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SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM SPARTANBURG COUNTY

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SANDY LYNN WESTMORELAND,

APPELLANT

APPELLATE CASE NO. 2014-002636

AMENDED RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS

4 STATE OF SOUTH CAROLINA,

5 PLAINTIFF,

6 VS.

7 SANDY LYNN WESTMORELAND,

8 DEFENDANT.

TRANSCRIPT

OF

RECORD

2012-GS-42-5195, 5196
2013-GS-42-4625

December 1st - 4th, 2014
Spartanburg, South Carolina

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge; and a jury.

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18 Attorneys for the State

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24 Circuit Court Reporter
25 Seventh Judicial Circuit

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22	S-18	Photograph	66	280
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24	S-20	Photograph	66	280
25	S-21	Photograph	66	280

1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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3	S-22	Photograph	66	280
4	S-23	Photograph	66	280
5	S-24	Photograph	66	280
6	S-25	Photograph	66	280
7	S-26	Photograph	66	280
8	S-27	Photograph	66	280
9	S-28	Photograph	66	280
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22	S-41	Photograph	66	280
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24	S-43	Photograph	66	280
25	S-44	Photograph	66	280

1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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5	S-47	Photograph	66	280
6	S-48	Photograph	66	280
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24	S-66	Photograph	66	235
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	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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1	<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
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4	C-1	Statement	53	
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1 THE COURT: It appears that all jurors have been able
2 to comply with my instructions thus far.

3 Now, I told you earlier that, when you returned to the
4 courtroom, you'd be taking an oath concerning your duties
5 and responsibilities as jurors in this case.

6 At this time I'll ask the clerk to please swear the
7 jury panel for me.

8 THE CLERK: Yes, sir.

9 (WHEREUPON, the jury panel was placed under oath at
10 this time.)

11 THE COURT: Now, if there, if there was any juror who
12 either failed or refused to take the oath that the clerk
13 just administered, please stand.

14 (No response.)

15 THE COURT: The record then will reflect that all
16 jurors have been sworn concerning your duties and
17 responsibilities in this matter.

18 Now, ladies and gentlemen, before we begin the trial of
19 a case there's some things that I need to go over with you.

20 First of all, on yesterday when I was going over
21 information with you concerning this case, I identified to
22 you three indictments that were possibly being tried in this
23 matter. As a result of my pretrial hearings and discussions
24 with counsel, this case is going forward on two of those
25 indictments.

1 The indictments that the case is moving forward on is
2 the Case Number 13-GS-42-4625. That is an indictment for
3 hit and run with death. The other indictment that is being
4 presented to us for trial is Case Number 2012-GS-42-5195.
5 That is the indictment for murder.

6 Now, the other indictment was an assault and battery in
7 the second degree, and that case is not going forward in
8 this case, and, therefore, it should not be considered by
9 you at all in reaching a verdict in this case as any
10 indictment can not be considered by you at all. They are
11 simply the documents that bring the cases to the Court.
12 They inform us of the charges to be tried. They inform the
13 defendant of the charges that have been lodged against him.
14 That case is not going forward, and, therefore, just as the
15 other indictments should not be considered by you at all in
16 reaching a verdict in this matter. And I'll go over that
17 with you in greater detail when I charge you concerning the
18 law at the close of the case.

19 Now, before we begin the trial there's some things that
20 I do want to go over with you because I suspect that, for
21 many of you, this is the first time that you've been in a
22 situation where you've been called and placed on a jury and
23 asked to decide a verdict in a criminal matter such as the
24 one that's before this Court. For those of you who have
25 never been in this position before, I'm going to go over

1 some basic things that you need to be aware of so that
2 you'll understand the roles and responsibilities that you
3 have, that I have, and the other participants in the trial
4 might have as we go forward.

5 If you've never been in this position before I would
6 suspect that most of what you might know about what goes on
7 with juries during trials you might have gathered from such
8 sources as television shows you've watched, even movies that
9 you've seen, perhaps books that you've read. They don't
10 teach much about the jury process in schools for some
11 reason. So, I don't know that you got a lot in your
12 educational process about what juries actually do and how
13 they function.

14 So, I'd expect that most of your information came from
15 those other sources that I'm talking about at this time,
16 and while all of those sources of information are
17 interesting, they keep your attention, they have interesting
18 storylines, and twists and turns in what goes on, I hope you
19 realize that those particular forms of information are
20 intended to entertain you. You know, it never ceases to
21 amaze me that you can watch a television show and an event
22 can occur, the case can be tried and resolved in the space
23 of one hour, and they even have time to stop about five
24 times for commercials during that process, and perhaps you
25 might realize then that those storylines, and what they show

1 that goes on in a courtroom, it's sometimes been or twisted
2 a little bit so it fits the storyline, so it fits within the
3 timeframe that they have to go over those matters with you.
4 Again, that's because those things are intended to entertain
5 you.

6 Now, what you're engaged in in this trial is intended
7 for anything but your entertainment. What you're involved
8 in today is a, and as this trial goes forward, is a
9 fundamental part of our government, our democracy. You see,
10 the right to a trial by a jury of ones peers goes back to a
11 document known as the Magna Carta. That document was signed
12 in England in the Year 1215. So that means next year that
13 document will have it's 800th anniversary. That means that,
14 under the system of justice that we use, juries have been
15 trying cases over an 800 year period of time. It's a system
16 that's been around a long time. It's been tried and we
17 consider it, in our country, to be the best method for
18 dissolving -- resolving differences in a Court of law.

19 Now, if you were to look around the world today at most
20 of the justice systems in the world you would find that most
21 of those systems do not allow direct participation by
22 citizens in the decision making process that goes on in the
23 courtrooms of those countries. Our system is different.

24 We allow citizens to serve on juries, to make important
25 decisions in what goes on in the courtrooms of our country.

1 It's a system that many people have fought and died for.
2 It's guaranteed in our Bill of Rights. I hope it's a system
3 we never lose in this country.

4 Now, this courtroom is a place of honor. It's
5 dedicated to the preservation of citizen's rights through
6 the system of government or system of justice that I've just
7 talked to you about.

8 Now, the attorneys that are going be involved in this
9 case are here to represent their client's interest. I
10 expect they'll do an excellent job in presenting their
11 client's position to you during this trial. On the one
12 hand, one of the clients and one of the parties before the
13 Court is the State of South Carolina that has brought
14 charges against one of its citizens, the defendant in this
15 case.

16 I hope you also realize, however, that those attorneys
17 are also officers of this Court. You see, at some point in
18 time they appeared in front of some Court or judicial body
19 and they took an oath as prescribed by law. Part of that
20 oath is that they will assist you in your search for the
21 truth in this matter, and that's what you're engaged in here
22 is a search for the truth, an effort to see that justice is
23 done between the parties that are before the Court in this
24 case.

25 You can expect, again, that they'll act in a

1 reasonable, a professional, and an ethical manner in
2 handling the case before you during this trial. I want to
3 remind you too that you've come in front of this Court
4 today. This morning you took an oath. You're expected to
5 act in a reasonable, a professional, and an ethical manner
6 in the discharge of your duties as jurors in this case.
7 Again, I want to thank you very much for your willingness to
8 accept the responsibilities that go with serving on a jury
9 in this country.

10 Now, I went over with you the indictments in this case
11 yesterday. I read them to you and I've already mentioned to
12 you the two indictments that are before the Court during
13 this trial is the indictment for murder and the indictment
14 for hit and run with a death, and, to those indictments, the
15 defendant has pled not guilty.

16 Now, that plea places the burden of proof in this case
17 solely upon the State. It's the State's obligation to prove
18 the allegations that are contained in those indictments to
19 you by proof beyond a reasonable doubt. It's your job, as
20 jurors, at the close of this trial, to determine or decide
21 whether or not the State has met its burden of proof in this
22 case.

23 Now, what I'm telling you now is not intended to be a
24 charge concerning the law in this case. It is not intended
25 to be a charge for you to use in reaching a verdict in the

1 matter. It is, however, an effort to give you some idea of
2 the duties and responsibilities that you have in this
3 matter.

4 Now, I will tell you that in every case that's tried in
5 front of a jury in this courtroom, the jury is the sole and
6 exclusive judge of the facts in this case. It will be your
7 responsibility to determine what the true facts are in this
8 matter at the close of the trial.

9 I will be the presiding officer in this case, and it
10 will be my responsibility to rule on certain questions of
11 whether evidence is admissible or not, questions of whether
12 or not questions that are being asked are appropriate given
13 the rules of evidence that govern those matters, and so it
14 will be my job to, to rule on those things.

15 I will tell you now, and I will tell you at the close
16 of the trial, you should not take from anything that I do in
17 the discharge of my duties as the presiding officer in this
18 trial to somehow indicate to you that I have an opinion one
19 way or the other as to how you determine the facts in this
20 case. The law doesn't allow me an opinion on the facts. I
21 can assure you I have no opinion as to how you determine the
22 facts in this case because you are the sole and exclusive
23 judges of the facts in this matter.

24 It will be your solemn responsibility, at the close of
25 the trial, to determine the guilt or the innocence of the

1 defendant in this matter based upon the facts that you have
2 found and the law as I give it to you at the close of the
3 trial because I will tell you the same law that makes you
4 the sole judges of the facts makes me the sole judge of the
5 law in this case. At the close of the law -- of the case I
6 will charge you concerning the law to be applied in this
7 case, and, under your oath as duties -- as your -- as
8 jurors, it's your duty to take the, the law exactly as I
9 give it to you, apply that law to the facts as you determine
10 the facts to be. That should put you in a position to
11 render a just, a true, and a fair verdict at the close of
12 the trial and at the close of your deliberations in this
13 matter.

14 I will tell you I want you to pay close attention to
15 what goes on during the trial. Try not to let your thoughts
16 wonder. It's very important that you be in a position to
17 discuss the matters that go on in the trial with your fellow
18 jurors during your deliberations. It's especially important
19 that you, as jurors, perform your duty of determining the
20 facts in this case conscientiously and diligently because,
21 ordinarily, there's no means by which an erroneous
22 determination of facts made by a jury can be corrected in
23 our system.

24 Now, I will tell you that if you came into the
25 courtroom with a notion as to what the law is or what the

1 law ought to be, I will instruct you at the close of the
2 trial to leave those notions outside of the jury room.
3 Again, it's your responsibility to take the law as I give it
4 to you, apply that law to the facts as you determine them to
5 be at the close of the trial.

6 Now, in determining what the true facts are in any
7 case, you must decide the facts in this case based upon the
8 evidence presented here in the courtroom. I've already
9 instructed you as to the fact that you should not attempt to
10 gather any information outside of the courtroom. You should
11 not listen to or watch media reports concerning this matter.
12 I can assure you that media reports, information on the
13 Internet, quite often contains information that would not be
14 allowed into evidence in a trial of a case in front of a
15 jury.

16 The rules of evidence have been established for
17 hundreds of years. We've developed them over those periods
18 of time, and I will tell you that you should only base your
19 decision based on the information that you receive during
20 this trial from this witness stand, from witnesses who've
21 been sworn to tell the truth, and any evidence that comes
22 into the record through those witnesses or by agreement of
23 the lawyers involved in this case.

24 So, you should decide this case solely upon the record
25 of this case at the close of the trial. Again, it would be

1 improper for you to try to gather any information from any
2 other source concerning this case and this matter.

3 Now, it's important again, and I told you earlier, that
4 you not discuss this case at all until I ask you to begin
5 your deliberations. Even the most innocent discussion you
6 may have about what one witness said or what one piece of
7 evidence might exist, might exhibit before you've heard all
8 the evidence would be highly improper by you. I want you to
9 keep an open mind about this case. Don't try to make any
10 decisions about this case until you've heard all the
11 argument by the lawyers, all the evidence from the witnesses
12 and the witness stand, and my charge concerning the law in
13 this matter. Then you will have the information that you
14 need to begin discussions concerning this case.

15 So, again, I'll caution you, don't discuss the case
16 with anyone, even among yourselves, excuse me, until I've
17 asked you to do that.

18 Excuse me.

19 In just a few minutes we'll start the case. I'll give
20 the attorneys the opportunity to make what's called an
21 opening statement or argument. Statements made by lawyers
22 during a trial do not constitute evidence. They can not be
23 used by you, therefore, directly in reaching a verdict in
24 this case.

25 The opening statement by a lawyer will serve to tell

1 you a little bit about what the case is about perhaps, what
2 the -- perhaps what they intend to prove, and, at the close
3 of the trial, we let the lawyers again directly address you,
4 and they can only talk to you directly twice during the
5 trial. That's during the opening statement and during the
6 closing argument or the closing statement.

7 At the closing statement they will go over the evidence
8 that you've seen and heard and from their client's
9 prospective and urge you to draw certain inferences from
10 that evidence. But, again, the statements made by lawyers,
11 both at the beginning of the trial and at the close of the
12 trial, it's not evidence in and of itself, and, therefore,
13 that information can not be used directly by you in reaching
14 a verdict in this case.

15 Now, I'm going to tell you that, in determining the
16 facts in this case, it's going to be necessary for you to
17 determine the credibility or the believability of the
18 evidence that you hear. I will ask you to use your good
19 common sense in making that decision. Every single day of
20 your life you make common sensical decisions as to what you
21 choose to believe and what you choose not to believe, and
22 these days, on the jury, are no different than any other day
23 in your life. Use your good common sense and make a
24 determination of what testimony you believe and what
25 testimony you don't believe.

1 You have the right, using your good common sense, to
2 consider whether a witness has a stake in the outcome of the
3 case, whether or not a witness may have some bias or
4 prejudice one way or the other, whether or not a witness
5 actually had the ability to know the facts about which the
6 witness is testifying, and perhaps, most importantly of all,
7 I just passed my 40th anniversary as a lawyer. I've been
8 in courtrooms for 40 years. I've never been in a courtroom
9 where the witness stand wasn't right in front of the jury
10 box, and the reason for that is that allows the jury to
11 directly observe the witnesses as they testify, the way they
12 speak, how they deliver their testimony.

13 You have a right to consider anything that's in the
14 record of the case in making a determination as to the
15 credibility or the believability of the witnesses that you
16 hear. So, pay close attention again to what's going on.
17 Try not to let your thoughts wonder. Be in a position, at
18 the close of the trial, to discuss that testimony with your
19 fellow jurors, and, again, use your good common sense in
20 making those determinations as to the credibility or the
21 believability of the testimony that you hear.

22 I want to caution you about one thing and I don't want
23 you to think that this is unusual. It happens in almost
24 every case. If there's an issue concerning the
25 admissibility of some evidence or the questions that are

1 being asked by a lawyer, and it's my belief that the
2 discussion about those issues might go into a discussion
3 about some matter that is not admissible under the rules of
4 evidence, therefore it should not be considered by you in
5 reaching a verdict, I may ask you to leave the courtroom
6 while I discuss those matters with the lawyers. I'll ask
7 you to step back to the jury room while I have those
8 discussions.

9 Don't take from the fact that I've asked you to leave
10 the courtroom to indicate to you that I've got an opinion
11 one way or the other as to how you determine the facts in
12 this case. I hope you realize it's me doing my job. Part
13 of my job is to see that you decide this case based upon
14 properly admitted evidence under the rules that govern that
15 evidence, and if I think the discussion is going into
16 something that would not be admissible under those rules,
17 I'll ask you to leave while I have those discussions. When
18 I finish my discussion we'll have you to come back into the
19 courtroom, I'll announce my ruling, we'll proceed with the
20 trial. But don't think, again, that's an effort by me
21 somehow to influence your decision in this case. Again, I
22 have no opinion as to how you decide the case. The law does
23 now allow me such an opinion.

24 Now, I do not appoint a foreperson of the jury until I
25 charge you on the law at the close of the trial. Some

1 judges appoint the foreperson at the beginning of the trial.
2 Some people will allow the jury to elect a foreperson. I
3 appoint the foreperson at the close of the trial during my
4 charge on the law. I do that for one reason primarily.

5 I want to emphasize to you, at the close of the trial,
6 that each and every one of you will have to agree upon the
7 verdict before it's the verdict of the jury. In other
8 words, there can be no verdict until all jurors who are
9 deliberating agree upon the verdict to be rendered by the
10 jury. That means each and every one of you is just as
11 important as any other juror in reaching the determination
12 in this case of what the proper verdict ought to be.

13 I don't want you to think, because I have picked
14 someone as your foreperson, somehow that you can sit back
15 and let that person listen and you don't have to pay
16 attention. Because you see, at the close of the trial, the
17 foreperson has the responsibility of leading the discussions
18 of the jury in the, in the jury room. In other words, they
19 preside over the discussions of the jury.

20 I want each of you to think that you might be the
21 foreperson cause you might be. Now -- and if you're
22 appointed, you'll have to be in a position to lead those
23 discussions or be able to preside over the discussions of
24 the jury at that time.

25 So, I want all of you to pay attention as if you're

1 going to be the foreperson of the jury because, at the close
2 of the trial, all of you need to discuss this, all of you
3 must agree upon a verdict before it's the verdict of the
4 jury or there will be no verdict in the case.

5 So, I wanted to make sure you understand I haven't
6 forgotten about the foreperson. I'll appoint that person at
7 the close of the trial. In the meantime, if any of you have
8 any difficulties or problems, you don't need to find a
9 foreperson. You can talk directly to the bailiffs if you
10 need to do something of that nature.

11 Now, I want to be sure I haven't violated anyone's
12 rights by my opening comments to you.

13 Does the State have an objection to my opening
14 comments?

15 SOLICITOR GRAY: No, sir.

16 THE COURT: Any from the defense?

17 MR. SHEALY: No, Your Honor.

18 THE COURT: All right. Now, ladies and gentlemen, I
19 will point out to you, as I told you earlier, the defendant
20 has pled not guilty to both indictments. That places the
21 burden of proof upon the State to prove the allegations in
22 those indictments by proof beyond a reasonable doubt.

23 For that reason, the State's allowed to go first in its
24 arguments to you followed by the defense. Then, when we go
25 through the presentation of evidence, again the State,

1 because it has the burden of proof, must go first followed
2 by any evidence the defense wishes to put up. Once all the
3 evidence is in, then we would have the closing arguments or
4 statements by lawyers. Once that has been completed I'll
5 charge you on the law to be applied in the case, and then
6 you will begin your deliberations.

7 So, those are the steps that we'll go through as the
8 trial moves forward.

9 So, at this time we'll have opening statements.

10 Who's gonna do that, Ms. Moricle?

11 SOLICITOR MORICLE: Yes, Your Honor.

12 THE COURT: All right. Ms. Moricle, you may proceed.

13 SOLICITOR MORICLE: Good morning, ladies and gentlemen.

14 On March 14th of 2012 Michael Daniels was having a
15 normal day. He got up early. He went to work at the
16 dialysis clinic where he worked everyday. He worked all day
17 long, and then he got a call from his partner and roommate,
18 Sandy Westmoreland.

19 Sandy Westmoreland told him that he wasn't feeling well
20 and needed to go to the emergency room. After working a
21 long day he went with Sandy to the Mary Black Emergency
22 Room. While at the Mary Black Emergency Room Mr.
23 Westmoreland copped a temper.

24 You will hear from this witness stand how Mr.
25 Westmoreland assaulted Michael Daniels in the emergency

1 room, the two had to be separated. Mr. Daniels was visibly
2 upset, had blood running out his face. He had had it. He
3 was leaving the defendant. He was going to walk home and
4 not come back.

5 You will hear from this witness stand how the victim,
6 Michael Daniels, left the emergency room and was believed to
7 have walked home. The defendant was irritated and angry
8 that the victim had left him. He was even more upset when
9 he got out to his car and realized the victim had already
10 gotten all of his belongings from his car and left and did
11 not wait on him. You will hear that Mr. Westmoreland was
12 discharged from the hospital a little bit after midnight.

13 You'll then hear from this stand, the next morning
14 Michael Daniels was found dead behind a row of bushes in
15 front of Mary Black Emergency Room. EMS was called and then
16 law enforcement.

17 You will hear from law enforcement that they determined
18 this was not an accident. You will hear from law
19 enforcement that the tire tracks that were seen from the
20 road make a right turn across the grass, through a row of
21 bushes. Michael Daniels body was found just behind that row
22 of bushes.

23 You will hear from a pathologist how Michael Daniels
24 was hit from behind crushing his vertebra and snapping his
25 neck, how he flew through the air, his belongings he was

1 carrying were scattered across the yard around his body.

2 You will hear from this witness stand from the
3 Multidisciplinary Accident Investigation Team or, in short,
4 M.A.I.T., that the tire tracks went through the bushes, kept
5 coming around through the bushes, and went back on the road.
6 There was not even a brake mark in the tire tracks.

7 You'll then hear how the car parts were scattered
8 around with the victim, Michael Daniels. Pieces of a bug
9 guard, pieces of a headlight assembly, his personal
10 belongings, pieces of a purple colored vehicle. You will
11 then hear how these items were collected into evidence and
12 that they were matched to Sandy Westmoreland's Ford
13 Explorer.

14 You'll hear from law enforcement they, when they went
15 to Sandy Westmoreland's home, his purple Ford Explorer was
16 in the driveway with a broken headlight, a missing bug
17 guard, and a broken grill along with pieces of a bush in the
18 grill.

19 You will then hear how he initially told law
20 enforcement that he had hit a deer on his way home, but
21 eventually told the truth. He had run over his partner and
22 didn't even bother to call 9-1-1.

23 Ladies and gentlemen, Mr. Gray and I are gonna prove,
24 beyond a reasonable doubt, today that Sandy Westmoreland
25 murdered Michael Daniels. The judge told you that one of

1 the counts is murder.

2 Murder is the intentional killing of one person with
3 malice, which means ill will or hostility towards another.
4 I want you to remember two things about murder. An evil
5 intent with an intentional act.

6 The judge also told you that one of the counts is hit
7 and run with death. That means the defendant was driving a
8 car, the car was involved in an accident, the defendant did
9 not stop or wait on law enforcement. He did not give any
10 information to law enforcement and he did not provide any
11 assistance to the injured.

12 Ladies and gentlemen, you're gonna hear about Mr.
13 Westmoreland's temper from this witness stand. He assaulted
14 his best friend in the emergency room, in a public place,
15 and the victim had just had it. It was time to go home.
16 And then, when he left that emergency room, he upped his
17 weapon of choice from a fist to a cane to a car and mowed
18 down his best friend in cold blood and he never even
19 bothered to hit the brakes or call 9-1-1.

20 Thank you.

21 THE COURT: Mr. Shealy, for the defense.

22 MR. SHEALY: Thank you, judge.

23 THE COURT: Yes, sir.

24 MR. SHEALY: My name is Matthew Shealy. I represent
25 Mr. Westmoreland, Sandy Westmoreland.

1 I've been doing this for a while now, an unfortunate
2 long, a long while now, and what I've learned in openings is
3 not to make promises cause I don't know how these people are
4 gonna testify. I can never tell you how somebody is going
5 to testify from the witness stand.

6 what I can tell you is that each of these witnesses has
7 a reason to spin things. Sometimes it's unintentional.
8 Sometimes, unfortunately, it is intentional. But they
9 always have a reason to cover what they're testifying to.

10 Now, Ms. Moricle's made some pretty strong promises to
11 you, and, quite frankly, I don't think she's gonna be able
12 to deliver them, and it's interesting that she says Sandy
13 ultimately told the truth cause he didn't.

14 Ladies and gentlemen, we're not denying that Sandy
15 Westmoreland hit Mr. Daniels. He's given statements to that
16 effect. He admits that.

17 The only reason we're here is because he didn't mean
18 to, and, in the statements that he gave, the ones Ms.
19 Moricle said were the truth, he says he accidentally hit
20 Mr. Daniels. It was an accident.

21 Now, I -- you've got to take Ms. Moricle at her word I
22 suppose. I mean that's why we're here. I expect, ladies
23 and gentlemen, that ultimately y'all are gonna find him
24 guilty of leaving the scene of an accident. He did that.

25 Now, he did come back and I expect the evidence to show

1 that, but he didn't call 9-1-1 like he should of.

2 Again, we admit those things. The only issue is
3 whether this was an intentional act or not and it wasn't.

4 You're gonna hear about that business at the hospital.
5 You're gonna hear about his treatment. You're also gonna
6 hear about his various health problems and the medication
7 that he was on during those health problems for those health
8 problems, and you're going to hear about the treatment of
9 those health problems at Mary Black Hospital.

10 I don't know where Ms. Moricle is come up with this not
11 coming back thing. She's right. Mr. Daniels and my client,
12 I don't know that it was much of an altercation because my
13 client wasn't arrested for that, Mr. Daniels, in fact, said
14 he didn't want to press charges. He just wanted to leave
15 and he left.

16 Now, again, that's what happened. He didn't say I'm
17 never coming back, we're over. At least I've got no, no
18 report of that. I just -- I don't know where that's going
19 to come from.

20 So, there's no good reason for what they're saying for
21 an intentional murder. There's just no good reason for it.
22 They don't have a motive here. They're gonna say that there
23 was a temper. Even if you accept what they're saying as
24 true, poking somebody with a cane is substantially different
25 from hitting them with a car.

1 Now, I don't believe my client actually meant to poke
2 him with the cane, but there is going to be testimony that
3 his nose was bloody. But, again, that's a far cry from
4 hitting somebody with a car, and you're going to hear again
5 about his treatment at Mary Black Hospital and I'd ask you
6 to listen to it, and I'd also ask you to bring your common
7 sense and y'all's experience to this case because that's
8 going to be important cause we've all had experiences with
9 hospitals. We've all had experiences with ERs. We've all
10 had experiences with various drugs and how they affect us,
11 and you're allowed to bring all that experience in here.

12 That's why we have juries, is because y'all have lived
13 and so y'all can see whether people are telling the truth.
14 You can bring your common sense, your understanding, your
15 various experiences and all of that to decide whether or not
16 this was an intentional act or not.

17 Ladies and gentlemen, again, I expect you're gonna find
18 my client guilty of leaving the scene because he did not
19 call 9-1-1. We admit that. This was not a murder, and
20 leaving the scene with death obviously is a serious offense.
21 It's a very serious charge.

22 The only reason we're here is this murder. It just
23 didn't happen. My 52-year old client did not murder Michael
24 Daniels. He just didn't do it.

25 They had been together for a very long time. They were

Clay Lyles - Direct examination
by Solicitor Moricle

1 best friends. My client gave him a place to stay. He just
2 didn't do it, and, at the end of this, while I expect you'll
3 find him guilty of leaving the scene of an accident, I
4 expect you to find him not guilty of murder or any other
5 intentional act, homicide, since you may be charged with,
6 and we'll discuss that at the closing.

7 I -- they just can't prove it beyond a reasonable doubt
8 and I should mention that we're not required to prove
9 anything. The defense is not required to prove anything.
10 The State has to prove it beyond a reasonable doubt that
11 this was an intentional act. It's, it's insufficient for
12 them to say well, it probably happened this way or he
13 probably intended to do this or something like that. They
14 have to prove it beyond a reasonable doubt. We'll go into
15 what reasonable doubt means, again, at closing.

16 But, ladies and gentlemen, I expect there to be
17 substantial reasonable doubt at the end of this case as to
18 murder. We're admitting the things we did. He's admitting
19 the things that he did, and he knows what that likely will
20 lead to for him at his age, his health problems.

21 So, we're here for the principle of he did not
22 intentionally kill his boyfriend.

23 Thank you.

24 THE COURT: The State may call its first witness.

25 SOLICITOR MORICLE: Your Honor, the State would call

Clay Lyles - Direct examination
by Solicitor Moricle

1 Clay Lyles.

2 THE COURT: Come forward to be sworn please. If you'll
3 step over here to my left and be sworn in.

4 (Witness complies.)

5 THE COURT: Thank you, sir.

6 CLAY LYLES, being first duly sworn,
7 testified as follows:

8 THE COURT: Have a seat in the witness stand, sir, and
9 once you're seated I'd ask that you state your name please.

10 THE WITNESS: My name is Clay Lyles.

11 THE COURT: Thank you.

12 Ms. Moricle, Ms. Moricle, your witness.

13 DIRECT EXAMINATION

14 BY SOLICITOR MORICLE:

15 Q Good morning, Mr. Lyles.

16 A Good morning.

17 Q How are you today?

18 A I'm all right.

19 Q Good.

20 Mr. Lyles, how old are you?

21 A Forty-one.

22 Q And where do you live?

23 A 5 Heritage, Spartanburg, South Carolina.

24 Q In Spartanburg?

25 A (Witness nods affirmatively.)

Clay Lyles - Direct examination
by Solicitor Moricle

1 Q And, Mr. Lyles, were you near Mary Black Hospital on
2 March 14th -- 15th of 2012?

3 A Yes, ma'am.

4 Q And what were you doing that day?

5 A I was dump -- meant I was at my uncle house at some
6 apartments right behind the hospital, and we didn't have any
7 cigarettes, and I was walking -- I left his house walking to
8 the store and I went past the emergency room going to the
9 store at -- down by Houston Elementary, and it's a shortcut
10 where they walk a track where people walk, and I went down
11 through there. And I was walking and I happened -- I just
12 looked over and I seen a guy laying, laying flat on his
13 back, and I turned -- I didn't go over, over there.

14 I went to the -- back up to the, to the lobby in Mary
15 Black and told the lady that it was a man laying out there.
16 I said I don't even know if he's dead or alive, and she
17 asked me where he was at, and I showed it to him -- showed
18 and she couldn't see it from where we was at in front of the
19 hospital. So, she got somebody to walk down there, and they
20 walked down there and they find out he was dead.

21 Q Did you see him -- were you walking beside the road?

22 A I was in -- coming through the field. He was off the
23 road. He wasn't on the road cause if he was on the road,
24 it's a school right in front of where the accident happened
25 at or what -- they would of seen him. He was on the

Clay Lyles - Direct examination
by Solicitor Moricle

1 backside of the shrubs, of the trees cause it's a sidewalk
2 right there too.

3 SOLICITOR MORICLE: Okay. No further questions, Your
4 Honor.

5 THE COURT: Mr. Shealy, any questions of the witness?

6 MR. SHEALY: No, Your Honor.

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

9 You wish to excuse the witness, Ms. Moricle?

10 SOLICITOR MORICLE: Yes, Your Honor.

11 THE COURT: Any objections?

12 MR. SHEALY: No, Your Honor.

13 THE COURT: Sir, you're free to go. Thank you for
14 coming today.

15 Ma'am, you may call your next witness.

16 SOLICITOR MORICLE: Your Honor, the State would call
17 Travis Haney.

18 THE COURT: Come forward, sir. If you'll step over to
19 my left and be sworn please.

20 (Witness complies.)

21 THE COURT: Thank you.

22 TRAVIS HANEY, being first duly
23 sworn, testified as follows:

24 THE COURT: Once you're seated, sir, state your name
25 please.

Travis Haney - Direct examination
by Solicitor Moricle

1 THE WITNESS: Travis Jamar Haney.

2 THE COURT: Thank you.

3 Your witness, Ms. Moricle.

4 DIRECT EXAMINATION

5 BY SOLICITOR MORICLE:

6 Q Good morning, Mr. Haney.

7 A Good morning.

8 Q How are you today?

9 A All right.

10 Q Good.

11 Mr. Haney, can you please tell us where you work?

12 A At the time of the incident I worked at Mary Black
13 Hospital. I was a security officer working in the ER that
14 night.

15 Q Okay. So, you were working at the ER on what night?

16 A March 14th, 2012.

17 Q Okay. And how long had you been there?

18 A Three years.

19 Q And what were you doing that evening?

20 A I was stationed in the emergency room making my rounds
21 as I always do. My shift was between 8:00PM to 4:00AM.

22 Q Okay. And what happened while you were there that
23 evening?

24 A I was coming down the hallway where Rooms 4 through 9
25 were and I was coming backwards up to the front of the

Travis Haney - Direct examination.
by Solicitor Moricle

1 nurses station. Once I passed Room 5, Mr. Daniels stumbled
2 out of Room 4 and said, and I quote, no, sir, you---

3 MR. SHEALY: Objection, Your Honor. Hearsay.

4 THE COURT: I'll sustain the objections to what
5 Mr. Daniels may of said. The witness can testify as to what
6 he did as a result of the conversation.

7 SOLICITOR MORICLE: Okay.

8 Q Mr.---

9 A Mr. Daniels -- I'm sorry.

10 Q You just can't say what anyone else said.

11 A Okay.

12 THE COURT: You can't quote anyone else. That would be
13 hearsay and against the rules.

14 THE WITNESS: Yes, sir.

15 THE COURT: So, you can testify as to what happened and
16 what you did.

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. You may proceed.

19 A Mr. Daniels stumbled out of Room 4, and I saw that he
20 had a bloody nose, and so I told him to come with me into
21 Room 5 and I'll get him a towel so he can wipe his nose off.

22 Q Okay. And did he seem up -- how did he seem?

23 A Very upset.

24 Q Was he crying or just visibly upset?

25 A He was, he was crying, yes, sir. Yes, ma'am. Excuse

Travis Haney - Direct examination
by Solicitor Moricle

1 me.

2 Q That's okay.

3 what room did he come out of?

4 A Four.

5 Q And who was in Room 4?

6 A Mr. Sandy Lynn Westmoreland.

7 Q And do you know why Mr. Westmoreland, Westmoreland was
8 there?

9 A He was there to be treated by medical personnel.

10 Q Okay. And did you-all have to call anyone?

11 A Yes, ma'am, if any assault occurs, whether in the
12 hospital or as a result come in for an assault, the
13 Spartanburg County has to be called.

14 Q And -- Spartanburg County Sheriff's Office?

15 A Yes, ma'am.

16 Q Okay. Did a sheriff deputy come?

17 A Yes, ma'am.

18 Q And what happened when the deputy came?

19 A The deputy came, spoke to the nurse who was
20 Mr. Westmoreland's nurse, and I directed him to where
21 Mr. Daniels was in Room 5. I had him sitting on the, on the
22 bed, and had his, you know, had his nose covered cause it
23 was bleeding, and the deputy talked to Mr. Daniels and asked
24 him did he want to file charges, and he said no, he just
25 wanted to go out to the car, get his things, and leave.

Travis Haney - Direct examination
by Solicitor Moricle

1 Q And did anyone walk Mr. Daniels out?

2 A No, ma'am.

3 Q Okay.

4 A I asked him, you know, to separate, to separate him and
5 Mr. Westmoreland so no other incident could happen, I asked
6 him to please wait outside.

7 Q Okay. And who walked Mr. Westmoreland out?

8 A Me and the deputy.

9 Q Did you walk him to his car?

10 A Yes, ma'am.

11 Q Did you see what kind of vehicle he was driving?

12 A A Ford Explorer.

13 Q Did you see him get into the vehicle?

14 A Yes, ma'am.

15 Q Did you see him leave the hospital?

16 A Yes, ma'am, I watched him as he drive -- drove from the
17 parking lot to the road that leads to the front of the
18 hospital. After that I did not see him.

19 Q Okay. Hang on just a second.

20 A Yes, ma'am.

21 (Pause.)

22 Q Mr. Haney, there was an assault that occurred at the
23 hospital that evening, correct?

24 MR. SHEALY: Objection, Your Honor. He can't testify
25 to what happened in Room 4.

Travis Haney - Direct examination
by Solicitor Moricle

1 THE COURT: Overruled. He can answer whether he felt
2 there was an assault that occurred based on his
3 observations.

4 I'll allow you to ask the question.

5 Q Mr. Haney, was there an assault that occurred in the
6 emergency room that night?

7 A Yes, ma'am.

8 Q Can you tell me who the assault occurred on?

9 A The assault occurred on Mr. Michael Daniels.

10 Q Thank you.

11 THE COURT: Any further questions?

12 SOLICITOR MORICLE: No, Your Honor.

13 THE COURT: You may proceed. You may cross-examine
14 him.

15 MR. SHEALY: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. SHEALY:

19 Q Just so we're clear, your weren't in Room 4---

20 A No, sir.

21 Q ---whenever all this all happened?

22 A No, sir.

23 Q So you don't know what happened in Room 4?

24 A No, sir, the only thing I know is Mr. Daniels did come
25 out of Room 4 holding his nose and it was bloody.

Travis Haney - Cross-examination
by Mr. Shealy

1 Q Okay. But you don't know what occurred in there?

2 A No, sir.

3 Q All right. So, when you testified that you thought
4 that there was an assault, that was based on simply after
5 the fact?

6 It wasn't any personal viewing?

7 A Actually Mr. Daniels walked out right in front of me.

8 Q Well, I understand that he walked out, but you didn't
9 see what happened in Room 4?

10 A No, sir.

11 Q Okay. Now you've testified that Mr. Westmoreland was
12 there for some kind of treatment?

13 A Yes, sir.

14 Q All right. Did anybody tell you what kind of
15 treatment?

16 A No, sir.

17 Q Did anybody tell you what kind of drugs, if any, they
18 had given him?

19 A No, sir.

20 Q Did anybody tell you that some of this, some of the
21 drugs he had been administered might be problematic to let
22 him drive?

23 A No, sir.

24 Q So they said let him drive away?

25 A Yes, sir.

Travis Haney - Cross-examination
by Mr. Shealy

1 Q Just get him out of our ER?

2 A They said walk him to the car.

3 Q Okay. Now, my understanding from what you've just
4 testified to, when Mr. Valentine asked Mr. Daniels if he
5 wanted to press charges, Mr. Daniels said no?

6 A No, he did not say no. He did say no. Excuse me.

7 Q He did say no?

8 A Yes, sir.

9 Q Okay. So, he said no, I don't want to press any
10 charges?

11 A Yes, sir.

12 Q Just to clarify it for the jury.

13 But that he wanted to get his belongings out of the
14 vehicle?

15 A Yes, sir.

16 Q All right. And then he left?

17 A He left.

18 Q Okay. So, you don't have any -- and I'm gonna hand you
19 up your --.

20 A Yes, sir.

21 Q Well, we'll just leave that.

22 Now, my understanding -- where are you working now, Mr.
23 Haney?

24 A Right now I am working at Eagle Metals.

25 Q Are you a security guard there too?

Travis Haney - Cross-examination
by Mr. Shealy

1 A No, sir, I make roofing materials and I drive a
2 forklift.

3 Q Okay.

4 All right. If you'll bear with me one second.

5 (Pause.)

6 MR. SHEALY: That's all I have for this witness.

7 THE COURT: Redirect?

8 SOLICITOR MORICLE: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY SOLICITOR MORICLE:

11 Q Mr. Haney, who would Mr. Daniels have wanted to press
12 charges against?

13 A Mr. Westmoreland.

14 Q Did Mr. Westmoreland have any injuries?

15 A No, ma'am.

16 Q Did he have any abrasions to his face?

17 A No, ma'am.

18 Q Did he have a bloody nose?

19 A No, ma'am.

20 Q How did Mr. Westmoreland seem when you walked him to
21 his car?

22 A He seemed calm, you know, and when me and the deputy
23 got him to his car, he saw that Mr. Daniels had tore off --
24 tore the tape off the back driver's side window to get his
25 belongings, but he was calm, quiet, and we told him good

Travis Haney - Redirect examination
by Solicitor Moricle

1 night and he said good night. He got in his car and he
2 left.

3 Q Okay. Did he slur his speech?

4 A No, ma'am.

5 Q Was he walking correctly?

6 A Yes, ma'am.

7 Q Did he seem impaired?

8 A No, ma'am.

9 SOLICITOR MORICLE: No further questions.

10 THE COURT: You wish to cross-examine?

11 MR. SHEALY: Just a few.

12 THE COURT: Recross, yes, sir.

13 RECROSS EXAMINATION

14 BY MR. SHEALY:

15 Q So, my -- Mr. Westmoreland, Sandy---

16 A Excuse me.

17 Q ---was polite?

18 A Yes, sir.

19 Q And he had a cane?

20 A Yes, he had a cane.

21 Q Okay. And when you were talking to him, he didn't seem
22 agitated too much?

23 A No, not when we walked him to the car.

24 Q Okay.

25 A No, sir, he was not agitated. He was polite. He was

Travis Haney - Recross examination
by Mr. Shealy

1 cordial and we walked him to the car and we asked him, you
2 know, have a good night, and he said okay, I thank you, and
3 he left.

4 Q Okay. So, he didn't cuss at you and say--

5 A No, sir.

6 Q Any shaking of the fist or---

7 A No, sir.

8 Q ---any of that?

9 A No, sir.

10 MR. SHEALY: Okay. I have nothing further, Your Honor.

11 THE COURT: All right, sir. You may step down. Thank
12 you very much.

13 THE WITNESS: Thank you.

14 THE COURT: You wish to excuse the witness?

15 SOLICITOR MORICLE: Yes, Your Honor.

16 THE COURT: Any objections?

17 MR. SHEALY: No objections.

18 THE COURT: You're free to leave, sir. Thank you very
19 much.

20 THE WITNESS: Yes, sir.

21 MR. SHEALY: And, Your Honor, he's released from my
22 subpoena as well.

23 THE COURT: I see.

24 You no longer have any responsibility to the court.
25 You're free to go, sir.

Jeff Valentine - Direct examination.
by Solicitor Moricle

1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you very much.

3 You may call the next witness.

4 SOLICITOR MORICLE: Your Honor, the State would call
5 Deputy Valentine teen.

6 THE COURT: Come forward and be sworn, sir.

7 JEFF VALENTINE, being first duly
8 sworn, testified as follows:

9 THE COURT: Once you're seated, sir, state your name.

10 THE WITNESS: Jeffery Scott Valentine.

11 THE COURT: Thank you.

12 Ms. Moricle, your witness.

13 DIRECT EXAMINATION

14 BY SOLICITOR MORICLE:

15 Q Good morning.

16 A Morning.

17 Q How are you today?

18 A All right.

19 Q Deputy Valentine, could you please tell us where you're
20 employed?

21 A I work for the Spartanburg County Sheriff's Office.

22 Q And how long have you been there?

23 A Seventeen years.

24 Q And what are your duties?

25 A I'm assigned to uniform patrol and I'm also assigned as

Jeff Valentine - Direct examination
by Solicitor Moricle

1 a K-9 handler.

2 Q All right. And were you on duty the night of
3 March 14th of 2012?

4 A Yes.

5 Q And could you tell me what your duties were that
6 evening?

7 A To respond to calls for service and answer any K-9
8 calls that happened to come up.

9 Q Did you respond to a call for service at Mary Black
10 Emergency Room?

11 A I did.

12 Q And could you tell us what happened?

13 A I responded to -- I can't remember if it's a
14 disturbance or an assault, but there was some type of
15 commotion at the Mary Black ER.

16 When I got there I encountered the security guard. He
17 told me that there was a problem with a -- with one of the
18 patients and a guest in the, in the emergency room. When I
19 got inside I spoke to the nurses and they said that Mr.
20 Westmoreland and Mr. Daniels had had an altercation. I was
21 directed to Mr. McDaniel -- Mr. Daniels. I spoke to him and
22 he told me that he was hit in the face---

23 MR. SHEALY: Objection, Your Honor. Hearsay.

24 THE COURT: I'll sustain the objection to what he might
25 of said.

Jeff Valentine - Direct examination
by Solicitor Moricle

1 You can state as to what your investigation might of
2 revealed.

3 You may proceed.

4 A I observed a large red mark on the bridge of
5 Mr. Daniels nose, and I asked him what happened, and I was
6 told---

7 MR. SHEALY: Objection, Your Honor. That's hearsay.

8 THE COURT: Again, sir, you can't quote what was said,
9 but you can state what your investigation might of revealed
10 to you. Your, your impressions.

11 A My impression was that Mr. Daniels had been struck in
12 the face with either a hand or an object.

13 Q Okay. And did he wish to press charges?

14 A No, he explained that he wanted to get his belongings
15 from Mr. Westmoreland's vehicle and leave the scene. I
16 explained to him that if he would go outside and wait for me
17 I would accompany Mr. Westmoreland outside so he could get
18 his stuff and there would be no more disturbance and then
19 they would both be free to leave.

20 Q Okay. And was that what happened?

21 A I went outside with -- I accompanied Mr. Westmoreland
22 after he was discharged from the hospital. I accompanied
23 him and -- with the security guard outside. We went -- when
24 we got to his vehicle Mr. Daniels was not around.

25 He -- Mr. Westmoreland looked at his vehicle and saw

Jeff Valentine - Direct examination
by Solicitor Moricle

1 that Mr. Daniels belongings were gone and he wanted me to
2 file, file a report for him for car breaking, and I asked
3 him what was missing from the car, and he said that
4 Mr., Mr. Daniels things were missing from the car. I asked
5 him if he had -- any of his things were missing. He said
6 no. I asked him how he got in the car and he showed me
7 where a broken -- a window had been broken and tape had --
8 plastic had been taped over the broken window.

9 I asked him if there was any damage to his car and he
10 said no, and I explained to him that I didn't see where I
11 could charge this man with breaking into his vehicle if all
12 he did was remove tape, enter the car, get only things that
13 belonged to him, and put secure -- put the tape back on the
14 window and then left.

15 At that point Mr. Westmoreland became pretty upset with
16 me with the fact that he didn't feel like I was doing what I
17 should of done and then he left.

18 Q So, Mr. Westmoreland wanted to press charges against
19 Mr. Daniels?

20 A Yes.

21 Q For car breaking?

22 A That's correct.

23 Q When you walked him out did he seem impaired?

24 A No.

25 Q Was he stumbling?

Jeff Valentine - Direct examination
by Solicitor Moricle

1 A No.

2 Q Slurred speech?

3 A No.

4 SOLICITOR MORICLE: Okay. Nothing further.

5 THE WITNESS: Thank you.

6 THE COURT: Yes, Mr. Shealy. Your witness.

7 MR. SHEALY: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. SHEALY:

10 Q Out of all of this did you write a report?

11 A No, sir.

12 Q Okay. So Mr. Haney wrote the report, but you didn't
13 write a report?

14 A That's correct.

15 Q All right.

16 A Well, I, I did not write one. I can't speak to what he
17 did.

18 Q Okay. Well, you -- weren't you just here while he was
19 testifying?

20 A Uh-huh. (Affirmative).

21 Q And he testified to it, he wrote a report.

22 A Okay. Well, if that's what he said, yes, sir.

23 Q Okay. Now, your version, I'm confused. It's my
24 understanding that, from what just was testified to, that my
25 client was polite and cordial, said good night, y'all said

Jeff Valentine - Cross-examination
by Mr. Shealy

1 good night, drove off. But your testimony is completely
2 different from that. He got angry with you.

3 Is that your testimony?

4 A He was upset at me, yes, sir.

5 Q All right. And he wanted to file a report for car
6 breaking?

7 A That's correct.

8 Q And he was agitated at that point is your testimony?

9 A At me, yes.

10 Q And when you say he wanted to press charges on
11 Mr. Daniels, did he actually say I want to press charges on
12 Mr. Daniels or the person who broke into my car?

13 A I can't recall.

14 Q You can't recall?

15 A No, sir.

16 Q Okay. So -- I mean because nobody watched Mr. Daniels
17 open the tape, correct?

18 A That's correct.

19 Q Or at least nobody I'm aware of.

20 Anybody you're aware of?

21 A No, sir.

22 Q No.

23 So it could of been any number of people who opened the
24 tape?

25 A Yes, sir.

Jeff Valentine - Cross-examination
by Mr. Shealy

1 Q And took stuff out of a car?

2 A Yes.

3 Q Wouldn't it make sense for him to be concerned for Mr.
4 Daniels stuff?

5 A I guess.

6 MR. SHEALY: Okay. I have nothing further.

7 THE COURT: Redirect.

8 SOLICITOR MORICLE: Yes, Your Honor.

9 THE COURT: Yes, ma'am.

10 REDIRECT EXAMINATION

11 BY SOLICITOR MORICLE:

12 Q Deputy Valentine, Mr. Daniels told you he had
13 belongings in Mr. Westmoreland's car?

14 A Yes.

15 Q He stated he wanted to go get those things?

16 A Yes.

17 Q When you walked Mr. Westmoreland to the car, were his
18 things in the car?

19 A Not that I'm aware of, no.

20 Q Okay. And he stated he wanted to press charges---

21 A Yes.

22 Q ---for car breaking?

23 A Yes.

24 SOLICITOR MORICLE: No further questions.

25 THE COURT: Mr. Shealy, any recross?

Mike Flynn - Direct examination
by Solicitor Moricle

1 Mike Flynn.

2 THE COURT: Come forward, sir.

3 MIKE FLYNN, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY SOLICITOR MORICLE:

7 Q Would you please state your name for the record?

8 A Michael Paul Flynn.

9 THE COURT: Your witness, counselor.

10 Q Mr. Flynn, where do you work?

11 A Spartanburg Communications, 9-1-1.

12 Q And what is your position there?

13 A Director.

14 Q Can you tell me what that entails?

15 A Yes, ma'am, I oversee the administration data systems,
16 policy, personnel. Everything that is about the department.

17 Q Does Spartanburg 9-1-1 keep records?

18 A Yes, ma'am.

19 Q What do they keep records of?

20 A Everything. We keep audio, video, and data records
21 including reports for events that occur daily.

22 Q And what are events?

23 A An event, in this case, is data that was entered into
24 our dispatch system to record information about anything
25 that happens -- that comes to us either over 9-1-1 or

Mike Flynn - Direct examination
by Solicitor Moricle

1 through a radio.

2 Q Okay. And how are those items kept?

3 A The data is kept in database servers on our premises.

4 Q Okay. And are you the custodian of records?

5 A Yes, ma'am.

6 Q And can tell me was a record prepared on
7 March 15th of 2012?

8 A Yes, ma'am.

9 Q And what kind of incident was that?

10 A It was for a traffic stop.

11 MR. SHEALY: We object, Your Honor, based on my prior
12 objection.

13 THE COURT: Your prior objection is noted and I've
14 overruled the objection.

15 You may proceed.

16 Q What kind of incident was it?

17 A A traffic stop which occurred at the intersection of
18 Carolina Avenue and South Church Street in the City of
19 Spartanburg at 37 minutes past midnight on Thursday, March
20 the 15th.

21 Q And can you tell me what vehicle -- if there was a
22 vehicle identified?

23 A Yes, ma'am, it was reported by the officer who made the
24 stop to be a red Ford. He didn't give a description of the
25 vehicle other than a red Ford with a tag number of DDA 434.

Mike Flynn - Direct examination
by Solicitor Moricle

1 Q Okay. And was there a registration?

2 A Yes, ma'am, the State's database returned registrant of
3 Sandy Lynn Westmoreland.

4 Q Okay. And can you tell me when the call ended?

5 A Yes, ma'am, the officer indicated to us, by radio, that
6 he was clear from the call at 49 minutes past midnight.

7 Q And how was that cleared?

8 A We use disposition codes that indicate whether an
9 arrest was made or citation was issued or, or anything else.
10 In this case, the disposition code 46 was given to indicate
11 that the officer handled the event and there was no record
12 on his part made of it.

13 Q Okay. And based on that, if there was an arrest or
14 anything, would you -- he have noted that?

15 A Absolutely, and we would have time stamped his activity
16 to jail. So --.

17 SOLICITOR MORICLE: Okay. No further questions.

18 THE COURT: Your witness, Mr. Shealy.

19 MR. SHEALY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SHEALY:

22 Q Now, you're not the officer, the dispatcher you spoke
23 of---

24 A No, sir.

25 Q ---that inputted this information, correct?

Mike Flynn - Cross-examination
by Mr. Shealy

1 A No, sir.

2 Q Okay. So, you're not privy of -- to all of the
3 information passed back and forth or anything like that?

4 A All I---

5 Q Is that my understanding?

6 A Only from the records. We have audio and this, this
7 CAD sheet.

8 Q Okay. Now, my understanding is this dispatcher wasn't,
9 obviously, wasn't on scene?

10 A That's correct.

11 Q Okay. So, this dispatcher wouldn't be able to identify
12 anybody?

13 A That's correct.

14 Q Okay. Wouldn't be able to pick, for example, Sandy
15 Westmoreland out of a lineup.--

16 A No, sir.

17 Q -- as the person who got stopped --

18 A No, sir.

19 Q -- and any of that?

20 This dispatcher wouldn't be able to testify as to what
21 happened?

22 A Not past the, the audio of, of the radio.

23 Q Okay. All right. And -- but I mean based on this
24 sheet that we're seeing, all this has is that there was a
25 Ford Explorer registered to Mr. Westmoreland and that

Mike Flynn - Cross-examination
by Mr. Shealy

1 presumably was the car pulled over, correct?

