

22006

NO DEFENDANT'S BRIEF
No Respondent's Brief Filed
VOLUME ONE

STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM HORRY COUNTY

Steven H. John, Circuit Court Judge

THE STATE,

RECEIVED

APR 30 2015

SC Court of Appeals

V.

MICHAEL ANTHONY BUTLER, JR.,

APPELLANT

APPELLATE CASE NO. 2014-001595

RECORD ON APPEAL

LAURA R. BAER
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit
Post Office Box 1276
1301 2nd Ave.
Conway, SC 29528-1276
(843) 915-5460

Attorneys for Respondent

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT # 29 (DVD)
STATE'S EXHIBIT #31 (DVD)

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2010-GS-26-1541

STATE OF SOUTH CAROLINA)
-vs-) TRANSCRIPT OF RECORD
MICHAEL ANTHONY BUTLER, JR.) ARRAIGNMENT

JULY 10, 2012
CONWAY, SOUTH CAROLINA

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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

LAUREE RICHARDSON, ESQ.
ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

JAMES C. GALMORE, III, ESQ.
OFFICE OF THE PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

1 **THE COURT:** All right, Solicitor.

2 **MS. RICHARDSON:** Thank you, Your Honor.

3 This is State of South Carolina versus Michael Anthony
4 Butler, Jr., Indictment 2010-GS-26-1541, charging him with
5 felony DUI, death resulting.

6 Your Honor, he was before you this morning to enter a
7 plea of guilty. He was on the trial roster. He has chosen
8 not to enter that plea of guilty at this time. The State
9 had agreed that if he pled guilty, we would be recommending
10 a cap of eight years. That plea offer is now off the table.
11 He will be looking at the one to twenty-five years.

12 We do intend that this trial would take some period of
13 time. The State has approximately twenty witnesses.
14 Obviously we would not have time for that this week, in
15 addition to the fact that we would be bringing in two
16 witnesses, one from Massachusetts and one from Georgia.

17 **THE COURT:** All right. Very good.

18 All right. Stand up Mr. Butler. (Mr. Butler stands.)

19 All right, Mr. Butler, you are charged and have been
20 charged by the State of South Carolina with the crime of
21 felony driving under the influence, whereby death results.
22 Do you understand that?

23 **MR. BUTLER:** Yes sir.

24 **THE COURT:** All right. Very good. You understand that
25 this is a violent and a serious offense by -- as classified

1 by the State of South Carolina. You understand that?

2 **MR. BUTLER:** Yes sir.

3 **THE COURT:** And you've discussed that with your
4 attorney, Mr. Galmore, is that correct?

5 **MR. BUTLER:** Yes sir.

6 **THE COURT:** All right. Very good. You understand the
7 potential sentence in this matter goes from a minimum of one
8 year up to twenty-five years in the State Penitentiary? You
9 understand that?

10 **MR. BUTLER:** Yes, Your Honor.

11 **THE COURT:** And a minimum fine of Ten Thousand, One
12 Hundred Dollars, up to Twenty Five Thousand, One Hundred
13 Dollars. You understand that?

14 **MR. BUTLER:** Yes, Your Honor.

15 **THE COURT:** All right, sir. As an ancillary penalty,
16 your driver's license is suspended for an additional five
17 years after whatever period of incarceration, so whatever
18 time that you would spend in the Department of Corrections,
19 once you get out, your driver's license -- you cannot have a
20 driver's license for an additional five years after that.
21 You understand that?

22 **MR. BUTLER:** Yes, Your Honor.

23 **THE COURT:** All right. Very good. Now, the State in
24 this matter has offered to you a plea bargain as described
25 by the Assistant Solicitor whereby you would plead to the

1 offense with the State's recommendation that the sentence be
2 capped or there be a maximum possible sentence of eight
3 years. You understand that?

4 **MR. BUTLER:** Yes, Your Honor.

5 **THE COURT:** You have obviously discussed this with your
6 attorney, Mr. Galmore, correct?

7 **MR. BUTLER:** Yes sir.

8 **THE COURT:** All right, sir. And he has given you his
9 advice, whatever it is, understanding it's your decision.
10 You understand that, of course?

11 **MR. BUTLER:** Yes sir.

12 **THE COURT:** All right. Very good. Now, regarding this
13 particular matter, what we're going through, the process
14 we're going through now is called an arraignment. It's for
15 you to make a decision, do I want to accept the State's plea
16 offer or do I want to turn that plea offer down, reject it,
17 and have a jury trial in this matter. You understand that?

18 **MR. BUTLER:** Yes sir.

19 **THE COURT:** If you decide to -- elect to exercise your
20 constitutional rights and have a jury trial in this matter,
21 the plea bargain that has been offered to you by the State
22 will be withdrawn and there will be no plea bargains offered
23 to you thereafter. You understand that?

24 **MR. BUTLER:** Yes sir.

25 **THE COURT:** Very good. Before I ask you whether you

1 want to accept the State's offer or go forward with the
2 trial, are there any questions you want to ask your
3 attorney, Mr. Galmore?

4 **MR. BUTLER:** No sir.

5 **THE COURT:** Very good. In this matter, then, do you
6 wish to accept the State's plea offer or do you want to go
7 forward with a trial in this matter?

8 **MR. BUTLER:** I will take the trial.

9 **THE COURT:** All right. Very good, sir. With that, the
10 matter will be placed on the trial calendar at the first
11 available date. Obviously, Mr. Galmore and Solicitor, y'all
12 will have to communicate with the Administrative Judge,
13 Judge Culbertson.

14 Y'all look at your docket, see what it is that this
15 trial can be accommodated on the criminal trial docket as
16 soon as possible. It is a case from February 16th, 2010, so
17 it obviously needs some resolution as it can be accommodated
18 on the schedule.

19 Are there any issues that need to be addressed at this
20 time, Mr. Galmore?

21 **MR. GALMORE:** It's my understanding that the State is
22 going to seek indictments for felony DUI, great bodily
23 injury based on injuries to other persons who were involved
24 in the accident. If that's the case, we're going to need
25 medical records and we're going to need time to perhaps hire

1 experts to determine whether there were, in fact, great
2 bodily injuries to these other people.

3 **THE COURT:** All right. Very good.

4 All right, Solicitor, other than that issue, is there
5 any other matters that the State needs to address at this
6 time?

7 **MS. RICHARDSON:** No sir, Your Honor.

8 **THE COURT:** All right. Very good.

9 I would suggest that y'all communicate with Judge
10 Culbertson regarding these matters, what needs to be done or
11 accomplished to bring this matter to trial so that y'all can
12 get the Administrative Judge's assistance in this matter,
13 all right?

14 **MS. RICHARDSON:** Thank you, Your Honor.

15 **MR. GALMORE:** Thank you.

16 **THE COURT:** Thank you very much.

17 (CONCLUSION OF TRANSCRIPT OF RECORD.)

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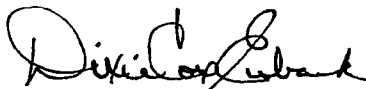
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of 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 hearing of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 10th day of July, 2012.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

October 22, 2014



DIXIE COX EUBANK

CIRCUIT COURT REPORTER

FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2013-GS-26-00131
2013-GS-26-00132

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

November 13, 2013

MICHAEL BUTLER,)

Defendant.)

B E F O R E:

Honorable Carmen T. Mullen
Horry County Courthouse
Conway, South Carolina

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

Lauree Richardson, Esquire
Attorney for Plaintiff

James Galmore, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

State v. Butler - 2013-GS-26-0131,0132

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E X H I B I T SNo.IDEV

(No exhibits were marked during hearing.)

State v Butler - 2013-GS-26-0131,0132
Heather Swarthout - By Richardson

3

1 **(NOVEMBER 13, 2013)**

2 MS. RICHARDSON: Good morning, Your Honor. This is the
3 State of South Carolina versus Michael Butler. It's
4 indictment 2013-GS-26-0131 charging him with felony driving
5 under the influence with great bodily injury, as well as 2013-
6 GS-26-0132 charging him with felony DUI with death. Your
7 Honor, this is gonna be a Schmerber hearing.

8 The State would call Officer Heather Swarthout at this
9 time.

10 THE COURT: Okay.

11 HEATHER SWARTHOUT, HAVING BEEN DULY
12 SWORN, TESTIFIES AS FOLLOWS:

13 CLERK: Please state your name and spell your last name
14 for the Court.

15 MS. SWARTHOUT: Heather Swarthout, S-W-A-R-T-H-O-U-T.

16 THE COURT: Good morning. Thank you.

17 MS. SWARTHOUT: Good morning.

18 THE COURT: Whenever you're ready.

19 DIRECT EXAMINATION OF HEATHER SWARTHOUT BY MS. RICHARDSON:

20 Q: Good morning, officer. Where are you employed?

21 A: City of North Myrtle Beach.

22 Q: Did you have an occasion to investigate a felony DUI on
23 February 16th, 2010?

24 A: Yes, ma'am, I did.

25 Q: Okay. And did you make an arrest based off of your

State v Butler - 2013-GS-26-0131, 0132

4

Heather Swarthout - By Richardson

1 investigation.

2 A: Yes, ma'am.

3 Q: And who was arrested for that?

4 A: Michael Butler.

5 Q: Okay. And why was Michael Butler arrested?

6 A: Based on witness statements, they identified him as the
7 driver of the vehicle and we identified him as being under the
8 influence and gave him a breathalyzer test.

9 Q: Okay. And what was the results of that breathalyzer
10 test?

11 A: .19.

12 Q: Now, are you aware of blood on the airbags of the
13 Defendant's vehicle?

14 A: Yes, ma'am.

15 Q: Okay. And to your knowledge, was that blood ever
16 swabbed?

17 A: Yes, it was swapped.

18 Q: Okay. And that's why we are requesting the Schmerber
19 today?

20 A: Correct.

21 Q: And would the results of that testing further your
22 investigation?

23 A: Yes, it would.

24 Q: And do you know how we intend to take his DNA today?

25 A: We would like to do a Buccal swab, a swab of his mouth.

State v Butler - 2013-GS-26-0131,0132
Heather Swarthout - By Galmore

5

1 THE COURT: Where was the blood? On which the airbag in
2 the car?

3 THE COURT: It was taken off of the driver's airbag.

4 THE COURT: Thank you.

5 BY MS. RICHARDSON:

6 Q: Just to be clear for the record, we don't want to be
7 misleading, there was some also on the passenger airbag as
8 well?

9 A: There was, correct.

10 THE COURT: And do you know who the passenger was?

11 MS. RICHARDSON: We do, Your Honor, that was the victim
12 in this case.

13 THE COURT: The deceased person, okay. Okay.

14 MS. RICHARDSON: That would be all for this witness.

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION OF HEATHER SWARTHOUT BY MR. GALMORE:

17 Q: Pronounce your name again for me, officer.

18 A: Heather Swarthout.

19 Q: Swarthout?

20 A: Yes.

21 Q: Okay. Officer Swarthout, did you take the DNA sample off
22 the airbag?

23 A: No, sir; I did not.

24 Q: Do you know which officer took the DNA sample?

25 A: It was detective Dennis Pittsinger.

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Heather Swarthout - By Galmore

6

1 Q: Do you know when the DNA sample was taken?

2 A: The next morning.

3 Q: Okay. So, it would've been taken February 17th of 2010?

4 A: Yes, sir.

5 Q: Do you know where the DNA sample has been stored for the
6 past three years?

7 A: It's been at the City of North Myrtle Beach in evidence
8 lockup.

9 Q: Is this just in a brown paper bag or in a refrigerator?
10 What ---

11 A: There is an actual vault that everything is secured in.
12 The only person that can get into that vault is our Evidence
13 Custodian.

14 Q: Could you address the Judge -- the Court's concerns about
15 any degradation of the DNA over the past three years?

16 A: None that I'm aware of.

17 Q: No further questions, ma'am.

18 THE COURT: Anything further?

19 MS. RICHARDSON: No, ma'am.

20 THE COURT: You may step down.

21 MS. RICHARDSON: That would be the State's showing, Your
22 Honor.

23 THE COURT: Okay. Do I need to hear from you? Do you
24 want to call anyone?

25 MR. GALMORE: No, Your Honor, but I do have a motion I'd

State v Butler - 2013-GS-26-0131,0132
MOTION

7

1 like to be heard.

2 THE COURT: Go ahead.

3 MOTION:

4 MR. GALMORE: Well, first, I would move to exclude this
5 DNA evidence for failure to comply with discovery under Rule
6 5. This case, as you've heard, the accident was on February
7 16th of 2010. We made a discovery request April of 2010.
8 It's now 2013 and this is the first indication that there was
9 DNA involved in this case. We have received discovery, my
10 client and I have gone through it. There are videos, we've
11 looked at the videos, we've gone through the paperwork.
12 Nowhere in that paperwork does it mention discovery. These
13 case has been scheduled for trial -- I mean, excuse me, does
14 it mention a DNA sample on an airbag. This case has been
15 scheduled for trial. I think it was scheduled August of last
16 year. It was also tentatively put on for this month and it
17 was taken off this month because of this DNA that has been
18 discovered laying around in a case file somewhere. My point
19 is we can't prepare defense if we're being given evidence at
20 the last moment. So, we'd like the Court to exclude this DNA
21 evidence.

22 MS. RICHARDSON: Your Honor, it was scheduled for trial
23 this month. It was actually first upon the trial roster for
24 this month. Just with the sheer number of witnesses we had, I
25 went over, I spoke with the officers, we all sat down in the

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8

MOTION

1 room. The detective who was actually on this case is a
2 retired detective. He is still around and we're able to get
3 in touch with him. However, when I was speaking with the
4 officers, we were discussing whether or not this Defendant was
5 the driver, how we were going to put him in the driver seat
6 and then the officer actually told me, well, why is this even
7 an issue because the detective took the blood swabs. That was
8 the first I was ever made aware of it. As soon as I became
9 aware of it, I notified Mr. Galtore the next day that we did
10 have the swabs and that I would be asking for a Schmerber
11 hearing.

12 THE COURT: Okay. Where did you send in the swabs here?
13 Do you send them to SLED or do you have your own lab?

14 MS. RICHARDSON: No, ma'am. We send them to SLED.

15 THE COURT: And what is your turnaround experience with
16 SLED.

17 MS. RICHARDSON: Your Honor, we will ask for a rush order
18 on this.

19 THE COURT: Okay. What does that mean for you all?

20 MS. ELDER: Typically about anywhere from three and six
21 months, Your Honor.

22 THE COURT: All right. And is your client incarcerated
23 currently?

24 MR. GALTORE: No, ma'am.

25 THE COURT: Okay.

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RULING OF THE COURT

9

1 MR. GALMORE: Your Honor, I would like to also point out
2 that, while we question the evidence itself, we question the
3 circumstances under which it was taken. We have a retired
4 detective that took the evidence. But we question where it's
5 been stored for the past three years, if there's any type of
6 degradation, if there's any type of evidence that can be
7 obtained at this point because it's been sitting in a brown
8 paper bag for the past three years. Also, Your Honor, my
9 client is concerned about his privacy rights and his Fourth
10 Amendment rights against unreasonable search and seizure. I
11 know how court's ruling that but we would just like you to
12 take those things into consideration and couple it with the
13 fact that this evidence has been missing for, wherever it's
14 been for the past three years, and we'd ask you to deny the
15 Schmerber hearing. If not, if you do not deny introduction of
16 this evidence into trial itself.

17 RULING OF THE COURT:

18 THE COURT: Okay. Well, first off. We're just doing a
19 Schmerber hearing and whether or not it can be used at trial
20 is an issue to be determined by the Trial Judge.
21 Additionally, any questions of any degradation the sample is
22 to be taken up and certainly can be addressed on cross
23 examination either at trial or an in camera hearing prior to.
24 I think we need to have a DNA expert tell us whether or not
25 they can actually make an identification based on that.

State v Butler - 2013-GS-26-0131,0132
RULING OF THE COURT

10

1 However, as far as a simple Schmerber hearing is concerned, I
2 will say that it's interesting that it takes this long for us
3 to find out that in fact there is a blood sample, which I'm
4 gonna assume -- and I hate to say assume but I'm going to
5 guess it was cut off of the airbag to have it to be compared
6 to, I would hope at least, and those are questions you can ask
7 certainly the DNA expert. As far as probable cause is
8 concerned, certainly there's probable cause that a crime
9 occurred, they believe it's your client, obviously. The swab
10 is minimally invasive and there is something to compare it to..
11 I don't think it's overly intrusive and I'm gonna grant it.

12 MS. RICHARDSON: Thank you, Your Honor.

13 MR. GALMORE: Yes, ma'am, thank you.

14

15 (ADJOURNED.)

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ORIGINAL

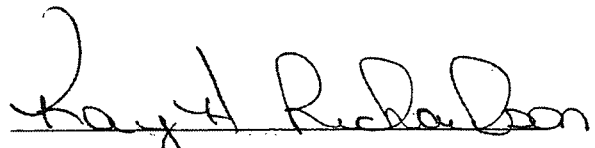
State v Butler - 2013-GS-26-0131,0132
CERTIFICATE OF COURT REPORTER

11

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, 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 the hearing held in the case of State of South Carolina versus Michael Butler, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on February 13, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

December 30, 2014.

STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

COUNTY OF HORRY) CASE NO.: 2014-GS-26-02621

April 14, 2014

BEFORE: The Honorable Larry Hyman

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

MICHAEL BUTLER,

Defendant.

 ORIGINAL

APPEARANCES:

Lore Richardson, Esq.
Attorneys for the State.

James Galmore, Esq.
Attorneys for the Defendant.

Official Court Reporter
Natalie Dahl

P R O C E E D I N G S

(MICHAEL BUTLER, having been duly sworn,
testified as follows:)

MS. RICHARDSON: He is charged with felony driving under the influence with death as well as great bodily injury. This is a motion to lift a bench warrant. We issued a bench warrant back in February, Your Honor, for failing to appear to a roll call. The State is ready to move forward with the trial in this case. He is scheduled right now for the May 12th trial roster.

THE COURT: What did he miss?

MS. RICHARDSON: Roll call.

MR. GALMORE: January roll call of this year.

THE COURT: Okay.

MR. GALMORE: And, Your Honor, once he was made aware of the situation, he contacted me and asked me to file to get it lifted. This is a felony DUI from 2010. It has made its way to the trial roster. It is scheduled for court in May. What happened is that --

THE COURT: Where has he been hiding? Because if they issued a bench warrant in January, obviously it hasn't been executed, so.

MR. GALMORE: That is the problem. He hasn't been hiding anywhere. We have the envelopes that we

1 sent to him for the last court date, and these
2 envelopes are returned back as "Return to Sender, Not
3 Deliverable as Addressed." I checked with Mr. Butler
4 and his mother. This is his mother's address. It is
5 not an apartment building where you have to list an
6 apartment unit.

7 THE COURT: Someone is handing it back to the
8 mailman and saying he doesn't live here.

9 MR. GALMORE: The mailman was saying "refused
10 delivery," he wouldn't say "not deliverable at
11 address," so that kind of made me believe we left off
12 an apartment number.

13 THE COURT: Did you have the right address?

14 MR. GALMORE: We do, Your Honor. I verified it
15 with Mr. Butler.

16 THE COURT: Who at the house there is saying, We
17 don't take his mail?

18 MR. GALMORE: I don't know why the mail comes
19 back. His mother -- his mother tells me this is the
20 correct address. I have spoken with the bondsman, and
21 she's willing to remain on the bond. We ask you to
22 give him an opportunity. He's come to court when
23 asked to do so.

24 THE COURT: How many times has he appeared?

25 MR. GALMORE: This is just an oversight in the

1 past four years.

2 THE COURT: How many times has he appeared? He's
3 been waiting for trial for four years?

4 MR. GALMORE: Yes, sir.

5 THE COURT: I'm lifting the bench warrant.

6 MS. RICHARDSON: It is scheduled for the May term
7 of court. There is outstanding DNA found on the
8 driver's airbag. It is the State's intention to move
9 without that DNA. I believe we have more than enough
10 evidence without that. I just want Your Honor aware
11 of that. We have extended an offer to him that if he
12 were to plead guilty, we would offer the minimum, one
13 year.

14 THE COURT: Mr. Galmore, you need to step back
15 and talk with your client and come back and visit me
16 in a few minutes.

17 MR. GALMORE: Yes, sir, Your Honor.

18 (A recess was taken.)

19 MS. RICHARDSON: Back on the record with State of
20 South Carolina versus Michael Butler. I believe he
21 does not want to accept the plea offer. I didn't know
22 if you wish to talk to him or do an arraignment. The
23 State is ready to move forward on May 12th.

24 THE COURT: You are ready to pull the offer?

25 MS. RICHARDSON: Yes, sir. We are done with our

1 offers.

2 THE COURT: All right. Mr. Butler, has Mr.
3 Galmore had an opportunity to explain to you the
4 charge that you are facing, felony DUI death ensuing?

5 MR. BUTLER: Yes, sir.

6 THE COURT: Do you understand what the State
7 would need to prove in order to convict you?

8 MR. BUTLER: Yes, sir.

9 THE COURT: More importantly, do you realize that
10 that carries up to 25 years in prison?

11 MR. BUTLER: Yes, sir.

12 THE COURT: And a mandatory one year?

13 MS. RICHARDSON: One year.

14 THE COURT: I don't know anything about your
15 case, Mr. Butler; I know absolutely nothing. It is
16 hard for me to say whether you are made a good offer
17 or bad offer. The offer, as I understand it, is the
18 State will recommend a sentence for the minimum, which
19 is one year. I don't know if that is a good deal or
20 bad deal. Have you had an opportunity to go over the
21 evidence with Mr. Galmore that they have against you,
22 what they call the "discovery materials?"

23 MR. BUTLER: They claim they have new evidence
24 that I have not seen.

25 THE COURT: What new evidence?

1 MS. RICHARDSON: I'm assuming he is talking about
2 the DNA.

3 THE COURT: But they said they are not going to
4 do the DNA?

5 MR. GALMORE: Correct.

6 THE COURT: So, Mr. Galmore, have you gone over
7 the evidence, discovery materials?

8 MR. GALMORE: Yes.

9 THE COURT: Is there a video?

10 MR. GALMORE: There is videos from before the
11 accident, and we viewed those. The interviews with
12 certain witnesses, we viewed those also.

13 THE COURT: So, you have had an opportunity to
14 look at your evidence. I'll tell you, even though I
15 know nothing about your case, I don't know whether it
16 is a good deal or bad deal, I'll promise you that Mr.
17 Galmore does. He has been doing this a very long
18 time. He -- I will assure you -- is in a better
19 position to evaluate this case than you are.
20 Unfortunately, every time I hold a term of general
21 sessions or criminal court, I have people that come
22 before me who have their buddies who are advising
23 them. I'll tell you, your buddies are idiots. They
24 may be telling you what you should do, maybe giving
25 you good advice, but when it comes to the law and

1 trying a case, they are idiots. Don't listen to them.
2 I suggest to you that you listen to your attorney. I
3 don't know what he's telling you. I don't know
4 whether he is saying to take the deal, or don't. If I
5 were you and he told me to take the deal, I would
6 think long and hard before rejecting it. If he told
7 me not to take it, I wouldn't, because he knows how to
8 evaluate these cases and knows how a jury is going to
9 look at it. He's not infallible, but I'll tell you he
10 is in a better position than anyone else around you to
11 make that call. It is up to you, but I want you to
12 understand that today the Solicitor is saying I will
13 allow you to plead guilty and I'll recommend to the
14 Court that you receive the minimum sentence. At 5
15 o'clock today, that is withdrawn. It will never be
16 offered again; do you understand that?

17 MR. BUTLER: Yes, sir.

18 THE COURT: You will go to trial, or you may get
19 another offer, but it will be substantially more, and
20 that is the policy in the Solicitor's office. They
21 follow it. Mr. Galmore will tell you, you turn down a
22 deal, they draw a line in the sand. If you turn it
23 down at that point, you don't get offers anymore;
24 right, Mr. Galmore?

25 MR. GALMORE: Yes, sir.

1 THE COURT: So I would advise you, this is a
2 turning point, an important point for you. You need
3 to talk with your attorney. I know Mr. Galmore is
4 busy doing pleas, but you need to hang around until
5 you have had an opportunity to have him answer any
6 questions you may have about this before you reject
7 this, because it is a substantial deal that you are
8 being offered; I think Mr. Galmore and I would agree
9 on that. It is very seldom we see that offer on a
10 felony DUI death. Good luck to you, Mr. Butler.

11 MS. RICHARDSON: Can we also inform him that if
12 he fails to appear on May 12th, we'll move forward
13 with the trial in his absence?

14 THE COURT: Absolutely. May 12th, they'll try
15 you whether you are here or not. You are put on
16 notice. May 12, 2014, Monday morning, here, 9
17 o'clock, they will try you with or without you.

18 MR. BUTLER: We also have a April 28th date.

19 MR. GALMORE: Status conference.

20 THE COURT: Okay. Goodbye.

21 (The proceedings concluded.)
22
23
24
25

1 CERTIFICATE OF REPORTER

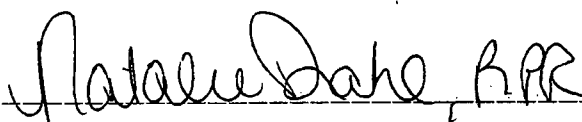
2
3 State of South Carolina)

4 County of Horry)

5
6 I, Natalie Dahl, Official Court Reporter for the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the captioned case, relative to appeal,
11 in the Court of General Sessions for Horry County,
12 South Carolina, on the 14th day of April, 2014.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15
16 December 11, 2014.

17
18 
19 _____
20 Natalie Dahl, RPR

21 Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2014-GS-26-02621

STATE OF SOUTH CAROLINA)
-vs-) TRANSCRIPT OF RECORD
MICHAEL ANTHONY BUTLER, JR.)
_____)

JULY 14 - 17, 2014
CONWAY, SOUTH CAROLINA

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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

LAUREE RICHARDSON, ESQ.
THOMAS G. TERRELL, III, ESQ.
ASSISTANT SOLICITORS
ATTORNEYS FOR THE STATE

JAMES C. GALMORE, III, ESQ.
CATHERINE D. OWENS, ESQ.
OFFICE OF THE PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDANT

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

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1 **THE COURT:** All right, ladies and gentlemen, we are
2 going to commence the trial of the State of South Carolina
3 versus Michael Anthony Butler, Jr. Now, the State of South
4 Carolina has charged the Defendant with the crime of felony
5 driving under the influence with death.

6 Regarding this particular matter, I am going to first
7 read to you some allegations, charges, that the State has
8 made against the Defendant in the indictment. Before I do
9 that, I want to tell you what the indictment is.

10 The indictment is how the matter comes to Court. It is
11 the charge. It is not evidence. It cannot be considered by
12 anyone as evidence in the case. That would come from
13 witnesses who might testify under oath in this particular
14 matter and any other kind of documentary or other type of
15 evidence that might be introduced in this matter.

16 The only reason I would read to you the charge as set
17 forth by the State of South Carolina against the Defendant
18 is to see if you happen to know anything about this
19 particular case, have any information about this case that
20 you need to tell the Court about prior to the trial
21 commencing.

22 So, the State of South Carolina has charged the
23 Defendant with the crime of felony driving under the
24 influence with death. The State charges that Michael
25 Anthony Butler, Jr. did in Horry County on or about February

1 16th of 2010 drive a motor vehicle while under the influence
2 of alcohol, drugs, or a combination of both, and did an act
3 forbidden by law or neglected a duty imposed by law in
4 driving of the vehicle, to wit: He drove left of center,
5 failed to maintain lane, and/or drove recklessly, and/or
6 drove on the wrong side of the road, which act or neglect
7 proximately caused the death of Mitchell White in violation
8 of the Code of Laws of the State of South Carolina, 1976, as
9 amended.

10 Is there any member of the jury panel that knows
11 anything about this particular matter, has any information
12 or facts about this particular case, that they need to tell
13 the Court about at this time? If so, please stand. (No
14 response.) Very good.

15 I'm going to read to you now several or the potential
16 or possible witnesses in this particular case. Just because
17 I read the person's name does not necessarily mean that they
18 will actually testify in the trial, but that they could be
19 called. They are potential, possible witnesses, and after
20 that, I'll ask if you happen to know any of the potential or
21 possible witnesses in this case.

22 Officer Heather Swarthout, S-W-A-R-T-H-O-U-T, North
23 Myrtle Beach Police Department; Detective Dennis Pittsinger,
24 North Myrtle Beach Police Department, retired; Lieutenant
25 Michael Boyd, North Myrtle Beach Police Department; Officer

1 Jeff Schuster, North Myrtle Beach Police Department; Renee
2 Best, North Myrtle Beach Police Department; Detective Joel
3 McGarland, North Myrtle Beach Police Department; Jeff
4 Senter, North Myrtle Beach Police Department, retired.

5 Lieutenant Mike Dangerfield, South Carolina Highway
6 Patrol; Trooper Eppes, South Carolina Highway Patrol;
7 Trooper Buie, B-U-I-E, South Carolina Highway Patrol;
8 Trooper Dewitt, South Carolina Highway Patrol; Trooper
9 Leach, South Carolina Highway Patrol; Trooper McGaha, M-C-G-
10 A-H-A, South Carolina Highway Patrol; Dr. Thomas Wilkins;
11 Dana Christmas, a registered nurse; Anna Goodwin, a
12 registered nurse; Dr. Edward Proctor.

13 Phillip Johnson, Horry County Fire Rescue; Nicholas
14 Henderson, Horry County Fire Rescue; Eric Pierce; Crystal
15 Alden; Bradley Burns; Said Canto, S-A-I-D C-A-N-T-O; Sarah
16 Walser; Lily Gallman, South Carolina Law Enforcement
17 Division; Brett Baker, South Carolina Law Enforcement
18 Division; Amy Stephen, South Carolina Law Enforcement
19 Division; David Lee; Gerald C. McDivitt; Michael Anthony
20 Butler.

21 Is there any member of the jury panel that's related by
22 blood or marriage, close personal friends, acquaintances of,
23 knows any of these potential or possible witnesses or have
24 any kind of connection or relationship to them? If so,
25 please stand. (No response.) Very good.

1 Is there any member of the jury panel, either you,
2 yourself, or a member of your immediate family ever had any
3 matters in any way, of any kind, handled by the Fifteenth
4 Circuit Solicitor's Office?

5 Now, the Fifteenth Circuit Solicitor's Office is the
6 prosecuting office which prosecutes cases for the State of
7 South Carolina in the counties of Horry and Georgetown, so
8 you, yourself, or a member of your immediate family have
9 ever had any matters handled in any way by the Fifteenth
10 Circuit Solicitor's Office, if so, please stand.

11 Yes ma'am. Tell me first your name and your juror
12 number, please.

13 **JUROR NUMBER 354:** Okay. I'm Elizabeth Newbigging. I
14 am Juror Number 354.

15 **THE COURT:** All right, ma'am. Now, regarding this
16 particular matter, don't tell me about it. Was it yourself
17 or a family member?

18 **JUROR NUMBER 354:** No, it was -- I'm the -- considered
19 the victim.

20 **THE COURT:** Okay. All right. So in that, regarding
21 that particular matter, and again, I don't want you to tell
22 me about it, my question to you is can you give to the State
23 of South Carolina and to the Defendant a fair and impartial
24 trial? Can you be a fair and impartial juror in this case?

25 **JUROR NUMBER 354:** Absolutely.

1 **THE COURT:** Thank you very much.

2 All right, yes ma'am, your name and juror number,
3 please.

4 **JUROR NUMBER 75:** I'm Kimberly Caudill, 75.

5 **THE COURT:** All right, ma'am. And was it yourself or a
6 family member?

7 **JUROR NUMBER 75:** A family member.

8 **THE COURT:** Can you give to the State of South Carolina
9 and to the Defendant a fair and impartial trial? Can you be
10 a fair and impartial juror in this case?

11 **JUROR NUMBER 75:** I will.

12 **THE COURT:** Thank you very much, ma'am.

13 Yes ma'am, your name and juror number, please.

14 **JUROR NUMBER 351:** Chanelle Myers, 351.

15 **THE COURT:** Yes ma'am. And was it yourself or a family
16 member?

17 **JUROR NUMBER 351:** A family member.

18 **THE COURT:** Can you give to the State of South Carolina
19 and to the Defendant a fair and impartial trial? Can you be
20 a fair and impartial juror in this case?

21 **JUROR NUMBER 351:** Yes.

22 **THE COURT:** Thank you very much.

23 All right. Is there any member of the jury panel that
24 either you, yourself, or a member of your immediate family
25 has ever had any matter handled by the Fifteenth Circuit

1 Public Defender's Office, that's either here in Horry or
2 Georgetown County? If so, please stand.

3 Yes ma'am, your name and jury number, please.

4 **JUROR NUMBER 316:** Tameka McCray, 316.

5 **THE COURT:** And was it yourself or a family member?

6 **JUROR NUMBER 316:** Myself.

7 **THE COURT:** Can you give to the State of South Carolina
8 and to the Defendant a fair and impartial trial? Can you be
9 a fair and impartial juror in this case?

10 **JUROR NUMBER 316:** Yes sir.

11 **THE COURT:** Thank you very much.

12 Is there any member of the jury panel that is related
13 by blood or marriage or close personal friends,
14 acquaintances of anybody employed at the Fifteenth Circuit
15 Solicitor's Office either in Horry or Georgetown County? If
16 so, please stand. (No response.)

17 Any member of the jury panel -- yes ma'am, I'm sorry.
18 Your name and jury number.

19 **JUROR NUMBER 64:** Jamie Caplan, 64.

20 **THE COURT:** All right, ma'am. And are you related or
21 just know somebody?

22 **JUROR NUMBER 64:** I know somebody.

23 **THE COURT:** All right. Very good. Can you give to the
24 State of South Carolina and to the Defendant a fair and
25 impartial trial? Can you be a fair and impartial juror in

1 this case?

2 **JUROR NUMBER 64:** Yes.

3 **THE COURT:** All right. Anybody else? (No response.)

4 Is there any member of the jury panel that's related by
5 blood or marriage, close personal friends, acquaintances of
6 anybody employed in either the Horry County or the
7 Georgetown County Public Defender's Office? If so, please
8 stand. (No response.)

9 Is there any member of the jury panel that you believe
10 you have any kind of personal, political, religious,
11 philosophical belief that you believe would prevent you from
12 being a fair and impartial juror in this particular case?
13 If so, please stand. (No response.)

14 Is there any member of the jury panel that you,
15 yourself, were a former law enforcement officer or you've
16 got a current family member that was in the past in law
17 enforcement or is currently now in law enforcement, wherever
18 that might be, just not talking about the State of South
19 Carolina, any type of federal, state, county agency of any
20 kind?

21 All right. We'll start here on the end. Yes sir, your
22 name and juror number, please.

23 **JUROR NUMBER 491:** My name is Casey Woodsby, 491.

24 **THE COURT:** 491. All right, sir.

25 **JUROR NUMBER 491:** I used to be employed by the State

1 of South Carolina Department of Revenue.

2 **THE COURT:** All right. Very good. Can you give to the
3 State of South Carolina and to the Defendant a fair and
4 impartial trial? Can you be a fair and impartial juror in
5 this case?

6 **JUROR NUMBER 491:** Yes sir.

7 **THE COURT:** Thank you very much.

8 **JUROR NUMBER 491:** Thank you.

9 **THE COURT:** All right.

10 Yes ma'am, right here.

11 **JUROR NUMBER 233:** Betty Isom, 233.

12 **THE COURT:** Yes ma'am.

13 **JUROR NUMBER 233:** I worked for the State Police in New
14 York, the New York State Police.

15 **THE COURT:** All right. Very good. Can you give to the
16 State of South Carolina and to the Defendant a fair and
17 impartial trial? Can you be a fair and impartial juror in
18 this case?

19 **JUROR NUMBER 233:** Absolutely.

20 **THE COURT:** Thank you very much.

21 Yes ma'am, your name and juror number, please.

22 **JUROR NUMBER 257:** Kimberly Kemmner, 257. My brother
23 is a former SLED agent for South Carolina and is a county
24 police officer.

25 **THE COURT:** All right, ma'am. Can you give to the

1 State of South Carolina and to the Defendant a fair and
2 impartial trial? Can you be a fair and impartial juror in
3 this case?

4 **JUROR NUMBER 257:** Yes sir.

5 **THE COURT:** Very good. Thank you, ma'am.

6 All right. Yes, sir, your name and juror number,
7 please..

8 **JUROR NUMBER 9:** Robert C. Andrews, Juror Number 9. I
9 have a first cousin who is still employed with the Maryland
10 State Police. I have not had contact with him in years.

11 **THE COURT:** All right. Very good. Can you give to the
12 State of South Carolina and to the Defendant a fair and
13 impartial trial? Can you be a fair and impartial juror in
14 this case?

15 **JUROR NUMBER 9:** Absolutely.

16 **THE COURT:** Thank you very much.

17 All right. Yes ma'am?

18 **JUROR NUMBER 144:** My name is Carolyn Finn, Juror
19 Number 144. My son is a lieutenant in the Maryland Police
20 Department. My two son-in-laws are both police officers.
21 My one son-in-law is with the County Sheriff in New York and
22 my other son-in-law is part of (inaudible).

23 **THE COURT:** All right. Very good. Can you give to the
24 State of South Carolina and to the Defendant a fair and
25 impartial trial? Can you be a fair and impartial juror in

1 this case?

2 **JUROR NUMBER 144:** I believe so.

3 **THE COURT:** All right. And I must ask from you, ma'am,
4 -- you must either tell me yes, I can, or no, I can't.

5 **JUROR NUMBER 144:** Yes, I can.

6 **THE COURT:** Very good. Thank you, ma'am.

7 All right. Anybody else? (No response.)

8 Is there any member of the jury panel, either you,
9 yourself, or a member of your immediate family, a member of
10 any kind of victim's rights or law enforcement support
11 organization. Now, I'm going to give you a couple of
12 examples. Now, this is not an exhaustive list of any kind.
13 What I am trying to do is just give you some examples.

14 The South Carolina Law Enforcement Officers
15 Association, or South Carolina Sheriffs Association, the
16 Mothers Against Drunk Driving, Citizens Against Violent
17 Crime, just some kind of law enforcement support
18 organization or victim's rights organization, either you,
19 yourself, or member of your immediate family a member? If
20 so, please stand. (No response.)

21 All right. Very good. The next question I'm going to
22 ask you, ladies and gentlemen, is whether or not you,
23 yourself, or a member of your immediate family have ever
24 been the victim of a crime. Now, I am not going to ask you
25 what occurred. I do not want you to volunteer any

1 information to me about what occurred. The question will be
2 straightforward. Was it yourself or a family member. Based
3 upon that, I will ask the qualification question.

4 Is there any member of the jury panel, either you,
5 yourself, or a member of your immediate family has ever been
6 the victim of a crime? If so, please stand.

7 All right. Yes ma'am. Again, just -- you have to tell
8 me your name and juror number again.

9 **JUROR NUMBER 354:** Elizabeth Newbigging, 354.

10 **THE COURT:** And I think you indicated before it was
11 yourself, correct?

12 **JUROR NUMBER 354:** And my husband.

13 **THE COURT:** All right, so yourself and a family member.
14 Can you give to the State of South Carolina and to the
15 Defendant a fair and impartial trial? Can you be a fair and
16 impartial juror in this case?

17 **JUROR NUMBER 354:** Yes.

18 **THE COURT:** Thank you, ma'am.

19 Yes ma'am?

20 **JUROR NUMBER 67:** I'm Stacie Carpenter, Juror 67.

21 **THE COURT:** Yourself or a family member?

22 **JUROR NUMBER 67:** A family member.

23 **THE COURT:** Can you give to the State of South Carolina
24 and to the Defendant a fair and impartial trial? Can you be
25 a fair and impartial juror in this case?

1 **JUROR NUMBER 67:** Yes sir.

2 **THE COURT:** Thank you very much, ma'am.

3 Yes sir, right in the middle there.

4 **JUROR NUMBER 496:** My name is Michael Wright. I can't
5 remember my number.

6 **THE COURT:** All right. Hold on a second.

7 Madam Clerk?

8 **THE DEPUTY CLERK:** Michael Wright, Juror 496.

9 **THE COURT:** 496. All right.

10 **JUROR NUMBER 496:** It was a family member.

11 **THE COURT:** A family member. Can you give to the State
12 of South Carolina and to the Defendant a fair and impartial
13 trial? Can you be a fair and impartial juror in this case?

14 **JUROR NUMBER 496:** Yes.

15 **THE COURT:** Thank you very much.

16 All right, yes ma'am. Your name and juror number,
17 please, ma'am.

18 **JUROR NUMBER 449:** Jennifer Tallevast, 449.

19 **THE COURT:** Yourself or a family member?

20 **JUROR NUMBER 449:** Myself.

21 **THE COURT:** Can you give to the State of South Carolina
22 and to the Defendant a fair and impartial trial? Can you be
23 a fair and impartial juror in this case?

24 **JUROR NUMBER 449:** Yes sir.

25 **THE COURT:** Thank you very much.

1 All right. Yes ma'am, in the middle there?

2 **JUROR NUMBER 351:** Chanelle Myers, 351, a family
3 member.

4 **THE COURT:** Can you give to the State of South Carolina
5 and to the Defendant a fair and impartial trial? Can you be
6 a fair and impartial juror in this case?

7 **JUROR NUMBER 351:** Yes sir.

8 **THE COURT:** Thank you very much.

9 All right. Yes ma'am?

10 **JUROR NUMBER 236:** Danielle Jenkins. I'm not sure what
11 my juror number was.

12 **THE COURT:** All right. Madam Clerk?

13 **THE DEPUTY CLERK:** 236..

14 **THE COURT:** 236. All right. Very good.

15 Go ahead, ma'am.

16 **JUROR NUMBER 236:** Myself.

17 **THE COURT:** Can you give to the State of South Carolina
18 and to the Defendant a fair and impartial trial? Can you be
19 a fair and impartial juror in this case?

20 **JUROR NUMBER 236:** Yes.

21 **THE COURT:** Thank you very much, ma'am.

22 All right. Yes ma'am?

23 **JUROR NUMBER 144:** My daughter.

24 **THE COURT:** Okay, a family member. Can you give to the
25 State of South Carolina and to the Defendant a fair and

1 impartial trial? Can you be a fair and impartial juror in
2 this case? If you have any hesitation, just tell me that to
3 be so and I might talk to you about that. You seem to be
4 having some hesitation. Come up here and talk to me for a
5 second.

6 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

7 THE COURT: I'm sorry, ma'am. Your juror number again
8 was?

9 JUROR NUMBER 144: 144.

10 THE COURT: Thank you very much, ma'am.

11 Yes sir, your name and -- oh, yes ma'am, I'm sorry.

12 JUROR NUMBER 70: Your Honor, I have a matter of ---

13 THE COURT: All right, ma'am. Don't tell me anything
14 about that. Tell me your name and your juror number.

15 JUROR NUMBER 70: Oh, I'm sorry. 70, Tula Carroll.

16 THE COURT: All right, Ms. Carroll. You come on up and
17 talk to me for a second, please.

18 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

19 THE COURT: Can you give to the State of South Carolina
20 and to the Defendant a fair and impartial trial? Can you be
21 a fair and impartial juror in this case?

22 JUROR NUMBER 70: Yes, I can.

23 THE COURT: Yes sir. Your name and juror number,
24 please, sir.

25 JUROR NUMBER 177: Austin Godwin, 177.

1 **THE COURT:** And was it yourself or a family member?

2 **JUROR NUMBER 177:** Family member.

3 **THE COURT:** Can you give to the State of South Carolina
4 and to the Defendant a fair and impartial trial? Can you be
5 a fair and impartial juror in this case?

6 **JUROR NUMBER 177:** Yes sir.

7 **THE COURT:** All right. Thank you very much.

8 All right. Is there any member of the jury panel that
9 either you, yourself, or a member of your immediate family
10 has been a part of any kind of litigation, a case in court,
11 involving either a criminal case or a civil case? It might
12 have involved driving under the influence in some way, so a
13 civil case involving driving under the influence or a
14 criminal case involving driving under the influence in any
15 way, civil or criminal, either you, yourself, or a member of
16 your immediate family? If so, please stand. (No response.)

17 All right, and again, as with the other question, I'm
18 going to be asking you whether it was yourself or a family
19 member. I will ask if it was civil court. Civil court is
20 basically about monetary money damages. Criminal court is
21 what we're about here today. I will ask if it was civil or
22 criminal. Please do not tell me any details. Do not
23 discuss the case in any way.

24 So we will first start off, ma'am, with your name and
25 juror number.

1 **JUROR NUMBER 67:** Stacie Carpenter, Juror Number 67.

2 **THE COURT:** All right. And was it yourself or a family
3 member?

4 **JUROR NUMBER 67:** It was a family member.

5 **THE COURT:** And was it civil or criminal?

6 **JUROR NUMBER 67:** Criminal.

7 **THE COURT:** Very good. Can you give -- I'm sorry. I
8 have to ask the qualification question now. Can you give to
9 the State of South Carolina and to the Defendant a fair and
10 impartial trial? Can you be a fair and impartial juror in
11 this case?

12 **JUROR NUMBER 67:** Yes sir.

13 **THE COURT:** Thank you very much.

14 All right. Yes ma'am, your name and juror number
15 again.

16 **JUROR NUMBER 449:** Jennifer Tallevast, 449. It was a
17 family member.

18 **THE COURT:** A family member. And then was it civil or
19 criminal?

20 **JUROR NUMBER 449:** Civil.

21 **THE COURT:** Can you give to the State of South Carolina
22 and to the Defendant a fair and impartial trial? Can you be
23 a fair and impartial juror in this case?

24 **JUROR NUMBER 449:** Yes sir.

25 **THE COURT:** Thank you very much.

1 Yes sir?

2 JUROR NUMBER 429: David Spangler, 429.

3 THE COURT: And was it yourself or a family member?

4 JUROR NUMBER 429: A family member.

5 THE COURT: And was it civil or criminal?

6 JUROR NUMBER 429: Civil.

7 THE COURT: Can you give to the State of South Carolina
8 and to the Defendant a fair and impartial trial? Can you be
9 a fair and impartial juror in this case?

10 JUROR NUMBER 429: Yes sir.

11 THE COURT: Thank you very much.

12 All right. Yes sir, your name and juror number again.

13 JUROR NUMBER 9: Robert C. Andrews, Juror Number 9.

14 THE COURT: And was it yourself or a family member?

15 JUROR NUMBER 9: A family member.

16 THE COURT: And was it civil or criminal?

17 JUROR NUMBER 9: Civil.

18 THE COURT: Can you give to the State of South Carolina
19 and to the Defendant a fair and impartial trial? Can you be
20 a fair and impartial juror in this case?

21 JUROR NUMBER 9: Yes sir.

22 THE COURT: Thank you very much.

23 All right. Yes sir, your name and juror number.

24 JUROR NUMBER 345: Donald Morrison, Number 345.

25 THE COURT: And then was it yourself or a family

1 member?

2 **JUROR NUMBER 345:** It was myself.

3 **THE COURT:** And was it then civil or criminal?

4 **JUROR NUMBER 345:** It was civil.

5 **THE COURT:** Can you give to the State of South Carolina
6 and to the Defendant a fair and impartial trial? Can you be
7 a fair and impartial juror in this case?

8 **JUROR NUMBER 345:** Yes sir, I can.

9 **THE COURT:** Very good, sir.

10 All right. Yes sir, your name and juror number.

11 **JUROR NUMBER 377:** 377, Steve Pugh.

12 **THE COURT:** And, yes sir, was it yourself or a family
13 member?

14 **JUROR NUMBER 377:** Myself.

15 **THE COURT:** And then was it civil or criminal?

16 **JUROR NUMBER 377:** Civil.

17 **THE COURT:** Can you give to the State of South Carolina
18 and to the Defendant a fair and impartial trial? Can you be
19 a fair and impartial juror in this case?

20 **JUROR NUMBER 377:** Yes sir.

21 **THE COURT:** Thank you very much.

22 Anything else? (No response.)

23 All right, ladies and gentlemen, I'm going to ask you
24 what I call my general or catch-all question. Do you know
25 of any reason, have any question in your mind, any doubt in

1 your mind that you believe you cannot give to the State of
2 South Carolina and to the Defendant a fair and impartial
3 trial, that is for any reason whatsoever you believe you
4 cannot be a fair and impartial juror in this case? If so,
5 please stand. (No response.) Very good.

6 Further questions from the State?

7 **MS. RICHARDSON:** None from the State, Your Honor.

8 **THE COURT:** Further questions from the Defense?

9 **MR. GALMORE:** No sir, Your Honor.

10 **THE COURT:** Very good.

11 All right, ladies and gentlemen, let me explain how the
12 selection process will proceed now. What is going to happen
13 is the Clerk of Court in a random order from your names
14 which were selected in a random manner, will call a name.
15 If your name is called, you will stand up and you will come
16 forward. You will come along and you will come to a place
17 basically right in front of the Court Reporter, Miss Dixie,
18 and you will stand, and you will turn and face to the back
19 of the courtroom.

20 At that point in time, the Clerk of Court will inquire
21 of the State to present or excuse the juror. If you are
22 excused by the State, you will go back and have a seat from
23 whence you came. If you are presented by the State, then
24 the Clerk will inquire of the Defense to seat or excuse the
25 juror. Again, if you are excused, you go back and have a

1 seat. If you are seated by the Defense, the Clerk of Court
2 will instruct you to go to the jury box right over there and
3 have a seat as a member of the jury in this particular case.

4 If you happen to have any personal items, a purse or
5 whatever that item might be, bring that personal item along
6 with you in case you are seated by the State and the
7 Defense, and you can go directly to the jury box.

8 All right, Madam Clerk.

9 **THE DEPUTY CLERK:** Tameka McCray, Juror 316.

10 What say the State?

11 **MS. RICHARDSON:** Please excuse this particular juror.

12 **THE DEPUTY CLERK:** Please be seated, ma'am.

13 Austin Godwin, Juror 177. What say the State?

14 **MS. RICHARDSON:** Please present the juror.

15 **THE DEPUTY CLERK:** Defense?

16 **MR. GALMORE:** Please seat the juror.

17 **THE DEPUTY CLERK:** Please have a seat in the jury box,
18 sir.

19 Stacie Carpenter, Juror 67. What say the State?

20 **MS. RICHARDSON:** Please present the juror.

21 **THE DEPUTY CLERK:** Defense?

22 **MR. GALMORE:** Please excuse the juror in the trial of
23 this case.

24 **THE DEPUTY CLERK:** If you would be seated, ma'am.

25 Thank you.

1 Tom Gilbert, Juror 174. What say the State?

2 MS. RICHARDSON: Please excuse this particular juror.

3 THE DEPUTY CLERK: Go ahead and have a seat back, sir.

4 Thank you.

5 Patrick Dennison, Juror 113. What say the State?

6 MS. RICHARDSON: Please present him.

7 THE DEPUTY CLERK: Defense?

8 MR. GALMORE: Please seat the juror.

9 THE DEPUTY CLERK: Please have a seat in the jury box,
10 sir.

11 Michael Nickerson, Juror 357. What say the State?

12 MS. RICHARDSON: Please present the juror.

13 THE DEPUTY CLERK: Defense?

14 MR. GALMORE: Please seat the juror.

15 THE DEPUTY CLERK: Please have a seat in the jury box,
16 sir.

17 Carolyn Finn, Juror 144. What say the State?

18 MS. RICHARDSON: Please present the juror.

19 THE DEPUTY CLERK: Defense?

20 MR. GALMORE: Please excuse the juror in the trial of
21 this case.

22 THE DEPUTY CLERK: Please have a seat, ma'am.

23 Lynne Kay, Juror 254. What say the State?

24 MS. RICHARDSON: Please present the juror.

25 THE DEPUTY CLERK: Defense?

1 **MR. GALMORE:** Please seat at juror.

2 **THE DEPUTY CLERK:** Please have a seat in the jury box,
3 ma'am.

4 William Foster, Juror 153. What say the State?

5 **MS. RICHARDSON:** Please excuse this particular juror.

6 **THE DEPUTY CLERK:** You can go ahead and have a seat,
7 sir. Thank you.

8 Tula Carroll, Juror 70. What say the State?

9 **MS. RICHARDSON:** Please present the juror.

10 **THE DEPUTY CLERK:** Defense?

11 **MR. GALMORE:** Please excuse the juror in the trial of
12 this case.

13 **THE DEPUTY CLERK:** You can have a seat. Thank you.

14 Donald Morrison, Juror 345. What say the State?

15 **MS. RICHARDSON:** Please excuse this particular juror.

16 **THE DEPUTY CLERK:** You can go back and have a seat,
17 sir. Thank you.

18 William Todd, Juror 461. What say the State?

19 **MS. RICHARDSON:** Please present him.

20 **THE DEPUTY CLERK:** Defense?

21 **MR. GALMORE:** Please seat the juror.

22 **THE DEPUTY CLERK:** Please have a seat in the jury box.

23 Elizabeth Newbigging, Juror 354. What say the State?

24 **MS. RICHARDSON:** Please present the juror.

25 **THE DEPUTY CLERK:** Defense?

1 **MR. GALMORE:** Please seat the juror.

2 **THE DEPUTY CLERK:** Please have a seat in the jury box.

3 Thank you.

4 Robert Andrews, Juror 9. What say the State?

5 **MS. RICHARDSON:** Please present the juror.

6 **THE DEPUTY CLERK:** Defense?

7 **MR. GALMORE:** Please excuse the juror.

8 **THE DEPUTY CLERK:** Please have a seat, sir. Thank you.

9 Michael Wright, Juror 496. What say the State?

10 **MS. RICHARDSON:** Please present the juror.

11 **THE DEPUTY CLERK:** Defense?

12 **MR. GALMORE:** Please seat the juror.

13 **THE DEPUTY CLERK:** Please have a seat in the jury box.

14 Thank you.

15 Robin Hirshman, Juror 213. What say the State?

16 **MS. RICHARDSON:** Please present the juror.

17 **THE DEPUTY CLERK:** Defense?

18 **MR. GALMORE:** Please seat the juror.

19 **THE DEPUTY CLERK:** Please have a seat in the jury box.

20 Thank you.

21 Elizabeth Taylor, Juror 454. What say the State?

22 **MS. RICHARDSON:** Please present the juror.

23 **THE DEPUTY CLERK:** Defense?

24 **MR. GALMORE:** Please seat -- please seat the juror.

25 **THE DEPUTY CLERK:** Go ahead and have a seat in the jury

1 box. Thank you.

2 David Spangler, Juror 429. What say the State?

3 **MS. RICHARDSON:** Please present this juror.

4 **THE DEPUTY CLERK:** Defense?

5 **MR. GALMORE:** Please seat the juror.

6 **THE DEPUTY CLERK:** Please have a seat in the jury box.

7 Chanelle Myers, Juror 351. What say the State?

8 **MS. RICHARDSON:** Please present the juror.

9 **THE DEPUTY CLERK:** Defense?

10 **MR. GALMORE:** Please seat the juror.

11 **THE DEPUTY CLERK:** Please have a seat in the jury box.

12 Kenneth Stewart, Juror 438. What say the State?

13 **MS. RICHARDSON:** Please present the juror.

14 **THE DEPUTY CLERK:** Defense?

15 **MR. GALMORE:** Please seat the juror.

16 **THE DEPUTY CLERK:** If you would have a seat in the jury

17 box.

18 **THE COURT:** We'll have one alternate. It will be one

19 and two, please.

20 **THE DEPUTY CLERK:** Debra Couture, Juror 91. What say

21 the State?

22 **MS. RICHARDSON:** Please present the juror.

23 **THE DEPUTY CLERK:** Defense?

24 **MR. GALMORE:** Please excuse the juror in the trial of

25 this case.

1 **THE DEPUTY CLERK:** Please have a seat, ma'am.

2 Sam Weiss, Juror 479. What say the State?

3 **MS. RICHARDSON:** Please present the juror.

4 **THE DEPUTY CLERK:** Defense?

5 **MR. GALMORE:** Please seat the juror.

6 **THE DEPUTY CLERK:** Please have a seat in the jury box.

7 **THE COURT:** All right, Mr. Weiss, you are the alternate
8 in this particular case. Thank you very much.

9 All right. Are there any objections to the jury as
10 empaneled, by the State?

11 **MS. RICHARDSON:** None from the State, Your Honor.

12 **THE COURT:** From the Defense?

13 **MR. GALMORE:** No sir.

14 **THE COURT:** Very good.

15 I find the jury is properly empaneled pursuant to
16 Batson vs. Kentucky and J.E.B. vs. Alabama.

17 All right, ladies and gentlemen, I am going to ask that
18 you go back to the jury room in just a few moments and do
19 one thing for me and that is select your foreperson. Let me
20 tell you very briefly what the foreperson's duties and
21 responsibilities are.

22 We are here in the courtroom and there is some matter
23 that the jury needs attention to, the witnesses need to
24 speak up, or the lawyers need to speak up, or whatever the
25 situation is, the foreperson raises their hand, gets the

1 Court's attention, and we'll handle the matter, whatever it
2 is.

3 If you're back in the jury room and some matter comes
4 up, you will take the pad and pen provided, you will write
5 out a note, you will sign it as the foreperson, deliver it
6 to the bailiff. It will come to me and, again, we'll handle
7 the matter, whatever it might be.

8 When we have gone through the evidentiary portion of
9 the trial, we've heard all the witnesses who are going to
10 testify in this particular matter, we've received any
11 documentary or other type of physical evidence that might be
12 introduced in this matter, you've heard the closing argument
13 of the attorneys, and then the Court has given to you the
14 law which you will apply to the facts and evidence you find
15 to be true in this particular matter, I will then submit the
16 case to you for your deliberations and your unanimous
17 decision in this particular matter.

18 Now, in that regard, the duties of the foreperson,
19 you're going to act like the chairperson at a meeting, guide
20 the discussions, if necessary. An important duty and
21 responsibility that the foreperson has is to make sure that
22 everybody that wants to has an opportunity to speak,
23 everybody's voice has an opportunity to be heard.

24 The foreperson's voice and vote carries no more weight
25 than any other member of the panel. You all are in an equal

JURY SELECTION
JURY OUT

34

1 position in that regard, but somebody does need to be in
2 charge. Again, if there is some question or some matter
3 that comes up, again, pad and pen, write the note out, sign
4 it, give it to the bailiff, it will come to me. Again,
5 we'll handle the matter, whatever it might be.

6 The final duty and responsibility of the foreperson is
7 once the jury has well and truly deliberated in this case
8 and you have reached your unanimous decision in this
9 particular matter, the foreperson will take the verdict form
10 that the Court will provide to you, check the appropriate
11 block or write out the appropriate word, thereafter signing
12 your name as the foreperson indicating that verdict is
13 indeed the unanimous verdict of each and every member of
14 this jury in this particular case.

15 Those being the duties and responsibilities of the
16 foreperson, I'm going to ask that you retire with the
17 bailiff to the jury room.

18 Now, I believe it was Mr. Weiss -- yes, Mr. Weiss, you
19 are the alternate. You can vote on who the foreperson is,
20 but obviously being the alternate, you cannot be the
21 foreperson. Everyone else is eligible.

22 Please retire to the jury room, select your
23 foreperson, knock on the door, let the bailiff know who that
24 is, please.

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

1 JURY.)

2 THE COURT: Regarding the jurors that were not selected
3 for this particular case, we need for you to be back
4 downstairs tomorrow morning at 9:30. Judge Culbertson will
5 select a jury in a civil case tomorrow morning, so you need
6 to re-assemble tomorrow morning downstairs in that jury
7 assembly room tomorrow, 9:30 in the morning. With that, you
8 are now excused. Thank you very much.

9 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
10 JURY AND THE JURY VENIRE.)

11 THE COURT: All right, we'll break for lunch and we'll
12 come back at two o'clock and get started on the motions at
13 that point in time. Is there anything we need to address
14 before that, Solicitor?

15 MS. RICHARDSON: Yes, Your Honor, just briefly. The
16 State has not served Mr. Butler a true-billed copy of his
17 indictment, and we wish to do so now.

18 THE COURT: All right.

19 MS. RICHARDSON: It is going to be for Indictment 2014-
20 GS-26-2621, charging him with felony driving under the
21 influence, death resulting.

22 THE COURT: All right. Very good.

23 All right, Mr. Galmore, anything we need to talk about
24 before the motions start?

25 MR. GALMORE: No sir.

1 **THE COURT:** All right. Very good. If y'all want to be
2 excused, I'm just going to let the jury go to lunch as soon
3 as they pick the foreperson, so I'm not even going to call
4 them back in, all right?

5 **MR. GALMORE:** Yes sir.

6 **MS. RICHARDSON:** Yes sir.

7 **THE COURT:** Thank y'all very much.

8 **MS. RICHARDSON:** Thank you, Your Honor.

9 **(THE FOLLOWING TAKES PLACE AFTER A LUNCH RECESS AND**
10 **OUTSIDE THE PRESENCE OF THE JURY.)**

11 **THE COURT:** Solicitor, is the State ready?

12 **MS. RICHARDSON:** Yes, Your Honor, the State is ready.

13 **THE COURT:** All right, and Mr. Galmore?

14 **MR. GALMORE:** Just a moment, Your Honor.

15 All right, Your Honor.

16 **THE COURT:** Do you want to start regarding the
17 statements first or the breathalyzer? Which one are you
18 prepared to go forward with, Solicitor?

19 **MS. RICHARDSON:** Your Honor, it's my understanding now
20 that the Defense has withdrawn his motion to suppress any
21 statements made on roadside video. We are solely dealing
22 with the DataMaster issue, the B.A. room.

23 **THE COURT:** All right.

24 **MS. RICHARDSON:** And it's my understanding there's a
25 motion to suppress based upon him -- the Defense attorney

1 says that he may have refused -- or it's his position that
2 he did refuse.

3 **THE COURT:** Okay.

4 **MS. RICHARDSON:** Obviously that's not the State's
5 position, and then there -- from my understanding, there are
6 specific questions that the officer asked him in regards to
7 where he'd been, where are you coming from, how much have
8 you had to drink, and I have that marked as well, Your
9 Honor, if you wish to listen to that short period.

10 **THE COURT:** All right. Well, why don't we concentrate
11 on first the breathalyzer room and the, I guess, playing the
12 tape first probably would be best, the introductory part of
13 it, and then I can hear Mr. Galtmore's motion about that as
14 far as whether he refused or consented to take the test, or
15 what that situation is, and then we'll go on to the --
16 regarding the statements.

17 **MS. RICHARDSON:** Yes, Your Honor. Okay.

18 **THE COURT:** All right.

19 **MS. RICHARDSON:** I'll just play it for you.

20 **THE COURT:** Very good.

21 (PORTION OF VIDEO OF DEFENDANT IN BREATHALYZER ROOM
22 PLAYED FOR THE COURT.)

23 **MS. RICHARDSON:** Your Honor, I can proceed if the
24 Defense counsel wish. I believe that that was the
25 conversation that his motion was based off of.

1 **THE COURT:** Do you wish the Solicitor to play more of
2 the tape, Mr. Galmore?

3 **MR. GALMORE:** Yes sir, we would, the Court to have the
4 Solicitor to continue playing it.

5 **MS. RICHARDSON:** Okay. I apologize, Your Honor.

6 **(CONTINUATION OF VIDEO OF DEFENDANT IN BREATHALYZER**
7 **ROOM PLAYED FOR THE COURT.)**

8 **MS. RICHARDSON:** Your Honor, I believe that this is the
9 extent of the conversation that Mr. Galmore was referring
10 to.

11 **THE COURT:** All right. Did you want anything else
12 played regarding this particular motion, Mr. Galmore?

13 **MR. GALMORE:** No sir.

14 **THE COURT:** All right. Very good. I'll be glad to
15 hear from you then.

16 **MR. GALMORE:** All right, Your Honor. Our argument is
17 two-fold. First, we argue that Mr. Butler made a valid
18 refusal to take the breath test. Throughout the audio he is
19 saying that he wants medical attention. He's asked for a
20 physician on multiple occasions, and specifically by the --
21 by the -- by the time that he is asked that question of
22 Officer Swarthout a couple of times, I think she says are
23 you refusing to take the test, and he says I want a
24 physician.

25 And he says that he needs medical care, and she says

1 you saw an E.M.T., and the argument is, yes, I saw an
2 E.M.T., but I want a physician. That statement is made
3 several times, and ultimately she asked him if you -- if he
4 wanted to be taken to the hospital, and his response to that
5 was, well, if that's what it takes.

6 The point is he's trying to get attention for his
7 injury. He's showing the injury on the video. He's
8 constantly holding his hand up and there appears to be blood
9 on his hand.

10 Ultimately he asked the officer do you want me to take
11 the test, and her response was yes, and I believe that he
12 made a valid refusal before asking the officer if he wanted
13 her to take the test. The thing about a refusal is that a
14 refusal can be made either express or implied.

15 A refusal can be express, I refuse to breathe into the
16 DataMaster machine, or the refusal can be implied from a
17 person's conduct or behavior. All of those things are
18 listed out in the SLED protocol.

19 In this case you've seen the video, and you can judge
20 the behavior of both parties for yourself. It looks to me
21 like he has asked for medical attention. It looks like
22 every time he asked for it, that -- that issue was ignored
23 by the police officer and ultimately she answers the
24 question, yes, she wants him to give a breathalyzer and he
25 does.

1 Your Honor, the other thing that he does is he asks for
2 an attorney in this video. I believe that at that point
3 this questioning should have stopped and he should have been
4 taken to the jail and allowed an opportunity to get an
5 attorney, and that would have been the end of it.

6 But the video continues with questioning after he
7 requests an attorney, and for those reasons, we'd ask that
8 this video be suppressed and that the results of the
9 DataMaster machine be suppressed, too. He attempted to
10 refuse this DataMaster in order to get medical attention,
11 and his request for medical attention was ignored.

12 **THE COURT:** All right.

13 Solicitor, your argument, please.

14 **MS. RICHARDSON:** Thank you, Your Honor. As it relates
15 to the medical treatment, Your Honor, he actually denied
16 medical treatment at least two times, if not three times, on
17 the roadside. EMS kept coming back to him. Actually the
18 officer kept putting him in the medic and he kept getting
19 out, Your Honor, and he did not want any further medical
20 treatment. He actually signed the waiver of medical
21 treatment on the roadside video.

22 Your Honor, our position is that this is solely a delay
23 tactic on behalf of Mr. Butler. He says numerous times in
24 the video, I will -- oh, no, I'll take a breathalyzer. I
25 will blow for you right now. I will blow for you right now.

1 I'll be glad to take the breathalyzer test right now. Those
2 times, Your Honor, I counted at least three occasions where
3 he said that specific statement, I will gladly take a
4 breathalyzer test for you right now.

