

21859

VOLUME ONE OF THREE

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHANA

ROBINSON,

APPELLANT

APPELLATE CASE NO 2014-001272

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2014-GS-08-0313
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
SHANA CECIEL ROBINSON	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 2, 2014
 Moncks Corner, S. Carolina

VOLUME 1 (OF 5)

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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[All exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

DEFENDANTPAGE

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
1	Box of beer	* 138 142
2	Single can of beer	* 139 142

* (For in camera hearing only)

COURT

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
1	Stipulation Agreement	62
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1 PROCEEDINGS

2 THE COURT: Ladies and gentlemen, we are going to
3 select a jury for the case of the State of South Carolina
4 versus Shana Ceciell Robinson. It is an indictment for
5 felony driving under the influence involving death,
6 indictment 2014-GS-08-313.

7 VOIR DIRE

8 We're going to go through the same process called
9 Voir Dire. If there is a question that applies to you
10 please stand and in a loud and clear voice give us your
11 name, your juror number, and an answer to the question if
12 applicable and remain standing until the court has
13 completed questioning you.

14 Before we begin that process I'm going to ask
15 counsel for the State to stand and introduce themselves
16 and tell us the names of the members of their office,
17 their lawyers in their office as well as counsel for the
18 defense to provide us with the same information and have
19 his client stand and face the panel. You may proceed.

20 MR. WEST: Thank you, Your Honor.

21 THE COURT: You're welcome, Mr. West.

22 MR. WEST: Good morning, panel. My name is Mason
23 West and I'm here today on behalf of the Ninth Judicial
24 Circuit. We represent Berkeley and Charleston counties
25 and the elected Solicitor is Scarlett Wilson. Here with

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1 me to help try this case is Deputy Solicitor Bryan
2 Alfaro. We have several other assistant solicitors in
3 our office; Charles Condon, Michael Patterson, Camilla
4 Sas, Colleen Taylor, Anne Williams, Kendra Wilson, and --
5 Thank you.

6 MR. MAYER: Good morning, guys. My name is Aaron
7 Mayer. I'm a defense attorney out of Charleston. With
8 me here today is -- here's my client, Shana Robinson; I
9 have the pleasure of representing her, and in my office
10 also this is Kerri Knapp [phonetic], she is a paralegal
11 and I also have Chris Robertson who is a paralegal in my
12 office.

13 THE COURT: Again ladies and gentlemen, if a
14 question applies to you please stand and in a loud and
15 clear voice give us your name and your juror number and
16 an answer to the question if applicable and remain
17 standing until the court has completed questioning you.

18 Ladies and gentlemen, the indictment alleges as
19 follows: That Shana Ceciel Robinson did in Berkeley
20 County, South Carolina on or about November 10th, 2011
21 drive a vehicle while under the influence of alcohol,
22 drugs, or a combination of both and did an act forbidden
23 by law and or neglected a duty imposed by law in the
24 driving of the vehicle to wit speeding and or crossing
25 the center line and or failure to maintain proper lane,

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1 which act or neglect proximately caused the death of
2 Candy S. Zoll alleging a violation of 56-5-2945
3 subsections (a)(2) of the South Carolina Code of Laws as
4 amended and alleging these acts to be against the peace
5 and dignity of the State of South Carolina. Again, if a
6 question applies to you please stand and in a loud and
7 clear voice give us your name, your juror number, an
8 answer to the question if applicable, and remain standing
9 until the court has completed questioning you.

10 Is there any member of the panel related by blood or
11 marriage to Shana Ceciel Robinson or any member of the
12 family of Candy S. Zoll, if so please stand at this time.

13 [Whereupon, no one stands]

14 THE COURT: Does any member of the panel have a
15 close personal or social relationship with Shana Ceciel
16 Robinson or anyone who is related to Candy S. Zoll, if so
17 please stand at this time.

18 [Whereupon, an individual stands]

19 THE COURT: Yes, sir?

20 MR. WEISS: Leonard M. Weiss, III.

21 THE COURT: And your number?

22 MR. WEISS: 168.

23 THE COURT: And who did you go to school with, sir?

24 MR. WEISS: Me and Shana went to school together.

25 THE COURT: Okay. How long -- how would you

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1 characterize that relationship; acquaintances or friends?
2 MR. WEISS: We were friends at one time.
3 THE COURT: How long ago was that?
4 MR. WEISS: That was 20 years ago.
5 THE COURT: Have you seen her recently?
6 MR. WEISS: No.
7 THE COURT: Okay. As a result of this experience
8 do you feel that you can remain fair and impartial and
9 render a fair and impartial decision in this case based
10 solely on the evidence as it will be presented and on the
11 law as the court will instruct?
12 MR. WEISS: Yes.
13 THE COURT: Thank you, sir. You may take your
14 seat. The following are a list of potential witnesses.
15 I would ask that you listen carefully: Joshua Witty W-
16 H-I-T-T-Y, Christopher Sasnett S-A-S-N-E-T-T, Allen
17 Myers, Chelsea Arrowood, Sergeant David Lee, Corporal
18 Chad Pearson, Trooper Daniel Southerland, Trooper S.M.
19 Gadsden, Trooper R.G. Elliott, Trooper Frick, Trooper
20 Mendell C. Rivers; all of the South Carolina Highway
21 Patrol, Monty Jenkins, Jardin Hedman of the Berkeley
22 County EMS, Forensic Technician Nikki Hughes, Patricia
23 Crooks, Brandon Williams; all of the South Carolina Law
24 Enforcement Division, as well as Carmen Tucker, Maribeth
25 Coleman, Lieutenant Laurie Shacker, Corporal Wendy Bell,

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1 Amy Stevens and Doris Yarbrough, Tracey McKinnon; all of
2 the South Carolina Law Enforcement Division, Doctor Carl
3 Potts, Chief Scott Lee, Moncks Corner Fire Department,
4 Officer J.A. Poston, Charleston County Police Department,
5 Brittany Hartley, Sarah Johnson, Mark Dirks D-I-R-K-S
6 Moncks Corner Rural Fire Department, as well as Heather
7 Pickard Onezine O-N-E-Z-I-N-E; all of the Moncks Corner
8 Rural Fire Department, Michael Daniel Young, Registered
9 Nurse, Doctor Stephanie Montgomery-Idema I-D-E-M-A, MUSC,
10 Mark Garrack, Mack Flood, Rob Mittlestadt, Jeff Forinash,
11 Wendy Forinash, Tony Zoll, Raymond Blair, William
12 Salisbury, the Berkeley Coroner, Michele Metts, David
13 Hill, Janet Jurosko, Tammy Norris, Chuck Holmes, Charles
14 Rece Buckner, Robert Bennett, Jason Wiggins, Lilly
15 McGrew, Robert Clark, Patricia Malphrus, Phil Riley,
16 Chris Robertson, and Brian Holt.

17 Is there any member of the panel related by blood or
18 marriage to any of the people that I've just listed or
19 does anyone have a close personal or business
20 relationship with any of these individuals. If so,
21 please stand at this time.

22 [Whereupon, an individual stands]

23 THE COURT: Yes ma'am, tell us your name and your
24 juror number.

25 MS. REED: Jennifer Reed, juror 131.

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1 THE COURT: And who is it that you have a
2 relationship with?

3 MS. REED: The list is very long. I work with all
4 members of the Berkeley County EMS including Chelsea
5 Arrowood during her employment at the Berkeley County
6 EMS. I also worked closely with Moncks Corner Rural Fire
7 Department; Scott Lee is the Chief of that department.

8 THE COURT: As a result of these experiences do you
9 feel that you can remain fair and impartial and render a
10 fair and impartial decision in this case based solely on
11 the evidence as it will be presented and on the law as
12 the court will instruct?

13 MS. REED: Yes, ma'am.

14 THE COURT: Thank you, ma'am. You may take your
15 seat. Has any member of the panel ever been represented
16 by any of the attorneys involved in this case or any of
17 the lawyers in their offices. If so please stand at this
18 time..

19 [Whereupon, no one stands]

20 THE COURT: Is there any member of the panel
21 related by blood or marriage to any of the attorneys
22 involved in this case, any of the lawyers in their
23 offices, or anyone who is employed in their offices in
24 any capacity, if so please stand at this time?

25 [Whereupon, no one stands]

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1 THE COURT: Has any member of the panel formed or
2 expressed an opinion about any issue or matter involved
3 in this case? If so, please stand at this time.

4 [Whereupon, no one stands]

5 THE COURT: Is there any member of the panel aware
6 of any bias or prejudice toward either the State or the
7 defense in this case, if so please stand at this time.

8 [Whereupon, an individual stands]

9 THE COURT: Yes, ma'am? Tell me your name and your
10 juror number.

11 MS. VINSON: Bayley Vinson, 166.

12 THE COURT: Yes, ma'am?

13 MS. VINSON: I don't think I could do a drunk
14 driving case considering I was hit by a drunk driver.

15 THE COURT: Are you telling me you cannot be fair
16 and impartial?

17 MS. VINSON: I don't think I could.

18 THE COURT: You will be excused from the trial of
19 this case only. You may take your seat.

20 [Whereupon, Juror number 166 is excused from the
21 trial of this case]

22 THE COURT: Is there any member of the panel that
23 was a member of the Grand Jury which issued the
24 indictment in this case? If so please stand at this
25 time.

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1 [Whereupon, no one stands]

2 THE COURT: Does any member of the panel have any
3 personal knowledge of the facts and circumstances alleged
4 in this case? If so please stand at this time.

5 [Whereupon, no one stands]

6 THE COURT: Is there any member of the panel who is
7 a member of or contributor to any group which has as its
8 primary concern the enforcement of law enforcement or
9 victim's rights? These groups would include but are not
10 limited to Mothers Against Drunk Driving, Student's
11 Against Drunk Driving, Citizens Against Violent Crime,
12 People Against Rape, Citizens Advocating a Return to
13 Decency and Ethics, Parents Empowered to Save Teens, or
14 any other type of community watch group. If so, please
15 stand at this time.

16 [Whereupon, no one stands]

17 THE COURT: Is there any member of the panel who
18 has a moral, religious or philosophical opposition to the
19 consumption of alcohol such that it impairs your ability
20 to be fair and impartial? If so, please stand at this
21 time.

22 [Whereupon, no one stands]

23 THE COURT: Is there any member of the panel who
24 has any philosophical, moral, or religious opposition to
25 sitting in judgment of a fellow human being? If so

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1 please stand at this time.

2 [Whereupon, no one stands]

3 THE COURT: Is there any member of the panel who
4 has a family member who is employed in law enforcement?
5 If so, please stand at this time.

6 [Whereupon, individuals stand]

7 THE COURT: Tell us your name, your juror number,
8 which family member it is, and which law enforcement
9 agency it is. Yes, ma'am?

10 MS. BUZILLE: Teresa Buzille, juror number 19. My
11 husband is a retired sheriff's deputy for 33 years.

12 THE COURT: Which agency ma'am?

13 MS. BUZILLE: Ohio, Stark [phonetic] County.

14 THE COURT: If you will remain standing. Thank
15 you. Yes, sir?

16 MR. SMITH: Shane Smith, 146. My father is a police
17 supervisor on the naval base.

18 THE COURT: Yes, ma'am?

19 MS. ROUSE: Patricia Rouse, 137. My brother-in-law
20 is a federal Marshall in the state of Illinois.

21 THE COURT: I'm sorry; I didn't hear the last part.
22 A federal Marshall where?

23 MS. ROUSE: In the state of Illinois.

24 THE COURT: Yes, sir?

25 MR. BLAND: Juror number 8, Jared Bland. I'm in the

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1 South Carolina National Guard as a military police
2 officer.

3 THE COURT: As a result of these experiences do you
4 all feel that you can remain fair and impartial and
5 render a fair and impartial decision in this case based
6 solely on the evidence as it will be presented and on the
7 law as the court will instruct? If your answer is yes
8 please take your seat. Let the record reflect that all
9 answered yes.

10 Is there any member of the panel who has read,
11 watched, or listened to any media coverage about this
12 case? That includes anything that could have been in the
13 newspaper, on the radio, television, or Internet; if so
14 please stand at this time.

15 [Whereupon, no one stands]

16 THE COURT: Is there any member of the panel who
17 has had what they would characterize as an unpleasant
18 experience with the South Carolina Highway Patrol such
19 that it impairs your ability to be fair and impartial in
20 this case? If so please stand at this time.

21 [Whereupon, no one stands]

22 THE COURT: Is there any member of the panel who is
23 familiar with or formerly frequented what was formerly
24 known as Geronimo's Bar and Grill? If so please stand at
25 this time. Where was that located, Geronimo's Bar and

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1 Grill?

2 MR. WEST: In Moncks Corner, Your Honor.

3 THE COURT: I mean do you know a location?

4 MR. WEST: It's off of 52.

5 THE COURT: Okay. That would be located off of
6 Highway 52 in Moncks Corner, if so please stand at this
7 time.

8 [Whereupon, no one stands]

9 THE COURT: Is there any member of the panel who
10 has been previously employed in any civilian or military
11 law enforcement agency; that is previous employment. If
12 so please stand at this time.

13 [Whereupon, an individual stands]

14 THE COURT: Yes, sir. You're currently employed
15 correct? Thank you, sir. You may take your seat. That
16 is number 8. Is there any member of the panel who has
17 ever been the victim of a violent crime? If so, please
18 stand at this time.

19 [Whereupon, no one stands]

20 THE COURT: Is there any member of the panel who
21 has ever had any experiences, contact or employment with
22 Atkins [phonetic] Landing Boat Dock and Marina? If so,
23 please stand at this time.

24 [Whereupon, no one stands]

25 THE COURT: Is there any member of the panel who

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1 has previously received medical training who is not
2 currently employed in the medical field? If so, please
3 stand at this time.

4 [Whereupon, individual stand]

5 THE COURT: Yes sir, tell us your name and juror
6 number.

7 MR. RAGAN: Michael Ragan, 126.

8 THE COURT: And what was that previous training in
9 sir?

10 MR. RAGAN: I was a Navy Corpsman for 15 years and a
11 Physician's Assistant for 25.

12 THE COURT: If you would remain standing. In the
13 back yes, sir?

14 MR. KUHLMAN: My name is David Kuhlman, juror number
15 77. I was previously trained as an EMT.

16 THE COURT: Thank you, sir. Please remain
17 standing. Yes ma'am that just stood?

18 MS. REED: Jennifer Reed, juror 131. I am currently
19 a paramedic for Berkeley County EMS and have been for the
20 past 11 years.

21 THE COURT: Yes, ma'am?

22 MS. SCHLECHT: Megan Schlecht, 236. I was
23 previously trained for a certified nurse's assistant for
24 -- of Charleston but I'm no longer employed.

25 THE COURT: Say that one more time?

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1 MS. SCHLECHT: The Bridge at Charleston but I'm no
2 longer employed there.

3 THE COURT: Okay. And yes, sir?

4 MR. MORAN: Anthony Moran, juror number 103. I'm a
5 retired Physicians Assistant both in the Air Force and in
6 private practice.

7 THE COURT: And yes, sir?

8 MR. FRAZIER: I guess I should have stood earlier.
9 I was involved with special forces unit and we were
10 trained also in Medic training field training.

11 THE COURT: Tell me your name and juror number sir.

12 MR. FRAZIER: My name is Randy Frazier, juror 47.

13 THE COURT: And yes sir?

14 MR. BLAND: Juror number 8, Jared Bland. I'm
15 currently with the Summerville Fire Department and I was
16 combat -- in the military --

17 THE COURT: I'm sorry; could you repeat your
18 answer. The court reporter didn't get it.

19 MR. BLAND: Summerville Fire Department as a
20 firefighter and combat life saver in the military.

21 THE COURT: As a result of these experiences do you
22 all feel that you can remain fair and impartial and
23 render a fair and impartial decision in this case based
24 solely on the evidence as it will be presented and on the
25 law as the court will instruct? If your answer is yes

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1 please take your seat. Let the record reflect that all
2 answered yes.

3 Is there any member of the panel who has previously
4 served in the military, not current but previously
5 served, or any member of your family who is a current
6 member of the military? If so please stand at this time.

7 [Whereupon, individuals stand]

8 THE COURT: I need you to tell me your name, your
9 juror number, whether it's you or a family member, and
10 what branch it was if you're now retired, and what
11 current branch of your family member. And if you would
12 remain standing? Yes, ma'am?

13 MS. BUZILLE: Teresa Buzille, juror number 19. My
14 son is a current member of Fire and Rescue Air Force
15 Charleston Air Base as a reservist.

16 THE COURT: Yes, ma'am?

17 MS. PRICE: Cynthia Price, 122. My brother-in-law
18 is currently serving in the Army at the Pentagon.

19 THE COURT: And starting -- yes, sir?

20 MR. MORAN: Anthony Moran, juror number 103. I am
21 retired Air Force with 31 years. I have two grandsons
22 who are presently in active duty; one in the Army and one
23 in the Air Force.

24 THE COURT: Yes ma'am in the white?

25 MS. PUCEL: Nicole Pucel, 230. It was myself, I was

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1 in the Navy and my husband was also in the Navy and my
2 nephew is currently in the Coast Guard.

3 THE COURT: And sir in the blue?

4 MR. HUDSON: Don Hudson, number 62 --

5 THE COURT: Starting on the front yes, sir?

6 MR. LOWRIMORE: William Lowrimore, juror number 83.

7 I was in the Air Force.

8 THE COURT: Okay. And ma'am?

9 MS. ROUSE: Patricia Rouse, 137. Husband Army, son
10 Army, daughter-in-law Army, and daughter Air Force.

11 THE COURT: And yes, sir?

12 MR. HUNT: James Hunt, juror 63. My wife and myself
13 are both retired Navy and I have a nephew serving in
14 Afghanistan.

15 THE COURT: Which branch?

16 MR. HUNT: Army.

17 THE COURT: Okay. Starting on the next row. Sir,
18 I'll get you in the green shirt and then I'll go to the
19 next row.

20 MR. FISHER: Edward Fisher, number 45. I previously
21 served in the Army.

22 MR. SMITH: Shane Smith, 146. A brother in the
23 Navy.

24 THE COURT: And next to you?

25 MS. REID: Rhonda Reid, 231, husband retired Navy.

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1 THE COURT: Is there anybody -- yes, sir?

2 MR. RAGAN: Michael Ragan, 126, Navy.

3 THE COURT: Okay. Then moving to the next row?

4 MR. FRAZIER: Randy Frazier, juror 47. From 74-1976
5 U.S. Government Special Forces.

6 THE COURT: And next to you?

7 MS. MCCANTS: I'm Elizabeth McCants, 92. My
8 daughter Air Force and brother Air Force.

9 THE COURT: Okay. Is there anybody else in that
10 row?

11 MS. LUMPKIN, Alanna Lumpkin, 85. My father is
12 retired Navy, my mother Navy -- and my sister Army.

13 THE COURT: Is there anybody else in that row?
14 Yes, sir?

15 MR. WILLIAMS: Zachary Williams, number 173. I
16 served in the Navy and I'm currently --

17 THE COURT: Is that everybody on that row? Moving
18 to the next row starting on this [indicates] end.

19 MS. REED: Jennifer Reed, juror 131. My father is
20 retired Air Force, I have a brother who is currently
21 serving as a Gunnery Sergeant in the Marine Corp, I have
22 a nephew in the Army, and another nephew that just
23 recently enlisted in the Navy.

24 THE COURT: And next to you?

25 MS. RUSSELL: Debbra Russell, number 234. My father

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1 is retired Air Force, husband retired Navy, nephew Air
2 Force, sister-in-law Air Force, brother-in-law Army.

3 THE COURT: And next to you?

4 MS. TREPEN: Mary Trepén, juror 243. My husband
5 served four years in the Navy.

6 THE COURT: I'm sorry; please repeat that for me.

7 MS. TREPEN: Mary Trepén, juror 243. My husband
8 served in the Navy for four years.

9 THE COURT: Is that everybody on that row or did we
10 miss somebody? Yes, sir?

11 MR. GEORGE: James George, juror 50. I served in
12 the Air Force and my son is currently in the Air Force.

13 THE COURT: Is that everyone on that row?

14 MS. FOSTER: Melda Foster, 206. My father was a
15 Marine, my brother in the Navy, and two nephews in the
16 Marines.

17 THE COURT: Did we get everybody -- yes, ma'am?

18 MS. COLON: Kristie Colon. My husband is in the Air
19 Force.

20 THE COURT: Tell me your juror number.

21 MS. COLON: 200.

22 THE COURT: Is that everyone on that row? Okay,
23 moving to the next row?

24 MR. BLACK: Kenneth Black, juror number 7. My
25 father was in the Army and I have two nephews; an Army

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1 and one in the Marines.

2 THE COURT: And next?

3 MS. FITZGERALD: Meagan Fitzgerald, 204. I was Air
4 Force and I have a nephew in the Army.

5 THE COURT: And who is next? Yes, sir?

6 MR. BAILEY: Mark Bailey, juror 185. My father was
7 in the Army, I'm currently in the Army Reserves.

8 THE COURT: Okay. Did I get you in the white
9 shirt? Ma'am, on the end? Okay, we got you. We got
10 everybody on this side except my paralegal from Clawson &
11 Staubes. Did we get everybody over here; everybody has
12 spoken and been accounted for. I know I saw somebody
13 stand up over here too. Yes, ma'am?

14 MS. BRABBS: I'm juror number 10 Kate Brabbs and my
15 husband served in the Army for four years.

16 THE COURT: Okay. Now who did we not get on this
17 side?

18 MS. SEVERN: Megan Severn, 143. My husband served
19 in the Air Force for six years.

20 THE COURT: And there was one other person that
21 stood up. Yes, sir?

22 MR. JONES: My father and mother both in the United
23 States Army. My father-in-law and mother-in-law both in
24 the United States Air Force, my brother-in-law Air Force,
25 my other brother-in-law former Air Force, and my sister-

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1 in-law Air Force.

2 THE COURT: And tell me your name and juror number?

3 MR. JONES: Jason Jones, 214.

4 THE COURT: All right. Did we get everybody?

5 Speak now or forever hold your peace. As a result of

6 these experiences do you all feel that you can remain

7 fair and impartial and render a fair and impartial

8 decision in this case based solely on the evidence as it

9 will be presented and on the law as the court will

10 instruct? If your answer is yes, please take your seat.

11 Let the record reflect that all answered yes.

12 Does any member of the panel know of any reason

13 whatsoever why he or she should not serve as a juror in

14 this case with particular emphasis being placed on your

15 ability to be fair and impartial to both the State and

16 the defense? If so please stand at this time.

17 [Whereupon, no one stands]

18 THE COURT: Are there any additional questions from

19 the State?

20 MR. WEST: Your Honor, may we approach?

21 THE COURT: You can just tell me a number or there

22 someone you want to challenge --

23 MR. WEST: No, Your Honor.

24 THE COURT: Do you have a number on the list that

25 you wanted to ask? On your list?

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1 MR. WEST: Court's indulgence, Your Honor.

2 [Whereupon, Mr. West reviews documents]

3 MR. WEST: Your Honor, the State strikes that
4 request.

5 THE COURT: I'm sorry; I can't hear you.

6 MR. WEST: The State strikes that request.

7 THE COURT: Okay. Any additional questions from
8 the defense?

9 MR. MAYER: I don't think we asked number 13, Your
10 Honor.

11 THE COURT: I asked if they had ever been a victim
12 of a violent crime and I think that question is
13 cumulative.

14 MR. MAYER: Okay, great. I would have a motion.

15 THE COURT: Pardon me?

16 MR. MAYER: I would have a motion on a couple of
17 them.

18 THE COURT: Well, I think that is premature until
19 such time that that actually becomes an issue at which
20 time you can make a contemporaneous objection. Strikes
21 are five and five. Who is going to demonstrate for me?
22 Which bailiff is going to show the juror what they need
23 to do? Ladies and gentlemen, if your name is called
24 please come forward with all of your personal belongings,
25 stand where the bailiff is standing, turn back facing the

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1 panel until we either seat or excuse you as a juror in
2 the trial of this case. Again, bring all of your
3 personal belongings with you and we'll either seat or
4 excuse you as a juror. Again, we appreciate your
5 patience. If you will bear with us for one moment while
6 we create those lists.

7 [Off the record momentarily]

8 THE COURT: All right. I'd ask that you give the
9 Clerk your attention. Again, ladies and gentlemen if
10 your name is called come forward with all of your
11 personal belongings. You may proceed when you're ready
12 Madame Clerk.

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State v Shana C. Robinson
Striking of the Jury
June 2, 2014

1 STRIKING OF THE JURY
2 CLERK OF COURT: Juror 246, James Walsh, Jr.
3 [Whereupon, Mr. Walsh comes forward]
4 CLERK OF COURT: What sayeth the State?
5 MR. WEST: Please seat the juror.
6 CLERK OF COURT: What sayeth the defendant?
7 MR. MAYER: Please seat this juror.
8 CLERK OF COURT: Seat the juror.
9 [Whereupon, Mr. Walsh is seated in the jury box as a
10 juror]
11 CLERK OF COURT: Juror 24, Patti Carey.
12 [Whereupon, Ms. Carey comes forward]
13 CLERK OF COURT: What sayeth the State?
14 MR. WEST: Please seat the juror.
15 CLERK OF COURT: What sayeth the defendant?
16 MR. MAYER: Please seat this juror.
17 CLERK OF COURT: Seat the juror.
18 [Whereupon, Ms. Carey is seated in the jury box as a
19 juror]
20 CLERK OF COURT: Juror 47, Randy Frazier.
21 [Whereupon, Mr. Frazier comes forward]
22 CLERK OF COURT: What sayeth the State?
23 MR. WEST: Please seat this juror.
24 CLERK OF COURT: What sayeth the defendant?
25 MR. MAYER: Please seat this juror.

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Striking of the Jury
June 2, 2014

1 CLERK OF COURT: Seat the juror.
2 [Whereupon, Mr. Frazier is seated in the jury box as
3 a juror]
4 CLERK OF COURT: Juror number 125, Robert Quinn.
5 [Whereupon, Mr. Quinn comes forward]
6 CLERK OF COURT: What sayeth the State?
7 MR. WEST: Please seat the juror.
8 CLERK OF COURT: What sayeth the defendant?
9 MR. MAYER: Please seat this juror.
10 CLERK OF COURT: Seat the juror.
11 [Whereupon, Mr. Quinn is seated in the jury box as a
12 juror]
13 CLERK OF COURT: Juror 200, Kristie Colon.
14 [Whereupon, Ms. Colon comes forward]
15 CLERK OF COURT: What sayeth the State?
16 MR. WEST: Please seat the juror.
17 CLERK OF COURT: What sayeth the defendant?
18 MR. MAYER: Please seat the juror.
19 CLERK OF COURT: Seat the juror.
20 [Whereupon, Ms. Colon is seated in the jury box as a
21 juror]
22 CLERK OF COURT: Juror 146, Shane Smith.
23 [Whereupon, Mr. Smith comes forward]
24 CLERK OF COURT: What sayeth the State?
25 MR. WEST: Please seat the juror.

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Striking of the Jury
June 2, 2014

1 CLERK OF COURT: What sayeth the defendant?
2 MR. MAYER: Please seat this juror.
3 CLERK OF COURT: Seat the juror.
4 [Whereupon, Mr. Smith is seated in the jury box as a
5 juror]
6 CLERK OF COURT: Juror 183, David Zook.
7 [Whereupon, Mr. Zook comes forward]
8 CLERK OF COURT: What sayeth the State?
9 MR. WEST: Please seat the juror.
10 CLERK OF COURT: What sayeth the defendant?
11 MR. MAYER: Please excuse this juror.
12 CLERK OF COURT: Excuse the juror.
13 [Whereupon, Mr. Zook returns to the audience]
14 CLERK OF COURT: Juror 45, Edward Fisher.
15 [Whereupon, Mr. Fisher comes forward]
16 CLERK OF COURT: What sayeth the State?
17 MR. WEST: Please seat the juror.
18 CLERK OF COURT: What sayeth the defendant?
19 MR. MAYER: Please seat this juror.
20 CLERK OF COURT: Seat the juror.
21 [Whereupon, Mr. Fisher is seated in the jury box as
22 a juror]
23 CLERK OF COURT: Juror 79, Daniel Laliscio.
24 [Whereupon, Mr. Laliscio comes forward]
25 CLERK OF COURT: What sayeth the State?

State v Shana C. Robinson
Striking of the Jury
June 2, 2014

1 MR. WEST: Please seat the juror.
2 CLERK OF COURT: What sayeth the defendant?
3 MR. MAYER: Please seat this juror.
4 CLERK OF COURT: Seat the juror.
5 [Whereupon, Mr. Laliscio is seated in the jury box
6 as a juror]
7 CLERK OF COURT: Juror 215, Ermine Kearse, Jr.
8 [Whereupon, Mr. Kearse comes forward]
9 CLERK OF COURT: What sayeth the State?
10 MR. WEST: Please seat the juror.
11 CLERK OF COURT: What sayeth the defendant?
12 MR. MAYER: Please seat this juror.
13 CLERK OF COURT: Seat the juror..
14 [Whereupon, Mr. Kearse is seated in the jury box as
15 a juror]
16 CLERK OF COURT: Juror 90, Cyrus Matthews.
17 [Whereupon, Mr. Matthews comes forward]
18 CLERK OF COURT: What sayeth the State?
19 MR. WEST: Please excuse the juror.
20 CLERK OF COURT: Excuse the juror.
21 [Whereupon, Mr. Matthews returns to the audience]
22 CLERK OF COURT: Juror 51, Destiney Glover.
23 [Whereupon, Ms. Glover comes forward]
24 CLERK OF COURT: What sayeth the State?
25 MR. WEST: Please excuse this juror.

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Striking of the Jury
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1 CLERK OF COURT: Excuse the juror.
2 [Whereupon, Ms. Glover returns to the audience]
3 CLERK OF COURT: Juror 156, Bruce Taylor.
4 [Whereupon, Mr. Taylor comes forward]
5 CLERK OF COURT: What sayeth the State?
6 MR. WEST: Please seat the juror.
7 CLERK OF COURT: What sayeth the defendant?
8 MR. MAYER: Please seat the juror.
9 CLERK OF COURT: Seat the juror.
10 [Whereupon, Mr. Taylor is seated in the jury box as
11 a juror]
12 CLERK OF COURT: Juror 122, Cynthia Price.
13 [Whereupon, Ms. Price comes forward]
14 CLERK OF COURT: What sayeth the State?
15 MR. WEST: Please seat the juror.
16 CLERK OF COURT: What sayeth the defendant?
17 MR. MAYER: Please seat the juror.
18 CLERK OF COURT: Seat the juror.
19 [Whereupon, Ms. Price is seated in the jury box as a
20 juror]
21 CLERK OF COURT: Juror 197, David Causey, Jr.
22 [Whereupon, Mr. Causey comes forward]
23 CLERK OF COURT: What sayeth the State?
24 MR. WEST: Please seat the juror.
25 CLERK OF COURT: What sayeth the defendant?

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Striking of the Jury
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1 MR. MAYER: Please seat the juror.
2 CLERK OF COURT: Seat the juror.
3 [Whereupon, Mr. Causey is seated in the jury box as
4 a juror]
5 THE COURT: Two alternates. Strikes are one and
6 two.
7 CLERK OF COURT: Juror 12, Jawanna Broughton.
8 [Whereupon, Ms. Broughton comes forward]
9 CLERK OF COURT: What sayeth the State?
10 MR. WEST: Please seat the juror..
11 CLERK OF COURT: What sayeth the defendant?
12 MR. MAYER: Please seat the juror.
13 CLERK OF COURT: Seat the juror..
14 [Whereupon, Ms. Broughton is seated in the jury box
15 as an alternate juror]
16 CLERK OF COURT: Juror 227, Gregory Perkins, II.
17 [Whereupon, Mr. Perkins comes forward]
18 CLERK OF COURT: What sayeth the State?
19 MR. WEST: Please seat the juror.
20 CLERK OF COURT: What sayeth the defendant?
21 MR. MAYER: Please seat the juror.
22 CLERK OF COURT: Seat the juror.
23 [Whereupon, Mr. Perkins is seated in the jury box as
24 an alternate juror]
25 THE COURT: Are there any motions regarding the

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Striking of the Jury
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1 selection of the jury from the State?

2 MR. WEST: None from the State, Your Honor.

3 THE COURT: From the defense?

4 MR. MAYER: We would have a motion, Your Honor.

5 THE COURT: Please approach.

6 [Whereupon, an off the record bench conference is

7 held]

8 THE COURT: The motion is withdrawn. To the
9 balance of the panel we thank you for your time and your
10 attention. You all have been incredibly patient with us.
11 We know it has been a long morning that has now stretched
12 into afternoon. You are excused with the court's
13 profound thanks. Please call the jury information line
14 after 6 o'clock this evening for further instructions.
15 Have a great day.

16 [Whereupon, the jury panel is excused and 12:48
17 p.m.]

18 THE COURT: Ladies and gentlemen -- is there any
19 exception to the jury being sworn from the State?

20 MR. WEST: None from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. MAYER: No, Your Honor.

23 THE COURT: Ladies and gentlemen, stand for me
24 please and give the Clerk your attention.

25

State v Shana C. Robinson
Jury Sworn
June 2, 2014

1 CLERK OF COURT: Please raise your right hands to
2 be sworn.

3 [Whereupon, the jury is sworn by the Clerk of Court
4 as follows: You shall well and truly try and a true
5 deliverance make between the State of South Carolina and
6 the defendant at the Bar, whom you shall have in charge a
7 true verdict render according to the evidence so help you
8 God. Say I do.

9 [Whereupon, the jury complies]

10 CLERK OF COURT: Please be seated.

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State v Shana C. Robinson
Introduction by the Court
June 2, 2014

1 THE COURT: Ladies and gentlemen, you've been
2 selected for the case of the State of South Carolina
3 versus Shana Ceciell Robinson and I apologize if I have
4 mispronounced your name again -- which is an indictment
5 for felony driving under the influence involving death.
6 We have -- and I'm sure you all are ready to go to lunch
7 as we are -- but we have some pre-trials matters, matters
8 of law that we need to deal with that will take us the
9 remainder of the afternoon. And instead of having you
10 all wait while we do that I've going to excuse you for
11 the balance of the day. We will begin this case in the
12 morning with the opening instructions and opening
13 argument at 9:30.

14 You're going to come directly to your jury room at
15 that time and the bailiffs are going to show you how to
16 do that. Again, please don't have any contact with
17 anyone in or about the courthouse that you do not
18 recognize to be a fellow juror. There are a lot of
19 witnesses in this case; this is a small courthouse that
20 the chance of interaction is great. And as southerners
21 we can have the most animated conversations about the
22 most innocuous of things.

23 And I would not want someone to think that you are
24 inappropriately talking about the facts and circumstances
25 of this case with a witness or a party or a lawyer and

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June 2, 2014

1 not realize that. And then we would have to go through a
2 lengthy voir dire process to make sure that you have not
3 been affected by that in your fact finding capacity. So
4 it's best to not have any conversations at all again,
5 unless you recognize them to be a fellow juror.

6 During this break please do not speculate about what
7 you think this case may or could be about. Please don't
8 discuss it with your family members, friends, or among
9 yourselves. Also, please do not watch, read, or listen
10 to any media accounts about this case; that includes
11 anything that may be on the radio today, television, or
12 even in the newspaper or on the Internet.

13 And you are strictly instructed you are not to do
14 any independent research of any type on the Internet. As
15 the fact finders you are bound to decide this case
16 according to your oath to the testimony that you hear in
17 this courtroom along with the other evidence that will be
18 introduced.

19 Also, please refrain from making any comments
20 regarding your social status on any social networking
21 sites. That includes Facebook, Instagram, Vine; I've
22 lost track there are so many. I'm a dinosaur. I do not
23 live vicariously through social media although I
24 recognize that I am completely out of the times. I'm
25 still of the opinion that sometimes I just don't need to

State v Shana C. Robinson
Introduction by the Court
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1 be reached. So -- or somebody just doesn't need to know
2 where I am.

3 But I recognize that I am out of the times and that
4 I'm probably a couple of centuries behind. But
5 nevertheless you would be amazed the people that peruse
6 social networking sites and call our jury coordinators
7 and tell us that you all are making inappropriate
8 comments about a case or your status; even down to I hate
9 jury service.

10 You would be amazed again I just wonder if people
11 work during the course of the day that they have time to
12 do this. But people who are not on jury service will
13 often call us and tell us that you have made comments
14 regarding your status. Again, that requires us to have a
15 personal conversation and I'm sure you will want to avoid
16 that as well as I want to avoid that because I'm certain
17 that most comments are innocent in their nature. But you
18 know busy bodies tend to think otherwise. So the best
19 way to avoid that is not to make any comments at all
20 regarding your status on any social sites. I think I've
21 covered everything.

22 You all have been very patient with us today. I
23 know this is a long day for you. We're used to this
24 routine. We do it every Monday, every Tuesday --
25 probably I'm thinking -- Berkeley is our smaller county

State v Shana C. Robinson
Introduction by the Court
June 2, 2014

1 but I hold court probably a little more in Charleston.
2 But we in Charleston have jury trials with four -- two
3 criminal courts and two civil courts operating almost
4 every week other than holidays.

5 So we are used to this routine. Probably in
6 Berkeley we have it twice a week -- twice a month
7 although I remember a time when he had court in Berkeley
8 once every other month. So that tells you how much
9 Berkeley is growing considerably by leaps and bounds. So
10 we're used to this cycle so to speak and we do it every
11 day but we recognize that you all are not and it's very
12 taxing on you so we appreciate your patience.

13 Again, as I've already said I hope that this will be
14 an educational experience for you and that you will leave
15 much more informed about the system after your jury
16 service this week. I will turn you all over to the
17 capable hands of the bailiffs and we will see you all on
18 tomorrow morning at 9:30. Have a great afternoon.

19 [Whereupon, the jury is excused for the day at 12:54
20 p.m.]

21 [Whereupon, a juror approaches the bench]

22 THE COURT: Yes sir, you had a question?

23 [Whereupon, the court and a juror confer]

24 THE COURT: Okay. That was juror number 125. He
25 was reinforcing what time he had to be here in the

State v Shana C. Robinson
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1 morning and he just really didn't feel like serving on
2 jury duty and I cajoled him and said hang in there with
3 us; it will be interesting. He didn't have any other
4 reason except what most jurors -- and then later on tell
5 me I'm so glad you made me stay. So he didn't indicate
6 to me any reason he couldn't be fair and impartial or
7 anything that gave me any pause or concern other than
8 just the general inconvenience. To tell you the truth
9 ten dollars a day and a lot of -- it's just really
10 obscene to me that in South Carolina employers are not
11 required to pay their employees while they are on jury
12 duty. So you have people who really lose a whole week of
13 work for 50 dollars. And then to add insult to injury
14 they got to pay taxes on that, which is like amazing to
15 me.

16 So the only thing that I sensed from him was just
17 the usual this is so inconvenient for my life. But he's
18 -- he indicated to me he could follow his oath and do
19 what he needed to do as a juror. So I will just keep an
20 eye on him to make sure that he is keeping his word to
21 me. All right. Is there anything before we break for
22 lunch till 2:00 from the State?

23 MR. WEST: Nothing, Your Honor.

24 THE COURT: From the defense?

25 MR. MAYER: No, Your Honor.

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Introduction by the Court
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1 THE COURT: Okay. The jury has been sworn, the
2 defendant will be taken into custody pursuant to the
3 statute and we will keep moving from there ---

4 MR. MAYER: --- oh ---

5 THE COURT: --- yes sir?

6 MR. MAYER: Your Honor, we would ask -- the
7 defendant has been out on PR bond and we would ask that
8 she remain. She lives right down the road and has
9 awaited trial for two and half years. We would ask that
10 she be allowed to remain out or at least not be remanded
11 into custody until the end of the day today.

12 THE COURT: I'm sorry; to what?

13 MR. MAYER: At least until the end of the day
14 today. We -- I didn't know Your Honor did that.

15 THE COURT: Well, it's not a matter of me doing it;
16 it's what the statute requires. Is there any exception
17 from the State? What is the State's position regarding
18 Mr. Mayer's request?

19 MR. WEST: The State takes no position, Your Honor.

20 MR. MAYER: May I be heard a little more on it,
21 Your Honor?

22 THE COURT: Sure.

23 MR. MAYER: My client has a medical condition
24 called Stevens Johnson syndrome. It requires the
25 abstaining from a variety of foods, sulfates, sulfites,

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1 and she also requires certain medications. There is a
2 letter I have somewhere from her doctor which describes
3 it in a little more detail, Your Honor. But I would ask
4 for those medical reasons -- and that's the same reason
5 that she was put on a PR bond to begin with, Your Honor
6 in this case. She's got a lot of stuff going on with her
7 medical history and her current predicament.

8 We'd just ask that the court would allow her to
9 remain at home to eat the very narrow grouping of foods
10 that she is able to eat without making her face puff up.
11 The court may be able to see her face in an almost
12 continuously red state from this condition and exposure
13 to these sulfates and sulfites and some of the other
14 stuff would only exacerbate that. Stevens Johnson
15 syndrome is a terrible thing.

16 THE COURT: I've never heard of it. I need to look
17 it up ---

18 MR. MAYER: --- yes, it's caused by an antibiotic,
19 a sulfur based antibiotic. I think they have had big
20 class actions on this but it makes the mucus membranes of
21 the person -- when they have a flare up it makes the
22 mucus membranes of a person's body slough off; and not
23 just the oral membranes, Your Honor. So it can be an
24 extremely terrible thing for a person to undergo. And
25 she's already under stress that none of us would ever

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June 2, 2014

1 want to experience in our lives. And we'd just ask that
2 because of that very unusual medical condition, for which
3 she is on S-S-D-I we would ask that she be able to remain
4 in the home, which again Your Honor, is not but five
5 minutes from here. I'll be happy to provide the court
6 with some ---

7 THE COURT: --- I can look it up online. But I
8 will think about it over the afternoon. I generally
9 don't make an exception. I've had very bad experiences
10 so I feed everybody out of the same spoon. I do what the
11 statute requires. I have no way of assuring her
12 appearance and I do not want to have a trial when I have
13 to try her in her absence when she doesn't show up.

14 And I've had more experiences than I care to count
15 where people have not shown up during jury deliberations,
16 they've not shown up during the last day of trial. It's
17 one thing when you are awaiting trial but when trial
18 actually starts and the reality sets in people do
19 irrational things. So I need to make sure I can assure
20 her appearance. I'll think about it over the lunch
21 break.

22 MR. MAYER: Thank you.

23 THE COURT: You're welcome. Now did the State
24 extend any offers to Ms. Robinson?

25 MR. WEST: Yes, Your Honor.

State v Shana C. Robinson
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1 THE COURT: And what were those?

2 MR. WEST: The State extended a cap of 15 years.

3 THE COURT: And you could argue against the cap for
4 less in other words?

5 MR. WEST: That's correct, Your Honor.

6 THE COURT: And when was that offer extended?

7 MR. WEST: Your Honor, I'll have to look back in my
8 notes but this trial has been on the docket several
9 times.

10 THE COURT: You can give me a window of time if you
11 can recall. Mr. Mayer, do you recall when that offer was
12 extended ---

13 MR. MAYER: --- I believe it was between August and
14 December, Your Honor.

15 THE COURT: Of this -- of last year?

16 MR. MAYER: Yes, Your Honor.

17 THE COURT: Which would be 2013. Did your client
18 accept -- was that your full understanding of the offer?

19 MR. MAYER: That was our full understanding of the
20 offer, Your Honor.

21 THE COURT: Does she have any record?

22 MR. MAYER: I'm sorry?

23 THE COURT: Does she have any previous record?

24 MR. MAYER: No, Your Honor.

25 THE COURT: And did you fully communicate that

State v Shana C. Robinson
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1 offer to your client?

2 MR. MAYER: I did.

3 THE COURT: Did she accept or reject it?

4 MR. MAYER: She rejected it.

5 THE COURT: Did she do that with or against your
6 advice?

7 MR. MAYER: She did that with my advice.

8 THE COURT: Okay. Ma'am, stand for me please and
9 raise your right hand to be sworn.

10 [Whereupon, the witness is duly sworn by the Court]

11 THE COURT: I need you to speak up, please.

12 MS. ROBINSON: Yes, ma'am.

13 THE COURT: State your full name for the record.

14 MS. ROBINSON: Shana Ceciel Robinson.

15 THE COURT: And Ms. Robinson is it correct that Mr.
16 Mayer fully advised you of the State's offer of a cap of
17 15 years?

18 MS. ROBINSON: Yes, ma'am.

19 THE COURT: And did you fully understand your
20 conversation with him?

21 MS. ROBINSON: Yes, ma'am.

22 THE COURT: Did you accept or reject that offer?

23 MS. ROBINSON: Rejected that offer.

24 THE COURT: Did you do that freely and voluntarily
25 and of your own will?

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1 MS. ROBINSON: Yes, ma'am.

2 THE COURT: Do you feel that anyone forced you to
3 reject that offer?

4 MS. ROBINSON: No, ma'am.

5 THE COURT: Thank you very much. See y'all at 2
6 o'clock. Have your witnesses ready for your pre-trials.

7 MR. MAYER: Thank you, Judge.

8 THE COURT: Thank you very much.

9 [Whereupon, court is in recess from 1:00 p.m. to
10 2:15 p.m.]

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State v Shana C. Robinson
Motions
June 2, 2014

1 THE COURT: Is there going to be any attempt to
2 introduce the victim's blood test results?

3 MR. MAYER: Yes, Judge.

4 THE COURT: And what were her -- what was her --
5 bear with me one second. What did her results bear out
6 and what was tested?

7 MR. MAYER: Judge, it's my understanding the
8 coroner drew blood from near the heart and properly sent
9 that to SLED where SLED then tested it and came up with
10 cannabis readings both immediate levels indicating recent
11 use and also long term levels, Judge.

12 THE COURT: I need to know exactly what the results
13 were; not your interpretation of what the results were.

14 MR. MAYER: Sure. Let me get my hands on that.

15 [Whereupon, Mr. Mayer reviews documents]

16 THE COURT: Was the victim driving or a passenger?

17 MR. WEST: It was a head-on collision, Your Honor,
18 in a different car than the defendant was in.

19 THE COURT: Wait a minute; say that one more time.

20 MR. WEST: It was a collision in which she was in a
21 different car and she was the driver.

22 THE COURT: Okay. Explain that to me because I
23 don't understand what you're saying.

24 MR. WEST: There were two cars and the victim was
25 in her own car. She was the driver of her own car.

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1 THE COURT: I understand that part. She was
2 driving her own vehicle that was my question.

3 MR. WEST: Yes, Your Honor.

4 THE COURT: Okay. Was she driving alone in the
5 vehicle?

6 MR. WEST: Yes, Your Honor.

7 MR. MAYER: Judge, I have it here. May I approach?

8 THE COURT: You can just tell me what it is.

9 MR. MAYER: Judge, the way the lab broke it down is
10 they broke it down into two different metabolites. As I
11 understand them for cannabis there is an immediate short
12 term level called tetrahydrocannabinol. And the result
13 there was 7.1 nanograms per liter of blood. The
14 threshold on that test is 2. That's the relevant amount
15 for immediate impairment.

16 In other states in which marijuana smoking is legal
17 have used figures related to that measurement to make it
18 a D-U-I offense in those states. I think they have
19 come down around the level of 5 for a D-U-I in those
20 states, Judge. That's a separate motion, which I ask the
21 court to take judicial notice of that threshold.

22 The second type of measurement provided by SLED here
23 is an 11 carboxy tetrahydrocannabinol, which is a THC
24 metabolite. The result there was 19 with the same
25 threshold of 2. I'm told by our toxicologist that that

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1 reflects -- and also by the State's toxicologist that
2 that reflects a longer term usage. And this is all on
3 the victim, Judge, just to be clear.

4 THE COURT: I'm clear about that. So I'm trying to
5 figure out how that is relevant when the testimony is
6 going to be that your client crossed the center line and
7 there was no testimony that the victim ever left her lane
8 of travel inappropriately.

9 MR. MAYER: Well, there are no eye witnesses, Judge
10 and that is part of the difficulty in this case. The two
11 people ---

12 THE COURT: --- it comes down to empirical proof.
13 It comes down to skid marks and other things. They can
14 tell who left what lane.

15 MR. MAYER: The two -- but they can't tell what
16 happened before that, Judge and the reason is the two
17 people who survived the wreck, my client and her friend
18 who was with her in the passenger seat of her car both
19 suffered from traumatic brain injury or something similar
20 where they were unable to remember a time period before
21 the wreck. So there is nobody who can say whether a dog
22 ran out, whether ---

23 THE COURT: --- that's why the empirical proof is
24 so much more important.

25 MR. MAYER: But whether Ms. Zoll was in the wrong

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1 lane to begin with and my client tried to move over ---

2 THE COURT: --- the empirical proof will bear out
3 who was in what lane and who left what lane of travel and
4 when it happened. That's why generally there is
5 objective, which is not -- there is generally objective
6 scientific level of proof that tells you who was riding
7 where when and who left what lane of travel.

8 And that's usually borne out by skid marks, gouges
9 in pavement and other things that are empirical in nature
10 and not subject to someone's subjective sort of opinion
11 about who was where because an eyewitness, nothing
12 pejorative about your client, may well have said that
13 this person was not in their lane when in fact they were
14 and the empirical proof bears that out because it would
15 be in the nature of a self-serving statement to benefit
16 themselves; or just because people have a bad memory.

17 Again, I would have to have some proof that somehow
18 she left her lane of travel. The mere fact that she may
19 have been under the influence of THC or some metabolite
20 of THC does not make her comparatively negligent in any
21 way. It doesn't mean she left her lane of travel.

22 It's no different than if somebody registered a .10
23 and they were driving down the highway in their lane of
24 travel and someone left their lane of travel who was not
25 impaired and hit them head-on. It doesn't mean that they

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1 were at fault in the accident. So I'm trying to figure
2 out how it -- what -- you know...

3 MR. MAYER: And just to be clear, Judge, we are in
4 no way trying to blame Ms. Zoll for the accident. We're
5 just trying ---

6 THE COURT: --- then why does it matter?

7 MR. MAYER: We're just trying to understand what
8 happened. And the fact that Ms. Zoll was high and had a
9 dog in the car, was on a cell phone and was driving a car
10 unfamiliar to herself ---

11 THE COURT: --- how do we know she was on a cell
12 phone?

13 MR. MAYER: My investigator spoke with a witness.

14 THE COURT: What witness?

15 MR. MAYER: The witness who says that she was on
16 the phone with Ms. Zoll at the time of the collision ---

17 THE COURT: --- is she going to come testify? We
18 got some cell phone records to say when what happened and
19 what time ---

20 MR. MAYER: --- we have the cell phone records
21 certified and we're trying to get a hold of that witness.

22 THE COURT: But again, does any of this bear out
23 that she wasn't in her lane? I could be if I'm riding in
24 my own lane and I'm totally inattentive and somebody
25 drives over into my lane and hits me head on how am I

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1 comparatively negligent in anyway? How have I in any way
2 contributed to the accident?

3 MR. MAYER: Judge, in that scenario you haven't but
4 we're assuming that we know that you stayed in your lane,
5 which is not something that we know ---

6 THE COURT: --- well, I have to assume in a light
7 most favorable at this moment because you haven't given
8 me anything empirical that says she wasn't in her lane.
9 So right now all I have is empirical proof that she
10 wasn't in her lane.

11 MR. MAYER: Judge, one of the State's witnesses, I
12 think it's Josh Witty says that he heard the chirp chirp
13 of the tires shortly before the accident. That could
14 well have been my client or Ms. Zoll trying to swerve to
15 avoid the other car, Your Honor. Because Mr. Witty was
16 not within sight range of that accident that was the only
17 thing he was able to say on that.

18 But because there is also an entry to a playing
19 field there, Judge it was only 8:30 or so at night; 8:45
20 at night there could even have been a third car that just
21 skedaddled as so often happens. There could have been a
22 dog, there could have been a deer or -- we just don't
23 know what happened. But under the Constitution I think
24 my defendant should have the benefit of any ---

25 THE COURT: --- she's entitled to anything that is

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1 relevant; something that makes a fact of consequence more
2 or less probable. You don't get to put in things that
3 are supercilious, misleading to the jury, which gives the
4 impression -- and here's the bottom line. If she was --
5 if I have empirical proof that she was in her lane, she
6 never left her lane, she's high as a kite; it really
7 doesn't matter.

8 However, if there is some evidence that they are
9 comparatively negligent somehow, somehow that she left
10 her lane of travel, that, in fact, she hit your client
11 head-on instead of your client hitting her head-on it
12 might be relevant. But I don't know based on what I have
13 heard so far that I can make that decision.

14 MR. MAYER: We do have an accident reconstruction
15 expert, he used to be an original member of the MAIT team
16 who ---

17 THE COURT: --- is he going to say the victim left
18 her lane of travel?

19 MR. MAYER: He will testify that in his opinion it
20 looks like our client could have been trying to avoid a
21 car that was in her lane based on her skid marks.

22 THE COURT: That doesn't negate the State's
23 original hypothesis though which is that your client hit
24 her head on. I mean you can realize ---

25 MR. MAYER: --- Judge, the reason ---

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1 THE COURT: --- that your car is out of control,
2 and then as you head towards hitting someone try to avoid
3 it.

4 MR. MAYER: But I think what he will testify to
5 would be that our client was trying to avoid an object in
6 her own lane and swerved to avoid it. ---

7 THE COURT: --- and then hit this person head on?

8 MR. MAYER: Correct.

9 THE COURT: Again, that still isn't telling me how
10 any of this other stuff would be relevant. I have to
11 hear it. What we will do is create a proffer and I'll
12 hear it when it naturally comes up during the course of
13 the testimony but you're not to mention it in your
14 opening.

15 MR. MAYER: Okay.

16 THE COURT: I need to create a record and I have no
17 idea whether it's relevant or not at this point.

18 MR. MAYER: Thanks, Judge.

19 THE COURT: You're welcome. Now as it regards the
20 -- what were the defendant's injuries?

21 MR. MAYER: The defendant's injuries were pretty
22 extensive. She had traumatic brain injury. She had a
23 ruptured spleen, which had to be removed in an emergent
24 way. She had a, I think, it was a punctured pancreas
25 that did not require operation. She lost something over

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1 a liter of blood just at the hospital. That's not to say
2 anything in the ambulance or in the life flight.

3 She was given something in the order of seven or
4 eight liters of fluid including red blood cells. This
5 was -- her ankle was almost severed entirely. She's had
6 something like a dozen ankle surgeries since that time.
7 She had injuries to her I believe it was her forearm, her
8 wrist, and she broke her leg.

9 THE COURT: Tell me how that is relevant.

10 MR. MAYER: Judge, the only thing that is relevant
11 are the internal injuries and the bleeding.

12 THE COURT: Why is that relevant?

13 MR. MAYER: Well, it's only relevant to the extent
14 that the State is trying to get in her blood alcohol
15 content.

16 THE COURT: How is that relevant?

17 MR. MAYER: Because -- well for a variety of
18 reasons. When the State took her blood finally four
19 hours plus after the accident she was undergoing a red
20 blood cell transfusion at that same time.

21 THE COURT: Did the State take her blood or did the
22 hospital take her blood in the course of treatment?

23 MR. MAYER: The State took her blood.

24 THE COURT: Okay. So again, I'm still trying to
25 figure out how her injuries are relevant to -- what it is

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1 relevant to.

2 MR. MAYER: Judge, we're not asking to get her
3 injuries in just for the sake of creating some
4 unwarranted sympathy from the jury. The only time her
5 injuries would come in would be under the testimony of
6 the State's doctor or something like this or the nurse or
7 with our toxicologist to explain all the different fluids
8 that she had. We would ---

9 THE COURT: --- why do you need to know her
10 injuries to know what fluid intake she had and how that
11 affects any test?

12 MR. MAYER: Well, the damage to the internal
13 organs, Judge it's my understanding that could have
14 affected the way -- the severe trauma to the body could
15 have affected the way the liver actually would metabolize
16 or excrete alcohol.

17 THE COURT: And you're going to have a witness that
18 testifies to that?

19 MR. MAYER: Yes, Judge.

20 THE COURT: I'll take it up in camera and make a
21 decision at that time.

22 MR. MAYER: Thank you, Judge.

23 THE COURT: You're welcome. Is there -- Mr. Mayer
24 filed a motion to determine the time of arrest. Should
25 there be any real mystery when she was arrested?

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1 THE COURT: It's not clear to me, Your Honor -- I
2 don't know.

3 MR. WEST: Your Honor, if I may?

4 THE COURT: Uh Huh?

5 MR. WEST: The State has a pretty clear time of
6 arrest. They had the booking report, traffic ticket
7 issued for the offense of felony driving under the
8 influence. The time is well documented. I don't believe
9 there is any issue with the time of arrest in this case.

10 THE COURT: Okay. Mr. Mayer?

11 MR. MAYER: Well Judge, it's awful convenient
12 because the time of the arrest was the exact same minute
13 as the time that the defendant's blood was drawn against
14 her -- without her authorization.

15 THE COURT: Did they need her authorization to draw
16 her blood?

17 MR. MAYER: They either would need a warrant or to
18 be within the three hour timeframe of the statute or to
19 have her authorization would be my interpretation of it
20 Judge, and they had none of those three arguably because
21 the time of the accident was 8:42. The time of the blood
22 draw was approximately 12:45.

23 THE COURT: The time of the accident and generally
24 when someone is arrested they have to investigate.

25 MR. MAYER: I don't disagree with you, Judge but at

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1 the prelim Trooper Poston testified that he made a
2 decision to arrest her at the scene of the accident
3 and...

4 THE COURT: But when that was actually effectuated
5 was a whole different thing.

6 MR. MAYER: I agree with you but I'm concerned
7 about the constitutionality of an unlimited expansion of
8 this statute, Judge because he arrested her and then four
9 hours after this incident then under the statute that
10 gives him an additional three hours to potentially have a
11 blood test drawn.

12 So that's makes seven hours for a warrantless search
13 of her body under this statute. And I would just ask the
14 court to consider McNeely [phonetic] the U.S. Supreme
15 Court case from last March, 2013. In that case the court
16 said that if there is probable cause, only if there is
17 probable cause to believe that a drunk driving incident
18 has occurred, then there may be an exception to the
19 search warrant requirement.

20 In the McNeely case, Judge a police officer was
21 following that person, saw him swerving over the double
22 yellow lines multiple times, pulled him over, smelled
23 alcohol, saw the guy's eyes were bloodshot, noted the
24 slurred speech. That person went through field sobriety
25 test which they failed hands down and then that person

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1 refused to provide a breath sample. That is in stark
2 contrast to the potential arguable probable cause here.

3 THE COURT: I think it is a totally different
4 factual situation. These type cases are very different
5 than a stopped case where someone is evidencing erratic
6 driving. You have an emergent situation where you have
7 people with life threatening injuries. You have to have
8 an investigation to basically that -- to your client's
9 benefit that either exculpates or inculpates her or the
10 other driver in the incident.

11 So a case where you have a felony D-U-I it is rare
12 ever that they are arrested right then at the scene
13 unless there are no injuries and where you have the
14 ability to take field sobriety tests, which in this
15 instance you would not. You had people with life
16 threatening injuries; you had the flurry of EMT's and
17 other people trying to save lives.

18 So what happens generally, at least in my experience
19 in many of these cases that I've tried, you have an
20 investigation that takes place first. They try to sort
21 it all out and try to see how many witnesses they have at
22 the scene or don't have at the scene. They try to
23 determine if they have any eye witnesses. They try to
24 determine if any of the drivers can articulate; if they
25 are cognizant of where they are, oriented. But their

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1 first and immediate concern is the preservation of life.
2 So the first thing they are going to try to do is
3 evacuate these people out of vehicles and get them to
4 medical attention.

5 MR. MAYER: And I would never fault them for that,
6 Judge.

7 THE COURT: And then it goes from there. Then they
8 start investigating and determining what they are going
9 to do. And based on my limited knowledge of this case
10 based on what I've read in the motions your client would
11 not have been in any real posture based on her injuries
12 to do anything at that point except to get her to
13 emergent medical care.

14 MR. MAYER: They still would require probable
15 cause, Judge to do a warrantless blood draw, which I
16 would humbly submit they didn't have here.

17 THE COURT: Well, I don't know; I haven't heard
18 everything. But I would think at this point it is really
19 premature to say that you are not aware of the date and
20 time of the arrest because it's clearly on the documents.