2 A That's correct.

3 Q Okay. Okay. And, again, based on other -- anything
4 other than this, she wouldn't have or he wouldn't be able to
5 testify as to the conditions out there cause he wasn't out
6 there --

7 A That's correct.

8 Q -- right?

9 All right. Nothing further, Your Honor.

10 THE COURT: Redirect?

11 SOLICITOR MORICLE: Nothing further, Your Honor.

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

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: You wish to excuse the witness?

15 SOLICITOR MORICLE: Yes, Your Honor.

16 THE COURT: Any objection?

17 MR. SHEALY: No objection.

18 THE COURT: You're free to go. Thank you, sir.

19 THE WITNESS: Thank you, sir.

20 THE COURT: All right. You may call your next witness.

21 SOLICITOR MORICLE: Your Honor, the State would call

22 Michael Hart.

23 THE COURT: Come forward, Mr. Hart, and be sworn.

24 MICHAEL HART, being first duly

25 sworn, testified as follows:

Michael Hart - Direct examination
by Solicitor Moricle

1 THE COURT: Once you're seated, sir, please state your
2 name on the record.

3 THE WITNESS: Michael Hart.

4 THE COURT: Thank you.

5 Ms. Moricle, your witness.

6 SOLICITOR MORICLE: Thank you, Your Honor.

7 THE COURT: Yes, ma'am.

8 DIRECT EXAMINATION

9 BY SOLICITOR MORICLE:

10 Q Mr. Hart, could you please state where you work?

11 A I work for Spartanburg EMS.

12 Q Can you tell me what you do there?

13 A I'm a paramedic.

14 Q How long have you been there?

15 A Thirteen and a half years.

16 Q And were you working on March 14th of 2012?

17 A I was.

18 Q And could you tell me what scene you responded to?

19 A I responded to a man down at Mary Black Hospital.

20 Q And can you tell me what you found when you arrived
21 there?

22 A Yeah, we were -- like I say, we was dispatched to a man
23 down. Upon arrival, found a male patient laying supine
24 behind a row of shrubbery next to the roadway.

25 Q Okay.

Michael Hart - Direct examination
by Solicitor Moricle

1 A Upon exam, we, we noticed that there was no spontaneous
2 pulse, no respirations. The patient was cool to the touch,
3 skin was mottled. Patient appeared to be hit by a vehicle.

4 It appeared that a vehicle had traveled through the
5 shrubbery, about five to ten feet above where the patient
6 was found, and exited through the shrubbery about 30 to
7 40 feet below the patient. EMS requested the Coroner's
8 office, the Sheriff's Office, the Highway Patrol, and
9 secured the scene till they got there, and then, once they
10 got there, we give it to them and cleared the call.

11 SOLICITOR MORICLE: Okay. No further questions.

12 THE COURT: Mr. Shealy, your witness.

13 MR. SHEALY: Nothing for this witness.

14 THE COURT: You wish to excuse the witness, Ms.
15 Moricle?

16 SOLICITOR MORICLE: Yes, Your Honor.

17 THE COURT: Any objection, Mr. Shealy?

18 MR. SHEALY: No, Your Honor.

19 THE COURT: You're free to go. Thank you for coming---

20 THE WITNESS: Thank you.

21 THE COURT: ---today, sir.

22 THE WITNESS: Yes, sir.

23 THE COURT: State may call its next witness.

24 SOLICITOR GRAY: State calls Deputy Campbell.

25 THE COURT: All right, sir. Be sworn please.

Jack Campbell - Direct examination
by Solicitor Gray

1 JACK CAMPBELL, being first duly
2 sworn, testified as follows:

3 THE COURT: Have a seat, and, once you're seated, state
4 your name please.

5 THE WITNESS: Jack Campbell.

6 THE COURT: All right. Mr. Gray, your witness.

7 SOLICITOR GRAY: Thank you, sir.

8 DIRECT EXAMINATION

9 BY SOLICITOR GRAY:

10 Q It's obvious you work for the sheriff's deputy --
11 you're a sheriff's deputy.

12 How, how long have you worked there?

13 A Ten years.

14 Q What's your prior experience with the Sheriff's Office?

15 A I've been a member of the Court security detail here
16 since August of 2013. Prior to that my entire time had been
17 spent in uniform patrol at the Sheriff's Office.

18 Q Okay. On March 15th of 2012, you were on patrol?

19 A I was.

20 Q Were you called out to Mary Black Hospital?

21 A I was.

22 Q And what time did you arrive there?

23 A My report shows at 9:40.

24 Q When you got there, what did you observe?

25 A The ambulance was already on scene when I arrived, and

Jack Campbell - Direct examination
by Solicitor Gray

1 I didn't approach the victim closely, but did observe the
2 victim lying in the grassy area there adjacent to Mary Black
3 Hospital. Spoke with the medical personnel on scene, and
4 then was advised by them that he was deceased.

5 Q Which side of the bushes was the deceased on?

6 A I call it the inside away from the roadway. In other
7 words, there was the paved surface and a -- that little
8 grassy area, then the row of shrubbery, and then another
9 larger grassy air, and that's the area where the deceased
10 was located.

11 Q Did you observe anything else about the scene?

12 A Most notably, a number of bits and pieces of what
13 looked to be vehicular parts or component parts thereof.

14 Q Did you call anyone after?

15 A Absolutely. We, we notified our violent crimes unit,
16 we notified ID, and I believe we notified or asked for the
17 assistance of the Highway Patrol which regard to the
18 accident.

19 Q And they all responded?

20 A They did.

21 Q Thank you.

22 Well, one more thing. This incident occurred at Mary
23 Black?

24 A That's correct.

25 Q You mean Mary Black Hospital, correct?

Jack Campbell - Direct examination
by Solicitor Gray

1 A Mary Black Hospital in Spartanburg County on Skylyn
2 Drive.

3 Q Do you know the address of Mary Black?

4 A [REDACTED] Skylyn Drive.

5 Q That's here in Spartanburg County?

6 A It is.

7 Q And that's where the incident took place?

8 A To the best, best of my knowledge, that's correct.

9 Q Yes, sir.

10 No further questions, Your Honor.

11 THE COURT: Mr. Shealy, your witness.

12 MR. SHEALY: Thank you, Your Honor. Just a couple.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. SHEALY:

16 Q Officer Campbell, you said you notified ID and Highway
17 Patrol and violent crimes?

18 A I did not notify them personally. A sergeant that was
19 on scene did that. My primary focus was scene security.

20 Q All right. And when did you get there did you testify?

21 A 9:40 --

22 Q 9:40.

23 A -- in the morning.

24 MR. SHEALY: Okay. I've got nothing further for this
25 witness.

Brandon Howard - Direct examination
by Solicitor Gray

1 THE COURT: Redirect?

2 SOLICITOR GRAY: No, sir, Your Honor.

3 THE COURT: Sir, you may step down.

4 State may call its next witness.

5 SOLICITOR GRAY: State calls Brandon Howard.

6 THE COURT: Come forward, sir, to my left and be sworn
7 in please.

8 BRANDON HOWARD, being first duly
9 sworn, testified as follows:

10 THE COURT: Once you're seated please state your name.

11 THE WITNESS: Brandon Howard.

12 THE COURT: Thank you.

13 Mr. Gray, your witness.

14 SOLICITOR GRAY: Thank you, sir.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION

17 BY SOLICITOR GRAY:

18 Q Where do you work, sir?

19 A Spartanburg Regional Hospital.

20 Q And, sir, were you working on March 15th, 2012?

21 A I was working at Spartanburg County Sheriff's Office.

22 Q You were working at Spartanburg County Sheriff's
23 office.

24 What were your duties then?

25 A I worked in the ID department.

Brandon Howard - Direct examination
by Solicitor Gray

1 Q And specifically any speciality in the ID department?

2 A No specific speciality. With the ID units would
3 respond to scenes after deputies would call. It could be
4 for a variety of things from photography of the simple
5 vandalism to homicide investigations.

6 Q All right. And, in this investigation, were you
7 directed to take some pictures?

8 A I don't recall if I was directed, but part of my
9 procedure was, whenever you get on scene, to photograph the
10 scene to make accurate documentation of it.

11 Q And on this date did you take pictures from an aerial
12 angle?

13 A I did.

14 SOLICITOR GRAY: I'm gonna approach the witness or you
15 want to---

16 THE COURT: You want to see the photos?

17 MR. SHEALY: Yes, sir, and I believe these two I'm
18 gonna have an objection to.

19 Q I'm gonna show you what's been marked---

20 THE COURT: Mr. Gray, you may proceed with laying a
21 foundation and then we'll take up any objections.

22 SOLICITOR GRAY: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 Q I'm gonna show you what's been marked for State's
25 Exhibit 54 and 55 and ask you if you recognize those.

Brandon Howard - Direct examination
by Solicitor Gray

1 A I do, sir.

2 Q Are those pictures that you took?

3 A They are. They're pictures from the helicopter.

4 Q And what do those pictures depict?

5 A They show---

6 MR. SHEALY: I'm gonna object, judge, cause I have an
7 objection as to those pictures. I'm gonna object as to what
8 they depict as well.

9 THE COURT: well, I think he has to identify what
10 they're photographs of. So, let's ask what are they
11 photographs of and whether or not they're accurate---

12 SOLICITOR GRAY: Yes, sir.

13 THE COURT: ---as of that date.

14 SOLICITOR GRAY: Yes.

15 THE COURT: And then we'll discuss the objections.

16 SOLICITOR GRAY: Yes, sir.

17 what are those photographs of?

18 A These photographs are from the scene at or just below
19 Mary Black Hospital. They depict several sheriff's vehicles
20 and possibly a coroner's vehicle and the victim laying in
21 the field beside the road.

22 Q Are those accurate representations of the pictures that
23 you took?

24 A They are.

25 Q Are those accurate representations of the crime scene

Brandon Howard - Direct examination
by Solicitor Gray

1 as you knew it?

2 A The -- they are not accurate as to when I first arrived
3 on scene. In the photos you see a tent and a yellow barrier
4 there.

5 MR. SHEALY: Your Honor, my objection is to what they
6 depict.

7 THE COURT: All right. Are you offering -- are you
8 offering them into evidence?

9 SOLICITOR GRAY: Yes, sir, Your Honor.

10 THE COURT: All right. Your objection?

11 MR. SHEALY: I'm a---

12 THE COURT: All right. I'm gonna ask the jury to step
13 back into the jury room while I have this discussion with
14 the lawyers. Please don't discuss anything about the case
15 unless I ask you to do so.

16 You may retire to the jury room.

17 (WHEREUPON, the following takes place outside the
18 presence of the jury.)

19 THE COURT: All right. May I see the photographs?

20 SOLICITOR GRAY: Yes, sir.

21 THE COURT: Thank you.

22 All right. Your objections, Mr. Shealy?

23 MR. SHEALY: Your Honor, if I may see them so I can get
24 it---

25 THE COURT: Oh, certainly.

Brandon Howard - Direct examination
by Solicitor Gray

1 MR. SHEALY: ---right, right information -- exhibit
2 number.

3 Your Honor, it'd be our position that both 54 and 55
4 are unfairly prejudicial in that they've got the dead body
5 just there. We -- our objection is stronger as to Exhibit
6 No. 55 because, again, judge, it would be our position that
7 the only purpose of presenting those exhibits would be to
8 inflame the passion of the jury. Again, judge, it would be
9 our position that 55 would be duplicative of 54. So, in
10 other words, if you -- there is no use for it.

11 THE COURT: All right. Mr. Gray, what probative value
12 might they have that would outweigh any prejudicial effect?

13 I think that's your objection---

14 MR. SHEALY: That's my objection.

15 THE COURT: ---is that there is a prejudicial effect---

16 MR. SHEALY: Yes, sir.

17 THE COURT: ---from the fact that the dead body is in
18 view in the photograph.

19 MR. SHEALY: Yes, sir.

20 THE COURT: All right.

21 SOLICITOR GRAY: Thank you, Your Honor.

22 THE COURT: Probative value versus prejudicial effect.

23 SOLICITOR GRAY: Well as to 54, Your Honor, probative
24 value shows the scene rather than doing a jury viewing in
25 this situation. The jury can see where this occurred from

Brandon Howard - Direct examination.
by Solicitor Gray

1 the aerial photo, general location in this situation.

2 In 55, it shows, again, where the officers are, where
3 it's marked off. I understand Mr. Shealy says you see the
4 dead body. It's very small in this situation. It is
5 present, but I see no prejudice in No. 54, Your Honor.

6 MR. SHEALY: And, again, Your Honor, it would be our
7 position that they're also duplicative. I should add that.

8 THE COURT: I'm sorry. I didn't hear you.

9 MR. SHEALY: They're also duplicative, that we've got
10 two pictures of roughly the same thing.

11 THE COURT: Oh, those two -- are there -- I haven't
12 seen all the other photographs.

13 MR. SHEALY: I didn't---

14 THE COURT: You're not talking about of any other
15 photographs?

16 MR. SHEALY: Well, they're duplicative of each other.

17 THE COURT: Let, let me look at that again.

18 SOLICITOR GRAY: Yes, sir.

19 THE COURT: Now this is taken from a helicopter?

20 SOLICITOR GRAY: Yes, sir.

21 MR. SHEALY: Yes, sir.

22 THE COURT: All right. You know the, the, the body is
23 depicted in the scene, but not in great detail. It's -- it
24 shows the location where the body was, and it does show its
25 orientation in connection with the road, the distance from

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by Solicitor Gray

1 the road, and with the shrubbery in question. It appears it
2 also shows marks in the shrubbery where the car would of
3 entered and exited.

4 SOLICITOR GRAY: Yes, sir.

5 THE COURT: Is this the only photograph that would be
6 able to show both entry, entry and exit points?

7 I'm referring to No. 55.

8 SOLICITOR GRAY: No, sir, I don't believe.

9 THE COURT: Are there other photographs that show the
10 entry and exit points from above?

11 SOLICITOR GRAY: No, sir.

12 THE COURT: This is it?

13 SOLICITOR GRAY: Yes, sir.

14 MR. SHEALY: Not from above, but, Your Honor, I believe
15 that they'll also present other---

16 SOLICITOR GRAY: But---

17 MR. SHEALY: ---photos of all of the -- well --.

18 SOLICITOR GRAY: But that is the only one that shows
19 the continuous motion.

20 THE COURT: Yes, sir.

21 MR. SHEALY: And I also believe that when the M.A.I.T.
22 Team ultimately testifies, I believe that they'll probably
23 attempt to put in those reconstructions---

24 THE COURT: well, I can't go on speculation as to what
25 they might be going to testify about. I have to take the

Brandon Howard - Direct examination
by Solicitor Gray

1 evidence as it appears.

2 It is not in great detail of the body. I find that
3 there are other factors involved in this case that it is
4 relevant for such as the proximity to the hospital. No. 54
5 shows the hospital in the background. It shows the, again,
6 orientation of the road, the shrubbery line in question, the
7 distance from the road where the body was located.

8 I find that the probative value of both photos is --
9 outweighs any prejudicial value. I'm gonna allow them in.

10 MR. SHEALY: As to the duplicative argument, judge?

11 I assume you're overruling it, but --.

12 THE COURT: Well, as I pointed out, No. 55 doesn't show
13 the hospital. It's a photograph straight on of the field in
14 question. No. 54 does show the hospital in the background,
15 and the location of the body relative to the, to the, to the
16 hospital, which is where the alleged altercation took place.
17 Also shows Spartanburg Day School, which was testified to by
18 one of the witnesses as being close to the scene.

19 So, I find that 54 and 55 -- 55 more clearly shows the
20 entrance and exit points through the shrubbery than 54. So,
21 I don't find them duplicative. I find that they both do
22 depict evidence separate and apart from each other. I'll
23 overrule the objection.

24 Your objection is noted, however.

25 MR. SHEALY: Thank you, Your Honor.

Brandon Howard - Direct examination
by Solicitor Gray

1 If I may just ask Mr. Gray on a point?

2 (Pause.)

3 THE COURT: All right. Anything further, Mr. Shealy,
4 before we bring the jury back?

5 MR. SHEALY: No, Your Honor. I believe we've taken
6 care of all the other exhibits. This will be testified
7 to---

8 THE COURT: And I'll mention to the jury the other
9 photographs again are exhibits -- what are the numbers?

10 SOLICITOR GRAY: These two?

11 THE COURT: The other photographs that this gentleman
12 took that have been agreed to and are in the record.

13 SOLICITOR GRAY: That's it.

14 THE COURT: That's the only two he took?

15 SOLICITOR GRAY: No, sir, he took two more. We agreed
16 they're duplicative in this situation.

17 THE COURT: Okay. So, these are the only two he's
18 testifying to?

19 SOLICITOR GRAY: Yes, sir..

20 THE COURT: That's it. These are the only two that
21 we'll deal with at this time then.

22 SOLICITOR GRAY: Thank you, judge.

23 THE COURT: All right. Let's bring the jury back.

24 (WHEREUPON, the following takes place within the
25 presence of the jury.)

Brandon Howard - Direct examination
by Solicitor Gray

1 THE COURT: All right. The record will reflect that
2 the jury has returned to the courtroom.

3 I have overruled an objection from the defense. I have
4 admitted the two exhibits, 54 and 55---

5 SOLICITOR GRAY: Yes, sir.

6 THE COURT: ---into the record.

7 (WHEREUPON, State's Exhibit Nos. 54 and 55 were
8 received into evidence at this time.)

9 THE COURT: You may proceed.

10 SOLICITOR GRAY: Thank you.

11 THE COURT: Yes, sir.

12 CONTINUED DIRECT EXAMINATION

13 BY SOLICITOR GRAY:

14 Q Officer Howard, at this time -- excuse me. I'm gonna
15 call officer.

16 Mr. Howard, at this time I have no further questions
17 for you.

18 THE COURT: Your witness, Mr. Shealy.

19 MR. SHEALY: Thank you, Your Honor. I have nothing for
20 this witness.

21 THE COURT: All right, sir. You may step down. Thank
22 you very much.

23 You may call your next witness.

24 SOLICITOR GRAY: State calls William Gary.

25 May he be excused, Your Honor?

Brandon Howard - Direct examination
by Solicitor Gray

1 THE COURT: Any objection to his being excused, Mr.
2 Shealy?

3 I'm sorry.

4 MR. SHEALY: No, Your Honor.

5 THE COURT: You're free to go. Thank you, sir.

6 Mr. Gary, come forward and be sworn please.

7 (Witness complies.)

8 THE COURT: Thank you.

9 WILLIAM GARY, being first duly
10 sworn, testified as follows:

11 THE COURT: Have a seat please and state your name
12 please.

13 THE WITNESS: William Gary.

14 THE COURT: Thank you.

15 Mr. Gray, your witness.

16 SOLICITOR GRAY: Thank you, sir.

17 DIRECT EXAMINATION

18 BY SOLICITOR GRAY:

19 Q Detective Gary?

20 A Yes, sir.

21 Q How long have you worked for the Sheriff's Department?

22 A Almost 20 years.

23 Q And what type of crimes have, have you investigated?

24 A I worked -- I been in investigations close to 15 years
25 of that and a little bit over 15 years of it. I started out

William Gary - Direct examination
by Solicitor Gray

1 in auto theft for about three and I've done -- the rest of
2 it has been violent crimes, robberies, homicides, assaults.

3 Q Thank you, sir.

4 Do you remember the incident on March 15th, 2012?

5 A Yes.

6 Q What was your role in investigating this crime?

7 A I was notified of it and given potential information
8 for a suspect in the case, given a name without an actual
9 exact location of where he may be. And with that
10 information, I went through the DMV database searching for
11 someone with the name with a vehicle similar to what was
12 noted being a purple Ford Explorer.

13 Once I did that with Mr. Westmoreland's information I
14 was able to find a vehicle that matched the description
15 registered to him. Well, I found a Ford Explorer.
16 Registration doesn't indicate color what I mean -- when you
17 run it.

18 So, what I did is I took the VIN number for that
19 vehicle, contacted NICB, which is National Insurance Crime
20 Bureau, which is a good resource for law enforcement and
21 insurance companies investigating different things with
22 vehicles. They get shipping records for most vehicles.
23 With the VIN number, they can look at the shipping record
24 and give you the color the vehicle was when it was
25 originally shipped from the factory.

William Gary - Direct examination
by Solicitor Gray

1 In this case they gave me that information saying it
2 was a deep Iris metallic. From that code I was able to go
3 to a website, look for deep Iris metallic for that year
4 vehicle, which basically you look at the color swatch of it.
5 It shows up as purple based on that description.

6 So, with that information, I felt pretty confident that
7 was the right Sandy Westmoreland that was found. So, I
8 notified Investigator Richie Foster, and he and I rode down
9 to Woodruff where the vehicle and all was registered. And
10 when we got down there we did notice a purple Explorer
11 sitting in the yard of that residence.

12 Q Excuse me one second.

13 A Yes, sir.

14 Q What was the address?

15 A [REDACTED] Poole Street in Woodruff.

16 Q All right. Please continue.

17 A So once we got down there and saw the vehicle we
18 notified other investigators of what we had seen, what we
19 observed. We didn't see any movement in the house or
20 outside the house or in the vehicle or anything such as
21 that. So, we took a position to watch the house and the
22 vehicle.

23 Some other investigators arrived. We were at a couple
24 different locations where we could see anything. Before we
25 were able to approach trying to just get a game plan of how

William Gary - Direct examination
by Solicitor Gray

1 we were wanting to approach the house, while we were
2 watching it, we see a man come out of the front of the house
3 and come down the sidewalk.

4 At that point Investigator Foster and I pulled up
5 beside him cause he came out of the house where the Explorer
6 was parked, that address, and we got out and confirmed he
7 was Sandy Westmoreland.

8 At that point another investigator had pulled up right
9 with us who took him from us and started talking to him away
10 from us there. Mr. Westmoreland being transported from that
11 scene by another investigator, and I stayed at the scene to
12 keep it secured at the house waiting on the search warrant
13 to come, photograph the vehicle, search the house, and then
14 tow the vehicle from there so it could be processed at our
15 shop in a more secure location.

16 Q Did anyone else come out of that location?

17 A The entire time we were watching it no one else came
18 out of the house and we went into house, no one was inside
19 of the residence either.

20 Q All right. What was Mr. Westmoreland's demeanor?

21 A Just a normal person. I mean there's nothing agitated
22 about him. There was nothing -- he wasn't upset. He wasn't
23 happy. I mean it was just a normal yes, this is who I am,
24 you know. He was asked would you go, by the other
25 investigators, asked if he would go to the office and he

William Gary - Direct examination
by Solicitor Gray

1 said that he would. He was cooperative.

2 Q And did you make any recordings, look at any statements
3 from him at that time?

4 A I did not, no, sir.

5 Q Did Deputy Foster who was with you?

6 A He, he was the point of contact between the two of us
7 with him. I did hear him verify that he was Sandy
8 Westmoreland when we were getting out of the vehicle.

9 Q And you turned him over to who?

10 A I think Investigator Williams, Lorin Williams ended up
11 with him originally and then Sergeant Bryant is who
12 transported him to the Sheriff's Office.

13 Q Thank you.

14 No further questions at this time.

15 THE COURT: Mr. Shealy, your witness.

16 MR. SHEALY: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. SHEALY:

19 Q Now, just a couple of questions, Detective Gary.

20 About what time was all this?

21 A I don't -- I did not put that in my write-up. I don't
22 recall. I guess if we looked at the search warrant that was
23 typed up for it we would be able to judge an approximate
24 time.

25 Q Okay. But -- so, it took you a while to -- I mean you

William Gary - Cross-examination
by Mr. Shealy

1 had to do this investigation you've testified.

2 So, that took some time presumably?

3 A The investigation to find him, his vehicle, and do all
4 that probably took a total of 30 to 45 minutes.

5 Q Okay. But that would be 30 to 45 minutes after you-all
6 were notified, correct---

7 A Correct.

8 Q ---and -- at least?

9 And Officer Campbell's already testified he didn't get
10 there until about 9:40, right?

11 A I think so, yes, sir.

12 Q Okay. If you'll bear with me just one little second.

13 THE COURT: Yes, sir.

14 (Pause.)

15 Q You've testified you think it would be -- you can get
16 an approximate time from the search warrant?

17 A Well, the search warrant that was drawn up on Poole
18 Street after he was located would be some time after we
19 arrived to the house. I would say we were probably sitting
20 up on that house for probably a couple of hours, close to
21 it.

22 Q Okay.

23 A So, the search warrant time probably would be a few
24 hours after we actually arrived to the house in Woodruff on
25 Poole Street.

William Gary - Cross-examination
by Mr. Shealy

1 Q But it would also be a couple of hours after he had
2 already been at home?

3 A Well, I don't know what -- exactly what time he got
4 home. But, you know, I know that the search warrant's
5 probably done a couple of hours after we located the vehicle
6 at his house.

7 Q Okay. Well, that wasn't my question.

8 My question was you sat on the house for two hours you
9 say, correct?

10 A Somewhere in that nature.

11 Q Okay. He didn't come home in those two hours?

12 A No, he was already there---

13 Q He was---

14 A ---cause he came out of the house.

15 Q He was already there.

16 Okay.

17 A Correct.

18 Q And so that would of been it looks like some time
19 around -- it looks like the search warrant was signed about
20 2:21. So, you said it would be -- you got there a couple of
21 hours before that?

22 A Right. I would say, based -- if it was signed at 2:21,
23 for the time that we were sitting at the house and all, we
24 probable got to the house, my guess would be 10:00 --
25 between 10:30 and 11:00 maybe. Somewhere around in there.

William Gary - Cross-examination
by Mr. Shealy

1 Q Okay. And when did you encounter Mr. Westmoreland?
2 What did you say?

3 A It -- a couple hours after or so after that. I didn't
4 write down the exact time that we got out with him..

5 Q So, somewhere around 1:30 maybe?

6 Does that sound roughly around---

7 A It would be a guess for here as far as the time, but it
8 was within -- I'd say a couple of hours or so from the time
9 that we got there.

10 Q All right. A couple of hours after you got there?

11 A Correct.

12 Q All right. Now, where is [REDACTED] Poole Street?

13 A It's in Woodruff. I --.

14 Q Okay. So -- and how far away is Woodruff from Mary
15 Black?

16 A It would be a guess on mileage. Driving normal speeds,
17 depending on the time of day or whatever, if you went
18 through the city, probably take you 25 minutes or so to
19 drive there.

20 Q Okay.

21 A Maybe something like that.

22 Q So that wouldn't be walking distance?

23 A It depends on how long it took and how long you wanted
24 to walk, how far you wanted to walk.

25 Q Okay. But that would be a heck of a walk it sounds

William Gary - Cross-examination
by Mr. Shealy

1 like?

2 A I wouldn't want to do it.

3 Q You wouldn't want to do it.

4 Well, it doesn't sound like I would either.

5 A Yes, sir.

6 Q So you think it takes about 25 minutes by car you've
7 said?

8 A Again, depending on traffic, which way you travel, that
9 sort of thing. It would vary.

10 Q Okay.

11 A Whether or not you break the law speeding or not.

12 Q And I'm sure you never do?

13 A Not at all.

14 MR. SHEALY: Okay. I've got nothing else for this
15 witness, Your Honor.

16 THE COURT: Redirect?

17 SOLICITOR GRAY: Nothing on redirect, Your Honor.

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

19 The State may call its next witness.

20 SOLICITOR GRAY: State calls Deputy Lorin Williams.

21 THE COURT: Come forward and be sworn please.

22 LORIN WILLIAMS, being first duly
23 sworn, testified as follows:

24 THE COURT: Once seated, sir, state your name for me.

25 THE WITNESS: My name is Lorin Williams.

Lorin Williams - Direct examination
by Solicitor Gray

1 THE COURT: Thank you.

2 Mr. Gray, your witness.

3 SOLICITOR GRAY: Thank you, sir.

4 DIRECT EXAMINATION

5 BY SOLICITOR GRAY:

6 Q Where do you work?

7 A Spartanburg County Sheriff's Office.

8 Q How long have you worked there?

9 A I've been an employee of the Sheriff's Office since
10 2005.

11 Q What are your duties and responsibilities now?

12 A I'm a violent crime investigator with the Sheriff's
13 Office. We handle any, any crimes to a person.

14 Q How long have you had that position?

15 A Since 2006.

16 Q On March 15th, 2012, were you involved with this
17 situation with Mr. Westmoreland?

18 A Yes, I was.

19 Q How did you become involved in this?

20 A I believe I was on call for violent crime at that
21 period of time. We were dispatched or we were notified
22 through 9-1-1 that the -- we were needed on Skylyn Drive at
23 Mary Black Hospital.

24 Q What did you, did you observe once you got there?

25 A Once I arrived on scene, EMS was already there. We

Lorin Williams - Direct examination
by Solicitor Gray

1 already had deputies there. They had started a crime scene.
2 The -- I was shown where the victim was located off the
3 roadway.

4 We were able to see, relatively quick, that there were
5 tire marks coming off Skylyn Drive that entered into the
6 bushes. The victim being on the other side of it. There
7 was an ambulance that was parked fairly close to where that
8 vehicle had in -- ran off the road and went through the
9 bushes. So, we had everybody move back. We started opening
10 up the crime scene. That way we could, we could see the
11 roadway and make sure that we weren't missing anything.

12 Q All right. Did you stay at the crime scene or did you
13 go somewhere else?

14 A I stayed at the scene for a, for a little while. We
15 were given the information from another investigator who had
16 actually gone down to the hospital. We had received the
17 information about the victim being in the ER the night
18 before. We were able to get that information and passed it
19 along to Investigator Gary as far as the vehicles and things
20 of that nature. Once the address was gotten for Mr.
21 Westmoreland, at that point we, we left the scene and we, we
22 went down to Woodruff.

23 Q And once you went to Woodruff, did you talk to Mr.
24 Westmoreland at all?

25 A Very briefly.

Lorin Williams - Direct examination
by Solicitor Gray

1 Q was he advised of his rights at that time you were
2 talking to him?

3 A No, not at that point.

4 Q All right. Did you advise him of his rights at all?

5 A I did not.

6 Q Did you see the vehicle in question?

7 A I did.

8 Q What did you do at that point?

9 A Once, once we had, had confirmed that it, that it --
10 that he was Sandy Westmoreland, he agreed to go to the
11 Sheriff's Office to, to be interviewed. We decided that we
12 were going to get a search warrant for the vehicle and the
13 residence since that was where he had come from.

14 At that point I left and went back to the Sheriff's
15 Office where the search warrant was prepared. It was taken
16 over to the courthouse and was signed by a judge there at
17 which point in time I went back to Mr. Westmoreland's house
18 where the vehicle and the residence, we were able to conduct
19 a search there at that point.

20 Q And based upon the search warrant and your
21 investigation, who signed the arrest warrant?

22 A I believe I did.

23 Q You signed the arrest warrant for murder?

24 A Yes.

25 Q Did you do anything else in this investigation or with

Lorin Williams - Direct examination
by Solicitor Gray

1 Mr. Westmoreland?

2 A I had no other interaction with Mr. Westmoreland at
3 that point until he went to the jail and the warrants were
4 signed and they were served on him. He was interviewed by
5 Sergeant Bryant.

6 Q Thank you, sir.

7 No further questions.

8 THE COURT: Mr. Shealy, your witness.

9 MR. SHEALY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. SHEALY:

12 Q Just to be clear, that's -- that arrest warrant is not
13 evidence of anything, is it?

14 A I'm sorry.

15 what?

16 Q It's not evidence?

17 That doesn't prove anything, does it?

18 A Oh no.

19 Q No.

20 It's just a warrant, just a warrant---

21 A Correct?

22 Q ---correct?

23 A Just a piece of paper with a charge.

24 Q All right. All right. Investigator Williams, now were
25 you the lead investigator on this?

Lorin Williams - Cross-examination
by Mr. Shealy

1 Is that why you signed the warrant?

2 A I was on call.

3 Q Okay. And as -- once you got to the scene, did you
4 speak to the various people there?

5 A I did.

6 Q Okay. So, you filled in, for example, the M.A.I.T.
7 Team?

8 A I did what now?

9 Q Did you talk to the M.A.I.T. Team?

10 A Yes. Yes, we---

11 Q Okay.

12 A ---spoke with the Highway Patrol and typically on, on
13 these types of incidents we will work them together with the
14 Highway Patrol until it's determined one way or the other
15 whether it is an accident or is it a situation where there
16 was a, you know, an involuntary act. You know, something
17 other than an accident, and, at that point in time, the
18 Highway Patrol steps away from it as far as making any type
19 of traffic charges or driving charges or things such as
20 that.

21 But due to the vehicle being involved, the Highway
22 Patrol has their M.A.I.T. Team, which is at our disposal,
23 and they come in, they work with us, we work with them to
24 determine speed and all those sort of things. They can,
25 they can get all kinds of information from the vehicles,

Lorin Williams - Cross-examination
by Mr. Shealy

1 from measurements. As far as taking pictures of the scene,
2 they catalog everything with some special stuff that they've
3 got that we didn't have at our disposal at that time.

4 Q Okay. So, your answer is yes, you talked to the
5 M.A.I.T. Team?

6 A Yes.

7 Q Okay. If you'll bear with me one second.

8 THE COURT: Yes, sir.

9 (Pause.)

10 MR. SHEALY: I have nothing further, Your Honor.

11 THE COURT: Redirect.

12 SOLICITOR GRAY: No, sir, Your Honor.

13 THE COURT: You may step down.

14 Do you wish to excuse the witness?

15 SOLICITOR GRAY: Yes, sir.

16 THE COURT: Any objections?

17 MR. SHEALY: No objection.

18 THE COURT: You're free to go if you'd like, sir.

19 Thank you very much.

20 State may call its next witness.

21 SOLICITOR GRAY: State calls Deputy Hopkins.

22 THE COURT: Come forward, sir. Be sworn please.

23 WILLIAM HOPKINS, being first duly
24 sworn, testified as follows:

25 THE COURT: Have a seat please, sir, and once you're

William Hopkins - Direct examination
by Solicitor Gray

1 seated state your name.

2 THE WITNESS: William Hopkins.

3 THE COURT: Thank you.

4 Mr. Gray, your witness.

5 SOLICITOR GRAY: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY SOLICITOR GRAY:

8 Q Deputy Hopkins, excuse me, Sergeant Hopkins, how, how
9 long have you worked with the Sheriff's Department?

10 A Just a little over 15 years.

11 Q What are your duties and responsibilities?

12 A I'm a -- one of the daily supervisors on uniform patrol
13 responsible for calls for service.

14 Q Were you on duty on March 15th, 2012?

15 A Yes, that day my assignment, as all of the supervisors
16 that were on uniform patrol, we took one week rotations with
17 violent crimes investigators and my duties that week were to
18 ride with them and observe what they were doing.

19 Q Did you ride with Detective Bryant?

20 A I did.

21 Q Now, regarding this situation with Mr. Westmoreland,
22 where did you go and what did you do?

23 A At, at some point they received the information in
24 reference to an address in Woodruff and I traveled with
25 Sergeant Bryant in his vehicle to that address in Woodruff,

William Hopkins - Direct examination
by Solicitor Gray

1 I believe it was, at [REDACTED] Poole Street.

2 Q And you two were together when Mr. Westmoreland was
3 questioned?

4 A I was in the car with Sergeant Bryant and Westmoreland
5 was identified by some other investigators and then he was
6 seated in the vehicle with Sergeant Bryant and I rode with
7 the two of them back to the Sheriff's Office.

8 Q All right. At anytime were Mr. Westmoreland's rights
9 read to him?

10 A Yes, Sergeant Bryant advised Mr. Westmoreland in the
11 vehicle from a pocket card of his Miranda warning.

12 Q And there was no confusion about his warnings, his
13 warnings or rights?

14 A No, he indicated that, that, that he was -- he
15 understood his rights.

16 Q And at that point in time did a conversation begin with
17 Detective Bryant and Mr. Westmoreland?

18 A Yes, it did.

19 Q Thank you.

20 Nothing further of this witness.

21 THE COURT: Mr. Shealy, your witness.

22 CROSS-EXAMINATION

23 BY MR. SHEALY:

24 Q So, Officer Hopkins, my understanding is you just rode
25 with Detective Bryant?

William Hopkins - Cross-examination
by Mr. Shealy

1 A Yes, sir.

2 Q Okay. And you didn't write a report about any of this,
3 did you?

4 A No, sir, I did not.

5 Q Is there a reason you didn't or you just didn't?

6 A It wasn't an assignment for the day. We were just
7 there -- I was there observing and had rode with him back to
8 the office, and then didn't take part in any of the
9 questioning in reference to the case.

10 Q Okay. I mean obviously you're -- you had testified it
11 was some kind of assignment?

12 A Yes, that was -- the assignment was to ride with
13 Sergeant Bryant.

14 Q But you saw no reason to memorialize what you saw, what
15 you read, what you heard, all of that business in a report?

16 A No, it was documented by Sergeant Bryant.

17 MR. SHEALY: Okay. That's all I have for this witness.

18 THE COURT: Redirect?

19 SOLICITOR GRAY: None, Your Honor.

20 THE COURT: All right, sir. You may step down.

21 Do you wish to excuse the witness?

22 SOLICITOR GRAY: Yes, sir.

23 THE COURT: Any objections?

24 MR. SHEALY: No objections.

25 THE COURT: Without objections you are free to go, sir.

1 (No response.)

2 THE COURT: It appears that all jurors have been able
3 to comply with my instructions thus far.

4 When we broke earlier the State was in the process of
5 presenting its evidence.

6 You may call your next witness.

7 SOLICITOR MORICLE: Thank you, Your Honor.

8 Your Honor, the State would call David Wren.

9 THE COURT: Sir, if you'll come forward to my left and
10 be sworn.

11 (Witness complies.)

12 THE COURT: Thank you.

13 DOCTOR DAVID WREN, being first duly
14 sworn, testified as follows:

15 THE COURT: Have a seat, please, sir, and, once seated,
16 state your name.

17 THE WITNESS: My name is John David Wren.

18 THE COURT: Thank you.

19 Ms. Moricle, your witness.

20 DIRECT EXAMINATION

21 BY SOLICITOR MORICLE:

22 Q Good morning, Doctor Wren.

23 A Morning.

24 Q Could you please state your profession?

25 A I'm a pathologist, medical doctor with a specialty in

David Wren - Direct examination
by Solicitor Moricle

1 pathology and forensic pathology.

2 Q Could you please tell the jury a little bit about your
3 education?

4 A Well, I have a Bachelor's, Masters, and Doctorate
5 Degree in Chemical Engineering from Clemson University, and
6 I have an M.D. Degree from the Medical University of South
7 Carolina. I did a combined anatomic and clinical pathology
8 residency in -- at the Medical University of South Carolina.

9 While I was there I was assistant medical examiner of
10 Charleston County from July of 1980 until the end of January
11 1982. I passed -- while I was there during that time I did
12 forensic autopsies on occasion during the week. I did a
13 three month rotation in forensic pathology, and then I did
14 autopsies during the week when the regular forensic
15 pathologists weren't there as well as one weekend a month of
16 autopsies from all over the State.

17 I've qualified for a completion of a residency in
18 forensic pathology by doing that. I also took my combined
19 anatomic and clinical pathology boards. I passed both of
20 those taking them separately with the anatomic passed in
21 1984 and the clinical portion in 1987. I never took the
22 forensic boards, but I've been qualified in multiple
23 counties over the State, and I could name probably the
24 majority of them. I'd have to think about it a minute, but
25 I've been employed in Spartanburg as a pathologist, and I do

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1 all of the coroner's cases in Spartanburg for the last five
2 or six years now.

3 I'm also laboratory medical director at Spartanburg
4 Regional Hospital as well as at the Spartanburg Hospital for
5 Restorative Care.

6 Q what are your duties as a pathologist?

7 A Pardon?

8 Q what are your duties as a pathologist?

9 A what did I --?

10 Q what are your duties?

11 A Duties, oh, as a pathologist.

12 I, of course, am the medical director of the laboratory
13 with all -- doing all the clinical correlations, approval of
14 all of the tests that are done, and responsible for the
15 operation of the laboratory at those two hospitals.

16 I also, as I said, do the forensic -- coroner's cases
17 here in town in this county. Sometimes I -- they send them
18 from other counties, but mostly from here at this time, and
19 I'm also an anatomic pathologist signing out surgical
20 pathology cases on a daily basis at Spartanburg Regional.

21 SOLICITOR MORICLE: Your Honor, I'd like to offer
22 Doctor Wren as an expert in the field of pathology.

23 THE COURT: Any objection?

24 MR. SHEALY: No, Your Honor.

25 THE COURT: All right. Ladies and gentlemen of the

David Wren - Direct examination
by Solicitor Moricle

1 jury, let me give you a brief explanation of what we're
2 doing right now.

3 Under the rules of evidence, generally witnesses are
4 not allowed to state opinions. They are allowed to testify
5 concerning facts within their knowledge, but aren't allowed
6 to give opinions.

7 There's an exception to that general rule for witnesses
8 that are designated as experts within some field or
9 profession or calling, and for those witnesses that are
10 designated as experts within a field, the rules do allow
11 them to give opinions within their area of expertise and
12 also state the reasons while they hold those opinions.

13 This witness is being offered as an expert within the
14 field of, of forensic pathology. I'll qualify him as an
15 expert as such. That will allow him to give opinions within
16 that field and state the reasons for them.

17 Later on, during my charge on the law, I will give you
18 some additional information as to how you might treat the
19 opinions offered by experts, but, at any rate, I wanted you
20 to be aware we're designating him as an expert for that
21 reason so that he will be allowed to give those opinions.

22 So, you may proceed at this time, Ms. Moricle.

23 SOLICITOR MORICLE: Thank you, Your Honor.

24 CONTINUED DIRECT EXAMINATION

25 BY SOLICITOR MORICLE:

David Wren - Direct examination
by Solicitor Moricle

1 Q Doctor Wren, did you perform an autopsy on
2 March 15th of 2012 on Michael Daniels?

3 A Yes, I did perform an autopsy in the Spartanburg
4 Regional Medical Center on Michael David Daniels on March
5 the 15th, 2012, beginning that autopsy at 3:45PM.

6 Q Had you ever seen Mr. Daniels before?

7 A Not, not that I recall.

8 Q Based on the autopsy, within the bounds of medical
9 reasonable certainty, could you give us your expert opinion
10 concerning the cause of death?

11 A Well, his cause of death I attributed to a upper
12 cervical spinal cord contusion and laceration, that's at the
13 base of the brain, secondary to a cervical spine fracture at
14 the base of the skull between the first cervical vertebra
15 and the base of the skull, and he also had another fracture,
16 but that was less life threatening than the one that I first
17 mentioned, and that was secondary to being struck by a
18 vehicle and most probably from posterior.

19 Q Okay. Doctor Wren, would that mean that his head was
20 separated from his neck?

21 A It was dislocated. It wasn't completely separated.

22 Q Okay.

23 A It was a -- what we call a fracture with laceration
24 and, and contusion of the, the spine in that area. It's
25 almost the same type of injury one gets with a, with an

David Wren - Direct examination
by Solicitor Moricle

1 acute hanging from fracture of the base of the skull.

2 Q Okay. Can you tell us how -- can you describe -- were
3 there any other wounds?

4 A Well, he had lots of other wounds. He there -- most of
5 them were internal.

6 He had some -- he had a periorbital contusion of his
7 left eye with, with some swelling there. He also had an
8 abrasion and contusion of his nose. There was no fracture
9 there. He had what, what we call brush type abrasions from
10 the level of the nipples all the way to the crease of the
11 legs on the left and from the midline to the posterior
12 axillary line all over on that side.

13 He had a, a stretch type abrasion. It's called in the
14 right inguinal region. That's usually from hyperextension
15 of the body versus the leg, and it, it just stretches the
16 skin to where it looks like a, a tear almost. It's not
17 completely torn, but it's stretched enough to where it's
18 called a stretch type abrasion.

19 He also had a fractured left leg that was determined on
20 x-ray, and internally he had a small left hemothorax, which
21 is blood within the left plural cavity.

22 As I stated previously, he had a fracture at the base
23 of the skull between the base of the skull and the first
24 cervical vertebra. They're seven cervical vertebrae that
25 were between the base of the skull and the first one. He

David Wren - Direct examination
by Solicitor Moricle

1 had hemorrhage all the way down into the neck all the way to
2 the level of the T-1, which is the first thoracic vertebra.
3 He had some rib fractures. Had fractures one through three
4 on the right at the vertebral column and posteriorly, and he
5 had one and two on the left in the same location just from
6 the extension of his back, and he had a fracture in his
7 spinal column at, I'd have to look it up here, T3/T4, which
8 is the third and fourth cervical vertebra, that was left --
9 less life threatening. It, it -- when he had sustained
10 them, but nevertheless it was there. Then he had some
11 abrasions and contusions to his extremities mainly.

12 Those were the major, major injuries.

13 Q Okay. Hold on just a moment.

14 A Okay.

15 (Pause.)

16 A I did leave out the fact that he had a, a large bruise
17 to the back of his head from his head either hitting the
18 ground or some solid object. There was not fracture beneath
19 that area, but he had subarachnoid hemorrhage onto the
20 brain, which is blood outside the, the brain tissue itself,
21 but between that and the skull, and he had a, an area of
22 hemorrhage in what's called the basal ganglia, which is a
23 portion of the brain that controlled autonomic systems, had
24 a hemorrhage there, and that was from the trauma to his, to
25 his neck and head.

David Wren - Direct examination
by Solicitor Moricle

1 Q Okay. And, Doctor Wren, based on these injuries, would
2 you think the victim was standing?

3 A Yes, he was, he was standing. In my opinion he was
4 standing, and as I indicated from the fact that he had a
5 fracture of his leg from probably a bump or something of
6 that nature hitting his leg, and the stretch type abrasion
7 meaning that he was, that he was thrown backwards. His
8 body -- his top portion of his body was bent backwards in
9 relation to the bottom part to cause that stretch in the
10 crease of the leg there at the hip.

11 Q Okay. So he was hit from behind?

12 A Yes, I think so.

13 Q And, again, in your expert opinion, what was the cause
14 of death?

15 A I made it kind of simple, upper, upper cervical spine
16 contusion or laceration and laceration secondary to a
17 cervical spine fracture at the base of the skull between the
18 skull and C1 and secondary to a vehicle versus pedestrian
19 encounter.

20 Q All right. No further questions. Thank you.

21 THE COURT: Your witness.

22 MR. SHEALY: Thank you, Your Honor.

23 THE COURT: Mr. Shealy.

24 CROSS-EXAMINATION

25 BY MR. SHEALY:

David Wren - Cross-examination
by Mr. Shealy

1 Q Doctor, I don't have too many questions.

2 THE COURT: All right.

3 Q Just a couple.

4 when you say an upper cervical spinal cord laceration,
5 you mean that the spinal cord back here was severed?

6 A No, it was just lacerated and contused. It was as if
7 you -- the, the spine and as well as the brain are pretty
8 soft. They aren't a solid organ like, like the liver.
9 There's, there's -- they're much softer. So if something
10 hits it it will cause what we call maceration. It sort of
11 crushes the spine.

12 Q Okay. And what would be the, the physical affect of
13 that laceration?

14 A well, I indicated previously it was almost like someone
15 being hung, that they died immediately from the, from the
16 impact of the base of the skull hitting the, the spinal
17 cord.

18 Q Okay. So, it pretty much would be an immediate death?

19 A Yeah.

20 Q Correct?

21 A Yeah, and that's shown by the fact that he had very
22 little blood in his chest cavity from those contusions. He
23 did have some contusions. So, he would of had pressure for
24 a short time, but not very long.

25 Q Okay. And you've also testified that there was a

David Wren - Cross-examination
by Mr. Shealy

1 contusion to his nose, correct?

2 A Yes, I said he had contusion with abrasions to his
3 nose.

4 Q Okay. But no---

5 A Probably from hitting the ground.

6 Q Okay. But no fracture that you saw?

7 A No, I couldn't feel a fracture. We did do the x-rays
8 and, as I said, I outlined the fractures in his chest
9 posteriorly in the area of that spinal fracture -- I mean
10 the vertebral column fracture at T3 and T4. It was in that
11 same area and he had a fracture to his leg that's shown on
12 the x-ray films. We don't usually cut into the extremities
13 unless we have to because it --

14 Q Okay.

15 A They usually are not immediate life threatening.

16 MR. SHEALY: That's all I have for this witness.

17 THE COURT: Redirect?

18 SOLICITOR MORICLE: No, Your Honor.

19 THE COURT: All right, sir. You may step down.

20 You wish to excuse the witness?

21 SOLICITOR MORICLE: I would like to, Your Honor.

22 THE COURT: Any objections?

23 MR. SHEALY: No objection.

24 THE COURT: All right. Doctor Wren, you're free to go.

25 Thank you very much, sir.

Jason Bryant - Direct examination
by Solicitor Gray

1 THE WITNESS: Thank you.

2 THE COURT: You may call your next witness.

3 SOLICITOR GRAY: State calls Officer -- Deputy, excuse
4 me, Deputy Jason Bryant.

5 THE COURT: Come forward, sir, and be sworn please.

6 JASON BRYANT, being first duly
7 sworn, testified as follows:

8 THE COURT: Have a seat please, sir. Once seated,
9 state your name.

10 THE WITNESS: My name is Jason Bryant.

11 THE COURT: Thank you.

12 Mr. Gray, your witness.

13 SOLICITOR GRAY: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION

16 BY SOLICITOR GRAY:

17 Q Deputy Bryant, where do you work?

18 A I work for the Spartanburg County Sheriff's Office.

19 Q How long have you worked there, sir?

20 A Eighteen years.

21 Q What are your primary duties and responsibilities?

22 A What I am is I am the homicide unit supervisor. I'm
23 the sergeant in the violent crime division.

24 Q How long have you had that position?

25 A 2009.

Jason Bryant - Direct examination
by Solicitor Gray

1 Q So, 2012, March 15th, 2012, you would of been the
2 supervisor?

3 A I was. I was the sergeant in that unit at that time.

4 Q All right. How about March 15th, 2012, were you
5 involved in the Sandy westmoreland situation?

6 A I was.

7 Q How did that start your involvement?

8 A Basically I had gotten notified earlier that morning,
9 around midmorning time, of an incident at Mary Black
10 Hospital, around the area of Mary Black Hospital. Responded
11 to the scene. Of course, assisted Investigator Williams
12 coordinating and do different things such as that, and then
13 one of the investigators had, had came up with a name and
14 information was derived at [REDACTED] Poole Street and I went
15 there.

16 Q All right. Once you arrived at Poole Street in
17 woodruff, did you talk to Mr. westmoreland?

18 A I did. I asked him, at that time, if he minded to ride
19 down to the Sheriff's Office to speak with us in which he
20 obliged.

21 Q All right. Did you advise Mr. Moreland -- westmoreland
22 of his rights?

23 A I did. I did that from a pocket card at approximately,
24 refer to my notes please, 12:25PM.

25 Q Did he have any problem understanding those rights?

Jason Bryant - Direct examination
by Solicitor Gray

1 A Not at all.

2 Q And did he say he didn't want to talk to you---

3 A Not all.

4 Q ---after that?

5 well, after that, advising of him -- him of his rights,
6 what transpired?