5 Your Honor, not to mention that under South Carolina
6 law, Section 56-5-2946, someone arrested for felony driving
7 under the influence does not have the option of refusing.
8 They must consent, Your Honor, and also, State vs. Cuevas in
9 616 S.E.2d 718, it's a 2005 case, they held that -- the
10 South Carolina Court of Appeals held that under 56-5-2946, a
11 Defendant charged with felony D.U.I. does not have a right
12 to refuse a breath test, along with a breath alcohol test
13 and/or urine. It's solely left up to the officer, and in
14 this case the officer did request a breath sample.

15 As it relates to him requesting an attorney, Your
16 Honor, I was trying to flip through my notebook quickly. I
17 do know that there is case law that says that the DataMaster
18 room is not an integral part of this stage, Your Honor, so
19 that an attorney does not apply in situations like that,
20 because under the statute, the police officers are under a
21 limited time period.

22 She has two hours from the time of arrest to collect
23 this sample. That's all she has. If we were to allow for
24 -- to take him back to the jail, as the Defense attorney
25 proposes, take him back to the jail to consult with an

1 attorney, Your Honor, that two hour time period, especially
2 in this case, would have lapsed.

3 And, again, I know there's case law that says that it's
4 not an integral part of this stage and that the right to an
5 attorney does not apply in the DataMaster room.

6 **THE COURT:** All right.

7 Anything in reply, Mr. Galmore?

8 **MR. GALMORE:** Your Honor, I would just point to the
9 video. There is a portion of that video where the officer
10 is asking Mr. Butler to sign an implied consent form and his
11 response was I don't sign what I don't understand, and she
12 said, well, that's a refusal. That conversation took place
13 in seconds.

14 The officer was able to make an immediate determination
15 based on her experience that he has refused, and I would
16 submit that the same -- the same analysis should apply to
17 the entire test itself. Once he asked for help, it should
18 have been a refusal just as quickly as she determined that
19 he refused to sign the paperwork.

20 **THE COURT:** All right. Thank you. Just give me a
21 couple of minutes and I'll come back. Thank you.

22 **MR. GALMORE:** Thank you.

23 **MS. RICHARDSON:** Thank you, Your Honor.

24 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
25 **JURY.)**

1 **THE COURT:** Thank you. You may be seated. Thank
2 y'all.

3 All right. Regarding the issue of -- raised by Mr.
4 Galmore that there was a valid refusal, and it should have
5 been so marked, this Defendant has been charged with the
6 crime of felony driving under the influence, death
7 resulting, under 56-5-2945, and he was so informed, as we
8 heard on the tape.

9 He was told that he was under arrest for the felony DUI
10 statute. The felony DUI statute, 56-5-2945, does not allow
11 -- and 46 is actually the admission of the test, that the
12 crime is 2945, and 2946 is the submission to testing -- the
13 statute does not allow someone to refuse.

14 Subsection (a) of 56-5-2946 says notwithstanding any
15 other provision of law, a person must, it's mandatory,
16 submit to either one or a combination of chemical tests of
17 his breath, blood, or urine for the purpose of determining
18 the presence of alcohol, drugs, or a combination of alcohol
19 and drugs, if there is probable cause to believe that person
20 violated or is under arrest, as this Defendant was, for a
21 violation of 56-5-2945, the felony DUI statute.

22 The test must be administered at the direction of a law
23 enforcement officer, that is the -- and further that the
24 administration of one test does not preclude the
25 administration of another. The resistance, obstruction, or

1 opposition to the testing pursuant to this section is
2 evidence admissible at the trial of the offense which
3 precipitated the requirement for testing, so even if it was
4 a refusal, the State would be allowed to play the tape in
5 front of the jury. They are allowed to by the statute.

6 I do not find that he refused. He stated adamantly he
7 wanted to take one now. Whether or not he was given
8 immediate medical attention, medical attention was offered.
9 He did not choose to take it in the manner it was being
10 offered, that is going to the hospital, and the B.A. test
11 being marked as a refusal, which he, under statute,
12 obviously doesn't have the right to do.

13 And there's also an appellate court decision, State vs.
14 Cuevas, that's 616 S.E.2d 718, a 2005 case that upholds the
15 validity of that statute saying that a person does not have
16 the right to refuse.

17 So, Mr. Butler didn't have the right to refuse. I
18 don't find that he refused based on his statements in there,
19 and, therefore, I'm not going to suppress the B.A. results.

20 Now, the second issue about him stating he wants an
21 attorney in response to the Miranda warnings, it's clear the
22 South Carolina Supreme Court in State vs. Degnan, 49 S.E.2d
23 346, state that counsel is not a part of the rights of the
24 Defendant to have counsel, or counsel is not necessary for
25 the operation of the B.A. test.

1 The rights do not implicate or do not apply to that
2 particular testing, the B.A. test, and, therefore, the fact
3 that he requested an attorney during the B.A. results is of
4 no consequence regarding the B.A. test.

5 Now, there may be some issue about statements later on.
6 I don't know. We'll hear that. Apparently that's the next
7 thing that's going to come, maybe some statements as to
8 questions, and there might be an issue, I don't know, if
9 further Miranda warnings were given or these were the only
10 Miranda warnings were given before the statements and the
11 questions, so we'll -- we'll look at that.

12 But I'm going to allow the State to put into evidence
13 the video tape and the results of the testing, finding one
14 that the Defendant does not under the statute and case law
15 have a right to refuse, and secondly, that he did not
16 refuse, there was not a refusal by him, but clearly an
17 indication that he wanted to take a test.

18 All right. So what's the next issue now? Mr. Galmore,
19 you had another issue about statements?

20 **MR. GALMORE:** Yes sir, Your Honor. At this point he
21 has been questioned by Officer Swarthout and he's ---

22 **THE COURT:** Is that the same female officer that's been
23 questioning? It's not a different officer?

24 **MR. GALMORE:** No. It's the same officer.

25 **THE COURT:** The same one?

1 **MR. GALMORE:** Yes sir.

2 **THE COURT:** All right. Very good. Okay, so that's the
3 next part of this tape?

4 **MS. RICHARDSON:** That is, Your Honor.

5 **THE COURT:** All right. Go ahead and play that, please.

6 **(CONTINUATION OF VIDEO OF DEFENDANT IN BREATHALYZER**
7 **ROOM PLAYED FOR THE COURT.)**

8 **MS. RICHARDSON:** And, Your Honor, I apologize. I have
9 it marked at 504. I thought we were there already. The
10 officer just informed that it -- after she does the field
11 sobriety test in the B.A. room, I don't know if Your Honor
12 wishes for me to keep playing it or if you would like for me
13 to ---

14 **THE COURT:** Is that your understanding, Mr. Galmore?

15 **MR. GALMORE:** You can fast-forward it.

16 **MS. RICHARDSON:** Okay.

17 **THE COURT:** Very good. I'll be glad for you to do that
18 then.

19 **(CONTINUATION OF VIDEO OF DEFENDANT IN BREATHALYZER**
20 **ROOM PLAYED FOR THE COURT.)**

21 **THE COURT:** Was that it?

22 **MS. RICHARDSON:** That is, Your Honor. I'm sorry. I'm
23 trying to slow it down.

24 **(CONTINUATION OF VIDEO OF DEFENDANT IN BREATHALYZER**
25 **ROOM PLAYED FOR THE COURT.)**

1 **THE COURT:** All right. So those are the questions and
2 the answers that you are concerned with, Mr. Galmore?

3 **MR. GALMORE:** Yes sir, Your Honor.

4 **THE COURT:** Just basically have you been drinking, the
5 quantity, where, time of the last drink?

6 **MR. GALMORE:** Yes sir.

7 **THE COURT:** All right. And so your argument about that
8 is?

9 **MR. GALMORE:** That he requested an attorney, and in
10 spite of that request for counsel, they continued to
11 question him.

12 **THE COURT:** All right.
13 Your response, Solicitor?

14 **MS. RICHARDSON:** Your Honor, again we would argue that
15 the right to an attorney does not apply at this stage in the
16 case, and again, Your Honor, he was properly advised. Even
17 when she begins these tests, she says I'm going to ask you
18 to do a few things. I'm going to ask you a few things. You
19 don't have to do these things if you don't want to.

20 **THE COURT:** All right. I appreciate that. Now, I
21 understand that the right to an attorney does not apply to
22 the breathalyzer procedure, and the testing, and the results
23 therefrom, but your purpose here, and correct me if I'm
24 wrong, but your purpose is to take these questions and
25 answers and use them against him in the prosecution of this

1 criminal case, correct?

2 **MS. RICHARDSON:** Actually, those are standard booking
3 questions ---

4 **THE COURT:** I understand they're standard booking
5 questions, but your purpose in this trial is to ---

6 **MS. RICHARDSON:** At this point in the trial, yes sir,
7 Your Honor.

8 **THE COURT:** All right. So I'm not -- I understand the
9 purpose of those and they flow along with, you know, what
10 day is it, what time it is, to get some ability for the
11 operator and anyone else to judge the appearance and how the
12 person is perceiving the situation, and what shape they're
13 in at that point in time.

14 I don't see that as a problem, but when you get to
15 questions that come to this particular point, he's charged
16 with felony driving under the influence, death resulting,
17 these questions clearly impact his Miranda warnings, that
18 statements you say can and will be used against you in a
19 court of law.

20 He is now -- you are asking him for affirmative
21 responses to specific questions about his actions, not, you
22 know, who is the President of the United States, so those
23 particular questions, no, I'm not going to allow those
24 because I do believe the Miranda warnings were violated in
25 that he said I want an attorney.

1 It doesn't apply to the procedure, but when you start
2 asking him questions that pertain to the thing you are
3 charging him for a crime, you know, where were you, where
4 did you go, what did you have to drink, then, yeah, it
5 applies, and they didn't -- I understand it's not a normal
6 situation, and normally it wouldn't matter, but it does
7 matter in this particular case, so that portion of the tape
8 I'm not going to allow.

9 **MS. RICHARDSON:** I agree, Your Honor. We'll just
10 delete that part, Your Honor. I will note the time. This
11 won't play until tomorrow. I will just need to ---

12 **THE COURT:** That's fine, because, I mean, it's a fairly
13 short period of time, and like I said, it's basically those
14 questions, had he been drinking, the quantity, where, time
15 of the last drink, those questions in that particular point,
16 so as to that aspect of it, I'm going to grant the motion.

17 **MS. RICHARDSON:** Thank you, Your Honor.

18 **THE COURT:** All right.

19 All right. Further motions, Mr. Galmore?

20 **MR. GALMORE:** No sir, Your Honor.

21 **THE COURT:** All right. Very good. I told the jury to
22 be back at 3:30, so we've got a few minutes for y'all to,
23 you know, get organized, and what we will do is we will come
24 in and y'all -- I will speak to the jury briefly. You will
25 give your opening statements, and then we'll proceed into

1 trying to get those first two witnesses that the State wants
2 in this afternoon, okay?

3 **MS. RICHARDSON:** Thank you, Your Honor.

4 **MR. GALMORE:** Thank you.

5 **THE COURT:** All right. Thank y'all very much.

6 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
7 **JURY.)**

8 **THE COURT:** All right, is the State ready for the jury
9 to come in?

10 **MS. RICHARDSON:** The State is ready, Your Honor.

11 **THE COURT:** And the Defense?

12 **MR. GALMORE:** Yes sir, Your Honor.

13 **THE COURT:** All right.

14 Ask the jury to come in, please.

15 The jury hasn't asked anything about taking notes and
16 I'm not offering, but if the State and Defense want them to,
17 we've got some pads and pens. Do y'all want them to do so
18 or do you ---

19 **MR. GALMORE:** I do not.

20 **MS. RICHARDSON:** I do not, Your Honor.

21 **THE COURT:** All right, good. Then we'll just stick
22 with the standard procedure.

23 **MR. GALMORE:** All right.

24 **MS. RICHARDSON:** Thank you, Your Honor.

25 **THE COURT:** Thank you. And for your information, the

JURY OUT/ON RECORD
JURY IN/REMARKS BY THE COURT

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1 jury selected Juror 461, Juror 461 as the foreperson.

2 MS. RICHARDSON: Thank you.

3 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
4 JURY.)

5 THE COURT: All right. Mr. Todd, you have been
6 selected as the foreperson for this particular jury, is that
7 correct?

8 JUROR NUMBER 461: Yes sir.

9 THE COURT: All right. Very good. If you would always
10 occupy that particular seat, and Mr. Weiss, if you would
11 always occupy that seat as the alternate. I just need to
12 know where the foreperson and the alternate are.

13 The rest of you ladies and gentlemen, wherever it is
14 that you happen to file in from the jury room, just occupy
15 that particular seat. There's no other assigned seating
16 that we have.

17 The very first thing that's going to happen is the
18 Clerk of Court's representative is going to administer your
19 oath to you, so if you would all please stand at this time.

20 Madam Clerk.

21 (THE JURORS ARE PLACED UNDER OATH BY THE DEPUTY CLERK
22 OF COURT.)

23 THE COURT: Is there any member of the jury panel that
24 did not affirmatively take the oath that was just given by
25 the Clerk? If so, please stand. (No response.) I find

1 that no juror has stood. The jury is properly sworn in this
2 matter.

3 All right, ladies and gentlemen, we are going to
4 commence this case where the State has charged the Defendant
5 with felony driving under the influence, death resulting.
6 In this particular case, you will occupy the position of the
7 judges of the facts of this particular case.

8 I will not indicate to you in any way what I believe
9 the facts of this case are. That will come from the
10 witnesses who testify under oath in this matter, any type of
11 documentary or other type of physical evidence that might be
12 introduced by the State in this matter, and from that, you
13 will judge the facts of this case and find that evidence
14 which convinces you of its truth.

15 In this particular case, the State having charged the
16 Defendant with that criminal offense, he has pled not
17 guilty. That puts the burden of proof solely and completely
18 on the State of South Carolina to prove the Defendant guilty
19 beyond a reasonable doubt.

20 The Defendant is presumed innocent of the crime for
21 which he is charged. The Defendant has nothing to prove to
22 you. The State must present to you the evidence. The
23 State must prove the Defendant guilty beyond a reasonable
24 doubt.

25 I tell juries all the time the Defendant need not even

1 show up for trial because they don't have a thing to show to
2 you. They don't have anything to prove to you. The State
3 must prove the case to you by the evidence presented beyond
4 a reasonable doubt that the Defendant is guilty of the crime
5 for which they have charged them beyond a reasonable doubt.

6 It will be your job to evaluate the evidence and find
7 that evidence which convinces you of its truth. Part of
8 this job will necessarily be to judge the credibility, that
9 is the believability, of witnesses that testify before you
10 in this particular matter.

11 Now, you might be thinking how do I judge somebody's
12 credibility or believability? You do it every single day of
13 your life. When somebody tells you something, you are
14 automatically judging whether or not you believe them. You
15 use your good common sense. You use your good judgment that
16 you use in conducting your own affairs.

17 You apply that good common sense. You apply that good
18 judgment to the facts and evidence you hear in this case and
19 find that evidence which convinces you it's true, and then
20 you take that evidence you find to be true and apply it and
21 see whether or not the State has proven to you the guilt of
22 the Defendant beyond a reasonable doubt.

23 I will tell you the law at the end of the case. You
24 will take that law that I give you, apply it to the facts
25 and evidence you find to be true to decide whether or not

1 the State has proven the Defendant guilty beyond a
2 reasonable doubt.

3 How this case will proceed, when I get done with these
4 brief comments, we'll have the opening statements of the
5 attorneys. The opening statements are not evidence, cannot
6 be considered by you as evidence in the case. That will
7 come later. That's their initial comments to you about what
8 they believe or what they hope the trial will show to you.

9 After that, we will have the actual evidence, the
10 evidence that you will judge its credibility and
11 believability to find the truth. We will have the witnesses
12 come before us to testify under oath, again, the
13 presentation of any introduction of any documents or other
14 type of evidence that might be introduced in this matter.

15 When we get done with that evidentiary portion of the
16 trial, we'll have the closing arguments of the attorneys.
17 Again, those closing arguments, just like the opening
18 statements, are not evidence.

19 At that point in time you've heard all the evidence in
20 this particular case. Those are the attorneys' comments on
21 the facts and evidence that have been presented, their
22 position, and what they are asking you to do as a result of
23 your unanimous verdict in this matter.

24 After that, I will give you the law that you will apply
25 to the facts and evidence you find to be true, and then I'll

1 submit the case to you for your discussion, your
2 deliberations, and then ultimately your unanimous decision
3 in this particular matter.

4 I will tell you before you retire for today, you are
5 not researchers, you are not investigators. You must decide
6 this case solely and completely on the facts and evidence
7 you hear in the courtroom and from no other source. When I
8 excuse you and you go about your other activities until you
9 come back tomorrow, you can't look up anything on the
10 Internet, you can't talk to anybody about the case.

11 I'm going to ask you not to talk about this case among
12 yourselves until I give it to you at the very end. It is
13 potentially that if you would have a discussion about the
14 facts, someone might take a position, which the very next
15 witness would dissuade them from taking, and then it would
16 be hard for them to go back and change that position.

17 So as best you can even mentally, I don't want you to
18 come to any firm conclusion as to what you believe or do not
19 believe until you have heard all of the witnesses, all of
20 the evidence in this case.

21 You will have all the time you deem necessary to talk
22 about this case at the end when you are deliberating this
23 case at that point in time to come to your unanimous
24 conclusion.

25 During the course of the trial, the attorneys may raise

REMARKS BY THE COURT
OPENING STATEMENT FOR THE STATE (TERRELL)

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1 certain matters to the Court while you are in the courtroom,
2 some objection, or a motion. If I decide those in the
3 courtroom with you present and I don't ask the jury to
4 retire to the jury room so I can discuss it more fully with
5 the attorneys, remember, I'm not making any comments on the
6 facts. That's your job and your responsibility to decide
7 the facts you find to be true in this particular matter.

8 I'm about one of my duties, that is to guide how the
9 trial will proceed, what the attorneys may do or may not do
10 in this particular case, but otherwise, I'm not making any
11 comments as to who to believe or not to believe, or any
12 comments on the actual facts of this particular case.

13 So with that, I'm going to invite your attention to the
14 attorneys as they give you their opening statements.

15 Solicitor.

16 **MR. TERRELL:** Thank you, Your Honor.

17 **THE COURT:** Yes sir.

18 **MR. TERRELL:** May it please the Court.

19 February 16th, 2010, early in the morning, it's 3:03
20 that morning, Crystal and Brad are on their way home.
21 They're driving on 17 northbound from Barefoot Landing up to
22 Little River where Crystal lives. They were out celebrating
23 her birthday that night.

24 At 3:03 that morning, Eric was making a delivery for
25 work. He delivers engine parts to car dealerships. He was

1 leaving Charleston driving 17 northbound up to Jacksonville,
2 North Carolina. At 3:03 in the morning, Said was just
3 starting his shift. He delivers newspapers. That's what
4 time he works.

5 At 3:03 in the morning, Mitchell White is alive.
6 Mitchell White was a passenger of Michael Butler's car.
7 They're also traveling on 17 northbound. They are not
8 traveling north. Mr. Butler was traveling south, the wrong
9 way on a divided highway, and as is so often the case in
10 dramatic events, everything changes in the blink of an eye.

11 At 3:04, Crystal and Brad are in their car on the
12 Jersey barrier. You will hear that term a number of times.
13 The Jersey barrier is just a little -- it's the concrete
14 wall that they put on a divided highway when you don't have
15 room for an actual median. You'll see it most of the time
16 on bridges. They are on the Jersey barrier, teetering.
17 Their car is see-sawing back and forth. Bradley is the
18 passenger of that car. He's trapped, slipping in and out of
19 consciousness.

20 At 3:04 in the morning, Eric Pierce, he's the delivery
21 driver, he's trying to piece together what just happened.
22 He's able to pull his car over to the side of the road.

23 At 3:04 that morning, Said sees smoke. He immediately
24 puts on his emergency flashers to warn other vehicles that
25 might be on the road, and stops his car short.

1 At 3:04 in the morning, Mitchell White is hanging out
2 of the back of Michael Butler's vehicle, dying.

3 About 3:05, Said is on the phone with 911 asking for
4 their help, and by 3:05, Mitchell White is dead.

5 Everything changes in the blink of an eye. That
6 morning, everything changes because of Mr. Butler. He
7 decides to go out and drink. He decides to go out and get
8 behind the wheel. He's the one who makes the decision to
9 not call a friend to come pick them up, to not call a taxi,
10 a simple phone call, to keep everybody safe.

11 He is the one who is driving in the southbound lane of
12 17 North. We know he is driving because he is the one that
13 Said sees in the driver's seat. He is the one that smashes
14 head-on with Crystal and Bradley's vehicle, before careening
15 off and hitting Eric's vehicle.

16 Make no mistake about it, he's the reason Mitchell
17 White is dead. Now, you're going to hear a lot over the
18 next couple of days, you'll hear a lot about what happened
19 that night. You'll hear testimony from the people who were
20 there, the people who were involved who are still able to
21 testify.

22 You will get to see some video that was captured that
23 night through the police cars, the footage and all that goes
24 along with that.

25 We will be mindful of your time and your service, and

OPENING STATEMENT FOR THE STATE (TERRELL)
OPENING STATEMENT FOR THE DEFENSE (GALMORE)

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1 your sacrifice for being here. All we ask in return is that
2 you pay close attention while you are in here to the facts
3 that you'll hear from the witness stand, and pay as close
4 attention to the evidence that is presented throughout the
5 course of the trial.

6 And we believe that if you do those things, in a few
7 days' time that you will be convinced beyond a reasonable
8 doubt that the man sitting right there is the man you will
9 find guilty of felony driving under the influence, resulting
10 in the death of Mitchell White.

11 **THE COURT:** All right, Mr. Galmore.

12 **MR. GALMORE:** May it please the Court.

13 **THE COURT:** Yes sir.

14 **MR. GALMORE:** Today I would like to talk to you about
15 role and responsibility because everyone in this courtroom
16 has a responsibility. Everyone in this courtroom has a job
17 to do. Our bailiffs, our deputies, they're here for your
18 safety. They're here for your comfort and your security.
19 That's their job.

20 Madam Court Reporter is here to keep a record of
21 everything that is said and a record of all of the evidence
22 that is introduced in the court. She transcribes everything
23 that everyone has to say. That is her job.

24 The Judge's job is to referee disputes between the
25 parties. I'm not going to try to tell you what the Judge's

1 job is. I've never been a judge, but the Judge has a job
2 here as well.

3 Madam Clerk, her job is to keep a file of everything
4 that happens here today, things that sometimes are beyond
5 her knowledge, but she's keeping a record of things in this
6 courtroom also.

7 The point is that everyone here has a job to do. You
8 too have a job to perform. Your job has been stated a lot
9 of different ways, but the easiest way to say it is like
10 this. Your job as jurors is to evaluate and determine
11 whether the State has done its job. See, the State of South
12 Carolina is required to prove to you each and every element
13 of each and every crime that they allege occurred, and they
14 have to prove that to you beyond a reasonable doubt.

15 Now, if you watch these cop shows and law shows, you've
16 heard that phrase, beyond a reasonable doubt, before, and if
17 you're anything like me, you say, well, what does that even
18 mean? Well, let me try to help you understand what it is.

19 Beyond a reasonable doubt is a standard of proof that
20 means that it's a level of proof that they have to give to
21 you in order for you to be convinced. For example, you
22 heard earlier today that we have Common Pleas Court and we
23 have General Sessions Court. Common Pleas is what Judge
24 Culbertson called suing someone for money, and General
25 Sessions is criminal.

1 Well, in Common Pleas Court, the standard of proof is
2 what's called the greater weight or preponderance of the
3 evidence, and the way I explain that is sort of like
4 football. A football field is a hundred yards from end to
5 end, end zone to end zone, okay? We're talking about
6 evidence and we're talking about evidence in a civil case.
7 That is the greater weight or preponderance of the
8 evidence.

9 That means that if you've got the football, you have to
10 carry the ball. You have to prove your case, and you have
11 to carry the ball at least here, to the fifty yard line, and
12 then just one foot across. That is the greater weight or
13 preponderance of the evidence.

14 If you remember the scales of justice, justice is blind
15 and the lady holding the scales. As long as the scale tips
16 ever so slightly in one direction or the other, that is what
17 we mean when we say preponderance of the evidence. Why am I
18 telling you that because this ain't a civil case? I'm
19 telling you that to demonstrate to you the level of evidence
20 that the State must bring you in a criminal case.

21 Like I said, in a civil case, you only have to go to
22 the fifty yard line and put your toe right across. In a
23 criminal case, the State must prove its evidence beyond a
24 reasonable doubt. They don't have to prove that evidence
25 beyond every conceivable doubt.

1 In fact, I could sit here and tell you I doubt the sun
2 is going to come up in the morning. I dare say you'd think
3 I was stupid for having that doubt, but I could doubt that.
4 That would be an unreasonable doubt. I could say I doubt
5 there's a fish in the Waccamaw River. Again, you'd probably
6 say that's kind of unreasonable, James, to assume that, but
7 that's what we're talking about when I say a reasonable
8 doubt.

9 The State must prove its evidence. If this were a
10 football game, the State would have to carry the ball. They
11 don't have to cross the goal, but they have to be so close
12 to the end zone that you know without a question in your
13 mind that they're about to score. The point is you can't
14 bring evidence that's at this level when in this case your
15 evidence is required to be up here.

16 To help you understand what I'm talking about, I'd like
17 to tell you a little bit about how criminal cases work.
18 Whenever someone is accused of committing a crime, that
19 person has to put on a defense, and the defense generally
20 falls into one of three categories. Number one, it didn't
21 happen.

22 Think, for example, I'm the night manager at the
23 Kangaroo gas station, and three days before Christmas, I
24 call 911, and I say, officers, I need some help. Somebody
25 hit me in the head and stole the money bag from the store,

1 an average person, average height, average weight, average
2 build, average complexion, and the police go out and arrest
3 someone who fits that description, and that person is
4 brought up to the courthouse and put on trial for the crime
5 of robbery.

6 Now, let's say now, for example, that the police do a
7 little further digging or a private investigator does some
8 digging, or the lawyer or whomever does some digging and it
9 turns out that that night manager at the Kangaroo didn't get
10 hit in the head and the money bag wasn't stolen.

11 In fact, what he did was, oh, it's three days before
12 Christmas, I don't have any money for my kids. I'll put the
13 money bag in the trunk of my car. I'll hit myself in the
14 head with a roll of toilet paper, and I'll swear up and down
15 that this store was robbed.

16 My point is for the poor fellow that's sitting on trial
17 charged with robbery, this falls into number one. It didn't
18 happen. There was no robbery.

19 Number two, it happened, but it wasn't me. That's
20 simple enough. Somebody comes in and robs a convenience
21 store, and they're wearing a ski mask and pull out a gun,
22 and they say give me all your money. Someone gets arrested,
23 and there's a criminal trial, brought to the courthouse,
24 sits at the table, and that person says ladies and gentlemen
25 of the jury, I do not dispute that someone robbed the

1 Kangaroo that night, but it wasn't me.

2 And number three, it happened, it was me, but wait, let
3 me explain. My co-counsel, Ms. Catherine Owens, just had a
4 baby. Just imagine that they're going to the hospital. She
5 tells her husband it's time, let's go to the hospital, and
6 they're on 501 and she can't hold it, and the contractions
7 are coming and he's going as fast as he can, and he ends up
8 running two or three red lights to try to get to the
9 hospital as quick as possible.

10 A policeman gets behind them and turns on his flashing
11 light or his blue light and they don't stop for the police.
12 They keep driving. When they get to the hospital, she gets
13 out, jumps in a wheelchair, goes on inside and has the baby,
14 and the officer says I'm going to stop and arrest you for
15 running a red light and for failing to stop when I signaled
16 you to do so.

17 I dare say Ms. Owens' husband would say it happened,
18 the red lights we were running. It was me. I ran the red
19 lights, but wait, let me explain. The reason why I ran the
20 red light is because my wife was pregnant and I would say
21 that that is a medical emergency, a justification or excuse
22 for why I did what I did, so that's the way all cases work.

23 Now, in this case, this is a case of, number one, it
24 didn't happen. The State of South Carolina is alleging that
25 Michael Butler is drunk, driving a vehicle and caused a

1 head-on collision. I submit to you that every day people
2 around this country are involved in motor vehicle accidents.
3 They just happen, and sometimes they're bad, but they just
4 happen. That's why they're called accidents.

5 That is what this was. This was a traffic accident, a
6 bad traffic accident. People were injured and Mitchell
7 White was killed, but the question, was this a drunk driving
8 accident? That is the question that is before you.

9 You will hear evidence that I submit will demonstrate
10 to you that anyone in the position of the driver could
11 simply and easily have made the same mistake that this
12 driver made, made a wrong turn and ended up on the wrong
13 side of Highway 17, and as a result of making a wrong turn,
14 the accident occurred. Anybody can make a wrong turn,
15 anybody.

16 In this case is also number two. It happened, but it
17 wasn't me. I submit to you that we will present evidence
18 that shows you Michael Butler was not driving that car.
19 Now, the Solicitor got up here and said he was, and I got up
20 here and I said he wasn't, so a gauntlet has been made.

21 And at this point, it is the State's responsibility, it
22 is their job, we're talking about a job, it is their job to
23 prove to each and every one of you beyond a reasonable doubt
24 that Michael Butler was driving that car.

25 I tell you they're not going to be able to prove it. I

1 tell you that now and when this case is over in a day or
2 two, I'll come back in closing argument and I'll tell you
3 that didn't I tell you they weren't going to be able to
4 prove to you that Michael Butler was driving? They're not
5 going to be able to prove to you who was driving this car at
6 all.

7 You'll hear the evidence, and I ask you to keep an open
8 mind and listen to the evidence, and as each witness gets on
9 this witness stand, ask yourself one simple question, did
10 that witness say who was driving? The next witness, did
11 that witness say who was driving? They've got, what, thirty
12 names that we heard earlier for witnesses. Put all thirty
13 of them up there and I'm going to ask them all the same
14 thing, and you have that same thought in your head, do you
15 know who was driving?

16 I submit to you the State does not know who was driving
17 that car. I further submit to you, as unfortunate as it
18 might sound, that Mitchell White was driving the car that
19 caused the injuries, that caused his death.

20 Now, you have no friends to reward. You have no
21 enemies to punish. Your job is very simple. Your job is to
22 say to yourself did the State of South Carolina prove,
23 number one, that this was a drunk driving accident, and did
24 the State of South Carolina prove, number two, that Michael
25 Butler was the driver in this drunk driving accident?

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1 Ask yourself those two questions as each witness takes
2 the stand, and I think you will agree with me that the State
3 has not met its burden of proof. The State will not be able
4 to do its job, and then you will be asked to do yours.

5 I'm asking you to find Mr. Butler not guilty of this
6 crime. I ask that you listen to the evidence. I ask that
7 you keep an open mind, and I ask that you keep that question
8 in the back of your head. Thank you for your attention.
9 This case should not take very long, and we appreciate that
10 you've taken your time to serve on jury duty.

11 **THE COURT:** All right, Solicitor, your first witness,
12 please, ma'am.

13 **MR. TERRELL:** Eric Pierce.

14 **THE COURT:** All right.

15 If you would just come up here, sir, and meet the Clerk
16 of Court right there, please, sir.

17 **ERIC M. PIERCE,** being first duly sworn, testifies
18 as follows:

19 **THE DEPUTY CLERK:** Have a seat, state your full name
20 and spell your last name for the Court, please.

21 **MR. PIERCE:** Eric M. Pierce, P-I-E-R-C-E.

22 **THE COURT:** Go ahead, Solicitor.

23 **MR. TERRELL:** Thank you, Your Honor.

24 **DIRECT-EXAMINATION BY MR. TERRELL:**

25 **Q.** Mr. Pierce, what do you do for a living?

1 A. I drive a truck.

2 Q. For whom?

3 A. For GM.

4 Q. What are -- what do your duties entail?

5 A. I deliver engines and transmissions.

6 Q. From where?

7 A. From Claxton, Georgia, all over the southeast United
8 States.

9 Q. Okay. And just so we know, what's in Claxton,
10 Georgia, that makes that where you're based out of?

11 A. That's just the place that we have a dealership and
12 warehouse.

13 Q. Okay. Did you have the same duties back on February
14 the 16th, 2010?

15 A. Yes.

16 Q. Do you remember that morning?

17 A. It was at night. It was -- I left -- I left Claxton
18 at ten o'clock at night and I was roughly here on 17, it was
19 probably about three o'clock in the morning.

20 Q. Okay. So you left Claxton at ten o'clock that night?

21 A. Yes.

22 Q. Did you make any stops on your way up?

23 A. I made one.

24 Q. Where was that?

25 A. I can't really remember. I believe it was

1 Charleston, but I'm not -- I don't really remember.

2 Q. Okay. And do you remember where you were going?

3 A. I know it was North Carolina, but I don't -- I don't
4 remember exactly the dealership I was going to.

5 Q. Okay. Do you remember what route you were taking,
6 what road you were on?

7 A. Yeah. I remember that was Route 17.

8 Q. Okay. Just prior to the wreck, take yourself, if you
9 don't mind, through -- through the beginning of the wreck.

10 A. I was driving north on 17, 17 North. It's a four
11 lane with a divider in the middle, and I come up around a
12 corner at the bottom of a hill, heading up over the
13 Intracoastal Waterway, and there was another car just -- had
14 just passed me. We were both probably traveling about, you
15 know, roughly forty miles an hour, and the car passed me ---

16 Q. Let me stop you right there.

17 A. Okay.

18 Q. What lane were you traveling in?

19 A. I was traveling in the right-hand lane.

20 Q. In the right lane. And you say you're coming --
21 you're coming up to a corner?

22 A. Yeah, there's like a -- there's kind of a corner at
23 the base before you kind of come up around the corner like
24 this before you start the incline of the bridge.

25 Q. Okay.

1 A. There's a corner at the base -- at the bottom of the
2 bridge.

3 Q. Okay. You said something about another car that had
4 just passed?

5 A. Yeah, it just passed, and they were traveling about
6 the same speed. I mean, they just, you know, just barely
7 passed me.

8 Q. Do you remember generally a description of that car?

9 A. I don't remember what the car looked like. The only
10 thing I can remember about it was there was a white male in
11 the passenger seat and there was a white female in the
12 driver's.

13 Q. Why particularly do you remember those two people?

14 A. Well, because they were going really slow when they
15 passed, and I just happened to glance over when they passed
16 by because they were driving so slow, you know, by me, and
17 -- and I remember the man that was sitting there, he
18 actually did the same thing, you know, gave a little glance
19 when he -- when he was passing.

20 Q. All right. So as you continued your rounding --
21 about to round the corner?

22 A. Yeah, you round the corner down there and you start
23 the incline, and as soon as that happened, just when it
24 happened was in seconds. There was another vehicle driving,
25 you know, on the wrong way, coming down the bridge, and

1 didn't have no time to react to it and it just hit the other
2 car that had just passed me. It was probably maybe two or
3 three car lengths ahead of me, and that was it. I mean, it
4 just happened that quick.

5 Q. At any point was your vehicle impacted?

6 A. Yeah. One of the two vehicles, and I don't know
7 which one it was because it happened so quick, deflected off
8 when they hit together. It deflected off and hit the front
9 end of my car -- my truck.

10 Q. What was your immediate reaction at that point?

11 A. Well, just, you know, a little bit of shock and that
12 was about it, I mean, just a little bit of a shock, and I
13 managed to get out of the vehicle and get out and walk
14 around to see what was going on, but like within a minute or
15 so -- probably within two minutes or so, the paramedics and
16 the police were there.

17 Q. Did you stop your car on your own or did you drive
18 it ---

19 A. I really don't know. I just -- it happened so quick.
20 I really don't even remember actually even hitting the
21 brake. That's how quick it happened. I'm just assuming
22 that the other vehicle either stopped me because it hit it
23 that hard maybe and stopped me or I just managed to just
24 stop on my own.

25 Q. Okay.

1 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 2 FOR
2 IDENTIFICATION ONLY.)

3 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 3 FOR
4 IDENTIFICATION ONLY.)

5 MR. TERRELL: May I approach, Your Honor?

6 THE COURT: Yes sir.

7 Q. Mr. Pierce, I'm handing you what's been labeled for
8 identification purposes only State's Exhibits 2 and 3. Do
9 you recognize those?

10 A. Yes.

11 Q. How do you reco- -- generally what are they?

12 A. That's just the vehicle I was driving. That's a
13 vehicle that we use to transport the engines and
14 transmissions.

15 Q. Okay. How do you -- how do you recognize it? Was
16 that your truck?

17 A. Oh, yeah.

18 Q. And does it fairly and accurately depict the damage
19 that happened that night?

20 A. Yeah.

21 Q. And is that where your car came to a rest that night?

22 A. Yes.

23 MR. TERRELL: Your Honor, the State offers Exhibits 2
24 and 3 into evidence.

25 THE COURT: Any objection?

1 **MR. GALMORE:** No sir.

2 **THE COURT:** All right. The pictures are in evidence
3 without objection. You may proceed.

4 **MR. TERRELL:** Thank you, Your Honor.

5 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
6 **NUMBER 2.)**

7 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
8 **NUMBER 3.)**

9 Q. Let's start here with Exhibit 3. You said that was
10 your truck, correct?

11 A. Yes.

12 Q. Is that a sign next to your truck?

13 A. That is to North -- Conway. That's right.

14 Q. So that's where your car came to rest, there?

15 A. Yes.

16 Q. I am referring now to Exhibit 2. Does that
17 accurately represent the damage that happened to your
18 vehicle?

19 A. Yes.

20 Q. Now, looking at that picture, are you reminded, if
21 you remember, what damage there was to your vehicle?

22 A. It was undriveable. I mean, it was actually pushed
23 into the tire so that ---

24 Q. When you say it, what are you referring to?

25 A. The vehicle, so -- so it was -- it was probably

1 damaged -- it was damaged beyond driveable. They had to tow
2 it.

3 Q. When you tried to get out of your vehicle ---

4 A. Yeah, I couldn't get out of the vehicle on the -- on
5 the driver's side.

6 Q. When you said you couldn't get out of the vehicle,
7 what do you mean?

8 A. The door wouldn't open.

9 Q. You physically pushed the door and it wouldn't open?

10 A. Yeah. No, it wouldn't open. I mean, it might have
11 been possible, but I -- I tried to get it open and it
12 wouldn't open.

13 Q. So how did you have to get out of your vehicle?

14 A. Just from the passenger side.

15 Q. Once you got out of your vehicle, what did you do?

16 A. Well, mostly I was fixated on the man that had died.
17 He was laying on the trunk of the car, of the vehicle that
18 was, you know, one of the head-on vehicles.

19 Q. When you got out, did you notice the position of the
20 other two vehicles that were in the accident?

21 A. Yeah. One of them was up on a divider, sitting up on
22 the divider, and the other one was in back of that car with
23 the man that had -- had deceased that was laying on the
24 trunk of the -- he had come through the wind- -- the back --
25 the back glass.

1 Q. And can you give us a general description of what
2 that man looked like?

3 A. Not other than he was black. That's all I could say
4 about it.

5 Q. Okay. And that was in the car that was in the middle
6 of the road, correct?

7 A. Yes.

8 Q. And you said that the other car was on the concrete?

9 A. Yeah. It was on the -- it was sitting up on it, on
10 the concrete divide that was in the middle and between the
11 two ---

12 Q. Did you at any point go up to that car?

13 A. You know, I really don't really remember. There was
14 somebody else there that was -- I just don't really
15 remember. I just remember being fixated more on that -- on
16 the man that had passed away that was on the trunk of that
17 car, and that's mostly what I was fixated on.

18 Q. You say he passed away. Did you know at that point
19 that he ---

20 A. He just looked like he -- I don't know exactly, but
21 he just -- he was just -- blood was coming out of his mouth
22 and he had like a little twitch to him, and he just looked
23 like he was deceased, but I didn't actually go up there and
24 check his pulse or anything like that, no. I mean, he just
25 -- he definitely appeared to be deceased.

1 Q. And you said he was in the vehicle in the -- that was
2 still in the middle of the road?

3 A. Yeah, it was in the middle of the road.

4 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 1 FOR
5 IDENTIFICATION ONLY.)

6 Q. I'm going to show you now what's been marked as
7 State's Exhibit 1 for identification purposes. Do you
8 recognize that?

9 A. Yeah, I recognize this.

10 Q. Generally, what do you recognize it as?

11 A. It's the Intracoastal Waterway. That's the bridge,
12 and I can recognize it because of the sign there, the Conway
13 sign.

14 THE REPORTER: Excuse me. Pull up to the microphone,
15 please. I can hardly hear you.

16 A. Excuse me.

17 THE REPORTER: Would you repeat what you just said.

18 A. I recognize it mostly because of that Conway sign and
19 the Intracoastal Waterway.

20 Q. Would that be the same Conway sign that your car came
21 to a stop at?

22 A. Yeah.

23 Q. This would be the scene of the accident?

24 A. Yes.

25 Q. And does that picture fairly and accurately depict

1 the scene of the accident as you remember it?

2 A. I mean, it depicts the road, yes.

3 Q. Correct.

4 **MR. TERRELL:** Your Honor, the State offer State's
5 Exhibit 1 into evidence.

6 **THE COURT:** Any objection?

7 **MR. GALMORE:** No sir, no objection.

8 **THE COURT:** All right, sir.

9 It's in evidence without objection.

10 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
11 **NUMBER 1.)**

12 Q. So this is the roadway where -- where it all happened
13 that night?

14 A. Yes.

15 Q. And you can clearly see that green sign that says
16 Conway, correct?

17 A. Yes.

18 Q. Were you on scene when EMS arrived?

19 A. Yes.

20 Q. Did they come check you out for injuries?

21 A. They -- they were -- they did, but they first took
22 care of the people that were up on the guard rail -- I mean
23 up on the barrier, that little -- because I -- I wasn't
24 hurt.

25 Q. Okay. How long did it take them to get there?

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1 A. Within a minute, two minutes, a couple of minutes.
2 The whole thing was probably a couple of minutes.

3 Q. And when they -- after they checked those other
4 people out and they checked you out, did they find any
5 injuries on you?

6 A. No.

7 MR. TERRELL: Please answer any questions Mr. Galmore
8 has.

9 A. Okay.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION BY MR. GALMORE:

12 Q. Sir, as I understand it, Mr. Pierce, you were driving
13 northbound on Highway 17?

14 A. Yes.

15 Q. And you would have been in the slow lane?

16 A. Yes.

17 Q. And a car passed you?

18 A. Yes.

19 Q. And that car would have been in the fast lane, is
20 that correct?

21 A. Yes.

22 Q. Okay. Now, that's the car that you said you sort of
23 looked over and glanced in ---

24 A. Yes.

25 Q. --- and you could see the guy looking at you?

1 A. Yes; yes.

2 Q. And in that car, were you able to see who was
3 driving?

4 A. Yes. It was a white female.

5 Q. Okay. So you could look in that car and you could
6 see that there was a white female ---

7 A. Yes.

8 Q. --- driving that car?

9 A. Yes, I could.

10 Q. And there was a white passenger in there?

11 A. Yes.

12 Q. Is that the same car that ended up on the rail?

13 A. Yes, it was.

14 Q. Okay. Do you have any idea how long it was between
15 when that car passed you and when the accident happened?

16 A. It was a matter of seconds, probably within a couple
17 of seconds because they were just -- they were only probably
18 maybe two car lengths ahead of me when it happened.

19 Q. All right. And that car is the one that hit with the
20 car that was coming over the bridge?

21 A. Yes.

22 Q. Okay. Were you able to see the car coming over the
23 bridge?

24 A. Yes, I could.

25 Q. Okay. Were you able to see who was driving that car?

1 A. No, I could not.

2 Q. Okay. That car came across the bridge and the two of
3 them hit head-on, is that correct?

4 A. Yes.

5 Q. Okay. And after the two of those cars hit, they kind
6 of spun around and you ended up hitting one of those cars
7 also?

8 A. I don't really know what happened at that point. I
9 know they hit together, ---

10 Q. Okay.

11 A. --- and then one of them hit me.

12 Q. Okay. So the two of them hit together?

13 A. Yes.

14 Q. And that's one accident?

15 A. Yes.

16 Q. And then one of those two cars hit you?

17 A. Yes.

18 Q. And that's a second accident or all part of the same
19 big accident?

20 A. Yes.

21 Q. Okay. Did you ever lose consciousness?

22 A. No.

23 Q. So after you and one of those two cars ---

24 A. Yes.

25 Q. --- collided, you said you don't know how your car

1 ended up off on the side?

2 A. No, because it happened so quickly.

3 Q. All right. All right. Now, I think you said that
4 you could not get out of your car on the driver's side?

5 A. Yes.

6 Q. So what did you do?

7 A. I had to crawl out the other side, crawl across the
8 seat and go out the other side.

9 Q. So because your driver's side was damaged, you did
10 what any reasonable person would do, which is to crawl
11 across and get out on the passenger side?

12 A. Yes.

13 Q. Okay. And that's not very complicated, is it?

14 A. No.

15 Q. All right. Did you sustain any significant injuries?

16 A. No, not at all.

17 Q. And you said EMS came to check you out?

18 A. Yes.

19 Q. Did they take you to the hospital?

20 A. No. I refused treatment at the hospital.

21 Q. You refused treatment on the side of the road?

22 A. No, just at the hospital. I didn't want to go to the
23 hospital.

24 Q. Okay. So you never went to the hospital?

25 A. No.

1 Q. Okay. Did you have a chance to check on the
2 condition of the other people involved in the accident?

3 A. No. There was another man there that was doing that.

4 Q. Okay.

5 A. But I didn't -- I just -- like I had said, I was
6 fixated on the man that had -- that I believed was deceased.

7 Q. So let me just try to understand this. You were
8 standing over near your vehicle, or did you walk over to ---

9 A. No, I walked up to it. I walked up to him. Yes, I
10 walked all the way -- almost right up to him.

11 Q. Okay. And that's when you saw the man hanging out
12 of ---

13 A. Well, I saw him from where I was, but I walked all
14 the way up to him.

15 Q. Just to be clear, you saw him from when your car
16 stopped on the median after the accident? You could look
17 and see ---

18 A. Well, when I got out of the vehicle, I got out of my
19 truck, come around, you know, that I could see -- I could
20 see it at that point. I could see the man at that point,
21 but I -- you know, I wanted to -- I was going to check on
22 him. I started walking up to him.

23 Q. Okay. But someone else was already checking him?

24 A. Somebody else was -- there was another man there, and
25 he -- he was checking on those other people. They were in

1 that vehicle that was up on the -- on the divider, so I just
2 walked up to him.

3 Q. To the person that was checking on the other car?

4 A. No. I walked up to the ---

5 Q. To the deceased person?

6 A. Yes.

7 Q. Okay. All right. Because this other guy was
8 checking on everybody too?

9 A. Yes.

10 Q. Okay. So just to get it -- just so that I understand
11 what happened, you got passed by a car, that that's what
12 happened ---

13 A. Yes.

14 Q. --- before the accident?

15 A. Yes.

16 Q. And then there's a head-on collision involving that
17 car and the car that was coming off the bridge?

18 A. Yes.

19 Q. And then after the two of them impacted, some kind of
20 way, they ended up -- or one of them ended up hitting you?

21 A. Yes.

22 Q. And you were knocked off over into the median, don't
23 know how you got over there?

24 A. Yes.

25 Q. All right. And you said you did not go to the

1 hospital?

2 A. No.

3 Q. Okay. And you were able to leave that night?

4 A. I went with the tow truck driver to Bell & Bell,
5 which is just -- it's not too far from there.

6 Q. Right.

7 A. They tow -- we actually deliver engines and
8 transmissions there.

9 Q. So he kind of knew ---

10 A. Yeah, I knew that, and so he towed it there. Another
11 man had come early in the morning and picked up what I
12 couldn't deliver with the truck and he finished the route,
13 so I just sat there. I just sat there and waited until he
14 showed up.

15 Q. Are you sure you never lost consciousness?

16 A. No, I never lost consciousness. I just don't know
17 how -- I don't really know how I stopped because it happened
18 so quick. I might have hit the brakes and pulled over or
19 they might have just knocked me over there.

20 Q. Right.

21 A. I mean, it -- I was a little bit of a shock, you
22 know, because it -- you know, obviously you get into a car
23 wreck, I was a little bit -- but I never lost consciousness.

24 Q. I understand. I'm just trying to clarify that issue.
25 I'm not trying to confuse you ---

1 A. Okay.

2 Q. --- or trick you, so your answer is you never lost
3 consciousness?

4 A. No, I never lost consciousness.

5 Q. Were you drinking that night?

6 A. No.

7 MR. GALMORE: No further questions. Thank you, Mr.
8 Pierce.

9 A. Okay.

10 THE COURT: Any redirect?

11 MR. TERRELL: No sir, Your Honor.

12 THE COURT: Do you wish the witness to be excused?

13 MR. TERRELL: Yes, we do, Your Honor.

14 THE COURT: Any objection?

15 MR. GALMORE: No sir.

16 THE COURT: All right, sir, you are released from your
17 subpoena. You may go back to your regular activities, sir.
18 Thank you.

19 Yes, Solicitor.

20 THE COURT: Yes, Solicitor?

21 MS. RICHARDSON: Dr. Edward Proctor, Jr.

22 THE COURT: Very good..

23 All right, Dr. Proctor, if you would just come on up,
24 all the way up here, and meet the Clerk at the corner,
25 sir.

1 **EDWARD L. PROCTOR, JR., M.D.**, being first duly
2 sworn, testifies as follows:

3 **THE DEPUTY CLERK:** Please be seated. State your full
4 name and spell your last name for the Court, please.

5 **DR. PROCTOR:** I am Edward Leroy Proctor, Jr., and
6 that's P-R-O-C-T-O-R.

7 **THE COURT:** Go ahead, Solicitor.

8 **MS. RICHARDSON:** Thank you, Your Honor.

9 **DIRECT-EXAMINATION BY MS. RICHARDSON:**

10 Q. Good afternoon, Dr. Proctor. Thank you for being
11 here today. Where are you employed?

12 A. I'm self-employed with an office at Grand Strand
13 Medical Center in Myrtle Beach.

14 Q. And what do you do there?

15 A. I am a pathologist. I practice general pathology,
16 clinical pathology, and forensic pathology.

17 Q. Okay. And what -- what is pathology?

18 A. Pathology is the scientific basis of disease.

19 Basically we make the diagnoses, take specimens, evaluate
20 them, perform autopsies to determine the cause and manner of
21 death.

22 Q. And how long have you been doing that for?

23 A. Approximately thirty years.

24 Q. Now, in order to do that, what training is necessary?

25 A. I have an M.D. Degree. I did a Pathology residency,

1 and did specialty training to receive qualification for
2 forensic pathology and have sat and passed the Boards in
3 anatomic, clinical, and forensic pathology.

4 Q. Okay. So you got your regular doctor degree, M.D.
5 degree?

6 A. That's correct.

7 Q. And then you did additional schooling for pathology?

8 A. Medical school, and then pathology residency.

9 Q. And, I'm sorry, how long did you say you'd been doing
10 that for?

11 A. Approximately thirty years.

12 Q. How many autopsies would you say that you've
13 performed?

14 A. Probably in the neighborhood of five thousand.

15 Q. What are your duties as a pathologist?

16 A. Duties as a pathologist in my general practice are we
17 just examine tissue, biopsies, that kind of stuff, give a
18 diagnosis as to what we see. Clinical, we run the blood
19 bank, chemistry lab, histology lab, microbiology lab, and
20 oversee that. Forensic-wise, it's autopsies at the request
21 of the Coroner to determine the medical/legal cause of
22 death.

23 Q. Do you hold any memberships in any special
24 organizations or associations?

25 A. I'm a member of the College of Medical Pathologists,

1 which is our Board organization, plus a member of the
2 Medical Society of Clinical Pathologists, and the College of
3 American Pathologists.

4 **THE COURT:** Yes sir, Mr. Galmore?

5 **MR. GALMORE:** I would submit that Dr. Proctor is a
6 qualified expert in the field of pathology.

7 **THE COURT:** All right.

8 Anything else you would wish him to be qualified in,
9 Solicitor?

10 **MS. RICHARDSON:** No sir, Your Honor.

11 **THE COURT:** All right. Very good.

12 I do find that Dr. Proctor is qualified to give his
13 opinion in the field of forensic pathology.

14 You may proceed.

15 **MS. RICHARDSON:** Thank you, Your Honor.

16 Q. Did you have an occasion to perform an autopsy on
17 Mitchell White February 16th, 2010?

18 A. Yes ma'am, I did.

19 Q. What time was that autopsy performed?

20 A. I was contacted by the Coroner or the Deputy Coroner,
21 and we performed that autopsy approximately 7:00 a.m. on the
22 16th.

23 Q. Okay. And where did that autopsy take place?

24 A. That took place in Myrtle Beach at Grand Strand
25 Medical Center.

1 Q. How long does an autopsy generally last?

2 A. Well, the actual performance of the examination is
3 approximately an hour to an hour and a half, possibly
4 longer. At that time, we retrieve samples which we then
5 have to send through histolics to have slides made. We also
6 send out a blood specimen for a toxicologic evaluation, so
7 all total once we get everything back, it takes about six
8 weeks to fully complete an autopsy.

9 Q. In this particular case, did you note any external
10 injuries?

11 A. This gentleman had fairly significant injuries.
12 Externally he had some abrasions, had a large abrasion with
13 avulsion of the skin on the -- on the ankle area, on the
14 right side I believe, and there was some abrasions on the
15 anterior leg in the tibula area below the left knee, and
16 externally that's pretty much what I saw.

17 Q. Okay. And what internal injuries did he have?

18 A. Internally there were significant injuries. This
19 gentlemen, he fractured multiple ribs on both the right and
20 left sides. There was a transection of aorta -- of his
21 aorta, which means it was torn half in two. There was
22 approximately fifteen hundred to two thousand cc's of blood
23 in his left chest, blood in the sac around the heart. He
24 had a large laceration of his liver, and he had lacerations
25 of the posterior surfaces of his lungs where the rib

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1 actually fractured at the lung.

2 Q. Were you able to determine a time of death in this
3 case?

4 A. Time of death was essentially what I was told by the
5 Coroner, the Deputy Coroner, which I was told to be
6 approximately 3:00 a.m.

7 Q. And based upon your examination of Mitchell White,
8 within the bounds of reasonable medical certainty, what was
9 Mitchell White's cause of death?

10 A. He died of extensive trauma sustained in a motor
11 vehicle collision of some sort.

12 **MS. RICHARDSON:** Nothing further, Your Honor.

13 **THE COURT:** Cross-examination.

14 **CROSS-EXAMINATION BY MR. GALMORE:**

15 Q. Dr. Proctor, I believe you testified that you
16 received your M.D., is that correct?

17 A. That's correct.

18 Q. And that means you're a medical doctor, M.D.?

19 A. That's correct.

20 Q. Now, I understand there are different kinds of
21 doctors. There's a D.O. What's a D.O.?

22 A. D.O. is a doctor of osteopathic medicine.

23 Q. Okay.

24 A. It's a field of medicine that they do lots of
25 physical, mechanical manipulation, but by and large the way

1 the osteopathic residencies are run these days, they train
2 very much like an M.D.

3 Q. Okay. But for your training, you attended
4 undergraduate school?

5 A. That's correct.

6 Q. And then how many years of medical school?

7 A. Four.

8 Q. And then you entered a residency in pathology?

9 A. That's correct.

10 Q. After completing medical school, before going into a
11 residency, let's say, for example, you decided that you
12 wanted to be an internist instead of a pathologist. Would
13 you have gone to a residency in internal medical instead
14 of ---

15 A. That's correct.

16 Q. --- in pathology?

17 A. That's correct.

18 Q. Okay. So if you wanted to be a kidney specialist,
19 you would have went to a residency in kidney ---

20 A. That's correct.

21 Q. --- work?

22 A. Uh-huh (indicating affirmative).

23 Q. Yes?

24 A. Correct.

25 Q. So would it be fair to say that all doctors start

1 with the M.D. and then you choose your specialty from there?

2 A. We all start with a basic M.D. degree, which is a
3 very broad-based introduction to the field of medicine, and
4 our specialty training is pretty concentrated after that.

5 Q. Okay. Well, about this broad-based introduction into
6 medicine, have you during your studies or residency had an
7 opportunity to study head injuries?

8 A. Some, that is correct.

9 Q. If a person were suffering from a concussion, what
10 signs would a doctor look for?

11 A. Clinically it's out of my realm. I was not trained
12 in the clinical evaluation of -- to take care of people with
13 concussions. I went straight to pathology and not into a
14 clinical residency.

15 Q. So if I ---

16 A. It's out of the -- it's out of the scope of my
17 training to discuss the nuances of a concussion, medical
18 nuances.

19 Q. If I asked you how long a concussion lasts, can you
20 answer that?

21 A. I cannot, no.

22 Q. If I asked you if a concussion would cause ---

23 **MS. RICHARDSON:** Your Honor, I would object to this
24 line of questioning.

25 **THE COURT:** Well, I appreciate it, but I'm going to

1 allow him to ask the question. The doctor may very well not
2 be able to answer it, but I'm going to allow him to ask the
3 question.

4 Q. Could a concussion cause memory loss?

5 A. I'm sure it can, yes.

6 Q. Could a concussion cause slurred speech?

7 A. Again, it's certainly possible that it could.

8 Q. Could a concussion cause problems with balance?

9 A. I -- I -- in all likelihood, it probably could.

10 Q. Okay. Well, let me ask you about the autopsy you
11 performed in this case. I understand that you listed his
12 time of death at approximately 3:00 a.m.?

13 A. That's correct.

14 Q. And the autopsy was performed at approximately 7:00
15 a.m. the same day?

16 A. That's correct.

17 Q. That four hour difference, does that make a
18 difference in your findings?

19 A. No, it does not.

20 Q. Now, you described for us the external injuries that
21 were on the body, and you described some injuries to Mr.
22 White's lower leg region?

23 A. That's correct.

24 Q. What injuries did he have on his legs?

25 A. Okay, Mr. White's right lower extremity showed

1 avulsion of skin over the lateral aspect of malleolus.
2 That's where the skin is actually torn and pulled away, and
3 the malleolus is the ankle area. Okay, that was the right
4 lower extremity.

5 The left leg showed an abrasion on the anterior leg
6 in the mid-tibial area, which is the anterior leg below the
7 knee.

8 Q. So there was an injury on the right leg and there was
9 an injury on the left leg?

10 A. That's correct.

11 Q. When you say avulsion, what is that?

12 A. That's where the skin is actually torn away.
13 Something hits it and just pulls it away, pulls it loose.

14 (PHOTO IS MARKED AS DEFENDANT'S EXHIBIT NUMBER 1 FOR
15 IDENTIFICATION ONLY.)

16 MR. GALMORE: May I approach, Your Honor?

17 THE COURT: Yes sir.

18 Q. Dr. Proctor, I'm going to hand you what's been marked
19 for identification purposes as Defendant's Exhibit Number 1
20 and ask you if you can tell us what that picture depicts?

21 A. Yes. This -- picture shows the avulsion of the skin
22 around the right ankle area, as well as the injury to the
23 anterior tibial area of the left leg below the knee.

24 Q. So those are the two injuries that you described?

25 A. That's correct.

1 Q. And is that Mitchell White?

2 A. To the best of my recollection, it is.

3 Q. And does this appear the injuries as you saw them
4 during the autopsy on February 16th, 2010?

5 A. That's correct.

6 **MR. GALMORE:** Your Honor, I would move at this time to
7 add Defendant's Exhibit Number 1 for identification
8 purposes, enter it into evidence as Defendant's Number 1.

9 **THE COURT:** Any objection?

10 **MS. RICHARDSON:** No, Your Honor.

11 **THE COURT:** All right. It's in evidence without
12 objection.

13 **(PHOTO INTRODUCED INTO EVIDENCE AS DEFENDANT'S EXHIBIT**
14 **NUMBER 1.)**

15 Q. Do you know what caused those injuries on his lower
16 legs?

17 A. I was told that there was a motor vehicle collision
18 or crash and those injuries are consistent with an impact
19 injury to a blunt force object. He hit the dash, the door,
20 or whatever, and anything where the ankle was moving to
21 catch something hard, it would avulse the skin or pull it
22 loose.

23 Q. So the ankle caught something and it tore the skin
24 loose?

25 A. That's correct.

1 Q. Now, once you opened Mr. White's body, what injuries
2 were -- did you observe?

3 A. Initially the multiple rib fractures, which were ribs
4 two through four in the left chest, and two through five in
5 the right chest. Secondarily as we proceeded with the
6 examination, a transection of the thoracic aorta. That's
7 where the aorta is actually ripped half in two. That was in
8 the arch area just in the thorax.

9 There was an associated two thousand cc's plus of
10 blood in the left chest, and there was ten to fifteen cc's
11 of blood within the sac around the heart. That was in the
12 chest area.

13 In the abdominal area -- again in the chest area, there
14 were lacerations to the lungs from where those ribs were
15 fractured and slashed the lungs, and in the abdominal area,
16 there was a large laceration to the liver which almost
17 transected it.

18 Q. All right. Well, let's go back to the ribs. I think
19 you described injuries to -- broken ribs on the left and
20 right side of his body?

21 A. That is correct.

22 Q. Based on those rib injuries, are you able to
23 determine where Mr. White was seated in the vehicle?

24 A. I was not.

25 Q. You also said that there was some damage to the

1 heart, damage to the liver, and damage to the lungs?

2 A. . Correct.

3 Q. Any one of which would have been fatal, is that fair
4 to say?

5 A. The damage to the aorta with the transection would
6 definitely be fatal, and the laceration of the liver as
7 extensive as it was would also have been fatal.

8 Q. All right. Did you also draw blood from Mr. White?

9 A. We did.

10 Q. And is that something that's done routinely in
11 autopsy?

12 A. That's a standard procedure in all forensic cases,
13 yes sir.

14 Q. And why was blood drawn in this case?

15 A. In all forensic cases, we perform a blood alcohol and
16 basic drug screen. We also screen for any other drugs which
17 we are informed may be present.

18 Q. All right. Does your lab test blood samples itself?

19 A. No sir.

20 Q. So what do you do with blood samples?

21 A. These blood samples are sent under chain of custody
22 to National Medical Services' laboratory in Willow Grove,
23 Pennsylvania, which is a national certified forensic testing
24 laboratory.

25 Q. So basically you contract with another laboratory to.

1 perform the blood tests?

2 A. That is correct.

3 Q. And you did so in this case?

4 A. Absolutely.

5 Q. And they performed the blood tests in this case?

6 A. Yes sir, they did.

7 Q. What results were they able to tell you about the
8 blood in Mr. White's system?

9 A. The blood results in this case are a blood ethanol of
10 236 milligrams per deciliter, which if you convert that to
11 grams percent or what you would refer to as the
12 breathalyzer ---

13 Q. Yes.

14 A. --- equivalent, would be .236. All right, we did
15 that test and then we did a blood drug screen which screens
16 for opiate drugs, Valium drugs, marijuana, barbiturates,
17 cocaine, and that drug screen was positive for marijuana and
18 marijuana metabolite.

19 Q. All right. So you found some amount of alcohol in
20 Mr. White and some amount of marijuana?

21 A. That is correct.

22 **MR. GALMORE:** Thank you, Dr. Proctor. No further
23 questions.

24 **THE COURT:** Redirect?

25 **MS. RICHARDSON:** Just briefly, Your Honor.

1 **REDIRECT-EXAMINATION BY MS. RICHARDSON:**

2 Q. Dr. Proctor, what's the difference between ---

3 **MR. GALMORE:** Objection, Your Honor.

4 **THE COURT:** Well, I don't know what the question is.

5 Do you -- do you know what the question is?

6 **MR. GALMORE:** May I have a moment with Your Honor?

7 **THE COURT:** Yes sir.

8 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

9 **MR. GALMORE:** I'm sorry, Your Honor. I'll withdraw my
10 objection.

11 **THE COURT:** All right. Go ahead.

12 Q. Dr. Proctor, what's the difference between marijuana
13 and marijuana metabolite?

14 A. Marijuana is just pure marijuana, is the active
15 component of marijuana, and marijuana metabolite is the --
16 when someone inhales, smokes, takes marijuana, you have a
17 marijuana level, which is the pure drug. The metabolite is
18 metabolized to marijuana metabolite. The pure drug stays
19 around for a couple of days. The metabolite is present for
20 up to two weeks.

21 Q. You're not able to determine at what time that
22 marijuana was smoked?

23 A. No sir -- no ma'am, I was not.

24 Q. It could have been anywhere, I think you just
25 testified, from two days to two weeks?

1 A. Well, probably less than two days because the pure
2 marijuana stays around for, you know, a few hours, but the
3 metabolite will stay up to about two -- two weeks.

4 Q. And I know it seems absurd, that alcohol and that
5 marijuana that you were able to determine was in Mr. White's
6 system, that wouldn't have severed his liver, would it?

7 A. No, it would not.

8 Q. And that wouldn't have caused the damage to his
9 aorta, would it?

10 A. No ma'am.

11 MS. RICHARDSON: Nothing further, Your Honor.

12 THE COURT: Anything on those questions, Mr. Galmore?

13 MR. GALMORE: No sir, Your Honor.

14 THE COURT: All right.

15 Do you wish this witness to be excused?

16 MS. RICHARDSON: I do, Your Honor.

17 THE COURT: Any objection?

18 MR. GALMORE: No sir, Your Honor.

19 THE COURT: All right.

20 Doctor, you are released from your subpoena and may go
21 back to your regular duties.

22 MS. RICHARDSON: Your Honor, may we approach?

23 THE COURT: Yes ma'am.

24 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

25 THE COURT: All right, ladies and gentlemen, we are

1 going to stop for today. I am going to ask that you be back
2 in -- I am going to ask that you be downstairs in the -- the
3 other panel is coming in at 9:30.

4 I don't want you to be confused and get stolen by Judge
5 Culbertson for his civil case, so Madam Bailiff, it would
6 probably be best if they came upstairs to the jury room
7 rather than going downstairs with the whole panel that was
8 not selected for this case or Judge Harrington's case as
9 they are assembling tomorrow morning downstairs.

10 So when you come back to the courthouse, y'all come on
11 up to the third floor. I'm sure Madam Bailiff will explain
12 it to you, but basically when you come off the stairs or the
13 elevator, you are going to go all the way down to the end of
14 the hall and use that corridor and come around.

15 They will meet you down at the end of the corridor, so
16 when you come off the stairs or the elevator, you turn right
17 and go to the end of the hall there where you can't walk any
18 further and the bailiffs will be there to meet you and take
19 you back to the jury room. I would appreciate it if y'all
20 could do that by nine o'clock.

21 The Clerk of Court's Office will have something for you
22 in your jury room tomorrow morning, and we will get started.
23 I will give you some time to enjoy that but I would
24 appreciate it if y'all could get there at nine o'clock and
25 then we'll get started shortly thereafter.

REMARKS BY THE COURT
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1 Now, remember, don't talk about the case. Don't talk
2 to anybody at home. You go home, see your husband,
3 boyfriend, girlfriend, person down the street, you can't
4 talk about the case because unintentionally they'll give you
5 their opinion about it and they don't have one, and you
6 shouldn't have one at this point in time, so again, you are
7 not investigators, you are not researchers. You decide this
8 case solely and completely on the facts and evidence you
9 hear in the courtroom and from no other source.