21 MR. MAYER: Judge, I'm not trying to say I'm not
22 aware of it. I just was trying to get a date and time
23 judicially noted so that we ---

24 THE COURT: --- I don't think that is for me to do.
25 I think that's a factual issue that may well or may well

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1 not play into the ultimate determination of this case and
2 I'm not the fact finder. I'm not going to say when she
3 was arrested. You have documents that indicate when she
4 was arrested. I would assume when she was Mirandized or
5 when they took blood draws or otherwise ---

6 MR. MAYER: --- yes, Judge.

7 THE COURT: And they have times on them?

8 MR. MAYER: Correct.

9 THE COURT: Factually that's where we are with
10 those dates and times so that renders your motion then
11 moot because the court is not doing to determine that.
12 I'm not the fact finder. That's not for me to determine.
13 That's something you all can certainly argue to the jury
14 if you decide to. And then I'll deal with the blood draw
15 and otherwise and we'll see where that leads us.

16 I don't think it's for the court to determine date
17 and time of the arrest when the documents are clear as to
18 when the police position is that they completed these
19 tasks because as we know this type of case is very paper
20 intensive, document intensive and they would have to have
21 noted dates and times on certain documents as they dealt
22 with Ms. Robinson.

23 I would imagine that you all are going to have
24 experts that are going to counter testify as to what at
25 what level a person, if the evidence comes in regarding

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1 marijuana, as to when a person is impaired or not
2 impaired correct?

3 MR. MAYER: I don't think so, Judge. I think
4 talking to the State's toxicologist he agrees with our
5 toxicologist that just a little bit of marijuana in the
6 blood would be impairing.

7 THE COURT: I'm sorry; I can't hear you.

8 MR. MAYER: I think there is no disagreement
9 between experts, Judge on that score having talked to
10 mine and the State's, Mr. McKinnon.

11 THE COURT: So then they both would testify as to
12 what they perceive in their expert capacity as to what
13 would constitute impairment from marijuana correct?

14 MR. MAYER: Yes, Judge.

15 THE COURT: So then why would I have to take
16 judicial notice of other state's laws regarding
17 impairment when South Carolina has chosen not to speak on
18 the issue?

19 MR. MAYER: I just thought it would be good for
20 clarity sake, Judge but...

21 THE COURT: I've found that when the legislature
22 intends to say something they say it. And there's a
23 reason South Carolina has not adopted any of these
24 standards.

25 MR. MAYER: Okay.

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1 THE COURT: And I see no need for me to then
2 basically expand our laws to apply a standard that our
3 legislative has not chosen to adopt.

4 MR. MAYER: Thanks, Judge.

5 THE COURT: Now, that then leaves us with -- you
6 all have stipulated to the chain of custody correct on
7 the blood sample?

8 MR. WEST: Yes, Your Honor. .

9 THE COURT: Is there anything else that this
10 stipulation applies to other than the blood sample on the
11 chain?

12 MR. MAYER: It applies to both blood samples,
13 Judge.

14 THE COURT: Okay.

15 MR. WEST: Your Honor, we would reserve argument
16 for the introduction of the marijuana. It seems that --
17 like you've already spoken on the issue but in regards to
18 the actual stipulation agreement there is a stipulation
19 section in there that talks about the victim's cause of
20 death being that of the accident.

21 And one of the elements the State must prove is the
22 proximate cause element. And the State has stipulated
23 with the defense that this collision was the proximate
24 cause of the death of Candy Zoll in order than Doctor
25 Carl Potts would not have to come testify as to the cause

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1 of the victim's death.

2 THE COURT: Okay. Well, the stipulation speaks
3 for itself. It's been marked as court's exhibit 1.

4 [Whereupon, court's exhibit number 1 is marked by
5 the court reporter]

6 THE COURT: That then leaves us basically with two
7 motions; that being -- do you all have any exception to
8 Mr. Mayer using Google maps as demonstrative exhibits?

9 MR. WEST: No exception to the use of Google maps.
10 I'd just like to be able to review them before he puts
11 them in front of the jury ---

12 THE COURT: --- do you have those with you Mr.
13 Mayer what you intend to use so that the State can look
14 at those?

15 MR. MAYER: Yes, Judge I do have it pulled up on my
16 computer.

17 THE COURT: Can you show them what it is you're
18 intending to use?

19 [Whereupon, Mr. Mayer and Mr. West confer]

20 MR. WEST: If Mr. Mayer shows what I believe is
21 going to be shown in the photographs taken during the
22 MAIT investigation then I feel like the Google maps might
23 be cumulative in the fact that there is a display of the
24 roadway in the photographs the State would introduce into
25 evidence.

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1 [Whereupon, Mr. Mayer and Mr. West confer]

2 MR. WEST: Your Honor, the State has no objection
3 as long as we're given time before the testimony is given
4 to review what maps he intends to use as demonstrative
5 exhibits.

6 THE COURT: I assume you have no exception to that
7 Mr. Mayer?

8 MR. MAYER: No, Judge.

9 THE COURT: Now you mentioned something about
10 exclude -- opening the door if defense asks witnesses
11 whether three drinks in a four hour period has caused
12 them to black out. I don't generally determine
13 evidentiary matters of that scope until I've heard the
14 testimony. There is no way for me to make any reasonable
15 decision regarding that because it's basically in the
16 dark. You'd have to make a contemporaneous objection and
17 I'd have to rule at that time.

18 And you're going to have to make a strategic
19 decision as to what you ask and what questions -- answers
20 you elicit because I'm not going to tie the State's arms
21 to rehabilitate witnesses. So you might want to be
22 careful as to what you ask.

23 MR. MAYER: Yes, Judge.

24 THE COURT: Because I can't rule in advance.

25 MR. MAYER: Okay.

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1 THE COURT: Because I have no idea how the
2 testimony is going to develop.

3 MR. MAYER: Fair enough.

4 THE COURT: That then leaves us with a motion to
5 exclude the blood draw and defendant's motion to inspect
6 an event data recorder. I assume you provided him with a
7 copy of the MAIT report, M-A-I-T for the court reporter;
8 it's an acronym.

9 MR. WEST: I have, Your Honor.

10 THE COURT: Okay. Is there such a thing as an
11 event data recorder?

12 MR. WEST: Your Honor, if I may just from
13 explanations give to me by my MAIT expert my
14 understanding of what a black box in a car is is somewhat
15 similar to what you would find in airplanes. It is an
16 event recorder that compiles certain calculations and
17 measurements in a car. Specifically in this case it
18 would be in the car near the time of the accident.

19 What actually is done by the MAIT team is it is
20 almost as if it is comparable to a computer. You can
21 plug a USB device into it, data is downloaded onto
22 whatever device the MAIT team used at that point in time.
23 That data is then recorded and produced into the MAIT
24 report that has been provided by the State to the defense
25 in this case. The physical black box that is being

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1 referenced there actually remains with the car. The
2 State is not in possession of the car.

3 THE COURT: I would imagine those cars would have
4 been junked -- I hate to sound too plain but there are
5 probably scrap at this point aren't they since they were
6 probably totaled?

7 MR. WEST: That's correct, Your Honor.

8 THE COURT: Probably quickly after the accident.

9 MR. WEST: And just for clarification the State is
10 not in possession and never has been in possession of the
11 actual black box in order to put it into evidence. It's
12 just the data that is compiled from the download from
13 this black box ---

14 THE COURT: --- is there a way to -- what's the
15 word I'm looking for? I don't want to say quantify
16 because that really isn't the word I'm looking for -- is
17 there a way to provide that raw data to Mr. Mayer or has
18 it already been provided to him?

19 MR. WEST: It has been provided. It's been placed
20 on a C.D.

21 THE COURT: Okay.

22 MR. WEST: And everything that is in that data is
23 actually in the MAIT reports.

24 THE COURT: Okay. Now what is it exactly that you
25 -- you're trying to get the original boxes from the cars?

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1 MR. MAYER: And Judge, the reason is ---

2 THE COURT: --- I understand the reason but what
3 comes ---

4 MR. MAYER: --- if I might provide just a little
5 background on the MAIT report itself. The first MAIT
6 report was done and conflated the two units. It calls my
7 client's car variously unit 1 and later unit 2.

8 THE COURT: Okay.

9 MR. MAYER: So when they came to us and said here's
10 the numbers pulled from unit 2's event data recorder we
11 didn't know if it was my client's or the decedent's ---

12 THE COURT: --- did you ask for clarity?

13 MR. MAYER: Yes Judge, and we still don't know.
14 It's done by a device a Bosch device and was based on the
15 airbag. And based on all of the errors that were in that
16 first MAIT report I've got no confidence that it came out
17 of the Saturn, which they claim that it did, without
18 seeing it say Saturn on it somewhere..

19 THE COURT: Well, how you going to do that? How
20 are you going to get that? I would assume that the
21 insurance companies probably junked these cars for scrap
22 very soon after the fact once the investigation was
23 completed and probably long before you requested this
24 information from the State.

25 MR. MAYER: Judge, that would be a shame but it's

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1 the State's ---

2 THE COURT: --- it's not the State's burden. They
3 have no control over these vehicles.

4 MR. MAYER: Well, they're trying to use this
5 information against my client. They have control over
6 that.

7 THE COURT: And they gave it to you. They gave you
8 what they -- they don't have any control over these
9 vehicles once they are totaled so to speak by the
10 insurance company. They remain the personalty of the
11 individuals -- in other words you had access to your
12 client's car. It was her car. You could have gone and
13 gotten it any time you wanted to.

14 MR. MAYER: I wasn't under -- I wouldn't have had
15 any concern about this until this MAIT report came
16 through attributing things to my client or vice versa
17 that should have been attributed to the other party.

18 THE COURT: Uh Huh.

19 MR. MAYER: And it was at that time the question
20 arose did they even do the event data recorder download
21 correctly. And it was at that time that I wanted to
22 examine the event data recorder.

23 THE COURT: And you could have gone to the
24 insurance company, asked them where it was, gone to the
25 junkyard or wherever they had it storage yard or storage

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1 facility where they had it and had a professional or an
2 expert remove the box, download the same data.

3 MR. MAYER: I could have if it had been available
4 Judge but it wasn't anymore. It was long gone.

5 THE COURT: Well, that's not the State's
6 responsibility. They can't require the insurance company
7 to keep a vehicle in storage accruing where nobody -- I
8 mean that's really within the adjuster's prerogative. At
9 some point they are going to order that the car be
10 scrapped. They're not going to continue to pay a storage
11 facility to have a car sit there indefinitely.

12 MR. MAYER: And it wouldn't have even been an issue
13 if the MAIT report were clear from the get go.

14 THE COURT: Well these are questions you ask that
15 go to weight of testimony but you can't -- I cannot
16 impose a duty on the State to keep a vehicle that doesn't
17 belong to them.

18 MR. MAYER: And we don't need the vehicle. We
19 would just need the black box ---

20 THE COURT: --- they can't remove the black box
21 from that vehicle. That would be destruction of
22 property. I'm certain they didn't remove it to download
23 the data. They said they attached a USB to it and
24 downloaded the data.

25 MR. MAYER: Okay.

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1 THE COURT: And you had the same opportunity.

2 MR. MAYER: Okay.

3 THE COURT: And I would assume based on my
4 knowledge of automobile accidents that they probably
5 would have kept this car -- I think it would be -- I
6 would be surprised if they kept it 30 days because
7 insurance companies is not going to pay storage to a
8 facility.

9 They're just not going to -- when they do a cost
10 benefit analysis they're just not going to hold the car
11 that long. They're going to decide what they are going
12 to do with it; if they are going to total it and scrap it
13 and pay the parties they are going to do that and then
14 they are going to dispose of the vehicle. And you know
15 if you want you probably could still ask them where it's
16 at; they should be able to trace where it went. It might
17 be sitting in a salvage yard somewhere.

18 MR. MAYER: I think we did try that a year or so
19 ago.

20 THE COURT: Because your request was a year after
21 this accident wasn't it?

22 MR. MAYER: I think it was Judge, yes.

23 THE COURT: I think it's a little unreasonable to
24 expect that that car would still be around that length of
25 time because the insurance companies don't have their own

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1 private facilities, which means they have to pay a
2 private facility to store a car. And the last time I
3 checked it was what -- about 50 dollars a day to store a
4 car?

5 MR. MAYER: The police store cars all the time for
6 drug cases, Judge.

7 THE COURT: Do they use a private facility to store
8 those vehicles and they pay somebody to do that. They
9 don't have them -- I mean there are some places -- there
10 is a State facility in Columbia where they have them and
11 they have sales every week I think where they sell off
12 cars.

13 Most drug cars they reuse for undercover officers.
14 They're not sitting somewhere; they are using them for
15 some purpose until they get tired and then they send them
16 to that facility to be sold and then they use that money
17 pursuant to the drug and addiction statute.

18 When they sell it they redistribute the proceeds to
19 help with whatever the statute provides they can use that
20 money for. But I'm not aware of -- even the county
21 impound when the county or the police tow your car it
22 goes to a private storage facility where you got to pay
23 to get your car, which is expensive.

24 MR. MAYER: Yes.

25 THE COURT: Yes, it gets to be very expensive so I

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1 would doubt very seriously that either one of these
2 vehicles was kept more than 30 days. So I don't know
3 that I can compel the State to do anything more than to
4 provide you with the raw data. And if they made some
5 mistake in downloading it you'd have to explore that with
6 them as to the completeness of the report.

7 MR. MAYER: Okay.

8 THE COURT: But I can't compel the State to produce
9 something that is not within their control, it's not
10 within their power to control; they don't own it. Did
11 you check with the deceased family to see what they did
12 with her vehicle? Did y'all check with the deceased
13 family to see what happened with her car?

14 MR. WEST: The deceased vehicle is the vehicle in
15 question, Your Honor.

16 THE COURT: Okay. Do you know where it is or what
17 happened to it?

18 MR. WEST: I do not, Your Honor.

19 THE COURT: So was Ms. Robinson's vehicle
20 salvageable?

21 MR. WEST: Ms. Robinson's vehicle isn't one of the
22 vehicles where the data was ---

23 THE COURT: --- stored?

24 MR. WEST: Compiled ---

25 THE COURT: --- compiled, okay.

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1 MR. WEST: We actually had to go through the MAIT
2 investigation to determine the calculations that we
3 needed for Ms. Robinson's..

4 THE COURT: Did her car not have one or was it
5 damaged?

6 MR. WEST: From my conversations with the MAIT
7 investigator it was data that was illegible. They
8 weren't able to understand.

9 THE COURT: I would assume then it was damaged in
10 the collision.

11 MR. WEST: That's my understanding, Your Honor.

12 THE COURT: And I would assume based on a head on
13 collision the way cars are made these days but neither
14 car was -- that both cars were totaled because cars now
15 are basically plastic covered in a little bit of metal
16 but basically plastic.

17 MR. WEST: Yes, Your Honor.

18 THE COURT: So her car was totaled as well?

19 MR. WEST: Ms. Robinson's car was severely damaged.
20 It was totaled according to Mr. Mayer.

21 THE COURT: Okay. And then Ms. -- the decedents
22 car was totaled as well correct?

23 MR. MAYER: Yes, Judge ---

24 MR. WEST: --- that's correct, Your Honor.

25 THE COURT: But her box in her car was intact and

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1 was able to have data downloaded from it?

2 MR. WEST: That's correct, Your Honor.

3 THE COURT: But Ms. Robinson's car no data could be
4 salvaged from it?

5 MR. WEST: That's correct, Your Honor, and we will
6 be asking our MAIT investigators that line of questioning
7 during the trial.

8 THE COURT: And where was Ms. Zoll's car stored
9 after the accident? What happened with it after the
10 accident?

11 MR. WEST: Your Honor, I wouldn't be able to tell
12 you the exact location. We do have photographs from the
13 facilities that they were stored ---

14 THE COURT: --- I mean what happened with it is
15 what happens with most automobile accidents the car was
16 towed to a storage facility?

17 MR. WEST: That's correct.

18 THE COURT: Or a storage yard?

19 MR. WEST: I do have troopers that are here that
20 could elaborate ---

21 THE COURT: --- the tow company towed it?

22 MR. POSTON: Yes, ma'am.

23 THE COURT: How long did it remain at the tow
24 facility?

25 MR. POSTON: I'm not sure.

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1 THE COURT: Sir, if you could tell us your name for
2 the record?

3 MR. POSTON: I'm John Poston.

4 THE COURT: Thank you, sir.

5 MR. POSTON: Yes, ma'am.

6 THE COURT: But they didn't keep it for a year?

7 MR. POSTON: No ma'am, it's towed to the facility
8 where it is -- I can't recall who the tow company was at
9 the time and I don't know what happened to it after that
10 point. MAIT usually takes over the investigation.

11 THE COURT: And did you all make any attempts to
12 contact the insurance company Mr. West to see where the
13 car was once you got -- after you got defense counsel,
14 Mr. Mayer's request for this information?

15 MR. WEST: I did not make that contact, Your Honor.
16 From my conversations with the investigator from the MAIT
17 team we had done all they normally do in the course of
18 their investigations and I felt that that was reasonable
19 under the circumstances.

20 THE COURT: Who was the insurance company that
21 handled the accident? Were there two different ones or
22 one insurance company?

23 MR. WEST: Your Honor, I don't have the answer to
24 those questions either.

25 THE COURT: Okay. But that information would have

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1 | been readily available to you and to Mr. Mayer correct?

2 | Do you know which insurance company handled it, Mr.

3 | Mayer?

4 | MR. MAYER: I think it was on the accident report,
5 | Judge.

6 | THE COURT: Okay. So you all both had that
7 | information available to you what insurance company was
8 | handling it ---

9 | MR. MAYER: --- yes ---

10 | THE COURT: --- and who would have had -- been in
11 | charge of personalty -- meaning the vehicles.

12 | MR. MAYER: And I'm sure back at the time we
13 | attempted to reach out to them as well.

14 | THE COURT: And they told you that ---

15 | MR. MAYER: --- just fruitless ---

16 | THE COURT: --- that it was gone, okay.

17 | MR. WEST: Your Honor, I've been informed that the
18 | insurance company is listed on the accident report.

19 | THE COURT: Yes, on the FR-10. And so that would
20 | have been whatever insurance company it was. I just
21 | don't think it is likely a year later they would have had
22 | the vehicle. Okay. So then that really renders this
23 | motion moot in that the State did not have control or
24 | possession of the vehicle that has been referenced and
25 | they provided all the raw data available to them to Mr.

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1 Mayer in response to his discovery.

2 And the likelihood of the time that it took for the
3 -- as your know most litigation takes time; no reflection
4 on Mr. Mayer. The time that it took for the request for
5 inspection the car had long been disposed of by the
6 insurance company. Now that then leaves us with the last
7 motion, which is the notice of motion and motion to
8 exclude blood draw results is that correct?

9 MR. MAYER: Yes, Judge.

10 THE COURT: Are y'all ready to proceed?

11 MR. MAYER: Yes, Judge.

12 THE COURT: Is the State ready to proceed?

13 MR. WEST: Yes, Your Honor.

14 THE COURT: Mr. West, you may proceed.

15 MR. WEST: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 MR. WEST: The State would call Officer Poston.

18 [Whereupon, Mr. Poston comes forward]

19 [Whereupon, the witness is duly sworn by the Clerk
20 of Court]

21 CLERK OF COURT: Please be seated. State your full
22 name and spell your last name for the record.

23 THE WITNESS: Deputy John Poston, P-O-S-T-O-N.

24 THE COURT: You may proceed.

25 MR. WEST: Thank you, Your Honor.

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1 JOHN POSTON,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WEST:
6 Q. Officer Poston, where do you work?
7 A. Charleston County Sheriff's Office.
8 Q. And were you working there in November of 2011?
9 A. No.
10 Q. Where were you working in November of 2011?
11 A. I was with the South Carolina Highway Patrol.
12 Q. And during your duties with the Highway Patrol in
13 2011 did you have the opportunity to respond to an
14 incident on Broughton Road?
15 A. I did.
16 Q. And could you describe that?
17 A. I arrived on the scene. It was a two car
18 collision. It was a pretty big mess out in the middle of
19 the roadway.
20 Q. Okay. Where were you called out to?
21 A. I was coming from -- responding from Rivers Avenue.
22 Q. Okay. And you drove to where?
23 A. To Broughton Road.
24 Q. Okay. Where on Broughton Road?
25 A. To the incident, to the traffic collision scene. I

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1 was dispatched to the traffic collision scene.

2 Q. Okay. When you got there was there anybody else on
3 the scene?

4 A. Yes.

5 Q. And who would that be?

6 A. My Corporal showed up behind me. There were
7 firemen, there were people everywhere. It was kind of a
8 chaotic scene.

9 Q. Okay. Was EMS already there?

10 A. Yes.

11 Q. When you arrived on the scene what was the first
12 thing that you saw?

13 A. The first thing that I saw was basically two
14 vehicles that had been crashed, EMS and so forth. I went
15 up there and looked around kind of gauged around to see
16 what was going on. I tried to find out about the victim
17 who was still left on the scene at the time.

18 Q. I'm sorry, but to back up a little bit but were you
19 the investigating officer during this ---

20 A. --- yes, I was.

21 Q. Okay. So when you got to the scene and you saw the
22 cars what's the first thing you did when you saw the
23 cars?

24 A. When I first saw the cars I checked to see if there
25 were any victims involved and what their statuses are.

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1 Q. And where were some of the people that were
2 involved, what were their statuses?

3 A. The defendant was already -- had left the scene.
4 The victim that was on the scene at the time she was
5 already in the ambulance when I got there.

6 Q. Okay. Do you know what kind of car the defendant
7 was driving at the time of the accident?

8 A. The defendant was driving -- it was a white -- it
9 was a BMW.

10 Q. Well, if you don't remember the color...

11 A. I don't remember.

12 Q. Okay. But where was that BMW when you arrived on
13 the scene?

14 A. It was off the roadway to the left opposite lane.

15 Q. Describe that roadway.

16 A. The roadway is -- it's got a sharp curve. It's a
17 straight road that turns into a sharp curve right before
18 you get to Lyons Beach.

19 Q. Okay. And what is the speed limit at that curve?

20 A. At the curve it's a 35 mile per hour speed limit.

21 Q. And you saw -- you said you saw the BMW down off the
22 roadway. Can you describe some more of that area off the
23 roadway?

24 A. It was -- there was like an embankment I guess you
25 could say -- she went down the embankment next to a

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1 utility pole.

2 Q. And was there any other cars on the scene that
3 involved in the collision?

4 A. There was.

5 Q. Okay. And what was that other car?

6 A. It was a pretty demolished. I believe -- I can't
7 speculate; I'm not sure exactly what the model was.

8 Q. But where was that car?

9 A. It was in split the lanes further back from where
10 the point of impact took place.

11 Q. And do you know who was driving that car?

12 A. Ms. Zoll.

13 Q. Okay. Do you know the status of Ms. Zoll today?

14 A. Yes, she is deceased.

15 Q. Okay. So when you arrived you saw these two cars a
16 BMW down the side of the embankment, the Saturn was still
17 in the roadway. As part of your investigations were you
18 able to determine anything about where the accident took
19 place?

20 A. I did.

21 Q. Okay. Can you describe that for us?

22 A. Yes. Based on my investigations I determined where
23 the point of impact took place based on the gouge marks
24 where -- what that means is in a head on collision such
25 as this you see where two vehicles collide and they

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1 buckle down like that [indicates]. When they buckle down
2 the engines hit and drag.

3 You can see where the defendant's vehicle goes off
4 to the left and the victim's vehicle because of the force
5 momentum of the collision dragged Ms. Zoll's car -- I
6 can't think exactly how far, but was a pretty good
7 distance away from where the point of impact took place.

8 Q. And you were able to determine what lane the point
9 of impact was?

10 A. Correct.

11 Q. Okay. And which lane was that?

12 A. That was in the lane traveling towards Moncks Corner
13 away from the beach.

14 Q. Okay. So were you able to determine which
15 direction of travel each car was going?

16 A. Yes.

17 Q. Okay. And what directions were those?

18 A. The victim was traveling towards Moncks Corner.

19 Q. Okay.

20 A. And the defendant was traveling towards Lyons Beach.

21 Q. Okay. So would the collision have occurred in the
22 victim's lane of travel as you testify?

23 A. Correct.

24 Q. Okay. Now when you arrived and you went to the BMW
25 was there anything you noticed about the BMW that would

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1 have indicated this wasn't your average wreck?

2 A. Yes. First of all there was a -- I smelled some
3 type of alcoholic beverage emanating from inside. I could
4 detect a smell of it.

5 As I gazed in the back I noticed there was a 12 pack
6 of beer in the case with a case that was busted open.
7 There were cans within the car and one of them was
8 busted.

9 Q. Okay. But there was alcohol inside the vehicle?

10 A. Correct.

11 Q. And there was the smell of alcohol ---

12 A. --- correct ---

13 Q. --- inside the vehicle. So is it safe to say there
14 was open alcohol inside the vehicle?

15 A. Correct.

16 Q. Now did you learn anything else about this defendant
17 after you had inspected the BMW?

18 A. I did. I was learning a few things while -- during
19 the course of my investigation. First I learned that she
20 was coming from a bar. Then I also learned that there
21 was marijuana on her person ---

22 Q. --- how did you -- excuse me, I'm sorry to
23 interrupt. How did you learn that she had been coming
24 from a bar?

25 A. From my Corporal who informed me.

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1 Q. And what's his name?

2 A. Corporal Chad Pearson.

3 Q. Okay. So you learned she was coming from a bar and
4 you said you found marijuana on her person.

5 A. I didn't find it. I learned that there was.

6 Q. Okay. And just describe that for the Judge at this
7 point.

8 A. I learned through my Corporal Chad Pearson that
9 there was marijuana on the defendant's person. That
10 involved an EMS worker who took it from her and passed it
11 to her brother. So there was marijuana involved on the
12 scene.

13 Q. Was there anything else in her car that would have
14 indicated impairment?

15 A. Yes. Also I noticed that her Mom came up to the
16 car pretty quick. She grabbed some -- I asked her what
17 she was grabbing and she said she was grabbing some
18 prescription drugs.

19 I didn't know what the names of them were or what
20 they were for other than the fact that I found out later
21 she has some kind of skin condition or something that I
22 think they were for.

23 Q. Those prescriptions, who were they prescriptions
24 for?

25 A. At that point in time I'm not sure. Based on what

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1 the mother said it was for her daughter and she was
2 getting them to take them to the hospital.

3 Q. And that person you're speaking of, the daughter, is
4 that this defendant?

5 A. That is the defendant, correct.

6 Q. Okay. After you found these things in the car and
7 you -- did you do anything else in your investigation in
8 terms of accident investigation?

9 A. Yes. I took photos and marked the scene and did the
10 relevant stuff as far as that so that the MAIT team could
11 come out and further investigate it.

12 Q. All right. Once you were done with this scene did
13 you go anywhere?

14 A. Yes, I went straight to MUSC.

15 Q. Okay. And while at MUSC what happened?

16 A. At MUSC I issued two citations, one for felony D-U-I
17 resulting in death and one for felony D-U-I with great
18 bodily injury.

19 Q. Do you know around about what time those citations
20 were issued?

21 A. I cannot recall what time I was at the hospital ---

22 Q. --- would it refresh your memory if you saw the
23 tickets you issued?

24 A. Well, now the tickets has the incident time on there
25 because it asked for the incident time so I put the

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1 incident time. The arrest time on the -- the actual
2 arrest time should be 0-0-4-5.

3 Q. Thank you. Do you know at what point in time blood
4 was extracted from this defendant?

5 A. 0-0-4-5.

6 Q. Okay. So the same time she was arrested the blood
7 was simultaneously taken?

8 A. Right, right.

9 Q. Now you didn't physically take the blood yourself?

10 A. No. Due to the exigent circumstances of me having
11 to go investigate the scene we sent Trooper Southerland
12 to do the blood draw after I determined the factors on
13 the scene.

14 MR. WEST: Court's indulgence.

15 [Whereupon, Mr. West and Mr. Alfaro confer]

16 MR. WEST: Thank you. That's all the questions the
17 State has at this time, Your Honor.

18 THE COURT: Mr. Mayer?

19 MR. MAYER: Thank you, Judge.

20 THE COURT: You're welcome. You may proceed.
21
22
23
24
25

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1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. You testified just a minute ago that you wrote Shana
4 two different tickets, one for great bodily injury and
5 one for death and you gave them to her the same time
6 right?

7 A. Correct.

8 Q. Why does one of those tickets say the date of arrest
9 is November 11th and the other ticket says the date of
10 arrest is November 14th? Do you want to take a look at
11 the tickets?

12 A. Yes, could you show me?

13 MR. MAYER: May I approach, Judge.

14 THE COURT: You may.

15 [Whereupon, documents are shown to the witness]

16 A. Yes. The felony D-U-I great bodily injury -- so it
17 is the wrong date in there.

18 Q. So ---

19 A. --- I see what you're saying.

20 Q. Is it just a clerical mistake type thing, is that
21 what you're saying? Or did you come back to the hospital
22 later and issue that ticket later?

23 A. I came back and picked it up -- but it wasn't -- it
24 has to be a clerical because I don't recall -- I don't
25 recall.

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1 Q. I was just trying to clarify. So it was a mistake
2 you made in writing the ticket that night is that right?

3 A. It could be a clerical.

4 Q. Okay. You testified once in this case already
5 right, at the preliminary hearing?

6 A. I did.

7 Q. Okay. I want to cover with you a couple of things
8 that we covered back then. You testified today that
9 there was a case of beer and you said it was a 12 pack.
10 I'm going to submit to you it is an 18 pack; that may
11 refresh your memory.

12 You said there were busted cans in there but you
13 went on in your testimony with Mr. West to say that there
14 was an open can. I'd like you to clarify that because I
15 remember we talked about that back at prelim and you said
16 there was one that had been punctured and you thought it
17 was punctured in the wreck right?

18 A. Yes.

19 Q. Okay. So there wasn't a can in there that had been
20 opened where it looked like someone didn't drink it?

21 A. No, I couldn't tell. I just noticed it was busted
22 open like from the wreck maybe.

23 Q. Okay. You looked at those cans to see if there
24 were any that had been actually opened, right?

25 A. Yes, but I can't say that it was from that way or I

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1 | couldn't say from the wreck. There is just -- part of
2 | but I believe that contributed to my probable cause
3 | because of what I saw in the car ---

4 | Q. --- I know. That's what I want to delve into with
5 | you. So are we talking about -- we're talking about one
6 | can that was punctured right?

7 | A. I cannot recall.

8 | Q. Would it refresh your memory to see your testimony
9 | from the preliminary hearing?

10 | A. Yes, it probably would.

11 | [Whereupon, the witness reviews documents]

12 | A. Okay.

13 | Q. So back -- we did a prelim back in January after
14 | this November accident right -- is that right?

15 | A. [Nods affirmatively]

16 | Q. Sorry, I didn't see you drinking. That is a yes ---

17 | A. --- yes.

18 | Q. And back at that time it was -- the wreck was more
19 | fresh in your memory than two and half years later.

20 | A. Yes.

21 | Q. And at the time you testified that there was one can
22 | that had been punctured.

23 | A. Okay.

24 | Q. Is that right?

25 | A. Yes, that's what I said.

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1 Q. Okay. And so is it safe to say there were no other
2 cans that were open besides that one that was punctured,
3 right?

4 A. Yes.

5 Q. Okay. And that punctured can in a big violent
6 wreck where Shana's car flipped over and rolled could
7 well have been what spread the smell of alcohol inside
8 that car, right?

9 A. It could.

10 Q. Okay. And you didn't testify as to having smelled
11 alcohol on my client's breath correct?

12 A. Yes, because I never had contact with her.

13 Q. Okay. And so -- let's flesh out this marijuana
14 rumor. There was some rumor on the scene of the crime
15 that there was marijuana?

16 A. Yes.

17 Q. But you didn't see where the marijuana came from
18 with your own eyes?

19 A. No.

20 Q. Who do you believe saw that?

21 A. We've got witnesses according to the Solicitor in
22 the courtroom that can testify to that. I'm not
23 testifying to that because I didn't see it.

24 Q. Okay. So do you know -- is it your Corporal who
25 was a witness to that?

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1 A. He's part of it.

2 Q. Okay. And who was charged with the marijuana?

3 A. Who was charged with it?

4 Q. It's my understanding that some EMT person was
5 charged with marijuana. There was a news article about
6 it.

7 A. She was fired over it. I don't know if charges were
8 brought against her. I didn't do it but I know she was
9 fired from her job.

10 Q. And what tests did y'all do on the marijuana to
11 figure out it was marijuana, if any?

12 A. What test?

13 Q. Yes. How did you know it was marijuana?

14 A. Honestly I'm not sure because I usually send it to
15 SLED or field test it and I didn't have any ---

16 Q. --- you didn't field test it?

17 A. I didn't have it.

18 Q. Okay. And as far as you're aware the marijuana
19 they are talking about would be un-smoked raw marijuana.

20 A. Correct.

21 Q. Okay. Was there any finding of paraphernalia to
22 smoke marijuana, rolling sheets, a bowl, smoked
23 marijuana, tar, resin; anything like that?

24 A. Not that I recall.

25 Q. Okay. On these prescription drugs you testified

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1 earlier that it was your belief that they were the
2 defendant's prescriptions right?

3 A. Right.

4 Q. It's not illegal to have a prescription drug?

5 A. No, absolutely not.

6 Q. It was properly stored in its own prescription
7 bottle?

8 A. Correct.

9 Q. You testified a bit ago and also in the prelim I
10 think about where Shana was coming from at a place
11 Geronimo's. Tell us who saw her having a drink there or
12 what happened there?

13 A. All I can speak on behalf of that is the fact that I
14 was informed by my Corporal at the time that she was seen
15 leaving Geronimo's. Now there is supposedly other
16 witnesses that can speak more on that behalf but I can't
17 speak on that behalf.

18 Q. Okay. And the Corporal you are referring to is
19 Corporal Chad Pearson?

20 A. That is correct.

21 Q. And you don't know if at the time of leaving
22 Geronimo's someone saw my client with just having had a
23 drink or what the degree that was, right?

24 A. I have no idea.

25 Q. Okay. What was your understanding of it at the

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1 time that you decided to have Shana's blood drawn?

2 A. Well, several factors. First and foremost the
3 collision and where it took place. It happened on the
4 opposite side of the lane, an improper lane change or
5 improper lane usage. Swerving across the center line
6 okay; that could be a factor, it could or could not be
7 but it helps determine my case.

8 The rate of the speed. Because of the destruction
9 of the vehicles it was a high speed impact based on the
10 totality, the collision; the way the vehicles were that
11 was another factor being that it is a 35 miles per hour
12 zone.

13 Q. The only ---

14 A. --- thirdly --

15 Q. Go ahead.

16 A. Thirdly, the prescription drugs that were coming out
17 that her mom was quickly going into the vehicle to snag
18 the prescription drugs for her daughter. You know that
19 draws to my -- maybe she is on prescription drugs that
20 would have probably based on the type of collision that
21 occurred and where it occurred could have been that.

22 Then there was beer in the car with the smell of
23 beer with the can popped open. I couldn't at that time
24 because of the way it was I couldn't quite determine if
25 it was popped open or if it was because of the collision.

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1 It could have been either one, however it was enough
2 for me to draw my conclusion based on all of that the
3 totality of the circumstances enough to make the probable
4 cause in order to go ahead and have blood drawn for
5 felony D-U-I at the time.

6 Q. Now at this you're talking about this 35 miles per
7 hour zone. Did you know that zone on that same curve
8 used to be 45?

9 A. If it was I wouldn't know. I probably wasn't
10 working on patrol back then.

11 Q. Okay. So it was your understanding just so I'll
12 know that the prescription drugs might have impaired her.
13 The open beer can which you testified earlier was clearly
14 punctured might have been a factor of her impairment.

15 The rate of speed based on your own determination of
16 looking at the cars might have been a sign of impairment?

17 A. Correct.

18 Q. Okay. And the fact that that occurred in a 35
19 miles per hour zone. Anything else?

20 A. Well and the fact that like I said it occurred in
21 the opposite lane -- when they crossed over the center
22 lane and caused the head on collision because of the
23 situation yes; that's my totality of circumstances.

24 Q. Did you have any witnesses who said that the
25 victim's car did not cross into my client's lane at any

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1 point? Did you have any witnesses who had seen the
2 accident?

3 A. Yes, I had -- no, I had no witnesses that saw the
4 accident, no.

5 Q. And from your testimony earlier you said that
6 Corporal Pearson was involved in this investigation?

7 A. Correct.

8 Q. And you said that Trooper Southerland was involved
9 in this investigation.

10 A. Correct.

11 Q. Who else was involved in this investigation?

12 A. The MAIT team.

13 Q. How about that night of before the blood draw who
14 else was involved in the investigation?

15 A. The night...

16 Q. I'm sorry the night of the accident ---

17 A. --- right.

18 Q. Prior to the blood draw who else from your agency
19 was involved in the investigation?

20 A. Right now all I can think of is me, Corporal Pearson
21 and Trooper Southerland. If there was someone else out
22 there that night I can't recall who it was.

23 Q. Now y'all's wasn't the only agency out there.

24 A. Oh, you referring to other agencies?

25 Q. Well, let's expand the question.

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1 A. Okay. Like there was somebody from the fire
2 department there, there were people from EMS there.

3 Q. How about law enforcement? Was there Berkeley
4 Sheriff's ---

5 A. --- Berkeley County Sheriff's Office was there.

6 Q. Describe how your agency works with them in
7 something like this.

8 A. Well, they are generally there to help us. There
9 are usually there to help us with traffic control.

10 Q. How do y'all have jurisdiction over them?

11 A. Because we're state and they are the county.

12 Q. Please explain.

13 A. State jurisdiction pretty much has the jurisdiction
14 to enforce all kind of laws within the whole state of
15 South Carolina. Berkeley County is -- can only enforce
16 the laws within its own county itself.

17 Q. And this accident did happen in Berkeley right?

18 A. Correct.

19 Q. So why couldn't Berkeley have done this?

20 A. Because they don't work wrecks. We work the wrecks
21 especially fatalities. We work the fatalities.

22 Q. Is that by agreement?

23 A. Not necessarily.

24 Q. Is there a policy on that?

25 A. No, there is no policy. They just don't work

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1 wrecks.

2 Q. So at some level a wreck becomes significant enough
3 to call in the Highway Patrol?

4 A. Yes, and Berkeley County it's always -- we have to
5 work all the wrecks for Berkeley County. Now I work for
6 Charleston County as you know now. We handle all of our
7 wrecks and we handle all of our fatalities -- Charleston
8 County does.

9 Berkeley County has never handled wrecks and they've
10 never handled fatalities. That's why the Highway Patrol
11 has to handle theirs.

12 Q. Okay. Do you know who all from Berkeley County was
13 out there that night?

14 A. I can't recall, no.

15 Q. There were a bunch of them though wasn't there?

16 A. There were a few but I can't remember who they were
17 honestly, no.

18 Q. A few officers who were on duty, correct?

19 A. I'm assuming, yes. I know maybe one or two but I
20 don't remember who they were.

21 Q. Okay. It's standard procedure when there is a
22 fatal wreck to get the blood drawn isn't it?

23 A. I mean if you have reason to believe that there is
24 you know probable cause to believe someone was driving
25 under the influence, yes.

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1 Q. And within the Highway Patrol it would likely be a
2 good reason for a reprimand if a Trooper didn't get blood
3 drawn in a fatal wreck right?

4 A. I wouldn't say that, no. They are known for a lot
5 of things to reprimand but not doing their job, no.

6 Q. So your testimony is it would be okay in a fatal
7 wreck for a Trooper not to get the blood drawn of the
8 person who caused the wreck.

9 A. If they believed that that party was not under the
10 influence of any kind of alcohol or drugs and the
11 supervisor believes it's not, no they are not going to go
12 draw blood.

13 Q. Okay. You knew at the time of this accident that
14 you had three hours to get Shana's blood right?

15 A. Yes. At the time of the arrest, correct.

16 Q. But even when you were responding to the accident
17 you already knew going in that in a D-U-I scenario if
18 someone can't blow then you have three hours to get their
19 blood by statute.

20 A. In three hours -- no in two hours. If they can't
21 blow within two hours then a breath test is invalid
22 according to state law; three hours for blood or urine.

23 Q. And so you -- you helped coordinate Shana being
24 transported by the EMT's in an emergency way right?

25 A. [No response]

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- 1 Q. Let me rephrase the question.
- 2 A. Thank you.
- 3 Q. If you wanted her blood to be drawn you could have
- 4 had a dispatcher send someone to get that blood right?
- 5 A. Well we had Trooper Southerland go up there.
- 6 Q. Right. You didn't have to do it personally?
- 7 A. No.
- 8 Q. Okay. In fact you were on the scene when the blood
- 9 was drawn?
- 10 A. Correct.
- 11 Q. Okay. What time did you ask Trooper Southerland to
- 12 go over there? How did you ask for that blood to be
- 13 drawn?
- 14 A. He immediately started over there to check on her
- 15 condition. While I was on scene evaluating everything
- 16 and checking everything out getting my probable cause, by
- 17 the time I got my probable cause with all my exigent
- 18 circumstances, totality of circumstances we asked Trooper
- 19 Southerland we need to get a blood sample.
- 20 Q. What time was that?
- 21 A. What exact time was that? I'm not sure exactly the
- 22 exact time but the time of the actual arrest was 0-0-4-5
- 23 when he was able to get the sample. When I knew I had
- 24 the probable cause, which when I was in the middle of the
- 25 wreck, we went ahead and told him to go ahead and get it.

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1 Q. Is it your understanding that Trooper Southerland
2 had to wait at all to get the sample?

3 A. Yes, he had to wait.

4 Q. Tell the court about that please.

5 A. He had to wait a while because he had to wait a
6 little while I think -- then again I'm speaking on his
7 behalf, which I don't like doing that; it's not a really
8 good thing to do.

9 But if I have to I will say that due to medical
10 exigent circumstances that prolonged the process just a
11 little bit longer than we needed it; if that makes any
12 sense.

13 Q. Do you have an understanding of what those medical
14 circumstances were?

15 A. She was pretty much banged up I understand from the
16 collision and they were trying to get her ready to prep
17 her for an operation and all that.

18 Q. Okay. So they were preparing her for an operation
19 when you asked that the blood be drawn?

20 A. Yes.

21 Q. And so how did you communicate that to Trooper
22 Southerland?

23 A. Well, he was communicating -- him and Corporal
24 Pearson were communicating a lot at the time. They knew
25 what my probable cause was. They were communicating it

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1 because I was still trying to work my scene.

2 Q. Okay.

3 A. They knew what my intentions were and we knew what
4 we had to do. It was a matter of getting it done based
5 on what was going on.

6 Q. Do you have any idea how long Trooper Southerland
7 was waiting at the hospital waiting for your directive to
8 draw blood?

9 A. I'll let him testify to that.

10 Q. But it's your understanding he immediately started
11 over to that hospital?

12 A. Yes, but if -- we sent him down there to make sure
13 to find out what the condition of the patient is so we
14 can kind of gauge on what we've got as far as injuries
15 and all that stuff.

16 Q. Okay.

17 MR. MAYER: Court's indulgence.

18 [Whereupon, Mr. Mayer confers with his client]

19 Q. [Mr. Mayer] And I know -- my last line of
20 questioning is about this person -- I think we covered a
21 little bit is the person who had told your colleague
22 Trooper Pearson that my client had a drink at Geronimo's.
23 You don't know who that person was who told Trooper
24 Pearson that?

25 A. I don't know.

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1 Q. And you don't know what extent if it was just a
2 drink in her hand or anything like that?

3 A. I don't know anything about that.

4 Q. No further questions.

5 THE COURT: Any redirect?

6 MR. WEST: Yes, Your Honor.

7 THE COURT: You may proceed.

8 MR. WEST: Thank you.

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REDIRECT EXAMINATION

BY MR. WEST:

Q. Just for clarification Officer Poston the tickets referenced -- the ticket and the booking reports you completed those, right?

A. Correct.

Q. Okay. So if I showed you these tickets and the booking reports what was the arrest date for the felony D-U-I involving the death of Candy Zoll?

[Whereupon, the witness reviews documents]

A. The date was 11-11.

Q. Okay. And on the booking report for this defendant, Shana Robinson what is the date of the arrest on the booking report?

A. 11-11.

Q. Okay. Now as part of your investigation you although did not have any eyewitnesses as you've testified to the actual collision you did have some eyewitnesses immediately before the wreck?

A. Correct.

Q. Okay. And without testifying exactly what they said do you remember the general content of what their statements entailed?

MR. MAYER: I'm going to object to this. It is outside the scope of my cross-examination.

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1 THE COURT: You asked specifically about
2 Geronimo's. It's specifically within the scope of your
3 cross-examination. I assume that's what he's going to.
4 That's what his questions are directed to.

5 MR. MAYER: Okay. Thank you, Judge.

6 THE COURT: Overruled. Sir, you may answer the
7 question. Do you need it repeated?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Please repeat the question.

10 Q. [Mr. West] As part of your investigation you took
11 several statements correct?

12 A. Correct.

13 Q. Okay. And without testifying as to what exactly
14 those statements are considering we will have them come
15 testify later what were the general content of those
16 statements?

17 A. One person stated and one of them said he heard a
18 loud speed noise.

19 MR. MAYER: Objection, Judge. I don't think this
20 has anything to do with Geronimo's. The same as ---

21 THE COURT: --- I'm going to give him some
22 latitude. It's in camera; I'm not the fact finder.

23 MR. MAYER: Okay.

24 Q. [Mr. West] What I'm getting at is did anybody see
25 this defendant's car before the wreck?

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1 A. Yes. In one of the statements I believe one of the
2 gentlemen said they observed it coming at a high rate of
3 speed down the road.

4 Q. Okay. That's what...

5 A. Yes.

6 Q. And that was this defendant's car travelling down
7 Broughton Road?

8 A. Correct.

9 Q. And after your evaluation of the scene, after your
10 investigation it was your determination through your
11 training and experience that you had probable cause to
12 draw the blood of Shana Robinson for felony D-U-I?

13 A. Yes, sir.

14 Q. Thank you.

15 THE COURT: Sir, you may step down.

16 [Whereupon, the witness is excused and exits the
17 witness stand]

18 THE COURT: You may call your next witness.

19 MR. WEST: The State calls Corporal Pearson.

20 [Whereupon, Corporal Pearson comes forward]

21 [Whereupon, the witness is duly sworn by the Clerk
22 of Court]

23 CLERK OF COURT: Please be seated, state your full
24 name and spell your last name for the record.

25 THE WITNESS: Chadwick A. Pearson, P-E-A-R-S-O-N.

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1 CHADWICK PEARSON,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WEST:
6 Q. Corporal Pearson where do you work?
7 A. South Carolina Highway Patrol.
8 Q. And did you work there in November of 2011?
9 A. Yes sir, I did.
10 Q. Did you have the opportunity to respond to an
11 incident that happened on Broughton Road on November
12 10th, 2011?
13 A. Yes, sir.
14 Q. Can you describe your role in the investigation of
15 the incident that occurred?
16 A. Yes, sir. We had actually myself, Trooper Poston,
17 and Trooper Southerland were eating dinner that night on
18 Rivers Avenue in North Charleston. It came out that
19 there was a collision on Broughton Road. From the
20 description dispatch gave it sounded to be a severe
21 collision with severe injuries.
22 So I ordered Trooper Southerland to go to Med U so
23 that he could assess the extent of the injuries to the
24 parties involved that would be transported there because
25 they told us MEDUCARE was being used; so we knew they

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1 were going to be flown to Med U.

2 So I sent him to Med U so that he could keep an eye
3 on the status of the patient and give me and Trooper
4 Poston an update.. And I assigned Trooper Poston to the
5 scene to act as the lead investigator and then I
6 proceeded to the scene after him to be a scene
7 supervisor.

8 Q. So you gave directions because you were the
9 supervisor?

10 A. Yes, sir.

11 Q. Okay. So when you arrived on scene what is the
12 first thing that you did?

13 A. I arrived on scene shortly after Trooper Poston and
14 the first thing that I was met with was -- right after
15 getting out the car would have been Chief Lee from the
16 Berkeley County Rural Fire Department met me after
17 getting out of my car and told me that one of his
18 firefighters needed to tell me about something she had
19 seen. And that was my first task on hand was to deal
20 with that.

21 Q. Okay. When you say deal with that what are you
22 dealing with?

23 A. He had just -- he had expressed it was very
24 important that I talk to this firefighter right away and
25 so he said hold on and I'll grab her for you.

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1 And he grabbed her and brought her to me and she
2 began to tell me the story of how she witnessed the EMT
3 worker, Chelsea Arrowood take marijuana out of Ms.
4 Robinson's pocket while she was treating her and take it
5 and hand it to her brother and tell him to get out of
6 here.

7 Q. Were you able to track down that bag?

8 A. I was, yes sir.

9 Q. Okay. And what was your determination once you
10 received that bag?

11 A. It was based on my training and experience and
12 having taken marijuana hundreds of times over the years
13 that it was in fact by all indication was raw marijuana.

14 Q. Okay.

15 A. A small baggie.

16 Q. And it's your testimony that you learned that that
17 bag of marijuana came from this defendant's person?

18 A. Yes, sir.

19 Q. Okay. So after you learned that and after you
20 tracked down the marijuana that came out of this
21 defendant's pocket what did you do next?

22 A. Actually after talking with the firefighter and the
23 EMT then at that point just an overall assessment of the
24 scene. What do I have? What is going on? What's
25 involved? How many people? Who all is here? Are there

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1 witnesses?

2 Both in a supportive role of Trooper Poston to
3 assist him but also to just manage the scene to make sure
4 that he had the help he needs but also to guide him if
5 necessary.

6 Q. Okay. So what did you notice and what did you
7 assist Trooper Poston with at that time?

8 A. I noticed that there were two vehicles involved in
9 this collision. It was a violent collision. There was
10 extensive damage done to both vehicles. It was apparent
11 from looking at the vehicles that the -- there was a fair
12 amount of speed involved in this.

13 It was definitely over -- it was definitely greater
14 than the posted speed limit because the posted speed
15 limit there is 35. And based on the damage of the
16 vehicles and the way they moved after the collision it
17 was definitely greater than a 35 mile per hour collision;
18 that it was a head-on. After learning whose vehicle was
19 whose now I can say that the collision did occur in fact
20 in Ms. Candy Zoll's lane and there was absolutely no
21 doubt about that.

22 Q. Did you in addition to Trooper Poston inspect either
23 of the vehicles?

24 A. I did, I did. Mostly just a visual inspection of
25 both vehicles due to the extensiveness of the damage a

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1 search just wasn't possible.

2 Even after noticing that there were beer cans in Ms.
3 Robinson's vehicle and that there was beer spilled in
4 there it just wasn't feasible to do a complete search of
5 the vehicle to see what all was in there due to the
6 damage and due to blood that was in the vehicle; it just
7 wasn't possible.

8 Q. At any time during your investigation did you learn
9 the whereabouts of this defendant prior to the collision?

10 A. Yes. I received a call from Janet Jurosko who I've
11 known for many years. And she was inquiring -- she had
12 heard from somebody that there was a bad collision there
13 on Broughton Road and it was in fact a fatality.

14 And she was inquiring as to if it was -- what was
15 going on. She said that she had heard that the defendant
16 in fact was involved in the collision. She had in fact
17 seen the defendant at Geronimo's earlier because she had
18 been at Geronimo's and she knew who the defendant was and
19 that the defendant was there. So she was inquiring
20 because she had heard that she had been involved in the
21 wreck.

22 Q. And Geronimo's is a bar?

23 A. Yes, sir.

24 Q. Okay.

25 A. That's my understanding. I've never been there but

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1 that is my understanding.

2 THE COURT: Could you say the name of the person
3 you spoke to again? I'm sorry I didn't get it.

4 THE WITNESS: Yes, Your Honor. Janet Jurosko.

5 THE COURT: Do you know how to spell her last name?

6 THE WITNESS: It's J-U-R-O-S-C-O -- oh, O-S-K-O.

7 THE COURT: Okay. You may continue.

8 MR. WEST: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 Q. [Mr. West] Corporal, is this just one of those
11 situations where its small town and word gets out and you
12 received a call or did you instigate the call or?

13 A. Just a small town and word travels fast.

14 Q. Okay. And she would have known that you were
15 working the scene?

16 A. She wouldn't have known that I was working the scene
17 unless whoever called her to tell her that there was a
18 wreck knew me to know that I was there, although we've
19 been friends a long time but she wouldn't have known my
20 schedule to know I was working.

21 And I really don't recall whether someone told her
22 that I was specifically the one there or if just she just
23 took a chance and called me thinking I might be working
24 it. I just don't know.

25 Q. But from your conversation with her she was an

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1 eyewitness that witnessed this defendant at Geronimo's
2 bar?

3 A. Yes, sir.

4 Q. Okay. Now after you had learned this information
5 and assisted Trooper Poston on the scene what did you do
6 in order to convey any information to Trooper Southerland
7 if anything?

8 A. Yes, sir. We had been talking through the night.
9 Every so often we would talk, either I would call him or
10 he would call me to get a status update; do you know
11 anything else about injuries? Is anything going on?

12 And then once Trooper Poston and I had had a chance
13 to actually work the scene and make a determination that
14 this was in fact going to be what we believed to be a
15 felony D-U-I case based on all the evidence that I would
16 have called him and asked him if there was anything
17 additional that he could add to it based on what he had
18 seen down at the hospital and any interactions that he
19 might have had and telling him to go ahead and go forward
20 with the felony D-U-I advisement and a blood draw.

21 Q. So you called Trooper Southerland to advise him to
22 draw the blood because of what?

23 A. Because of the fact that this was a rather violent
24 collision where there was definitely speed involved.
25 coupled with the fact that not only was the vehicle we

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1 had determined to be at fault speeding and it was also in
2 the wrong lane of travel. .

3 There was also beer spilled inside that vehicle.
4 There was beer visible inside the vehicle. There was
5 marijuana found on the defendant's person. There was
6 prescription pills found in her vehicle.

7 And in addition to that Trooper Southerland also
8 advised that there was alcoholic beverages emanating from
9 her person as well once he was at the hospital and able
10 to see her he advised me of that as well.

11 And based on the fact that I received a phone call
12 saying that her last known whereabouts prior to the
13 collision was leaving a bar. All that together I felt
14 like was plenty of evidence to lead towards a blood draw
15 for felony D-U-I.

16 MR. WEST: That's all the questions the State has
17 at this time.

18 THE COURT: Any cross-examination of the witness?

19 MR. MAYER: Yes, Judge. Thank you.
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1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Trooper Pearson I noticed that when you were
4 reciting your list of things that may have contributed to
5 your probable cause you didn't mention marijuana. And is
6 that because you found no evidence that any marijuana had
7 been smoked?

8 THE COURT: Actually he did say marijuana.

9 MR. MAYER: He did say that?

10 THE COURT: Uh Huh.

11 Q. [Mr. Mayer] How -- then please explain how raw
12 marijuana would indicate that someone may be guilty of a
13 felony D-U-I?

14 A. That's not what I said. I said that it was part of
15 the totality of the circumstances.

16 Q. Okay.

17 A. And in fact ---

18 Q. --- just like having beer in the car?

19 A. Yes, sir. And people only typically carry around
20 marijuana if they're going to smoke it has been my
21 experience. They either have or they are going to, but
22 one way or the other people don't carry it around if they
23 are not using it and or going to use it.

24 Q. And correct me if I'm wrong but the only time that
25 marijuana impairs someone is if they have smoked it or

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1 ingested it in some way, right? It doesn't impair you by
2 having it in your pocket.

3 A. No, sir. It does not.

4 Q. Okay. Just like beer doesn't impair someone by
5 sitting in the backseat with some other groceries right?

6 A. Right, but I didn't know what had been done or what
7 had been taken. I didn't know.

8 Q. That's my point too.

9 A. But it could have been.

10 Q. So what you're saying is the prescription medicine
11 which you guys did not take samples of or write down the
12 names of may have been a factor of your decision?

13 A. It could have played a part in it. I mean it did
14 play a part in it but it was just one more little piece
15 of the puzzle that in fact that it -- but in the same
16 time if those prescriptions were necessary for her life
17 and her Mom's duty is to take care of her daughter we're
18 certainly not going to inhibit that either because then
19 we could be aiding in her demise. And we wouldn't want
20 to do that either.

21 Q. Sure, I appreciate that. Now Trooper Southerland's
22 observations -- and I'm not going to ask you to state
23 what Trooper Southerland should be stating here in a
24 minute but what was your understanding of his access to
25 the defendant? How close was he to her and this sort of

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1 thing when he was making his observation?

2 A. I know that he was denied access for awhile while
3 they were working on her. And then at some point he
4 gained access to her. And right about the time of the
5 blood draw was right about the time whenever he --
6 thereabouts was about when he was able to get blood.

7 I mean I don't know exactly his access prior to but
8 I know sometimes at the hospital you can get access but
9 you can't get blood; it takes hours sometimes.

10 So even you can see somebody but you can't get blood
11 because they're just not willing to do it. And I don't
12 really know that entire sequence of events.

13 Q. It was yourself who communicated to Trooper
14 Southerland to draw the blood or was it Trooper Poston?

15 A. It was me.

16 Q. Okay. And you talked to him and asked him to get
17 the blood. Was that in the same conversation when he
18 reported to you about this alleged alcohol smell
19 emanating from the defendant?

20 A. I don't know if that conversation would have been
21 the same because we would have spoke multiple times that
22 night.

23 Q. But you said just a moment ago that you didn't think
24 he had access to her much before then right?

25 A. I said I don't know. I said I didn't think he had

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1 access to draw the blood before then. But I don't know
2 how great access to see her or get close to her I just
3 don't know.

4 Q. Okay. But if I take a beer and shake it up and pop
5 the top and spray it all over and you're standing by me
6 you might get some beer on you right?

7 A. Yes, sir.

8 Q. And then a few hours later you might still have beer
9 on you if you haven't changed your clothes and taken a
10 shower right?

11 A. It's possible.

12 Q. It doesn't mean you imbibed, right? It just means
13 you've got beer on you.

14 A. It's possible, yes.

15 Q. Okay. Ms. Jurosko at Geronimo's Bar & Grill did
16 she tell you Shana was drunk?

17 A. She said she didn't know.

18 Q. What did she tell you that she saw?

19 A. She said that she saw her there. I guess she was --
20 I think her sister worked at the bar maybe.

21 Q. Whose sister?

22 A. Shana's sister. And that I think Shana used to work
23 at the bar but maybe doesn't work there anymore. I don't
24 really recall. I just know that she said that she had
25 seen her there, she was talking with someone, she wasn't

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1 sure what, if anything, she had to drink. I think she
2 said she thought she was there about an hour.

3 Q. Let me back up a minute. I don't mean to put you on
4 the spot asking you to recall a conversation from two and
5 half years ago. Did you happen to take notes from this
6 conversation at all?

7 A. I wasn't like sitting in my car. I was walking
8 around still trying to do stuff.

9 Q. So it was just contemporaneous input; you weren't
10 taking notes?

11 A. Right.

12 Q. Okay. Is it possible then that Janet Jurosko was
13 one of the people who actually spoke with my client?

14 A. Is it possible she spoke to her that night?

15 Q. Yes?

16 A. Yes. I would have no way of knowing that.

17 Q. Well, I mean it seems like that would have been
18 relevant to you in Ms. Jurosko's conversation. She might
19 have said I talked to her and she was yes impaired or no
20 not impaired.

21 A. You mean talk to her at the bar?

22 Q. Yes, I'm talking about ---

23 A. --- I thought you were just saying talked to her at
24 some point in time.

25 Q. Oh, no my bad. I'm talking about at the bar before

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1 the accident the situation that Ms. Jurosko then relayed
2 to you later by telephone.

3 A. Yes, my recollection was she saw her but didn't talk
4 to her.

5 Q. Okay.

6 A. And didn't really know what her condition was; just
7 knew that she was there.

8 Q. Okay. So Ms. Jurosko didn't tell you she seemed
9 impaired?

10 A. No sir, she didn't. She didn't tell me she was or
11 she wasn't.

12 Q. Okay.

13 A. She just said she was there.

14 Q. Okay. You testified a little bit earlier you said
15 searching the car was not feasible. And I'm going to
16 challenge you on that because it seems like there were
17 lots of police around that could have done that.