7 A After, after I advised him of his rights from the
8 pocket card, at that time we began to speak of the day
9 before and everything such as that, and if, if I could refer
10 to my note, he stated that he had picked Mike up at work and
11 they had went to Mary Black. He stated they had got into a
12 fuss at Mary Black and that Mike had walked off and left and
13 then he had stated that he had hit a deer later that
14 evening.

15 Q All right.

16 A And then we arrived at the Sheriff's Office, and I
17 asked him for a voluntary statement, which he obliged.

18 Q Did he give you that voluntary statement?

19 A I'm sorry, sir?

20 I couldn't hear you.

21 Q Did he give you that voluntary statement?

22 A He did.

23 Q Was that verbal also?

24 A No, sir, at that time he had written a voluntary
25 statement. Basically when I take a statement from someone I

Jason Bryant - Direct examination
by Solicitor Gray

1 do however they feel comfortable. What I do is I ask them,
2 I can write it in my hand and their words word-for-word
3 exactly or they could write it in their hand or we could do
4 it on an audiotape. It was whatever they choose to do.
5 And, and if I remember correctly, let me refer here, he had
6 requested that I write the statement in his words for him
7 and he then signed the statement.

8 Q Did he ever request a lawyer or anything at this time?

9 A No, sir, not at all.

10 Q And he signed the statement you have before you?

11 A That's correct.

12 SOLICITOR GRAY: May I approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 (WHEREUPON, the statement was marked as State's Exhibit
16 No. 110 for identification purposes only at this time.)

17 SOLICITOR GRAY: May I speak with Mr. Shealy briefly?

18 THE COURT: Yes, sir.

19 (Pause.)

20 Q I'm gonna show you here what's been marked as State's
21 Exhibit 110.

22 I'm gonna ask you if you recognize that.

23 A Yes, sir, this is the voluntary statement from that
24 interview or---

25 Q That's the one you wrote?

Jason Bryant - Direct examination
by Solicitor Gray

1 A ---after that interview.

2 Q That's the one you wrote?

3 A That's correct.

4 Q And the one Mr. Westmoreland signed?

5 A That is correct.

6 SOLICITOR GRAY: At this time, Your Honor, I'd like to
7 enter that statement into evidence.

8 MR. SHEALY: No objection, Your Honor.

9 THE COURT: Without objection it will be admitted.

10 SOLICITOR GRAY: Thank you.

11 (WHEREUPON, State's Exhibit No. 110 was received into
12 evidence at this time.)

13 Q Now, you say in your first statement, verbally, Mr.
14 Westmoreland said he had hit a deer that night, correct?

15 A That's correct. He had advised me that he had hit a
16 deer around the Dillon Drive area.

17 Q Now this is his second statement, correct?

18 A He had provided me a verbal statement during the course
19 of the interview on the ride up from Woodruff. Then, once
20 we got back to the Sheriff's Office, he provided the, the
21 written statement that is here, that's correct.

22 Q Could you read that for me?

23 A Sure.

24 And at the top, of course, it is the statement of Sandy
25 Westmoreland with his age. That date being 3/15/2012. His

Jason Bryant - Direct examination
by Solicitor Gray

1 address being [REDACTED] Poole Street, Woodruff, South Carolina.
2 His date of birth [REDACTED] of '62 along with his Social Security
3 Number, and it's statement written by J. Bryant at my
4 request, and that's how I always, if someone requests that I
5 write a statement for them, I always start it out that way.
6 And then I basically -- or, in his words, it stated I picked
7 Mike up at DCI behind Mary Black about 4:30PM. When I
8 picked Mike up we went straight to the emergency room. We
9 were there till about 11:00PM. Mike got upset because they
10 were taking too long.

11 while we were at the hospital we argued because of the
12 weight. I accidentally hit him in the nose with my cane.
13 The security guard came in and asked Mike if he wanted to
14 press charges. Mike told him no. Mike told him that he
15 just wanted to get his stuff out of my car and walk home.

16 When they released me, security walked me out. I seen
17 that he had got his stuff out of my car from the tape over
18 the window. I left and went to the motel. I stayed a
19 while. Mike never showed up. I then called him. I figured
20 I would give him some time to cool off. So I went to my
21 house in Woodruff. I hit a deer on Dillon Drive looking for
22 Mike before I went to Woodruff.

23 Q Was this the last statement that Mr. Westmoreland gave
24 you?

25 A No, sir, not at all.

Jason Bryant - Direct examination
by Solicitor Gray

1 Q He gave you another statement, is that correct?

2 A He did.

3 Q A verbal statement?

4 A It was.

5 Q What was the nature of that, that statement?

6 A After he had signed this statement, and was signed off
7 and everything such as that, I began to discuss the
8 discrepancies from information that I had received from the
9 crime scene and everything such as that in speaking with
10 other investigators, and it was at that time that he stated
11 that he had hit Mike with the car.

12 Q What about the deer?

13 A He stated that he hadn't hit a deer, that he had hit
14 Mike with the car.

15 Q Were there anymore statements at -- to that -- to you?

16 A After that he provided an audio statement.

17 Q Okay. During that audio statement what did he say?

18 A At that time, if I remember correctly and if I can
19 refer to my notes, he stated that -- this was during the
20 audio statement and that was at the time that he had advised
21 that it was an accident.

22 Q Was this also a verbal statement---

23 A It was.

24 Q ---and you witnessed it?

25 A That was, that was audio recorded.

Jason Bryant - Direct examination
by Solicitor Gray

1 Q All right. What did he say?

2 A Sir?

3 Q What did he say?

4 A He -- basically he stated that he had picked Mike up
5 around 4:40, they had went to Mary Black Hospital, and that
6 he had had a knot on his right side I believe it was. It
7 was getting late and Mike had to work. They had started
8 fussing because it was taking too long. They're always
9 playing. He said that he had had a cane and it accidentally
10 hit Mike in the nose with the cane. Mike was in an ill
11 mood. He had already packed his stuff. Security had came
12 in. Had went outside and saw that Mike had already gotten
13 his stuff out of the car. Had drove down Dillon Drive.

14 He doesn't drive well at night. So he saw Mike at the
15 last minute and he was trying to pull over to tell Mike to
16 get in the car, and that's when he said that he had
17 accidentally hit Mike with the car. He had got out to see
18 if Mike was okay, but he wasn't breathing. He said that he
19 had gotten scared and he had called Mike's number a couple
20 of times, but never called 9-1-1.

21 Q Thank you. No further questions at this time.

22 THE COURT: Mr. Shealy, your witness.

23 MR. SHEALY: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. SHEALY:

Jason Bryant - Cross-examination
by Mr. Shealy

- 1 Q In your discussions with Mr. Westmoreland---
- 2 A I'm sorry, sir. I can't hear you.
- 3 Q In your discussions with Mr. Westmoreland --
- 4 A Yes, sir.
- 5 Q -- did you figure out what their relationship was?
- 6 A I had, I had known their relationship, that's correct.
- 7 Q Okay. And what is that relationship?
- 8 A Romantically involved.
- 9 Q Okay. Now, in the first, in the first statement, which
- 10 I understand he admittedly told you was at least, in part, a
- 11 lie, does -- he told you about a motel?
- 12 A That's correct.
- 13 Q Did you go to a motel?
- 14 A Other investigators, at that time, did go to the motel.
- 15 Q And any idea to who those were?
- 16 A I'm sorry, sir.
- 17 Q Any idea as to who those investigators were?
- 18 A I do not recall.
- 19 Q You don't recall?
- 20 A It's not in my write-up.
- 21 Q Right.
- 22 Okay. Do you know what motel?
- 23 A I -- if I remember correctly it was one close to the
- 24 Pine and Main Street area. I'm not sure.
- 25 Q Okay. Now, it's my understanding, from what you

Jason Bryant - Cross-examination
by Mr. Shealy

1 testified to, that you wrote this statement for him, right?

2 A The first written voluntary statement, yes, sir.

3 Q Correct.

4 And that was, in time, chronologically, that was the
5 first statement that was written and signed, correct?

6 A The first written statement or statement that was
7 taken. Of course, I interviewed him on the way from
8 Woodruff.

9 Q Right.

10 And then this, this written statement was essentially a
11 memorialization of that statement?

12 I mean---

13 A Pretty much.

14 Q ---it, it tracked what he had told you in the car?

15 Is that my understanding?

16 A Somewhat.

17 Q That's my understanding.

18 Okay. And then you told him well, I don't really
19 believe you cause of this, that, the other thing?

20 A That's correct.

21 Q And then he told you what happened?

22 A Then he had told me that he did hit Mike and got out to
23 check on him and he wasn't breathing and that's when he
24 left.

25 Q Okay. So, he gave you a different statement---

Jason Bryant - Cross-examination
by Mr. Shealy

1 A That's correct.

2 Q ---again?

3 And then that's the last statement he gave you?

4 A No, sir, and then he gave the third statement, which
5 was the audio recorded statement.

6 Q Okay. So, he, he told you that he had hit Mike.

7 So that would be what you're counting as statement
8 number three, and then there's a statement number four where
9 you recorded him telling you that he had accidentally hit
10 Mike?

11 A That's correct.

12 Q Okay. But statements three and four were more or less,
13 more or less tracked?

14 A No, sir, if I remember correctly, during, during the
15 course of the interview with him prior to the recorded audio
16 statement, there wasn't any mention of an accident.

17 Q Okay. So, in your write-up, he then advised that he
18 did strike Mr. Daniels with the vehicle?

19 A That's correct.

20 Q And provided this, what you call a second voluntary
21 statement on an audiotape?

22 A That's when he provided the second audio statement.

23 Q All right. So, he went into more detail and all that
24 it sounds like.

25 All right. And, Investigator Bryant, now, my

Jason Bryant - Cross-examination
by Mr. Shealy

1 understanding is you found my client at Poole Street,
2 correct?

3 A Yes, sir.

4 Q And that was his address with the DMV?

5 A If I remember correctly, that's how the other
6 investigators had found the vehicle and where he was at.

7 Q Okay. So, you don't have him living in a motel?
8 Y'all thought he was living at [REDACTED] Poole Street, right?

9 A We knew that the vehicle had registered back to [REDACTED]
10 Poole Street.

11 Q And point of fact, you found him at [REDACTED] Poole Street?

12 A That's correct.

13 Q Okay. And as to the DMV records, that's where
14 apparently he's listed his residence, correct?

15 A Correct.

16 Q I mean that's what other people have testified to I
17 think.

18 I've got nothing further for this witness.

19 THE COURT: Redirect.

20 SOLICITOR GRAY: Possible, Your Honor.

21 THE COURT: Yes, sir.

22 (Pause.)

23 SOLICITOR GRAY: Your Honor, at this time, if I didn't
24 do so, I'd like to move the statement into evidence.

25 MR. SHEALY: I have---

Jason Bryant - Cross-examination
by Mr. Shealy

1 THE COURT: Any objection?

2 MR. SHEALY: I have no objection.

3 THE COURT: All right. Has it been marked already?

4 SOLICITOR GRAY: Yes, sir, Your Honor.

5 THE COURT: All right. It will be received into
6 evidence without objection as marked.

7 (WHEREUPON, State's Exhibit No. 110 previously was
8 received into evidence.)

9 SOLICITOR GRAY: No further questions, Your Honor.

10 THE COURT: All right. Anything further from the
11 defense?

12 MR. SHEALY: Nothing further.

13 THE COURT: All right, sir. You may step down.
14 You wish to excuse the witness?

15 SOLICITOR GRAY: Yes, sir.

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

17 MR. SHEALY: No, Your Honor.

18 THE COURT: You're free to leave if you'd like. Thank
19 you very much.

20 THE WITNESS: Thank you, sir.

21 THE COURT: The State may call its next witness.

22 SOLICITOR GRAY: State calls Trooper Duncan, Your
23 Honor.

24 THE COURT: Come forward, sir, to my left and be sworn
25 please, sir.

Michael Duncan - Direct examination
by Solicitor Gray

1 TROOPER MICHAEL DUNCAN, being first
2 duly sworn, testified as follows:

3 THE COURT: Have a seat please, sir, and once you're
4 seated, state your name for the Court please.

5 THE WITNESS: Michael Duncan.

6 THE COURT: Thank you.

7 Mr. Gray, your witness.

8 SOLICITOR GRAY: Thank you, sir.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY SOLICITOR GRAY:

12 Q Corporal Duncan?

13 A Yes, sir.

14 Q How long have you worked for the South Carolina Highway
15 Patrol?

16 A Now just over 24 years.

17 Q And you're a member of the M.A.I.T. Team?

18 A Yes, sir, it is M.A.I.T. It stands for
19 Multidisciplinary Accident Investigation Team.

20 Q And what do you do?

21 A Our primary job is traffic reconstruction. However we
22 are there to assist as, as you've heard earlier. Basically
23 assist other agencies in any investigation. Whether it be
24 something from a minor nature to serious in nature.

25 Q How long have you been doing this?

Michael Duncan - Direct examination
by Solicitor Gray

1 A At the time, I've been with M.A.I.T. since 2008.

2 Q Did you receive any special education or training?

3 A Yes, sir, I did. Basically here back in 2006, we have
4 what they call three phases. You must have at least three
5 phases of traffic reconstruction.

6 They have what they -- what is known as at scene where
7 you get two weeks of training of specific accident
8 investigation, and then the additional training after that
9 would be what we call technical. There is another two weeks
10 of training from there, and then, at the end of the third
11 phase, there is another two weeks of what we call the
12 reconstruction phase.

13 That is the minimum training to -- that you receive as
14 far as the accident reconstruction. However, being with
15 M.A.I.T., we train consistently throughout the year, and
16 over, over the time I've probably -- I've had accident
17 investigation in motorcycle, PED, advanced PED, advanced
18 motorcycle, commercial vehicle. Pretty much traffic related
19 investigation, interviewing, interrogation, detective
20 services. I've had numerous hours of training since 2000 --
21 well, since 2006.

22 Q Have you ever testified in Court before?

23 A Yes, sir.

24 Q Have you ever testified as an expert in accident
25 reconstruction?

Michael Duncan - Direct examination
by Solicitor Gray

1 A Yes, sir.

2 Q How many times?

3 A I've testified approximately three times in Magistrate
4 Court, once in Family Court, and approximately once in --
5 once or twice in General Sessions Court.

6 SOLICITOR GRAY: Your Honor, at this time we would
7 offer Corporal Duncan as an expert in accident
8 reconstruction.

9 THE COURT: Any objection to that designation?

10 MR. SHEALY: No, Your Honor.

11 THE COURT: All right. Without objection he'll be so
12 designated. I've explained to the jury the meaning of that.

13 You may proceed.

14 SOLICITOR GRAY: Thank you.

15 May I approach the witness?

16 THE COURT: Yes, you may. Excuse me.

17 A Thank you.

18 Q I just handed you something, sir.

19 What is that?

20 A This is part of the M.A.I.T. investigation that we do.
21 Upon request, like I said, typically we do traffic
22 investigations again. This was what -- request by the
23 Spartanburg County Sheriff's Office to come assist in this
24 investigation. We prepare a report for them as far as what
25 we do, and this is part of the report that was prepared.

Michael Duncan - Direct examination
by Solicitor Gray

1 Q Now, what date was that -- excuse me.

2 what date did you go out there?

3 A On this particular date I went out there on March the
4 15th, 2012. Our time of arrival was approximately at
5 12:20 in the afternoon.

6 Q Now, what was this in response to?

7 A When we first got the call it was a possibility that it
8 may be a hit and run or an intentional act.

9 Q Hit and run involving what?

10 A A pedestrian.

11 Q And was the pedestrian alive, hurt, or --?

12 A As far as I can recall it was a fatal hit and run or
13 leaving the scene of the accident.

14 Q All right. What did you see when you got there and
15 what did you do?

16 A Upon arrival, once we got there, myself and Corporal
17 Brooks were actually coming from Oconee County working
18 another scene, and when we were requested we headed over to
19 Spartanburg.

20 Once arriving, myself and him arrived at approximately
21 the same time. I noticed a bunch of police cars. Basically
22 Spartanburg County. There was other Highway Patrol there.
23 Some emergency personnel.

24 When I arrived, we were first met with the detectives
25 to kind of give a brief synopsis of what happened. At that

Michael Duncan - Direct examination
by Solicitor Gray

1 point in time you could see a tent raised. It looked like
2 where possibly, doing this as many years as I have, is where
3 the body may of been at. As we got there we kind of
4 gathered around, got our wits about ourself to determine
5 what we were gonna do, how we were gonna do it, and what to
6 look for.

7 Q And what did you observe, at that time, beyond just the
8 superficial?

9 A Okay. Once we, once we determined what we were dealing
10 with, like I said, possible hit and run or a possible
11 intentional act, we started -- each, each individual member
12 kind of goes their own way to get a different aspect of what
13 they see. That way we can come back and compare notes to
14 what we may or may not see.

15 I particularly started back toward Mary Black Hospital
16 away from where the pedestrian was and turned around and
17 started walking back in the direction the vehicle would of
18 been traveling. At that point in time, what I'm
19 specifically looking for on the roadway, is maybe any type
20 of markings as far as scuff marks from possible shoe
21 markings, a skin marking, even tire marks as far as skid
22 marks where if a car lays down skid marks you have some type
23 of black mark on the roadway from transfer of rubber onto
24 the asphalt.

25 As I'm walking closer to where you could see definite

Michael Duncan - Direct examination
by Solicitor Gray

1 tire tracks going off into the grass at a sharp angle,
2 you -- there was no tire marks indicating that, that there
3 was any skid marks, as we call them, laying on the ground.

4 As I walked toward where the tire marks went off into
5 the grass, there wasn't skid type marks. It was like, if
6 any of y'all have ever cut grass or rode through grass, you
7 just see where, where a car rides through and lays the grass
8 down on that first portion up to where the bushes were at to
9 where the pedestrian went through.

10 Also, I was looking for maybe where the pedestrian was
11 standing, and you could see a clear mark where it appeared,
12 from the tire marks into the bushes to the right of the tire
13 marks somewhat, where it looked like a -- something else had
14 went through. Not necessarily the car. But something else.
15 It led to where the pedestrian came to a rest.

16 At that point in time I continue walking, still looking
17 at the tire marking, and as I get towards around where the
18 bushes are, like I said, the car, the tire marks go off at
19 an angle and have the steering motion and continue to steer
20 through the bushes. I could tell the vehicle continued on
21 through the bushes on back out on the other side of the
22 bushes and back out onto the road. There was no -- that's
23 no stopping to it at all.

24 One of the reasons that we could determine that was
25 right where it's -- the car goes through the bushes and just

Michael Duncan - Direct examination
by Solicitor Gray

1 passed where the pedestrian was laying, was laying, there
2 was what we call acceleration marks in the grass. They're
3 heavily laid down. Instead of where it's sliding through,
4 it's actually doing a different type of rotation, and you
5 have like what we call furrowing or different type of
6 furrowing then if it's sliding, and it goes back off to the
7 bushes and back towards the roadway that he was traveling
8 on.

9 Q Did you obtain an approximate speed of the vehicle?

10 A Yes, we, while there, also we did a -- what we call
11 forensic mapping. Most of the tools that we use, some of
12 y'all may have seen, it's -- the easiest way to explain this
13 is it looks like surveying equipment. It's a lot different
14 than surveying than forensic what we're doing. It's a
15 computer program.

16 At the particular time Corporal Brooks was what we call
17 the -- work the station that keyed in the codes. I'm
18 actually the architect, the one that actually goes out and
19 diagrams what we have, have done.

20 At that point, excuse me, at that point we did what we
21 call forensic mapping, went out and documented several
22 pieces of evidence from the car, the tire marks, where the
23 vehicle traveled off the roadway to on the roadway, where we
24 thought the pedestrian may of been according to the
25 evidence, and where he was -- came to a final rest.

Michael Duncan - Direct examination
by Solicitor Gray

1 With that information, we go back to our office, put it
2 into a computer. It gives us a computer diagram as far
3 as -- we have to actually, you know, fill in certain things,
4 but we do a computer diagram of the scene. It's an actual
5 scale drawing of the, of the scene, and from that we take
6 measurements off of it and do a speed calculation.

7 In this sense, I did what was known as Searle. It is
8 accepted through the accident reconstruction community, and
9 the speed that I come up with at that particular time -- let
10 me flip through the notes here.

11 If I'm not mistaken, it was between 29 was the minimum
12 speed and 37 was the maximum speed.

13 The way this program or not -- the way the calculation
14 works, it depends on how the person is struck, whether he
15 flies completely through the air or if he's partially flying
16 through the air and then rolls some on the ground. The
17 minimum speed basically just refers to if the vehicle -- if
18 the person is struck, if you've ever seen anything struck,
19 it may fly through the air and just come to a land and
20 sticks right there where it, where it's at.

21 In this particular case, that was not, not the case
22 because you could see, like I said, where something had,
23 other than the car, went through the type of bushes. So
24 there was probably some flight to it, and then some roll,
25 what we call rolling, or sliding effect.

Michael Duncan - Direct examination
by Solicitor Gray

1 At that point, the speed would probably be somewhere
2 between 29 and 37. It could be 31 or it could be 36. It
3 could be somewhere in-between there.

4 Q But, at, at the point of impact, there was no breaking?

5 A No, sir, at the point of impact -- and the speed -- and
6 I -- let me go back and re-clarify this.

7 The speed that I'm giving you is an approximate speed.
8 It's not t he -- the pedestrian is getting a certain portion
9 of that speed of that car. So, the speed could be even
10 higher depending on how the person is hit.

11 While we're out there, we could tell it wasn't what I
12 call a center frontal hit or what we call a, a forward
13 vault.

14 In this particular case I believe it was our consensus
15 that he was more what we call a fender vault where it hits
16 more to the right fender or even possibly at the right
17 fender because he's gonna get a portion of that speed. He
18 didn't get a roof vault cause it didn't, it didn't look like
19 he flipped up and was carried that way and just get that in
20 the air and then fall to the ground.

21 So, we felt, at that time, that it was more of what we
22 call a fender vault. But there was no braking prior to or
23 afterwards. It was one continuous motion.

24 The vehicle -- the determination that I, I, along with
25 other M.A.I.T. members determined basically was there was

Michael Duncan - Direct examination
by Solicitor Gray

1 severe steering input into where the pedestrian was at.

2 Q Severe steering input?

3 A Yes, sir.

4 Q I don't understand that term.

5 A In other words, you had -- it wasn't -- the car did not
6 just drift off the road. You actually have to turn the
7 wheel a good amount.

8 In other words, the vehicle -- if I am directly driving
9 straight towards y'all, we consider that, in math terms, a
10 zero type degrees or going straight. In this sense, the
11 vehicle goes off at a, a good angle, 20 -- anywhere from 22
12 to 28 degrees at that point. I mean you have to -- you just
13 don't barely turn the steering wheel. You have to put some
14 type of steering input in it to get that type of circular
15 pattern to the, to the tire markings.

16 Q And the circular pattern that you're discussing, he
17 enters -- excuse me.

18 The car enters the grass?

19 A Yes, sir.

20 Q Goes through the bushes?

21 A That's correct.

22 Q And comes back out of the bushes?

23 A Yes, sir, it actually -- I hate using my hands, but
24 basically we have a -- the drawing that I have. I know it's
25 not gonna be large enough for you to see, but basically this

Michael Duncan - Direct examination
by Solicitor Gray

1 is the---

2 MR. SHEALY: Objection, Your Honor. If they want to
3 enter something into evidence, that's fine.

4 THE COURT: The document's not in evidence. It can't
5 be published to the jury unless it's been admitted.

6 SOLICITOR GRAY: Yes, sir, Your Honor.

7 THE COURT: Is it part of a report that's already in
8 evidence or not?

9 SOLICITOR GRAY: No, sir, Your Honor.

10 THE COURT: Do you want to put it in or do you want
11 to---

12 SOLICITOR GRAY: Yes, sir, I would like to.

13 THE COURT: All right. You want to show him the
14 document that he's talking about?

15 SOLICITOR GRAY: Yes, sir.

16 MR. SHEALY: Thank you.

17 (WHEREUPON, the diagram was marked as State's Exhibit
18 No. 111 for identification purposes only at this time.)

19 Q I'm gonna show you what's been marked as State's
20 Exhibit No. 111 and ask if you recognize that.

21 A Yes, sir.

22 Yes, sir, I do.

23 Q Is that part of your report that you generated and
24 prepared in this situation?

25 A The front part was actually done by the Spartanburg

Michael Duncan - Direct examination
by Solicitor Gray

1 County office as far as what we call a field sketch. That
2 gives you just a basic knowledge of, of it. We were given
3 that by them.

4 On the backside is part of -- there's different what we
5 call roadway layers.

6 Q Uh-huh. (Affirmative).

7 A And this is the actual roadway of what we mapped out
8 there or what the forensic mapping does.

9 In this incident, the, the scale for it is a zero to
10 50. It's a one to 50 basically scale.

11 SOLICITOR GRAY: I'd like to enter 111 into evidence,
12 Your Honor.

13 THE COURT: Any objection?

14 MR. SHEALY: No, Your Honor.

15 THE COURT: Without objection it will be admitted as
16 marked.

17 You may proceed.

18 SOLICITOR GRAY: Thank you.

19 (WHEREUPON, State's Exhibit No. 111 was received into
20 evidence at this time.)

21 Q Please describe again the pathway in this situation.

22 A Well, on this particular -- this one doesn't actually
23 have the pathway. It's further in the report.

24 Q Right.

25 A But on this particular roadway, there's other in this

Michael Duncan - Direct examination
by Solicitor Gray

1 report basically, the path -- the vehicle comes off and
2 makes a sharp right-hand turn or a noticeable right-hand
3 turn. Basically travels in a circular path behind the
4 bushes and then goes back out in front of the bushes and
5 back onto the road.

6 Just, just past where the pedestrian or the victim was
7 laying is the -- what we determined to be acceleration
8 marks. That's the way they were laid down. You have a
9 distinct pattern from skid marks and acceleration marks. In
10 this case they were acceleration marks.

11 Q After the impact?

12 A After the impact, yes. The -- prior to, it's just
13 where, like I said, it's like you're driving across grass
14 and you see, you see basically tire tracks laying down.

15 Also, the vehicle you can tell that there's steering
16 input into it too because the vehicle starts to what we call
17 out track or starts to make a counter rotation, and that
18 comes from where the vehicle's going in speed. You may have
19 a change of friction, change in friction from the roadway to
20 the grass surface because it's -- if any of y'all been on
21 ice or go from roadway to ice, there's what we call a
22 frictional value between the tire and the pavement and the
23 tire and the ice. Most people describe it as when I -- hits
24 the breaks it felt like I was on ice or I didn't have -- my
25 brakes didn't work.

Michael Duncan - Direct examination
by Solicitor Gray

1 what is happening is, is you're going from one surface
2 that has a high frictional value that assists you in
3 stopping, and as you transfer over to another surface, it
4 has a lower frictional value that it feels like that you
5 just don't have the braking that you have one -- on a
6 particular surface.

7 Q In this situation, was there any of that?

8 A No, sir, there was no, there was no braking from start
9 to finish.

10 Q Now I want to ask you also.

11 You said there was one -- was there one set of---

12 A There -- there's four what we call tire patterns or
13 tire tracks through. As a vehicle out tracks, the tires --
14 the -- usually, as a vehicle goes straight down the road,
15 one tire follows the other. The front follows the back. If
16 you go into the, into a curve, you may have a -- your tires
17 out track of the vehicle. The rear tires out track the
18 front. It's just the way it's designed.

19 But as you're making a turn basically, it may out
20 track, and, in this case, you have an out tracking of this
21 car due to possibly him either speeding up or losing some
22 type of frictional value.

23 Q Did you see any other tire marks in this area?

24 A Not that led from off the roadway to where the
25 pedestrian came to rest and back on the roadway, no, sir.

Michael Duncan - Direct examination
by Solicitor Gray

1 Q Was there anything to indicate this vehicle turned
2 around and went back to the---

3 A There was no---

4 Q ---victim?

5 A There was no indication -- indication showed that it
6 came from Mary Black Hospital off to the right, through the
7 bushes, back through the bushes, and then back onto the
8 roadway. There was no indication that, that he turned
9 around and then pulled back into the grass. There was no
10 indication of that.

11 Q Any I guess you call skid marks leading up to---

12 A No indication---

13 Q ---the impact?

14 A ---of skid marks leading up to the impact or even from
15 the roadway to the grass.

16 Q And, again, no circular motion, no return tracks?

17 A No, sir, it actually -- it goes, like I said, a
18 circular behind or through the bushes, behind, back through
19 the bushes, and out like you were going out back onto the
20 roadway away from Mary Black Hospital.

21 Q And if I understand you correctly, not only did he not
22 slow down, he accelerated after the impact?

23 A That's what it appears, yes, sir.

24 Q Thank you.

25 Nothing further at this time, Your Honor.

Michael Duncan - Direct examination
by Solicitor Gray

1 THE COURT: Mr. Shealy, your witness.

2 MR. SHEALY: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. SHEALY:

5 Q Now, Corporal Brooks, you said you can testify as to
6 what happened in the grass, correct?

7 A Yes, sir, or coming off the roadway to the grass, yes,
8 sir.

9 Q Right.

10 And that's basically what you're talking about, right

11 --

12 A Yes, sir.

13 Q -- all these, these tracks and everything?

14 A Yes, sir.

15 Q You didn't see -- there weren't any tracks on the
16 roadway, correct?

17 A No, sir, no tracks. No -- like I said, when I walked
18 back up the roadway there was no indication that he skidded
19 prior on the roadway and not even as he went off the roadway
20 into the grass. There was no indication that he skid.

21 Q But just so, you can't testify to any skid marks on the
22 other side of the roadway?

23 A When he come back on from out of the grass?

24 Q When, when -- yeah.

25 A There's no skid marks whatsoever out there.

Michael Duncan - Cross-examination
by Mr. Shealy

1 Q Okay. But you can't testify as to what he did after he
2 returned to the roadway except that he did not skid,
3 correct?

4 A I can tell you he accelerated from the grass onto the
5 roadway.

6 Q Okay. Well, that's not what I asked you.

7 I asked you could you find any skid marks on the
8 roadway after he entered the -- reentered the roadway.

9 A There's no indication that he stopped.

10 Q There's no indication that he didn't.

11 A If he accelerates out of the grass I would say he
12 didn't.

13 Q Okay.

14 A There would be---

15 Q But my understanding is---

16 A Let me, let me clarify your question then.

17 If he's accelerating out of the grass he's got to get
18 on the brakes, and it appears, from the vehicle that he was
19 driving does not have any antilock brakes, so if he would of
20 come to a sudden stop, he would of left some type of skid
21 marks, tire marks.

22 Q Okay.

23 A There's no indication of that.

24 Q But you can not testify, it's my understanding from
25 what you've already testified to, as to what he did once he

Michael Duncan - Cross-examination
by Mr. Shealy

1 reentered the roadway?

2 So, he couldn't---

3 A I could say he traveled a specific distance down the
4 roadway at the speed he come back on, yes, sir.

5 Q Okay. But---

6 A It takes time for him to stop.

7 Q So, so---

8 A He could of went down a hundred feet.

9 Q So my understanding, from what you're testifying to --

10 A Yes, sir.

11 Q -- is that cars don't slow down without leaving skid
12 marks?

13 A He has to have time to slow down. So, he can not go
14 from the grass and stop right at the edge of the road. No,
15 sir, he can not.

16 Q Okay. I understand that and that's not what I asked
17 you.

18 What I've---

19 A You asked me if he stopped.

20 Q What I've asked you is can you testify as to what he
21 did after he reentered the roadway?

22 A That -- as far as him going as far as I think he went,
23 no, I can not.

24 Q Okay.

25 A I can tell you he went a certain distance. He has to

Michael Duncan - Cross-examination
by Mr. Shealy

1 go a certain distance before he can stop.

2 Q So, for instance, you can't testify as to whether he
3 went down, turned around, came back?

4 A No, sir, I can not tell you---

5 Q You can't testify?

6 A ---whether he come back. I can tell you he did not
7 come back and pull his car into the grass.

8 Q He didn't pull it into this grass?

9 A That's correct.

10 Q Okay. All right. Now -- if you'll bear with me.

11 A Yes, sir.

12 Q This Searle velocity thing you talked about --

13 A Yes, sir.

14 Q -- that's basically an equation?

15 A It is and it's done from several different studies of,
16 of Searle himself and basically we've actually done tests as
17 well.

18 Q So, it's after -- it's named after the fellow who came
19 up with it?

20 A That is correct.

21 Q Okay. And part of that equation is something called
22 DT, correct?

23 A Yes, sir.

24 Q That's the distance the pedestrian I guess the word is
25 thrown here?

Michael Duncan - Cross-examination
by Mr. Shealy

1 A Distance throw, yes, sir.

2 Q Okay. So you have to know that in order to get the
3 velocity that you've found?

4 A Yes, sir, you have to -- you have to have a distance,
5 yes, sir.

6 Q Okay. And I'm a little confused. I've been through
7 your report. Everything says that you took it from where
8 you felt the impact happened.

9 A Yes, sir.

10 Q How do you determine where you feel the impact
11 occurred?

12 A Well, in this incident, it's not on -- like I said,
13 it's in this other part of the report. There's what we call
14 a debris field and from where the debris field starts, he
15 has to have some type of distance where he's at. If you
16 take it back in line, it looks like where he's hit, there's
17 a mark that's in the grass up to where he comes to rest.
18 So---

19 Q There's a mark in the grass?

20 A ---he has to have -- through the or from the -- certain
21 part of the grass, mulch area, through the bushes to his
22 final resting.

23 Q So, you've testified that there was a mark in the grass
24 where he was hit?

25 A There appeared to be. I mean I can't specifically say.

Michael Duncan - Cross-examination
by Mr. Shealy

1 Some people can say, you know, there's a scuff mark on the
2 road. That's what we try to look for. This is appeared to
3 where he, he was struck at.

4 Q Okay.

5 A Can I say for one hundred percent that was the exact
6 spot?

7 No, sir, it could of been some carry distance from the
8 car. So, he could of been hit further back.

9 Q Okay. And you wrote a report in this case, correct?

10 A Yes, sir.

11 Q And---

12 A As far as report as?

13 Q Just into the Multidisciplinary Accident Investigation
14 Team.

15 You have a report?

16 A A lot of our, our report comes from the CAD drawing,
17 yes, sir.

18 Q Okay. well, I'm gonna come up and hand you something
19 --

20 A Okay.

21 Q -- that I'm calling your report.

22 A Yes, sir.

23 Okay. Yes, sir, that's part of the report.

24 Q Okay. And now I see where you say in that report,
25 sorry, I had it just a second ago, that y'all determined

Michael Duncan - Cross-examination
by Mr. Shealy

1 where y'all thought he had been struck.

2 A Yes, sir.

3 Q But in that sentence it starts with while walking the
4 area, I don't have a mark in the grass. You don't mention a
5 mark in the grass.

6 A That's -- it leads from where we're at. I mean no, I
7 probably didn't put it in there, but this is where, if you
8 go back to the pictures, there's evidence markers or flags
9 that we planted. So we basically put one where we felt that
10 this was the collision area.

11 Q Where y'all felt---

12 A Yes, sir.

13 Q ---it was the collision area?

14 A Yes, sir.

15 Q Okay. Bear with me one second.

16 A Yes, sir.

17 (Pause.)

18 Q Okay. I think that's all I have for this witness. If
19 I may get that back from you.

20 A Yes, sir.

21 THE COURT: Redirect, Mr. Gray?

22 SOLICITOR GRAY: No, sir.

23 THE COURT: All right, sir. You may step down. Thank
24 you very much.

25 Any objection to the witness being excused, Mr. Shealy?

Michael Duncan - Cross-examination
by Mr. Shealy

1 MR. SHEALY: No.

2 THE COURT: You, you have the right to leave if you'd
3 like.

4 That was not placed into evidence?

5 Is that -- that one was?

6 THE WITNESS: Yes, sir.

7 SOLICITOR GRAY: Yes, sir.

8 THE COURT: Hand that to the court reporter.

9 THE WITNESS: Yes, sir. Thank you.

10 THE COURT: Mr. Gray, you ready for your next witness?

11 SOLICITOR GRAY: Yes, sir, Your Honor.

12 THE COURT: All right. You may call them.

13 SOLICITOR GRAY: Coroner Rusty Clevenger.

14 THE COURT: All right. Sir, if you'll come forward to
15 be sworn please.

16 RUSTY CLEVINGER, being first duly
17 sworn, testified as follows:

18 THE COURT: Have a seat please, and once you're seated,
19 state your name please.

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you.

22 THE WITNESS: My name is Charles R. Clevenger. I'm
23 commonly known as Rusty Clevenger.

24 THE COURT: Thank you.

25 Mr. Gray, your witness.

Rusty Clevenger - Direct examination
by Solicitor Gray

1 SOLICITOR GRAY: Yes, sir, Your Honor.

2 DIRECT EXAMINATION

3 BY SOLICITOR GRAY:

4 Q I apologize for not -- Mr. Clevenger.

5 where do you work now, sir?

6 A I'm the coroner of Spartanburg County.

7 Q How long have you held that position?

8 A Since January of 2009.

9 Q Before that, what did you do?

10 A I began my career as a sheriff's deputy in 1985.

11 Graduated the academy in February of 1987. From there I

12 went to a short stint in investigations in narcotics and

13 vice. From there to the detective division.

14 I left the detective division in the violent crimes

15 section, 1997. Began investigative career with the

16 solicitor's Office, 1997. I took on an initiative for

17 forensic coordinator, 2005, as a joint operation between the

18 solicitor and the sheriff, and I ran for office in 2008 and

19 was elected in 2009 for coroner.

20 Q Forensic coordinator, did you deal with violent crimes
21 at that time?

22 A Yes, sir. well, I dealt with a number of different
23 crimes from accident investigation to violent crime
24 investigation.

25 Q And have you had any training in death cases, violent

Rusty Clevenger - Direct examination
by Solicitor Gray

1 death cases?

2 A That has been the majority of the emphasis of my
3 career, yes, sir.

4 Q Where have you had some training at?

5 A I've had a number of different schools, homicide
6 investigation, advanced homicide investigator, taught by
7 Vernon Geberth, nationally known homicide instruction. I've
8 been to the academy for homicide investigation school. I've
9 had a number of investigative schools in my career.

10 Q And have you testified about the manner of death
11 anytime in any Court?

12 A No, sir, I haven't testified in the manner of death.

13 Q Okay. What are your duties and responsibilities now as
14 the coroner?

15 A Part of my responsibility is make sure that a cause is
16 identified. I do that through the pathologist that just
17 testified today, and then I take the information that my
18 office gathers, as well as law enforcement gathers, apply it
19 to what the pathologist tells me, and I assign a manner of
20 death to every suspicious or unattended death in Spartanburg
21 County.

22 Q Thank you.

23 At this time we offer the coroner as an expert in
24 determining the manner of death.

25 MR. SHEALY: Your Honor, I think we do have an

Rusty Clevenger - Direct examination
by Solicitor Gray

1 objection to that. I do have an objection to that.

2 THE COURT: what is that?

3 MR. SHEALY: My understanding is that the coroner is an
4 elected position. I'm not sure how that makes you an expert
5 in testifying as to the manner of death. He's testified to
6 a bunch of other courses that he's taken, it sounds like, as
7 an investigator.

8 THE COURT: Are you, are you asking him for an opinion
9 at this point in time or are you asking what his findings
10 were?

11 SOLICITOR GRAY: What his findings were.

12 THE COURT: Coroners do make findings.

13 MR. SHEALY: Your Honor, it's my understanding, from
14 what he's just asked to qualify him as, is it's going to be
15 an opinion.

16 THE COURT: Well, I'm gonna -- unless the witness has
17 been qualified as an expert he'll not be allowed to offer
18 opinions.

19 MR. SHEALY: Your Honor, it's my understanding they're
20 attempting to offer him as an expert.

21 SOLICITOR GRAY: We withdraw that, Your Honor.

22 THE COURT: Okay. He's withdrawing that.

23 MR. SHEALY: Okay.

24 Q what are the four types or manners of death that you
25 deal with?

Rusty Clevenger - Direct examination
by Solicitor Gray

1 A Okay. They're, they're four primarily and one we have
2 the option for, if we can't make a ruling one way or
3 another, natural, accident, homicide, and suicide and the
4 fifth would be undetermined if the evidence doesn't weigh
5 one, one way or another. So there are five.

6 Q Could you please, please explain the four types?

7 A Sure natural death, of course, is the mechanism most of
8 us come to our death as a natural cause. Some disease
9 process or, or other effect.

10 An accidental death would be -- that was totally -- not
11 necessarily totally unavoidable, but unavoidable would, you
12 know, for a better -- a good example would be like a fall.

13 The next is suicide, which is actually a criminal
14 event, and that occurs when you take your own life, but no
15 one's ever prosecuted simply because there's no one to
16 prosecute, and then homicide is the intentional act of you
17 taking the life of another.

18 Q Basically one person takes a life of another person?

19 A Yeah, one human being takes the life of another human
20 being.

21 Q Now, you can't determine whether or not it's
22 intentional, can you?

23 A Not all the time, no, sir.

24 Q And my understanding is you didn't determine that in
25 this situation, did you?

Rusty Clevenger - Direct examination
by Solicitor Gray

1 A well, I ruled this case a homicide.

2 Q You ruled it a homicide?

3 A Yes.

4 MR. SHEALY: Objection, Your Honor. He just testified
5 to his opinion, what this was.

6 THE COURT: well, the -- I think coroners are required
7 to give rulings on death by law, are they not?

8 MR. SHEALY: well, judge, again, it's -- it wasn't---

9 THE COURT: He's stating what his ruling is. I'll
10 overrule the, the objection.

11 SOLICITOR GRAY: No further questions at this time,
12 Your Honor.

13 THE COURT: All right. Mr. Shealy, you may
14 cross-examine.

15 MR. SHEALY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. SHEALY:

18 Q Is it Mr. Clevenger, Coroner Clevenger?

19 How do I---

20 A You can call me Rusty if you'd like.

21 Q well, I, I appreciate that, but I probably ought to
22 call you Mr. Clevenger I suppose.

23 what you've testified to is you take the findings of
24 the pathologist, right, and you combine that with some
25 investigation?

Rusty Clevenger - Cross-examination
by Mr. Shealy

1 A The investigation, yes, sir.

2 Q Right.

3 And the investigation of the officers or the law
4 enforcement officers?

5 A Law enforcement, my office, and the, the pathologist,
6 yes, sir.

7 Q Okay. And the pathologist gets a history basically
8 from law enforcement as well, right?

9 A My office and law enforcement, yes.

10 Q Okay. So, your ruling I suppose is, in large part,
11 based on what law enforcement and your office have come up
12 with?

13 A It's---

14 Q Correct?

15 A ---the totality of the circumstance, correct.

16 Q Okay. So, y'all are -- I mean your rulings are
17 informed by what they're telling you?

18 A Correct.

19 MR. SHEALY: Okay. That's all I have for this witness,
20 Your Honor.

21 THE COURT: Anything on redirect?

22 SOLICITOR GRAY: No, sir, Your Honor.

23 THE COURT: Sir, you may step down. Thank you very
24 much.

25 THE WITNESS: Thank you.

1 (WHEREUPON, a bench conference was held at this time.)

2 THE COURT: All right. Mr. Gray, are we ready to
3 start?

4 SOLICITOR GRAY: Yes, sir, Your Honor.

5 THE COURT: Are you ready to start for the defense?

6 MR. SHEALY: Yes, sir, Your Honor.

7 THE COURT: Thank you, Mr. Shealy.

8 Bring the jury in.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: The record will reflect the jury has
12 returned to the courtroom.

13 The State may call its next witness.

14 SOLICITOR GRAY: State calls Dwayne Corn.

15 THE COURT: All right. Come forward, sir, to be sworn
16 please.

17 DWAYNE CORN, being first duly
18 sworn, testified as follows:

19 THE COURT: Once you're seated, sir, state your name.

20 MR. SHEALY: J. Dwayne Corn.

21 THE COURT: Mr. Gray, your witness.

22 SOLICITOR GRAY: Thank you.

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION

25 BY SOLICITOR GRAY:

Dwayne Corn - Direct examination
by Solicitor Gray

1 Q Mr. Corn, where do you work?

2 A Spartanburg County Coroner's Office.

3 Q How long have worked?

4 A Worked for the Coroner's Office twice, from 1998 to
5 2000, and I returned in 2006 to present.

6 Q Okay. What are your primary duties and
7 responsibilities?

8 A I'm a senior investigator with the Coroner's Office.
9 In addition to that I also process all the photos in the
10 office. My job primarily consists of going to scenes,
11 meeting with families, processing evidence as necessary,
12 collecting evidence, and then, once we complete the autopsy,
13 if necessary, compile that into a report.

14 Q On May 15th, 2012, did you go out to Mary Black
15 Hospital for a crime scene?

16 A I did, yes, sir.

17 Q All right. And, again, you work for Mr. Clevenger, is
18 that correct?

19 A I do, yes, sir.

20 Q All right. You're one of his investigators?

21 A Yes, sir.

22 Q You went out there and what did you do at that crime
23 scene?

24 A Initially, when I got to the scene, the scene was
25 already -- perimeter tape had been set off with, with

Dwayne Corn - Direct examination
by Solicitor Gray

1 evidence tape. The coroner, Coroner Clevenger, and our
2 assistant chief investigator, Ellen Holmes, arrived on scene
3 a few minutes before I did. Initially I started securing
4 outside perimeter photographs. Those photographs were
5 depicting what I saw from the direction of Houston
6 Elementary looking towards the hospital, and then back up
7 Skylyn Drive to the Day School looking back in from north
8 to, to where the scene actually occurred on the other side
9 of the hedges.

10 Upon entering the scene I began to photograph the
11 decedent. All the evidence had already been marked as such
12 by the Sheriff's Office and Highway Patrol who are also on
13 scene investigating.

14 It was a joint investigation with the agencies, and the
15 whole intent of, of our purpose was to make sure we
16 documented what we saw with the decedent himself. It was
17 hot that day. So, we erected a tent to preserve evidence,
18 to preserve any further decomposition and, additionally, to
19 preserve the integrity of our decedent.

20 Q Did you do any, anything further?

21 A I did. The photographs were taken showing tire tracks
22 that led from Skylyn Drive into the scene itself and then
23 back out back onto Skylyn Drive. Those tire tracks were,
24 were documented leading up to the body and exiting back
25 through a row of hedges that entered and exited back to

Dwayne Corn - Direct examination
by Solicitor Gray

1 Skylyn Drive.

2 So, the, the purpose of that was to show the, the tire
3 tracks leading in and out and with the body placement where
4 that all transpired.

5 Q And you said to secure the scene and prevent further
6 decomposition --

7 A Correct.

8 Q -- of the body.

9 Did you do anything else with Mr. Daniels---

10 A Well---

11 Q ---body?

12 A We examined the body making sure that we noted any
13 injuries to the body with photographs that would be further
14 described at autopsy by our pathologist. So, those injuries
15 were depicted on the body at the time of the investigation
16 for Doctor Wren to further describe at the autopsy itself.

17 Q Did you take the body to the autopsy?

18 A We did take the body. Once all of the scene was
19 processed at Skylyn Drive, we secured the body in a body bag
20 and made sure that we follow the body to the hospital the
21 entire time. Once the body arrived to the hospital, the
22 body was secured until the autopsy itself.

23 Q Thank you.

24 May I approach the witness, Your Honor?

25 THE COURT: You may.

Dwayne Corn - Direct examination
by Solicitor Gray

1 Q I'm gonna show you what's been marked as State's
2 Exhibits 57 through 75 and ask you if you recognize those.

3 A These are photos that I did take from the exterior of
4 the scene, and this is as I'm entering the scene depicting
5 the, the tire tracks, the debris from the hedges, and then a
6 name tag of the decedent. I did secure these photographs to
7 take them, yes, sir.

8 Q You took these photographs?

9 A I did, yes, sir.

10 Q And these are accurate representations of---

11 A They are.

12 Q ---the crime scene that day?

13 A Yes, sir, they are.

14 SOLICITOR GRAY: At this time, Your Honor, I would like
15 to move into evidence items 57 through 75.

16 THE COURT: Any objection?

17 MR. SHEALY: No objection, Your Honor.

18 THE COURT: Without objection they'll be admitted as
19 marked.

20 (WHEREUPON, State's Exhibit Nos. 57 through 75 were
21 received into evidence at this time.)

22 THE COURT: You may proceed.

23 SOLICITOR GRAY: No further questions, Your Honor.

24 THE COURT: Your witness, counselor.

25 MR. SHEALY: Your Honor, I have no questions for this

Dwayne Corn - Direct examination
by Solicitor Gray

1 witness.

2 THE COURT: All right, sir. You may step down. Thank
3 you very much.

4 THE WITNESS: Thank you.

5 THE COURT: Those exhibits stay with the court
6 reporter.

7 SOLICITOR GRAY: Yes, sir.

8 At this time, Your Honor, I'd like to publish those to
9 the jury.

10 THE COURT: You may do so.

11 SOLICITOR GRAY: Thank you, Your Honor.

12 THE COURT: By publishing, I'll allow him to show you
13 the photographs since they've now been placed into evidence.

14 Are you gonna pass them around?

15 SOLICITOR GRAY: Yes, sir.

16 THE COURT: All right. Please do.

17 As we pass them around we'll be calling other
18 witnesses. You can look at them, but please don't allow
19 them to distract you from what's going on in the courtroom.

20 You may call your next witness.

21 SOLICITOR GRAY: State calls Deputy Rosenberg.

22 THE COURT: Mr. Rosenberg, step forward and be sworn
23 please.

24 ROBERT ROSENBERG, being first duly
25 sworn, testified as follows:

Robert Rosenberg - Direct examination
by Solicitor Gray

1 THE COURT: Once seated, state your name please, sir.

2 THE WITNESS: Officer Robert Rosenberg.

3 THE COURT: All right. Your witness, counselor.

4 SOLICITOR GRAY: Thank you, sir.

5 DIRECT EXAMINATION

6 BY SOLICITOR GRAY:

7 Q What are your primary duties and responsibilities?

8 A I'm employed with the Spartanburg County Sheriff's
9 Office and my primary duties now, I'm currently assigned as
10 evidence custodian.

11 Q And what does an evidence custodian do?

12 A Evidence is collected in the field and it's brought
13 into the Sheriff's Office. My job is to make -- is to take
14 it in, catalog it and secure it and make sure it stays
15 secure while the investigation's going on and until it goes
16 to Court.

17 Q How was evidence brought into you?

18 A Different versions. Officers bring it in. We have
19 some lockers or steel encased boxes. They're locked. They
20 can put it in these lockers.

21 The public does not have access to that area. It stays
22 secured. If we're not there -- if we're open, they bring it
23 into our office, and the officers bring it into our office
24 and we take it in that way.

25 Q Did -- does anybody have access or just you?

Robert Rosenberg - Direct examination
by Solicitor Gray

1 A We have three evidence custodians and then three
2 supervisors that I believe are -- have access to our office.

3 Q So, once the evidence is secured, that's what you mean?

4 A Nobody -- they have a window they have to come to.
5 They ask for the evidence or see it at the window and we
6 bring it to the window, and either they can sign it out or
7 they can view it there.

8 Q And I said -- see you have a number of evidence
9 sheets---

10 A Yes.

11 Q ---in front of you.

12 What does that track?

13 A The officer, when he collects the evidence, will list
14 what he collects, and who collects, at what time, and what
15 location. They bring it to us and we sign it as receiving
16 and it keeps a time date for us, and it shows where I
17 received this evidence on March 19th, 2012, at nine
18 o'clock in the morning. It shows also that I took it out
19 for Court. I signed it out yesterday because I been -- it's
20 been in my possession or it's been locked up in our office
21 since then.

22 Q Okay. And you don't give this evidence out to anyone
23 else?

24 A The investigator has a right to come and sign it out.

25 Q But in this case, in this particular case, has any

Robert Rosenberg - Direct examination
by Solicitor Gray

1 evidence been signed out before this date?