10 With that, I'll see you back tomorrow morning, nine
11 o'clock. Thank you very much.

12 Everyone else remain seated while the jury retires,
13 please.

14 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
15 **JURY.)**

16 **THE COURT:** All right, Solicitor, is there anything we
17 need to talk about before we end for today?

18 **MS. RICHARDSON:** Not that I'm aware of.

19 **THE COURT:** Mr. Galmore?

20 **MR. GALMORE:** No sir.

21 **THE COURT:** All right. As you heard me tell the jury,
22 I would appreciate if y'all would be here by nine o'clock.

23 Is Mr. Butler in custody or on bond?

24 **MR. GALMORE:** Your Honor, he is on bond, and previously
25 we discussed it with the Solicitor, and she was not opposed

1 to allowing him to remain on bond.

2 **THE COURT:** All right. Did you think to communicate
3 with the bonding company to make sure they would stay on the
4 bond during the pendency of the trial?

5 **MR. GALMORE:** I did not, sir.

6 **THE COURT:** All right. What I would ask you to do is
7 make attempts to do that and make sure that they want to
8 stay out on -- have him stay out on bond during the pendency
9 of the trial.

10 **MR. GALMORE:** Yes sir.

11 **THE COURT:** Mr. Butler, stand up for a second, please,
12 sir. (Mr. Butler stands.) At this present time, I'm going
13 to allow you to stay out on bond under the same terms and
14 conditions. I will tell you that we will reconvene tomorrow
15 morning, nine o'clock.

16 That means you will be in the courtroom here by nine
17 o'clock tomorrow morning. You fail to do so, a couple of
18 things will happen. One, a Bench Warrant will be issued for
19 your arrest. Secondly, the trial will proceed in your
20 absence. You not being here will not stop the trial. The
21 trial will proceed to a conclusion, whatever the jury
22 decides that conclusion is.

23 If they convicted you, the Court would impose a
24 sentence, seal that sentence. When you are picked up by the
25 police authorities, then you would be brought back before me

1 for the imposition of the sentence. Further, I could hold
2 you in contempt of court and send you to jail for a period
3 of up to one year for failing to report no matter what the
4 jury does in this case. Even if they decided to find you
5 not guilty of this crime, you could still be held in
6 contempt of court and sent to the Department of Corrections.
7 You understand me?

8 **MR. BUTLER:** Yes sir.

9 **THE COURT:** All right, sir. With that, we'll resume
10 tomorrow morning, nine o'clock. Thank you very much.

11 **MR. GALMORE:** One thing, Your Honor.

12 **THE COURT:** Yes sir.

13 **MR. GALMORE:** And it's not a big thing. I had -- I
14 neglected to make a motion to sequester witnesses. I
15 mentioned it to Ms. Richardson and they've been kind enough
16 to make sure that any potential witnesses were not in the
17 courtroom so far.

18 **THE COURT:** Is there any objection to that from the
19 State, besides the chief investigating officer?

20 **MS. RICHARDSON:** No sir, Your Honor.

21 **THE COURT:** All right. Very good. With the exception
22 of the chief investigating officer, I will allow the
23 sequestration of the witnesses.

24 **MR. GALMORE:** Your Honor, there is one person that is
25 in the courtroom that appears to be a friend of one of the

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JURY IN

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1 State's witnesses, and I would just -- I would try to make
2 sure that that person doesn't go back and report any
3 testimony to witnesses that have not yet testified.

4 **THE COURT:** Well, Solicitor, as best you can, if that
5 is the case, you will try and talk to that particular
6 person, okay?

7 **MS. RICHARDSON:** I will. Yes sir, Your Honor.

8 **MR. GALMORE:** Thank you, sir.

9 **THE COURT:** Thank y'all very much.

10 (END DAY.)

11 (THE FOLLOWING TAKES PLACE ON TUESDAY, JULY 15, 2014,
12 OUTSIDE THE PRESENCE OF THE JURY.)

13 **THE COURT:** Is the State ready to proceed?

14 **MS. RICHARDSON:** We are, Your Honor.

15 **THE COURT:** And Defense?

16 **MR. GALMORE:** Yes.

17 **THE COURT:** All right. Very good.

18 Ask the jury to come in, please, sir.

19 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
20 JURY.)

21 **THE COURT:** Good morning, ladies and gentlemen.

22 All right, Solicitor, are you ready with your next
23 witness?

24 **MS. RICHARDSON:** Yes, Your Honor.

25 **THE COURT:** All right.

1 **MS. RICHARDSON:** Said Canto.

2 **THE COURT:** Mr. Canto, if you would come all the way
3 around and then meet the Clerk all the way up here, please,
4 sir.

5 **SAID CANTO,** being first duly sworn, testifies as
6 follows:

7 **THE DEPUTY CLERK:** Please be seated. State your full
8 name for the Court and spell your last name for the Court,
9 please.

10 **MR. CANTO:** C-A-N-T-O.

11 **THE COURT:** Could you spell your first name, please,
12 sir.

13 **MR. CANTO:** S-A-I-D.

14 **THE COURT:** All right. Very good.

15 Go ahead, Solicitor.

16 **MS. RICHARDSON:** Thank you, Your Honor.

17 **DIRECT-EXAMINATION BY MS. RICHARDSON:**

18 Q. Good morning, Mr. Canto.

19 A. Good morning.

20 Q. Where are you employed currently?

21 A. I work for Cleat Chaser's Restaurant.

22 Q. Cleat Chaser's, okay. And where were you employed in
23 2010?

24 A. I was working for a company that I did the same kind
25 of work for USA Today newspapers company.

1 Q. Okay. And what was your job for that newspaper
2 company?

3 A. Delivering paper.

4 Q. You delivered papers?

5 A. Yes. I did that for a year.

6 Q. How old are you?

7 A. Forty-four.

8 Q. On or about February 16th, 2010, did you have an
9 occasion to witness an accident?

10 A. Yes.

11 Q. And about what time was it?

12 A. I'm not sure, but it should be between 4:00 or 5:00
13 p.m. -- a.m.

14 Q. So it was early morning hours?

15 A. Early morning, yes. It's the time I'm delivering the
16 paper, so it couldn't be later than that.

17 Q. And it was 2010, okay. So where were you headed?

18 A. Ma'am?

19 Q. Where were you going?

20 A. I was driving on 17 towards Wilmington. I got my
21 route starting from Little River all the way to Southport,
22 so I was, you know, towards North Carolina on 17.

23 Q. Okay. You were headed north on 17?

24 A. Right.

25 Q. Right before the accident, do you recall seeing any

1 cars on the road?

2 A. Yes. There was another car basically next to me and
3 then the next car. It was -- I can't remember -- it was
4 dark car. I'm not sure it was black or blue, or something
5 like that, but it was basically -- we were driving basically
6 in the same speed till we get to the bridge.

7 Q. Okay. And what happened at the bridge?

8 A. Well, at the bridge, because I got, you know, my car
9 load of newspapers, I kind of slowed down. The other car
10 keep going the same speed, so get like kind of far -- little
11 bit far away from me, but we just kept driving.

12 Q. Okay. Do you recall how fast you were going?

13 A. Well, if I -- I think we were -- I was driving maybe
14 forty and the other car maybe forty-five or forty-three,
15 just a little bit faster than I was.

16 Q. Do you know what the speed limit is right there on
17 that road?

18 A. Yeah. It's forty-five.

19 Q. How far in front of you were they?

20 A. Well, like I said, we were driving the same speed
21 before. As soon as we get to the bridge, I say maybe two
22 cars, two or three cars away. I can't say the distance.

23 Q. Did you actually see the collision?

24 A. Not really. What I saw was I kind of hear the noise
25 and see like smoke or dust or something. I don't see

1 exactly, you know, the collision at exactly the time, but I
2 was really seconds away.

3 Q. Now, you said you heard -- you heard it. What did
4 you hear?

5 A. I hear a noise. I don't know. It is like -- it was
6 the collision. I mean, I just hear like a little explosion
7 or something. I can't explain what kind of noise it was,
8 but now I know it was the collision. It was just a noise
9 like a little explosion.

10 Q. What did you do once you realized that there had been
11 an explosion?

12 A. Well, I just -- I just slowed down a little -- a
13 little bit more and I just keep driving, and the next thing
14 I saw was the collision, but I did put my flashing lights on
15 and stop in the middle of the road so any car that is coming
16 behind me can see what's going on.

17 Q. You turned your flashers on?

18 A. Yes.

19 Q. At some point did you get out of your car?

20 A. I did. I did right away as soon as I stop. I turn
21 my flashing lights on and I get out of the car and get my
22 cell phone and I was the one who call 911. I was the first
23 person there, so that's what I did, start talking to -- call
24 911, and I was talking to -- I don't know, maybe a cop
25 or ---

1 Q. Okay. What do you remember seeing?

2 A. Well, I saw what car, you know, after the collision.

3 One of the car was on the top of the concrete carrier

4 between the two roads. It was sitting right there kind of,

5 you know, balancing or something, and the other car was just

6 right there in the middle of the road.

7 Q. Do you recall what color car was up on the barrier?

8 A. Like I said, it was a dark car. For me, it was black

9 or dark blue or -- I'm not -- it was -- was the nighttime,

10 so for me, it was a black car.

11 Q. Okay. And we'll talk about one car at a time, and

12 then we'll be finished and we'll eventually move to the

13 other car. Did you make contact with the driver of that

14 black car sitting on top of the barrier?

15 A. Yes, I did. She was kind of screaming, yelling.

16 Well, the first thing I saw was the small car that was in

17 front of me. I was walking to the car and I saw a couple of

18 guys. One of the guys was behind the steering wheel. He

19 was, you know, knocked out basically or sleeping.

20 I see -- I went around this car, went to the other

21 car. The lady was screaming, yelling, so I approached her

22 and just tell her to calm down, the cops on the way, and she

23 asked me to reach her phone, so I opened the door, got her

24 phone and give it to her, and she started, you know, making

25 calls, you know, and talking with some people.

1 Q. At any point did you try to get her out of the car?

2 A. No, not really. At any point, I didn't. I
3 eventually just tell her to calm down and stop moving
4 because, I mean, you know, because I explain to her, you
5 know, that she was basically on the -- and any movement
6 would make the car flip or, you know, make the situation
7 worse.

8 Q. Her passenger, do you recall? Do you recall her
9 passenger?

10 A. Yeah, because I was going to also try to kind of wake
11 him up a little bit. At the time when I was talking to her,
12 that's -- I saw him for a few seconds. He was kind of
13 recovering from the impact. And then by that point, I just
14 turned back to the other car.

15 Q. Do you recall what her passenger looked like?

16 A. Well, inside the car, I just -- I used to remember
17 there was kind of a skinny guy.

18 Q. Do you remember his race?

19 A. He was a white guy.

20 Q. And I think you testified that you initially looked
21 in the silver car, the other car?

22 A. Yeah, the first car, yeah. It was the first car, you
23 know, and the car was on the top of the barrier and it was
24 going to, you know, fall on down, the car, so obviously I
25 saw the first -- the small car first.

1 Q. Okay. And I'm sorry. Are you calling it a small car
2 first? Is that what you said?

3 A. Yes.

4 Q. Okay. I just want to make sure I'm hearing you
5 correctly. I want to refer to it how you are referring to
6 it, the small car. Okay. Do you recall from your memory
7 what color it was?

8 A. I'm not sure, but it looks like gray or silver. It
9 was -- I don't know that.

10 Q. Did you ever approach that car?

11 A. Yes, I did.

12 Q. And what did you see when you approached that car?

13 A. Like I say, I saw a guy lying down on the -- on the
14 seat like looks like he was sleeping. I'm not -- I'm sure
15 he was knocked out because of the impact too. He was laying
16 on the seat, and I see the other guy on the other side
17 hanging out from the back window, you know, the back seat,
18 the window. I assume he was on the passenger side, but he
19 was actually hanging out the window from the back seat, you
20 know what I'm saying?

21 Q. Uh-huh (**indicating affirmative**), the back of the car?

22 A. The back of the car, the back seat, hanging out.
23 Half of his body was out of the car with his arms like that
24 (indicating). The other part of his body was inside the
25 car, so I went around and I saw him and I pretty much saw

1 his last breath, I think. The guy died right there.

2 Q. At any point did -- did the guy who passed away, did
3 he say anything to you?

4 A. No.

5 Q. Did you try to offer any sort of medical assistance
6 to him?

7 A. No. I just approached and I saw him, and I know
8 right away that I don't have the skills to help him, you
9 know. Maybe he was moving or trying to get some -- or do
10 something, but I'm not exactly what he was -- I know that he
11 was really bad, so I didn't even touch him. I just looked
12 at him and went to the other car.

13 For me, I heard the noise and at that point,
14 whatever, he's yelling, or crying or something, the one who
15 needs more help, you know, this guy, I don't know if he was
16 dead or sleeping, or -- I don't know.

17 Q. All right. Let's go back to the driver of the small
18 car.

19 A. Okay.

20 Q. At any point did you try to get him out of the car to
21 your recollection?

22 A. Not really. I just look in the window. I approached
23 the window and I see -- I saw the guy who was sleeping, so I
24 didn't try to, you know, get him out of the car, because
25 like I said, he was knocked out, so ...

1 Q. What did he look like?

2 A. Well, he looks like not really a tall guy. I don't
3 say how short he was, but wasn't too tall. He was a black
4 -- a black guy with dreadlocks.

5 Q. And as far as the dreadlocks, were they little
6 dreads, long dreads? Do you recall?

7 A. No, it was kind of long.

8 Q. Did you ever, to your recollection, ever have a
9 conversation with that driver?

10 A. Well, at some point I did have a conversation. I
11 just -- after I went to the lady over here and let them know
12 that they have to stay -- I mean, don't move, and let her
13 know that help is on the way, I came back to the first car,
14 the small car.

15 And, you know, I saw the guy actually kind of moving.
16 The driver was, you know, moving, so I just did a sign like
17 stay there, help is on the way. He didn't say anything. He
18 just look at me and he didn't say anything.

19 Q. At any point, did you witness him get out of the car?

20 A. Yeah. You know, after that, I went -- I went back to
21 the other car, you know, again, just to try to keep the
22 people calm, you know, tried to be in contact with both
23 cars. When I was -- for the second time I was with the lady
24 in the black car. When I come back, he actually was out of
25 the car already, so I just tell him, come back to the car or

1 stay here because help is on the way. He didn't say
2 anything. He was looking around, kind of dizzy, so ...

3 Q. So you had advised him at that point that you had
4 called the ambulance or 911?

5 A. Yeah, yeah, yeah, yeah. I -- by that time, I was --
6 I was talking with somebody, and the entire time I was on
7 the phone calling -- talking to the cops or whoever --
8 whoever answered the 911 phone, you know.

9 Q. How long was it before help arrived?

10 A. It wasn't too long. It was maybe five minutes or
11 maybe less. They were -- they were pretty -- pretty quick.

12 Q. And you stayed until help arrived?

13 A. Yes. As soon as I saw the first, you know, the first
14 responders coming, I kind of -- I can't remember if it was a
15 police car or an ambulance, but I just see the lights, and I
16 went to get in my car, because like I said, I park my car
17 before in the middle of the road with my flashing lights on,
18 because I was delivering papers.

19 I know it was going to be really crowded in a few
20 minutes, and so I came back to my car and drive it from the
21 back of the accident to the front of the accident so in that
22 way as soon as everybody gets here, I can keep doing what I
23 was doing. I was working, and it can stop and I can leave
24 the place at some point.

25 Q. And at some point, you did return to work?

1 A. Yeah. Basically after I get -- I saw, like I said,
2 the first car get there, and then I seen it was the cops,
3 and I just give the phone to somebody. I'm pretty sure it
4 was a police officer. I just give my cell phone and explain
5 that I have to go because I was working. If they need me,
6 they can call me, and actually they did. A couple of days
7 later, they call me. I went to the North Myrtle Beach
8 Police Station and gave an interview, a report.

9 MS. RICHARDSON: The Court's indulgence. Just a
10 moment.

11 Q. Very briefly, you talked about the guy with dreads,
12 and the driver in that seat, and I think you said he was
13 hunched over a little bit. Any doubt in your mind -- where
14 exactly was he in the car?

15 A. Well, he was right on the seat behind the steering
16 wheel ---

17 Q. Okay.

18 A. --- and lean like that, like when somebody is
19 sleeping.

20 Q. Okay. And I just want to be perfectly clear for this
21 jury. His butt is in the driver's seat?

22 A. Yes.

23 Q. He's behind the steering wheel?

24 A. Yes.

25 Q. And you say he's hunched over. Is he like completely

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CROSS BY GALMORE

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1 leaning over? Is ---

2 A. No, no, just a little bit like when somebody just
3 fell asleep, and basically his neck and maybe a little bit
4 of his shoulder, but he was just kind of sleeping, but his
5 entire body, it was on the driver's seat.

6 Q. The guy who passed away, do you know what his name
7 is? Do you know?

8 A. I don't know anybody.

9 Q. Okay. Do you recall what he looked like?

10 A. Well, he was a black guy, too. He looked like the
11 bigger boy than the one that was driving. He was kind of --
12 looks like a bigger boy, but that's pretty much it because,
13 you know, I can't say how because his body was in a position
14 that I can't say anything else. He was with his arms like
15 that and his body hanging out of the car, and the other boy
16 was in the car, so I don't know. All I can see was the
17 blood, blood there.

18 **MS. RICHARDSON:** Thank you, Mr. Canto. Please answer
19 any questions the Defense attorney would have.

20 **THE COURT:** Mr. Galmore.

21 **CROSS-EXAMINATION BY MR. GALMORE:**

22 Q. Sir, before the accident, you said you were driving
23 north on Highway 17, is that correct?

24 A. Correct.

25 Q. And you said there was another car that was driving

1 along with you?

2 A. Right.

3 Q. Which lane would you have been in? Would you have
4 been in the fast lane or the slow lane?

5 A. I think I was driving in the slow lane.

6 Q. And this other car, it would have been in the fast
7 lane?

8 A. Well, if I was on the right side, she -- they were on
9 the left side, but I'm not sure at that point which one is
10 the fast lane.

11 Q. Okay. So you were in the right lane and this other
12 car was in the left lane?

13 A. Right.

14 Q. Okay. And you said that it was a black or a blue
15 car?

16 A. Yes. I mean, I just looked at the color. I don't
17 see exactly what kind of car it was.

18 Q. Right. I understand. Was this the same car that was
19 involved in the accident?

20 A. Yeah, I'm pretty sure it was because a few seconds --
21 I was driving basically behind -- behind that car, ---

22 Q. Right.

23 A. --- and that's the only car it could be.

24 Q. Okay. Now, I understand that you said you saw smoke?

25 A. Well, yeah, like smoke, or dust, or something after

1 the collision. It's like -- I don't know.

2 Q. Did you see the collision?

3 A. No, not really. All I can see -- I saw -- because,
4 you see, when you get on the bridge, the lights, you know, I
5 just the see the dust, or smoke, or whatever it was. And a
6 few second later, I saw the cars in the middle of the road.

7 Q. Okay. Did you see who was driving the small car?

8 A. Yes.

9 Q. Right. When you got out and you walked over to the
10 car and you saw a person sitting in the seat?

11 A. Right.

12 Q. When the car was driving, did you see -- when the car
13 was moving, did you see who was driving?

14 A. No.

15 Q. So immediately after seeing the accident, you turned
16 on your flashers and you called 911?

17 A. Right.

18 Q. And then you went to try to render aid to the people?

19 A. Right.

20 Q. Okay. Now, the first -- I understand that you went
21 to see the people in the black or blue car?

22 A. Yes.

23 Q. And the lady in the car, was she conscious or
24 unconscious?

25 A. Yes, she was conscious because she was yelling, and

1 crying.

2 Q. And she asked you for her cell phone?

3 A. Right.

4 Q. And you gave it to her?

5 A. Right.

6 Q. Okay. Now, the man that was in that car, was he
7 conscious or unconscious?

8 A. He was kind of recovering from unconscious, so I
9 don't know, but I just saw him kind of recovering. He
10 wasn't saying anything or maybe he was in the middle of --
11 fell asleep or waking up, something like that.

12 Q. Okay. Okay. So he was recovering?

13 A. Right.

14 Q. He was waking up?

15 A. Yes, he basically was.

16 Q. Do you know if these people had on seatbelts? Could
17 you tell? Do you remember?

18 A. I remember they have seatbelts on, because she can't
19 actually move. She can't get her phone. She definitely has
20 her seatbelt on.

21 Q. All right. Now, when you went over to the small car,
22 I think you said that when you saw the person with the
23 dreads, he was unconscious?

24 A. Right.

25 Q. Is that what you're saying?

1 A. Yes, at the first point, yes.

2 Q. Okay. Now, you left that vehicle, and then by the
3 time you came back to the small car, he had stepped out of
4 the car?

5 A. Right.

6 Q. Okay. And how would you describe how he was behaving
7 once he stepped out of the car?

8 A. Well, he was kind of walking around the car, kind of
9 dizzy. He didn't say anything. He was looking at the
10 scene. I thought maybe he was trying to figure out what's
11 going on, and I just tell him to come back to the car and
12 wait for the help, and he didn't say anything.

13 He didn't listen to me. He just was looking around,
14 and go out there and come back, and at the point I go back
15 to the other car, so I lost him for a minute, and then come
16 back and he is still -- he walked like a little way out. He
17 walk away for a few feet and then come back.

18 Q. You said the word dizzy? He looked like he was
19 dizzy?

20 A. Like he was dizzy.

21 Q. Okay. So the first time you saw him, he was
22 unconscious?

23 A. Right.

24 Q. And then the second time you saw him, he was walking
25 around, dizzy?

1 A. Right.

2 Q. Now, the people, did you see whether or not the
3 person with the dreads had on a seatbelt or not?

4 A. I'm not sure about that. When he was in the car, I
5 didn't pay attention. I noticed the other car because she
6 tried to get her stuff and she can't move, and the seatbelt
7 was kind of---

8 Q. Right.

9 A. --- stuck. I don't know.

10 Q. She was fighting with her seatbelt, trying to take
11 it ---

12 A. Right.

13 Q. Okay.

14 A. So about him, ---

15 Q. You didn't notice?

16 A. I don't know. I didn't even notice. To say no or
17 yes, I don't ---

18 Q. Okay. Now, the other person that was in the small
19 car was hanging out of the window?

20 A. Yeah.

21 Q. Do you know which window he was hanging out of?

22 A. Yeah, the back seat, the back seat, this side.

23 Q. Okay.

24 A. Not the windshield.

25 Q. Not the windshield in the back?

1 A. Not the windshield in the back. You know, the back
2 seat, the window at the back seat behind the passenger side.
3 Q. Okay. I know this sounds kind of crazy, but did he
4 have a seatbelt on?
5 A. No.
6 Q. Because he was hanging out the window?
7 A. Yes, he was hanging out. I mean, at least at the
8 seat, you know, it could have been possible that he had that
9 on and still get projected to the -- but I don't see any
10 belt at all, so ...
11 Q. I've got 'cha. When you went to these two cars, did
12 you see any beer cans in the cars, in either of the cars?
13 A. No, I don't see any.
14 Q. Did you see any liquor bottles in either of the cars?
15 A. No.
16 Q. Did it appear that the person with the dreads was
17 having trouble with his balance?
18 A. Yeah.
19 Q. And you said he was walking around and he looked kind
20 of dizzy to you?
21 A. Yes.
22 Q. Let me ask you about the conditions on the bridge.
23 Was it a clear night, or a rainy night, a foggy night?
24 A. It was kind of clear. It wasn't raining definitely,
25 and it wasn't foggy either. It was kind of a clear night.

1 Q. Okay. Did you -- would you say whether -- or would
2 you describe it as being a well-lit area or a dark area?
3 How would you describe it?

4 A. It was a clear area because there are lights on the
5 bridge.

6 Q. I'm sorry. Say it again.

7 A. It's a -- it was a clear area. Like I say, I can see
8 the lights on the bridge.

9 Q. Right, because there are lights on the bridge?

10 A. Yeah, lights on the bridge.

11 Q. Okay.

12 **MR. GALMORE:** The Court's indulgence for just a minute.

13 **THE COURT:** Yes sir.

14 Q. Now, when you went to the small car to check on the
15 passengers in that car, you said you looked in and the
16 person with the dreads looked to be -- appeared to be
17 unconscious, and you say the butt was in the seat. Did you
18 see where his legs were?

19 A. Say that again.

20 Q. Did you see where his legs were?

21 A. For the other guy?

22 Q. For the one with the dreads.

23 A. His legs?

24 Q. Yes.

25 A. It was on the pedals maybe like he was driving.

1 Q. Were you able to see if there was any blood on the
2 person with the dreads?

3 A. No.

4 Q. You didn't observe any?

5 A. No, I didn't see any blood on him.

6 Q. Were you looking for any or just ---

7 A. No. It was like I didn't look for any. I just saw
8 him and he -- it was like to help somebody, but I didn't pay
9 attention if there was blood on him or not, but I don't
10 remember seeing any blood on him.

11 Q. Once again, when that car was moving, did you see who
12 was driving?

13 A. Which car?

14 Q. The small car.

15 A. I never see the small car move until the collision.
16 I never saw the other car.

17 Q. Okay. So when it was -- you didn't see it when it
18 was moving at all?

19 A. No.

20 Q. You just saw it after the accident occurred?

21 A. Right. Yeah, the only car I saw is what the car was
22 next to me, like when I slowed down, because the way that I
23 have the car, you know, that I keep driving, and then a few
24 seconds later, I saw the smoke and the next thing, I see two
25 cars in the middle, but I never see the other car. I don't

1 know where it come from.

2 Q. Okay.

3 MR. GALMORE: Thank you, Mr. Canto. No further
4 questions.

5 THE COURT: Any redirect?

6 MS. RICHARDSON: No sir, Your Honor.

7 THE COURT: Do you wish the witness to be excused?

8 MS. RICHARDSON: Yes sir.

9 THE COURT: Any objection?

10 MR. GALMORE: No sir.

11 THE COURT: All right, sir, you are released from your
12 subpoena and may go back to your regular activities. Thank
13 you.

14 Your next witness, Solicitor.

15 MS. RICHARDSON: Crystal Alden.

16 THE COURT: Ms. Alden, if you would just come all the
17 way and meet the Clerk all the way up here, please. Thank
18 you, ma'am.

19 THE DEPUTY CLERK: Please be seated. State your full
20 name and spell your last name for the Court, please.

21 MS. ALDEN: Crystal Lynn Alden, A-L-D-E-N.

22 THE COURT: And your first name, too, please, ma'am.

23 MS. ALDEN: C-R-Y-S-T-A-L.

24 THE COURT: Thank you, ma'am.

25 You may proceed, Solicitor.

1 **MS. RICHARDSON:** Thank you, Your Honor.

2 **DIRECT-EXAMINATION BY MS. RICHARDSON:**

3 Q. Good morning, Ms. Alden.

4 A. Good morning.

5 Q. Where are you employed?

6 A. Olive Garden.

7 Q. How long have you been employed there?

8 A. Now, since February.

9 Q. Do you remember February 16th, 2010?

10 A. I do.

11 Q. And why is that?

12 A. Because I was in a car accident.

13 Q. Where were you coming from that night?

14 A. Bully's in North Myrtle Beach.

15 Q. And what is Bully's?

16 A. It was a bar.

17 Q. What occasion were you out for that night?

18 A. My birthday.

19 Q. Where had you been before Bully's?

20 A. We went to dinner at Rioz.

21 Q. And you said you were leaving the bar. Had you been
22 drinking?

23 A. I was.

24 Q. Okay. What had you had to drink?

25 A. I had one glass of wine at dinner, and about two

1 shots at the bar between the six hour period.

2 Q. And why is it that you remember that?

3 A. Because I wasn't drunk.

4 Q. Had you been out previously?

5 A. Yes. I was hung over from Valentine's Day.

6 **THE REPORTER:** Excuse me. Repeat that, please.

7 A. I was hung over from Valentine's Day.

8 Q. So you weren't out trying to get drunk?

9 A. Not at all.

10 Q. Who was out with you?

11 A. My sister, my best friend, Brad, my friend, Matt. A
12 lot of my other friends were out. They all met us, met out
13 with us.

14 Q. And you said you had been where to eat before that?

15 A. Rioz.

16 Q. Rioz. Do you recall about what time you got to Rioz?

17 A. Probably seven. I know it was kind of an early
18 dinner.

19 Q. Okay. All right, you ate at Rioz. You said you had
20 -- I'm sorry ---

21 A. One glass of wine with dinner.

22 Q. And then you -- how long were you at Rioz?

23 A. Probably two hours.

24 Q. And where did you go from there?

25 A. Bully's.

1 Q. So if I'm following your testimony, we should be up
2 to about nine o'clock?
3 A. Yes.
4 Q. Okay. And you're at Bully's?
5 A. Right.
6 Q. Okay. What time do you leave Bully's?
7 A. They are closing, so probably 2:30, a little later,
8 in the morning.
9 Q. And where were you headed?
10 A. Home.
11 Q. And where -- where is home? Where was home for you
12 at that time?
13 A. Little River.
14 Q. Okay. So you're in the car and where are you going?
15 A. North Myrtle Beach, in Barefoot Landing.
16 Q. So you're in Barefoot Landing and you're headed to
17 Little River?
18 A. Yes ma'am.
19 Q. So you were headed in what direction?
20 A. Northbound.
21 Q. Okay. And what color car were you driving that
22 night?
23 A. Black.
24 Q. Was it your car?
25 A. It was my mother's car.

1 **(LARGE MAP IS MARKED AS STATE'S EXHIBIT NUMBER 14 FOR**
2 **IDENTIFICATION ONLY.)**

3 Q. I'm going to show you what's been marked as State's
4 Exhibit 14. See if you can identify this for me. Do you
5 recognize that?

6 A. Yes.

7 Q. And what is that?

8 A. It's Highway 17 and the waterway. That's like the
9 North Myrtle Beach, Cherry Grove area.

10 Q. And that is just a road view of it?

11 A. Yes.

12 Q. And then does this show where the accident occurred?

13 A. Yes.

14 Q. Okay.

15 **MS. RICHARDSON:** Your Honor, at this time, the State
16 would move to admit State's Exhibit 14.

17 **THE COURT:** Any objection to that?

18 **MR. GALMORE:** No sir.

19 **THE COURT:** All right. State's 14 is in evidence
20 without objection.

21 **(LARGE MAP INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
22 **NUMBER 14.)**

23 **MS. RICHARDSON:** And, Your Honor, may I walk around the
24 witness so she can see ---

25 **THE COURT:** Yes ma'am.

1 **MS. RICHARDSON:** Okay.

2 Q. And I'm sorry. I'm trying to get so the jury can see
3 as well.

4 A. Yes ma'am.

5 **THE COURT:** If you want to step down and get in front
6 of the box.

7 **MS. RICHARDSON:** Yes sir.

8 **THE COURT:** Go ahead, ma'am. Just make sure you stand
9 right -- either right by this microphone or the one on the
10 box right there.

11 Q. All right. I'm sorry. Okay, so in location to where
12 you were, where is Bully's?

13 A. (Inaudible.)

14 **THE COURT:** You're going to have to speak up now,
15 ma'am.

16 A. I'm sorry. It would be over here.

17 Q. Okay. Where is 17 on this map?

18 A. Right here.

19 Q. Okay. So Bully's is down here?

20 A. Right.

21 Q. And where were you headed?

22 A. To Little River.

23 Q. Okay. And where is that in location?

24 A. Up here.

25 Q. Okay. And what is this?

1 A. The waterway.

2 Q. What -- do you know the name of that waterway?

3 A. Intracoastal.

4 Q. Okay. And that's the big bridge that goes over that
5 waterway?

6 A. Yes.

7 Q. Where did the wreck occur?

8 A. It was on the bridge.

9 Q. Okay. Do you know in relation to the map, can you
10 point where it occurred?

11 A. It was about right here.

12 Q. Okay. And so as soon as you round that curve?

13 A. Yes.

14 Q. If you'll have a seat for me.

15 A. Sure.

16 Q. Okay. So you are leaving Bully's. You are headed to
17 Little River. You are headed north on 17?

18 A. Yes.

19 Q. Do you recall any vehicles beside you, around you,
20 anybody else being on the road?

21 A. No.

22 Q. Who was in your car?

23 A. Brad Burns.

24 Q. Where was everybody else?

25 A. They were ahead of us. They left before us.

1 Q. Okay. How far ahead of you were they?

2 A. Maybe five minutes.

3 Q. Okay. At any point did you make any stops for
4 anything?

5 A. Yes. I stopped and got a pack of cigarettes for
6 Brad.

7 Q. And that was obviously before the collision?

8 A. Yes ma'am.

9 Q. Talk to me about Brad for a minute. Had he been
10 drinking?

11 A. Yes ma'am.

12 Q. What was his condition?

13 A. He was intoxicated.

14 Q. All right. You don't remem- -- you don't remember
15 anybody else on the road. Right before this collision,
16 what's the first thing you remember?

17 A. Headlights.

18 Q. And when do you see those headlights?

19 A. As I was coming around the curve, I saw the
20 headlights coming at me and I thought they were on the other
21 side of the road. Then when I saw that they did not
22 disappear, I veered my car to the left and then I got hit.

23 Q. Okay. What do you mean you saw that they didn't
24 disappear?

25 A. If you're driving along that bridge, as you take that

1 curve, and I re-live it every day, as you're coming down,
2 the headlights are coming at you, but they disappear with
3 the barrier as they take the turn, and in this condition,
4 they did not disappear.

5 Q. So what was your first reaction?

6 A. To jerk my car to the left and try and get out of the
7 way.

8 Q. What is the next thing you remember?

9 A. Opening my car door and realizing I was in the air.

10 Q. Did you ever lose consciousness?

11 A. I don't recall.

12 Q. And what about your passenger?

13 A. He did.

14 Q. What do you remember about him?

15 A. I remember after -- like I said, I don't know if I
16 had blacked out or if I had just come to, but I remember
17 looking over at him and he was knocked out unconscious, and
18 he was snoring heavily, and then I turned and I opened my
19 car door, and I saw a man hanging out of a car. I talked to
20 him. He didn't respond.

21 I talked back to Brad. He woke up, asked me what had
22 happened, and knocked back out, and by that time, there was
23 a man helping me get my cell phone.

24 Q. What are your -- what was your physical condition in
25 the car?

1 A. I was trapped in between the seat and the steering
2 wheel. I couldn't move.

3 Q. Okay. At some point, were you able to get out?

4 A. Yes, when the EMS's came and they strapped -- they
5 had to strap down my car.

6 Q. Because it was how, and why is that? Why did they
7 have to strap down your car?

8 A. The tearing on the barrier.

9 Q. You said a man comes over to help you, and you get
10 your cell phone. Who do you call?

11 A. My sister.

12 Q. Where were they?

13 A. They were driving into Little River, and she said to
14 Matt, Brad's brother, we need to turn around. Crystal is in
15 an accident.

16 Q. You said you were driving a black car that night. Do
17 you recall what color the other car was?

18 A. Silverish gold.

19 Q. I'm going to show you some pictures and see if you
20 can identify them for me. We'll go over them one at a time
21 for the record.

22 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 4 FOR
23 IDENTIFICATION ONLY.)

24 Q. Referring to what's been marked as State's Exhibit 4,
25 what is that? Can you identify that and then we'll ---

1 A. That's my car accident, my car and the car that hit
2 me.

3 Q. Is that the way you remember it from that night?

4 A. Yes.

5 Q. Okay. Has it been changed or altered in any kind of
6 way?

7 A. No ma'am.

8 MS. RICHARDSON: The State would seek to admit State's
9 Exhibit 4 into evidence.

10 THE COURT: Any objection?

11 MR. GALMORE: No sir.

12 THE COURT: All right. State's 4 is in evidence
13 without objection.

14 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
15 NUMBER 4.)

16 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 5 FOR
17 IDENTIFICATION ONLY.)

18 Q. All right. Let me show you what's been marked as
19 State's Exhibit 5 and see if you can identify that for me
20 generally.

21 A. That's also my car, my car on the barrier.

22 Q. And, again, is that the way you recall it from that
23 night?

24 A. Yes ma'am.

25 Q. Changed or altered in any kind of way?

1 A. No.

2 MS. RICHARDSON: The State would move State's Exhibit 5
3 into evidence.

4 THE COURT: Any objection?

5 MR. GALMORE: No sir.

6 THE COURT: All right. They're both in evidence
7 without objection.

8 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
9 NUMBER 5.)

10 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 6 FOR
11 IDENTIFICATION ONLY.)

12 Q. State's Exhibit 6 I just handed to the witness, what
13 is that?

14 A. Again, my car accident.

15 Q. Okay.

16 A. Not altered at all.

17 Q. The way you recall it from that night?

18 A. (No response.)

19 THE REPORTER: Excuse me. What was your answer?

20 A. Yes ma'am. Sorry.

21 Q. You have to say yes or no.

22 A. I'm sorry.

23 MS. RICHARDSON: The State would move State's Exhibit 6
24 into evidence?

25 THE COURT: Any objection?

1 **MR. GALMORE:** No sir.

2 **THE COURT:** All right. It's in evidence without
3 objection.

4 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
5 NUMBER 6.)

6 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 7 FOR
7 IDENTIFICATION ONLY.)

8 Q. And I am handing to the witness State's Exhibit 7.
9 What is that?

10 A. Again, my car accident.

11 Q. What does that show?

12 A. My car on the barrier.

13 Q. And is that how you recall it from that night?

14 A. I do.

15 Q. Okay. Changed or altered in any kind of way?

16 A. No ma'am.

17 **MS. RICHARDSON:** The State would move State's Exhibit 7
18 into evidence.

19 **THE COURT:** Any objection?

20 **MR. GALMORE:** No sir.

21 **THE COURT:** It's in evidence.

22 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
23 NUMBER 7.)

24 Q. I'm referring to State's Exhibit 6. This is your
25 car, correct, the black car?

1 A. Yes ma'am.

2 Q. Okay. And this would be the other car that you saw
3 the headlights?

4 A. Yes ma'am.

5 Q. Where is the guy that is deceased?

6 A. Right here (indicating). He's hanging out the back
7 of the windshield in that car.

8 Q. Okay. So as soon as you opened your door ---

9 A. I saw his face.

10 Q. --- you had a clear view of him?

11 A. Yes ma'am.

12 Q. Do you recall him saying anything or doing anything?

13 A. I opened my car door and I turned and looked. I
14 asked him if he was okay. He took his last breath and he
15 just laid there.

16 Q. At some point you were able to get out of your car?

17 A. Yes ma'am.

18 Q. Were you treated on scene?

19 A. Yes ma'am.

20 Q. And did you go to the hospital?

21 A. Yes ma'am.

22 Q. What was the extent of your injuries?

23 A. I had third degree burns. I had fractured ribs, a
24 busted ankle. My lip was severed. My eye socket was
25 bruised. I had lacerations all across my body from my

1 seatbelt. I had bruising on my chest from the steering
2 wheel, and I had internal bleeding.

3 Q. How long were you in the hospital?

4 A. That one night.

5 Q. Did you stay overnight?

6 A. No, I did not.

7 Q. Did they release you?

8 A. Yes ma'am. I don't know if they released me
9 willingly.

10 Q. What do you mean by that?

11 A. I had kind of left. I was seeing they had Brad
12 admitted. He had broken a lot, and I -- they -- I asked
13 them if I could leave and they wanted me to stay, but I
14 left.

15 Q. The following day, did you seek any other medical
16 treatment?

17 A. Yes.

18 Q. Where did you go then?

19 A. To Seacoast.

20 Q. And why -- why is that?

21 A. Because I needed x-rays.

22 Q. X-rays for what?

23 A. My knee and my ankle.

24 Q. Why is that?

25 A. Because my ankle was swollen so bad and my knees were

1 both like blown up, and I didn't know if there was something
2 broken in there.

3 Q. At some point did you seek additional medical
4 treatment?

5 A. Yes.

6 Q. And where did you go?

7 A. And then I went to Access Medical also for my back,
8 because I had a crack in my spine, and they gave me electric
9 shock treatments.

10 Q. After the collision, did you go look at your car?

11 A. I did.

12 **MS. RICHARDSON:** Your Honor, I don't know it's okay
13 with the Defense attorney, but if so, can we group them
14 together if possible so we don't -- or do I need to go
15 through them one at a time?

16 **THE COURT:** That's probably best to mark them
17 separately, please, so we're clear about which one we're
18 talking.

19 **(PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 9 FOR**
20 **IDENTIFICATION ONLY.)**

21 Q. I will hand you what's been marked as State's Exhibit
22 9. Can you identify that for me?

23 A. That's my car, the car in the accident.

24 Q. And where is it at that point when that picture was
25 taken?

1 A. It was at a tow yard on -- I don't know what road it
2 was on. It was off of 90.

3 Q. And this is the way you saw it a few days later?

4 A. Uh-huh (**indicating affirmative**). Yes ma'am.

5 Q. Is it a true and accurate representation of the way
6 you remember it?

7 A. Yes ma'am.

8 **MS. RICHARDSON:** The State would seek to admit State's
9 Exhibit 9 into evidence.

10 **THE COURT:** Any objection?

11 **MR. GALMORE:** No sir.

12 **THE COURT:** All right. It's in evidence.

13 (**PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
14 **NUMBER 9.**)

15 (**PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 10 FOR**
16 **IDENTIFICATION ONLY.**)

17 Q. We're going to go through the same series of
18 questions and talk about -- I've handed up State's Exhibit
19 10. Can you identify that for me?

20 A. It is the vehicle in the accident.

21 Q. And is that the way you recall it?

22 A. Yes ma'am.

23 Q. Has it changed in any kind of way?

24 A. No ma'am.

25 **MS. RICHARDSON:** The State would seek to admit State's

1 Exhibit 10 into evidence.

2 THE COURT: Any objection?

3 MR. GALMORE: No sir.

4 THE COURT: It's in evidence.

5 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
6 NUMBER 10.)

7 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 11 FOR
8 IDENTIFICATION ONLY.)

9 Q. I'm handing you what is State's Exhibit 11. What is
10 that?

11 A. My accident.

12 Q. Has it been changed or altered in any way?

13 A. No ma'am.

14 Q. Is that the way you remember it appearing?

15 A. Yes.

16 MS. RICHARDSON: The State would seek to admit State's
17 Exhibit Number 11.

18 THE COURT: Any objection?

19 MR. GALMORE: No sir.

20 THE COURT: It's in evidence.

21 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
22 NUMBER 11.)

23 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 12 FOR
24 IDENTIFICATION ONLY.)

25 Q. I am handing to the witness State's Exhibit 12. What

1 is that?

2 A. A vehicle in my accident.

3 Q. Is that a true and accurate representation of the way
4 you remember it?

5 A. Yes ma'am.

6 Q. Changed or altered in any kind of way?

7 A. No ma'am.

8 **MS. RICHARDSON:** The State would seek to admit State's
9 Exhibit 12 into evidence.

10 **THE COURT:** Any objection?

11 **MR. GALMORE:** No sir.

12 **THE COURT:** It's in evidence.

13 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
14 NUMBER 12.)

15 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 13 FOR
16 IDENTIFICATION ONLY.)

17 Q. Handing the witness State's Exhibit 13. What is
18 that?

19 A. My accident.

20 Q. Is that the way you recall it appearing?

21 A. Yes ma'am.

22 Q. Changed or altered in any way?

23 A. No ma'am.

24 **MS. RICHARDSON:** The State would seek to admit State's
25 Exhibit 13 into evidence.

1 **THE COURT:** Any objection?

2 **MR. GALMORE:** No sir.

3 **THE COURT:** It's in evidence.

4 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
5 NUMBER 13.)

6 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 8 FOR
7 IDENTIFICATION ONLY.)

8 Q. I am handing to the witness what's being referred to
9 as State's Exhibit 8, that's been marked as State's Exhibit
10 8. What is that?

11 A. The car in my accident, the speedometer.

12 Q. Do you recall seeing that?

13 A. Yes ma'am.

14 Q. Is that the way you recall it appearing?

15 A. Yes ma'am.

16 Q. Changed or altered in any kind of way?

17 A. No ma'am.

18 **MS. RICHARDSON:** The State would seek to admit State's
19 Exhibit 8 into evidence.

20 **THE COURT:** Any objection?

21 **MR. GALMORE:** No sir.

22 **THE COURT:** It's in evidence.

23 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
24 NUMBER 8.)

25 Q. So this is the way -- just in general I'm referring

CRYSTAL ALDEN - DIRECT BY RICHARDSON
CROSS BY GALMORE

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1 to Exhibits 9 through 13, this is the way your car appeared
2 after the accident?

3 A. Yes ma'am.

4 Q. Do you recall -- we've talked about Brad, we've
5 talked about yourself, and the gentleman that died. Do you
6 recall seeing anyone else?

7 A. A man came and helped me with my cell phone.

8 Q. And at that point, you made contact with EMS?

9 A. Right after. They were not there yet.

10 Q. Do you know when you were transported, you were at
11 the scene before you were transported to the hospital?

12 A. I was probably at the scene for at least twenty
13 minutes to a half hour.

14 **MS. RICHARDSON:** The Court's indulgence just a moment.

15 **THE COURT:** All right.

16 Q. Crystal, were you intoxicated that night?

17 A. No ma'am.

18 Q. Any doubt in your mind that you were driving north?

19 A. No ma'am.

20 **MS. RICHARDSON:** Nothing further, Your Honor.

21 **THE COURT:** Cross-examination.

22 **CROSS-EXAMINATION BY MR. GALMORE:**

23 Q. Ms. Alden, I believe you testified that you were at
24 Rioz that night?

25 A. Yes sir.

1 Q. How long would you say you were there?
2 A. Probably about two hours.
3 Q. And I assume you ate while you were at Rioz?
4 A. Yes sir.
5 Q. And I think you testified that you had a glass of
6 wine while you were there?
7 A. Yes sir.
8 Q. And after that, you went to Bully's?
9 A. Yes sir.
10 Q. And what is Bully's?
11 A. It's a bar, restaurant.
12 Q. Pool hall kind of place?
13 A. Yeah.
14 Q. And you got there, I think you said, approximately
15 9:00 p.m.?
16 A. Nine or ten, yes, sir.
17 Q. Now, which one was it?
18 A. Nine.
19 Q. Okay. So you got there at 9:00 p.m.?
20 A. Sure. I'm not positive. It was four years ago.
21 Q. All right. So your testimony is that you got there
22 at 9:00 p.m.?
23 A. Yes sir.
24 Q. All right. And you said you stayed until closing?
25 A. Yes sir.

- 1 Q. And you think they closed about 2:30?
- 2 A. Yes sir.
- 3 Q. So you were there for approximately five hours?
- 4 A. Yes sir.
- 5 Q. And it's your testimony that you had one glass of
- 6 wine while you were at Bully's?
- 7 A. No. I had two shots at Bully's.
- 8 Q. Two shots at Bully's?
- 9 A. Yes sir.
- 10 Q. Okay. And then you left the bar and you headed home?
- 11 A. Yes sir.
- 12 Q. And it's approximately 3:00 a.m.?
- 13 A. Yes sir.
- 14 Q. Do you recall how fast you were going?
- 15 A. About forty-five to fifty-five.
- 16 Q. Do you recall telling Trooper Epps that you were
- 17 going approximately fifty-three miles an hour in a forty-
- 18 five zone?
- 19 A. I don't recall.
- 20 Q. Do you recall talking to Trooper Epps a couple of
- 21 days afterwards?
- 22 A. Yes sir.
- 23 Q. And you don't recall telling him that you were going
- 24 fifty-three?
- 25 A. I could have.

1 Q. And, in fact, you said that a police officer told you
2 that that's how fast you were going?

3 A. Yes sir.

4 Q. And you said that a police officer showed you a
5 picture ---

6 A. Yes sir.

7 Q. --- of how fast you were going?

8 A. Yes sir.

9 Q. Let me hand you what's been marked as State's Exhibit
10 Number 8. Is this your vehicle?

11 A. Yes sir.

12 Q. Okay. Is that the speedometer in your vehicle?

13 A. Yes sir.

14 Q. All right.

15 **MR. GALMORE:** May I publish, Your Honor?

16 **THE COURT:** Yes sir.

17 Q. And the police officer even said that might get you
18 in trouble?

19 A. Yes sir.

20 Q. Do you know which policeman this was you were talking
21 to?

22 A. I don't recall.

23 Q. But you had a conversation with a policeman?

24 A. A couple of days after.

25 Q. Right, and he told you that you were going over the

1 speed limit?

2 A. Yes sir.

3 Q. And he told you that might get you in trouble?

4 A. Yes sir.

5 Q. Were you cited for speeding?

6 A. No sir.

7 Q. You've been cited for speeding before?

8 A. Yes.

9 Q. In fact, you've been -- your license has been
10 suspended for speeding?

11 A. Yes.

12 Q. And at the time of this accident, you were on SR-22
13 insurance?

14 A. Yes sir.

15 Q. What is SR-22 insurance?

16 A. I can't even explain that.

17 Q. But you had it, though, right?

18 A. Right. I know it was on my license.

19 Q. So it's some kind of insurance that you were required
20 to have?

21 A. Yes sir.

22 Q. And who required you to have SR-22 insurance?

23 A. The State of South Carolina.

24 Q. Why would the State say you needed SR-22 insurance?

25 A. Because my license was suspended.

1 Q. And why was your license suspended?

2 A. For speeding.

3 Q. Do you recall whether or not you passed a white

4 pickup truck or work truck while approaching the bridge?

5 A. No sir.

6 Q. Do you recall whether or not you passed any vehicles

7 while going up the bridge, while approaching the bridge?

8 A. Yes sir.

9 Q. Okay. So did you pass a vehicle?

10 A. I think so. I'm not -- I'm not positive, ---

11 Q. All right. That's fine.

12 A. --- my memory from then.

13 Q. And your testimony is that you had one glass of wine

14 and two shots to drink that night?

15 A. Yes sir.

16 Q. In a period of at least five hours at Bully's and two

17 hours at Rioz?

18 A. Yes sir.

19 Q. Seven hours, three drinks?

20 A. Yes sir.

21 Q. Okay. And Mr. Burns was drinking, too?

22 A. Yes sir.

23 Q. You gave this information to the paramedics, is that

24 correct?

25 A. I believe so.

- 1 Q. You told the paramedics that you had been drinking?
- 2 A. Yes.
- 3 Q. Did you get a ticket for DUI?
- 4 A. No sir.
- 5 Q. You told the paramedics you were drinking, yes?
- 6 A. Yes sir.
- 7 Q. And you admitted in court today that you were
- 8 driving?
- 9 A. Yes sir.
- 10 Q. And you didn't get any tickets at all?
- 11 A. No sir. I was not intoxicated when I got behind the
- 12 wheel.
- 13 Q. Well, ---
- 14 A. To my recollection. I was not drunk.
- 15 Q. Did you perform any field sobriety tests?
- 16 A. No sir.
- 17 Q. Did you blow into a breathalyzer machine?
- 18 A. No sir.
- 19 Q. So it's just your opinion that you weren't drunk?
- 20 A. Yes sir, and the E.M.T.s on scene.
- 21 Q. So an E.M.T. told you you weren't drunk?
- 22 A. They told me I did not appear intoxicated.
- 23 Q. And you told them you had been drinking?
- 24 A. Yes sir.
- 25 Q. Did you or Mr. Burns or you and your party go to any

1 other restaurants or bars that evening?

2 A. No sir.

3 Q. Now, you said that you saw the lights coming across
4 the bridge?

5 A. Yes sir.

6 Q. And you were beginning to head up the bridge at that
7 time, or where was your car when you first saw the lights?

8 A. I was about to take the curve, the turn.

9 Q. Okay, because there's a curve before you start up the
10 bridge?

11 A. Right.

12 Q. Okay.

13 A. At that curve.

14 Q. You were at the curve ---

15 A. Yes sir..

16 Q. --- and you could see headlights?

17 A. No. As I came around the curve, I saw the
18 headlights. I had about a three second reaction time.

19 Q. All right. And you had three seconds?

20 A. Give or take.

21 Q. Okay. And once you saw those headlights, your
22 response or your action was to veer to the left?

23 A. Yes sir.

24 Q. Now, there are barriers to the left?

25 A. Correct.

- 1 Q. So why did you go to the left?
- 2 A. It was my first instinct. I just wanted to get out
- 3 of the way.
- 4 Q. And you weren't able to get out of the way?
- 5 A. Correct.
- 6 Q. Had you gone to the right, do you think you would
- 7 have been able to get out of the way?
- 8 A. No sir.
- 9 Q. This car was coming down both lanes at once?
- 10 A. No. It was coming down one lane. I saw headlights.
- 11 Q. Okay. So had you gone to the right, do you think you
- 12 would have been able to get out of the way?
- 13 A. Maybe.
- 14 Q. But definitely by going to the left, there's nowhere
- 15 to go because there's ---
- 16 A. Correct.
- 17 Q. --- a guardrail?
- 18 A. Correct.
- 19 Q. You saw his headlights, and then your experience
- 20 going on this bridge says that these headlights should
- 21 disappear if they're on the other side?
- 22 A. Yes sir.
- 23 Q. They would be blocked out by the concrete median?
- 24 A. Yes sir.
- 25 Q. And they didn't disappear, so you kind of figured it

1 was a problem?

2 A. Yes sir.

3 Q. All right. Did you see who was driving that car as
4 it was coming towards you?

5 A. I did not.

6 Q. And the car came towards you and you were hit?

7 A. Yes sir.

8 Q. Did your air bags deploy?

9 A. Yes sir.

10 Q. And you were wearing a seatbelt?

11 A. Yes sir.

12 Q. This is a kind of stupid question, but were you
13 distracted by anything while driving?

14 A. No sir.

15 Q. Were you talking on your cell phone and driving?

16 A. No sir.

17 Q. Were you eating and driving?

18 A. No sir.

19 Q. So after the accident, you were unable to get out of
20 the car?

21 A. Yes sir.

22 Q. And you said you don't know if you lost consciousness
23 or not?

24 A. Right.

25 Q. But you do know that Mr. Burns, who was riding with

1 you, lost consciousness?

2 A. Absolutely.

3 Q. And he came to?

4 A. Yes sir.

5 Q. And then he kind of passed out again?

6 A. Yes sir.

7 Q. And you spoke or attempted to speak to the person in
8 the other car that was hanging out?

9 A. Yes sir.

10 Q. Did you speak to Mr. Butler?

11 A. No sir.

12 Q. Do you know if he was knocked out in the accident or
13 not, or were you not paying attention to the other car?

14 A. I was paying attention, but I do not know if he was
15 knocked out or not.

16 Q. But you said Mr. Butler -- Mr. Burns was knocked out?

17 A. Yes sir.

18 Q. And you don't know if you were knocked out?

19 A. Right.

20 Q. Do you know how long Mr. Burns was unconscious?

21 A. Probably three minutes before the E.M.T.s got there.
22 They arrived very fast. He came to before they got there,
23 was back out within a matter of seconds. He spoke two words
24 and passed back out.

25 Q. And once the E.M.T.s were able to get you out of your

1 car, they took you to an ambulance, I assume?

2 A. They tried to. I just stood there at my car and let
3 them cover up Brad because he was freaking out, and I was
4 worried for him, so I stood there and let him -- I held his
5 hand while they covered him with a blanket to cut him out of
6 my car.

7 Q. Were you able to walk to the ambulance?

8 A. Yes sir.

9 Q. Because I understand you testified that you had some
10 knee injuries, and ankle injuries, and things like that?

11 A. Correct. I think it might have been a matter of
12 shock as to why I didn't feel the pain.

13 Q. But in spite of those injuries, you were able to walk
14 on your own?

15 A. Yes sir.

16 Q. All right. After you got to the ambulance and told
17 the paramedics that you had something to drink, did any
18 officers come over and ask you any questions?

19 A. Yes sir.

20 Q. Did you tell the officers that you had something to
21 drink?

22 A. Yes sir.

23 Q. Do you know which officer you told that you had
24 something to drink?

25 A. No sir. I don't recall anybody's names.

1 Q. All right. And after you told them you had something
2 to drink, did the officer ask you to perform any field
3 sobriety tests?

4 A. No sir.

5 Q. If the officer had asked you to stand on one foot,
6 would you have been able to do it?

7 A. Most likely, sustaining my injuries.

8 Q. I'm sorry?

9 A. Most likely, but sustaining my injuries, I most
10 likely would have been able to.

11 Q. You most likely would have been able to do it in
12 spite of your injuries?

13 A. That's right.

14 Q. Okay. But that was not done in this case?

15 A. Yes sir.

16 Q. And no one asked you to come to the police station
17 and blow in the machine?

18 A. I went the next day. I didn't take a sobriety test,
19 though, no. I know at Grand Strand, they had taken my
20 blood, though.

21 Q. Okay.

22 **MR. GALMORE:** The Court's indulgence, please.

23 **THE COURT:** Yes sir.

24 **MR. GALMORE:** Ms. Alden, I don't have any further
25 questions.

1 **THE COURT:** Any redirect?

2 **MS. RICHARDSON:** The Court's indulgence.

3 No further questions, Your Honor.

4 **THE COURT:** Do you wish the witness to be excused?

5 **MS. RICHARDSON:** Yes, Your Honor.

6 **THE COURT:** Any objection?

7 **MR. GALMORE:** No sir. She can go.

8 **THE COURT:** All right.

9 Ma'am, you are released from your subpoena and may go
10 back to your regular activities.

11 Solicitor, can y'all come up and talk to me, Mr.
12 Galmore.

13 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

14 **THE COURT:** We'll take a short break, then.

15 All right, ladies and gentlemen, if you would go to
16 your jury room. We'll take a short break and resume within
17 ten minutes. Thank you very much.

18 Everyone else remain seated while the jury retires.

19 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
20 **JURY.)**

21 **THE COURT:** All right, we'll take a short break. Thank
22 you very much.

23 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
24 **THE PRESENCE OF THE JURY.)**

25 **THE COURT:** Solicitor, are you ready for the jury?

JURY OUT/ON RECORD/JURY IN.
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1 MS. RICHARDSON: Yes, Your Honor.

2 THE COURT: Defense?

3 MR. GALMORE: Yes sir.

4 THE COURT: Ask the jury to come in, please. Thank
5 you.

6 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
7 JURY.)

8 THE COURT: All right, Solicitor, your next witness,
9 please.

10 MR. TERRELL: Yes sir.

11 Brad Burns.

12 THE COURT: Mr. Burns, if you'd come all the way around
13 and meet the Clerk right up here, please, sir. Thank you.

14 BRADLEY BURNS, being first duly sworn, testifies
15 as follows:

16 THE DEPUTY CLERK: Please be seated. State your full
17 name and spell your last name for the Court, please.

18 MR. BURNS: Bradley Burns, B-U-R-N-S.

19 THE COURT: Go ahead, Solicitor.

20 DIRECT-EXAMINATION BY MR. TERRELL:

21 Q. Good morning, Mr. Burns.

22 A. Good morning.

23 Q. Where do you work?

24 A. I work at Flounder's Steakhouse in Cherry Grove.

25 Q. About how long have you worked there?

- 1 A. About four months..
- 2 Q. So that's in Cherry Grove?
- 3 A. Yes.
- 4 Q. How long have you lived in the area?
- 5 A. Been in South Carolina for about five years now.
- 6 Q. Always in the Myrtle Beach area?
- 7 A. Yeah, Myrtle Beach, North Myrtle, Little River.
- 8 Q. All right. Going back to the night of February 15th,
- 9 2010, do you remember that night?
- 10 A. Yes.
- 11 Q. I guess going back earlier to that day, what had --
- 12 what had you been doing that day?
- 13 A. It was Crystal's birthday. We went out to dinner.
- 14 Q. About what time did you go out to dinner?
- 15 A. It was about 7:30, eight o'clock.
- 16 Q. Do you recall where you went?
- 17 A. We went to Rioz.
- 18 Q. While y'all were there, had -- were y'all drinking?
- 19 A. Had a few drinks, yes.
- 20 Q. Specifically, had you been drinking?
- 21 A. Yes.
- 22 Q. About how much while you were drinking?
- 23 A. I'm not real sure.
- 24 Q. What about Crystal, do you remember ---
- 25 A. Not a whole lot.

1 Q. Okay. Once -- once y'all left Rioz -- how long were
2 y'all there?

3 A. A couple of hours.

4 Q. A couple of hours. Where did you go after Rioz?

5 A. We went to Bully's Pub in Barefoot Landing.

6 Q. How long were y'all there?

7 A. Probably about four hours, four or five hours.

8 Q. Do you remember what time approximately when you
9 left?

10 A. It would have been about two or two-fifteen.

11 Q. From there, where did you all go?

12 A. We stopped at a gas station. We were on our way back
13 to Crystal's house.

14 Q. Where does Crystal live ---

15 A. Little River.

16 Q. --- or where did she live then?

17 A. She was living in Little River.

18 Q. Okay. So y'all would have been driving from Barefoot
19 to Little River?

20 A. Yes.

21 Q. You said about what time? I'm sorry.

22 A. About two-fifteen, two, two-fifteen.

23 Q. Who all -- who all was in the car with you?

24 A. It was just me and Crystal.

25 Q. Who was driving?

1 A. Crystal was.

2 Q. While you were at Bully's, did you continue to drink
3 there?

4 A. Yes.

5 Q. Was Crystal drinking?

6 A. Yes, but not heavily.

7 Q. Do you remember how much she had?

8 A. Not exactly.

9 Q. Okay. So when you got in her car, was -- did you
10 have any question as to her level of intoxication?

11 A. No.

12 Q. You felt completely safe getting in her car and
13 letting her drive?

14 A. Absolutely.

15 Q. No doubt in your mind?

16 A. None.

17 Q. You left Bully's, you said, about two-fifteen and you
18 went -- you said you made a stop on the way. Where was
19 that?

20 A. We stopped at the gas station.

21 Q. Do you remember which gas station?

22 A. It was the Shell station at 13th Avenue South.

23 Q. Why did you make that stop?

24 A. To get a pack of cigarettes.

25 Q. Okay. I imagine that stop didn't take ---

1 A. A couple of minutes.

2 Q. --- a long amount of time?

3 You got back on the road. As you were heading north
4 after you leave the gas station, do you remember seeing any
5 other cars?

6 A. Not really. I mean, it's four years ago.

7 Q. Right. Take us up, if you will, to -- to the
8 accident. What -- what were you doing?

9 A. Sitting in the front seat of Crystal's car. I had my
10 back to the door. We were just talking. I looked down to
11 light a cigarette, looked up, went oh, shit, and then woke
12 up.

13 Q. Why -- why did you say that?

14 A. Because there was a car coming at us.

15 Q. Did -- what -- what was your reaction when -- when
16 you saw those headlights?

17 A. Just oh, shit, and then, I mean, ---

18 Q. I guess you -- did you brace yourself at all or ---

19 A. Not really, didn't really have time to.

20 Q. After that, you said -- you said you woke up. What
21 do you remember immediately afterwards, the next thing you
22 remember?

23 A. The next thing I remember is asking Crystal is what
24 happened. She said we'd been in a bad car accident.

25 Q. Was -- was anybody else there with you when you asked

1 that?

2 A. No, just Crystal.

3 Q. Okay. After -- after that, what is the next thing
4 you remember?

5 A. The next thing I remember is being in the ambulance
6 and on the way to the hospital.

7 Q. Okay. So, when -- when the E.M.T.s show up, you
8 don't -- you don't remember having any kind of conversation
9 with them?

10 A. Vaguely. I mean, it's not -- not real, you know,
11 prominent. I don't ---

12 Q. Okay. After you were in the accident, do you
13 remember trying to get out of your car at all?

14 A. No.

15 Q. Do you remember having to be cut out of the car?

16 A. Very vaguely. I remember vaguely a girl saying she
17 was putting a blanket over me to keep glass from getting on
18 me.

19 Q. Okay. Was that girl Crystal or was that somebody
20 else?

21 A. Somebody else.

22 Q. And after that, what's the next -- you said you were
23 riding in the ambulance, ---

24 A. Yes.

25 Q. --- that's the next thing you remember?

1 While you were in the ambulance, do you remember
2 anything specific?

3 A. I remember there was a pool of blood in my right eye
4 and asking somebody to get the blood out of my eye, and they
5 told me they were trying to stabilize me, so I grabbed the
6 gauze, got the blood out of my eye, put it right back in my
7 hand.

8 Q. Okay. Do you remember the positioning of any of the
9 vehicles?

10 A. No.

11 Q. Okay. You were in the ambulance. They took you --
12 do you remember where they took you?

13 A. They took me to Grand Strand Regional.

14 Q. And there you got checked out by a doctor?

15 A. Yes.

16 Q. Do you remember the extent of your injuries?

17 A. I broke my foot, my arm, fractured -- bruised three
18 ribs, and eight stitches in my eyebrow.

19 Q. Which foot did you ---

20 A. It was my right foot.

21 Q. And which arm?

22 A. My right arm.

23 **MR. TERRELL:** The Court's indulgence.

24 I don't have any further questions. Please answer any
25 questions that the Defense has for you.

1 **THE COURT:** Cross-examination.

2 **CROSS-EXAMINATION BY MR. GALMORE:**

3 Q. How are you doing, Mr. Burns.

4 A. Pretty good.

5 Q. All right, sir. As I understood, you said that you
6 all had been to Rioz that night, and -- is that correct?

7 A. Yes.

8 Q. And it was a group of you?

9 A. Yes.

10 Q. How many people would you say was in your party?

11 A. From my -- what I remember, there was five or six of
12 us.

13 Q. Okay. And you said you had something to drink?

14 A. Yes.

15 Q. And you saw Ms. Alden drinking, I believe?

16 A. Yes.

17 Q. And then you went to Bully's?

18 A. Uh-huh (**indicating affirmative**).

19 Q. And you had something to drink ---

20 **THE COURT:** You need to answer yes or no. I'm sorry.

21 A. Yes.

22 Q. And you were drinking while you were at Bully's?

23 A. Yes.

24 Q. Were you driving the black car?

25 A. No.

- 1 Q. So it doesn't matter how much you were drinking, does
2 it?
- 3 A. No.
- 4 Q. Because you weren't driving?
- 5 A. That's right.
- 6 Q. Now, you observed Ms. Alden drinking at Bully's also?
- 7 A. Yes.
- 8 Q. Prior to the accident when the car was headed north
9 on Highway 17, Ms. Alden was driving your car, is that
10 correct?
- 11 A. No. She was driving her car.
- 12 Q. Okay. Ms. Alden was driving her car?
- 13 A. Yes.
- 14 Q. She was driving the car you were in?
- 15 A. Yes.
- 16 Q. You were the passenger, and she was driving?
- 17 A. Yes.
- 18 Q. Did you see who was driving the other vehicle?
- 19 A. No.
- 20 Q. You can't tell us who was driving that car?
- 21 A. No.
- 22 Q. Before you accident, I think you said that you were
23 getting a cigarette or something and you looked down?
- 24 A. Yes.
- 25 Q. And then when you looked up, you saw the headlights?