18 A. A full scale search of that vehicle in my opinion
19 that night was not possible. It wasn't safe. It wasn't
20 really accessible to search under the seats, the back
21 seat; everything. The car was in shambles, there was
22 debris everywhere. There was fluid everywhere. I don't
23 really think a full scale search of that -- I mean you
24 could do some light searching of that vehicle but as far
25 as checking every beer can going up under the seats and

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1 all that I submit it wasn't really feasible to do the
2 entire vehicle properly.

3 Q. When would it have been feasible to find all the
4 beer cans?

5 A. That would have possibly been feasible at the time
6 that MAIT investigated it and inspected it.

7 Q. Okay. So to find 12 or 18 beer cans that night
8 after the people were already sent to EMS and kind of the
9 life threatening stuff was dealt with your testimony is
10 you couldn't have done it.

11 A. I don't really think it was safe and feasible to do
12 on scene, no sir.

13 Q. Tell me again what made it unsafe. Did you think
14 the car was going to blow up or something?

15 A. No, sir. I mean you've got glass, you've got
16 fluids. I mean we're in dress uniforms; we don't really
17 have proper equipment to go searching through a vehicle
18 without possibly tearing our uniforms, getting blood on
19 it, doing -- the vehicle if I remember correctly you
20 could only open one door of the vehicle if I remember,
21 which was the right front passenger door I believe. I
22 think was the only door that opened. I'm just saying a
23 full scale search of the vehicle wasn't -- it just wasn't
24 really a safe idea that night.

25 Q. So rather than getting your uniforms dirty you just

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1 assumed that she was drunk? Is that what I'm hearing?

2 A. That's not what you're hearing at all, sir. No,
3 sir.

4 Q. Let's talk about this marijuana. You said a
5 firefighter saw Arrowood take it. Who is the
6 firefighter?

7 A. I don't recall her name.

8 Q. Just a female firefighter.

9 A. Yes sir, that's what I remember.

10 Q. And you think you eventually got that same marijuana
11 back?

12 A. Yes, sir.

13 Q. How do you know you got that same marijuana back?

14 A. Because that's what Ms. Robinson's brother told me.

15 Q. And who is Ms. Robinson's brother who you understand
16 her brother to be?

17 A. Devin.

18 Q. Devin?

19 A. I believe he might possibly be a step-brother or her
20 half brother. He might even be her full brother I don't
21 know. But it's my understanding that that is her
22 brother; in some capacity that's her brother.

23 Q. That's the person who gave you some marijuana?

24 A. No sir, that's the person who I spoke with on the
25 phone that sent his friend back with it. But he told me

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1 that was it.

2 Q. Who is the person who brought the marijuana to you?

3 A. It's in the case file. I don't remember his name.

4 Q. When did you get this marijuana back?

5 A. A short time later at the scene. We were still at
6 the scene.

7 Q. Before or after you asked Southerland to draw the
8 blood?

9 A. I can't specifically tell you the time. So I'm not
10 100 percent sure.

11 Q. So it could have been after you made the decision to
12 draw the blood?

13 A. It could have been. I just can't really tell you.

14 Q. So it must not have affected you too heavily in the
15 totality of the circumstances you were --

16 A. It was part of the totality.

17 Q. But if at the time you made a decision to draw the
18 blood you haven't even seen the marijuana -- the alleged
19 marijuana with your own eyes. You didn't -- you wouldn't
20 have known if it was even marijuana or something else
21 right?

22 A. I had spoken with the EMT worker who told me it was;
23 that she believed it was.

24 Q. That's Ms. Arrowood?

25 A. Yes, sir.

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1 Q. Okay. Now she presumably wouldn't have the depth
2 and breadth of expertise in marijuana as you do as not
3 being trained on it or arresting people for it.

4 A. I'd say you'd be hard pressed to find somebody who
5 didn't know what marijuana was obviously. That's been my
6 experience; everybody knows what marijuana is.

7 Q. So when the marijuana did return did you ever test
8 it?

9 A. I logged it into evidence. I don't test the drugs.

10 Q. So it wasn't field tested?

11 A. No sir, I didn't field test it.

12 Q. And was there anything to indicate that marijuana
13 had been smoked?

14 A. Not that I know of, no sir.

15 Q. So you didn't find rolling papers for instance or a
16 bowl?

17 A. Like I said it wasn't feasible to search the vehicle
18 for that type of stuff. I didn't see it plainly visible
19 no sir.

20 Q. Okay. And it wasn't in my client's pocket for
21 instance?

22 A. I mean not that I know of.

23 Q. Okay. So Trooper Southerland went from the
24 restaurant on Rivers Avenue down to the Medical U?

25 A. Yes, sir.

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1 Q. How long do you figure that trip takes?

2 A. From the restaurant to the hospital?

3 Q. Yes?

4 A. Twenty minutes maybe.

5 Q. You think he got there before my client?

6 A. I believe he did. Yes, I'm quite certain of it
7 actually.

8 Q. Okay.

9 MR. MAYER: No further questions for this witness.

10 THE COURT: Any redirect?

11 MR. WEST: Nothing from the State, Your Honor.

12 THE COURT: Sir, you may step down.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 THE COURT: You may call your next witness.

16 MR. WEST: The State calls Trooper Southerland.

17 [Whereupon, Trooper Southerland comes forward]

18 [Whereupon, the witness is duly sworn by the Clerk
19 of Court]

20 CLERK OF COURT: Please be seated. State your full
21 name and spell your last name for the record.

22 THE WITNESS: My full name is Stephen Southerland.
23 The last name spelling S-O-U-T-H-E-R-L-A-N-D.

24 THE COURT: Is Stephen will a V or a P-H?

25 THE WITNESS: P-H, ma'am.

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1 STEPHEN SOUTHERLAND,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WEST:
6 Q. Trooper Southerland, where do you work?
7 A. South Carolina Highway Patrol.
8 Q. And were you working there in November of 2011?
9 A. Yes sir, I was.
10 Q. Did you have the opportunity to investigate an
11 incident involving this defendant in November of 2011?
12 A. In a capacity, yes sir.
13 Q. What was your capacity in that?
14 A. Well, as Corporal Pearson has stated we were at
15 dinner on Rivers Avenue when we got the call for the
16 wreck.
17 Trooper Poston and Corporal Pearson responded to the
18 wreck and I was sent to the hospital as is pretty
19 standard in severe collisions to check on the injury
20 status of the people that are sent there. I arrived at
21 the hospital before the defendant in this case had
22 arrived. At that time my role was simply to check on
23 injuries.
24 Q. So you arrived before the defendant did. When did
25 the defendant arrive, do you remember?

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1 A. I don't know a specific timeframe. I don't remember
2 exactly how long I was there. I mean it took me about 15
3 or 20 minutes to get there from the restaurant. I don't
4 remember exactly how long I was there before she arrived
5 there.

6 I do remember that when she first arrived of course
7 they brought her immediately into trauma. I wasn't
8 allowed to go into the room. Obviously their role at
9 that point was to operate on her and that sort of thing
10 and I would have only been in the way.

11 So I was only allowed to see her from a distance.
12 It was some time before I was actually able to get next
13 to her or near her.

14 Q. So you were physically stopped by people at the
15 hospital from having access to the defendant?

16 A. Yes sir, they told me I could go no further.

17 Q. But at some point you had contact with the
18 defendant?

19 A. After she had been operated on she was sent upstairs
20 to another room where she was in a bed. At that point I
21 was told I had access and I went upstairs at that time.

22 Q. Okay. Once you got upstairs what did you do?

23 A. Well, I tried to speak with her but she was very,
24 very out of it. I did notice when I was able to stand
25 right next to her and look at her I did notice the smell

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1 of an alcoholic beverage coming from her body or from her
2 person rather I should say. I tried to speak with her
3 and ask her what happened but she was incomprehensible
4 and nothing she said made any sense.

5 Q. At some point did you get any directions from
6 Corporal Pearson?

7 A. It was about the same time. And as he stated I had
8 been on the phone with him on and off throughout the
9 night.. Once I had gotten close enough to her like I said
10 I smelled the alcohol and I did call him back to give him
11 yet another status update.

12 It was -- I don't know if it was exactly that
13 conversation or the one before that; I can't tell you for
14 sure. But he did state to me that they had found alcohol
15 in the vehicle.

16 And without making any long drawn out phone
17 conversations because most of them had to be very brief
18 but he did tell me that with the beer in the vehicle and
19 a number of other circumstances there he felt that there
20 might be a situation involving a D-U-I. And I told him
21 that I had smelled the beer on her and he told me to go
22 ahead and get blood for Trooper Poston who would be in
23 right after he left the scene.

24 Q. Okay. Did -- when did you eventually extract the
25 blood from the defendant?

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1 A. Well, the time of arrest, which I had to inform her
2 first once I had gotten that order from him I did inform
3 her that she was under arrest at 12:45 A.M.

4 I advised her of her Miranda rights and from there I
5 went immediately into advising her of her implied consent
6 rights and then requested the nurse draw the blood per
7 SLED policy and the law.

8 Q. Okay. And was Trooper Poston present during this?

9 A. No sir, he was not. I was the only trooper there.

10 Q. But Trooper Poston eventually issued the arrest
11 citation around that time.

12 A. Yes, sir. After I left the hospital he arrived
13 shortly thereafter and did what he had to do as far as
14 charging.

15 Q. Okay. And that was at 12:45 A.M.?

16 A. Yes, sir.

17 Q. So the nurse extracted the blood. Is there any sort
18 of documentation that goes along with the extraction of
19 blood in a felony D-U-I case?

20 A. There would have been a urine blood collection
21 report filled out, which I know I would have filled out.
22 And I would have been present and supervised the time
23 that he withdrew the blood.

24 Q. Okay. And you did fill out one in this case?

25 A. Yes sir, I did.

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1 Q. And is that a standard form?

2 A. Yes sir, it is.

3 Q. Okay. And the advisement of implied consent is
4 that a form?

5 A. It's a form. It's slightly different in a felony
6 case. At the time I believe it's a little shorter as
7 they didn't have a right to refuse. I read that out loud
8 to her everything that was stated on it and then
9 proceeded to the blood draw.

10 Q. Were copies of these forms given to the defendant?

11 A. Yes sir, they were placed with her belongings. She
12 wasn't able to sign or anything like that. She was in
13 bad shape and that's understandable.

14 Q. Okay. But you physically did not extract the blood
15 a nurse did?

16 A. A nurse did, yes sir.

17 Q. Okay. And that nurse worked for the hospital?

18 A. Yes sir, for MUSC.

19 Q. And all of this was after the direction of Corporal
20 Pearson and Trooper Poston's investigations?

21 A. Yes sir, it was.

22 Q. Trooper I'm going to show you what we can mark as
23 court's exhibit number 2 for identification at this time.

24 [Whereupon, court's exhibit number 2 is marked by
25 the court reporter]

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1 THE COURT: Any objection?
2 MR. MAYER: No, Judge.
3 THE COURT: What is that?
4 MR. WEST: This is court's exhibit number 2, the
5 urine blood collection report I'm showing the witness at
6 this time.
7 THE COURT: Marked and admitted without objection.
8 You may continue.
9 Q. [Mr. West] Trooper Southerland what is that?
10 [Whereupon, the witness reviews document]
11 A. This is a standard SLED urine blood collection
12 report filled out at any blood draw or urine collection
13 with a D-U-I case. This is the one I filled out on Ms.
14 Robinson.
15 Q. Okay. And when did you fill that out?
16 A. At the time of the draw which was 12:45 A.M.
17 Q. On what day?
18 A. November 11th, 2011.
19 Q. Okay. And that's simultaneous to the arrest?
20 A. Yes, sir.
21 MR. WEST: That's all the questions the State has
22 at this time.
23 THE COURT: Any questions for the witness?
24 MR. MAYER: Yes, Judge. Thank you.
25 THE COURT: You may proceed.

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1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. When you got to visit with the defendant finally you
4 described her as incomprehensible.

5 A. And by that I only mean that I wasn't really able to
6 make out anything that she said back to me.

7 Q. Did you report that to Trooper Pearson?

8 A. Yes sir, I did.

9 Q. Was that a factor in your decision to arrest her and
10 process her?

11 A. Certainly. With what I had to go on that being my
12 only contact with her, yes.

13 Q. Sure. Did you know what type of operation she had
14 just gone through when you spoke with her?

15 A. I had been told that there was an injury to her
16 foot; a pretty severe injury, and I assumed it was that
17 and anything else -- I thought it would probably been a
18 little more complicated for me than I needed to hear
19 anyway.

20 Q. Sure. Have you -- do you have any experience being
21 under general anesthesia?

22 A. Yes, but very recent after the wreck, after this
23 incident.

24 Q. So at the time?

25 A. No.

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1 Q. When you were waiting around the hospital when the
2 nurses and doctors wouldn't give you access to the
3 defendant if you had gotten an order to get her blood you
4 could have communicated that to them at the time right?

5 A. Well certainly, but it wouldn't have made any
6 difference. Their first job obviously is to try to
7 preserve life and make their situation better. And with
8 her severe injury they wouldn't have let me do it at that
9 time anyway even if I hadn't had that order.

10 Obviously our first goal when we get there is to try
11 to get blood as soon as possible if we know that it is
12 going to be a D-U-I type situation to try to fit within
13 the law. But if they tell us we have no access, we have
14 no access; it's their house.

15 Q. So you have to abide by what a medical professional
16 tells you?

17 A. They don't even have to let us back there if they
18 don't want to.

19 Q. And is it your understanding you have to be
20 physically present to observe the blood draw?

21 A. Yes, sir. I was just going to say that blood or
22 urine draw has to be supervised.

23 Q. Okay. And so when you were at the hospital just to
24 be clear you didn't ask them to do a blood draw prior to
25 her operation?

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1 A. When I first saw her you mean when she was first
2 brought into the hospital?

3 Q. Yes?

4 A. At that time all I knew was she was part of the
5 wreck. I didn't have any idea that we were looking at a
6 D-U-I case at that time.

7 Q. Okay. Why is it standard procedure for you to go
8 to the hospital when there is a wreck?

9 A. In the event -- it's not what I said -- it's not
10 standard procedure at every wreck. But in the event that
11 we have a feeling that there are severe injuries the
12 Trooper will tend to go to the hospital to find out if it
13 is going to become a life threatening injury because that
14 does dictate a lot of paperwork and processing of the
15 scene if it is going to become a fatality.

16 Q. Okay. So your guys on the scene would need to know
17 that before they leave the scene if someone dies ---

18 A. --- absolutely.

19 Q. Okay. And did you communicate that back to them
20 when Ms. Zoll passed?

21 A. They knew that before I knew that. Ms. Zoll was
22 never brought to MUSC.

23 Q. Okay. Ms. Robinson, my client, she was unable to
24 consent to a blood draw right?

25 A. Right, yes.

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1 Q. You observed the nurse draw her blood?

2 A. Yes, I did.

3 Q. Where did he draw it from?

4 A. I believe her right arm because I believe I was
5 standing at her left side.

6 Q. Okay. Did she have other cords and things going to
7 her body ---

8 A. --- I'm sure she did.

9 Q. Did you know if she was actually having a
10 transfusion ---

11 A. --- I have no idea.

12 MR. MAYER: Court's indulgence.

13 [Whereupon, Mr. Mayer reviews documents]

14 MR. MAYER: No further questions, Judge.

15 MR. WEST: Nothing from the State, Your Honor.

16 THE COURT: Sir, you may step down.

17 [Whereupon, the witness is excused and exits the
18 witness stand]

19 THE COURT: Does the State have any further
20 witnesses?

21 MR. WEST: No, Your Honor.

22 THE COURT: Does the defense have any witnesses?

23 MR. MAYER: Just a couple, Judge.

24 THE COURT: We're going to take a very brief break
25 of about five minutes and then we will resume. Who are

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1 your witnesses going to be?

2 MR. MAYER: Judge, my client is going to testify
3 for the limited purpose of her medical treatment and her
4 Mom is going to testify for the limited purpose of
5 retrieving the beer.

6 THE COURT: Retrieving what?

7 MR. MAYER: The beer from the car.

8 THE COURT: Okay. We'll be at ease for five
9 minutes.

10 [Whereupon, court is in recess from 4:05 p.m. to
11 4:20 p.m.]

12 THE COURT: You may be seated. Is the State ready
13 to proceed?

14 MR. WEST: Yes, Your Honor.

15 THE COURT: Is the defense ready to proceed?

16 MR. MAYER: Yes, Judge.

17 THE COURT: You may call your witness.

18 MR. MAYER: Judge, we would call Ms. Tammy Atkins
19 to the stand.

20 [Whereupon, Ms. Atkins comes forward]

21 [Whereupon, the witness is duly sworn by the Clerk
22 of Court]

23 CLERK OF COURT: Please be seated. State your
24 full name and spell your last name for the record.

25 THE WITNESS: Tammy Atkins, A-T-K-I-N-S.

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Tammy Atkins-Direct Examination by Mr. Mayer
June 2, 2014

1 TAMMY ATKINS,

2 Having been first duly sworn,

3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MAYER:

6 Q. Ms. Atkins, how do you know the defendant?

7 A. She's my daughter.

8 Q. Did you have an opportunity on November the 10th to
9 go to the scene of the accident in question here?

10 A. Yes, I did.

11 Q. What did you do? Please describe to the court what
12 you did at the scene of the accident?

13 A. Besides freaking out after they got her out of the
14 car I wasn't allowed to go around her or anything while
15 they were working on her in the car.

16 Once they got her on the road and had her laid out
17 they were asking her questions; if she was allergic to
18 anything. And I didn't know how bad hurt she was so I
19 was trying to answer for them.

20 But I couldn't remember everything because she's got
21 a really rare disease called Stevens Johnson syndrome so
22 she's highly allergic to everything. Shana was able to
23 be coherent enough to tell them that she was allergic to
24 sulfates and sulfites. In my brain I couldn't remember
25 everything so I ran to the car and I got her purse out

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1 because I knew all of her medication was in there to give
2 to them or at least to take to the hospital.
3 Q. Because you thought that might inform them ---
4 A. --- yes. I was just trying to help.
5 Q. Okay. Was there someone kind of supervising you
6 when you took the medicine out of the car?
7 A. No.
8 Q. What about -- was there somebody from Berkeley
9 County?
10 A. Yes, Berkeley County was around but nobody messed
11 with me.
12 Q. Okay. Was someone making a list of what you were
13 taking out?
14 A. Finally a Berkeley County officer I guess asked me
15 who I was and I told him. I told him what I was taking
16 out of there and he wrote it -- made a list of everything
17 that I had taken out, which like a computer, cell phones,
18 and Shana's purse with her medicines in it and Brittany's
19 purse too.
20 Q. Okay. And so at that time how did you access that
21 vehicle?
22 A. Through the door, the driver's door.
23 Q. Okay. Did you have a hard time getting into the
24 vehicle?
25 A. Uh Uh.

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1 THE COURT REPORTER: Was that no?

2 A. No. I didn't have a hard time getting in.

3 Q. [Mr. Mayer] Just please verbalize your response.

4 A. I'm sorry.

5 Q. And so were you able to get into the back seat as
6 well?

7 A. I don't recall getting in the back seat. I know
8 Shana's cell phone was in her driver's door; I remember
9 grabbing that. I think Brittany's purse was on the
10 passenger side so I was able to get everything -- the
11 laptop might have been in the backseat at the time.

12 I might have reached from the front and got it out
13 of the back seat, but that would have been the only
14 thing. I think there was -- I found one shoe.

15 Q. Okay. Did you see any beer in the car at the time
16 you were in ---

17 A. --- yes, I did.

18 Q. Okay. And did you take any beer out of the car at
19 that time?

20 A. No, sir.

21 Q. Okay. Did you have sometime later when you went
22 back to the car and you were able to remove some
23 additional items?

24 A. I did not go see the car on Friday. I was at the
25 hospital all day. I believe it was Saturday that I went

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1 with her two uncles. And we weren't allowed to touch
2 anything. We just wanted to look at the car and we took
3 pictures of the car but we weren't allowed to remove
4 anything out of the car. I wanted to make sure that all
5 the beer was there but only by looking of course.

6 I guess the police or whatever authority had to
7 check out the car first before we were able to come back
8 and take whatever out we wanted to, which was a couple of
9 days later.

10 Q. Okay. So you went on that Saturday but you
11 couldn't remove anything out?

12 A. No.

13 Q. Okay. And then it was a couple of days after that
14 that you went back to the car again?

15 A. Uh Huh.

16 Q. And did you remove anything from the car at that
17 time?

18 A. I got all 18 cans of beer and there was a shoe
19 missing and I think some jewelry.

20 MR. MAYER: May I approach, Judge?

21 THE COURT: Uh Huh.

22 [Whereupon, defendant's exhibit number 1 is marked
23 by the court reporter]

24 Q. [Mr. Mayer] Ms. Atkins, I'm showing you what has
25 been marked for identification purposes only as defense

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1 exhibit 1. Do you recognize that?
2 [Whereupon, the witness is shown box]
3 A. Oh, yes.
4 Q. What is that?
5 A. That was the box that the beer was all in.
6 Q. Okay. That's the beer ---
7 A. --- that's all I can see from here is just the box.
8 Q. Just the box?
9 A. Yes, is there beer in there?
10 [Whereupon, the witness is shown the box]
11 A. Yes, that's the cans.
12 Q. And how do you recognize this?
13 A. Well, they are all beat up.
14 [Whereupon, defendant's exhibit number 2 is marked
15 by the court reporter]
16 A. They are all beat up. You can tell they've been
17 knocked around.
18 Q. I'm handing you what has been marked for
19 identification purposes as defense exhibit 2. Would you
20 pick that up and examine it if you will and tell me what
21 that is.
22 [Whereupon, the witness views the item]
23 A. It's a beat up can of beer unopened but it's light.
24 Q. It's light? Is there a hole in that somewhere?
25 A. Honey, without my glasses I couldn't tell you

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1 anything. If there is a hole in there; I'm sure there is
2 because it's not a full can.
3 Q. Okay. Is that one of the cans that you removed ---
4 A. --- absolutely ---
5 Q. --- from Shana's car sometime in the days after the
6 accident?
7 A. Yes.
8 Q. After the police authorized you to go back in that
9 car?
10 A. Yes, at the impound, yes.
11 Q. Okay. What did you do with that beer after you
12 removed it from the car?
13 A. I put in that box and called you and had you come
14 get it.
15 Q. Okay. How many beers does it say came in that box
16 right there?
17 A. 18.
18 Q. How many beers did you pull out of Shana's car?
19 A. All 18.
20 Q. Of the beers that you pulled out of Shana's car were
21 any of those beers open?
22 A. No, sir.
23 Q. Pardon?
24 A. No sir, not pop top open.
25 Q. Right. Were they open in any other way?

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1 A. Evidently this one [indicates] must be punctured on
2 the side.

3 Q. Okay.

4 A. Again, it's very light.

5 Q. Okay. Do you know what Shana's plan with this beer
6 was?

7 A. Yes. It was a Thursday night, the night of the
8 accident, and it was college football and we were going
9 to watch the ball game and we had a board game that I had
10 just bought that day that we were all going to play.

11 So Brittany had to go to school and Shana took her
12 to school. And then Shana I thought was just going to
13 wait around for her and then they were going to come back
14 and be ready to watch the football game.

15 And they were going to stop and get some beer and we
16 were going to have a little girls' party with football
17 and a board game.

18 Q. Okay. So you had drunk beer with Shana?

19 A. I don't drink beer.

20 Q. Okay. Had you seen Shana drink beer before?

21 A. Uh Huh.

22 Q. Had you ever seen her drink beer by puncturing it
23 and drinking it the way this can lost its contents?

24 A. No.

25 Q. Okay.

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1 MR. MAYER: Judge, at this time we would move to
2 enter defense exhibit 1 and 2 into evidence.

3 THE COURT: Any objection?

4 MR. WEST: For the limited purposes of the hearing,
5 no Your Honor. But at trial we would reserve the
6 opportunity to object to its introduction.

7 THE COURT: It will be marked and admitted for the
8 purpose of the in camera hearing only.

9 [Whereupon, defendant's exhibit numbers 1 and 2 are
10 admitted into evidence for purposes of the in camera
11 hearing only]

12 MR. MAYER: Thank you, Judge. Court's indulgence.

13 [Whereupon, Mr. Mayer reviews documents]

14 Q. [Mr. Mayer] Ms. Atkins, please answer any questions
15 the prosecutor has please?

16 THE COURT: Any cross-examination of the witness?

17 MR. WEST: Nothing from the State, Your Honor.

18 THE COURT: Ma'am, you may step down.

19 [Whereupon, the witness is excused and exits the
20 witness stand]

21 THE COURT: You may call your next witness.

22 MR. MAYER: Thank you, Judge. We would call the
23 defendant to the stand, Ms. Shana Robinson.

24 THE COURT: Ma'am, if you will come to the witness
25 stand. I'll remind you that you are still under oath.

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1 [Whereupon, Ms. Robinson comes forward]
2 THE COURT: State your full name for the record.
3 THE WITNESS: Shana Ceciel Robinson.
4 THE COURT: You may proceed.
5 MR. MAYER: Thank you, Judge.
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1 SHANA ROBINSON,
2 Having been previously duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. MAYER:
6 Q. Shana, please tell the court a little bit about your
7 educational background.
8 A. I graduated here high school at Berkeley High
9 School. I grew up here in Moncks Corner. Went to
10 Trident Technical College for dental assisting. Went on
11 to the Medical University to study oral and maxillofacial
12 surgery. I also have been trained in advanced cardiac
13 life support, sedation techniques, and crash cart and
14 medical emergencies basically.
15 Q. And when you -- did you ever have a chance to use
16 that education in an employment field?
17 A. Absolutely.
18 Q. Did you have occasion to read medical records?
19 A. Absolutely.
20 Q. And have you had the occasion since this accident to
21 read your own medical records?
22 A. Absolutely.
23 Q. Do you know what something called the Glasgow Coma
24 Scale is?
25 A. Yes, I do.

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1 Q. Please describe that for the court.

2 A. It is a scale that is used medically to go over your
3 spontaneity, visual acuity, verbal; anything that they
4 can register for like "neuro" purposes and brain damage
5 and things of that nature.

6 Q. Were you given a Glasgow Coma Scale test at the
7 hospital?

8 A. Per my medical records, yes I was.

9 Q. Okay. And what was your score on that?

10 A. My score was a 15, which is the highest you can get.

11 Q. Okay. What does that mean to you?

12 A. That means that I was -- had no impairment, no
13 disability to the doctors, physicians, or medical team
14 that looked at me.

15 Q. How many Glasgow Coma Scale tests were you given
16 before your surgery?

17 MR. ALFARO: Objection, Your Honor.

18 THE COURT: Basis?

19 MR. ALFARO: She's testifying as to what ---

20 THE COURT: --- she can only testify as to what she
21 knows of her own personal knowledge, Mr. Mayer. She
22 can't testify from her medical records; it's hearsay.
23 She's not qualified to testify to anything that is
24 subjective that is in those records. She can only
25 testify as to what she reported to medical personnel for

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1 purposes of diagnosis and treatment.

2 MR. MAYER: Okay.

3 THE COURT: And she certainly cannot interpret
4 subjective opinions.

5 MR. MAYER: Okay.

6 Q. [Mr. Mayer] After the accident in the wake of the
7 accident do you recall being asked questions to orient
8 yourself by some medical professional?

9 A. I remember specifically being asked by the ambulance
10 at the scene of the accident questions.

11 Q. What did they ask you?

12 A. They asked me what day of the week it was, which I
13 answered Thursday. They asked me who the President of
14 the United States was to which I answered Barak Obama.
15 They asked me if I had -- if I was allergic to anything
16 and of course I said everything; I have a rare disease
17 but sulfates and sulfites are kind of the big deal there.

18 Q. Okay. And is it your understanding you answered
19 all those questions correctly?

20 A. Yes.

21 Q. Okay. Do you remember speaking to Trooper
22 Southerland?

23 A. No.

24 Q. Do you remember having abdominal surgery before you
25 talked to Trooper Southerland?

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1 A. No.

2 Q. Do you remember being given any other tests to
3 assess your neurological function before you were
4 arrested for this charge?

5 A. I don't remember. I know that I was given the
6 Glasgow Coma Scale and I was given one other but I can't
7 tell you what it is right now.

8 Q. Okay. Have you ever had occasion to assist people
9 coming out of any sort of anesthesia?

10 A. Yes.

11 Q. Please describe how that works for the person coming
12 out of anesthesia.

13 A. Usually they are in what is called a PACU post ---

14 MR. ALFARO: --- objection, Your Honor.

15 THE COURT: Basis?

16 MR. ALFARO: Relevancy and how other people react
17 to anesthesia has nothing to do with probable cause.

18 THE COURT: Well, it goes a little beyond
19 relevance. It's a lack of foundation issue. You need to
20 establish for me that she has the experience, training or
21 otherwise even to speculate about what she is talking
22 about. And then you are going to have to draw a line for
23 me in relevance as to why it would be relevant in this
24 instance.

25 MR. MAYER: okay.

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1 THE COURT: Especially when her consent for the
2 blood draw is not required pursuant to statute.

3 MR. MAYER: Sure.

4 Q. [Mr. Mayer] Shana, please step back a minute and
5 describe for the court your experience and what that
6 involved in helping people with anesthesia.

7 A. I previously worked for four oral surgeons and a
8 plastic surgeon in North Carolina. And I also worked for
9 a surgeon here in Charleston. I was also a nurse
10 staffing supervisor for several years. So I have
11 knowledge of how sedation and anesthesia works.

12 Q. Do you have experience actually being with the
13 anesthetized person?

14 A. Yes.

15 Q. Okay. And for what duration of time have you --
16 over what duration time did you accrue that experience?

17 A. I graduated school in '97 so since then -- then I
18 became a nurse staffing supervisor in 2002. So from '97
19 to 2002 I was directly with patients in sedation and
20 anesthesia.

21 Q. So for four or five years?

22 A. Yes.

23 Q. Okay. And were you in the courtroom earlier when
24 you heard Trooper Southerland describe your state after
25 your surgery?

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1 A. Yes.

2 Q. And is the state that he described for you typical
3 of someone coming out of anesthesia?

4 A. Absolutely.

5 Q. Okay.

6 A. There is a reason that you have to stay in the post
7 anesthesia care unit for an extended period of time to be
8 monitored.

9 Q. You had -- had you seen people behave the way he
10 described yourself behaving after anesthesia?

11 A. Absolutely.

12 Q. Okay. And to your knowledge had any of those
13 people imbibed or consumed alcohol prior to that surgery?

14 A. No.

15 MR. MAYER: Judge, I think those are the limited
16 topics that we'd like to address with her at this time.

17 THE COURT: Any cross-examination of the witness?

18 MR. ALFARO: Briefly, Your Honor.

19 THE COURT: You may proceed.

20 MR. ALFARO: Thank you.

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State v Shana C. Robinson
Shana Robinson-Cross-Examination by Mr. Alfaro
June 2, 2014

1 CROSS-EXAMINATION

2 BY MR. ALFARO:

3 Q. You testified as to some prior individuals that you
4 have seen come out of anesthesia?

5 A. Correct.

6 Q. Were any of those patients was it normal to smell of
7 alcohol when they come out of anesthesia?

8 A. On occasion; possibly. We did trauma, head and neck
9 trauma and gunshots to the face and everything in
10 between. So I have had had that but I mean....

11 Q. But that smell wasn't based off what they took in or
12 imbibed before being given anesthesia for your surgery?

13 A. Potentially, yes.

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

15 THE COURT: Any redirect of the witness?

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State v Shana C. Robinson
Shana Robinson-Redirect Examination by Mr. Mayer
June 2, 2014

1 REDIRECT EXAMINATION
2 BY MR. MAYER:
3 Q. And that alcohol smell could have been also from
4 alcohol that was sprayed on them before the surgery
5 right?
6 A. Absolutely.
7 Q. It doesn't mean they drank it?
8 A. No.
9 MR. MAYER: That's it, Your Honor.
10 THE COURT: You may step down ma'am.
11 [Whereupon, the witness is excused and exits the
12 witness stand]
13 THE COURT: Anything further?
14 MR. MAYER: No, Judge. I would just like to be
15 heard whenever the court ---
16 THE COURT: --- any rebuttal testimony from the
17 State?
18 MR. WEST: Nothing from the State, Your Honor.
19 THE COURT: I'll be glad to hear argument.
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State v Shana C. Robinson
Closing Argument on Motion- Mr. Mayer
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1 CLOSING ARGUMENT ON MOTION

2 BY MR. MAYER:

3 Thank you, Judge. Judge, we've had Trooper Poston
4 testify that he saw one can that was busted of this beer
5 can that was busted. He testified that was the only can.
6 He testified there were no other cans opened here as part
7 of the court's exhibits or the other cans of alcohol.
8 Judge may I approach?

9 THE COURT: I don't need to look at it. I'll look
10 at it later.

11 MR. MAYER: Okay.

12 THE COURT: I think there has been ample testimony
13 as to what the condition of the can is and I really don't
14 know that it is germane to the evaluation of whether
15 probable cause existed.

16 MR. MAYER: The can is much lighter than a normal
17 12 ounce beer can, Judge indicating that the beer had
18 sprayed out of that can during the time of this accident
19 and sprayed all over the car including on my client. And
20 that would be a perfectly valid explanation.

21 In fact possibly the only explanation for why my
22 client would have smelled like alcohol. Had the State
23 bothered to look in the car and check the other beer cans
24 they would have readily concluded that not a single one
25 of those beer cans was open. And it seems unfair to

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1 argue that during their employment asking them to go into
2 a car that the defendant's mother was able to get into
3 without a problem and do a partial inventory of the
4 relevant alcoholic beverages to access whether any were
5 open or not. That's not too much to ask, Judge.

6 There is no issue with manpower here. There were
7 lots of Berkeley County police officers. Several
8 Berkeley County Sheriff's deputies on the scene in
9 addition to the three highway patrolman who were
10 dispatched at the time of the accident, Judge.

11 Poston testified that at the time that he
12 transmitted word to Trooper Southerland to go ahead and
13 draw my client's blood that they were preparing her for
14 an operation. Judge, I would absolutely argue that
15 Trooper Southerland should have asserted the State's need
16 for blood prior to that operation. It was a major
17 abdominal surgery which would have affected the results
18 of the blood draw.

19 Trooper Pearson testified that Ms. Jurosko called
20 him after hearing about this accident. She was at
21 Geronimo's Bar and Grill and explained that she had seen
22 Shana there, did not describe her in any state of
23 inebriation. It would have been a very different ball of
24 wax, Judge if Ms. Jurosko had said yes, she seemed like
25 she was a little impaired or I'd seen her have several

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1 drinks. But none of that is what happened, Judge.
2 Trooper Southerland testified that part of what he used
3 as probable cause was speaking with Shana after the
4 accident after her general anesthesia, Judge, which at
5 the time Trooper Southerland had no experience with and
6 he misinterpreted to be impairment. And he testified
7 that he reported that back to Corporal Pearson who then
8 used it erroneously as ---

9 THE COURT: --- I think you are misinterpreting the
10 testimony. He never said that her incoherent state was
11 what contributed to him saying she was impaired. He said
12 he smelled alcohol and that's what triggered him saying
13 after what the other officer had said to him. He didn't
14 say unless I misheard him, but I listened very intently,
15 and he didn't say her being incoherent made him think
16 that she was impaired. He knew that she had just had
17 major surgery and he had been denied access to her.

18 MR. MAYER: Well, Judge maybe I ---

19 THE COURT: --- unless I misunderstood but I don't
20 -- that ---

21 MR. MAYER: --- maybe I misunderstood ---

22 THE COURT: --- not what I heard -- that's not what
23 I heard him say ---

24 MR. MAYER: --- I thought Trooper Southerland said
25 she was incomprehensible and that he reported that back

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1 to Trooper Pearson.

2 THE COURT: He reported -- he was there to
3 ascertain the status of the injuries of both parties and
4 that would have been a part of the update. But he did
5 not testify that that was a part of his determination;
6 that he merely reported that he smelled alcohol and then
7 in combination with the other things that the other
8 troopers saw they made a probable cause determination.

9 But, I'll go back and listen to the testimony but I
10 don't recall him saying that that was a part of any
11 probable cause determination other than a status report
12 as to her condition. I think he knew she had just had
13 major surgery and anybody coming out of major surgery
14 would have been incoherent from anesthesia.

15 MR. MAYER: I think we can agree on that but I
16 don't think that's what Trooper Southerland testified --
17 or understood at the time. But the other ---

18 THE COURT: --- well, we only have his testimony
19 and that is what I heard. I did not hear how you are
20 interpreting his testimony.

21 MR. MAYER: I don't mean to argue with you, Judge.
22 And so the other things that were used for probable cause
23 in this case were the smell of alcohol in the car, which
24 again would have been easily explained by the shaken up
25 busted beer can. There was no other alcohol in the car.

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1 The State claims that they used some raw marijuana that
2 was allegedly brought back to the scene that was never
3 tested as probable cause. There is no connection between
4 -- even if the court grants them the assumption that it
5 came off of my client there is no evidence to suggest
6 that any of that had been smoked or otherwise taken by my
7 client at anytime in a way that would have contributed to
8 impairment.

9 So there is no evidence of ash in marijuana or resin
10 marijuana or smoked marijuana. There was no evidence
11 that the prescription drugs that my client was rightfully
12 prescribed and taking for her rare medical disability in
13 any way diminished her capacity to drive a vehicle.
14 There has been nothing along those lines, Judge.

15 More than three hours passed from the time of this
16 accident to the time of the blood draw. It was noted in
17 the paperwork as being drawn at the exact same minute as
18 the arrest even though the trooper testified that she was
19 read her Miranda rights and everything else that would
20 have made it near impossible unless someone is speaking
21 at the pace of an auctioneer to make those things happen
22 at the exact same minute, which just shows the State was
23 making it convenient for them to comply with the statute
24 without any doubt. Judge, if the court were to accept
25 the State's interpretation of how this statute three hour

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1 time limit should be interpreted as starting from the
2 time of the arrest then from the time of this arrest at
3 0:45 -- double 0-45 on the 11th the State would have had
4 until 3:44 that morning to draw this person's blood.
5 They would have been looking at not merely three hours
6 from the time of the accident as the statute contemplates
7 but ---

8 THE COURT: --- that's not what the statute
9 contemplates. You're adding words that are not in it.
10 There is no need to interpret a statute when the words
11 are unambiguous and I don't think there is any need to
12 employ statutory construction because the words in the
13 statute are unambiguous.

14 It says three hours from the time of arrest. It
15 doesn't say three hours from the time of the accident.
16 It doesn't say three from any other specified time. It
17 specifies two hours for urine and I forget the other
18 category -- breath -- but none the less the statute is
19 unambiguous. So I really don't have to employ statutory
20 construction because it's clear from the way it's worded
21 what the legislative intention was.

22 MR. MAYER: I understand, Judge. So we would just
23 submit that the warrantless blood draw violated my
24 client's constitutional rights and we would argue that
25 the results of the blood draw being done as they were

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1 after ---

2 THE COURT: --- what were the results because
3 nobody testified to that?

4 MR. MAYER: Judge, the results were .09 blood
5 alcohol. We would argue ---

6 THE COURT: --- how many hours after the accident?

7 MR. WEST: Your Honor, if I may, .09 was not all
8 that was found in this defendant's blood stream.

9 THE COURT: What else was found in her bloodstream?

10 MR. WEST: She had Hydromorphone, Diphenhydramine,
11 Ketamine, Sertraline, Norsertraline, Lidocaine.

12 THE COURT: Were all these things for her other
13 medical condition?

14 MR. MAYER: And her surgery, Judge.

15 MR. WEST: We would certainly anticipate the
16 testimony of the medical doctors to include the fact that
17 they did administer some of these drugs.

18 THE COURT: Well, they would have had to to have
19 done the surgery.

20 MR. WEST: Understandably, Your Honor. However,
21 certain of these drugs found in her system were not
22 medically administered at MUSC.

23 THE COURT: Like what?

24 MR. WEST: We have Trazodone, which is a sleeping
25 pill, we have Clonazepam or more commonly known as Xanax,

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1 and Diphenhydramine is Benadryl.

2 THE COURT: I would assume some of that was for her
3 condition wouldn't it?

4 MR. WEST: That's correct, Your Honor. I'll let
5 Mr. Mayer continue to argue. I felt that was necessary
6 since he didn't include that when he stated what was in
7 the toxicology report.

8 THE COURT: You may continue, Mr. Mayer.

9 MR. MAYER: I'm sorry, Judge. I thought the
10 Solicitor and I had agreed that that was all medical
11 stuff. So, the problem we have is this blood draw was
12 not just delayed but it was done after this major
13 abdominal surgery. It was done after my client received
14 multiple liters of various other things.

15 She was given no fewer than 28 other substances from
16 the time of the accident to the time the blood was drawn.
17 She was given a barrage of vaccines, she was given a
18 barrage of medications, and she was given a whole litany
19 of intravenous fluids and this sort of thing, which a
20 toxicologist -- when our toxicologist if he has to
21 testify he would testify that these are all things that
22 could affect someone's alcohol reading.

23 THE COURT: Making it higher or lower?

24 MR. MAYER: Making it higher, Judge. Four factors
25 should be considered to assess reliability before

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1 admitting scientific evidence. The scientific
2 methodology that was used ---

3 THE COURT: --- well there is no scientific
4 evidence that we are talking about admitting right now is
5 it?

6 MR. MAYER: Well, we're talking about ---

7 THE COURT: --- is there any real question about
8 the methodology for blood draws and testing blood alcohol
9 levels in blood in South Carolina? It's all done the
10 same way isn't it?

11 MR. MAYER: There is when it is done after a
12 surgery like this, Judge.

13 THE COURT: I think you're talking about weight not
14 admissibility. We're not talking about scientific
15 methodology. There is only one way to test B-A levels in
16 blood.

17 MR. MAYER: Judge, my only concern is ---

18 THE COURT: --- there is no mystery to that ---

19 MR. MAYER: --- if you put a number like this in
20 front of a jury and they are going to fixate on it
21 without understanding ---

22 THE COURT: --- I don't know what they are going to
23 do. I assume you have an expert that would counteract
24 it. That's why they call it the battle of the experts,
25 but it's for me to exclude it on that basis. You're

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1 talking about the completeness of how something was done,
2 other things that could affect the dissipation of
3 alcohol, which in my estimation it seems would inure to
4 your client's benefit because it would seem to me that if
5 she had surgery that these things would have been
6 metabolized out of her body more quickly that if she had
7 been tested more closely in time to this incident that
8 her B-A level at least in my experience would have been a
9 lot higher than it was at the time that it was tested.

10 So I'm a little at a bit of a loss as to how this
11 prejudices her. But we're sort of leaping from one thing
12 to another. There really is in my estimation at least
13 based on my breadth of experience in this area as to the
14 methodology for testing blood alcohol levels. And I
15 don't think there is any real question about that and I
16 don't think you can really make a good faith argument
17 about that.

18 Now, what the accurate level would be that's a whole
19 another story and that's why they get to present what
20 they think it would have been and you get to counter with
21 what you think how it was affected. In other words
22 saline in her body, blood transfusions; all of these
23 things go to the weight of it, not its admissibility.
24 It's not for me to be the fact finder. I'm not going to
25 sit here and weigh out what her blood -- how these things

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1 could have affected her B-A level. That's for you --
2 although you have no burden of proof. Certainly you have
3 the ability through cross-examining their witnesses to
4 determine the validity of those calculations; but
5 certainly methodology isn't a valid good faith argument.
6 There is only one way as far as I know to test blood
7 alcohol.

8 MR. MAYER: Well, Judge I think there are two ways.
9 There is the enzymatic array and there is the gas ---

10 THE COURT: --- but there is way that the State ---

11 MR. MAYER: --- spectrometry.

12 THE COURT: Yes.

13 MR. MAYER: But I'm not taking issue with the way
14 the blood was tested. I'm just taking issue with what
15 happened before the blood was drawn and whether there was
16 probable cause to even draw the blood.

17 And Judge, I think probable cause is thin or
18 nonexistent in this case at the time that they went and
19 drew her blood. I think that even to operate under the
20 South Carolina statute and draw the blood under the
21 statute they have to have probable cause under the
22 Supreme Court case of McNeely [phonetic] -- U.S. Supreme
23 Court Judge ---

24 THE COURT: --- a whole different factual set of
25 circumstances that deal with field sobriety tests. In

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1 McNeely they do not have a statute similar or -- now
2 South Carolina statute do they?

3 MR. MAYER: Judge, I believe that McNeely looked at
4 a couple of different cases. There is a split in the
5 circuits, Judge ---

6 THE COURT: --- McNeely has a whole different
7 statute; a totally different statutory framework than
8 South Carolina.

9 MR. MAYER: Yes, I agree with that Judge. I just
10 would ask the court to take a hard look at probable cause
11 here for this blood draw. I mean we've heard troopers
12 testify about well they smelled alcohol but they didn't
13 bother to look and see if any beers had been opened and
14 drank. And we've heard troopers testify that well, she
15 was at a bar and restaurant. But Judge, none of that is
16 enough to create probable cause here. And I just think
17 it needs to be excluded on that basis. Thank you, Judge.

18 THE COURT: You're welcome. Would the State like
19 to respond?

20 MR. WEST: Yes, Your Honor.
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State v Shana C. Robinson
Closing Argument on Motion- Mr. West
June 2, 2014

1 CLOSING ARGUMENT ON MOTION

2 BY MR. WEST:

3 The State is concerned with the probable cause in
4 this case and the fact that the burden that the State has
5 at this juncture is that it is more probably than not
6 that this defendant was impaired by the use of drugs,
7 alcohol, or a combination of both. And then ---

8 THE COURT: --- I need you to speak up a little bit
9 more for me. There is a fan over my head and I'm sorry
10 if it seems like I don't hear y'all. When it's off its
11 fine, but when it's running its difficult to hear you.
12 So if you can repeat that ---

13 MR. WEST: --- I apologize Your Honor ---

14 THE COURT: --- no you don't need to apologize.
15 You wouldn't have any way of knowing that. If you could,
16 repeat what you said to me.

17 MR. WEST: Thank you.

18 THE COURT: You're welcome.

19 MR. WEST: What the State just said is that the
20 State is concerned with the probability of whether or not
21 there was more than likely a reasonable belief that this
22 defendant was impaired by drugs, alcohol, or a
23 combination of both at the time of the incident.

24 What we have here is a scenario where the troopers
25 have testified that this defendant was involved in the

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1 collision that was head-on in the victim's lane of travel
2 at high rates of speed. That goes certainly to the
3 impairment of the driver at the time of the collision.

4 In addition the troopers have testified that they
5 have found alcohol inside the vehicle that the defendant
6 was driving. They testified that this defendant had
7 recently left a bar, which certainly indicates that this
8 defendant had at some point been at some point taking
9 alcohol throughout the night.

10 Also in addition to not only the alcohol that was
11 found in this defendant's car this defendant was found
12 with marijuana on her person. This was out of her
13 pocket. The marijuana was actually cut from the EMS
14 worker out of the pocket of the defendant.

15 There was also several prescription drugs that were
16 taken from this defendant's car. All of this goes to the
17 impairment under the drugs or combination of alcohol
18 going to the element of whether there was an impairment
19 of the driver.

20 There has certainly been ample testimony that meets
21 the burden that the State is requested to produce at this
22 juncture in time for the limited purposes of this
23 hearing, Your Honor. The State has certainly produced
24 evidence that satisfies the standard that is a reasonable
25 ground for a belief of guilt. And as such the State

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1 would request that Your Honor respectfully deny the
2 defendant's motion to suppress the blood alcohol content.

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COURT'S RULING ON MOTION

THE COURT: The operative statute that we have been dealing with 56-5-2950 which is implied consent to test for alcohol or drugs procedures inference of D-U-I. And what is operative for our consideration is subsection [a] and the operative language provides that at the direction of the arresting officer the person first must be offered a breath test to determine the person's alcohol concentration.

If the person is physically unable to provide an acceptable breath sample because he has an injured mouth, is unconscious or dead, or for any other reason considered acceptable by the licensed medical personnel, the arresting officer may request a blood sample to be taken. If the officer has reasonable suspicion that the person is under the influence of drugs other than alcohol or is under the influence of a combination of alcohol and drugs the officer may order that a urine sample be taken for testing.

Then it goes on to talk about a breath sample being collected within two hours of arrest and that any additional test to collect other samples must be collected within three hours of the arrest and the qualifications of those who draw those samples. The operative portion of the statute however deals with the

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1 officer's ability to request a blood sample. And what
2 is dispositive of this issue is when a person is unable
3 for various myriad of reasons articulated in the statute
4 to do a breath test, which I think we all agree in this
5 instance that the defendant in this case was far beyond
6 just having an injured mouth. She was completely
7 incapable of being able to offer or provide an acceptable
8 breath sample.

9 Certainly at the time of the -- the circumstances at
10 some point -- I don't know if she ever lost consciousness
11 because there was no testimony regarding that but
12 certainly she would fit under the remaining portion of
13 that sentence which is or for any other reason considered
14 acceptable by licensed medical personnel of the arresting
15 officer may request a blood sample to be taken.

16 It is uncontroverted that she -- they did not have
17 access to her before surgery. I agree with the
18 assessment which I had observed earlier which is medical
19 personnel's first responsibility is to preserve life.
20 They really don't care if you are trying to make a D-U-I
21 case or not. They're not going to give you access to
22 someone until they know they have taken every step that
23 they can to make sure that that person's life is
24 preserved. And so the first concern of -- and I would
25 imagine of law enforcement at the time as well -- was the

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1 preservation of life; that being of Ms. Zoll and Ms.
2 Robinson. So their first concern based on what has
3 already been described as a chaotic scene would have been
4 to make sure they both were dispatched to the appropriate
5 medical facility for treatment.

6 And I do find that the testimony of the officer
7 credible that he was not allowed access to Ms. Robinson
8 until such time that that appropriate medical care had
9 been rendered and until she was in a position where a
10 blood sample could actually have been taken.

11 But to go back a little bit I think certainly and
12 without belaboring the time as we have already reached 5
13 o'clock there certainly was probable cause to have taken
14 a blood sample -- and I'll get to those reasons
15 articulated by defendant counsel shortly. But the first
16 officer on the scene and that being Officer Poston
17 testified that there were several reasons that he
18 considered a blood draw appropriate.

19 One was where the point of impact was, where the
20 gouge marks were, where he has described the point of
21 impact being that the accident very clearly in his
22 estimation based on his training and experience took
23 place in Ms. Zoll's lane of travel. That there was a
24 high rate of speed and a high impact that where the speed
25 limit was posted at 35 miles per hour and that it was

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1 clear from the impact that the speed had been grossly
2 exceeded at that point -- my words not his. But there
3 were prescription drugs present in the vehicle which the
4 defendant's mother quickly removed from the car and that
5 he smelled the odor of beer in the car; that he could not
6 tell whether the can had been popped as a result of the
7 accident or whether it had been popped as a result of it
8 being an open container in the vehicle.

9 But never the less, in his observations as a first
10 responder to the accident in his capacity as law
11 enforcement that he smelled the odor of alcohol about the
12 vehicle and that there were no eye witnesses to the
13 accident.

14 We then have the testimony of Corporal Pearson who I
15 also find credible on the issue of probable cause that
16 there were several things that were brought to their
17 attention, which based on the totality of the
18 circumstances amounted to probable cause.

19 That being first that it was a violent collision
20 with extensive damage to both vehicles and that there was
21 a fair amount of speed in excess of 35 miles per hour
22 involved in this head-on collision, which clearly took
23 place based on his education, training, and experience in
24 Ms. Zoll's lane and that he had no doubt about that. But
25 also he considered the violent nature of the collision,

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1 the speed involved, that it took place in the wrong lane
2 of travel, that beer was visible or spilled in the car,
3 that there was marijuana on the defendant's person, which
4 we've already heard testimony was removed by an emergency
5 technician who was subsequently fired as a result of it
6 and the testimony was that it was basically secreted away
7 and given to someone and told them basically to get out
8 of the vicinity of the accident, that there were
9 prescription pills in the vehicle, and that the smell of
10 alcohol was present on the defendant on the defendant on
11 her person at the time of the -- at the time that Officer
12 Southerland was present at the hospital.

13 When I look at the requirements of probable cause
14 and the totality of the circumstances in this case I can
15 -- I don't really have to consider any conversations that
16 took place regarding whether she had just left a bar or
17 not. Although whether it was hearsay or not was
18 certainly appropriately considered by the officer that
19 someone had just left an establishment serving alcohol
20 when you look at the totality of the circumstances.

21 But I really don't have to give that any weight in
22 the assessment of probable cause. And whether she was
23 coherent at the time she was Mirandized the statute
24 doesn't require that she be Mirandized for the drawing of
25 a blood sample. The way the statute is worded is

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1 unambiguous in its nature and it provides for that
2 circumstance when someone is basically unconscious or
3 dead and it contemplates where a person cannot consent
4 for purposes of the preservation of evidence basically
5 and for the draw of a blood sample to determine a
6 person's blood alcohol level or their impairment where
7 certain circumstances are present.

8 In addition to that we had the testimony of Officer
9 Southerland who testified that when he was at the
10 hospital he smelled the odor of alcohol on her after she
11 had already come down from her surgical procedure and
12 that he smelled the odor of alcohol coming from her
13 person. I did not interpret his testimony of her being
14 incoherent not making any sense as to whether she was
15 impaired or not.

16 I attributed that testimony on his behalf as to her
17 having just come out of anesthesia just coming out of
18 surgery and at that time he Mirandized her and gave her
19 her implied consent warnings and then was there for the
20 draw of the blood. And according to the arrest records
21 the time of arrest and the time of the blood draw were
22 simultaneous and I have no reason to doubt the
23 authenticity of those documents. In addition to that I
24 believe and I haven't heard any testimony regarding it
25 but again based on my experience the nurse also makes

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1 notations as to when certain draws are taken. And it
2 just sort of -- I'm not a big conspiracy theorist and
3 whenever you've got more than one person involved in
4 something it's real hard to make all of those things sort
5 of collaborate and come together to make it all
6 consistent especially from a nurse.

7 Again, I've not heard that testimony yet but he
8 doesn't have any dog in the fight so to speak but I would
9 imagine that those times would be simultaneous or close
10 in proximity to one another. But again it's not
11 necessary for the court's determination.

12 Now, Mr. Mayer has raised several things; all of
13 which are factual in their nature and do not go to the
14 issue of probable cause. There are things that he can
15 raise before the jury as to the completeness of the
16 investigation in this case but it's not for the court to
17 act as the fact finder at this juncture of the
18 proceedings one of which is whether beer was actually
19 consumed or not.

20 The police don't have to make that determination.
21 They don't have to see her drinking. As a matter of fact
22 under the felony D-U-I statute they don't have to prove
23 any of that. Basically felony D-U-I statute is a
24 negligence statute that says you either met a duty, you
25 failed to meet a duty when you had an obligation --

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1 actually I'm going to use the exact language from the
2 statute. The State is not required to prove or even use
3 the D-U-I inferences. They are required to prove that
4 the defendant was sufficiently under the influence to
5 impair his ability to drive with reasonable care, with
6 due regard to others and himself, or as a reasonably
7 prudent person would drive.

8 It is not necessary to show the defendant was in a
9 helpless condition, passed out, or even intoxicated. On
10 the other hand the fact that the defendant had something
11 to drink prior to the incident, drank an alcoholic
12 beverage or took a drug is not enough to prove that the
13 person was driving under the influence.

14 So really the felony D-U-I statute is really a
15 negligent -- it really is based in negligence and
16 proximate cause. You don't have to prove really under
17 the felony D-U-I statute a person who may register a .04
18 could still be found guilty of felony D-U-I. The .08 is
19 merely an inference; it's an evidentiary fact.

20 There are other substances people can have in their
21 bodies that are legally prescribed. They do not have to
22 determine whether she took it legally or not. There are
23 many people that have used their medications. That's why
24 you have all these different pain management agreements
25 between doctors; especially people who take Oxycodone.

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1 Just because you have a legal prescription for Oxycodone
2 if you take five pills in an hour when you're only
3 supposed to take one just because you were legally
4 prescribed does not excuse you of your duty or it does
5 not say that you were not impaired when you drove the
6 vehicle.

7 So they don't have to go to the extent of proving --
8 in other words it's rare that you're going to see
9 somebody drink and get in a car, at least not the
10 officers. There may be other people around who see that
11 but they don't have to see her drink. They don't have to
12 -- I find credible the testimony that these vehicles were
13 in such bad condition that they could not do -- it was
14 just not feasible or safe with blood present, with other
15 fluids I would imagine present from this crash; again,
16 cars these days are made of plastic, a little bit of
17 metal but mostly plastic.

18 It just was not safe for them to try to do a full
19 search of this vehicle and to then really sort of
20 determine who was drinking what when or whether in fact
21 the top of the can was popped or whether it was popped in
22 the course of the accident. I don't know that they have
23 to go to that extreme to make a determination of probable
24 cause. And frankly the nature of the impact, their
25 assessment of the point of impact just all of these

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1 things in combination are more than sufficient to have
2 established probable cause. Now again as I've already
3 observed these things being raised by Mr. Mayer certainly
4 he is entitled to raise them. And he can raise them in
5 the presence of the jury; he can raise them in cross-
6 examination.

7 As to the extent of the investigation that was
8 undertaken, and as to whether the State has met their
9 burden of proof beyond a reasonable doubt that his client
10 was in fact driving in an impaired condition and that she
11 was the cause of this accident and that Ms. Zoll's death
12 was the proximate result of her actions; these are all
13 factual matters for a jury to resolve.

14 The court is not the fact finder and it's not my
15 prerogative or my responsibility to resolve any of those
16 factual issues. But as it regards probable cause they
17 had more than sufficient probable cause to have sought
18 the blood draw and it was appropriately done.

19 And it has been my experience, again I'm not a
20 medical doctor and I would have to hear the testimony of
21 the experts, but it has been my experience that the
22 longer you wait after the more the alcohol dissipates.
23 So that really inures to the benefit of the person, not
24 against them. I have no indication -- it would cause me
25 more concern if immediately they had charged her than

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1 doing a full investigation. Investigations serve a very
2 useful purpose. They can inculcate people and they can
3 exculpate people. And it is really within their
4 prerogative and their responsibility to do a full
5 investigation before they charge someone with something
6 as significant as felony D-U-I involving a death.

7 And so they did their due diligence, they
8 investigated, they gathered the facts and then they made
9 a decision to charge her with felony D-U-I. I have no
10 reason to doubt what has been testified to, the validity
11 or creditability of the testimony regarding the time of
12 her arrest as well as the time of the blood draw.

13 And again these issues go to -- I'm certain that you
14 will have medical testimony as it regards you know how
15 these fluids affected the metabolism of the alcohol, the
16 dissipation of the alcohol in her system and the other
17 substances she had in her system.

18 And I don't know what the testimony is going to be.
19 I don't know if they are going to testify she took more
20 Xanax than she was supposed to take; I have no idea. But
21 all of these things are factual issues to be fleshed out
22 during the course of the trial, which of course does not
23 relieve the State of its burden to prove her guilt beyond
24 a reasonable doubt and she has no burden. But I'm
25 certain that it is your responsibility, Mr. Mayer and I

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1 have no doubt that you will meet that obligation to
2 effectively cross-examine the witnesses regarding the
3 weight and breadth of their testimony. So the motion to
4 suppress the blood draw is denied. Do we have anything
5 else we need to take up this evening before we break?

6 MR. MAYER: Judge, I just wanted to draw your
7 attention to a note from Shana's doctor that may be
8 relevant.

9 THE COURT: I've read it.

10 MR. MAYER: And we would ---

11 THE COURT: --- I'm going to tell you what my
12 concern is. I generally -- the only way you can treat
13 everybody fair is feed them all out of the same spoon.
14 Once I start making deviations from the rule then I have
15 to create a specific situation for everybody. Then it
16 gets sticky because then how do you make it fair for
17 everybody.

18 I understand that she has these conditions but we
19 have people with conditions all the time. I assume
20 however because of her dietary restrictions the jail --
21 it probably makes it easier for the jail to not have to
22 deal with -- because I'm trying to figure out how they
23 would even keep her away from sulfates. Let me see here.

24 [Whereupon, the court reviews documents]

25 THE COURT: I guess my main concern is how do we

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1 keep her away from dyes, preservatives. They certainly
2 wouldn't administer any medications for her at the jail
3 such as -- I would think -- if they knew they wouldn't.
4 But some of these things I think she might come into
5 contact with at the jail, which concerns me a little.
6 But the other thing that concerns me even more is she is
7 on a PR bond and I have no way of assuring her
8 appearance.