2 A I would have to go through my sheets.

3 Q Yes, sir.

4 A Let's see. They were signed out by, excuse me, a crime
5 scene log sheet was signed out by Sergeant Hogsed to assign
6 evidence numbers to it. Let me see. And it was returned
7 also to our office. The solicitor's office, Todd Wilson,
8 signed out an audiotape.

9 Q Besides those two pieces of evidence --

10 A And it was signed back in also.

11 Q Okay. Thank you.

12 A Yes, sir.

13 Q Besides those two pieces of evidence, everything else
14 has been in your control---

15 A Yes, sir.

16 Q ---secured by the Sheriff's office?

17 A Yes, sir.

18 Q Thank you.

19 Nothing further at this time, Your Honor.

20 THE COURT: Okay. Your witness, counselor.

21 MR. SHEALY: Your Honor, I have nothing, nothing for
22 this witness either.

23 THE COURT: All right, sir. You may step down. Thank
24 you very much.

25 THE WITNESS: Yes, sir.

Mark Rody - Direct examination
by Solicitor Gray

1 THE COURT: State may call its next witness.

2 SOLICITOR GRAY: May I approach, Your Honor?

3 MR. SHEALY: I think we may need to approach.

4 THE COURT: Please.

5 (WHEREUPON, a bench conference was held out of the
6 hearing of the jury at this time.)

7 SOLICITOR GRAY: We're ready to proceed, Your Honor.

8 THE COURT: Call your next witness.

9 SOLICITOR GRAY: Doctor Mark Rody.

10 THE COURT: Come forward, sir. Step up to my left to
11 be sworn please.

12 DOCTOR MARK RODY, being first duly
13 sworn, testified as follows:

14 THE COURT: Have a seat please, sir, and once seated,
15 state your name.

16 THE WITNESS: I'm Bret Rody.

17 THE COURT: Thank you.

18 Mr. Gray, your witness.

19 SOLICITOR GRAY: Thank you.

20 DIRECT EXAMINATION

21 BY SOLICITOR GRAY:

22 Q I apologize, Doctor Rody.

23 May I approach the witness, Your Honor?

24 THE COURT: You may.

25 THE WITNESS: Thank you.

Mark Rody - Direct examination
by Solicitor Gray

1 Q Doctor Rody, please give us a little educational
2 background please.

3 A I'm, I'm a physician. I went to medical school at the
4 University of Oklahoma between 1983/1987. Did a year
5 internal medicine internship, and then I did a residency in
6 emergency medicine between 1988 and 1991, and I'm board
7 certified in ER, and I'm currently -- well, I initially came
8 to town to be the medical director of the ER at Spartanburg
9 Regional, which I did for four years, and I'm currently the
10 medical director of the ER at Mary Black and I also direct
11 two other ERs currently for Apollo MD, and I work in all
12 these ERs clinically.

13 SOLICITOR GRAY: Your Honor, we'd like to have Doctor
14 Rody qualified as an expert.

15 THE COURT: Any objection?

16 MR. SHEALY: No, Your Honor.

17 THE COURT: We'll qualify him as an expert within the
18 field of medicine.

19 You may proceed.

20 SOLICITOR GRAY: Thank you, sir.

21 On March 14th, I believe, did you treat Mr. Sandy
22 Westmoreland?

23 A Yes, I did.

24 Q What did Mr., Mr. Westmoreland complain of?

25 A Well, he was initially seen by Doctor Carter, and so

Mark Rody - Direct examination
by Solicitor Gray

1 it's one of those where, in emergency medicine, if the, if
2 one physician is going off shift, and he can't finish a
3 patient say within 30 minutes or so, if they're, if they're
4 test pending, then we will take over the care of that
5 patient. But the -- Mr. Westmoreland was complaining of
6 abdominal pain.

7 He also complained that, when he was sleeping in the
8 floor and straightened up, his abdominal pain was worse. He
9 had loose bowels with some blood in his stools and he had
10 had that for one week.

11 He's had four hernias. He has a history of kidney
12 stones. His symptoms started that day. The symptoms were
13 present during the time that I was seeing him, and he was
14 complaining of pain in the right lower quadrant in his
15 abdomen. His symptoms were exacerbated by contact. They
16 were relieved by nothing. This is Doctor Carter's initial
17 chart that I'm reading from. So that was the initial
18 presentation and then my documentation is sort of on the
19 back-end of the chart.

20 So, we both, both have documentation because Doctor
21 Carter saw the patient initially, and so the initial
22 presentation was documented by Doctor Carter, and, as Doctor
23 Carter went off shift, I took over the care of Mr.
24 Westmoreland.

25 Q About what time did he arrive at the ER?

Mark Rody - Direct examination
by Solicitor Gray

1 A Looks like he got into the ER at 17:56, which is 5:56
2 in the evening.

3 Q And you say Doctor Carter treated him first?
4 Was he---

5 A Yes.

6 Q ---given any medication?

7 A He was.

8 Q What type of medication?

9 A He was given some pain medication by Doctor Carter. He
10 was given one of Dilaudid and four of Zofran, and looks like
11 that was ordered like at 19:18.

12 Q So, you---

13 A Well, excuse me. His first dose was at 18:04 where he
14 received one milligram of Dilaudid and four of Zofran as a
15 nausea medication. So frequently, when we give narcotics,
16 we'll give an antiemetic with it. So, the narcotic is
17 Dilaudid. The antiemetic is Zofran. And so he received
18 that at 18:03 and 18:04, the first dose, and then he
19 received another dose at 19:18, which is 7:18.

20 Q All right.

21 A So, he received the same thing both times. So,
22 Dilaudid 1, Zofran 4, at roughly six o'clock and then about,
23 about 7:15 he received another dose.

24 Q And when did you take over his care?

25 A I took over his care, it's hard for me to say exactly,

Mark Rody - Direct examination
by Solicitor Gray

1 because sometimes Doctor Carter will kind of hang around the
2 ER for 30, 45 minutes, an hour, maybe an hour and 15 minutes
3 later. So, I'm not sure exactly what time it was.

4 I mean theoretically it should be like right on the
5 money at seven o'clock PM.

6 Q Uh-huh. (Affirmative).

7 A But Doctor Carter tends to hang around a while, and so
8 it could of been anywhere in kind of that seven -- let me
9 see if I can tell who ordered that second dose.

10 I can't tell by looking at this cause it doesn't have a
11 doctor. No, it is -- it looks like Doctor Carter did order
12 both doses cause it's J.C., Jim Carter, on both of those
13 dosages. So, I probably took over the care some time after
14 he ordered that pain medication, which would of been not
15 somewhere between 19:30 and 20:00.

16 Q That's 7:30 and 8:00?

17 A Yes. Let me just look in here for a second and see if
18 I can tell when my scribe might of put an entry in here, and
19 then I have a better -- I would have a better idea.

20 No, I, I can't tell when I took, when I took the
21 patient over, but it would of been, you know, after Doctor
22 Carter gave him that second, second dose of pain medication.

23 Q Did you give Mr. Westmoreland, Westmoreland, excuse me,
24 any pain medication?

25 A Did I give him any?

Mark Rody - Direct examination
by Solicitor Gray

1 Q Yes.

2 A No.

3 Q Okay.

4 A I didn't give him any more. The last, the last shot of
5 pain medication he received was at 7:18, and he didn't, he
6 didn't get any more pain medication, and he didn't, he
7 didn't leave till, you know, close to midnight. So, it was
8 close to like four hours and 45 minutes or so, you know,
9 after he received that last dose of pain medication. I
10 didn't give him anymore.

11 Q All right. How does Dilaudid affect your faculties?

12 A How does it affect your what?

13 Q Abilities, walking, talking, driving.

14 A It depends on what your, your level of tolerance to the
15 medication case and everybody responds differently. But it
16 can make you a little bit groggy and it can make you a
17 little bit sleepy. But it's -- when you give it IV, it's,
18 it's somewhat, you know, quick in and out, and that's why
19 Doctor Carter evidently gave him another shot within an hour
20 and 15 minutes of giving him the first shot cause you see
21 the first does was given at 18:04. So, it's 6:04. And then
22 he gave him another shot at 7:18. So less than an hour and
23 15 minutes later he received a second shot.

24 When you give medications either orally or IM, they may
25 last a little bit longer. The IV meds, especially the IV

Mark Rody - Direct examination
by Solicitor Gray

1 pain meds, will hit the patient quicker when you give them
2 IV, but also be out of their system quicker.

3 Q So, in this case, a four hour difference, would it --
4 could the Dilaudid still be in a person's body after four
5 hours?

6 A I would say that it wouldn't have any impact on the
7 patient after four hours especially when you give it IV
8 because its half life is, is quick enough to where it's
9 gonna be out of your system at that point.

10 Q Do you -- you said something about tolerance of the
11 individual.

12 Do you know the tolerance of -- potential tolerance of
13 Mr. Westmoreland?

14 A Well, let me look at his prior medications. He was on
15 Lantus for his diabetes. He was on Nexium probably for
16 ulcers or gird. Singulair is an asthma medication. Aspirin
17 once a day. Spiriva is for asthma or COPD. Advair is an
18 inhaled steroid for asthma or COPD. Symbicort is another
19 inhaled steroid for asthma or COPD. Proventil is a rescue
20 inhaler for COPD or asthma. Requip is a psych medication as
21 is, as is Cymbalta, and he's on Lortab 10s three times a
22 day.

23 So, somebody takes Lortab 10 three times a day is gonna
24 have, you know, a greater tolerance for the medication and
25 probably not respond to those lower doses of narcotics like,

Mark Rody - Direct examination
by Solicitor Gray

1 you know, versus somebody who is never on narcotics and gets
2 a shot of Dilaudid. They would tend to be more zonked by
3 it.

4 SOLICITOR GRAY: One moment, Your Honor.

5 THE COURT: Yes, sir.

6 (Pause.)

7 Q Someone taking the Lortab 10 you said?

8 A Yes, that's a, that's a big dose of Lortab. That's the
9 strongest Lortab tablet that, that -- Lortab isn't made
10 anymore, but that's the strongest Lortab tablet. You could
11 prescribe either 5, 7.5, or 10s. So, the 10s, that's a
12 strong tablet.

13 Q Do you know how long he'd been taking the 10s?

14 A I don't.

15 Q Okay. But someone taking those for a substantial --
16 what would be a substantial amount of time to have built up
17 drug tolerance?

18 A Let's say even if he had been taking it for a week
19 consistently, three times a day, he would already start to
20 develop a tolerance or build up a tolerance in terms of how
21 that next dose of pain medication would, would affect you.

22 Q All right.

23 A And certainly if he'd taken it for years, then, then
24 it's even more impressive. But I don't recall how long he'd
25 been on that.

Mark Rody - Direct examination
by Solicitor Gray

1 Q All right. As far as that day, the discharge, would
2 you have discharged anyone if they were intoxicated in any
3 manner?

4 A No, and he wasn't. I mean I remember him, and one of
5 the things I remember is that he was over in Room 4, and our
6 physician's desk at Mary Black sits over very near the
7 ambulance entrance, and so I basically kind of catercornered
8 to his room and I was in his room several times before, I
9 think, he hit his boyfriend in the nose with like a crutch
10 or something, and his boyfriend was very upset that he got,
11 you know, smacked in the face and I went in and talked to
12 him about it, and that's when I called the police.

13 And then there was a time after that that I watched him
14 get up and walk to the bathroom, which, from Room 4, is on
15 the other side of the hall and the restroom's like probably
16 30 yards away, and he walked over there just fine. He had
17 no problem doing that. He was communicating with me and the
18 nurses just fine. There was no alteration in his mental
19 status. There was no problem there.

20 Q And when he, when you discharged him, still no
21 problems?

22 A No problem. I mean he didn't, didn't receive any more
23 medicine and he was, he was a okay from a mental status
24 standpoint. And either -- I can't remember whether it was
25 the police or the sheriffs that were there. But there was,

Mark Rody - Direct examination
by Solicitor Gray

1 you know, prolongation of his visit because the police and
2 the sheriffs were there investigating the incident because I
3 had the nurses call the police or the sheriffs when he hit
4 his, his boyfriend with a crutch in the nose.

5 And we were trying to get his boyfriend to like check
6 in to see if he had like a broken nose, and see if his, his
7 needed nose sutured or anything. And I think his boyfriend
8 opted not to do that. He would not check in.

9 But then there was a period of sort of, you know, even
10 beyond the time that we probably would of already discharged
11 him from a clinical or a medical prospective. He was still
12 there talking with the, the sheriffs or the police about the
13 incident and they were making a determination in terms of
14 whether they were gonna file charges and things like that.

15 Q In your opinion, did the defendant suffer from any
16 impairment whatsoever due to drugs or Dilaudid or anything
17 like that?

18 A No, not, not any of the times I saw him and certainly
19 not at discharge.

20 Q Thank you.

21 A Absolutely not.

22 Q Thank you, sir.

23 No further questions.

24 Please answer any questions Mr. Shealy may have.

25 THE COURT: Mr. Shealy, your witness.

Mark Rody - Direct examination
by Solicitor Gray

1 MR. SHEALY: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. SHEALY:

4 Q Doctor Rody, can you finish that list of medications
5 that he was on?

6 We kind of stopped at Lortab.

7 A And then the -- as we continue the list, he was on
8 vitamin B daily, Magnesium daily, Glyburide Metformin, which
9 is a diabetic oral an -- an oral hypoglycemic agent for Type
10 II diabetics, diabetics, and he was on Diazepam, which is
11 Valium, 10 milligrams twice a day, Lisinopril for his blood
12 pressure, and that's all I have on the list here.

13 Q Okay. So, you've testified already that the Lortab is
14 a pretty big dose?

15 A Yes, sir.

16 Q Is that Diazepam a pretty big dose too?

17 A Yes.

18 Q That's a pretty big dose too?

19 A It is.

20 Q Okay.

21 A It is 10, 10-milligram. Like five would be kind of
22 more your conventional dose of Valium to take at one time.
23 So, 10, 10's a pretty big, big shot at a time for Valium.

24 Q Okay. Now, I -- it's my understanding, again from
25 having gone to a number of doctors and things, that whenever

Bret Rody - Cross-examination
by Mr. Shealy

1 you mix certain drugs they have a -- what's called a
2 synergistic effect.

3 Can you explain that?

4 A Well, I don't know if I'd exactly call it synergism,
5 but if you take multiple medications that cause sedation,
6 then that could certainly -- one can pile on top of the
7 other.

8 Q All right. Which is why you're not suppose to, for
9 example, mix alcohol with a narcotic?

10 A That's correct. And it also has to do with, you know,
11 where the drug's metabolized. Like alcohol's metabolized in
12 the Cytochrome p450 system in the liver. And so if you're
13 on medications like Zantac or Zithromax or Levaquin or other
14 medications that are metabolized at that site, then you can
15 potentiate the affects of those drugs by competing for that
16 metabolizing enzyme system.

17 So, there's potentiation related to how the drugs are
18 metabolized, and also the more sort of simplistic notion
19 that every sedating medication you have could make you more
20 sedate, and if you take a couple together, you're certainly
21 gonna be more tired or sedated.

22 Q Sure.

23 Okay. And Lortab would be one of those sedating -- I
24 mean---

25 A Correct.

Bret Rody - Cross-examination
by Mr. Shealy

1 Q Right.

2 And would Valium be somewhat sedating?

3 A Valium can be sedating, again, depending on how long he
4 had been on it and how use to it he was. If my wife took a,
5 you know, one Valium 10 she'd sleep for three days. I have
6 patients that take one Valium 10 and say they don't even
7 feel it. So, it kind of depends on how much they've been
8 taking and what they're use to, and, you know, like the
9 easiest way to say it is just what they're use to in their
10 system.

11 So -- but generally speaking, if you or I took a Valium
12 10, we'd probably take us a nice long nap.

13 Q Okay. But you can't testify as to how long he'd been
14 on those---

15 A I don't know---

16 Q ---Valiums and meds?

17 A ---since Doctor Carter saw him initially. I don't know
18 even know that Doctor Carter would know.

19 Q Okay.

20 A Because typically, in the ER, we're just saying okay,
21 what medications are you on.

22 Q Right.

23 And he was there complaining of a -- it appears a fibro
24 nodular structure outside his abdominal wall musculature.

25 What does that mean?

Bret Rody - Cross-examination
by Mr. Shealy

1 Any idea?

2 A What was it on him or what was it in general?

3 Q Well, I suppose what is it in general and then if you
4 knew, know what is it on him.

5 A In general, it would be something, you know, would be
6 above the rectus muscle layer in the abdomen. Something
7 subcutaneous that it was either -- and you'd probably have
8 to biopsy it to know or feel it to know. But it could be
9 anywhere from a nerve base structure like a neuroma, a fibro
10 nodular structure related to prior surgery. It could be a
11 light lipoma or just a fatty tumor. So, you have to feel it
12 and/or biopsy it to know for sure what it was.

13 Q Okay. And you didn't biopsy or y'all didn't biopsy?

14 A I never really biopsy a lesion in the emergency
15 department. I think that's more a surgeon's or a
16 dermatologist's job.

17 Q Okay. All right. So, you were reading through his
18 list of medications and you were kind of saying what all of
19 those things were for.

20 A Yes.

21 Q From that medication list, it appears that he has COPD
22 or asthma of some kind?

23 A Correct.

24 Q From what you testified to, some kind of gird I believe
25 you've testified to?

Bret Rody - Cross-examination
by Mr. Shealy

1 A Well, I was just looking at the -- he was on Nexium.
2 So, that's either for gird or for gastritis or for ulcers.

3 Q Okay.

4 A It's used for those three things.

5 Q And then---

6 A Or esophagitis I guess would be the fourth.

7 Q And then there's also some issues with diabetes it
8 looks like?

9 A Correct.

10 Q Okay. Now, Doctor Rody, you've testified that you
11 thought he was fine, but that you never discharge people who
12 are intoxicated.

13 How, how can you never discharge someone who's
14 intoxicated from the ER I mean?

15 A I don't know that -- he asked the question do I, do I
16 ever discharge somebody intoxicated. I didn't answer that
17 question specifically.

18 Q Okay.

19 A I mean yes, there are patients who still have alcohol
20 in their bloodstream when they're discharged from the
21 emergency department. We couldn't possibly hold everybody
22 there until their alcohol level got to zero.

23 So, if I answered it in that way then I was mistaken
24 and I don't think I did. But, if I did, then that would be
25 incorrect that --.

Bret Rody - Cross-examination
by Mr. Shealy

1 Q Okay.

2 A Yeah, certainly patients that come in intoxicated would
3 stay until we either felt like they could function on their
4 own or they had somebody that was a family member or a
5 friend who would be driving them home and looking after them
6 and things like that.

7 Q Right.

8 A So, no, it wouldn't be correct to say that like --
9 let's say somebody used some drugs or they drank some
10 alcohol that I would keep them there until their 397 alcohol
11 level came down to zero. I absolutely would not do that.
12 But I wouldn't discharge them until I knew that they had
13 like family there that would drive them home and they could
14 look after them, make sure they're not driving, things like
15 that.

16 Q Okay. And you've testified that all of these things
17 affect everybody differently?

18 A Correct.

19 Q Right?

20 And as you've already discussed -- testified, you
21 can't, you can't tell us how long -- what his tolerance was
22 to these things?

23 A That's correct.

24 Q Okay. And you also testified something about a half
25 life.

Bret Rody - Cross-examination
by Mr. Shealy

1 What is that?

2 A The half life is the -- the full life of the drug would
3 be the entire time that the drug stayed in your system. The
4 half life is when you have a remaining like 50 percent
5 potency of the drug, and so it's not like you can't just
6 break it into half.

7 So, let's say the drug could stay in your system for 18
8 hours. The half life might be three hours where the drug
9 kind of goes from 100 percent down to 50 percent in terms of
10 its availability to do its function.

11 Q Okay. Do you know what the half life of Dilaudid is?

12 A I don't remember exactly what it is. It's just my feel
13 for using it over the last 27 years as an ER doctor.

14 Q Okay. But all you've testified to is you, in your
15 experience, it's pretty quick?

16 A It's pretty quick when given IV. Medications tend to
17 hang around longer they -- like patients in pain would much
18 prefer typically to get a medication IV because they can
19 feel the effects of it quicker. So, it hits you quicker and
20 it's out of your system quicker whereas an IM or
21 intramuscular medication or say a subcutaneous injection is
22 also slower to kind of get into the system, but slower to --
23 longer to hang around.

24 Q Okay. Okay. At it appears that you wrote -- I suppose
25 you would of written a prescription for Ibuprofen?

Bret Rody - Cross-examination
by Mr. Shealy

1 A Yes, sir.

2 MR. SHEALY: I've got nothing further for this witness.

3 THE COURT: Redirect?

4 SOLICITOR GRAY: Yes, sir.

5 THE COURT: Yes, sir.

6 REDIRECT EXAMINATION

7 BY SOLICITOR GRAY:

8 Q Mr. Shealy asked you about intoxication level and
9 driving.

10 On this night with this defendant, did you feel
11 comfortable letting him go?

12 A I did because I had observed him for -- and I actually
13 did find the time. You asked me earlier when he was checked
14 out to me. Doctor Carter notes that at 7:47 he checked in,
15 into my or he was signed over to me. He was my
16 responsibility.

17 So, I had the patient under my care from so 7:45 until
18 I wrote his discharge instructions at 23:32. So, we're
19 looking at three hours and 45 minutes I had the chance to
20 see him and on several occasions, watch him walk to the
21 bathroom, et cetera. So I had him there for -- I had him
22 there for almost four hours not counting the time that
23 Doctor Carter had him there for an hour and 45 minutes.

24 So, five hours and 45 five minutes or so he was there.
25 So, we had plenty of time to observe him. I had a chance to

Bret Rody - Redirect examination
by Solicitor Gray

1 talk to him multiple times, talked to him after the incident
2 involving the crutch to the face, and then watched him walk
3 to the bathroom, talked to him about his discharge
4 instructions and his test results.

5 So, you know, I had a great feel for him by that time,
6 and so yes, I was comfortable with him leaving.

7 Q Thank you.

8 THE COURT: Recross.

9 MR. SHEALY: Thank you, Your Honor. Just a couple.

10 RECROSS EXAMINATION

11 BY MR. SHEALY:

12 Q I'm concerned about this tolerance thing, and I guess
13 the best way for me to understand it would be alcohol.

14 Does alcohol have the same kind of tolerance?

15 A It does.

16 Q It does.

17 Okay. Now, you say that you talked to him and that he
18 seemed fine?

19 A Yes.

20 Q Correct?

21 A Yes.

22 Q Okay. But I, I guess my concern is, whenever someone
23 would -- comes to the ER and is intoxicated on alcohol,
24 would you still let them drive away even though they seemed
25 fine at a .1 level?

Bret Rody - Recross examination
by Mr. Shealy

1 A Depends on -- yeah, I mean it depends on what they look
2 like and how they were functioning in the department. .1 is
3 the next guys zero versus, you know, .1 may make the next
4 person intoxicated.

5 So, yeah, it depends on what they look like and, you
6 know, how the -- you know, a big job of ours in emergency
7 medicine is evaluating how a patient looks or Gestalt to the
8 patient or Gestalt to the patient, and getting an idea of
9 how they interact with us, and what their mental status is,
10 how they can walk.

11 Since I talked to him multiple times, watched him walk,
12 interacted with him, and had him under my care for I think I
13 said three hours and 45 minutes a little bit ago, I think,
14 with that length of time watching and observing him, I can
15 make a determination whether he's safe to go and drive and
16 so forth, yes.

17 Q Okay. And so the answer to my question about the
18 fellow with the .1 alcohol level, even though he looks okay,
19 you would let him drive---

20 A If---

21 Q ---from there?

22 A ---he looked good, he was interacting with me well, had
23 a normal mental status, and --.

24 Q Despite it---

25 A Just walking and talking fine.

Bret Rody - Recross examination
by Mr. Shealy

1 Q Despite it being illegal for him to drive?

2 A That's correct.

3 Q Okay. Thank you.

4 THE COURT: Anything further from the witness?

5 SOLICITOR GRAY: No, sir, Your Honor.

6 THE COURT: All right, sir. You may step down. Thank
7 you very much.

8 You wish to excuse the witness?

9 SOLICITOR GRAY: Yes, sir.

10 THE COURT: Any objections?

11 MR. SHEALY: No, Your Honor.

12 THE COURT: You're free to go, sir. Thank you very
13 much---

14 THE WITNESS: Thank you.

15 THE COURT: ---for coming today.

16 All right. Have we reached the point where we need to
17 go over the evidence with some other witnesses?

18 Is there another witness to be called?

19 SOLICITOR GRAY: No, sir, Your Honor.

20 THE COURT: Beg your pardon?

21 SOLICITOR GRAY: No, sir.

22 THE COURT: So, we've completed the witnesses for today
23 is what I'm asking you?

24 SOLICITOR GRAY: Yes, sir.

25 THE COURT: All right. Ladies and gentlemen of the

1 instructions in regards to your behavior while away from the
2 courthouse, please stand.

3 (No response.)

4 THE COURT: It appears that all jurors have been able
5 to follow my instructions thus far.

6 When we broke yesterday afternoon, the state was in the
7 process of presenting its case, and the state may call its
8 next witness.

9 SOLICITOR GRAY: Thank you, Your Honor.

10 The state calls Deputy Knighton.

11 THE COURT: Come forward, sir, to my left over here to
12 be sworn please.

13 ANTHONY KNIGHTON, being first duly
14 sworn, testified as follows:

15 THE COURT: Have a seat. Once you're seated, state
16 your name please.

17 THE WITNESS: Anthony Allen Knighton.

18 THE COURT: Thank you.

19 Your witness, Mr. Gray.

20 SOLICITOR GRAY: Thank you, sir.

21 DIRECT EXAMINATION

22 BY SOLICITOR GRAY:

23 Q How long have you worked for the Sheriff's Department?

24 A Eight years.

25 Q What are your primary duties and responsibilities now?

Anthony Knighton - Direct examination
by Solicitor Gray

1 A Crime scene investigator.

2 Q How long have you had that job?

3 A Oh, approximately four years.

4 Q So, on March 15th, 2012, you would of had that job?

5 A Yes, sir.

6 Q Now, crime scene investigator, the same as ID?

7 A Yes, sir.

8 Q What do you do?

9 A Process crime scenes, collect evidence, photograph the
10 scenes.

11 Q So, in this case there would be many photographs of
12 different scenes.

13 Which scene did you go to?

14 A I was at the scene at [REDACTED] Poole Street in Woodruff.

15 Q Is that the home of the defendant?

16 A Yes, sir.

17 Q What did you do when you got there?

18 A Photographed the vehicle in the driveway and evidence
19 that I collected off the vehicle.

20 SOLICITOR GRAY: May I approach the witness, Your
21 Honor?

22 THE COURT: You may.

23 Q I'm gonna show you what's been marked as State's
24 Exhibits 32, 33, and 34 and ask if you recognize those.

25 A Yes, sir.

Anthony Knighton - Direct examination
by Solicitor Gray

1 Q Did you take those pictures?

2 A Yes, I did.

3 Q And are the pictures of what, sir?

4 A These are berries under the headlight housing, red
5 berries. The second photograph is -- it's the red berries
6 from the front of the radiator stuck up in there, and the
7 third photograph is -- it's a broken twig that was
8 underneath the car.

9 Q And those were taken at --?

10 A At---

11 Q -- Poole Street?

12 A On Poole Street, yes, sir.

13 SOLICITOR GRAY: At this time, Your Honor, I'd like to
14 enter into evidence Exhibits 32, 33, and 34.

15 THE COURT: Any objection?

16 MR. SHEALY: No objection.

17 THE COURT: Without objection they will be admitted as
18 they've been marked.

19 (WHEREUPON, State's Exhibit Nos. 32, 33, and 34 were
20 received into evidence at this time.)

21 THE COURT: You may proceed.

22 SOLICITOR GRAY: Thank you, sir.

23 Now, is that the only thing you did was take pictures
24 of the scene?

25 A At the scene, yes, sir.

Anthony Knighton - Direct examination
by Solicitor Gray

1 Q Did you do anything else?

2 Did you collect any evidence?

3 A I collected the berries and the twig.

4 SOLICITOR GRAY: One moment, Your Honor.

5 THE COURT: Yes, sir.

6 (Pause.)

7 Q I'm gonna show you what's marked as State's Exhibit
8 102, 103, and 104, and ask you if you recognize this.

9 A Yes, sir, it's the evidence I collected at Poole
10 Street.

11 Q All right. Once you collected those items at Poole
12 Street, what did you do with those items?

13 A I put it in the envelope and sealed it and placed it
14 into evidence at the Sheriff's Office.

15 Q And it's been sealed ever since?

16 A Yes, sir.

17 Q Have you opened it for any reasons since that date --

18 A No, sir.

19 Q -- you collected them?

20 A No, sir.

21 Q What do those items purport to be?

22 A Sir?

23 Q What do those items purport to be?

24 You have some---

25 A 25 and 26 are the berries and 27 is the twig.

Anthony Knighton - Direct examination
by Solicitor Gray

1 Q For Court purposes, that would be 102, 103 and 104?

2 A Yes, sir.

3 SOLICITOR GRAY: At this time, Your Honor, I'd like to
4 enter State's Exhibits 102, 103, and 104 into evidence.

5 THE COURT: Any objections?

6 MR. SHEALY: Well, Your Honor, I think he needs to open
7 them to make sure that the items in them, in the envelope---

8 THE COURT: All right. He'd like to be sure the items
9 are in the---

10 SOLICITOR GRAY: That's fine.

11 THE COURT: ---envelopes are---

12 Q Officer, could you open those please?

13 A Yes, sir.

14 THE COURT: I'll direct the witness to open the
15 envelope or the bag. I'm not sure what the, the evidence is
16 in.

17 A It's berries.

18 Q Okay. Pull those out for me.

19 A They're loose.

20 Q They're loose berries?

21 A Yes, sir.

22 SOLICITOR GRAY: May I approach?

23 THE COURT: Would you like to step up and take a look?

24 MR. SHEALY: If he's testifying that they're the
25 berries he's collecting, that's fine. That's what I wanted

Anthony Knighton - Direct examination
by Solicitor Gray

1 to make sure of.

2 SOLICITOR GRAY: All right.

3 THE COURT: What number is that?

4 SOLICITOR GRAY: That is 102, Your Honor.

5 THE COURT: 102. All right. Thank you.

6 A These are the leaves from, that's 103, that was under
7 the radiator.

8 Q It was under the radiator of the vehicle?

9 A Of the vehicle at Poole Street.

10 Q Thank you.

11 A And this one -- and this is the twig that was
12 underneath the vehicle.

13 Q Thank you very much.

14 THE COURT: All right. The witness is confirmed the
15 items are present.

16 Any objection at this time?

17 MR. SHEALY: No, Your Honor.

18 THE COURT: All right. Without objection then they'll
19 be admitted as they've been marked.

20 (WHEREUPON, State's Exhibit Nos. 102, 103, and 104 were
21 received into evidence at this time.)

22 THE COURT: You may proceed, Mr. Gray.

23 SOLICITOR GRAY: Thank you, sir.

24 And as far as you know, the defendant drove that
25 vehicle or owned it?

Anthony Knighton - Direct examination
by Solicitor Gray

1 A As far as I know, yes, sir.

2 MR. SHEALY: Objection, Your Honor.

3 THE COURT: Sir?

4 MR. SHEALY: I mean I think he may have fixed his
5 question as to who owned the vehicle, but he can't testify
6 as to who drove the vehicle.

7 SOLICITOR GRAY: I said owned, Your Honor.

8 THE COURT: Okay. Proceed.

9 SOLICITOR GRAY: Thank you.

10 Did you collect any other evidence besides at, at the
11 scene at Woodruff?

12 A No, sir.

13 SOLICITOR GRAY: No further questions, Your Honor.

14 THE COURT: Mr. Shealy, your witness.

15 MR. SHEALY: I have no questions for this witness.

16 THE COURT: All right, sir. You may step down.

17 You wish to excuse this witness?

18 SOLICITOR GRAY: Yes, sir, Your Honor.

19 THE COURT: Any objections?

20 MR. SHEALY: No, Your Honor.

21 THE COURT: You're free to go if you'd like, sir.

22 Thank you for coming this morning.

23 (Pause.)

24 THE COURT: Thank you, sir. You're free to go.

25 THE WITNESS: Thank you.

David Hogsed - Direct examination
by Solicitor Gray

1 THE COURT: You may call your next witness.

2 SOLICITOR GRAY: Thank you, Your Honor.

3 State calls Deputy Hogsed.

4 THE COURT: Sir, if you'd come forward to be sworn
5 please.

6 (Witness complies.)

7 THE COURT: Thank you.

8 DAVID HOGSED, being first duly
9 sworn, testified as follows:

10 THE COURT: Have a seat please, and once seated, state
11 your name please.

12 THE WITNESS: David Hogsed.

13 THE COURT: Mr. Gray, your witness.

14 SOLICITOR GRAY: Thank you, sir.

15 DIRECT EXAMINATION

16 BY SOLICITOR GRAY:

17 Q Where do you work, sir?

18 A Spartanburg County Sheriff's Office.

19 Q How long have you worked there?

20 A I have been with the Sheriff's Office since 2005.

21 Q What are your primary duties and responsibilities now?

22 A I am the night shift supervisor sergeant of the crime
23 scene unit.

24 Q What does the crime scene unit do?

25 A The crime scene, ID, ID stands for identification. We

David Hogsted - Direct examination
by Solicitor Gray

1 can do a multitude of things. We are basically a support
2 unit for the Sheriff's Office and/or any agency that calls
3 for us related to crime scene investigation. So, we can go
4 from going out and taking photos of a vandalism or assault
5 victim to actually working a full blown homicide scene.

6 Q All right. On March 15th of 2012 did you work a
7 homicide scene?

8 A Yes, I was called at home and informed of the incident
9 on -- at [REDACTED] Skylyn Drive, which is Mary Black Hospital,
10 and responded there from my residence.

11 Q All right. I'm gonna show you what is been marked as
12 State's Exhibits 1 through 75 with, with the exception of 32
13 through 34, and ask you if you recognize those, sir.

14 A I do.

15 Q You took those pictures, sir?

16 A Yes.

17 Q And what are those pictures of?

18 A Actually they're -- they're actually from two different
19 locations.

20 Q All right.

21 A Some are from the crime scene itself or the incident
22 location on Skylyn Drive in front of Mary, Mary Black
23 Hospital, and the other is from our maintenance shop at [REDACTED]
24 Broadcast Drive where the Ford was towed to when it was
25 recovered from woodruff.

David Hogsed - Direct examination
by Solicitor Gray

1 Q Okay. The first scene, did you document the entire
2 scene with pictures?

3 A We did.

4 Q And the scene at the tow shop -- what is the tow shop?

5 A It's actually a maintenance shop. Spartanburg County
6 has its own wrecker services for, for us. When one of our
7 vehicles breaks down, through the numerous agencies or
8 divisions of Spartanburg County, instead of having to have
9 someone come tow it like a tow company, Spartanburg County
10 has its own wrecker service.

11 So what we do, on an incident like this, we have our
12 wrecker service come get the car and it takes it to our
13 maintenance shop. We have an agreement with our maintenance
14 shop. Basically they'll take it and they'll put it inside
15 for us, inside the shop, which is the maintenance shop where
16 we get our vehicles repaired or, or maintained, and it's
17 held there once we secure it until and -- well, in this
18 incident, a search warrant was done prior to anything being
19 processed to it at the shop.

20 Q So, my understanding is Mr. Westmoreland's vehicle,
21 vehicle was towed from his place of residence to the tow
22 shop?

23 A Yes, it was towed from Spartanburg County wrecker and
24 went to the address on Poole Street in Woodruff, and it
25 towed it to [REDACTED] Broadcast Drive, which is basically right

David Hogsed - Direct examination
by Solicitor Gray

1 behind the Sheriff's Office, if you know where that is, and
2 held there overnight. Prior to it being held -- if I may?

3 Q Yes, sir.

4 A Prior to it being held overnight we take evidence tape
5 and, and like you see on the, on the evidence bags, we have
6 a thinner kind that has actually for a date and a time. We
7 seal the doors with that evidence tape and date and initial
8 it. So, if we go back to it, since it's there overnight and
9 nobody sits there with it overnight, if that tape is broken,
10 then we know we have an issue. In this incidence, this tape
11 was not broken.

12 Q Thank you.

13 And during the scene at the hospital, you took the
14 pictures, I'm guessing, you laid out some type of markers?

15 A When we work a crime scene we basically take numerous,
16 numerous, numerous photos. We'll take photographs as is as
17 we see it when we first arrive. We take it at 360 degrees,
18 which basically means all the way around it. Then we'll go
19 back, and once we start doing our initial walk-through and
20 looking for items of evidence and so forth, we'll photograph
21 them as we see them then. Then we'll go back and we'll use
22 numbered placards, and we'll place those by those items of
23 evidence and rephotograph them showing them in correlation
24 where they are to one another and then actually close-ups of
25 each one.

David Hogsted - Direct examination
by Solicitor Gray

1 Q And, again, once you correlate these numbers, what do
2 you do with the items?

3 A Once they're collected and taken back to -- once
4 everything is collected and it's, it's basically put in its
5 own separate either bag, envelope, we, we use boxes, it's
6 taken back to the Sheriff's Office, and I'm gonna use police
7 lingo here, but it's bagged and tagged with everything on
8 it, and then it's submitted to our evidence room.

9 Q And it's sealed at that point?

10 A It's sealed prior to -- we seal it, crime scene
11 investigator will seal it, and when it's sealed, it goes
12 from us to our evidence room sealed.

13 Q And if there's any opening, is there documentation of
14 that?

15 A Yes, on our property sheets, on the bottom half, on the
16 bottom sections you'll see several lines that says received
17 by, reason, date, and time. That's what we refer to as a
18 chain of custody. So, if, for some reason, say an
19 investigator wanted something done with the item of
20 evidence, processed for latent fingerprints, DNA, whatever,
21 and it had already been put into the evidence room, I would
22 go to the evidence room, ask for that item, I would sign for
23 it, sign it out, keep that chain of custody showing that it
24 came from the evidence room to me.

25 I do what I needed to do with it and I take it back.

David Hogsed - Direct examination
by Solicitor Gray

1 I'd seal it back when I got done with it, take it back to
2 the evidence room, and they, in turn, would sign it showing
3 it came back into the evidence room.

4 Q No matter how small or big, you would put a number
5 associated with that heat sealed item?

6 A Yes.

7 SOLICITOR GRAY: Okay. At this time, Your Honor, I'd
8 like to introduce 1 through 77 with the exception of 32
9 through 34 of the pictures of the crime scene and of the
10 scene involving Mr. Westmoreland's vehicle.

11 MR. SHEALY: If I can just flip through them.

12 THE COURT: Yes. Allow, allow Mr. Shealy to look at
13 those please.

14 SOLICITOR GRAY: Yes, sir.

15 MR. SHEALY: Your Honor, I do have an objection as to
16 No. 56.

17 THE COURT: All right. The objection is?

18 MR. SHEALY: Judge, it would be our position that it's
19 irrelevant and its probative value is outweighed---

20 THE COURT: May I see that?

21 MR. SHEALY: Yes, Your Honor. If I may.

22 (Pause.)

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, this is one of the occasions I'm gonna ask you to step
25 back to the jury room while I discuss this matter with the

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by Solicitor Gray

1 lawyers. During your absence, please do not discuss the
2 case at all.

3 Thank you very much.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. First of all, let me ask the
7 State, it appears to be a, a close-up of some bruising on --
8 and I'm not sure---

9 SOLICITOR GRAY: Yes, sir.

10 THE COURT: ---where that picture came from.

11 SOLICITOR GRAY: Yes, sir, that's the picture from
12 the -- Deputy, Deputy Hogsed took it. It has been testified
13 to about the injuries sustained by the defendant and the,
14 and the victim in this case.

15 THE COURT: Uh-huh. (Affirmative).

16 SOLICITOR GRAY: That picture, and the victim being run
17 over by the defendant. So, we chose to show some injury to
18 the victim without being more graphic. We have many more
19 graphic photos that we agree were prejudicial.

20 In this case, Your Honor, I don't believe it's
21 prejudicial in this situation. I think it's more probative.
22 We have a distance photo, aerial. You can barely see the
23 victim. We have no photos, as of yet, of the injuries to
24 the victim, and that's what that tends to purport. It also
25 shows some bruising and potential, I don't know how else to

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1 say it, grass marks from where he was run over in this
2 situation, the impressions on his back.

3 THE COURT: All right. I'll hear from the defense.

4 MR. SHEALY: Your Honor, I don't know that Deputy
5 Hogsed can testify that those are grass marks or anything
6 like that. It looks to me like that was taken at the morgue
7 at the autopsy. I mean I don't believe it was taken at the
8 scene. I don't see how it's probative of anything.

9 I mean the pathologist has testified that that occurred
10 from a dislocation of the neck at the base of the, of the
11 skull. That, that is clearly not at the base of the skull
12 one, and, two, even if it were, it'd be our position that
13 that's far too prejudicial. I mean I don't see how it's
14 probative of anything.

15 I mean they've had people testify as to what the
16 injuries were. They've had a pathologist who was immanently
17 qualified as to testify to what those injuries were, he did,
18 and, Your Honor, I just don't see how it's probative of
19 anything. It's just an attempt to inflame the passions of
20 the jury.

21 THE COURT: All right. Last shot, Mr. Gray.

22 SOLICITOR GRAY: I understand, Your Honor. This is not
23 an attempt to inflame the jury. As I said before, we -- I
24 have pictures of the victim with grass in his mouth, with a
25 distended neck, broken femur.

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1 We did not want to enter those, introduce those
2 pictures, Your Honor. In this situation, you don't see the,
3 the bottom half of the defendant. You don't see his broken
4 neck at the top half. You see merely the indentations that
5 prove, I think in this situation, that he was run over and
6 that would corroborate what was testified to.

7 THE COURT: Well, the testimony of the pathologist
8 described the injuries.

9 SOLICITOR GRAY: Yes, sir.

10 THE COURT: It indicated that he -- it was of his
11 opinion that death was as a result of being struck by an
12 automobile. I've allowed photos in that show the body from
13 a distance, where it was found---

14 SOLICITOR GRAY: Yes, sir.

15 THE COURT: ---and where it was located, and I found
16 those to be probative simply because they, they showed the
17 scene and the entry and the exit for the vehicle and
18 proximity to the hospital and things of that nature.

19 This case -- I don't, I don't find this is probative of
20 any issue that's, that's material to the case, and I do find
21 that it's prejudicial effect would outweigh any probative
22 value.

23 So, I'm going to sustain the objection.

24 MR. SHEALY: Thank you, Your Honor.

25 SOLICITOR GRAY: Yes, sir, and a point, Your Honor, I

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1 misspoke earlier. The pictures were 1 through 75.

2 THE COURT: I see.

3 SOLICITOR GRAY: Not 1 through 77.

4 Is that your understanding?

5 MR. SHEALY: That is, Your Honor.

6 THE COURT: So, any objection to 1 through 75 other
7 than the one I've ruled out?

8 MR. SHEALY: Other than 56, no, sir.

9 THE COURT: All right. And that number was what, 50?

10 COURT REPORTER: 56.

11 (WHEREUPON, State's Exhibit Nos. 1 through 31 and 35
12 through 53 were received into evidence at this time.)

13 THE COURT: Okay. Let's bring the jury back.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: Can I get you folks to move down one more
17 seat and that way we'll fill in somebody on the end?

18 (Jurors comply.)

19 THE COURT: We're missing one person. Here you go.
20 You're the alternate, is that right?

21 THE JUROR: Yes, sir.

22 THE COURT: You have to sit in that seat out there.
23 You're the only person with an assigned seat. Everybody
24 else can sit wherever they want, but you have to sit in that
25 one.

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1 Okay. The record will reflect that the jury has
2 returned to the courtroom.

3 I have sustained an objection to Exhibit 56. All other
4 offered photographs have been admitted into evidence, and
5 that was 1 through 70---

6 SOLICITOR GRAY: 75.

7 THE COURT: ---75 except with the exception of 56.

8 You may proceed.

9 SOLICITOR GRAY: Thank you, Your Honor.

10 CONTINUED DIRECT EXAMINATION

11 BY SOLICITOR GRAY:

12 Q Okay. I have here what purports to be a piece of a
13 headlight assembly.

14 Did you recover -- that would be your Number 1 I
15 believe.

16 A Actually I recovered numerous items out there.

17 Q All right. As part of this investigation, correct?

18 A Right.

19 Q Is several items here be State's Exhibit 78, 79, 80,
20 81. I don't see 82.

21 Ask you if you recognize the items, sir.

22 A When I tell you what these are I'm gonna be using the
23 Spartanburg County Sheriff's Office evidence item number.

24 These will correlate with the numbered placards that you'll
25 see in the photographs. So, whatever -- when you're looking

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1 at the photographs, whatever Item Number 1 is would be our
2 Item Number 1 in this bag and so forth. Item 2 there would
3 be Item 2 in this bag.

4 So, those photographs correlate with the item number
5 that's up here as far as the Sheriff's Office number goes.

6 Q And those are items you collected from Skylyn Drive---

7 A Yes, all---

8 Q ---crime scene?

9 A From the Skylyn Drive crime scene or location, there
10 was actually -- let me refer to my notes just a minute. So
11 that's 24, 25 -- about 25 items collected out there that
12 day.

13 Q And these items have been heat sealed until now?

14 A Well, they're sealed with evidence tape.

15 Q Okay.

16 A What this is, and you'll notice I'm having to open it
17 with a pocketknife, and the reason being it's a tamper proof
18 evidence tape. So, once it's on here and it's sealed, if
19 you was -- if I was to try to remove it, you ever take duct
20 tape and put it on something that it's been there and you go
21 to print it, you know, the thread's still there. It's
22 basically what you would run into here with it being a
23 tamper proof evidence.

24 Q Now, would you please identify each item?

25 A State's Exhibit No. or our evidence number?

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by Solicitor Gray

1 Q Both if you like.

2 A Okay. Spartanburg County Sheriff's Office Item --
3 evidence Item Number 1, State's Exhibit No. 78---

4 Q Hold on a second.

5 A ---is---

6 Q Don't, don't open it yet.

7 A Okay.

8 Q What is that?

9 A This is a piece of a headlight assembly. Item 2 is a
10 piece of a headlight assembly. Three is a piece of a
11 headlight lense cover, and our Item Number 4 is a piece of a
12 headlight lense cover, which is State's Exhibit No. 78, 79,
13 80, and 81.

14 SOLICITOR GRAY: At this time we'd move these pieces of
15 evidence into the record, Your Honor.

16 MR. SHEALY: Again, judge, I know it's tedious, but I
17 think he needs to open it.

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

19 MR. SHEALY: I said I know it's tedious, but I think he
20 needs to open the envelope and say this is what I---

21 THE COURT: All right. I'll ask the witness to open
22 the envelope and confirm the items are present.

23 Q Which item is that?

24 A This is State's Exhibit 78, our Item Evidence Number 1,
25 a piece of a headlight assembly cover which is actually the

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1 section that would be back behind the bulb.

2 State's Exhibit 79 or Evidence Item Number 2 is a piece
3 of headlight assembly, and, and, of course, some of these
4 are small.

5 State's Exhibit 80, our, our Evidence Item 3, same
6 thing as it was, a piece of headlight lense cover.

7 State's Exhibit 81 or Evidence Item Number 4 is a piece
8 of a headlight lense cover.

9 SOLICITOR GRAY: All right. We'd like to move those in
10 evidence, Your Honor.

11 MR. SHEALY: No objection.

12 THE COURT: Without objection, they'll be admitted.

13 (WHEREUPON, State's Exhibit Nos. 78 through 81 were
14 received into evidence at this time.)

15 Q Thank you.

16 I'm gonna present to you State's Exhibits 83, 84, 85,
17 86, 87, 88, 89, excuse me, and 90.

18 Did you recover all these items?

19 A Yes.

20 Q And all these items have been sealed since the date you
21 put them into evidence?

22 A That's correct.

23 Q And none of them have been removed until this day?

24 A That's correct.

25 Q would you please open these items and tell what they

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1 are?

2 A State's Exhibit 83 or our Item Number 6, bear with me,
3 this tape can be a little tricky, is an AT&T cell phone.

4 State's Exhibit, excuse me, 84, our Item Number 7, is a
5 lense from a set of eyeglasses.

6 State's Exhibit 85, our Item Number 8, is a piece of a
7 headlight lense cover.

8 State's Exhibit 86, our Item Number 9, is a piece of
9 a -- purple colored piece of a vehicle.

10 State's Exhibit 87, our Item Number 10, is a sneaker.

11 Eighty-eight, State's Exhibit 88, our Item Number 11,
12 is a set of eye glasses with, of course, the lense missing.

13 State's Exhibit 89, our Item Number 12, is a piece of
14 headlight -- of a headlight assembly.

15 State's Exhibit 90, our Item Number 13, is a white
16 cloth---

17 MR. SHEALY: Objection, Your Honor.

18 A ---with a red substance on it.

19 THE COURT: What's your objection?

20 MR. SHEALY: We made an agreement as to they couldn't
21 testify as to what was on there.

22 (Pause.)

23 MR. SHEALY: I'll withdraw the objection.

24 THE COURT: All right. You may proceed.

25 SOLICITOR GRAY: I'd like to enter these items into

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1 evidence, Your Honor.

2 THE COURT: Any objection to these items?

3 MR. SHEALY: No, Your Honor.

4 THE COURT: All right. They'll be received into
5 evidence as they have been marked.

6 (WHEREUPON, State's Exhibit Nos. 83 through 90 were
7 received into evidence at this time.)

8 Q I'm gonna show you what's been marked State's Exhibit
9 82, 91, and 92.

10 A State's Exhibit 82 is a piece of a bug guard that a lot
11 of people put on the front of the hood of the car.

12 State's Exhibit 92 is a piece of a headlight lense
13 cover.

14 State's Exhibit 91 is sneaker.

15 Q Would you please open those?

16 A Sure. State Exhibit 92, Evidence Item Number 15, is a
17 piece of a headlight lense cover.

18 State's Exhibit 82, Sheriff's Office Item Number 5, is
19 a piece of a bug guard.

20 State's Exhibit 91, our Item Number 14, is a sneaker.

21 SOLICITOR GRAY: At this time, Your Honor, I'd like to
22 move these items into evidence.

23 THE COURT: Any objections?

24 MR. SHEALY: No, Your Honor.

25 THE COURT: All right. Without objection they'll be

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1 received into evidence as they have been marked.

2 (WHEREUPON, State's Exhibit Nos. 82, 91, and 92 were
3 received into evidence at this time.)

4 THE COURT: You may proceed.

5 SOLICITOR GRAY: Thank you, Your Honor.

6 Q I have here State's Exhibits 93, 94, 95, 97, and 98.

7 Ask you if you recognize those.

8 A Excuse me. State's Exhibit 97, our Item Number 20, and
9 I have it listed as a, as a black pouch, which I really
10 don't know what you call it, but inside it has what I refer
11 to it as religious items as in beads and documentation or
12 pamphlet.

13 State's Exhibit 98, our Item Number 21, is a piece of a
14 headlight lense cover.

15 State's Exhibit 95, our Item Number 18, is a piece of a
16 headlight lense cover.

17 State's Exhibit 93, our Item Number 16 -- and do you
18 mind if I stand up, sir?

19 THE COURT: Oh, you may stand up, yes, sir.

20 A We have it listed as a bundle of clothes. We have a
21 shirt, socks, some underwear, and, and a blue shirt in
22 there.

23 Q whose clothing is that?

24 A It was near the body of Mr. Daniels. So I'm assuming
25 it's his.

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by Solicitor Gray

1 SOLICITOR GRAY: Your Honor, at this time we'd like to
2 move---

3 A Well, I've got one more.

4 Q Oh, excuse me. You have one more.

5 A State's Exhibit 94, our Item Number 17, is -- looks
6 like a lunch box and then this is the bag of various
7 clothing, and these were on the ground as well near
8 Mr. Daniels.