- 1 A. Yes.
- 2 Q. Was Ms. Alden doing anything that would have been
3 detracting from her ability to drive?
- 4 A. Not that I remember.
- 5 Q. Do you recall if she was on a cell phone and driving?
- 6 A. No. Like I said, I don't remember.
- 7 Q. Do you recall if she was eating and driving?
- 8 A. No.
- 9 Q. All right. But you said you were lighting a
10 cigarette?
- 11 A. Yes.
- 12 Q. Once the accident happened, do you recall if you lost
13 consciousness?
- 14 A. Yes.
- 15 Q. Do you recall if she lost consciousness?
- 16 A. No.
- 17 Q. You don't ---
- 18 A. No, I don't recall.
- 19 Q. --- know?
- 20 A. I don't -- I don't know if she did or not.
- 21 Q. Okay. Now, when you came to, were you able to get
22 out of the car on your own?
- 23 A. No.
- 24 Q. You had to be helped out by firefighters and EMS?
- 25 A. Yes.

1 Q. Did those EMS workers treat you right there on the
2 scene?

3 A. They stabilized me. As far as treatment, no.

4 Q. And they put you into an ambulance?

5 A. Yes.

6 Q. Okay. Were you able to walk to the ambulance on your
7 own?

8 A. No.

9 Q. You were on a stretcher?

10 A. Yes.

11 Q. And from the ambulance, you were taken to the
12 hospital?

13 A. Yes.

14 Q. Do you recall how fast the car was going that you
15 were riding in before the accident?

16 A. No, I don't.

17 Q. Do you recall if Ms. Alden made any type of evasive
18 action or attempt to avoid the car coming towards her?

19 A. No, I don't. I mean, I wasn't driving. I wasn't
20 really paying attention. I was lighting a cigarette.

21 Q. Okay. Would it be fair to say that because you
22 weren't driving, you weren't paying attention to what was
23 going on?

24 A. Yes.

25 **MR. GALMORE:** I don't have any further questions for

1 you, Mr. Burns. Thank you.

2 **THE COURT:** Any redirect?

3 **MR. TERRELL:** The State has no further questions and
4 requests that he be excused, Your Honor.

5 **THE COURT:** Any objection?

6 **MR. GALMORE:** No sir.

7 **THE COURT:** All right, sir, you are released from your
8 subpoena and may go back to your regular duties.

9 All right, Solicitor, your next witness, please.

10 **MS. RICHARDSON:** Phillip Johnson.

11 **THE COURT:** All right, sir, if you could just come all
12 the way around and meet the Clerk right over here, please,
13 sir. Thank you.

14 **THE DEPUTY CLERK:** Please be seated. State your full
15 name and spell your last name for the Court, please.

16 **MR. JOHNSON:** Phillip Johnson, J-O-H-N-S-O-N.

17 **THE COURT:** And your first name, do you have it with
18 two L's or one?

19 **MR. JOHNSON:** Two L's.

20 **THE COURT:** All right. Very good.

21 Go ahead, ma'am.

22 **MS. RICHARDSON:** Thank you, Your Honor.

23 **DIRECT-EXAMINATION BY MS. RICHARDSON:**

24 Q. Good morning, Mr. Johnson.

25 A. Good morning.

- 1 Q. I know it seems obvious, but where are you employed?
- 2 A. Horry County Fire and Rescue.
- 3 Q. And how long have you been employed there?
- 4 A. Since 2006.
- 5 Q. And what do your duties consist of?
- 6 A. I am a firefighter, E.M.T.I. I ride the medic unit
- 7 and the firetrucks every third day.
- 8 Q. Did you have an occasion to respond to a car accident
- 9 on February 16th, 2010?
- 10 A. Yes ma'am.
- 11 Q. Where was that collision?
- 12 A. On the North Myrtle Beach bridge across the ICW.
- 13 Q. What is the ICW?
- 14 A. Intracoastal Waterway.
- 15 Q. Okay. And I know again it may sound obvious. What
- 16 county is that located in?
- 17 A. Horry.
- 18 Q. Do you recall approximately what time of day it was?
- 19 A. Dark, in the afternoon -- I mean in the morning
- 20 hours. I didn't -- whatever my report says. It was at
- 21 night.
- 22 Q. Okay. And when you get on the scene, do you recall
- 23 who's there?
- 24 A. A black car, or silver car, black car. There was
- 25 still a woman in the black car, and there was a guy hanging

1 out the silver car, and then there was a guy standing over
2 to the side.

3 Q. Had police arrived by that point, do you recall?

4 A. I don't -- I don't recall. I don't think they had.

5 Q. Okay. Any other firefighters or ambulances there?

6 A. Yes, North Myrtle Beach. All of us were arriving
7 about the same time. North Myrtle Beach Fire was coming up,
8 and we were coming from Little River.

9 Q. You were coming from Little River?

10 A. Yes ma'am.

11 Q. So when you arrived on scene, where do you park your
12 vehicle?

13 A. In the North Myrtle Beach lane on the opposite side
14 of the bridge from where the wreck happened.

15 Q. You are southbound?

16 A. Yeah. I'm heading into North Myrtle Beach.

17 Q. What do you do when you arrive?

18 A. I get out of the truck, assess the situation, looking
19 at it, crossing over the Jersey wall. There's a lady in the
20 black car asking me to get her out of the car. I explained
21 to her that the car is not stable, stay still, let's assess
22 the rest of the situation to see what else we've got.

23 I look at the silver car. There's a guy in the back
24 windows of the silver car, and then we start assessing them,
25 and then there's a gentleman standing over to the -- down

1 closer to North Myrtle Beach next to the middle or next to
2 the Jersey wall, so we start assessing patients.

3 Q. And what do you do when you assess patients?

4 A. Generalized questions, to find out who is hurt, who
5 is not hurt, who wants to go to the hospital, who is not
6 going to the hospital, who can answer our questions
7 correctly, and make a determination of whether they can
8 answer our questions and refuse medical treatment, have
9 medical treatment, whether they're capable of making those
10 decisions or if they've had some kind of injury that allows
11 them not to make that decision.

12 Q. What do you mean by answer your questions correctly?

13 A. If they can't answer to where they're at, what time
14 or place of day it is, what's going on, who is -- you know,
15 generalized questions they should know like who is the
16 President. They should know it. They should know this.

17 They should know their date of birth. If they can't
18 answer it, then there's other issues going on that they --
19 that I'm not going to leave them on that scene. We're going
20 to give them medical treatment and carry them on to the
21 hospital.

22 Q. Okay. And did you ask those questions of the people
23 involved in this collision?

24 A. Yes.

25 Q. Who did you have contact with?

1 A. The lady in the car, the guy that was down the road,
2 and the guy that was in the back window was just -- he was
3 already pretty much deceased. He wasn't answering, wasn't
4 talking, so we were -- we never talked to him.

5 Q. Did you check his vitals or anything?

6 A. Not immediately. He had injuries compatible with
7 death, and I had two more patients on the scene, so until
8 the second unit or either the next unit arrived, they
9 started assessing him.

10 Q. Okay. Is it safe to say that whenever you arrive on
11 a scene you are in charge of certain people?

12 A. Well, we evaluate all people, decide who's going to
13 be in charge. We've got three different levels of care on
14 our units, and so everybody has to be assessed to decide if
15 they need ALS, BLS, or no care at all.

16 Q. Okay. You've got to explain that to me. I'm sorry.

17 A. ALS is advanced life support. BLS is basic life
18 support, and then no care at all means that they're not
19 going to get transported. We have paramedics. We have
20 E.M.T.s. We have intermediates that ride our trucks.

21 Q. Okay. You said advanced life support. What's the
22 next one?

23 A. BLS, basic life support.

24 Q. Basic life support. Are those the only two that you
25 are mandated to transport?

1 A. As in -- yeah. I mean, we don't -- we don't have to
2 transport them. They just -- if their injury is -- if
3 they're having chest pain, they have to go on a monitor,
4 which means an ALS has -- an ALS provider has to put them on
5 a monitor. A BLS provider can't put them on a cardiac
6 monitor, can't give cardiac drugs, can't give ---

7 Q. Okay.

8 A. --- certain drugs, so if they're complaining of chest
9 pain, then they have -- they're an ALS care patient. They
10 can still refuse. They can still not go, but then the ALS
11 provider has to provide that care for them because ---

12 Q. Okay. You assess the injuries to determine who's
13 going to take care of them?

14 A. Yes.

15 Q. Sorry. I was just trying to understand. Okay. So
16 who did you administer help to that night?

17 A. Michael Butler and Eric Pierce.

18 Q. Okay. You said that the female that was in the black
19 car was asking you to get her out? Did you not get her out?

20 A. No, I didn't get her out. We didn't have the
21 equipment there at that time to get her out safely, so we
22 had to wait on the North Myrtle Beach Fire to set the
23 cutting tools up. We had to wait on our heavy rescue to get
24 there to put struts up under the car to stabilize the car
25 before we got her out, and North Myrtle Beach got her out,

1 and Medic 32 transported her.

2 Q. What medic unit were you driving?

3 A. Medic 2.

4 Q. All right. As it relates to, you said, Eric Pierce,
5 do you recall what he was driving?

6 A. A white company truck.

7 Q. What were the extent of his injuries?

8 A. He didn't have any. He refused. We didn't realize
9 he was even involved in it until we got ready to leave the
10 scene.

11 Q. Okay.

12 A. He was across the -- he was on down the bridge on the
13 other side.

14 Q. All right. Now, when somebody refuses, do you still
15 go through the standard questions with them?

16 A. Uh-huh (**indicating affirmative**).

17 **THE COURT:** You need to answer yes or no.

18 A. Yes sir. Yes sir. Yes, we go through the questions.

19 Q. Okay. And why is that?

20 A. Because we have to make sure that they haven't had a
21 head injury, they haven't had something that is going to
22 interfere with their logical decision, to make a -- to be
23 able to make a decision.

24 Q. And I believe you testified that you had contact with
25 Michael Butler?

1 A. Yes.

2 Q. Did you ask those questions of him?

3 A. Yes.

4 Q. What were his injuries?

5 A. He had a cut above the eye and a gash -- and I think
6 a gash above the eye and right below the eye. I can't
7 remember. It's in the report, a left or a right eye.

8 Q. Do you recall if he was able to answer your
9 questions?

10 A. Yes. It says in my report that he answered his
11 questions correctly.

12 Q. As part of your questions, do you place -- do you try
13 to see where they are seated in the car?

14 A. Yes.

15 Q. And where did Michael Butler tell you he was in the
16 car?

17 **MR. GALMORE:** Objection, Your Honor.

18 **THE COURT:** I'm going to allow it.

19 **MR. GALMORE:** Your Honor, I believe the statement was
20 not a statement made to this witness, so it would be
21 hearsay.

22 **THE COURT:** Why don't you clarify that, Solicitor.

23 **MS. RICHARDSON:** Okay.

24 Q. Did you personally assess Michael Butler?

25 A. Yes.

1 Q. Did you ask him where he was seated in the car?

2 A. My partner did while we were all there.

3 Q. And you were present when that -- when he was ---

4 A. Yes.

5 Q. And then where did Michael Butler tell you he was
6 seated?

7 A. Originally he stated he was the driver of the
8 vehicle, and then he stated that he was in Loris, and then
9 he stated that he wasn't the driver.

10 Q. At any point did you tell Michael Butler the
11 condition of the passenger?

12 A. No. No ma'am.

13 Q. Did you transport Michael Butler to the hospital?

14 A. Negative. He didn't -- he didn't want to be
15 transported.

16 Q. Did you ever place him in the medic unit?

17 A. Yes.

18 Q. Okay. And why is that?

19 A. Because it was cold outside and he was cold, and we
20 used the medic unit to keep him warm, to get him out of
21 harm's way, put him in the back of the truck. We know where
22 he's at. He's not walking around on the scene with cars,
23 because the other side of the road still had vehicles
24 traveling at that time until we got the heavy rescue there.

25 Q. Okay. I just want to make sure we're clear. You're

1 in the southbound lane? You're coming into North Myrtle
2 Beach?

3 A. We're coming into North Myrtle Beach.

4 Q. Okay. And that traffic was still flowing?

5 A. Until we got our heavy rescue there to set up the --
6 block that traffic, yes, it was still flowing.

7 Q. So for his own safety, you put him in the back of the
8 medic?

9 A. And he stated that he was cold, so the heat is
10 blowing. We don't shut our trucks down there. They're
11 running. They're plugged in at the station to stay warm to
12 keep the drugs a constant temperature. We just put them in
13 the truck to keep them warm.

14 Q. To your knowledge, did he stay there?

15 A. No ma'am. He got out.

16 Q. And what was he doing?

17 A. Walking around in traffic.

18 Q. What did you do at that point?

19 A. We put him back in the truck, and he got out again.

20 Q. And what did you do at that point?

21 A. I advised North Myrtle Beach that they needed to do
22 something with him. He wasn't going to the hospital. I
23 couldn't make him stay in the truck, but he was out in
24 traffic.

25 Q. Based upon your experience and training, did you have

1 any concerns about whether or not he could deny treatment?

2 A. Not from his questions. He knew -- he knew who the
3 President was, my three general questions, where are you at,
4 who is the President, what time of day it is, and what's
5 going on, and the way you walk and handle yourself, and he
6 answered all the questions correctly. He knew we were
7 putting him in the truck. He asked us to get in -- asked us
8 to get out of the cold.

9 He handled getting himself across the Jersey wall by
10 himself. I didn't see anywhere where that would be a head
11 injury involved. If he had a head injury involved, he
12 wouldn't be able to walk, he wouldn't be able to talk to us
13 correctly, but he got across the wall on his own.

14 Q. Did you notice anything abnormal about his speech?

15 A. Not at -- no ma'am.

16 Q. And you said when he was walking, you didn't have any
17 concerns about that?

18 A. No ma'am.

19 Q. Is it part of your routine questions to ask whether
20 or not they had been drinking?

21 A. No ma'am. That's not my, you know, -- if I smell it
22 on them, I'll usually ask them. They don't have to tell me.
23 We're going to treat them the same either way.

24 Q. You're concerned about this patient?

25 A. Yes ma'am.

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CROSS BY GALMORE

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1 Q. Now, you said if you smelled it on them. The next
2 logical question is did you smell it on Michael Butler?

3 A. I didn't smell it. It was cold, windy. I didn't
4 smell it, you know.

5 Q. You made no notation of that?

6 A. No.

7 Q. How many times did you ask Michael Butler if he
8 wanted treatment?

9 A. Many a times. I went to -- you know, he was on the
10 opposite side, so I'd come back and help my partner. We'd
11 go back to the truck to check on him because I'm not going
12 to leave them, just leave them over there. I don't have an
13 exact number, but it was multiple times back to the truck
14 before he signed the waiver. We explained to him what was
15 going on, if he was refusing treatment, and he still agreed
16 to sign the waiver.

17 Q. And you were okay with letting him go?

18 A. Yes ma'am.

19 MS. RICHARDSON: No further questions of this witness,
20 Your Honor.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION BY MR. GALMORE:

23 Q. Mr. Johnson, you're the person that treated Michael
24 Butler, is that correct?

25 A. Yes sir.

1 Q. Okay. And you identified an injury of some type
2 above his eye?

3 A. And below his eye if I recall.

4 Q. Okay, and a second injury below his eye. Okay. Do
5 you recall what eye -- which eye this was?

6 A. I can read the report and see if it's in the report.

7 Q. Yes sir.

8 A. Is it?

9 Q. Please feel free to read your report to refresh your
10 memory.

11 A. Laceration to the right side of the forehead and just
12 below the right eye, about a half an inch by a quarter inch
13 wide.

14 Q. Okay. Do you think that when you wrote that report
15 you were being accurate and truthful at that time?

16 A. That would be close to -- you know, I mean, we don't
17 pull tape measures out and measure them, ---

18 Q. Right.

19 A. --- you know, ...

20 Q. But I mean if you said his right eye in that report
21 and that was four years ago, today you would still say the
22 injuries were to his right eye?

23 A. Well, the report was wrote the next morning. It
24 might have been the other side eye, but, you know, I mean,
25 if it was -- if it was the left eye, it was an honest

1 mistake of just, you know, ...

2 Q. So would it be fair for us to assume that if you
3 wrote the right eye ---

4 A. It would be the right eye, yes sir.

5 Q. All right. Thank you. Now, you also performed a
6 Glasgow Coma Scale test on Mr. Butler?

7 A. Yes sir.

8 Q. What is that test?

9 A. That is the res- -- what his respiratory rate is,
10 what his eye -- pupil response is. It's a trauma score that
11 we allow to the hospital that tells us anything around a
12 Glasgow of eight, they're going to get intubated. If it's
13 above that, if it's a Glasgow of ten or better, they're
14 probably going to a trauma center. If they're a twelve to a
15 fifteen, they can go to Seacoast or another hospital.

16 Q. Does that test measure for head injury?

17 A. No. I mean, it would dictate what type of injuries
18 and how severe they are. If he can't answer me, then he
19 gets a 1.

20 Q. Okay.

21 A. If he can't answer correct questions, he gets a 1.

22 If he doesn't -- if he doesn't answer at all, he gets a
23 zero. If I -- if I move around his eyes and his eyes

24 doesn't move, he gets a zero. If you get a 4, 5, 3 -- a 5,
25 4 and it adds up to 15. We add them up. If it adds up to

1 12, then his injuries are probably not compat- -- you know,
2 probably not major, it still needs to be seen. If it's a
3 10, he's probably going to go to a trauma center. If it's
4 8, then we're going to have to -- we're going to have to
5 take aggressive care for him.

6 Q. Well, let me ask you about concussions, Mr. Johnson.
7 As a paramedic, what would you look for? What signage would
8 you look for?

9 A. Pupils dilated, one side or the other, repeative
10 (sic) questioning, saying the same thing over and over
11 again. Motor response shouldn't be where it was at, you
12 know. Abnormal motor response is on the right side of their
13 brain, the left side of the body is going to be slower, and
14 things -- headaches is the number one reason.

15 Q. Would dizziness, say, be a sign of or a possible sign
16 of ---

17 A. That would be your walking, if you couldn't walk ---

18 Q. I'm sorry, of a concussion?

19 A. Yes.

20 Q. What about lack of coordination?

21 A. That would -- yes sir.

22 Q. That would be a possible sign to look for?

23 A. That would be your walking and your body not acting
24 the way it should.

25 Q. Right. What about having an open wound on your head?

1 A. It possibly could.

2 Q. Okay. Now, I believe you said your partner asked a
3 question about was he the driver?

4 A. Yes.

5 Q. And the response was yes, he was the driver?

6 A. Actually he said he was driving the silver car.

7 Q. Okay. That was the initial response?

8 A. Yes.

9 Q. And there was a second response?

10 A. The second response was once we went -- when I done
11 my second evaluation back over in the medic unit and I --
12 it's in here, I think, he said -- the first time he said he
13 was in Loris and walked to the scene.

14 Q. Okay. And what was the third response?

15 A. I think it was in Loris, and twenty miles away, and I
16 walked to the scene. The next time I asked him, he stated
17 he was picking up someone in Loris and then was going to
18 drop them off. I asked him where he dropped them off, and
19 he said Little River.

20 Q. Okay. So you asked him one question and got three
21 different answers?

22 A. Yes.

23 Q. Would that be a sign of a person that might have
24 suffered a head injury?

25 A. If they had already other signs, yes, but ---

- 1 Q. And those other signs would be ---
- 2 A. Couldn't walk.
- 3 Q. --- lack of coordination?
- 4 A. Yes, and a headache.
- 5 Q. Motor response, okay.
- 6 A. Pupils dilated or any of that.
- 7 Q. Okay. Now, so Mr. Butler refused treatment, but
- 8 asked about -- said that he was cold, so you put him in the
- 9 ambulance?
- 10 A. Yes sir.
- 11 Q. And he kept getting out?
- 12 A. Yes sir.
- 13 Q. Now, when you say he got out, what was he doing?
- 14 A. He was trying to talk to his buddy that was over
- 15 there on the other side.
- 16 Q. Okay.
- 17 A. And went back to him the first time, and the second
- 18 time he was standing at the Jersey wall just looking across.
- 19 Q. Okay. I think you said he was walking in traffic?
- 20 A. That was the south side when he'd done come across
- 21 the Jersey wall.
- 22 Q. So when you saw Mr. Butler, he was suffering from a
- 23 head injury that you diagnosed ---
- 24 A. No, not a head injury that I diagnosed.
- 25 Q. When you ---

1 A. He had a laceration to the forehead and he had a
2 laceration below the eye.

3 Q. Okay. So you observed injuries to his facial area?

4 A. Yes.

5 Q. That would be a fair way of saying it?

6 A. Yes.

7 Q. And you observed him answer one question with three
8 different responses?

9 A. Yes, that one question.

10 Q. And you observed him walking in traffic?

11 A. Yes.

12 Q. All right. Now, you also said that you had an
13 opportunity to treat the lady that was in the other car?

14 A. No sir.

15 Q. No, you did not treat the lady in the other car?

16 A. No sir.

17 Q. You treated Mr. Butler and you treated the person
18 that was in the window, hanging out of the window?

19 A. No sir.

20 Q. No. Who did you treat? Who was the other person?

21 A. I treated the guy that was in the white truck -- that
22 was Michael Butler's report -- an Erin -- Urin ---

23 Q. Eric Pierce?

24 A. Yes.

25 Q. Okay. Did Mr. Pierce appear to be able to walk

1 around normally?

2 A. Yes.

3 Q. Mr. Pierce, was he able to answer your questions?

4 A. Yes.

5 Q. Did Mr. Pierce have any injuries to his facial area?

6 A. No.

7 Q. All right.

8 **MR. GALMORE:** The Court's indulgence, Your Honor.

9 **THE COURT:** Yes sir.

10 **MR. GALMORE:** No further questions, sir.

11 **THE COURT:** Any redirect?

12 **MS. RICHARDSON:** Just briefly, Your Honor.

13 **REDIRECT-EXAMINATION BY MS. RICHARDSON:**

14 Q. The Defense attorney asked you about a Glasgow ---

15 A. Coma.

16 Q. --- report?

17 A. Uh-huh (**indicating affirmative**).

18 Q. And we heard all about those numbers. Did you do one
19 of those evaluations on Mr. Butler?

20 A. Yes, in my report. It should have been -- I would
21 assume that I put a 15. I don't know where it's at on --
22 there it is, Glasgow Coma Scale of 11. I've got them mixed
23 up, up here. It would have been a 15 from his reactions.
24 There it is. 4 -- his eye response was 4. His verbal
25 response was a 5. His motor skills was a 6, a total score

PHILLIP JOHNSON - CROSS BY GALMORE
REDIRECT BY RICHARDSON

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1 of 15. He could walk. He could cross the Jersey wall.

2 He answered all of my other questions correctly, who
3 was the President, what time it was, what the date was. All
4 of that was answered correctly. One question -- one thing
5 that he did was get out of the medic unit. He was getting
6 out of the medic unit to see what his buddy was doing. He
7 wanted to talk to his buddy, so he kept getting out.

8 Q. Did you, based upon his responses to your questions,
9 did you have any concern with his waiver of medical
10 treatment?

11 A. No.

12 Q. You had no concern with allowing him to deny
13 treatment?

14 A. No, because had I -- if I'd have done that, North
15 Myrtle Beach wouldn't have accepted him, or whoever
16 transported him, because the jails won't accept them, so, I
17 mean, the jails won't accept one with anything going on
18 nowadays.

19 Q. And I'm sure you testified to it and I just don't
20 recall it. You said he had a laceration to the eye?

21 A. Below the eye and above the eye is what my report
22 says, about a half an inch by a quarter inch.

23 Q. About a half an inch. Okay.

24 **MS. RICHARDSON:** No further questions, Your Honor.

25 **THE COURT:** Anything on those particular questions?

1 **MR. GALMORE:** Yes sir, just briefly.

2 **RECROSS-EXAMINATION BY MR. GALMORE:**

3 Q. Mr. Johnson, you said that Mr. Butler was getting out
4 of the vehicle and trying to talk to his buddy?

5 A. He went over to the -- he went -- the first time he
6 was over there where we had pulled him out of the car and
7 was over there where he was laying.

8 Q. Now, you didn't tell him about the condition of the
9 other person, did you?

10 A. No.

11 Q. So when he answers your question about was he the
12 driver and he gave you three different answers to that ---

13 A. That was prior to him even -- that was prior to all
14 of that. This was ---

15 Q. Okay. So he didn't know that the other person was
16 deceased when he gave you those answers?

17 A. About that he was the driver?

18 Q. Right.

19 A. At that point in time, I -- if he seen him in the
20 car, he probably made his own decision. I'm sure he had to
21 see him, but as far as us make a determination, no, I didn't
22 tell him.

23 Q. You didn't tell him that his friend was deceased when
24 he was answering your questions?

25 A. The questions you're referring to would be?

1 Q. You asked was he driving a vehicle?

2 A. Well, my partner did.

3 Q. Your partner did?

4 A. Yes, and no, he didn't -- he had to get out of the
5 vehicle and see the individual in the back window, but no,
6 as far as us telling him, no, I did not -- we did not tell
7 him.

8 Q. When your partner asked if he was the driver and he
9 gave three different answers, at that time you nor your
10 partner had told him that his friend was deceased?

11 A. No, but, now, that was three different times during
12 the call. It wasn't immediately that he made these -- the
13 first time was when we were doing him at the wall, talking
14 to him at the wall, and then one of them was in the medic
15 unit, and then right before -- during one of our
16 investigations in the medic unit when I was talking with
17 him.

18 Q. Right. So you asked the question, and then you
19 left ---

20 A. Yes.

21 Q. --- and came back again?

22 A. Yes sir.

23 Q. And you left and came back and asked again?

24 A. Yes sir.

25 Q. And each time he gave you a different answer?

1 A. Yes sir.

2 Q. Now, for each of those times, at any point during
3 those three times, did you tell him that his friend was
4 dead?

5 A. No.

6 Q. All right.

7 MR. GALMORE: Thank you, sir.

8 THE COURT: Anything else, Solicitor?

9 MS. RICHARDSON: No sir, Your Honor.

10 THE COURT: Do you wish the witness to be excused?

11 MS. RICHARDSON: Yes sir, Your Honor.

12 THE COURT: Any objection?

13 MR. GALMORE: No sir.

14 THE COURT: All right, sir, you are released from your
15 subpoena, may go back to your regular duties.

16 Your next witness?

17 MS. RICHARDSON: Your Honor, may we approach?

18 THE COURT: Certainly.

19 Mr. Galmore.

20 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

21 THE COURT: All right, ladies and gentlemen, if you
22 will bear with us just a few minutes. We need to see if the
23 next witness has arrived yet or not.

24 Why don't you go back to your jury room for just a few
25 minutes and we'll call you back out in just a few minutes.

1 Everyone else remain seated.

2 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
3 JURY.)

4 THE COURT: He is here?

5 MS. RICHARDSON: Yes sir.

6 THE COURT: So what's the best estimate from the State
7 as to how long the State will be with the witness?

8 MS. RICHARDSON: Your Honor, I would imagine it would
9 take some time, at least -- I would imagine at least thirty
10 minutes, Your Honor.

11 THE COURT: Okay.

12 And Mr. Galmore?

13 MR. GALMORE: Probably the same, Your Honor.

14 THE COURT: All right.

15 Well, let's give the jury just a couple of minutes
16 since I just sent them out, and we'll call the witness and
17 get started, and we'll go through this witness and then
18 we'll break, okay?

19 MS. RICHARDSON: Okay. Your Honor, if it's okay with
20 you, I'm going to inquire of him only as to the problem with
21 the attorney ---

22 THE COURT: Right, the issue about the CAB program.
23 Yes, you need to find that out so we can -- you can tell Mr.
24 Galmore, all right?

25 MS. RICHARDSON: Yes sir.

1 **THE COURT:** So we will just take a very short break and
2 then we will get started. Thank you.

3 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
4 **THE PRESENCE OF THE JURY.)**

5 **THE COURT:** All right, Solicitor, is the State ready?

6 **MS. RICHARDSON:** Your Honor, we are ready, and I did
7 speak to Lieutenant Dangerfield and he is going to make
8 contact with the guy who runs the Charleston office, I
9 forgot his name, but he said he would make contact with him
10 to get in touch with Mr. Lee, who I believe is the Defense
11 witness, to arrange some sort of contact between the two of
12 them to make his computer available.

13 **THE COURT:** All right. Very good. And so, Mr.
14 Galmore, you kind of coordinate with your fellow and tell
15 him who that person is so that maybe he can make sure he
16 gets in contact with them.

17 **MR. GALMORE:** Yes sir, and I do not anticipate that
18 this will be a problem. Our expert has said that if he can
19 get it sometime this afternoon, that will be fine.

20 **THE COURT:** Well, that's good. Well, I'm just saying
21 why don't you let him know that they are trying to make
22 efforts to get in touch with him so that he's doing
23 that, ---

24 **MR. GALMORE:** Yes sir.

25 **THE COURT:** --- that he makes himself available and he

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1 knows who is trying to get hold of him.

2 **MR. GALMORE:** Yes sir.

3 **THE COURT:** Very good.

4 All right. Ask the jury to come in, then, please.

5 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
6 **JURY.)**

7 **THE COURT:** All right, Solicitor, your next witness
8 please, ma'am.

9 **MS. RICHARDSON:** Thank you, Your Honor. The State
10 would call Lieutenant Mike Dangerfield.

11 **THE COURT:** All right.

12 All right, Lieutenant, if you would come all the way
13 around and meet the Clerk of Court up here at the front,
14 please, sir.

15 **MICHAEL ANTHONY DANGERFIELD,** being first duly
16 sworn, testifies as follows:

17 **THE DEPUTY CLERK:** Please be seated. State your full
18 name and spell your last name for the Court, please.

19 **MR. DANGERFIELD:** Michael Anthony Dangerfield,
20 D-A-N-G-E-R-F-I-E-L-D.

21 **THE COURT:** Go ahead, Solicitor.

22 **DIRECT-EXAMINATION BY MS. RICHARDSON:**

23 Q. Good morning, Lieutenant. Where are you employed?

24 A. With the South Carolina Highway Patrol.

25 Q. How long have you been employed there?

1 A. This is my twentieth year, since 1994.

2 Q. And what do your duties consist of as a highway
3 patrol officer?

4 A. Initially in 1994, I was hired as an enforcement
5 trooper, the trooper most of y'all are familiar with, drives
6 around in the fully-marked cars, stops people, enforces the
7 motor vehicle laws and other criminal laws. I did that from
8 1994 until 2001 right here in Horry County.

9 In 2001, I began my training in collision
10 reconstruction. I was still an enforcement trooper at the
11 time. I was promoted to Corporal, which is a first-line
12 supervisor.

13 I moved out of Horry County over into Marion County. I
14 stayed in Marion County for two years as a first-line
15 supervisor, and then in 2003, I started with our multi-
16 disciplinary accident investigation team which does
17 collision reconstruction.

18 Q. And is that what is commonly referred to as the MAIT
19 Team?

20 A. Yes, it is.

21 Q. And what does MAIT stand for?

22 A. MAIT stands for Multi-disciplinary Accident
23 Investigation Team.

24 Q. And you said training and reconstruction. What type
25 of training have you received?

1 A. I received all the normal reconstruction training
2 that's at-scene investigation, which is basically the field
3 portion of investigations for collisions. That's
4 identifying tire marks, skid marks, gouge marks, inspecting
5 cars, things like that. It's a very basic course of
6 instruction.

7 I've also attended technical collision
8 reconstruction, which gets more into the theories behind
9 collision reconstruction. I've attended collision
10 reconstruction, advanced collision reconstruction,
11 motorcycle, pedestrian, bicycle, commercial motor vehicle,
12 lamp analysis, heat belt analysis, forensic mapping, which
13 is very similar to surveying, Lieutenant Detective Level 1
14 training, attended numerous collision reconstruction
15 conferences within South Carolina, Pennsylvania, and Texas.

16 I was at one time an adjunct instructor for the
17 Criminal Justice Academy where I taught collision
18 reconstruction. All told, it's about sixteen hundred hours
19 in collision reconstruction specific training, and to break
20 that down a little bit, it's between six and eight months of
21 training I've had over the course of the last ten years that
22 I've been with MAIT.

23 I'm also certified in collision reconstruction
24 through ACTAR, ACTAR which stands for the Accreditation
25 Commission's Traffic Accident Reconstruction. It is an

1 independent organization that certifies collision
2 reconstructionists, not just law enforcement but also those
3 in the private sector. I'm fully accredited with them.
4 I've been fully accredited since 2005.

5 I also currently sit on the ACTAR Board for South
6 Carolina. There are twenty-four participating agencies that
7 represent the private sector and the law enforcement sector.
8 South Carolina is one of those twenty-four agencies. I've
9 been the representative for the past two years.

10 As part of my duties there, we -- ACTAR tests
11 collision reconstructionists in two phases. One is a theory
12 test, which is a four hour, you know, true/false, multiple
13 answer where you have to demonstrate that you understand the
14 theories behind collision reconstruction.

15 The second part of that is an actual collision
16 reconstruction to give you a scenario. You have to
17 basically find out what happened, determine what happened,
18 determine speeds, angles of impact, post-impact, you know,
19 where occupants were sitting, things of that nature.

20 You have to pass both phases in order to be certified.
21 They don't half-way certify you if you pass one and fail the
22 other. It's either pass/fail both.

23 And I am certified and have been certified since
24 2005, but again, part of my duties with ACTAR sitting on the
25 Board is I participate in the collision tests that they do.

1 The tests are, you know, staged collisions. We go out, we
2 set the vehicles up, we have known speeds, known directions
3 of travel, and we formulate our tests from the actual -- our
4 written tests from the staged tests.

5 Also, as part of my participating with the South
6 Carolina conference that I've been to, I've participated in
7 those staged collisions. What the conferences are mainly
8 for is to demonstrate that what we learn in the classroom
9 and actually apply to real world collisions, so that's not
10 just book learning. It's hands-on to show that -- the
11 principles behind collision reconstruction work.

12 Q. In 2010, what were -- what was your position with the
13 Highway Patrol?

14 A. In 2010, I was a Sergeant with the South Carolina
15 Highway Patrol. I was the Pee Dee Region of South Carolina,
16 which encompasses eight counties that goes from Darlington,
17 Marlboro, down to Georgetown. That's called the Pee Dee
18 Region for MAIT purposes in South Carolina, or patrol
19 purposes. I was a team leader at that time.

20 Q. What does that mean?

21 A. That means as far as the team leader, I was a
22 Sergeant. Below me were all the other team members. I had
23 two Corporals and I believe it was six other team members or
24 investigators. As team leader, it was my responsibility to
25 make sure that our investigations were being conducted

1 properly following Highway Patrol protocol, but also were
2 being followed properly according to collision
3 reconstruction principles.

4 Q. How many collisions would you say that you've had a
5 chance to investigate?

6 A. There's a difference between investigating a
7 collision and reconstructing a collision. During my time as
8 an enforcement trooper in Horry County, which is one of the
9 busier counties in South Carolina, probably around two
10 thousand collisions that I investigated.

11 Investigating is basically just going to the scene,
12 looking at the damage, talking with parties involved,
13 talking with witnesses, and then determining that the
14 evidence you see on the cars and the roadway matches up with
15 what you've learned -- what you learned at at-scene
16 investigations and also the parties you spoke with also
17 match up with the damage and the evidence that you see. And
18 as far as investigating, that's usually where it stops at.

19 For collisions, I've probably participated in around
20 a thousand, maybe fifteen hundred collision reconstructions.
21 Collision reconstruction is obviously more in-depth than
22 collision investigation.

23 Q. And generally, what is reconstruction? What's the
24 difference?

25 A. Generally, it takes off or it starts where the

1 investigation ends. As far as the scene investigation for
2 collision reconstruction, we use specialized equipment.
3 It's called forensic mapping, but it's very similar to
4 surveying equipment. Most of it is the same exact
5 equipment. However, for surveying, you must be licensed.
6 For forensic mapping, you do not need to be licensed.

7 Most of the time on collision reconstruction, you
8 have to forensically map the scene. That gets down to, you
9 know, within millimeters of what the -- measurement-wise as
10 what is actually at the scene. You also do more in-depth
11 vehicle analysis.

12 We often do vehicle mechanical exams. We have an SAE
13 certified mechanic, who is also a collision
14 reconstructionist, on the MAIT Unit. Oftentimes we'll
15 mechanically examine a vehicle to determine whether there
16 was some type of mechanical failure.

17 We also do -- oftentimes we'll do speed analysis.
18 That's something we refer back to our forensic mapping to
19 get more precise measurements, more precise angles of before
20 a collision, which direction the vehicle was traveling,
21 after the collision what direction they were traveling.

22 We also do more in-depth interviews. Oftentimes we
23 will, you know, talk with a person a much longer time for a
24 collision reconstruction versus a normal inves- -- accident
25 investigation.

1 We also do more extensive videos for our collision
2 reconstruction. All of our scenes are videoed. Really,
3 it's more in-depth and more knowledge that you use for
4 collision reconstruction, and it takes a -- usually a
5 tremendously longer period of time.

6 Also, for our collision reconstruction where an
7 accident investigation is one person doing all the work,
8 making a determination, in collision reconstruction, that's
9 a team effort. For the Pee Dee Region, we had at the time
10 nine members, I believe.

11 All nine members participated in various aspects of
12 the collision reconstruction, and for collision
13 reconstruction, we all collectively come together, analyze
14 the evidence and determine what occurred.

15 Q. So if I understand your testimony correctly, I want
16 to make sure I'm using the same terms you are, all
17 reconstructionists are investigators, but not all
18 investigators are reconstructionists?

19 A. That's correct. For the South Carolina Highway
20 Patrol, if you are not ACTAR certified, then you are not
21 considered a reconstructionist. You are considered an
22 investigator. There is a -- there's a huge difference.

23 It's just like a -- I often refer to it as a medical
24 doctor. They may be able to perform surgeries. They don't
25 have to be Board Certified to do surgeries, just like a

1 reconstructionist in the private world doesn't have to be
2 ACTAR certified, but as far as collision reconstruction,
3 that is the only certification that you can get is the ACTAR
4 certification.

5 Q. And I know that you testified that you are certified.
6 Do all MAIT team members have to be certified?

7 A. All MAIT team members do not have to be certified.
8 We encourage it. We certainly would like for it to be, but
9 the examination has about a sixty percent failure rate.
10 It's a very difficult exam. We always encourage it. Some
11 people just can't pass for whatever reason.

12 If you cannot pass, they can still be a part of the
13 MAIT unit, but they are investigators. They can do all the
14 field investigations. They can calculate speeds, but any
15 kind of reconstruction that they do must be done under the
16 supervision of a collision reconstructionist.

17 **MS. RICHARDSON:** Your Honor, at this time the State
18 would move Lieutenant Dangerfield -- ask that he be
19 certified as an expert in accident collision and
20 reconstruction.

21 **THE COURT:** Do you wish to voir dire the witness as to
22 his qualifications or challenge the offer by the State in
23 any way?

24 **MR. GALMORE:** No sir.

25 **THE COURT:** Very good.

1 He is qualified to give his opinion in the fields of
2 accident reconstruction. Thank you very much.

3 **MS. RICHARDSON:** Thank you, Your Honor.

4 Q. February 16th, 2010, did you guys have an occasion to
5 investigate a collision on the North Myrtle Beach bridge?

6 A. Yes, we did.

7 Q. Did you have an occasion to reconstruct that?

8 A. Yes, we did.

9 Q. Did MAIT respond to that collision?

10 A. We did.

11 Q. Okay. And when you respond to the collision, what
12 does MAIT do?

13 A. Generally, the first thing that the MAIT officers do
14 when they arrive on the scene -- this was a North Myrtle
15 Beach Department of Public Safety -- they were the primary
16 investigating agency. They requested that we come and
17 assist. One of the first things we do is make contact with
18 their lead investigator and get a general briefing of what
19 occurred.

20 When we arrive on scene, the first thing -- the next
21 thing we will do is after we speak with the agency, we'll
22 walk through a collision scene. We'll get a general feeling
23 for what occurred.

24 We'll identify tire marks left by tires that are
25 skidding. We'll identify gouge marks in the pavement,

1 scratches in the pavement, anything on the roadway that --
2 because we know eventually that we're going to need to
3 forensically map or survey the scene when we start
4 identifying what we need to -- what's out there that we need
5 to map or what's out there that we need to survey.

6 Next, we'll usually take pictures. We'll walk
7 through the collision scene taking pictures. We walk both
8 directions, the direction the cars are going and then turn
9 around and walk the direction they were coming from. We
10 also video all the scenes.

11 One of the next things we do then is we start
12 forensically mapping. Many of you probably have seen our
13 pick-up trucks on the side of the road. We're holding
14 traffic up. We're out there holding a surveyor's pole, a
15 prism pole. We have the tripod on the side of the roadway
16 and we are -- that's what we call our forensic mapping.

17 That forensic mapping is basically drawing a two-
18 dimensional, a top down version of what's out there at the
19 scene. It's very -- if you don't have any kind of program
20 to pretty it up, it's a bunch of numbers, a bunch of
21 letters, a bunch of lines. Once we're done at the scene,
22 then we have to go back to the office and download it into a
23 computer and make it more user-friendly, make it more
24 aesthetically appealing.

25 Another thing we do at all collision scenes is we

1 examine vehicles that are involved. All of our MAIT
2 investigators have had training on examining a vehicle, not
3 mechanically examining, but basically looking at parts and
4 if there are no red flags, you know, ...

5 They check the brakes by pressing on the pedal, turn
6 the steering wheel. If everything appears to be in order,
7 that's where it ends at. If something does cause them
8 concern, then our mechanical specialist is called in and a
9 full mechanical exam is done.

10 And in this case, I think we also interviewed several
11 parties that were involved, and I think a witness that was
12 involved.

13 Q. Okay. You gave a lot of information up there. I'm
14 trying to break it down. As far as the mapping, did we map
15 the scene in this case?

16 A. Yes, we did.

17 Q. Okay. And I think you talked about video. Did we
18 video the scene?

19 A. Yes, we did.

20 Q. And you said we -- you interviewed witnesses?

21 A. Yes, we did.

22 Q. And you took pictures?

23 A. Yes.

24 Q. I'm going to show you some pictures and see if you
25 can identify them for me.

1 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 15 FOR
2 IDENTIFICATION ONLY.)

3 Q. I'm showing the witness what's been marked as State's
4 Exhibit 15 for identification purposes.

5 A. This is a picture more or less facing northbound on
6 Highway 17 just before the Intracoastal Waterway in North
7 Myrtle Beach, fanning about in the number -- the middle
8 lane.

9 Q. And is that the MAIT team that's out there?

10 A. Yes, it is. Also in the photograph is a pick-up
11 truck, one of our MAIT -- it's actually two pick-up trucks.
12 One -- one of the people in it, there was a MAIT officer,
13 and he's actually setting up the -- the forensic mapping
14 equipment or the surveying equipment.

15 Q. And is that the type of picture that you take?

16 A. Yes, it is; yes, it is. Also in this picture are
17 some small cones. They look like traffic cones. They are
18 about three inches high. MAIT does commonly use those.
19 We've tested those. They actually do assist in clearing the
20 scene faster.

21 We've tested those compared to the prism pole.
22 Usually the prism pole is what is used with forensic mapping
23 and surveying. We tested these three-inch high cones and
24 they are just as accurate as the prism pole.

25 MS. RICHARDSON: Your Honor, at this time the State

1 would seek to admit State's Exhibit 15 into evidence.

2 **THE COURT:** Any objection?

3 **MR. GALMORE:** No sir.

4 **THE COURT:** State's 15 in evidence without objection.

5 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
6 **NUMBER 15.)**

7 **(PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 16 FOR**
8 **IDENTIFICATION ONLY.)**

9 Q. I'm going to hand you what is State's Exhibit 16. I
10 believe you testified -- I'm sorry. What is that?

11 A. This is another picture. It's facing generally
12 northbound on Highway 17. This appears to be where two of
13 the vehicles involved came to final rest.

14 There's some orange markings on the roadway. Those
15 are generally made as more or less a painted orange T.
16 Usually those are painted at one of the tires of vehicles
17 when they come to final rest after a collision.

18 Q. Is this a picture that MAIT would take on the scene?

19 A. Yes.

20 **MS. RICHARDSON:** The State would seek to admit State's
21 Exhibit 16 into evidence.

22 **THE COURT:** Any objection?

23 **MR. GALMORE:** Just a moment. May I take a look at it?

24 **THE COURT:** Yes sir, absolutely.

25 **MR. GALMORE:** Yes sir, no objection.

1 **THE COURT:** It's in evidence without objection.

2 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
3 **NUMBER 16.)**

4 **(PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 17 FOR**
5 **IDENTIFICATION ONLY.)**

6 Q. I'm handing the witness State's Exhibit 17, and if
7 you could identify that picture, please.

8 A. This is a similar picture to State's 16, except it is
9 from further away. It's slightly south, still facing
10 northbound. It looks to be, again, the same contents as
11 State's Exhibit 16. It's a little bit further away.

12 Q. And are these the type of pictures MAIT takes while
13 on the scene?

14 A. Yes.

15 Q. And are these the type of pictures you rely on in
16 forming your conclusion?

17 A. We do partially rely on these pictures.

18 **MS. RICHARDSON:** The State would admit State's Exhibit
19 17 into evidence.

20 **THE COURT:** Any objection?

21 **MR. GALMORE:** No sir.

22 **THE COURT:** It's in evidence.

23 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
24 **NUMBER 17.)**

25 **(PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 18 FOR**

1 IDENTIFICATION ONLY.)

2 Q. I'm handing the witness State's Exhibit 18.

3 A. This, again, is another picture. It's a close-up
4 picture of 16 and 17, and this picture, again we see the
5 orange T's that are painted on the roadway. You can also
6 see more clearly some gouging on the roadway surface. This
7 is another picture that a MAIT team member generally takes.

8 Q. And also you rely on that picture to help formulate
9 your opinion?

10 A. Yes, partially.

11 MS. RICHARDSON: The State moves to admit State's
12 Exhibit 18 into evidence.

13 THE COURT: Any objection?

14 MR. GALMORE: No sir.

15 THE COURT: It's in evidence.

16 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
17 NUMBER 18.)

18 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 19 FOR
19 IDENTIFICATION ONLY.)

20 Q. And I'm handing the witness State's Exhibit 19. If
21 you could identify that, please.

22 A. This also is another picture of U.S. 17, but it's
23 facing more -- the picture is facing more south versus
24 north. It's a different angle of the same information
25 that's in 16, 17, and 18, and this is another picture that

1. MAIT generally takes.

2. **MS. RICHARDSON:** The State would move to admit State's
3. Exhibit 19 into evidence.

4. **THE COURT:** Any objection?

5. **MR. GALMORE:** No sir.

6. **THE COURT:** It's in evidence without objection.

7. **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
8. **NUMBER 19.)**

9. Q. Lieutenant Dangerfield, what -- what are those
10. markings on the road telling you?

11. A. The -- the gouging and the scrapes generally identify
12. the area of impact. When a -- a collision reconstruction is
13. based on Isaac Newton's three laws of motion. I'm sure we
14. all kind of remember Isaac Newton. I kind of remembered him
15. from high school, but then I kind of forgot about it after
16. high school. Then I re-learned it once I began my MAIT
17. career.

18. There's three laws of motion basically state -- and
19. we've heard some of this on television. The first law is an
20. object in motion tends to stay in motion, and an object at
21. rest tends to stay at rest until it's acted upon by an
22. outside force.

23. That law applies to this because the vehicles are
24. traveling in a certain direction. Until something happens
25. to those vehicles, they're going to continue traveling in

1 that direction until the driver does something, slows down,
2 turns, until something outside the driver's area does
3 something to the vehicle.

4 So in this case, two vehicles are traveling towards
5 each other until they collided. The vehicles want to
6 continue going in the direction that they were going, but
7 they can't because outside forces are trying to stop them.
8 They continue to try, but as they continue to try, sheet
9 metal buckles, under-carriages buckle and start striking the
10 concrete or asphalt surface, and it starts marking on that
11 surface.

12 Generally when vehicles -- they strike each other,
13 all that happens, and the metal is bending and everything,
14 that's called maximum engagement. You know, the vehicles
15 have worked on themselves as much as they can. They still
16 want to continue going, but the sheet metal is not going to
17 bend any more. It's done as much as it can. Engines aren't
18 going to move. Under-carriages aren't going to compress any
19 more. They can't because they're hitting the surface.

20 Once they do that, it starts leaving -- most of the
21 time it leaves marks on the surface. That's the area of the
22 impact. That's what I see in some of these photographs.
23 The surface is gouged out. That's where the collision
24 occurred.

25 His second law of motion, Newton's second law of

1 motion, deals with mass and acceleration. It's easily
2 explained as the larger object, you've got to give it more
3 force to move it faster. A smaller object, you apply the
4 same force where it's going to move faster than the larger
5 object.

6 And the third law is basically for every action,
7 there's an equal and opposite reaction. As we sit here, as
8 you sit there and I sit here, we're exerting a force down,
9 the chair is exerting a force up. They are equal. If there
10 was more force going down, like when I try to sit in my
11 young child's small chair, when I try to sit in it, my force
12 is too much and it breaks the chair.

13 All collision reconstruction are based on those three
14 principles. Those three principles are what we use to
15 reconstruct collisions and what I see here as far as the
16 gouging and stuff, that's the area of impact, and I also
17 rely upon the three laws of motion to determine which
18 vehicle was going the wrong way because one of the vehicles
19 was going the wrong way.

20 Q. Before we get into that, I just want to make sure
21 we've covered everything.

22 MS. RICHARDSON: I'm leaving a picture up here so the
23 jury has a chance to look at it later and they know what
24 they're looking at, and I'm referring to State's Exhibit 16.

25 Q. The cones that are in the road that you were talking

1 about, and you talked to them earlier about mapping, what
2 are those cones there to do?

3 A. The cones that are on the roadway surface, they're on
4 lines that are -- the divider line, the white lines.
5 They're also on the yellow lines to the left. They're on
6 the solid white line on the right, which is the fog line,
7 and they're also in the center divider, which is commonly
8 called the Jersey barrier.

9 The cones are there because the instrument that we
10 use, the forensic mapping or the surveying equipment that we
11 use, it shoots an infrared signal that bounces off of those
12 cones back to the surveying equipment, and it gives you a
13 distance.

14 The computer is a hand-held computer that's involved,
15 the user of the equipment basically tells the computer this
16 is a white line, shoots a point, shoots another point and it
17 says this is the end of that white line. It does the same
18 thing for the yellow line. It could be an infinite number
19 of points or however many points the user wants in order to
20 demonstrate what's on the scene, so the cones are actually
21 architecting the scene.

22 It's like if you're drawing the scene, the cones are
23 with the assistance of the operator of the equipment, and it
24 gives you again a two-dimensional or a top-down look that is
25 accurate to within millimeters. You can actually open up

1 the program and get any kind of distance you want using
2 special software of where the lines are, where the piece of
3 equipment that the MAIT officer is using, how far the Jersey
4 barrier is outside of the yellow line. Any kind of
5 measurement that you want, you can use that program to
6 do it.

7 Q. All right. And you plug all these numbers into that
8 program when you get back to the office?

9 A. Generally, yes. Generally, we just download it using
10 special software, and we don't change anything. We can't
11 manipulate anything. We just download it.

12 **(PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 20 FOR**
13 **IDENTIFICATION ONLY.)**

14 Q. And I'm going to show you some additional pictures
15 and see if you can identify them.

16 I am handing the witness State's Exhibit 20. What is
17 that?

18 A. This is the finished CAD or computer assisted drawing
19 that MAIT commonly completes for our collision
20 reconstructions.

21 Q. Is that what you used those cones to help you create?

22 A. Yes, it is, and this one is just the roadway surface
23 as if no collision occurred, just what was out there at the
24 roadway minus any kind of tire marks, or gouges, or any
25 evidence left from this collision.

1 Q. And does that picture say what highway is noted
2 there?

3 A. Yes, it does. This was U.S. 17 and on it you can see
4 the southbound lanes and the northbound lanes just from a
5 top-down viewpoint.

6 Q. As you are looking down on it?

7 A. Yes.

8 Q. And does it say what day that an accident -- it
9 occurred on?

10 A. It gives you the date that it occurred on and it also
11 gives you the date that it was drawn or forensically mapped.

12 Q. And that mapping was a result of your reconstruction
13 in this particular case?

14 A. Yes.

15 MS. RICHARDSON: The State would move to admit State's
16 Exhibit 20 into evidence.

17 THE COURT: Any objection?

18 MR. GALMORE: No sir.

19 THE COURT: It's in evidence without objection.

20 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
21 NUMBER 20.)

22 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 23 FOR
23 IDENTIFICATION ONLY.)

24 Q. I'm going to show you what's been marked as State's
25 Exhibit 23, and I'm sorry they are out of order.. What does

1 that show?

2 A. This, again, shows what was previously on State's
3 Exhibit 20, but in addition, it also shows two vehicles that
4 are touching each other, and also on both -- I'm sorry, on
5 State's Exhibit 20 and 23, there is a scale bar so you could
6 actually use just this drawing to get measurements off of,
7 but in addition to what's on 20 -- on 23, there are two
8 vehicles that were involved in this collision at impact.

9 MS. RICHARDSON: The State would seek to move State's
10 Exhibit 23 into evidence.

11 THE COURT: Any objection?

12 MR. GALMORE: No sir.

13 THE COURT: All right. It's in evidence without
14 objection.

15 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
16 NUMBER 23.)

17 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 22 FOR
18 IDENTIFICATION ONLY.)

19 Q. I'm going to hand you what's been marked as State's
20 Exhibit 22.

21 A. 22, again, is what was on State's Exhibit 20, but on
22 this case, there were three vehicles involved in this
23 collision, and this is showing the evidence that was at the
24 roadway and the final rest of all three vehicles that were
25 involved.

1 **MS. RICHARDSON:** The State would move to enter State's
2 Exhibit 22 into evidence.

3 **THE COURT:** Any objection?

4 **MR. GALMORE:** No sir.

5 **THE COURT:** It's in evidence.

6 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
7 **NUMBER 22.)**

8 **(PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 21 FOR**
9 **IDENTIFICATION ONLY.)**

10 Q. And I hand you what's been marked as State's Exhibit
11 21. What is that?

12 A. 21 also shows what was on State's Exhibit 20, but on
13 this, it gives a sequence of events, what occurred through
14 the whole event, the first collision, the second collision,
15 and the final rest of all the vehicles that were involved.

16 **MS. RICHARDSON:** The State would seek to move State's
17 Exhibit 21 into evidence.

18 **THE COURT:** Any objection?

19 **MR. GALMORE:** No sir.

20 **THE COURT:** All right. In evidence without objection.

21 **(PHOTO WITH SEQUENCE OF EVENTS INTRODUCED INTO EVIDENCE**
22 **AS STATE'S EXHIBIT NUMBER 21.)**

23 Q. And I just want to be clear for the jury. The
24 sequence would be, referring to the State's exhibit, what
25 would the sequence be of how that collision occurred?

1 A. The sequence of events is basically what occurred
2 pre-impact, at-impact, and post-impact, the directions pre-
3 impact all the vehicles were traveling. The direction post-
4 impact, the vehicles traveled to their final rest, and also
5 shows at-impact, where the vehicles were when the first
6 collision occurred, where the vehicles were when the second
7 collision occurred.

8 So as far as the sequence of events, for MAIT
9 purposes, we generally lay it out as the roadway, and this
10 is in our report, what we generally do, roadway, what is out
11 there with nothing out, no evidence, no vehicles, what the
12 roadway looks like before the collision occurred.

13 Next we'll show -- usually we'll show the evidence
14 and final rest, where everything ended up at, what's all the
15 evidence we found out there, everything that we mapped, and
16 then generally we show the first impact, the second impact,
17 and then the sequence of events.

18 Usually the sequence of events gives you a better
19 understanding of what occurred because it's all on one page.
20 You can look at it to see how the vehicles interacted with
21 each other, to see how they struck each other. You can also
22 see where they came -- where they were coming from, what
23 direction they were traveling, and where they ended up at,
24 so the sequence of events to me is everything put together
25 in the one page.

1 Q. And which one of those show everything together?

2 A. It's State Exhibit 21, which is also labeled -- which
3 MAIT labeled sequence of events.

4 Q. We talked about the mapping. Do you know how you
5 determine the roadway? How do you determine where to put
6 the ---

7 A. On the roadway, there's markings that are left on the
8 roadway. Usually there are skid marks when someone sees
9 that an impact is coming. They hit the brakes and hit them
10 hard. Usually it leaves skid marks.

11 I don't believe there were any skid marks for this
12 collision, but again, as we discussed earlier, it was
13 gouging. The gouging was left because the vehicle struck,
14 the suspensions buckled or the suspensions were put under
15 pressure. They were pushed down. They went down as far as
16 they could go until they hit the roadway surface, and then
17 they started scraping and gouging.

18 We also looked at when we examined the vehicles, we
19 look at the damage profiles, what on the vehicle is damaged
20 from the initial impact. When vehicles initially impact,
21 that metal is all mangled up, but also you can get the roof
22 is buckling, all that.

23 You know, it's just secondary damage. We look for
24 what was maybe initial impact. We relied on that to
25 determine how the vehicles interacted with each other, and

1 then we also talked with witnesses and talked with drivers.

2 In this situation, we had no tire marks to go by, but
3 we did have scrapes, gouges. We had the vehicle damage
4 profiles, and we had independent witnesses, and we had
5 drivers that we were able to talk to.

6 Q. You rely on all of that in making your drawings?

7 A. Yes.

8 Q. And your ultimate opinion in the case?

9 A. Yes.

10 Q. And you say you do a vehicle inspection?

11 A. Yes.

12 Q. Was one done in this case?

13 A. I believe two were done. One of the vehicles
14 involved was driveable after the collision, and it was taken
15 out-of-state, and it didn't play a huge part in the initial
16 collision.

17 Q. Do you recall whether a -- any speed analysis was
18 done in this case?

19 A. No speed analysis was done, and -- for one thing,
20 this was a near head-on collision. In a head-on collision,
21 you have to basically assign a speed to one of the vehicles.
22 Now, who to assign it to and what speed to assign it to is
23 usually completely collision reconstruction. Whoever is
24 doing that reconstruction, it's that person's determination.

25 From this collision, it didn't appear that a great

1 speed involved. It didn't appear that either vehicle was
2 going well above the speed limit. It was obvious to myself
3 and to the investigators that there was no vehicle traveling
4 ninety or a hundred miles an hour. The damage would have
5 been much more severe.

6 It looked to us like it was a highway speed. I
7 believe the speed limit is forty-five. It was somewhere
8 around -- impact was somewhere around forty-five miles per
9 hour.

10 Also, for this one, there was a third vehicle
11 involved. That vehicle came to a controlled stop. He
12 basically just slowed down and pulled off the side of the
13 roadway. He didn't panic and slam on the brakes and skid
14 off, which we could calculate that speed.

15 I believe when we asked -- talked with him, he said
16 he slowed down and pulled off the roadway, so what -- how
17 much pressure he put on the brake to do that, we don't know
18 and we can't calculate that, but, again, for this collision,
19 it was our opinion that it was not a great amount of speed
20 involved by any of the parties involved, so a speed analysis
21 was not completed.

22 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 24 FOR
23 IDENTIFICATION ONLY.)

24 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 25 FOR
25 IDENTIFICATION ONLY.)

1 **(PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 26 FOR**
2 **IDENTIFICATION ONLY.)**

3 Q. Let me show these pictures and see if you can
4 identify them for me.

5 A. These are pictures of one of the vehicles, all in the
6 collision. The pictures, they all appear to be pictures
7 that MAIT generally takes, and we do rely upon these
8 pictures to formulate our opinions in part.

9 **MS. RICHARDSON:** The witness is referring to State's
10 Exhibit 24, 25, and 26. The State would seek to admit these
11 into evidence.

12 **THE COURT:** Any objection?

13 **MR. GALMORE:** No sir.

14 **THE COURT:** They're in evidence.

15 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
16 **NUMBER 24.)**

17 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
18 **NUMBER 25.)**

19 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
20 **NUMBER 26.)**

21 **(PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 27 FOR**
22 **IDENTIFICATION ONLY.)**

23 Q. This is another picture in your stack. Can you
24 identify that one for me?

25 A. It's another picture of one of the vehicles involved.

1 This is a picture MAIT generally takes, and we also rely
2 upon it in part to determine what occurred in the collision.

3 **MS. RICHARDSON:** The State would seek to move State's
4 Exhibit 27 into evidence.

5 **THE COURT:** Any objection?

6 **MR. GALMORE:** No sir.

7 **THE COURT:** It's in evidence.

8 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
9 **NUMBER 27.)**

10 Q. Based upon all the evidence that you collected in
11 this case, were you able to reconstruct this accident?

12 A. Yes, we were.

13 Q. Please tell the jury how this accident occurred.

14 A. As I stated earlier, we knew from when we were on the
15 scene that one of the vehicles was going the opposite
16 direction or the wrong direction. This was nearly a head-on
17 collision.

18 With our -- with the damage profiles that we had on
19 the vehicles, the evidence we had on the scene, we
20 determined that the -- I believe it was a silver Mercury
21 Sable was traveling southbound in the northbound lane.

22 It was in the -- if you're traveling northbound, it
23 was in the lane closest to the Jersey barrier or the fast
24 lane, or the left lane. The black vehicle was involved was
25 traveling north. The silver Mercury Sable was traveling

1 south. The vehicles struck off- -- slightly off center or a
2 little bit off center. The passenger side of both vehicles,
3 front passenger side, struck each other.

4 Remember, we talked about earlier about when you are
5 in motion, you want to stay in motion. I'm sure most of you
6 have experienced either walking in a hallway or in the mall
7 and you're hit on the shoulder like you want to spin.
8 You're spinning around and you just enter a mass.

9 The vehicles did the same thing. The vehicles wanted
10 to continue going straight. The right front of each vehicle
11 struck. Each vehicle had to rotate. Each vehicle rotated
12 clockwise.

13 The black vehicle involved, when it rotated sideways
14 or clockwise, the only place it had to go was into the
15 Jersey barrier, so it actually ended up on top of the Jersey
16 barrier. The vehicle that was traveling the wrong way, it
17 also wants to continue going straight, but it can't because
18 no opposite force is coming at it, but it also wants to
19 rotate clockwise.

20 It had open lane -- an open lane next to it, so when
21 it rotated clockwise into the other lane, that's when the
22 third vehicle came along and struck it in the rear because
23 the vehicle was continuing to spin. The silver Mercury was
24 continuing to spin. As it spun out, it was struck in the
25 rear and then redirected back towards the way it just came

1 from, so it was actually redirected north again.

2 Q. To the final positioning of the cars, they are facing
3 southbound in the northbound lane?

4 A. Yes, they are, and the black car that was involved is
5 really not in the northbound lane any more. It's up on the
6 Jersey barrier, and the silver car that was originally going
7 the wrong way was redirected back -- basically spun back
8 around and is facing south in the northbound lane, and the
9 other vehicle just slowed down and pulled off to the
10 shoulder.

11 Q. And based upon your training and expertise, is there
12 any way the black car was headed the wrong direction?

13 A. Based on the laws of physics, there's no way. If it
14 was going the wrong direction, then it would have been
15 struck in the rear versus the silver Mercury. There's --
16 it's impossible. The laws of physics, it can't happen any
17 other way.

18 Q. When you reach your final conclusion as to the
19 reconstruction, what, if anything, is in place to make sure?
20 Is there any other -- does anybody else review what you've
21 done?

22 A. Yes. Again, at the local level, we have, myself
23 included, the nine reconstructionists and investigators to
24 look at it. Once we formulate an opinion, once we make a
25 decision, it doesn't stop there. At the State level with

1 the Highway Patrol, we have what's called an investigative
2 review committee which are team leaders throughout the
3 State.

4 All of us are reconstructionists. We all review it
5 then. For this case, I would have most likely presented
6 what we found. There's back and forth. There's questions
7 and answers going on. If anyone sees something that defies
8 the laws of physics or that defies the principles of
9 collision reconstruction, that's where it's ironed out.

10 So it would have been my -- the investigative review
11 committee. It's five other collision reconstructionists,
12 plus at the time, there's the unit commander who's also a
13 reconstructionist.

14 Everyone reviews every case that we do. This one, I
15 don't believe there was anything that stood out to me or
16 anything that we did incorrectly on this case, so it was
17 approved by the investigative review committee.

18 Q. And just for future knowledge, what happens if
19 something does raise a red flag?

20 A. If something is wrong, it's not approved by the
21 investigative review committee. It's sent back to the local
22 level. We make the corrections. Then we bring it back to
23 the investigative review committee.

24 Q. And was this particular case sent back?

25 A. I don't believe it was. It doesn't -- it doesn't

1 ring a bell with me. I don't think so.

2 Q. It's your testimony here today there's no other
3 possible way this accident could have occurred?

4 A. There is no way that this -- again, it would defy the
5 laws of physics for it to occur some other -- for the
6 vehicle to be going the other direction other than what we
7 determined; it would be impossible.

8 Q. I'm showing you what's been marked as State's Exhibit
9 2. Do you know what this is?

10 A. That's the third vehicle that was involved in this
11 collision.

12 Q. And what damage do you see on that vehicle?

13 A. On this vehicle, there is damage to the left front --
14 the vehicle has a push bar on the front. That appears to be
15 pushed back towards the driver a little bit. There's some
16 damage on the hood, some damage on the left front fender,
17 and appears that the front headlights are probably damaged.

18 Q. Also showing you what was marked as State's Exhibit
19 26, and I believe this is the vehicle that you testified to
20 that was rear-ended?

21 A. Yes.

22 Q. Looking at that picture, would that brush guard cause
23 that much damage in your training and experience?

24 A. It would.

25 Q. And why is that?

1 A. The brush guard on the -- it's a pick-up truck is the
2 third vehicle. Many pick-up trucks still have a frame.
3 They still have metal, still have solid steel underneath.
4 Cars are not that way any more, newer cars. It's a unibody
5 construction. It's sheet metal.

6 Oftentimes you can bend it in if you put enough force
7 with your arm. This pick-up truck struck the rear of the
8 Mercury Sable in the trunk area. The only thing back there
9 is a gas tank and sheet metal. That's all it is, versus the
10 pick-up truck, you've got steel.

11 You've got a steel brush guard that's connected to
12 the frame. Steel is much harder to bend than sheet metal.
13 While the damage on the Mercury Sable looks severe and you
14 would think whatever struck it would have an equal amount of
15 damage, that's not the case because of sheet metal versus
16 steel.

17 You know, with the sheet metal and cars these days
18 are designed to crumple, they have the crumple zones.
19 They're designed to crumple around the passenger
20 compartment. Everything else out of the passenger
21 compartment is designed just to crush like an aluminum can
22 to protect the people inside. That's what this car did.

