

 ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
DEANDREA G. BENJAMIN, Circuit Court Judge

Case no. 2014-002652

The State of South Carolina..... Respondent

v.

Willie Thomas Starnes.....Appellant

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

COURT'S EXHIBIT # 2 (recording of appellant's first statement to police)

STATE'S EXHIBIT # 39 (redacted recording of appellant's second statement to police)

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2 COUNTY OF KERSHAW) COURT OF GENERAL SESSIONS
3) 2013-GS-28-1040 and 1041

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Willie Thomas Starnes,)
8 Defendant.)

9 August 25-28, 2014
10 Camden, South Carolina

11
12 B E F O R E:

13 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a
14 jury.

15
16
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Official Court Reporter

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1 it looks like. I have the original. On the
2 original unredacted copy.

3 THE COURT: An hour and 48 minutes?

4 MR. PAULING: Hour and 48 and like 50 seconds.

5 THE COURT: Is where it stops?

6 MR. PAULING: Where that is it. It is done.
7 Because, like I was saying, there is another 40
8 minute gap, and then Chief Deputy Brown comes in
9 and, you know, asked him one more thing, but it
10 wasn't anything relevant to this.

11 THE COURT: Okay. All right. All right,
12 well, I will take it in chambers and see if I can
13 get it to work, first of all.

14 All right, we'll be at ease.

15 (WHEREUPON, a break was taken.)

16 THE COURT: I'll watch the video this
17 afternoon and we will -- and then I'll get you all
18 a ruling on that in the morning.

19 As for the -- Mr. -- I believe Mr. Kirincich
20 has objected to any statements from the victim, I
21 think. And Mr. Perry has said that he would like
22 to get them in under dying declaration or --

23 MR. PERRY: And/or excited utterance, Your
24 Honor.

25 THE COURT: -- excited utterance. And

3 MR. PERRY: Your Honor, I would call Martha
4 Pate.

5 THE BAILIFF: Place your left hand on the
6 Bible.

7 THE COURT: I will swear her. Put your left
8 hand on the Bible and raise your right hand, ma'am.

9 (Witness complies.)

10 THE COURT: All right. Do you swear or affirm
11 to tell the truth, the whole truth, so help you
12 God?

13 THE WITNESS: I do.

14 THE COURT: All right, thank you.

15 THE BAILIFF: Come around this way, ma'am.

16 (Witness complies.)

17 THE BAILIFF: State your name.

18 THE WITNESS: Martha Pate.

19 MARTHA PATE,
20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION (JURY OUT)

22 BY MR. PERRY:

23 Q Ms. Pate, last year, on the 24th of August, 2013,
24 can you just tell the Court what happened that
25 afternoon?

1 A Me and husband was going to an auction, and we got
2 to the end of Camp Road and we stopped at the stop
3 sign, and we was going to turn on Freeman Road to
4 the left. And we seen something on the side of the
5 road.

6 Q And, Ms. Pate, not to interrupt you, but your
7 husband is Lloyd Pate; correct?

8 A That's correct.

9 Q That is the nephew of --

10 A Alan.

11 Q -- Alan? Alan Robinson is the man who died; right?

12 A Correct. When we got up there, we seen it was Al
13 laying on the side of the road. We got out and was
14 asking him what happened.

15 Q If you will, describe for the Court exactly where
16 he was laying in relation to the roadway. And was
17 he in the road, out of the road, partially? Just
18 tell the Court all about that.

19 A The road -- this is the road, and he was kind of
20 laying like this on the side of the road with his
21 feet pointing towards the road(indicating).

22 We got out. And his tools, his oil, his cap,
23 everything was scattered all over the road.

24 Q Did you see his Moped anywhere?

25 A We didn't see his Moped anywhere.

1 Q Okay.

2 A And we asked him, Al, what is going on? What
3 happened? Where is your Moped?

4 And he said, They took it.

5 Q What -- how did he appear to you at that time? He
6 wasn't bleeding or anything, was he?

7 A No, sir, but he was laying on the ground, but he
8 couldn't get up.

9 Q Okay. So he couldn't get up?

10 A But he was hollering.

11 Q Was he expressing any pain or discomfort?

12 A Most definitely. He was hollering, Help me! Help
13 me! And he was holding his stomach. And he would
14 holler out, Oh, God, help me!