9 SOLICITOR GRAY: At this time, Your Honor, I would like
10 to move these items into evidence.

11 THE COURT: Any objections?

12 MR. SHEALY: No objection, Your Honor.

13 THE COURT: Without objections they'll be admitted as
14 they have now been previously marked.

15 (WHEREUPON, State's Exhibit Nos. 93 through 95, and 97
16 and 98 were received into evidence at this time.)

17 THE COURT: You may proceed.

18 SOLICITOR GRAY: Thank you, Your Honor.

19 Q I have here State's Exhibit Nos. 96, 99, 100, 101, 102,
20 109, and 112.

21 I'm gonna ask you, again, did you collect most all of
22 these items?

23 A I did.

24 Q And these item were sealed with evidence tape?

25 A Yes.

David Hogsed - Direct examination
by Solicitor Gray

1 Q Please open these.

2 A State's Exhibit 112, our Item Number 38, and this was
3 actually collected at the autopsy at the hospital when I
4 went to the autopsy that afternoon, is a red hooded sweat
5 jacket that would of been -- that was worn by Mr. Daniels.

6 State's Exhibit 99, our Item Number 22, is a gray
7 shirt.

8 Q Is that from the victim?

9 A Sir?

10 Q The gray shirt, was that from the victim?

11 A We collected it at -- on Skylyn Drive. I'd have to see
12 the photographs.

13 Q All right.

14 A State's Exhibit 109, our Item Number 32, and this was
15 collected when I, excuse me, when I processed the vehicle or
16 served a search warrant on the vehicle at the county shop or
17 our maintenance shop, is a piece of the passenger side front
18 headlight assembly.

19 State's Exhibit 96, our Item Number 19, and this was
20 from the crime scene on Skylyn Drive, a piece of the bug
21 guard.

22 State's Exhibit 100, our Item 23, and since they were
23 in such close proximity to one another at the crime scene,
24 it's actually three pieces of the headlight assembly.

25 State's Exhibit 101, our Item Number 24, another piece

David Hogsed - Direct examination
by Solicitor Gray

1 of the headlight assembly.

2 State's Exhibit 105, our Item Number 28, is a purple
3 colored piece of the vehicle.

4 SOLICITOR GRAY: At this time, Your Honor, I'd like to
5 enter these items into evidence.

6 THE COURT: Any objection?

7 MR. SHEALY: No objection.

8 THE COURT: Without objections they'll be admitted as
9 they've been marked.

10 (WHEREUPON, State's Exhibit Nos. 96, 99 through 102,
11 105, 109, and 112 were received into evidence at this time.)

12 Q Deputy Hogsed, I'd like to show you State's Exhibit
13 106, 107, 113, 114, 115, and 116.

14 A State's Exhibit 113, our Item Number 39, which was
15 collected when I attended the autopsy of Mr. Daniels, I call
16 it pajama bottoms. Looks like blue checkered colored.

17 Q And those were taken off Mr. Daniels at the autopsy?

18 A At the autopsy, yes, sir.

19 State's Exhibit 114, our Item Number 40, also collected
20 at the autopsy, is -- these were also taken off of
21 Mr. Daniels, his underwear.

22 Item -- State's Exhibit 115, our Item Number 41,
23 collected off Mr. Daniels at the, at the autopsy, is socks
24 he was wearing.

25 State's Exhibit 116, our Item Number 42, also collected

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by Solicitor Gray

1 at the time of the autopsy, a black colored t-shirt.

2 Is that the last one --

3 Q No.

4 A -- you handed me just now?

5 Q This one --

6 A Yeah.

7 Q -- and that one.

8 A Excuse me.

9 State's Exhibit 107, our Item Number 30, and this was
10 collected once the vehicle, the search warrant was executed
11 on the, on the vehicle at our, at our county shop -- can I
12 lay these out right here?

13 Q (Solicitor nods affirmatively.)

14 A It's two pieces of a hood bug guard for a vehicle.

15 Q Did you get that off of the defendant's vehicle?

16 A It was actually in the rear cargo area. This was a
17 Ford -- like a Ford Explorer type vehicle. So, it had been
18 removed from the front of the vehicle and was actually in
19 the back cargo area.

20 Q Was it visible?

21 A Yes, you could see it, but there were actually some
22 items on top of it like grocery items and like a couple of
23 Dollar General bags. It had like some grocery items in it.
24 So, the bug guard had been placed in and then the -- those
25 bags of grocery items. But, when you opened the cargo area,

David Hogsed - Direct examination
by Solicitor Gray

1 yes, you could see it.

2 Q Yes.

3 Again, that's the bug guard from the defendant's
4 vehicle?

5 A That's correct.

6 Q And that item has been sealed until this day when you
7 opened it?

8 A Well, it actually -- it says it had been opened to let
9 someone from the solicitor's office view it on March 26th
10 --

11 Q All right.

12 A -- and then resealed.

13 Q Thank you.

14 A And it's been sealed since then.

15 Q I believe there was one up with more item on the front
16 here.

17 A Oh, I'm sorry.

18 You want me to put this back in here?

19 Q Uh-huh. (Affirmative).

20 A State's Exhibit No. 106, our Item Number 29, also
21 collected from inside of the, the vehicle or at our
22 maintenance shop when I did the search warrant, is a, I
23 guess metal, plastic, and whatever that is, walking cane.

24 Q And where did you retrieve that from?

25 A It was actually sitting, when you opened the passenger

David Hogsed - Direct examination
by Solicitor Gray

1 door, you have your transmission weld right here, driver's
2 seat, transmission weld, passenger seat. It was sitting
3 beside -- leaning in the passenger side floorboard, but
4 against that wheel weld or the transmission weld. So, it
5 was sort of sitting upward.

6 Q And, again, that was retrieved from the defendant's
7 vehicle?

8 A It was.

9 Q Thank you.

10 At this time, Your Honor, I would like to move, move
11 these items into evidence.

12 THE COURT: Any objection?

13 MR. SHEALY: No objection.

14 THE COURT: They'll be admitted as they've been marked.

15 (WHEREUPON, State's Exhibit Nos. 106, 107, and 113
16 through 116 were received into evidence at this time.)

17 Q All right. Mr. Hogsed, I show you State's Exhibit 108.
18 Can you---

19 A State's -- I'm sorry.

20 Q Go ahead.

21 A State's Exhibit 108, our Item Number 31 --.

22 Q What is that, sir?

23 A It is actually the front grill of the vehicle, and bear
24 with me, this is actually in two bags. Let me just do this
25 the easiest way.

David Hogsed - Direct examination
by Solicitor Gray

1 Q And that came from the defendant's vehicle?

2 A Yes, driver's side, passenger's side.

3 Q No one tampered with that at all?

4 A It may of been viewed by someone from the Solicitor's
5 office, but other than that no, it would of been sealed.

6 Q Thank you.

7 At this time I'd like to enter one -- Item 108 into
8 evidence.

9 THE COURT: Any objection?

10 MR. SHEALY: No objection.

11 THE COURT: Without objection it will be admitted.

12 (WHEREUPON, State's Exhibit No. 108 was received into
13 evidence at this time.)

14 SOLICITOR GRAY: I have no further questions for
15 Sergeant Hogsed.

16 THE COURT: Give him a moment to get that situated.

17 MR. SHEALY: Yes, sir.

18 THE WITNESS: Yeah, it's gonna---

19 MR. SHEALY: Yes, sir, I will.

20 THE COURT: It's gonna take you a second.

21 THE WITNESS: Can I just sit it back here and we'll do
22 it---

23 THE COURT: Give him -- well, give him a hand.

24 (Pause.)

25 THE COURT: All right. You may proceed, Mr. Shealy.

David Hogsed - Cross-examination
by Mr. Shealy

1 MR. SHEALY: Thank you, judge.

2 CROSS-EXAMINATION

3 BY MR. SHEALY:

4 Q Sergeant Hogsed, I don't have a whole lot of questions.

5 I guess you didn't do the mapping of this scene, right?

6 A No, that was actually done by the South Carolina
7 Highway Patrol M.A.I.T. Team.

8 Q That was that thing they testified to with the
9 architect?

10 It's like a survey?

11 A It's like a survey equipment.

12 Q Survey equipment.

13 A I'm actually trained to use one, but I didn't do it.

14 Q Okay. But you did take a couple of measurements,
15 right, looks like from your report?

16 A Yes, we did.

17 Q Okay. The only measurement I'm asking you about is
18 where was the closest item, the closest item of debris?

19 A The closest item of debris --.

20 Q To the roadway.

21 A From the roadway edge, closest to Mr. Daniels location,
22 which would be Item Number 1---

23 Q Okay.

24 A ---which is a -- I think it's a piece of a headlight
25 assembly.

David Hogsted - Cross-examination
by Mr. Shealy

1 Q I believe so.

2 A Was like 10-foot 1-inch.

3 Q Ten foot one inch from the roadway?

4 A From the roadway exit.

5 Q The edge of the roadway?

6 A Right.

7 Q Into the shoulder?

8 A Going in towards the bushes over the shoulder.

9 Q Okay. I guess the grassy part?

10 A The grassy part, yes.

11 Q Ten feet of the grass then, right?

12 A Uh-huh. (Affirmative).

13 MR. SHEALY: Okay. That's all I have of this witness.

14 THE COURT: Redirect?

15 SOLICITOR GRAY: Thank you.

16 REDIRECT EXAMINATION

17 BY SOLICITOR GRAY:

18 Q What was the furthestest item?

19 A We didn't get that because it was so spread out. I
20 mean this was basically a 360-degree area. So, we, we only
21 took, because of the, the Highway Patrol did the mapping,
22 prior to them getting there we actually by two measurements
23 and, and that was one of them. And so once it was agreed
24 upon that they would do the mapping, since you can go back
25 into the mapping system and actually calculate how far this

David Hogsed - Redirect examination
by Solicitor Gray

1 is, Item 1 is from two, and two to three and so forth, we
2 didn't take measurements.

3 Q You say items are in 360-degree?

4 A Well, like in a circle around in -- one when we worked
5 it. You have them going, following the path, but you have
6 that point of impact where they go outward. So you have
7 them here, here, here, and so forth.

8 Q And that, that's depicted in some---

9 A It's in the pictures, yes.

10 Q ---pictures?

11 Thank you.

12 THE COURT: Anything further, Mr. Shealy?

13 MR. SHEALY: I don't believe, no, Your Honor.

14 THE COURT: Any questions?

15 MR. SHEALY: No, Your Honor.

16 THE COURT: Oh, you may step down.

17 Wish to excuse the witness?

18 SOLICITOR GRAY: Yes, sir, Your Honor.

19 THE COURT: Any objections?

20 MR. SHEALY: No, Your Honor.

21 THE COURT: You're free to go, sir. Thank you very
22 much.

23 SOLICITOR GRAY: At this time the State rests, Your
24 Honor.

25 THE COURT: All right. Ladies and gentlemen, that

1 completes the presentation of evidence by the State in this
2 case. There's some matters that I need to take up with the
3 attorneys at this point in time. So, be a good time for you
4 to take a break and go back to the jury room. As always,
5 I'll ask you not to discuss anything about the case until
6 I've asked you to begin your deliberations.

7 You may retire to the jury room.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: Any motions at this time?

11 MR. SHEALY: Yes, Your Honor.

12 We'd make a motion for directed verdict on both counts.
13 Judge, we would be -- it's our position that the State has
14 failed to prove any malice aforethought here. They've not
15 shown a motive. They've not shown really anything that
16 would suggest that my client intended to kill Mr. Daniels.
17 In fact -- I mean they've, they've eminently proved that
18 there was an accident. They've proven that there was --
19 that it was by a car, but they have not proved my client's
20 intent.

21 It would be our position that it's an issue as to
22 whether they've actually proven it was even my client,
23 judge. So, it would be our position that they've simply not
24 proven any kind of malice. They've not even presented any
25 evidence of malice, judge.

1 Thank you.

2 THE COURT: Mr. Gray.

3 SOLICITOR GRAY: Thank you, Your Honor.

4 This leaving the scene of an accident, hit and run with
5 death in this situation, the car was---

6 THE COURT: I think his motion may be directed toward
7 the murder charge.

8 Is that correct?

9 MR. SHEALY: Your Honor, if I may, I'll be making
10 another one as to the leaving the scene, but---

11 THE COURT: Oh, okay.

12 MR. SHEALY: ---I will be---

13 THE COURT: Well, why don't you make your motions and
14 then I'll let him argue the whole thing?

15 MR. SHEALY: Yes, sir.

16 Well, judge, and I'd also point out that they've not
17 proven that he didn't come back.

18 Judge, what you actually have to do is you have to give
19 information and render aid. What we've heard is, in the
20 giving the information, is give his name, address, I'm
21 quoting from 56-5-1230 as to duties that 1210 relates to,
22 should give his name, address, and registrations number of
23 the vehicle to the person struck.

24 Now, there's also a -- that he has to render reasonable
25 assistance, Your Honor, including the carry and making

1 arrangements or carrying of such person to a physician.

2 Your Honor, as we've heard from the pathologist, his
3 death was immediate. There was no aid to be given. My
4 client couldn't have done anything to save his life. We
5 heard that from the pathologist. It was an immediate death
6 with the exception of maybe of a few seconds, there's a
7 little bit of a pressure, that's why he said that there was
8 so little blood in his cavity.

9 There was no reasonable aid that could be given, and
10 there is nothing in here, contrary to what Ms. Moricle told
11 the jury, to give the information to the police. That's
12 not -- that's explicitly not in 56-5-1230. It's to the
13 person struck, again, and reasonable aid.

14 Now, as to the murder again, we would reiterate that
15 there is no proof that my client had any malice here. There
16 just wasn't.

17 Thank you, judge.

18 THE COURT: Now Mr. Gray.

19 SOLICITOR GRAY: Yes, sir.

20 Leaving the scene of an accident can be proven
21 circumstantially in this case through Mr. Westmoreland. It
22 was his vehicle that struck Mr. Daniels. Additionally, Mr.
23 Westmoreland, after he struck Mr. Daniels, was stopped in
24 the City, didn't tell anyone, including the officer, where
25 it happened. He coolly drove home after that to Woodruff.

1 Once officers got there, he casually walked out, did not
2 tell them what had happened, that Mr. Daniels was dead.
3 They never informed him of that fact. Reasonable aid could
4 have been rendered by the hospital, and he could of walked
5 maybe 200 yards and saved Mr. Daniels life.

6 Mr. Westmoreland is not a doctor. He did not know what
7 injuries befell Mr. Daniels. He could of called EMS. He
8 could of called the police. He let Mr. Daniels lay in the
9 grass in front of Mary Black from approximately 12:30 to
10 7:30 in the morning with Mr. Clay Lyles found him.

11 That would be leaving the scene of an accident and not
12 doing something reasonable to render aid to the victim, and,
13 in this situation, as Mr. Shealy has pointed out, the victim
14 was dead instantaneously, but he did not know that. He did
15 not go back to the scene.

16 Officers testified he made a circular motion. There
17 were no skid marks from back onto the street. He
18 accelerated through the curve once he hit the defendant,
19 spun him in the air. He threw clothes everywhere, items
20 everywhere. He sped up at that point.

21 The malice aforethought, in this situation, you're
22 gonna hear from Trooper Duncan as far as murder. He said he
23 did not veer off the road casually. He made a purposeful
24 turn. He gave the angle. This was not veering off the
25 road, a steering problem. He had to yank the, the car off

1 the road. Malice aforethought.

2 He could of used a gun, a knife. The weapon in this
3 situation was the 2,000-pound vehicle.

4 THE COURT: I think the standard charge says that the
5 use of a deadly weapon, malice can be inferred from that,
6 and a deadly weapon can be an ordinary object, depending on
7 how it's used, and that will be a jury question I believe.

8 SOLICITOR GRAY: Yes, sir.

9 THE COURT: All right. Go ahead.

10 MR. SHEALY: Your Honor, again, as to the, as to
11 Mr. Gray's arguments to leaving the scene, again, it -- as
12 he said, it, it was instantaneous.

13 THE COURT: Let me ask you a question.

14 MR. SHEALY: The solicitor -- Your Honor?

15 THE COURT: Is it your position that if someone is
16 killed there is no duty to stop and render any aid at all?

17 MR. SHEALY: Well, judge, no. If -- there is no proof
18 that he didn't stop, that he didn't come back cause Trooper
19 Duncan also testified that he couldn't testify as to what
20 somebody did as they were down the road.

21 THE COURT: But the statute says that you -- refers to
22 section 56-5-1230.

23 MR. SHEALY: Yes, sir.

24 THE COURT: And it says -- it gives name, address, and
25 registration number he's driving, and shall, upon request if

1 available, exhibit a driver's license to the person struck
2 or to the driver or person attending any vehicle collided
3 with, and shall render aid to any person injured in such
4 accident including carrying or making arrangements for the
5 carrying of the person to a physician, surgeon, hospital,
6 surgical treatment if it's apparent that such treatment is
7 necessary or if it's requested by the injured person.

8 So, it's not quite as simple as you've laid it out.

9 MR. SHEALY: Your Honor, I've read the statute. I mean
10 I've -- the statute requires reasonable assistance and I
11 understand it includes carrying and I think I read that.

12 THE COURT: And so if you, if you kill somebody---

13 MR. SHEALY: But---

14 THE COURT: ---and you realize they're dead, you're
15 free to go?

16 MR. SHEALY: Judge, I didn't write the statute. I can
17 just tell you that that's what the statute seems to say.

18 THE COURT: Well, I'm not sure that's what the statute
19 intends --

20 MR. SHEALY: Well---

21 THE COURT: -- the intent of the Legislature might of
22 been.

23 MR. SHEALY: Well, judge, I'd submit to you that
24 there's plain language there.

25 THE COURT: Well, what about his duty to take him to a

1 doctor to have him checked?

2 MR. SHEALY: Well, Your Honor, again, if the death is
3 instantaneous and it was clear, then I---

4 THE COURT: Well, I don't know if your client's a
5 doctor or not. Maybe he could of been revived or saved.
6 People are---

7 MR. SHEALY: Well, Your Honor---

8 THE COURT: That happens.

9 MR. SHEALY: We've had testimony that it couldn't have
10 happened.

11 THE COURT: Well now. But, at the time, you're telling
12 me he knew that himself?

13 MR. SHEALY: Well, judge, it would be our position that
14 they've not proven he didn't know that. They have to prove
15 it, judge. I mean -- and, again, I'm not the one -- I
16 didn't write the statute. I'm just reading the statute and
17 that's what it says.

18 THE COURT: So, if someone's killed, then you don't
19 have to render any aid?

20 That's what you're saying?

21 MR. SHEALY: Judge, I'm just reading the statute.

22 THE COURT: I don't see---

23 MR. SHEALY: That's what it says.

24 THE COURT: I don't read that here. I don't read that
25 there.

1 MR. SHEALY: Well, Your Honor---

2 THE COURT: It doesn't say that.

3 MR. SHEALY: But, again, it would---

4 THE COURT: All right. I'll overrule, deny the motion.
5 I find that there is sufficient circumstantial evidence to
6 show that there had been a previous altercation between the
7 parties, that there had been violent previous altercation
8 that evening, that he left under unusual circumstances, that
9 there was indication of -- that the defendant was angry at
10 the time he left the, the facility.

11 There also was testimony concerning the manner in which
12 the vehicle left the road and reentered the road, which
13 would indicate circumstances from which a jury could
14 reasonably infer that malice existed. Again, the use of a
15 deadly instrument, and even ordinary objects can be a deadly
16 instrument depending on how they're used, can, can be used
17 to infer malice.

18 I do not agree with the defense's interpretation of the
19 statute as far as the duty of a driver who's involved in an
20 accident in which a death may occur, and I do believe that
21 there's circumstantial evidence to indicate that the
22 defendant may not have complied with the statutory duties
23 required.

24 So, I'll deny the motion.

25 Now, have you talked to your client about his right to

1 All right. Are you ready to proceed?

2 MR. SHEALY: Yes, sir, Your Honor.

3 THE COURT: State ready?

4 SOLICITOR GRAY: Yes, sir.

5 THE COURT: Bring the jury in.

6 (WHEREUPON, the following takes place within the
7 presence of the jury.)

8 THE COURT: The record will reflect the jury has
9 returned to the courtroom.

10 The State has rested in this case. At this time the
11 defense has the right to call witnesses.

12 You may proceed, Mr. Shealy.

13 MR. SHEALY: Thank you, Your Honor.

14 The defense would call Sandy Lynn Westmoreland.

15 THE COURT: Mr. Westmoreland, if you'd come to my left
16 and be sworn please.

17 SANDY WESTMORELAND, being first duly
18 sworn, testified as follows:

19 THE COURT: Have a seat please, sir.

20 (Defendant complies.)

21 THE COURT: Once you're seated, state your name please.

22 THE WITNESS: Sandy Westmoreland.

23 THE COURT: Mr. Westmoreland, I'll ask you -- you have
24 a -- kind of a quiet voice. So, if you would please, speak
25 up so that everyone in the courtroom can hear what you have

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1 to say.

2 You may proceed, Mr. Shealy.

3 DIRECT EXAMINATION

4 BY MR. SHEALY:

5 Q All right. Mr. Westmoreland, how old are you?

6 How old are you?

7 A Fifty-two.

8 Q Okay. Do you know a fellow by the name of Michael

9 Daniels?

10 A Yes, sir.

11 Q How long have you known him?

12 A Eighteen years.

13 Q Eighteen years.

14 Okay. Were you involved in a relationship with

15 Mr. Daniels?

16 A Yes, sir.

17 Q Okay.

18 A He was my best friend for 18 years.

19 Q Okay. Tell me a little bit about that relationship.

20 I mean was it an exclusive relationship or did he have

21 other relationships, you have other relationships?

22 A Sort of.

23 Q Okay. What do you mean by sort of?

24 A During the 18 years, they been a few times we was

25 together then, you know, but during the 18 years that, you

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1 know, I have went astrayed, he had went astrayed, but we
2 always stayed best friends.

3 Q Okay. And when you say a relationship, it was a
4 loving, sexual relationship, right?

5 A Yes, sir.

6 Q I mean y'all were---

7 A Yes, sir.

8 Q Now, recently, I suppose, back in March of 2012, which
9 isn't really recently, but as recently as we can go, can you
10 tell me how Mike ended up living in a motel?

11 A He had, he had gotten on crack --

12 Q Okay.

13 A -- and he had lost his place. He'd lost his vehicle.
14 He didn't have no where to go. I told him you always got a
15 place, you know. So, he moved in with me.

16 He continued, over the next six months, taking his
17 paycheck and just blowing it on crack. So, I told him look,
18 you got -- I want you to stand back on your own two feet,
19 you know. So, we got him in a motel. I told him don't
20 worry about going back and forth to work. I'll get you back
21 and forth to work every day as usual, you know, but you need
22 to start standing back on your own two feet.

23 Q Okay. So, he needed---

24 A You need---

25 Q ---to start spending his money on something---

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- 1 A On himself.
- 2 Q ---on---
- 3 A On---
- 4 Q ---getting him some independence back?
- 5 A Yeah, back on his feet. Independence again.
- 6 Q Okay. What motel was that?
- 7 A I forget the actual name of it. It was right there
- 8 beside the Sugar & Spice.
- 9 Q Okay. And now, how were you gonna get him back and
- 10 forth to work?
- 11 A My vehicle.
- 12 Q Okay. But when---
- 13 A When, when I didn't actually take him and come pick him
- 14 up, then I'd let him use the car.
- 15 Q Okay. Would you generally -- would you always take him
- 16 to work and always pick him up or how did that work?
- 17 A If I was -- just, just didn't feel like it and, and
- 18 didn't have something I had to do that day, then I'd let him
- 19 take the car. But if I had something I had to do, then I
- 20 would take him and pick him up.
- 21 Q Okay. But would somebody else take him to work?
- 22 A Every now and then a friend of his from work, Linda,
- 23 would actually pick him up in the mornings.
- 24 Q Okay.
- 25 A So that would, you know, that was every now and then.

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- 1 Q All right. But you would always pick him up?
- 2 A Yeah, I always picked him up.
- 3 Q Okay. And did Linda not get off at the same time?
- 4 A They didn't get off at the exact same time, no, sir.
- 5 Q Okay. Now, taking you back to March 15th, I guess
- 6 you picked him up---
- 7 A Yes, sir.
- 8 Q ---from work, correct?
- 9 A Yes, sir.
- 10 Q Do you remember about what time that was?
- 11 A It was somewhere around 4:30.
- 12 Q Okay. So, that's generally when you picked him up?
- 13 A Between -- usually between 4:30, 5:00, you know. They
- 14 had to get the last patient off and --.
- 15 Q Okay.
- 16 A -- and out.
- 17 Q What kind of work did he do?
- 18 A At the dialysis clinic.
- 19 Q Okay. What kind of work did you do?
- 20 A I'm disabled. I use to manage convenience stores.
- 21 Q Okay. What's the nature of your disability?
- 22 A All my health problems. Back surgery, neck surgery,
- 23 emphysema, COPD, diabetes.
- 24 Q Okay. And as far as all of those health problems, you
- 25 were on -- it sounds like, we've already heard testimony, a

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1 fair number of medications?

2 A Yes, sir.

3 Q Including Lortab and Valium?

4 A (Witness nods affirmatively.)

5 Q And you got to answer---

6 A Yes, sir.

7 Q Okay. And I think there were some others, Spiriva and
8 Proventil?

9 A Yes, sir.

10 Q Some other, Lantus, which I think is for --

11 A Yes, sir.

12 Q -- diabetes, right?

13 A (Witness nods affirmatively.)

14 Q Okay. All right. And on March 15th, I guess did you
15 have -- what, what was going on with you that day?

16 A I had been -- had a knot in my side and I had been
17 hurting for three days, and blood in my bowels and stuff
18 like that.

19 Q Okay.

20 A And so when I picked him up from work, I went ahead and
21 slid over, when I pulled up there, I went ahead and slid
22 over in the passenger seat and that's where I waited on him
23 to come out. He said well, we're here. We might as well go
24 on and take you on to the emergency room. That way I can
25 drive. I said all right. So, we proceeded on to the

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1 emergency room.

2 Q why would he need to drive?

3 A In case they gave me something for pain.

4 Q Okay. All right. So, you got to the emergency room,
5 and you have any idea as to when about you were admitted?

6 A I really -- we, we went straight from his work, which
7 is right behind there straight onto the emergency room.

8 Q Okay.

9 A So, I---

10 Q About five---

11 A About 5:30, something like that.

12 Q About 5:17 it looks like.

13 Does that sound about right?

14 A Yes, sir.

15 Q Okay. And you were seen by I guess a Doctor Carter,
16 correct?

17 A Yes, sir.

18 Q All right. And when you were seen by Doctor Carter,
19 did he give you any medications?

20 A Yes, sir.

21 Q All right. And what were those medications?

22 A I received two shots of Dilaudid.

23 Q Okay. And he also I think gave you some Zofran for
24 the---

25 A Yeah.

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1 Q ---nausea there?

2 A Yes, sir.

3 Q Okay. Do you have any idea as to what time those were
4 given to you?

5 A No, sir, not -- I --.

6 Q Okay. As the night wore on, I guess you -- they kept
7 you in the ER?

8 A Yes, sir.

9 Q After---

10 A They, they took -- that had to send me back to do an
11 MRI on me and stuff.

12 Q Okay.

13 A I told Mike, you know, I got a pizza and stuff to make
14 a salad. You worked all day. Go ahead and, you know, go
15 get you something to eat and come back. There's nothing you
16 can do while I'm back in -- doing the MRI. I gave him my
17 teeth, my glasses, my wallet, and he left.

18 Q You gave him your key?

19 A My keys.

20 Q Your keys.

21 A My teeth.

22 Q Yeah.

23 So, so, you've got some problems---

24 A I have false teeth.

25 Q Okay.

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1 A Yes, sir.

2 Q why did you give him all that stuff?

3 A You can't -- I couldn't take it back to the MRI with
4 me.

5 Q And you didn't want to leave it in a room --

6 A No, sir.

7 Q Unattended?

8 A No, sir.

9 Q Okay. And so it sounds like you thought something was
10 pretty wrong with you---

11 A Yes, sir.

12 Q ---at the ER?

13 All right. And once you got back from the MRI, was
14 Mike back?

15 A Not exactly, no, sir.

16 Q Okay. But they bring you back to the room and when
17 does he---

18 A They brought me back to the room and with, within an
19 hour later, I'd say somewhere -- I can't be precise on time,
20 but within -- around an hour later Mike came back.

21 Q Okay. Again, do you have idea as to those times?

22 A No, sir.

23 Q No.

24 Okay. Cause, I guess, at that point you had your two
25 shots of Dilaudid?

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1 A Yes, sir.

2 Q And your Lortab 10s?

3 A Yes, sir.

4 Q And your Diazepam---

5 A Yes, sir.

6 Q ---I believe ten, correct?

7 A Yes, sir.

8 Q So you had taken all your pills you were suppose to

9 take that day?

10 A Yes, sir.

11 Q All of those doses?

12 A Yes, sir.

13 Q All right. So, you had 20 milligrams of Valium in you,
14 and it looks like 30 grams of Lor -- 30 milligrams. Excuse
15 me.

16 Actually 20 milligrams, excuse me, of Lortab and
17 Diazepam already in you before they gave you the Dilaudid?

18 A Yes, sir.

19 Q Okay. All right. So Mike comes back within the hour
20 after your, your MRI and what happened then?

21 A He came back in. He was very upset.

22 Q Okay.

23 A He had, he had took the last little bit of money him
24 and me both had and---

25 Q How much was that?

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1 A Around \$20.

2 Q Okay.

3 A And he went and tried to buy a crack rock, but he
4 bought a piece of soap instead of crack rock. It wasn't
5 real, and---

6 Q That agitated him?

7 A ---proceeded back -- and he was very agitated. He was
8 very -- Mike, Mike, please I don't want to hear this. I, I,
9 I don't feel like it not to mention how you are suppose to
10 get back and forth to work the next few days until you get
11 paid, you know. I don't feel like it.

12 Q Okay. And you didn't have any other money?

13 A No, sir.

14 Q So, you were concerned about gas, is that right?

15 A Yes, sir.

16 Q Okay. And so y'all got into a fuss?

17 A Yes, sir.

18 Q Tell me about this fuss.

19 A I was, I was sitting on the end of the bed. I had my
20 cane in my hand. I was twirling it on my finger around and
21 around. I was sitting on the end of the bed. He was
22 sitting in the chair beside the front of the bed, and, you
23 know, we was bickering back and forth.

24 I was like how you suppose to get back and forth to
25 work the next couple of days and stuff, you know, why did

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1 you do that. You, you knew we didn't have the money for you
2 to do that, and that's -- he jumped up. I don't want to
3 hear it. I'm going for a walk, and that's, when, when he
4 jumped up, the cane struck him right there just a little
5 bit. He stuck his finger up to his nose and had a little
6 bit of blood on it.

7 Q Okay. Well, tell me about this twirling it over your
8 head. That seems an odd thing for a sick person to be
9 doing.

10 A I was a little agitated with him fussing, you know,
11 and, you know, I didn't feel like hearing it. I was just
12 nervous energy, what --.

13 Q Okay. And then ultimately he gets hit in the nose with
14 the cane?

15 A Yeah, I mean it was an accident. It just barely hit,
16 hit him right there.

17 Q All right. Okay. And, at that point, he left the
18 room?

19 A Yes, sir.

20 Q And---

21 A We was -- we'd been arguing a little bit there.

22 Q Okay. And I guess that's when the Sheriff's Office was
23 called?

24 A Yes, sir.

25 Q All right. And can you tell me a little bit about

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by Mr. Shealy

1 that, when they got there?

2 A As soon as Mike opened the door to go out they was
3 there, and what happened, Mike said he hit me with the cane,
4 and the officer said would you like to press charges. He
5 said absolutely not, me and him best friends. We been best
6 friends for over 18 years, you know. He said I'm just
7 leaving going for a walk.

8 Q Okay.

9 A And---

10 Q So how---

11 A I stood, I stood there. You know, Mike, come on, come
12 on, they gonna release me. You know, he was angry because
13 it was taking so long in there. I'm like Mike, you work in
14 there. You know it takes a while.

15 Q Okay. And so he didn't, at that point, say no, I don't
16 want to press charges, but I'm leaving forever?

17 A No.

18 Q He didn't say I'm leaving him?

19 A No.

20 Q That I'm never coming back?

21 A No, sir.

22 Q Didn't say any of that?

23 A No, sir.

24 Q Okay.

25 A He had my wallet, my keys, my teeth. He had

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1 everything. He pitched the keys, you know, to me, but no.

2 Q Okay. And so---

3 A He was going for a walk.

4 Q So he left at that point?

5 A Uh-huh. (Affirmative).

6 Q Okay. And then I guess, by that point, you had been in
7 the ER for somewhere around it looks like five hours,
8 something like that, five or six hours?

9 A Somewhere hours. It wasn't a clock right over me or
10 nothing. I, I don't---

11 Q Okay.

12 A ---can't relate the times.

13 Q Well, how were you feeling whenever all that happened?

14 A I was high. I was, you know --.

15 Q Okay. And, at that point, they released you?

16 A Yes, sir.

17 Q All right. And how did you get back to your car?

18 A As soon as they came with the release form for me I
19 signed it, the security guard and the officer escorted me
20 out, either leave or go to jail.

21 Q So, the security guard and the police officer were
22 there and they discharged you pretty much like that --

23 A Yes, sir.

24 Q -- after Mike had left?

25 A Yes, sir.

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1 Q So, all this was get him out of our ER?

2 A Yes.

3 Q Okay. And you've testified you had a cane.

4 Did you use that cane to walk?

5 A Yes, sir.

6 Q All right. And the purpose of that cane is to
7 stabilize you?

8 A Yeah, to stabilize me. I've had back surgery, neck
9 surgery. I -- this right leg is a little weak on me,
10 sciatic nerve and stuff.

11 Q Okay. And so the -- you've testified that the officer
12 and the security guard walked you to your car?

13 A Yes, sir.

14 Q And what happened when you got to your car?

15 A We got to the car. Mike had done got there and got a
16 couple things out of the car. I seen the tape pulled up.
17 The little side mirror window thing had been busted out.
18 Somebody busted it out a long time ago. It was busted out
19 actually five years ago when I bought the car.

20 Q And you still hadn't gotten around to fixing it?

21 A No, sir.

22 Q All right.

23 A Just -- I'm on disability. I just didn't have the
24 extra money to, you know, keep insurance on it and make the
25 house payment and --.

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by Mr. Shealy

- 1 Q Okay. So that -- you assumed it was Mike who had
2 lifted up the, the---
- 3 A Yeah, I assumed it was him that lifted it up.
- 4 Q And did you---
- 5 A Cause I, after I opened the door and stuff, you know, I
6 seen his lunch box was gone. So, I --.
- 7 Q All right. And did you ask for a report of a car
8 breaking?
- 9 A No, sir.
- 10 Q Did you get agitated about it?
- 11 A No, sir.
- 12 Q Was it understandable what he'd done, gotten his stuff
13 out and went for a walk?
- 14 A Yeah.
- 15 Q Okay. And -- but you've testified that there was -- it
16 was leave -- either leave or go to jail?
- 17 A Uh-huh. (Affirmative).
18 Yes, sir.
- 19 Q Okay. And that's the instructions you were given?
- 20 A That was the instructions I was gave.
- 21 Q All right. Which of those options did you choose?
- 22 A To leave. I ain't never been to jail in my life. I, I
23 --.
- 24 Q Okay. And so you, you chose to leave?
- 25 A Yes, sir.

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1 Q Did you tell the officers that you were feeling high?

2 A They walked me to the car and told me either leave or
3 go to jail, and I, I didn't know what to do. I didn't argue
4 with them. I didn't -- I, I got in the car and left as they
5 wanted me to do.

6 Q Okay. All right. And now I know this is difficult to
7 talk about, but why don't you tell me what happened when you
8 were leaving?

9 A I was back up at the emergency room. I went around the
10 hospital, got up there to the red light. He had my glasses,
11 all this stuff, you know. I don't see good at night.

12 Q Okay.

13 A Not to mention without my glasses I really can't see
14 good at night.

15 Q All right. Do you have any conditions as to your eyes?

16 A I got astigmatism and I can't see far up or close.

17 Q Okay.

18 A Far or close in this eye. This eye I've got a
19 degenerative eye disease.

20 Q Okay. You have -- is that macular degeneration?

21 A Yes, sir.

22 Q Okay. So you got bad eyes too?

23 A Yes, sir.

24 Q And you got diabetes?

25 A Yes, sir.

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1 Q And you got COPD?

2 A Yes.

3 Q And you got back surgeries?

4 A Yes, sir.

5 Q I believe the doctor testified you have four hernias?

6 A Yes, sir.

7 Q Okay. So you've got bad eyes and this is at night, and
8 you've been shot up with the Dilaudid?

9 A Yes, sir.

10 Q And you got Lortab and Valium in you?

11 A Yes, sir.

12 Q What happened then?

13 A I turned to the right to leave to go back towards town.
14 I started -- it's a straight drive.

15 Q Okay. What do you mean by that, manual transmission?

16 A Yes, sir.

17 Q All right. How many speeds?

18 A Five speeds. I think I done gone about, about -- I
19 can't say exactly, but I think I'd gone about through my
20 gears, and I just saw a glimpse of him way off the road on
21 this side, which is my bad eye. I saw a glimpse of him. I
22 jerked the car to pull over and pick him up. I don't
23 know -- I can't say what happened then other than me jerking
24 the car. I don't know if I mashed the clutch instead of the
25 brakes. I don't know.

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1 Q Okay. And it's at that point that you hit him?

2 A When I jerked the car over and stuff, I felt a bump. I
3 realized I was in the field. I jerked it back around. I
4 was scared that I'd get stuck and gave it a little gas and
5 got back on the road. I said oh, my God, you know, what
6 happened. I turned around and came back. He was dead.

7 Q Okay. So, you came back and you got out of your car?

8 A Yes, sir.

9 Q And you went over to him?

10 A Yes, sir.

11 Q All right. And you checked him?

12 A Yes, sir.

13 Q And you saw him lying there dead?

14 A Yes, sir.

15 Q That was your boyfriend --

16 A (Witness nods affirmatively.)

17 Q -- you saw lying dead?

18 A Yes, sir.

19 Q Okay. If you'll bear with me, judge.

20 (Pause.)

21 Q Okay. And then what happened?

22 Did you call 9-1-1?

23 A No, sir.

24 Q Why not?

25 A He was dead. I just -- I flipped out. I ain't never

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by Mr. Shealy

1 been to jail in my life. I was high. I didn't know what to
2 do. I just flipped out. I just wanted to go home.

3 Q Okay. And then you got in your car and you left?

4 A (Witness nods affirmatively.)

5 Yes, sir.

6 Q Okay. And then I think there's been some testimony
7 that a car with your registration was pulled over I guess
8 over near Wofford.

9 Can you tell us about that?

10 A When I was going on North Church Street going towards
11 Woodruff---

12 Q Okay. Well, let's, let's back up.

13 what happened whenever you -- immediately after you
14 left the scene?

15 I'm sorry.

16 A I went by the motel and got my Insulin and stuff and my
17 medicine and, and stuff like that. Threw a couple of
18 those things in the car --

19 Q Okay.

20 A -- and I wanted to go home to Woodruff.

21 Q Okay. And did you take the bug guard off of your car
22 or not?

23 A Yes, sir, when I -- after -- when I stopped there in
24 front of the motel, the bug guard was swung out sticking
25 out. So, I jerked it off and threwed it in the back of the

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1 car.

2 Q Okay. But you didn't call 9-1-1 then either.
3 why not?

4 A I was just -- I was scared to death.

5 Q So, you had kind of a tunnel vision.
6 You wanted to get home?

7 A Yes, sir.

8 Q You needed to get home?

9 A (Witness nods affirmatively.)

10 Q Okay. So that's when you throw your Insulin -- you've
11 testified you threw your Insulin in the back of the car---

12 A Yes, sir.

13 Q ---and you left?

14 A (Witness nods affirmatively.)

15 Q Okay. And then what happened?

16 A Then I was on North Church Street heading towards
17 Woodruff and I met this car, and when I did, the, the light
18 was out on that side, on the passenger side, and so he
19 stopped me for it. I told him yes, I knew it was out. That
20 was it.

21 Q Okay. Did you tell him that you hit a deer?

22 A Yes, sir.

23 Q Okay.

24 A I told him I'd hit a deer, the light was out. I was
25 planning on replacing it.

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1 Q So you lied to that officer?

2 A Yes, sir.

3 Q Why did you do that?

4 A I was scared. I didn't know what to do. I just -- I
5 was high. I just -- I wanted to go home. I kept telling
6 myself just go home and go to bed, this is a terrible
7 nightmare, you'll wake up and everything will be all right.

8 Q Okay. All right. Did the officer give you a field
9 sobriety test?

10 A No, sir.

11 Q Did he get you out of the car at all?

12 A No, sir.

13 Q So, he didn't check at all to see---

14 A No, sir.

15 Q ---if you were---

16 A He walked up to the window---

17 Q ---intoxicated or not?

18 A ---and I handed him my license. He went back to his
19 car, called everything in, and everything checked out good,
20 came back---

21 Q Did he say---

22 A ---okay, you know, get it fixed, yes, sir.

23 Q And sent you on your way?

24 A And sent me on my way.

25 Q All right. And then did you get to Woodruff at that

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1 point?

2 A Yes, sir, I went straight on to the house, sit there,
3 and cried myself to sleep.

4 Q Okay. And in hopes that tomorrow would -- this would
5 all have been a big nightmare?

6 A (Witness nods affirmatively.)

7 Q Turns out it wasn't though?

8 A I had just got up and I was going over to the -- my
9 neighbor's house when they pulled up.

10 Q When the police pulled up?

11 A Yes, sir.

12 Q Okay. But, again, you didn't call 9-1-1.
13 why didn't you call 9-1-1 then when you woke up?

14 A I was -- I didn't have a phone or nothing. Mike had
15 all that.

16 Q Okay.

17 A He had---

18 Q So, you had no phone at your house?

19 A No, sir, I had cell phones and Mike had got that with
20 my other stuff.

21 Q Okay. All right. Well, when the police pulled up, why
22 didn't you tell them?

23 A I was scared. I was planning on going over to the
24 neighbor's house and calling my sister and getting her to
25 come down there so I could have somebody to talk to and to

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1 find out, you know, what I needed to do to fix this.

2 Q Okay. Why would you need your sister to tell you what
3 to do to fix this?

4 A Well, I was just scared. I just needed somebody to
5 talk to.

6 Q You needed some support?

7 A Yes, sir.

8 Q And that's what Mike use to be for you?

9 A Yes, sir.

10 Q Unfortunately what happened happened?

11 A Yes, sir.

12 Q And then I guess they -- Officer Bryant drove you to
13 the police station?

14 A Yes, sir.

15 Q Okay. But you didn't tell him the truth either.

16 why didn't you tell -- I mean they got you.

17 why don't you tell them the truth?

18 A I was scared of going to jail. Like I said, I've never
19 been to jail in my life and I was scared. I didn't know
20 what to do.

21 Q Uh-huh. (Affirmative).

22 But ultimately you do tell them the truth, right?

23 A Yes, sir.

24 Q And I believe Investigator Bryant said, testified you
25 told them the truth twice?

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by Mr. Shealy

- 1 A Yes, sir.
- 2 Q Once to him and once on some kind of audiotape?
- 3 A Yes, sir.
- 4 Q Okay. And what is the truth?
- 5 A It was an accident. I meant to pull over to pick him
- 6 up. There's no way he could walk back, walk home, and then
- 7 walk back to work. There's no way he could do that. He
- 8 didn't have no one else to pick him up.
- 9 Q Is that why he was living with you and then you put him
- 10 in the motel is cause---
- 11 A Yes, sir.
- 12 Q --he had nobody else?
- 13 A Yes, sir.
- 14 Q So, you were all he had?
- 15 A Yes, sir.
- 16 Q And he was, more or less, all you had?
- 17 A Yes, sir.
- 18 Q Would you have run him over over---
- 19 A No, sir.
- 20 Q ---twenty dollars?
- 21 A Absolutely not.
- 22 Q Twenty dollars of worthless crack?
- 23 A No, sir.
- 24 Q That's not sufficient for you?
- 25 A No, sir, absolutely not. When he, when he wasn't on --

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1 when he wasn't on crack he was a totally different person,
2 and he's one of the best people you'd ever want to meet.

3 Q Okay. Well, were you angry at him for being on crack?

4 A No, sir, we all, we all make a mistakes. We all do.

5 Q But this, this fellow is bleeding you dry.

6 Why aren't you angry about that?

7 A He's, he's helped me out. He's always been my rock.

8 I've always been his rock. He got it one time before about
9 four and a half, almost five years before this. He was on
10 it about six months, talked to him, and talked to him. He
11 got off of it. He did good.

12 Q Okay. Now, my understanding is they only found one
13 cell phone at the -- in all of this mountain of evidence.

14 Did -- are you testifying that he had your cell phone?

15 A Yes, sir.

16 Q Okay. Do you have any idea as to what happened to it?

17 A No, I don't have no idea.

18 Q Okay. But you gave it to him before he left you?

19 A Yes, sir, I don't know what he did with it, whether he
20 took it back and put it up at the motel somewhere. I
21 didn't, I didn't think to look. I didn't --.

22 Q Okay. So y'all have been through a number of ups and
23 downs?

24 A Yes, sir.

25 Q Y'all have -- as most couples are?

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by Mr. Shealy

1 A Yes, sir.

2 Q Particularly nonexclusive couples.

3 But you had no reason to kill Mr. Daniels?

4 A No, sir, absolutely not.

5 Q What happened, I guess from your testimony, was an
6 accident?

7 A Yes, sir.

8 Q But, again, he -- you could of told 9-1-1. You could
9 of told the police. You could of gone to the hospital. You
10 could of done all of that.

11 Why didn't you do all of that?

12 A I jumped out and got over there. He was dead. I
13 just -- I, I was high. I just flipped out. I didn't know
14 what to do.

15 Q Were you still high 12-hours later?

16 A Well, I took my morning medicines again, you know. I
17 just -- I was scared.

18 Q Okay.

19 A I just -- I didn't know what to do. I knowed it was
20 the wrong thing to do. I just -- I was scared. I ain't
21 never been in jail in my life. I didn't want to go to jail.

22 Q Okay. Anything else you want to tell the jury, Mr.
23 Westmoreland?

24 A (Witness nods negatively).

25 Q Are you sorry for what happened?

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by Mr. Shealy

1 A I'm very sorry. I would do anything to have him back.
2 I go through this everyday, you know.

3 Q What do you mean by that?

4 A Everyday I have to wake up and knowing that he's not
5 here no more, knowing that I accidentally hit him.

6 Q So, you wake up everyday knowing that you're the one
7 who committed the---

8 A (Witness nods affirmatively.)

9 Q ---hit who accidentally killed him?

10 A Yes, sir.

11 Q Okay. Thank you, Mr. Westmoreland. Please answer any
12 questions the State may have.

13 THE COURT: The State may cross-examine.

14 SOLICITOR GRAY: Thank you, Your Honor.

15 (Pause.)

16 MR. SHEALY: Your Honor, if we can approach?

17 THE COURT: Yes, sir.

18 (WHEREUPON, a bench conference was held out of the
19 hearing of the jury at this time.)

20 THE COURT: All right. Ladies and gentlemen of the
21 jury, at this point in time I'm gonna ask you to step back
22 to the jury room. As always, don't discuss anything about
23 the case until I ask you to do so.

24 You may retire to the jury room.

25 (WHEREUPON, the following takes place outside the

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1 presence of the jury.)

2 THE COURT: All right. My understanding is that the
3 State intends to cross-examine the witness concerning some
4 type of a test performed by SLED. I -- that's all -- that's
5 as much as I know about it. So---

6 SOLICITOR GRAY: Yes, sir.

7 THE COURT: ---at this point in time I'm gonna ask you
8 to make me aware of what you intend to do and then we'll get
9 the defense's position.

10 SOLICITOR GRAY: Yes, sir, Your Honor.

11 The State's position is Mr. Shealy and the defendant
12 went, went over all discovery. The defendant testified that
13 the victim was on crack all the time, this, this type of
14 situation. If he went through the discovery with
15 Mr. Shealy, they would see a negative result for all drugs
16 in his system, the victim's system.

17 So, I would like to ask him about that, the results
18 only, of the victim, how's that square with---

19 THE COURT: Can I see that --

20 SOLICITOR GRAY: ---him being on crack cocaine.

21 THE COURT: -- the document you're talking about?

22 SOLICITOR GRAY: Yes, sir, Your Honor.

23 THE COURT: All right. I'll hear from you, Mr. Shealy.

24 MR. SHEALY: Thank you, Your Honor.

25 To begin, my client didn't testify he was on crack at

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1 the time that this happened. He testified that Mr.---

2 THE COURT: That the victim was on crack at the time
3 this happened?

4 MR. SHEALY: Well, that he was -- he had a crack
5 problem. In point of fact, my client testified that the
6 agitation was because it was a -- that, that day, it was a
7 fake crack rock. It wasn't a real crack rock. That's what
8 he testified to. He testified that there was a crack
9 problem, but not that he was on crack at the time of the
10 incident. So, to clear up that misunderstanding as to the
11 testimony.

12 While my client has been over the discovery, and I've
13 talked to him about these things, he can't testify as to the
14 quality of the test. He can't testify as to what that test
15 shows. He can't testify as to how far back that test goes.
16 He can't testify to anything about that test, and the fact
17 that he is aware that it was in the discovery doesn't mean
18 he can testify to it.

19 I don't think he could testify, for example, to things
20 that an officer saw when my client wasn't present even
21 though he's been over the discovery with me. He can't
22 testify to hearsay statements that were in the discovery
23 unless an exception applies and they're within his personal
24 knowledge.

25 So, simply because he's been over it in discovery

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1 doesn't mean he should be able to testify to it. I'm
2 unaware of any case that says you necessarily are, anything
3 that's in there you can testify to. Otherwise, judge, we'd
4 just have Mr. Gray and me testify to what was in the
5 discovery and that would be it.

6 THE COURT: I doubt it would be that simple, but---

7 MR. SHEALY: But---

8 THE COURT: ---go ahead.

9 MR. SHEALY: Judge, I mean if I went over the
10 discovery, he went over the discovery, simply because my
11 client's been over the discovery doesn't mean he can
12 testify -- they want to be the test. They want to call SLED
13 to testify that, at the time of the incident, there was
14 blood drawn. I don't know that they've laid all of that
15 foundation yet. They'd have to go back and call some people
16 to blood being drawn properly and all of that. Then they
17 can and they could of done that in their case in chief, and
18 I wouldn't of had any objection to that. But that's one,
19 not what my client testified to.

20 So, I don't know that it's that relevant, and, two, I
21 don't think, just because it's in discovery, means that my
22 client can testify to it.

23 THE COURT: All right. I'll hear from you---

24 SOLICITOR GRAY: Thank you, Your Honor.

25 THE COURT: ---Mr. Gray.

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1 SOLICITOR GRAY: I'm using this to impeach the
2 defendant. He's said that the victim had a habitual crack
3 problem for years. He all -- get on it, off it. At the
4 time I believe the victim was on dialysis also. If you have
5 a crack problem you can't go to dialysis consistently.

6 He knew that this report was available. He knew the
7 results, and, at this time, he's trying to counteract the
8 results with saying the victim was on crack and we have---

9 THE COURT: Well, here's where we are. I understand
10 that there is a test that was done on the victim that,
11 according to my reading of it, showed a -- it was a negative
12 drug screen across the board to the victim. However, the
13 test was done by, looks like, a Toni Broome, a forensic
14 toxicologist with SLED. I'm not sure this, this witness is
15 required to testify about the test or the accuracy of the
16 test. So, I'm gonna sustain the objection.