23 The outside of the trunk area is pretty much
24 demolished, but the front of this truck is not because,
25 again, it's steel versus sheet metal.

1 **MS. RICHARDSON:** That's all.

2 **THE COURT:** Cross-examination.

3 **CROSS-EXAMINATION BY MR. GALMORE:**

4 Q. Lieutenant Dangerfield, I understand that you had to
5 gather several pieces of evidence in order to reach
6 conclusions about the accident and the reconstruction of the
7 accident, is that correct?

8 A. That's correct.

9 Q. And one of the sources of information that you look
10 to are interviews with witnesses, is that correct?

11 A. Partially, yes.

12 Q. Okay. And was that done in this case?

13 A. I believe it was, yes.

14 Q. And you also had MAIT officers to go out to the crime
15 scene and attempt to forensically map the crime scene, is
16 that correct?

17 A. That's correct.

18 Q. And that would be the computer-assisted drawing?

19 A. Yes.

20 Q. And that was done in this case?

21 A. Yes, it was.

22 Q. All right. Photographs were taken of the vehicles
23 involved, is that correct?

24 A. That's correct.

25 Q. There were also photographs taken of the scene of the

1 accident?

2 A. Yes.

3 Q. Were there any other photographs that were taken in
4 this case?

5 A. Not to my knowledge.

6 Q. Did you personally take any photographs?

7 A. No, I did not.

8 Q. So photographs were taken by the MAIT team members?

9 A. They were taken by the MAIT team members and an
10 officer with the North Myrtle Beach Department of Public
11 Safety.

12 Q. So on the night or early morning of the accident,
13 North Myrtle Beach Police were taking pictures of the scene?

14 A. That's correct.

15 Q. Okay. And then the next day, MAIT team officers went
16 to the wrecker locations to take pictures of the two cars?

17 A. That's correct.

18 Q. And your MAIT team officers were not able to take any
19 pictures of the white pick-up truck?

20 A. That's correct. That's the vehicle that was still
21 driveable, and I believe he went to North Carolina.

22 Q. Okay. So they took pictures of these two cars
23 because they were at the wrecker's, and they couldn't take
24 pictures of the third car because it left the scene?

25 A. That's correct.

1 Q. All right. And do MAIT team officers also video the
2 scene, is that correct?

3 A. Yes, it is:

4 Q. And lastly, do MAIT team officers conduct a
5 mechanical test on the cars?

6 A. They mechanically examined one of the vehicles
7 involved.

8 Q. They mechanically examined one vehicle?

9 A. That's correct.

10 Q. And that would be the Mercury Sable?

11 A. Yes.

12 Q. Okay. Well, let's start there. On the Mercury
13 Sable, were you able to determine if there were any
14 mechanical problems to the vehicle?

15 A. No mechanical problems were found on the vehicle.

16 Q. And what kind of mechanical issues would you have
17 been looking for?

18 A. Commonly steering, brakes, suspension. Those are the
19 big three that usually people say fail.

20 Q. Okay. So in this case, the steering, brakes, and
21 suspension were working?

22 A. Yes, they were.

23 Q. And the black car, no mechanical tests were
24 performed?

25 A. No mechanical examination, but a general vehicle

1 examination was.

2 Q. And what do you look for in a general vehicle
3 examination?

4 A. The overall condition of the vehicle. Again, we turn
5 the steering wheel, if it turns, and the tires move, and you
6 say the steering system is good. If you depress the brake
7 pedal and there's pressure, then the brakes probably work.

8 It's more of a general overview of the condition of
9 the vehicle. In that case, no red flags were raised by the
10 investigator and no mechanical examination was requested.

11 Q. Okay. Well, let me hand you what's been marked as
12 State's Exhibit Number 24 and ask you if you recognize what
13 that picture is?

14 A. Yes sir. It is a front picture of the Mercury Sable.

15 Q. This would be the silver car?

16 A. The silver car, yes.

17 Q. Now, what damage can you see to the silver car in
18 that picture?

19 A. The front end is severely damaged. The most severely
20 damaged portion of the front end, or where the initial
21 impact occurred, is the passenger side front, and then the
22 front of the vehicle is twisted clockwise. There's also
23 damage to the windshield.

24 There's damage to the right front or passenger tire
25 area, and you actually see a little bit of damage on the

1 passenger side. And then if you look, the roof line is
2 buckled, and you see damage actually from where the bumper
3 or the -- I'm sorry, trunk area, you can tell it's damaged
4 because it's pushed up above the roof line.

5 Q. So in this picture, Exhibit 24, you're able to tell
6 there's severe damage to the passenger side of the silver
7 vehicle?

8 A. There is some, yes.

9 Q. Would you describe this damage as significant?

10 A. The right front area of the car is significant.
11 That's where most of the damage -- that's where the initial
12 contact with the other vehicle occurred, and you can tell
13 that because when you look at the damage profiles of each
14 vehicle, you can tell the right front of each vehicle made
15 contact.

16 Q. Would this damage have been significant enough to
17 cause a human body to move about inside the vehicle?

18 A. They are going to move about, yes.

19 Q. So bodies move around in accidents?

20 A. If you're not properly restrained by a seatbelt,
21 you're -- a severe collision, you're going to move about.

22 Q. Now, let me hand you what's been marked as State's
23 Exhibit Number 12 and ask you if you can tell us what this
24 picture depicts?

25 A. This is a picture of the other vehicle that was

1 involved, not the pick-up truck, but the black vehicle that
2 was involved, and again, severe front end damage, very
3 similar damage to the silver car as far as the right front.
4 You can look at it and tell where the first point of contact
5 or first area of contact is, and there's damage on its
6 passenger side also.

7 Q. And you used these pictures to help you to
8 reconstruct the accident?

9 A. In part, yes.

10 Q. That's one of the many things that -- one of the
11 factors that you all consider?

12 A. Yes sir.

13 Q. Now, in looking at these two photographs, I think you
14 stated that the accident occurred head-on, the passenger --
15 front passenger side to front passenger side?

16 A. That's correct.

17 Q. All right. Would it be fair to say that it would be
18 more closer to say front passenger headlight to front
19 passenger headlight?

20 A. That's -- that's close, yes.

21 Q. Okay. So they weren't directly impacting? They were
22 kind of angled?

23 A. They were off-center, yes.

24 Q. Off-center, all right. Were you able to determine
25 the speed of the silver vehicle?

1 A. We did no speed analysis.

2 Q. Did you attempt to determine the speed of the silver
3 vehicle?

4 A. We had a -- as I stated earlier, we had several
5 things working against us. One of the things, since this
6 was a near head-on collision, most likely we would have had
7 to assign a speed to one of the vehicles. Who we assigned
8 that to would be up to the collision reconstructionist.

9 Also, since there was another impact that occurred,
10 post- -- post-impact from the first impact, that -- the
11 other vehicle in that impact came to a controlled stop, that
12 would have made it more difficult to determine the initial
13 speed of the Mercury, the silver vehicle.

14 Q. Okay. So you can't determine how fast the silver
15 vehicle was going because the pick-up truck hit it
16 secondarily and, therefore, affected what you're looking
17 for? I don't know what ---

18 A. I wouldn't say it's impossible, but it would be
19 highly suspect. If another collision reconstructionist did
20 it, calculated the speed, or one of my team members did it,
21 it would be very suspect on, first of all, what speed you're
22 going to give to that pick-up truck that came to a
23 controlled stop.

24 That plays a role in it. Who are you identifying as
25 traveling at what speed from the initial impact? Are you

1 assigning a speed to the silver vehicle or are you assigning
2 a speed to the black vehicle?

3 Q. Well, regarding the silver vehicle, were tests made
4 to determine its speed?

5 A. We did not, no.

6 Q. Did you remove the black box from the silver vehicle?

7 A. We did.

8 Q. And that black box would have contained information
9 such as the speed of the silver vehicle?

10 A. No, it did not.

11 Q. No? Go ahead. I'm sorry.

12 A. Yes, the black box that Counsel is referring to is --
13 we call it the air bag control module. It's a -- if a
14 vehicle has -- if your vehicle has an air bag in it, it's
15 going to have something that controls that air bag, a
16 computer system.

17 This vehicle had air bags, had a computer system. I
18 want to say it was a 2004 Mercury, but all systems are not
19 supported, and by being not supported, they are not
20 supported by the equipment that is currently available to
21 image what's on there. This vehicle was not, and I don't
22 believe it's even today.

23 I checked yesterday. It's still not supported to be
24 imaged or to be downloaded, so we did secure it in hopes
25 that one day it would be supported. This collision occurred

1 in 2010.

2 Sometimes manufacturers will back-date or include
3 older vehicles to be imaged, but in this case, it wasn't, so
4 we could not get any information off of it. We didn't even
5 attempt because it states in our literature that it is not
6 supported to be imaged, but, no sir, we did not.

7 Q. So basically you got the black box from the silver
8 car, but can't read what it says?

9 A. No sir, we can't.

10 Q. Okay. Now, I understand that the pick-up truck left
11 the scene, so you weren't able to determine its speed?

12 A. After the collision, the pick-up driver was allowed
13 to leave the scene. I don't believe his air bags were
14 deployed. From the pictures I've seen, it doesn't look like
15 they were, so if his box -- if his air bag control module
16 would have any data on it, I don't know. It could, or it
17 may or it may not.

18 Q. And even if it had remained at the scene, you could
19 not estimate its speed because that vehicle came to a
20 controlled stop after the second impact?

21 A. That's correct. You could -- someone could estimate,
22 but what they're basing that on would be highly suspect.

23 Q. Okay. So we don't know how fast the silver vehicle
24 was going and we don't know how fast the pick-up truck was
25 going?

1 A. That's correct.

2 Q. All right. What efforts were made to determine the
3 speed of the black vehicle?

4 A. There were some interviews that were conducted. I
5 believe the driver of that vehicle stated she was going 53,
6 because I think someone showed her her speedometer was stuck
7 at 53, but I don't believe she ever said she was going 53.
8 I think she said 50 or somewhere thereabouts, but that's
9 just from memory.

10 Q. Okay. When you talk about her speedometer was stuck
11 at 53, would that be the image that is depicted in State's
12 Exhibit Number 8?

13 A. Yes, it is.

14 Q. All right. Well, this is the speedometer from the
15 black vehicle?

16 A. That is -- that's correct.

17 Q. Okay. Thank you. Now, in the interview process with
18 the witnesses, did it come to your attention that Crystal
19 Alden had been drinking?

20 A. Is she the driver of the black vehicle?

21 Q. The black car.

22 A. I don't recall.

23 Q. Okay. If you have an automobile accident and a
24 person admits that they were drinking immediately prior to
25 the accident, as a state trooper, what would you do with

1 that information?

2 A. If I were the primary investigating officer, if I was
3 the officer that first arrived on the scene and it was my
4 duty to investigate the collision, first of all, if someone
5 admitted that to me, I would find that very strange, but
6 then I would take them through a series of field sobriety
7 tests.

8 They are common tests that most law enforcement
9 officers are familiar with. You send them through -- not so
10 -- not very complicated, but it does divide your attention.
11 It's tests we do on the side of the road that tests their
12 ability to drive and kind of a test as to whether they've
13 been drinking or not.

14 Q. What do you mean when you say these tests divide your
15 attention?

16 A. They ask you to do several things, like one of them
17 is stand on one leg and count for a certain period of time.
18 You're doing multiple things at the same time. It's been
19 shown that someone who is impaired has a difficult time
20 doing that.

21 Q. If a person admitted that they were drinking
22 immediately prior to an accident and no field sobriety tests
23 were conducted, would that be standard or would that be
24 unusual?

25 A. To me as a state trooper, it would be unusual, but I

1 can't speak for the primary investigating officer, the first
2 officer on the scene.

3 Q. So to you, if somebody said I was drinking prior to
4 this accident, you would ask them to perform field sobriety
5 tests?

6 A. I would certainly go a little bit further than just
7 leaving it at that. I'd talk to them; I'd question them.
8 Usually when someone has been drinking an alcoholic
9 beverage, you smell the by-product.

10 You know, if it's beer, you smell the by-products of
11 beer on their breath. If it's a certain type of clear
12 liquors, then you don't smell it, but there are some other
13 cues that you can look at.

14 Q. All right. Do you know which of your troopers spoke
15 with Ms. Alden?

16 A. Off the top of my head, no, I don't.

17 Q. Do you know if one of your troopers spoke with Ms.
18 Alden?

19 A. On the scene, no, no trooper did. None of the MAIT
20 investigators did. I believe we spoke to her by phone if
21 I'm not mistaken.

22 Q. And that would have been a few days after the
23 accident?

24 A. Yes.

25 Q. Are there standard field sobriety tests that law

1 enforcement officers use?

2 A. From my recollection, there are. I'm no longer
3 certified in doing field sobriety tests because I don't
4 perform enforcement duties any more, but there are
5 standardized field sobriety tests.

6 Q. And what would those tests be?

7 A. If memory serves me correctly, one of them is the
8 one-legged stand. Another one is a horizontal gaze
9 nystagmus test, and I think the third one is in the alphabet
10 or something, but I can't remember because I'm not certified
11 to do it any more.

12 Q. Okay. Now, for example, let's just talk about the
13 horizontal gaze nystagmus test. What type of test is that?
14 How is that testing done?

15 A. Again, from my memory, it's basically when you're
16 talking to the person that you suspect to be under the
17 influence, you stand approximately -- you hold an object
18 approximately ten inches from the tip of their nose. You
19 use a pen or some small light source.

20 It's not a flashlight that you flash into their eyes,
21 but I will demonstrate with my finger. You basically are
22 going to move your object to their left and to their right
23 several times and you instruct them to follow it with their
24 eyes only, don't move your head, just follow it with your
25 eyes.

1 Most people, unless they have some type of prior
2 medical condition, the eyes -- and they haven't been
3 drinking, and they haven't been doing any type of narcotics,
4 most people, their eyes will follow it smoothly.

5 The nystagmus comes in is if -- do you have a prior
6 medical history, or if they have been consuming alcoholic
7 beverages or some type of narcotics, their eyes will not
8 follow it smoothly. There will be a jerking motion.

9 Q. Would you offer that test to a person that had an eye
10 injury?

11 A. I wouldn't, no.

12 Q. And why would you not offer an eye test to a person
13 with an eye injury?

14 A. It could give you a false result.

15 Q. Yes sir. And you all, the MAIT team, you also
16 investigated the road conditions on the bridge, is that
17 correct?

18 A. Yes.

19 Q. And used the information that you obtained from the
20 road conditions to determine the location of the cars prior
21 to, and at impact, and after the impact?

22 A. In part, yes.

23 Q. All right. Now, the road conditions that you looked
24 at, you did not see any skid marks?

25 A. I don't believe we identified any skid marks.

1 Q. And what does that tell you?

2 A. That the tires on the vehicles were not locked, they
3 didn't have time enough to stop rotating. In any collision
4 or any event, really, there's a perception and reaction
5 time. When you see something about to happen, first of all,
6 you have to visually see it. Then your brain has to process
7 it, and then your body has to act on it.

8 Some people, their perception/reaction time is faster
9 than others. It's a very person-dependent, and it's very
10 situationally dependent. In this case the tires on the
11 vehicles did not stop rotating for whatever reason.

12 Q. Would alcohol use affect someone's reaction time?

13 A. It has been shown that alcohol usage does slow
14 someone's reaction time.

15 Q. Would speeding affect a person's reaction time?

16 A. It wouldn't affect their reaction time, because the
17 time is going to be relevant to whatever they're doing, but
18 it will increase the distance involved.

19 Q. Would it make the reaction -- the time to react would
20 be less because the vehicle was moving faster, would that be
21 fair to say? If you're speeding, you have less time to
22 react?

23 A. If you react in 1.5 seconds or a second, if you're
24 going faster, the distance is going to be longer. The time,
25 1 second or 1.5 seconds is still the same, but the distance

1 you travel in that time is going to be longer.

2 Q. So we're talking like ninth grade math, distance,
3 rate, and time?

4 A. Yes.

5 Q. Okay. Now, speed of the vehicle would be the rate?

6 A. Yes.

7 Q. Distance between the cars -- well, there is a
8 distance between two vehicles?

9 A. Yes.

10 Q. And they're going at a speed, and in -- let's say one
11 of them is moving faster than it should, that would decrease
12 the reaction time?

13 A. It would reduce the time that you had to react, yes.

14 Q. So a person speeding would have less time to react?

15 A. Put that way, yes.

16 Q. And a person drinking would have less time?

17 A. Most likely.

18 Q. Do you know if your MAIT team members investigated
19 any other areas regarding this accident other than the
20 bridge itself?

21 A. I don't believe they did.

22 Q. Did your MAIT team members investigate the exit ramp
23 in the area of the Mama Jean's Restaurant?

24 A. I'm familiar with it, but I don't think we
25 investigated it.

1 Q. Did you take pictures of the area with the -- of the
2 exit ramp by Mama Jean's Restaurant?

3 A. I don't believe so.

4 Q. Did you assign a MAIT team officer to travel Highway
5 17 and eventually review the area by Mama's Kitchen
6 Restaurant -- Mama Jean's Restaurant?

7 A. No, I did not.

8 Q. So if anyone took pictures in the area of Mama Jean's
9 Restaurant, it wasn't you?

10 A. I don't believe we did. If they did, I haven't seen
11 them.

12 **(PHOTO IS MARKED AS DEFENDANT'S EXHIBIT NUMBER 2 FOR**
13 **IDENTIFICATION ONLY.)**

14 Q. Let me hand you what's been marked for identification
15 purposes as Defendant's Exhibit Number 2 and ask you if you
16 can tell me what this picture depicts?

17 A. This appears to be looking the wrong way on an exit
18 ramp of 17. It looks like it's an exit ramp for northbound
19 17, probably going up to Highway 90, I believe, but it's
20 looking the opposite direction.

21 Q. Do you know the distance from that exit ramp to where
22 this accident occurred?

23 A. I could guess it for you if you want me to guess.

24 Q. Yes, please.

25 **THE COURT:** No sir. We're not going to have him guess,

1 and he hasn't identified the photograph.

2 **MR. GALMORE:** Your Honor, he's an accident
3 reconstructionist. He can't tell us the distance ---

4 **THE COURT:** He has not specifically stated he knows
5 that to be the area, nor anything that he has done. If he
6 had investigated it, if he had done so, I would allow it.
7 No sir.

8 Q. Did you send your MAIT team officers to take pictures
9 of the exit ramp near Mama Jean's Restaurant?

10 A. I didn't specifically send them. Sometimes they do
11 what's called drive-throughs and they will drive through the
12 collision scene to a certain point to get a general feel for
13 the area.

14 Q. And I believe you testified that you had nine MAIT
15 team officers working this scene?

16 A. It wasn't a total of nine working the scene. I
17 believe it was four that worked the scene. They are
18 directed to do certain things, but then they are also given
19 leeway to do other things. If they see something else that
20 needs to be done, then they just do it.

21 Q. So would it be unusual for one of your MAIT team
22 officers to drive along 17 in the immediate vicinity of the
23 accident site?

24 A. It wouldn't be unusual, no.

25 Q. Do you know if any of your officers actually drove

1 along Highway 17 around the immediate area of the accident
2 site?

3 A. I don't know for sure because I don't recollect all
4 the pictures that were taken. This may have been taken by
5 one of my officers just because it looks like a silver hood.
6 That could be the front of their vehicle. If I reviewed all
7 the pictures again, then I would be able to tell you yes or
8 no, whether this is one of my officers' pictures.

9 Q. All right. Are you able to tell us the distance
10 between this exit ramp and the accident site?

11 A. Again, I could estimate it for you just from my
12 general knowledge of the area since I live in Horry County.

13 **THE COURT:** I'll allow that, not based on the
14 photograph.

15 **MR. GALMORE:** Okay.

16 Q. Can you give us an estimate of the distance from the
17 exit ramp to the accident site?

18 A. I would estimate it's about a quarter mile.

19 Q. And have you -- you didn't happen to personally visit
20 this crime scene, did you?

21 A. No, I did not.

22 Q. And you did not personally inspect these vehicles at
23 the wrecker site?

24 A. No, I did not.

25 Q. Did you conduct any of the witness interviews

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1 yourself?

2 A. No.

3 Q. Did you conduct the computer-assisted drawing?

4 A. No, I did not.

5 Q. Did you do the forensic mapping?

6 A. No.

7 Q. Did you take a photograph?

8 A. No.

9 **MR. GALMORE:** No further questions.

10 **THE COURT:** Redirect?

11 **MS. RICHARDSON:** Just briefly, Your Honor.

12 **REDIRECT-EXAMINATION BY MS. RICHARDSON:**

13 Q. What did you do?

14 A. As supervisor of the local team, I make every effort
15 to go to every scene. However, the Pee Dee Region, which
16 encompasses Horry County is busy and I can't be in more
17 places than one, so for this collision investigation, I was
18 the focal point or I was the funnel that everything came
19 through.

20 I didn't go to the scene, didn't do the mapping,
21 didn't talk with people, but all the information was
22 presented to me by my investigators, and I did listen to the
23 audio recordings. I did review most of the pictures, and I
24 did approve the CAD drawing, and I did approve the findings,
25 the ultimate conclusions that we came to.

1 Q. And what were those ultimate conclusions?

2 A. That the silver Mercury was traveling the wrong
3 direction on U.S. 17. It was traveling southbound in the
4 left northbound lane. It collided with the black vehicle
5 that was involved, pretty much the passenger side front to
6 passenger side front. The vehicle rotated clockwise.

7 Once the silver Mercury rotated clockwise, it was
8 then struck by another northbound vehicle that was slightly
9 behind the back vehicle, and then that vehicle, the silver
10 vehicle, was redirected back around. It came to final rest
11 facing southbound. The third vehicle slowed down and pulled
12 off on the shoulder.

13 Q. So the silver Mercury Sable was -- is it safe to say
14 that that was determined to be the at-fault driver?

15 A. Yes.

16 **MS. RICHARDSON:** The Court's indulgence just a moment.

17 **THE COURT:** All right.

18 **MS. RICHARDSON:** Nothing further, Your Honor.

19 **THE COURT:** Anything on those particular questions and
20 answers?

21 **MR. GALMORE:** Just briefly, sir.

22 **RECROSS-EXAMINATION BY MR. GALMORE:**

23 Q. Lieutenant Dangerfield, you said you were able to
24 determine that the silver vehicle was the at-fault vehicle
25 in this accident?

1 A. It contributed to the collision, yes.

2 Q. Were you able to determine who was driving the silver
3 vehicle?

4 A. We did not do an occupant kinematics for this case.

5 Q. So you could have done that, but it wasn't done in
6 this case?

7 A. It can be done in most cases, and it could have been
8 done in this one most likely.

9 Q. But you could have determined who was driving this
10 vehicle, but that test wasn't -- wasn't conducted in this
11 case?

12 A. The analysis was not conducted by the MAIT unit.

13 MR. GALMORE: Thank you very much.

14 THE COURT: Anything else, Solicitor?

15 MS. RICHARDSON: Your Honor, I would like to ask him a
16 couple of questions on that.

17 THE COURT: All right. Go ahead.

18 REDIRECT-EXAMINATION BY MS. RICHARDSON:

19 Q. What is that?

20 A. Occupant kinematics is just another analysis of
21 collision reconstruction where you look at the evidence, all
22 the evidence we've already spoken about, and you make a
23 determination of who was sitting in what position.

24 Q. And how would you do that?

25 A. Again, you use all the evidence that's available, use

1 a damage profile of the vehicle, whether the occupants were
2 restrained or not restrained, where they ended up post-
3 impact ---

4 **MR. GALMORE:** Your Honor, I would object.

5 **THE COURT:** Sir, you asked the question, brought it up.
6 I'm going to allow the State to explore it. Thank you very
7 much.

8 **MR. GALMORE:** Your Honor, what I'm saying is that this
9 is the State's witness and she had the opportunity to
10 explore every issue, because she conducted a complete
11 direct-examination.

12 **THE COURT:** I understand that, but you brought the
13 issue up. You brought the issue up. I am now going to
14 allow the State to explore it. Thank you very much.

15 **MR. GALMORE:** Yes sir.

16 Q. Did you finish?

17 A. I believe I finished.

18 Q. Do you do that in every investigation?

19 A. No, we don't.

20 Q. Why not?

21 A. Sometimes it's obvious who was driving. Sometimes a
22 witness has said this person was driving. It does take a
23 tremendous amount of time and resources to do occupant
24 kinematics analysis. In this case, we weren't requested,
25 and through our investigation from mainly talking with

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1 everyone involved, that we didn't see a need to do it.

2 MS. RICHARDSON: Nothing further, Your Honor.

3 THE COURT: Mr. Galmore?

4 MR. GALMORE: No sir, no further questions.

5 THE COURT: Do you wish the witness to be excused?

6 MS. RICHARDSON: Yes, Your Honor.

7 THE COURT: Any objection?

8 MR. GALMORE: No objection.

9 THE COURT: Sir, you are released from your subpoena
10 and may go back to your regular duties.

11 MS. RICHARDSON: Your Honor, if we could just have him
12 hang out in the courtroom for just a little while.

13 THE COURT: All right. Do you want to speak to him
14 further?

15 MS. RICHARDSON: Yes sir, Your Honor.

16 THE COURT: All right. Very good.

17 If you would do that, please, Officer.

18 All right, ladies and gentlemen, we are going to break
19 for lunch at this point in time and ask that you be back in
20 your jury room by 2:30, please. Be back in your jury room
21 at 2:30.

22 Everyone else remain seated, please.

23 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
24 JURY.)

25 THE COURT: All right. We'll resume at 2:30 then.

1 Thank you very much.

2 (THE FOLLOWING TAKES PLACE AFTER A LUNCH RECESS AND
3 OUTSIDE THE PRESENCE OF THE JURY.)

4 THE COURT: Solicitor, are you ready for the jury to
5 come in?

6 MS. RICHARDSON: Your Honor, I am. I don't know if now
7 is the proper time to take this matter up or if it would be
8 before Officer Swarthout testifies.

9 THE COURT: Okay.

10 MS. RICHARDSON: There is a part in the implied consent
11 rights that states you have a right to have a qualified
12 person of your own choosing to conduct additional
13 independent tests at your expense. The officer, upon
14 request, must provide you affirmative assistance.

15 There's case law, Your Honor, that says if the
16 Defendant stipulates to that, we are not to publish that to
17 the jury.

18 THE COURT: Okay.

19 MS. RICHARDSON: I have spoke with the Defense Counsel
20 about that. It's my understanding that he wishes to
21 stipulate to that.

22 THE COURT: Is that correct, Mr. Galmore?

23 MR. GALMORE: Yes sir, Your Honor.

24 THE COURT: All right. So, then, you will just mute it
25 at that point in time?

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1 **MS. RICHARDSON:** I will, Your Honor. I went through
2 and watched it, just in case we were to get to her testimony
3 today, although it would be a lengthy testimony. I marked
4 that where I would need to mute it, and I will also black it
5 out on the advisement of rights form and have instructed her
6 not to testify to that specific thing.

7 **THE COURT:** Great. Good deal. All right.

8 **MS. RICHARDSON:** Thank you, Your Honor. That's all.

9 **THE COURT:** Thank you.

10 All right. Mr. Galtore, are you ready for the jury
11 then?

12 **MR. GALTORE:** Yes sir, Your Honor.

13 **THE COURT:** All right.

14 Ask the jury to come in, please, sir.

15 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
16 **JURY.)**

17 **THE COURT:** All right, Solicitor, your next witness.

18 **MS. RICHARDSON:** Brett Baker, Your Honor.

19 **THE COURT:** All right, sir, if you would come around
20 and meet the Clerk right up here, please, sir. Thank you.

21 **DONALD BRETT BAKER,** being first duly sworn,
22 testifies as follows:

23 **THE DEPUTY CLERK:** Please be seated. State your full
24 name and spell your last name for the Court, please.

25 **MR. BAKER:** That's Donald Brett, last name is Baker,

1 B-A-K-E-R.

2 **DIRECT-EXAMINATION BY MS. RICHARDSON:**

3 Q. Good afternoon, Mr. Baker. Where are you employed?

4 A. I'm employed at the South Carolina Law Enforcement
5 Division, commonly known by the acronym SLED.

6 Q. And what do you do for SLED?

7 A. I work in what -- I work in what's called the Implied
8 Consent Department. The Implied Consent Department is that
9 department which regulates breath alcohol testing for the
10 State of South Carolina. That's a video recording that's
11 mandated by statute, as well as to equipment.

12 I also manage the database which houses all the
13 records for every test that's been given. We have records
14 dating all the way back to 1991.

15 Q. So what specifically do your duties consist of?

16 A. Well, software development with the factory to make
17 sure that the instruments were running, comply with State
18 law, so if they ask certain questions that the operator
19 needs to ask, as well as maintaining the maintenance, so I
20 review all the records twice a week of every test that's
21 been provided in the State to ensure that, you know, if
22 there's errors, then we need to get somebody out there to
23 fix it.

24 I am trained to fix the instruments. We no longer
25 fix them ourselves. We have a contract with the

1 manufacturer, so we're more of a regulatory basis now, but
2 as well as review the videos of breath alcohol tests and
3 ensure the policies and procedures are being adhered to.

4 I helped write the policies and procedures that are
5 in place today, as well as choose the equipment that's in
6 use in the State today.

7 Q. I'm not sure, and maybe it is, I'm not sure that it's
8 real clear what instrument we're talking about.

9 A. And that would be the DataMaster DMT. That is the
10 current version of the BAC DataMaster. In 1991, the State
11 transitioned from a manual breathalyzer. That's one that's
12 wet chemistry that required the operator to manipulate
13 certain dials and stuff to get a reading.

14 We changed over to an automated one in 1981, which
15 was about three feet long, about eighteen inches deep, and
16 about nine inches high. That was the BAC DataMaster. It
17 utilized infrared technology or the absorption of infrared
18 energy.

19 In 2009, we switched from that instrument to the
20 DataMaster DMT, which is the next version. It's a Windows-
21 based unit, but it utilizes the same technology, infrared
22 energy, to analyze a person's breath.

23 Q. A little more up-to-date?

24 A. Yes. It's state-of-the-art, is the up-to-date
25 version, correct.

1 Q. What training have you received?

2 A. Specifically as it relates to the DataMaster DMT, I
3 am trained and certified by the National Patent Analytical
4 Systems, which is the owner or the creator of the DataMaster
5 DMT. I am certified as a operator, a maintenance
6 technician, in the theory of operation.

7 I've also received training, and it goes back a
8 while, in the early nineties from Dr. Borkenstein, who is
9 the inventor of the original breathalyzer in 1954. He has
10 now since deceased.

11 But I went to Indiana University for a week-long
12 school where they train persons who work in the field of
13 breath alcohol testing. They go -- bring in all the experts
14 from around the world, Dr. Debowski, and some others from
15 around the world, Sweden or what have you.

16 They come to Indiana University twice a year. They
17 hold these courses for law enforcement or for persons in the
18 area of breath alcohol testing because there's no degree you
19 can get in breath alcohol testing, so it's kind of like they
20 bring them in there, so they train you how this instrument
21 works, the theory, kind of the history of it, but I've got
22 extensive training in the area of breath alcohol testing, as
23 well as through SLED.

24 I'm trained and certified as a breath test expert
25 from SLED, as well as a video recording expert, again

1 required to stay abreast upon the laws and any current
2 literature or technology that's out there in the field, so,
3 you know, it's kind of an overview of what I do or my
4 training.

5 Q. Have you ever testified as an expert before in court?

6 A. Yes, I have.

7 MS. RICHARDSON: Your Honor, at this time, the State
8 would move to qualify Mr. Baker as an expert in breath
9 alcohol testing and specifically the DataMaster.

10 THE COURT: The use and operation of the DataMaster?

11 MS. RICHARDSON: Yes sir.

12 THE COURT: Do you wish to voir dire the witness or
13 challenge the offer by the State?

14 MR. GALMORE: No sir.

15 THE COURT: Very good.

16 I'll qualify him to give his opinion in the use and
17 operation of the DataMaster and in the field of the theory
18 of the breath -- breathalyzer, along with the regulations,
19 policies and procedures.

20 You may proceed.

21 MS. RICHARDSON: Thank you, Your Honor.

22 Q. And without talking over my head too much, Mr. Baker,
23 what is the DataMaster?

24 A. A DataMaster is a electronic, mechanical device ---

25 THE COURT: Can you make sure you're behind the

1 microphone so everybody can hear you?

2 A. Yes sir. I apologize. Yes sir. I tend to be too
3 loud.

4 **THE COURT:** That's all right. Don't worry about that.

5 A. It's a electronic, mechanical device that utilizes
6 infrared to analyze a person's breath. That's kind of a
7 broad view. Simplistically, it's a device that utilizes
8 Windows, other words it asks a few questions.

9 The program is designed to ask the operator his name,
10 put in the subject's name that is being tested, all the
11 biographical and other information for ticket numbers and
12 things, for statistics that can be pulled so you can relate
13 this test back to the individual.

14 So it asks for biographical information, and after
15 biographical information, the instrument does some testing,
16 but basically a person blows into the instrument. Every
17 compound in nature is known to absorb infrared energy.

18 We utilize three wave lengths to specific ethyl
19 alcohol, that's drinking alcohol, fermented alcohol. A
20 person blows into a tube. A small section of the end of
21 their breath is captured, about roughly 30 cc's of air. It
22 is then subjected to infrared energy.

23 It knows that it should have a certain amount of
24 infrared energy, if you will. If less infrared energy is
25 being admitted down that tube, the alcohol has to be in that

1 tube, and that's calculated into a reading. That's about as
2 simple as you can get.

3 Q. Okay. I appreciate it. What, if anything, can the
4 operator of that machine do to manipulate that test?

5 A. Absolutely nothing as far as running of the test.
6 The only thing you could possibly do would be let a person
7 consume ethyl alcohol during an observation period. The
8 most critical thing for breath alcohol testing is that there
9 be nothing -- a person not allowed to place any alcohol or
10 anything with ethyl alcohol in their mouth during that
11 twenty minutes prior to testing.

12 Studies have shown -- a person can rinse their mouth
13 alcohol -- rinse their mouth out with alcohol, say, twenty-
14 five minutes before, spit it out. You give twenty minutes,
15 all that will dissipate.

16 Alcohol is a volatile. That's why you can smell it
17 when you walk in a room. It's going into the air. It's
18 vaporizing into the air, so if you have twenty minutes for
19 that to take place, you don't let somebody ingest alcohol
20 prior to giving the breath test, so that's the most
21 important thing of breath tests, because if you let somebody
22 ingest alcohol, you could get a false elevated reading. You
23 could get a reading from a person who is a zero if you let
24 it equilibrate just right.

25 It's hard to do that, but again, that's the only thing

1 a operator could do, to answer your question, is let someone
2 ingest alcohol for that twenty minutes prior to giving a
3 sample. Other than that, he does nothing. The instrument
4 is fully automated.

5 He enters biographical data. He does a review, and
6 when the review is complete, the instrument takes over and
7 does its setup, and I can talk about that procedure if
8 needed. It then prompts the operator it's time for the
9 subject to provide a sample or blow into the instrument.

10 Then it does some checks to make sure it's still
11 working and it prints out the results on a stand-alone laser
12 printer, so there is nothing the operator can do short of
13 letting someone ingest alcohol to manipulate or potentially
14 skew the results.

15 Q. To operate this machine, is there any training that's
16 necessary?

17 A. Yes. They have to be trained and certified by the
18 South Carolina Criminal Justice Academy, which is outside of
19 Columbia. Every operator has to be -- if they're going to
20 be an operator to run the instrument, they have to be
21 trained and certified by them on SLED's policies and
22 procedures.

23 Basically, I train the Academy personnel to do the
24 training of the officers in the field. I'm also a certified
25 provisional instructor through them, so I do training on a

1 occasional basis up there, but again, they have to be
2 trained. They can't just be a road officer with no
3 experience.

4 And basically what they're being trained on, more
5 than the -- run the instrument, because it's really push a
6 button. The instrument prompts questions. It's all the
7 policies and procedures and the law that surrounds persons
8 being given tests.

9 Q. You talked a little bit about the process before
10 someone gives a sample that the machine does. Can you talk
11 a little bit more about that? What is that -- what is that
12 procedure that the machine does?

13 A. Sure. Again, it's a scientific procedure that the
14 instrument goes through to ensure that there's no alcohol in
15 the machine, that the machine is working properly. It's
16 what we refer to as a twelve-step run process.

17 The first thing happens after the person enters in
18 biographical data, does a review of the data. The
19 instrument takes over and you will hear a loud purging,
20 urrrrrr, and that's where it's drawing outside room air
21 through the breath tube that the person blows through,
22 through the sample chamber and out the back of the
23 instrument.

24 It's trying to purge to make sure, one, there's no
25 contaminants or nothing in the instrument. Two, it checks

1 the outside room air to make sure there's no contaminants,
2 so it's going to do a purge. It's going to do what we refer
3 to as an ambient zero, so it's going to try to establish a
4 zero, can I find zero on the air that's in there.

5 It's going to do a blank test, again to check and
6 make sure there's no alcohol. It's going to do an internal
7 standards. That's where we pull quartz, a quartz filter, if
8 you will, in front of the light. Quartz has a known
9 infrared absorption, so it checks the stability of the
10 electronics.

11 And then it does what we refer to as an external
12 standard. This is something that one State statute requires
13 prior to every breath test that they -- external standards
14 are a simulator test, and that is simply a known
15 concentration of ethyl alcohol in water.

16 And what it does, you actually check the vapor above
17 the water the same as you would check the vapor of a
18 person's breath, and that has to come back within a
19 specified reading. And if that passes -- and if it doesn't
20 pass, it would shut down at that point. It would say
21 external standard is out of range. Abort the test.

22 The operators then, based on their training, would,
23 you know, have a sheet and a red light. External standards
24 means I could have a person with alcohol on their breath too
25 close to the breath tube as it's trying to clean itself out.

1 It's picking up alcohol.

2 But anyway, it does an external standard, and then it
3 goes back and repeats those same processes. It's going to
4 purge down, do an ambient zero blank test. It's going to
5 ask for a subject sample, so what we do is a test of a known
6 standard, and then we test the unknown, which is the person
7 that's been brought in to provide a sample.

8 And then after that person provides a sample, it's
9 going to purge down one more time and check the quartz one
10 more time, so we try to establish that the electronics and
11 the instrument is working prior to the subject providing a
12 sample and then after.

13 As well as while the person is providing a sample, it
14 reads their breath four times a second. Every two hundred
15 and fifty milliseconds it's taking a reading, so it plots
16 the person's breath and waits for it to reach some maximum
17 and level off.

18 And that's, again, a check in there to make sure that
19 there's not alcohol or other things, because if you would
20 see the reading go up and start to come down, it would abort
21 the test because we read what they refer to as alveolar air
22 or deep lung air.

23 That's where the exchange occurs from blood into the
24 breath. You're taking in oxygen, giving off carbon dioxide.
25 Alcohol being a volatile, your blood is giving off in the

1 breath, so what happens as the person is to blow, if they
2 blow it should do nothing but go up, go up, and level off.
3 It should never go up and go down.

4 After twenty minutes, this should contain -- the
5 upper respiratory should contain no alcohol. So it should
6 start out low, go up, read some maximum, level off. So if
7 it ever goes up and starts to come down, it would abort the
8 test because it would say, hey, that's in contrary to what
9 it should be happening. So again, that is the testing
10 procedure and kind of the science behind what happens.

11 Q. So if somebody had alcohol in their mouth and hadn't
12 waited that twenty minute period of time, the reading would
13 go up and then it would come back down because it's not the
14 deep lung air, ---

15 A. That's correct.

16 Q. --- is that my understanding?

17 A. That is correct.

18 Q. Okay. And in order to get that deep lung air, that
19 is what you're looking for?

20 A. That is what we're looking for. That is the truest
21 reading of what's in the blood.

22 Q. What happens if this machine is not working properly?

23 A. Again, the instrument is designed to shut down or
24 preclude any chance of an improper test. It picks up
25 volatiles from somebody as recently using floor stripper,

1 for example, to strip floors. It will abort the test.

2 You may get a blank error. You may get a system at
3 zero. You could get external standards out of range. It's
4 whenever it kind of picks it up in the testing procedure.
5 There's multiple -- I should say what I refer to as status
6 codes because I don't call them errors.

7 They're designed to give off this error, if you will,
8 or the status of, hey, this happened, abort the test, to
9 ensure that we don't have a bad test. So again, it's
10 designed to try to preclude any chance of a bad breath test.

11 And, again, in this State, that's all on video for
12 you, so it kind of helps you as far as me when reviewing
13 videos, or having to give an opinion on whether or not a
14 test looked proper I'm asked to review videos, and it's
15 easier to, hey, I can watch what the procedure was.

16 Q. Before we get into that, I'm going to back up a
17 little bit. What interest do you have in the prosecution of
18 a case?

19 A. Absolutely none. SLED in 1968 -- I think 1968, 1969,
20 was given the authority to regulate breath alcohol testing.
21 The Federal Government, when they passed the regulations,
22 said there needs to be implied consents in every state, that
23 is breath alcohol laws need to be in place. It was given to
24 SLED in South Carolina. In North Carolina, it's another
25 regulatory agency.

1 Our job at SLED is to, one, test equipment, review
2 equipment to see which equipment should be utilized in this
3 State, and to make sure that that equipment is working
4 properly, for the State as well as the person being tested,
5 so our interest is, is there a fair test being provided.
6 That's the only interest that we have.

7 Q. And I asked you about the operator. What, if
8 anything, could the Defendant do to manipulate these test
9 results?

10 A. Absolutely not.

11 Q. Would it interfere with the test if he were -- he or
12 she were to have blood on themselves?

13 A. As long as it wasn't in the mouth. The regulations
14 state, the statute, if they have a injured mouth,
15 unconscious, or dead, you can go for blood. Other than
16 that, go for a breath test first, but again, and really
17 blood in the mouth, more so that you don't want them to blow
18 a liquid because it's trying to test vapor, and they have
19 prior to the breath tube -- there's a little saliva trap or
20 what they call a mouthpiece, that's put on there.

21 It has like a little baffle so you can't blow spit or
22 blood into -- into the instrument, but it would have no
23 scientific bearing on the results.

24 Q. Now, for your testimony here today, and were you able
25 to review the video in this case?

1 A. I was.

2 Q. Were you able to review any records?

3 A. I was. We -- again, part of the requirements under
4 statute is that we maintain a database of records to make
5 them available for the Defense, as well as the Prosecution,
6 when conducting cases, so we maintain that web site. I was
7 able to review the records there on that web site, yes
8 ma'am.

9 Q. Okay. Did you see anything in those records or on
10 that video that would make you think the machine was not
11 working properly?

12 A. Absolutely not. My review of the records, my review
13 of the procedure that the officer utilized in conducting
14 this breath test, everything looked proper, and there's no
15 reason it would not be a proper test and a good test.

16 Q. And just because you brought up a term, what do you
17 mean by a good test?

18 A. Meaning it's a valid test, it would be scientifically
19 valid. It would be a true representation of the breath
20 alcohol of what's in the blood via the breath.

21 Q. So a good sample is not necessarily positive or
22 negative as far as a sample range, it's ---

23 A. No, it's absolutely not. That it was whatever the
24 reading may be, it could be zero. Zero is a reading.
25 Probably -- I forget what the percentage -- I haven't pulled

1 it lately.

2 I test that occasionally because I'm asked, all the
3 way up to, you know, the highest reading. It could be zero
4 is a reading. You know, persons could be taken in and they
5 not be under the influence, so again, a good test is
6 something I refer to, not it's good or bad, or pass or fail,
7 but it's a scientifically valid test, yes ma'am.

8 **MS. RICHARDSON:** That's all at this time, Your Honor.

9 **THE COURT:** All right.

10 Cross-examination.

11 **CROSS-EXAMINATION BY MR. GALMORE:**

12 Q. Mr. Baker -- or excuse me, Agent Baker. Is it Agent
13 or Mr.?

14 A. Either one would be proper. I am a Agent with the
15 State Law Enforcement Division through the Forensic Science
16 Division.

17 Q. Yes sir. Agent Baker, I think you testified that you
18 had helped to choose the equipment that's in operation
19 today?

20 A. That is correct.

21 Q. And would it be fair to say that there are several
22 different types of breathalyzer machines on the market?

23 A. There are many types. One of our regulations at SLED
24 is that we will not choose an instrument that has not been
25 tested and placed on the conforming products list that's

1 tested and approved by NTSA.

2 The National Highway Traffic Safety Administration
3 has a conforming products list of various breath alcohol
4 machines or devices that are approved for use in -- or what
5 they deem as being analytically or scientifically correct or
6 good instruments to use, but yes, so there's lots on the
7 market, but internal regulations, we won't choose anything
8 that hadn't been tested and approved by the Federal
9 Government.

10 Q. Now, would it be fair to say that different police
11 departments use different types of breathalyzer machines?

12 A. Not in the State of South Carolina. We're lucky
13 enough that with our regulations, the operators only can use
14 the DataMaster DMT in South Carolina. You may find in North
15 Carolina, Georgia, Florida, there could be three or four
16 different types of instruments because their statutes may
17 read where the department can choose anything that the
18 states approved.

19 And many of the states will say you can use anything
20 that the Federal Government has approved, so -- but, yes, in
21 our State, we are the single regulatory agency, and it just
22 makes it easier for data collection.

23 Q. State law says that you pick the -- that SLED can
24 select the machines that are used throughout the State of
25 South Carolina?

1 A. That's correct.

2 Q. But in different states, there's different types of
3 machines?

4 A. Correct.

5 Q. And some states would choose the DataMaster DMT, and
6 some states choose some other type of DataMaster?

7 A. That is correct.

8 Q. So there are more -- there is more than one type of
9 DataMaster?

10 A. Oh, well ---

11 Q. More than one type of breathalyzer?

12 A. More -- yes sir, yes sir. There are still some other
13 DataMasters out there all the way back to the ones in the
14 1980's to verify, but there's many different instruments out
15 there like there would be a Ford or a Chevy versus, you
16 know, what-have-you, a Toyota or Honda. There's different
17 brands, but they all do the same thing.

18 Q. DataMaster is basically the name of the company that
19 you're selecting -- that has been selected?

20 A. DataMaster -- actually, it's National Patent
21 Analytical Systems is the name of the company, but the
22 DataMaster, it was one of the first ones that could collect
23 data, that if you start looking in the late eighties into
24 the early nineties where computers started to come about.

25 It was one of the first ones that you could actually

1 input persons' names, gender, what have you, and collect
2 that sort of the information. That's how the name was --
3 had generated.

4 Q. But my point is that there is more than one type
5 of ---

6 A. Absolutely, there's -- yes sir, more than one type of
7 breathalyzer. Yeah, that's correct.

8 Q. And in this case, SLED had selected the DataMaster
9 DMT as the machine to be used statewide?

10 A. That is correct. In 2008, somewhere around there,
11 2007, we selected this instrument.

12 Q. And you were one of the people that decided to pick
13 that particular make and model of breathalyzer?

14 A. That is correct. The way we did it, we had a panel
15 of persons. We actually ask some other persons from law
16 enforcement and throughout, and we had persons come in from
17 different companies and submit their instruments, give their
18 -- give their kind of their spiel of why we should choose
19 their instrument and then we did testing on their
20 instruments.

21 We tried to find which ones would best fit with our
22 regulations and help us help the officer meet the hurdles
23 needed to enter data to make a test valid to get in court.

24 Q. So you had various machines that you could choose
25 from, and your panel chose the DataMaster DMT to use?

1 A. That's correct.

2 Q. Now, you testified about what the operator can and
3 can't do to affect the outcome of this test. First of all,
4 I think you said the operators are certified by the State,
5 certified by SLED?

6 A. Well, they're certified by the South Carolina
7 Criminal Justice Academy, which has to train them pursuant
8 to our regulations, which we train the Academy people to do
9 the training, so effectively we set up the training, but
10 it's given off to a different agency to do it because that's
11 where persons go to get their basic law enforcement and
12 everything, as they're better equipped to do that training
13 than we are.

14 Q. So if a person were to put something in his or her
15 mouth, that would affect the outcome of the machine?

16 A. It could potentially affect the outcome of the
17 machine if they put something in their mouth that contained
18 ethyl alcohol or was some other volatile, because the
19 instrument is going to be -- if it's a volatile, again, a
20 volatile by nature readily evaporates at normal pressures
21 and temperature.

22 It has to be -- if you put -- and I'm just giving you
23 an example, Aspirin, in your mouth, it's not a volatile.
24 It's not going to evaporate, so a person blowing into the
25 machine with Aspirin in their mouth is not going to affect

1 it.

2 Tobacco in your mouth is not going to affect it, but
3 if you was able to take vodka or some other volatile, shoe
4 polish, or something like that, or gasoline, or floor
5 stripper, or what-have-you, and able to ingest or put some
6 of that in your mouth prior to blowing into an instrument,
7 it absolutely would cause the instrument to shut down.

8 Q. SLED has issued policy that tells the DataMaster
9 operators to not allow anyone to put anything in their mouth
10 before a test?

11 A. That is correct.

12 Q. And those policies include tobacco?

13 A. That is correct.

14 Q. Even though you just testified that tobacco ---

15 A. Will not affect it.

16 Q. --- will not affect it?

17 A. That's correct, but it's easier, and not to be
18 confused, sir, the list of what you could put in your mouth
19 and what you couldn't put in your mouth would be a book.
20 It's easier to say don't put anything in your mouth when
21 providing this test and then you don't have to answer
22 questions of what is acceptable to go in your mouth and what
23 isn't, so our policy is you don't put anything in the mouth,
24 or you shouldn't.

25 Q. And you -- and SLED has issued policies that direct a

1 breathalyzer operator to not allow any person to put
2 anything in his mouth?

3 A. That's correct.

4 Q. And when an operator allows someone to put something
5 in their mouth, that could affect the outcome of the test?

6 A. Possibly. I'd have to know specifically what was put
7 in the mouth to be able to give you a judgment call or my
8 scientific opinion of whether it would affect the test. It
9 would have to be -- again, you stick your shoe in your
10 mouth, it's not going to hurt you.

11 We have people come in, they put pennies in their
12 mouth, thinking copper, so, you know, or a piece of apple,
13 or something like that. You have them spit it out. It's
14 not going to affect the test.

15 But if you allow them to put in some Binaca spray or
16 something, many of those, the carrier that holds the dosage
17 of the medicine is an alcohol-based carrier, so you don't
18 want them to use Binaca sprays or those sorts of things.
19 That could affect the test, yes.

20 Q. If a person were to regurgitate during or prior to
21 taking the test, is that something that could affect the
22 outcome of the test?

23 A. There are studies both ways. Our opinion is that
24 regurgitation, if detected, you should have the person rinse
25 out their mouth, because what you would be bringing up is

1 potential -- and again, the reason I say studies both ways,
2 not to get confusing, most of the time when you drink
3 alcohol, you consume it, it's not in the stomach or in the
4 gastric area long.

5 Within thirty to forty-five minutes, it's emptied
6 into the intestines where most of the absorption takes
7 place, so does the gastric juices actually have alcohol in
8 it? If it did, one of the advantages we have with the
9 DataMaster DMT is when it does that analysis, when a person
10 is blowing four times a second, it would be blotting it.

11 And as you blow, if the upper respiratory system
12 contains more alcohol than the deep lung as it finishes
13 blowing, if it ever goes -- starts to decrease, it would
14 abort the test, so potentially it could, depending on when
15 their last consumption and last meal, those types of things.

16 But again, that's why we have it on video for persons
17 to be able to make a call and for the officers to be able to
18 say I observed this person for twenty minutes prior to the
19 test and I seen nothing that was abnormal to me.

20 Q. Now, you said that you're also an adjunct instructor
21 at the Criminal Justice Academy?

22 A. That's correct.

23 Q. And you testified that SLED had issued regulations
24 and policies, a twelve-step policy for the procedures for
25 taking a breath test?

1 A. It's a twelve-step run process that we call it, the
2 instrument goes through, but there's many procedures and
3 policies that we have in place that is off of our web site,
4 yes, that -- that we've written and to help guide the
5 operator in testing the person.

6 Q. So these steps include things like taking down
7 biographical data on the person taking the test?

8 A. Right, giving them some guidance of, you know, hey,
9 -- an example, as silly as it may seem, you can enter first
10 name, middle initial, or no middle initial, and last name,
11 because some people may not have a middle initial, so, you
12 know, the policies even go to that nth degree. Hey, if you
13 don't have a date of birth, enter in 1900, the default date
14 of birth, if you don't know it from the individual.

15 Certain fields have to be filled out because for
16 statistical purposes and us maintaining in -- so we can find
17 the test and show it to -- on our web site so the person can
18 then know where they were tested in relation to other tests
19 being given and time span, so our policies are not just
20 regulations on taking it. It's kind of like how to enter
21 the information, too.

22 Q. Okay. It's a twelve-step process, these are the
23 things that you need to do, start here, follow these twelve
24 steps, and then you'll have a result?

25 A. Basically, the instrument, yes sir.

1 Q. Now, one of the things that the regulations did say
2 is that the officer has to put down the arrest time, is that
3 correct?

4 A. The arrest time and/or incident time. We -- I think
5 we leave that open-ended, and it's for the jurisdictions to
6 make their own determination. Do you put in the time of
7 arrest or the time of the incident, because it can be two
8 different things, the time the person, you know, is
9 dispatched.

10 Some places, when they dispatch them, they keep up
11 with that time. I'm being dispatched and it takes me five
12 minutes to get to the scene, and then some people will put
13 down the time of the arrest once they get to the incident,
14 so that is left up open-ended to what is really needed by
15 that entity there, but, yes, there is a time of arrest that
16 needs to be entered.

17 Q. And that's entered by the operator of the machine?

18 A. That is correct.

19 Q. And that would be the police officer has to type into
20 the machine the date -- excuse me, the time of arrest?

21 A. That is correct.

22 Q. Or the time of the incident?

23 A. That is correct.

24 Q. And that is necessary in order for the machine to go
25 to the next step?

1 A. Well, it's necessary that you put it in, and it's not
2 necessary that it even be correct, because people many times
3 misspell person's names on tickets, addresses. You could
4 put in the wrong -- incorrect time, it would still go to the
5 next step. It would just have the wrong time in there and
6 at some point, somebody would point it out and say, hey,
7 you've got a conflict here in what you say here and what's
8 over here, and they have to explain it.

9 It's an attempt to try to keep the -- consolidate the
10 information so when we're asked by NTSA or other persons,
11 can you tell me, I can give you, hey, what time of arrest
12 starts, from Friday to Friday, you know, what time during a
13 twenty-four period, when are most arrests made, what days of
14 the week they are, so it's for more use for statistical
15 information later than it is for validity of the test, so
16 it's not needed -- I'm not trying to belabor the point.
17 It's not needed for the test to go forward.

18 Q. Okay.

19 A. It's just needed to be entered.

20 Q. And this machine that is at the North Myrtle Beach
21 Police Department, did you install it?

22 A. I did not actually install this particular machine.
23 I do help maintenance this machine. I was there last week,
24 matter of fact, but yes, our agents are capable of going to
25 any machine anywhere in the State.

1 State regulations say that once a quarter they have
2 to -- every ninety days they have to be inspected. Computer
3 programs speak out about at sixty-six days, saying, hey,
4 this one is coming due, and we usually give ourselves three
5 weeks in case somebody has leave, or somebody is sick, or
6 some other conflict, so when it comes up saying, hey, sixty-
7 six days, I know that within twenty-one days somebody needs
8 to be out there having an inspection on it.

9 I actually set up an e-mail to all our agents in the
10 department, hey, in your region, this one is coming due.
11 You need to go do this one. You need to go to -- but,
12 again, yes, I'm familiar with the North Myrtle Beach
13 instrument, very familiar.

14 Q. Because each of these machines is connected to the
15 SLED office in Columbia?

16 A. That's correct, as well as the videos are connected
17 to the SLED office in Columbia.

18 Q. And each police department is required to have a
19 dedicated line just for that machine to be connected to
20 SLED?

21 A. Correct, a dedicated phone line, as well as a
22 dedicated -- well, I say dedicated, the Internet line. Most
23 of them are hooked -- well, they're all hooked via a virtual
24 privacy network that we upload the videos.

25 Q. So you're in your office in Columbia and a notice or

1 a flash comes across your desk that says the machine in
2 North Myrtle Beach needs to be inspected? Is that how
3 it ---

4 A. What happens twice a week, I initiate the program on
5 Fridays usually, and Mondays, Fridays in case there's
6 anything happened during the week that we know we need to
7 get it up, or call the representative to come fix it before
8 the weekend, and usually Monday after the weekend.

9 The date is actually when a person takes a test, it's
10 stored on the instrument in its memory. My program
11 initiates the retrieval of that information, so we request
12 it, and it basically -- say, hey, you got the information?
13 Give me anything that you've had over the week, and it sends
14 it up.

15 It's then put into a database, basically a
16 spreadsheet, and you go, all right, when is the last time
17 somebody was here, you know, and I can run a report and find
18 out when somebody was there, give me a status codes on any
19 of them that's -- any aborted test that did not complete for
20 whatever reason, and I can look and see all the ones that
21 may have aborted due to, you know, external standards out of
22 range, ambient fails, blank test, invalid sample.

23 There's so many others, or if I -- but again, I run
24 those reports. It doesn't -- it's not like I'm sitting
25 there and a flash comes across and says, hey, this happened.

1 Problem. You know, I actually have to initiate it to -- to
2 find out what problems were there.

3 Q. Now, I think you testified that you inspected this
4 machine last week?

5 A. Correct. It was on its normal routine -- normal
6 rotation. I forget what day it was. I think it was Tuesday
7 or Wednesday of this past week.

8 Q. And what does that inspection entail?

9 A. It usually entails us going out there, of course,
10 walking into the room. I usually enter in what we refer to
11 as a non-implied consent test. In South Carolina, there's
12 basically eight types of tests that can be run or ran.

13 There's a DUI, felony DUI, voting under the
14 influence, felony voting under the influence, there's flying
15 under the influence, there's shooting under the influence,
16 there's CDL violations, there's under twenty-one violations,
17 and then we have what was referred to as a non-implied
18 consent. That means it's not for any legal reason.

19 Military bases that we have them on use that for
20 command staff testing if a person comes to work intoxicated.
21 Sheriff's Departments sometimes use it if they suspect
22 someone under the influence coming in, so I go in there and
23 I initiate what's referred to as a non-implied consent test,
24 so I actually blow into it.

25 So we check the volume of the instrument, and we

1 usually run what's referred to as a diagnostic and/or
2 supervisor, which basically tests the external standards of
3 the instrument to make sure it's reading within range, but
4 again, I usually know whether it's working or not prior to
5 getting there because I can -- I can actually remotely run
6 these tests if I have one that has a issue or a suspected
7 issue, and I say from Columbia -- I actually live out of
8 Charleston -- and I'm connected to Columbia.

9 I can initiate a test and run a test remotely from
10 another location and see if it's working fine, and if it's
11 not, I can remove it from service until somebody gets there,
12 but yes, so I go in and I run a non-implied consent, do a
13 diagnostic.

14 I test the video. I do a test video recording to
15 make sure the video is capturing and uploading like it
16 should to SLED, and then I enter in the reports, you know.
17 If you type in, hey, I was here this date and time, or it
18 captures the date and time, and the program knows, hey, he
19 was there on this date, did this inspection. In another
20 ninety days, he'd better show up. If you don't, you have
21 violated policy.

22 Q. And you inspected this machine last week?

23 A. Last week, correct.

24 Q. And you inspected, well, here's a machine -- the
25 machine is inspected every ninety days?

1 A. Roughly every ninety days. Again, sometimes it can
2 be a little more. If you happen to be in the area for
3 another one and one is close by, sometimes we try to group
4 them together to save on gas and different things, so if
5 you're in an area, you test what you can in the area.

6 Q. Okay. And sometimes a machine is tested in person
7 and sometimes it's tested remotely?

8 A. Yes, we can do both tests, but every ninety days
9 roughly it's going to be inspected in person. I think
10 statute requires us to have it inspected at least twice a
11 year in person. We do it, you know, every time we go out,
12 we try to do it in person. We don't try to do any remote
13 inspections.

14 Q. And when you inspected this machine last week, did
15 you find that it had any problems, or was it operating
16 normally?

17 A. It was operating normally.

18 **MR. GALMORE:** The Court's indulgence.

19 **THE COURT:** Yes sir.

20 **MR. GALMORE:** I don't have any further questions for
21 Mr. Baker.

22 **THE COURT:** All right.

23 Any redirect?

24 **MS. RICHARDSON:** No sir, Your Honor.

25 **THE COURT:** All right. Do you wish the witness to be

1 excused?

2 **MS. RICHARDSON:** Yes sir, Your Honor.

3 **THE COURT:** Any objection?

4 **MR. GALMORE:** No sir, Your Honor.

5 **THE COURT:** All right.

6 Sir, you are released from your subpoena and may go
7 back to your regular duties.

8 All right, Solicitor, your next witness.

9 **MS. RICHARDSON:** Your Honor, may we approach?

10 **THE COURT:** Sure.

11 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

12 **THE COURT:** All right, ladies and gentlemen, we'll take
13 a short break and in that break, I'm going to need for y'all
14 to make a decision.

15 The next witness is going to be very lengthy. There is
16 a video that lasts two hours. That's not the testimony,
17 okay? That's a video that you will need to watch that lasts
18 two hours, so the testimony from the State will go beyond
19 that, obviously, and then you'll have the cross-examination
20 by the Defense, however long that might take.

21 I don't find it to be proper to break up the direct-
22 examination and the cross-examination. I find that the jury
23 to evaluate a witness needs to hear both basically at the
24 same time or in one sitting if at all possible, so with
25 that, I need for you when you take a break for you to make a

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1 decision, I want to go home and start this tomorrow morning,
2 nine o'clock, 9:15, with the officer and the two hour video,
3 and the testimony, and the cross-examination, or do y'all
4 want to stay here tonight until we get that done for however
5 long that takes, so, Mr. Foreman, take your jury to your
6 jury room, take a break, let us know what you want to do.
7 Thank you very much.

8 Everyone else remain seated.

9 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
10 JURY.)

11 THE COURT: All right, we'll take a short break and the
12 jury will let us know what they want to do. Thank y'all.

13 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE
14 THE PRESENCE OF THE JURY.)

15 THE COURT: We will bring the jury in, but it's my
16 understanding that they would like to stop for today and
17 come back tomorrow morning, so that's what we'll do.

18 All right, ask the jury to come in, please.

19 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
20 JURY.)

21 THE COURT: All right, Mr. Foreman, I understand that
22 your jury has requested to stop for today and to resume
23 tomorrow morning?

24 THE FOREMAN: Yes sir.

25 THE COURT: All right. Very good. All right, what

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1 we'll do, again, through the auspices of the Clerk's Office,
2 they will have something for you tomorrow morning. It might
3 be different than it was this morning, but what I would ask
4 that you do is to, please, again assemble downstairs in the
5 jury assembly room at nine o'clock.

6 When y'all are all together, they'll bring you upstairs
7 to the jury room, give you a little bit of time to enjoy
8 what the Clerk's Office has for you, and then we'll start
9 again regarding the testimony and the evidence in this case.

10 As I've told you a couple of times, again, you're not
11 researchers, not investigators. You can't go look up
12 anything. You know, you can't go out of your way to go
13 drive to where this matter might have happened to look at it
14 for yourself; that's investigation.

15 You can't tweet, communicate, you know, whatever, about
16 the case until it's all over with. You can talk about it
17 all you want to after it's over with, but during it, you are
18 to keep to yourself about that. Obviously don't discuss the
19 case with anybody, and then I'll see you back tomorrow
20 morning, nine o'clock. Thank y'all very much.

21 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
22 **JURY.)**

23 **THE COURT:** All right, anything that we need to cover
24 at the present time, Solicitor?

25 **MS. RICHARDSON:** Not that I'm aware of, Your Honor.

1 **THE COURT:** Mr. Galmore?

2 **MR. GALMORE:** No sir, Your Honor.

3 **THE COURT:** All right. Just so that y'all are working
4 on it, if you have any requests to charge, anything, cases
5 you want to be looking at, I would appreciate it if you
6 might have those in the morning so I have plenty of time to
7 look at them before we get started with that aspect of the
8 trial, all right?

9 **MR. GALMORE:** Yes sir.

10 **THE COURT:** See y'all back tomorrow morning, nine
11 o'clock.

12 Again, Mr. Butler, do you understand what we talked
13 about yesterday about you coming and being present? The
14 trial is going to continue whether you're here or not. You
15 understand that?

16 **MR. BUTLER:** Yes sir.

17 **THE COURT:** All right. Very good. Tomorrow morning.
18 Thank y'all.

19 **MS. RICHARDSON:** Yes sir. Thank you.

20 **MR. GALMORE:** Yes sir.

21 (END DAY.)

22 **(THE FOLLOWING TAKES PLACE ON WEDNESDAY, JULY 16, 2014,**
23 **OUTSIDE THE PRESENCE OF THE JURY.)**

24 **THE COURT:** All right, Solicitor, is the State ready
25 for the jury to come in?

1 **MS. RICHARDSON:** Yes sir, Your Honor.

2 **THE COURT:** And the Defense, Mr. Galmore?

3 **MR. GALMORE:** Yes sir.

4 **THE COURT:** All right. Very good.

5 Ask the jury to come in, please, sir.

6 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
7 **JURY.)**

8 **THE COURT:** Good morning, ladies and gentlemen.

9 All right, Solicitor, your next witness, please, ma'am.

10 **MS. RICHARDSON:** Thank you, Your Honor. The State
11 would call Officer Heather Swarthout.

12 **THE COURT:** All right, ma'am, if you would just meet
13 the Clerk right over here, please, ma'am.

14 **HEATHER SWARTHOUT,** being first duly sworn,
15 testifies as follows:

16 **THE DEPUTY CLERK:** Please be seated. State your full
17 name and spell your last name for the Court, please.

18 **MS. SWARTHOUT:** Heather Swarthout, S-W-A-R-T-H-O-U-T.

19 **THE COURT:** Go ahead, Solicitor.

20 **MS. RICHARDSON:** Thank you, Your Honor.

21 **DIRECT-EXAMINATION BY MS. RICHARDSON:**

22 Q. Officer Swarthout, I know it's obvious, but where are
23 you employed?

24 A. At the City of North Myrtle Beach.

25 Q. How long have you been employed there?

1 A. Since February of '99.

2 Q. And what are your duties -- what are your duties
3 supposed to be at North Myrtle Beach?

4 A. I am a patrol officer currently on A Shift. I
5 currently work day work. I answer emergency calls for
6 service, non-emergency calls for service. I'm also a
7 firefighter for the City. I am a crime scene technician
8 within the department, so I help with crime scenes. I am a
9 certified radar person, so I can run radar, and I am
10 certified to run breathalyzer tests.