9 MR. MAYER: Judge ---

10 THE COURT: --- because if she doesn't show up then
11 I'm left with just doing a bench warrant of some type
12 trying to ensure her appearance and then I'm left with
13 trying to do a trial in her absence, which concerns me.

14 MR. MAYER: Judge, as an officer of the court I can
15 assure you that my client is very optimistic that the
16 fact finders here will realize that she did not drive
17 impaired. And she's not going to do anything stupid
18 during the pendency of this trial. Even more Judge she
19 lives at a dead end down Broughton Road right outside
20 this courthouse.

21 And I will offer as an officer of the court to be at
22 her house personally first thing in the morning to make
23 sure that she is ready and on time every single day of
24 this trial. I just think -- I'm so concerned about her
25 being exposed to these things that may just make her blow

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1 up like a balloon.

2 THE COURT: And then that was my other concern. I
3 don't want it to look like -- I'm trying to choose my
4 words delicately -- I don't want her to look like she has
5 been out partying when in fact she's had some allergic
6 reaction to something and that concerns me as well. I'm
7 glad you raised that because I'd forgotten about that.
8 What is the State's position?

9 MR. ALFARO: Your Honor, while the State clearly
10 understands the medical issues if you are inclined to
11 allow her to stay out we would ask that she be advised
12 about that the trial will go on in her absence if she
13 doesn't show up in the morning or tomorrow afternoon or
14 Wednesday morning; or whenever that may be, that she
15 would be in essence -- that she be counseled that she has
16 the right to be here but she also can waive her presence.
17 And by not showing up she will be doing that and the
18 State will be asking to go forward in a TIA if she
19 decides not to show up. The State does share Your
20 Honor's concern that she is on a PR bond.

21 THE COURT: Yes, she's on a PR bond. I mean what
22 can we do -- I need something to -- Mr. Mayer as much
23 confidence I have in you as an officer of the court
24 again, like I told you twice bitten once shy I had a
25 gentlemen didn't show up the last day of jury

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1 deliberations and it ended up being a hung jury because
2 the mother still had to estreat her business because he
3 didn't show up. So while you have a greater degree of
4 confidence of human nature people do silly things when
5 they are faced with very catastrophic circumstances.

6 It's isn't real yet; it got real today when we swore
7 the jury. And so I need to make sure she is going to
8 show up because I don't have anything to estreat. I
9 don't have anything to take. I don't have any
10 consequences. All I have is her word. And so have you
11 talked to a bondsman about ensuring her appearance?

12 MR. MAYER: We certainly can, Your Honor.

13 THE COURT: Bear with me one moment.

14 [Whereupon, the court confers with the Clerk]

15 THE COURT: I appreciate y'all's indulgence. I
16 needed to leave a message for my jury folk.

17 MR. MAYER: Judge, my client does own a condominium
18 that she is not living in but she could certainly put
19 that up as to...

20 THE COURT: I need y'all to work out some kind of
21 consent document that would have some -- I have to be
22 able to -- there has to be some consequence at this point
23 if she doesn't show up. The court would -- trial in her
24 absence but if she were to abscond then that puts the
25 State in the position of having to expend extensive

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1 resources to find her. And again, it's not personal. I
2 just tend to -- I find that the only way you treat
3 everybody fair is to treat them all the same. So once
4 you start making exceptions then I'm going to have to
5 make exceptions for everybody; and that can be a little
6 taxing with our breadth of case load that we have to deal
7 with.

8 MR. MAYER: Sure.

9 THE COURT: But I am taking into consideration -- I
10 just have some concerns about how she -- if she came into
11 contact and had an allergic reaction to something I
12 wouldn't want the trial delayed because of that nor would
13 I want her appearing -- her appearance to be distorted.
14 But I need something to assure that she will appear for
15 trial and I need that to have some teeth that I can
16 enforce because right now she's just out on her own word
17 and I can't enforce that except with a bench warrant.
18 And we all know how meaningless that can be.

19 So why don't y'all talk for a few minutes and see if
20 y'all can come up some kind of consent document or we
21 could put it on the record. Y'all could consent to some
22 level of surety and then she would have to post it or
23 have her family post it in the morning and then I could
24 allow her to remain out on that basis and then I could
25 advise her of her TIA rights and otherwise.

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1 [Whereupon, all counsel confer]

2 MR. MAYER: Judge, I think that we have an
3 agreement that would involve my client posting a surety
4 bond, a ten percent surety on a 2,500 or 25,000 -- 20,000
5 or 25,000 I think is what we talked about. We would
6 prefer the lower number of course but with the court.
7 The only snafu is at 5:20 ---

8 THE COURT: --- yes, you're not going to be able to
9 do it now. Y'all can do it in the morning; I don't have
10 a problem with that. Ma'am, stand up for me please.
11 I'll remind you you are still under oath.

12 [Whereupon, the defendant complies]

13 THE COURT: I need to advise you that if you fail
14 to appear that the case will continue. If you are found
15 guilty the court will sentence you. That will be placed
16 under seal and you will -- a bench warrant will be issued
17 for your arrest at which time you will be sentenced. Do
18 you understand?

19 MS. ROBINSON: Yes, ma'am.

20 THE COURT: And do you understand that you have an
21 affirmative obligation to appear on tomorrow at 9:30?

22 MS. ROBINSON: Yes, ma'am.

23 THE COURT: For resuming the trial.

24 MS. ROBINSON: Yes, ma'am.

25 THE COURT: Okay. Does the State have any

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1 questions?

2 MR. ALFARO: No, Your Honor.

3 THE COURT: Do you have any questions, Mr. Mayer?

4 MR. MAYER: No, Judge.

5 THE COURT: Thank y'all very much. See you at

6 9:30.

7 MR. MAYER: Thank you, Judge.

8 THE COURT: You're welcome.

9 [Whereupon, court adjourns at 5:25 p.m.]

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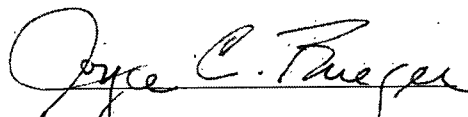
State v Shana C. Robinson
Certificate of the Court Reporter
June 2, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Berkeley County, South
Carolina on the 2nd day of June, 2014.

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

September 12, 2014


Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON.

STATE OF SOUTH CAROLINA

vs.

SHANA CECIEL ROBINSON

Defendant

COURT OF GENERAL SESSIONS

DOCKET NO. 2014-GS-08-0313

TRANSCRIPT OF RECORD

June 3, 2014

Moncks Corner, S. Carolina

VOLUME 2 (OF 5)**B E F O R E:**

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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1 PROCEEDINGS

2 THE COURT: What did you all decide on the bond for
3 Ms. Robinson?

4 MR. MAYER: Judge, we decided a 20,000 dollar bond
5 surety here with the Clerk of Court and she is going to
6 put on that -- get that surety money in with a certified
7 check today.

8 THE COURT: The 20,000 dollars?

9 MR. MAYER: The ten percent.

10 THE COURT: So you all agreed to a 20,000 dollar
11 surety bond with posting ten percent, is that correct?

12 MR. WEST: Yes, Your Honor.

13 THE COURT: I need y'all to reduce that to a
14 consent order because the Clerk can't take the money
15 without some writing for the bond.

16 MR. MAYER: Will do, Judge.

17 THE COURT: Okay. Is there anything before we
18 proceed from the State?

19 MR. WEST: Yes, Your Honor. The State and defense
20 have agreed on several photographs to be admitted into
21 evidence.

22 THE COURT: Actually you sort of -- now that you've
23 said that it reminded me of something else I wanted to
24 ask. Other than those photographs have y'all pre-marked
25 any exhibits and agreed to any exhibits?

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1 MR. WEST: Your Honor, they have been pre-marked.
2 I anticipate some contemporaneous objections at the time.

3 THE COURT: I just need to know what you've agreed
4 to; not what you have objected to -- what there are
5 objections to. I just need to know if there are any
6 exhibits that you all have agreed to and what those
7 numbers are.

8 MR. WEST: Yes, Your Honor. We have agreed to
9 basically 1 through 67 are all photographs subject to the
10 following numbers being objected to.

11 THE COURT: I just need to know the numbers you've
12 agreed to.

13 MR. MAYER: We've agreed to 1 through 30 and 38
14 through 55 we've agreed to. 57 we've agreed to. 59
15 through 63 we've agreed to. And 65 through...

16 MR. WEST: 67.

17 MR. MAYER: I'm sorry, 66 and 67 we've agreed to.
18 We have not agreed to 65.

19 THE COURT: Okay. Is that correct, Mr. West?

20 MR. WEST: That's correct, Your Honor.

21 THE COURT: Those will be marked and admitted
22 without objection.

23 [Whereupon, State's exhibit numbers 1 through 30, 38
24 through 55, 57, 59 through 63, 66 and 67 are entered into
25 evidence by the court]

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1 THE COURT: Are there any other exhibits that have
2 been agreed to?

3 MR. WEST: Other than the stipulation agreement as
4 to the chain of custody no, Your Honor.

5 THE COURT: Are there any other exhibits that need
6 to be pre-marked that have not been agreed to?

7 MR. WEST: Your Honor, we had pre-marked State's
8 69, 70, and 72; all I anticipate will be with
9 contemporaneous objections at the time of trial.

10 THE COURT: Madame Court Reporter, does that match
11 your records?

12 THE COURT REPORTER: It does. What about 71?

13 MR. WEST: 71 is a C.D. and I imagine that will be
14 contemporaneously objected to as well.

15 THE COURT: What kind of C.D. is it?

16 MR. WEST: It's an animation from the MAIT report.

17 THE COURT: Okay.

18 MR. WEST: Your Honor, we do have an evidentiary
19 sort of question just a matter of handling in this case.

20 THE COURT: Okay.

21 MR. WEST: There is a blood sample from this
22 defendant that is over in the refrigerator at Berkeley
23 County evidence next door. We intend to bring that
24 sample over so that the nurse can testify as to the
25 proper sealing and signature of the blood sample. We do

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1 not anticipate that that blood sample needs to go back
2 with the jury at the time ---

3 THE COURT: --- so it is demonstrative only?

4 MR. WEST: Yes, but we do intend on introducing a
5 photograph of the seal and signature and packaging at
6 that time. That has been discussed with defense counsel.

7 THE COURT: What number is that?

8 MR. WEST: That will be number 73, Your Honor.

9 THE COURT: Is there some exception to that Mr.
10 Mayer?

11 MR. WEST: Well Judge, I mean if the nurse is going
12 to testify that it is his signature and that everything
13 comports with his memory of it I don't know that that can
14 be summed up as a demonstrative but I'm not -- I don't
15 object to ---

16 THE COURT: --- I don't think it would be
17 appropriate or safe to admit an actual blood sample into
18 evidence. That would be like putting a loaded gun in
19 evidence.

20 MR. MAYER: Right.

21 THE COURT: It just wouldn't be appropriate; it's
22 not safe.

23 MR. MAYER: Sure. So in terms of using it as a
24 demonstrative I don't have an objection to that.

25 THE COURT: Okay. Are you going to have any

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1 objection to the picture which is a picture of the sample
2 and the seal, which she is going to testify -- that's
3 presupposing the testimony develops as he -- as Mr. West
4 has indicated?

5 MR. MAYER: It's only a demonstrative right?

6 THE COURT: No, the picture he wants to enter into
7 evidence.

8 MR. MAYER: Relevant to show that it was the
9 nurse's signature or something?

10 THE COURT: Pardon me?

11 MR. MAYER: I mean relevant to show because he's
12 going to testify to that and it's going to be cumulative
13 at that point.

14 THE COURT: No, not if it's demonstrative. It's
15 not coming into evidence. I would assume he would want
16 the picture to come into evidence to show that that is in
17 fact the signature that he testified to and that's a copy
18 of the blood sample.

19 MR. MAYER: I've got no problem with that.

20 THE COURT: Okay. What number is that? 73?

21 MR. WEST: 73, Your Honor.

22 THE COURT: 73 is the actual picture?

23 MR. WEST: Yes, Your Honor.

24 THE COURT: Okay. Then that will come in without
25 objection.

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1 [Whereupon, State's exhibit number 73 is entered
2 into evidence by the court]

3 THE COURT: Is there anything else that the State
4 needs to bring to the court's attention before we begin?

5 MR. WEST: No, Your Honor.

6 THE COURT: Anything from the defense?

7 MR. MAYER: Just briefly, Judge. The prosecutor
8 and I talked about not mentioning this alleged marijuana
9 that was removed from my client. I just would like to
10 have the court rule on that that that is not to be
11 mentioned unless I ---

12 THE COURT: --- I'm not ruling on anything unless
13 it's been presented and there has been a contemporaneous
14 objection. I don't rule in limine on evidentiary
15 matters. I have no context within which to determine
16 what the basis of an objection would be. Now if you all
17 have agreed to something that's fine, you can put your
18 agreement on the record and you'll be bound by it. But
19 I'm not ruling in advance on any evidentiary issue when I
20 haven't heard any of the case.

21 MR. WEST: Your Honor, what the State has done is
22 agreed to instruct our witnesses that we are not going to
23 mention the marijuana collected from the defendant's
24 pocket. However, if Mr. Mayer opens the door I do
25 believe we are allowed to go through the door.

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1 THE COURT: Is that y'all's agreement?

2 MR. MAYER: Yes, Judge.

3 THE COURT: Okay. Now I don't take speaking
4 objections. So if there is an objection you need to
5 stand and say that you object. I will ask the basis for
6 the objection, I will then rule on the objection and if I
7 need argument I will ask for it. You should be able to
8 state your objections succinctly either by making
9 reference to the applicable rule or concept, but I do not
10 expect there to be any lengthy diatribes in the presence
11 of the jury regarding any objections.

12 Any matter that has been the subject of a motion in
13 limine is not to be mentioned in the presence of the jury
14 at all until such time that the court takes it up. And
15 you all need to make me aware if there are any matters of
16 law so that I can excuse the jury and I can hear the
17 testimony in its context, create a proffer and then rule
18 on the matter. Is the State ready to proceed?

19 MR. WEST: Yes, Your Honor.

20 THE COURT: Is the defense ready to proceed?

21 MR. MAYER: Yes, Judge.

22 THE COURT: Please bring -- when you bring in the
23 jury I am appointing Bruce Taylor as the foreperson,
24 number 156 so he should be seated in the foreperson seat.
25 Thank you.

State v Shana C. Robinson
Opening Instruction to Jury
June 3, 2014

1 [Whereupon, the jury enters at 9:55 a.m.]

2 THE COURT: You may be seated. Good morning ladies
3 and gentlemen. I hope everybody had a pleasant evening.
4 We are now going to begin the case of the State of South
5 Carolina versus Shana Ceciel Robinson, indictment 2014-
6 GS-08-313. You all have notepads in your seats if you
7 would write on the very first page of that notebook your
8 juror number so that you will be able to identify which
9 notebook belongs to you. During the course of this trial
10 you will be given the opportunity to take notes and I
11 will give you some further instructions regarding that
12 near the conclusion of this preliminary instruction.

13 What I will now say to you ladies and gentlemen is
14 intended to serve as an introduction to the trial of this
15 case. These remarks are not a charge on the law. And
16 just so that you know when you hear me use the word
17 charge charge is a legal term of ours that simply means
18 instructions. So when you hear me use the word charge
19 and instructions they are interchangeable.

20 And as I've explained these remarks are not a charge
21 on the law in this case. I will instruct you on the law
22 applicable to this case at the end of the trial before
23 you retire to consider your verdict. This is merely an
24 explanation of the procedure that we will follow in the
25 trial of this case so that you may better understand what

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Opening Instruction to Jury
June 3, 2014

1 is happening. The defendant is charged by an indictment
2 filed in this court with the crime of felony driving
3 under the influence involving death, the elements of
4 which will explained to you at the conclusion of the case
5 after the parties have made their closing arguments and
6 after all of the evidence has been presented.

7 The indictment, ladies and gentlemen, is simply the
8 charge by which the case is brought into court and it is
9 not in any sense evidence of any of the allegations it
10 contains. The defendant has pled not guilty to this
11 indictment. The State therefore has the burden of
12 proving each of the elements of the indictment beyond a
13 reasonable doubt. And it will be your duty, ladies and
14 gentlemen, to decide whether the State has met that
15 burden or not.

16 Your purpose as jurors is to find and determine the
17 facts. You are the sole judges of the facts in this
18 case. If at any time I make any comment regarding the
19 facts you must disregard it. The Constitution of our
20 state doesn't allow me to have an opinion about the facts
21 in a case that is tried before a jury. You are to
22 determine the facts from the testimony you hear and the
23 other evidence introduced in court. It is up to you to
24 determine the inferences which you feel may be properly
25 drawn from that evidence. It is especially important

State v Shana C. Robinson
Opening Instruction to Jury
June 3, 2014

1 that you perform your duty of determining the facts
2 diligently and conscientiously because ordinarily there
3 is no way to correct an erroneous determination of facts
4 made by a trial jury.

5 On the other hand, and with equal inference, the
6 same law that makes you the judges of the facts makes me
7 the Judge of the law. The law as given by this court is
8 the only law you may consider. You must accept and
9 follow it even though you may disagree with it. The
10 court cannot tell you what the facts are and you cannot
11 disagree with me about what the law is or what the law
12 should be.

13 Your responsibility, ladies and gentlemen, is to
14 take the law as I instruct it and apply it to the facts
15 as you find them from the testimony of the witnesses and
16 any other evidence that is introduced. After doing that
17 you will render your verdict, a true and just verdict
18 under the solemn oath that you have taken as jurors in
19 this case.

20 Until I advise you to begin your deliberations you
21 must not discuss this case with anyone; that includes
22 among your fellow jurors, your family members and anyone
23 involved in this case. After the case is submitted to
24 you for deliberation you must discuss it only in the jury
25 room among your fellow jurors. The attorneys and the

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Opening Instruction to Jury
June 3, 2014

1 parties as well as the witnesses in this case have been
2 advised that they should not speak with you at all. So
3 if you should run into them in the hallway, on the
4 stairs, out in the parking lot, even down the street
5 maybe at Subway or a local restaurant and they do not
6 speak to you or acknowledge you please do not think that
7 they are being rude or untoward. They are simply
8 following the court's instructions because again we would
9 not want an innocent conversation to be misinterpreted.

10 During the trial you are not to read, listen to or
11 watch any news reports about this case. That includes
12 anything that may be in the newspapers, on the
13 television, radio, or Internet. And you're strictly
14 prohibited from doing any independent research of any
15 type on the Internet; that includes any subject matter
16 searches or otherwise or any information outside of the
17 evidence that could be found on the Internet.

18 You are bound by your oath to decide this case
19 according to the testimony that you will hear from the
20 lips of the sworn witnesses and the other evidence that
21 will be introduced during the course of this trial. You
22 should not consider anything that you may have heard
23 outside of this courtroom whether before or during the
24 trial. It is essential that you maintain and keep an
25 open mind and not decide any issue in this case until all

State v Shana C. Robinson
Opening Instruction to Jury
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1 of the evidence has been presented, the parties have made
2 their closing arguments, and I've instructed you on the
3 law of this case. It is your solemn responsibility to
4 determine the guilt or innocence of the defendant.

5 And your verdict must be based solely on the
6 evidence as it is presented to you in this trial and on
7 the law as I will instruct you during and at the close of
8 this trial. In just a moment the Solicitor will make an
9 opening statement in which he will explain to you what he
10 believes the issues to be in this case. We often call it
11 arguing what the facts will show in a case. Keep in mind
12 that what the attorneys say is not evidence. It is only
13 their contention as to what they believe the evidence
14 will show in this case.

15 The attorney for the defendant may also make an
16 opening statement although he is not required to do so.
17 Again, what the attorneys tell you during their opening
18 statements is not evidence in this case. It is only
19 their contention as to what they believe the issues are
20 in this case and what they believe the evidence will show
21 in this case.

22 The evidence in this case will be presented to you
23 by the testimony of sworn witnesses from the witness
24 stand and or by exhibits that may be introduced into
25 evidence. From time to time during the trial you will

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Opening Instruction to Jury
June 3, 2014

1 hear the attorneys say Your Honor I object. Just as in
2 sports business or any other structured activity there
3 are certain rules that we must obey in the presentation
4 of evidence. These rules ensure that you receive the
5 most trustworthy and reliable evidence available.

6 An objection is the procedure that an attorney uses
7 to call a possible violation of these rules to my
8 attention as the Judge of this court. And for this
9 reason you should never hold an attorney's objection
10 against them nor should you conclude from the court
11 overruling or sustaining an objection that I favor one
12 side or the other.

13 Also from time to time you will hear the attorneys
14 say Your Honor we have a matter of law to take up or may
15 we approach the bench. Or sometimes I may ask them to
16 approach the bench and sometimes it may even be necessary
17 for us to exclude you from the courtroom for a short
18 while while we discuss matters of law.

19 The reason we do this is because as I've explained
20 you are the finders of the facts. The law does not allow
21 me to have an opinion about the facts and sometimes when
22 we are discussing matters of law it might be necessary
23 for me to make some comment about the facts in connection
24 with ruling whether a statute applies or an evidentiary
25 rule or a procedural rule. And for this reason we

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June 3, 2014

1 exclude you from the courtroom so in no way will you be
2 influenced by anything that the court may say or do in
3 connection with the facts of this case.

4 In determining what the true facts are in this case
5 ladies and gentlemen you must decide whether or not the
6 testimony of the witnesses is believable. It is my
7 responsibility to rule as a matter of law as to whether
8 certain testimony is admissible at all or not. But once
9 it is admitted whether or not you believe it is solely a
10 matter for you to determine in your fact finding
11 providence.

12 In deciding whether to believe a witness you have a
13 right to consider the interest of any witness, the bias
14 of any witness, the prejudice of any witness, the
15 opportunity for the witness to have seen the matters and
16 things about which the witness may testify and the way a
17 witness acts on the witness stand, something we commonly
18 refer to as demeanor.

19 You have a right to consider anything that is in the
20 record that will help you evaluate the testimony of the
21 witnesses. That means, ladies and gentlemen, that it is
22 your duty to pay close attention to the witnesses, to
23 observe them, to listen to them, and to pay close
24 attention to the attorneys and the court. Although I
25 know it can be very difficult please do not allow your

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1 thoughts to wander but give strict attention to the
2 testimony so that at the end of the testimony after the
3 arguments of the attorneys and the charge on the law
4 given to you by the court you will then be in a position
5 to determine what the true facts are and apply the law to
6 those facts and thus render a true and just verdict in
7 this case.

8 During the course of this trial you will be given
9 the opportunity to take notes. Note taking is a
10 privilege that you may choose to exercise or choose not
11 to exercise. Please don't feel you are required to take
12 notes. Not everyone finds note taking helpful to them.
13 If you should decide to take notes please don't try to
14 record everything that is said; it's physically
15 impossible.

16 I've been now I think I'm entering or completing my
17 18th year on the bench and I find that I talk faster and
18 faster. My court reporter probably can attest to that;
19 she's been with me probably the last few months, but I've
20 been trying to pace myself because I realize even an
21 average speaker talks about 200 words a minute. So
22 whether a court reporter is a transcriptionist with a
23 machine or a mask reporter it can be hard to keep up the
24 faster or the quicker the pace you speak. So as you well
25 can imagine it would physically impossible to take down

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1 everything that is being said and even with that note
2 taking can become an extreme distraction to you. And
3 it's so very important that you pay attention to the
4 witnesses, that you observe their demeanor, and you rely
5 on your powers of observation and not allow note taking
6 to become a distraction to you.

7 You may want to keep an outline of the main points
8 that are being made; the main arguments that are being
9 made so that when you retire to deliberate you can allow
10 your notes to refresh your memory. Please be reminded
11 that your notes are for your specific and your individual
12 purposes. They are only to be used to refresh your own
13 memory. They are not to be shared with anyone else. And
14 your notes should not be considered any more reliable
15 than another juror's memory.

16 During breaks and recesses your notes will be left
17 in your seats and we do that to ensure that there is no
18 premature temptation to discuss any matter that you may
19 have heard prior to any breaks. Again, be reminded that
20 your notes are for your individual purposes and they
21 should not be considered any more reliable than someone
22 else's memory. It is your added duty, Mr. Foreman to
23 write out the verdict form and to write out any questions
24 that the jury has during deliberations but I'll give you
25 further instructions regarding that at the conclusion of

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1 the case. Ladies and gentlemen, the foreperson is purely
2 an administrative function. That person fills out the
3 verdict form, they sign the indictment at the conclusion
4 of the case, and they write out any questions you all may
5 have during the deliberation process. That person does
6 not have any greater vote or voice than you do. It is
7 purely administrative and it is purely random the process
8 that the court employs to select a foreperson so that a
9 random cross section of the community is represented in
10 that capacity. But again, I emphasize that that person
11 does not have any greater vote or voice than you do in
12 the deliberation process. In order to preserve
13 everyone's rights I'm going to give the parties the
14 opportunity to take exception to anything that the court
15 has said by way of opening instruction. Are there any
16 exceptions from the State?

17 MR. WEST: Nothing from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. MAYER: No, Judge.

20 THE COURT: Ladies and gentlemen, I would ask that
21 you give the attorneys your undivided attention in
22 opening statement. You may proceed, Mr. West.

23 MR. WEST: Thank you, Your Honor. May it please
24 the court?

25 THE COURT: Yes sir, you may proceed.

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BY MR. WEST:

On November 10th of 2011 Candy Zoll was killed in a car crash. And you're here today to hear the trial of the person that killed her. Shana Robinson is charged with felony D-U-I because on the night she killed Candy Zoll she chose to drink alcohol. She chose to take several pills. She chose to drive. She chose to speed, at which time she left her lane of travel into the victim's lane striking her head-on and causing her death.

That's the basic facts of the case, ladies and gentlemen. In real time the collision that brings us here today only took a matter of seconds. But the choices made by this defendant were made over the course of several hours. Several hours of conscious decisions that led to the death of Candy Zoll. This trial will highlight those choices and those choices will highlight the elements of the crime of felony D-U-I.

As such the State must prove essentially three things in order to prove the crime of felony D-U-I; the first being that the defendant was under the influence of drugs, alcohol, or a combination of both. Number two, she committed an act forbidden by law or neglected a legal duty. In other words she was speeding, she crossed the center line, and she went into the victim's

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1 lane of travel. And number three that Candy Zoll died
2 as a result of that accident. Now you're going to hear
3 a lot of testimony during this case. You're going to
4 hear from a lot of witnesses. You're going to hear from
5 witnesses that saw Shana Robinson flying down Broughton
6 Road.

7 If you're not familiar with Broughton Road Broughton
8 Road is the road immediately next to this courthouse.
9 Some of you probably even turned on it to get here today.
10 Well, if you travel toward the end of Broughton Road at
11 the end of Broughton Road there is a curve down towards
12 the lake. At that curve the speed limit is 35 miles per
13 hour. You're going to hear testimony about how this
14 defendant was travelling nearly three times the speed
15 limit.

16 You're going to hear from witnesses that heard the
17 explosion of the cars. You're going to see pictures and
18 hear testimony about just how horrendous this collision
19 actually was. You're going to hear testimony from
20 witnesses; fireman, emergency personnel, troopers,
21 doctors. And all these witnesses are important because
22 they help establish some element of the crime. But
23 really there are two witnesses that will help solidify
24 the elements of felony D-U-I through scientific
25 testimony. One of them is going to be Tracy McKinnon.

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1 Tracy McKinnon works for SLED, the South Carolina Law
2 Enforcement Division and what he does is he tests
3 evidence. He tested evidence in this case given to him
4 by the Highway Patrol. And what he tested was a sample
5 of blood taken from this defendant right after the
6 accident.

7 You're going to hear a lot about how that blood was
8 collected, when that blood was collected, who collected
9 it. But what's important about that blood sample is what
10 was in the blood. You're going to hear how he found
11 several drugs, alcohol in her blood system. You're going
12 to hear the effects of alcohol on the human body. You're
13 going to hear the effects of those drugs on the human
14 body.

15 Importantly you're going to hear the interaction
16 between the drugs and the alcohol. And importantly
17 you're going to hear how the interactions between those
18 drugs and alcohol would affect a driver of a motor
19 vehicle.

20 Towards the end of the trial you're going to hear
21 from David Lee. He's a retired member of the Highway
22 Patrol and back in 2011 he worked this scene. He is
23 going to reconstruct the collision for you. He is going
24 to testify about things like speed and momentum. He is
25 going to tell you how he went to the scene and inspected

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1 the physical evidence that led him to the conclusion that
2 this defendant, Shana Robinson, was driving down
3 Broughton Road at excessive speeds when she went into the
4 victim's lane of travel striking her head-on and causing
5 her death.

6 This is a technical case, ladies and gentlemen. But
7 it is not so overly technical that you cannot use the
8 most important thing that you brought with you into this
9 courtroom and that's your common sense. You're going to
10 see pictures, you're going to hear testimony, and if you
11 use your common sense when you listen to this testimony
12 and you look at those pictures you will see exactly where
13 this collision occurred, how it occurred, and how Candy
14 Zoll died on that night.

15 Now one of the important things to remember here,
16 ladies and gentlemen is that you took an oath. When you
17 were sworn as jurors you took an oath to do one thing;
18 apply the law to the facts of the case. And that's all
19 the State is asking you to do; apply the law to the
20 facts.

21 And if you do this then you've upheld your oath.
22 And if you do this and when you do this you will see that
23 the evidence in this case shows that Shana Robinson drove
24 down Broughton Road at such excessive speeds that she
25 caused the death of Candy Zoll. And when you find that

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1 you must find her guilty of felony D-U-I.

2 THE COURT: You may proceed.

3 MR. MAYER: Thank you, Judge.

4 THE COURT: You're welcome.

5 MR. MAYER: May it please the court?

6 THE COURT: Yes, sir.

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State v Shana C. Robinson
Opening Statement by Mr. Mayer
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1 OPENING STATEMENT

2 BY MR. MAYER:

3 Y'all I want to make clear that nothing we say
4 during the course of this trial is intended in any way to
5 diminish the loss suffered by the Zoll family. In every
6 step of the way we are conscious of that and in no way do
7 we intend any disrespect whatsoever.

8 Now that being said what the Solicitor explained to
9 you just then is that -- what he left out is the cause of
10 this accident they have to prove to you beyond a
11 reasonable doubt the cause of this accident was alcohol.
12 They have to prove it wasn't Shana's speeding or if it
13 was Shana's speeding they have to prove that her speeding
14 was caused by her alcohol consumption. It's not enough
15 for them to say she had a drink at Applebee's and then
16 she drove home and then she got in this wreck and now
17 it's a felony D-U-I.

18 Y'all will see from the evidence that this is not a
19 case where someone went out and had ten drinks and got
20 plastered and did something they shouldn't have done.
21 That's not this case, okay. This is a case where Shana
22 Robinson, my client, went with her friend Brittney
23 Hartley to drop a test off at Trident Tech. They went to
24 Applebee's and they sat and they had some girl chitchat
25 for a couple of hours. Over the period of about two

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1 hours at Applebee's Shana had one vodka cranberry, okay
2 in that first hour and in the second hour she had a
3 second vodka cranberry. That's over a two hour time
4 period. These aren't shots. This isn't a crazy party.
5 This is girls sitting down and catching up together,
6 okay.

7 They left Applebee's and they wanted to see if some
8 of their friends were around and they stopped by a place
9 called Geronimo's Bar and Grill, which was on the way
10 home from -- Applebee's is on the other side, this
11 Applebee's is on the other side of town and Geronimo's
12 was right off of 52 there.

13 The girls stopped by there and they were there at
14 Geronimo's for approximately an hour plus, okay where
15 several people spoke with my client, several
16 acquaintances okay, not best buddies, not bosom pals;
17 these are acquaintances with no dog in the fight if you
18 will I would humbly submit.

19 You will hear from them during this trial. If my
20 memory serves I think there are about five of them
21 impartial who will come and tell you ten minutes before
22 this wreck they talked to Shana. She was stone-cold
23 sober; no signs of impairment, okay. Five impartial
24 people; I want you to pay attention to that testimony all
25 right. Now it is my expectation that you will hear that

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1 Shana grew up on Broughton Road and has driven that road
2 a bunch of times. She is familiar with the speed limits
3 on that road and she knows how to drive that road, okay.
4 So pay attention please to the State's witnesses who
5 claim to have seen Shana driving at a crazy excessive
6 rate of speed and see if that doesn't gibe with someone
7 just driving a little speed -- speeding a little bit,
8 which I think is more of what happened.

9 Now this was a wreck involving another car where the
10 deceased was the driver of that other vehicle okay. Now
11 we don't know exactly what was going on in that car. And
12 again I am not trying to point the finger at the deceased
13 at all. We're just trying to figure out what happened.

14 And the reason -- let me back up just a little bit.
15 The reason I'm trying to figure out what happened is
16 because my client and her passenger suffered such severe
17 injuries from the wreck they both had some loss of
18 consciousness and they both had something called
19 traumatic brain injury, which caused them to variously
20 not remember some period of time before the accident.

21 If memory serves I think Brittany Hartley, who is
22 one of the State's witnesses, lost something like bits
23 and pieces of a week before the accident. She had an
24 actual subdural hematoma I believe. And my client lost
25 about an hour before the accident traumatic brain injury.

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1 So what we've tried to do is tried to go back and figure
2 out what did happen. In the other car, not my client's
3 car, in the other car we have evidence that would suggest
4 the driver was on the phone, that there was a dog in the
5 car, that she was driving someone else's car that she may
6 not have been familiar with, and that she just recently
7 had gotten back her drivers license. There may be some
8 other evidence to as to what was going on in the car but
9 hopefully the witnesses will bring that out.

10 Now this is a curve that is kind of an off camber
11 curve where -- this is not the first wreck -- you will
12 hear this is not the first wreck that has happened there.
13 The approach to that curve from down here [indicates]
14 includes like a 55 mile per hour speed zone with dotted
15 yellow line allowing for passing. It's not a solid
16 yellow; you're allowed to pass there.

17 And as you approach that curve it used to be years
18 ago that curve was at a 45 mile per hour speed limit.
19 And then some years back they put in an access road to
20 the game -- to the playing field they are and they
21 changed that speed limit to 35 or at least it's a caution
22 sign. It's like a suggested 35 I think is what it is
23 now. Anyway that curve can be safely driven at 55 or 60
24 miles an hour; I've done it myself. But you'll testimony
25 to that effect.. So right before that curve there's kind

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1 of a slight curve. And the slight curve is important
2 because we are I think going to get into this that with
3 some of these first witnesses. The slight curve is
4 important because you can't see the curve, right. People
5 who -- some of the State's witnesses say that they saw
6 Shana earlier on Broughton Road had no visibility to see
7 what happened at the actual accident.

8 So here we've got an investigation that was done in
9 the aftermath of this very horrific accident. The State
10 patrol responded the Berkeley County Sheriff's responded
11 and they rightly were most concerned with preventing loss
12 of life. The most important priority in their mind
13 you'll hear them testify was to save these people. This
14 is a terrible thing let's try to patch the holes here;
15 let's try to save these folks. That's all as it should
16 be, but I think it contributed -- I think you'll see that
17 it contributed to an investigation that was a little
18 half-baked because the priority was correct; we're going
19 to save lives.

20 And what I mean by that is the calculations that
21 were done for the speed here it's called a M-A-I-T
22 report, which is a big accident report that the Highway
23 Patrol puts together, which they did in this case. They
24 did -- you'll see they did two versions of that. They
25 did one version that even to a lay person like myself was

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1 blatantly wrong. And then they came back and they did a
2 second version which I humbly submit to you is still
3 blatantly wrong. You'll hear later in the trial from a
4 person who used to be on the MAIT who was one of the
5 original founding members who we asked to evaluate this
6 who comes with a speed for my client -- does a correct
7 calculation and does a speed for my client. I want to say
8 if memory serves is about 25 miles per hour less than
9 what they came up with. And it's -- without getting
10 into too much detail about it it comes down to a formula
11 and some assumptions that were made by someone who wasn't
12 an original member of the team and wasn't properly
13 trained to the same degree. So that's a long way of
14 saying please keep an open mind in this case. It is
15 anything but a clear-cut case. And you're talking about
16 an extremely serious charge that has already been life-
17 changing for my client and may well affect a significant
18 portion of her future.

19 So please, please keep an open mind. I think you'll
20 agree with me in the end of this thing the evidence is
21 inconclusive. There is a huge bunch of doubt as to what
22 happened that night on Broughton Road. And I think
23 you'll find the appropriate witnesses to be very credible
24 and that they've done a good job. So please do keep an
25 open mind and we'll talk more later. Thank you.

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1 THE COURT: The state may proceed.
2 MR. WEST: The State calls Joshua Witty.
3 [Whereupon, Mr. Witty comes forward]
4 MR. MAYER: Judge, we didn't mention earlier about
5 sequestration ---
6 THE COURT: --- what's your -- objection?
7 [Whereupon, an off the record bench conference is
8 held]
9 [Whereupon, the witness is duly sworn by the Clerk
10 of Court]
11 CLERK OF COURT: Please be seated. State your full
12 name and spell your last name for the record.
13 THE WITNESS: My name is Joshua Tyler -- Witty,
14 W-I-T-T-Y.
15 THE COURT: You may proceed.
16 MR. WEST: Thank you, Judge.
17 THE COURT: You're welcome.
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State v Shana C. Robinson
Joshua Witty-Direct Examination by Mr. West
June 3, 2014

1 JOSHUA WITTY,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WEST:
6 Q. Good morning Mr. Witty. How are you today?
7 A. I'm fine.
8 Q. Thanks for coming in. I just have a couple of
9 questions for you. Where did you live in November of
10 2011?
11 A. 108 Lois circle.
12 Q. Okay. And where is that in relation to Broughton
13 Road?
14 A. It's three houses down from Broughton Road. If you
15 make a right of Lois it's the third house on the right.
16 Q. But you have ready visibility to Broughton Road from
17 your house?
18 A. Yes, sir.
19 Q. Okay. Do you recall the events of the night of
20 November 10, 2011?
21 A. Yes, sir.
22 Q. Okay. And can you tell the jury what you saw that
23 night?
24 A. That night I was standing in my driveway smoking a
25 cigarette waiting for my wife to get home. You know I

State v Shana C. Robinson
Joshua Witty-Direct Examination by Mr. West
June 3, 2014

1 was looking for her headlights. She drove a Cadillac
2 Escalade so it had distinctive headlights. So I was
3 looking for her and I was going to scare her. I was
4 going to hide behind my truck.

5 And several cars went by and all of a sudden I
6 started hearing one car and you can tell by the road
7 noise that this car was going extremely fast before I
8 even seen the car.

9 And when the car went to pass Lois Circle on
10 Broughton Road heading towards Lyons Beach when it got to
11 Lois Circle you heard it speed up. You heard them gun
12 the engine I mean you heard whomp. I ended up losing
13 sight of this car because of the fact that across from my
14 house -- this house is on Broughton Road but it's in
15 between my house and Broughton Road if you looking
16 diagonal.

17 It was where a sheriff lived and I would lose vision
18 of the cars that went in front of this house. And when
19 they came out the other side before they went into the
20 curve you could see the car again. You could see the
21 taillights.

22 And you heard the car let off of the gas but you
23 never seen the brake lights come on. You can tell the
24 difference between tail lights and brake lights and the
25 brake lights never came on. And that's when I said to

State v Shana C. Robinson
Joshua Witty-Direct Examination by Mr. West
June 3, 2014

1 myself they are not going to make the curve. And
2 that's...

3 Q. When you first saw this car what type of car was it?

4 A. It was a grey or silver sedan.

5 Q. Okay. And just a rough estimation from your
6 experience as a driver what was your estimation as to
7 the speed of that car?

8 A. At least 75 plus whenever it got to Lois Circle.

9 Q. And you're familiar with Broughton Road. What's the
10 speed limit of that curve?

11 A. The speed limit of the curve is 30 to 35. I believe
12 it's 35.

13 Q. So once you saw it pass and you saw it going towards
14 the curve what's the next thing you heard or saw?

15 A. When the car entered the curve like I said I didn't
16 see the brake lights come on and they disappeared. I
17 heard a short screech like somebody locked up the brakes.
18 It was real short and then I heard a loud explosion like
19 a bomb went off.

20 Q. So you didn't actually see the collision, but you
21 heard it?

22 A. No, sir.

23 Q. But you heard it?

24 A. I heard it, yes.

25 Q. Okay. And once you heard the collision what is the

State v Shana C. Robinson
Joshua Witty-Direct Examination by Mr. West
June 3, 2014

1 first thing you did?

2 A. The first thing I did was like I said I was shocked
3 and said a cuss word because I was scared. And that's
4 when one of my neighbors turned on the road and I
5 immediately ran out and stopped him to get him going down
6 there and then I had to run back in the house and call
7 911.

8 Q. Okay. So do you remember who that person was?

9 A. Chris, he drives for Advanced Concrete Cutting
10 [phonetic].

11 Q. Do you know his last name?

12 A. I don't know his last name.

13 Q. Okay. And you told him to go to the wreck?

14 A. Yes. My exact words were to him was the car that
15 was in front of you just went around that curve and I
16 know they wrecked. I heard them wreck. It was a loud
17 explosion; somebody needs to get down there.

18 Q. Okay. What was the weather like out that day?

19 A. It was actually nice. It was real nice that night.
20 I can't remember if it was cloudy or not but it wasn't
21 wet, it wasn't nothing. I was standing outside in my
22 driveway barefooted.

23 Q. Okay. Did you ever go down to the scene of the
24 collision?

25 A. Yes, I did.

State v Shana C. Robinson
Joshua Witty-Direct Examination by Mr. West
June 3, 2014

1 Q. Okay. Tell us about that.

2 A. When I arrived on the scene -- I had to wait for my
3 wife to get to the house. By the time I got down there
4 some rescue was there and of course there was other
5 people there and people trying to get down there and
6 everybody was parked on the sides.

7 When I got down to the scene I crossed the road to
8 the left hand side and that's when I noticed the silver
9 sedan sitting off the left hand side of the road, which
10 is a drop off facing back towards the road.

11 And from what I could see there was people around
12 the car and I could tell the front end was crushed in.
13 That's when I noticed that they didn't hit a tree. I
14 thought they would have hit a tree but you could tell
15 they didn't due to the damage to the car.

16 Q. And were there any other cars out there?

17 A. There was like I said the silver car. There was a
18 lot of commotion going on and that's when I looked to one
19 of the people standing there and I'm like what did they
20 hit and they said they hit another car. At this time I
21 could not see the other vehicle.

22 Q. Did you ever see the other vehicle?

23 A. Yes, I did.

24 Q. Okay. Can you describe the damage to the first car
25 you saw off the side of the road?

State v Shana C. Robinson
Joshua Witty-Direct Examination by Mr. West
June 3, 2014

1 A. The silver car?

2 Q. Yes.

3 A. The damage on that the whole front end was square
4 crushed in like they hit a wall or hit something square
5 on. And I would say it was probably crushed in about
6 that far [indicates]; about a foot or foot and half, two
7 feet or so it was crushed in.

8 Q. And when you got to the scene were there any firemen
9 or emergency personnel already there?

10 A. There was I know for a fact there was one police
11 officer there, which was the neighbor because I ran and
12 got him. I want to say Moncks Corner was there the
13 police I believe was there, and I want to say there were
14 a couple of fire rescue there.

15 Q. So there was a lot of people on scene?

16 A. Yes, and they were still steady coming in.

17 Q. Would you describe the scene as pretty chaotic?

18 A. Yes.

19 Q. Okay. And once you saw the other vehicle could you
20 describe that vehicle for the jury?

21 A. Imagine your car -- through the windshield wipers --
22 take a chain saw and cut the whole front end off.
23 Everything was in the driver's compartment. There was no
24 front end on this car. It was from the bottom of the
25 windshield back; that was it. Everything on the front

State v Shana C. Robinson
Joshua Witty-Direct Examination by Mr. West
June 3, 2014

1 was gone.

2 Q. Was it crushed or was it severed?

3 A. No, it was crushed. The front bumper was crushed
4 all the way into -- I mean everything into the engine
5 driver's compartment.

6 Q. Okay. So once you saw this scene and there were
7 fireman and other emergency personnel on the scene did
8 you do anything to help?

9 A. The best I could have done was just stayed out of
10 the way unless somebody said they needed help. There was
11 nothing I could have done at all. I didn't have training
12 for that.

13 Q. Okay. So you're not trained as an emergency
14 personnel ---

15 A. --- no.

16 Q. What do you do for a living?

17 A. I run heavy equipment.

18 Q. Okay. So you were just a Good Samaritan on the
19 scene?

20 A. Yes, sir.

21 Q. Okay.

22 MR. WEST: Court's indulgence.

23 [Whereupon, Mr. West and Mr. Alfaro confer]

24 Q. [Mr. West] When you got to the car that was still in
25 the roadway, not the silver car but the car that had the

State v Shana C. Robinson
Joshua Witty-Direct Examination by Mr. West
June 3, 2014

1 front end crushed, did you see anybody in that car?

2 A. I could see somebody in the car. I didn't have a
3 good visual at the time on that person. But you could
4 see there was somebody in the driver's seat.

5 Q. Okay. Did you ever go up to the car?

6 A. I stayed approximately 12 -- between 10 and 15 feet
7 away from that car; maybe 20 at the most. That was about
8 as close as I got to it.

9 Q. Did you see emergency personnel working on that car?

10 A. Yes, sir. They were like ants all over it.

11 Q. Okay. What did you see them doing?

12 A. The first thing they did was cut the roof off. And
13 that's when I got a good visual of the driver.

14 Q. Okay. What happened after that?

15 A. As rescue was still trying -- after they got the
16 roof off they were in the process of cutting the whole
17 side of the car out, the back door and front door and
18 trying to pry this car away from her.

19 There was people I guess they were nurses or
20 whatever that lived around there and EMS were all on top
21 of the car and in the car trying their best to tend to
22 the woman that was in there.

23 Q. And did they ever get her out of the car?

24 A. Yes sir, they did.

25 Q. Okay. Describe that process.

State v Shana C. Robinson
Joshua Witty-Direct Examination by Mr. West
June 3, 2014

1 A. After they got her out?

2 Q. After they got her out what did you see?

3 A. When they got her out of the car up onto the
4 backboard the ambulance was probably I don't know 30
5 feet, 40 foot from the back of her car.

6 They got her out and started carrying her towards
7 the ambulance and got about half way, sat her on the
8 ground. They all kneeled around her and that's when she
9 died.

10 Q. So you saw her?

11 A. Yes.

12 MR. WEST: No further questions for this witness.

13 THE COURT: Any questions of the witness?

14 MR. MAYER: Just briefly, Judge.

15 THE COURT: You may proceed.

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State v Shana C. Robinson
Joshua Witty-Cross-Examination by Mr. Mayer
June 3, 2014

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Good morning Mr. Witty.

4 A. Good morning.

5 Q. My name is Aaron Mayer and I represent Shana. Now

6 from your house where you were waiting for your wife you

7 can't see the curve where this happened, is that right?

8 A. The way that the road is set up Broughton Road is

9 kind of at an angle to Lois so as you're coming by there

10 is a house sitting here [indicates] and you see the car

11 as they are entering -- there is a two-part curve and you

12 can see the car as they are entering -- this first part

13 [indicates] and then you lose them behind the trees.

14 Q. Okay. So why you say there is a two-part curve

15 there is like a little curve and then there is a little

16 straightaway and then a big curve, is that right?

17 A. Something like that.

18 Q. And so you lost sight of this car after the little

19 curve?

20 A. Yes, as they were in the little curve.

21 Q. And this was at nighttime right?

22 A. Yes.

23 Q. You mentioned that you heard a short screech.

24 A. Yes.

25 Q. Was it a screech like someone turning?

State v Shana C. Robinson
Joshua Witty-Cross-Examination by Mr. Mayer
June 3, 2014

- 1 A. No.
- 2 Q. What kind of screech was it?
- 3 A. Somebody locking up brakes.
- 4 Q. Okay. And how long is the short screech?
- 5 A. [Indicates sound] It was short. I mean it was like
- 6 as soon as you heard that screech that's when the
- 7 explosion hit.
- 8 Q. Okay.
- 9 A. So it was pretty fast.
- 10 Q. All right. And you mentioned that you drive heavy
- 11 equipment?
- 12 A. Yes.
- 13 Q. I imagine it's not manual -- would it be a stick
- 14 shift equipment?
- 15 A. I drive -- I operate track hoes, bulldozers,
- 16 eighteen wheelers.
- 17 Q. Okay. You drive an eighteen wheeler?
- 18 A. Yes.
- 19 Q. Driving something with a stick like that have you
- 20 ever slowed down by downshifting?
- 21 A. I have slowed down by downshifting. So in a car I
- 22 know what you're talking about; you're asking me about
- 23 throwing it in second gear the tires would lock up real
- 24 quick.
- 25 Q. I'm not talking about for the tire locking up. I'm

State v Shana C. Robinson
Joshua Witty-Cross-Examination by Mr. Mayer
June 3, 2014

- 1 just saying is that a way to slow down and be ---
2 A. --- oh, yes.
3 Q. Okay. You testified earlier the tires locking up
4 but it was pretty clear it was brakes?
5 A. Yes.
6 Q. You testified that you watched them cut the roof --
7 the emergency personnel cut the roof off the Saturn.
8 A. Yes.
9 Q. And also cut the side of it away.
10 A. Yes.
11 Q. Okay. You did not see this accident?
12 A. I did not see -- no I did not see the impact.
13 Q. Okay. You didn't see where the other car was
14 travelling, right?
15 A. The one that got the roof cut off?
16 Q. The Saturn -- it was a Saturn, right?
17 A. Yes, a Saturn.
18 Q. You never saw that car driving.
19 A. No, I did not see that car.
20 Q. And you don't know if that car was in its proper
21 lane or not.
22 A. I couldn't tell you.
23 MR. MAYER: Court's indulgence.
24 [Whereupon, Mr. Mayer confers with his client]
25 MR. MAYER: No further questions, Your Honor.

State v Shana C. Robinson
Joshua Witty-Cross-Examination by Mr. Mayer
June 3, 2014

1 THE COURT: Any redirect of the witness?

2 MR. WEST: Nothing from the State, Your Honor.

3 THE COURT: Sir you're excused.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 THE COURT: You may call your next witness.

7 MR. ALFARO: The State calls Christopher Sasnett.

8 [Whereupon, Mr. Sasnett comes forward]

9 [Whereupon, the witness is duly sworn by the Clerk
10 of Court]

11 CLERK OF COURT: Please be seated. State your full
12 name and spell your last name for the record.

13 THE WITNESS: S-A-S-N-E-T-T.
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State v Shana C. Robinson
Christopher Sasnett-Direct Examination by Mr. Alfaro
June 3, 2014

1 CHRISTOPHER SASNETT,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. ALFARO:
6 Q. Good morning Mr. Sasnett.
7 A. Good morning.
8 Q. Could you tell the jury where you live?
9 A. 200 Lois Circle.
10 Q. And is that located -- where is that located?
11 A. Moncks Corner.
12 Q. Is that in Berkeley County?
13 A. Yes, sir.
14 Q. And what type of work do you do?
15 A. Concrete cutting. I work for a concrete cutting
16 company.
17 Q. And how long have you lived on Lois Circle?
18 A. About 14 years I think.
19 Q. So you were living there on November 10, 2011?
20 A. Yes, sir.
21 Q. And that evening around 8:30 did you have the
22 opportunity to observe a silver BMW travelling on
23 Broughton Road?
24 A. Yes, sir.
25 Q. Prior to an accident -- motor vehicle collision?

State v Shana C. Robinson
Christopher Sasnett-Direct Examination by Mr. Alfaro
June 3, 2014

1 A. Yes, sir.

2 Q. And where did you see that vehicle?

3 A. When I first saw it I was about at Division
4 [phonetic] Street on Broughton Road heading out that way
5 and they were behind me about at the courthouse.

6 Q. What kind of vehicle were you driving?

7 A. A F-250 diesel pickup truck.

8 Q. And tell the jury what happened after you first saw
9 that car.

10 A. By about the time I got to Reid [phonetic] Street it
11 had caught me. I noticed it was coming up real quick on
12 me. I thought I was getting pulled over by how fast it
13 was coming up.

14 I looked at my speedometer and I was doing about 40
15 in a 35 and they caught me by the time I got to Reid
16 Street. And then when we got right past Kipville
17 [phonetic] Road in the 55, once we got in the 55 the car
18 passed me and went on up.

19 Q. And you said it caught up to you before you got to
20 Reid Street?

21 A. Right around Reid Street, yes sir.

22 Q. And you saw it at Division first you said?

23 A. Yes.

24 Q. What's the distance between Division to Reid Street?

25 A. It's not that far.

State v-Shana C. Robinson
Christopher Sasnett-Direct Examination by Mr. Alfaro
June 3, 2014

1 Q. And you said you thought you were getting pulled
2 over?

3 A. Yes, sir.

4 Q. And so that part where you saw the car that was 35
5 miles per hour?

6 A. Yes, sir.

7 Q. And so the vehicle, the BMW that is traveling the
8 same direction as you comes up behind you, correct?

9 A. Yes, sir.

10 Q. And at what point did it pass you?

11 A. Once we got in the 55 mile per hour zone, as soon as
12 you pass Kipville Road.

13 Q. And were you going 55 when it passed you?

14 A. I was actually doing 60 when they passed me, yes
15 sir.

16 Q. And when it passed you were you able to say how fast
17 you thought it was going based off your speed and how
18 fast you were going?

19 A. No, sir.

20 Q. But it was going faster than 60 because it passed
21 you.

22 A. Yes, sir.

23 Q. And when it passed you did it pass you at a
24 continuous speed or did it just take off?

25 A. I mean they were speeding up as they were going

State v Shana C. Robinson
Christopher Sasnett-Direct Examination by Mr. Alfaro
June 3, 2014

1 around me.

2 Q. And this was still on Broughton Road?

3 A. Yes, sir.

4 Q. And after that BMW passed you where did you go?

5 A. I went on down the road and turned on Lois Circle
6 and I went home, which I was heading home when the guy
7 about three houses down ran out in the road in front of
8 me and flagged me down and said that car that was in
9 front of you just got in a wreck. So I turned around and
10 went back down there.

11 Q. Okay. How long did it take you to get to the crash
12 scene?

13 A. I mean a minute or two; not long.

14 Q. And do you recall what you saw when you got to the
15 scene?

16 A. There was another vehicle that had apparently been
17 behind us coming out that had got there first and then
18 when I looked out I saw the silver BMW to the left over
19 in the ditch.

20 And I didn't even see the other car until I was
21 coming back up to the road to grab my truck and pull it
22 up to the blind curve and turn the flashers on so nobody
23 else come around the curve and hit us.

24 Q. And you eventually did see the other car?

25 A. Yes, sir.

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1 Q. And where was that other car located?

2 A. In the other lane facing back the other way.

3 Q. So it would have been in the lane as if it was going
4 back towards ---

5 A. --- back towards Lyons Beach.

6 Q. And did you stay at the scene until the police and
7 fire and EMS people got there?

8 A. Yes, sir.

9 Q. Did you do anything with -- have any contact with
10 either of the drivers?

11 A. No, sir. Me and the woman that was there when I got
12 there went down there and opened the door to see if we
13 could help them any. And one of them, the driver, was a
14 little conscious and the passenger wasn't.

15 And then everybody started coming out from the
16 houses right there behind them and other people jumped in
17 there to start helping and that's when I went and pulled
18 my truck up around the curve with the flashers on.

19 Q. So the BMW had two people inside?

20 A. Yes, sir.

21 Q. And when you eventually saw the other vehicle do you
22 recall what kind of car that was?

23 A. No, sir. I just remember it was a small car.

24 Q. And did you go up to that car?

25 A. Yes, sir.

State v Shana C. Robinson
Christopher Sasnett-Direct Examination by Mr. Alfaro
June 3, 2014

1 Q. Did you have any contact with that driver?

2 A. No, sir.

3 Q. Thank you. Please answer any questions Mr. Mayer
4 has for you.

5 THE COURT: Any questions for the witness?

6 MR. MAYER: Very briefly, Your Honor..

7 THE COURT: You may proceed.

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State v Shana C. Robinson
Christopher Sasnett-Cross Examination by Mr. Mayer
June 3, 2014

1 CROSS-EXAMINATION
2 BY MR. MAYER:
3 Q. Mr. Sasnett, when this BMW passed you did it get
4 back in the correct lane of travel?
5 A. Yes, sir.
6 Q. Did you see it swerve or anything like that?
7 A. No, sir.
8 Q. No further questions.
9 THE COURT: Any redirect?
10 MR. ALFARO: No, Your Honor.
11 THE COURT: Any objection to the witness being
12 excused from the State?
13 MR. ALFARO: No, Your Honor.
14 THE COURT: From the defense?
15 MR. MAYER: No, Judge.
16 THE COURT: Sir, you are excused.
17 [Whereupon, the witness is excused and exits the
18 witness stand]
19 THE COURT: You may call your next witness.
20 MR. ALFARO: The State calls Allen Myers.
21 [Whereupon, Mr. Myers comes forward]
22 [Whereupon, the witness is duly sworn by the Clerk
23 of Court]
24 CLERK OF COURT: Please be seated. State your full
25 name and spell your last name for the record.

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Christopher Sasnett-Cross Examination by Mr. Mayer
June 3, 2014

1 THE WITNESS: Allen A. Myers, M-Y-E-R-S.

2 THE COURT: You may proceed.

3 MR. ALFARO: Thank you.

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State v Shana C. Robinson
Allen Myers-Direct Examination by Mr. Alfaro
June 3, 2014

1 ALLEN MYERS,

2 Having been first duly sworn,

3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ALFARO:

6 Q. Good morning Mr. Myers. Could you tell the jury
7 where you live?

8 A. 712 Broughton Road.

9 Q. And what type of work do you do?

10 A. I'm an account developer for Coca Cola.

11 Q. And were you living on Broughton Road on November
12 10, 2011?

13 A. Yes, sir.

14 Q. And on that evening did you have the opportunity to
15 observe a silver BMW around 8:30 that evening?

16 A. Yes, sir.

17 Q. Could you tell us what you were doing when you saw
18 that car?

19 A. I was out on the front porch. My daughters were
20 leaving and I walked outside to watch them pull away as I
21 always do.

22 Q. And what happened then?

23 A. Well, as they were leaving I heard a vehicle coming
24 at a high rate of speed so I was concerned about them
25 backing out. My daughter seen it and stopped. At that

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1 time the car come by the house at a real high rate of
2 speed. So I said to myself there is no way that car will
3 make it around the curve.

4 Q. What's the speed limit on that section of Broughton
5 Road where you live?

6 A. 45.

7 Q. And how far from your house is that curve that you
8 said you didn't think they were going to make?

9 A. A quarter mile maybe.

10 Q. Did you say a quarter mile?

11 A. I think so, yes.

12 Q. And what direction was that car headed when it
13 passed your house?

14 A. It was headed towards Lyons Beach.

15 Q. And you said you heard it before you saw it?

16 A. Correct.

17 Q. How would you describe the driving at that point --
18 how it was driving?

19 A. Just extremely fast.

20 Q. And what did you do after that?

21 A. After I heard the impact I told my wife there has
22 been an accident so we jumped in the truck and drove down
23 there to see if everything was okay.

24 Q. So you were still outside when the accident
25 happened?

State v Shana C. Robinson
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1 A. Correct.

2 Q. And you heard it from your house?

3 A. Yes.

4 Q. And you said you went up there with your wife to the
5 scene of the collision?

6 A. Correct.

7 Q. And what did y'all do when you got there?

8 A. When we pulled up of course I seen the vehicles. My
9 wife went to the one car that was in the road. I kind of
10 stayed off to the side. I didn't want to get any closer.

11 Q. And you said you were outside when you heard the
12 collision. Could you tell the jury what you heard prior
13 to that collision and describe the sound of the collision
14 that you heard?

15 A. Once I lost sight of the car I heard the screeching
16 tires like brakes and then I heard a loud impact.

17 Q. And how much time would you say had passed between
18 the time the BMW went past your house and you heard the
19 crash?

20 A. A few seconds maybe.

21 Q. A few seconds?

22 A. Yes.

23 Q. When the BMW first passed your house how fast would
24 you say it was going?

25 A. I would assume it to be at least 80 if not faster.

State v Shana C. Robinson
Allen Myers-Direct Examination by Mr. Alfaro
June 3, 2014

1 Q. Thank you. Please answer any questions Mr. Mayer
2 has for you.

3 THE COURT: Any questions for the witness?

4 MR. MAYER: Just briefly, Judge.

5 THE COURT: You may proceed.
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State v Shana C. Robinson
Allen Myers-Cross-Examination by Mr. Mayer
June 3, 2014

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Mr. Myers when you were questioned during this
4 investigation you were questioned in the presence of a
5 couple of other people who were around at the time of the
6 accident, is that right?