17 SOLICITOR GRAY: Yes, sir.

18 THE COURT: Now, if the -- and he is correct, I don't
19 recall him -- the witness, on direct examination, stating
20 that the victim was under the influence of crack that
21 evening. Perhaps you will gather that information in your
22 cross-examination. I don't know. Of course, in reply or
23 rebuttable testimony, depending on what it says, it may be
24 possible for you to bring a witness in to testify in reply
25 or rebuttal.

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1 SOLICITOR GRAY: Yes, sir.

2 THE COURT: I'll sustain your objection at this time.

3 MR. SHEALY: Thank you, Your Honor.

4 SOLICITOR GRAY: Thank you.

5 THE COURT: Any other matters before we bring the jury
6 back?

7 SOLICITOR GRAY: No, sir.

8 MR. SHEALY: No, Your Honor.

9 THE COURT: All right. Let's bring the jury in.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: The record will reflect the jury has
13 returned to the courtroom.

14 I have sustained an objection by the defense.

15 At this time you may begin your cross-examination,
16 Mr. Gray.

17 SOLICITOR GRAY: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY SOLICITOR GRAY:

21 Q Mr. Westmoreland, did you have your glasses on that
22 night?

23 A At the hospital I did, but I gave them to him when I
24 went back for the MRI.

25 Q You gave them to --?

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by Solicitor Gray

1 A To Mike when I went to the hospital.

2 Q Okay. Did you ever get your glasses back?

3 A No, sir.

4 Q Why did you drive without your glasses if your eyes
5 were so bad?

6 A Repeat that, sir.

7 Q Why did you drive without your glasses if your eyes are
8 so bad?

9 A Because the officer walked me to the car and said
10 either leave or go to jail.

11 Q Hadn't Mike already left?

12 A Yes, sir.

13 Q So, you could drive a few feet or a hundred feet or
14 whatever, or whatever and stop at that point, couldn't you?

15 The officer told you to leave, to leave.

16 He didn't say how far to go, correct?

17 A What was I gonna do, leave and -- I had no way of
18 calling nobody or nothing else.

19 Q Okay---

20 A What was I suppose to do, pull off the premises and
21 walk?

22 Q That's not quite correct cause you told Officer Bryant
23 that one of the things you did was call Mike after this
24 incident.

25 A When I got home, but I didn't -- until I got to the

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by Solicitor Gray

1 motel room I didn't have the cell phone. When I got to the
2 motel room he had laid my cell phone on the, the table
3 there.

4 Q But you just testified you couldn't call 9-1-1, 9-1-1
5 cause you didn't have a phone?

6 A It was dead.

7 Q It was dead --

8 A (Witness nods affirmatively.)

9 Q -- by the time you got home from killing Mike to
10 Woodruff---

11 A I hadn't charged it that day.

12 Q ---the phone died?

13 Excuse me?

14 A I hadn't charged it that day.

15 Q You didn't charge it that day?

16 A (Witness nods negatively.)

17 Q But you didn't call 9-1-1, you didn't call the
18 hospital, you told Detective Bryant the first person you
19 called was a deadman.

20 why would you do that?

21 A Cause I wanted to hear his voice.

22 Q Excuse me?

23 A I wanted to hear his voice.

24 Q You want to hear his voice?

25 A His answering machine, his voice on his answering

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by Solicitor Gray

1 machine. I needed to---

2 Q That's why you did that?

3 A I needed, I needed to hear from him.

4 So, you know the greeting on the answering machine?

5 I called it and listened to him say this is Mike

6 Daniels, leave a name and a message. I just needed to hear

7 his voice.

8 Q And this is the first time you said that to an officer

9 or anybody is that you wanted to hear his voice one last

10 time?

11 A I called him a couple of times.

12 Q You called him a couple of times?

13 A Yes, sir, I just -- I was sitting there crying and just

14 needed to hear his voice.

15 Q So, in those couple of times you called, why not call

16 EMS?

17 A He was dead.

18 Q why not call EMS?

19 A I've never been in trouble in my life.

20 Q No, no.

21 A I just---

22 Q I wasn't talking about the police. I'm asking about

23 EMS or the hospital. I'm not talking about the police or

24 being in trouble. The hospital's maybe 200 yards, 300 yards

25 away. You have a vehicle. Drive up there and say it, I had

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by Solicitor Gray

1 an accident, I think somebody's dead.

2 why not do that?

3 A I flipped out. I didn't know what to do.

4 Q You didn't know what to do?

5 A No, sir.

6 Q Okay. That night when you struck Mike with the cane,
7 you say you were twirling it above your head --

8 A Yes, sir.

9 Q -- somehow?

10 A Yes, sir, the little rope thing on the end of it.

11 Q Yeah.

12 A It was around my finger and I was twirling it.

13 Q Okay. My understanding is you were complaining of four
14 hernias, correct?

15 A I've had four hernia---

16 Q I mean that night --

17 A ---surgeries.

18 Q -- you were complaining.

19 A I was complaining with a knot in my side. Blood in
20 my---

21 Q A knot in your side?

22 A Blood in my---

23 Q stool?

24 A ---stools.

25 Q And you do have a hernia?

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 A I've had four hernias.

2 Q Four hernias?

3 A Repaired. They're repaired.

4 Q So, four hernia tears, bad eyes, diabetes, and you want
5 us to believe you're sitting there playing with a cane with
6 a rope?

7 Is that what you were doing?

8 A That's what I was doing.

9 Q In the ER?

10 A When me and him was arguing and stuff I was just
11 twirling it.

12 Q Right. And it accidentally hit him.

13 Which part of the cane accidentally hit him?

14 A Somewhere---

15 Q Was it the rubber handle or the rubber bottom?

16 A The -- somewhere in-between that cause I was twirling.
17 When he got, got up, when he got up, the cane struck him
18 there when he got up to walk out.

19 Q So that was another accident?

20 A It---

21 Q You keep having accidents, don't you?

22 A (Witness nods negatively.)

23 Q Well, why were you two arguing while you were twirling
24 the cane?

25 A Because he had bought the crack rock or fake crack

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by Solicitor Gray

1 rock, piece of soap.

2 Q what's -- was he high that night?

3 A No, it was a piece of soap. That's the reason he was
4 angry. That's the reason he was fussing.

5 Q With you about that not having a crack rock.

6 He was angry with you?

7 A Yes, sir.

8 Q Not the person who sold him the fake rock?

9 That---

10 A I---

11 Q That's what you're saying?

12 A I knew when he got it. I don't -- but he was angry
13 when he came back.

14 Q But no, you're saying he was angry with you. That's
15 why there was an argument.

16 Correct?

17 A He was just -- he came back with an attitude. Just
18 fussing --

19 Q Attitude?

20 A -- and I told him I didn't want to hear it. I don't
21 feel like hearing it.

22 Q well---

23 A You know you shouldn't of done it to begin with.

24 Q why would the officers separate the two of you, but
25 Mike went to get his stuff out of your car, correct?

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 A Yes, sir.

2 Q Okay. Why were the officers separating the two of you
3 and make, make you stay behind, not Mike, correct, after you
4 hit him with your cane?

5 A When I hit him with the cane and stuff, as he started
6 out with -- the door, that's when the officer was right
7 there.

8 Q And, again, you hadn't stayed behind while Mike
9 collected his stuff?

10 A They was---

11 Q Correct?

12 A They hadn't discharged me yet. As soon as they -- the,
13 the few minutes they had discharged me and the security
14 guard and the officer walked me to the vehicle and told me
15 to leave.

16 Q Okay. Was this the first physical altercation you guys
17 had?

18 A We have never hit each other out of anger whatsoever as
19 far as -- I don't know no two people that lives together
20 that don't argue sometimes.

21 Q Okay. And this argument escalated that night?

22 A It was -- he went for a walk. It would, it would of
23 been over with.

24 Q Okay. This walk that he took, he went from Mary Black,
25 behind the bushes there, and you came around driving,

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 correct?

2 A Yes, sir.

3 Q And, without your glasses, you saw him?

4 A I saw him out of the corner of my eye. I stopped the
5 car to pick him up.

6 Q And this is about---

7 A I jerked it over.

8 Q ---12:00 after -- a little bit after 12:00?

9 A I'm not sure of the time, sir.

10 Q Midnight, dark?

11 A Yeah, it was, it was dark and somewhere around
12 midnight. I got -- I can't say precisely when---

13 Q without your glasses you saw him -- you knew it was
14 him---

15 A Yeah.

16 Q ---walking?

17 A His red coat.

18 Q Red coat, at midnight, with no lights around, you knew
19 it was him, correct?

20 A I assumed it was him. I mean---

21 Q Okay.

22 A ---I couldn't -- I seen the red coat. I jerked it over
23 to pick him up.

24 Q You, you drove off the road, through the hedges, to
25 pick him up?

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 A I jerked the car to pull over. Like I said, I don't
2 know if I hit the clutch instead of the brakes. I don't
3 know.

4 Q You been driving for how long?

5 A Ever since I was 16.

6 Q How many times have you jerked the car off the road to
7 see somebody?

8 was this the first time?

9 A I've been trying to look at people and run off the road
10 before.

11 Q I, I understand that. You've run off the road a little
12 bit, but you just testified you jerked it in this instance.

13 were you going directly at Mike?

14 A No, I was jerking it to pull over. He was off the --
15 almost there at the bushes.

16 Q Right.

17 So, to pull over, you were parallel to the bushes?
18 wouldn't you -- your track would be parallel to the
19 bushes cause you jerked it one way.

20 Couldn't you jerk it the other way also to miss Mike?

21 A I -- that was the whole point. I didn't --.

22 Q You didn't slow down, did you?

23 A I don't know. If I could answer that question, sir,
24 that would be the million dollar question.

25 Q when you hit Mike and accelerated, correct?

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 A I was in the field, when I was in the field, yes, sir,
2 I accelerated cause I was scared I'd get stuck. I
3 accelerated to not get stuck.

4 Q So, you were scared to get stuck in the field or on
5 Mike?

6 A In the field.

7 Q Not, not on Mike as you were rolling over him?

8 A I never rolled over him whatsoever.

9 Q You know that for a fact?

10 A I never felt the car do like that whatsoever, no, sir.

11 Q So, once you -- so, you didn't run over him.

12 You hit him and he flew away from the car?

13 A I didn't see it. I don't -- I can't -- that's
14 something I can't answer.

15 Q Well, there was testimony that he was hit on the right
16 front. So, you have bad eyes, you -- but you could see him
17 from the road, but you can't see him when he's on your grill
18 and bumper?

19 When he was close to you you can't see him then?

20 A I didn't.

21 Q I know. You don't know.

22 When, when talking with Officer Bryant -- well, let me
23 back up.

24 Some officers came to your home, correct?

25 A Yes, sir.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 Q And you just walked out casually to see them?

2 A Yes, sir.

3 Q Did you tell---

4 A I was, I was---

5 Q ---them that---

6 A ---coming out of the house and approaching the
7 sidewalk. I was down on the sidewalk when they pulled up.
8 I was going to the neighbor's house.

9 Q Okay. Did you tell the officers, at that time, what
10 you had done?

11 A No, sir, I was, I was scared. I didn't.

12 Q What time was that when you talked to the officers.

13 A I, I don't have no idea.

14 Q Nine o'clock, ten o'clock?

15 A I don't have no idea, sir.

16 Q All right. But you told Officer Bryant, the first
17 statement, you go to pick Mike Daniels up from work, you
18 went to Mary Black, you got in an argument, Mike left, and,
19 on your way home, you hit a deer.

20 You didn't say anything about crack or any drugs or
21 anything like that, did you?

22 A No, sir.

23 Q No.

24 A I mean --.

25 Q That's the first lie about hitting a deer, correct?

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 A Yes, sir.

2 Q All right. Then the second statement, in writing, he
3 signed it, meaning you, and you said you hit a deer again.
4 That's two lies to the officers, correct?

5 A Yes, sir.

6 Q All right. And then, finally, you said I tried to pull
7 over to talk to the victim and hit him with the car by
8 accident.

9 Where was your car located when you, you say you got
10 out checking -- to check Mike?

11 A Yes, sir.

12 Q Where was your car located when you say you stopped to
13 check Mike, Mike?

14 A I turned around up there somewhere there at the
15 elementary school.

16 Q At where?

17 A At the elementary school right there.

18 Q Houston Elementary?

19 A Yes, sir, I turned around at that road right there.

20 Q You went that far---

21 A It was---

22 Q ---before you---

23 A ---almost -- you know, I had to stop once I got on the
24 road. I had to get the car stopped and then I turned around
25 and came back and turned around and parked right there.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

- 1 Q Where?
- 2 A On the side of the road.
- 3 Q Which side?
- 4 A On the right side.
- 5 Q Okay.
- 6 A Got out.
- 7 Q Walked across the street.
- 8 Is that what you're saying?
- 9 A No, sir.
- 10 Q Oh, the same side --
- 11 A Yes, sir.
- 12 Q -- where Mike was?
- 13 A Yes, sir.
- 14 Q And you get into the grass?
- 15 A Yes, sir, I pulled off the road.
- 16 Q Into the grass?
- 17 A Into the grass.
- 18 Q Where there were no tire tracks whatsoever, that's
- 19 where you pulled over into the grass, correct?
- 20 A Yes, sir, I pulled off into the grass.
- 21 Q Uh-huh. (Affirmative).
- 22 And then what did you do?
- 23 A I got out and I went to him. He was dead. He was not
- 24 breathing.
- 25 Q Are you a doctor?

Sandy Westmoreland - Cross-examination
by Solicitor Gray

- 1 A I looked at him.
- 2 Q Are you a doctor of any kind?
- 3 A I tried to do CPR on him. He was, he was not
- 4 breathing. There was no air.
- 5 Q You did what?
- 6 A I tried to do CPR on him. They was---
- 7 Q And that's the first---
- 8 A ---air coming out.
- 9 Q ---time anybody's heard that too.
- 10 You tried CPR on him?
- 11 A Yes, sir.
- 12 Q Okay. What position was the body in?
- 13 A He was laying like that.
- 14 Q On his back?
- 15 A Yes, sir.
- 16 Q And you tried CPR?
- 17 A Yes, sir.
- 18 Q Are you certified in CPR?
- 19 A No, sir. He was, he was not breathing.
- 20 Q Okay. Explain why there are no additional tire tracks
- 21 if you went back into the grass.
- 22 A I don't understand the question.
- 23 Q You went back into the grass on the same side of the
- 24 road where you sped off. At this time there are no tire
- 25 tracks where you say you pulled onto the side of the road

sandy westmoreland - Cross-examination
by solicitor Gray

1 where Mike was.

2 A How, how was they no tire tracks when we -- when the
3 officers got there the next day and stuff, the ambulance was
4 already pulled up right there on the same side of the road.
5 so they had to be -- is there---

6 Q That's your speculation.

7 A Is there---

8 Q That's your speculation, correct?

9 A Is the ambulance floating?

10 Q Do you know for a fact that the, this ambulance rolled
11 over your exact tire tracks on his---

12 A I don't -- I didn't say that.

13 Q You don't know, do you?

14 A I didn't say that, but---

15 Q Right.

16 A I, I parked right there and got out and went to Mike.

17 Q Did you ever call 9-1-1?

18 A No, sir.

19 Q Do you know Ms. Linda Wright?

20 A Yes, sir.

21 Q So, did Ms. Wright ever take Mike to work?

22 A Occasionally.

23 Q Did she bring him home from work?

24 A I guess -- I always brought him home from work.

25 Q You always brought him home?

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 A Yes, sir.

2 Q So, she took him to work occasionally?

3 A She -- they, they went in most of the time -- the same
4 time. They was friends---

5 Q So---

6 A ---and---

7 Q ---when you said you took him to work and brought him
8 home from work everyday, that's not exactly true, is it?

9 A Well, sometimes she would pick him up. I always picked
10 him up from work. Sometimes she would come and take him to
11 work cause they went in at the same time. They opened up.

12 Q Let me ask you about this statement you were high at
13 the time. I mean you think you were high at the time when
14 you were driving.

15 Is that correct?

16 A Yes, sir.

17 Q Were you slurring your speech at all to the officers?

18 A I, I don't know. I --.

19 Q Could you see clearly?

20 No, that's because you didn't have your glasses,
21 correct?

22 You couldn't see clearly?

23 You don't know if you were slurring your words,
24 stumbling---

25 A No. No.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 Q ---at all?

2 A I couldn't tell you.

3 Q You heard the doctor testify he wouldn't have let you
4 leave. He would monitor you without -- if you were high, he
5 wouldn't have let you leave or drive.

6 How do you know you were high?

7 A I can't, I can't answer that question, sir.

8 Q You also heard the doctor testify about, about
9 tolerances, a person can build up a tolerance --

10 A Yes, sir.

11 Q -- correct?

12 I'm gonna show you something.

13 Mark this please.

14 (WHEREUPON, a list of medications was marked as State's
15 Exhibit No. 117 for identification purposes only at this
16 time.

17 Q State's Exhibit 117 for purposes, purposes of
18 identification.

19 Do you recognize that?

20 A Yes, sir.

21 MR. SHEALY: Your Honor, I have an objection to this
22 being entered into evidence.

23 SOLICITOR GRAY: I've not offered it.

24 MR. SHEALY: He can testify to the stuff inside of it,
25 but---

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 THE COURT: He's had it marked for identification.

2 SOLICITOR GRAY: Yes, sir.

3 THE COURT: He's asked the witness if he recognizes the
4 document. He has a duty to set a foundation before he
5 offers it. It's not been offered yet.

6 SOLICITOR GRAY: No, sir.

7 THE COURT: So, overruled if there's an objection.

8 MR. SHEALY: Yes, sir.

9 THE COURT: I'll allow him to lay a foundation.

10 SOLICITOR GRAY: Thank you.

11 Q What is that?

12 A It's a report of my medications.

13 Q How far does that go back?

14 A Let's see. It goes back to '11.

15 Q 2011?

16 A Yes, sir.

17 SOLICITOR GRAY: May I approach the witness; Your
18 Honor?

19 THE COURT: You may.

20 Q So, this is -- really is a report of all of your
21 medications, some of your medications?

22 A That's just a report of the narcotics.

23 Q Narcotics?

24 A Medications.

25 Q Pain medications?

Sandy Westmoreland - Cross-examination
by Solicitor Gray

- 1 A Pain medication and Diazepam.
- 2 Q Okay. So, August 28th of 2011, Hydrocodone, correct?
- 3 A Yes, sir.
- 4 Q You got 90 of them?
- 5 A Yes, sir.
- 6 Q September 4th, 2011, Diazepam, you got 60 of them?
- 7 A Yes, sir, every month.
- 8 Q Okay. 9/27/2011, Hydrocodone?
- 9 A Yes, sir.
- 10 Q October 2011, Diazepam.
- 11 A Yes, sir.
- 12 Q Another October 2011, Oxycodone again?
- 13 A Yes, sir.
- 14 Q And the amounts 60, 30, 90, 60.
- 15 November 2011, Oxycodone.
- 16 November, again, four days later, Oxycodone again.
- 17 November 26th, Diazepam.
- 18 November 28th, Hydrocodone.
- 19 December 24th, Diazepam 90.
- 20 December 26th, the day after Christmas, 2011,
- 21 Hydrocodone.
- 22 January 2012, Diazepam.
- 23 January 2012, Hydrocodone.
- 24 February 2012, Hydrocodone.
- 25 March 13th, 2012, Diazepam.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 A Yes, sir.

2 Q You heard the doctor testify about building up a
3 tolerance.

4 A Yes, sir.

5 Q well, based on these amounts, 60, 90, 60, 90, 90, 60,
6 90, wouldn't you build up a tolerance for drugs, these type
7 of drugs for pain?

8 MR. SHEALY: Objection, Your Honor. He can't testify
9 to that. He doesn't know. He's not a doctor.

10 THE COURT: well, tolerance is something that would
11 have to do with the amount that you're taking to achieve an
12 effect.

13 MR. SHEALY: Your Honor, my understanding of the
14 question was how much builds up what kind of tolerance.

15 THE COURT: No, he didn't ask that question.

16 MR. SHEALY: Okay.

17 THE COURT: That's not what he asked.

18 Ask the question again, Mr. Gray.

19 SOLICITOR GRAY: wouldn't he have tolerance to the pain
20 pill, pain pills.

21 MR. SHEALY: Again, Your Honor---

22 SOLICITOR GRAY: That pain medication.

23 MR. SHEALY: ---that requires him to have knowledge as
24 to -- he's not asking if he did. He's asking if he would
25 of. That's different.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 THE COURT: I'm gonna ask the jury to step back to the
2 jury room. Don't begin any discussions about the case until
3 I ask you to do so.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Mr. Gray, I would suspect that what you're
7 asking is that you're asking him whether or not, over that
8 period of time that you just went over all the drugs that he
9 was taking and prescriptions that he was filling, that
10 you're asking him is, over that period of time, if he had to
11 take more and more of the medication in order to achieve a
12 certain feeling or result?

13 SOLICITOR GRAY: Yes, sir.

14 THE COURT: Is that what you're asking?

15 SOLICITOR GRAY: Yes, sir.

16 THE COURT: All right. Now, you're saying that
17 requires a medical degree to know how many pills you have to
18 take in order to get a certain effect?

19 MR. SHEALY: No, Your Honor. But that's not what he
20 kept asking. He kept asking, based on all of these pills,
21 wouldn't you have built up a tolerance. That---

22 THE COURT: Well, you---

23 MR. SHEALY: ---would be my position, a toxicologist---

24 THE COURT: He said did you build up a tolerance---

25 MR. SHEALY: ---or something.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 THE COURT: ---I think. Not, not when did you.

2 SOLICITOR GRAY: Yes, sir.

3 THE COURT: He said did you.

4 MR. SHEALY: Well, I, I---

5 THE COURT: And, of course, that's, that's different.

6 In other words, we're asking what affect it had on him.

7 MR. SHEALY: Well, he said---

8 THE COURT: I did think that would require a medical
9 degree for him to describe the effect that the certain
10 number of pills he took might have on him.

11 MR. SHEALY: Well, again, judge, that was not my
12 understanding of the question.

13 THE COURT: That's -- that was my understanding of the
14 question.

15 MR. SHEALY: Well, that's just not how I heard it.

16 THE COURT: That's how I heard it.

17 MR. SHEALY: That's, that's why I objected.

18 THE COURT: I understand your objection. I'm gonna
19 overrule the objection as long as Mr. Gray asked him if,
20 over that period of time, was he having to take more and
21 more of the medication to receive whatever desired effect he
22 had. I don't know what desired effect he had. But, you
23 know, it's just like any, anyone else with any other type of
24 drugs or medication. Alcohol is a drug and some people have
25 to drink more and more to get to the point where they feel

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 the effect they want to have.

2 So, that's what a tolerance is. That's something that
3 can be testified to by the person who's using the drug or
4 the alcohol. So, I'm gonna allow him to ask the question in
5 that fashion.

6 Bring the jury back.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: All right. I have overruled the objection.
10 You, you may proceed pursuant to my instructions.

11 SOLICITOR GRAY: Thank you, sir.

12 CONTINUED CROSS-EXAMINATION

13 BY SOLICITOR GRAY:

14 Q Did you build up a tolerance based on these pills?

15 I mean you -- the, pain pills you had been taking all
16 this time, the amounts you were taking, did you build up a
17 tolerance?

18 A It would take more to ease the pain, but you would
19 build the build -- you know, one pill you would feel it in
20 your head, but as far as it cured -- taking the pain away,
21 it would take more.

22 Q So, that's why you went to the hospital for pain?

23 A I -- to -- for them to find out what was going on, what
24 was in my side.

25 Q And you received two injections, correct?

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 A Yes, sir.

2 Q And those were fairly close to each -- together?

3 A Yes, sir.

4 Q And you received no more injections after that?

5 A No, sir.

6 Q Over a four hour period, correct?

7 A Yes, sir.

8 Q So, basically, as the doctor testified, tolerance, the

9 IV medication, would go in and out rather quickly?

10 Isn't that why you requested a second shot or IV?

11 A Could you repeat that question, sir?

12 Q Yes, sir.

13 Because the IV medication would go in and out so
14 quickly, isn't that why you requested a second IV because of
15 the pain?

16 A Because I was still hurting, yes, sir.

17 Q Well -- so you needed your pills and the Dilaudid to
18 ease the pain?

19 A It still didn't ease the pain.

20 Q Still didn't ease the pain.

21 All right. But you weren't high at that time, were
22 you, when they gave you the initial injections?

23 A Yes, sir.

24 Q You were high then?

25 A I, I don't take Dilaudid. I take Lortab and Valiums.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 I don't take Dilaudid.

2 Q Okay. When did you get high in yours---

3 A When, when they gave me the injections.

4 Q Okay. And how long did that last?

5 A I, I don't know, sir. A while.

6 Q A while.

7 But you heard the doctor say those injections would go
8 in and out of you fairly quickly, right?

9 You heard that, correct?

10 A Yes, sir.

11 Q So what other drugs could have made you high?

12 A Between---

13 Q If you said---

14 A The both of them together. The Lortabs, the Valiums,
15 and the---

16 Q So you were taking---

17 A ---Dilaudid.

18 Q ---medication that could of made you high?

19 A I'm -- I have -- I've had back surgery, neck surgery.

20 I'm on pain medications every month and the Diazepam is
21 for -- I got bad nerves in my back --

22 Q Did you take---

23 A -- for muscle spasms.

24 Q ---any pills after the Dilaudid?

25 A No, sir, not after the Dilaudid. I didn't have no

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 pills with me or nothing.

2 Q Okay.

3 A There's no way I could of took them any pills then.

4 Q All right. I understand you and Mike had a
5 relationship for about 18 years, correct?

6 A Yes, sir, we've been best friends for 18 years.

7 Q But it became more than that, correct?

8 A Yes, sir.

9 Q Boyfriend and boyfriend?

10 A Yeah. Yes, sir.

11 Q All right. Best friend, and boyfriend, and boyfriend,
12 Mike lived at a hotel.

13 He didn't live with you, correct?

14 A Yes, sir.

15 Q So, when Mike said I'm going home, I'm out of here or
16 whatever, he was going to the hotel, not to Woodruff,
17 correct?

18 A Well, we stayed at Woodruff during the -- when he was
19 off work. The reason he got the motel was because he needed
20 to put his money to good use.

21 Q So, he was going to the hotel then?

22 He took all of his stuff out of your car, correct?

23 A He didn't take nowhere near all of his stuff. He took
24 his lunch box and the little thing of clothes right there
25 that he had.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 Q Okay.

2 A But the dirty laundry and there's a bunch of stuff of
3 his still in the vehicle.

4 Q Still in the vehicle?

5 A Yes, sir.

6 Q But he took his -- you're saying some of his things --

7 A Yes, sir.

8 Q -- out of the car --

9 A Yes, sir.

10 Q -- to go to the hotel?

11 A I don't -- I didn't have no idea exactly where he was
12 going to, but what -- I pulled over to, to pick him up and
13 he couldn't walk there and then turn around and walk back to
14 work.

15 Q You didn't pull over. You jerked your way over and hit
16 him, spun him in the air, and accelerated.

17 That's not pulling over, is it?

18 Pulling over is what you said, well, when you went back
19 to check on him, correct?

20 A Yes, sir.

21 Q You didn't pull back through the bushes again, did you?

22 A No, sir.

23 Q You didn't pull back and make skid marks because oh,
24 no, my boyfriend might be dead?

25 Did you do that?

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 A No, sir.

2 Q In your words, you pulled to the side of the road, got
3 out, and checked on him, correct?

4 A Yes, sir.

5 Q Why couldn't you do that the first time?

6 A I don't -- I---

7 Q Well, you heard the M.A.I.T. Team, the expert, Trooper
8 Duncan said this was not pulling over. This was an
9 intentional turn.

10 A I jerked the car over.

11 Q No, you didn't. Not jerked. He said an intentional
12 turn into the bushes. You could of come back, but you
13 didn't.

14 You didn't go through the bushes, did you, to, to check
15 on Mike?

16 A No, sir.

17 Q As a matter of fact, you left there, there, got stopped
18 by a policeman calm and coolly, and never said anything
19 about Mike, did you?

20 A No, sir.

21 Q And you drove all the way to Woodruff with Mike's body
22 laying out in the grass possibly seven to nine hours until
23 Mr. Allen, excuse me, Mr. Lyles found him, is that correct?

24 A Yes, sir, I flipped out and was scared. I didn't know
25 what to do.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

- 1 Q You were scared?
- 2 A Yes, sir.
- 3 Q Did you take any drugs when you got home?
- 4 A In the morning, yes, sir.
- 5 Q You did?
- 6 A Yes, sir.
- 7 Q You took some drugs when you got home?
- 8 A I took---
- 9 Q What did you take?
- 10 A When I got up the next morning I took my Valium, my
- 11 Lortabs, all of my list of medicines.
- 12 Q The next morning is when you took all your drugs?
- 13 A I took all my medicine.
- 14 Q Were you still high when you were sleeping?
- 15 When you woke up, were you still high?
- 16 A Yeah, I -- no, sir.
- 17 Q When did the high wear off exactly?
- 18 A I, I don't -- I can't --.
- 19 Q You don't know?
- 20 A I can't say that.
- 21 Q So, you can't say it -- when you were high and when it
- 22 stopped, can you?
- 23 A When I woke up, I wasn't.
- 24 Q You talked about all your back problems and hernia
- 25 problems and things of that nature.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 why haven't you been using a cane this week?

2 A Cause I don't, I don't have one now.

3 Q You don't have one now, but you---

4 MR. SHEALY: Your Honor, I think we have an objection
5 that needs to be done outside the presence of the jury.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, I'll ask you to step back to the jury room. As
8 always, I'll ask you not to discuss this matter until I've
9 asked you to begin your deliberations.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Yes, sir, Mr. Shealy.

13 MR. SHEALY: My client, Your Honor, has been in jail
14 and has been for two and a half years. The question of why
15 don't you have a cane I expect would lead to a -- the jail
16 as an issue with a cane.

17 SOLICITOR GRAY: Your Honor?

18 THE COURT: Is he allowed to have a cane in the jail?

19 SOLICITOR GRAY: Yes, sir.

20 THE WITNESS: I've asked medical for one and they
21 refuse to give me one.

22 THE COURT: If you get into that we're gonna get into
23 the fact he's incarcerated, and that -- I think the
24 prejudicial effect may outweigh the probative value in that
25 case.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 SOLICITOR GRAY: Yes, sir, Your Honor.

2 THE COURT: So, I'm gonna ask you not to go there.

3 MR. SHEALY: Thank you, judge.

4 THE COURT: I'll sustain the objection.

5 Well, let's take about a five minute break. I've got
6 to deal with the jury pool for just a second. So, I've got
7 to take care of some things. We'll take about a five minute
8 break. I'll stay on the bench.

9 (WHEREUPON, a short recess was taken at this time.)

10 THE COURT: Everybody ready, Mr. Gray?

11 SOLICITOR GRAY: Yes, sir.

12 THE COURT: Are you ready, Mr. Shealy?

13 MR. SHEALY: I am, Your Honor.

14 THE COURT: All right. Let's bring the jury in.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: The record will reflect the jury has
18 returned to the courtroom.

19 At this time you may proceed with your
20 cross-examination in keeping with my instructions, Mr. Gray.

21 SOLICITOR GRAY: Thank you, sir.

22 CONTINUED CROSS-EXAMINATION

23 BY SOLICITOR GRAY:

24 SOLICITOR GRAY: May I approach the witness?

25 THE COURT: Yes, sir, you may.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 Q I show you what's been marked State's Exhibit 59, 60,
2 and 57.

3 Do you recognize those scenes in those pictures?

4 A Yes, sir, that's Dillon Drive.

5 Q It's Dillon Drive or Skylyn Drive?

6 A Skylyn Drive. I'm sorry.

7 Q All right. Do you see any track marks going back into
8 the grass?

9 Do you?

10 A I don't understand what you mean the track marks. I
11 don't -- I see that right there that --

12 Q Okay.

13 A -- where I slid I think.

14 Q Okay. I'm gonna ask you, in No. 59, do you see what's
15 in front of the sheriff's deputy's car?

16 A An ambulance.

17 Q An ambulance.

18 And where is it parked?

19 A In the road.

20 Q In the road.

21 Show you another one.

22 Can you make that out?

23 A Uh-huh. (Affirmative).

24 Q What is that?

25 A An ambulance.

Sandy Westmoreland - Cross-examination
by Solicitor Gray

1 Q And where is it parked?

2 A In the road.

3 Q So they -- the ambulance did not park over your tread
4 marks you said you made in the grass, isn't that correct?

5 A I pulled over. I'm not sure how far I pulled over.

6 SOLICITOR GRAY: No further questions, Your Honor.

7 THE COURT: Mr. Shealy, redirect.

8 MR. SHEALY: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. SHEALY:

11 Q You ever driven on the grass before, Sandy, just in
12 general?

13 You ever driven on the grass before?

14 A Yes, sir.

15 Q Okay. Do you always leave track marks?

16 A (Witness nods negatively.)

17 Q They're times, in fact, that you don't, isn't that
18 true?

19 A Yes, sir.

20 Q Okay. So, you don't know if you left track marks when
21 you came back, do you?

22 A No, sir.

23 Q Did you get out and say oh, yeah, there's my track
24 mark, there's my track mark?

25 A No.

Sandy Westmoreland - Redirect examination
by Mr. Shealy

1 Q No.

2 You didn't do that.

3 why didn't you do that?

4 You're a little concerned about what was going on,

5 weren't you---

6 A Yes, sir.

7 Q ---about Mr. Daniels?

8 THE COURT: You're on direct and that's leading. I'm

9 gonna prevent you from doing that.

10 MR. SHEALY: I apologize, Your Honor.

11 Q But is that correct?

12 A Yes, sir.

13 Q All right. We've -- they crossed you about this

14 tolerance thing, and they read off from this exhibit.

15 was there any Dilaudid?

16 A No, sir.

17 Q So you weren't prescribed Dilaudid?

18 A No, sir. As far I recollect, that's the first time I

19 ever had Dilaudid.

20 Q You don't know that you've ever had Dilaudid other than

21 that one?

22 A No, sir.

23 Q No.

24 So, you couldn't have built up a tolerance to that one?

25 A No, sir.

Sandy Westmoreland - Redirect examination
by Mr. Shealy

- 1 Q Okay. Now, you've testified also about pain and I
2 believe you've testified about how it took more pills to
3 ease the pain?
- 4 A Yes, sir.
- 5 Q How would it affect your mental faculties, your mental
6 abilities?
- 7 A You'd feel it and everything mentally, but the pain
8 would still be there.
- 9 Q Okay. So you'd still hurt, but you'd---
- 10 A Yes, sir.
- 11 Q ---still be high?
- 12 A Yes, sir.
- 13 Q Okay. And you've been high before?
- 14 A Yes, sir.
- 15 Q Okay. So you know what it feels like?
- 16 A Yes, sir.
- 17 Q Do you have to be falling all over yourself?
- 18 A No, sir.
- 19 Q Cause you've been high before?
- 20 A Yes, sir.
- 21 Q Now, Mr. Gray kept bringing up this you looked fine,
22 everybody said you looked fine.
- 23 How did you feel?
- 24 A I was high. I was confused.
- 25 Q Okay. And you were also in the courtroom when the

Sandy Westmoreland - Redirect examination
by Mr. Shealy

1 doctor testified everything affects somebody differently.

2 A Yes, sir.

3 Q That it was -- that it just affects people differently.

4 A Yes, sir.

5 Q And so, to your knowledge, you've never had Dilaudid
6 before?

7 A No, sir.

8 Q You can't think of a time when---

9 A No, sir.

10 Q You certainly were prescribed it?

11 A No, sir.

12 MR. SHEALY: I think that's all I have for this
13 witness.

14 THE COURT: Recross.

15 RECROSS EXAMINATION

16 BY SOLICITOR GRAY:

17 Q Did you tell anyone you were high before you left?

18 A Before I left the hospital?

19 Q Did you?

20 A No, sir.

21 Q Did you tell the doctor---

22 A They, they told me to leave, leave or go to jail. So,
23 I left. I did what the officer told me to do.

24 Q Did you tell the officer that you were high?

25 A I did as he told me to do. I left.

Sandy Westmoreland - Recross examination
by Solicitor Gray

1 Q It's a simple question, sir.

2 Did you tell the officer---

3 A No, sir.

4 Q ---you were high?

5 A No, sir.

6 Q Did you tell the doctor you were high?

7 A No, sir.

8 Q Did you tell anybody, the security guard, a nurse, that
9 you were high?

10 A No, sir, they asked me to leave. Either leave or go to
11 jail. I got in the car. I left. I did not argue with
12 them. I didn't.

13 Q But you did argue with Mike, didn't you?

14 A We had a little argument, yes, sir.

15 Q And you hit him in the nose with the cane?

16 A Yes, sir, but not on purpose.

17 Q Again -- never mind.

18 Nothing further, Your Honor.

19 MR. SHEALY: Just a couple of questions on recross,
20 redirect I suppose, judge.

21 THE COURT: I don't know if I allow re-redirect unless
22 there was something new that came up.

23 MR. SHEALY: Your Honor, he's asked him about the---

24 THE COURT: There's nothing new.

25 MR. SHEALY: ---argument. I believe I can go back into

Sandy Westmoreland - Recross examination
by Solicitor Gray

1 that.

2 THE COURT: The argument has been gone over in previous
3 testimony.

4 MR. SHEALY: Well, judge, again, he went into it on
5 cross. I would of thought I'd be able to bring -- ask him
6 about it.

7 THE COURT: Re-redirect is something that is rarely
8 done.

9 MR. SHEALY: Okay.

10 THE COURT: So, you're gonna have to explain to me what
11 new has come up about the argument.

12 MR. SHEALY: Well, judge, he's asked him if there was
13 an argument. I believe I can ask about him being angry at
14 my client. I mean I, I believe I have -- if you're not
15 gonna allow me to ask him about that---

16 THE COURT: well, if that's something new -- I think
17 we've gone into the argument on direct and on cross and now
18 on redirect and on recross and --.

19 MR. SHEALY: well, judge, so I'm assuming that---

20 THE COURT: we can only dig these holes so deep. I'll
21 let you ask your question.

22 MR. SHEALY: All right.

23 THE COURT: But it better be something new.

24 MR. SHEALY: Or the -- well, judge, I mean I don't know
25 if it's gonna fit your---

Sandy Westmoreland - Re-redirect examination
by Mr. Shealy

1 THE COURT: I don't know what your question is.

2 RE-REDIRECT EXAMINATION

3 BY MR. SHEALY:

4 Q In this argument I believe he's asked about the
5 argument that involved the -- being with Mr. Daniels with
6 the cane.

7 It's my understanding that he was just angry, is that
8 correct?

9 A Yes, sir.

10 Q Are folks who have crack addictions always rational?

11 SOLICITOR GRAY: Objection.

12 THE COURT: Yes, sir.

13 SOLICITOR GRAY: Objection is he doesn't have the
14 knowledge. I believe it's speculation also.

15 MR. SHEALY: Judge, he's been living with the fellow
16 who he's testified has a---

17 THE COURT: I'll ask the jury to step back to the jury
18 room. Don't begin any discussion until I ask you to do so.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Crack addiction?

22 MR. SHEALY: Your Honor, he said he's been on crack.
23 If I need to rephrase that---

24 THE COURT: He said, he said today he hadn't been using
25 cause he got a soap rock and he wasn't on crack that day.

1 MR. SHEALY: Well, not that day, but he's -- he said
2 that -- judge, if you want me to rephrase it, if you want me
3 to withdraw the question I'll withdraw the question.

4 THE COURT: Well, I mean either your position is that
5 the victim was on crack that day and would of affected his
6 arguing, arguing abilities and his reasoning abilities or he
7 was not on crack that day.

8 Now, you took the position earlier before the Court
9 that he got a soap rock, and, therefore, he was not on crack
10 that day. Now you seem to be asking a question that he is
11 on crack that day---

12 MR. SHEALY: But---

13 THE COURT: ---and I'm having a hard time following
14 what your position is.

15 MR. SHEALY: Well, judge, it's our position that, while
16 he was not on crack that day, he was apparently using it at
17 various times. Not maybe that day. We don't -- I can't
18 testify -- I don't know. He hasn't testified that he was
19 using crack that day. In fact, he's testified he wasn't
20 using crack that day, but---

21 THE COURT: And I don't recall Mr. Gray asking him
22 about what affect crack might of had on the argument that
23 day.

24 MR. SHEALY: Well---

25 THE COURT: So that is going -- again, I think we're

1 going too far to re-redirect.

2 MR. SHEALY: Judge?

3 THE COURT: Then I will not allow the question.

4 MR. SHEALY: Okay. Then I'll just be done.

5 THE COURT: One reason I don't like to go there. We
6 just keep getting into things like this.

7 MR. SHEALY: Well, judge --.

8 THE COURT: Any other questions on new matters that
9 were brought up by his---

10 MR. SHEALY: No, sir.

11 THE COURT: ---recross?

12 MR. SHEALY: No, sir.

13 THE COURT: Okay. Bring the jury back.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: I ruled the last question out of order.
17 You may continue.

18 MR. SHEALY: I have no further questions.

19 THE COURT: All right. Sir, you may step down.

20 The defense may call its next witness.

21 MR. SHEALY: The defense would rest at this point, Your
22 Honor.

23 THE COURT: All right. Does the State intend to have
24 witnesses in reply?

25 SOLICITOR GRAY: Yes, sir, Your Honor.

1 THE COURT: All right. I'm gonna take a break for
2 lunch at this point in time. We'll take those up when we
3 come back.

4 Ladies and gentlemen of the jury, I'm going to allow
5 you to go to lunch. It's about 12:30 and that's when I like
6 to try to stop for lunch.

7 I'll give you the same instructions I've given you
8 every time you left the courthouse thus far. Don't attempt
9 to gather any information about this matter on your own.
10 Don't listen to, watch, or read media reports about the
11 case. Don't discuss the case with anyone. Don't allow
12 anyone to discuss it with you. If anyone attempts to
13 contact you about the case, please report that upon your
14 run.

15 We'll start back, let's see, about a quarter till 2:00,
16 1:45. That will give you a little more than an hour for
17 lunch. Be back in the jury room at that time. We should be
18 in a position to start shortly thereafter.

19 You may retire.

20 (WHEREUPON, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. Court's in recess for lunch.
23 We'll return at a quarter till 2:00.

24 Thank you very much.

25 MR. SHEALY: Thank you, judge.

1 (WHEREUPON, Court was in recess for the lunch hour.)

2 THE COURT: All right. State ready to proceed?

3 SOLICITOR GRAY: Yes, sir, Your Honor.

4 THE COURT: Defense ready to proceed.

5 MR. SHEALY: Yes, Your Honor.

6 THE COURT: Let's bring the jury in.

7 (Whereupon, the following takes place within the
8 presence of the jury.)

9 THE COURT: All right. The record will reflect the
10 jury has returned to the courtroom.

11 If there was any juror who was unable to follow my
12 instructions during the lunch break, please stand.

13 (No response.)

14 THE COURT: It appears that all jurors have continued
15 to follow my instructions.

16 When we broke before lunch the State had indicated they
17 wish to call at least a reply witness.

18 At this time you may do so.

19 SOLICITOR MORICLE: Thank you, Your Honor.

20 State would call Pat Livesay.

21 THE COURT: Come forward please, ma'am.

22 PAT LIVESAY, being first duly
23 sworn, testified as follows:

24 THE COURT: Have a seat please, ma'am, and once you're
25 seated, state your name.

Pat Livesay - Direct examination
by Solicitor Moricle

1 THE WITNESS: My name is Pat Livesay.

2 THE COURT: Thank you.

3 Your witness, Ms. Moricle.

4 DIRECT EXAMINATION

5 BY SOLICITOR MORICLE:

6 Q Good afternoon, Ms. Livesay.

7 Can you please tell the jury where you work?

8 A I work for DCI, Dialysis Clinic, Incorporated.

9 Q And can you tell me, was Michael Daniels an employee?

10 A Yes, he was.

11 Q How long had he been employed there?

12 A Almost five years.

13 Q How long have you known Mr. Daniels?

14 A Probably about 17 years.

15 Q And did you hire Mr. Daniels?

16 A I did.

17 Q Can you tell me what his basic duties were?

18 A As a patient care technician, he put patients on
19 dialysis machines, and monitored them, inserted their
20 needles, removed their needles, and cleaned the equipment.

21 Q And did he work with the other staff?

22 A Yes, he was -- there's five staff to a side. So, he
23 was always with an RN and an LPN and two other patient care
24 technicians.

25 Q Okay. And can you tell me what his hours were?

Pat Livesay - Direct examination
by Solicitor Moricle

1 A 6:00 to 4:30. Once a week a PC is assigned to come in
2 at 4:30AM to open the facility.

3 Q Okay. And how many hours a week did he work?

4 A He would work 60 if you would let him. He worked a lot
5 of overtime.

6 Q would you say you worked with him pretty closely?

7 A Yes.

8 Q Did you ever notice any erratic behavior?

9 A No.

10 Q Did you ever believe that he had been on drugs?

11 A No.

12 Q How long had he worked there?

13 A Five, five years.

14 Q How many hours a week?

15 A He worked a lot of overtime. Somewhere between 40 and
16 60 hours a week.

17 Q Have you had anyone work for you that has been on drugs
18 previously?

19 A Yes.

20 Q Were you able to tell they were on drugs?

21 A Yes, I was.

22 Q Would you think -- did you think Mr. Daniels was on
23 drugs?

24 A No, I never thought that.

25 Q What was his personality like?

Pat Livesay - Direct examination
by Solicitor Moricle

1 A Very mild mannered, meek, religious.

2 Q Did he ever lose his temper?

3 A No.

4 Q Was he ever agitated?

5 A No, ma'am.

6 Q Did you ever see Mr. Daniels drink alcohol?

7 A No.

8 Q Smoke cigarettes?

9 A No.

10 Q Take any medication?

11 A No.

12 Q Do you know Mr. Westmoreland?

13 A I've seen him twice, but no, I don't know him
14 personally.

15 Q Okay. Would you hold on just a moment?

16 A Uh-huh. (Affirmative).

17 (Pause.)

18 SOLICITOR MORICLE: I have no further questions for the
19 witness, sorry, for this witness, Your Honor.

20 THE COURT: All right. Mr. Shealy, you may
21 cross-examine.

22 MR. SHEALY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SHEALY:

25 Q Ms. Livesay, did you live with Mr. Daniels?

Pat Livesay - Cross-examination
by Mr. Shealy

1 A Did I live with him?

2 Q Did you live with him?

3 A No, sir.

4 Q Okay. Did you go to the hotel that he was living at
5 with him?

6 A No, sir.

7 Q No.

8 Did you go to Mr. Westmoreland's house when Mr. Daniels
9 was living with Mr., Mr. Westmoreland?

10 A No.

11 Q No.

12 Do you know who Tim Cannon is?

13 A Yes.

14 Q Okay. Who is he?

15 A He was Michael's significant other for a period of time
16 after Michael died -- Michael Smith died.

17 Q And did Tim Cannon ever have cause to call y'all?

18 A No.

19 Q Okay. Do you know why Mr. Daniels and Mr. Cannon broke
20 up?

21 A No.

22 Q No.

23 I believe that's all I have for this witness, Your
24 Honor.

25 THE COURT: Redirect?

Pat Livesay - Cross-examination
by Mr. Shealy

1 SOLICITOR MORICLE: No, Your Honor.

2 THE COURT: You may step down, ma'am.

3 THE WITNESS: Thank you.

4 THE COURT: You wish to excuse the witness?

5 SOLICITOR MORICLE: Yes, Your Honor.

6 THE COURT: Any objections?

7 MR. SHEALY: No, Your Honor.

8 THE COURT: Ma'am, you're free to go. Thank you very
9 much.

10 State may call its next witness.

11 SOLICITOR GRAY: State calls Deputy Hogsed.

12 THE COURT: Come forward, sir. I will remind you that
13 you've already been placed under oath in this case. You are
14 still under oath at this time.

15 Do you acknowledge that fact?

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you. Have a seat, sir.

18 (Witness complies.)

19 DAVID HOGSED, having been previously
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR GRAY:

23 Q Again, you collected all evidence at the scene of the
24 incident, correct?

25 A Yes, I did.

David Hogsted - Direct examination
by Solicitor Gray

1 Q Did you recover any false teeth?

2 A I did not.

3 Q A wallet belonging to the defendant?

4 A I did not.

5 Q Any drugs like crack?

6 A No.

7 Q Any drug paraphernalia?

8 A No.

9 Q Any soap, soap that he was talking about?

10 A No, sir.

11 SOLICITOR GRAY: That's all, Your Honor.

12 THE COURT: Mr. Shealy, your witness.

13 CROSS-EXAMINATION

14 BY MR. SHEALY:

15 Q Did you go to the hotel?

16 A I did not.

17 Q Okay. You've heard testimony that Mr. Daniels left the
18 hospital and then came back, correct?

19 A That's correct.

20 MR. SHEALY: All right. That's all I have for this
21 witness.

22 THE COURT: Redirect?

23 SOLICITOR GRAY: No, sir.

24 THE COURT: All right, sir. You may step down.
25 State may call its next witness.

1 SOLICITOR GRAY: Nothing further from the State, Your
2 Honor.

3 THE COURT: All right. Anything further from the
4 defense?

5 MR. SHEALY: No, Your Honor.

6 THE COURT: Ladies and gentlemen, that completes the
7 presentation of evidence in this case. There's some matters
8 I have to go over with the lawyers before we begin the next
9 phase of the trial, which will be the closing arguments and
10 then my charge on the law.

11 So, once again, I'm gonna ask you to step into the jury
12 room. Don't begin discussions until I ask you to do that in
13 deliberations.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Defense wish to renew its motions for
17 directed verdict?

18 MR. SHEALY: We do, Your Honor.

19 THE COURT: All right. It's noted that you have made
20 the motion and I would issue the same order and same ruling
21 at this time.

22 Any other motions?

23 MR. SHEALY: No, Your Honor, but I would -- I guess we
24 do need to talk about charges.

25 THE COURT: Yes, that's what my next, next thing would

1 be.

2 MR. SHEALY: Okay, Your Honor.

3 THE COURT: Any specific request for charge from the
4 State?

5 SOLICITOR GRAY: Yes, sir. Your Honor, intoxication --
6 involuntary intoxication is not a defense in this situation.

7 THE COURT: Well, I had gotten that charge out.

8 what, what's the defense's position on voluntary
9 intoxication?

10 MR. SHEALY: Well, Your Honor, it'd be our position
11 that the charge, as to involuntary manslaughter, would be
12 correct as to whether this was criminal negligence or not.
13 Unfortunately the State is decided not to charge him with
14 Felony DUI.

15 Now, it would be our position that to call this
16 voluntary intoxication is a little disingenuous since he was
17 injected -- I mean he was taking prescribed meds and he was
18 also injected at the hospital. It would be our position
19 that there would be evidence from which a jury could find
20 one, that even this was simply an accident, or that my
21 client was criminally negligent, and that's why we're
22 handled -- an instrumentality this deadly, and, judge, we do
23 have case law as to involuntary manslaughter regarding
24 vehicles dealt with recklessly. It's old, but it's, so far
25 as I can tell, not been overturned.

1 THE COURT: Are, are you mixing some arguments here?
2 I'm trying to follow what you're arguing.

3 MR. SHEALY: Well, it's our argument -- what we're
4 asking you to charge is for a charge on accident and a
5 charge on involuntary manslaughter.

6 THE COURT: well, let's talk about the one he
7 requested, which was one of involuntary -- involuntary
8 intoxication -- is it voluntary or involuntary intoxication?