11 MS. RICHARDSON: Your Honor, may I approach the
12 witness?

13 THE COURT: Absolutely.

14 MS. RICHARDSON: I'm just going to adjust this
15 microphone. You are very soft-spoken, and I am going to try
16 to stand as far back from you so it will force you to talk
17 louder.

18 A. Okay.

19 THE COURT: Go ahead, Solicitor.

20 MS. RICHARDSON: Thank you, Your Honor. It's hard to
21 hear in this courtroom sometimes, so I'm going to attempt to
22 stay as far back as I can.

23 Q. Did you have an occasion to investigate a collision
24 on or about February 16, 2010?

25 A. Yes ma'am, I did.

1 Q. And where was that collision?

2 A. It was on the -- what we call the big bridge in North
3 Myrtle Beach or the bridge going over the Intracoastal
4 Waterway in North Myrtle Beach.

5 Q. And I know this is a silly question again, but what
6 county is that located in?

7 A. It's in Horry County.

8 Q. What time did that collision occur?

9 A. Early in the morning approximately a little after
10 3:00 a.m.

11 Q. What time did you arrive?

12 A. Approximately 3:12, 3:14 a.m.

13 Q. Were you first on the scene?

14 A. No ma'am, I was not.

15 Q. When you arrived, who was there?

16 A. There were several officers attempting to shut down
17 the bridge, but the only other officer actually at the scene
18 of the accident was Officer Schuster.

19 Q. And what was Officer Schuster doing when you arrived
20 at the scene?

21 A. He was beginning to start the basic investigation of
22 the accident.

23 Q. And what does that consist of?

24 A. Basically looking at the vehicles to see their
25 damage, trying to figure out who was in which vehicle, who

1 was driving which vehicle, if anybody was injured and needed
2 medical attention, and what additional units we may need to
3 help, whether we needed to shut the road down, that type
4 thing.

5 Q. What did you do when you first arrived?

6 A. When I first arrived, I located Officer Schuster and
7 basically asked him what can I do to help, try to, you know,
8 take some of the burden off him of there's so much to do,
9 and he asked me to start taking photographs.

10 At the time back then -- we all have cameras now, but
11 back then, I was the only officer on the shift that actually
12 had a camera in my car.

13 Q. Did you make any contact with anybody involved in the
14 collision?

15 A. I did briefly at different times to start with. Like
16 I said, my initial role was to take pictures. When I first
17 started taking the pictures, I noticed a male on the
18 opposite side of the Jersey wall, kind of leaning over some
19 of the firefighters and dripping blood on them, and the
20 firefighters were yelling at me to come get him, so I
21 climbed over the Jersey wall and I made contact with now who
22 I know as Mr. Butler.

23 And I kind of escorted him away from where the guys
24 were working because they were actively extricating out of
25 the ve- -- one of the vehicles, and I kind of escorted him

1 to the ambulance that was on that side of the Jersey wall,
2 helped him up into the ambulance, and got the ambulance crew
3 to come take a look at him.

4 Q. And what, if anything, did you notice about Mr.
5 Butler in your initial contact?

6 A. Initially, I first noticed that he had blood on his
7 face, on his hands, and had a laceration above his right
8 eye. He immediately smelled of alcohol when I approached
9 him. It was apparent that he was under the influence of
10 alcohol, and at that time I didn't know where he fit into
11 the accident or even, you know, kind of what was going on
12 with him, so I just, you know, kind of let's get you out of
13 this area and get you the medical attention that's apparent
14 that you need.

15 Q. Okay. Crystal Alden, she was the female driver of
16 the black vehicle. Did you have any contact with her?

17 A. I did. After I escorted Mr. Butler into his
18 ambulance, I went back to taking pictures, and I had gotten
19 about as far as I could get at the time because I was
20 waiting for, you know, people to move and extrication to be
21 done, so I was asked if I would hand out voluntary
22 statements.

23 I actually went back to my car, got the clipboards
24 and pens and went to where Crystal was and the ambulance she
25 was on, in a different ambulance closer to the accident

1 site, and kind of opened up the back doors to the ambulance,
2 told her who I was and asked her if she could write a
3 voluntary statement for me.

4 Q. And did she comply with that?

5 A. Yes, she did.

6 Q. Did you notice anything about her?

7 A. She was extremely upset, wanting to know how her
8 friend was. That seemed more important than the fact that
9 she had an obvious injury. She had blood all over her face.
10 It appeared like, you know, a busted lip.

11 I was not right up on her by any means, but, you
12 know, it appeared that she had been injured and, you know,
13 she was crying and shaking and just kind of distraught.

14 Q. I believe Eric Pierce was also involved. Did you
15 have contact with him?

16 A. I did not. I saw him, but at the time I didn't know,
17 you know, that he was even involved. I just kind of saw him
18 standing over to the side.

19 Q. And what about Bradley Burns?

20 A. I -- again, I saw him while I was taking pictures,
21 but I didn't have any direct contact with him.

22 Q. And what about one of the victims in this case, Mr.
23 White?

24 A. I was -- because I was taking photographs, I was
25 actually right up on him and had to take pictures of him.

1 He had been ejected out of the back of the vehicle, and he
2 was hanging over the back portion like where the trunk would
3 be, except the trunk had been kind of squished in, so he was
4 kind of over the edge, kind of hanging towards the passenger
5 side of the vehicle.

6 Q. And what was Mr. White's status when you had contact
7 with him?

8 A. He was deceased.

9 Q. Now, you said where he was hanging from. What window
10 was he hanging out of?

11 A. The back windshield window.

12 **MS. RICHARDSON:** If you could mark this.

13 **(PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 28 FOR**
14 **IDENTIFICATION ONLY.)**

15 Q. Let me show you what's been marked as State's Exhibit
16 28 and see if you can identify that for me.

17 A. Yes ma'am. That's one of the pictures that I took on
18 the scene, and it shows the silver Sable and we have a tarp
19 over Mr. Mitchell (sic), but it does show how he was hanging
20 out of the vehicle.

21 Q. And that's a picture you took?

22 A. Yes ma'am.

23 Q. Does it clearly show what you saw on that night?

24 A. Absolutely.

25 **MS. RICHARDSON:** The State would move State's Exhibit

1 28 into evidence.

2 THE COURT: Any objection?

3 MR. GALMORE: No sir.

4 THE COURT: All right, sir. It's in evidence without
5 objection.

6 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
7 NUMBER 28.)

8 Q. So you made contact with some of the people involved,
9 but again, it wasn't your duty to investigate?

10 A. It was not. I was just there to help, initially was
11 just there basically to take pictures because I had the
12 camera, and even at one point I was told physically to hurry
13 up, take the pictures, and clear. I was not doing any of
14 the talking or asking any of the questions to any of the
15 occupants of the vehicles.

16 Q. At some point, that role changed?

17 A. It did.

18 Q. And what did you do next?

19 A. Well, as I, you know, continued taking photographs,
20 and again, I looked over and I saw Mr. Butler out of the
21 ambulance right up on the first responders that were working
22 on the vehicle, so I crossed the Jersey wall again and I
23 approached him and ended up handcuffing him because he had
24 blood all over his hands and he kept trying to touch me, as
25 well as the firefighters, not aggressively by any means, but

1 he was just trying to touch everybody.

2 And with the blood on his hands, I didn't want him
3 touching me or anybody else, so I did detain him in
4 handcuffs and escorted him away from where everybody was
5 working and basically away from being able to see where his
6 passenger was hanging out of the window.

7 And I moved him up to the front of the ambulance and
8 actually had him sit down, and told him a couple of times to
9 sit on the front of the ambulance because he had already
10 been a little bit unsteady on his feet, but then when I
11 detained his hands, of course, I didn't want him to fall, so
12 I made him sit on the front of the ambulance and basically
13 just sat there with him to keep him from moving around the
14 area for his own safety since he would not stay in the back
15 of the ambulance.

16 Q. Okay. At some point, did he move again?

17 A. We moved him again. Officer Schuster came over, read
18 him his Miranda, started to ask him some questions, but
19 basically the first question was do you want the medics to
20 take care of your face. He did not, so Officer Schuster and
21 I helped him across the Jersey wall.

22 Again, I had taken his hands away from him. He had
23 been unsteady, but then taking the hands away would -- made
24 it worse, so we helped him over the Jersey wall, and then
25 Officer Schuster and I actually placed him in the back of

1 Officer Schuster's vehicle.

2 That way, we knew he could not get out of the
3 vehicle, basically for his own safety. I didn't want him
4 walking around the area or falling or, you know, trying to
5 get in and out of the ambulance because the ambulance is
6 kind of a high step to get in and out of, and I just wanted
7 to know where he was so that he wasn't in harm's way.

8 Q. At that point, did you know who the driver of the
9 silver car was?

10 A. I did not.

11 Q. At some point, did you discover who the driver of the
12 silver car was?

13 A. I did. Shortly thereafter, I'm guesstimating about
14 4:00 a.m., Officer Schuster and the Sergeant that was on the
15 scene and I had a meeting basically there on the scene, and
16 we talked about what witnesses had said and things that they
17 had said, and Officer Schuster advised that he had
18 determined that Michael Butler was the driver of the silver
19 Sable and that he had planned on starting the DUI process
20 and -- but that he was overwhelmed, and he asked if I would
21 take over that process for him.

22 Q. So your investigation then turned to DUI?

23 A. Correct.

24 Q. And why is it that we have to have somebody different
25 doing the DUI investigation?

1 A. There's a time frame that the State puts in place
2 that we have to get a sample from the person. It is a two
3 hour time frame. When you're working an accident as big as
4 that, you can't get everything for the accident done in two
5 hours, let alone do the accident and the DUI in the two
6 hours, so we usually spread it so that one officer does the
7 accident and one officer does the DUI.

8 Q. So you determined that Michael Butler is the driver?

9 A. Yes ma'am.

10 Q. And I believe right now he's in the back of Officer
11 Schuster's car?

12 A. That's correct.

13 Q. What do you do next?

14 A. I approach Officer Schuster's vehicle and I open the
15 door and I asked him to step out of the vehicle. When I do
16 that, I notice that he's gotten out of the handcuffs. He
17 has one hand out, one hand in, and, you know, just kind of
18 watching him to see what he's doing, and asked him to step
19 out. He initially does not want to. Again, he's not being
20 aggressive or anything, but he says, you know, just talk to
21 me while I'm in here.

22 He finally does exit the vehicle for me, and I walked
23 with him up to the front of my patrol vehicle. We all have
24 microphones on us, and my microphone is basically synced to
25 my mobile video, so I wanted to make sure that you could see

1 and hear everything that I was doing with Michael Butler, so
2 we went to the front of my vehicle.

3 I started to read him his Miranda and stopped because
4 I realized that I had not taken the cuff off of one of his
5 hands. His hands were free, but the cuff was hanging, so I
6 stopped, took the handcuffs off of -- completely off of him,
7 actually handed the cuffs to Officer Schuster who was
8 standing there with me and proceeded to read him his Miranda
9 rights.

10 He told me that he understood his Miranda rights,
11 verbally told me that he did, and I advised him that I was
12 going to ask him to do some field sobriety tests and made it
13 clear that I -- they were simple tests, but I needed him to
14 listen to everything that I said and follow the
15 instructions.

16 Q. What are field sobriety tests?

17 A. They are simple tests that we ask someone to perform
18 that help us determine if they are capable of driving or if
19 they are under -- physically under the influence of alcohol.
20 It's just a clue, clues that we look for. We're trying to
21 distract -- basically distract them, ask them to do more
22 than one thing at one time to see if they can do that.

23 When you're driving, you're using your feet, your
24 hands, your eyes, multiple things at the same time and you
25 have -- normally if you're under the influence, you cannot

1 do multiple things at one time, so it gives us clues to see
2 if they are under the influence and at what level they're
3 under the influence.

4 Q. What field sobriety tests did you offer?

5 A. I offered the ABC test, the one-leg stance, and the
6 walk-and-turn.

7 Q. And are those the tests that you are trained to give?

8 A. At that time, those were the tests that I was trained
9 to give. I've had additional training now, but then those
10 were the three tests that the South Carolina Criminal
11 Justice Academy had shown me how to use and during my field
12 time had been instructed and shown how to use.

13 Q. I believe you testified it was the ABC test?

14 A. Yes ma'am.

15 Q. The one-legged-stand?

16 A. Yes ma'am.

17 Q. And the walk-and-turn?

18 A. Correct.

19 Q. Is that the order that you did them in?

20 A. Yes ma'am.

21 Q. Okay. Let's talk first about the ABC test. What is
22 the instruction for that?

23 A. Basically to wait until I tell you to begin, and to
24 stand with your hands down by your side, to lean your head
25 back, close your eyes, and then say the ABC's out loud.

1 Q. How did Michael Butler perform on that test?

2 A. Not well. He started trying to say the ABC's before
3 I had finished giving the instructions. He never leaned his
4 head back. He never shut his eyes, and when he was saying
5 the ABC's, he got up to P and then stopped, kind of mumbled,
6 and then tried to sing them, and then said them again out
7 loud, but his letters were not in the proper order.

8 Q. I believe you said the one-legged-stand was next?

9 A. Yes ma'am.

10 Q. What are the instructions on that?

11 A. The same thing, to listen to my instructions and not
12 begin until you are told, to have your hands down by your
13 side, to lift one leg, either/or, off the roadway or the
14 pavement in front of you approximately two feet, toe pointed
15 to look at your foot, and to count out loud from one-one-
16 thousand and one to one-one-thousand and ten.

17 Q. And how did Michael Butler perform on that?

18 A. He also did not perform this test well. Instead of
19 lifting his leg out in front of him so that it was pointed
20 in front of him, he actually kind of lifted it up at his
21 knee and tucked his foot kind of behind him, and then put it
22 down and started counting with both feet on the ground,
23 neither foot lifted, and counted.

24 Instead of counting to one-one-thousand and ten, he
25 continued, but he was like one-one-thousand and seventeen,

1 nineteen, eighteen, so he messed up his numbers, so not able
2 to complete the test, wasn't following directions.

3 Q. And the walk-and-turn was next?

4 A. The walk-and-turn was next. As I started to tell him
5 what to do, he started kind of yelling at me. I had to ask
6 him again if he was even going to complete the test. I was
7 actually still trying to give the directions when he started
8 to attempt to do just the portion that I had told him. He
9 finally just turned around and he said I can't do it, and
10 doesn't even attempt to do it on the side of the road.

11 Q. And at that point, what happened?

12 A. Based on the clues that I had gotten from all of my
13 senses that, you know, I had smelled the alcohol on him,
14 with his speech and the numbers and everything, that his
15 speech was not how it should be, and then from the clues
16 that, you know, he was unsteady and unable to complete the
17 tests, I did place him under arrest for DUI, and I read him
18 his implied consent rights.

19 **MS. RICHARDSON:** Your Honor, may we approach?

20 **THE COURT:** Absolutely.

21 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

22 Q. At that point, he was placed under arrest?

23 A. Yes. I actually placed the handcuffs back on him and
24 I actually tell him that he is under arrest for DUI.

25 Q. What time was that?

1 A. My report shows that it was 4:30 approximately, but
2 reviewing my mobile video on the -- the actual time on my
3 mobile video was 4:26 a.m.

4 Q. You talk about a mobile video, were your actions on
5 that night recorded?

6 A. Yes ma'am.

7 Q. And how was that?

8 A. There is a mobile video that hangs in the front
9 window of my patrol vehicle, and then it records everything
10 that I do. I actually have a microphone that fits onto my
11 belt and it captures my voice and everything that I say and
12 do when the mobile video is activated.

13 Q. I'm going to show you what will be marked as State's
14 Exhibit 29.

15 A. Okay.

16 Q. What is that?

17 A. This is a certified copy of the mobile video from the
18 accident night.

19 Q. Have you had a chance to review that?

20 A. Yes ma'am.

21 Q. Has it been changed or altered in any kind of way?

22 A. No ma'am.

23 Q. And how do you know that?

24 A. I've initialed it that I've seen it and looked at it.

25 MS. RICHARDSON: The State would seek to admit State's

1 Exhibit 29, Your Honor, and publish to the jury.

2 THE COURT: Any objection?

3 MR. GALMORE: No sir.

4 THE COURT: All right.

5 It's in evidence and you may publish.

6 (DVD VIDEO OF ON-SCENE FIELD SOBRIETY TESTS INTRODUCED
7 INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 29.)

8 (STATE'S EXHIBIT NUMBER 29, DVD VIDEO OF ON-SCENE FIELD
9 SOBRIETY TESTS, IS PUBLISHED IN OPEN COURT.)

10 Q. Officer Swarthout, was a true and accurate
11 representation of what happened that night?

12 A. Yes ma'am.

13 Q. And at that point in time that we stopped the video,
14 what happened to Mr. Butler?

15 A. At that point, you know, he is under arrest, so
16 Officer Schuster and I start to escort him to the back of my
17 patrol vehicle. While we are doing that, Officer Schuster
18 is still investigating, trying to figure out exactly who all
19 was in the vehicle, so he does ask him who was in the
20 vehicle with him, and he proceeds to tell us that there was
21 a white male and a black male in the vehicle with him.

22 And we specifically asked him about Mr. White,
23 Mitchell White, who was the deceased, and he tells us at
24 first that -- he says I took him home, and then he said I
25 dropped him off, I believe were his exact words, and we keep

1 walking and we're still trying to understand.

2 And Officer Schuster, with me standing there, said --
3 asked, you know, kind of who was driving, and at first he
4 tells us the white male was driving, but he can't tell us
5 the white male's name or even where he's at, so Officer
6 Schuster specifically again asked him about Mr. Mitchell --
7 Mr. White, and he says, no, he was the passenger; no, he
8 wasn't driving.

9 So I put him in the back of my patrol vehicle with
10 the blood and everything. Officer Schuster and I helped
11 seatbelt him, but right before I went to leave to take him,
12 we had the medic unit come over one more time and talk to
13 him because he was bleeding. I felt he needed at the
14 minimum to be cleaned up from the blood, but he refused to
15 allow them to do that.

16 I actually took him out of my patrol vehicle, took
17 off the handcuffs, and he actually signed a waiver with the
18 medic unit that he did not want treatment and he did not
19 want transport, so we went to the police department.

20 Q. How many times did you offer him medical treatment?

21 A. At least three times.

22 Q. And what was his response to all three times?

23 A. He never wanted any type of treatment or transport.

24 Q. Now, this white male, to your knowledge, ---

25 A. Did not exist.

1 Q. Did Mr. Butler on the roadside ever tell you where
2 they were coming from, where he was coming from?

3 A. Roadside, he did not.

4 Q. Where was he transported to?

5 A. From the accident scene to the North Myrtle Beach
6 jail.

7 Q. And what happened at the jail?

8 A. Inside of the jail we have a -- we call it a B.A.
9 room, a breathalyzer room. Once he got to the jail and he
10 was accepted into the jail, I went into the breathalyzer
11 room and got it ready, got the video recorded, opened the
12 door and asked him to come into the room with me.

13 Q. The breathalyzer room, is that also known as the
14 DataMaster?

15 A. Yes, it's the same thing as the DataMaster, and we
16 just still call it the B.A. room. It's the same thing,
17 though.

18 Q. And there's certain -- what, if any, policies or
19 procedures do you have to follow?

20 A. Of course, I have to have it recorded. I'm not
21 allowed to have any radios, or telephones, or anything
22 inside the room. I have to advise him of his rights, advise
23 him of what he's being charged with.

24 I have to check his mouth. I have to actually tell
25 him that he's being recorded, and I have to observe him for

1 twenty minutes before I can accept or take a sample from
2 him.

3 Q. Are all officers qualified to run the DataMaster?

4 A. No ma'am.

5 Q. What training, if any, is necessary?

6 A. You have to go to the South Carolina Criminal Justice
7 Academy and take a specific class that trains you to use the
8 DataMaster machine.

9 Q. And were you certified to operate that machine?

10 A. Yes ma'am.

11 Q. You said you had to observe him for twenty minutes.
12 Why is that?

13 A. It's part of the statute that it requires me to
14 observe him for twenty minutes, that reason being, you know,
15 if he had just taken a drink of alcohol or swished it around
16 in his mouth, that would give it time to dissipate out of
17 his mouth so that it could not in any way interfere with the
18 test and we're getting a true sample of his blood alcohol
19 level from his inside lungs.

20 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 30 FOR
21 IDENTIFICATION ONLY.)

22 Q. I'm going to show you what's been marked as State's
23 Exhibit 30. What is that?

24 A. It's the advisement of the implied consent rights.

25 Q. And whose name is on that?

1 A. And at the top, it says Michael Anthony Butler, and
2 then my name is signed down at the bottom as well.

3 Q. And is there a date on that?

4 A. There is down at the bottom next to my name. It has
5 2/16/10 and the time.

6 Q. Are those the rights that you advised him of that
7 night?

8 A. Yes ma'am.

9 MS. RICHARDSON: The State would seek to admit State's
10 Exhibit 30.

11 THE COURT: Any objection?

12 MR. GALMORE: No sir.

13 THE COURT: All right.

14 State's 30 is in evidence without objection.

15 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT
16 NUMBER 30.)

17 Q. Would you publish those rights to the jury, please.

18 A. Yes ma'am. Starting from the top, it says advisement
19 of implied consent rights; subject's name, Michael Anthony
20 Butler, Jr.; his driver's license number, 24519987; date of
21 birth, 08/17/79; State License, I have N.C.; and it says
22 felony driving under the influence advisement.

23 (a) Will test be videoed? If yes, start here and
24 inform subject of video recording. If no, if answer is no,
25 start here. Inform subject of type of samples requested,

1 i.e. blood, breath, blood, urine. (b) Provide subject with
2 a written copy of the following advisement and read the
3 statement to the subject. You are under arrest for felony
4 driving under the influence, felony DUI, Section 56-5-2945,
5 South Carolina Code of Laws, 1976 as amended, or a law
6 enforcement officer has probable cause to believe that you
7 have violated this section.

8 The officer has directed that samples be taken for
9 alcohol or drug testing. The samples will be taken and
10 tested according to Section 56-5-2950 and SLED policies.
11 Pursuant to Section 56-5-2946, you must submit to either one
12 or a combination of chemical tests for the purpose of
13 determining the presence of alcohol, drugs, or a combination
14 of alcohol and drugs.

15 The resisting, obstruction or opposition to testing
16 pursuant to Section 56-5-2946 is evidence admissible at
17 trial. If your test or samples have an alcohol
18 concentration of fifteen one-hundredths of one percent, 0.15
19 percent, or more, your privilege to drive in South Carolina
20 must be suspended for at least one month.

21 You have the right to request an administrative
22 hearing within thirty days of the issuance of the notice of
23 suspension. If you do not -- if you do not request an
24 administrative hearing or if your suspension is upheld at
25 the administrative, you must enroll in an alcohol/drug

1 safety action program.

2 If applicable, perform the following procedures.

3 (c:) Check subject's mouth and remove any foreign material.

4 Not required if a refusal has occurred. (d) Enter

5 biographical data into the DataMaster DMT. Required for all
6 tests, including refusals.

7 And (e), observe the subject for a minimum of twenty
8 minutes before collecting breath sample. Not required if
9 refusal has occurred. And directly underneath that is also
10 in Spanish, but I can't read Spanish.

11 Q. Are those the rights that you advised him of on that
12 night?

13 A. Yes ma'am.

14 Q. And I believe in those it's -- for an option for you
15 to check his mouth?

16 A. Yes ma'am.

17 Q. Did you do that?

18 A. I did.

19 Q. Did he have anything in his mouth?

20 A. He did not.

21 Q. Talk to me a little bit about your training with that
22 DataMaster machine. Have you ever had to change the
23 chemical solution?

24 A. I only have had to change it in training.

25 Q. And what happens if that fluid is not changed

1 properly?

2 A. The machine will not operate properly. It will give
3 you an error code and not let you perform a test.

4 Q. And did you receive an error code on this night?

5 A. No ma'am.

6 Q. I'm going to show you what will be State's Exhibit

7 31. What is this?

8 A. It's a video recording of the B.A. room.

9 Q. So your actions in the DataMaster Room were recorded?

10 A. Yes ma'am.

11 Q. Has that been altered or changed in any kind of way?

12 A. No ma'am.

13 Q. How do you know that?

14 A. I've seen this video and I have initialed that.

15 **MS. RICHARDSON:** The State seeks to admit State's
16 Exhibit 31 into evidence.

17 **THE COURT:** Any objection?

18 **MR. GALMORE:** Your Honor, I would object for reasons
19 previously stated during our motion in limine.

20 **THE COURT:** All right. Very good.

21 I'm going to allow it into evidence over the objection
22 of the Defense.

23 You may proceed.

24 **MS. RICHARDSON:** Thank you, Your Honor. The State
25 would request to publish it to the jury at this time.

1 **THE COURT:** You may do so.

2 (DVD OF DATAMASTER TEST INTRODUCED INTO EVIDENCE AS
3 STATE'S EXHIBIT NUMBER 31.)

4 (STATE'S EXHIBIT NUMBER 31, DVD OF DATAMASTER TEST,
5 PUBLISHED IN OPEN COURT.)

6 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 32 FOR
7 IDENTIFICATION ONLY.)

8 Q. Let me show you what's been marked as State's Exhibit
9 32. Can you identify that for me?

10 A. Yes ma'am. This is the South Carolina form that
11 prints out of our computer after we do a breath analysis.

12 Q. Whose name is on that form?

13 A. The subject's name is Michael Butler.

14 Q. And is that the sample -- is that what printed out of
15 that machine on February 16th, 2010?

16 A. Yes ma'am.

17 **MS. RICHARDSON:** Your Honor, the State would seek to
18 admit State's Exhibit 32 into evidence.

19 **THE COURT:** Any objection?

20 **MR. GALMORE:** Your Honor, I would renew our previous
21 objection on this exhibit.

22 **THE COURT:** All right. Very good.

23 I'm going to allow it over the objection of the
24 Defense.

25 (PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT

1 **NUMBER 32.)**

2 Q. Let's talk briefly about that. Are you able to look
3 at that and tell whether the DataMaster ran a self-test?

4 A. Yes ma'am. It specifically gives me a line item of
5 what it was doing and the time that it was doing it, and
6 whether or not it verified a test.

7 Q. And what was Michael Butler's test result?

8 A. 0.19.

9 Q. All right.

10 **(PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 33 FOR**
11 **IDENTIFICATION ONLY.)**

12 Q. I'm going to show you what's been marked as State's
13 Exhibit 33. And what is that?

14 A. It's the South Carolina Department of Motor Vehicles'
15 Notice of Suspension.

16 Q. And whose name is on that form?

17 A. Michael Anthony Butler, Jr.

18 Q. And is it dated?

19 A. It is, 2/16/2010.

20 **MS. RICHARDSON:** Your Honor, the State would seek to
21 admit State's Exhibit 33 into evidence.

22 **THE COURT:** Any objection?

23 **MR. GALMORE:** No sir.

24 **THE COURT:** It's in evidence without objection.

25 **MS. RICHARDSON:** Thank you, Your Honor.

1 **(PHOTO INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT**
2 **NUMBER 33.)**

3 Q. And those are the rights you advised him of after he
4 gave his breath sample?

5 A. Yes.

6 Q. Or I guess it was -- was the suspension you advised
7 him of?

8 A. Correct.

9 Q. And why was his driver's license suspended?

10 A. Because he blew greater than a .15.

11 Q. Is that your policy?

12 A. No ma'am. That's the State's policy.

13 Q. And what time did he give his breath sample?

14 A. The time on the form is 05:29.

15 Q. And does the machine print out the time of the test
16 or do you punch that in, the time he submits to his test?

17 A. The machine does that. It's based on the machine's
18 time.

19 Q. What did you do with Michael Butler after leaving the
20 DataMaster Room?

21 A. We went back out into the jail facility. He had
22 asked then to have medical treatment. They -- I advised the
23 dispatchers and the jailers. They called for First
24 Responder EMS to come to the jail, so an ambulance and the
25 fire personnel came to the jail, and he actually didn't want

1 to go by ambulance to the hospital. He requested that I
2 personally drive him in my patrol vehicle to the hospital.

3 Q. Did you drive him to the hospital?

4 A. I did.

5 Q. How long were you at the hospital for?

6 A. Approximately three hours.

7 Q. Was he released with you?

8 A. Yes ma'am.

9 Q. What did you do with him after the hospital?

10 A. I turned him over to the North Myrtle Beach jail and
11 where he was held.

12 Q. Was there any medical condition that prevented him
13 from being booked in at the jail?

14 A. No ma'am.

15 Q. Does the jail commonly refuse to book people in or
16 accept people?

17 A. Yes ma'am.

18 Q. And why is that?

19 A. If they have a condition that our jailers cannot take
20 care of or are not -- none of our jailers have any medical
21 training, so if there is anything where they have to be
22 watched or monitored, our jail cannot do that.

23 **MS. RICHARDSON:** The Court's indulgence just a moment.

24 **THE COURT:** Yes ma'am.

25 **MS. RICHARDSON:** That's all the questions for this

1 witness.

2 **THE COURT:** All right.

3 Ladies and gentlemen, let's -- we'll take a short break
4 for about five or ten minutes and then we'll come in and do
5 the cross examination. Go to your jury room for about five
6 minutes.

7 Everybody else remain seated, please.

8 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
9 **JURY.)**

10 **THE COURT:** All right, we'll be at ease for about five
11 or ten minutes. Thank you very much.

12 **MS. RICHARDSON:** Thank you, Your Honor.

13 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
14 **THE PRESENCE OF THE JURY.)**

15 **THE COURT:** All right, Solicitor, are you ready for the
16 jury to come back in?

17 **MS. RICHARDSON:** Just briefly, Your Honor, ---

18 **THE COURT:** Yes ma'am.

19 **MS. RICHARDSON:** --- I needed a third part of that B.A.
20 room that you were unaware of and that we did not put on
21 record. That third part is talking about additional testing
22 and his right to additional testing, so I went ahead and
23 muted that part. I told the Defense attorney I was going to
24 do that, and he was okay with that.

25 **THE COURT:** All right.

JURY OUT/ON RECORD/JURY IN
HEATHER SWARTHOUT - CROSS BY GALMORE

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1 Mr. Galmore, you were aware of that, correct?

2 **MR. GALMORE:** Yes sir.

3 **THE COURT:** And that was with your agreement, correct?

4 **MR. GALMORE:** Yes sir.

5 **THE COURT:** All right. Very good.

6 Mr. Galmore, are you ready for the jury to come in?

7 **MR. GALMORE:** Yes sir.

8 **THE COURT:** All right.

9 Ask them to come in.

10 **MS. RICHARDSON:** Your Honor, may we approach?

11 **THE COURT:** Certainly.

12 **(A BENCH CONFERENCE WAS HELD OFF THE RECORD.)**

13 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
14 **JURY.)**

15 **THE COURT:** All right, Mr. Galmore, cross-examination.

16 **CROSS-EXAMINATION BY MR. GALMORE:**

17 Q. You didn't see either of the cars actually in motion?

18 A. No sir.

19 Q. Because they had come to a complete stop?

20 A. No sir.

21 Q. So you did not personally observe who was driving the
22 silver car? I understand you were there to assist and --
23 assist Officer Senter?

24 A. Schuster.

25 Q. Schuster, I'm sorry, and Schuster was the primary

1 officer on the scene?

2 A. That's correct, investigation, but kind of whatever
3 he needed or asked me to do, I was there to help him.

4 Q. So he asked you to take pictures?

5 A. Yes.

6 Q. And you did that?

7 A. Correct.

8 Q. Did you have an opportunity to talk with Ms. Alden?

9 A. Very briefly.

10 Q. So you talked to her the night of the accident while
11 still on the bridge?

12 A. Yes sir.

13 Q. Did you ask her if she had been drinking?

14 A. No sir.

15 Q. Did you ask her if she had been speeding?

16 A. No sir.

17 Q. Did you talk with any other people at the scene?

18 A. I talked to several officers at the scene, several
19 medics, E.M.T.s, and Mr. Butler.

20 Q. And the officers and the medics were telling you that
21 Mr. Butler was kind of in the way?

22 A. Absolutely.

23 Q. And what specifically was he doing?

24 A. The one time that I personally saw him, he was
25 leaning over one of our firefighters and blood was dripping

1 down as he was working on extricating.

2 Q. Okay. Was he attempting to stop the firefighter from
3 performing his duties?

4 A. No. He was just -- no one wants blood dripped on
5 them and more or less in the way, not a safe place for him
6 to be.

7 Q. Was he arguing, fussing, fighting the firefighter?

8 A. No sir.

9 Q. Would it be fair to say that he was just kind of
10 walking around?

11 A. Yes sir.

12 Q. And you noticed that he was dripping blood on one of
13 the officers -- I mean one of the firefighters?

14 A. Correct.

15 MR. GALMORE: May I approach the witness, Your Honor?

16 THE COURT: Yes sir.

17 (DNA DOCUMENT IS MARKED AS DEFENDANT'S EXHIBIT NUMBER 4
18 FOR IDENTIFICATION ONLY.)

19 Q. Officer, let me hand you what's been marked for
20 identification purposes only as Defendant's Exhibit Number 4
21 and ask you if you know what that document is?

22 A. I do.

23 Q. And what is that document?

24 A. It is a -- the one that we fill out when we do DNA
25 evidence and there is DNA evidence and we're sending it to

1 SLED.

2 Q. And is that document addressed to you?

3 A. It is.

4 Q. Okay. So that document was mailed from SLED to you?

5 A. It was.

6 Q. Does it appear to be a copy of the original document
7 that you received?

8 A. Yes sir.

9 Q. Does it appear to be altered in any way?

10 A. No sir.

11 Q. And that's a document that was mailed or addressed to
12 you?

13 A. Yes sir.

14 **MR. GALMORE:** Your Honor, I would at this time move to
15 introduce Defendant's Exhibit Number 4 into evidence as the
16 Defense's next exhibit.

17 **THE COURT:** Any objection?

18 **MS. RICHARDSON:** No sir, not as -- not as she has
19 identified it.

20 **THE COURT:** All right.

21 Defendant's 4 then is in evidence without objection.

22 **(DNA DOCUMENT INTRODUCED INTO EVIDENCE AS DEFENDANT'S**
23 **EXHIBIT NUMBER 4.)**

24 Q. Can you please tell me what the purpose of requesting
25 that document was for?

1 A. I'm not sure I understand the question.

2 Q. Okay. Let's do it another way. You received that
3 document, correct?

4 A. Correct.

5 Q. And it came from SLED to you, correct?

6 A. Correct.

7 Q. And this document is to identify blood samples that
8 were taken at the scene, is that correct?

9 A. It doesn't specifically say that, but it's a buccal
10 swab and then swab- -- it says swabs from a driver's air bag
11 and swab from passenger air bag.

12 Q. Okay. When you say buccal swab, can you explain to
13 the jury what that is?

14 A. It's a sample taken from a person usually from like
15 inside of the mouth.

16 Q. And who was the buccal swab taken from in this case?

17 A. Michael A. Butler.

18 Q. All right. Now, I understand that there were
19 samples, blood samples, sent to SLED from the crime scene,
20 is that correct?

21 A. Yes, that's correct.

22 Q. Okay. And what items were sent to SLED to be tested?

23 A. It describes it as a swab from driver's air bag and a
24 swab from the passenger air bag.

25 Q. So a bloody piece of the driver's air bag was sent to

1 SLED?

2 A. No sir.

3 Q. No? Please explain.

4 A. A swab.

5 Q. Okay. So let me back up. Was there blood on the
6 driver's side air bag?

7 A. I cannot answer that.

8 Q. A swab was taken from the driver's side air bag and
9 sent to SLED, is that correct?

10 A. Via this document, yes sir.

11 Q. And a swab was taken from the passenger side air bag
12 and sent to SLED?

13 A. Via this document, yes sir.

14 Q. And SLED sent you the results of those tests?

15 A. They sent the results to me, yes.

16 Q. Okay. Could you publish for the jury what the
17 results of those tests were?

18 A. The partial DNA profile developed from Item 2.2
19 matches the DNA profile of Michael Butler. The probability
20 of randomly selecting an unrelated individual having a DNA
21 profile matching this item is approximately one in 1.4
22 quadrillion. A particle DNA profile developed from Item 2.1
23 also matches the DNA profile of Michael Butler.

24 It states note any remaining evidence and/or
25 packaging will be returned to the requesting agency.

1 Q. So two swabs were sent to SLED?

2 A. That's what it says, yes sir.

3 Q. And a standard Michael Butler blood sample was also
4 sent to SLED?

5 A. No sir, a buccal, a swab.

6 Q. A swab?

7 A. Yes sir.

8 Q. Now, you talk about Item 2.1. What is Item 2.1?

9 A. From the phonics the way they listed it?

10 Q. Yes.

11 A. So 2.1 is the swab from driver's air bag.

12 Q. Okay. And what is Item 2.2?

13 A. Swab from passenger air bag.

14 Q. So what you just read us then is that the swab from
15 the driver's side air bag matches Michael Butler's DNA?

16 A. Correct.

17 Q. And that the swab from the passenger side air bag
18 also matches Michael Butler's DNA?

19 A. Correct.

20 Q. All right. Thank you, ma'am. And when you were
21 alerted by fire and rescue personnel that there was a person
22 that was in the wagon, would that have been the first time
23 you came into contact with Mr. Butler?

24 A. Yes sir.

25 Q. And at that time, I think you said that he was

1 bleeding on a person?

2 A. Yes sir.

3 Q. All right. And your answer was to take him to the
4 ambulance?

5 A. Correct.

6 Q. Did you stay at the ambulance while he was being
7 treated by paramedics?

8 A. I did not.

9 Q. And what was the next contact that you had with Mr.
10 Butler?

11 A. He was back out of the ambulance and the medic called
12 me over and wanted me to take him -- control of him because
13 they could not. He was not doing as they had asked.

14 Q. Was he fighting with paramedics?

15 A. No.

16 Q. What was he doing?

17 A. He just kept getting out of the ambulance and going
18 back to where it was not safe for him to be.

19 Q. Kind of walking around again?

20 A. Correct.

21 Q. And as a result of that, you took him and put him in
22 a squad car?

23 A. I did take him for his safety and put him in a squad
24 car. That way, I knew he could not get out of the squad
25 car.

1 Q. Okay. So when you put him in the squad car he was
2 walking around and not particularly doing anything but
3 walking?

4 A. Correct.

5 Q. And he was bleeding?

6 A. Correct.

7 Q. How did you determine that Michael Butler was the
8 driver of the car?

9 A. I did not.

10 Q. And you did not see Michael Butler driving?

11 A. I did not.

12 Q. But you arrested him for being the driver?

13 A. Correct. I did that at the request of Officer
14 Schuster.

15 Q. So you didn't determine that he was the driver?
16 Another North Myrtle Beach officer did?

17 A. Correct.

18 Q. And all you did was carry out his instructions after
19 that?

20 A. Correct.

21 Q. So Officer Schuster should be up here explaining how
22 he determined that Michael Butler was the driver?

23 A. There's witness statements that have been put into
24 evidence.

25 Q. Did any police officer see Mr. Butler driving this

1 vehicle?

2 A. I am not aware.

3 Q. How many police officers were on scene on this night?

4 A. I don't know exactly. I can give you the ones that I
5 know for sure were at the scene, accident.

6 Q. Okay.

7 A. I know that there was myself. I was the second
8 arriving, and the first arriving was Officer Schuster;
9 Sergeant Vinn, Sergeant Boyd came to the scene, and
10 Lieutenant Johnson came to the scene, and Detective
11 Pittsinger came to the scene.

12 Q. All right. And you testified that you did not see
13 Michael Butler driving this vehicle?

14 A. Yes sir.

15 Q. Okay. Regarding Officer Schuster, do you know if he
16 saw Michael Butler driving this vehicle?

17 A. I do not know, sir.

18 Q. What about Sergeant Boyd?

19 A. I do not know, sir.

20 Q. Did Lieutenant Johnson see Michael Butler driving
21 this vehicle?

22 A. I do not know.

23 Q. And I think the last person you said was Detective
24 Pittsinger. Did he see Michael Butler driving this vehicle?

25 A. I do not know, sir.

1 Q. So the police officers that you identified were on
2 the scene, none of them saw Michael Butler driving this
3 vehicle?

4 A. I said I did not know, sir.

5 Q. You do not know if any police officers saw Michael
6 Butler driving this vehicle?

7 A. Yes sir.

8 Q. And if they did, they probably need to come up here
9 and testify that they saw him, would that be fair?

10 A. Yes sir.

11 Q. So Officer Schuster tells you to arrest Michael
12 Butler?

13 A. No sir.

14 Q. No. Officer Schuster told you to conduct your
15 sobriety tests on Mr. Butler?

16 A. Start the DUI process to see how that would go.

17 Q. So he told you to investigate with the possibility of
18 arresting Mr. Butler for DUI?

19 A. Correct.

20 Q. Now, these field sobriety tests, are you supposed to
21 demonstrate the tests for the person?

22 A. Then? No sir. I was not under -- aware that I
23 should have. Now I have had additional training and, yes
24 sir.

25 Q. So your training was inadequate back in 2010?

1 A. No sir. I'm saying there's new standards.

2 Q. Okay. There were old standards where you didn't have
3 to demonstrate these tests?

4 A. Correct. You would ---

5 Q. Now there are new standards where you do have to
6 demonstrate these tests?

7 A. Correct, and they've added tests to the standard.

8 Q. And they subtracted tests also?

9 A. Correct.

10 Q. So let's talk about this ABC test. Is that a test
11 that's currently in use?

12 A. No sir.

13 Q. For 2010, that was a test that was in use?

14 A. Yes sir.

15 Q. For the ABC test, don't you have to first determine
16 that a person knows his ABCs?

17 A. Yes sir, and I asked him that.

18 Q. Okay. So I guess what I'm saying, if you are a dummy
19 and you don't know your ABCs, you can't take the ABC test?

20 A. Correct.

21 Q. Now, let's talking about the HGN test. What does the
22 HGN stand for?

23 A. Horizontal Gaze Nystagmus. I'm sorry, I can't say
24 that word very well.

25 Q. And that is also a field sobriety test, is it not?

1 A. It is a current one, yes sir.

2 Q. Was that testing used in 2010?

3 A. Not that I was aware of or that I had been trained to
4 do.

5 Q. Okay. Now, with this HGN test, it studies the
6 movement of a person's eyes, is that correct?

7 A. That is correct.

8 Q. And if a person has an eye injury, they would not be
9 able to perform that test, would they?

10 A. They would not.

11 Q. But they could try to perform the test?

12 A. You could try.

13 Q. Would the test results be valid if the person who
14 took the test had an eye injury when they took it?

15 A. I do not know.

16 Q. Are you saying it's okay to give a person an eye test
17 when they have an eye injury?

18 A. I would not, no, sir.

19 Q. Okay. And the same goes true of, say, an ankle
20 injury. You have a person who steps out of a vehicle and is
21 standing there with a broken ankle, a cast on his leg, you
22 wouldn't ask that person to do a walk-and-turn, would you?

23 A. No sir.

24 Q. In this case, you asked Mr. Butler to perform an ABC
25 test?

1 A. Yes sir.

2 Q. And then you asked him to perform a one-leg-stand
3 test?

4 A. Yes.

5 Q. And you asked him to perform the walk-and-turn test?

6 A. Correct.

7 Q. And you also questioned him about what happened?

8 A. Correct.

9 Q. And what was his first response to you about what
10 happened?

11 A. When I first talked to him, I basically just asked
12 him what vehicle he was in, not necessarily asking him what
13 happened, but, you know, what vehicle he was in, and he told
14 me he came to the scene in an ambulance.

15 Q. Now, we know he didn't come to the scene in an
16 ambulance?

17 A. Yes sir.

18 Q. Because the ambulances were coming to the scene for
19 the accident?

20 A. Correct.

21 Q. But that was the answer he provided?

22 A. Correct.

23 Q. Did you find anything unusual about that answer?

24 A. Absolutely.

25 Q. And he gave a second answer also, is that correct?

1 A. That is correct.

2 Q. And what was the second answer that he gave?

3 A. I currently just drew a blank. I don't recall.

4 Q. Something along the lines of they dropped somebody

5 off?

6 A. May I look in my report?

7 Q. Yes ma'am. Any time -- you can look at your report

8 at any time.

9 A. It's not in my report, but one of the times he told

10 me he was coming from Loris.

11 Q. Okay.

12 A. I don't know if that was the second or which time he

13 told me.

14 Q. So in response to your question, he gave you two

15 different answers?

16 A. Correct.

17 Q. The first answer being that he was riding with some

18 -- a white male and a black male?

19 A. No, that wasn't the first one. That was later.

20 Q. That was later?

21 A. I know that one was later, yes sir.

22 Q. Okay. What was the first answer, please?

23 A. The first answer was that he came in the ambulance.

24 Q. And the second answer was?

25 A. That he was coming from Loris or actually that he was

1 in Loris.

2 Q. Okay. And he was saying at that moment he thought he
3 was in Loris instead of on the ---

4 A. That's what he was telling me.

5 Q. --- big bridge in North Myrtle Beach? Okay. And
6 then he gave you a third answer and what was that?

7 A. The third answer closer to the -- after I had
8 arrested him, is more what happened, and he told us, you
9 know, that there had been a white male driving or he didn't
10 know the white male's name, or anything about him, of this
11 where he was.

12 Q. Is he still bleeding when he gives these answers?

13 A. Yes sir.

14 Q. So he had been treated, but ---

15 A. He would not allow anyone to treat him.

16 Q. He had not been treated, all right. So he performed
17 the field sobriety tests and then you placed him under
18 arrest?

19 A. Based on the field sobriety tests what I -- in my
20 senses what I saw, heard and smelled.

21 Q. Now, when you placed him under arrest, that was under
22 the instruction of Officer Schuster?

23 A. Yes. I started the proceedings, the field sobriety
24 tests at the instruction or request of Officer Schuster. It
25 was my determination based on the field sobriety tests, what

1 I heard, smelled, and saw, to place him under arrest for
2 DUI?

3 Q. And you didn't see him driving?

4 A. No sir, I did not.

5 Q. Now, once we get to the B.A. room at the North Myrtle
6 Beach jail, you asked him to perform field sobriety tests
7 again?

8 A. Correct.

9 Q. Was it required that he perform those tests?

10 A. Absolutely not.

11 Q. But he did so anyway?

12 A. Correct.

13 Q. Now, in that video, we saw a lot about you and him
14 going back and forth about his injuries?

15 A. Correct.

16 Q. After he performed the breathalyzer, you took him to
17 the hospital, is that correct?

18 A. I call for a first responder, EMS, first, and then at
19 his request, he wanted to go in the patrol car, not in an
20 ambulance, so, yes, I physically took him.

21 Q. You didn't have to take him, did you?

22 A. I did not, no.

23 Q. Well, why did you take him to the hospital?

24 A. Because he asked to go.

25 Q. Well, he asked for forty minutes on the tape?

1 A. But he also told me he would stay and do the BA.

2 Q. So you take him to the hospital because you saw that
3 he was injured?

4 A. He wouldn't let them treat him on scene or clean him
5 up on the scene, so, no sir, I took him because he
6 specifically requested to go.

7 Q. Ma'am, what injuries did you observe on Mr. Butler?

8 A. He had a laceration above his right eye.

9 Q. Do you know how he obtained that injury?

10 A. Specifically, no, sir.

11 Q. Do you know the extent of that injury, how serious it
12 was?

13 A. I was at the hospital with him, so yes sir.

14 Q. It was serious enough that he had to go to the
15 hospital?

16 A. At his request, he went.

17 Q. Do you know if he had to have follow-up treatment?

18 A. I have seen the paperwork, so I can answer that if
19 you want.

20 Q. Okay.

21 A. Yes, it said to follow-up for wound care.

22 Q. And the Myrtle Beach officers from the jail would
23 have taken him for that follow-up treatment because he had
24 been booked at this point?

25 A. The North Myrtle Beach would have, not Myrtle Beach,

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REDIRECT BY RICHARDSON

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1 but no, sir. He would have been transferred out to J.
2 Reuben Long and wound care can be provided there because
3 they have nurses.

4 Q. So he had an injury that requires a hospital visit
5 and a follow-up visit, is that correct?

6 A. Correct. He had a laceration above his eye.

7 MR. GALMORE: I don't have any further questions.
8 Thank you, ma'am.

9 THE COURT: Redirect?

10 REDIRECT-EXAMINATION BY MS. RICHARDSON:

11 Q. Let's talk about those swabs. Did you collect those
12 swabs?

13 A. No ma'am.

14 Q. When were those submitted to SLED if you can tell
15 based upon that?

16 A. I don't see in front of me the date that they were
17 sent to SLED. However, I do see the date that this report
18 was mailed to the police department to my attention, and
19 that was April 24th of 2014.

20 Q. Do you have any first-hand knowledge where those
21 swabs were kept?

22 A. I do not. I didn't process this paperwork. Someone
23 else did it, but they put it to my attention because I was
24 the lead person on the DUI.

25 Q. Do you know if those swabs were in evidence?

1 A. To my knowledge, no ma'am.

2 Q. To your -- I want to be clear for the jury. To your
3 knowledge, no, they weren't in evidence, or to your
4 knowledge you don't know?

5 A. To my knowledge on the form that I've seen, I do not
6 know where they were. They were not in evidence.

7 (PHOTO IS MARKED AS STATE'S EXHIBIT NUMBER 34 FOR
8 IDENTIFICATION ONLY.)

9 Q. I'm going to show you a picture and see if you can
10 identify it. Can you tell me what the photo is if you can
11 identify it. Do you know what that is?

12 A. Yes.

13 MS. RICHARDSON: I'm sorry. I handed the witness
14 State's Exhibit 34.

15 THE COURT: All right.

16 Q. Is that -- did you take that picture?

17 A. No ma'am, I did not.

18 Q. Did you observe that on the scene?

19 A. No ma'am.

20 Q. To your knowledge, do you know where the DNA was
21 located on the passenger side air bag?

22 A. Not specifically. I just know it was on the air bag.

23 Q. So you don't know if it was closest to the driver or
24 farthest away?

25 A. I do not know.

1 Q. Okay. Out of curiosity, do you know why the ABC test
2 isn't used anymore?

3 A. Specifically I do not, no.

4 Q. And you testified that you took Michael Butler to the
5 hospital?

6 A. I did.

7 Q. You were there when the doctors administered care?

8 A. I was in the room with him. He was still in my
9 custody.

10 Q. What care was administered to Michael Butler that you
11 were aware of?

12 A. Nurses cleaned up the wound on his eye. We went over
13 to a different part of the hospital and he had scans done on
14 his head and basically his whole upper body, scans were
15 performed. And we went back to the individual room that we
16 were in and they bandaged his eye, and then they released
17 us.

18 Q. Were you told by any doctor of any medical concerns
19 that they may have?

20 A. No ma'am.

21 Q. They released him?

22 A. They released him.

23 Q. Did any doctor tell you to watch for certain things?

24 A. No ma'am.

25 Q. How long were you at the hospital?

1 A. Approximately three hours.

2 MS. RICHARDSON: The Court's indulgence just a moment.

3 THE COURT: Yes ma'am.

4 MS. RICHARDSON: Nothing further, Your Honor.

5 THE COURT: Anything on those particular questions?

6 MR. GALMORE: Just briefly, sir.

7 RECROSS-EXAMINATION BY MR. GALMORE:

8 Q. You testified that you went to the hospital with Mr.
9 Butler?

10 A. Correct.

11 Q. And you were present while the doctors were treating
12 Mr. Butler?

13 A. Correct.

14 Q. Did they stitch his eye, give him stitches or
15 sutures?

16 A. Not that I recall.

17 Q. Not that you recall. Do you know if they diagnosed
18 him with any particular diagnosis?

19 A. With that laceration to his eye.

20 Q. Did they diagnose him with a corneal abrasion?

21 A. I believe that's written on the paper, yes sir.

22 Q. All right. Did they give Mr. Butler an eye patch for
23 it?

24 A. I believe he had an eye patch underneath the gauze
25 that they had wrapped around his head, yes.

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THE STATE RESTS

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1 Q. Okay. So when he got to the hospital, they patched
2 his eye and wrapped his head?

3 A. Correct.

4 Q. And then they told him to come back for follow-up
5 treatment?

6 A. Correct.

7 Q. Now, just briefly regarding these samples, I believe
8 you testified that sample 2.1 would have been a swab that
9 was taken from the driver's side air bag, is that correct?

10 A. That's what this form says.

11 Q. Okay. And sample 2.2 would have been a swab that was
12 taken from the passenger air bag?

13 A. That's what this form says.

14 Q. And that both samples matched Michael Butler's known
15 sample that was provided along with it?

16 A. That's what the results say.

17 **MR. GALMORE:** All right, Thank you very much. No
18 further questions.

19 **THE COURT:** All right, ma'am, you may step down,
20 please. If you have any exhibits, just hand those to the
21 Court Reporter, please.

22 All right. Next witness by the State.

23 **MS. RICHARDSON:** Your Honor, at this time, the State
24 would rest.

25 **THE COURT:** All right. Very good.

REMARKS BY THE COURT
JURY OUT

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1 Mr. Galmore, do you have some matters for the Court at
2 this time?

3 MR. GALMORE: Yes sir.

4 THE COURT: All right. Very good.

5 All right, ladies and gentlemen, at this point in time
6 the State has rested the presentation of evidence by the
7 State. There are matters of law that the Court must take up
8 at this point in time. That will take some period of time.

9 It's getting close to twelve noon. I don't see any
10 necessity of you sitting in the jury room for the length of
11 time that this is going to take and then potentially for us
12 to do anything else at this point in time, so what I'm going
13 to do is give you an extended lunch break so that we can
14 take care of all the matters that the Court must take care
15 of outside your presence, and then obviously give the
16 participants some time for lunch themselves.

17 So I'm going to ask that y'all be back at two o'clock,
18 back at two o'clock in your jury room and after that we will
19 resume the trial of this case.

20 Remember, don't talk about the case. Don't allow
21 anybody to talk to you about it, and I'll see you back at
22 two o'clock. Thank you very much.

23 Everyone else remain seated.

24 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
25 JURY.)

1 **THE COURT:** All right, Mr. Galmore, be glad to hear
2 from you, sir.

3 **MR. GALMORE:** Yes sir, Your Honor. I will make a
4 motion for a directed verdict at this time. Looking at the
5 evidence in the light most favorable to the non-moving
6 party, the State has not produced any evidence that Mr.
7 Butler was the driver of the vehicle.

8 We specifically asked each witness as they testified.
9 Ms. Alden testified that she did not see who was driving the
10 Mercury Sable. Mr. Burns testified to that. Mr. Canto
11 testified that afterwards he walked up to the car and saw
12 Mr. Butler where he was positioned, but that he did not see
13 who was driving the car during the accident as well.

14 Your Honor, we had Lieutenant Dangerfield, who was here
15 from the Highway Patrol. He testified that they had the
16 ability to determine an occupant motion study that could
17 determine where each occupant of the car was, was seated
18 prior to the accident, but that they did not do it in this
19 case. Lastly, we asked Officer Swarthout if she was able to
20 see who was driving the car, and she testified that she did
21 not.

22 Because there is no direct evidence that Mr. Butler was
23 driving the vehicle, we'd ask for the case to be dismissed
24 at this time.

25 **THE COURT:** Solicitor.

1 **MS. RICHARDSON:** Yes, Your Honor, just briefly.
2 Obviously Your Honor knows the standard at this point in the
3 game. I don't need to recite that.

4 Your Honor, as I recall the testimony, Mr. Canto said
5 that he saw him behind the driver's seat. He was there
6 seconds after it happened. He saw the smoke. He heard the
7 collision. He was there seconds after it happened. Mr.
8 Butler appeared to him at that point to be passed out.

9 Your Honor, he was -- he testified specifically that
10 his butt was in the driver's seat and, Your Honor, Ms. Alden
11 testified that the car was moving. She saw headlights
12 coming at her. That would indicate that it was being driven
13 and also that it was driven by Mr. Butler.

14 **THE COURT:** All right. So the standard is in the
15 record. The Defendant is entitled to a directed verdict
16 when the State fails to produce evidence of the offense
17 charged.

18 I am concerned -- something you wanted to say, Mr.
19 Galmore?

20 **MR. GALMORE:** No sir.

21 **THE COURT:** Okay. That's all right. You can sit down.

22 **MR. GALMORE:** Yes sir.

23 **THE COURT:** A trial judge is concerned with the
24 existence of evidence, that is whether or not the evidence
25 has been produced in this trial. I am not to judge its

1 credibility or believability or to its weight. It's just
2 whether or not the evidence exists. If there's any direct
3 evidence or substantial circumstantial evidence reasonably
4 tending to prove the guilt of the accused, it's properly
5 submitted to the jury.

6 I have a different standard than the jury. The jury
7 is beyond a reasonable doubt. My standard is if there is
8 any direct evidence or substantial circumstantial evidence
9 reasonably tending to prove the guilt of the accused; it
10 goes to the jury.

11 Only when the evidence raises a mere suspicion that
12 the accused is guilty would a directed verdict be proper.
13 In this particular case, we do have the testimony of Mr.
14 Said Canto who was a witness involved in the accident
15 secondarily. He was the delivery driver for the USA Today
16 papers. He was on his way to North Carolina.

17 He indicated that immediately after the accident
18 occurred, he got out of his -- he stopped his vehicle on his
19 own. He got out of his vehicle. None of the other
20 participants in the accident, either the car that was
21 traveling in the proper lane going what you would call north
22 on Highway 17, it's not actually north by a compass
23 direction, but what everybody would commonly call the proper
24 direction on Highway 17 over the bridge, they were still in
25 the vehicle. Both occupants were still in the vehicle

1 hanging over the median wall, what's been called here in the
2 trial the Jersey wall, and the other occupants of the other
3 vehicle had not left their vehicle on their own accord.

4 The person who is deceased, that being Mitchell White,
5 had been ejected partially from the vehicle, but as
6 indicated by the testimony, he was either at that point in
7 time deceased or immediately prior to dying.

8 The driver of the vehicle or the person that appears to
9 be the driver of the vehicle was unconscious as according to
10 Mr. Canto. He said the driver was knocked out, he was
11 unconscious, behind the wheel of the vehicle.

12 He was seated in the driver's seat. His whole body was
13 in the driver's seat and he was unconscious in the driver's
14 seat, and this is immediately after the accident. It was
15 only later that that person came to and exited the vehicle.

16 There is also DNA evidence which places the Defendant
17 behind or in the driver's seat. I understand there's blood
18 on both sides of the air bags, but his blood is on the
19 driver's side air bag. All this is evidence which exists in
20 this trial, which is direct evidence, and it is also
21 substantial circumstantial evidence reasonably tending to
22 prove the guilt of the accused.

23 Mr. Galmore did provide the case to the Court, State
24 vs. Graves, a 1977 case found at 237 S.E.2d 584. The
25 decision of the South Carolina Supreme Court at that point

1 in time, I obviously have read that case and I appreciate
2 the law that's discussed in there, but that's not the
3 situation we have here when there is, as I've indicated,
4 direct and substantial evidence reasonably tending to prove
5 the guilt of the accused regarding the fact that the
6 Defendant charged with this crime was actually the driver of
7 this vehicle, and, therefore, your request for a directed
8 verdict is respectfully denied.

9 Further motions by the Defense?

10 **MR. GALMORE:** No sir.

11 **THE COURT:** All right. Obviously from the witness list
12 that you have provided, Mr. Galmore, you have one or more --
13 one or two experts that I'm assuming it would be your
14 intention to call in this case, is that correct?

15 **MR. GALMORE:** Yes sir.

16 **THE COURT:** Are they present?

17 **MR. GALMORE:** Yes sir.

18 **THE COURT:** I don't think -- we're obviously not going
19 forward now. We'll do so at two o'clock, but with them
20 being present, I do at some point in time obviously need to
21 question your client and the Defendant under oath as to his
22 understanding of his rights to testify or not testify in
23 this case.

24 What my intention would be, if you would like me to do
25 so, is to allow you to present that other testimony, take a

1 short break, and then at that point in time he would have
2 the benefit of all of the testimony that could come in,
3 except for himself if that's what he chooses to do and,
4 therefore, would be making the decision at the time of the
5 trial when he knows as best about the facts, his facts and
6 circumstances, as he can. Would you like me to do that?

7 **MR. GALMORE:** Yes sir.

8 **THE COURT:** All right. So what we'll do is we'll go
9 forward with the presentation of the Defense at two o'clock,
10 the calling of the expert witness. Do you anticipate
11 calling both of the people that you told me about or one of
12 them?

13 **MR. GALMORE:** No sir, just Mr. David Lee.

14 **THE COURT:** Mr. David Lee, Okay. All right, so we'll
15 have his testimony. Would there be other witnesses besides
16 Mr. Lee except for Mr. Butler?

17 **MR. GALMORE:** No sir.

18 **THE COURT:** All right. And so as soon as Mr. Lee's
19 testimony and direct and cross-examination is over with,
20 we'll take a short break and I'll question Mr. Butler at
21 that point in time about his rights, and then we'll go
22 forward at that point in time, all right?

23 **MR. GALMORE:** Thank you.

24 **THE COURT:** And I believe the State gave to the Court a
25 few requests to charge. I understand she gave you a copy of

JURY OUT/ON RECORD
JURY IN

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1 that, Mr. Galmore?

2 **MR. GALMORE:** Yes sir.

3 **THE COURT:** And if you'd look through that and if
4 you've got any objections to -- there were six of them. If
5 you would look through them and see if you have any
6 objections to any of them, and when we come back from lunch,
7 let me know if you object to any of those, if you would,
8 please, all right?

9 **MR. GALMORE:** Yes sir.

10 **THE COURT:** All right. Thank y'all very much.

11 **MS. RICHARDSON:** Thank you, Your Honor.

12 **(THE FOLLOWING TAKES PLACE AFTER A LUNCH RECESS AND**
13 **OUTSIDE THE PRESENCE OF THE JURY.)**

14 **THE COURT:** All right. Is the State ready for the jury
15 to come in?

16 **MS. RICHARDSON:** The State is ready, Your Honor.

17 **THE COURT:** And the Defense?

18 **MR. GALMORE:** Yes sir.

19 **THE COURT:** Ask the jury to come in, please.

20 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
21 **JURY.)**

22 **THE COURT:** Mr. Galmore, are you ready with your
23 witness?

24 **MR. GALMORE:** Yes sir. The Defense would call David
25 Lee to the stand.

1 **THE COURT:** All right.

2 Mr. Lee, if you would meet the Clerk of Court right
3 over there, please, sir.

4 **DAVID W. LEE,** being first duly sworn, testifies as
5 follows:

6 **THE DEPUTY CLERK:** Please be seated. State your full
7 name and spell your last name for the Court, please.

8 **MR. LEE:** My name is David W. Lee, L-E-E.

9 **THE COURT:** Go ahead, Mr. Galmore.

10 **DIRECT-EXAMINATION BY MR. GALMORE:**

11 Q. Mr. Lee, where are you employed?

12 A. Currently I work for Crash Teams. It's a collision
13 reconstruction unit based out of Charleston.

14 Q. Is that a private company?

15 A. It is.

16 Q. Prior to that, where were you employed?

17 A. I was employed with the South Carolina Highway Patrol
18 for twenty-seven years.

19 Q. And what were your duties as a South Carolina highway
20 patrolman?

21 A. When I joined the Highway Patrol in 1987, my primary
22 duties were to enforce the traffic laws of the State of
23 South Carolina, investigate traffic collisions as they
24 occurred. I was on eight hour tours of duty. After about
25 eight and a half years, the MAIT Team was formed.

1 It was sent out that we could go and apply for the
2 MAIT Team. We could test for it, which I did, because I
3 thought that was what the Highway Patrol was about, was
4 investigating collisions on a higher level.

5 At that point, after I had tested for it and was
6 accepted, I started with the MAIT Team in 1996, was one of
7 the founding members of the unit. We started on January
8 16th, I believe it was, of 1996.

9 Q. So you were a founding member of the MAIT Unit?

10 A. That's correct.

11 Q. Explain for us what MAIT does.

12 A. MAIT is the Multidisciplinary Accident Investigation
13 Team. They are basically the CSI for the highway. They
14 would go out and look at collisions, how they occur, what
15 causes them to occur, and what happens during the collision
16 itself, and they report those findings.

17 Q. Is there any specialized training that you have to go
18 through to be a member of the MAIT Team?

19 A. There's actually a good bit of training that you go
20 into.

21 Q. Please detail it for us.

22 A. All right. Before -- before we started in 1996,
23 there were a number of courses, basic courses is what they
24 were called at the time, we thought we were very informative
25 and determined shortly after that that we had a lot more

1 information we needed to learn and continued to do so, but
2 we started with a at-scene investigation, technical
3 reconstruction, and then reconstruction. Those are the
4 three basic classes that we took.

5 We also did computer-aided diagramming class, as well
6 as a forensic mapping class. From that point, we started to
7 branch out into specialization. It would be like motorcycle
8 investigation classes, bio-mechanic classes, commercial
9 motor vehicle classes, bicycle/pedestrian classes. Each of
10 those has their own course. It's a specialized sort of
11 training.

12 **THE COURT:** Sir, you need to move up to the microphone
13 and raise your voice, please, sir.

14 A. I'll try and get a little closer to it. Is that
15 better?

16 **THE COURT:** Yes sir.

17 A. I apologize. I do have a tendency to talk softly.

18 **THE COURT:** Go ahead.

19 Q. How many hours of classes would you say that you have
20 had since joining the MAIT Team in '96?

21 A. It's somewhere in the neighborhood of two thousand
22 hours. It's close to that. I'm also -- was also an
23 instructor with the -- with the MAIT Team. My -- the
24 particular unit or groups that we taught were the MAIT
25 associates, somewhere in the neighborhood of the year 2000,

1 pretty much all the members of the MAIT Team that are
2 currently -- all but three or four, I guess, is the number
3 I've trained in one fashion or another.

4 Q. So you trained MAIT Team members who are currently
5 employed with the Highway Patrol?

6 A. That's correct, and that would be in the technical
7 reconstruction, the second phase, the reconstruction phase,
8 which is the third phase, and then the computer-aided
9 diagramming and some would be forensic mapping.

10 Q. In addition to your, I think you said two thousand
11 hours of class training, is that correct?

12 A. That's correct.

13 Q. In addition to that, are you a member of any
14 professional associations regarding accident and collision
15 reconstruction?

16 A. Yes sir. I'm a member of SCARS, which is a group of
17 people with the MAIT Unit in the State of South Carolina.
18 We started our own reconstruction group and we put on a
19 seminar or a conference every year.

20 And I'm also a member of ACTAR, which is a nationally
21 accredited reconstruction -- it's basically I wouldn't say
22 the bar, but it's kind of like that for collision
23 reconstruction, and I got that certification, and I've got
24 it on here somewhere, in '97, '98, I believe. I believe
25 it's '98. I'll have to look back and see.

1 Q. Would these -- would these organizations be the
2 premier organizations in the field of accident
3 reconstruction?

4 A. ACTAR, yes sir. As a matter of fact, the Highway
5 Patrol is a participating member at this point. The Highway
6 Patrol is also signed on with ACTAR and has their faith in
7 it. All of our supervisory people are members of that. As
8 they -- as they promote, they're required to get that
9 certification.