7 A. Yes, sir.

8 Q. Y'all were kind of in a group talking about it
9 together with the officers at least at some point?

10 A. While we were filling out the statements, yes.

11 Q. Okay. Now when you say you heard a car going at a
12 high rate of speed you heard a motor, is that right?

13 A. No, I didn't hear the motor. I just heard the, I
14 guess the sound of the wind if that makes any sense to
15 you.

16 Q. Okay. The road noise of the tires?

17 A. Correct.

18 Q. Okay. So you didn't hear like a high revving or
19 acceleration?

20 A. I did not.

21 Q. Okay. And where do you live if we are approaching
22 the curve from here do you live before Lois Circle or
23 after Lois Circle?

24 A. I live on the corner of Lois Circle.

25 Q. Right by Lois Circle?

State v Shana C. Robinson
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1 A. Correct.

2 Q. Okay. Now you said you heard the screeching of
3 tires. And it sounds like -- did you assume it was the
4 locking up of brakes or how do you distinguish I guess is
5 my question between locking up of brakes and turning and
6 squealing a tire from turning?

7 A. Well there would be no way to distinguish that at
8 that point. I could just tell you that I heard the
9 tires.

10 Q. Sure. Thank you, sir.

11 THE COURT: Any redirect of the witness?

12 MR. ALFARO: No, Your Honor.

13 THE COURT: Sir, you may be excused.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

16 MR. WEST: The State calls Brittany Hartley.

17 THE COURT: Wait one second for me, please. Mr.
18 Foreman, ladies and gentlemen you all have been sitting
19 right at an hour. I'm going to give you a brief restroom
20 break. During the break please do not discuss the case
21 and please leave your notepads in your seats. We'll be
22 out about maybe five minutes. If you will go with the
23 bailiff for me please.

24 [Whereupon, the jury exits at 10:54 a.m.]

25 THE COURT: Now is there -- at sidebar you all

State v Shana C. Robinson
Allen Myers-Cross-Examination by Mr. Mayer
June 3, 2014

1 asked about sequestering witnesses. Is that an issue?

2 MR. WEST: Your Honor, it was just the defense's
3 motion.

4 MR. MAYER: I would like to sequester the
5 witnesses, Judge.

6 THE COURT: Is there any exception from the State?

7 MR. WEST: Well ---

8 THE COURT: --- victims cannot be sequestered. By
9 statute they are allowed to be in the courtroom.

10 MR. WEST: Who is that, ma'am?

11 THE COURT: I said the victim's family cannot be
12 sequestered. By statute they are entitled. They have a
13 right by State law to be in the courtroom. You can't
14 exclude them.

15 MR. WEST: Along with ---

16 THE COURT: --- and the case agent will remain.

17 MR. WEST: Trooper Poston and I believe some of the
18 defendant's family is in here. I don't...

19 THE COURT: If they are going to testify they have
20 to be sequestered.

21 MR. MAYER: I think they are on our list.

22 MR. WEST: All right. That's the only issue.

23 THE COURT: All right. We'll be at ease for five
24 minutes.

25 MR. WEST: Thank you.

State v Shana C. Robinson
Allen Myers-Cross-Examination by Mr. Mayer
June 3, 2014

1 THE COURT: You're welcome.

2 MR. MAYER: Thanks, Judge.

3 [Whereupon, court is in recess from 10:55 a.m. until
4 11:00 a.m.]

5 THE COURT: Is the State ready to proceed?

6 MR. WEST: Yes, Your Honor.

7 THE COURT: Is the defense ready to proceed?

8 MR. MAYER: Yes, Judge.

9 THE COURT: Please bring in the jury.

10 [Whereupon, the jury enters at 11:02 a.m.]

11 THE COURT: The State may proceed.

12 MR. WEST: Thank you. The State calls Brittany
13 Hartley.

14 [Whereupon, Ms. Hartley comes forward]

15 [Whereupon, the witness is duly sworn by the Clerk
16 of Court]

17 CLERK OF COURT: Please be seated. State your full
18 name and spell your last name for the record.

19 THE WITNESS: Brittany Hartley, H-A-R-T-L-E-Y.

20 THE COURT: You may proceed.

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State v Shana C. Robinson
Brittany Hartley-Direct Examination by Mr. West
June 3, 2014

1 BRITTANY HARTLEY,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WEST:
6 Q. Ms. Hartley, you're friends with this defendant
7 aren't you?
8 A. Yes, sir.
9 Q. And you didn't really want to be here?
10 A. No.
11 Q. You were subpoenaed to be here?
12 A. Yes, sir.
13 Q. Okay. Where do you live?
14 A. I live on Broughton Road.
15 Q. Who do you live with?
16 A. Shana.
17 Q. You're still living with this defendant?
18 A. Yes, sir.
19 Q. Were you living with this defendant at the time of
20 the collision?
21 A. No, sir.
22 Q. Okay. Were y'all friends at that time?
23 A. Yes, sir.
24 Q. Do you remember the events of November 10th, 2011
25 that bring us here?

State v Shana C. Robinson
Brittany Hartley-Direct Examination by Mr. West
June 3, 2014

- 1 A. I know a little bit. I don't know a lot.
- 2 Q. Okay. Is there something wrong with your memory
- 3 medically?
- 4 A. Yes, sir. I suffered a traumatic brain injury due
- 5 to loss of consciousness -- loss of memory.
- 6 Q. So your memory from the collision is sparing?
- 7 A. Yes, sir.
- 8 Q. Can you tell the jury what you do remember from that
- 9 day?
- 10 A. I remember going and asking her to take me to
- 11 school, and she said yes. And we left the house and we
- 12 went to school for me to turn in a paper. And after that
- 13 we went to Applebee's.
- 14 Q. Okay, let me stop you right there. You say you went
- 15 to school. Where is school?
- 16 A. Trident Tech.
- 17 Q. Are you still enrolled there?
- 18 A. Yes, sir.
- 19 Q. Okay. And what were you doing going to the school?
- 20 A. I was taking a test through my psychology class.
- 21 Q. Okay. And you didn't drive there because of what?
- 22 A. I don't know how to drive a stick shift.
- 23 Q. Okay. So you don't know how to drive a stick
- 24 shift. Was the BMW that Shana Robinson owned a stick
- 25 shift?

State v Shana C. Robinson
Brittany Hartley-Direct Examination by Mr. West
June 3, 2014

- 1 A. Yes, sir.
- 2 Q. Okay. So she drove you to Trident Tech?
- 3 A. Yes, sir.
- 4 Q. Did she drive you to Applebee's?
- 5 A. Yes, sir.
- 6 Q. Okay. Now while at Applebee's what time do you
- 7 think you got to Applebee's?
- 8 A. I'm not 100 percent sure.
- 9 Q. Okay. What time did you turn in your paper?
- 10 A. 4:45.
- 11 Q. Okay. So a little after 4:45 you went straight to
- 12 Applebee's?
- 13 A. Yes, sir.
- 14 Q. Okay. So you went straight to Applebee's a little
- 15 bit after 4:45. And then how long would you say you
- 16 stayed at Applebee's?
- 17 A. I would say a little bit after 7:00.
- 18 Q. Okay. So about two hours?
- 19 A. Uh Huh.
- 20 Q. Did you eat at Applebee's?
- 21 A. No.
- 22 Q. So what were you doing at Applebee's?
- 23 A. We were catching up because we didn't live together
- 24 at the time and we were just having a couple of drinks.
- 25 Q. Okay. So you were drinking together?

State v Shana C. Robinson
Brittany Hartley-Direct Examination by Mr. West
June 3, 2014

- 1 A. Yes.
- 2 Q. And this defendant was drinking with you?
- 3 A. Yes.
- 4 Q. Okay. And that's the same night as this collision
- 5 occurred?
- 6 A. Yes.
- 7 Q. Okay. So from about a little after 4:45 until 7:00
- 8 you were drinking with this defendant at Applebee's.
- 9 Where did you go once you left Applebee's?
- 10 A. I have no idea.
- 11 Q. Okay. So this is one of the areas where your
- 12 memory is lost from the collision?
- 13 A. Yes, sir.
- 14 Q. What's the next memory you have?
- 15 A. Arriving at the Scotchman.
- 16 Q. Okay. So from Applebee's to Scotchman do you know
- 17 if there was anywhere in between?
- 18 A. No, sir.
- 19 Q. Okay. What did you do at the Scotchman?
- 20 A. I have no idea.
- 21 Q. But you just remember being at the Scotchman?
- 22 A. Yes, sir. I just remember pulling up to the
- 23 Scotchman. I don't remember getting out or anything.
- 24 Q. Okay. And just to reiterate Shana Robinson, this
- 25 defendant, is the person that drove the BMW from

State v Shana C. Robinson
Brittany Hartley-Direct Examination by Mr. West
June 3, 2014

- 1 Applebee's, missing gap in time in memory to Scotchman,
2 right?
- 3 A. Yes.
- 4 Q. And from Scotchman where did you go?
- 5 A. I don't know.
- 6 Q. Okay. Are you aware of the location of the
7 collision?
- 8 A. Yes.
- 9 Q. Okay. And where is that?
- 10 A. At the curve going towards Lyons Beach.
- 11 Q. Okay. And is that off Broughton Road?
- 12 A. Yes.
- 13 Q. Okay. Is the Scotchman on Broughton Road?
- 14 A. It's at the end of Broughton Road.
- 15 Q. Okay. And the end you mean?
- 16 A. At the beginning at the red light.
- 17 Q. Okay. What intersection is that?
- 18 A. I guess that would be Highway 6.
- 19 Q. Main Street and Broughton Road?
- 20 A. Yes.
- 21 Q. In the town limits of Moncks Corner?
- 22 A. Yes.
- 23 Q. And that's in Berkeley County?
- 24 A. Yes.
- 25 Q. Okay. So in the town limits you were at the

State v Shana C. Robinson
Brittany Hartley-Direct Examination by Mr. West
June 3, 2014

1 Scotchman and Shana Robinson is driving the BMW towards
2 Lyons Beach and the collision occurs. What do you
3 remember about the actual collision?

4 A. I don't remember it.

5 Q. What is the next memory you have after the collision
6 occurred?

7 A. Waking up in the hospital five days later.

8 Q. Okay. So there is a gap in time where you just
9 can't remember anything from the collision. It's about a
10 five day gap?

11 A. Yes, sir.

12 Q. Once you woke up what injuries had you sustained
13 from the collision?

14 A. I was told I had a traumatic brain injury resulting
15 a bleeding on my brain. I had a broken femur, left femur
16 bone. I had a laceration around my right knee, and I had
17 -- my right wrist was broken.

18 Q. Okay. Now as a result of those injuries do you
19 know if this defendant was ever charged with anything
20 because of that?

21 A. No.

22 Q. Okay.

23 MR. WEST: Court's indulgence.

24 [Whereupon, Mr. West and Mr. Alfaro confer]

25 MR. WEST: That's all the State's questions at this

State v Shana C. Robinson
Brittany Hartley-Direct Examination by Mr. West
June 3, 2014

1 time.

2 THE COURT: Any questions for the witness?

3 MR. MAYER: Yes, Judge.

4 THE COURT: You may proceed.

5 MR. MAYER: Thank you.

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State v Shana C. Robinson
Brittany Hartley-Cross-Examination by Mr. Mayer
June 3, 2014

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Good morning.

4 A. Good morning.

5 Q. So you testified a moment ago that your -- is it
6 your last memory is at Applebee's?

7 A. Yes, sir.

8 Q. And then you have a flash of memory later at the
9 Scotchman?

10 A. Yes, sir.

11 Q. Okay. At Applebee's do you remember what you
12 drank?

13 A. Cranberry and vodka.

14 Q. Do you remember how many you drank?

15 A. I had three, Shana had two.

16 Q. Okay. And we're talking about a period of time
17 from approximately you said 4:45 till shortly after 7:00
18 p.m.

19 A. Yes.

20 Q. Two plus hours?

21 A. Yes.

22 Q. Do you remember Shana's demeanor at Applebee's?

23 A. She was really happy. We were just catching up on
24 old times because we didn't do that a lot.

25 Q. Okay. Was she impaired?

State v Shana C. Robinson
Brittany Hartley-Cross-Examination by Mr. Mayer
June 3, 2014

1 A. No.
2 Q. Was she drunk?
3 A. No.
4 Q. Was she intoxicated?
5 A. No.
6 Q. Okay. Would you have gotten in the car with
7 someone who was?
8 A. No.
9 Q. Okay. You don't remember going to Geronimo's Bar
10 and Grill?
11 A. No, I do not.
12 Q. Okay. Do you remember purchasing beer at the
13 Scotchman?
14 A. No, I do not.
15 Q. Okay. Do you remember going into the Scotchman?
16 A. No.
17 MR. MAYER: Court's indulgence.
18 [Whereupon, Mr. Mayer confers with his client]
19 Q. [Mr. Mayer] Brittany based on everything you know
20 about this wreck do you think this was Shana's fault?
21 A. No.
22 MR. MAYER: Thank you, Judge. No further
23 questions.
24 THE COURT: Any redirect of the witness?
25 MR. WEST: Yes, Your Honor.

State v Shana C. Robinson
Brittany Hartley-Redirect Examination by Mr. West
June 3, 2014

1 REDIRECT EXAMINATION

2 BY MR. WEST:

3 Q. It was your testimony during direct that you don't
4 remember the collision, right?

5 A. I don't.

6 Q. So you don't remember whether Shana Robinson was
7 speeding or not?

8 A. No.

9 Q. Okay. But your testimony given during the
10 questioning of Mr. Mayer was you still don't believe that
11 this was Shana's fault.

12 A. No, I do not.

13 Q. Okay. And your testimony previously was you don't
14 remember anything between Applebee's and the time of the
15 collision.

16 A. No, I do not.

17 Q. But it's your testimony today you remember exactly
18 how many drinks Shana Robinson on the night of this
19 collision occurred.

20 A. I remember what we had at Applebee's.

21 Q. Okay. Thank you. No further questions.

22 THE COURT: Any objection to the witness being
23 excused from the State?

24 MR. WEST: Nothing from the State, Your Honor.

25 THE COURT: From the defense?

State v Shana C. Robinson
Brittany Hartley-Redirect Examination by Mr. West
June 3, 2014

1 MR. MAYER: No, Judge.

2 THE COURT: Ma'am you're excused.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: You may call your next witness.

6 MR. ALFARO: The State calls Scott Lee.

7 [Whereupon, Mr. Lee comes forward]

8 [Whereupon, the witness is duly sworn by the Clerk
9 of Court]

10 CLERK OF COURT: Please be seated. State your full
11 name and spell your last name for the record.

12 THE WITNESS: It's Chester Scott Lee, Jr. Last
13 name is Lee, L-E-E.

14 THE COURT: You may proceed.

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State v Shana C. Robinson
Scott Lee-Direct Examination by Mr. Alfaro
June 3, 2014

1 CHESTER SCOTT LEE,
2 Having been first duly sworn,
3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ALFARO:

6 Q. Good morning Mr. Lee.

7 A. Good morning.

8 Q. Could you tell the jury where you work?

9 A. Moncks Corner Rural Fire Department.

10 Q. And how long have you been with Moncks Corner Rural
11 Fire Department?

12 A. I've been with them approximately 40 years.

13 Q. And how long have you been Chief?

14 A. Since '95.

15 Q. And can you describe for us -- tell us a little bit
16 about your department and how its set up and how many
17 people you have working for you.

18 A. I'm the only paid employee and then I have 29
19 volunteers.

20 Q. And of those volunteers what positions do they hold?

21 A. We have -- I'm the Chief, I have Captains, Engineers
22 that drive the trucks, EMT's, First Responders, and just
23 regular fire fighters.

24 Q. And is it a normal part of your department's
25 responsibilities to respond to vehicle collisions that

State v Shana C. Robinson
Scott Lee-Direct Examination by Mr. Alfaro.
June 3, 2014

1 occur in Moncks Corner?

2 A. Yes, sir.

3 Q. And when you respond to such an incident what do
4 y'all do at the scene?

5 A. Initially when I get to the scene or whoever the
6 first fireman is there he does incident stabilization,
7 which is we try to control the area the best we can.
8 Most of the time there is a lot of public there.

9 We have to do a 360 of the car; we have to walk
10 around the cars completely and make sure there is no
11 leaks, there is no fire, and what we need to do exactly.

12 Then I or whoever the commander is deploys the
13 units. The Captains will take a car or whatever we're
14 working on and if they need to do extrications they'll go
15 ahead and start that.

16 Q. Were you working on the evening of November 10th,
17 2011?

18 A. Yes sir, probably. May I look at my report?

19 Q. Sure.

20 [Whereupon, the witness reviews documents]

21 A. Yes, sir.

22 Q. And on that date did you have the opportunity to
23 respond to a two car collision on Broughton Road at
24 approximately 8:48 p.m.?

25 A. Yes, sir.

State v Shana C. Robinson
Scott Lee-Direct Examination by Mr. Alfaro
June 3, 2014

1 Q. And what do you recall about the collision?

2 A. When I arrived on scene there was already a medic
3 unit was on scene. There was two cars; a BMW and a
4 Saturn.

5 Q. And do you recall how many occupants were in the
6 BMW?

7 A. Two occupants in the BMW and one in the Saturn.

8 Q. And can you describe what those vehicles looked
9 like.

10 A. Both of them had heavy damage. The BMW was
11 perpendicular to the road. The passenger was laid over
12 on the driver. The Saturn was in the right hand lane
13 pointing toward Lyons Beach.

14 Q. And so the Saturn was the only one of those that was
15 on the roadway?

16 A. Yes, sir.

17 Q. And regarding the BMW with the two occupants what
18 actions were taken at the scene?

19 A. I told my people we needed to remove the patients.
20 The public had already opened the doors or either the
21 doors were open I'm not sure; they were open when I got
22 there.

23 I told them to remove those patients and transfer
24 them to EMS and then we had to do extrication on the
25 other car.

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1 Q. And the other car being the Saturn?

2 A. On the Saturn.

3 Q. And what was done with the Saturn?

4 A. We had to do a -- let me go back to my report. We
5 had to remove the roof to get her out. Do you want me to
6 explain the procedure?

7 Q. If you could just tell us -- you said you had to
8 extract the driver of the Saturn. Just tell us how that
9 is normally done.

10 A. We had to remove the roof. We had to cut all the A
11 posts and the B posts and then we have to lay down the
12 driver's side, which we physically just cut the posts on
13 the car and lay the whole side of the car down.

14 The dash and the steering wheel and all that was
15 pressed up into her so we had to put a ram on the B post.
16 When you cut it you leave about that much [indicates] of
17 it on the bottom of the frame of the car.

18 You frame it up and the ram pushes the -- rolls the
19 dash completely off the person so you can get them out.
20 Then we dropped the seat down and slid a back board up
21 underneath her so we could extricate her out.

22 Q. And so after you got on the scene you discovered
23 that there were three patients essentially ---

24 A. --- yes, sir ---

25 Q. --- two occupants of the BMW and one of the Saturn.

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1 Were any of those individuals air lifted from the scene?

2 A. There was I believe two of them air lifted. We had
3 -- initially the paramedics decide whether people need to
4 go by air or whether they need to go by ground and then I
5 order for the helicopters.

6 And then I decide where they are going to land. I
7 had other departments come in and land the helicopters
8 since all my people were at our scene.

9 After they leave -- after the patients leave my
10 scene they're out of my control; they belong to med
11 control then. So it's up to the paramedics whether they
12 continue to put them on the air craft or whether they
13 decide they need to go by ambulance.

14 Q. You said it's your responsibility to determine the
15 landing zone.

16 A. Correct.

17 Q. And what landing zones were used ---

18 A. --- we picked Berkeley County airport for one and
19 Roper Berkeley for the other.

20 Q. And are they transported to those -- are the
21 patients transported to those landing zones by your
22 people or by EMS?

23 A. Normally by EMS but the people -- what we do if the
24 paramedics ask for additional drivers or EMT's then my
25 medics will get on that ambulance with them. But both of

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1 the people -- both the -- three victims left the scene;
2 two went by helicopter and I'm not sure how the other one
3 went. But we provided them with medics and drivers.

4 Q. Thank you. Please answer any questions the defense
5 has for you.

6 THE COURT: You may proceed.

7 MR. MAYER: Thank you, Judge.

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State v Shana C. Robinson
Scott Lee-Cross-Examination by Mr. Mayer
June 3, 2014

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Good morning Mr. Lee.

4 A. Good morning.

5 Q. You testified a moment ago that the doors on this
6 BMW were open when you got there?

7 A. Yes, sir.

8 Q. Which doors were open?

9 A. Both of them to my knowledge. Now there was a lot
10 of people there trying to help.

11 Q. Sure. Those were the front doors?

12 A. On the what?

13 Q. Well on the BMW. It was a four door car was it not?

14 A. I'm not sure.

15 Q. Okay. But when you say both of them there was a
16 door open on either side?

17 A. Right. There was a door open on each side.

18 Q. Okay. Were you able to get okay access to those
19 people in that car?

20 A. Yes, sir. We did not have to do any extrication on
21 the BMW.

22 Q. Okay. Now in the car -- in the other car in the
23 Saturn was there a dog in that car?

24 A. There was. I didn't know at first there was a dog
25 in the car until the Coroner came there and asked me to

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1 send my guys over there to extricate the dog out of the
2 car.

3 Q. Okay. And where did you pull the dog from?

4 A. Sir?

5 Q. Where did you pull the dog out from?

6 A. The boys that I sent to do the extrication they said
7 they got him out of the passenger floorboard.

8 Q. Okay. That's up front.

9 A. Yes, sir.

10 MR. MAYER: No further questions.

11 THE COURT: Any redirect?

12 MR. ALFARO: No, Your Honor.

13 THE COURT: Any objection to the witness being
14 excused from the State?

15 MR. ALFARO: No, Your Honor.

16 THE COURT: From the defense?

17 MR. MAYER: No, Judge.

18 THE COURT: Sir, you're excused.

19 THE COURT: Call your next witness.

20 MR. WEST: Thank you, Your Honor. The State calls
21 Chelsea Arrowood.

22 [Whereupon, Ms. Arrowood comes forward]

23 [Whereupon, the witness is duly sworn by the Clerk
24 of Court]

25 CLERK OF COURT: State your full name and spell

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1 your last name for the record.

2 THE WITNESS: Chelsea Jean Arrowood. My last name
3 is A-R-R-O-W-O-O-D.

4 THE COURT: You may proceed.

5 MR. WEST: Thank you, Your Honor.

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Chelsea Arrowood-Direct Examination by Mr. West
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1 CHELSEA ARROWOOD,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WEST:
6 Q. Good morning Ms. Arrowood. How are you today?
7 A. Nervous.
8 Q. Understandably. Can you tell the jury a little bit
9 about what you do for a living?
10 A. I'm a paramedic. Currently I'm a supervisor at
11 Carolina Med Care, which is a private service. I've been
12 doing it for almost ten years now.
13 Q. Can you describe a little bit of your training and
14 experience for the jury?
15 A. I've been -- I went to Trident Tech and got my
16 degree; an associate in Allied Health Sciences with an
17 emphasis in Paramedicine.
18 I was a paramedic at the county and did 911 for
19 about seven years until I transferred over into the
20 private service.
21 Q. And where were you working on November 10th of 2011?
22 A. In Moncks Corner at Medic 3 station.
23 Q. Okay. Was that for Berkeley County EMS?
24 A. Yes, sir.
25 Q. Okay. Now do you remember responding to a call on

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1 Broughton Road on November 10, 2011?

2 A. Yes, sir.

3 Q. Okay. I want you to describe for the jury the
4 process of receiving a call and being called out to a
5 scene?

6 A. Me and my partner were sitting at the station that
7 day. I know it was in the evening. We get toned out for
8 a call for an M-V-A with possible entrapment and heavy
9 damage. Me and my ---

10 Q. --- let me stop you right there, I'm sorry. What is
11 an M-V-A?

12 A. A motor vehicle accident.

13 Q. Okay. Sorry. Continue..

14 A. We went in route and while we were in route dispatch
15 advised us that we had another medic unit coming to us
16 and we operate on two ends; a north end radio and a south
17 end radio just to cut down some of the traffic.

18 The other medic unit that was coming to us was medic
19 10. They operate on the south end and we wanted us to
20 switch over to the south end so we can hear everything
21 that was going on.

22 At this point my partner was driving. I was in the
23 passenger seat so I was on the radio. We called in to go
24 ahead and ask them to lift Omni flight because they were
25 getting a lot of details toward we might be needing the

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1 helicopter. So we went ahead and lifted Omni flight and
2 just advised them that we would cancel then when we got
3 in route -- or when we got on scene if we didn't need
4 them we would cancel them.

5 Q. When you -- I'm sorry, did you have something else?

6 A. No, I was just going to continue; sorry.

7 Q. Well, let me ask you a question first. When you got
8 called out to the scene could you describe where medic 3
9 station was and where you were coming from?

10 A. Medic 3 station is actually very close to here. I
11 haven't been over this way in about three years. I know
12 we were heading -- the call was off of Broughton Road,
13 which is like right here [indicates] as well; the main
14 road over here [indicates]. So it's like three miles.
15 My mileage, I think, should be in my report; I'm not sure
16 the exact miles.

17 Q. But you responded to the scene and what's the first
18 thing you saw when you got on scene?

19 A. When me and Monty got on scene we noticed two
20 vehicles with very heavy front end damage. One was in
21 the roadway and one was down an embankment.

22 Q. Describe the vehicles for the jury.

23 A. There was a lot of debris in the roadway. I got out
24 to try to start assessing the scene while my partner --
25 it was very dark out and we have scene lights on the

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1 ambulances that allow us to light up the scene so we can
2 see a little bit more. However there was a lot of debris
3 and we were unable to get our ambulance as close to the
4 accident as we wanted to so we could have more light
5 because when you get too close to a lot of debris like
6 that you risk puncturing a tire or something like that
7 and then you can't get your ambulance out. So you're
8 kind of useless if you can't get your patient out.

9 Q. Who was on scene when you arrived?

10 A. When we arrived it was just me and Monty at first
11 and a lot of bystanders.

12 Q. Who is Monty?

13 A. He was my partner that day. He's also a paramedic.

14 Q. Do you know his last name?

15 A. Jenkins.

16 Q. Okay. So Monty Jenkins is the driver of the
17 ambulance you are in?

18 A. Yes.

19 Q. You arrive on scene and you see two cars?

20 A. Uh Huh.

21 Q. Okay. Can you describe which car you went to
22 first?

23 A. I -- since I was in the passenger seat how we parked
24 Monty was in the middle of trying to get equipment and
25 move the truck close. I got out and went to the vehicle

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1 that was in the roadway that had heavy front end damage
2 and I started assessing that patient in that vehicle. Do
3 I describe what I was assessing or?

4 Q. Describe the car that was in the roadway.

5 A. Like I said it was very dark but I remember there
6 was just a lot of front end heavy damage. The patient
7 was pretty entrapped, which takes a lot of force.

8 Q. Okay. Did you end up treating that patient?

9 A. No, sir.

10 Q. Okay. Which car did you end of going to after
11 that?

12 A. After -- I did a little bit of treatment because at
13 this point we are still triaging the scene. So we
14 initially started a little bit of treatment as far as --
15 a lady had come up to us like I said there were a lot of
16 bystanders.

17 She identified herself as a nurse and we put a C-
18 collar on her and I showed the nurse how to like hold C-
19 spine on the patient.

20 Q. I'm going to stop you right there. You said a
21 couple of medical terms and I just want to be clear for
22 the jury. What is a C-collar?

23 A. A C-collar is a device that you put around the neck
24 to prevent any immobilization of -- to prevent any
25 further damage to the spinal cord if there is any.

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1 Q. And what is a C-spine?

2 A. A C-spine is the same thing. It's just what you are
3 maintaining -- you want to keep it in an inline neutral
4 position just to prevent any further damage to the
5 patient's spinal cord.

6 Q. Okay. So after you did that what did you do next?

7 A. I did a -- what we do for triage -- when we triage a
8 patient you're going to access a mental status, you're
9 going to access radial pulses and respirations.

10 She wasn't responding to us. She had absent radial
11 pulses, which means her blood pressure was real low and
12 her respiratory rate was really rapid. So we knew she
13 was really critical but there was nothing we could do
14 because she was so entrapped.

15 My partner Monty had come up to me with some
16 equipment and I had given him the status of our patient
17 -- this patient and was like we need to go down the
18 embankment to start assessing to see what we have down
19 there. So at this point we don't even know how many
20 patients we have down the embankment yet.

21 Q. So once you went to the car then what did you do?

22 A. Monty went down to the car first. He went down to
23 the embankment and he hollered up to me telling me that
24 we had two more patients that were both critical and that
25 we probably needed another helicopter. So as I was

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1 walking back to the truck, we have portable walkies, I
2 called into dispatch to let them know we had three
3 critical patients.

4 We were probably going to need a third medic unit
5 and another helicopter and have that helicopter go ahead
6 and land at the Roper Berkeley airport or Berkeley County
7 airport over here.

8 At that point I noticed that 701 got on the scene.
9 And the fire department is very good at coordinating that
10 kind of stuff so I gave him turnover and he starting
11 coordinating the L-Z's for us. And then I went and got
12 some ---

13 Q. --- sorry, a lot of medical terms. What is a 701?

14 A. He is the Chief for Moncks Corner Rural Fire
15 Department.

16 Q. Okay. So when you said 701 ---

17 A. --- that's just his number.

18 Q. Okay. So 701 got on the scene which means the fire
19 department showed up.

20 A. Uh Huh.

21 Q. Okay. Fire department showed up and you said
22 something about L-Z's.

23 A. That's the landing zone where the helicopters are
24 going to be coordinated to come land. So we know where
25 we are meeting the flight crews at.

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1 Q. Okay. So you went down to the car down the
2 embankment.

3 A. Uh Huh.

4 Q. And what did you -- were you able to notice anything
5 about who the driver was or who was in the car?

6 A. I started bringing some equipment back for Monty.
7 When I was bringing him equipment down he started rapidly
8 extricating one patient.

9 He started telling me that the passenger of the
10 vehicle was on top of the driver of the vehicle and he
11 had to rapidly extricate the patient just so we were able
12 to still kind of triage both patients because we couldn't
13 get to the driver of the vehicle without the passenger
14 out. And so he rapidly extricated her and then I started
15 assessing the driver of the vehicle.

16 Q. Okay. And eventually you got the driver out of the
17 vehicle.

18 A. Yes, sir.

19 Q. And once you got the driver out of the vehicle did
20 you transport her anywhere?

21 A. We transported her to the L-Z.

22 Q. Okay. The landing zone?

23 A. Yes, sir.

24 Q. Okay. Where was that?

25 A. Our landing zone was at Roper Berkeley ER in Moncks

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1 Corner.

2 Q. So during the transfer were you on the ambulance?

3 A. Yes, sir.

4 Q. Okay. Were you in the back with the defendant?

5 A. Yes, sir.

6 Q. During this transport is there any sort of
7 medications that would be administered to the defendant
8 during the transport?

9 A. No, sir. When I went -- I reread my report and the
10 only thing I administered was normal saline, which is not
11 a medication it's just fluids.

12 Q. Okay. So fluids as in an I-V?

13 A. Yes, sir.

14 Q. If you were to administer medications how would you
15 do that?

16 A. Like for this call or just in general?

17 Q. Well, would you have to get approval from anybody
18 before you do that?

19 A. Depending on the drug I would. If it was a narcotic
20 we would have to call into a doctor and give him a report
21 and he would let us know if we're allowed to give the
22 patient medication.

23 But in this situation I was only in the back of the
24 medic unit with the patient for about three minutes and I
25 wouldn't have had any time to do any of that anyways. We

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1 were too busy trying to keep her blood pressure up and
2 narcotics are known for dropping a blood pressure so we
3 wouldn't have administered it anyways or even call for
4 a...

5 Q. Your testimony is that no medications were given
6 during the transport in the ambulance?

7 A. No, sir.

8 Q. Okay. And then you turned your patient, this
9 defendant over to who?

10 A. The flight crew from MEDUCARE.

11 Q. And is that the end of your involvement at that
12 point in time?

13 A. Yes, sir.

14 Q. Okay. Did you do anything else regarding the
15 transport between ambulance and helicopter that would
16 have involved any sort of medications?

17 A. No, sir.

18 THE COURT: No further questions from the State at
19 this time.

20 THE COURT: Any cross-examination of the witness?

21 MR. MAYER: Briefly, Your Honor.

22 THE COURT: You may proceed.
23
24
25

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1 CROSS-EXAMINATION
2 BY MR. MAYER:
3 Q. Good morning, Ms. Arrowood.
4 A. Hello, how are you.
5 Q. I'm Aaron Mayer, I represent Shana. You said you
6 went to the Saturn initially.
7 A. Went to where?
8 Q. The Saturn car -- the one that was on the road?
9 A. Oh, I didn't know what kind of make and model it
10 was. Yes sir, I went to the one that was in the roadway.
11 Q. Okay. And you said you did some brief triage on
12 Ms. Zoll.
13 A. Yes, sir.
14 Q. Okay. Did you notice whether she had a seatbelt
15 on?
16 A. No, sir.
17 Q. Okay. You didn't notice?
18 A. No, sir.
19 Q. Okay. And then you went over to the BMW and you
20 worked on Shana?
21 A. Yes, sir.
22 Q. You did go to the BMW.
23 A. I went to the vehicle down the embankment.
24 Q. Okay. And you worked on Shana?
25 A. Yes, sir. She was my patient out of the three.

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1 Q. And how long did you work on her for?

2 A. I know she was in my care for a while because she
3 was the last patient to leave the scene. So I managed
4 her for I want to say at least 20 to 30 minutes. My
5 report should have the exact time. But I know we were on
6 scene for a long time.

7 Q. What was her condition?

8 MR. WEST: Objection, Your Honor, 403 ---

9 THE COURT: --- basis? Please approach.

10 [Whereupon, an off the record bench conference is
11 held]

12 THE COURT: Sustained. Proceed. Rephrase.

13 Q. [Mr. Mayer] So you testified a moment ago that you
14 worked on Shana for 20 to 30 minutes approximately.

15 A. Yes, sir.

16 Q. Did you testify that you didn't give her anything
17 for pain?

18 A. I did not.

19 Q. So your testimony earlier was that you did not give
20 her anything for pain?

21 A. I did not give her anything for pain.

22 Q. Okay.

23 A. As far as -- I mean the only thing I administered
24 was normal saline, which that does not -- is not for
25 pain. It's just to keep her blood pressure stable

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1 because it was unstable.

2 Q. Okay. Was she conscious at the time that you
3 talked with her?

4 A. She was conscious.

5 Q. Okay. Was she with it?

6 A. She was -- I didn't get personal with her but she
7 was screaming a lot about having a lot of leg pain. She
8 kept asking about her friend a lot.

9 And I was just trying to keep her calm and I was
10 trying to work on her at the same time because she was
11 very critical at the time. And I was just trying to get
12 her off the scene.

13 Q. So you've got a patient screaming about leg pain.

14 A. Uh Huh.

15 Q. But why didn't you give her anything?

16 A. Her blood pressure was very unstable. And I kept
17 trying to keep it around 90. I was giving her a normal
18 saline bolus, which would bring her pressure up.

19 And narcotics will drop her pressure and that's --
20 we can't be giving medicine that is also going to drop
21 the pressure when I'm already fighting to keep her
22 pressure up.

23 Q. Is there pain medicine out there that is not
24 narcotic that you could give her?

25 A. Not that I had on me at the time, no sir.

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1 Q. But if there were you wouldn't have had to get
2 approval for that?

3 A. I would.

4 Q. I thought you said you only ---

5 A. --- what do you mean like Tylenol or Aspirin?

6 Q. Well you testified on direct that you only had to
7 get approval for narcotics.

8 A. Which is -- we carry Fentanyl. We had just starting
9 carrying Fentanyl about this time. And as far as I
10 remember correctly -- like I said I haven't worked there
11 in about three years I think or maybe two years. I'm
12 pretty sure our protocol for Fentanyl was still the blood
13 pressure had to be a certain level.

14 We also carry Morphine, which I know for a fact we
15 carried that the whole time I worked there. The blood
16 pressure had to be at a certain amount for us to
17 administer it even with med control.

18 Q. What amount was that?

19 A. At least 100 with med control.

20 Q. Okay.

21 A. And her blood pressure was very unstable. Every
22 time I could get it to 90, which is where we would -- is
23 the ideal range we would want to keep a patient's blood
24 pressure when there is trauma involved. Every time I cut
25 back the fluid once I got her pressure to about 90 it

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1 would drop back down.

2 Q. So you testified earlier that you were kind in
3 charge of her care for that period of time.

4 A. Yes, sir.

5 Q. But you let someone else work on her during that
6 period of time didn't you?

7 A. What do you mean, like when we were in the back of
8 the medic unit?

9 Q. I don't know exactly when but sometime during that
10 period of time you had someone else working on her.

11 A. When we were in the back of the medic unit there
12 were three medics in the back and we were all kind of a
13 team back there. I know I was only able to get one line
14 on scene with -- an unstable blood pressure ideally you
15 want to get two.

16 So I know we were trying to attempt a second line.
17 We had another person who was back there with me was
18 putting her on the monitor and doing all that while I was
19 on the radio.

20 I was sitting at her head at the time on the radio
21 trying to talk to the flight crew letting them know what
22 was going on so when we got on the scene she could fly
23 out quicker.

24 Q. Was one of the people you let work on her was
25 someone named Devin?

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1 A. There -- there was a lot of bystanders and
2 firefighters there but they don't have to wear uniforms
3 or badges. I don't know if I'm allowed to think that
4 there was but I can't say for sure.

5 Q. Okay. Is it possible that someone administered a
6 pain medicine to her that you weren't aware of at the
7 time?

8 A. I would pretty close with her the whole time. The
9 only time I mean...

10 Q. You were away from her at certain times right?

11 A. I'm sorry, say that again.

12 Q. You were pulled away from her at certain times.

13 A. Not -- I -- because there were a lot of bystanders I
14 did have to like -- I was still at her side and I would
15 have to assist like the first responders or bystanders if
16 I needed a line spiked or stuff like that. So I wasn't
17 constantly looking at her but it was only a few seconds.

18 Q. Okay. So from the time that you left the car that
19 was on the road where you did initial triage till the
20 time that you went to the car that was in the ditch after
21 you got to the car in the ditch is it your testimony that
22 you didn't leave Shana's side until she was taken away?

23 A. When she was in the car we started triaging her.

24 The only time -- I walked around to the other side of the
25 vehicle, which that only takes like three seconds maybe

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1 to help stabilize her leg that was -- I don't know --
2 grossly angulated; I don't know if I'm allowed to say
3 that and then I walked back around and started talking to
4 her.

5 But at that time there was -- I mean it was really
6 dark down the embankment. I know there was two -- I'm
7 pretty sure there were two firefighters down there with
8 me and we had some bystanders also helping me try to get
9 her up the embankment.

10 Q. And you asked her questions to orient her right, and
11 figure out how her mind was?

12 A. Yes, sir.

13 Q. What questions did you ask?

14 A. We normally ask them what year it is. Do you know
15 what month it is; stuff like that.

16 Q. Did she get those right?

17 A. She should have because I think I put in my report
18 that she was alert and -- times three.

19 THE COURT REPORTER: I'm sorry, repeat what you
20 just said.

21 A. Alert and oriented times three. I'm pretty sure I
22 put in my report.

23 Q. [Mr. Mayer] What's alert and oriented times three
24 mean?

25 A. That means she was able to tell me her name. I

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1 think I asked her maybe something like what is going on
2 like maybe her friend's name because she kept talking
3 about her friend because she was a little hysterical.

4 So I'm not going to be able to ask her -- typically
5 you're going to ask like the President, the year, the
6 month so I probably asked her the month, her friend's
7 name just kind of ---

8 Q. --- let me just pause you there. You said you
9 probably asked her. Was this written down somewhere or
10 are you relying on your memory from two and half years
11 ago?

12 A. Typically in a report we're going put alert and
13 oriented times three. That was my opinion at the time.
14 Certain situations you're going to ask different
15 questions to get that answer.

16 So typically you're going to ask the President, the
17 month, the year but she was very hysterical about her leg
18 pain wanting to know where her friend was I'm going to
19 kind of go -- if she seems like she is able to carry
20 somewhat of a conversation on with me and answer
21 questions appropriately then I'm still going to -- but I
22 don't know specifically what questions I asked her.

23 Q. So you may or may not have asked her who the
24 President was?

25 A. Yes, sir.

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1 Q. Okay. But whatever questions you did ask her she
2 answered appropriately?

3 A. Yes, sir.

4 Q. Okay. It is fair to say she didn't give you any
5 reason to think that she was intoxicated?

6 A. No, sir.

7 Q. That's fair to say?

8 A. Yes, sir. It wasn't in my report so. It's
9 something that we would document.

10 Q. You would have documented it if she was impaired?

11 A. If we thought so, yes sir.

12 Q. Right, if you thought so. But you didn't think so?

13 A. Not at the time. There was a lot going on and my
14 main focus was her.

15 Q. I'm not asking you to apologize for it. I'm just
16 asking you at the time did you think she was impaired?

17 A. It's not in my report that I thought that.

18 Q. So the answer is no.

19 A. No, sir.

20 Q. Okay.

21 MR. MAYER: No further questions.

22 THE COURT: Any redirect?

23 MR. WEST: Nothing from the State, Your Honor.

24 THE COURT: Any objection to the witness being
25 excused from the State?

State v Shana C. Robinson
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1 MR. WEST: No, Your Honor.

2 THE COURT: From the defense?

3 MR. MAYER: No, Judge.

4 THE COURT: You're excused ma'am.

5 [Whereupon, the witness is excused and exits the
6 witness stand]

7 THE COURT: You may call your next witness.

8 MR. ALFARO: The State calls Monty Jenkins.

9 [Whereupon, Mr. Jenkins comes forward]

10 [Whereupon, the witness is duly sworn by the Clerk
11 of Court].

12 CLERK OF COURT: Please be seated. State your full
13 name and spell your last name for the record.

14 THE WITNESS: Montorony Jenkins, J-E-N-K-I-N-S.

15 THE COURT: Could you spell your first name for the
16 court reporter?

17 THE WITNESS: M-O-N-T-O-R-O-N-Y.

18 THE COURT: Thank you. You may proceed.

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State v Shana C. Robinson
Montorony Jenkins-Direct Examination by Mr. Alfaro
June 3, 2014

1 MONTORONY JENKINS,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. ALFARO:
6 Q. Mr. Jenkins, could you tell the jury where you work?
7 A. Currently I work two places, Berkeley County EMS and
8 Trident Technical College.
9 Q. And what do you do for EMS?
10 A. EMS I am a senior crew chief also known as a station
11 supervisor responsible for the upkeep and the crews at
12 the station that are there for that month.
13 Q. And what do you do for Trident Tech?
14 A. Trident Tech I am a paramedic instructor.
15 Q. And could you describe for the jury what your duties
16 are related to your EMS position?
17 A. My EMS position on a daily basis we would come in
18 and check off our truck. We are responsible for patient
19 care, responding to 911 calls on a regular basis as
20 people call in.
21 Q. And what type of educational training and background
22 do you have in that position?
23 A. My education for EMS I obtained a two year degree at
24 Trident Technical College as an Associate's degree. It
25 certified me as a paramedic.

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Montorony Jenkins-Direct Examination by Mr. Alfaro
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1 Q. And were you working in that capacity for Berkeley
2 County EMS on November 10, 2011?

3 A. Yes, sir.

4 Q. And on that date did you have the opportunity to
5 respond to a vehicle collision on Broughton Road at
6 approximately 8:50 p.m.?

7 A. Yes, sir.

8 Q. And can you describe what you saw when you got to
9 the scene?

10 A. Upon arriving on the scene we noticed two vehicles;
11 one remaining in the roadway facing the beach side. We
12 noticed another vehicle off to the left side of the road
13 as you're going into Bonneau Beach -- excuse me, Lyons
14 Beach. As you're going into Lyons Beach the vehicle was
15 on the left side of the roadway in the grass portion.

16 Q. And do you recall how many people were in that
17 vehicle?

18 A. Which vehicle?

19 Q. The one that was -- the one that was in the road
20 first.

21 A. In the road I do believe there was one patient and a
22 dog that was in that vehicle.

23 Q. And what about the other one?

24 A. In the vehicle there were two occupants.

25 Q. And do you recall how they were situated in the car?

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1 A. The driver was seated upright and the passenger I
2 noted in my report that she was slumped over the driver
3 to her left side.

4 Q. And did you have the opportunity to examine or treat
5 both of those people?

6 A. Initially my care was primarily directed towards the
7 passenger of the vehicle. It was me and my partner on
8 the truck and we split the resources me going to one
9 patient and she to another.

10 So primarily my care went to the passenger until the
11 driver could be extricated and the passenger was turned
12 over to a flight crew.

13 Q. And the passenger was that Brittany?

14 A. Yes, sir.

15 Q. And was the defendant, Shana Robinson the driver?

16 A. Yes, sir.

17 Q. And when you interacted with the defendant was she
18 conscious?

19 A. The defendant I do not recall her mental status. I
20 do believe she was conscious but I don't know if she was
21 alert and oriented.

22 Q. And was she treated at the scene or was she
23 transported from the scene?

24 A. Both patients their care primarily began at the
25 scene. I do believe that they both sustained what we

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Montorony Jenkins-Direct Examination by Mr. Alfaro
June 3, 2014

1 would consider the pre hospital setting immediate life
2 threats, which could be some type of bleed from an
3 extremity. So I believed they both needed care rendered
4 to immediately. So the treatment was rendered at the
5 scene as well as in route to the landing zone.

6 Q. And did you administer any medications to Shana
7 Robinson?

8 A. Shana Robinson? Not that I recall.

9 Q. And did you -- were you present when she was
10 transported from the scene to the Medevac?

11 A. Yes, sir.

12 Q. And where were you at in the ambulance when she was
13 transported?

14 A. I do believe that I assisted with managing bandaging
15 injuries. She didn't require any advance care as far as
16 -- she required cardiac monitoring, which is considered
17 advance care. But most of her injuries were managed with
18 basic remedies bandaging, IV access; things of that
19 nature.

20 . . . So we assisted with things -- I assisted with those
21 things the IV access, bandaging, managing bleeds and
22 things of that nature.

23 Q. And when you say IV access. Is that administering
24 medication through an IV or what is given through the IV?

25 A. IV access is obtained in case medication is needing

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1 to be administered. She was administered fluids. Upon
2 arriving to the landing zone they did initiate additional
3 IV access. That was something that they did.

4 We did make attempts at those not necessarily to
5 give medication but maybe some fluids to help stabilize
6 her blood pressure.

7 Q. And if you were administering fluids to stabilize
8 blood pressure what type of fluids would those be?

9 A. It would be normal saline. It's like a water salt
10 combination. It's mixed to a certain concentration.

11 Q. But you didn't administer any medications to her?

12 A. No, sir.

13 Q. And if any was done it would have been done by the
14 flight crew people and they would have to testify to
15 that.

16 A. It would have done by a flight crew and they would
17 have to testify to that or if Arrowood administered any
18 fluids she would have that in her report as well.

19 Q. Thank you. Please answer any questions defense
20 counsel may have.

21 THE COURT: Questions for the witness?

22 MR. MAYER: Just briefly, Judge.

23 THE COURT: You may proceed.

24

25

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1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Good morning Mr. Jenkins.

4 A. Good morning.

5 Q. So who was in charge at the scene there between you
6 and Ms. Arrowood? Were y'all kind of on the same level
7 or were you her supervisor?

8 A. At that time Arrowood was my superior. I came in
9 after her she would be designated as the crew chief.

10 Q. Okay. And so when you were working with her did
11 you also -- you worked on both patients from the car in
12 the ditch right?

13 A. Initially primarily my care went towards the
14 passenger, which is Brittany. I did leave to take
15 Brittany to the landing zone or to the flight crew, came
16 back and assisted Arrowood with the care that was
17 rendered to her.

18 Q. Pretty chaotic scene?

19 A. Oh very, very.

20 Q. Is it possible that something didn't get written
21 down right in a scene like that?

22 A. That I can't say as far as Arrowood and her details.
23 I do believe she wrote the report for the defendant.
24 With the report that I wrote I do believe my report is
25 fairly accurate.

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1 Q. Okay. Describe the Fentanyl drug if you will.

2 A. Fentanyl drug is a drug that is given as an
3 analgesic for pain relief.

4 Q. Is that a narcotic?

5 A. It is.

6 Q. What were the criteria for giving that back in
7 November of 2011?

8 A. Back in 2011 is pretty much the same as it is now.
9 We gauge a patient's pain based on presentation. You
10 look at grimace; things of that nature.

11 And basically what they tell you we ask for a one to
12 ten scale usually we think from one to five we might give
13 something orally. Five and up we think about giving
14 something intravenously; i.e. Fentanyl.

15 Q. A person screaming in pain where does that put them
16 on a pain scale?

17 A. You kind of believe them if they tell you it is a
18 ten.

19 Q. Okay.

20 A. Again, it's their assumption of what their pain is.
21 If they say it's an eight or a ten we believe them;
22 especially if they are screaming in pain.

23 Q. Would you be inclined to help them ease that pain?

24 A. You would.

25 Q. Okay. And in the aftermath of helping them ease

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1 that pain that all may or may not get put into a report
2 correct? I know it's supposed to.

3 A. That's something that definitely goes into a report.
4 You do not forget to put the fact that you gave Fentanyl
5 in your report. And the reason being is because there is
6 a process behind it.

7 Fentanyl is a drug that is a narcotic. In the state
8 of South Carolina you cannot give a narcotic as an EMT or
9 paramedic without online med control; i.e. we pick up the
10 radio or phone, call the med control physician, you ask
11 for a request, that request would then be granted or
12 declined by that online med control physician.

13 After that drug has been administered there is an
14 additional step where you have to fill out a weigh
15 [phonetic] sheet that says hey, I gave this drug, this
16 doctor ordered it, and you get a weigh [phonetic] sheet
17 signed by a witness saying I gave this and this was
18 wasted or thrown away. So you typically do not forget to
19 put a narcotic administration in your report.

20 Q. That's if someone is complying with the procedures.

21 A. That is a fair statement but at the same time it's a
22 lengthy process. Again, fair enough -- if someone is
23 complying with their procedures it ---

24 Q. --- I don't mean to belabor it but in terms of the
25 physical impediment if you will to grabbing the medicine

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1 and giving it to the patient there is no one there saying
2 no, wait. I mean if someone is in agony and you're
3 working as an EMT physically grab a Fentanyl, inject it
4 and then figure out the other stuff later right, I
5 mean....

6 A. I don't know if I can follow you on that. Giving a
7 narcotic is not something that you pick up off the shelf
8 and just administer it. There is a whole process behind
9 it.

10 You need to know the patient's status. You need to
11 know if your patient is hemodynamically stable; their
12 blood pressure, vital signs, things of that nature,
13 respiratory rate. It was depress your respiration. So
14 if they are not breathing fast enough we certainly don't
15 want to give them something that is going to slow it down
16 and impede that further.

17 And again, you have to access the patient, you have
18 to call your online med control physician and obtain that
19 order. So it's not something that you just pick up and
20 give.

21 Q. Okay. So if someone -- if an EMT asks someone, a
22 patient if they are allergic to pain medicine do you
23 think that indicates the EMT is considering giving them
24 pain medicine?

25 A. No, it is not. If you ask a patient if they are

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1 allergic to a medication and they tell you that they are
2 that is in no way related to administering the
3 medication; if I understand your question.

4 Q. So what you're saying as I understand it then would
5 be you might ask a patient if they are allergic to a pain
6 medicine and at the time of asking that question you may
7 have no intention of giving them pain medicine.

8 A. That's correct.

9 Q. You just might be asking what would be a random
10 question.

11 A. Not a random question but a series of questions.
12 When you access a patient you obtain a sample history,
13 signs and symptoms of what is going on with you.

14 The [A] in sample would be allergies. So there are
15 a series of questions that you ultimately would then put
16 in your report.

17 Q. You said the [A] in sample would be allergies. Is
18 Sample an acronym?

19 A. It's an acronym. It's the way we teach it to
20 students to kind of get them to remember an order; sample
21 signs and symptoms.

22 Q. I'm sorry; S-A-M-P-L-E?

23 A. Correct.

24 Q. And would you tell the jury what each of those
25 letters stand for?

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- 1 A. S, again signs and symptoms; ultimately going on
2 with the patient and what do you see. A, allergies, what
3 are you allergic to? M, medications; what medications
4 are you currently taking? P, past pertinent history, L,
5 would be last oral intake, and E, would be events leading
6 up to what led you to call 911.
- 7 Q. Okay. So where in there would someone ask about if
8 they are allergic to -- that would be under the [A] if
9 they are allergic to pain meds?
- 10 A. Correct.
- 11 Q. Okay. And would they ask it -- would they ask if
12 they are allergic to anything?
- 13 A. What are you allergic to?
- 14 Q. Okay.
- 15 A. And you leave it as an open ended question. I'm not
16 going to ask you if you are allergic to aspirin; not that
17 I am going to give you aspirin or Fentanyl.
- 18 And I have already obtain my sample, the [A] part of
19 it, and you didn't say it I might specify that drug are
20 you allergic to aspirin or are you allergic to Fentanyl
21 just to clarify.
- 22 Q. Okay. But that would be to clarify, that wouldn't
23 be your initial question?
- 24 A. Exactly, to clarify.
- 25 Q. Okay.

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Montorony Jenkins-Cross-Examination by Mr. Mayer
June 3, 2014

1 MR. MAYER: Court's indulgence.

2 [Whereupon, Mr. Mayer confers with his client]

3 MR. MAYER: No further questions.

4 THE COURT: Any redirect?

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State v Shana C. Robinson
Montorony Jenkins-Redirect Examination by Mr. Alfaro
June 3, 2014

1 REDIRECT EXAMINATION

2 BY MR. ALFARO:

3 Q. Mr. Jenkins, you were describing that there is a
4 process before you give someone narcotics?

5 A. Yes, sir.

6 Q. And you went a little fast for me but I was trying
7 to keep up. What are some of the things that you
8 consider before deciding whether to give a narcotic?

9 A. When deciding whether to give a narcotic it has to
10 be indicated first off. For Fentanyl per se it would be
11 used as a pain management drug so the person would have
12 to be in pain. You would then access that pain.

13 After determining whether the drug is indicated or
14 contraindicated, contraindicated being that you cannot
15 give it for any particular reason, whether they are
16 allergic to it, whether they are hemodynamically
17 unstable. Once those things have been ruled in or out
18 then you would go about contacting online med control
19 telling them about the patient and requesting that drug.

20 Once that drug has been requested online med control
21 would look at the patient that you ultimately gave them
22 verbally a presentation of and they would either grant
23 your request or amend it in some fashion. Maybe you
24 asked for 100 of Fentanyl and they said, no let's give
25 them 50. But they ultimately would grant or deny your

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Montorony Jenkins-Redirect Examination by Mr. Alfaro
June 3, 2014

1 order.

2 Q. And you use the phrase hemodynamically unstable.

3 What does that mean?

4 A. When you're looking at someone's hemodynamic status
5 you're looking at blood pressure, heart rate. You may
6 have a good blood pressure but your heart rate may be
7 fast because you're compensating.

8 Those are things you take into account. So you're
9 ultimately looking at blood pressure, heart rate, skin
10 presentation; things of that nature.

11 Q. And so if somebody's blood pressure was low or
12 fluctuating would affect the decision whether you would
13 give Fentanyl?

14 A. That's correct.

15 Q. Do you recall while you were in the ambulance on the
16 way to the Medevac whether doctor approval was sought?

17 A. No, sir.

18 Q. And you said something about -- I think you said a
19 weigh [phonetic] sheet?

20 A. A weigh [phonetic] sheet, yes sir.

21 Q. And those have to be witnessed?

22 A. Those have to be witnessed. Once a medication is
23 given, again if there is 100 in the vile and you give 50
24 there is 50 left to be wasted; ultimately that would be
25 thrown away in the same trash can. And someone would

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1 witness that that was wasted.

2 Q. And did you witness that during the course of your
3 transporting her?

4 A. I don't recall Fentanyl being given during the
5 course of our transport.

6 Q. Thank you.

7 THE COURT: Any objection to the witness being
8 excused from the State?

9 MR. ALFARO: No, Your Honor.

10 THE COURT: From the defense?

11 MR. MAYER: No, Judge.

12 THE COURT: Sir, you are excused.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 THE COURT: You may call your next witness.

16 MR. WEST: The State calls Mark Garrick.

17 [Whereupon, Mr. Garrick comes forward]

18 [Whereupon, the witness is duly sworn by the Clerk
19 of Court]

20 CLERK OF COURT: Please be seated. State your full
21 name and spell your last name for the record.

22 THE WITNESS: Mark Garrick. Garrick G-A-R-R-I-C-K.

23 THE COURT: You may proceed.

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25

State v Shana C. Robinson
Mark Garrick-Direct Examination by Mr. West
June 3, 2014

1 MARK GARRICK

2 Having been first duly sworn,

3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. WEST:

6 Q. Mr. Garrick, where do you work?

7 A. I work for Med Trans Corporation.

8 Q. And what is that?

9 A. We provide the med crew and helicopter service for
10 the Medical University of South Carolina.

11 Q. Were you working there in November of 2011?

12 A. Yes, I was.

13 Q. Do you recall the events of November 10, 2011 in
14 which you were working?

15 A. Yes.

16 Q. And can you describe for the jury your involvement
17 in the transport of this defendant, Shana Robinson?

18 A. We were requested by Berkeley EMS to respond and we
19 actually went to the Urgent Care Center and landed to
20 transport a patient from a motor vehicle accident. And
21 we waited there for them to bring the patient to us. We
22 did some treatment on the scene and transported to the
23 Medical University by helicopter.

24 Q. Can you describe the transport process how somebody
25 is exchanged from on scene ambulance to the helicopter?

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Mark Garrick-Direct Examination by Mr. West
June 3, 2014

1 A. Yes, really two ways. The way we did it that night
2 was they brought the patient to us. We did not land at
3 the scene. Usually we will land at the scene if there is
4 room for the helicopter to land but in that case there
5 was not.

6 So they brought them to a remote location to us. We
7 didn't actually see the accident scene. But essentially
8 they fill out the patient's package in the back of the
9 ambulance. We get in the back and get a quick report.
10 We do a head to toe assessment.

11 We correct any life threatening interventions that
12 need to be done and transfer the patient from the
13 ambulance, load them to our helicopter and then fly them
14 to whatever the appropriate facility is.

15 Q. Okay. During the transport to the Medical
16 University do you remember whether you administered any
17 medications to this defendant?

18 A. Yes, that was done.

19 Q. Okay. And do you remember what medications?

20 A. Yes.

21 Q. And can you describe those for the jury?

22 A. Really there was three different ones. One was
23 Lidocaine, which is like a numbing agent. We actually
24 placed a needle into the bone to start for fluid
25 resuscitation and we used the Lidocaine to cut down the

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Mark Garrick-Direct Examination by Mr. West
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1 pain because of pushing massive amounts of fluid are
2 somewhat painful so we do that. Zofran, which is anti
3 nausea medication to keep the patients from getting sick,
4 and also gave two doses of Fentanyl, which is a pain
5 reliever.

6 Q. Would you be aware of any medications given to this
7 defendant prior to your involvement in her treatment?

8 A. I was not aware of any. None was told to us during
9 turnover.

10 Q. During the normal course of your treatment of a
11 patient would that information be transferred to you?

12 A. Oh, absolutely yes.

13 Q. So it's important for you to know what she has been
14 given prior to your treatment.

15 A. Right, because we would not want to repeat anything
16 or double dose and with certain thresholds of
17 limitations, etcetera.

18 Q. And it's your testimony that the only medications
19 that were administered to this defendant, Shana Robinson,
20 was the three you just listed?

21 A. That's correct.

22 Q. And after you administered those medications and
23 transported her to MUSC did you have any further
24 involvement in the treatment of Shana Robinson?

25 A. I did not. We gave our turnover to the trauma team

State v Shana C. Robinson
Mark Garrick-Direct Examination by Mr. West
June 3, 2014

1 | in the trauma bay at MUSC and they assumed care and we
2 | exit the room.