9 SOLICITOR GRAY: I would say both, Your Honor.

10 THE COURT: voluntary.

11 SOLICITOR GRAY: Yes, sir.

12 MR. SHEALY: But, Your Honor, he just said both.
13 Now, again---

14 THE COURT: well, that's what -- I pinned him down.

15 MR. SHEALY: But, again, judge---

16 THE COURT: voluntary---

17 MR. SHEALY: I don't---

18 THE COURT: ---is what he's asking for, and I want you
19 to address that request and then we'll get to something else
20 later on.

21 MR. SHEALY: Yes, sir, and I apologize.

22 THE COURT: That's okay.

23 MR. SHEALY: I believe that, again, to call this
24 voluntary intoxication is to be disingenuous and we'd object
25 to that charge. I don't believe it's---

1 THE COURT: well, I've -- we're looking for some
2 authority on that point. I haven't found any.

3 I assume you have some?

4 MR. SHEALY: I, I have no authority as to -- but I
5 don't -- I just don't have any authority. It doesn't appear
6 to be mentioned is the problem.

7 THE COURT: well, my understanding of the medications
8 that he was taking, they were prescription pain medications,
9 and that he was given some medications at the hospital.

10 MR. SHEALY: Yes, sir.

11 THE COURT: The doctor, however, testified, and it
12 really wasn't refuted, that he observed him, he didn't
13 appear to be under the influence of the drugs when he left
14 the hospital.

15 MR. SHEALY: well---

16 THE COURT: Now your client says he was high, but then
17 he was asked if he knew why he -- what -- how he was high
18 and he didn't really have an answer as to how he knew he was
19 high.

20 MR. SHEALY: well---

21 THE COURT: But let's -- neither here nor there. The
22 taking of pain medications, you have the right to refuse
23 them. In other words, you -- a person is not required to
24 take pain medications. In other words, I could -- I've been
25 through procedures before and they've given me pain

1 medications and never take a bit of it. Just don't do it.

2 So, I mean people don't have to take them. So, it's --
3 I'm, I'm trying to find anything that, that would indicate
4 though that a -- because it's a prescription that you're
5 claiming to be an intoxicant, if that takes it out of the
6 realm of voluntary intoxication.

7 MR. SHEALY: Well, judge, and I can't point to a
8 particular case. Having said that, I can't point to a
9 particular case that makes it voluntary intoxication. So,
10 I'd submit to you that the -- you should be erring on the
11 side of the defendant. That's the Rule of Lenity. I mean
12 that's what we use.

13 I mean and if they can't---

14 THE COURT: Well, again, the medications that he took
15 he could of refused.

16 MR. SHEALY: Well, Your Honor, he didn't realize he was
17 gonna be driving. He testified that Mr. Daniels was there
18 to be his driver, and after those medications---

19 THE COURT: And then he could of refused to drive.

20 MR. SHEALY: Well, Your Honor, again, he would -- he
21 testified that it was leave or go to jail. Nobody assumes
22 they're---

23 THE COURT: Oh, I would of defended him on that one.

24 MR. SHEALY: I mean well, judge---

25 THE COURT: I'm just saying if that was the case.

1 MR. SHEALY: well, maybe, judge, but, you know, I think
2 a reasonable person wouldn't expect what happened to have
3 happened. I mean I think a reasonable person would of just
4 said okay, and tried to drive home. And I don't think
5 that -- again, I think that without a case that says it is
6 voluntary intoxication, I'd submit to you that---

7 THE COURT: well, we may have some.

8 MR. SHEALY: well, we, we may. I'm not hearing that
9 though.

10 THE COURT: I'm working on that right now. To, to -- I
11 don't have any that says it's not.

12 So, I mean I'll, I'll be glad to -- I haven't charged
13 it yet. I'm trying to -- I'm, I'm seeking guidance on it
14 because it is an unusual circumstance.

15 SOLICITOR GRAY: Your Honor?

16 THE COURT: Uh-huh. (Affirmative).

17 SOLICITOR GRAY: I think I have a State v. Todd.

18 THE COURT: State v. Ott?

19 SOLICITOR GRAY: Todd.

20 THE COURT: Todd. I'm sorry.

21 SOLICITOR GRAY: 290 SC 212.

22 MR. SHEALY: Your Honor, again, this one would be
23 regarding a -- there was some evidence that the defendant
24 had been drinking.

25 THE COURT: Yes, sir. well, the charge, the charge

1 that I normally charge involves the use of drugs and/or
2 alcohol is way the charge is, is in my charge book. So,
3 drugs are included.

4 MR. SHEALY: Yes, sir, but it would be our position
5 that drinking is not something prescribed.

6 THE COURT: Oh, I understand that. If you, if you see
7 an exception for prescription drugs in that area of the law
8 I would like to see it.

9 MR. SHEALY: Well, judge---

10 THE COURT: I'm looking for it. I can't -- have not
11 found that exception.

12 MR. SHEALY: And, again, judge, I don't -- it would be
13 our position that they've not shown that there isn't such a
14 exception.

15 SOLICITOR GRAY: Your Honor, I don't think we have to
16 prove a negative.

17 THE COURT: He wants you to do that.

18 MR. SHEALY: Well, judge, I think he has to have a case
19 that says that it's -- well, I mean again---

20 THE COURT: well, you know, my, my position is, and
21 as -- I thought this through at lunch. We discussed this at
22 lunch with my law clerk, and we talked about this, and, and
23 most pain medications are medications that people can either
24 take or not take. It's not something you have to take to
25 survive.

1 You know, in the Civil War they amputated arms and legs
2 and gave them a bullet to bite on. So, pain medication is
3 something that people take. I realize it's part of our
4 society, I understand that, and if there's an exception for
5 prescription drugs when taken in accordance with a
6 prescription that, that takes it out of the voluntariness
7 of -- exception, I'll be glad to hear it. This is just an
8 interesting question I have not had come up before.
9 Apparently there's not too many cases on it where we can
10 find anything.

11 MR. SHEALY: I can't find anything either, judge. But,
12 again, it would be our position, and, obviously Your Honor
13 can---

14 THE COURT: See, I can see somebody, for example,
15 take -- having a prescription drug and then abusing it,
16 taking twice the dosage, and that certainly would be a
17 voluntary intoxication.

18 MR. SHEALY: Yes, sir, but, again, that was not the
19 case here, and that's not -- nobody has -- there's been no
20 evidence presented that he overdosed himself.

21 THE COURT: Oh, I didn't say that. I'm just saying
22 that the fact that it's a prescription drug, in and of
23 itself, would not take it out of the voluntariness is what
24 I'm trying to say.

25 MR. SHEALY: But, again, judge, it would be our

1 position that it's not -- it's simply not voluntary
2 intoxication.

3 THE COURT: I understand your position. Give me
4 some -- give me, give me some you -- authority and I'll let
5 you -- we'll talk about this again after your argument. I'm
6 asking you to support your position.

7 MR. SHEALY: Well, and -- again, judge, as you've
8 already pointed out, there doesn't seem to be any case that
9 says one way or the other, and, again, judge, I would submit
10 to you that since the burden is on the State---

11 THE COURT: Is there a case that says that, what you're
12 telling me now?

13 MR. SHEALY: The Rule of Lenity would say that you have
14 to---

15 THE COURT: The rule of what?

16 MR. SHEALY: Lenity, L-E-N-I-T-Y.

17 THE COURT: Yeah.

18 MR. SHEALY: That you have to construe these cases
19 against the State because my client is the accused here.

20 THE COURT: Well, the cases all say that voluntary
21 intoxication is not a defense. That's what the cases say.

22 MR. SHEALY: Well, judge, and, again, it -- if you're
23 gonna rule against me, I think I -- I've explained to you
24 that I don't have a case, but it would be our position---

25 THE COURT: And I'm giving you an opportunity to look

1 for some, and we'll talk -- I'll come back to you later.

2 All right, now. Anything else that the State's asking
3 for?

4 SOLICITOR GRAY: No, sir, Your Honor.

5 THE COURT: All right. Now, defense's request.

6 MR. SHEALY: We would have a request for involuntary
7 manslaughter, Your Honor, as negligent handling of a
8 dangerous instrumentality as well as a charge for accident.

9 THE COURT: All right. I -- State's position.

10 SOLICITOR GRAY: I don't think involuntary is necessary
11 in this situation. There's testimony that the yanking or
12 steering of the wheel indicates intent in that situation
13 from the expert from the M.A.I.T. Team, and we also have
14 evidence of acceleration in this situation. There's
15 distance from the road to the impact.

16 There's no indication that he slipped off the road,
17 there were slippery slope or ice or anything in this
18 situation. No recklessness. This was intentional, plain
19 and simple. He saw him walking down the road and he yanked
20 the car, hit him, and sped off, Your Honor.

21 MR. SHEALY: Your Honor, and I understand the State
22 doesn't want to believe my client, but we did present
23 evidence, through my client, that it was -- that he -- they
24 could either -- that a jury could either find---

25 THE COURT: Well, voluntary manslaughter requires heat

1 of passion.

2 MR. SHEALY: Involuntary. Involuntary.

3 THE COURT: Oh, excuse me. I misunderstood, I
4 misunderstood what you told me.

5 okay. Let me go there.

6 (Pause.)

7 THE COURT: All right. On that question?

8 SOLICITOR GRAY: Yes, sir.

9 THE COURT: I want to hear your argument.

10 SOLICITOR GRAY: Which question is that, voluntary?

11 THE COURT: Involuntary -- no, on involuntary.

12 SOLICITOR GRAY: On this situation, Your Honor, it's
13 the intent that's most important for the involuntary
14 manslaughter. Again, yanking the car.

15 THE COURT: Well, I understand that you have factors---

16 SOLICITOR GRAY: Yes, sir.

17 THE COURT: ---that would tend to disprove what they're
18 saying.

19 SOLICITOR GRAY: Yes, sir.

20 THE COURT: But according to his testimony, he did not
21 intend to hit him. He intended to pull-off and offer him a
22 ride. So, there is evidence to the effect that he did not
23 intend the result.

24 I'll charge it.

25 MR. SHEALY: Your Honor, we also ask for accident given

1 he said that it was an accident.

2 THE COURT: Tell me the nature -- give me the charge
3 you want me to give on accident.

4 MR. SHEALY: I apologize, judge. I thought there was
5 a -- just a standard charge as to accident.

6 THE COURT: I'll charge accident.

7 MR. SHEALY: And, Your Honor, I would object to -- and
8 I don't know if Your Honor planned to give that malice can
9 be inferred from the use of a deadly weapon.

10 THE COURT: All right. I'll hear from you on that.

11 MR. SHEALY: It would be our position that, according
12 to State versus Belcher and it's prodigy, that where there's
13 evidence given to mitigate or excuse a homicide, that, that
14 charge is simply not proper.

15 SOLICITOR GRAY: Anything can be used as a weapon, Your
16 Honor, any plain object. In this case it's a 2,000-pound
17 object where he's --.

18 THE COURT: Let me ask you what the mitigation was for
19 his use of the vehicle in that fashion.

20 MR. SHEALY: Your Honor, it's our argument that it was
21 an accident or that he could be found guilty of involuntary
22 manslaughter. That would either reduce, mitigate, excuse,
23 or justify the homicide, and, again, that's State versus
24 Belcher, 385 SC 5.

25 THE COURT: Yeah, I'm familiar with State versus

1 Belcher. That involved guns I believe.

2 MR. SHEALY: It, it is.

3 THE COURT: Yeah.

4 Yes, Mr. Gray.

5 SOLICITOR GRAY: Yes, sir, Your Honor. I stick with my
6 previous argument. In this situation I don't think accident
7 mitigates this particular situation for involuntary
8 manslaughter or accident or murder in this situation.
9 There's an intentional act by the defendant, however, an
10 accident mitigates leaving the scene of an accident,
11 basically hit and run with death. He hit the vehicle --
12 this individual and ran. He told you I knew he was dead. I
13 ran cause I was scared. So, I---

14 THE COURT: Well, now, that---

15 SOLICITOR GRAY: ---don't think---

16 THE COURT: You're, you're -- that's the charge of
17 leaving the scene where death occurred.

18 SOLICITOR GRAY: Yes, sir.

19 THE COURT: Well, that's; that's a whole different---

20 SOLICITOR GRAY: Yes, sir.

21 THE COURT: Accident is not a defense to that charge.

22 SOLICITOR GRAY: Thank you, Your Honor.

23 THE COURT: Cause it can be an accident.

24 MR. SHEALY: Yes, sir, I understand. It's, it's our
25 position that, as to the murder, there is a charge, old

1 charge, about inferring malice from the use of a deadly
2 weapon.

3 THE COURT: Yes, sir. Well, it's -- no, it's not an
4 old charge. It's a current charge.

5 MR. SHEALY: It, it is.

6 THE COURT: It's -- you only -- you don't use it where
7 there's some excuse for the use of the instrumentality.

8 MR. SHEALY: Yes, sir.

9 THE COURT: So, it's not an old charge. It's, it's---

10 MR. SHEALY: But it---

11 THE COURT: It's current. We currently use it.

12 MR. SHEALY: Yes, sir, but, again, it would be -- we'd
13 object to using that charge here because --.

14 THE COURT: I understand what you're saying.

15 Under murder, I'll, I'll grant that. I won't charge
16 the inference of a deadly weapon.

17 MR. SHEALY: Thank you, Your Honor.

18 THE COURT: Now, as to accident, I will have to inform
19 the jury that is only a defense to the charge of murder.

20 MR. SHEALY: Yes, sir.

21 THE COURT: Not to the other charge.

22 MR. SHEALY: Yes, sir, I understand.

23 THE COURT: All right. I got lost here. Just go back.
24 (Pause.)

25 THE COURT: All right. Anything further from the State

1 before we do closing arguments?

2 SOLICITOR GRAY: No, sir, Your Honor.

3 THE COURT: Anything further from the defense?

4 MR. SHEALY: No, Your Honor.

5 THE COURT: I assume the defense will be going first?

6 MR. SHEALY: Yes, sir.

7 THE COURT: Followed by the State?

8 SOLICITOR GRAY: Yes, sir.

9 THE COURT: All right. Bring the jury in.

10 COURT REPORTER: Judge, can I have a quick break?

11 THE COURT: Yeah, we'll take about a five minute break.

12 I'll stay on the bench.

13 (WHEREUPON, a short recess was taken at this time.)

14 THE COURT: Ask the attorneys to approach.

15 (WHEREUPON, a bench conference was held at this time.)

16 THE COURT: All right. State ready to proceed?

17 SOLICITOR GRAY: Yes, sir, Your Honor.

18 THE COURT: Defense ready to proceed?

19 MR. SHEALY: Yes, sir, Your Honor.

20 THE COURT: Bring the jury in.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE COURT: All right. The record will reflect the
24 jury has returned to the courtroom.

25 At this point in time the attorneys will be allowed to

1 again directly address you through their closing arguments
2 or summations. The defense will be going first.

3 Mr. Shealy, you may proceed.

4 MR. SHEALY: Thank you, Your Honor.

5 Ladies and gentlemen, it's been a long three days. I
6 like to begin my closing with an explanation of reasonable
7 doubt.

8 As I told you at the beginning, we don't bear any
9 burden to prove anything. The reason for that is just our
10 system requires the State to prove it beyond a reasonable
11 doubt.

12 So, what is a reasonable doubt?

13 A reasonable doubt is that doubt that would cause a
14 reasonable person to hesitate.

15 Okay. Now, my dad's been a lawyer for a very long
16 time. He's got the best explanation of reasonable doubt
17 that I've heard, and his explanation of reasonable doubt is
18 when you are going into say a Food Lion or something like
19 that, and you go to the -- either the meat counter, and I'll
20 just use the meat counter, and you see a steak there that is
21 reduced for quick sale.

22 Okay. You know what that means. You know that it
23 might be going off. Okay. But it's really cheap, and you
24 really want that steak, but it might be going off.

25 That's reasonable doubt. Maybe you get the steak.

1 Maybe you don't. It doesn't matter. The fact is you
2 hesitated to act. So, if you hesitate to act, that's a
3 reasonable doubt, and you're required by that oath to find
4 my client not guilty.

5 Okay. Now, you've heard, again, a lot of testimony,
6 and, as I told you at the very beginning of all of this,
7 Sandy left the scene of that accident.

8 Now, the statute is complicated and it's not
9 particularly well written. So, there's a technical argument
10 that he didn't violate the statute, but we're not gonna make
11 that cause he left the scene of the accident, and he's
12 always admitted that.

13 Well, he's admitted that since he talked to Officer
14 Bryant, and I wish he hadn't given those other statements.
15 I wish he had called 9-1-1. As you saw, he wishes he had
16 done that, but he didn't. He can't change those facts. He,
17 he lied.

18 Now, if y'all don't understand why he would of lied,
19 then I don't think y'all are trying to put yourselves in his
20 shoes enough. He'd never been to jail before. He was
21 terrified.

22 Is that an excuse?

23 No.

24 We're not arguing it's an excuse. We're not asking you
25 to find him not guilty of that crime.

1 what we are asking you to find him not guilty of is
2 murder. Murder is an intentional act. That's what it is.

3 Now, as you'll recall, and I told you at the beginning
4 of all this in the openings, that I don't promise things
5 unless I know I can deliver them, and that you should hold
6 us to the promises that we make.

7 They promised you testimony that Mr. Daniels said I'm
8 leaving and never coming back. He said we're done.

9 That didn't happen. There was no such testimony and
10 you'll notice that whenever they testified as to what Mr.
11 Daniels said to the officers, no, I don't want to press
12 charges, and I just want to get my belongings. Didn't
13 object to that cause I thought they had every right to
14 attempt to make that promise good and they didn't because it
15 was never said.

16 There is no reason that they can point to as to why
17 Sandy westmoreland would of run him over. I mean they're
18 just -- that was the testimony was that no, I don't want to
19 press charges. I want to get my belongings. Now, Mr.
20 westmoreland was I want to get my belongings and go and take
21 a walk I believe.

22 There were also, during the accident reconstruction
23 fellow, he said there was a picture of where the pedestrian
24 was hit. There was some kind of mark in the grass. I
25 didn't see that. I don't see it in -- I have looked at the

1 pictures three or four times now. I've not seen that and
2 all of their calculations were based on this, this spot that
3 they say is there, but I, I, I don't know where it is.
4 Nobody testified to it. It's just it's -- I can't find it.
5 It's just not there.

6 And as Sandy told you, ladies and gentlemen, he was on
7 a number of fairly powerful medications and they gave him
8 two more fairly powerful medications.

9 Now, again, this is where y'all's experiences in life
10 come in cause all of you have probably been on some kind of
11 pain medication at some point in your lives, and y'all will
12 know how those things affect you, and y'all are able to talk
13 about them.

14 I can tell you that my girlfriend was on Dilaudid once.
15 Knocked her out. Knocked her flat for hours.

16 It affects everybody differently. That's what the
17 doctor testified to. It's what he said cause he can't say
18 how Dilaudid would affect people.

19 Yes, he built a tolerance. You heard that. You also
20 heard the doctor say that he was fine discharging a fellow
21 with .1 alcohol level if he looked fine.

22 Now, I use to work in Magistrate Court. I represented
23 a lot of people on DUIs, and I wished that defense had
24 worked, but it didn't. He looks fine, but they blue a .25
25 ain't a defense. It's just not a defense.

1 How many times, ladies and gentlemen, have you maybe
2 driven when you shouldn't have driven?

3 You wake up the next morning and you think I really
4 shouldn't have done that, but you felt fine. All your
5 friends said you looked fine. Yeah, you were fine to drive,
6 but you weren't. It happens. It just happens.

7 Now, again, I wish I could change the facts here.
8 Sandy wishes he could change the facts here, that he had
9 said well then just take me to jail.

10 But let's be honest, again, when faced with that
11 situation, how many of you are saying take me to jail?

12 I'd submit to you not many of us cause nobody thinks
13 that what happened this night is going to happen. You just
14 don't. Particularly not when you're thinking right. You --
15 you're high. You're not thinking and it's just -- it
16 happens.

17 Now, they've made a lot of this nose thing with the
18 cane and you heard the pathologist that just testified.
19 There was no palpable fracture meaning there wasn't any
20 fracture in there. The only contusion he testified was
21 probably from brush.

22 Okay. So, this massive bloody nose that everyone is
23 talking about, the pathologist has testified it's not
24 fractured. The pathologist, who's got no dog in any of this
25 fight, all he's doing is testifying that the shape of the

1 body when he got it and the autopsy, he's saying that it --
2 the only contusion is from brush.

3 So, I don't -- again, what the police officers have
4 testified to and what the independent witnesses are
5 testifying to seems completely different. It's completely
6 different, and that's why I would submit to you, ladies and
7 gentlemen, that the investigation in this case, and I
8 understand there's all of this stuff, but the investigation
9 in this case is really more what we call a rationalization.

10 As M.A.I.T. testified, just as soon as they got there
11 from Oconee County, as soon as they got there, they were
12 told it was an intentional crime. As soon as they got
13 there. They had made their determination within just a few,
14 ten to fifteen, twenty, thirty minutes, however long it
15 takes to call them over from the Oconee County. That
16 quickly. And, at that point, they were building a case for
17 murder because Lorin Williams had decided it was a murder.

18 He told M.A.I.T. it's a murder. He told the coroner
19 it's a murder. He told everybody it's a murder.

20 So, ladies and gentlemen, again, and I -- just as
21 another example of that, I'll point out the differences in
22 the way Mr. Haney, who works at -- driving a forklift now,
23 got absolutely -- doesn't even work at Mary Black anymore.
24 He doesn't have any dog in this fight. I didn't call him.
25 The solicitor's Office called him. So, he doesn't have any

1 reason to shade it my way, and Officer Valentine, with the
2 Sheriff's Office, compared the way they testified my
3 client's demeanor was.

4 Mr. Haney says yeah, he was polite. Said yes, no, good
5 night. He walked them out to the car. Nothing happened.
6 He wasn't agitated. He was fine.

7 Officer Valentine oh, yeah, he was real angry. He was
8 angry at me cause he didn't -- he wanted me to file a report
9 for a car breaking. Yeah, he was agitated, he was, he was
10 angry. He was agitated with me.

11 Officer Haney's right there, and we both asked him
12 those questions.

13 Well, was he agitated?

14 Was he angry about anything?

15 He said no. He's fine. He was fine.

16 I can't explain it. One of those is simply not
17 correct, and I would submit to you that we have not an
18 investigation, but a rationalization. We've decided it's a
19 murder and we're gonna marry it.

20 Now, you'll notice that I made them open all of these
21 bags, and I understand that that was a tedious exercise.
22 But you'll also notice he had to open them with a
23 pocketknife. Y'all all went through security. Y'all
24 shouldn't have a pocketknife. I imagine they would of told
25 you to take it back to your car. You have no way of getting

1 into this mountain of evidence unless they opened it for
2 you, unless they've given you scissors in there which I
3 don't believe they have. Maybe they have now.

4 So, you know, they're reasons this is the way we do
5 things. We have them open them. We have them identify
6 them, and, again, it's tedious. But we have to do the right
7 thing. You have every right to look in the envelopes and I
8 encourage you to. Although I will point out that all of
9 this evidence proves only what we've already admitted.
10 Sandy Westmoreland and his vehicle hit Michael Daniels is
11 what all of this evidence proves and we've admitted that.

12 So -- and some of it I don't, I don't even know what
13 it's relevant to, but it's been in the courtroom. I figure
14 y'all have a right to see it. So, I wouldn't object to it.

15 Now, as for the Dilaudid, as you heard, he's testified
16 he never had had Dilaudid before.

17 How do you build up a tolerance for something you've
18 never had before?

19 Now, he had a tolerance maybe for the Lortab and the
20 Valium, but he didn't have any tolerance for the Dilaudid,
21 one, and, two, the doctor testified that just as you don't
22 mix alcohol with narcotics, as anybody who's done that knows
23 that's a bad idea, you don't mix narcotics with narcotics
24 and then go driving.

25 Now, I understand he also testified well, it's

1 generally in and out of the body pretty quickly, but he also
2 couldn't testify that it was certainly out of his body
3 fairly quickly cause he said everybody's different.

4 We also heard his body's breaking down. You heard
5 hernias. You heard all of these problems. So, I would
6 submit to you that everyone reacts differently.

7 Now, he's testified, ladies and gentlemen, that it was
8 an accident. He's testified, and I understand that he came
9 back, and they've made a big deal of there weren't any tire
10 marks. Now I've driven on grass. You don't always leave
11 tire marks, but that's apparently a big deal for the
12 prosecution. So, they're gonna harp on that, and I'd submit
13 to you, again, you don't always leave tire marks, and,
14 again, that don't prove murder.

15 It proves -- it just doesn't -- well, it doesn't really
16 prove anything. We admit he left the scene. We admit that.

17 And they also called Ms. Livesay to testify that well,
18 she knows he didn't ever use crack. But Ms. Livesay's never
19 been to his motel room. Never been to Woodruff apparently.
20 Had only met Sandy twice. Didn't know why she -- he broke
21 up with Tim Cannon, his prior significant other. Didn't
22 know any of that.

23 Now I understand why cause she's his employer, and
24 there's no reason why she has to know all of what he's
25 doing. But I submit to you that that doesn't prove he

1 wasn't using crack cocaine at various times throughout
2 those -- the weeks and months prior to this incident. It
3 doesn't prove that. I'd submit to you that that would make
4 sense as to why he would of been agitated. He'd gotten a
5 piece of soap and he was pretty agitated about that.

6 Then I point out, again, that Sandy's the one who knows
7 what happened. He's the only one who can testify as to what
8 happened in that room. You'll notice there was video given
9 to you from Mary Black. It's, it's on them to provide these
10 things for you. He didn't.

11 why not?

12 Ladies and gentlemen, there was simply no motive.
13 There was simply no reason for him to kill Mike Daniels.
14 They were together. They had been together for a very long
15 time. They had broken up for apparently previously, gotten
16 back together, broken up again. So, that's not a reason for
17 that to happen and you heard him testify that his problem
18 with crack wasn't a reason to kill him.

19 There's just no good reason, and if they can't provide
20 you a good reason, then I'd submit to you that what makes
21 the most sense is that it was an accident.

22 Now, y'all are gonna have to decide, cause you're gonna
23 hear something called involuntary manslaughter, and
24 involuntary manslaughter is basically criminal negligence.
25 He shouldn't have been driving essentially, he handled the

1 car improperly, and he ran over Mr. Daniels. Y'all are
2 gonna have to decide what criminal negligence means. Well,
3 y'all are gonna have to decide whether this falls within
4 what the judge explains to you what criminal negligence
5 means.

6 Ladies and gentlemen, I can't tell you one way or the
7 other. He shouldn't of been driving. He admitted he
8 shouldn't of been driving. He shouldn't have been driving.
9 But, ladies and gentlemen, they gave him a choice to leave
10 or go to jail. Unfortunately he chose to leave, and, ladies
11 and gentlemen, again, I think there's certainly reasonable
12 doubt as to murder.

13 I leave it up to you as to whether you think this is
14 criminally negligent or not, and that would be, again,
15 involuntary manslaughter.

16 So, thank you very much.

17 THE COURT: Mr. Gray.

18 SOLICITOR GRAY: Yes, sir, Your Honor.

19 THE COURT: For the State.

20 SOLICITOR GRAY: He's guilty of murder, plain and
21 simple.

22 You know who didn't hesitate to act?

23 The defendant.

24 He's riding down the road, saw his boyfriend, jerked
25 the wheel, bam, knocked him in the air, skidded pulling out.

1 He told you he called his cell phone. Not the police.
2 Not 9-1-1. Not the officer who stopped him and let him go.

3 Apparently no intoxication. He drove home. First
4 officer, I hit a deer. I hit a deer. Oh, my mistake. I
5 was lying those other times. I hit it and I drove away.

6 Murder. One person killing another person with malice
7 aforethought, evil intent, plus the action, intentional
8 action. Malice aforethought does not mean what you might
9 hear on TV. There's a plan, a plot, a week before, a day
10 before, an hour before. It can be a minute or a second
11 before. When he gets that evil thought in his head, and
12 then decides this is how I do it.

13 He's at the red light, yanks the car. As you heard the
14 expert say, there was no veering off of the road. There was
15 no calm -- try to get up beside the victim. He yanked it
16 and gunned it, 27 to 39, and he never slowed down. Not
17 once.

18 I don't know if he was drunk, high, or whatever. I do
19 know that he intentionally ran over the victim in this case.
20 why?

21 I hate to say it like this, but I heard many many times
22 from different sources, even, even the radio. This
23 situation, boyfriend, girlfriend, girlfriend grabs stuff out
24 of the car, I'm leaving, which grabbing your stuff out of
25 the car really means, boyfriend can't take it. We have some

1 type of altercation, maybe a gunshot, maybe a punch to the
2 face, maybe a hit to the face with a cane. But in this
3 situation, the phrase I've heard many many times, same sex,
4 same problems. Victim decided I'm leaving, grabbed his
5 stuff. He couldn't take it. You heard the officer say he
6 was agitated. There was no reason to be agitated. He
7 wasn't going to jail. The victim already said I don't want
8 to press charges, but he still became agitated. I want to
9 press charges for breaking into a vehicle.

10 They had been together for 18 years yet the victim was
11 living in a hotel next to Sugar & Spice. He was gonna try
12 to walk home from Mary Black. He never got that chance.

13 Doctor Rody treated Mr. Westmoreland. He told you
14 about the drugs going into his system and he -- coming out
15 of his system. They're two shots very close together where
16 the victim, excuse me, where the defendant says oh, I'm many
17 in pain. I need more medicine. My tolerance was built up.

18 Since 2011 he's been taking Diazepam, Valium,
19 Hydrocodone, Oxycodone to build up his tolerance. The drugs
20 don't work anymore for his pain.

21 So he needs something else that day. Not four shots.
22 Not eight shots. Not ten shots. Two. And there was a four
23 hour difference between that last shot and when he was
24 dismissed.

25 Doctor Rody, an expert, excuse me, told you on the

1 stand he was fine. If I thought he wasn't I wouldn't have
2 discharged him. He wasn't groggy. He wasn't slurring his
3 words. I had been observing him. He was walking around
4 just fine.

5 How fine was he?

6 He drove, after he hit the victim in this case, drove
7 through the city, coolly, calmly, got out of his car.
8 There's a situation with an officer. No DUI. The officer
9 said no problem. According to the CAD sheet, let him go.
10 He goes home and goes to sleep.

11 The victim's body is outside behind the hedges for
12 almost seven to nine hours. He's sleeping in his bed just
13 fine. A total stranger has to find Michael's body.

14 And what did that total stranger do?

15 First thing, Mary Black Hospital.

16 I think there's a dead guy out here.

17 What did he do?

18 He lied about the incident, not the accident, the
19 incident where he ran over the victim.

20 You heard from a number of officers about the scene and
21 how he was, how he conducted himself.

22 There were no skid marks on the roadway at all. He
23 didn't brake when he was coming off the road. He didn't
24 brake when he was going back onto the road. Sharp turn. I
25 believe the expert said at least 20 degrees. That denotes

1 intent in his expert opinion.

2 He intended to kill him. Evil intention with an
3 intentional action.. That's what he did. An intentional
4 action by not veering off the road, steering off the road to
5 hit this gentleman, and, mind you, this is about 12:20,
6 12:30 at night.

7 It's dark. After midnight. He sees a red hoodie.

8 Who could be in that red hoodie?

9 Anybody.

10 But he knows that it's Michael right then. Run over
11 him, speed off.

12 And you heard from Doctor Wren about cause of death.
13 Mr. Shealy made some statements about contusions here or
14 there. It doesn't matter. Doctor Wren told you he ran over
15 him to the point where his neck dislocated. He hit him,
16 spun him around. It was like a hanging. It was just like a
17 hanging. He snapped his neck.

18 He tells you he went back to try CPR on a dead body.
19 He's not qualified for CPR. Another lie.

20 I called his phone to hear his voice, not to the
21 police, but he said he didn't have a phone originally.
22 Another lie.

23 And, again, he says Michael took all of his items.
24 False teeth, wallet. Not found by the police. Said he was
25 on crack. No drug paraphernalia whatsoever was found near

1 the body. Continuing lies from the defendant.

2 Mr. Livesay told you that she worked with Michael up to
3 60 hours a week, 60 hours a week. That's almost constant
4 contact with Ms. Livesay. She never saw him high, never saw
5 him drunk, stumbling, mumbling, anything.

6 He's trying to destroy a deadman's character. That man
7 is guilty of murder.

8 Excuse me one second.

9 (Pause.)

10 SOLICITOR GRAY: Ladies and gentlemen, there have been
11 numerous pictures in this situation that you will have back
12 there in the jury room. I want you to pay, pay attention to
13 these especially, 52, 74, 60, 61, 54, 55, and 58. They
14 denote the crime scene.

15 On here you'll see some crime scene tape that outlines
16 the basic path the defendant took. This is the churned up
17 dirt where he didn't slow down, where the officer told you
18 he accelerated. Again, you can see the tire track on here
19 that he leaves. It's pretty faint, but you can see the tire
20 track where he leaves. He doesn't stop. He doesn't turn
21 around.

22 Again, there's another picture of the tire track.
23 Doesn't slow down. Doesn't turn around.

24 Here's what's most important I believe. Here's one
25 aerial photo, Skylyn Drive, incident location, the red

1 light.

2 How can he veer off the road -- he made an intentional
3 turn. There's no veering. He made it from the ER, around
4 Mary Black, to the light. No accidents. He didn't hit a
5 trash can. He didn't hit a light fixture. He didn't hit
6 Mary Black. Yeah, he hit, he hit who he intended to hit.

7 Again, unfortunately, this one is the little more
8 detailed. See the aerial scene and you'll have this back
9 there with you. That's the victim. That's the victim where
10 he was laid to rest.

11 From here to here, what was accidental?

12 Was he veering off the road?

13 Was it a mistake?

14 And the last one, the phantom tire track. He said it
15 was made by an ambulance, an ambulance parked on the road.
16 Don't want to harp on that. Just another lie by the
17 defendant.

18 Ladies and gentlemen, this was an intentional evil act
19 by the defendant. It's murder. Murder plain and simple.
20 Now an accident, not intoxication because nothing else was
21 hit. He was stopped by the police department, excuse me,
22 the police department on the way home. No intoxication in
23 this situation. Even if there was, he drove well enough to
24 get from Mary Black ER to the red light and he drove well
25 enough to hit Michael once he saw him.

1 It could of been ten seconds before, the second before.
2 In his mind, he saw Michael, who wanted to leave him, he
3 made a decision, at that moment, malice aforethought. Bam.
4 Unfortunately we have a murder case.

5 Don't let him slur the victim for his actions.
6 Unfortunately, like I said, before, same sex, same problems.
7 In this situation, the problem was he was angry enough, evil
8 enough to kill his boyfriend.

9 Thank you.

10 THE COURT: All right. Ladies and gentlemen of the
11 jury, that completes the closing arguments by counsel. It
12 will now be my responsibility to charge you concerning the
13 law to be applied in this matter. I'm gonna give you a very
14 short break before we go into that so you can stretch your
15 legs, clear your mind. Then we'll come back and I'll give
16 you law. So, again, one more time I'll ask you to step
17 back, not to begin discussions until I ask you to do so.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right. On the question of the
21 involuntary -- or the voluntary or involuntary intoxication,
22 any authority from the State?

23 SOLICITOR MORICLE: Yes, Your Honor.

24 I know that you were looking at out-of-state case law,
25 and I did find a case out-of-state that's State v. Samuels,

1 and it states that where a defendant underwent a medical
2 procedure, during which he was given tranquilizing drugs;
3 the defendant's taking drugs was voluntary and would not
4 support a defense of involuntary intoxication.

5 THE COURT: All right. That case is?

6 SOLICITOR MORICLE: State v. Samuels. It's 1995 MO
7 APP, and then another statutory authority for it is 905 SW2d
8 536. It's a 1995 Missouri case, and basically in this case,
9 Your Honor, on our view of it, the defendant went to a store
10 and attempted to shoplift, and during the case of the trial,
11 he called a lady to testify that she had taken him to the
12 hospital that morning, he had a medical procedure done, and
13 then he asked her to take him to the store. He came out
14 running, asked her to start the car, she said no, and then
15 they tried to introduce the whole medical record saying he'd
16 been given these drugs and he was involuntarily intoxicated,
17 and the Court found that that was not an involuntary
18 intoxication.

19 THE COURT: Mr. Shealy, you had a chance to look at
20 that case?

21 MR. SHEALY: Judge, my -- unfortunately we don't get
22 out-of-state cases. So, we are -- West Law is what we're
23 limited to. Sorry, judge, I didn't stand up.

24 THE COURT: well, he's got it up.

25 If you want to come and read it, we've got it up.

1 MR. SHEALY: If I may.

2 THE COURT: Come take a look at it.

3 (Pause.)

4 MR. SHEALY: I have, Your Honor.

5 THE COURT: Yes, sir.

6 MR. SHEALY: It's my understanding that that's within a
7 particular statute.

8 THE COURT: Yeah, there's a statute that, that applies
9 there. Ours is more of a common law, but I don't know that
10 that makes it a different---

11 MR. SHEALY: Well, judge---

12 THE COURT: ---concept under the law.

13 MR. SHEALY: Well, again, it would be our position that
14 one or all of those are out-of-state cases.

15 THE COURT: Well, you know, when you don't have any in
16 state cases you look for other states to look at.

17 MR. SHEALY: Well, judge, and, again, it would be our
18 position that a voluntary intoxication charge would not be
19 proper here because he is -- he was injected with something.
20 At the time he was injected with it he had someone capable
21 of driving him. That person ultimately left. It would be
22 our position that a voluntary intoxication charge would be
23 improper.

24 THE COURT: I'll hear from the State.

25 SOLICITOR MORICLE: Your Honor, I think, based on the

1 interpretation of out-of-court case law and their own
2 statutes, it clearly says, and I will quote from this, that,
3 and these are from other states obviously, but "involuntary
4 intoxication can only be caused by trick, artifice, or
5 force" and the quote -- Court also stated, when they made
6 their determination, that "when there's a medical procedure
7 done, that's not by trick, artifice, or any other -- it's
8 not done in a manner in which you don't know that it's
9 happening to you."

10 So, I would argue that, in this insurance, he was at
11 the hospital. The doctor testified that he voluntarily went
12 in for medicine. He was given that pain medicine. He was
13 there for four hours before he was let go. So, he ingested
14 it voluntarily, and I do believe, in our state case law,
15 that voluntary intoxication is found to be, and I'll quote
16 from one of these cases, but as far as voluntary goes, "that
17 it's not a valid defense unless you are found to be in, in
18 permanent insanity," which I don't believe has been the
19 argument at all.

20 THE COURT: No.

21 MR. SHEALY: Your Honor, I would like to correct --
22 they keep saying that he went to the emergency room for pain
23 medication. He didn't. He went to the, the emergency room
24 for a fibro nodular structure from the outside of his
25 abdominal muscle wall musculature. That's what the doctor

1 testified there was.

2 THE COURT: And blood in the stool.

3 MR. SHEALY: And blood in the stool. My client
4 testified---

5 THE COURT: well---

6 MR. SHEALY: ---he had a knot in his side, and blood in
7 his stool. So, he didn't go looking for pain medication.
8 They keep trying to make this sound like some kind of pain
9 seeking behavior. There was a certified medical emergency.
10 That's what the doctor testified to.

11 So, now I will -- it would be our position that, within
12 the facts of this case, it would be improper to say that it
13 was voluntary intoxication. Again, judge---

14 THE COURT: well, I mentioned to all of you the
15 possibility of me charging the jury that they will have to
16 make a finding of fact---

17 MR. SHEALY: And that will be fine.

18 THE COURT: ---as to whether or not this was a
19 voluntary or involuntary intoxication, if any at all.

20 MR. SHEALY: And that would be fair, Your Honor.

21 THE COURT: Because there was evidence there was none
22 according to the doctor.

23 MR. SHEALY: Yes, sir.

24 THE COURT: And so if there, if there was no -- if they
25 find that there was no intoxication, it wouldn't be a factor

1 in their determination.

2 MR. SHEALY: Yes, sir.

3 THE COURT: If they find that it was voluntarily done,
4 then it's not a defense. If they find that it was
5 involuntarily done, then it would serve as a mitigating
6 factor or a defense to the -- to a statute requiring general
7 intent.

8 MR. SHEALY: Specific intent.

9 THE COURT: Specific intent.

10 MR. SHEALY: Yes, sir, and that would be -- we would
11 have no real objection to that. No real objection to that.

12 THE COURT: So, you would agree to me charging in that
13 fashion?

14 MR. SHEALY: I would.

15 THE COURT: The State agrees to a charge in that
16 fashion?

17 SOLICITOR MORICLE: Your Honor, I think the State would
18 have to object on that point.

19 THE COURT: Okay. You can object, but I don't have any
20 authority in South Carolina. We don't---

21 SOLICITOR MORICLE: I understand.

22 THE COURT: ---have a statute as they have in Missouri.
23 I tend to agree with the Missouri position, but our Supreme
24 Court hasn't spoken on that yet, and it is a factual
25 question as to whether someone voluntarily or involuntarily

1 uses the medication.

2 Now, the language in that statute refers to by trick,
3 artifice, or force --

4 MR. SHEALY: Yes, sir.

5 SOLICITOR MORICLE: Yes, Your Honor.

6 THE COURT: -- is the language they use?

7 SOLICITOR MORICLE: Yes, Your Honor.

8 THE COURT: All right. I think I'll let the jury
9 decide that matter.

10 MR. SHEALY: Thank you, Your Honor.

11 THE COURT: I'll charge all of it.

12 All right. Bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, at this point in time it's my responsibility to charge
17 you concerning the law to be applied in this case.

18 We began this case by my going over with you the
19 indictments that are being tried. The indictments will be
20 given to you to take back into the jury room for your review
21 and, and viewing. I will go over them with you briefly.

22 The first indictment that I will go over with you is
23 for the charge of hit and run with death. That's in Case
24 Number 2013-GS-42-4625.

25 The indictment states that Sandy Westmoreland did, in

1 Spartanburg County, on or about March 15th of 2012, having
2 been the driver of a vehicle involved in an accident
3 resulting in the death of Michael Daniels, did, willfully
4 and unlawfully, fail to stop the vehicle at the scene or as
5 close as possible to the scene or return to the scene to
6 give information and to render aid as required under Section
7 56-5-1230, of the South Carolina Code of Laws, 1976 as
8 amended, such acts being in violation of Section
9 56-5-1210(a)(3) of the South Carolina Code of Laws, 1976 as
10 amended, against the peace and dignity of the State and
11 contrary to the statute in such case made and provided.

12 That's the first indictment that's before us.

13 The second indictment is in Case Number, excuse me,
14 2012-GS-42-5195. This is for the offense of murder.

15 The indictment states that Sandy Lynn Westmoreland did,
16 in Spartanburg County, on or about March 15 of 2012,
17 feloniously, willfully, and with malice aforethought kill
18 Michael Daniels by striking the victim with a vehicle and he
19 died as a proximate result thereof. All in violation of
20 Code Section 16-3-10 and 20 of the South Carolina Code of
21 Laws, 1976 as amended, against the peace and dignity of the
22 state and contrary to the statute in such case made and
23 provided.

24 I'm going to remind you that the fact that a defendant
25 has been charged, arrested, and indicted in a case, those

1 facts are not evidence in the case and can not be considered
2 by you as evidence of guilt in the matter and nor, nor do
3 they create any presumption or inference of guilt. The
4 documents I just went over with you are simply the charges
5 that inform us of the charges to be tried. It informs the
6 defendant of the charges lodged against him, and, again, an
7 indictment can not be used by you as evidence of guilt or
8 create any inference of guilt.

9 There are two indictments in the case, and I will tell
10 you that each indictment charges a separate and distinct
11 offense. You must decide each indictment separately on its
12 own, on its own evidence and the law that's applicable to
13 that indictment uninfluenced by your decision on the other
14 indictment. So, therefore, a defendant may be convicted or
15 acquitted on either or both of the indictments, and you'll
16 be asked to write a separate verdict of guilty or not guilty
17 as to each of the indictments that are before the Court,
18 and, in one case, we're going to discuss with you a lesser
19 included offense that has to be decided given certain
20 circumstances, and I'll explain that to you in just a few
21 minutes.

22 The defendant has pled not guilty to those indictments,
23 and that plea, under the laws and the Constitution of this
24 State, puts the burden of proof upon the State to prove the
25 defendant guilty. A person charged with the commission of a

1 crime, in South Carolina, is never required to prove his
2 innocence. I charge you that it's an important rule of law
3 that every defendant in a criminal trial, no matter what the
4 seriousness of the crime might be, is always presumed to be
5 innocent of the crime for which the indictment has been
6 issued until and unless guilt has been proven to you, the
7 jury, by proof beyond a reasonable doubt.

8 Now, the presumption of innocence doesn't, doesn't end
9 when you begin your deliberations. It accompanies the
10 defendant into your deliberations. Some people describe the
11 presumption of, of innocence somewhat like the robe that a
12 judge wears into the courtroom. That robe or that
13 presumption of innocence is about the defendant's shoulders
14 throughout the trial. It remains about his shoulders into
15 the -- your deliberations. It remains about his shoulders
16 until such time as it might be stripped from him by evidence
17 that satisfies you of the defendant's guilt beyond a
18 reasonable doubt.

19 Now, the presumption of innocence is not just a mere
20 legal theory and it's not just a legal phrase. It's a
21 substantial right that every defendant is entitled to, to
22 unless you, the jury, are satisfied, from the evidence, of
23 the defendant's guilt beyond a reasonable doubt.

24 Now, I've mentioned to you, on a couple of occasions
25 already, the standard of proof in this case, and that is

1 proof beyond a reasonable doubt. You may ask yourself well,
2 just what do you mean by proof beyond a reasonable doubt.

3 what is a reasonable doubt?

4 I will tell you that the case law in this state and in
5 the United States has defined a reasonable doubt as that
6 kind of doubt which would cause a reasonable person to
7 hesitate to act, and the State has the burden of proving the
8 defendant guilty beyond a reasonable doubt. I don't want
9 you to be confused about one thing that you may have heard
10 in some other setting.

11 In civil cases, in this Court, cases where people are
12 seeking monetary damages, that can be because somebody
13 breached a contract or failed to pay a debt or someone's
14 been injured and claiming damages for their injuries, things
15 of that nature, the standard of proof in civil cases is
16 proof by the greater weight. Sometimes described as the
17 preponderance of the evidence.

18 what that means is the scales of justice just have to
19 tilt ever so slightly in favor of a plaintiff or ever so
20 slightly in favor of a defendant for that party to be
21 entitled to a verdict in Civil Court. This is not Civil
22 Court. We're in Criminal Court and the standard of proof is
23 more powerful than that. It's proof beyond a reasonable
24 doubt.

25 I will tell you that if, after your consideration of

1 the evidence, if you are firmly convinced of the defendant's
2 guilt beyond a reasonable doubt, you must find the defendant
3 guilty. However, on the other hand, if you find that there
4 is a real possibility that the defendant is not guilty, then
5 you must give the defendant the benefit of that doubt and
6 find the defendant not guilty.

7 I'll remind you that, during this trial, we've had
8 different duties to perform. As the trial judge, it's been
9 my responsibility to preside over the case and make rulings
10 on certain matters that came up during the trial. Again,
11 I'm gonna caution you, don't take from anything that I've
12 said in performing those duties to somehow indicate to you
13 that I have an opinion as to how you should find or
14 determine the facts in this case because the law doesn't
15 allow me an opinion on the subject, and I don't have an
16 opinion as to how you ought to determine the facts in this
17 matter.

18 Now, if there was any matter that I overruled or did
19 not allow into evidence, anything that I, that I struck from
20 the record, if there's anything that's happened during the
21 trial such as that, those matters should not be considered
22 by you at all in reaching a verdict. You should only
23 consider the evidence that's been admitted into the record
24 of the case during the trial in making a determination in
25 this case.

1 I have the duty now of charging you concerning the law
2 in this case. I told you earlier I am the sole judge of the
3 law in this case. It's your responsibility to take the law
4 as I give it to you, apply that law to the facts as you
5 determine the facts to be, that will put you in a position
6 to render a just, a true, and a fair verdict in this matter.

7 Now, in every case tried in this Court you are the sole
8 and exclusive judges of the facts, and, again, please don't
9 take from anything that I say even during this charge on the
10 law that somehow indicates to you that I have some opinion
11 as to how you should determine the facts in this, this case.
12 The facts in this case is a matter solely for you, the jury,
13 to determine. It's your duty to determine the effect, the
14 value, the weight, and the truth of the evidence that's been
15 presented during the trial.

16 Now, there's two types of evidence that you have the
17 right to consider in reaching a verdict in this case, and
18 I'll explain to you what I mean by types of evidence.

19 First of all, we type evidence as direct evidence, and
20 direct evidence is when a witness testifies directly on the
21 fact that's sought to be proven. That's someone who claims
22 to have actually seen the event, experienced the event, an
23 eye witness, someone who participated in the event in some
24 fashion who would testify directly on the facts that are
25 sought to be proven. That's what we refer to as direct

1 evidence.

2 The other type of evidence that we have in cases is
3 what we refer to as circumstantial evidence. Circumstantial
4 evidence is proof of a chain of facts or circumstances that
5 indicate the existence of a fact. Somehow -- sometimes it's
6 been described as proof of collateral facts from which a
7 main fact might be reasonably inferred.

8 Now, that's a -- that's kind of fancy lawyer language.
9 I like to use a very simple example of what is meant by
10 proof of a fact by circumstantial evidence.

11 I'll tell you that -- let's assume last night, before
12 you went to bed, you walked to the window of your bedroom.
13 You looked outside and the stars were shining. It was a
14 beautiful night and you went to bed, slept well all night.
15 You didn't wake up at all. You know, the next morning you
16 got up and you walked back over to that same window and you
17 looked out, and you -- while the sun was out, you noticed
18 pretty quickly that there's water dripping from all the
19 trees, and there's puddles in the road out in front of the
20 house. The grass is wet.

21 Now, during the night, you slept. You didn't see it
22 rain. You didn't hear it rain. But from those facts that
23 you know to be true, that is the water dripping from the
24 trees, the puddles in the road, the water being on the grass
25 in front of the house, you know from those facts that you

1 could reasonably infer that, at sometime during the night,
2 it did, in fact, rain. So, that's what we mean by proof of
3 a chain of facts that indicate the existence of another
4 fact.

5 Now, I will tell you, again, that if, after considering
6 all of the evidence, if you are firmly convinced of the
7 defendant's guilt beyond a reasonable doubt, you must find
8 the defendant guilty. On the other hand, if you think
9 there's a real possibility that the defendant is not guilty,
10 you must give the benefit, the benefit of that doubt to the
11 defendant and find the defendant not guilty.

12 Now, the State has the burden of proving the defendant
13 guilty beyond a reasonable doubt, and that burden rests with
14 the State regardless of whether the State relies upon direct
15 evidence, circumstantial evidence, or some combination of
16 the two, and the law requires no greater degree of certainty
17 for circumstantial evidence than that of direct. It's up to
18 you, the jury, to determine the facts in this case. Both
19 facts based on direct evidence and facts based on
20 circumstantial evidence.

21 Now, in doing your job as the sole judges of the facts,
22 it's gonna be necessary that you determine the credibility
23 of the witnesses that you've heard from, and that's what
24 credibility -- credibility means believability. It's your
25 duty, as jurors, to analyze and evaluate the evidence. You

1 make a determination of which evidence convinces you of its
2 truth.

3 In determining the believability of witnesses who
4 testified in this case, you have the right to believe one
5 against all the others. You have the right to believe all
6 the others against one. You have the right to believe all
7 of, none of, or part of what any witness may have testified
8 to. You should use your good common sense in determining
9 the credibility of the witnesses that you've heard.