10 Q. Now, it's my understanding that at some point you
11 became a supervisor of the MAIT Team?

12 A. Yes sir, and sometime between 2002, 2003, I became
13 the Sergeant over the MAIT Unit down in Charleston and was
14 Sergeant until this year over that unit.

15 Q. Since 2003 to 2014?

16 A. Yes sir.

17 Q. How many accidents would you say that you have
18 investigated, Mr. Lee?

19 A. When I started on the road, we averaged somewhere in
20 -- and this is not collision reconstruction work, this is
21 basic at-scene investigation. The average trooper in
22 Berkeley County was going to somewhere between fifteen and
23 twenty accidents a month or collisions a month and I did
24 that for eight and a half years.

25 That is a fairly high number, and then once I joined

1 the MAIT Team, we investigated for the first four or five,
2 six years, somewhere in the neighborhood of twenty to
3 twenty-five, an average, over that time, and then over the
4 last several years, those numbers have drastically picked
5 up, anywhere from a hundred to a hundred and fifty cases a
6 year over the last seven to eight years, so it's in the
7 thousands. I'm not sure exactly what that number would be.

8 Q. And that would be while you were a member of the MAIT
9 Team or while you were a supervisor of the MAIT Team?

10 A. Some while I was a member, some while I was a
11 supervisor.

12 Q. All right. Now, as part of working with MAIT, I
13 understand there are various types of tests and things that
14 can be conducted on automobiles and at accident scenes.
15 Could you tell us about some of the tests that MAIT is able
16 to perform?

17 A. We look at everything about a vehicle. Now, when I
18 say we, we have different people who have different
19 specialties within -- within our unit. I'm not a mechanic
20 and I don't claim to be one. I go through the reports that
21 our mechanics do, so I do have some -- I have a little more
22 knowledge than what the layman might necessarily have, but I
23 don't have enough to actually do the mechanical itself
24 because there's a lot of moving parts that go in and take a
25 brake system apart and make a determination on it.

1 I do have some specialties in that area, but I
2 wouldn't consider myself a mechanic. We also do testing on
3 the -- or we look for certain things within the vehicle. We
4 look inside the vehicle to determine if the seatbelts were
5 in use at the time, or if there is damage to the interior of
6 the vehicle that might have been from a particular person.

7 We look at the damage profile for the car to
8 determine what the principal direction of force or how the
9 cars hit, whether it was a head-on collision, a side-swipe,
10 a T-bone, a rear end, where the other car came from, where
11 it went after the collision took place. We make
12 determinations as to who was the driver of the vehicle based
13 on some of those profiles.

14 Q. And these different tests that you've discussed and
15 these various investigative techniques, do they require
16 specialized training?

17 A. Specialized training and as well as experience having
18 seen a great number of those types of crashes.

19 Q. And do you feel like you have that specialized
20 training and experience?

21 A. Absolutely.

22 Q. Do you feel like you have more knowledge, experience,
23 and training than the average lay person in the field of
24 accident reconstruction?

25 A. Yes sir.

1 Q. Do you think your specialized knowledge, training,
2 and skill can help the jury to understand the facts of this
3 case?

4 A. Yes sir, I do.

5 Q. Have you ever been qualified as an expert witness in
6 court before?

7 A. Yes sir, I have. As a matter of fact, within the
8 last week and a half in Allendale, I was qualified as an
9 expert in the field of accident collision reconstruction.

10 Q. All right. How many times would you say you've been
11 qualified as an expert witness in the field of accident
12 reconstruction?

13 A. Between ten and fifteen. I've been qualified as an
14 expert in Magistrate's Court, and General Sessions Court,
15 and the Court of Common Pleas, which is civil, the same
16 level of court, just in the civil side. I've been qualified
17 in a Coroner's Inquest and in Federal Court, as well as in a
18 Court Martial.

19 Q. All right. So you -- I'm sorry. You were saying
20 something?

21 A. No sir.

22 Q. All right. So you said you've been -- you were a
23 member of the MAIT Team since it was founded in 1996?

24 A. Yes sir.

25 Q. You've had over two thousand hours of course work in

1 the field of accident reconstruction?

2 A. Yes sir.

3 Q. You were a member of the MAIT Team from 1996 'til
4 2014?

5 A. Yes sir.

6 Q. And for some period of that time from 2003 to 2014,
7 you were a MAIT Team supervisor?

8 A. That's correct.

9 Q. You are a member of ACTAR, which is the preeminent
10 professional organization for accident reconstruction?

11 A. That's correct.

12 Q. And you've been certified -- or excuse me, qualified
13 as an expert witness in court on multiple occasions?

14 A. That's correct.

15 Q. Now, on these times that you've been qualified as an
16 expert witness, was that for the State or was that for the
17 Defense?

18 A. The last two actually -- there was another one in
19 Berkeley County, and I can't remember the date of it, when
20 it was, but it's been since I retired, I was called as a
21 State witness as a member -- or a former member of the MAIT
22 Team that actually investigated that particular collision to
23 come in and testify as to the results of what had occurred
24 during that crash.

25 Q. So on the occasions that you have been qualified as

1 an expert witness, would you say the majority of that was as
2 a Highway Patrolman testifying for the State?

3 A. Yes sir. There's only -- this, today, is the first
4 time I've not been a member of a law enforcement agency
5 testifying in court as to the particulars of a crash. I've
6 only been deposed one other time outside of that capacity.

7 Q. Okay.

8 **MR. GALMORE:** Your Honor, I would offer Mr. David Lee
9 as an expert in the field of accident reconstruction.

10 **THE COURT:** All right.

11 Solicitor, do you wish to voir dire the witness or
12 challenge his qualifications?

13 **MS. RICHARDSON:** Not his qualifications, Your Honor.

14 **THE COURT:** All right. Do you want to ask him any
15 questions at this time or in cross-examination?

16 **MS. RICHARDSON:** Not at this time, Your Honor, cross-
17 examination.

18 **THE COURT:** All right. Very good.

19 He is qualified to give his opinion in the field of
20 accident reconstruction.

21 You may proceed, Mr. Galmore.

22 Q. We asked you to come on board and take a look at this
23 case, is that correct?

24 A. That's correct.

25 Q. And tell the jury what -- what you do in the process

1 of investigating a case.

2 A. A collision is not based on just one particular thing
3 or two particular things. It's based on the totality of the
4 circumstances, everything that's involved.

5 When we -- when I was called and asked us to look
6 into this particular crash, we looked into all the witness
7 statements that were taken, all the photographs that were
8 taken, the mapping that was done of the particular crash,
9 the way the crash occurred, the physical damage done to the
10 vehicle, the medical profiles of what was available for what
11 had occurred to the people, the occupants within the
12 vehicle.

13 We also looked at data that came back as far as DNA
14 results and that sort of stuff. Anything that was in that
15 report was information that I needed to look at to make a
16 determination as to who was driving the vehicle that Mr.
17 Butler was an occupant in.

18 Q. Now, were you able to make a determination as to who
19 was driving that vehicle?

20 A. Yes sir, through looking at the dynamics of the
21 crash, as well as the photographs that were supplied. Now,
22 there were -- there were some photographs that it was hard
23 to look at the particular photographs and see what was going
24 on inside the vehicle, but based on what information was
25 there, the determination that I came up with is that Mr.

1 Butler wasn't the operator of the vehicle, that the deceased
2 was, based on their ending locations after the collision
3 took place and the dynamics of the crash as it occurred.

4 Q. Okay. Well, explain to us how you reached the
5 conclusion that you did.

6 A. When -- when these two vehicles hit -- there were
7 actually three vehicles involved in the crash. The first
8 two are the Hyundai and the Sable that Mr. Butler was in.
9 When they hit, they hit on the passenger side of the
10 headlight -- the headlight or fairly close to that, and the
11 vehicles rotate clockwise.

12 As you are traveling in that vehicle, if the vehicle
13 changes its direction suddenly like as in a crash, the
14 bodies that are within that vehicle would continue to travel
15 in the direction that the vehicle was traveling until they
16 strike something in the car, like a seatbelt, or an air bag,
17 or something interior of the vehicle, and once they strike
18 that, then at that point they will change direction.

19 So if you were traveling straight ahead and the
20 vehicle is hit and it starts to rotate clockwise, then in
21 reference to the vehicle, you would strike something that
22 would be to the left of you as you were seated in the car.
23 If you were in the driver's seat, you would strike something
24 on the left, which would be the driver's door or something
25 in that vicinity. If you were in the passenger seat, you

1 would strike something towards the center of the console,
2 air bags or between the air bags.

3 Q. So you said the cars hit not exactly head-on, but
4 passenger light to passenger light?

5 A. That's right, headlight to headlight on the passenger
6 side, that's correct.

7 Q. All right. And then you indicated that the car
8 rotated?

9 A. Yes sir.

10 Q. If I hand you what's been marked as State's Exhibits
11 20, 21, 22, and 23, could you tell us how these pictures
12 depict what you're saying, how those -- I'm sorry, how those
13 reconstructions depict what you're saying?

14 A. 20 is a diagram of the roadway itself. 21 is a
15 sequence of events.

16 **THE COURT:** And those are State's Exhibits now?

17 **MR. GALMORE:** Yes sir.

18 A. That's correct. 22 is the evidence of final rest,
19 and 23 is the first impact. So basically it's showing the
20 way that the vehicles were at impact and the sequence of
21 events as it occurred.

22 Q. So the sequence is the vehicles, the Hyundai and the
23 Sable hit passenger light to passenger light?

24 A. Yes sir. That's would be in State's Exhibit 23.
25 That's the first impact. That's the way they have that

1 labeled.

2 Q. Okay. This is the first impact of the accident?

3 A. That's correct.

4 Q. From here, I think you said something about the cars
5 were rotating? Please explain that.

6 A. Yes sir. When they strike, the Sable, as well as the
7 Hyundai, rotate in a clockwise rotation or they spin around
8 that area where they impact each other, so that means
9 they're -- if you look at a clock face, they're going the
10 way the hand on the clock would travel, so the vehicle is
11 actually turning from it's left to right.

12 Q. And then the vehicle is struck a second time, is that
13 correct?

14 A. The Sable is, yes sir.

15 Q. The Sable is.

16 A. It's -- the Hyundai ends up on the barrier between
17 the two lanes of travel and it comes to rest there, and
18 there's not any other impact shown with the Sable or with
19 the pick-up truck that strikes the Sable, so the Hyundai is
20 struck one time.

21 The Sable is rotating post-collision with the Hyundai
22 and then is struck in the rear, actually on the corner of
23 the -- on the passenger side rear corner by the pick-up
24 truck as it approaches from the rear and drives through it,
25 and it rotates it immediately in a counter-clockwise fashion

1 to its point of final rest.

2 Q. So the Sable is hit and rotates clockwise and is hit
3 again, and rotates back counter-clockwise?

4 A. That's correct.

5 Q. Now, I understand that speed of the vehicles could
6 not be determined by the MAIT Team in this case?

7 A. No sir. When I -- when I read through their report,
8 the ACM or air bag control module that was in there was a --
9 was not one that was supported at the time, so they didn't
10 have a speed from that particular box as a starting speed,
11 and that I saw, there were no calculations that were done to
12 indicate a speed at the time of the crash.

13 Q. Would that be something that you would have like to
14 have had done?

15 A. With the type of crash that it was, because of the
16 lack of overlap in the crash, it's not a -- it's not
17 something -- I wouldn't have calculated a speed on that with
18 that either based on the information that they had.

19 Q. So the speed of the vehicles in your opinion didn't
20 affect the outcome of the crash? I'm just trying to
21 understand.

22 A. Of course it has a -- it has an outcome. The higher
23 the speed, the more energy that's involved in the crash.
24 When you have higher energy, you have -- you have more
25 damage. You have more things that occur within the

1 vehicle.

2 These two particular vehicles, one was traveling --
3 the Hyundai was traveling, I think, at fifty-five is what
4 they've listed on the TR310, as well as a witness statement
5 from the driver of the Hyundai, that they were driving
6 somewhere in the neighborhood of fifty to fifty-five miles
7 an hour, so they used that as a speed for the Hyundai.

8 The speed of the Sable was shown at forty-five,
9 which is the posted speed limit of the roadway in that
10 area, and there didn't appear to be anything as far as the
11 crash itself or the damage done to the vehicles that
12 indicated that those speeds are not comparable with that
13 crash.

14 Q. So you are able to determine exactly how the
15 accident happened?

16 A. To a reasonable amount of reconstruction certainty,
17 yes sir.

18 Q. All right.

19 A. And I'm in agreement with them as the way this
20 collision has occurred, that is that the headlight -- they
21 strike headlight to headlight. That is evidenced by the
22 damage in the photographs that I've looked over, and then
23 the secondary impact, which is the pick-up truck and the
24 Sable, and when they strike that the Sable comes to rest,
25 and then the pick-up truck moves on.

1 Q. Were you able to determine who was driving the
2 Hyundai?

3 A. I didn't look at who was operating the Hyundai. The
4 witness statements that I saw indicated that the driver of
5 the Hyundai indicated she was the driver of the Hyundai,
6 and that's not changed since date of the collision that I'm
7 aware of, so, no sir, I didn't make any determination as to
8 who was operating that. I didn't go any further. That's
9 not where I was asked to look at.

10 Q. So it wasn't necessary to do anything with that
11 because she said that she was the driver?

12 A. She said that and maintained that throughout the
13 entire investigation as far as I know. There was not any
14 change in the statement that she was or was not the driver.

15 Q. What about the Mercury Sable, how were you able to
16 reach the conclusion that Mitchell White was driving the
17 Sable?

18 A. Well, as I stated, whenever -- whenever you have a
19 vehicle involved in crash and there's a sudden change in
20 direction of a vehicle, the bodies within that vehicle
21 don't react to that change in direction until they are
22 acted upon by something within the vehicle, either the
23 doors on the car, the seats that they are in, the seatbelts
24 that they are wearing or not wearing, the air bags, and
25 that sort of thing. When the vehicle changes its position

1 relative to the passengers, they continue in a straight
2 line until they strike something in a car.

3 Having said that, the driver of this vehicle who
4 appears to have been seatbelted at the time, that's in
5 looking at the photographs, it appears that the driver was
6 seatbelted ---

7 Q. Wait a minute. You can tell from the pictures that
8 the driver of the Mercury Sable had on a seatbelt?

9 A. I believe that was the conclusion the MAIT Team came
10 up with at the time of the collision, and also when I look
11 at the photographs, I can see that there's some scratching
12 and indication that the seatbelt was in use at the time.

13 Q. Okay. I'm sorry. Please continue.

14 A. Obviously I haven't seen the vehicle, so I haven't
15 actually looked at and gone completely through the seatbelt
16 itself, but judging from the photographs, it appears that
17 it was in use at the time of the crash.

18 Q. And you mentioned that the Sable is initially headed
19 south on Highway 17?

20 A. That is correct.

21 Q. All right. So that was the initial direction, and
22 then you testified about a change in direction?

23 A. Yes sir.

24 Q. And what -- would that be when the car began to
25 rotate clockwise?

1 A. Yes sir, at impact.

2 Q. And then the second impact, it rotated back counter-
3 clockwise?

4 A. That's correct.

5 Q. All right. And this change of direction is what
6 affects the movement of the bodies inside the vehicle?

7 A. Yes sir. The -- as I stated, the first -- the first
8 impact would send the occupant of the passenger seat
9 towards the center console and as it continues to rotate
10 towards the driver's seat. The ---

11 Q. Well, how do you know that that first impact would
12 send that passenger towards the driver's seat?

13 A. Well, it would send them towards the center -- the
14 center console and eventually towards the driver's
15 seat, ---

16 Q. Okay.

17 A. --- because the way the -- the way the vehicle is
18 rotating, that's the direction that the body is going to be
19 traveling in. It's going to move forward in that -- in
20 that direction because the vehicle has changed its position
21 relative to the bodies in the car.

22 Now, the big thing is that there is a secondary
23 impact involved in this crash. The driver of the vehicle
24 is restrained and with -- with an air bag, is located in
25 the driver's -- is located in the driver's seat. Now, the

1. secondary impact shows up from the rear and it comes from
2 the left rear corner, which rotates the Sable in a counter-
3 clockwise manner. In doing so, it pins that driver against
4 the doorway or against the side of the vehicle as it's
5 turning.

6 The passenger is actually moving now directly
7 towards the driver's side of the car. Once -- there's a
8 tremendous amount of energy that's involved in the crashes.
9 In the photographs that I saw, the entire rear end of the
10 vehicle is damaged and pushed up through the impact.

11 Q. Let me hand you what's been marked as State's
12 Exhibit Number 26 and ask you if that helps you to explain
13 to the jury what you are talking about?

14 A. Yes sir, it does.

15 Q. Okay.

16 A. The rear quarter panel is pushed, and you can
17 actually see the light from the -- from the rear of the
18 vehicle is almost to the center. It's underneath the
19 license plate, which indicates that there was an angular
20 component to the strike, so it's going to rotate the
21 vehicle rapidly and there's a tremendous amount of damage
22 that's done to it as it's -- as it's being struck.

23 Q. And when you talk about an angular component, can
24 you demonstrate what you mean by that on this picture?

25 A. This would be the left rear quarter panel of the

1 Sable. There's the tail light, and it's pushed from the
2 outer corner all the way into just below the license plate
3 on the vehicle.

4 Q. This is the damage that the pick-up truck did to the
5 Mercury Sable?

6 A. Yes sir, and it stopped at rotation it had in a
7 clockwise fashion and redirected it in a counter clockwise
8 fashion.

9 Q. Right. So the first impact knocked the Sable into a
10 clockwise turn?

11 A. Yes sir.

12 Q. The second impact knocked the Sable back into a
13 counter clockwise position?

14 A. Or rotation, not a turn, but a rotation.

15 Q. And both of these impacts would have occurred at
16 approximately forty-five miles per hour?

17 A. Yes sir. There's not anything that's indicating any
18 -- any greater speed on either vehicle.

19 Q. Now, once the vehicle is hit a second time, you said
20 that's why the passenger is forced into the direction of
21 the center console?

22 A. Well, at that point because of the location of the
23 vehicle and the position of the passen- -- unrestrained
24 passenger in the front seat, that person is moving towards
25 the driver's side during that particular collision

1 sequence. The energy that is delivered to the driver
2 that's in that position, the driver is actually, for lack
3 of a better term, pinned against the doorway.

4 .And when that energy is released, the vehicle comes
5 to a sudden stop based on the short distance from the
6 impact to final rest on the Sable, then the driver is
7 actually ejected and slides out of the seatbelt, actually
8 comes out from underneath the seatbelt and ejects backwards
9 and ends up across the right rear quarter panel, the right
10 rear fender, which is depicted in one of the photographs I
11 saw earlier.

12 Q. Let me hand you what's been marked as Defense
13 Exhibit Number 1 and ask you if that picture helps to
14 explain what you are trying to clarify for the jury?

15 A. Yes sir. In the -- in exiting that seatbelt without
16 detaching the seatbelt, the body has to slide up and under
17 the lap belt of the driver's side.

18 In the photograph that Mr. Galmore is showing me,
19 there is evidence of something scraping down not one, but
20 both legs of the deceased from just below the shorts line
21 all the way down through the foot.

22 And on the right foot, there's a -- there's a gash
23 where it's been torn open by something as it -- within the
24 vehicle, and looking through the photographs that were
25 supplied, there's a photograph of one of the seatbelts of

1 the driver's side seatbelt where there is blood along the
2 ridge of that seatbelt, and it appears to be what has
3 caused that tear on the foot.

4 Q. Okay. So first, you said the seatbelt causes like
5 scraping along the leg?

6 A. Yes.

7 Q. Okay. And would you describe it as kind of ashy?

8 A. Yes.

9 Q. And then there is a tear of flesh along the foot or
10 the ankle area?

11 A. That's correct.

12 Q. And you said that is from the leg or ankle catching
13 something while it's being ejected?

14 A. Yes.

15 Q. You testified that you reviewed the MAIT file, yes?

16 A. Yes sir.

17 Q. And you looked at the MAIT photographs?

18 A. Yes sir.

19 Q. And you found that there was blood on the seatbelt
20 of the driver's -- on the driver's side seatbelt of the
21 Sable?

22 A. That's correct.

23 Q. In your reviewing of the MAIT file, did you see
24 whether or not that blood had been sent off for testing?

25 A. No sir.. The only blood that I saw that had been

1 sent off for testing I think was sent off by North Myrtle
2 Beach, and that was from each of the air bags, and that
3 came back that Mr. Butler was on the passenger side, as
4 well as on the driver's side of the car, which is
5 consistent that he would be the only one that would have
6 the opportunity to be on both sides of the car based on the
7 dynamics of the crash.

8 Q. Because the other person was in a seatbelt, number
9 one?

10 A. And would have maintained in the driver's side until
11 he ejected through the rear diagonally out of the back
12 window. The first impact was to the front, which would
13 have pushed him forward and to the left relative to the
14 vehicle. The second impact would have actually taken him
15 backwards and to the right or out of the ---

16 Q. Because the car was going in the opposite direction?

17 A. Because the vehicle is spinning the opposite
18 direction, that is correct.

19 Q. All right. Now, to reach these conclusions, you
20 reviewed the photographs that MAIT took?

21 A. Yes, that MAIT took and that North Myrtle Beach
22 took.

23 Q. Right, photographs that North Myrtle Beach took
24 also. You reviewed the hospital records?

25 A. I did.

1 Q. And which hospital records did you look at?

2 A. I looked at -- I actually looked at Mr. Butler's
3 records. They were -- and then looked at the photographs
4 of the deceased, so I guess those were the autopsy photos
5 of the deceased, and then I read over Mr. Butler's records
6 from the EMS as well as from the hospital.

7 Q. Did Mr. Butler have any particular injuries that
8 would be consistent with your theory of the accident?

9 A. Yes sir. Mr. Butler has two gashes on the right
10 side of his fore- -- or the right side of his head. Had he
11 been on the driver's side, he would have been not facing
12 that direction to get those gashes.

13 As the vehicle turns clockwise in the original
14 collision, his right side is actually opened up or facing
15 what may be the rearview mirror within the vehicle and
16 anything that might be damaged in -- within the collision
17 after the air bags deployed.

18 Also, the secondary collision would -- after he's
19 already out of position would have -- his body would have
20 been turned with his right side facing the console and once
21 again put him in a position to be damaged on the right
22 side, and there were -- they were described as a half inch
23 gash and a quarter inch wide, two on the right side of his
24 forehead.

25 Q. So it's your conclusion that Mr. Butler was in the

1 passenger seat?

2 A. That's correct.

3 Q. Was he restrained or unrestrained in the passenger
4 seat?

5 A. Unrestrained.

6 Q. All right. Now, once the accident occurred, the
7 person in the passenger seat is forced towards the center
8 console?

9 A. That's correct.

10 Q. And eventually would be forced all the way across
11 the car?

12 A. That's correct.

13 Q. Okay. Does that explain how Mr. Butler's blood got
14 on the passenger side air bag?

15 A. As he started from that side?

16 Q. Yes sir.

17 A. Yes sir. That would explain why he was able to put
18 samples on both sides, either through the initial collision
19 or in the secondary impact. Like I said, the only person
20 that would be on both sides of the vehicle would be Mr.
21 Butler -- or I'm sorry, would be the passenger, which would
22 make Mr. Butler the passenger at the time.

23 Q. And only the passenger could have been on both sides
24 of the vehicle?

25 A. That's correct.

1 Q. Because we don't have Mr. White's blood on the
2 passenger side?

3 A. No sir, none that was taken or sampled within --
4 either by Myrtle Beach or by the Highway Patrol.

5 Q. And to reach these conclusions that you reached, did
6 you consult the voluntary statements and the tape-recorded
7 statements that witnesses gave to law enforcement?

8 A. I did.

9 Q. Anything in those statements that would make you say
10 that your conclusion is not the proper conclusion?

11 A. No sir, nothing whatsoever.

12 Q. All right. Did you review the videos that the MAIT
13 Team produced in this case?

14 A. No sir, I don't think I looked at any video specific
15 to this from the MAIT Team.

16 Q. Okay. And did you review the MAIT Team's report
17 itself?

18 A. Yes sir, I did.

19 Q. Did you have any disagreements with the MAIT Team's
20 report?

21 A. The main focus from what I saw from the MAIT Team
22 was that they were looking at the mechanical capabilities
23 of the vehicle and whether or not it was in proper working
24 order, but that wasn't really what I was looking for as far
25 as this collision was concerned, so no sir, I didn't -- I

1 didn't go into anything as far as that was concerned. The
2 only conclusions I made was that Mr. Butler was not the
3 operator of the vehicle or driver of the vehicle at the
4 time.

5 Q. Did the MAIT Team do any testing to determine the
6 location of the people in the Sable prior to the accident?

7 A. The photographs that I saw indicated that they had
8 gone back out and looked at the restraint systems within
9 the vehicle and had taken photographs of the air bags as
10 well, but there was no indication that they had done an
11 occupant kinematic study or had actually taken or sent any
12 samples to SLED, I think all that was done by North Myrtle
13 Beach, as far as the sampling was concerned.

14 Q. I guess what I'm saying is MAIT comes out to the
15 scene. There are a series of tests that MAIT could get
16 done?

17 A. That's correct.

18 Q. And in this case, they did general examinations of
19 the vehicles?

20 A. Yes sir, and they did a mechanical examination which
21 I think is what was their main focus for this particular
22 crash.

23 Q. They also did forensic mapping?

24 A. Yes sir.

25 Q. And they did computer-assisted drawing?

1 A. Yes sir, and those are standard within the procedure
2 for the -- for the MAIT Team is to do a mapping of the
3 scene and then the diagramming to follow it up. As far as
4 a mechanical exam, that's a request depending on the type
5 of call-out, so in this case, they were requested to do
6 that, so that would have been their -- their focus in this
7 particular crash.

8 Q. And they did not do an occupant kinematic study?

9 A. No sir, not in any of the notes or any of the things
10 -- anything that I saw within their report.

11 Q. Is that a standard test or is it something that's
12 requested?

13 A. If there was a question about that from the
14 requesting agency, then that would be something that we
15 would do, but not necessarily as a standard. I say we; the
16 MAIT Team would do.

17 Q. Did you perform an occupant kinematic study?

18 A. Yes sir, I have in the past.

19 Q. Did you perform one in this case?

20 A. Yes sir.

21 Q. Okay. And your conclusion from that study is that
22 Mr. Butler was seated in the passenger position?

23 A. That's correct.

24 Q. And that Mr. White was driving the vehicle?

25 A. Yes sir.

1 **MR. GALMORE:** No further questions. Please answer any
2 questions the State has.

3 A. All right.

4 **THE COURT:** Cross-examination.

5 **MS. RICHARDSON:** Yes, Your Honor.

6 **CROSS-EXAMINATION BY MS. RICHARDSON:**

7 Q. All right, 2010, you were employed by the South
8 Carolina Highway Patrol, is that correct?

9 A. That's correct.

10 Q. Your position at that time was what?

11 A. 2010, I would have been the Sergeant over the MAIT
12 Team in Charleston, team leader ---

13 Q. And as part of -- I'm sorry.

14 A. Team leader, Region Commander. It was a couple of
15 different titles, so my daughter actually likes me to say
16 Region Commander. She thinks it's a cool title, so ...

17 Q. And as part of your duties as a Sergeant, you
18 actually sit on the review committee ---

19 A. Yes.

20 Q. --- that reviewed MAIT reconstruction?

21 A. Yes ma'am. It's a peer review over -- over
22 different cases as they come through, throughout the State,
23 and I don't recall when that started, but we do that
24 currently, or they do that currently.

25 Q. Now, you work for the private sector now?

1 A. I do.

2 Q. Are you paid for your testimony here today?

3 A. I hope so. Yes ma'am, and I mean not to be -- not
4 to be curt, but yes ma'am, I was called to come in and look
5 at this as a private reconstruction guy, so yes ma'am.

6 Q. Did you actually sit on the review committee for
7 this case?

8 A. I don't recall. I may have.

9 Q. So you're not disputing MAIT's findings?

10 A. The only thing, if what you're about to ask me is
11 one of the findings that we put on our reports, some
12 reports, is that we concur with the findings of the TL310.
13 I have in the past on a regular basis stated that I didn't
14 like that finding.

15 I never have, because if we don't do the entire
16 investigation or the parts of it that are in question, then
17 it's hard for us to agree or it's hard for the MAIT Team to
18 agree with what's occurred.

19 That was the biggest and most glaring problem I had
20 with concurring with anything that an outside agency did,
21 not that they were not competent to do those things, but if
22 we were going to say we agreed with it, then we should also
23 be the ones doing that testing. Yes, I did sit on that
24 Board, and if that -- this is one of the cases that I
25 signed off on, then, yes ma'am, I did sign off on that.

1 Q. You're no longer employed by Highway Patrol?

2 A. No ma'am.

3 Q. Why is that?

4 A. I retired in March of this year.

5 Q. You were actually demoted before your retirement,
6 were you not?

7 A. Yes ma'am, I was.

8 Q. You were a Captain, and you went down to what?

9 A. No ma'am, I wasn't a Captain. That would be the
10 other Lee on the MAIT Team. He is currently a sheriff in
11 Chesterfield County. I was demoted down to Lance Corporal
12 from Sergeant.

13 Q. From Sergeant?

14 A. Yes ma'am. I didn't actually work a day as a Lance
15 Corporal. I retired. I decided that I didn't like the way
16 that was going, and I had twenty-seven years on, and I only
17 needed twenty-five, so I chose to retire as opposed to --
18 as opposed to work at a demoted rate.

19 Q. Now, I want to make sure I understand your testimony
20 here today. Are you aware of anything in that vehicle
21 besides these two gentlemen?

22 A. Aware of anything in the vehicle other than these
23 two gentlemen?

24 Q. Yep, physically.

25 A. Specifically what?

1 Q. A car seat? Are you aware of any car seats that
2 were in that vehicle?

3 A. No ma'am.

4 Q. You weren't told that?

5 A. No ma'am, and with the amount of debris that was in
6 the back seat and the photograph -- the lack of photographs
7 taken at the scene, I didn't see any car seats that were in
8 the back.

9 Q. Would that change your opinion?

10 A. No ma'am.

11 Q. So it wouldn't matter to you if it was a big car
12 seat, a little car seat, a front-facing car seat,
13 backwards-facing car seat, wouldn't change your opinion?

14 A. No ma'am.

15 Q. If there were several car seats in there, would it
16 change your opinion?

17 A. If they were stacked up so that the occupant
18 couldn't get out the back window, I would be concerned as
19 to how it occurred, but no ma'am, there didn't appear to be
20 anything that ended up in the front seat that created a
21 difference in the way that this occurred on the inside, and
22 the -- I didn't see anything in there that would indicate
23 that it would impede the travel of any occupant out of the
24 back window.

25 Q. And if someone told you that Michael Butler was

1 sitting behind the driver's seat with his feet on the floor
2 pedal, would that change your opinion?

3 A. That was Mr. Canto's statement, I believe. He did
4 say that when he came to the window -- in the written
5 statement he said he came to the window and he knocked on
6 the window and Mr. Butler asked him if he wanted to get
7 into the car. No, it doesn't surprise me that he saw him
8 seated in that position.

9 Mr. Canto also stated that he didn't see the crash,
10 he saw the smoke from the crash and pulled over and
11 stopped, that he had seen the vehicles, the two vehicles
12 that were involved in the crash with the Sable prior to the
13 crash, and that they went to the crash site and they had a
14 collision.

15 He pulled off, he stopped, he exited his vehicle and
16 started towards the Sable. All of those things take time,
17 so what could have occurred within that vehicle, Mr. Butler
18 moving himself around in some fashion or form trying to
19 exit the vehicle, who knows? My opinion is that he ended
20 up on the driver's side of the vehicle after the collision
21 occurred due to the dynamics of the crash.

22 Q. So again, if a witness were to say I saw him with
23 his butt in the driver's seat, feet on the floor pedal,
24 that would not change your position as to how this
25 occurred?

1 A. No ma'am. As I stated, I read his statement, so I'm
2 aware that he said that he was seated on that side. My
3 understanding is that through that statement and his
4 recorded statement from MAIT is he didn't go that deep into
5 detail as to whether or not he was seated with his feet on
6 the floorboard and that sort of thing, ---

7 Q. Right.

8 A. --- but he was -- but he was seated on the driver's
9 side, so which would indicate that he was in that position.

10 Q. And with all fairness, your -- you were listening to
11 statements that were recorded?

12 A. Yes.

13 Q. So if statements were different now, that may change
14 your opinion?

15 A. If they were drastically different, I would question
16 what had happened from then 'til now.

17 Q. Would it change your opinion if Michael Butler said
18 I was driving the car?

19 A. As I went through Mr. Butler's records, I saw that
20 he had at one point stated that he was driving, but he also
21 at one point stated that he was walking, that he was
22 picking up somebody, that some -- that there was a third
23 party in the car, and that at various times he said not
24 only was he not driving, but he had been walking from one
25 place to the next and didn't know how he got there.

1 The differing statements and the fact that he had a
2 head injury to the right side of his head, I find
3 completely inconsistent with what occurred in this case.

4 Q. Well, let's be completely honest. He doesn't have a
5 head injury. He has a laceration to the eye, correct?

6 A. Okay, the way I -- the way I saw the -- when I read
7 the medical records, it said that he had -- he had a head
8 injury. That was the way it was described.

9 Now, if -- how serious they were, I'm not a -- not a
10 physician, so I didn't go into that, and I didn't read
11 anywhere in there where they had done any testing for
12 concussions, but the fact that he had an open wound over
13 his eye and had struck something within the vehicle
14 sufficient enough to injure his eye in two different
15 locations or his forehead on that side seemed consistent
16 with the fact that he had multiple stories within very
17 short periods of time.

18 It's also consistent with the fact that someone
19 knocked on his window and he asked them if they wanted to
20 get into the car as opposed to help him out.

21 Q. Now, you've been with the Highway Patrol for how
22 long?

23 A. I was with the Highway Patrol for twenty-seven
24 years.

25 Q. And how many DUI investigations have you conducted?

1 A. I would hate to hazard a guess. The majority of the
2 collisions that we investigated with the MAIT Team were
3 DUIs or felony DUIs, either death or great bodily injury.

4 Q. Isn't it also in your training and experience very
5 common for a defendant to change his story?

6 A. People change their story, yes ma'am.

7 Q. Especially when they realize that someone is dead?

8 A. I have seen that happen, yes ma'am, people who were
9 conscious and cognizant of what was going on, yes ma'am.

10 Q. Let's talk about this DNA in the car. Do you know
11 where it was taken from?

12 A. It indicates on the reports it was taken from the
13 air bags. As I looked through the photographs, one was on
14 the lower left corner if you're seated in the driver's seat
15 or lower left quadrant of the air bag, almost to the back
16 of it, and then the other one was on the -- in a similar
17 position on the passenger side.

18 Q. So both of the spots were looking -- if we're
19 sitting in the driver's seat looking at the air bag, ---

20 A. Yes.

21 Q. --- it is lower left-hand side?

22 A. It's on the driver's side, yes.

23 Q. Right. Okay.

24 A. And then on the passenger side, if you're seated in
25 the passenger seat, it would be on the left side of that

1 air bag as well.

2 Q. The lower left-hand side of that air bag?

3 A. I'm not sure if it's lower. The air bag wasn't
4 inflated when I saw it. It was just -- it was on the bag
5 in that -- on that side, on the left side.

6 Q. So on the left side?

7 A. Yes.

8 Q. Now, your training, I understand that you have to go
9 to these classes, I understand about ACTAR and that you
10 have to keep up with so many training hours, is that
11 correct?

12 A. That's correct.

13 Q. When is the last training that you had in accident
14 reconstruction?

15 A. I'm not sure what the last training date I had was.
16 It was a -- the last one I think was a perception/reaction
17 time, and then I've been through at least one seminar or
18 conference since then, so ---

19 Q. Do you recall when that was?

20 A. No ma'am, I don't recall specifically. I should
21 update it. I haven't, but it's eighteen pages long.

22 Q. Right, and the last page I have is 2011.

23 A. Yes ma'am.

24 Q. Would that be fair to say?

25 A. That's the last page that I had updated, yes ma'am.

1 Q. And so have you had any since then?

2 A. That's what I was saying, yes ma'am. I've had some,
3 but I don't recall what they were and I haven't updated it.

4 Q. With the training you received, because I don't
5 know, is occupant reconstruction a part of every training
6 that you attend?

7 A. No ma'am. Occupant kinematics is specifically what
8 you're asking about, and no ma'am, it's not. There are
9 certain -- I think on there that the C.V. that I've handed
10 you, which is -- there is only, I think, one class on it
11 that says -- and that's biomechanics, and it deals with
12 occupant kinematics. The rest of it is from experience
13 within the MAIT Unit.

14 Q. And would it be safe to say the only class you've
15 had on it was July of 1999?

16 A. Yes ma'am, that specifically addressed that issue.

17 Q. You testified in your direct examination that there
18 was what you identified as blood on the driver's side
19 seatbelt?

20 A. Yes ma'am.

21 Q. How do you know that was blood?

22 A. It appears to be blood. That's what I said, that it
23 appeared to be blood on the driver's side seatbelt.

24 Q. But you don't know that?

25 A. No ma'am, I didn't do any testing. The vehicle

DAVID W. LEE - CROSS BY RICHARDSON
REDIRECT BY GALMORE

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1 wasn't available, and that would have been something that
2 could have been done at the time of the collision.

3 Q. And I just want to make sure I understand. It's
4 your testimony here today that someone who was restrained
5 in a seatbelt was ejected through the back window, but
6 someone who was unrestrained, with severe passenger side
7 damage remained in the vehicle?

8 A. Yes ma'am.

9 Q. Okay.

10 **MS. RICHARDSON:** Nothing further, Your Honor.

11 **THE COURT:** Redirect.

12 **MR. GALMORE:** Very briefly, Your Honor.

13 **REDIRECT-EXAMINATION BY MR. GALMORE:**

14 Q. There was mention of a TR310. What is that, sir?

15 A. That's a collision report form. That's filled out
16 on every collision.

17 Q. Okay. And who filled out the TR310 in this case?

18 A. That would have been an officer from North Myrtle
19 Beach Police Department.

20 Q. Now, it's my understanding that MAIT reached the
21 conclusion that they concurred with everything in the
22 TR310, is that correct?

23 A. That's -- that's what -- in that report. The
24 Collision or the MAIT Team Report says one of the headers
25 that they have is that they concur with the findings of the

1 investigating agency. It's not exactly word for word, but
2 that's what it says.

3 Q. Do you concur with the findings that are made in the
4 TR310?

5 A. No sir.

6 Q. And what specifically do you disagree with?

7 A. The TR310 shows Mr. Butler as the driver of the
8 vehicle and I disagree with that.

9 Q. What is the basis in the TR310 that Mr. Butler was
10 driving the vehicle?

11 A. As I read through the witness statements and listen
12 to him, as well as the incident report, the fact that he
13 was seated in the driver's position from Mr. Canto, and
14 then a statement made that he was driving, but it's
15 discounted when he says he wasn't driving or that he says
16 he was walking.

17 Q. So basically Mr. Canto saw him in the driver's seat
18 after the accident?

19 A. Some period of time, and it wasn't ten minutes, it
20 wasn't five minutes. It was a short period of time, but
21 there was time where things could have changed within the
22 vehicle for the actual position of Mr. Butler.

23 Q. And after he saw Mr. Butler in the driver's
24 position, the North Myrtle Beach Police concluded that he
25 was the driver?

1 A. That's correct, based on that statement.

2 Q. Now, I understand that there was a slight change in
3 Mr. Canto's testimony today. Were you here for Mr. Canto's
4 testimony?

5 A. No sir, I wasn't.

6 Q. Now, the change that was in his testimony, in his
7 statement -- from his statement to his testimony, would
8 that change affect the conclusions that you have drawn on
9 this case?

10 A. (a), I don't have any idea what Mr. Canto said, but
11 no, it wouldn't have changed anything.

12 Q. When he added that he saw Mr. Butler's feet near the
13 pedals?

14 A. No sir.

15 Q. So that information does not change your conclusion?

16 A. No sir.

17 Q. You testified that you went through Mr. Butler's
18 medical records and you found that he had an injury to his
19 head area, on the right side of his head?

20 A. That's correct.

21 Q. And you also stated that Mr. Butler gave multiple
22 answers to the same question when asked by law enforcement?

23 A. Yes sir, that he had -- that he was driving, that he
24 wasn't driving, that he had been walking, that he had a
25 third passenger within the vehicle at some point, and that

1 they had walked away.

2 Q. So because he gave multiple answers, you would
3 discount the answer that he gave that he was the driver of
4 the vehicle?

5 A. I wouldn't use it solely as the basis for making the
6 charge that he was operating the vehicle at the time. It
7 would have to be in -- as a piece of evidence to base that
8 on, so there would need to be multiple pieces of evidence
9 to indicate he was operating the vehicle.

10 Q. Would the fact that he gave multiple answers to the
11 same question be a cause of concern?

12 A. Yes.

13 Q. Why so?

14 A. As I stated, I'm not a medical person, so I don't --
15 I don't do that for a living. I can't testify what his
16 injury was or the severity of it, but the fact that he had
17 struck his head would indicate to me that maybe there was a
18 possibility he had some issue that wasn't readily presented
19 at the time or it could be for any number of reasons, but
20 the fact that he gave several different answers not once,
21 but on multiple occasions, that there might be something
22 more to what was going on with Mr. Butler at the time.

23 Q. Now, let's talk about the DNA. I understand that
24 you said you saw in the pictures what appeared to be blood
25 on the driver's side seatbelt of the Mercury Sable, is that

1 correct?

2 A. That's correct.

3 Q. Do you stand by that position today?

4 A. I do.

5 Q. Do you stand by the conclusions that you have shared
6 with this jury today?

7 A. I do.

8 **MR. GALMORE:** Thank you, Mr. Lee. No further
9 questions.

10 **THE COURT:** Anything on those questions, Solicitor?

11 **MS. RICHARDSON:** Not on those, Your Honor.

12 **THE COURT:** All right. Very good.

13 Mr. Galmore, do you wish the witness to be excused?

14 **MR. GALMORE:** Yes sir, Your Honor.

15 **THE COURT:** Any objection?

16 **MS. RICHARDSON:** No sir, Your Honor.

17 **THE COURT:** All right.

18 Mr. Lee, you are released from your subpoena and may
19 go back to your regular activities.

20 **MR. LEE:** Thank you, Your Honor.

21 **THE COURT:** If there were any exhibits, just leave
22 them where you have them right there.

23 All right. Mr. Galmore, is there something that the
24 Court needs to take up at this point in time?

25 **MR. GALMORE:** Yes sir.

1 **THE COURT:** All right.

2 Ladies and gentlemen, we're going to take a short
3 break. If you'd go to your jury room for a short period of
4 time, I'll call you back out as quick as I can. Thank you.

5 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
6 **JURY.)**

7 **THE COURT:** All right. As I understand it, Mr.
8 Galmore, besides the potential of Mr. Butler testifying,
9 there would be no other Defense witnesses. Would that be
10 correct?

11 **MR. GALMORE:** Yes sir.

12 **THE COURT:** All right. Very good. Is your client
13 prepared for me to ask him about his wish to testify in
14 this case?

15 **MR. GALMORE:** Yes sir.

16 **THE COURT:** All right.

17 Madam Clerk, if you would place him under oath.

18 **MICHAEL BUTLER** is placed under oath by the Deputy
19 Clerk of Court.

20 **THE COURT:** Mr. Butler, at this point in time I'm
21 going to explain to you certain of your constitutional
22 rights. If at any point in time you don't understand what
23 I'm talking about, what I'm saying, you need to indicate
24 that to me in some way. You could raise your hand. You
25 can tell your attorney, but you've got to affirmatively do

1 something that tells me you don't understand. Are we in
2 agreement there?

3 **MR. BUTLER:** Yes sir.

4 **THE COURT:** All right. We've reached the stage of the
5 trial where you have been or you are, through your
6 attorney, presenting your defense in this matter. You have
7 the right to claim the protection given to you by the Fifth
8 Amendment of the Constitution of the United States of
9 America which states in part that no person shall be
10 compelled in any criminal case to be a witness against
11 themselves.

12 That means nobody can make you testify in this case.
13 You can testify. You are welcome to do so if you choose to
14 do so, but it's your choice. Nobody can make you. You
15 understand that?

16 **MR. BUTLER:** Yes sir.

17 **THE COURT:** All right, sir. If you decided to
18 testify, you'd be subject to the same rules that you've
19 seen all the other witnesses that have testified in this
20 case. Your attorney would be asking you questions, direct-
21 examination. Then you would be cross-examined, asked
22 questions by the State of South Carolina on any matters the
23 Court deems relevant in this case. You understand that?

24 **MR. BUTLER:** Yes sir.

25 **THE COURT:** Is there an issue about a prior record,

1 Solicitor?

2 **MS. RICHARDSON:** I do not believe so, no sir.

3 **THE COURT:** All right. Very good. So there would be
4 no -- there would be no questions that you would be asking
5 Mr. Butler about regarding his prior record then?

6 **MS. RICHARDSON:** I do not believe I have a
7 disposition, no sir.

8 **THE COURT:** All right.

9 Now, if you decide to testify, Mr. Butler, it's got to
10 be your decision, freely, voluntarily made, intelligently
11 made with the knowledge of the rights that I'm talking to
12 you about right now.

13 If you decide not to testify, I will instruct and tell
14 the jury that they can't give that fact any consideration
15 whatsoever. I'll be telling them they can't talk about it
16 in the jury room.

17 I'll tell them they can't even use it mentally in
18 making a determination about the facts and evidence in this
19 case, it being your decision to decide whether or not you
20 want to testify in this case.

21 And you can ask someone else their opinion if you want
22 to, a family member, or if you've got -- your attorney, you
23 want to ask your attorney some questions, you can do that,
24 but you understand it's your decision. You understand
25 that?

1 **MR. BUTLER:** Yes sir.

2 **THE COURT:** Do you want to talk to anybody before you
3 make your decision?

4 **MR. BUTLER:** No sir.

5 **THE COURT:** Do you understand and have you understood
6 everything we've talked about?

7 **MR. BUTLER:** Yes sir.

8 **THE COURT:** All right, sir. Do you need to ask your
9 attorney any questions?

10 **MR. BUTLER:** No sir.

11 **THE COURT:** All right, sir. Do you wish to testify in
12 this case?

13 **MR. BUTLER:** No sir.

14 **THE COURT:** Very good. Thank you very much.

15 Y'all can have a seat.

16 All right. So with that then, does the Defense rest
17 at this time?

18 **MR. GALMORE:** Yes sir.

19 **THE COURT:** Is there going to be any reply testimony
20 by the State of South Carolina, Solicitor?

21 **MS. RICHARDSON:** The Court's indulgence just a moment.

22 **THE COURT:** Yes ma'am.

23 **MS. RICHARDSON:** No sir, Your Honor.

24 **THE COURT:** All right. Very good. So there will be
25 no reply testimony. All right.

1 So we don't have to send the jury out again, what I
2 would ask, Mr. Galmore, is that if you have any motions
3 that you would like to renew at this point in time, I'll be
4 glad for you to do so.

5 **MR. GALMORE:** Yes sir, Your Honor. I would renew our
6 motion for a directed verdict. Again, there is no direct
7 evidence that Mr. Butler was the driver of the Mercury
8 Sable. Now that we have gone through with the Defense
9 case, there is evidence in the record that Mr. Butler was,
10 in fact, a passenger in the vehicle.

11 Your Honor, with that said, we would ask the Court to
12 reconsider the request for a directed verdict.

13 **THE COURT:** All right, very good. I'm not going to
14 reiterate the directed verdict standard as I already did
15 earlier at the end of the State's case, suffice it to say
16 that my decision in a directed verdict motion is different
17 from that of the jury. The jury's decision is beyond a
18 reasonable doubt.

19 My decision is whether or not the evidence that is
20 produced by the State of South Carolina by direct or
21 substantial circumstantial evidence reasonably tends to
22 prove the guilt of the accused. If that evidence exists in
23 the case, then the matter is properly submitted to the jury
24 for their determination about credibility, believability,
25 and whether or not the State has proven its case beyond a

1 reasonable doubt.

2 As I indicated at the end of the State's case, there
3 was testimony of the witness, Said Canto. Mr. Canto
4 indicated there was an extremely short period of time from
5 the time the accident occurred and when he got out of his
6 vehicle and approached the car and the vehicle that the
7 Defendant was in. He did that.

8 He found the Defendant to be unconscious, not
9 responding, in the driver's seat, seated completely in the
10 driver's seat, feet on the pedals or in the pedal area, he
11 appeared like he was sleeping, but he was unconscious. And
12 the other victim was on the other side of the vehicle, half
13 in and out, ejected throughout the back of the vehicle,
14 hands protruding out the back over the trunk.

15 There is also the DNA evidence that indicates that Mr.
16 Butler's DNA was on the driver's side air bag. Certainly
17 it indicates it's on the passenger side air bag, but that's
18 not my job to resolve conflicts in the evidence. It's not
19 my job to judge credibility and believability.

20 The evidence exists that he is the driver of the
21 vehicle. The fact that an opinion by a person the Court
22 qualified to give their opinion opposes that only puts the
23 issue more squarely in the jury's purview, there being a
24 direct contradiction in that testimony and evidence, and I
25 cannot resolve that. That's the jury's job to resolve the

1 conflicts in the evidence and the testimony.

2 The evidence exists. Your motion for a directed
3 verdict is denied.

4 Any other motions?

5 **MR. GALMORE:** Not a motion, Your Honor.

6 **THE COURT:** Yes sir.

7 **MR. GALMORE:** Would you like to address the charges at
8 this time?

9 **THE COURT:** Yes, we certainly can. I'll be glad to do
10 that.

11 Just for your information, we noted that the
12 foreperson would always bring the note pad in and he didn't
13 take any notes until very recently, and he took two very
14 brief notes. I had the bailiff to secure those from the
15 foreperson, and I am handing those to the Clerk of Court
16 for their destruction.

17 We did not authorize the taking of notes, and, in
18 fact, the State objected at the very beginning when I
19 brought it up and, therefore, those notes will be
20 destroyed.

21 **MR. GALMORE:** Your Honor, may I suggest that perhaps
22 they are made a Court Exhibit and held by the Court
23 Reporter?

24 **THE COURT:** For what purpose?

25 **MR. GALMORE:** I don't know the purpose except that it

1 was obtained as part of the record. I ---

2 **THE COURT:** It's not part of the record. I did not
3 authorize it.

4 **MR. GALMORE:** I understand the Court didn't authorize
5 it. I didn't want it either, but it was done.

6 **THE COURT:** Well, I appreciate that, but for what
7 purpose? It cannot be reviewed. It's not part of the
8 record.

9 **MR. GALMORE:** Yes sir. I just wanted to place it on
10 the record.

11 **THE COURT:** I appreciate that. I'm ordering it to be
12 destroyed. Thank you very much.

13 **MR. GALMORE:** Yes sir. Can we read it first?

14 **THE COURT:** No sir. It's not part of the record.
15 It's not part of this case. It was not authorized. It's
16 not part of the case. No sir.

17 I have folded it up. The Clerk of Court is not going
18 to read it. The Clerk of Court is going to destroy it.
19 Thank you very much.

20 All right. The charge, the State submitted, I
21 believe, if I counted correctly, six requests to charge.
22 They weren't numbered as such, but I will just take them in
23 the order that they were paper-clipped or given to the
24 Court.

25 The first one is the Defendant is charged with driving

1 under the influence resulting -- the State must prove to
2 you the Defendant drove a vehicle while under the
3 influence, et cetera, citing State vs. DeAntonio. Is there
4 any objection to that charge?

5 **MR. GALMORE:** No sir.

6 **THE COURT:** The next one, again, citing that
7 particular case, State vs. DeAntonio, the Defendant's act
8 may be regarded as a proximate cause of felony DUI if it's
9 a contributing cause of the death. The Defendant's act not
10 -- need not be the sole cause, provides a proximate cause,
11 so it's basically a proximate cause charge. Any objection
12 to that?

13 **MR. GALMORE:** No sir, Your Honor.

14 **THE COURT:** All right. Now, in saying this, I will
15 tell you my charge will probably not mirror or be exactly
16 what the State has in their charge. I believe the charge
17 will reflect the principles and the theories as expressed,
18 but not in the exact same wording.

19 The next one is about yielding the right-of-way. Do
20 you have any comments about that?

21 **MR. GALMORE:** Your Honor, I would object to that
22 particular charge. Mr. Butler has not been charged with
23 the crime of failure to yield right-of-way.

24 **THE COURT:** Well, I appreciate that. I do -- the
25 State does, though, under felony driving under the

1 influence, they've got to prove several things. One of
2 them is the State has to prove beyond a reasonable doubt
3 that while driving, the Defendant did an act forbidden by
4 law or neglected a duty imposed by law, and now it's the
5 Court's duty to say what that is.

6 Now, I'm not sure that proper duty is failing to yield
7 the right-of-way. That's normally at an intersection or
8 something like that, so, Solicitor, I'm not going to charge
9 failing to yield right-of-way.

10 Now, we might go on to the next one, 56-518-10, and
11 that's about upon any roadway having four or more lanes for
12 moving traffic, providing for two-way movement, a vehicle
13 shall be driven left of center line of the roadway except
14 when authorized by official traffic control devices
15 designating certain lanes to the left side of the center of
16 the roadway for use by traffic not otherwise permitted to
17 use such lane, saying to the Court that that is an obvious
18 violation of the law that the Court should charge.

19 What's your position there, Mr. Galmore?

20 **MR. GALMORE:** Your Honor, I believe that the proximate
21 cause charge which looks at contributory factors on part --
22 on the part of each party would be sufficient to cover the
23 issues in that particular charge, and again, he's not been
24 charged with reckless driving.

25 **THE COURT:** I appreciate that, but again, I believe it

1 to be a duty and responsibility of the State under the
2 felony driving under the influence statute that one of the
3 things that they must prove is while driving the Defendant
4 did an act forbidden by law or neglected a duty imposed by
5 law, meaning there was some driving violation, and that
6 being an obligation of the State to prove to the jury
7 beyond a reasonable doubt, it is proper for the Court to do
8 so.

9 And the facts warrant a charge about driving left of
10 center, and, therefore, upon the roadway, four or more
11 lanes, which this clearly is based upon the photographs in
12 evidence and the divider that, therefore, I'm going to
13 charge that particular Code section.

14 **MR. GALMORE:** Yes sir.

15 **THE COURT:** How about the standard that -- and I don't
16 -- would not use the same language that the Solicitor has
17 suggested, but the standard charge of failing as an
18 obligation of being a driver upon the roadway of the State
19 of South Carolina to operate your car in a manner such as
20 to not endanger any other vehicles, persons, or objects
21 upon the roadway, the standard charge you obviously see in
22 a wreck case in South Carolina, but is a statutory law of
23 the State of South Carolina imposed on all drivers that
24 occupy or are upon the roadways of the State of South
25 Carolina. Do you have an objection to that?

1 **MR. GALMORE:** No sir.

2 **THE COURT:** All right. Very good. And the last one
3 was the presumption regarding if the alcohol concentration
4 was at the time eight one-hundredths of one percent, that
5 is point zero eight or more, it may be inferred that the
6 person was under the influence of alcohol. Any objection
7 to that?

8 **MR. GALMORE:** No sir.

9 **THE COURT:** All right. Very good.

10 **MR. GALMORE:** A correct statement of the law.

11 **THE COURT:** All right. Very good.

12 All right, Solicitor, did you have any comments or
13 anything you wanted to say about what the Court had decided
14 in this matter?

15 **MS. RICHARDSON:** No sir, Your Honor. The State is in
16 agreement.

17 **THE COURT:** All right. Very good.

18 All right, so basically the two violations of law are
19 the ones that I'm going to talk about, basically under
20 felony DUI, the driving under the influence the State has
21 to prove that the Defendant drove the vehicle while under
22 the influence of alcohol or drugs. Driving a motor vehicle
23 means the vehicle was in motion, can be proved by direct or
24 circumstantial evidence.

25 A movement of the vehicle might occur without any

1 affirmative act by a driver or, in fact, by any person. If
2 a vehicle is moved by some power beyond the control of the
3 Defendant, the driver, or by accident, that would not be
4 driving.

5 The State also has to prove beyond a reasonable doubt
6 the Defendant was sufficiently under the influence to
7 impair his ability to drive with reasonable care and with
8 due regard for safety of others and himself or as a
9 reasonably prudent person would drive.

10 It's not necessary to show that they were in a
11 helpless condition, passed out, or intoxicated. The other
12 hand, the fact that the Defendant at some time prior to the
13 incident drank an alcoholic beverage or took a drug does
14 not prove the Defendant was driving under the influence.

15 I'm assuming in this particular matter, the standard
16 language about or took a drug is something you would not
17 want, Mr. Galmore, since there's no evidence of that, I
18 assume?

19 **MR. GALMORE:** Yes sir.

20 **THE COURT:** All right. Very good. All right, and
21 then finally, the State has to prove beyond a reasonable
22 doubt the Defendant did that act forbidden by law or
23 neglected a duty imposed by law and that the State must
24 prove beyond a reasonable doubt that an act or neglect of
25 the Defendant proximately caused great bodily injury or

1 death to another person.

2 I would go on to define proximate cause, but to show
3 that, you know, there can -- there can be more than one
4 proximate cause, there could be contributing causes, but so
5 that the jury understands that it does not have to be the
6 sole cause of the death of the victim, and the issue about
7 inference, and so the normal things we normally talk about,
8 credibility, believability, beyond a reasonable doubt, all
9 the things that we normally talk about in every single
10 case.

11 I intend to include in the charge to the jury in this
12 particular case, including the charge that the Defendant
13 did not testify is not a matter for the jury to consider in
14 this particular case.

15 So is there anything else from the State?

16 **MS. RICHARDSON:** No sir, Your Honor.

17 **THE COURT:** Anything else from the Defense?

18 **MR. GALMORE:** No sir.

19 **THE COURT:** Very good.

20 All right, folks, approximate, how long do you think
21 you would take in closing, Solicitor, just approximate?
22 As I said, I'm not going to be like Judge Floyd was and
23 start tapping on the desk or pounding on the thing and
24 tell you that you need to shut up. I'm not going to do
25 that.

1 **MS. RICHARDSON:** Your Honor, I would imagine about
2 thirty minutes.

3 **THE COURT:** Mr. Galmore?

4 **MR. GALMORE:** Yes sir, about thirty minutes.

5 **THE COURT:** All right. Very good.

6 Probably -- I mean, it would be my inclination to
7 continue on, but the jury is a captive audience and they
8 are the one that we are holding here, asking them to do
9 something they would not normally be doing, so what I am
10 going to do is -- I hate to call them out and then send
11 them right back out.

12 Would it be -- would there be any objection to the
13 Court writing some question to the jury and have them
14 decide it about staying tonight or coming back tomorrow
15 morning, or do you want me to call them in, ask them the
16 question and send them back out? I mean, I'll be glad to
17 do that. Solicitor?

18 **MS. RICHARDSON:** I have absolutely no objection, Your
19 Honor.

20 **THE COURT:** To writing it out, and then, Mr. Galmore,
21 do you have any problem with me writing it out?

22 **MR. GALMORE:** No sir. The note is fine.

23 **THE COURT:** I'll make sure somebody ---

24 **MS. RICHARDSON:** Your Honor, ---

25 **THE COURT:** --- looks at it so that they can make sure

1 they can read my handwriting before it goes back.

2 MS. RICHARDSON: --- I'm sorry. I don't know that the
3 Defense attorney has formally rested on record.

4 THE COURT: He has not, but I didn't want to call them
5 out -- I mean, I can do that. I guess I can call them
6 out ---

7 MS. RICHARDSON: Sorry, Your Honor.

8 THE COURT: Well, no, no, no. That would be probably
9 a good way to call them out and just deal with the problem
10 that way, call them out, have Mr. Galmore rest, ---

11 MR. GALMORE: Okay.

12 THE COURT: --- you say there's no reply testimony,
13 and then I can go into the spiel about them and then send
14 them out, so they'll be here for a little bit of time. It
15 won't be just like running in and out of the courtroom, so
16 we'll do that.

17 MR. GALMORE: Yes sir.

18 MS. RICHARDSON: Your Honor, just in case they were to
19 quickly say we are -- we want to stay, can I take just a
20 break ---

21 THE COURT: Well, we're going to take a break right
22 now.

23 MS. RICHARDSON: Okay.

24 THE COURT: We're going to take a short break right
25 now and then we'll call them in, okay?

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1 MS. RICHARDSON: Thank you.

2 MR. GALMORE: Not a problem.

3 THE COURT: Absolutely.

4 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE
5 THE PRESENCE OF THE JURY.)

6 THE COURT: All right, is the State ready for the jury
7 to come in?

8 MS. RICHARDSON: Yes sir, Your Honor.

9 THE COURT: And the Defense, Mr. Galmore?

10 MR. GALMORE: Yes sir.

11 THE COURT: Ask the jury to come in, please.

12 Counsel, I understand y'all didn't have any problems
13 with the verdict form, is that correct?

14 MR. GALMORE: That's correct.

15 MS. RICHARDSON: That's correct.

16 THE COURT: Very good.

17 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
18 JURY.)

19 THE COURT: All right, Mr. Galmore, the position of
20 the Defendant at this point in time?

21 MR. GALMORE: The Defense rests, Your Honor.

22 THE COURT: All right. Very good.

23 Any reply testimony from the State?

24 MS. RICHARDSON: None from the State, Your Honor.

25 THE COURT: Very good.

1 All right, ladies and gentlemen, we have concluded the
2 evidentiary portion of the trial. There will be no more
3 evidence that will be presented in this particular case.
4 Based on the evidence presented, you will be making your
5 decisions as to credibility and believability and the
6 State's burden to prove the Defendant guilty beyond a
7 reasonable doubt in this case.

8 What we do next is we have the closing arguments of
9 the attorneys. Now, regarding that, combining the State
10 and the Defense, certainly that would take certainly at
11 least an hour for both of them, if not longer. After that,
12 I would give you the law that you will apply to the facts
13 and evidence you find to be true in this particular case,
14 and then I will submit the case to you for your
15 deliberations and your unanimous decision in this
16 particular matter.

17 Once the case is submitted to you, it is your case
18 until you reach your unanimous conclusion for whatever
19 length of time that takes. That means you will stay until
20 you reach a unanimous conclusion in the matter.

21 I do not normally, and I don't think it's proper to
22 split up the closing arguments and the charge on the law
23 and the submission to the jury, because it is all one
24 course of events that needs to happen at the same time.

25 So again, Mr. Foreman and your jury, you're going to

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1 have a decision, if you want us to go forward tonight with
2 the closing arguments and charge on the law, and then the
3 submission of the case to you for your unanimous decision
4 for whatever length of time that takes, meaning you will be
5 here until you reach that unanimous conclusion, or you can
6 come back tomorrow morning and have the closing arguments,
7 the charge on the law, and then the submission to the jury
8 for your decision.

9 So, with that, I would appreciate it, Mr. Foreman, if
10 you would -- I think it's best if you go to your jury room.
11 I wouldn't ask you to take a poll, but I just think it's
12 best you go back to the jury room, you talk about it with
13 your fellow members of the jury, and y'all reach a decision
14 and let the Court know what you want to do, all right?
15 Thank you very much.

16 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
17 JURY.)

18 THE COURT: Solicitor and Mr. Galmore, the jury has
19 decided they would like to come back in the morning to have
20 the closing arguments, the charge on the law, and their
21 decision, so that's what we will do.

22 You had probably better bring them in. It's a broken
23 record, but, you know, I've got to caution them about not
24 being investigators and researchers and that sort of thing,
25 so ...

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1 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
2 **JURY.)**

3 **THE COURT:** All right, Mr. Foreman, I understand that
4 the jury has decided to come back in the morning, is that
5 correct?

6 **THE FOREMAN:** Yes sir.

7 **THE COURT:** All right. Very good. I would like for
8 y'all, as you have in the past two days, to come back to
9 your jury room tomorrow morning at nine o'clock. Again,
10 the Clerk's Office will have something completely different
11 for you tomorrow morning, and so hopefully that you will
12 like, and I'll give you a little bit of time to enjoy that,
13 and then we will come in.

14 We will go into the closing arguments, the charge on
15 the law, and then submission of the case to the jury for
16 your unanimous decision in this particular matter.

17 As I've told you several times already, you're not
18 researchers, not investigators, can't look up anything.
19 You can't talk about the case yet, not until I give it to
20 you at the very end. Certainly you can't talk about it
21 with anybody else because they shouldn't have an opinion
22 about it. It's going to be your decision in this
23 particular matter.

24 With that, I'll see you back tomorrow morning, nine
25 o'clock. Thank you very much.

1 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
2 **JURY.)**

3 **THE COURT:** All right, is there anything further from
4 the State at this point in time?

5 **MS. RICHARDSON:** No sir, Your Honor.

6 **THE COURT:** From the Defense?

7 **MR. GALMORE:** No sir.

8 **THE COURT:** All right. Very good, Counsel. I'll see
9 y'all back tomorrow morning, nine o'clock, then. Thank you
10 very much.

11 And, again, Mr. Butler, the same -- same thing. You
12 know, you don't come, we're going to continue on, and the
13 usual thing about the bench warrant, then contempt of
14 court. You understand all that?

15 **MR. BUTLER:** Yes sir.

16 **THE COURT:** Very good. See you in the morning. Thank
17 you very much.

18 **(END DAY.)**

19 **(THE FOLLOWING TAKES PLACE ON THURSDAY, JULY 17, 2014,**
20 **OUTSIDE THE PRESENCE OF THE JURY.)**

21 **THE COURT:** All right, Solicitor, are you ready for
22 the jury to come on in?

23 **MS. RICHARDSON:** The State is ready, Your Honor.

24 **THE COURT:** And the Defense, Mr. Galmore?

25 **MR. GALMORE:** Yes sir.

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1 **THE COURT:** All right. Obviously the Defendant
2 introduced evidence in this case, so you will be going
3 first, Mr. Galmore.

4 **MR. GALMORE:** Yes sir.

5 **THE COURT:** All right. Very good.
6 Ask the jury to come in, please.

7 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
8 **JURY.)**

9 **THE COURT:** Good morning, ladies and gentlemen. As I
10 indicated to you yesterday, we are now at the stage of the
11 trial where we're going to go into the closing arguments of
12 the attorneys. I remind you, as I told you at the very
13 beginning, you now have received all the evidence in this
14 case, and the closing arguments of the attorneys are not
15 evidence. You have received that, but the closing
16 arguments are important.

17 They are each side's summation to you of what they
18 believe the evidence has shown to you during the course of
19 the trial, remembering, of course, that you are the judges
20 of the facts of this particular case.

21 After that, I will give you the law that you will
22 apply to the facts and evidence you find to be true in this
23 case, and then I'll submit the case to you for your
24 deliberation and your unanimous decision in this matter, so
25 with that, Mr. Galmore.