3 | THE COURT: That's all the questions the State has
4 | at this time.

5 | THE COURT: Any questions for the witness?

6 | MR. MAYER: Yes, Judge. Thank you.

State v Shana C. Robinson
Mark Garrick-Cross-Examination by Mr. Mayer
June 3, 2014

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Good morning, sir.

4 A. Good morning.

5 Q. So when you say you gave your turnover is that a
6 piece of paper?

7 A. That is a verbal report. Essentially we walked in
8 and there is a team of anywhere from ten to twenty people
9 waiting on us of all different specialties. And one of
10 the things that they do is they have a time out before
11 they ever touch the patient.

12 And we give a complete turn over so everybody has
13 the time to listen attentively so they don't miss
14 anything and we tell them what we did and then they are
15 transferred over to their stretcher and they assume care.

16 Q. And where is that oral verbal turn over recorded?

17 A. There is a charge nurse that is doing notes
18 recording all the events that occurred. And once we give
19 our verbal we go and individually tell them the dosage of
20 medications etcetera for her paperwork.

21 Q. Okay. Have you had the opportunity ever to review
22 those write ups?

23 A. On this specific one?

24 Q. Yes?

25 A. No, I have not.

State v Shana C. Robinson
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1 Q. Okay. But you would have noted the medications
2 that were given?

3 A. Yes. We tell them the time -- we don't use exact
4 times like 15 minutes ago we gave this and 20 minutes ago
5 we gave this and give them the dosage that we also gave.

6 Q. What else besides the three medications you
7 mentioned a moment ago what else did you give her?

8 A. IV fluids.

9 Q. Okay. And what is that?

10 A. Just essentially salt water. It's normal saline.

11 Q. Is that the same as a lactate or is that different?

12 A. It's different. There is lactated ringers, which is
13 one type that has a buffer in it, and then there is
14 normal saline which is what typically people get.

15 Lactate ringers is used for things like burns and things
16 like that generally.

17 Q. Okay. And so how did you administer the saline?

18 A. Saline is given -- was given she had a peripheral IV
19 in her arm and most of it was given through which is an
20 intraosseous needle, which we put into the bone of her
21 leg.

22 Q. Did she get any inoculations while she was in y'all
23 care?

24 A. No.

25 Q. She did not get a tetanus shot from y'all?

State v Shana C. Robinson
Mark Garrick-Cross-Examination by Mr. Mayer
June 3, 2014

1 A. Not from us, we don't do that. It's not part of pre
2 hospital.

3 Q. Okay.

4 A. They may have done that in the trauma bay but again
5 that's not within my...

6 Q. Okay. Do you know if they did that at the scene in
7 the ambulance before they got to y'all?

8 A. I do not know that they didn't, but that would be out
9 of the scope of practice if they did.

10 Q. Okay. So a tetanus shot would typically be
11 something that would happen at ---

12 A. --- that's definitive care at the hospital.

13 Q. After your ---

14 A. --- we don't carry that on the helicopter and EMS
15 doesn't carry it.

16 Q. Okay, great. Thank you very much.

17 THE COURT: Any redirect?

18 MR. WEST: Nothing from the State, Your Honor.

19 THE COURT: Any objection to the witness being
20 excused from the State?

21 MR. WEST: No, Your Honor.

22 THE COURT: From the defense?

23 MR. MAYER: No, Judge.

24 THE COURT: Sir, you're excused.

25 [Whereupon, the witness is excused and exits the

State v Shana C. Robinson
Mark Garrick-Cross-Examination by Mr. Mayer
June 3, 2014

1 witness stand]

2 THE COURT: You may call your next witness.

3 MR. WEST: Thank you, Judge. The State calls
4 Corporal Chad Pearson.

5 THE COURT: Actually what I'm going to do is we've
6 been sitting about an hour and I'm going to give the jury
7 a restroom break. Ladies and gentlemen I'm going to give
8 you a brief restroom break. During the break please do
9 not discuss the case and please leave your notepads in
10 your seat. We will probably break around 12:30, quarter
11 of 1 for lunch just so that you know for planning
12 purposes. If you would go with the bailiff please.

13 [Whereupon, the jury exits at 12:10 p.m.]

14 THE COURT: We'll be at ease for five minutes.

15 [Whereupon, court is in recess from 12:11 p.m. to
16 12:20 p.m.]

17 THE COURT: Is the State ready to proceed?

18 MR. WEST: Yes, Your Honor.

19 THE COURT: Is the defense ready to proceed?

20 MR. MAYER: Yes, Judge.

21 THE COURT: Please bring in the jury.

22 [Whereupon, the jury enters at 12:22 p.m.]

23 THE COURT: The State may proceed.

24 MR. WEST: Thank you. The State calls Mark Dirks.

25 [Whereupon, Mr. Dirks comes forward]

State v Shana C. Robinson
Mark Garrick-Cross-Examination by Mr. Mayer
June 3, 2014

1 [Whereupon, the witness is duly sworn by the Clerk
2 of Court]

3 CLERK OF COURT: Please be seated. State your full
4 name and spell your last name for the record.

5 THE WITNESS: Mark Duane Dirks, Jr., D-I-R-K-S.

6 THE COURT: You may proceed.
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State v Shana C. Robinson
Mark Dirks-Direct Examination by Mr. West
June 3, 2014

1 MARK DIRKS,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WEST:
6 Q. Mr. Dirks, where do you work?
7 A. Berkeley County Roads and Bridges.
8 Q. Do you have any other places of employment or
9 volunteer shifts?
10 A. With Moncks Corner Rural Fire Department I
11 volunteer.
12 Q. How long have you done that?
13 A. Eleven years; right at eleven years.
14 Q. And can you describe what a volunteer fireman would
15 do in the normal course of his employment?
16 A. We start off with training classes as we come into
17 the department. Once we're in so long we get voted in;
18 you've got to get voted in. You take your training
19 classes then you proceed to respond to calls, emergency
20 calls; non emergency and emergency.
21 Q. Were you a volunteer firefighter on November 10,
22 2011?
23 A. Yes sir, I was.
24 Q. Did you have the opportunity to respond to a
25 collision involving this defendant on Broughton Road on

State v Shana C. Robinson
Mark Dirks-Direct Examination by Mr. West
June 3, 2014

1 that date?

2 A. Yes sir, I did.

3 Q. Would you describe for the jury your role on scene?

4 A. My role on scene on arrival we had two vehicles. I
5 went to vehicle 1, which was the BMW. It had two
6 patients in the car and assisted with removing the first
7 patient, which was on top of the driver.

8 We got her out of the vehicle. We had more
9 personnel show up and we turned that over to EMS and
10 other personnel. And then I proceeded to the second
11 vehicle, which was the Saturn where I helped extricate
12 the patient out of the Saturn.

13 Q. Where was the Saturn?

14 A. It was about in the middle of the road.

15 Q. Okay. And you say you extricated that patient.
16 Describe that process for the jury.

17 A. Me and my deputy chief did the extrication on that.
18 We had another firefighter inside the vehicle with the
19 patient. We did a roof removal cutting all the posts
20 around the car and completely removing the roof.

21 Then we took both driver -- on the driver's side the
22 front door and the rear door off. And we call it a B
23 post; we removed the B post to access the patient.

24 Q. Why did you have to do that?

25 A. Because there was extremely heavy damage to that

State v Shana C. Robinson
Mark Dirks-Direct Examination by Mr. West
June 3, 2014

1 vehicle.

2 Q. Could you have gotten to the patient absent an
3 extrication?

4 A. No sir, you couldn't.

5 Q. Now once you take off the roof of the vehicle what's
6 your next step in the process of evaluation of the scene?

7 A. At that time we had the paramedics and fire fighters
8 and EMT's in the vehicle with the patient. They are
9 assessing the patient the whole time talking to the
10 patient or the objective is to keep the patient safe and
11 remove parts of the car that we needed to remove to get
12 her out.

13 Q. And you did that in this case?

14 A. Yes, sir.

15 Q. Were you involved in any sort of patient treatment?

16 A. No, sir. We got her on the backboard and she went to
17 the EMS then.

18 Q. Were you involved in any sort of patient treatment
19 on the defendant?

20 A. No, sir.

21 Q. Would you have administered any medications as a
22 volunteer fire fighter?

23 A. No, sir.

24 Q. Okay. Your sole in this collision was simply to
25 extricate one of the patients out of the Saturn?

State v Shana C. Robinson
Mark Dirks-Direct Examination by Mr. West
June 3, 2014

1 A. Yes, sir.

2 Q. Thank you.

3 MR. WEST: That's all the questions the State has
4 at this time.

5 THE COURT: Any questions for the witness?

6 MR. MAYER: Just briefly, Judge.

7 THE COURT: You may proceed.

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State v Shana C. Robinson
Mark Dirks-Cross-Examination by Mr. Mayer
June 3, 2014

1 CROSS-EXAMINATION
2 BY MR. MAYER:
3 Q. Good afternoon, sir. The BMW do you remember if
4 that was a two door or four door?
5 A. It was a four door.
6 Q. Okay. And were able to get pretty good access
7 inside that car?
8 A. Yes, sir.
9 Q. Did you go in the backseat at all?
10 A. No, sir.
11 Q. Okay. But both sides of the front driver's side
12 and the front passenger side you had good access?
13 A. Yes, sir.
14 Q. Okay. If you had needed to get something out of
15 the back seat could you have?
16 A. Yes, sir.
17 Q. Okay. Thank you.
18 MR. MAYER: No further questions.
19 THE COURT: Any redirect?
20 MR. WEST: Nothing from the State, Your Honor.
21 THE COURT: Any objection to the witness being
22 excused from the State?
23 MR. WEST: Nothing from the State.
24 THE COURT: From the defense?
25 MR. MAYER: No, Judge.

State v Shana C. Robinson
Mark Dirks-Cross-Examination by Mr. Mayer
June 3, 2014

1 THE COURT: Sir, you're excused.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 THE COURT: You may call your next witness.

5 MR. WEST: Thank you, Judge. The State calls
6 Heather Pickard Onezine.

7 [Whereupon, Ms. Onezine comes forward]

8 [Whereupon, the witness is duly sworn by the Clerk
9 of Court]

10 CLERK OF COURT: Please be seated. State your full
11 name and spell your last name for the record.

12 THE WITNESS: My name is Heather M. Onezine,
13 O-N-E-Z-I-N-E.

14 THE COURT: You may proceed.

15 MR. WEST: Thank you, Judge.
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State v Shana C. Robinson
Heather Onezine-Direct Examination by Mr. West
June 3, 2014

1 HEATHER ONEZINE,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WEST:
6 Q. Ms. Onezine, where do you work?
7 A. I work at MedTrust Ambulance Service. I am also a
8 volunteer at the Moncks Corner Rural Fire Department.
9 Q. What type of job duties do you have outside of your
10 volunteer work at MedTrust?
11 A. I am a nationally registered EMT.
12 Q. Okay. What sort of training do you have for that?
13 A. I have to get certifications through schooling, a
14 year of schooling, patient care, emergency medical care.
15 Q. And how long have you been certified to do this sort
16 of thing?
17 A. Four years.
18 Q. Now your volunteer shift where is that?
19 A. Moncks Corner Rural Fire Department.
20 Q. And what do you do with them?
21 A. I am an EMT there and a firefighter.
22 Q. Okay. Were you working on the night of November
23 10, 2011?
24 A. For the fire department, yes.
25 Q. Do you recall the collision involving this defendant

State v Shana C. Robinson
Heather Onezine-Direct Examination by Mr. West
June 3, 2014

1 that occurred on Broughton Road on November 10, 2011?

2 A. Yes.

3 Q. Can you describe for the jury your role in the
4 investigation or the treatment of any patients on the
5 scene of the collision?

6 A. When I arrived on scene I assessed the scene. And
7 there was a vehicle in the ditch to the left of me and
8 another vehicle still on the road.

9 I saw a lot of emergency medical personnel already
10 to the left so I proceeded to the right to the Saturn.
11 And I could not gain access through the driver's side so
12 I went into the car from the passenger side rear to ---

13 Q. --- why couldn't you gain access on the driver's
14 side?

15 A. It was smashed. I was unable to open either door.

16 Q. Okay. Can you just describe the car in general?

17 A. To me the car -- the outer part I really -- it was
18 dark; I didn't get to see too much of the outer part of
19 the vehicle other than the smashed inside of the driver's
20 side.

21 I was able to gain access through the back and
22 that's when I could see that the whole front end of the
23 vehicle was pretty much in the front seat of the car.

24 Q. Okay. Now you say you entered the car through the
25 passenger side?

State v Shana C. Robinson
Heather Onezine-Direct Examination by Mr. West
June 3, 2014

- 1 A. Passenger side rear door.
- 2 Q. What did you do once you were inside?
- 3 A. I took C-spine of the patient.
- 4 Q. What does that mean?
- 5 A. With any trauma, car accident, fall, you assume they
- 6 have a neck injury. To cause further damage -- not to
- 7 cause further damage you take C-spine which you hold the
- 8 patient's neck in a position where they can't move it and
- 9 you stabilize it so they don't get any more injury to
- 10 their neck and spine causing paralysis.
- 11 Q. Did you provide any other care to the patient in
- 12 that car?
- 13 A. I did a preliminary assessment on her. Once I got
- 14 C-spine I was able to help the paramedic and Berkeley
- 15 County EMS with the blood pressure and the SpO2, the
- 16 oxygen in your blood. I was able to talk to the patient
- 17 and try and assess her alertness. And I remained with
- 18 her until we got to the hospital.
- 19 Q. So you entered the car, you conducted your initial
- 20 treatment and then did you ever get her out of the car?
- 21 A. Yes, I assisted when they -- I remained in car. We,
- 22 myself, and the patient got covered with a bunker jacket
- 23 as they were extricating her from the vehicle.
- 24 Q. What does that mean?
- 25 A. They had to cut the vehicle open, take the

State v Shana C. Robinson
Heather Onezine-Direct Examination by Mr. West
June 3, 2014

1 windshield out and then we had to put a back board under
2 her to get her out of the vehicle. I assisted from the
3 inside of the vehicle.

4 Q. Could you have gone around any other way?

5 A. No, sir.

6 Q. And why was that?

7 A. The car was crushed and it was crushed around her so
8 there was no way to get her out any other way.

9 Q. Okay. So once you got her onto the board you say
10 you were with her the whole way. What happened the
11 whole way?

12 A. Once we got her out of the vehicle we had to start
13 CPR. I was doing her respirations with a bag valve mask,
14 another EMT was doing chest compressions and once we were
15 loaded into the ambulance the paramedic started IV's and
16 we did CPR all the way to the hospital.

17 Q. And why did you do that?

18 A. Her heart stopped once we got her out of the
19 vehicle.

20 Q. Did you make any assessments as to status of Ms.
21 Zoll at this time?

22 A. Did I -- I'm sorry can you repeat that?

23 Q. Did you make any assessments about the status of Ms.
24 Zoll's health while you were treating her at that time?

25 A. The only assessment I could give while I was in the

State v Shana C. Robinson
Heather Onezine-Direct Examination by Mr. West
June 3, 2014

1 car was she did not have a level -- her eyes were open
2 but she was not speaking. She had agonal breathing,
3 which was getting further and further apart. I could
4 tell she had a lot of things broken but I'm not a doctor
5 so I can't really other than what I saw I knew we had to
6 get her out of there quickly.

7 Q. Okay. But it's your testimony that you know her
8 heart stopped.

9 A. Yes, because we wouldn't have started CPR if she was
10 technically still alive.

11 Q. Did you ever recover a heart beat?

12 A. No, we did not.

13 MR. WEST: That's all the questions the State has
14 at this time.

15 THE COURT: Any questions for the witness?

16 MR. WEST: Just briefly.

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State v Shana C. Robinson
Heather Onezine-Cross-Examination by Mr. Mayer
June 3, 2014

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Were you the first person to arrive at the Saturn?

4 A. I was the first person from the fire department to

5 arrive at the Saturn.

6 Q. Were the EMTs already there when you got there?

7 A. The Berkeley County?

8 Q. I guess so -- any EMT's?

9 A. I was an EMT. I was the first EMT on the scene with

10 the Saturn vehicle.

11 Q. Okay.

12 A. There was -- it was -- there was personnel

13 everywhere.

14 Q. So when you arrived there were people everywhere

15 already?

16 A. Yes.

17 Q. Okay. Did you remove the seat belt off Ms. Zoll?

18 Was there a seat belt on her?

19 A. There was a seat belt on her and if I remember

20 correctly we cut it off of her before we extricated her.

21 Q. Okay. So your testimony is there was definitely a

22 seat belt on her?

23 A. Yes.

24 Q. Okay. And then were you able to do the orientation

25 thing with Ms. Zoll? The orient and alert exercise?

State v Shana C. Robinson
Heather Onezine-Cross-Examination by Mr. Mayer
June 3, 2014

1 A. Yes. She was unresponsive. She was blinking and
2 like I said she had the agonal breathing and moaning but
3 other than that she was unresponsive.

4 Q. Okay. Thank you.

5 MR. MAYER: No further questions.

6 THE COURT: Any redirect?

7 MR. WEST: Nothing from the State, Your Honor.

8 THE COURT: Any objection to the witness being
9 excused from the State?

10 MR. WEST: No, Your Honor.

11 THE COURT: From the defense?

12 MR. MAYER: No, Judge.

13 THE COURT: Ma'am, you're excused.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

16 THE COURT: You may call your next witness.

17 MR. WEST: Thank you, Judge. The State calls
18 Daniel Southerland.

19 [Whereupon, Mr. Southerland comes forward]

20 [Whereupon, the witness is duly sworn by the Clerk
21 of Court]

22 CLERK OF COURT: Please be seated. State your full
23 name and spell your last name for the record.

24 THE WITNESS: Stephen Southerland, Stephen with a
25 P-H, Southerland is S-O-U-T-H-E-R-L-A-N-D.

State v Shana C. Robinson
Stephen Southerland-Direct Examination by Mr. West
June 3, 2014

1 STEPHEN SOUTHERLAND,
2 Having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. WEST:

6 Q. Trooper Southerland where do you work?

7 A. South Carolina Highway Patrol.

8 Q. And were you working there in November of 2011?

9 A. I was.

10 Q. Do you recall the events that bring up here
11 involving this defendant on the night of November 10,
12 2011?

13 A. Yes, I do.

14 Q. Can you describe for the jury your role in the
15 involvement of this case?

16 A. Yes, sir. The investigating officer Trooper Poston
17 and Corporal Pearson went to the scene and I was sent to
18 the hospital in the capacity to check on injury status of
19 the drivers involved.

20 Q. Okay. And once you got there what -- where do you
21 go? Did you say where you went?

22 A. I'm sorry I did not; the Medical University, MUSC.

23 Q. Okay. Once you got to MUSC what was your role?

24 A. Again, it was checking on injury status of the
25 patients. In this case I guess Ms. Robinson had been

State v Shana C. Robinson
Stephen Southerland-Direct Examination by Mr. West
June 3, 2014

1 sent to the hospital. I wanted to check on her injuries
2 but I actually had arrived at the hospital before she got
3 there.

4 When she first arrived I wasn't allowed to come in
5 and see her so I was literally waiting for most of the
6 time I was there. My goal at that time was to check on
7 her injury status and report back.

8 Q. Okay. Why weren't you allowed to see her?

9 A. The hospital staff's goal obviously was preserving
10 her life and doing what they had for her and I would have
11 only been in the way.

12 Not being central medical staff they wouldn't let me
13 pass the nurses holding station to get to her as they had
14 to start operating and doing what they had to do.

15 Q. Would you have made contact with her had you not be
16 stopped by hospital personnel?

17 A. I would have. I would have gone in and spoken with
18 her and gone from there.

19 Q. What's your normal duties when it comes to first
20 assessing someone in this sort of collision?

21 A. Well if it's going to be a life threatening type
22 injury or something like that of course I report back to
23 the officers on scene so that they can assess the way
24 they're going to perform their investigation. Other than
25 that any other issues that would come from talking with

State v Shana C. Robinson
Stephen Southerland-Direct Examination by Mr. West
June 3, 2014

1 the patient and go from there.

2 Q. Did you have any contact with any other troopers
3 regarding in this case?

4 A. I was in regular contact with Corporal Pearson the
5 supervisor on the scene. I just reported what I saw at
6 the hospital back and forth to him.

7 Q. Was he your supervisor?

8 A. He was, yes sir.

9 Q. Did he give you any orders in regards to this case?

10 A. He did. After she was taken from the trauma bay she
11 had gone into her surgeries and everything like that she
12 was taken upstairs and that's when I was finally allowed
13 to see her.

14 And after I had finally spoken with her and reported
15 back what I noticed he did give me an order to have blood
16 drawn from her.

17 Q. What was your first impression when you saw Ms.
18 Robinson for the first time?

19 A. Well, when I tried speaking with her she was
20 extremely incoherent. Nothing she said made a lot of
21 sense.

22 But I was able to get close enough I did smell the
23 odor of an alcoholic beverage coming off her person and
24 reported that back to Corporal Pearson. He then told me
25 due to the totality of the circumstances he had you know

State v Shana C. Robinson
Stephen Southerland-Direct Examination by Mr. West
June 3, 2014

1 finding beer in the vehicle and such and in addition to
2 that to go ahead and move to have blood drawn on
3 suspicion of D-U-I.

4 Q. So you were ordered to take a blood sample?

5 A. Yes sir, I was.

6 Q. And did you physically take the blood sample or does
7 someone at the hospital take that sample?

8 A. A registered nurse does; I just witness it.

9 Q. Why don't you describe to the jury just sort of the
10 routine for taking a blood sample in any sort of case.

11 A. Okay. At the time that the subject is informed
12 that they are under arrest, obviously they are read their
13 Miranda rights.

14 They are then read a set of what is called implied
15 consent rights after which a breath sample is requested
16 except in this case it being a felony it wasn't an
17 option. So at that point I find a nurse whoever is
18 willing to do it and they will take the blood.

19 We just have to stand and witness to make sure it's
20 done in the sealed kit that we are provided and a little
21 bit of paperwork done after that it packaged and sent off
22 to SLED.

23 Q. Describe that kit for the jury.

24 A. Okay. It's a small white box. Inside of it
25 contains a urine blood collection glass, a SLED form that

State v Shana C. Robinson
Stephen Southerland-Direct Examination by Mr. West
June 3, 2014

1 just has some details on who took the blood and the
2 defendant's name and that kind of thing. There are two
3 vials for blood and there is a small container for urine
4 in the event that you were collecting urine. It's a
5 pretty simple kit; just a little bit of paperwork and a
6 couple of vials.

7 Q. And did you use one of those kits in this case?

8 A. I did, yes sir.

9 Q. Was that kit properly sealed when you first came
10 into contact with the kit?

11 A. It was.

12 Q. Okay. And can you describe the process of the
13 actual blood extraction from the defendant in this case?

14 A. The nurse used the material that was inside the kit.
15 It was a non-alcohol prep, drew blood and put it directly
16 into the two vials and placed it back into the kit,
17 sealed as the record shows.

18 Q. You witnessed that extraction?

19 A. I did. I was there the entire time.

20 Q. Okay. Once you got the vials of blood what is your
21 duty subsequent to that draw?

22 A. The only thing I will do is once it's placed back in
23 the kit I'll have the nurse fill out his portion of the
24 paperwork and I'll make sure the paperwork is completed
25 properly, make copies of everything, leave copies with

State v Shana C. Robinson
Stephen Southerland-Direct Examination by Mr. West
June 3, 2014

1 the defendant, seal it up and have it logged into
2 evidence --

3 Q. You mentioned the report that is filled out by both
4 you and the nurse. Did you make one of those reports in
5 this case?

6 A. I did, yes sir.

7 MR. WEST: Your Honor, I'm going to show the
8 witness what has been pre-marked as State's 72. I've
9 already shown defense counsel.

10 Q. [Mr. West] Do you recognize this?

11 [Whereupon, witness is shown exhibit]

12 A. Yes, sir. This is the urine blood collection report
13 I filled out.

14 Q. Is that the same urine blood collection report you
15 filled out in this case?

16 A. Yes sir, it is.

17 Q. And is that the same urine blood collection report
18 you had from the blood that was taken from this
19 defendant?

20 A. Yes sir, it is.

21 Q. Okay. Did you fill it out properly in accordance
22 with the procedures as you've been trained?

23 A. Yes sir, I did.

24 Q. Is that a fair and accurate depiction of everything
25 that you filled out on that form as provided by your

State v Shana C. Robinson
Stephen Southerland-Direct Examination by Mr. West
June 3, 2014

1 procedures?

2 A. Yes, sir.

3 MR. WEST: The State at this time would move
4 State's 72 into evidence.

5 MR. MAYER: Objection.

6 THE COURT: Basis?

7 MR. MAYER: Hearsay, best evidence.

8 THE COURT: Please approach.

9 [Whereupon, an off the record bench conference is
10 held]

11 THE COURT: Sustained subject to foundation. You
12 may proceed.

13 Q. [Mr. West] Once blood is collected from someone do
14 you know what happens with that sample?

15 A. The sample is transferred from me or the collecting
16 officer rather generally directed to a supervisor and it
17 is placed into our evidence refrigerator at our office in
18 North Charleston.

19 It is then transferred the next available shift to
20 our central evidence in Columbia. It is transferred from
21 there to SLED to be tested.

22 Q. Was that done in this case?

23 A. Yes, sir. It's done in every case.

24 Q. Can you describe what time the blood sample was
25 taken?

State v Shana C. Robinson
Stephen Southerland-Direct Examination by Mr. West
June 3, 2014

1 A. Yes, sir. It was at 12:45 a.m. on the 11th of
2 November.

3 Q. Had the defendant been arrested at that time?

4 A. She had, yes sir.

5 Q. Can you describe that for the jury?

6 A. Yes, sir. Obviously it's not a custodial type of
7 arrest; you know she just came out of surgery and she was
8 laying in bed. But at the time that we've established
9 our probable cause for the D-U-I she is informed that she
10 is under arrest for that charge, advised of her Miranda
11 rights.

12 Immediately after doing that we move into advising
13 her of what I told you was her implied consent warnings,
14 which are specifically related to the D-U-I. And after
15 that the blood is drawn.

16 Q. And those implied consent warnings are they written
17 down as well?

18 A. Yes sir, they are. They are on the SLED forms; they
19 are the same every time.

20 Q. And was a copy given to this defendant?

21 A. Yes, sir.

22 Q. And can you describe that for the jury?

23 A. Do you want me to ---

24 Q. --- did you give it to her directly?

25 A. No, sir. I'm sorry. It was placed with her

State v Shana C. Robinson
Stephen Southerland-Direct Examination by Mr. West
June 3, 2014

1 belongings. She wasn't able to sign anything -- she
2 wasn't able to sign and she was too incoherent to have
3 read anything I gave her so it was left with her
4 belongings as all copies of paperwork was.

5 MR. WEST: Court's indulgence.

6 [Whereupon, Mr. West and Mr. Alfaro confer]

7 Q. [Mr. West] Trooper Southerland I'm going to show you
8 what has been previously marked as State's 72 subject to
9 the prior objection by defense counsel.

10 [Whereupon, the witness is shown document]

11 Q. Is your signature on that form?

12 A. Yes sir, it is.

13 Q. Okay. Is there any other signature on that form?

14 A. The nurse, Daniel Young, has both printed and signed
15 his name. And the subject signature line I did write
16 unable to sign and I initialed it as she was unable to do
17 so.

18 Q. Is that standard procedure to write unable to sign
19 and what circumstances?

20 A. In the event they are medically incapable, if they
21 are unconscious or in her case just coming out of surgery
22 she just wasn't able to.

23 Q. Okay. And again can you reiterate the time and
24 date of that?

25 A. Yes sir, November 11th, 2011 at 12:45 a.m.

State v Shana C. Robinson
Stephen Southerland-Direct Examination by Mr. West
June 3, 2014

1 MR. WEST: That's all the questions the State has
2 at this time.

3 THE COURT: Any questions for the witness?

4 MR. MAYER: Thank you, Judge.

5 THE COURT: You're welcome.

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State v Shana C. Robinson
Stephen Southerland-Cross-Examination by Mr. Mayer
June 3, 2014

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. When you got this call where were you?

4 A. We were at dinner actually at Andolini's Pizza on

5 Rivers Avenue in North Charleston.

6 Q. Who is we?

7 A. Myself, Trooper Poston, and Corporal Pearson.

8 Q. Okay. So you had time to sit down and have a meal?

9 A. For a nice change, yes.

10 Q. And you got this call and where did you go from

11 there?

12 A. As I stated I was sent to MUSC to check injury

13 status. Trooper Poston and Corporal Pearson both went

14 directly to the scene of the wreck.

15 Q. And you mentioned in your direct that you arrived at

16 MUSC before Shana did.

17 A. I did, yes sir.

18 Q. And you had to wait around there for a while?

19 A. Yes sir, I did.

20 Q. And you had to wait while she went through an

21 operation.

22 A. Yes, sir.

23 Q. You didn't talk to her before the operation?

24 A. I was not allowed to see her before the operation.

25 Q. Is it your understanding that she was given general

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- 1 anesthesia to have that operation?
- 2 A. It wasn't my understanding. I had no idea what they
3 were doing with her.
- 4 Q. Okay. So at the time when you got to talk to her
5 you testified earlier you said she was incomprehensible.
- 6 A. Yes, sir.
- 7 Q. At the time when you were talking to her you didn't
8 know why she was incomprehensible is that right?
- 9 A. Fair enough, yes sir.
- 10 Q. Okay. But you did report to Trooper Pearson that
11 she was incomprehensible.
- 12 A. Yes sir, as an injury update.
- 13 Q. Sure. And it was after that you told him she was
14 incomprehensible that he told you get a blood draw.
- 15 A. Well, in that same conversation I also told him that
16 I smelled the odor of an alcoholic beverage coming off of
17 her body. And it was at that point that he told me what
18 the circumstances on scene including beer in her vehicle
19 and such that I should move to have the blood drawn, yes
20 sir.
- 21 Q. The smell you smelled was it consistent with beer?
- 22 A. It was consistent with an alcoholic beverage.
- 23 Q. What time would you say the decision to arrest her
24 was made?
- 25 A. 12:45 a.m. is when she was informed of her arrest.

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1 The conversation took place before that to move for the
2 blood.

3 Q. Okay. How long before that?

4 A. I'm not sure.

5 Q. Hours?

6 A. No, sir.

7 Q. Just minutes?

8 A. I walked to her body, walked away, made a phone call
9 and walked back and informed her of the arrest.

10 Q. Okay. And the reason she was not arrested earlier
11 was because y'all hadn't made the decision to arrest her
12 earlier?

13 A. No. The reason that she was not under arrest
14 earlier is I had no contact with her. As I stated when I
15 first arrived at the hospital I was not allowed to see
16 her.

17 She went away for an operation for a while and the
18 first contact I had with her I reported back to Corporal
19 Pearson and was then told to move forward with the arrest
20 and blood draw.

21 Q. Okay. So even though you didn't have contact with
22 her there had been no decision to arrest her made?

23 A. I hadn't been told anything at that point, no.

24 Q. Okay. And what time did this accident happen?

25 A. I'm not exactly sure. I wasn't the investigating

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1 officer.

2 Q. What time did you get the call?

3 A. Again, I'm not exactly sure. We were at dinner and
4 I went to the hospital. The restaurant was still open so
5 I would assume it was probably before 9:00.

6 Q. Okay. So you got the call sometime before 9?

7 A. Yes, sir.

8 Q. And then the arrest, the technical arrest, wasn't
9 made until 12:45 is that right.

10 A. The arrest wasn't made until 12:45.

11 Q. Okay. What -- describe what else is in that SLED
12 South Carolina Law Enforcement Division blood draw kit?

13 A. Just what I stated. Two empty vials for blood
14 collection, a small plastic container for urine
15 collection, there is an iodine prep pad, I believe there
16 is a needle of some sort for collecting the blood and any
17 appropriate paperwork.

18 Q. Are you sure those vials are empty?

19 A. Yes, sir. Well, no sir, there is a white powder at
20 the bottom and I assume it is some form of preservative
21 of some kind. I don't know exactly what it is.

22 Q. Okay. And you observed the nurse draw Shana's
23 blood.

24 A. Yes sir, I did.

25 Q. Did he use the needle that was in the kit?

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1 A. I assume so. I don't recall.

2 Q. Okay. Would that be written down anywhere where
3 you could refresh your memory of it?

4 A. No, sir.

5 Q. Are you positive that he used those blood vials or
6 could he have used a different one from the hospital?

7 A. I'm positive he used the blood vials and I'm
8 positive he used the iodine prep.

9 Q. And did he stick her directly or did he get access
10 through some other port that she already had on her body?

11 A. I'm not sure.

12 MR. MAYER: Court's indulgence.

13 [Whereupon, Mr. Mayer confers with his client]

14 Q. [Mr. Mayer] Just to clarify about something we
15 already touched on when you said that she was
16 incomprehensible you did not know if that was from
17 surgery or from something else?

18 A. No, I did not.

19 Q. Okay. But you -- did you clarify in any way what
20 may have been the cause of that when you reported it to
21 Trooper Pearson.

22 A. No, I did not. I did state to him that she had gone
23 to surgery. He knew that from our other conversations.
24 I just said I wasn't able to speak to her because she was
25 incomprehensible.

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1 Q. Okay. Thank you.

2 THE COURT: Any redirect?

3 MR. WEST: Nothing from the State, Your Honor.

4 THE COURT: Any objection to the witness being
5 excused from the State?

6 MR. WEST: Nothing from the State.

7 THE COURT: From the defense?

8 MR. MAYER: Nothing from the defense.

9 THE COURT: Officer, you are excused.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 THE COURT: Mr. Foreman, ladies and gentlemen we're
13 going to take advantage of this break in testimony to
14 take our lunch recess. During this break please do not
15 discuss the case among yourselves or with anyone else.
16 Please do not allow yourselves to be exposed to any media
17 coverage about the case. And when you return to the
18 courthouse please don't have any contact with anyone in
19 or about the courthouse. We're going to resume at 10
20 after 2:00, which gives you an hour and 15 minutes for
21 lunch. And you will come directly to your jury room and
22 the bailiff will show -- do they come directly to the
23 jury room?

24 THE BAILIFF: They come in the entrance and we meet
25 them down there and bring them up.

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1 THE COURT: Just follow her instructions. I'll
2 stay in my lane. Whatever she tells you that's what
3 y'all need to do. Have a good lunch. See you at 10
4 after 2:00.

5 [Whereupon, the jury exits at 12:55 p.m.]

6 THE COURT: Is there anything before we break for
7 lunch from the State?

8 MR. WEST: Nothing from the State, Your Honor.

9 THE COURT: From the defense?

10 MR. MAYER: No, Judge.

11 THE COURT: Have a good lunch. See you all at 10
12 after 2:00.

13 [Whereupon, court is in recess from 12:55 p.m. to
14 2:15 p.m.]

15 THE COURT: Is the State ready to proceed?

16 MR. WEST: Yes, Your Honor.

17 THE COURT: Is the defense ready to proceed?

18 MR. MAYER: Yes, Judge.

19 THE COURT: Please bring in the jury.

20 [Whereupon, the jury enters at 2:15 p.m.]

21 THE COURT: Ladies and gentlemen, I hope you all
22 had a pleasant lunch recess. We will now resume
23 testimony. The State may proceed.

24 MR. ALFARO: The State calls William Young.

25 [Whereupon, Mr. Young comes forward]

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1 [Whereupon, the witness is duly sworn by the Clerk
2 of Court]

3 CLERK OF COURT: Please be seated. State your full
4 name and spell your last name for the record.

5 THE WITNESS: William Daniel Young, Y-O-U-N-G.

6 THE COURT: You may proceed.

7 MR. ALFARO: Thank you, Your Honor.

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1 WILLIAM YOUNG,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. ALFARO:
6 Q. Mr. Young, could you tell the jury where you work?
7 A. Medical University of South Carolina.
8 Q. And how long have you been there?
9 A. I was there from 2008 until 2013.
10 Q. And what are you doing now?
11 A. I'm a second year medical student at the Medical
12 University.
13 Q. And were you working at MUSC on the evening or the
14 night going into the morning of November 11th, 2011?
15 A. I was.
16 Q. In what capacity?
17 A. I was the charge nurse in the surgical trauma ICU.
18 Q. Can you describe for us what type of educational
19 background and training you received related to that
20 position?
21 A. I have a Bachelors of Science in nursing from the
22 University of South Carolina. I graduated in 2008. I
23 have been through extensive critical care training to
24 work as a staff nurse and a charge nurse in critical
25 trauma ICU. What else can I tell you?

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1 Q. That should be enough for what we're doing today.

2 As part of your duties did you regularly have the
3 opportunity to draw blood from patients?

4 A. Yes.

5 Q. And you also had the occasion to draw blood from
6 patients suspected of felony D-U-I?

7 A. Yes.

8 Q. And can you describe for us what the process is that
9 you go through in doing that?

10 A. Sure. So the procedure would be that I would
11 identify the patient using their armband. I would wash
12 my hands, put on gloves, select an appropriate location
13 to draw blood, apply a tourniquet, cleanse the site using
14 Betadine; I would draw a blood sample using the equipment
15 provided in the D-U-I draw kit.

16 I would place the blood into the vials, place a
17 bandage over the site, label the vials, sign the
18 signature with seals and place the seals over that and
19 then place those in a case for the law enforcement
20 officer.

21 Q. And so the kit that you described that contains all
22 the things that you use to draw the blood contained in
23 that kit?

24 A. Yes.

25 Q. Including the vials themselves are actually in the

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1 kit already.

2 A. Yes.

3 Q. And is the needle that you use in the kit? Are the
4 preps in the kit?

5 A. Everything is in the kit. The needle, the Betadine
6 swabs, and the vials to draw the blood are all in the
7 kit.

8 Q. And in the process of drawing the kit is there any
9 paperwork that is completed at the same time?

10 A. Yes.

11 Q. I'm going to show you what has been marked for
12 identification as State's Exhibit 72.

13 [Whereupon, the witness is shown document]

14 Q. Do you recognize that document?

15 A. I do.

16 Q. And could you tell the jury what that document is?

17 A. This is the report sheet that is filled out when the
18 blood is drawn at the bedside.

19 Q. And was that the report that was filled out in this
20 case when you drew blood from the defendant, Shana
21 Robinson?

22 A. Yes.

23 Q. And does that report indicate what time -- the time
24 and date of the blood draw?

25 A. The date was 11/11 of 2011 at 00:45 a.m.

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1 Q. And is your signature on that form?

2 A. It is.

3 Q. And could you tell the jury what is -- what
4 information is printed there next to where you wrote your
5 name, printed your name?

6 A. It says using a non-ethanol prep a blood sample was
7 collected into an unused, uncontaminated vial and given
8 directly to the arresting officer or to the subject
9 requesting the sample for his or her independent test
10 after collection. And I am the licensed collector.

11 MR. ALFARO: Your Honor, at this time the State
12 would ask that State's 72 be admitted into evidence.

13 THE COURT: Any objection?

14 MR. MAYER: No objection.

15 THE COURT: Marked and admitted without objection
16 State's 72.

17 [Whereupon, State's exhibit number 72 is entered
18 into evidence by the court]

19 THE COURT: That is the correct number isn't it?

20 MR. ALFARO: Yes, Your Honor.

21 Q. [Mr. Alfaro] I'd also like to show you what has been
22 marked for identification only as State's exhibit 74.

23 [Whereupon, the witness is shown exhibit]

24 Q. Do you recognize that item?

25 A. I do.

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1 Q. And what do you recognize that as?

2 A. These would be the blood vials that would have been
3 drawn for the D-U-I sample.

4 Q. From the defendant?

5 A. Correct.

6 Q. And these would have been drawn in accord with
7 State's exhibit 72 which you just testified about?

8 A. Yes.

9 Q. Now you testified that you prepped the area where
10 the blood was drawn using a Betadine prep?

11 A. That's correct.

12 Q. What's the significance of that?

13 A. The Betadine prep is used to cleanse the area and
14 it's a non-alcohol prep so it doesn't contaminate the
15 specimen.

16 Q. And after you draw the blood you turn it over to the
17 law enforcement officer?

18 A. Correct. I draw the blood, I place the blood into
19 the vials, and then I take the seals that are provided,
20 which are on top of the vials, I place them over the top
21 of the vials and hand them to the law enforcement
22 officer.

23 Q. Thank you. Please answer any questions the defense
24 has for you.

25 THE COURT: You may proceed.

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1 CROSS-EXAMINATION
2 BY MR. MAYER:
3 Q. Afternoon Mr. Young.
4 A. How are you?
5 Q. Good thanks. When you were testifying a moment ago
6 do you have a distinct recollection of drawing this
7 particular blood?
8 A. No.
9 Q. Okay. So you testified as to what your normal
10 procedure would be?
11 A. Correct.
12 Q. Okay. So when you drew this particular blood where
13 did you draw it from?
14 A. I'd have to look at the paperwork where it was
15 marked.
16 Q. Which paperwork would you need?
17 A. That report being a nurse's note.
18 Q. A note that you would have made?
19 A. Yes.
20 [Whereupon, Mr. Mayer reviews documents]
21 Q. Would that have been a trauma flow sheet type note?
22 A. No, the trauma flow sheet would have been done in
23 the emergency department. This would have been a note
24 that would have been drawn from the surgical trauma ICU
25 that -- in the bloodstream.

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- 1 Q. Okay. You were in the surgical trauma?
2 A. That's correct.
3 Q. Okay. You were not in the trauma ICU?
4 A. The surgical trauma ICU is name of the department.
5 Q. Okay. Were you one of Shana's nurses?
6 A. I would have been the charge nurse so I see all the
7 patients in that unit for the shift.
8 Q. Would you have overseen the other nurses?
9 A. Yes.
10 Q. Did you ever see a nurse named R. Watkins [phonetic]
11 at that time?
12 A. Potentially.
13 Q. Do you know who that person is?
14 A. No.
15 MR. MAYER: May I approach, Judge?
16 THE COURT: Uh Huh.
17 Q. [Mr. Mayer] I'm handing you what has been marked
18 just for identification purposes as defendant's exhibit
19 11.
20 [Whereupon, the witness is shown document]
21 Q. Do you recognize that?
22 A. This is the trauma restitution flow sheet, which is
23 filled out in the emergency department.
24 Q. Okay. That is not what you are talking about?
25 A. Correct. This is the initial restitution flow sheet

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1 from the patient's arrival in the emergency department.

2 Q. Does that say who the patient's nurses are?

3 A. Correct. It says the patient's nurses are Brady and
4 Watkins [phonetic] and those were would be nurses in the
5 emergency department and not nurses that are in the ICU.

6 Q. So they would have been different nurses when you
7 drew the blood?

8 A. That's correct.

9 Q. Okay. Do you know who those nurses were?

10 A. I do not.

11 Q. If you had completed a -- I'm sorry what did you
12 call that worksheet -- a nursing?

13 A. A nurse's note.

14 Q. If you had completed a nurse's note would it be part
15 of the medical records for this client -- this patient?

16 A. Yes.

17 Q. What type of information would be included on that
18 nurse's note?

19 A. It would have described the location of the stick
20 and that blood was drawn for law enforcement purposes.

21 Q. And that would have been the end of it?

22 A. Correct.

23 Q. Would there be any significance to not having that
24 document exist?

25 A. Not particularly. But blood would have been drawn

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1 and documented with the law enforcement sheet so the
2 blood draw is not directly related to treating the
3 patient or anything.

4 So it would have been also documented in the law
5 enforcement sheet so it would have done as a sticky note
6 as a note just that blood had been drawn.

7 Q. Okay. So it's not imperative that this other
8 nursing sheet be filled out?

9 A. Correct.

10 Q. Do you recall if you filled one out in this
11 particular case?

12 A. I do not.

13 Q. When you used the vials that were given to you by
14 the trooper tell us about those vials.

15 A. They are pretty standard blood collection vials.

16 Q. Okay. Do you know where they were before that?

17 A. In the collection kit.

18 Q. Okay. And was that something in the hospital?

19 A. No. It is brought by the law enforcement officers.

20 Q. Okay. What do you know if there was a preservative
21 used in those vials to preserve the blood or not?

22 A. There is something that is in the vials. I'm not
23 familiar with its contents.

24 Q. Okay. When you drew the blood, and I understand
25 that you don't recall this particular blood draw, when

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1 you typically draw blood would you have looked at the
2 expiration date for the vial?

3 A. No.

4 Q. Are you familiar with the concept of these vials
5 having an expiration date?

6 A. I would assume that they would.

7 Q. Okay.

8 A. I'm not familiar with that, no.

9 Q. The expiration date is relevant -- what I'm told I
10 think is for the seal of the vial is that right?

11 A. I'm not familiar with the expiration date procedures
12 on the vial.

13 Q. Okay. At any rate you didn't check the expiration
14 -- you would not have checked the expiration date on
15 these vials?

16 A. Correct. That's not part of my standard procedure.

17 Q. Okay. So from everything that the State has
18 provided you and everything you've reviewed to testify
19 today you can't say where you drew her blood from?

20 A. That's correct.

21 Q. Did she have an IV at the time of the blood draw?

22 A. She would have had an IV. She would actually have
23 more than one IV if she was in the intensive care unit
24 that is correct.

25 Q. Is it possible that she was given a transfusion at

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1 the exact same time as the blood draw?

2 A. No. If she was getting a transfusion we would have
3 stopped that as part of the policy before we drew the
4 blood.

5 Q. How would you have stopped it?

6 A. You would roll or clamp it closed. We would unhook
7 the line and flush it to leave the line --

8 Q. Okay. And in the nursing notes would it then have
9 indicated that it was clamped off and stopped and then
10 restarted?

11 A. No. Part of the standard documentation for that
12 would not have been to document the stopping of the
13 transfusion and the restart. It would only be that the
14 transfusion was initiated and concluded at some point.

15 Q. I'm sorry. Bear with me one minute here.

16 [Whereupon, Mr. Mayer reviews documents]

17 Q. Would your nurse's note have been -- it would not
18 have been part of the operative nurse's record?

19 A. No, it would not be.

20 Q. How long does it take to give someone a transfusion?

21 A. The policy for transfusion varies based on the
22 patient's acuity level. If the patient is unstable then
23 the transfusion is given for a rapid period of time in
24 order to maintain stability and restore their vital
25 signs. If the patient is stable the transfusion is

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1 typically given over an hour.

2 Q. Okay. And so if the patient were anything other
3 than stable would you pause the transfusion to draw the
4 blood?

5 A. That would depend on the physician's preference.

6 Q. Okay. I'm handing you what has been marked just
7 for identification as defendant's exhibit 9. Take a look
8 at that and tell the jury if you recognize what that
9 might be.

10 [Whereupon, the witness is shown document]

11 A. This is a blood identification form. So it comes
12 along with the blood back from the Red Cross and it's
13 what is produced by our transfusion services.

14 Q. Can you tell from that whether or not a transfusion
15 was given to this defendant at that time?

16 A. Yes.

17 Q. And was there a transfusion given to her on that
18 night?

19 A. Yes.

20 Q. And based on the record in your hand when was that
21 transfusion given?

22 A. The transfusion was started on 11/11/11 at 00:30 I
23 believe from what is written.

24 Q. Okay. And then you're saying the blood draw was
25 done at 00:45.

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- 1 A. Okay.
- 2 Q. Is that right?
- 3 A. Yes.
- 4 Q. Okay. About 15 minutes after this transfusion was
5 started, correct?
- 6 A. That's correct.
- 7 Q. So if she is getting this particular transfusion
8 she's either stable enough for you to pause it ---
- 9 A. --- correct.
- 10 Q. Or the transfusion goes through lickety-split and
11 then you draw the blood, right?
- 12 A. Correct.
- 13 Q. Do you know which was the case in this instance?
- 14 A. I'd have to look back over the notes; I do not.
- 15 Q. This same sheet?
- 16 A. I can look at the same sheet, yes.
- 17 [Whereupon, the witness reviews document]
- 18 A. Judging by the patient's blood pressure as 77 over
19 50 the patient would have given the blood rapidly.
- 20 Q. Rapidly. And how rapidly is rapidly?
- 21 A. Given over a few minutes; however quickly I can pump
22 it in with a pump.
- 23 Q. Okay. So you may have finished this transfusion
24 before drawing the blood?
- 25 A. Potentially, yes.

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1 Q. Now if someone is in the trauma ICU as you describe
2 it by definition does that mean they're not stable?

3 A. No, it does not mean they're not stable.

4 Q. I think of ICU as intensive care unit.

5 A. Correct.

6 Q. But you have stable people in there?

7 A. Every day.

8 Q. Okay. And do they hang out there or is it just for
9 a short period of time before they are transferred
10 somewhere else?

11 A. That depends on the physician's preference but it
12 also is dependent on whether or not there are beds
13 available on the floor in a step down unit. So just
14 because the patient is in the intensive care unit it does
15 not mean that they are unstable.

16 Q. Okay. I probably should have asked you this before
17 I took the sheet back but do you know what the
18 transfusion was of?

19 A. No.

20 [Whereupon, the witness is shown document]

21 A. The transfusion was of red blood cells; 0-Positive
22 packed red blood cells.

23 Q. Thank you, sir. And just because she had this
24 transfusion doesn't mean she didn't have other
25 transfusions too, right?

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1 A. That's correct.

2 Q. You said you had been nursing for several years at
3 this point right, in 2011?

4 A. That's correct.

5 Q. Had you ever had patients tell you that they tasted
6 something when an IV started? They had a taste in their
7 mouth from an IV?

8 A. Not that I recall, no.

9 Q. How many vials of blood did you draw?

10 A. How many vials of blood did I draw for the D-U-I
11 sample?

12 Q. Yes?

13 A. It would have two vials of blood.

14 Q. And how do you -- do you plug those vials directly
15 into a needle typically or how does that work?

16 A. That's correct. So you have a protective cap, which
17 has a needle which goes into the vessel and it has a
18 sheath that covers it to protect the clinician who is
19 drawing the blood from getting stuck by the needle. You
20 slide the vial directly into that and it's drawn directly
21 through the needle.

22 Q. With the swab that should have been provided in the
23 kit do you typically keep the wrapper of that and put it
24 in the kit?

25 A. No.

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- 1 Q. What do you do with the wrapper?
- 2 A. Throw it away.
- 3 Q. So there is no I guess tangible evidence later to
- 4 show that you used Betadine instead of a regular alcohol
- 5 swab?
- 6 A. We do not keep the wrapper of the Betadine, no.
- 7 Q. I'm sorry?
- 8 A. We do not keep the wrapper of the Betadine, no.
- 9 Q. Okay. What is typically used in a hospital to swab
- 10 a person's arm before an injection or a blood draw?
- 11 A. Chlorhexidine.
- 12 Q. Okay. And what's in that?
- 13 A. It's an antiseptic swab that we use to clean
- 14 beforehand. I'm not familiar with all of its components.
- 15 Q. Okay. But it's not non-alcoholic correct?
- 16 A. I'm not sure about that. It is not an alcohol swab
- 17 I will tell you that.
- 18 Q. What's the difference?
- 19 A. Chlorhexidine is used as a preferential cleanser
- 20 because it's a better cleanser than alcohol or Betadine.
- 21 Q. Okay.
- 22 A. And it's what the hospital uses.
- 23 Q. Okay.
- 24 MR. MAYER: Court's indulgence.
- 25 [Whereupon, Mr. Mayer confers with his client]

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1 Q. [Mr. Mayer] Now I know you don't have a specific
2 recollection of where you drew the blood from is there a
3 typical place that you draw the blood from in a situation
4 like this?

5 A. Preferentially we would draw the blood from an
6 antecubital vein, which is here [indicates] in the crux
7 of the arm.

8 But there is no standard place to draw blood, no.
9 In a situation like that we would draw blood from where
10 we could find a vein to draw blood from in the ICU.

11 Q. Okay. Thank you.

12 MR. MAYER: No further questions.

13 THE COURT: Any redirect of the witness?

14 MR. ALFARO: Yes, Your Honor.

15 THE COURT: You may proceed.
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June 3, 2014

1 REDIRECT EXAMINATION
2 BY MR. ALFARO:
3 Q. Let me show you what was marked as defendant's
4 exhibit 9.
5 [Whereupon, the witness is shown document]
6 Q. You testified as to the time the transfusion
7 started. Does the form also show what time the
8 transfusion ends?
9 A. It does.
10 Q. Can you tell us what the time it started was and the
11 time that it ended was?
12 A. The initiation of transfusion was at 00:30. The end
13 of the transfusion was at 01:10.
14 Q. So based off that and then the vials the
15 transfusion would have started at...
16 A. 00:30.
17 Q. And then the blood draw would have been 00:45.
18 A. Yes.
19 Q. And then the transfusion end at 01:10?
20 A. That's correct.
21 Q. Okay. Thank you.
22 MR. ALFARO: No further questions.
23 THE COURT: Any objection to the witness being
24 excused from the State?
25 MR. ALFARO: No, Your Honor.

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1 THE COURT: From the defense?

2 MR. MAYER: No, Judge.

3 THE COURT: Sir, you're excused.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 THE COURT: You may call your next witness.

7 MR. WEST: The State calls Tracy McKinnon.

8 [Whereupon, Ms. McKinnon comes forward]

9 [Whereupon, the witness is duly sworn by the Clerk
10 of Court]

11 CLERK OF COURT: Please be seated. State your full
12 name and spell your last name for the record.

13 THE WITNESS: Tracy Allen McKinnon, M-C-K-I-N-N-O-N.

14 THE COURT: You may proceed.

15 MR. WEST: Thank you, Judge.

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1 TRACY MCKINNON,

2 Having been first duly sworn,

3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. WEST:

6 Q. Mr. McKinnon, where do you work?

7 A. I work for the South Carolina State Law Enforcement
8 Division and it's more commonly referred to as SLED.

9 Q. What do you do there?

10 A. I'm a forensic toxicologist.

11 Q. How long have you been working there?

12 A. For just over eight years.

13 Q. Can you describe for the jury your training and
14 experience as a forensic toxicologist.

15 A. Yes. I've got a Bachelor of Science degree with a
16 chemistry major from the University of North Carolina at
17 Charlotte. I've got a Master's of Science with a
18 forensic toxicology degree from Arcadia University.

19 Throughout my training period at SLED I was under
20 the tutelage of a senior analyst for roughly a year
21 learning all the aspects of forensic toxicology.

22 I was required to take a competency test at the end
23 of my training, which I passed and then ever since I take
24 yearly proficiency tests to maintain my proficiency in
25 the field.

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1 Q. Could you tell the jury how many times you may have
2 run sample tests on blood specimens?

3 A. Into the thousands.

4 Q. And how many times have you prepared reports for
5 those samples?

6 A. Well over several thousand reports.

7 Q. Can you tell the jury how many times you've
8 testified in court?

9 A. Twenty four times previously.

10 Q. Have you ever been published -- have you ever
11 written anything on the subjects?

12 A. I've done individual method development research in
13 our lab, which has been published and peer reviewed at
14 annual meetings.

15 Q. Have you ever been qualified as an expert
16 toxicologist when you testify?

17 A. Yes, 24 times previously.

18 MR. WEST: Your Honor, at this time the State would
19 move that Mr. McKinnon be admitted as an expert in the
20 field of forensic toxicology?

21 THE COURT: Any objections or questions?

22 MR. MAYER: Court's indulgence.

23 [Whereupon, Mr. Mayer confers with his client]

24 MR. MAYER: Just a brief Voir Dire Judge, if
25 possible.

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1 THE COURT: Only as to qualifications.
2 MR. MAYER: Thank you, Judge.
3 THE COURT: Nothing substantive. You may proceed.
4 MR. MAYER: Thank you, Judge.
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1 VOIR DIRE

2 BY MR. MAYER:

3 Q. Mr. McKinnon, just real briefly in the 24 trials
4 you've testified in before have those all been law
5 enforcement trials?

6 A. I've testified as a forensic toxicologist both for
7 the prosecution and the defense.

8 Q. Okay. And with your forensic toxicology have you
9 studied the impact of certain chemicals on the human
10 body. Is that how you define toxicology?

11 A. Yes. That's essentially what toxicology is. It's
12 how different substances react in the body and what those
13 substances do to the body and then conversely what the
14 body does to those substances to get rid of them.

15 Q. And are you familiar with the body's interaction
16 with the substance of alcohol?

17 A. Yes, I am.

18 Q. And are you familiar with the body's interaction
19 with the substance of marijuana?

20 A. Yes.

21 MR. MAYER: Thank you, Judge. The defense is
22 satisfied.

23 THE COURT: Admitted without objection expert in
24 the field of forensic toxicology.

25 MR. WEST: Thank you, Judge.

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Tracy McKinnon-Direct Examination by Mr. West (resumes)
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1 DIRECT EXAMINATION (resumes)

2 BY MR. WEST:

3 Q. Mr. McKinnon, did you receive any specimens in the
4 case involving Shana Robinson?

5 A. Yes, I did.

6 Q. And tell the jury about how you received those
7 specimens.

8 A. They would have been received initially into our
9 evidence log-in department from the submitting agency in
10 this case. And then from the evidence log-in department
11 they would have been transferred up to our department by
12 one of our technicians.

13 At that point the evidence would have been
14 inventoried with pictures and descriptions into our
15 library into our information system. And then at that
16 point I would have taken custody of the evidence once the
17 initial inventory and screening was completed.

18 MR. WEST: I'm showing the witness what has been
19 previously marked as State's 74 for identification
20 purposes only.

21 [Whereupon, the witness is shown item].

22 Q. [Mr. West] Do you recognize this?

23 A. Yes, I do.

24 Q. And how do you recognize it?

25 A. I can tell from the -- may I take it out?

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1 Q. Sure.

2 A. By the SLED evidence bag and also my initials should
3 be on these seals. Yes, my initials and dates are on the
4 seals indicating the times that I actually cut into the
5 bag to -- for testing.

6 Q. And what is in that bag?

7 A. There are two grey top tubes of blood and they are
8 both labeled Shana C. Robinson.

9 Q. Okay. So those are the vials of the blood samples
10 that you tested in this case?

11 A. Yes.

12 Q. Does one of those vials contain a little bit less
13 blood than the other?

14 A. Yes. It appears as though one of the vials was
15 exhausted in the testing and then there is at least a
16 couple of millimeters of blood left in the other tube.

17 Q. And that would be because that's the physical blood
18 that you tested?

19 A. Yes.

20 [Whereupon, State's exhibit number 75 is marked by
21 the court reporter]

22 MR. WEST: I'm showing the witness what is marked
23 as State's 73 and 75.

24 [Whereupon, the witness views photos].

25 Q. [Mr. West] Do you recognize those?

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1 A. Yes, these are the SLED evidence bag that the
2 evidence is placed into initially and then also the two
3 tubes of blood that I would have tested.

4 Q. And this is the same specimens that you just
5 testified to, correct?

6 A. Yes.

7 Q. And they are true and accurate representations of
8 the items as they are depicted?

9 A. Yes, they are.

10 MR. WEST: The State would move State's 73 and 75
11 into evidence.

12 THE COURT: Any objections?

13 MR. MAYER: No objection.

14 THE COURT: Marked and admitted without objection.

15 [Whereupon, State's exhibit number 75 is entered
16 into evidence by the court]

17 Q. [Mr. West] Can you describe for the jury what your
18 tests on those specimens would entail?

19 A. So for this particular case an initial blood alcohol
20 screening would be completed. And then with the results
21 of the blood alcohol complete we would do a drugs of
22 abuse screen basically looking for different types of
23 classes of drugs, which are generally abused such as
24 cocaine, methamphetamine class of drugs called opiates,
25 which would include Vicodin, Oxycontin, a class of drugs

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1 called benzodiazepines, which would include Xanax or
2 Valium, and then marijuana. And then once that initial
3 screening of the sample is completed then anything that
4 hits a positive screen would be confirmed and
5 quantitated.

6 And in this case we would actually do a more
7 comprehensive screen looking for other drugs that don't
8 necessarily cross react with our panel of drug screens.

9 Q. So the blood that is stored in those vials is there
10 anything in those vials prior to the blood actually being
11 placed in the vials?

12 A. Yes. There is a chemical preservative placed into
13 the vials at least in grey top tubes of blood to
14 basically keep the sample from clotting.

15 And then also to act as a somewhat of a chemical
16 preservative to kind of inhibit any further degradation
17 or -- degradation of the sample or -- and it would also
18 prevent samples from taking on extra ethanol if ethanol
19 is actually present in the samples.