10 You may consider whether a witness has exhibited to you
11 an interest, a bias, prejudice, or other motive in
12 testifying in the case. You may also consider the
13 appearance and the manner in which the witness has testified
14 on the witness stand. You're the sole judges of the facts.
15 That makes you the sole judges of the credibility or the
16 believability of the testimony that you heard in the case.

17 We had a couple of witnesses who were qualified as
18 experts in this case. I stopped the trial at one time and
19 explained to you what we were doing when we did that, and
20 the rules of evidence, again, ordinarily do not permit
21 witnesses to testify as to opinions or conclusions. An
22 exception to the rule exists for witnesses that we call
23 experts, and those are witnesses, who because of their
24 education or experience, have become an expert in some art,
25 science, or profession, or calling. And once they're

1 designated as experts, they're allowed to state their
2 opinions as to relevant and material matters in which the
3 witness claims to be an expert and state the reasons why
4 they have those opinions.

5 I'll ask you to consider the evidence offered by
6 experts like any other evidence in the case. You give it
7 the weight you think it deserves, and like any other
8 evidence, you can decide whether or not the opinion of an
9 expert is not based on sufficient education or experience.
10 You have the right to conclude that the reasons given in
11 support of the opinions are not sound or that the opinion is
12 outweighed by other evidence. In other words, you weigh the
13 evidence given by experts like any other evidence. You have
14 a right even to disregard the opinion in its entirety if you
15 choose to do that.

16 I'll tell you that just because someone's been declared
17 to be an expert, there testimony is not to be given any
18 greater weight than that of any other witness simply because
19 of that fact. Further, you're not required to accept an
20 expert's opinion even though it may not be contradicted by
21 other evidence.

22 Now, in a few minutes I'm going to go over with you the
23 offenses in this case, and I will tell you that generally,
24 in order to establish criminal liability, criminal intent is
25 required. That's the mental state required to be proven by

1 the State for a particular crime to be proven. Intent or
2 purpose or knowledge or recklessness or criminal negligence
3 can all be some of the elements of criminal intent that are
4 required for a particular crime.

5 Criminal intent, if it's required by the crime, must be
6 proven by the State by proof beyond a reasonable doubt like
7 any other factor. Criminal intent is -- I will tell you is
8 always a matter that must be determined by the jury from the
9 circumstances surrounding a crime. You see, there's no way
10 for us to cut up a person's head, look at their brain at the
11 moment they're committing an act, and be able to
12 scientifically prove what they intended to do when that act
13 occurred. That's not possible.

14 So, for that reason, criminal intent is always proven
15 by the facts and circumstances that exist around the
16 commission of the act. Criminal intent can be inferred from
17 the facts and circumstances that have been shown to have
18 existed at the time that the act occurred. So that's how
19 you make a determination as to the element of intent in
20 whether or not it was present.

21 So, therefore, it's not necessary to establish intent
22 by direct or positive evidence. It can be established in
23 the same way as any other fact taking into consideration the
24 acts of the parties and all of the facts and circumstances
25 of the case. I will tell you though that criminal intent is

1 a mental state. It's a conscious wrongdoing and it's up to
2 you to determine what the defendant intended to do based
3 upon the circumstances that were shown to have existed at
4 the time of the crime.

5 I will tell you, in certain crimes, criminal intent can
6 arise from negligence, recklessness, or indifference to a
7 duty or to the consequences that are considered by the law
8 to be the equivalent of criminal intent. We'll talk about
9 that more when I talk to you about the particular charges in
10 this case.

11 One other factor that, that I want to make you aware
12 of, there has been evidence presented during this trial that
13 witnesses may have made prior statements which are not
14 consistent with the witnesses present testimony. You may
15 use this evidence to decide whether the witness is
16 believable. You may also use the evidence of the earlier
17 contradictory statements to determine the truth of those
18 statements. It's up to you, as the jury, to decide whether
19 to believe earlier statements or testimony given at trial.
20 You, the jury, are the sole judges of the facts in this
21 case, and, again, I want to stress to you you're the sole
22 judges of the credibility and the believability, therefore,
23 of the witnesses that you've heard in this matter.

24 Now I'm going to talk to you about the first
25 indictment. That is leaving the scene of an accident which

1 is caused death. The defendant is charged with that
2 offense, that is leaving the scene of an accident causing
3 death to another person.

4 The State must prove, for that case to be proven beyond
5 a reasonable doubt, that the defendant was driving a
6 vehicle, number one.

7 Number two, that the vehicle was involved in some type
8 of an accident.

9 Number three, that the accident caused personal injury
10 and/or death to another person.

11 Number four, that the defendant did not stop or failed
12 to return and remain at the scene.

13 Number five, that the defendant failed to give his or
14 her name, address, vehicle registration number, and, if
15 asked, failed to show his or her driver's license.

16 Six, the defendant failed to give reasonable assistance
17 to the injured person. Reasonable assistance includes
18 taking the person to a doctor, hospital, or making
19 arrangements to have the person so taken if it is apparent
20 that the treatment is needed or that the injured person
21 asked for treatment.

22 The State must prove, beyond a reasonable doubt, that
23 the defendant knew or should have known that the accident
24 had happened. This may be shown by evidence of
25 circumstances and conditions which would cause an ordinary

1 and reasonable person to believe that the vehicle had been
2 involved in an accident resulting in either personal injury
3 or death to another person. So that is the charge of what
4 we call hit and run with death.

5 The second indictment in this case is for the offense
6 of murder, and the defendant is charged with murder. And in
7 that case, the State must prove, beyond a reasonable doubt,
8 that the defendant killed another person with malice
9 aforethought.

10 Now, malice is defined as hatred or ill will or
11 hostility towards another person. It's the intentional
12 doing of a wrongful act without just cause or excuse and
13 with the intent, that's that word I told you we'd talk about
14 later on, to inflict injury or under circumstances that the
15 law would, would infer an evil intent.

16 Malice aforethought doesn't require that the malice
17 exist for any particular time before the act is committed,
18 but malice must exist in the mind of the defendant just
19 before and at the time the act is committed. Therefore,
20 there must be a combination between the evil intent and the
21 act.

22 Malice aforethought can be either expressed or
23 inferred. These terms expressed or inferred do not refer to
24 different types of malice. It refers to the manner in which
25 malice might be shown or proven. That is either by direct

1 evidence or by inference from the facts and circumstances
2 which are proven.

3 Malice is shown at -- expressed malice is shown when a
4 person speaks words which express either hatred or ill will
5 for another or when a person prepares beforehand to do the
6 act which is later accomplished. Malice can be inferred
7 from conduct showing a total disregard for human life.

8 Now, should you find that the defendant is not guilty
9 of the offense of murder, I am going to require that you
10 then render a verdict as to whether or not the State proved
11 what is called a lesser included offense and that is the
12 offense of involuntary manslaughter, and let me explain to
13 you what is meant by involuntary manslaughter.

14 In order for a defendant to be guilty of involuntary
15 manslaughter, the State must prove, beyond a reasonable
16 doubt, that the defendant unintentionally killed the victim
17 without malice, but while engaged in an unlawful activity
18 not naturally intending to cause death or great bodily harm
19 or that the defendant unintentionally killed the victim
20 without malice while engaged in a lawful activity when that
21 activity is done with reckless disregard for the safety of
22 others.

23 Now, unintentional means that the defendant did not
24 intend for anyone to be killed or seriously injured.
25 Reckless disregard for the safety of others is more than

1 mere negligence or carelessness. Mere negligence or
2 carelessness is the failure to use the care that a
3 reasonable, ordinary, prudent person would do under the same
4 circumstances.

5 Recklessness, on the other hand, is a conscious failure
6 to use ordinary care. Reckless disregard for the safety of
7 others means that you are not interested in the consequences
8 of your acts or the rights or safety of others. If a person
9 who knows or should know that ordinary care requires certain
10 precautions be taken for the safety of others when using a
11 dangerous instrumentality such as a gun or a car, but that
12 if the person fails to use those precautions without
13 concerns, the person's actions, actions are considered to be
14 reckless.

15 The State also must prove that the defendant's act was
16 the proximate cause of the death. Proximate cause is the
17 direct cause. It's the immediate cause. It's the efficient
18 cause. It is the cause without which the death of the
19 victim would not have resulted.

20 Now, there must be a chain of causation from the time
21 of the injury inflicted by the defendant until the time of
22 the victim's death. Proximate cause does not necessarily
23 mean that it occurred, that it occurred immediately prior to
24 the death, and there can be more than one proximate cause.
25 The acts of two or more people may combine to be the

1 proximate cause of a death.

2 Now, to this particular offense the defendant has
3 raised several defenses. The first one I will go over with
4 you is the defense of accident.

5 The defendant has raised the defense of accident. An
6 act may be excused or grounds of accident if it is shown
7 that the act was unintentional, that the defendant was
8 acting lawfully, and that reasonable care was used by the
9 defendant in handling, in handling the instrumentality. In
10 this case the car that was being used in this particular
11 case. The burden is on the State to prove, beyond a
12 reasonable doubt, that the act was not an accident, but was
13 caused by the negligent, carelessness, or recklessness on
14 the part of the defendant in handling, handling the
15 dangerous instrumentality or by unlawful activity by the
16 defendant.

17 Now, the question of intoxication has come into this
18 case, and I want to go over with you what, what that might
19 mean in relationship to the defenses.

20 First of all, under the law, insanity caused by drugs
21 or alcohol may be a defense if the insanity is permanent and
22 destroys the defendant's ability to know right from wrong if
23 the, if the intoxication was voluntary. However, when
24 voluntary intoxication has not proved -- produced permanent
25 insanity, it is not a defense to a crime. A person who

1 voluntarily becomes intoxicated is just as responsible for
2 the acts committed while intoxicated as the person who is
3 not intoxicated.

4 Now, involuntary intoxication, however, is the opposite
5 of that. If someone becomes involuntarily intoxicated, then
6 it can be a defense to the charges in a crime of specific
7 intent. And, so, if, for example, someone is intoxicated as
8 a result of a trick, artifice, or force, or had no choice in
9 the intoxication, then that, that could provide a defense to
10 a crime requiring specific intent.

11 Also, you could find, as a jury, that intoxication was
12 not a factor in this case, that the defendant was not
13 intoxicated at the time of the offense, and if it's not a
14 factor in this case at all, then it would not be a factor
15 for you to consider at all. In other words, the question
16 for you, the jury, to determine is whether or not the
17 defendant was intoxicated at the time of the event, whether
18 or not that intoxication was either voluntary or
19 involuntary.

20 If the intoxication was voluntary, that means that
21 the -- it would not be a defense to the crime unless it
22 produced permanent insanity. If the intoxication was
23 involuntarily -- if the intoxication was involuntary, then
24 it would be a defense to a crime requiring specific intent.

25 Now, ladies and gentlemen of the jury, your verdict in

1 this case must be unanimous. Each and every one of you must
2 agree upon the verdict in this case before it's the verdict
3 of the jury.

4 Mr. Cramer, raise your hand please.

5 (Juror complies.)

6 THE COURT: You're going to be the foreperson of the
7 jury. That means you will be the person who will conduct
8 discussions of the jury. If, at anytime during your
9 discussions, the jury has a question you'd like to ask me,
10 I'll ask that you write it on a piece of paper, knock on the
11 door, give it to the bailiff, the bailiff will bring it to
12 me for my review. I can't answer each and every question
13 you might have during your deliberations because I can't get
14 involved in your decisions concerning the facts. That's
15 your job. However, I'm not asking you to edit any question
16 the jury might have. I -- what I will ask you to do is
17 submit them to me and I will decide how I should answer
18 them.

19 Once a verdict has been reached, it will be your job to
20 record the verdict on the form that I'm going to give you
21 and go over with you in just a moment so I'm sure that you
22 understand it. But, again, the verdict must be unanimous.
23 Each and every one of you must agree upon the verdict before
24 you've reached a verdict on the question submitted. So, no
25 juror, again, has any greater say in the outcome than any

1 other juror in this case.

2 Now, I've gone over a great deal with you. I want to
3 be sure that I haven't misspoken on some point or that we
4 haven't left something out. Also there's a great deal of
5 evidence that will be going back with you into the jury
6 room, and I want to be sure that we only send back the
7 evidence that was admitted and not something that was not
8 admitted into the record. So, we have to go through and
9 doublecheck that. Got a couple housekeeping matters I'm
10 going to do.

11 So, I'm gonna ask you to step back to the jury room one
12 more time.

13 Mr. Cramer, do not allow the jury to begin any
14 deliberations until I bring you back for final instructions.

15 You may retire to the jury room.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Exceptions to the charge from the state?

19 SOLICITOR MORICLE: No, Your Honor.

20 THE COURT: Defense.

21 MR. SHEALY: No, Your Honor.

22 THE COURT: All right. Come forward. Let's go over
23 the exhibits. I have the proposed verdict form I want you
24 to review and be sure you have no objections.

25 MR. SHEALY: Your Honor, while we do all that, can he

1 go to the bathroom?

2 THE COURT: Certainly. He can step out and go to the
3 bathroom.

4 MR. SHEALY: He needs to.

5 (Pause.)

6 THE COURT: All right. I'm gonna give the jury the
7 right to make a decision, about 5:30, if they want to go on
8 with deliberations or come back in the morning, and so I'll
9 explain that to them, and we'll let them decide how they
10 wish to proceed with that.

11 MR. SHEALY: Whether they want to come---

12 THE COURT: They want to stay and get supper and spend
13 the evening or---

14 MR. SHEALY: Or not.

15 THE COURT: That will be their call.

16 SOLICITOR MORICLE: All right.

17 THE COURT: We'll tell them to let us know that by
18 5:30---

19 SOLICITOR MORICLE: Okay.

20 THE COURT: ---this afternoon, this evening.

21 All right. Bring the jury in.

22 MR. SHEALY: Judge, wait just one second. My client---

23 THE COURT: Wait a second.

24 MR. SHEALY: My client's not back.

25 THE COURT: The defendant left. I thought he came

1 back. I'm sorry.

2 (Pause.)

3 THE COURT: All right. Let's bring the jury in.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: You'll need to let the foreman sit right
7 there. We have another assigned seat now.

8 Mr. Bailiff, please hand this to the foreman for me.

9 (The bailiff complies.)

10 THE COURT: Now, sir, that is -- the top document is
11 the verdict form that's in use for this case. At the top
12 you'll see it identifies the Court that we're in. It states
13 the State of South Carolina against Mr. Westmoreland who's
14 the case. There are two main questions numbered one and
15 two.

16 The first question is as to the indictment on murder,
17 and it states that the verdict is either not guilty or
18 guilty on that particular charge. And let me point out to
19 the jury. Don't take from the fact that the choices are in
20 any order on that form to, to somehow indicate I've got a
21 preference as to what your verdict is. I've been preparing
22 those forms for about 11 years now and everyone I've ever
23 done they're in that same order. That's just the way it is
24 on the computer and I don't change it. So it will say not
25 guilty first and then guilty.

1 You'll put an X on the line next to whatever verdict is
2 reached on that particular charge. If a jury finds the
3 defendant not guilty of the offense of murder, then you
4 would need to ask the question -- answer the question below
5 that which has to do with the offense of involuntary
6 manslaughter, and then you'd decide whether or not the State
7 did prove that he was guilty of -- either guilty or not
8 guilty of involuntary manslaughter. So, that's the choices
9 on that charge. You'll only answer the involuntary
10 manslaughter charge if you find the defendant not guilty of
11 murder.

12 The other charge has to do with the hit and run or
13 hit -- the leaving the scene of an accident where death is
14 caused. And, again, the choice is guilty or not guilty on
15 that particular charge. The place for your signature is on
16 the second page. I would ask that you initial the front
17 page as well that shows it's part of the same document.

18 Now, behind that are the two indictments that I told
19 you that I would let you take back to the jury room with you
20 to review and consider, consider in reaching your verdict.
21 The exhibits will be given to you back in the, in the jury
22 room.

23 I don't recall -- are there any recordings or anything
24 in the exhibits?

25 SOLICITOR GRAY: No, sir, Your Honor.

1 THE COURT: Good.

2 All right. We don't have to deal with playing those
3 things.

4 So, you have the right to view the evidence if you'd
5 like in the jury room.

6 Now, I note it's about four o'clock in the afternoon.
7 I'm going to allow you to deliberate up until about 5:30 in
8 the evening.

9 Now, if you wish to continue your deliberations until
10 you reach a verdict, you have every right to do so. We will
11 order supper for you, have it brought in, be served to you
12 in the jury room and you will remain until you reach a
13 verdict.

14 The other alternative is, if you wish to go home
15 overnight, come back at nine o'clock in the morning and
16 resume deliberations, we can allow you to do that with
17 certain instructions concerning that, that procedure. If
18 you decide to stay after 5:00 -- 5:30, we'll call family and
19 let them know where you are or friends and let you -- them
20 know what's going on with you. So, you have every right to
21 go ahead and complete your work this evening if you wish to
22 do that. I'll leave that up to you as to how you wish to
23 proceed in your deliberations. Please don't feel any
24 pressure one way or the other as to how you do that.

25 Now, if it becomes necessary for a bailiff to enter the

1 jury room during your deliberations to take a order for
2 lunch or to get information on who to call, stop your
3 deliberations while that person is in the jury room. Do not
4 discuss the case at all while that person is present. Wait
5 until that person is completed their work and left before
6 you resume any discussions concerning the case.

7 You understand how that would be handled?

8 THE FOREMAN: Yes, sir.

9 THE COURT: Is that right?

10 THE FOREMAN: Yes, sir.

11 THE COURT: All right. At this point in time I'm going
12 to ask that the 12 members of the jury panel retire to the
13 jury room and begin deliberations.

14 Sir, you're the alternate and you remain seated at this
15 time.

16 You may retire. The bailiffs will bring you the
17 exhibits back to you for your review.

18 Thank you.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 (WHEREUPON, the alternate juror was dismissed at this
22 time.)

23 THE COURT: Any objections from the State as to my
24 final charge, the exhibits, or the verdict form?

25 SOLICITOR GRAY: No, sir, Your Honor.

1 THE COURT: Any objections from the defense as to those
2 matters?

3 MR. SHEALY: No, Your Honor.

4 THE COURT: Thank you.

5 We're in recess until a verdict is reached.

6 SOLICITOR GRAY: Yes, sir.

7 (WHEREUPON, the jury began deliberations at 4:09PM and
8 returned with a question at 5:10PM.)

9 THE COURT: I have questions. It shouldn't take me
10 very long to respond to these. So --.

11 All right. Bring the jury in.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: All right. The record will reflect that
15 the jury has returned to the courtroom.

16 I've received a document from the jury. The first
17 numbered item on there is angle of car leaving road.

18 Is that -- that's not a question. So, I'm not sure
19 exactly what you---

20 THE FOREMAN: We---

21 THE COURT: ---what you wanted to know.

22 THE FOREMAN: We're wanting to know when the car
23 actually left Skylyn Drive, the angle that it left the road.
24 We mistakenly thought we heard somewhere around 20 degrees.

25 THE COURT: Okay. Well, here, here's where we are.

1 You have the documents that are in the record, and so that,
2 that evidence is in the record.

3 The second question is when did Mr. Westmoreland see
4 Michael on the side of the road.

5 Both of those questions would require me to comment on
6 what witnesses said. I'm not allowed to do that.

7 Now, I will tell you that if -- we do not have a
8 printed transcript of the testimony.

9 THE FOREMAN: Okay.

10 THE COURT: The only thing we have of the testimony is
11 a recording of the testimony, and if you would like to hear
12 the testimony again we can play that.

13 Now, if we play the testimony, generally we play all of
14 that witnesses testimony. Not just portions because, for us
15 to pick out a part or a piece, we may leave out a piece that
16 might refer to that same thing.

17 So, generally, if we -- if you decide that you do want
18 to hear the testimony of any particular witness again, it
19 would, would require that we play the entire testimony of
20 that particular witness.

21 So, I don't know, I don't know where that leaves you in
22 your questioning. I will tell you, however, I can not, as a
23 judge, comment specifically on either of these facts because
24 they are facts and that's for you to decide. I can't
25 comment on what the witnesses may or may not have said or

1 how they said it.

2 Do you understand where we are?

3 THE FOREMAN: Right.

4 THE COURT: All right. So, I'll ask you to step back
5 to deliberations. If you have further inquiries, let me
6 know.

7 Thank you very much.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. Any objection to my responses
11 from the State?

12 SOLICITOR GRAY: No, sir, Your Honor.

13 THE COURT: Any from the defense?

14 MR. SHEALY: No, Your Honor.

15 THE COURT: All right. The question will be made a
16 Court's Exhibit and part of the record.

17 (WHEREUPON, the note from the jury was marked as
18 Court's Exhibit No. 2 for identification purposes only at
19 this time.)

20 THE COURT: We'll remain in recess until a verdict is
21 reached or we receive additional questions.

22 (WHEREUPON, the jury began deliberations again at
23 5:14PM and returned with another question at 5:25PM.)

24 THE COURT: All right. We need to bring the defendant
25 in.

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Thursday, December 4th, 2013

THE COURT: All right. We're on the record in the case of State versus Westmoreland.

Is the State ready to go forward with the jury this morning?

SOLICITOR GRAY: Yes, sir, Your Honor.

THE COURT: Defense ready?

MR. SHEALY: Yes, Your Honor.

THE COURT: All right. Let's bring the jury in.

(WHEREUPON, the following takes place within the presence of the jury.)

THE COURT: The record will reflect that the entire jury has returned to the courtroom this morning. I hope everyone had a good evening.

Yesterday afternoon, when you left the courthouse, I gave you some instructions concerning your behavior while you were away from the courthouse.

If there was any member of the jury panel who was unable to comply with my instructions, I'd ask that you now please stand.

(No response.)

THE COURT: All right. The record then will reflect that all jurors have been able to comply with my instructions.

1 Yesterday you were in the process of deliberating in
2 the case. At this time I would instruct you to return to
3 the jury room to continue your deliberations. The exhibits
4 and other documents should be present.

5 Is there anything the jury needs before we begin --
6 resumes deliberations?

7 THE FOREMAN: Yes, we would like to hear the testimony,
8 once again, of Sandy Westmoreland.

9 THE COURT: Yes.

10 THE FOREMAN: And also Corporal Brooks if that would be
11 possible.

12 THE COURT: There, there apparently -- I've checked
13 with the court reporter. The Court -- there was not a
14 Corporal Brooks that testified in the case. The police
15 officer -- are you talking about the highway patrolman?

16 THE FOREMAN: Yes.

17 THE COURT: What was his name?

18 COURT REPORTER: Duncan.

19 THE COURT: Duncan?

20 COURT REPORTER: Yes, sir.

21 THE COURT: It was Office Duncan or Corporal Duncan.
22 Is that---

23 THE FOREMAN: We were reviewing, we were reviewing the
24 document that had the---

25 THE COURT: Was signed by someone named Brooks?

1 THE FOREMAN: Yes.

2 THE COURT: All right. All right. well, the gentleman
3 who testified was Duncan.

4 Is that the individual that you'd like to hear the
5 testimony?

6 As I indicated, if I replay testimony, we'll replay the
7 testimony in its entirety, both direct and in
8 cross-examination.

9 THE FOREMAN: Yes, sir.

10 THE COURT: Okay. All right. Are you prepared to do
11 that?

12 COURT REPORTER: Yes, sir.

13 THE COURT: All right. Let's proceed with the playing
14 of those, those transcripts, or not transcripts, recordings.

15 This one is?

16 COURT REPORTER: Mr. Westmoreland.

17 THE COURT: This is Mr. Westmoreland.

18 (WHEREUPON, the testimony of Sandy Westmoreland was
19 played for the jury at this time.)

20 COURT REPORTER: That's all of his.

21 Do you want me to go ahead---

22 THE COURT: There were no other questions, were there?

23 COURT REPORTER: No, sir.

24 THE COURT: Okay.

25 COURT REPORTER: You want me to go ahead---

1 THE COURT: No.

2 Ladies and gentlemen, that completes the testimony of
3 Mr. Westmoreland.

4 We'll take a short break while we rack up the testimony
5 of the police officer you'd requested. I'll allow you to
6 step back into the jury room for a few moments.

7 As always, I'm gonna instruct you at this time not to
8 discuss anything about the case until we've completed the
9 presentation of the evidence you've requested.

10 You may retire to the jury room.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right. We'll be in recess, recess
14 briefly.

15 About how long you think it's gonna take, Pam?

16 COURT REPORTER: Thirty minutes.

17 Oh, his testimony is thirty minutes.

18 THE COURT: Are you ready?

19 COURT REPORTER: Oh, I'm ready.

20 THE COURT: All right. We'll be recess for about five
21 to ten minutes.

22 Thank you.

23 (WHEREUPON, a short recess was taken at this time.)

24 THE COURT: All right. Is the State ready to proceed?

25 SOLICITOR GRAY: Yes, sir, Your Honor.

1 THE COURT: Defense ready?

2 MR. SHEALY: Yes, sir.

3 THE COURT: Bring the jury in.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: All right. The record will reflect the
7 jury has returned.

8 You had requested the playing of Highway Patrol Officer
9 Duncan's testimony.

10 So, at this time I'll direct the court reporter to
11 publish that testimony.

12 Yes, ma'am.

13 (WHEREUPON, the testimony of Trooper Duncan was played
14 for the jury at this time.)

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, that completes the evidence that you've requested.

17 So, at this time I'll ask you to return to the jury
18 room to begin your deliberations.

19 Let me mention one thing to you. I notice it's
20 11:00 -- ten minutes after 11:00. If you wish to have lunch
21 served to you in the jury room, it takes about an hour for
22 that to happen.

23 So, if you decide you wish to have lunch served to you,
24 you need to let the bailiff know. They need to come in and
25 take an order and then deliver the meal to you once it

1 arrives at the courthouse.

2 So, I'll leave that up to you as to how you wish to
3 proceed. Just make you aware that it is available to you,
4 but you'd have to give us some time in which to accomplish
5 that task.

6 So, at this point in time I'll ask you to step back
7 into the jury room and continue your deliberations.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: Is there any objection from the State in
11 the manner in which the Court responded to the jury's
12 request?

13 SOLICITOR GRAY: No, sir, Your Honor.

14 THE COURT: Any from the defense?

15 MR. SHEALY: No, Your Honor.

16 THE COURT: All right. We'll be in recess then until
17 such time as a verdict is reached in the case.

18 Thank you.

19 (WHEREUPON, the jury began deliberations at 11:12AM and
20 returned with a verdict at 12:21PM.)

21 THE COURT: All right. I have been informed by the
22 bailiffs that a verdict has been reached in the case.

23 Is the State ready to receive the verdict?

24 SOLICITOR GRAY: Yes, sir, Your Honor.

25 THE COURT: Defense ready?

1 MR. SHEALY: Yes, sir.

2 THE COURT: Let's bring the jury in.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: All right. The record will reflect the
6 jury has returned to the courtroom.

7 Mr. Foreman, I've been informed by the bailiff that a
8 verdict has been reached.

9 Is that true?

10 THE FOREMAN: That is true, Your Honor.

11 THE COURT: Pass the form to the bailiff.

12 (Foreman complies.)

13 THE COURT: Thank you, sir.

14 Madam Clerk, you may publish the verdict.

15 THE CLERK: Yes, sir.

16 In the General Sessions Court, State of South Carolina
17 versus Sandy Lynn Westmoreland, we, the jury, unanimously
18 find the defendant, Sandy Lynn Westmoreland, concerning the
19 offense of murder, Case Number 2012-GS-42-5195, guilty.

20 We, the jury, unanimously find the defendant, Sandy
21 Lynn Westmoreland, concerning the offense of traffic hit and
22 run with death, Case Number 2013-GS-42-5625, guilty.

23 This is signed by the foreperson and dated today's
24 date.

25 Ladies and gentlemen of the jury, if this is your

1 verdict and still your verdicts, please raise your
2 right-hand.

3 (WHEREUPON, all jurors raise their hands at this time.)

4 THE COURT: Thank you.

5 THE CLERK: So say you all.

6 THE COURT: Anything further from the State before I
7 release the jury?

8 SOLICITOR GRAY: No, sir, Your Honor.

9 THE COURT: Anything further from the defense?

10 MR. SHEALY: No, Your Honor.

11 THE COURT: All right.

12 (WHEREUPON, the jury was dismissed at this time.)

13 SOLICITOR GRAY: May I approach, Your Honor?

14 THE COURT: Yes, sir, please do.

15 Does Mr. Shealy need to step up?

16 He's approaching. So, anytime he approaches I invite
17 the other side. So come on up.

18 MR. SHEALY: I think he's just giving you the
19 sentencing sheet.

20 THE COURT: I know that. I don't know if there's a
21 question on them. I don't know what it's gonna involve.

22 (WHEREUPON, a bench conference was held at this time.)

23 THE COURT: All right. I'll ask you to approach the
24 bar please.

25 (Parties comply.)

1 THE COURT: All right. Mr. Sandy Lynn Westmoreland,
2 having been found guilty by a jury of your peers of the
3 offenses of murder and hit and run involving an accident
4 involving death, I am considering sentencing at this time.
5 I'm going to go over some matters with your attorney, and I
6 will give you an opportunity to speak once I have discussed
7 some matters with your attorney.

8 Now, my understanding is that, in the case of murder,
9 the possible sentence is 30 years to life without parole,
10 and as far as the offense of hit and run involving death,
11 the possible sentences are -- is a sentence of not more than
12 25 years and a fine of at least \$10,000 up to \$25,000.

13 Is that your understanding as well, Mr. Shealy?

14 MR. SHEALY: It is, Your Honor.

15 THE COURT: All right. Mr. Shealy, I'll be happy to
16 hear from you on behalf of Mr. Westmoreland.

17 MR. SHEALY: Your Honor, just for housekeeping, I
18 should renew my prior motions for---

19 THE COURT: Your prior motions are, are -- will be
20 considered as having been renewed, and the Court will make
21 the finding -- make the same rulings on those motions.

22 MR. SHEALY: Thank you, Your Honor.

23 Your Honor, Mr. Westmoreland, as he is testified, is 52
24 years old. You've heard from him, and from the doctor about
25 all the various medical conditions he has.

1 He's been in jail now for very nearly three years.

2 He's been in jail for two years and eight months---

3 THE DEFENDANT: Nine months.

4 MR. SHEALY: Nine months. 995 days.

5 THE COURT: All right.

6 MR. SHEALY: Your Honor, obviously we stand by our
7 position -- he has no children. He was married at one time,
8 but his wife is deceased.

9 We stand by our position. I think we had a defense to
10 this. We presented that defense. Unfortunately the, the
11 jury, for whatever reason, decided to find him guilty of
12 murder. But, again, we would submit to you that, that there
13 was simply no good motive here, Your Honor, and I understand
14 that -- that's for the jury to decide. But I think it's
15 important for me to explain I think we had defenses as to
16 this being an intentional act.

17 We were offered voluntary manslaughter, but, again,
18 that would require it to be a voluntary act or an
19 intentional act. My client denies that that's what
20 happened. He's always denied that that's what happened from
21 the beginning of all the statements that he gave.

22 Judge, we would ask that you be as lenient as you can.
23 Again, people die in corrections at about 56. So, even,
24 even had he just been found guilty of the things that we
25 argued he was guilty of, he probably would be serving a life

1 sentence anyway. This was about a principle for us.

2 Judge, we'd ask that you be as lenient as you can. It
3 is my---

4 THE COURT: Well, I understand.

5 Thank you, thank you, Mr. Shealy.

6 MR. SHEALY: Thank you.

7 THE COURT: Mr. Westmoreland, this is your opportunity
8 to speak to me about this matter.

9 Would you like to speak to the Court?

10 THE DEFENDANT: I'll stand by my word. I didn't do it
11 on purpose. I'm sorry for what happened. At least I got to
12 tell the truth of what happened. That's all I know.

13 THE COURT: Thank you, sir.

14 Prior record from the State?

15 SOLICITOR GRAY: No prior record, Your Honor.

16 THE COURT: Any, anyone who wants to speak as a victim
17 in the matter?

18 SOLICITOR GRAY: No, sir.

19 THE COURT: Anything further you think the Court should
20 consider?

21 SOLICITOR GRAY: This was an intentional act, Your
22 Honor, from circumstantial evidence to direct evidence.
23 This was not a mistake. He targeted this gentleman and he
24 was so callous he left his body there basically to rot
25 unless Mr. Clay Lyles hadn't found him.

1 I don't think the first, I've never been in jail, this
2 is the first time I've been in trouble, well, he doesn't get
3 credit for that, the first time either. He hadn't murdered
4 anybody also. I request consecutive sentences in this
5 matter.

6 THE COURT: Thank you, sir.

7 Do you agree with the defense's calculation of 995---

8 SOLICITOR GRAY: Yes, sir.

9 THE COURT: ---Mr. Gray?

10 Mr. Westmoreland, the jury has spoken concerning their
11 determination of the facts in this case, and I see no reason
12 to disturb their findings of fact in this matter.

13 What is particularly concerning to this Court, however,
14 is, if I take your version of what happened after the
15 incident occurred, you went back and attempted to render CPR
16 to the victim and then left the scene without calling for
17 any further aid or attention for the victim. That's
18 troubling to this Court.

19 The victim was left to lie there, and had he not been
20 found by the gentleman who happened to be cutting through
21 the campus of the hospital, may still have been there, and
22 that's the reason for the statute that requires people to
23 stop and render aid to people, to park your car as near as
24 possible to the scene, and to render aid even if that person
25 may appear to be beyond help. That's really not for a

1 layman to decide. Help should of been summoned, and it's
2 disturbing that, even if I take your version of the facts to
3 be true, that, when you got to the -- wherever you had your
4 phone, you said it had -- the battery had run down.

5 well, you know, you could plug those things in or you
6 could of gone to a neighbor's house and asked for a phone.
7 There are places to make phone calls in America that don't
8 require the use of your personal phone. So, it's very
9 disturbing to this Court that that occurred in this case,
10 and I wanted to share that with you now.

11 All right. The Sentence for the charge of murder is
12 that you be confined in the State Department of Corrections
13 for a period of -- and in making this sentence I have taken
14 into consideration your age and your physical condition as
15 well. The Sentence is 30 years with credit for 995 days.

16 The Sentence for the hit and run, the Sentence is 25
17 years and a fine of \$10,000. I have run those concurrently.
18 Same credit for days.

19 Good luck to you, Mr. Westmoreland.

20 MR. SHEALY: Thank you, Your Honor.

21

22

23 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

24

25

SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM HORRY COUNTY
In The Court of Common PleasHonorable Michael G. Nettles
Common Pleas Judge of the Fifteenth Judicial Circuit

Case No.: 2013-CP-26-5621

RECEIVED

AUG 03 2015

S.C. SUPREME COURT

Danny Cortez Brown, #317608,

Petitioner,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner appeals the Order of Dismissal of the Honorable Michael G. Nettles, dated June 16, 2015,
and received by Petitioner on July 10, 2015:

July 28, 2015



Tristan M. Shaffer, Esq.
AXELROD & ASSOCIATES P.A.
4701 Oleander Drive
Myrtle Beach, SC 29577
(843) 848-6708 Phone
(843) 848-6709 Fax
Attorney for Appellant

Respondent's Attorney:
Joshua L. Thomas, Esquire
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

SUPREME COURT OF SOUTH CAROLINA

RECEIVED

APPEAL FROM HORRY COUNTY

In The Court of Common Pleas

AUG 03 2015

Honorable Michael G. Nettles
Common Pleas Judge of the Fifteenth Judicial Circuit **S.C. SUPREME COURT**

Case No.: 2013-CP-26-5621

Danny Cortez Brown, #317608, Petitioner,

v.

State of South Carolina, Respondent.

CERTIFICATE OF SERVICE

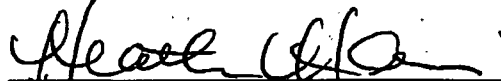
I, Heather L. Harris, do hereby certify that I am an employee of Axelrod & Associates, P.A., in Myrtle Beach, South Carolina, and that I have this date served the Petitioner's Notice of Appeal upon the Respondent, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Joshua L. Thomas, Esquire
S.C. Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Horry County Clerk of Court
P.O. Box 677
Conway, SC 29528

Danny Cortez Brown, #317608
Lieber Correctional Institution
136 Wilborn Ave.
Ridgeville, SC 29472

Daniel E. Shearouse
Clerk of Court
P.O. Box 11330
Columbia, SC 29211



Heather L. Harris
Paralegal

July 29, 2015
Myrtle Beach, South Carolina

CASE# 12030767	VOLUNTARY STATEMENT		PAGE 1 of 1
STATEMENT OF: Sandy L Westmoreland	AGE: 49	DATE: 3/15/12	
ADDRESS: [REDACTED] Woodruff SC 29388			
PHONE # [REDACTED]	DOI [REDACTED]	SSN [REDACTED]	

Statement written by I Bryant at my request.

I picked Mike up at DCI behind Mary Black at about 4:30 pm. When I picked Mike up we went straight to the emergency room. We were there till about 11 pm. Mike got upset because they were taking to Long. While we were at the hospital we argued because of the wait. I accidentally hit him in the nose with my cane. The security guard came in + asked Mike if he wanted to press charges. Mike told him NO. Mike told him that he just wanted to get his stuff out of my car + walk home. When they released me security walked me out. I seen that he had got his stuff out of the car from the tape over the window. I left + went back to the motel. I stayed a while + Mike never showed up. I then called him. I figured I would give him some time to cool off so I went to my house in Woodruff. I had a deer on Dillon Dr looking for Mike before I went to Woodruff.

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement. This statement was completed at 1:11 P.M. on the 15 day of 3 20 12.

WITNESS: [Signature]

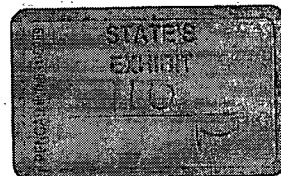
Sworn to before me this 15

day of March, 20 12

Notary Public of South Carolina

My Commission expires: June 02 2013

[Signature]
Signature of person giving voluntary statement



PL-028-12

Spartanburg County Sheriffs Department		Incident Date: 3/15/2012	Case Number
			PL-028-12
Drawn By	Date Drawn	Location: SEC-31	Scale
Cpl. T.J. Brooks	3/15/2012		Not to scale

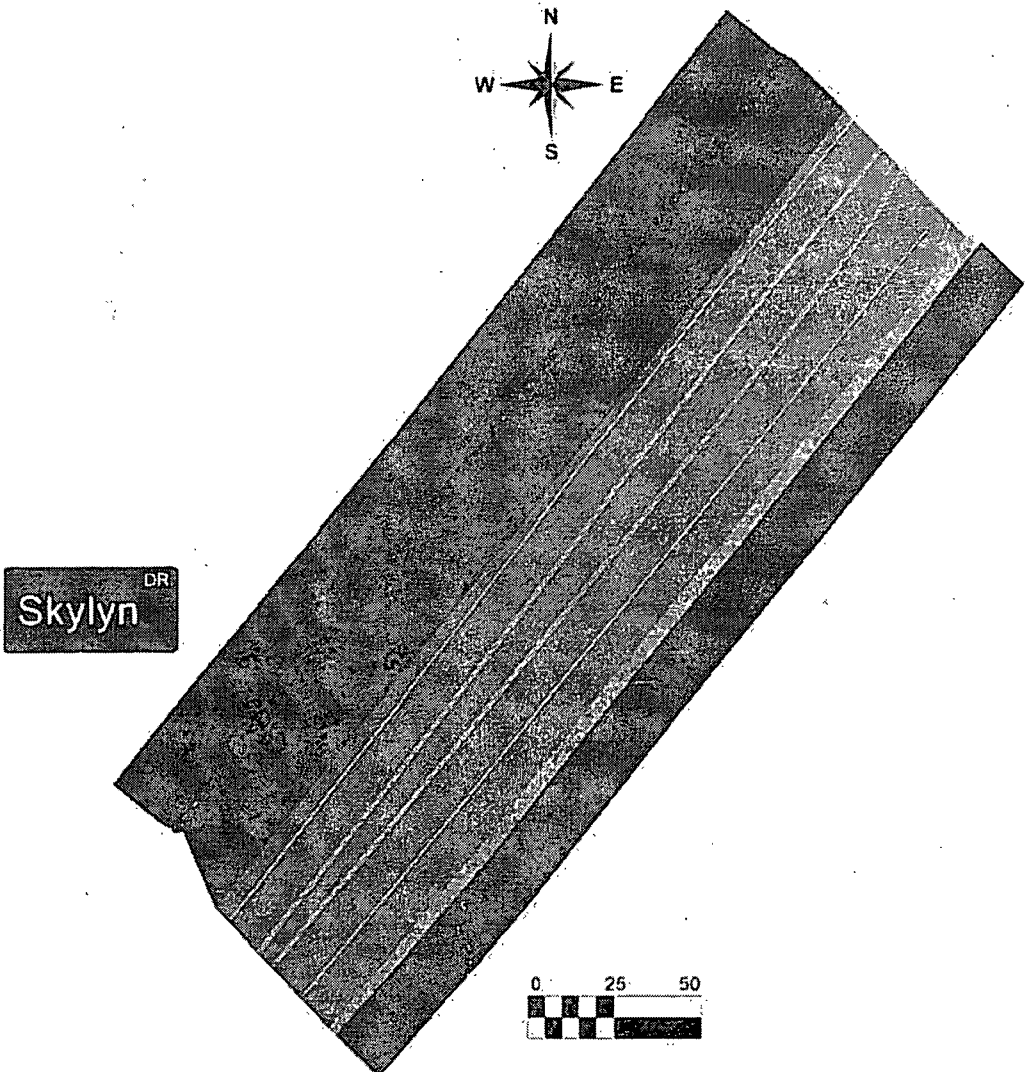
The diagram illustrates a crime scene layout. A horizontal line of small circles represents a 'Bushes and mulch bed'. Above this line, several curved lines indicate 'Tire Marks'. The scene is divided into three horizontal bands: a top white band for the diagram, a middle dark grey band, and a bottom white band for the address.

Bushes and mulch bed

Tire Marks

Skyland Drive
S-42-31

STATE'S
EXHIBIT
VII



PL-028-12

SOUTH CAROLINA HIGHWAY PATROL
 MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
 EDMONT M.A.I.T.
 Date Drawn: 03/15/2012

ROADWAY

TROOP 3/SPARTANBURG
 Occurred on: 03/15/2012
 PL-028-12



Patient Rx History Report

WESTMORELAND S

Search Criteria: Last Name 'westmoreland' and First Name 's' and D.O.B. = '09/28/62' and Request Period = '07/10/11' to '07/10/14' - 3 out of 3 Recipient(s) Selected.

Fill Date	Product, Str, Form	Qty	Days	Pt ID	Prescriber	Written	RX#	N/R*	Pharm
08/06/2011	DIAZEPAM 10 MG TABLET	60.000	30	00443964	AW2202492	04/01/2011	0902353	R	BC6391356
07/29/2011	HYDROCODON-ACETAMINOPHN 10-500	90.000	30	00443964	AW2202492	07/07/2011	0940467	N	BC6391356
03/13/2012	DIAZEPAM 10 MG TABLET	60.000	30	05076109	AW2202492	02/27/2012	0123060	N	FS2386135
02/24/2012	HYDROCODON-ACETAMINOPHN 10-500	90.000	30	05076109	AW2202492	11/03/2011	0114856	R	FS2386135
01/24/2012	HYDROCODON-ACETAMINOPHN 10-500	90.000	30	05076109	AW2202492	11/03/2011	0114856	R	FS2386135
01/22/2012	DIAZEPAM 10 MG TABLET	60.000	30	05076109	AW2202492	11/03/2011	0114855	R	FS2386135
12/26/2011	HYDROCODON-ACETAMINOPHN 10-500	90.000	30	05076109	AW2202492	11/03/2011	0114856	R	FS2386135
12/24/2011	DIAZEPAM 10 MG TABLET	60.000	30	05076109	AW2202492	11/03/2011	0114855	R	FS2386135
11/28/2011	HYDROCODON-ACETAMINOPHN 10-500	30.000	8	05076109	FT2572510	11/28/2011	4001802	N	FR1928502
11/26/2011	DIAZEPAM 10 MG TABLET	60.000	30	05076109	AW2202492	11/03/2011	0114855	R	FS2386135
11/26/2011	HYDROCODON-ACETAMINOPHN 10-500	90.000	30	05076109	AW2202492	11/03/2011	0114856	N	FS2386135
11/14/2011	OXYCODONE-ACETAMINOPHEN 5-325	15.000	4	05076109	BP4954904	11/14/2011	0981373	N	BC6391356
11/10/2011	OXYCODONE-ACETAMINOPHEN 7.5-500	10.000	3	05076109	BM4537582	11/10/2011	0115274	N	FS2386135
11/03/2011	DIAZEPAM 10 MG TABLET	60.000	30	05076109	AW2202492	11/03/2011	0114855	N	FS2386135
10/28/2011	HYDROCODON-ACETAMINOPHN 10-500	90.000	30	05076109	AR6971445	10/28/2011	0114401	N	FS2386135
10/21/2011	HYDROCODON-ACETAMINOPHN 10-500	30.000	30	05076109	FT2572510	10/21/2011	4001746	N	FR1928502
10/18/2011	OXYCODONE-ACETAMINOPHEN 5-325	10.000	2	05076109	MU1930521	10/18/2011	0113723	N	FS2386135
10/04/2011	DIAZEPAM 10 MG TABLET	60.000	30	05076109	AW2202492	10/04/2011	0112848	N	FS2386135
09/27/2011	HYDROCODON-ACETAMINOPHN 10-500	90.000	30	05076109	AW2202492	07/07/2011	0110484	R	FS2386135
09/04/2011	DIAZEPAM 10 MG TABLET	60.000	30	05076109	AW2202492	04/01/2011	0110893	N	FS2386135
08/28/2011	HYDROCODON-ACETAMINOPHN 10-500	90.000	30	05076109	AW2202492	07/07/2011	0110484	N	FS2386135

*N/R N=New R=Refill

Prescribers for prescriptions listed

AW2202492 [REDACTED] PAUL D MD; [REDACTED] SPARTANBURG SC 29307
 MU1930521 [REDACTED] REBECCA JO; [REDACTED] FRANCIS HOSPITAL-ER, 1 ST. FRANCIS DRIVE, GREENVILLE SC 29601
 FT2572510 [REDACTED] N, DARREN ALLEN; REGENESIS HEALTH CARE FAMILY DENTISTRY, 5 [REDACTED] UNIT 2, SPARTANBURG SC 29306
 AR6971445 [REDACTED] N, THOMAS LITTLE MD; 118 DILLON DRIVE, SPARTANBURG SC 29307
 BM4537582 [REDACTED] CATHY ANN DO; SPARTANBURG REGIONAL MED CTR, DEPT OF EMERGENCY MEDICINE, [REDACTED] E. WOOD STREET, SPARTANBURG SC 29
 BP4954904 [REDACTED] T, EDWIN ALLEN MD; [REDACTED] SPARTANBURG SC 29303

Pharmacies that dispensed prescriptions listed

BC6391356 SOUTH CAROLINA CVS PHARMACY, L.L.C.; DBA: CVS/PHARMACY # 03586, 2397 REIDVILLE ROAD,, SPARTANBURG SC 29301,
 FS2386135 SOUTH CAROLINA CVS PHARMACY, L.L.C.; DBA CVS/PHARMACY # 2446, 820 N MAIN STREET, WOODRUFF SC 29388,
 FR1928502 REGENESIS HEALTH CARE; REGENESIS HEALTH CARE PHARMACY, 750 S. CHURCH ST., P.O. BOX 5158, SPARTANBURG SC 29304,

Patients that match search criteria

00282544 WESTMORELAND SANDY, DOB [REDACTED] COWPENS SC 29330
 00443964 WESTMORELAND SANDY, DOB [REDACTED] COWPENS SC 29330

Report Disclaimers:

The Report is based on the search criteria and the data provided by the dispensing entities. For more information about any prescription, please contact the dispenser or the prescriber.
 This Report contains confidential information, including patient identifiers, and is not a public record. The information should not be

Health Information
Designs Inc.

South Carolina DHEC
Query Report

Patient Rx History Report

WESTMORELAND S

Patients that match search criteria

05076109 WESTMORELAND SANDY, [REDACTED], WOODRUFF SC 29388

Report Disclaimers:

The Report is based on the search criteria and the data provided by the dispensing entities. For more information on a prescription, please contact the dispenser or the prescriber.
This Report contains confidential information, including patient identifiers, and is not a public record.
provided to any other persons or entities.

WITNESSES

Spartanburg County Sheriff's Department

1. SUBSCRIBER ☒

2. REPORT MADE ☒

3. CASE FILED ☒

4. *Kevin [Signature]* ☒

5. ☒

6. ☒

7. ☒

ARREST WARRANT NUMBER

M758322

ACTION OF GRAND JURY

Deane [Signature]

True Bill

Foreperson of Grand Jury Date: OCT 18 2012

VERDICT

Guilty

Robert M. [Signature] 12-4-14

Foreperson of Petit Jury Date:

DOCKET NO. 12-GS-42-5195

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 22 2012

TERM

THE STATE

v

Sandy Lynn Westmoreland

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR Code 116

Class FEL-EXM

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 OCT 23 AM 8:56
M. HOPE BLACKLEY

RECEIVED
DEC 12 2014
SC Court of Appeals

as

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

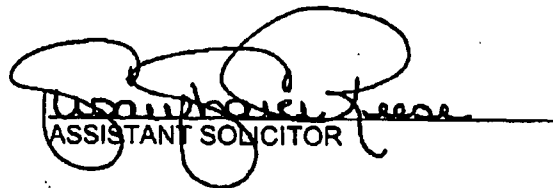
At a Court of General Sessions, convened on Oct 18 2012, the

Grand Jurors of Spartanburg County present upon their oath:

MURDER

That Sandy Lynn Westmoreland did in Spartanburg County on or about March 15, 2012, feloniously, willfully, and with malice aforethought, kill Michael Daniels by striking the victim with a vehicle, and he died as a proximate result thereof, all in violation of §16-3-0010, 0020, *The South Carolina Code of Laws*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

Spartanburg County Sheriff's Office

Kevin B. [Signature]

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

Harold [Signature]
Foreperson of Grand Jury
Date: SEP 27 2013

VERDICT

Foreperson of Petit Jury
Date:

DECKE NO. **13-GS-42-4625**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

Sandy Westmoreland

Indictment for

**TRAFFIC/HIT AND RUN
WITH DEATH**

SC Code: 56-5-1210 (A) (3)
CDR Code: 2463
Class FEL/B

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

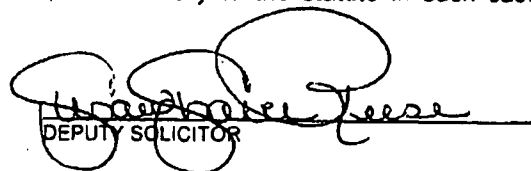
INDICTMENT

At a Court of General Sessions, convened on _____ the
 Grand Jurors of Spartanburg County present upon their oath:

TRAFFIC/HIT AND RUN WITH DEATH

That Sandy Westmoreland did in Spartanburg County on or about March 15, 2012, having been the driver of a vehicle involved in an accident resulting in the death of Michael Daniels, did willfully and unlawfully fail to stop the vehicle at the scene or as close as possible to the scene or to return to the scene to give information and render aid as required under Section 56-5-1230 of the South Carolina Code of Laws, (1976), as amended. Such acts being in violation of Section 56-5-1210 (A)(3) of the South Carolina Code of Laws, (1976), as amended.

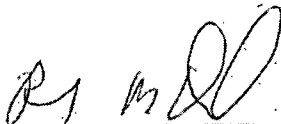
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 DEPUTY SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this amended Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 22nd, 2016



Robert M. Dudek
Chief Appellate Defender

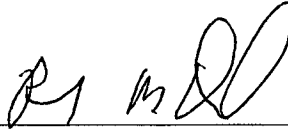
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this amended Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 22nd, 2016



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

FEB 22 2016

SC Court of Appeals