1 **MR. GALMORE:** So we've come to the end of this case
2 and you have all of the evidence that you are going to
3 receive. If you're sitting over there right now saying to
4 yourself I have no idea what's going on in this case, you
5 are not alone.

6 You were selected for a very simple purpose. The
7 entire jury process was all designed for this moment. When
8 you came in Monday, we were downstairs asking questions of
9 you and trying to find out where you worked, and where you
10 lived. We wanted some background information about you.

11 You come upstairs and sat out here, and we asked more
12 questions, and people stood up and gave responses to
13 answers, and we needed more information about you.

14 Of all the questions that you have been asked, one
15 question that the Judge brought up repeatedly on Monday, no
16 matter what the situation was, no matter what the personal
17 thing is, could you be fair and impartial to both the State
18 and to the Defendant, and each one of you said you could
19 and I thank you for that.

20 When you come to jury service, we know it's an
21 inconvenience. There are things that you could be doing,
22 work, you're not getting paid that much, and we understand
23 that, but I do appreciate that you were willing, that you
24 were able to come down here and do something that you
25 probably didn't want to do.

1 Now, you're doing what juries do all around this state
2 and all around this country. Right now in courthouses far
3 and wide, jurors are being asked to decide cases. And we
4 selected each one of you because we thought that you could
5 fulfill that obligation.

6 Now, earlier I told you you have no friends to reward
7 and no enemies to punish. That means regardless of what
8 your verdict is, guilty or not guilty, nobody is mad at
9 you. You've done your job. You've listened to the
10 evidence faithfully.

11 You've done what the Judge asked you to do and not
12 discuss the case, or go and investigate the case on your
13 own, and now you have to make determinations based on the
14 evidence that you have been given.

15 So let's talk about what your job is. In order to
16 help you understand what the job of a juror is, you have to
17 understand what the job of a juror is not. You are not
18 asked to decide what happened to figure out what happened.
19 That is not your job. That is the State's job.

20 They should have figured out what happened years ago,
21 and that's the problem with this case. From 2010 when this
22 accident happened until today until they brought it to you,
23 they don't know what happened, and yet they are asking you
24 to decide what happened.

25 Your job is to answer a simple question. Has the

1 State of South Carolina proven to you beyond a reasonable
2 doubt that Michael Butler was the driver of this vehicle.
3 That is the question. Have they proven it beyond a
4 reasonable doubt?

5 So, you have to understand what it means when I say
6 beyond a reasonable doubt. Reasonable doubt has been
7 defined as that doubt which causes a juror to hesitate to
8 act. What does that mean? That means that you go in that
9 jury room and you say I've heard the case. He's guilty.
10 No hesitation in your voice, then you've decided the case.

11 If you go in that jury room and you say, well, I'm --
12 I'm not so sure. Let's go through and figure this thing
13 out. If there's hesitation in your mind, that is a not
14 guilty, because the State has not shown you evidence beyond
15 a reasonable doubt. They have instead shown you evidence
16 which causes you to hesitate to act.

17 Another way of defining reasonable doubt goes like
18 this: Are you firmly convinced that Michael Butler was the
19 driver of this vehicle or in the alternative, is there a
20 real possibility that the wrong person is on trial? If you
21 feel even the slightest possibility that Michael Butler was
22 not the driver of this vehicle, you must find him not
23 guilty of this charge, and that's a decision that each and
24 every one of you needs to make.

25 So let's go through the evidence and see what

1 happened. We have a three car accident. It's not a two
2 car accident. It's a three car accident. That's an
3 important point. It's an important point because the
4 Mercury Sable is hit two times.

5 And you heard from the State's witness, Lieutenant
6 Dangerfield, and you heard from the Defense witness, David
7 Lee. Both said the car rotated clockwise and struck again,
8 then rotated back counter-clockwise, so what we have is a
9 significant motor vehicle accident.

10 We know that Crystal Alden was the driver of one
11 vehicle. Why? Because she said so. She said it back in
12 2010. She said it on the witness stand during this trial.
13 What do we know about Ms. Alden?

14 We know that it was her birthday. We know that she
15 was out drinking with her friends that day. She said she
16 had a couple of wines at Rioz over a two hour period, and
17 then she went to a pool hall and had two shots over a five
18 hour period.

19 Now, I've been to pool halls before. If you're in
20 there for five hours, you're taking more than two shots.
21 And believe that evidence if you want to, but I suspect
22 that it's not quite accurate.

23 And that's the role of the jury. You're supposed to
24 decide what evidence you choose to believe and what
25 evidence you choose to disbelieve. The Judge will tell you

1 you can believe some evidence from a witness and not
2 believe other evidence from that same witness. You can
3 believe one witness versus many witnesses. You can believe
4 many witnesses versus one witness. That's all up to you,
5 and if you think that Ms. Alden had two drinks in five
6 hours, then so be it.

7 We know that Ms. Alden is a high risk driver. She
8 testified at the time of the accident she was under SR-22
9 insurance. Now, the State of South Carolina doesn't make
10 anybody get SR-22 insurance.

11 I dare say that each one of you has a driver's
12 license. I don't know what your license status is, but if
13 you had SR-22 insurance, that's because the State has
14 determined that you need to be watched a little more
15 closely. You need to be insured a little more than the
16 rest.

17 So we have this high risk driver that's on the road.
18 We don't know how much she had to drink because nobody
19 checked. Now, this is again something that you all need to
20 decide.

21 If a person comes forward and says I've been drinking,
22 and not one police officer says, oh, well, ma'am, we
23 probably need to find out how much you've had to drink, I
24 think that's a serious problem, and I hope that you agree
25 with me that that is, but that's what we have.

1 We have a high risk driver with an unknown amount of
2 alcohol in her system. Now, I'm not saying that she caused
3 this accident. It would be ridiculous for me to say that
4 when we have a car that's going the wrong way on Highway
5 17. That's the cause of the accident.

6 But at the same time, you can't ignore the entire
7 picture. You have to see the totality of the picture in
8 order to understand what happened, and her alcohol, her
9 speeding is part of that picture.

10 Now, when we go to the Mercury Sable, we don't know
11 who the driver is. We've got testimony, Michael Butler
12 told the paramedic that he was driving. Fine. We've also
13 got testimony that Michael Butler told the paramedic that
14 he had walked there from Loris. We've also got testimony
15 that Michael Butler told the paramedic they were giving
16 somebody a ride or dropping somebody off.

17 We've got testimony that Michael Butler told Mr.
18 Canto, you want a ride? And his answers don't make sense.
19 And the question is why. I submit to you that when you're
20 hit in the head as a result of a high speed impact in which
21 both air bags in both cars are deployed and one person is
22 killed and several people are injured, when you're hit in
23 the head under those circumstances, you might not give the
24 most consistent answers to any question. You might have a
25 concussion.

1 Brett Favre with Austin scored two touchdowns, win the
2 game, get voted MVP and not remember a thing. That's what
3 these high impact injuries do. But these trained medical
4 personnel, these trained law enforcement personnel didn't
5 pick up on that for some reason. Not complicated. You ask
6 a person what happened and they give you five different
7 answers, you might want to inquire as to why he's giving
8 you five different answers.

9 Now, the State will tell you it's not a big injury.
10 It's a few stitches on the eye. It's big enough that two
11 hours later on the field sobriety tape, that this accident
12 happens at 3:08, and the field sobri- -- excuse me, the
13 breath site video was at 5:30, 5:28, two hours later, and
14 he's still bleeding.

15 After that, he was taken to the hospital for it.
16 Everyone else involved in this accident was also taken to
17 the hospital for it. This was a serious accident, but yet
18 he wasn't injured that bad according to the State. His
19 injuries are superficial.

20 They're not superficial. The problem with head injury
21 is that it validates each and every test that Mr. Butler
22 was asked to take, and that's why we talked about HGN test,
23 the horizontal gaze nystagmus test. It's a test of your
24 eyes, and it doesn't matter how smart you are. It doesn't
25 matter if you can read or write. It doesn't require any

1 critical thinking on the part of the person taking the
2 test, so whether you're loopy from being hit in the head
3 and knocked unconscious or whether you're wide awake, the
4 test results are going to be the same.

5 Now, each of these other tests that were given, ABC
6 test, the walk-and-turn test, the stand-on-one-foot and
7 have-a-conversation test, each of these tests requires
8 thought and requires balance.

9 I asked one or two of the witnesses if a person
10 stepped out of a car with a broken ankle, would you ask
11 them to do a walk-and-turn, and the answer is no. Why not?
12 He can't do a walk-and-turn. He's got a broken ankle.
13 Common sense.

14 Would you ask a person who just hit their head in a
15 car accident to recite their ABCs? That's the issue. ABCs
16 are not like the eye test, anyone can take it. You have to
17 have some common sense. You have to think it through. If
18 you hit your head, you might not be able to give them the
19 right answer.

20 If you ask an individual to stand on one leg and to
21 count one one thousand one to one one thousand ten,
22 basically you're asking them to do two things, just like
23 walking and chewing gum. First of all, you're hit in the
24 head, you can't think straight, and you're not to be able
25 to count one one thousand one all the way to one one

1 thousand ten.

2 Secondly, a concussion, a head injury can affect a
3 person's balance, so you might not be able to stand on one
4 leg. You might not be able to do that walk-and-turn if you
5 just hit your head in a car accident. But that's not the
6 point.

7 The point is who was driving the car. That is the
8 issue, and the question for you as jurors is has the State
9 of South Carolina proven to you beyond a reasonable doubt
10 that Michael Butler was driving the car. Are you firmly
11 convinced that Michael Butler was the driver?

12 Well, they've taken a statement and said yeah, because
13 he said it at one point, then we're good with that,
14 disregarding the fact that he said four other things at the
15 same time. But that's all they have.

16 Now, we went through and asked every single witness
17 that testified if they saw who was driving the car, and
18 each witness said no. We asked Eric Pierce. He was the
19 driver of the pick-up truck, the truck that impacted the
20 Mercury Sable second, did you see who was driving the
21 Mercury Sable silver car? No.

22 We asked Mr. Burns. He was knocked out during the
23 accident, came to and passed back out again, and asked a
24 few questions and passed back out, asked him if he saw who
25 was driving the car. He said no. Asked Crystal Alden did

1 she see who was driving the car that hit her. She said no.

2 Asked Dr. Proctor did you see who was driving, and he
3 said no, but more importantly, we asked Dr. Proctor could
4 you look at the injuries on Mitchell White's body and
5 determine based on those injuries where he was seated in
6 the vehicle. Dr. Proctor, a pathologist, said no. He's
7 the medical doctor that examined this case and he can't
8 tell us where Mr. White was in the car.

9 It goes on. They brought the EMS employee, Mr.
10 Johnson. He can't tell us who was driving. They brought
11 us Lieutenant Dangerfield. He's the lead investigator who,
12 by the way, did not personally investigate anything and he
13 can't tell us who was driving.

14 So here's what they did. They brought in Said Canto,
15 a nice guy, good guy, just going to work, minding his
16 business, doing what all of us are supposed to be doing,
17 working and taking care of your family, and Mr. Canto gives
18 as honest an assessment as he can from what he saw. After
19 the accident, he got out to render aid. He called 911.

20 He went to the Hyundai and checked on them and gave
21 Ms. Alden her telephone. He went over to the silver car
22 and saw that Mr. White was hanging out and there wasn't
23 anything he could do for him. He went over and talked to
24 Butler and knocked on the window and Butler was passed out
25 behind the wheel, came to while Mr. Canto was talking to --

1 knocking on the window.

2 Let me tell you what that is. That's what's called
3 circumstantial evidence. So we have to get into a
4 discussion of what circumstantial evidence is. In cases
5 there are two types of evidence, direct evidence and
6 circumstantial evidence, and direct evidence is the
7 evidence that is perceived by your five senses. I know
8 this to be true because I saw it, I smelled it, I touched
9 it, whatever.

10 Circumstantial evidence is evidence from which you can
11 logically deduce a conclusion. What is the difference?
12 It's exactly what this case is about. I know Michael
13 Butler was driving that car because I saw him driving the
14 car. Nobody said that. There is no direct evidence of
15 that.

16 What the State has done, we saw Mr. Butler sitting in
17 the driver's seat after the accident. Therefore, we
18 conclude that he was driving the car. That's
19 circumstantial evidence.

20 And the Judge will tell you that there's no difference
21 in the law between direct evidence and circumstantial
22 evidence, but here's the problem with circumstantial
23 evidence. You can draw whatever conclusions you want.

24 You take the evidence and you can make a conclusion
25 from it. We can just as easily say I saw Michael Butler

1 sitting in the passenger seat and therefore conclude that
2 after the accident he was on the driver's seat and he
3 climbed over because he couldn't get out on the passenger
4 side, and he climbed over to the driver's side and tried to
5 get out.

6 The evidence shows the silver Sable right side was
7 damaged extensively to the point that nobody is opening
8 that driver -- that passenger side door getting out. If
9 you're in an accident in that car, you're climbing across
10 the seat to get out. That could be a conclusion that I
11 could draw from the evidence that was presented.

12 Now, because the circumstantial evidence can be
13 interpreted in many different ways, you come up with many
14 different hypotheses. We didn't go with that conclusion.
15 We didn't assume that. We didn't make the conclusion that
16 Butler crossed the seat after the accident trying to get
17 out on the driver's side. What we did, we asked a
18 professional to look at the evidence and tell us what
19 happened.

20 Now, David Lee testified that he worked for the
21 Highway Patrol as a State Trooper for a total of twenty-
22 seven years, that he was a founding member of the MAIT Team
23 and that he was the supervisor of the Charleston area MAIT
24 Team. This case was investigated by the Pee Dee area MAIT
25 Team.

1 With those twenty-seven years of experience, do you
2 think that Mr. Lee has a little more information about
3 accidents than the average citizen? Does he know more
4 about accidents than you or I? I dare say that he does.

5 So we give him the file, ask him to take a look at it
6 and use his specialized training, and use his twenty-seven
7 years of experience to try to figure out what's going on in
8 this case, and he did that.

9 The first thing that we found out when you put
10 Dangerfield up against Lee, the first thing we found out is
11 that there was a test, a kinetic motion study, that the
12 Highway Department can do on any accident at any time, but
13 that that test was not done in this case. Why not?
14 Because they said we got the information from the TR310 and
15 we concurred with its findings.

16 The TR310 is an incident report. Some police officer
17 wrote on the incident report that Michael Butler was
18 driving the Mercury Sable. Nobody said how do you know
19 Michael Butler was driving the Mercury Sable, but they just
20 said that on the report, and the Highway Department ran
21 with it.

22 Now, when you actually ask someone to do the actual
23 test that does exist, but wasn't done in this case, we
24 asked Mr. Lee to do it. Did you perform a kinetic motion
25 study in this case? Yes. What's the purpose of that test?

1 To determine the location of the occupant prior to the
2 crash.

3 His conclusion, based on the thousands of accidents
4 that he's investigated, based on the twenty-seven years of
5 his experience as a State Trooper, his conclusion is that
6 Mr. White was driving and Mr. Butler was in the passenger
7 seat. How did he reach that conclusion? He looked at the
8 evidence.

9 When I show you this picture, it just looks like a car
10 that's been wrecked to a layman like you or me, but to a
11 trained professional with twenty-seven years experience
12 investigating accidents, he knows what to look for in this
13 picture.

14 I don't know what to look for in this picture, but he
15 does. He's the Highway Patrolman, and he looks at these
16 pictures and he can make a determination about who had on a
17 seatbelt and who didn't.

18 Mr. Lee tells us Mr. White had on a seatbelt in the
19 driver's seat. Mr. Butler in the passenger seat did not.
20 He tells us that because of this accident, Mr. White is
21 ejected from the driver's seat across out the passenger --
22 out the back window, and that Mr. Butler seated in the
23 passenger seat is knocked towards the center console and
24 eventually keeps going in that direction into the driver's
25 seat location.

1 Now, I'm not an expert in physics, but my first
2 thought was you've got people going in two different
3 directions in one accident. This is crazy. Are you just
4 making this stuff up? And his answer is no, because this
5 accident was not a straight collision.

6 It's kind of like the concept of when you wear your
7 seatbelt in the car. You step on your brakes and your
8 seatbelt grabs you. That's because your body is still
9 moving forward. You're inside of a moving vehicle, the
10 vehicle stops, the body is still moving forward, the
11 seatbelt catches you. That's the physics of what happens
12 in this accident, but it's not straight.

13 If it was a straight line, everybody would have simply
14 gone through the windshield and they all would have met
15 right in the middle. This accident was angled, passenger
16 light to passenger light, and because it was an angled
17 accident, the cars rotated.

18 And then when it was hit again by the pick-up truck,
19 it rotated back in the original direction, so yes, people
20 can go that way and then another person can go this way
21 because the car is turning, and then the car is turning
22 back, so is it possible that people can go in two different
23 directions in one accident? Yes.

24 How do we know Mr. White was the driver? Because he
25 has the scarring on his body that shows it. He has the

1 scratches on his legs from when he's ejected out of the
2 seat, he's sliding up out of the back of the seat and the
3 seatbelt is on, and it goes down his legs as he is going
4 up.

5 That's where those scratch marks come from on his
6 legs. He has the tear on his ankle where the seatbelt
7 catches his ankle and pulls the skin off as he is being
8 ejected.

9 And what we have, Mr. Butler in the passenger
10 position, when the car struck he hits the passenger side
11 air bag, he hits the driver's side air bag because he is
12 traveling from the passenger side over towards the driver's
13 side. That's why his blood is on both air bags, a very
14 simple concept.

15 Mr. Canto comes up to the car, sees him in the
16 driver's seat. He wakes up at that point and doesn't say
17 anything about, well, he suddenly went over there. From
18 the point that Canto sees him, he's here. If his blood is
19 over there, that means he was there at some point. It
20 couldn't have been after the accident.

21 He gets out of the car, walks around dazed and
22 confused, goes to an ambulance, goes to a police car, goes
23 to the police station, so he didn't go to that side of the
24 car afterwards. Therefore, he had to have been on that
25 side of the car before, which means he's in the passenger

1 position.

2 Now, this is not required to be proven to you in a
3 court of law. The Defendant has the right to remain
4 silent. That means the Defendant doesn't have to prove to
5 you what happened. He doesn't have to prove that he's
6 innocent.

7 The law requires that the State prove that he's
8 guilty. The law requires the State convince each and every
9 one of you beyond a reasonable doubt that you are firmly
10 convinced of the guilt of the accused.

11 Now, I'm not firmly convinced of anything. I'm not
12 convinced that he's the driver. I haven't seen anyone say
13 it. I haven't seen anyone put him in the driver's seat
14 except after the accident. So that's the evidence in this
15 case.

16 We've got plenty of evidence after the accident.
17 We've got statements from witnesses. We've got statements
18 from Mr. Butler. We've got field sobriety tests. We've
19 got DataMaster tests, but it doesn't matter what you blow
20 on a DataMaster if you're not the driver of the car,
21 specifically may should have asked that of Mr. Burns. As a
22 passenger, you can drink whatever you wanted.

23 But what else does the State have to show you that you
24 are firmly convinced of Mr. Butler's guilt? There is
25 nothing else, no video camera. There's no third person in

1 the car who was alive who can say I was in the passenger
2 seat and I can tell you who was driving. There's nothing.
3 The problem with that, the State can't bring you a case and
4 ask you to send a man to prison if they can't prove it.

5 Mr. Butler has denied that he's the driver. It is,
6 therefore, incumbent upon the State to prove what they say,
7 and they have to prove it to you beyond a reasonable doubt.

8 And Monday, I talked about this football field, this
9 factual football field and how the hundred yards, and in
10 civil cases, you only have to prove this much, fifty
11 percent and one piece more. The scales of justice, if they
12 tip ever so slightly in one favor or the other, but this is
13 not a Common Pleas case.

14 This is not a civil case where somebody is suing for
15 some money. This is a criminal case where you are being
16 asked to find someone guilty of a crime, and because the
17 repercussions are greater, the evidence must be stronger.
18 It must be up here, and it simply is not in this case.

19 Any police officer should have said people in every
20 car were drinking, let's test all the people in every car.
21 Any police officer should have said, okay, this guy is
22 walking around like he's dazed and confused. Let's make
23 sure if he's dazed and confused or not, but don't give him
24 a test that requires thought for a person who is hit upside
25 the head at approximately fifty-five or fifty-three miles

1 an hour.

2 If I had a stick and I hit you in the head with the
3 force of a fifty-three per mile -- mile per hour impact and
4 then asked you to say your ABCs, I suspect you might not
5 get them all correct. That's what happened here. And the
6 State hasn't shown anything to dispute that.

7 We know how the accident happened. The experts agree
8 on that. What we don't know is who was driving the car.
9 We didn't know it in 2010. We don't know it today. The
10 million dollar question, did anybody see him driving? Did
11 any police officer see him driving?

12 See, here's the thing with DUI. Usually what happens
13 is they're driving down, say, 501, weaving, and running red
14 lights and stuff, and some concerned citizen calls 911 and
15 says, hey, I think there's a drunk driver on 501. The
16 dispatcher says we'll get somebody right on it, and a
17 policeman goes out there to look.

18 They see the car go by, and the policeman gets behind
19 him and watches him weave and turn for a while, and then he
20 puts on his blue light and stops the car. In that case,
21 there's no issue about who's driving the car because the
22 policeman says I was behind him. I saw the car in motion.
23 It weaved and turned. When I pulled it over, nobody
24 switched seats, and I grabbed the guy from the driver's
25 seat and got him out. He's the one that was driving. I

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1 saw it with my own two eyes.

2 That didn't happen here, so when the question comes
3 up, did any cop see him driving? The answer is no. You
4 don't know who was driving this car.

5 Well, does he have any, you know, steering wheel
6 shaped injuries on his chest? If he did, it would have
7 been reported from this witness stand, Mr. Butler had a
8 steering wheel shaped injury and a Ford logo implanted on
9 his chest. No, he's not the person that hit the steering
10 wheel.

11 Mr. White's injuries are consistent with that. It
12 broke his ribs on both sides. It sounds like he was the
13 person to hit the steering wheel. That's a factual
14 determination that you need to make.

15 Now, how does all this tie together? The Judge will
16 give you the law, and the law says that it is illegal to
17 operate a motor vehicle in the State of South Carolina
18 while impaired. You have to add the facts to the law, so
19 the question is who was operating the motor vehicle, and
20 the next question is whoever that person was operating --
21 whoever that person was, was he impaired.

22 Now, if you determine Mitchell White was operating the
23 motor vehicle, then it doesn't matter because he's
24 deceased. If you determine that Mr. Butler was operating
25 the motor vehicle, then you need to determine whether or

1 not his ability to operate that motor vehicle was impaired.

2 Now, they've brought you these tests, stand on one
3 foot and walk and turn to show you that he was impaired.
4 And I've brought you ample evidence of head injury to tell
5 you that yes, he was impaired by that head injury, and you
6 have to determine based on this evidence that the State has
7 given you whether or not you are firmly convinced that he
8 was the driver of the car.

9 I submit to you that the State hasn't met its burden
10 of proof. We all have jobs to do, and your job is to tell
11 them you haven't carried your burden. I am not firmly
12 convinced of the guilt of the accused. I am not firmly
13 convinced that Michael Butler was the driver.

14 There is a real possibility that Mitchell White was
15 driving this car, and if you feel that there is such a
16 possibility, then you must acquit.

17 Again, I thank you for your time and for your service,
18 ask you to listen to what the Solicitor has to say. I ask
19 that you listen to what the Judge has to tell you, and when
20 you begin your deliberations, I ask you to keep in mind
21 that one issue, has the State proven to you beyond a
22 reasonable doubt, are you firmly convinced about who was
23 driving this car, and if you are not, we ask you to find
24 Mr. Butler not guilty. Thank you.

25 **THE COURT:** All right, Solicitor.

1. **MS. RICHARDSON:** Thank you, Your Honor.

2 What is felony DUI? A person who -- the Judge will
3 instruct you on the law. Please, if I say anything
4 different than what the Judge tells you, you go with the
5 Judge. He is the instructor on the law.

6 A person while driving under the influence drives a
7 motor vehicle and while driving does some acts forbidden by
8 law and that act proximately causes the death of another.

9 We're going to go through these one at a time. We'll
10 start backwards first with what really happened being
11 contested. The fourth element, did the act proximately
12 cause the death of another? You heard Dr. Proctor. He
13 talked to you about the injuries. He told you based upon
14 my experience and training and my expert opinion, he died
15 as a result of a vehicular homicide.

16 His heart was almost ripped in two. His liver was
17 almost ripped in two. He talked about the injuries. He
18 said his injuries, external and internal, are consistent
19 with blunt force trauma, blunt force trauma.. There's no
20 doubt Mitchell White died of the proximate cause of Michael
21 Butler's actions on that night, no doubt.

22 Was it an act forbidden by law? Now, you heard from
23 Eric Pierce. He said he was driving a car. He was at
24 work. He was driving a car. I recall there being -- I
25 don't think he could tell the color of the car at first.

1 He said I remember a white male because I looked at
2 him. We were riding beside each other. I think he said he
3 was going about forty miles per hour, not speeding, going
4 forty. We were riding beside each other. I remember
5 seeing a white male and a white female. I looked across.
6 Me and the male, we made eye contact.

7 Mr. Galmore asked him was that the same car that was
8 up on the Jersey barrier? Yes, it was the same car. No
9 doubt they were going the right way. They are headed
10 north.

11 He said when the accident occurred, Crystal Alden was
12 two to three car lengths in front of him, two to three car
13 lengths, two to three car lengths in front of him, but yet
14 he had no time to react. There was no skid marks. He said
15 I don't even remember if I applied my brakes. There's no
16 doubt, he hadn't been drinking. He hadn't had anything to
17 drink. He was on his way to work. He couldn't react to
18 the wreck.

19 And then did you see who was driving the car? No. He
20 was -- I was too fixated on the guy that was hanging out of
21 the back of the car and taking his last breath, not really
22 concerned with who's driving the car. I'm concerned with
23 the dead guy hanging out the back, with the guy who is
24 possibly dying at that point. Ladies and gentlemen, that's
25 reasonable. That's reasonable.

1 You also heard from Crystal Alden. Was she drinking?
2 Yes. She told you she had been drinking. She told them
3 that night she had been drinking. She wasn't trying to
4 hide anything. She wasn't trying to keep anything from
5 you. She's not trying to mislead you.

6 She said yes, I had been drinking, and no I wasn't
7 drinking a lot because I was hung over from Valentine's
8 Day. It doesn't matter whether we agree with that decision
9 or not. It's her life, okay? But what does matter is on
10 that night she was fully capable of operating the vehicle.

11 And how do we know that? She said I'm very familiar
12 with that road. I know that when you see car lights coming
13 towards you -- let me get this straight -- based upon this
14 curve, I know from my experience driving that road that car
15 lights fade. They fade if they're in the right lane.
16 These car lights weren't fading. And before I could do
17 anything, it was too late.

18 She's turning to the left. She's taking that curve.
19 She's going to the left. Doesn't it make sense, isn't it
20 reasonable that someone who is already steering to the left
21 would jerk to the left? It's common. If something is
22 coming at you, you don't turn into it. You turn away from
23 it.

24 Now, the Defense is going to want you to think that
25 because maybe she was drinking -- well, we know she was

1 drinking, but because maybe she was impaired, because maybe
2 she was distracted, maybe she was smoking a cigarette,
3 maybe she was eating, but this collision might not have
4 occurred maybe had she turned her signal and merged into
5 the right-hand lane, this accident wouldn't have occurred.
6 Michael Butler would have just drove on by.

7 Ladies and gentlemen, if Michael Butler hadn't been
8 driving a car on the wrong side of the road, this collision
9 wouldn't have occurred. Lieutenant Dangerfield told you it
10 would defy the laws -- it would be contrary to the law of
11 physics for this wreck to have occurred any other way.

12 There's no doubt Crystal Alden and Eric Pierce are
13 going on the right side of the road, and Michael Butler
14 comes down the wrong side of the road, causing a head-on
15 collision, no doubt.

16 Lieutenant Dangerfield also talked to you about
17 investigation and reconstruction and, you know, maybe we
18 should have called every officer that was out there that
19 night, but why would you do that when you heard he's
20 investigating it.

21 He's getting statements, names, addresses, insurance
22 information. All of those people were here to tell you.
23 They were here to tell you what they told him that night.
24 No doubt Michael Butler was doing this act forbidden by law
25 on that night.

1 Was Michael Butler under the influence of alcohol?
2 Absolutely. Absolutely. Officer Swarthout told you he
3 reeked of alcohol. From the very beginning, there was no
4 doubt as to his intoxication. The only doubt at that point
5 was she didn't know who was driving.

6 They were trying to get witness statements to find out
7 who was driving. We'll get to that in a minute. She -- I
8 believe it was her testimony that he was highly
9 intoxicated.

10 Well, let's just make it clear here. This isn't my
11 standard. Highly intoxicated is not my standard. I don't
12 have to show you that he was in, for lack of better words,
13 a drunken stupor. I don't have to do that. I have to show
14 you that he was under the influence of alcohol.

15 Now, the Defense really wants you to think because he
16 had a concussion. There was absolutely no testimony, no
17 testimony that he had a concussion.

18 In fact, Phillip Johnson, who is the medic, who did
19 the Glasgow Coma Score, whose whole purpose is to determine
20 if someone has a head injury; he got the highest score on
21 it, one of the highest scores on it. He didn't have a head
22 injury. He had a cut to his eye. He had a small cut to
23 his eye. He had a concussion because he was changing the
24 story.

25 Phillip Johnson also told you when I initial- -- when

1 we initially asked him, when we made our first assessment
2 on scene, I asked him who was driving or where were you in
3 the car? I was the driver.

4 Now, that story doesn't change, ladies and gentlemen,
5 until Phillip Johnson tells you he's trying to make contact
6 with Mitchell White. All of a sudden, the seriousness of
7 his actions is setting in. That's why everything changes.

8 There's been a big to-do about a concussion.
9 Regardless, I submit to you there is no evidence that he
10 had a concussion. Officer Swarthout took him to the
11 hospital. She testified. She told you I was with him the
12 whole time. I went with him.

13 They did see him. They did upper scans. They did
14 head scans. They didn't tell me anything to watch out for.
15 They didn't tell me anything I needed to be concerned
16 about. They told me he had a cornea -- a corneal abrasion,
17 a scratch to his eye.

18 That's what he had, and don't you think if they had
19 had concerns about his head they would have told the
20 officer that he was going to jail with, you need to be
21 watching out for this. If he displays any of these signs,
22 you need to bring him back to us.

23 They didn't tell her any of that, none of that. He
24 was free to go, just like Phillip Johnson said he was free
25 to go that night on the scene. He denied having treatment

1 over, and over, and over, and over.

2 Conveniently enough, he didn't ask for medical
3 treatment until he's in a DataMaster Room in which we can't
4 let him go. We're under law to collect that sample within
5 a certain amount of time. He knows that. He's delaying
6 that process as much as he possibly can.

7 The fact of this is, even some way you think maybe he
8 did have a concussion, again I submit to you there's no
9 testimony of that, that concussion would not cause him to
10 blow a point one nine. That's also how we know he's under
11 the influence. Point one nine. You'll hear about this
12 finding, okay?

13 A lot of people are under the misunderstanding that
14 South Carolina has a .08 limit. There's no limit. It's an
15 inference, okay? The law says that once you reach .08, you
16 can infer that someone is impaired. Their faculties to
17 drive, their ability to drive that car would be impaired at
18 a .08.

19 We didn't have a .08. We had a .19. We're double.
20 We're above double. We're at a .19. Ladies and gentlemen,
21 he was impaired. He was impaired.

22 Now, was Michael Butler the driver of the car? Mr.
23 Said Canto told you -- and listen, he's got no friends to
24 reward. He said I don't know these people. I didn't know
25 the victim. I don't know him. He didn't know anybody, no

1 friends to reward, no enemies to punish. He is merely
2 being a good citizen and stopped at a collision.

3 He said I was there within mere seconds. Remember, I
4 believe he told you, too, they are only a few car lengths
5 ahead of him. Now, he can't see the collision because the
6 way the curve happened, doesn't see it, they're far enough
7 ahead of him for that, but he does see the smoke. He hears
8 the collision and he sees the smoke.

9 He said when I get there, I turn off my car, I believe
10 he said, and I put on my flashers, park in the middle of
11 the road, jumped out and tries to see if he can help
12 anybody. Ladies and gentlemen, he's there within mere
13 seconds. We're not talking about minutes. He's there
14 within mere seconds.

15 He got to the small car first. The small car, we now
16 know what he's referring to as the silver car. I see that
17 first. He sees the guy hanging out of the window, Mitchell
18 White. He testified I did not have the skills to help him.
19 He wanted to, he really wanted to, but he didn't have the
20 skills to help him. I watched him take his last breath.

21 He goes to the driver to assist the driver. He says
22 he's not a small man, he's not a tall man. He was a black
23 male with long dreads. He was knocked out behind the
24 driver's seat. Whether he was sleeping, whether he was
25 knocked out, he was passed out behind the driver's seat.

1 He hears Crystal Alden screaming, so he immediately
2 takes off to her car. They're up on the Jersey barrier
3 teetering. Don't get out. It's going to flip. It's going
4 to fall. Don't move. She says will you hand me my phone?
5 Of course. He picks up the phone and he hands it to her.
6 Help is on the way.

7 He goes back around to Michael Butler. I asked him
8 specifically where was his butt? It seems like a dumb
9 question. It seems like a silly question. His butt is in
10 the driver's seat. He's sitting up. He's not slouched
11 over. He's not hanging over. He is sitting up in the
12 driver's seat.

13 I didn't ask him, because quite frankly I didn't know
14 where they were going with it, but the Defense attorney
15 asked him where was his feet? On the pedal, in the floor.
16 He's sitting up.

17 How else do we know he was driving? Because the DNA
18 said he was driving. One in one point four quadrillion. I
19 don't even know how to write that number. One in one point
20 four quadrillion it was him.

21 Now, where was that blood located? Their expert told
22 you it was on the left-hand side. You're sitting in the
23 driver's seat from the left-hand side of that vehicle.
24 Sitting in the passenger seat, it was on the left-hand side
25 of that seat. What eye is bleeding? His right eye.

1 Ladies and gentlemen, we all know when an air bag
2 deploys, it blows out. His right eye is bleeding. Doesn't
3 it make sense that as the driver of that vehicle, there's
4 going to be blood on that left -- on that passenger side,
5 on the left side of it? Had he started off in this seat,
6 there would have been blood all over it. There wasn't.
7 No.

8 Sometimes evidence that you don't necessarily talk
9 about, it's the things that aren't said that speaks louder
10 than the things that are said. In the B.A. room, what is
11 Michael Butler holding? His left arm. Their expert told
12 you he would expect to see injuries to the left side. He's
13 holding his left arm.

14 Ironically enough, Crystal Alden told you -- we know
15 she's the driver, we know she's restrained, she tells you I
16 had a laceration to my eye, the same exact injury had to
17 his eye, who was also in the driver's seat restrained by a
18 seatbelt.

19 Let's talk about that. Let's talk about this expert
20 they brought in. I didn't object to his qualifications as
21 a reconstructionist in accidents because he'd had the same
22 training as my guy had. He is qualified to do a
23 reconstruction accident, but when it comes to the inside,
24 you heard me ask him, in all your training, how much
25 training have you had as far as the occupant

1 reconstruction? One class. One class back in 1999.

2 It's just ironic he was on the Board -- you heard
3 Lieutenant Dangerfield tell you that the Sergeants over the
4 MAIT Team sit on the Board. It's a review process. The
5 guys out in the field do their analysis. They come up with
6 a conclusion. They bring it to me. I review everything
7 they review. I come up with my own conclusion. We compare
8 those. It has to go through a Review Board. He's on that
9 Board.

10 Ladies and gentlemen, if there was a question as to
11 who was driving that vehicle, don't you think that Board
12 would have brought it up? There's only a question four
13 years later when now he's unemployed by the Highway Patrol,
14 when he's employed by the Defendant, and he'll say whatever
15 he needs to say to get paid. That's just being honest.

16 The only Review Board that he's got now is you and
17 your good common sense.

18 Let's talk about this accident. You guys saw the
19 picture. Here's one, and you'll have the pictures to look
20 back there. This is the Defendant's car he was in. He
21 wants you to believe -- that expert wants you to believe
22 that whoever is in this passenger seat gets moved to the
23 driver's seat, sitting up with his feet on the pedals, in a
24 driving position perfectly, and while it tosses back,
25 causes somebody else to get thrown out the back.

1 Honestly, I didn't even know where to go with him. I
2 asked him would anything change your opinion? If Said
3 Canto came in and said his feed were on the pedals, would
4 that change your opinion? No. If Michael Butler told you
5 he was driving the car, would that change your opinion?
6 No. No. No. Nothing changes his opinion. Why? He's
7 getting paid to say an opinion.

8 Use your good common sense when it comes to this
9 accident. It's like a roller coaster ride. You're jerking
10 and you're pulling the same way. People's bodies are
11 moving the same way. Is it really possible that the same
12 accident that can cause somebody to go out of that back
13 window would also be the same accident that would cause
14 Michael Butler to not be leaning in the driver's side, but
15 to be sitting straight up with his butt in the seat and his
16 feet on the pedals?

17 When you ride a roller coaster and they put the
18 harness over you, they put the lap band on, if you've got
19 two guys riding a roller coaster, one is strapped in and
20 one is not, guess who's left at the end of the ride. I
21 submit to you it's not the one who wasn't strapped in.
22 He's out. He's out.

23 There's no possible way Mitchell White was driving
24 this vehicle. Said Canto told you it was in mere seconds,
25 mere seconds from there, and Michael Butler was behind the

1 driver's seat. How else would we know it was his car that
2 he was driving? It was his mama's car. It was her car,
3 but his buddy, unfortunately who is deceased, was more
4 drunk than he was.

5 Now, why would you let somebody who is more drunk than
6 you drive your mama's car? You wouldn't, ladies and
7 gentlemen. You wouldn't. There is no doubt Michael Butler
8 is the driver of this car. There's simply no doubt.

9 And briefly about Mitchell White's injuries, there's a
10 gash in his leg, his right leg I believe it is. They want
11 you to believe that that injury came from the seatbelt.
12 Ladies and gentlemen, I submit to you, that injury, that
13 blunt force trauma that Dr. Proctor told you about, came to
14 him when he was sitting in that passenger seat when that
15 dashboard came so far in, it removed him.

16 I just -- I'm still not -- I'm not ready to move on
17 from there, and I can't do things reverse, so I'm trying
18 not to turn my back to you. You've got two guys sitting
19 beside each other, okay, passenger, driver.. They get hit
20 right here first.

21 They say it's going to go this way, so you're
22 swinging. If you're -- if you're swinging, that supposedly
23 is what causes Michael Butler to go into the driver's seat,
24 but the accident that his expert is saying that causes
25 Mitchell White to come out of the seat isn't until the

1 second accident, but when Michael Butler would have been on
2 top of him. It just don't make sense. It doesn't make
3 sense.

4 I submit to you Mr. White is sitting in the passenger
5 seat. He is unrestrained. When that first impact happened
6 and they shift this way, when Michael Butler hits his arm
7 on the driver's side door that his expert told you that
8 would have happened, he's holding it in the B.A. room.

9 When they shift this way and they hit again, and they
10 get hit in the back, Mitchell White who is sitting in the
11 passenger seat shifts, and when he's hit in the back, he
12 ejects. There's nothing to hold him there. That seat
13 isn't there anymore because he's in the center area, and he
14 ejects straight through the back.

15 Ladies and gentlemen, use your good common sense.
16 That's why we picked you. Beyond a reasonable doubt. The
17 Defense attorney told you it's not beyond all doubt, it's
18 reasonable. He stood up here and he told you if you get
19 back there and you hesitate to act, then he's not guilty.
20 You'll hear the definition of hesitate to act. You'll hear
21 the definition of beyond a reasonable doubt.

22 There is no time limit on that. There is no time
23 limit on that. You might get back there and it might take
24 you a little while, it might take you a long time, but
25 there's no specific time limit.

CLOSING SUMMATION FOR THE STATE (RICHARDSON)
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1 I submit to you when you get twelve people in a room
2 and you know you're hungry and you try to decide where
3 you're going to eat, it might take a little while. It
4 doesn't mean you're not hungry. It just may take a little
5 while.

6 To use the analogy of the football field, he told you
7 they don't have to score, but they've got to get awful
8 close to it. Ladies and gentlemen, touchdown. Touchdown.
9 There's absolutely no doubt Michael Butler was driving that
10 car. That's not a reasonable doubt. There's absolutely no
11 doubt he did an act forbidden by law.

12 He was driving down the wrong side of the road.
13 There's absolutely no doubt he was impaired. He blew a
14 .19, and there's absolutely no doubt that had he not been
15 driving on the wrong side of the road under the influence
16 that night, Mitchell White would not have died.

17 There's absolutely no doubt, and there's no doubt that
18 he's the one that you should convict for felony driving
19 under the influence. Thank you for your time and attention
20 in this matter.

21 **THE COURT:** All right, Mr. Foreman, if you would take
22 your jury to the jury room for just about five minutes,
23 we'll come in and conclude the matter.

24 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
25 **JURY.)**

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1 **THE COURT:** All right. We'll be at ease for about
2 five minutes. Thank you very much.

3 **(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE**
4 **THE PRESENCE OF THE JURY.)**

5 **THE COURT:** All right, Solicitor, are you ready to
6 have the jury come in?

7 **MS. RICHARDSON:** Yes sir, Your Honor.

8 **THE COURT:** And Mr. Galmore?

9 **MR. GALMORE:** Yes sir.

10 **THE COURT:** Ask the jury to come in, please, sir.

11 **(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE**
12 **JURY.)**

13 **THE COURT:** All right, Mr. Foreman and ladies and
14 gentlemen of the jury, it is now my duty and responsibility
15 to give you the law that you will apply to the facts and
16 evidence you find to be true. I told you at the very
17 beginning I would not indicate to you in any way what I
18 thought the facts of this case were because it wasn't my
19 job, it was your job, duty, and responsibility.

20 In that same vein, if you came into this courtroom
21 with any preconceived ideas of what the law is, what it
22 ought to be, what it should be, what you hope it would be,
23 you will disregard that. You will take the law as I now
24 give it to you and apply it to the facts and evidence you
25 find to be true.

1 I told you at the very beginning one of your duties
2 and responsibilities in this case was to be the judges of
3 the facts of the case and in that you would be determining
4 the credibility and the believability of the witnesses that
5 have testified in this case.

6 In doing so, you can believe one witness against
7 several, several against one. You can believe a portion of
8 what a witness says and disregard the remaining portion of
9 their testimony. If you've got a good and sound reason for
10 doing so, you can disregard in its entirety the testimony
11 of a particular witness.

12 You look at whether or not that witness has exhibited
13 to you any kind of interest, motive, bias, prejudice they
14 might have in giving you the testimony they gave you from
15 the witness stand. You look at the opportunity for
16 knowledge, how did they come about that information that
17 they gave you from the witness stand.

18 And again I remind you, you use your good common
19 sense. You do something you do every single day of your
20 life when somebody is telling you something in judging it
21 whether or not you believe it. You use your good common
22 sense and apply it to the facts and evidence of this case
23 and find that evidence which convinces you of its truth.

24 You don't have any friends to reward. You don't have
25 any enemies to punish, and your verdict can't be the result

1 of any kind of passion, prejudice, or sympathy. It has to
2 be an examination of the facts and evidence and find that
3 evidence which convinces you it's true.

4 Now, in this particular matter there are two types of
5 evidence that are presented, presented in this case, and
6 it's presented in virtually every single case that's tried,
7 and they're called direct and circumstantial evidence.

8 Direct evidence, that's the testimony of a person who
9 asserts or claims to have actual knowledge of a fact. This
10 is what I saw, this is what I heard, this is what I
11 smelled. It's something that happened in their presence
12 and they're telling you about it.

13 Circumstantial evidence, that's a proof of a chain of
14 facts indicating the existence of a fact. The law doesn't
15 make any distinction between the two, and a greater degree
16 of proof is not required regarding one or the other.
17 However, to the extent that the State relies on
18 circumstantial evidence, all of the circumstances must be
19 consistent with each other and when taken together point
20 conclusively to the guilt of the accused beyond a
21 reasonable doubt.

22 As I told you in the very beginning, the State has the
23 burden of proving everything in this case beyond a
24 reasonable doubt. The burden rests with the State
25 regardless of whether or not the State relies on direct

1 evidence or circumstantial evidence or some combination of
2 the two.

3 After weighing all the evidence, if you are not
4 convinced of the guilt of the Defendant of the crime
5 charged beyond a reasonable doubt, you must find the
6 Defendant not guilty.

7 The Defendant in this matter did not testify. I
8 instruct you, I emphasize to you, and I tell you this fact
9 is not a factor in this case. It cannot be considered by
10 you in your deliberations in any way. You cannot even use
11 it mentally in deciding whether or not the State has proven
12 the Defendant guilty beyond a reasonable doubt.

13 This Defendant, any defendant, has the constitutional
14 right to remain silent. The assertion, the claim, of this
15 right cannot be used against them in any way. It means you
16 can't consider it in any way. You can't discuss it in the
17 jury room.

18 I told you at the very beginning a defendant is not
19 required to prove anything to you at all. They don't even
20 have to show up for trial because they don't have to prove
21 anything to you. The State has the burden of proof to
22 prove the Defendant guilty beyond a reasonable doubt.

23 To the indictment, you remember I read it to you when
24 y'all were assembled in the courtroom at the very beginning
25 to see if anybody knew anything about this case. That was

1 the charge, the indictment, brought against the Defendant.

2 To that charge or indictment, the Defendant pled not
3 guilty. That means he is presumed innocent of the crime
4 for which the charge has been brought or levied against
5 him.

6 It's an important rule of law that this Defendant, any
7 defendant in a criminal trial, no matter the seriousness of
8 the charge, whatever the charge is, will always be presumed
9 innocent of the crime for which the indictment has been
10 issued until and unless the State proves the defendant
11 guilty beyond a reasonable doubt.

12 This presumption of innocence didn't end at the
13 beginning of the trial. It hasn't ended now. It does not
14 end unless and until you believe the evidence you find to
15 be true has proved the Defendant guilty beyond a reasonable
16 doubt.

17 This presumption of innocence is liken to a robe of
18 righteousness placed on the shoulders of the Defendant and
19 it stays on the shoulders of the Defendant unless and until
20 the State rips that robe of righteousness from the
21 shoulders of the Defendant by proof which convinces you of
22 the guilt of the Defendant beyond a reasonable doubt.

23 This is not just some legal theory or legal phrase
24 that we use. It's a substantial right to which every
25 defendant and which every American is entitled. Unless and

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1 until you are satisfied from the evidence of the
2 Defendant's guilt beyond a reasonable doubt, he is presumed
3 innocent.

4 What's reasonable doubt? Reasonable doubt is the kind
5 of doubt that would cause an ordinary, reasonable person to
6 hesitate to act. Proof beyond a reasonable doubt is proof
7 that leaves you firmly convinced of the Defendant's guilt.

8 Now, there are very few things we can know with
9 absolute certainty and the law and the State is not
10 required to give you that kind of proof. What is required
11 is that if based upon your consideration of the evidence
12 you find to be true you are firmly convinced the Defendant
13 is guilty of the crime charged, you must find the Defendant
14 guilty.

15 On the other hand, based upon your view of the
16 evidence, the evidence you find to be true, you are not
17 firmly convinced the Defendant is guilty of the crime
18 charged, you must give the Defendant the benefit of the
19 doubt and find them not guilty.

20 The Defendant in this matter is charged with the crime
21 of felony driving under the influence, death resulting.
22 The State must first prove to you beyond a reasonable doubt
23 that the Defendant drove a motor vehicle upon the roadways
24 of the State of South Carolina while under the influence of
25 alcohol or drugs.

1 Driving a motor vehicle means that the vehicle was in
2 motion. This may be proved by direct or circumstantial
3 evidence. A movement of a vehicle which occurred without
4 any affirmative act by a driver is not driving. If the
5 vehicle is moved by some power beyond the control of the
6 Defendant, this is not driving. The State has to prove the
7 Defendant was driving the vehicle by direct or
8 circumstantial evidence.

9 The State must prove beyond a reasonable doubt that
10 the Defendant was sufficiently under the influence to
11 impair his ability to drive with reasonable care, with due
12 regard for himself and others, or as a reasonably prudent
13 person would drive.

14 It is not necessary to show that the Defendant was in
15 some helpless, intoxicated condition or passed out. On the
16 other hand, the fact that the Defendant had sometime prior
17 to the incident drank an alcohol beverage does not in and
18 of itself prove the Defendant was driving under the
19 influence.

20 The State then has to prove to you beyond a reasonable
21 doubt that while driving the Defendant did an act forbidden
22 by law or neglected a duty imposed by law, that means
23 violated one of the rules of the road, the statutory rules
24 of the road that everybody must abide by when they are
25 driving upon the roadways, highways, byways of the State of

1 South Carolina.

2 Now, I will read to you, too, which you may use for
3 your consideration to see whether or not the State has
4 proven to you beyond a reasonable doubt that while driving
5 the Defendant did an act forbidden by law or neglected a
6 duty imposed by law. Again, the State has to prove this,
7 as well as everything, beyond a reasonable doubt.

8 Upon any roadway having four or more lanes for moving
9 traffic and providing for two-way movement of traffic, no
10 vehicle shall be driven to the left of the center line of
11 the roadway except when authorized by an official traffic
12 control device designating that lane to the left side of
13 the center of the roadway to be used.

14 A person using the public roadway, highways, byways of
15 the State of South Carolina owes an urgent duty to keep a
16 proper lookout for other persons or objects upon the
17 highway. This duty is not merely one of looking, but of
18 observation.

19 In the exercise of due care or caution for the safety
20 of himself and others, a person must look in an intelligent
21 and careful manner so as to enable him to see any other
22 persons or objects on the highway to avoid harming any
23 other persons or objects upon the highways of the State of
24 South Carolina.

25 Finally, the State of South Carolina has to prove to

1 you beyond a reasonable doubt that the act or the neglect,
2 an action they did or neglecting to do something an
3 ordinary, reasonable person would have done, of the
4 Defendant proximately caused the death of another person.

5 What's proximate cause? Proximate cause is the direct
6 cause. It's the immediate cause, the efficient cause, the
7 cause without which the death of the victim would not have
8 resulted. There must be some chain of causation from the
9 time of the injury inflicted by the Defendant until the
10 time of the Defendant's (sic) death.

11 Now, it doesn't mean it has to have occurred
12 immediately, right immediately prior to death, and there
13 can be more than one proximate cause. Two or more acts may
14 combine together to be the proximate cause of the death of
15 a person.

16 The Defendant's act is regarded as the proximate
17 cause, the direct cause, if it is a contributing cause to
18 the death of the victim. The fact that some other cause
19 might also contribute to the death of the victim does not
20 relieve the Defendant from responsibility.

21 The Defendant's act does not have to be the sole cause
22 of the death, but it has to be a direct cause contributing
23 to the death of the victim.

24 The amount of alcohol in the Defendant's blood at the
25 time of the alleged violation as shown by a chemical

1 analysis of the Defendant's breath or bodily fluid may be
2 considered by you in deciding whether or not the Defendant
3 was under the influence if the alcohol concentration was
4 eight one-hundredths of one percent or more, that is .08,
5 it may be inferred that the Defendant was under the
6 influence of alcohol.

7 This inference is an evidentiary fact to be considered
8 by you along with all the other evidence, and you give it
9 the weight you desire. Again, as with all things, the
10 State has to prove this to you beyond a reasonable doubt,
11 the State having the burden of proof on all matters, that
12 standard being beyond a reasonable doubt.

13 That, ladies and gentlemen, is the law that you will
14 apply to the facts and evidence you find to be true in this
15 particular case. Just to go over it very quickly, the
16 State has to prove to you these things beyond a reasonable
17 doubt, those being the Defendant drove a vehicle while
18 under the influence of alcohol.

19 The State has to prove beyond a reasonable doubt the
20 Defendant was sufficiently under the influence of alcohol
21 to impair his ability to drive with reasonable care. The
22 State has to prove to you that the Defendant did an act
23 forbidden by law, neglected a duty, didn't follow one of
24 the rules of operation when -- that everybody has to follow
25 when they drive on the roadway of the State of South

1 Carolina.

2 And the State has to prove to you beyond a reasonable
3 doubt that this act or neglect of the Defendant while under
4 the influence of alcohol caused the death of another
5 person.

6 The verdict form in this matter is straightforward.
7 It has the caption of the case. It's got felony driving
8 under the influence, death resulting. On the charge of
9 felony driving under the influence that we, the jury, by
10 unanimous consent, find the Defendant, Michael Anthony
11 Butler, Jr., and there's two choices here, and I put one
12 before the other, and don't assign anything to that, I've
13 got to put one before the other, not guilty or guilty.
14 Those are your two choices by unanimous consent.

15 Unanimous means exactly what you think it means. It
16 means twelve/zero. It does not mean eleven/one, ten/two,
17 any combination thereof. Whatever your verdict is, you've
18 got two choices. Whatever the verdict is, it must be
19 unanimous.

20 Mr.. Foreman, there's a space on here, when your jury
21 has well and truly deliberated and they've reached that
22 unanimous conclusion, you check the appropriate block, you
23 sign your name, you put today's date. It will be given to
24 the Court, and you will be telling us, Judge, every single
25 member of the jury agrees to this verdict. This verdict is

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1 twelve/zero. Everybody agrees.

2 What I'm going to ask that you do, Mr. Foreman, is --
3 Mr. Alternate, if you'll stay with us, but, Mr. Foreman,
4 take the other members of the jury that will total up with
5 yourself twelve, take them back to the jury room. Do not
6 -- do not begin your deliberations until the bailiff hands
7 to you the verdict form and the exhibits. When the verdict
8 form and the exhibits come into the jury room, then you may
9 begin your deliberations.

10 Mr. Foreman, take your jury to the jury room, please.

11 (AT 11:00 A.M., THE FOLLOWING TAKES PLACE OUTSIDE THE
12 PRESENCE OF THE JURY.)

13 THE COURT: Mr. Weiss. Is there any objection from
14 the State or the Defense from the Court excusing the
15 alternate from his duties and responsibilities here,
16 Solicitor?

17 MS. RICHARDSON: None from the State, Your Honor.

18 MR. GALMORE: No sir.

19 THE COURT: All right. Very good.

20 All right, Mr. Weiss, your duty and responsibility was
21 to step in the shoes of one of the other twelve members of
22 the jury if for some reason they couldn't go forward, if
23 somebody got sick, or ill, or whatever the situation is.
24 They all seem ready, willing, and able to do that, so I am
25 able to excuse you from your responsibilities in this case.

1 I am also excusing you from your responsibilities for this
2 jury term. When I release you, you will be done with your
3 obligations for this week.

4 I want to thank you. You performed a valuable
5 service. I appreciate it very much. I can't tell you how
6 many times we actually have to use the alternate. We
7 didn't have to in this particular case, but it happens much
8 more frequently than you would think, so you were there
9 and, you know, chances are, this time it just didn't
10 happen, all right?

11 I want to thank you. You are excused.

12 **MR. WEISS:** Thank you.

13 **THE COURT:** Yes sir.

14 All right. Any exceptions, deletions, additions to
15 the charge from the State?

16 **MS. RICHARDSON:** No sir, Your Honor.

17 **THE COURT:** From the Defense?

18 **MR. GALMORE:** No sir.

19 **THE COURT:** All right, Counsel, if y'all would please
20 get with the Court Reporter, make sure we've got all the
21 exhibits that need to go to the jury. We do have a laptop
22 that we will send in with them with the C.D.s we've got.
23 We took care of that. We have that already, and there's
24 nothing else on it. It's just one that can play -- play
25 the C.D.s. The Clerk's Office has that and that's what

1 they use, so that's what it's there for.

2 **MS. RICHARDSON:** Your Honor, ---

3 **THE COURT:** Yes ma'am.

4 **MS. RICHARDSON:** --- my only position with that would
5 be there were some parts of the B.A. room that were muted.
6 Obviously I don't ---

7 **THE COURT:** Well, I don't know what to do about that.

8 **MR. GALMORE:** Your Honor, if they want to hear the
9 C.D.s, could we perhaps bring them out to the courtroom and
10 let them hear them again?

11 **THE COURT:** Well, we'll have to tell them that
12 somehow. If I'm not going to send the laptop in for them
13 to look at it, they've got to know that they're just not
14 getting C.D.s that they can't -- so, you know, I guess we
15 could write a note that, you know, could be attached to the
16 outside.

17 Both of them were in a sleeve, and I guess we could
18 attach it to the outside of the sleeve and say if you wish
19 to listen to either of these, please let the bailiff know,
20 something like that.

21 Dixie, do you want to -- your handwriting is going to
22 be a whole lot more readable than mine is, so if you would
23 just tell them something like that and just attach it, all
24 right?

25 With that, I also wanted to tell you, Counsel, that

1 y'all, both of y'all, all of y'all, all four of you did a
2 great job, did everything that the Court would have
3 expected in this case and I appreciate your hard work on
4 both sides of this case. Thank y'all.

5 With that, we'll be at ease until the jury needs us.

6 **THE REPORTER:** I have thirty-three exhibits for the
7 State. 34 did not go in. And I have 1 and 4 went in for
8 the Defendant.

9 **(AFTER A FULL REVIEW, COUNSEL FOR THE STATE AND THE**
10 **DEFENSE ARE IN AGREEMENT WITH THE EXHIBITS TO BE SUBMITTED**
11 **TO THE JURY.**

12 **AT 11:10 A.M., THE VERDICT FORM AND EXHIBITS ARE TAKEN**
13 **TO THE JURY.)**

14 **(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
15 **JURY.)**

16 **THE COURT:** All right. There is a request of the jury
17 in the State versus Michael Anthony Butler, Jr. matter to
18 watch one of the DVDs, and they have given that to the
19 Court, and I have given that to the Solicitor to put in the
20 machine to queue up for them to watch, so you want to go
21 ahead and put the -- let's see if we can't get it situated
22 before they come in.

23 All right. Very good.

24 Is the State ready for the jury to come in?

25 **MS. RICHARDSON:** Yes sir, Your Honor.

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1 **THE COURT:** And the Defense?

2 **MR. GALMORE:** Yes sir.

3 **THE COURT:** Ask the jury to come in, please, sir.

4 (NOTE FROM JURY IS MARKED AS COURT'S EXHIBIT NUMBER
5 1.)

6 (AT 12:00 P.M., THE FOLLOWING TAKES PLACE WITHIN THE
7 PRESENCE OF THE JURY.)

8 **THE COURT:** All right, Mr. Foreman, you had requested
9 on behalf of the jury to watch what we are calling the
10 roadside video, and we have that que'ed up to play now. As
11 I recall, I don't know that it's that long, but whatever
12 portion of it you want to watch, you just let us know.
13 You're in control of that.

14 If you want to watch the whole thing, that's great, or
15 just the beginning, or whatever part of it, we'll do that,
16 and then I'll ask you if there's anything further at the
17 end of it, all right?

18 Very good. Go ahead, Solicitor.

19 (STATE'S EXHIBIT NUMBER 29, ROADSIDE VIDEO OF FIELD
20 SOBRIETY TESTS, PUBLISHED IN OPEN COURT.)

21 **THE COURT:** All right, Mr. Foreman, based on the
22 Court's rulings, that's the evidence that y'all received
23 earlier in trial as far as that stage of the video.

24 Is there anything else that you would like at this
25 point in time?

JURY IN
JURY OUT/ON RECORD/JURY IN

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1 **THE FOREMAN:** No sir.

2 **THE COURT:** All right, sir. If you would take the
3 jury back to the jury room and resume the deliberations.
4 Thank you.

5 **(AT 12:09 P.M., THE FOLLOWING TAKES PLACE OUTSIDE THE**
6 **PRESENCE OF THE JURY.)**

7 **THE COURT:** All right, Counsel, we'll just be at ease
8 until the jury needs us then, all right? Thank y'all very
9 much.

10 **(AT 12:40 P.M., NOTE FROM JURY IS MARKED**
11 **OFF-THE-RECORD AS COURT'S EXHIBIT NUMBER 2.)**

12 **(AT 1:20 P.M., THE FOLLOWING TAKES PLACE OUTSIDE THE**
13 **PRESENCE OF THE JURY.)**

14 **THE COURT:** I think you saw that the jury wanted to
15 hear some of the testimony of the witness, Said Canto, so I
16 think we are prepared to play that, Madam Court Reporter?

17 **THE REPORTER:** Yes sir.

18 **THE COURT:** All right. Very good.
19 Ask the jury to come in, please.

20 **(AT 1:25 P.M., THE FOLLOWING TAKES PLACE WITHIN THE**
21 **PRESENCE OF THE JURY.)**

22 **THE COURT:** All right, Mr. Foreman, at the request of
23 the jury, we are prepared to play the -- re-play the
24 testimony of the witness, Said Canto.

25 Please remember we are here at your request, so if at

JURY IN
JURY OUT/ON RECORD

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1 any point in time the jury as a whole believes they've
2 heard what they want to hear, we can stop. Obviously, we
3 can hear the whole thing if you want to. It's just I'm
4 trying just to indicate to you it's up to you how much we
5 hear of it, all right?

6 Very good. Madam Court Reporter, if you would play
7 the testimony then.

8 (THE TESTIMONY OF WITNESS, SAID CANTO, IS PLAYED IN
9 OPEN COURT.)

10 THE COURT: All right, Mr. Foreman, we have played the
11 testimony of Mr. Said Canto. Is there anything else that
12 you would like to do at this point in time?

13 THE FOREMAN: No sir.

14 THE COURT: All right, sir. If you would go back to
15 your jury room and resume your deliberations. Thank you
16 very much.

17 (AT 1:57 P.M., THE FOLLOWING TAKES PLACE OUTSIDE THE
18 PRESENCE OF THE JURY.)

19 THE COURT: All right, anything from the State at this
20 point in time?

21 MS. RICHARDSON: No sir, Your Honor.

22 THE COURT: Defense?

23 MR. GALMORE: All right. We'll just be at ease until
24 the jury needs us then. Thank you very much.

25 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE

JURY OUT/ON RECORD
JURY IN/VERDICT

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1 JURY.)

2 THE COURT: Solicitor, I understand the jury has
3 returned a verdict. Is the State ready to receive it?

4 MS. RICHARDSON: Yes sir, Your Honor.

5 THE COURT: Defense?

6 MR. GALMORE: Yes sir.

7 THE COURT: Very good. Ask the jury to come in,
8 please, sir.

9 (AT 2:14 P.M., THE FOLLOWING TAKES PLACE WITHIN THE
10 PRESENCE OF THE JURY.)

11 THE COURT: All right, Mr. Foreman, has your jury
12 reached a verdict in this matter?

13 THE FOREMAN: Yes, Your Honor.

14 THE COURT: All right. Very good. Could you hand the
15 verdict form to the Clerk, please, sir.

16 All right, Madam Clerk, you may publish the verdict.

17 THE DEPUTY CLERK: In the Court of General Sessions,
18 Fifteenth Judicial Circuit, Case Number 2014-GS-26-02621,
19 State of South Carolina, County of Horry, State of South
20 Carolina versus Michael Anthony Butler. Felony driving
21 under the influence, death.

22 On the charge of felony DUI under the influence,
23 death, we, the jury, by unanimous consent, find the
24 Defendant, Michael Anthony Butler, Jr., guilty. Signed by
25 Foreperson, William Todd. Dated July 17, 2014.

VERDICT
JURY POLLED

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1 **THE COURT:** All right, Mr. Foreman, ladies and
2 gentlemen of the jury, if that is your verdict, if you
3 would so indicate by raising your right hand, please.
4 You may put them down. Thank you.
5 All the jurors having affirmed the verdict by raising
6 their right hand, does the State wish the jury polled?
7 **MS. RICHARDSON:** No sir, Your Honor.
8 **THE COURT:** Does the Defense wish the jury polled?
9 **MR. GALMORE:** Yes sir, Your Honor.
10 **THE COURT:** Very good.
11 By juror number, if you would please poll the jurors,
12 Madam Clerk.
13 **THE DEPUTY CLERK:** Please stand when I call your
14 number. I will ask you two questions. After you answer
15 them, please be seated.
16 **THE DEPUTY CLERK:** Juror 461. Is this your verdict?
17 **JUROR NUMBER 461:** Yes ma'am.
18 **THE DEPUTY CLERK:** Is this still your verdict?
19 **JUROR NUMBER 461:** Yes ma'am.
20 **THE DEPUTY CLERK:** Juror 113. Is this your verdict?
21 **JUROR NUMBER 113:** Yes ma'am.
22 **THE DEPUTY CLERK:** Is this still your verdict?
23 **JUROR NUMBER 113:** Yes ma'am.
24 **THE DEPUTY CLERK:** Juror 177. Is this your verdict?
25 **JUROR NUMBER 177:** Yes ma'am.

1 THE DEPUTY CLERK: Is this still your verdict?
2 JUROR NUMBER 177: Yes ma'am.
3 THE DEPUTY CLERK: Juror 357. Is this your verdict?
4 JUROR NUMBER 357: Yes ma'am.
5 THE DEPUTY CLERK: Still your verdict?
6 JUROR NUMBER 357: Yes ma'am.
7 THE DEPUTY CLERK: Juror 254. Is this your verdict?
8 JUROR NUMBER 254: Yes.
9 THE DEPUTY CLERK: Is this still your verdict?
10 JUROR NUMBER 254: Yes ma'am.
11 THE DEPUTY CLERK: Juror 354. Is this your verdict?
12 JUROR NUMBER 354: Yes ma'am.
13 THE DEPUTY CLERK: Still your verdict?
14 JUROR NUMBER 354: Yes ma'am.
15 THE DEPUTY CLERK: Juror 496. Is this your verdict?
16 JUROR NUMBER 496: Yes ma'am.
17 THE DEPUTY CLERK: Still your verdict?
18 JUROR NUMBER 496: Yes ma'am.
19 THE DEPUTY CLERK: Juror 213. Is this your verdict?
20 JUROR NUMBER 213: Yes ma'am.
21 THE DEPUTY CLERK: Still your verdict?
22 JUROR NUMBER 213: Yes ma'am.
23 THE DEPUTY CLERK: Juror 454. Is this your verdict?
24 JUROR NUMBER 454: Yes ma'am.
25 THE DEPUTY CLERK: Still your verdict?

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Steven H. John, Circuit Court Judge

 ORIGINAL

RECEIVED

JUN 30 2015

RESPONDENT SC Court of Appeals

THE STATE,

V.

MICHAEL BUTLER,

APPELLANT

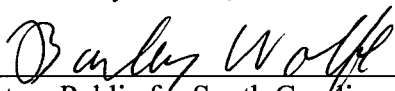
APPELLATE CASE NO. 2014-001595

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 30th day of June, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 30th day of June, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.