20 Q. And to your knowledge these samples were properly
21 stored prior to your testing?

22 A. Yes, they were.

23 Q. Okay. And you mentioned in your testing your
24 testing is not -- is your testing all comprehensive? In
25 other words is it going to test for every drug in the

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1 world?

2 A. Not every drug in the world, no.

3 Q. Okay. Can you describe for the jury what sorts of
4 things you're looking for again?

5 A. So for the initial drug screens as I mentioned the
6 classes of drugs that we are specifically looking for.
7 And then in our more comprehensive drug screen we're
8 looking for drugs such as over the counter medications
9 that you might receive, and also sometimes drugs that are
10 actually administered in hospital settings.

11 Other prescription drugs that an individual may take
12 that are not included in our screening panel are some of
13 the drugs that we might be looking for.

14 Q. During the course of your testing is it regular
15 procedure to prepare a report as to the results of your
16 test?

17 A. Yes. Once testing is completed and all the quality
18 control for each piece of data that was generated is
19 reviewed a report is generated and then that report is
20 then peer reviewed by another analyst in the toxicology
21 department.

22 And in this case it happens to be the Lieutenant or
23 the supervisor in the department who actually would
24 review that test or that report to make sure that
25 everything makes sense and all the -- are matches. So

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1 that there is a secondary peer review system and then
2 once that peer review has been completed then the report
3 is issued.

4 Q. Did you prepare a report in this case?

5 A. Yes, I did.

6 MR. WEST: I'm showing the witness what has already
7 been marked as State's number 70.

8 Q. [Mr. West] Do you recognize that document?

9 [Whereupon, the witness reviews document]

10 A. Yes, it appears to be the report that I would have
11 generated for this case.

12 Q. And this is the report that is kept in the regular
13 course of your testing at SLED?

14 A. Yes.

15 Q. Is it accurate in the sense that it is the true
16 report that you completed in this case?

17 A. It appears to be so, yes.

18 Q. Okay.

19 MR. WEST: At this time the State would move
20 State's number 70 into evidence.

21 THE COURT: Any objection?

22 MR. MAYER: Judge, we would object on ---

23 THE COURT: --- no speaking objections. Basis of
24 the objection?

25 MR. MAYER: Just on foundation.

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1 THE COURT: Overruled. To be marked and admitted
2 subject to the objection.

3 [Whereupon, State's exhibit number 70 is entered
4 into evidence by the court subject to the objection]

5 Q. [Mr. West] Mr. McKinnon can you testify as to what
6 sorts of things were found in this defendant's blood
7 sample that you received from law enforcement?

8 A. So for the first part of our testing as I mentioned
9 we do a blood alcohol analysis for -- generally for D-U-I
10 cases we're looking specifically for ethanol or the
11 alcohol that is actually ingested in alcoholic beverages.

12 Here ethanol was present at -- its result was a 0.09
13 percent ethanol. Then our drugs of abuse screen
14 basically was essentially negative for Amphetamine,
15 Methamphetamine, Oxycodone, and Cannabinoids which would
16 entail the marijuana, and also negative for Cocaine.

17 There would have been a positive opiate screen and
18 that was confirmed and quantitated to be Hydromorphone.
19 And then also several other drugs were detected,
20 Diphenhydramine, which is Benadryl or Unisom, Ketamine,
21 Lidocaine and its metabolite were also found.

22 But those drugs are generally administered in the
23 hospital, and also an antidepressant Sertraline or trade
24 name Zoloft was present and then also a metabolite of
25 Klonopin, and a sedative Trazodone or Desyrel was found

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1 in this case.

2 Q. That was a lot so I am going to try to walk you
3 through that again.

4 A. Okay.

5 Q. One of the first things you found you said was
6 ethanol.

7 A. Correct.

8 Q. Describe for the jury what that means.

9 A. As far as?

10 Q. As far as what ethanol is and how it was found in
11 this case.

12 A. So the ethanol was detected in this case. Basically
13 the ethanol level in this case at an .09 level the State
14 per se law of a 0.08 percent so you're looking at
15 something that's just over the State per se law for
16 driving under the influence of ethanol.

17 Q. And when you're saying ethanol you mean?

18 A. Yes. Ethanol is drinking alcohol. It's the alcohol
19 that is consumed in alcoholic beverages.

20 Q. Okay. Now is ethanol is the same sort of alcohol
21 that you would find in the hospital setting?

22 A. Ethanol is not at all the same. Actually yes you
23 can find ethanol -- there are ethanol preps that are used
24 in hospital settings for sterilization purposes. But
25 generally the ethanol that we would consider the alcohol

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1 that you would find in the hospital setting is isopropyl
2 alcohol or rubbing alcohol.

3 Q. So would those two test different if you found them
4 in your results?

5 A. Yes, they would. We are able to basically
6 differentiate between ethanol and isopropyl alcohol.

7 Q. This ethanol found in this defendant's system was
8 not the same ethanol or isopropyl alcohol that would be
9 found in the hospital settings?

10 A. Correct. It is -- the ethanol in this case would
11 have been something that somebody would actually ingest
12 in an alcoholic beverage.

13 Q. Why don't you describe for the jury what ethanol's
14 effects are on the human body?

15 A. Okay. So ethanol is a central nervous system
16 depressant meaning that it's going to act basically on
17 the brain and the peripheral and slow everything down.

18 Its major affects are going to be sedation,
19 drowsiness, slurred speech, increased reaction time. And
20 those effects are actually increased with increased
21 amounts of ethanol that are ingested.

22 Q. In this case you testified that there was a .09;
23 what significance does that .09 have in terms of how that
24 level would affect the human body?

25 A. The State of South Carolina has said that 0.08

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1 percent of per se law meaning at that level anyone with
2 that amount of alcohol or ethanol in their system is
3 legally under the influence of ethanol.

4 So at an .09 you're looking at somebody who is
5 basically defined as somebody who is under those
6 influences and materially and appreciably impaired in
7 their ability to drive a motor vehicle.

8 Q. Now aside from the ethanol I'm going to just go
9 specifically into other sorts of elements that you found
10 in your testing without referencing the interactions
11 between the two.

12 Which of the drugs listed in your report did you say
13 would have normally been administered in a hospital
14 setting?

15 Q. So that the Hydromorphone would have most likely
16 been administered in the hospital and that would be used
17 for pain management for anything -- for any kind of
18 surgical procedure or medical procedure that an
19 individual would undergo.

20 Also the Ketamine that was found would most likely
21 be administered in the hospital basically as an
22 anesthetic agent.

23 Lidocaine also administered in the hospital also as
24 a topical anesthetic type compound. And then the
25 metabolite of Klonopin, the 7-Aminoclonazepam may or may

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1 not have been administered. Generally patients are given
2 something to act as a sedative when they are in the
3 hospital to kind of calm them down if they are going to
4 undergo any kind of procedure.

5 Q. What about Trazodone?

6 A. Trazodone most likely not. That's something that
7 people -- that is prescribed for anxiety or sleep
8 deprivation.

9 Q. Okay. So it's your testimony that Hydromorphone,
10 Ketamine, Lidocaine; those drugs would probably have been
11 administered in the hospital setting?

12 A. Most likely, yes.

13 Q. Now you said Benadryl or Diphenhydramine likely
14 wasn't?

15 A. Correct.

16 Q. What is the effect of Diphenhydramine on the human
17 body?

18 A. So Diphenhydramine also is a central nervous system
19 depressant and its effects are going to be very similar
20 to those of ethanol. It's indicated for allergies.

21 It's an antihistamine, but its primary manifestation
22 is sedation; meaning when you take this medication it's
23 going to put you to sleep. It's sold over the counter
24 in Benadryl and also as Unisom, which is an over the
25 counter sleep aid.

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1 Q. What about Zoloft?

2 A. Zoloft is essentially an antidepressant. It's not
3 really going to have any types of psychomotor either
4 stimulation or depression. It's basically a mood leveler
5 if you will.

6 Q. What about Clonazepam?

7 A. Clonazepam is given as an antidepressant type drug.
8 It's also a central nervous system depressant and its
9 effects also are going to include sedation and the
10 drowsiness that would be associated with that.

11 Q. Okay. Now you've already testified to the
12 Trazadone. How would these drugs, aside from the use of
13 alcohol just alone, in combination with each other how
14 would they affect the driver of a motor vehicle?

15 A. Each individually by itself or all of these
16 together?

17 Q. Well do it individually and then we'll do an in
18 combination.

19 A. Okay. So the Diphenhydramine in this case the
20 defendant had 0.06 milligrams per liter, which is
21 indicative of a onetime therapeutic dose. That would
22 lead generally to drowsiness ---

23 MR. MAYER: --- objection, Judge.

24 THE COURT: Basis?

25 MR. MAYER: Can we approach?

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1 THE COURT: Uh Huh.

2 [Whereupon, an off the record bench conference is
3 held]

4 THE COURT: Sir, you may answer the question. Do
5 you need it repeated? The objection is overruled.

6 THE WITNESS: Yes, please.

7 Q. [Mr. West] How would Benadryl or Diphenhydramine
8 effect the driver of a motor vehicle?

9 A. Okay. So it's affects as I said before would be
10 very similar to ethanol. The primary manifestation would
11 be sedation or at least drowsiness to the point where
12 reaction time would be increased.

13 And then probably more than likely your divided
14 attention ability would be decreased meaning that if
15 you're starting to nod off then you're not paying
16 attention to what is going on in front of you, behind
17 you, beside you; so all of that would be affected
18 definitely by even a single dose of Diphenhydramine.

19 The Trazadone also had a 0.08 milligrams per liter
20 appears to be a one-time therapeutic dose. But it also
21 as I stated before is a central nervous depressant so its
22 affects would then be the same as ethanol and
23 Diphenhydramine meaning that your primary manifestation
24 is going to be sedation, the drowsiness, the
25 sluggishness, increased reaction time; that goes along

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1 with that. Taken together ---

2 Q. --- did you -- I'm sorry; how about the Clonazepam?

3 A. In the Clonazepam also would also act similarly to
4 the Diphenhydramine, the Trazadone, and the ethanol.

5 Q. Okay. Now the drugs in combination without the
6 alcohol can you describe what the affects of the human
7 body and in particular a driver of a motor vehicle would
8 be?

9 A. So just Diphenhydramine and the Clonazepam and the
10 Trazadone taken together the effects at least would be
11 additive meaning whatever the affect of the
12 Diphenhydramine was plus the effect of the Clonazepam,
13 plus the affect of the Trazadone would equal three times
14 the effect of just one of those by itself meaning one
15 plus one equals three.

16 Sometimes you can get synergistic or potentiated
17 effects where the one plus one plus one equals something
18 much greater than three or the affects could be five,
19 ten, fifty fold. That would probably be extreme in this
20 case but definitely at least an additive type affect.

21 Q. Now in particular the Diphenhydramine, the Zoloft,
22 the Clonazepam and the Trazadone how would they interact
23 with the use of drinking alcohol?

24 A. So the Diphenhydramine and the ethanol together just
25 regardless of the other two would be at least an additive

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1 affect, meaning if the subject is at a 0.09 percent blood
2 alcohol concentration then you would add that effect to
3 the Diphenhydramine. So you're looking at something
4 greater than .09; that quantity is really impossible to
5 actually quantify but you're looking at an additive
6 affect.

7 When you add Trazadone and ethanol the two of those
8 together you're looking at a potentiation reaction where
9 as I said before it's a one plus one is going to be
10 something much greater than two; meaning that these
11 effects are going to be quite greater as far as central
12 nervous system depression goes just the Trazadone and the
13 ethanol.

14 When you add all three together plus the Clonazepam
15 you're looking at very, very significant central nervous
16 system depression.

17 Q. Why is the timing of a blood draw significant in
18 terms of testing for ethanol?

19 A. Basically as soon as you ingest any compound your
20 body is going to try to get rid of it. The moment that
21 it's taken in and absorption into the system begins the
22 elimination has also started.

23 So after you've ingested ethanol or any other
24 compound the longer it takes from the time of ingestion
25 to the time of peak concentration you're going to start

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1 eliminating and then you're not going to be able to
2 detect those substances in a forensic setting.

3 Q. How would the levels of drugs and alcohol
4 specifically that you found in this case particularly
5 indicate to you what the impairment level of the
6 defendant would be at the time that the sample was taken?

7 MR. MAYER: Objection, Judge.

8 THE COURT: Basis?

9 MR. MAYER: There is insufficient evidence here.
10 There is no ---

11 THE COURT: --- please approach.

12 [Whereupon, an off the record bench conference is
13 held]

14 THE COURT: Sustained. Rephrase. It's him forming
15 a hypothetical.

16 Q. [Mr. West] Mr. McKinnon how would the levels of
17 these drugs in combination with the alcohol in a
18 hypothetical scenario affect the driver of a motor
19 vehicle in terms of being impaired on the roadways?

20 A. These levels would certainly lead to somebody in my
21 opinion not being able to safely operate a motor vehicle.
22 I believe that the impairment would be such that you
23 would see somebody who would have a very hard time
24 maintaining a lane, somebody whose reaction time to a
25 stimuli would be greatly increased, the time that it

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1 takes for that person to actually process something
2 crossing the road, a stop sign would be greatly increased
3 and then the reaction to the process would actually be
4 greatly increased.

5 Being able to pay attention to everything that is
6 going on around you would be greatly impaired. So it
7 would be my opinion that at these levels that somebody
8 would be very unsafe to drive a motor vehicle.

9 Q. Now I'm going to back up a little bit. We talked
10 about the timing of the sampling of blood in terms of how
11 these things would be metabolized in the system.

12 Would those things found in the blood, specifically
13 these drugs and the ethanol, would they have been higher
14 had the sample been taken sooner?

15 A. Yes. You would generally expect that the longer the
16 time between ingestion and sample draw, in this case
17 blood draw, the longer that time the longer the body is
18 going to have to actually metabolize and get rid of these
19 substances. So the concentrations would therefore be
20 greatly smaller as time were to increase.

21 Q. So in a scenario where a blood sample is taken
22 nearly four hours after a specific point in time it would
23 be your testimony that these levels would have been
24 higher prior to that four hour period.

25 A. Yes. On the assumption the individual is not

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1 ingesting ethanol or Diphenhydramine or Trazadone or
2 Clonazepam during that time I would expect that four
3 hours prior that the concentrations would have been
4 somewhat higher.

5 Q. Now, is there any way to calculate what those levels
6 would be when you trace back from those points in time?

7 A. There is a way for ethanol -- we refer to it as back
8 extrapolation and that takes a lot of factors into
9 account.

10 For other drugs it's basically impossible unless you
11 actually are with somebody as they are taking the
12 medications or taking the drugs know exactly how much
13 they are taking, and then you basically have to take
14 their blood at certain times basically to determine their
15 elimination rates for those drugs. But for ethanol there
16 is a way to back extrapolate.

17 Q. Could you describe that for the jury?

18 A. Basically there is a range that has been accepted
19 where people are going to eliminate ethanol at about an
20 average rate.

21 And like I said it takes a lot of things into
22 account; whether a person is male or female, whether or
23 not they are in good health, if they've got a full
24 stomach. There are a lot of things that have to be taken
25 into account, but that range has widely been accepted to

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1 be a 0.01 percent to a 0.18 percent per hour with an
2 average of about 0.15 percent per hour.

3 Q. Using those same formulas and calculations were you
4 able to determine through the back extrapolation what the
5 amounts of ethanol in a scenario where somebody would
6 have had a .09 would have been four hours prior to the
7 blood sample?

8 MR. MAYER: Objection, Judge.

9 THE COURT: Basis?

10 MR. MAYER: Same as the other one.

11 THE COURT: It is in the form of a hypothetical.
12 Overruled. It's not fact specific.

13 Q. [Mr. West] Continue.

14 A. So on the basis of all those assumptions and the
15 fact -- and another huge assumption is assuming that
16 somebody is actively eliminating and they are on the
17 basically the downward side of the concentration curve
18 the concentration of the ethanol using the average of
19 0.015 you multiply that by four hours so you're looking
20 at a 0.06 percent over the course of four hours.

21 So that would put that ethanol concentration if they
22 were to have a 0.09 four hours later at a 0.15 percent.

23 Q. Can you describe for the jury how an IV would affect
24 the measurements of these calculations that you've just
25 described?

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- 1 A. An IV as far as?
- 2 Q. A normal IV with saline solution.
- 3 A. Such that you would be given in the hospital for?
- 4 Q. That's correct.
- 5 A. Okay. So for an IV that would essentially --
- 6 you're adding more volume to the blood. So anytime you
- 7 add more volume to something whatever the concentration
- 8 is initially as you add more volume the concentration is
- 9 actually of whatever substance is actually in a decrease.
- 10 Q. Okay. So if someone in a hypothetical scenario
- 11 were to have a .09 and they were given an IV without the
- 12 IV your testimony is that that would have been higher or
- 13 lower?
- 14 A. Without the IV?
- 15 Q. With the IV and without the IV.
- 16 A. Okay. So a 0.09 without an IV is a 0.09. With an
- 17 IV it would most likely be a little bit lower. How much
- 18 lower depends on exactly how much volume was given.
- 19 Q. Okay. So an IV would essentially make -- obviously
- 20 I'm throwing out numbers here but an IV could potentially
- 21 dilute a .10 to a .09?
- 22 A. Potentially, yes.
- 23 Q. Okay. And that's kind of the scenario that you
- 24 just described?
- 25 A. Yes.

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1 Q. What about a blood transfusion?

2 A. A blood transfusion would be basically a similar
3 basis assuming that the blood that is being put back into
4 the body is ethanol free that would also dilute the
5 alcohol or the ethanol that is in the blood.

6 Q. Would the fact that an IV in addition to a blood
7 transfusion at all multiply the effects of the dilution
8 of that .09?

9 A. Potentially yes.

10 Q. Okay.

11 MR. WEST: I'm going to show the witness what we
12 are going to mark as State's 76 for identification
13 purposes only.

14 [Whereupon, State's exhibit number 76 is marked by
15 the court reporter]

16 Q. [Mr. West] Do you know what this is?

17 [Whereupon, the witness reviews document]

18 A. This appears to be the patient's -- what the patient
19 would have been given in a hospital setting.

20 Q. Okay. And in a hypothetical scenario would this
21 list on State's number 76 how would the listed
22 medications or drugs affect the readings that you've just
23 described for the jury?

24 A. Meaning everything that is listed on here or just
25 the highlighted?

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1 Q. No, I apologize; there is a lot. But I would like
2 for you to kind of walk through it for the jury.

3 A. Well, I'm obviously not a medical expert but there
4 are substances on here which were confirmed in my
5 toxicology report specifically the Hydromorphone, the
6 Ketamine, and the Lidocaine.

7 There are also substances on here that were given it
8 appears in an IV situation, and then there are also drugs
9 that appear to be basically adrenaline boosters to get a
10 body resuscitated.

11 Q. Would any of those drugs listed spike the alcohol
12 levels that you gave in your readings?

13 A. I'm not familiar with any of these on here that
14 would spike because there is nothing -- no ethanol listed
15 on here.

16 Q. Okay. Would any of those medications listed spike
17 any of the other drug readings that were found in your
18 report?

19 A. Just the three that I mentioned that were consistent
20 with the toxicology report that was issued for this case.

21 Q. Okay. So it is your testimony that nothing in this
22 list would cause you to have a misreading in the report
23 that you made in this case?

24 A. Correct.

25 MR. WEST: That's all the questions the State has

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1 at this time. Thank you.
2 THE COURT: Any questions for the witness?
3 MR. MAYER: Yes Judge, thank you.
4 THE COURT: You may proceed.
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1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Hey Mr. McKinnon. . . Aaron Mayer. We spoke on the
4 phone some time ago; thank you for that.

5 A. Yes.

6 Q. Some of the drugs that Mr. West was asking you about
7 do they have something called a half-life or is there
8 some useful time in the body when they have an effect and
9 then there is some later time when they don't?

10 A. All drugs have half-lives and basically as a
11 toxicologist a half-life is going to be something that we
12 use as a timeframe for detection purposes; meaning
13 basically each half-life is the point in time that it
14 takes for half of the drugs concentration in the body to
15 -- or the concentration of the drug or substance in the
16 body to be decreased by half the concentration.

17 So if you've got a one of something in the body one
18 half-life later you would expect to see 0.5 of that and
19 then so on and so forth. And then after essentially five
20 half-lives of whatever the drug is we would essentially
21 not be able to detect it or report as being positive.

22 Q. So for example let's go through the list of things
23 that you found in Shana's blood. Let's talk about the
24 half-lives of those. What is the first thing on the list
25 that you found there?

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1 A. Ethanol.

2 Q. Ethanol. What's the half-life? I guess that's a
3 metabolism thing isn't it?

4 A. Yes. It's basically like I said before the average
5 elimination rate is going to be the 0.015 percent per
6 hour. And that's just an average; the range being 0.01
7 to 0.018.

8 Q. Now you mentioned when you were testifying about
9 that earlier I think -- I don't want to misquote you but
10 I think you said something like the huge assumption is
11 that the person is actively eliminating alcohol?

12 A. Yes, that's correct.

13 Q. Please tell us about that assumption.

14 A. If somebody is actually still absorbing ethanol then
15 your concentration actually hasn't reached its peak yet;
16 meaning that there is a potential that the ethanol
17 concentration could be greater and then the back
18 extrapolation that I gave could have been off on the low
19 side potentially from the hypothetical of a 0.15 to
20 something a little bit greater than a 0.15 assuming that
21 there is still absorption taking place.

22 Q. Okay. And what sort of factors would influence
23 whether someone is actively absorbing alcohol or whether
24 their body is somehow excreting alcohol?

25 A. Like I mentioned before as soon as you ingest

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1 something elimination is going to take place basically
2 simultaneously with the absorption. So with ---

3 Q. --- let me pause you right there. Are you assuming
4 a regular healthy individual?

5 A. Yes, that is one of the assumptions that have to be
6 taken into account.

7 Q. And for Ms. Robinson are you aware of whether she
8 was healthy or not?

9 A. I have no knowledge of her health.

10 Q. Okay. And you're not a doctor right?

11 A. No, I am not.

12 Q. Okay. So you wouldn't be able to give us an
13 opinion on how trauma would affect these rates, right?

14 A. No, I would not be able to give an opinion as to the
15 effects of trauma.

16 Q. Okay. Please continue.

17 A. Could you repeat what you would like me to continue
18 with?

19 Q. Okay. Sorry. You were talking about some of the
20 assumptions that you made when you said that -- huge
21 assumptions that the person is actively eliminating
22 before your measurements.

23 A. So elimination is key to the assumption for half-
24 lives and elimination determinations. Also as I said
25 before whether or not somebody has got a full stomach if

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1 you've got a full stomach the absorption into the body is
2 going to be delayed somewhat and it depends on what types
3 of foods you have in your stomach that is going to affect
4 your absorption.

5 The health of the individual is something that is
6 taken into account. Are they what we call a fast
7 metabolizer, are they a slow metabolizer meaning they
8 metabolize ethanol more quickly than others do or more
9 slowly and that's where we take that range into account.

10 Q. And when you say that something gets taken into
11 account that's not something you took into account in
12 Shana's case right?

13 A. For the back extrapolation?

14 Q. Right.

15 A. For the back extrapolation ---

16 Q. --- and I know you did a hypothetical for that but
17 in coming up with Shana's blood level of .09 when you
18 tested that blood were you -- did you take into account
19 whether she was healthy or not?

20 A. No, that .09 is what it is. That's what her blood
21 alcohol concentration was at the time that the blood was
22 drawn. I mean there are no hypotheticals that can be
23 taken into account there. It is what it is.

24 Q. Okay. But you don't know whether that alcohol in
25 her blood was caused by trauma to her liver or whether it

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1 was from something that she drank, is that right?

2 A. It would have been something that she would have
3 ingested.

4 Q. Okay. Before we go on and talk about the other
5 substances that were in what does one beer cause
6 someone's blood level hypothetically to go up?

7 A. Hypothetically assuming that there is nothing else
8 that they have not drank -- had anything else to drink?

9 Q. Correct.

10 A. Generally you look at one alcoholic beverage your
11 blood alcohol concentration is going to typically
12 increase 0.01 to 0.02 percent from nothing.

13 Q. Okay. And so how do you define one alcoholic
14 beverage for that?

15 A. One standard twelve ounce beer, one four ounce of
16 wine, one one-ounce shot of liquor is your typical dosing
17 for an alcoholic beverage.

18 Q. Okay. So let me give you a hypothetical. If
19 someone has one alcoholic beverage per hour for two hours
20 and then has in the next hour and half has a third
21 alcoholic beverage what is that going to make their blood
22 alcohol be?

23 A. Taking into account the assumptions of elimination
24 the blood alcohol concentration would be somewhere in the
25 range of a 0.02 to 0.03 just quick math in my head. It

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1 would be fairly low.

2 Q. Okay. Would someone be experiencing signs of
3 impairment at that level?

4 A. You begin to experience signs of impairment at lower
5 levels but they are very subtle signs of impairment.

6 Generally it's the 0.04 to 0.05 range where the
7 signs of impairment are noticeable to a casual observer
8 and definitely for a trained observer such as someone
9 giving potentially standardized field sobriety test or a
10 medical professional would be able to most likely pick up
11 on the subtle signs of impairment starting at the 0.04 to
12 the 0.05 range.

13 Q. In that range 0.04 to 0.05 what would be some of the
14 subtle queues if you will of impairment?

15 A. You would see somebody's ability to pay attention
16 starting to be impaired. Signs of euphoria start to
17 manifest at lower levels, meaning that somebody is
18 starting to really begin to feel the positive effects of
19 ethanol as far as the positive effects that make them
20 feel good.

21 You would expect to see somebody starting to lean
22 against walls or tables for balance purposes; their
23 balance would be somewhat affected. And these were all
24 at just fairly low levels.

25 Q. At 0.04 to 0.05?

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1 A. Yes.

2 Q. How would that level of alcohol in the blood
3 manifest for someone driving?

4 A. This sign that the ability to maintain a lane would
5 be -- would begin to be impaired meaning you would see
6 some drifting across the yellow lines across the fog
7 lines.

8 The reaction times would begin to be increased
9 meaning it would take just a little bit longer to
10 actually see a stimuli and then respond to it.

11 The ability to pay, as I said before, to pay
12 attention to your surroundings is starting to be impaired
13 at those lower levels.

14 Q. Okay. Those are not signs that would be exhibited
15 at that .02 level where you just did the quick
16 calculation in your head where someone had three drinks
17 over ---

18 A. --- just possibly very subtle, yes.

19 Q. Okay. But the 0.02 level being very different from
20 the 0.04 level you just described.

21 A. Yes, certainly the more ethanol you take in and your
22 concentration increases the impairment is going to
23 increase with the increased amount.

24 Q. Did you assume when you tested Shana's blood that
25 whatever wipe was used on her to draw her blood was a

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1 non-alcohol wipe?

2 A. I make no assumptions when I test blood or urine or
3 any other biological fluids. I test it as we receive
4 samples however it was retrieved, the process I have no
5 control over that so I test it and report as it was
6 received.

7 Q. Was there anything in the package that you received
8 to indicate that some non-alcohol wipe was used?

9 A. No, there was not.

10 Q. How would an alcohol based wipe potentially affect a
11 reading?

12 A. Now when you mean alcohol there are several
13 different types of alcohols. Are you referring to
14 ethanol or?

15 Q. Let's go through each one.

16 A. So there are ethanol preps that are used. Basically
17 everybody has seen you know the nurse will draw blood,
18 will take a sample of blood the ethanol used there has a
19 potential to increase the blood alcohol concentrations.

20 There are isopropyl alcohol rubs that are also used,
21 the rubbing alcohol that most people I would assume would
22 have in their medical cabinet for cuts and bruises. That
23 would not affect the ethanol level at all because those
24 are two different alcohols. And then there are also
25 other non-alcohol based sterilizing agents that are used

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1 for blood draws.

2 Q. Are you familiar with the proper procedure for a
3 blood draw for the test for the blood you use?

4 A. It -- I'm not at all familiar with whatever hospital
5 or medical personnel would use; it's whatever their
6 protocols are. We give recommendations that non-alcohol
7 preps are used. And I can only hope those non-alcohol --
8 non-ethanol preps are used when taken for cases such as
9 this.

10 Q. Okay. And is the blood supposed to be drawn from a
11 particular place for these tests?

12 A. Generally by a licensed medical person.

13 Q. Right. And I question was a little ambiguous I
14 guess. Is the blood supposed to be drawn from a
15 particular place on the body for these types of tests?

16 A. There is no real recommendation really. Generally
17 it is taken from a vein in the arm.

18 Q. Okay. So does it make a difference whether it's
19 taken from a vein or an artery?

20 A. Potentially.

21 Q. What's the difference?

22 A. Blood going to the heart is going to be contained in
23 the veins meaning -- let me make sure this is correct --
24 let me brush up on my physiology -- arteries carry blood
25 away from the heart and veins carry it back to the heart.

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1 So veins are going to be -- are going to contain the
2 blood that has already been distributed throughout the
3 body and is making its rounds back to the heart for
4 recirculation. The arterial blood I would assume would
5 be not the safest route to collect blood from a living
6 person.

7 Q. What would make you think that?

8 A. If you get a wrong stick I would think since you're
9 pumping the heart out it could actually cause trauma.

10 Q. Oh. Well are you familiar with a thing called
11 Candida? Candida?

12 A. No, I am not.

13 Q. As a toxicologist you've not heard of Candida?

14 A. I have not heard of Candida.

15 Q. Okay. So your testimony is it doesn't matter if
16 the blood for your test is taken from a vein or artery is
17 that right?

18 A. It's generally taken from a vein in a living person.

19 Q. But for the purposes of accuracy in your tests your
20 testimony is it doesn't matter if it is a vein or artery?

21 A. It can matter, yes.

22 Q. Okay. Please describe that.

23 A. Like I said the arterial blood is blood that is
24 coming from the heart. So if it's freshly from the heart
25 meaning very proximal or near the heart that means that

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1 the concentration can potentially be a little bit
2 greater. As I said the venous blood is blood that has
3 gone through the body and has reached the end points and
4 is coming back for recirculation.

5 Q. Okay.

6 A. So that typically only applies to post-mortem cases;
7 death cases where drugs once somebody has died drugs and
8 alcohol can actually pool in places around the heart.

9 Q. Okay. All right. Now the machine that you guys
10 use that you used to do this test where is that machine
11 at?

12 A. The instruments that we used for the testing here?

13 Q. Yes.

14 A. The instruments are in our SLED toxicology lab.

15 Q. Wasn't there an issue with radio frequency
16 interference for the accuracy of those tests?

17 A. There should not be any interferences.

18 Q. Were you familiar with an incidence where there was
19 some radio frequency interference causing inaccurate
20 readings?

21 A. No, I am not.

22 Q. How long have you been at SLED doing this?

23 A. For eight years.

24 Q. Before you tested this blood did you check to see
25 what the expiration was for these vials that the blood

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1 was stored in?

2 A. No, I did not.

3 Q. Are you familiar with the idea these vials do
4 expire?

5 A. Yes, but that's simply the expirations for the
6 vacuum on the tubes, not for the actual tube itself
7 meaning when blood is actually drawn if a tube has
8 expired and is not longer good it won't create that
9 vacuum to pull the blood into the tube. That's generally
10 the only reason for having an expiration on the tubes.

11 Q. Isn't it true that if the vacuum is diminished a
12 little bit it can cause something called candida growth
13 and that can increase the ethanol reading?

14 A. With the chemical preservatives that are used for
15 gray top tubes any microbes that would be introduced
16 would potentially be eliminated by the preservatives that
17 are present in the tubes.

18 Q. Okay. Now you don't personally -- you aren't the
19 one that packs those tubes with preservatives right?

20 A. No, I am not.

21 Q. Do you know where those tubes are sent from?

22 A. New Jersey I assume. I -- that's just a wild guess.

23 Q. Where all chemicals come from. So what's the
24 correct -- is there a correct ratio of preservatives that
25 should be maintained in these tubes?

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1 A. There is.

2 Q. Do you know what that is?

3 A. I don't know what that is off the top of my head.

4 Q. So it would be one of your assumptions in coming up
5 with this ethanol reading it would be one of your
6 assumptions that the preservatives in the tube were
7 correctly calibrated with the correct ratio?

8 A. Yes.

9 Q. Are you familiar with the concept that if there was
10 too little preservative there could be bacteria growth?

11 A. There is generally an excess of preservative that is
12 placed in there just for those assumptions.

13 MR. MAYER: Court's indulgence.

14 [Whereupon, Mr. Mayer reviews documents]

15 Q. [Mr. Mayer] Isn't it true though that if there is
16 too much preservative it can cause the blood to coagulate
17 even and skew the reading that way?

18 A. I'm not aware of that happening.

19 Q. I mean you wouldn't -- would you have any procedures
20 in place to check for that or prevent against that?

21 A. For coagulation?

22 Q. For the preservative being either too much or too
23 little in the vials?

24 A. We don't test the preservative concentration prior
25 to or as part of our routine testing.

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1 Q. Isn't it true that the liver in the body produces
2 alcohol?

3 A. The liver does not produce ethanol; it eliminates
4 ethanol.

5 Q. You're not aware of the fact that the liver can
6 excrete ethanol alcohol in a quantity greater than has
7 even been consumed; you're not aware of that concept?

8 A. I'm not aware of that concept.

9 Q. Have you checked for -- with the machine you used to
10 calculate Shana's blood have you or your agency ever
11 checked for radio frequency interference caused by other
12 nearby devices?

13 A. Radio frequency interference does not affect the
14 flame ionization detector that we use to detect ethanol.

15 Q. How do you know that?

16 A. I can't say that I know that personally but it has
17 been talked about in our lab as being a false rumor that
18 radio frequency just does not -- it's just something that
19 is brought up as ---

20 Q. --- so you have heard of that concept?

21 A. I have heard of the concept but it has been assured
22 that it does not happen in our lab.

23 Q. Okay. Where in the lab is the machine that you
24 used to test her blood? Please describe that setup.

25 A. It would only help for me to describe this if I were

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1 able to draw a picture of the lab. It is roughly 25 feet
2 from the center of the building, maybe 10 feet from the
3 edge of the building near a window if that helps
4 visualize it at all.

5 Q. It's near a window?

6 A. Yes.

7 Q. And you just -- I don't want to be redundant but did
8 you testify earlier you don't know what preservatives
9 were used in those vials?

10 A. Its sodium fluoride and potassium oxalate are
11 generally the preservatives used for gray top tubes.

12 Q. Okay. Do you know the correct ratio for those?

13 A. I'm not -- I don't remember the correct ratio.

14 Q. Okay. And still on the alcohol issue in the list
15 that the Solicitor showed you where it looked like a
16 hospital list of medicines given do you know what each of
17 those things may have been preserved in?

18 A. I have no idea, no.

19 Q. Okay. So when you testified earlier that those
20 medicines that were given wouldn't have increased her
21 blood alcohol level you weren't talking about whatever
22 preservatives that may have been in the tube you were
23 just talking about those medicines listed?

24 A. Correct.

25 Q. Okay; just making sure. Let's talk about the other

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1 things that you found in Shana's blood test. What was
2 the next positive you got there?

3 A. On page 2 was the Hydromorphone or the Dilaudid.

4 Q. Okay. And that's something that was given at the
5 hospital, right?

6 A. Yes, that's correct.

7 Q. And what was the next thing?

8 A. The Diphenhydramine.

9 Q. And what is that? Is that the Benadryl?

10 A. Benadryl or Unisom, yes.

11 Q. Okay. And are you familiar with the kind of
12 standard over the counter dose of that?

13 A. Typically from what I recall about 25 milligrams;
14 sometimes 50 milligrams is a standard dose.

15 Q. And so 50 milligrams how would 50 milligrams be
16 written compared to this .06 in your results? Would it
17 be written as 50?

18 A. The 50 milligram dose that you would see for a
19 prescription is quite different than what we report the
20 drug concentrations as milligrams per liter.

21 The 50 milligrams would be the amount of drug that
22 is actually in the dose that is taken whether you're
23 taking a tablet or whether you're taking it in liquid
24 form. So if you've got just an ounce of liquid Benadryl
25 or Unisom that you are taking there are going to be 50

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1 milligrams of drug in that dose. Here the 0.06
2 milligrams per liter means that there are 0.06 milligrams
3 per liter of blood in the body.

4 Q. Okay. And so do you have a way of figuring out how
5 long ago based on half lives this may have been taken?

6 A. You can get a rough estimate.

7 Q. What's the half life of Benadryl?

8 A. It's fairly long because it's something that the
9 body needs if you're taking it for allergies. I don't
10 know exactly what the half life is; I'll say that its
11 four hours and that can be low or that can be high.

12 Q. Is that ballpark?

13 A. That would be ballpark.

14 Q. Okay. So it might be three and a half or it might
15 be four and a half but it wouldn't be 20.

16 A. Right.

17 Q. Okay.

18 A. So you would say that after one hour if the
19 concentration is 0.06 then the concentration one hour
20 later would be 0.03. That's how the ---

21 Q. --- no, not based on a four hour half life it
22 wouldn't be right?

23 A. You're right, I'm sorry. Yes, exactly so four hours
24 later ---

25 Q. --- four hours later?

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1 A. Four hours later, yes. Yes, I'm sorry.

2 Q. So do you have any idea what the standard dose of
3 Benadryl once it's in -- gotten a chance to get into the
4 blood stream how that would show up in terms of
5 milliliters or milligrams per liter?

6 A. Typically as I said before it's one of those things
7 where somebody actually has to take somebody's blood and
8 monitor or test for it to see what the concentrations
9 are.

10 And there are reports that the average dose, an
11 average 50 milligram dose or 25 milligram dose two hours
12 later would be peak concentration. The average dose or
13 the average concentration in the body would be roughly
14 the 0.06. That's why I stated that this appears to be a
15 therapeutic dose of the drug.

16 Q. All right. So that would be consistent with being
17 given that within two hours before this blood draw?

18 A. Yes. I mean that is not a significantly high
19 concentration. Like I said it would be therapeutic but
20 still acting as a central nervous system depressant.

21 Q. Okay. And then so how long would that reading
22 still show up in the blood after peak concentration?

23 A. Meaning how long would we be able to detect the
24 Diphenhydramine?

25 Q. Correct?

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1 A. So we're going to ---

2 Q. --- take the half lives out ---

3 A. --- as we talked about before we take five half
4 lives. If a half life is four hours 20 hours later that
5 drug would essentially be eliminated from the body.

6 Q. What would be lowest reading that you would be able
7 to register for that before it goes to zero reading?

8 A. A zero point -- we would be able to detect less than
9 a 0.01, but at that point it starts to become
10 toxicologically insignificant.

11 Q. Okay. And when say that the peak amount in the
12 blood would peak a couple of hours after ingesting
13 Benadryl and you said that would be .06. Could that be
14 higher?

15 A. It certainly could be higher given if somebody is
16 taking a higher dose. There are certain things that you
17 have to consider. Are they taking the drug the way they
18 should or are they abusing it; there are things that have
19 to be considered when you take into account the
20 toxicology report that was issued.

21 Q. And is all that based on a person's weight and body
22 size?

23 A. Typically speaking the average person has seven
24 liters of blood circulating at any given time. So really
25 the weight of a person generally doesn't affect; it's the

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1 amount of drug per liter of blood and if you're assuming
2 a seven liter volume then you would assume that there
3 would be seven times 0.06 or .42 milligrams total drug in
4 the body.

5 Q. Okay. I understand. So it would be seven times .06
6 to get the total milligrams ---

7 A. --- yes ---

8 Q. --- in the body. Now this reading that you're
9 getting here is .06.

10 A. Right.

11 Q. But when you're talking about milligrams you're on
12 the other side of the decibel.

13 A. Correct, that's right.

14 Q. Okay. So a 50 milligram dose of this would take
15 you to the big number side of the decibel right?

16 A. Right.

17 Q. Okay. And so with seven liters of blood in the
18 body at peak absorption you would expect the reading here
19 to be on the left side of the decibel in terms of
20 milligrams per liter right?

21 A. No, you're still going to be on the right side of
22 the decibel. You're going to be at zero point something
23 unless you're taking a lot of drug. When you're taking a
24 lot of drug that's when you're in the actual milligrams
25 not percents of milligrams.

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1 Q. I'm sorry I don't mean to belabor this; I'm just
2 having a hard time understanding your testimony. So you
3 said there are seven liters of blood in the body.

4 A. Right.

5 Q. And when someone takes a Benadryl for example the
6 total concentration of that pill or liquid gets
7 distributed through that seven liters of blood right?

8 A. Right.

9 Q. But so if you have seven liters of blood and just to
10 make our math easy a 42 milligram tablet of Benadryl at
11 peak concentration -- to figure out peak concentration
12 you take the milligrams of the tablet, 42, and divide by
13 seven for liters of blood right?

14 A. If it were that easy it would be extremely easy for
15 everyone in here to understand.

16 Q. That's how it ---

17 A. --- when a drug is ingested not all that drug is
18 going to make it into the body into the system to be
19 circulated. There is going to be a percentage of the
20 drug depending on what its bioavailability is.

21 In this case the bioavailability of Diphenhydramine
22 is only ten percent. That means that only ten percent of
23 that dose is going to get circulated throughout the
24 blood. So that's why you see the -- and then also the
25 metabolism that is taking place also. So you've got

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1 bioavailability, meaning how much of the drug is actually
2 going to be available to the body. And then you've got
3 metabolism, which makes that amount actually smaller.

4 And then of course the total volume of blood which
5 gets you on the right hand side of the decibel point and
6 this point a 0.06 milligrams per liter for one assuming
7 therapeutic dose.

8 Q. Okay. So what you added in there that's new from a
9 moment ago was you said ten percent of the drug is
10 bioavailability?

11 A. And that's just a number I pulled out. It could be
12 50 percent. There ---

13 Q. --- that wasn't an actual figure for Benadryl?

14 A. No, it's not.

15 Q. Okay. Do you know the figure for Benadryl?

16 A. No. I would have to look at the literature to see
17 what the actual bioavailability is.

18 Q. Well, let's just do a hypothetical if you can just
19 to help me and the jury to hopefully understand this.

20 A. Okay.

21 Q. Okay. Let's assume that it is ten percent
22 bioavailability okay and let's do the easy math again six
23 times seven being 42 still can we agree on that?

24 A. Sure.

25 Q. I mean six times seven ---

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1 A. --- six times seven is 42.

2 Q. Okay. And then so if the pill is 42 milligrams
3 then and if ten percent of that is bioavailable then
4 we've got bioavailable to the body 4.2 milligrams of
5 Benadryl.

6 A. Correct.

7 Q. Right? Okay. Then we take that hypothetical figure
8 because we don't know if it is ten percent or not, we
9 take that hypothetical figure and divide it by seven for
10 the number of liters of blood in the body and that will
11 give us our peak concentration after two hours?

12 A. No, it won't.

13 Q. What are we missing?

14 A. The metabolism that has taken place because there is
15 a first pass metabolism that takes place when you take a
16 drug in when it hits the liver the liver is going to take
17 a good portion of that drug and metabolize it and start
18 the elimination process.

19 So you're looking at in our case 4.2 milligrams of
20 drug and if it's -- you divide that by seven gives you
21 the .6 so you know there is a chance that another ten
22 percent of this is getting first pass metabolized by the
23 liver. So that would then -- assuming one dose of this
24 would get you down -- or actually microgram range of drug
25 that's actually in the body.

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1 Q. Okay. I'm really almost done beating this horse I
2 really promise. So that's an assumption of ten percent.
3 Would that be related in any way to the half life of the
4 drug?

5 So if the half life of the drug were four hours
6 would that mean that it cycles through the metabolism in
7 a four hour period so you could expect each hour 25
8 percent of that could be metabolized? Did that make any
9 sense?

10 A. No, that did not make any sense.

11 Q. Is the metabolism related in any way to the half
12 life ---

13 A. --- yes ---

14 Q. --- of the drug ---

15 A. --- yes it is ---

16 Q. --- please explain that.

17 A. Because the body is constantly metabolizing
18 substances, so as soon as you ingest a compound the body
19 is going to get rid of it. So as the body is actively
20 getting rid of whatever compound you've ingested that is
21 taken into account for the half life.

22 So if's you got a half life of four hours then
23 that's taken into account what the body is doing to get
24 rid of the drug during that four hours.

25 Q. Okay. Now you testified before we got into that

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1 swamp of metabolism you testified that .06 you thought
2 was a peak for a normal dose of Benadryl. Is that
3 something you know from literature because it doesn't
4 seem like something you know from the metabolism and ---
5 A. --- from literature references, yes.

6 Q. Okay. So you from your experience as a
7 toxicologist have read that somewhere else this is the
8 dose and this is the peak.

9 A. Yes, generally the 0.06 milligrams per liter is the
10 average peak concentration of Diphenhydramine.

11 Q. Is that affected in any way then by someone who uses
12 Benadryl say on a daily basis for a skin allergy?

13 A. If you're using that on a daily basis sure that
14 concentration could be what we refer to as a steady state
15 concentration meaning that after you've taken the drug
16 enough times that you would see that the level would rise
17 to a point and then it would kind of come back down.

18 And then you'd have like an equilibrium or flat line
19 of drug at any given point you know whether or not the
20 drug was recently ingested or whether or not it has been
21 ten hours post ingestion.

22 Q. Okay. And at that flat line point could we expect
23 that whatever mental affect that drug would have would be
24 non-existent at that point?

25 A. No. The central nervous system depression is still

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1 going to be present at any level of the drug.

2 Q. So it's your testimony that if someone takes
3 Benadryl every day for a year and then takes it one
4 morning that they will still be feeling the effects of
5 that drug the same way later that night?

6 A. They could have potentially built up a tolerance to
7 the effects meaning that their body has learned how to
8 compensate for the depression but yes, the central
9 nervous system depressions still would be present.

10 Q. How would someone's body compensate for the
11 depression?

12 A. They would like I said before when you compensate
13 say for instance if you're taking ethanol -- we'll just
14 say in this case for the Diphenhydramine. If they tend
15 to get dizzy or tired you would see someone who was
16 taking the drug that would lean up against walls or
17 tables a little bit more.

18 Q. I thought you were talking about tolerance for it?

19 A. That is a learned biological tolerance is to
20 compensate for the adverse effects of drugs.

21 Q. Okay. I thought you were talking about tolerance
22 in the sense that someone who drinks more than another
23 person doesn't -- has a higher tolerance and doesn't feel
24 the effects the same way.

25 A. The effects are going to be felt but they are going

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1 to be generally perceived by that individual differently.

2 Q. Okay. I understand. And so that takes us on to
3 the next thing in your results, which is Ketamine. And
4 is that -- you said that was consistent with a
5 therapeutic dose?

6 A. Yes, that's consistent with something administered
7 in the hospital.

8 Q. And is that also a peak excretion or peak levels in
9 the blood ---

10 A. --- I would assume that was probably given bolus
11 right before blood was drawn so that's -- I would assume
12 that would be a therapeutic dose given in the hospital.

13 Q. Okay. What would be kind of the peak reading you
14 would see in the blood as a result of a therapeutic dose
15 and when would that peak reading occur?

16 A. Generally it depends on the drug for this specific
17 case, for Ketamine. You would essentially expect the
18 peak to be in the -- you would actually want it to be
19 faster acting because it's going to be given for a
20 medical procedure so the peak would probably tend to
21 manifest a little bit earlier say 30 minutes would be
22 peak; 30 minutes to 60 minutes.

23 Q. Okay. And the next few things that you have listed
24 as positive in your report for Shana looks like there is
25 Zoloft but you don't have an amount. How does that

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1 happen? How do you have a positive without having an
2 amount?

3 A. Because Sertraline is not like I said before is not
4 going to have any psychomotor effects on the body. So we
5 list it as present indicating that it was found but its
6 concentration doesn't really matter for this particular
7 case.

8 Q. Okay. So that would have no impact on someone who
9 is driving?

10 A. No, it wouldn't.

11 Q. Okay. And the same could be said with the next one.
12 -- how do you pronounce that?

13 A. Norsertraline?

14 Q. Yes.

15 A. It's a metabolite. It's just the primary metabolite
16 of Sertraline or Zoloft.

17 Q. Okay. And again that wouldn't have any effect on
18 someone's driving?

19 A. Correct.

20 Q. And Lidocaine, would Lidocaine have any effect on
21 someone driving?

22 A. Most likely not. It's a topical anesthetic and that
23 would be consistent with something that is given in the
24 hospital.

25 Q. Okay. And then there are two more things in your

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1 report. Clonazepam; it's listed as .01 milligrams per
2 liter. Is that consistent with -- how do you figure when
3 that was taken? Can you tell?

4 A. Because only the metabolite is listed and in this
5 case it is an active metabolite meaning it's something
6 that the body is getting rid of but it's still exhibiting
7 the same effects as the parent drug. The parent drug in
8 this case would be Clonazepam.

9 The compound detected was 7-aminoclonazepam. The
10 fact that it is at a 0.01 would indicate that the drug
11 was taken therapeutically because Clonazepam is a low
12 dose drug administered for anxiety and or convulsions.
13 And that would have been taken most likely
14 therapeutically some time ago. And I couldn't tell you
15 when because there is no parent found.

16 Q. What do you mean there is no parent found?

17 A. Like I said the 7-aminoclonazepam that listed on the
18 report is the metabolite of Clonazepam.

19 Q. Okay.

20 A. Clonazepam being a parent.

21 Q. Okay. And what is the last thing that you found
22 there?

23 A. Trazadone.

24 Q. And that's a sedative?

25 A. Sedative, yes.

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1 Q. Okay. And can you tell anything about when that
2 was given?

3 A. No. You can take an assumption that somebody is
4 taking one therapeutic dose and say that it was most
5 likely administered sometime in the last six hours on the
6 assumption it was a one-time therapeutic dose.

7 Q. Okay. Or if it were a continuous repeated dose
8 that could have been a higher base line?

9 A. Yes, it could be, yes.

10 Q. Okay.

11 [Whereupon, defendant's exhibit number 31 is marked
12 by the court reporter]

13 Q. Mr. McKinnon, I'm handing you what has marked for
14 identification purposes only as defense exhibit 31. Do
15 you recognize that?

16 MR. WEST: Your Honor, the state would object under
17 403.

18 THE COURT: Please approach.

19 [Whereupon, an off the record bench conference is
20 held]

21 THE COURT: Proceed.

22 Q. [Mr. Mayer] Mr. McKinnon, do you recognize that?

23 [Whereupon, the witness reviews document]

24 A. Yes. It appears to be our internal chain of custody
25 for the samples associated with this case.

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1 Q. And did you have a hand in creating that?

2 A. When I took custody of the evidence I would have put
3 myself as part of the chain so yes, I would have some
4 part of creating it but I didn't create the actual
5 document.

6 Q. I understand. Where -- when did you do the blood
7 test on Shana's blood?

8 A. I took custody of this November 30th, 2011 at 3:55
9 p.m.

10 Q. And did you take custody of it at any other time
11 after that?

12 A. No, I maintained custody of it until it was -- until
13 testing was completed.

14 Q. Okay. Where did you get the sample from when you
15 tested it?

16 THE COURT: Please approach.

17 [Whereupon, an off the record bench conference is
18 held]

19 THE COURT: Proceed.

20 Q. [Mr. Mayer] In relation to this accident Mr.
21 McKinnon did you have an opportunity to test the blood of
22 anybody else?

23 MR. WEST: Objection, Your Honor. 403.

24 THE COURT: Basis? Please approach -- Mr. Foreman,
25 ladies and gentlemen, we're going to take a very brief

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1 recess for a restroom break and I apologize for it taking
2 longer than I anticipated. During the break please do
3 not discuss the case and please leave your notepads in
4 your seats.

5 [Whereupon, the jury exits at 4:15 p.m.]

6 THE COURT: Mr. McKinnon, do you need to go to the
7 restroom?

8 THE WITNESS: I would like some water.

9 THE COURT: Madame Clerk, could you give the
10 witness a cup of water please. What's the basis of the
11 objection?

12 MR. WEST: This -- the testing of the victim's
13 blood that we had ruled on pretrial. I believe, again to
14 reiterate, the argument is irrelevant and more
15 prejudicial than probative.

16 THE COURT: What do you plan to ask this witness
17 regarding that?

18 MR. MAYER: Judge, only to lay the foundation for
19 the fact that he tested it and that the test was valid.

20 THE COURT: For what purpose?

21 MR. MAYER: So that if later -- I would not ask to
22 admit this evidence now -- so that if later the court ---

23 THE COURT: --- I don't think you have to ask those
24 questions. You all entered into a stipulation which
25 verified that there was a proper chain of custody. You

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1 further specified each paragraph, each hand that each of
2 these specimens passed through. And in fact certified it
3 in this stipulation, which is an agreement, which means
4 by virtue of agreeing to it you're not requiring either
5 part to provide any further proof that all of the samples
6 were properly handled and they were properly delivered to
7 whomever tested them.

8 So I guess I'm at a bit of a loss as to the
9 necessity of that line of questioning what it would be
10 establishing when you have a stipulation that already
11 agrees there is a proper chain of custody especially when
12 you're not going to be able to ask this -- well, you
13 haven't shown me anything at least at this point to ask
14 any questions regarding -- well, you said the only thing
15 you're going to ask is did he test it. You're not going
16 to ask what he tested it for and what the results were
17 correct?

18 MR. MAYER: Not at -- correct, Judge.

19 THE COURT: So then what would be the point of
20 asking him if he tested it if you're not going to tell
21 the jury what it was tested for? It's misleading. It
22 leaves this hanging thing in the wind that it was tested
23 and then they don't get any results.

24 MR. MAYER: I'm sorry, Judge. I was just being --
25 out of an abundance of caution I was going to lay a

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1 foundation with this witness so that if the court decided
2 it was appropriate to admit this evidence later that
3 there would be a foundation for it. But if you say ---

4 THE COURT: --- why would you need a foundation if
5 you have a stipulation as to the chain of custody?

6 MR. MAYER: Well ---

7 THE COURT: --- and who else would you get that
8 testimony in through?

9 MR. MAYER: The testimony of which, Judge?

10 THE COURT: Who else would you be eliciting the
11 testimony regarding her testing? Who else would you be
12 eliciting that testimony from other than this witness?

13 MR. MAYER: Nobody really.

14 THE COURT: Okay. So I guess I'm at a loss as to
15 what you're saying then. You lost me.

16 MR. MAYER: I just want to make sure that after the
17 MAIT people testify if there is sufficient cause for the
18 court to believe that Ms. Zoll was a factor in this
19 accident that we then would have ample foundation to
20 admit the results of her blood test.

21 THE COURT: Well, you all have agreed to the chain
22 of custody so I guess for what purpose would you be
23 asking the question? Y'all stipulated it was a proper
24 chain.

25 MR. MAYER: If I wouldn't need to I wouldn't ask it

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1 then. That's fine; I'm sorry.

2 THE COURT: Y'all specified -- and I'm referring to
3 the stipulation which has been marked as court's exhibit
4 1. It's also marked as State's exhibit 68, which I'm a
5 little unclear as to why it has two stickers but never
6 the less basically starting at paragraph 2 -- well
7 starting at paragraph 2 you specify what time and date
8 the test was taken.

9 And then beginning with paragraphs 3 through 5 well
10 actually through 6 you specify every hand that the sample
11 passed through and each paragraph you specify that you
12 all are stipulating that it was a proper chain of custody
13 as to the blood sample, correct?

14 MR. MAYER: Okay.

15 THE COURT: And it was not just Ms. Robinson's as I
16 recall. Let me make sure I'm being accurate.

17 [Whereupon, the court reviews documents]

18 THE COURT: From the defendant. Well, at paragraph
19 5 the State and the defendant further agree as to the
20 proper chain of custody in regard to blood sample from
21 the decedent Candy Zoll drawn by the Berkeley County
22 Coroner William Salisbury on or about November 10th, 2011
23 having taken possession of the body from Berkeley
24 Hospital. Further that the aforementioned blood sample
25 was properly sealed and stored until transported to South

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1 Carolina Law Enforcement Division, in addition that the
2 chain of custody testimony would have consisted of sworn
3 testimony regarding the exchange of the sealed sample
4 from William Salisbury to the safe at the South Carolina
5 Law Enforcement Division.

6 And then it goes on at paragraph 6 to specify each
7 hand that that sample passed through and that it
8 established the proper of chain of custody.

9 MR. MAYER: And Judge, maybe I owe the court an
10 apology but it's my understanding that stipulating to the
11 chain of custody would stipulate to the admissibility not
12 to the weight of the evidence.

13 THE COURT: You scan argue the weight of evidence
14 but a stipulation is an agreement and it requires no
15 further proof, which means you don't get to pick and
16 choose. Once you've agreed to something you've agreed to
17 it; that's it. The State doesn't have anything further
18 to prove on the chain.

19 MR. MAYER: So with regard to where Shana's blood
20 was stored would I be able to proffer with the court by
21 asking this witness where he got the blood from?

22 THE COURT: He's already testified where he got it
23 from. But you've already stipulated and agreed where it
24 came from. You can't contravene your own agreement.

25 MR. MAYER: I understand Judge. But in terms of

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1 the weight of if it was the correct blood and this sort
2 of thing.

3 THE COURT: You can't question that now. You've
4 agreed to it. You've agreed that it was the proper
5 sample. You've agreed as to where it was taken from.
6 You agreed as to every hand it passed through from the
7 time it was taken to when it was tested. That's what a
8 stipulation is; otherwise they would have brought
9 everyone in here to prove each hand it went through.

10 That puts them at a deficit... Why would they agree
11 to something where you are not holding them to an
12 additional burden of proof on it and then you get to pick
13 and choose what part of it you agree to and what part you
14 don't agree to? That's not how a stipulation works;
15 either you have an agreement or you don't. If you don't
16 have an agreement then they will bring every chain
17 witness here and prove each hand it went through.

18 MR. MAYER: Well, I was trying to help them out,
19 Judge, but I'm concerned about the weight of it because
20 it says it was misfiled.

21 THE COURT: Well, maybe you should have thought
22 more cautiously about that before you signed the
23 stipulation.

24 MR. MAYER: Well, I thought I talked it through
25 with the prosecutor ---

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1 THE COURT: --- well you know talking is one thing
2 but the only thing that counts is what is reduced to
3 writing. And you all have a very specific stipulation.
4 If you want to call the witness I'll think about letting
5 you do it. But you know there is a reason you have
6 stipulations. It saves time and they don't have to prove
7 the chain is -- they only have to prove it as far as
8 practical. They don't have to bring every single person
9 here.

10 And really unless you have some good faith basis to
11 say somehow it didn't go through the hands it went
12 through -- I guess I'm just at a bit of a loss as to why
13 you agree to something and then you want to challenge it
14 later. It just doesn't make sense to me.

15 MR. MAYER: I agreed to it, Judge to help the
16 Solicitor out with the understanding that I would be able
17 to ---

18 THE COURT: --- I've never known a defense lawyer
19 to be that beneficent to the State or the State to be
20 that beneficent or have that level of largesse toward a
21 defense attorney. I'm certain there was something in it
22 for the both of you or you wouldn't have done it. So why
23 don't y'all talk while we take this break. And you may
24 go the restroom as well; just please don't talk to
25 anybody about your testimony during the break.

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1 [Whereupon, court is in recess from 4:25 p.m. to
2 4:35 p.m.]

3 THE COURT: Is the State ready to proceed?

4 MR. WEST: Yes, Your Honor.

5 THE COURT: The defense ready to proceed?

6 MR. MAYER: Yes, Your Honor.

7 THE COURT: Please bring in the jury. And you all
8 have agreed to the scope of questioning within the
9 confines of the stipulation correct?

10 MR. MAYER: Yes, Judge.

11 MR. WEST: Yes, Judge.

12 [Whereupon, the jury enters at 4:37 p.m.]

13 THE COURT: Ladies and gentlemen I hope you enjoyed
14 your break. We'll now resume questioning. Mr. Mayer,
15 you may proceed.

16 MR. MAYER: Thank you, Judge.

17 THE COURT: You're welcome.

18 CROSS-EXAMINATION (resumes)

19 BY MR. MAYER:

20 Q. Mr. McKinnon, just a couple of last questions on
21 this blood for Shana. When did you test her blood?

22 A. I took custody of the evidence here November 30th,
23 2011 at 3:55 p.m.

24 Q. Can you tell when you put it back?

25 A. I'm sorry?

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1 Q. Can you tell when you gave up custody of the
2 evidence or when you put the evidence back?

3 A. I put the evidence in a holding bin to be returned
4 to the submitting agency January 24th, 2012 at 12:19 p.m.

5 Q. How do you know you put it in a holding bin?

6 A. That's what we do when we complete testing with
7 cases. We take -- after we have custody of it we
8 maintain custody of it throughout the analysis and then
9 upon completion we place it into a holding bin for a
10 month, sometimes shorter, until it's actually
11 relinquished to the submitting agency.

12 Q. And the date on your test of blood is January 31,
13 2012. That's the date on the report but that's not when
14 you would have tested it, right?

15 A. Correct.

16 Q. That's just the date you produced the report.

17 A. Yes, testing is not going to be completed within a
18 day.

19 Q. And you mentioned on direct exam that your report
20 would be peer reviewed by someone else in your
21 department?

22 A. Yes, that's correct.

23 Q. And is this date January 31, 2012 after the peer
24 review?

25 A. That would have been the date that the report, the

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1 draft of the report would have been reviewed and then
2 approved for submission to the agency.

3 Q. Okay. Now, you didn't find any marijuana in
4 Shana's blood correct?

5 A. Correct. No, I did not.

6 Q. Is marijuana a substance that impairs somebody?

7 A. Yes, it is.

8 Q. How does it do that?

9 A. The active component of marijuana, which is
10 tetrahydrocannabinol, we refer to it as THC for obvious
11 reasons it's easier to talk about it that way. That's
12 the active component and it acts similar to the way
13 ethanol would as a central nervous system depressant.

14 Q. And are there thresholds -- is the way you talk
15 about ethanol having thresholds similar for THC
16 impairment where that would manifest itself to different
17 degrees?

18 MR. WEST: Objection, Your Honor. Relevance.

19 THE COURT: Sustained. Move on.

20 MR. MAYER: Court's indulgence.

21 [Whereupon, Mr. Mayer confers with his client]

22 MR. MAYER: Thank you, Judge. No further
23 questions.

24 THE COURT: Any redirect?

25 MR. WEST: Nothing from the State, Your Honor.

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1 THE COURT: Any objection to the witness being
2 excused from the State?

3 MR. WEST: Nothing from the State?

4 THE COURT: From the defense?

5 MR. MAYER: Nothing from the defense.

6 THE COURT: Sir, you're excused.

7 [Whereupon, the witness is excused and exits the
8 witness stand]

9 THE COURT: You may call your next witness.

10 MR. WEST: Thank you, Judge. The State would call
11 Doctor Stephanie Montgomery.

12 THE COURT: And ladies and gentlemen we appreciate
13 your indulgence. This witness may take us just a little
14 beyond 5 o'clock. I understand that many of you have
15 other obligations and it's not our intention to
16 inconvenience you. As you know dealing with doctor's
17 schedules can be very difficult and so we appreciate you
18 all indulging us to finish as much of this testimony as
19 possible today.

20 [Whereupon, Doctor Montgomery comes forward]

21 [Whereupon, the witness is duly sworn by the Clerk
22 of Court]

23 CLERK OF COURT: Please be seated. State your full
24 name and spell your last name for the record.

25 THE WITNESS: My name is Stephanie Carol

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1 Montgomery, last name M-O-N-T-G-O-M-E-R-Y.
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1 STEPHANIE MONTGOMERY,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WEST:
6 Q. Good afternoon.. Thank you Doctor Montgomery for
7 staying with us this long. Could you please tell us
8 where you work?
9 A. I work at Medical University of South Carolina.
10 Q. And could you describe for the jury your educational
11 background?
12 A. Educational background; I'm a surgeon; I'm a doctor.
13 So I went to medical school at Eastern Virginia Medical
14 School in Norfolk, Virginia. After that I did residency
15 at the University of Maryland for general surgery.
16 I did surgical research at Memorial Sloan Kettering
17 Cancer Center and then I did a fellowship at the R. Adams
18 Cowley Shock Trauma Center for trauma and critical care.
19 Q. And how long have you worked at MUSC?
20 A. Five years.
21 Q. Has that always been in the emergency room -- or
22 emergency department?
23 A. Yes. We do general surgery and trauma so it is
24 basically any emergent surgical problem I deal with it.
25 Q. Have you ever testified in court?

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1 A. Yes.

2 Q. How many times?

3 A. Twice.

4 Q. Have you ever been qualified as an expert in a case?

5 A. Yes.

6 Q. And what was that qualification in?

7 A. It was in general surgery and trauma surgery.

8 Q. Have you ever been qualified in the area of
9 emergency medicine?

10 A. No.

11 Q. Do you think that your training, background, and
12 experience would allow you to be qualified as an expert
13 in emergency medicine?

14 A. There is a specific residency for emergency
15 medicine. I would be completely qualified for surgery or
16 acute care surgery or critical care. Emergency medicine
17 separately have different -- but emergency surgery, yes.

18 Q. Would you feel comfortable saying that you could be
19 qualified in emergency surgery?

20 A. Certainly, yes.

21 MR. WEST: At this time the State would ask that
22 the witness be qualified as an expert in emergency
23 surgery.

24 THE COURT: Any objections or questions?

25 MR. MAYER: Yes, Judge I object.

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1 THE COURT: Basis?
2 MR. MAYER: She's never ---
3 THE COURT: --- approach, please.
4 [Whereupon, an off the record bench conference is
5 held]
6 THE COURT: Proceed.
7 MR. WEST: The State would ask that this witness be
8 qualified as an expert in emergency surgery.
9 THE COURT: He's objected and I instructed you to
10 lay the appropriate foundation for that expertise so the
11 court can make a contemporaneous ruling.
12 Q. [Mr. West] How many times have you been qualified as
13 an expert?
14 A. Once. Are you also including like depositions
15 because I've done lots of those as well?
16 Q. Anytime you've been qualified as an expert in a
17 court proceeding?
18 A. Once in the court I was qualified in surgery and
19 trauma surgery and I think there was a deposition that I
20 was also qualified for trauma surgery but that wasn't in
21 court; it was just in a deposition situation where they
22 were taping me but that was it.
23 Q. And all of your training and education has gone
24 towards your profession now in emergency surgery?
25 A. Yes, sir. Yes, my fellowship and my -- I worked at

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1 the biggest trauma training fellowship in the United
2 States.

3 Q. And could you again describe your experience in the
4 field while you've worked at MUSC?

5 A. Yes, so part of my job everyday is dealing with
6 every trauma patient that comes into MUSC whether it's a
7 gunshot wound or a stabbing or a fall or assaults or
8 motor vehicle crash.

9 I take care of those people from the trauma bay to
10 the operating room where I operate on them. And also
11 when they go to the intensive care unit after the
12 operation I take care of trauma patients in all phases of
13 their care.

14 MR. WEST: At this time the State would ask that
15 this witness be qualified as an expert in emergency
16 surgery.

17 THE COURT: Any objections or questions?

18 MR. MAYER: Just the same objection, Judge.

19 THE COURT: Which is?

20 MR. MAYER: Which is that she has never been
21 qualified ---

22 THE COURT: --- that's not the basis of an
23 objection. I need to know the basis of your objection.

24 MR. MAYER: She is the treating physician, Judge.

25 THE COURT: That doesn't exempt her from being

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1 qualified as an expert. What is the basis of your
2 objection which were found in her expertise or lack of
3 training and experience?

4 MR. MAYER: We just have a general objection that
5 she is not an emergency room doctor.

6 THE COURT: That is not the qualifications that
7 they are seeking to admit.

8 MR. MAYER: Okay. That's my only objection.

9 THE COURT: Well, you haven't really articulated a
10 basis for the objection for the court to make a
11 contemporaneous ruling. So I need to know something more
12 specific so that I can rule on it to preserve the record.

13 MR. MAYER: I guess we'll just withdraw the
14 objection, Judge.

15 THE COURT: The objection is withdrawn. You may
16 proceed.

17 MR. WEST: Thank you, Your Honor.

18 THE COURT: You're welcome. She is admitted as an
19 expert in the area of emergency surgery only.

20 Q. [Mr. West] Were you working on the night of
21 November 10th, 2011?

22 A. Yes.

23 Q. And do you remember coming into contact with this
24 defendant?

25 A. Not specifically. I don't remember her face

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1 specifically.

2 Q. Okay. If I show you your report would that refresh
3 your recollection?

4 A. Yes, sir.

5 Q. If you could review that and I'll come back to the
6 question.

7 [Whereupon, the witness is shown documents]

8 A. I'm free to review the whole thing correct?

9 THE COURT: Yes ma'am, you can review your report
10 to refresh your memory.

11 THE WITNESS: Thank you.

12 [Whereupon, the witness reviews document]

13 A. So the only -- the discharge summary is done by
14 physician assistants and nurse practitioners. The
15 emergency room records are the records that are like
16 following this that he has given me. That has all of
17 the records that I specifically filled out myself, which
18 is right here. So I have access to all the stuff that I
19 -- I have access to this, yes.

20 Q. [Mr. West] After reviewing that do you remember the
21 treatment of this defendant?

22 A. Yes. We have obviously reviewed the records for
23 this case a couple of times although I don't remember --
24 I mean I remember generalities about the case I don't
25 remember her specifically. But I remember -- I can

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1 comment about happened or what went on based on records
2 as well.

3 Q. Do you remember administering any medications to
4 her?

5 A. In the trauma bay?

6 Q. Yes, ma'am.

7 A. The -- when you are in the trauma bay there are
8 standard orders, standard trauma set orders for basically
9 main medications that are given to the patients; those
10 are the only ones that are approved in the trauma bay
11 really. Other than intubation medications pain
12 medications are the only drugs that are approved in the
13 trauma bay.

14 So I can't -- I know that the nursing notes, there
15 is a trauma flow sheet that is usually accompanied with
16 this that says exactly how much pain medications and
17 things that she was given but I don't see that here.

18 Q. Okay. I'm showing you what has been previously
19 marked as State's exhibit 76 and also State's exhibit 70;
20 76 being for I.D. only and 70 being already admitted into
21 evidence.

22 A. Okay.

23 [Whereupon, the witness reviews document]

24 Q. After looking at State's 70 is there anything in
25 that report that would be reflected as something that you

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1 would have administered as medication to this defendant?

2 A. The medications, specifically the Dilaudid, which is
3 a Hydromorphone, may have been given to her
4 perioperatively because she had an operation that
5 evening; she had a splenectomy. Dilaudid is a pain
6 medication that we would have given her probably in the
7 recovery room.

8 Typically we give narcotic medicines in the trauma
9 bay, intubation drugs in the trauma bay, and in the
10 operating room, which is the other exhibit that we have,
11 showed that she received other medications which are more
12 anesthetic drugs, which she also had in her system.

13 Q. Okay. Is there anything else besides the Dilaudid
14 ---

15 A. --- Dilaudid ---

16 Q. --- I apologize.

17 A. The Dilaudid. No, that is the only thing we would
18 have given her.

19 Q. Now, just to go back would Ketamine or Lidocaine
20 have been administered?

21 A. Ketamine and Lidocaine could have been given in the
22 operating room. These are common medications for
23 anesthesia. Lidocaine could be given to her whenever she
24 was intubated. Ketamine is a medicine that's only really
25 given by anesthesiologists in critical care teams or

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1 people who are in the operating room; that is the only
2 time. But none of those medications would have been
3 given in the trauma bay except for maybe for intubation
4 purposes, but otherwise no.

5 Q. How about ethanol?

6 A. No.

7 Q. Clonazepam?

8 A. No.

9 Q. Trazadone?

10 A. No.

11 Q. Diphenhydramine?

12 A. No.

13 Q. None of those just listed would have been
14 administered under your direction or by the
15 administration of the hospital?

16 A. No.

17 Q. Are you familiar with having worked in surgery with
18 patients needing blood transfusions?

19 A. Yes.

20 Q. Can you describe sort of the quality control or
21 procedures used before a patient is administered a blood
22 transfusion?

23 A. Yes. How far back do you want me to go? From like
24 donation or like at the actual given -- because it is a
25 different process. There is a process that the nurse

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1 goes through at the bedside to determine if this is what
2 she should get or at the donation.

3 Q. Testify as to what is in your knowledge and in your
4 expertise.

5 A. Okay. So I know that our blood is given to us by
6 the Red Cross. But most of the bloods at the hospital
7 are supplied by the American Red Cross. People go to the
8 Red Cross to donate blood.

9 They are -- they have a medical exam, like a quick
10 medical exam, a questionnaire that is filled out to
11 determine if they are appropriate to give blood, the
12 blood is given, there are a multitude of tests that are
13 performed on the blood for transmittable diseases. It is
14 given to the hospitals. It is stored in the blood bank.

15 When a patient needs the blood they are obviously --
16 they have to have the appropriate blood type, an HLA
17 typing because you don't want to give a person an
18 inappropriate type blood.

19 Let's say I needed a blood transfusion. I would
20 have bloods taken; they would perform a cross-match with
21 the blood that they are going to give me to make sure
22 there are no reactions prior to giving me that blood.
23 They assign that blood to me. The nurse taking care of
24 me verifies that this is the blood that was matched to
25 me. I have to show that this is me based on my -- either

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1 they scan your arm, like the code that is on your arm to
2 scan the blood to make sure there has been no confusion
3 within distribution of the blood.

4 The blood is hung and the nurse monitors for
5 transfusion reactions because they still can happen even
6 with all those checks you can have a reaction to
7 something. But the nurse monitors during the blood
8 transfusion and then you monitor for sequelae after a
9 blood transfusion.

10 Q. Okay. In a hypothetical situation would there ever
11 be blood stored and given to a patient that had ethanol
12 in it?

13 A. Okay. The donation process should stop that from
14 happening. When you go in to donate blood you are
15 accessed for appropriateness for donation.

16 Being intoxicated or on illegal substances, if they
17 can look at you and tell you are intoxicated or whatever
18 they would immediately not take your blood because they
19 -- there is a little failsafe for people who don't look
20 well.

21 Like I said they have to look well. They have to
22 pass the eyeball test for the people that are taking your
23 -- they do a little pinprick blood test too, but they
24 have to evaluate you. I'm assuming that would knock that
25 out. I can't imagine that there would be alcohol in a

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1 blood bank.

2 Q. Now I'm going to show you what has been previously
3 marked as defendant's number 9 for identification only.

4 [Whereupon, witness is shown exhibit]

5 Q. Do you recognize that?

6 A. I recognize this as an MUSC tag that follows -- this
7 goes with the blood, the pack of blood. And it's
8 basically kept in the chart as a record of the
9 transfusion that was given to the patient.

10 Q. Okay. So in your opinion given that defendant's
11 number 9 has already been read to the jury as a blood
12 transfusion beginning on 11/11/11 at 00:30 and ending at
13 11/11/11 - 010 can you describe the amount of transfusion
14 or how that blood would have been transfused?

15 A. So obviously -- so we usually -- it transfused --
16 different areas of the hospital have different protocols
17 for how quickly they can give blood. On the floor you
18 can't give blood quickly.

19 You can give blood quickly in the trauma bays, in
20 the operating room, and in the ICUs because those are the
21 patients when the patient is sick or in the recovery
22 room.

23 The places where the patient could be sick are
24 allowed to give the blood more rapidly than other places.
25 That was approximately an hour give or take a little bit

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1 less than an hour. I think 30 to 10 after is like 30 or
2 40 minutes something like that. So that would have been
3 a pretty decent blood flow rate for them. Usually on the
4 floor they can give it over two to four hours, you know
5 drip it in.

6 But if the person is unstable or looks sick or needs
7 the blood they can just fire it in. If it is a decent
8 and rapid rate she would never received it if she wasn't
9 like indicated.

10 Q. Have you ever witnessed a blood draw by law
11 enforcement?

12 A. In the trauma bay I've seen them draw blood. I
13 haven't stared at them while they were doing it but I
14 knew they were in the process of it.

15 I try to get my team back and give them space when
16 they're doing that. I know that that is happening; I
17 haven't stared at them doing it.

18 Q. I'm going to show you what has been marked as
19 State's number 72.

20 [Whereupon, the witness reviews document]

21 Q. Can you read what time the blood draw was taken in
22 that case?

23 A. Date of test was 11/11/11 at basically 12:45, 00:45
24 a.m. at MUSC.

25 Q. So comparatively between defendant's number 9 and

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1 State's 72 if the blood transfusion began ---

2 A. --- yeah, the blood transfusion started...

3 Q. About 15 minutes before the blood draw?

4 A. Yes, give or take, yes.

5 Q. In your expertise how much blood would likely have
6 been transfused in that 15 minutes?

7 A. That's like a maybe -- let's say the original was
8 around 45 minutes for the 300 cc's of blood to be
9 delivered. So based on the transfusion record it was
10 around 45 minutes or; 15 minutes is a third of that,
11 right -- 15-15-30-45.

12 It's around 300 cc's in a bag of blood, a unit is
13 around 300 cc's so I would say around 100 cc's of blood
14 had been transfused approximately.

15 Q. Could you put that in layman's terms? What is about
16 100 cc's of blood?

17 A. Let's say not very much. It's like less than this
18 cup [indicates]..

19 Q. You pointed to a cup.

20 A. I just -- I'm sorry, maybe I shouldn't have done
21 that. I hope I didn't like do anything wrong.

22 Q. No. Just hold the cup up for the jury.

23 [Whereupon, the witness complies]

24 Q. What type cup is that? Is that like just an
25 ordinary Styrofoam cup?

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1 A. Yep.. It's something around this range [indicates]
2 would be around 300 cc's in the bottom of this cup
3 because the blood pack -- I don't know if you guys have
4 seen what a blood pack looks like.

5 It's pretty much just like you see on TV it's about
6 like this [indicates] and it's that [indicates] full of
7 blood at the bottom of it but the bag is flexible. So
8 about 100 cc's would be about this much [indicates] in
9 the bottom of a cup.

10 Q. Okay. Now I'm going to back up just a little bit
11 aside from the blood testimony. I want to ask you a
12 little bit about surgical procedures. What type of
13 sterilization procedures are used by you and your
14 doctors?

15 A. Are you talking skin or instruments?

16 Q. Before you would have prepped anything whether it be
17 skin or instrument what sort of materials are used?

18 A. In the operating room obviously you don't want any
19 -- sterilization is key to preventing infections in
20 patients because we are getting ready to enter their body
21 cavities so the room is as sterile as it can be.

22 They have special cleaners that they use in the
23 room. The instruments have special obviously autoclaved
24 to kill spores, bacteria, virus; all that business. We
25 have scrubbing that we do ourselves. The patients

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1 receive antibiotics at the time of incision you will have
2 antibiotics floating around in the blood stream to
3 prevent infection. You also have skin preparation
4 techniques that you do for patients.

5 You clip the hair, don't shave it, but you clip the
6 hair on the individuals you clip that hair off instead of
7 shaving so you don't make little cuts in the skin. And
8 then you use a prep for the skin that is supposed to kill
9 off most of the bacteria.

10 Different preps are used for different indications.
11 The ones that are used most these days are Chlorhexidine
12 and alcohol mixes based preps because they have been
13 proven to kill more germs except for things like open
14 like mouths; you can't put that in your mouth or your
15 eyeballs or something.

16 So there are special ones you have to use for other
17 areas. But for skin anywhere on your skin you can use an
18 alcohol based prep Chlorhexidine.

19 Q. And that's not the same type of alcohol as drinking
20 alcohol?

21 A. No. It's isopropyl alcohol. The same kind of
22 alcohol you can get -- it's a different concentration but
23 it's the same kind of alcohol you get at the stores at
24 Walmart, you know the alcohol in the bottle you rub
25 wounds with.

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1 Q. Does that isopropyl alcohol does it evaporate or
2 does it absorbed into the skin, what happens when you
3 wipe it on a patient?

4 A. It is -- it evaporates. There is a little pouch
5 clip that you have to crack it open because it's in a
6 container that is sterile. It's in a sterile container
7 you have to open up and crack it and then it comes into
8 the bottom of this brush and you paint the skin with it.

9 And you actually have to -- it evaporates pretty
10 quickly and it has to evaporate off because you are going
11 to use electrocautery and it can combust and catch fire.
12 So it's meant to evaporate off the skin.

13 You're supposed to allow -- usually what happens is
14 we're standing in the room, we prep the patient and we go
15 outside and scrub while that's evaporating and then the
16 patient is prepped because that way we know it's dry.

17 But it's pretty quick. It's very fast. It's
18 alcohol; it's supposed to do that. Rub alcohol on the
19 table the same situation; it doesn't stay there for long.

20 MR. WEST: Court's indulgence.

21 [Whereupon, Mr. West and Mr. Alfaro confer]

22 MR. WEST: That's all the State's questions at this
23 time.

24 THE COURT: Questions for the witness?

25 MR. MAYER: Thanks, Judge.

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1 CROSS-EXAMINATION
2 BY MR. MAYER:
3 Q. Aaron Mayer. We met before. It's nice to see you
4 again.
5 A. Nice to see you again too.
6 Q. So with your treatment of Shana I want to ask you
7 she was it is hypovolemic is that right?
8 A. Yes.
9 Q. Which in layman's terms means she had low blood
10 pressure is that right?
11 A. Yes or actually low blood volume.
12 Q. Low blood volume.
13 A. But one of the signs of it is having low blood
14 pressure.
15 Q. Okay. And is that why they were giving her that
16 transfusion maybe?
17 A. That's at least one of the reasons. Sometimes we
18 can reverse hypovolemic shock by just giving fluids.
19 But for her specifically she had a spleen that had to be
20 taken out and had hemoperitoneum which means she had
21 blood inside her abdomen so we had to replenish what she
22 had lost.
23 Q. Okay. And when someone is given a fluid
24 intravenously does it automatically stay in the veins or
25 does it stay in the body like that or is it excreted and

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1 can the patient stay hypovolemic?

2 A. You can -- so there is a lot of ways that the person
3 could lose that blood volume. Number one if there
4 circulatory system is not closed, which meaning like if
5 she has a cut in that artery or vein some of the
6 resuscitated fluid, the fluid that we give in her IV can
7 leak out.

8 And also your body has built in mechanisms to
9 protect you. One of the things whenever you have trauma
10 your body releases all these chemicals and stuff that
11 actually causes your capillaries and veins to be leaky.
12 So a lot of the fluid that you give to a person leaks out
13 their veins and arteries.

14 Q. Where does it go?

15 A. Everywhere. Soft tissue, lungs, legs, into your
16 intra-abdominal cavity.

17 Q. Okay.

18 A. It's pretty complicated.

19 Q. Describe that process with trauma. Does that happen
20 the instant the trauma occurs?

21 A. At the microscopic level if you have damage to
22 tissues or your spleen is lacerated or something like
23 that yes, some of those local tissue reactions happen
24 immediately. Your body has ways to protect itself by
25 trying to prevent you from losing all your blood volume.

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1 Some of the blood can be lost obviously immediately
2 because you have a hole in something. And then there are
3 other -- as you get better, as the doctor, me in this
4 case, stopped the bleeding, took care of the bleeding
5 spleen, then you have to replenish the fluid that the
6 person had lost and it takes sometimes -- takes people
7 different times.

8 Different people like he [indicates] might be really
9 quick at it but she [indicates] might be really slow;
10 everybody is different on how they respond to the
11 resuscitation; and it's variable.

12 Q. Okay. So it's not a one unit in to the body equals
13 one unit more of blood volume?

14 A. Blood is a little more complicated. I'm trying to
15 figure out how to explain this very easy to understand.
16 Blood is not just fluid; there are cells in it. And your
17 body fluid follows protein.

18 The blood cells -- more blood -- actually giving
19 that person blood it would stay inside their blood
20 vessels a little bit longer than just fluids.

21 Q. Okay. And so if someone just got saline it would
22 come out quicker?

23 A. Yeah, it could. Obviously depending on how -- what
24 stage of shock the person is in.

25 Q. So as I understand hypovolemic is like you said;

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1 it's insufficient liquid in the veins, in the blood is
2 that right?

3 A. Yes. It's a simplified way to think about it but it
4 is a lower volume of blood inside the veins. But you can
5 also have it with decreased tone in the veins as well.
6 Like your veins can dilate up, which is one of the things
7 that can happen in trauma as well.

8 I'm sorry. I don't feel like I'm answering your
9 question appropriately because it's like a complex
10 process that I'm trying to make sound simple. And I'm
11 sorry.

12 Q. That's okay. Let me just give you a hypothetical.

13 A. Okay.

14 Q. Let's assume no blood loss.

15 A. Okay.

16 Q. And someone is just hypovolemic?

17 A. In a closed system not bleeding?

18 Q. Yes.

19 A. Okay.

20 Q. Is there some given amount of liquid that they could
21 be administered intravenously that would fix that?

22 A. Yes.

23 Q. Okay. And how would you figure out what that is?

24 A. How much fluid the person needed?

25 Q. Yes.

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1 A. You look at lots of things, indications. The first
2 thing that is an indication of whether or not you have
3 enough blood volume is your heart rate actually; that's
4 the first thing that responds. Your heart becomes
5 tachycardic and this is your first response to lower
6 volume ---

7 Q. --- it beats extra fast?

8 A. Yes. Your heart beats faster because your body is
9 trying to pump blood around to keep everything alive.
10 That's one thing that you would notice. Number two is
11 like your heart rate would get better if you've given the
12 person enough fluid your heart rate goes down.

13 Your blood pressure comes up. They start peeing
14 because patients who don't have adequate blood volume
15 don't pee because your body is trying to reabsorb all the
16 fluid right, because your body wants to keep the fluid
17 inside because it's trying to save you, keep you alive.
18 And they start -- you look better and obviously you start
19 profusing and you have better pulses in your feet.

20 Q. So you guys would monitor the fluids going out as
21 well?

22 A. Yes.

23 Q. Okay. Can you say from Shana's records what fluids
24 she had going out, what amount?

25 A. At what time? In the trauma bay, in the OR, ICU,

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1 meaning how much she was peeing? That should be in the
2 anesthesia records. They have like how much urine output
3 she was making and anesthesia should be there.

4 [Whereupon, the witness reviews document]

5 A. Yes, they have urine output here, fluids out come at
6 the bottom because everything in the hospital are -- eyes
7 and nose. So she made 1200 cc's of pee during the case,
8 and because they were replenishing her with all sorts of
9 fluids and drips and things.

10 Q. Okay. And can you tell in the trauma center was
11 she given 6,000 milliliters of fluids?

12 A. Could. That is -- that should be on the trauma flow
13 sheet. Do you have that?

14 Q. I think I might. I'm handing you what has been
15 marked for identification previously as defendant's
16 exhibit 22.

17 [Whereupon, the witness reviews document]

18 A. Oh, yes. So this could have even been given --
19 usually what they have up at top this was even given to
20 her before she got to us because of pre-hospital data,
21 which means that she was hypotensive in the helicopter
22 because she was flown in by the helicopter flight team
23 and they give IV fluids and blood too.

24 Q. Okay. And so of those things she was given 6,000
25 milliliters?

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1 A. Six liters; not surprising.

2 Q. Six liters?

3 A. Liters.

4 Q. And it's my understanding that there is about seven
5 liters of blood in the human body is that right?

6 A. It depends on the size of the person. It's based on
7 your body weight and how big you are. Girls, normal
8 girls are anywhere -- like I am probably around six
9 liters.

10 Obviously smaller people are less and can be like
11 five and bigger people can be up to seven. But it is
12 usually around the five to seven range for girls and boys
13 and girls are different. Our body water is different.

14 Q. So are you telling us that Shana was given six
15 liters of fluid, which is the same amount that she
16 probably had in there to start with?

17 A. Yes. It sounds odd because you're thinking good God
18 that's her entire blood volume right here. The thing
19 that happens in trauma is that the six liters of blood
20 volume is just the volume of blood that is inside your
21 intravascular system.

22 She was losing blood into her peritoneal cavity
23 because where she had her spleen was ruptured she was
24 bleeding inside her peritoneal cavity and anything
25 external like cuts and things like that you can bleed to

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1 the outside world and you have to replenish your
2 extravascular volume too.

3 Q. So when you testified earlier about the 100 cc's
4 being about the size of a cup ---

5 A. --- about the size of a cup.

6 Q. Six liters?

7 A. Of IV fluid.

8 Q. Of IV fluids. Can you give the jury a sense of
9 what that looks like? Is that six of these thermos
10 [indicates] or?

11 A. Yeah. A two-liter bottle of coke just like the
12 regular two liter bottles of that and it would be three
13 of those that's what is intravascular, that's blood
14 volume; intravascular blood volume. That's not total
15 body volume.

16 Obviously you have things that are outside of your
17 body like lymph fluid and things like that. But yes, the
18 amount that had been given to her is about like this
19 [indicates] compared to maybe six of those [indicates] or
20 three two-liter bottles.

21 Q. Okay. And so all that was given to her prior to
22 double 045 on November 11?

23 A. Yes. She probably was given more than that
24 actually, truthfully because she was in the operating
25 room before -- you're asking about before the blood draw?

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1 Q. Yes, ma'am.

2 A. So she had also received in the OR she has received
3 lots of IV fluids and things like that as well and some
4 packed cells so she had some blood that was also given to
5 her in the operating room.

6 Q. Okay.

7 A. And this was preoperative -- pre going to the OR.

8 Q. Great.

9 A. You get a lot of fluid.

10 Q. Being a trauma specialist if you will you must know
11 what the Glasgow scale is?

12 A. Glasgow Coma score?

13 Q. Yes. Please explain what that is for the jury.

14 A. Okay. So the Glasgow Coma Score is a way to
15 describe people with brain injury. It was -- it is a
16 scale. Three -- like a dead person is a three. It's a
17 little odd; you would expect a dead person to be zero or
18 something.

19 But it's a scale from three to fifteen, fifteen
20 being what we would expect people you know normal lucid
21 individuals. But it's a basic rudimentary score for
22 opening your eyes gives you four points. If you come
23 into the trauma bay and I tell you hey buddy, open your
24 eyes and you don't open your eyes until I tell you to
25 that's only a three. So it's based on your response to

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1 stimuli. If I say hey, give me a thumbs up and you do
2 this [indicates] that give you the full score for ---

3 Q. --- motor ---

4 A. --- motor, right. So then eyes, motor, and voice
5 and you give them a score based on that. And the reason
6 that they delivered it, the reason they did that is if I
7 was talking to you and I said he has a Glasgow Coma Score
8 of 12 and if I was talking to her [indicates] telling her
9 she has a Glasgow Coma Score of 12 we know exactly what
10 that patient looks like.

11 So there is no open to interpretations. So if I was
12 in Glasgow, Scotland and you were in L.A. I could talk to
13 you about trauma patients and we are speaking the same
14 language.

15 Q. Okay. Now for the verbal component of the Glasgow
16 Coma Score the high score on that is a five, right?

17 A. It's a five.

18 Q. And that indicates normal conversation.

19 A. It's conversant.

20 Q. Conversant?

21 A. Yes. It's like having -- answering questions but
22 not being confused speech.

23 Q. Okay.

24 A. If I asked you what is the day you would say today
25 is Tuesday -- today is Tuesday. And where are you? I'm

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- 1 in the hospital.
- 2 Q. You were almost a four there weren't you?
- 3 A. I could have been.
- 4 Q. And what's a four? Disoriented?
- 5 A. Disoriented. A four is either confused,
- 6 disoriented; they are not answering you appropriately.
- 7 Q. Okay. And what is a three?
- 8 A. A three where -- so they have people who are
- 9 incorrigible or not speaking at all to -- so we have
- 10 conversing, confused, disoriented speech, intelligible
- 11 sounds, and not speaking.
- 12 Q. Okay. So a three would be words but not coherent,
- 13 is that right?
- 14 A. Yes. They are not really speaking appropriately.
- 15 They are saying words; the other person who is
- 16 incorrigible sounds something like [indicates a sound].
- 17 Like if I just said monkey that's a three.
- 18 If I say yes I'm a little confused I'm in a taxicab
- 19 that's a four because I'm conversing; I'm a little
- 20 confused but I'm using appropriate verbiage. If I'm like
- 21 [indicates a sound] that's a two.
- 22 Q. And what was Shana on these tests?
- 23 A. She was a fifteen.
- 24 Q. Is that the highest score?
- 25 A. That is the highest GCS.

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1 Q. Okay. And that would indicate she was conversant?

2 A. Yes.

3 Q. And normally so?

4 A. You can be conversant -- you can be a fifteen
5 because you give the person the best score. You can
6 still be -- yes, you would be conversant, you can answer
7 questions. Yes, I would say that is true.

8 Q. I mean if someone were incoherent they could not
9 score a fifteen?

10 A. If they were incoherent they could not score a
11 fifteen.

12 Q. Okay.

13 A. True.

14 Q. So based on Shana's scale she was not incoherent?

15 A. No, she was not incoherent.

16 Q. Okay. Were there other sorts of neurological
17 evaluations done on her in the trauma area?

18 A. You basically do -- in the trauma bay you do a quick
19 Glasgow Coma Score and you check eyes and pupils;
20 pupillary response to light. And you also make sure the
21 person is moving everything because there could be -- you
22 could still have a Glasgow Coma Score of fifteen and be a
23 quadriplegic.

24 Q. Okay.

25 A. Or a paraplegic or something.

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1 Q. So the Glasgow scale just really measures
2 neurological, right?

3 A. Right. And you have to be able -- you need to know
4 if the person can move arms and legs and things like
5 that; especially someone who has been in a crash.

6 Q. For someone who has been in a crash how many
7 different Glasgow Coma Scales would they have undergone
8 by the time they get to you?

9 A. One during -- well to be honest with you they are
10 constantly assessing that because EMS assess it when they
11 see the person initially because the Glasgow Coma Score
12 in the field matters. What their Glasgow Coma Scale
13 changes to when they get to the trauma center.

14 Like if all of a sudden you're a fifteen and all of
15 a sudden you're a ten when you see me that's bad. So we
16 have to know the change. Then she was intubated and she
17 was immediately knocked off her voice because you can't
18 talk anymore after that.

19 Q. She's got a tube in her mouth?

20 A. She's got a tube so they have a special designation
21 for that with a T.

22 Q. All right. Aside from when she was intubated was
23 there any point when Shana's Glasgow Coma Scale dropped
24 below the very highest?

25 A. Not that I was aware of, no. She was a fifteen.

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1 She would be a fifteen.

2 Q. Okay. And then you took her in for the operation
3 and you gave her general anesthesia, correct?

4 A. Yep.

5 Q. And that causes someone to lose consciousness
6 correct?

7 A. Yes.

8 Q. And what does someone feel like when they are coming
9 back awake from being knocked out as a result of that?

10 A. Disoriented. They are given sedating medicines and
11 just reorienting to reality. They sometimes don't
12 remember because some of the medications that are given
13 to them are given to them on purpose to make them not
14 remember stuff and feel anything obviously. And then you
15 wake up in PACU and you're obviously tired.

16 Q. Okay. So it's like waking up from a deep sleep or
17 something maybe?

18 A. Uh Huh.

19 Q. And over what period of time does someone wake up
20 from that general anesthetic?

21 A. And that takes different periods of time. Some
22 people wake up like that [snaps fingers] and some people
23 are snoring for hours. That's also patient dependent.
24 But the PACU record will have you know it's obviously
25 based on how awake she is and pain scores and things like

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1 that.

2 Q. Would you be able to tell from Shana's PACU record
3 as to how long it took her to kind of wake up and get
4 back kind of conscious?

5 [Whereupon, the witness reviews documents]

6 A. If I could find the PACU records. Do you have them?

7 [Whereupon, Mr. Mayer provides documents to the
8 witness]

9 A. Those are medications and stuff there. They have a
10 PACU record that has like eyes and nose on it and all
11 that stuff.

12 [Whereupon, Mr. Mayer reviews documents]

13 Q. Is it the one that has the faces on it? There's a
14 smiley face and a not smiley face.

15 A. I can take a look at it and tell you.

16 [Whereupon, Mr. Mayer reviews documents]

17 A. This is the anesthesia record because there are
18 things that are put on this record -- this is an
19 anesthesia slash PACU record but that is clearly
20 anesthesia because you don't give Ketamine and all that
21 stuff that they gave to intubate her here.

22 Q. I'm handing you what has been marked just for
23 identification as defense exhibit 23.

24 [Whereupon, the witness reviews document]

25 A. No, that's pain management. This is like for a PCA

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1 -- this is the Dilaudid PCA pump.

2 Q. Okay. So that's not...

3 A. Sorry. I can try to find it. It might take a bit
4 though but I can try to find it.

5 Q. It's okay. I think you've said enough about people
6 -- some people snap out of anesthesia and others come out
7 slowly.

8 A. Take a long time and differ. Different people based
9 on how quickly they can me metabolize the drugs or how
10 sick they were or what operation they had; obviously it's
11 different.

12 Q. Okay. Did you diagnose or was Shana diagnosed with
13 traumatic brain injury?

14 MR. WEST: Objection, Your Honor ---

15 THE COURT: --- I didn't hear the question. Could
16 you please repeat the question?

17 MR. MAYER: I asked if she was diagnosed with
18 traumatic brain injury?

19 THE COURT: The basis of the objection?

20 MR. WEST: Relevance, Your Honor.

21 THE COURT: Please approach.

22 [Whereupon, an off the record bench conference is
23 held]

24 THE COURT: Ma'am, you may answer the question. Do
25 you remember it?

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1 A. I can totally remember that one. I think that she
2 had a loss of consciousness. I'm almost positive it
3 would be on my flow sheet. So by definition a loss of
4 consciousness is a closed head injury; it's a concussion.

5 It's an injury but she had a CT scan of her head and
6 didn't have any intracranial bleeding or something like
7 that. But I'm pretty sure she had a loss of
8 consciousness. If I could find my paper I could tell you
9 for sure. But I think she had -- I'm pretty sure she had
10 a loss of consciousness and that would qualify as a head
11 injury.

12 [Whereupon, the witness reviews document]

13 Q. I might have a shortcut for you. I have what has
14 been marked for identification as defense exhibit 26 and
15 see if that refreshes your memory.

16 [Whereupon, the witness reviews document]

17 A. I actually wouldn't -- the reason that they call it
18 TBI is just for the concussion. Those -- traumatic brain
19 injuries come with a overall umbrella term for anything
20 that happens to your brain.

21 It can be concussion, subarachnoid hemorrhage; any
22 of those things. It could be lots of gradations of
23 badness, but I'm pretty sure that she had a concussion.
24 But I'd love to find my paper. I'm pretty sure she had a
25 loss of consciousness so I think the only thing she had

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1 from a traumatic brain injury perspective was a
2 concussion.

3 Q. And is a concussion something that would make
4 someone be unable to remember an event or part of an
5 event?

6 A. It can.

7 Q. Okay. In your operation on Shana's spleen did you
8 stitch that up?

9 A. You take it out. You try to stitch it up -- if you
10 but I think with her I had to take hers out. But I can
11 fix a spleen. If it's amenable to being repaired you can
12 fix it.

13 Q. Okay. And how do you close up the wound
14 afterwards?

15 A. There is a tough connective called fascia, which
16 holds all your guts in and that has a -- you sew that
17 together using special thread suture material that is
18 made for fascia to keep it together.

19 Q. What is that stored in that special thread?

20 A. What is it stored in?

21 Q. How is it preserved or protected to keep it sterile?

22 A. It is placed in a -- I would have used PDS suture on
23 her and it is stored in a plastic container with a peel
24 pack so that it is sterile. It sterilizes the inside of
25 the pack so when they open the pack it is given to you

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- 1 sterilely. You take it and sew the patient ---
2 Q. --- it's not liquid?
3 A. No.
4 Q. Okay.
5 A. Some are but not PDS.
6 Q. Okay ---
7 A. --- chromic would be.
8 Q. What liquid would that be in?
9 A. Different -- chromic used to be stored in alcohol.
10 But I don't use chromic. I use PDS or -- different
11 suture materials for different areas of the body.
12 Q. Did you ever use chromic?
13 A. No.
14 Q. Even in 2011?
15 A. Uh Uh.
16 Q. Okay.
17 A. You use it in the mouth mostly; or the penis.
18 Q. Did you also treat someone named Brittany Hartley
19 that same day?
20 A. The name sounds familiar. If you have the records I
21 can review them quickly and talk about her stuff too if
22 you want.
23 [Whereupon, Mr. Mayer confers with Mr. West and Mr.
24 Alfaro]
25 Q. Would it help you to refresh your memory to look at

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1 a medical record of Brittany?

2 A. Sure. I will review it.

3 MR. WEST: Objection, Your Honor. Relevance.

4 THE COURT: Please approach.

5 [Whereupon, an off the record bench conference is
6 held]

7 THE COURT: You may proceed.

8 Q. [Mr. Mayer] Doctor, did Brittany Hartley have some
9 sort of traumatic brain injury that same night as well?

10 A. Yes, she did. According to -- she had a traumatic
11 brain injury but hers was -- her CT scan showed there was
12 a subdural hematoma, which is actually you can see blood
13 inside the brain.

14 Q. Okay. Thank you for that.

15 A. No problem.

16 MR. MAYER: Court's indulgence.

17 [Whereupon, Mr. Mayer confers with his client]

18 Q. [Mr. Mayer] Just to summarize the hypothetical I
19 gave you with the fluids in and fluids for of the body
20 and the hypovolemic blood pressure, or blood volume in
21 the veins that was not Shana's situation? She was not a
22 closed -- she had an open wound ---

23 A. --- in addition -- yes.

24 Q. In fact she had multiple open wounds.

25 A. True.

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1 Q. Thank you. No further questions.

2 THE COURT: Any redirect?

3 MR. WEST: Yes, Your Honor.

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State v Shana C. Robinson
Stephanie Montgomery-Redirect Examination by Mr. West
June 3, 2014

1 REDIRECT EXAMINATION
2 BY MR. WEST:
3 Q. Doctor, you testified a lot about the Glasgow Coma
4 Scale.
5 A. Yes.
6 Q. Have you ever seen anybody that was intoxicated
7 score a fifteen on the Glasgow Coma Scale?
8 A. Yes.
9 Q. Thank you. That's all the questions from the
10 State.
11 THE COURT: Did you say you had no further
12 questions?
13 MR. WEST: No further questions, Your Honor.
14 THE COURT: Any objection to the witness being
15 excused from the State?
16 MR. WEST: Nothing from the State.
17 THE COURT: From the defense? Any objection to
18 the witness being excused?
19 MR. MAYER: Can I recross?
20 THE COURT: It depends. Approach.
21 [Whereupon, an off the record bench conference is
22 held]
23 THE COURT: You may proceed.
24
25

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1 intoxicated people. There are also some other ways to
2 determine if a person is intoxicated or not.

3 Q. Okay. From treating Shana was there any indication
4 that she was intoxicated?

5 A. Not based on her Glasgow Coma Score. I can look
6 back at -- I don't know if we drew an alcohol level or
7 not because I think that was before we were drawing
8 alcohol levels.

9 But the patient either admits to it or -- but it
10 sometimes doesn't affect whether or not -- it doesn't
11 matter to us if the person is intoxicated or not. I mean
12 it doesn't matter to me if she is intoxicated.

13 Q. I'm just trying to clarify. I'm not...

14 A. No, but the question is I don't -- we don't always
15 test it because as a trauma surgeon if she is drunk or
16 not or this guy or whoever it won't matter to me. You
17 will still get the spleen taken out, you would still get
18 on the same drips and everything would still be the same.

19 They might get a little bit more IV fluid
20 resuscitation but that's it. So we don't always test for
21 it. It's not critical that we know that all the time.

22 Q. So then here ---

23 A. --- she didn't admit to it. As far as I was aware
24 she didn't admit to doing it and there was -- because
25 sometimes if it is overt and terrible we will write

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1 things in a chart like smelled of alcohol, slurring their
2 speech. But if you're slurring your speech then you're
3 not a fifteen.

4 Q. Okay. And there were no such notes made in Shana's
5 case.

6 A. There was no such note made of overt intoxication
7 made in her chart.

8 Q. Okay. Thank you, Doctor.

9 THE COURT: Any further questions of the witness?

10 MR. WEST: Nothing from the State, Your Honor.

11 THE COURT: Any objection to the witness being
12 excused from the State?

13 MR. WEST: Nothing from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. MAYER: Nothing from the defense, Your Honor.

16 THE COURT: Doctor, you are excused.

17 [Whereupon, the witness is excused and exits the
18 witness stand]

19 THE COURT: Mr. Foreman, ladies and gentlemen we're
20 going to take advantage of this break in testimony to
21 take our evening recess. During the break please do not
22 discuss the case among yourselves or with anyone else.
23 Please don't do any independent research of any type on
24 the Internet regarding any issue or matter involved in
25 this case. We are going to resume at 9:30, follow the

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1 same procedure that we followed on yesterday with the
2 bailiffs and as soon as you all arrive we will then
3 resume testimony.

4 I appreciate your indulgence in allowing us to go
5 beyond 5 o'clock. I hope it has not inconvenienced
6 anyone too greatly. I hope you all have a great evening
7 and we'll see you in the morning at 9:30.

8 [Whereupon, the jury exits at 5:42 p.m.]

9 THE COURT: Is there anything before we break for
10 the evening from the State?

11 MR. ALFARO: Your Honor, just one matter regarding
12 the actual blood vials that were marked as 74 for
13 identification only. We've admitted two photographs of
14 those as 73 ---

15 THE COURT: --- those were already marked and
16 admitted without objection.

17 MR. ALFARO: Yes, Your Honor. Because of that just
18 as far as having the blood -- we would take ---

19 THE COURT: --- y'all had already agreed -- I
20 thought y'all had already agreed on how you were going to
21 deal with that before we got started.

22 MR. ALFARO: We did. I just wanted to make sure
23 Your Honor is okay with us taking it ---

24 THE COURT: --- yes ---

25 MR. ALFARO: --- since we actually put a mark ---

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1 THE COURT: --- yes, that's -- I forget what the
2 medical term is they use for that -- nontoxic waste --
3 biohazard. I knew there was a word on the big red
4 container that's everywhere...

5 MR. ALFARO: Because it had a sticker on it I
6 wanted to make sure we put that on the record as to why I
7 took it out of there.

8 THE COURT: Okay.

9 MR. ALFARO: Other than that that's all we've got.

10 THE COURT: Anything from the defense before we
11 break for the evening?

12 MR. MAYER: No, Judge.

13 THE COURT: Okay. And in the future the reason I
14 hesitated about young Ms. Brittney's records is because
15 you all failed to comply with HIPPA. You don't ever give
16 somebody's medical records to somebody else. There is a
17 federal procedure you have to follow. She should have
18 gotten notice that that doctor was going to testify about
19 her medical history.

20 MR. MAYER: Okay.

21 THE COURT: Hopefully she won't get upset about it.

22 MR. MAYER: Yes, she gave it to us.

23 THE COURT: Well, in the future make sure you have
24 it on the record.

25 MR. MAYER: Will do, Judge. Thank you.

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1 THE COURT: All right. Y'all have a good night.
2 MR. ALFARO: Thank you, Judge.
3 [Whereupon, court is adjourned at 5:45 p.m.]
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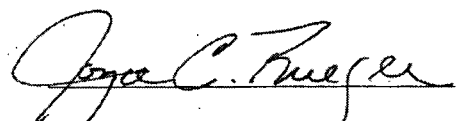
State v Shana C. Robinson
Certificate of the Court Reporter
June 3, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Berkeley County, South
Carolina on the 3rd day of June, 2014.

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

September 12, 2014


Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2014-GS-08-0313
	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
	)	
vs.	)	
	)	
SHANA CECIEL ROBINSON	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 4, 2014
Moncks Corner, S. Carolina

VOLUME 3 (OF 5)

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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32	Photo	524
33	Photo	529
34	Photo	571
35	Photo	571
36	Photo	571
37	Photo	530
56	Photo	572
58	Photo	572
64	Photo	572
69	MAIT report	592
71	C.D.	(I.D. only)

INDEX TO EXHIBITS (continued)

[All exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

DEFENDANTPAGE

<u>No.</u>	<u>Description</u>	<u>Marked / Admitted</u>
1	Box of beer	
2	Single can of beer	
32	TR310 form	548
33	MAIT report calculation page	648 / 650
34	Photo	671 / 672

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1 PROCEEDINGS

2 THE COURT: Is the State ready to proceed?

3 MR. WEST: The State is ready, Your Honor.

4 THE COURT: Is the defense ready to proceed?

5 MR. MAYER: Yes, Judge.

6 THE COURT: Bring in the jury.

7 THE COURT: Who's the state's next witness?

8 MR. WEST: Corporal Pearson from the Highway

9 Patrol, Your Honor.

10 THE COURT: Is he present?

11 MR. WEST: He is.

12 THE COURT: I mean is he in the court room?

13 MR. WEST: Oh, no.

14 THE COURT: We need to go ahead and get him so we

15 don't have to wait. And then who on your list are you

16 not calling, Mr. West? If you would just give me the

17 numbers Mr. Alfaro.

18 MR. ALFARO: Everybody on there is being called,

19 Your Honor. We should just have 3 left, Pearson, Poston

20 ---

21 THE COURT: --- well actually I had a list of 35,

22 so you're not calling all of them ---

23 MR. ALFARO: --- I'm sorry ---

24 THE COURT: --- Yeah ---

25 MR. WEST: --- I believe we gave a redacted

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1 version of it.

2 THE COURT: Uh Uh.

3 MR. WEST: No?

4 THE COURT: Not that I've received.

5 MR. WEST: Okay.

6 THE COURT: Mr. Alfaro why don't you approach for
7 me and then you can tell me from this list that I have
8 here.

9 [Whereupon, an off the record bench conference is
10 held]

11 [Whereupon, the jury enters at 9:40 a.m.]

12 THE COURT: Good morning ladies and gentlemen. I
13 hope that you had a pleasant and restful evening and that
14 everyone is refreshed. We will now resume with
15 testimony. I would ask that you give the attorneys your
16 attention. The State may proceed. Please call your
17 witness, Mr. West.

18 MR. WEST: State calls Corporal Pearson.

19 [Whereupon, Corporal Pearson comes forward]

20 [Whereupon, the witness is duly sworn by the Clerk
21 of Court]

22 CLERK OF COURT: Please be seated. State your name
23 and spell your last name for the record.

24 WITNESS: Chadwick A. Pearson, P-E-A-R-S-O-N.

25 MR. WEST: Your Honor, my defense counsel and I

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1 approach.

2 [Whereupon, an off the record bench conference is
3 held]

4 THE COURT: Sir, please state your name for the
5 record. I know you already did it but if you could
6 accommodate the court.

7 THE WITNESS: Yes, Your Honor. Chadwick A.
8 Pearson, P-E-A-R-S-O-N,

9 THE COURT: You may proceed.

10 MR. WEST: Thank you, Your Honor.

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State v Shana Robinson
Chadwick Pearson-Direct Examination by Mr. West
June 4, 2014

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CHADWICK PEARSON,
Having been first duly sworn,
Was examined and testified as follows:
DIRECT EXAMINATION
BY MR. WEST:
Q. Corporal Pearson, where do you work?
A. South Carolina Highway Patrol.
Q. How long have you worked there?
A. Sixteen years..
Q. Were you working there in November of 2011?
A. Yes, sir, I was.
Q. How long have you been in law enforcement in :
general?
A. I started July 5, 1998 with continuous service since
then..
Q. Can you describe your educational background and
experience for the jury?
A. I graduated from high school in '94. I graduated
with an Associate in Criminal Justice from USC in '97.
I graduated with a Bachelor in Sociology in '9 -- in May
of '98. Then I started at the South Carolina Criminal
Justice Academy July 5, of 1998. I graduated from the
Criminal Justice Academy November 20, 1998 and then began
with a field training officer here, in Berkeley County in
1998. Since then I've had accident investigation

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1 training and just multiple refresher and continuous
2 education updates through the Patrol.

3 Q. What is your rank with the Highway Patrol now?

4 A. Corporal.

5 Q. Okay, do you have any supervisory authorities?

6 A. Yes, sir. The roll of a Corporal is to act as the
7 shift supervisor and just basically run the shift. I
8 have people who work under me and I directly advise them
9 what they need to do, where they need to go, and just
10 handle the normal average day-to-day running operations
11 of that shift.

12 Q. Do you recall the events that bring us here today?

13 A. Yes sir, I do.

14 Q. All right. Can you describe for the jury when you
15 got a call concerning the events of a collision on
16 Broughton Road on November 10, 2011?

17 A. Yes, sir. I was with two of the guys that work for
18 me. At the time it was a Trooper Poston and he was
19 working for me that night and then Trooper Southerland
20 was working for me that night.

21 And the three of us were on Rivers Ave and we had
22 eaten dinner together and had just finished. Then we got
23 a call about a collision on Broughton Road that come out
24 -- it was reported as a severe collision with injuries
25 and that MEDUCARE was en route. So, typically if we have

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1 somebody available and we're not close to a collision
2 scene like we weren't that night if possible we are going
3 to send somebody to the hospital so that they can be
4 there when MEDUCARE gets there to give us a status update
5 on injuries, because MEDUCARE can fly somebody and they
6 be fine or they can fly somebody and then can be, you
7 know, near death or even sometimes do pass away.

8 And how severe the injuries are and the collision is
9 going to depend on how in depth we need to go with the
10 investigation.

11 Q. Did you send any of your troopers to the Medical
12 University that night?

13 A. Yes sir, I did. I sent Trooper Southerland to the
14 Medical University to give status updates on injuries
15 once MEDUCARE went.

16 Q. Did you go to the scene of the collision?

17 A. I did. I sent Trooper Poston first because he was
18 going to act as the primary investigator and then I was
19 en route behind him.

20 Q. Can you tell the jury about what time you got to the
21 scene? Round about.

22 A. I don't recall exactly. I think it was I would
23 approximate 9:30-ish. I'm just really ball parking,
24 there.

25 Q. All right, well when you got to the scene, who was

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1 on scene already?

2 A. Trooper Poston did arrive before me and he was the
3 only trooper that was there. But there were multiple
4 deputies and I can't begin to tell you how many
5 firefighters -- just plenty of firefighters. And then
6 there was, of course citizens on scene.

7 Q. Any emergency personnel?

8 A. Yes sir and EMS workers as well.

9 Q. What was your roll in the investigation when you got
10 on the scene?

11 A. To act as scene supervisor for my department in
12 coordination with the fire chief. The fire chief is
13 ultimately in charge of the emergency side of it and I'm
14 in charge of the investigation side of it and just there
15 to make sure that evidence is documented, that the proper
16 phone calls get made for additional resources, to relay
17 information, and to direct Trooper Poston making sure
18 that he documents what he needs to document and do what
19 he needs to do.

20 And then support him as well as assist him in doing
21 his duties as well and to make sure the investigation
22 goes properly.

23 Q. How did you specifically assist Trooper Poston in
24 this case?

25 A. Well the -- as soon as arriving I got out of the car

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1 and first thing started speaking with the fire chief
2 about what was going on and he began telling me that
3 there was another firefighter that needed to speak with
4 me immediately upon arriving because they had witnessed
5 something that I needed to know about. And so I began
6 to ---

7 Q. --- I'm going to stop you right there, sorry.

8 A. Yes, sir.

9 Q. When you got to the scene, what did you notice about
10 the car specifically?

11 A. I noticed that it was a violent collision with
12 extensive damage to both vehicles and what appeared to be
13 a rather high speed crash, due to the nature of the
14 damage to both vehicles and just severely damaging both
15 vehicles. And it had spun one around and shot one off
16 the road; just a very bad collision.

17 Q. Could you describe the location of the vehicles?

18 A. Yes, sir. There was a Saturn that had been spun
19 around and it was actually in the -- I guess what would
20 have been the lane probably towards Lyons Beach and then
21 the BMW had been shot off the roadway. It was completely
22 off the road way all together -- just off on the side of
23 the road in the grass.

24 Q. During your investigation, did you ever continue
25 contact with Trooper Southerland?

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1 A. Yes, sir. I spoke with him multiple times while we
2 were there because we were on the scene several hours and
3 just constantly in contact with Trooper Southerland
4 getting updates on the patient that was down there at
5 Med-U.

6 Q. While you were on the scene did you ever learn the
7 whereabouts of this defendant prior to the accident?

8 A. Yes, I did. I received a phone call that stated
9 that Ms. Robinson, the defendant, was seen at a bar prior
10 to this collision.

11 Q. Okay. And were you able to determine the direction
12 of travel of Ms. Robinson?

13 A. Yes, sir. Ms. Robinson was actually traveling
14 towards Lyons Beach.

15 Q. Okay. And how about the Saturn?

16 A. The Saturn was coming from Lyons Beach headed
17 towards the interior of Moncks Corner -- towards the
18 courthouse actually.

19 Q. When, if ever, did you make the determination that
20 Ms. Robinson, the defendant, should have been arrested?

21 A. We made that determination while we were still on
22 scene because -- due to the fact that we had such a
23 violent collision and there was obvious -- it was just
24 obvious Ms. Robinson was traveling well above the posted
25 speed limit. She was on the wrong side of the road.

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1 There was beer all inside the car. There was a green
2 leaf material that was believed to be ---

3 Q. --- I'm going to stop you right there.

4 MR. MAYER: Objection.

5 Q. Okay. Was there --

6 THE COURT: Are you withdrawing your objection?

7 MR. MAYER: Well, can we approach Your Honor?

8 THE COURT: Uh Huh.

9 [Whereupon, an off the record bench conference is
10 held]

11 THE COURT: You may proceed.

12 Q. [Mr. West] When did you make the decision to arrest
13 this defendant?

14 A. While I was still there at the scene I called
15 Trooper Southerland and told him that all the evidence on
16 scene pointed to the fact that this was going to be a
17 felony D-U-I case and that we needed to draw blood and
18 arrest Ms. Robinson for that.

19 Q. Okay. Do you recall about the time line of when you
20 instructed Trooper Southerland to draw the blood sample
21 from this defendant?

22 A. It...

23 Q. But you did give him the order?

24 A. Yes, sir. I did give him the order. As far as an
25 actual time I really can't ---

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1 Q. --- and that time ---

2 A. --- recall an actual time. ---

3 Q. --- would have been documented by Trooper
4 Southerland?

5 A. Yes sir, I believe so.

6 Q. How did you determine that there was alcohol
7 involved?

8 A. Well it was two-fold. One, there was beer inside
9 the car that we saw and beer had been spilled inside the
10 car. So that was the first clue that beer might -- that
11 alcohol might be involved in this collision.

12 When I say inside the car, I mean inside the car
13 that Ms. Robinson was operating and then also Trooper
14 Southerland advising me that when he was near her and
15 speaking with her that he smelled it coming off her
16 person.

17 Q. No further questions from the state at this time.

18 THE COURT: You may proceed.

19 MR. MAYER: Thank you, Judge.

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State v Shana Robinson
Chadwick Pearson-Cross-Examination by Mr. Mayer
June 4, 2014

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Trooper Pearson during your time on the scene did

4 you look in Shana's car?

5 A. Yes sir, I did.

6 Q. And did you see beer in there?

7 A. I did, yes sir.

8 Q. And did you see a single opened beer in there?

9 A. I didn't see any that were open no, sir.

10 Q. Okay. But you smelled beer in the car?

11 A. I did, yes sir.

12 Q. Did you attempt to pick up any of the beers that

13 were in the car?

14 A. Any that were in the car? I mean I don't know if I

15 attempted to pick up any per say, but I know I certainly

16 didn't attempt to look at them all because it wasn't

17 possible.

18 Q. It was impossible?

19 A. I said it wasn't possible.

20 Q. It wasn't possible?

21 A. No sir, it wasn't.

22 Q. And why not?

23 A. Well because inside the car there was -- that night

24 it was a violent collision, serious injuries, there's

25 blood, bodily fluids, there's fluids from the car and you

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1 got cut -- you've got metal that can cut you, you've got
2 glass debris aside from getting in full P-P-E gear to
3 protect myself from cuts and blood borne pathogens, it's
4 just not a good idea to try to root through a vehicle
5 like that.

6 Q. So it's a better idea just to charge someone and
7 assume the beer was open, is that right?

8 A. That's not what I said at all, sir.

9 Q. So, did -- were you in the courtroom before when
10 someone testified that both doors to the BMW opened that
11 night?

12 A. This is my first time in the courtroom.

13 Q. Okay, I'm sorry ---

14 A. --- during this trial.

15 Q. So you made no attempts to collect the beers that
16 were in the car, is that right?

17 A. It wasn't safe to do so, no sir.

18 Q. When would it have become safe to do so?

19 A. Days later, after leaving the scene with the proper
20 equipment.

21 Q. Was the car later searched?

22 A. Not by myself. I know the MAIT Team did their
23 follow up investigation.

24 Q. Okay. What kind of beer did you see in the car?

25 A. I believe it was Bud Light.