15 Q Did you see him try to move or get up and not be
16 able to?

17 A Yes, sir. At one point he was grabbing his left
18 hip saying his left hip was hurting and he was
19 trying to roll to the right. And then a few
20 minutes later he would grab the right hip and say
21 it was hurting. And he tried to roll to the left
22 and he was trying to get up, and he couldn't get
23 up. We wouldn't let him get up because we didn't
24 know how bad he was hurt.

25 Q And specifically what, if anything, did he say that

1 caused you to believe that he was in great pain or,
2 you know, any other type of problems that he might
3 be having?

4 A Well, Al wasn't a very talkative person. He would,
5 you know, kind of just sit around and not say a
6 whole lot. But when he went to hollering out, Help
7 me! God help me! we knew he was in pain.

8 Q Okay. And then what did he tell you? You asked
9 him about the Moped?

10 A He said, They took it.

11 And we were like, Who took it?

12 He said, There were two guys.

13 And we said, Did you know who they were?

14 And he said, One was white, one was black. He
15 said, And they got in a van the color of Scott's.

16 Scott is our neighbor. He has a dark blue
17 SUV.

18 And he said, They loaded it up and went down
19 to Camp Road, turned around, was coming back up
20 Freeman Road towards him. And he said when they
21 got close to him, they sped up and hit him.

22 Q When he said they hit him, exactly what words did
23 he use to describe that?

24 A He said, They hit me with the vehicle.

25 Q Okay. All right. So he wasn't referring to them

1 hitting him, you know, with a fist or anything at
2 that time?

3 A No, no, no, no, no, no, no. No.

4 Q He was saying they ran into him with a vehicle --
5 ran over him with a vehicle?

6 A Right.

7 Q All right. And you testified that he was unable to
8 get up?

9 A No, he wasn't able to get up.

10 Q In great pain?

11 A Yes, sir.

12 Q Crying out for help?

13 A Yes, sir.

14 Q Okay. What, if anything else, did he say to you
15 while you were there with him?

16 A Al wouldn't say a whole lot unless we asked him
17 questions, other than him hollering out, Help me!
18 Oh, God, help me!

19 Q Is that something you had seen him do before?

20 A No, sir. Like I said, he was a very quiet type
21 person, and he didn't say a whole lot.

22 Q And did you stay there with him the whole time
23 until EMS came, or did you leave and come back?

24 A No, sir. My husband stayed there with him, because
25 my cell phone wouldn't get any service and I had to

1 go back to my house and call 9-1-1.

2 Q Okay. All right. So you are actually the one who
3 called 9-1-1, I guess?

4 A Yes, sir.

5 Q All right. Then you went back to the scene?

6 A Yes, sir.

7 Q And after you got back there, until the time that
8 EMS transported him, what did you experience?

9 A Him just laying there hollering, Help me! God help
10 me!

11 And we kept saying, The ambulance is on the
12 way, Al. You can't get up.

13 One of our neighbors came up with -- and she
14 had a pillow or something in the trunk of her car,
15 and we put it under his head.

16 And he kept hollering, Help me! God help me!

17 And all we could do is try to keep him on the
18 ground until the ambulance got there.

19 Q And approximately how old was Al at the time this
20 happened?

21 A About 65 or 66.

22 Q Okay. Was there any doubt in your mind that he was
23 in lots of pain?

24 A Most definitely, yes.

25 Q Was there any doubt in your mind that he was --

1 what did you think his thoughts were as far as what
2 he thought was going to happen to him? Or could
3 you tell based on that?

4 A I don't know. All I know is he just kept hollering
5 out, help him. And we kept saying, The ambulance
6 is on the way. There wasn't nothing we could do.

7 Q Okay. Please answer any questions Mr. Kirincich
8 may have for you.

9 THE COURT: All right. Yes, sir?

10 MR. KIRINCICH: I don't have any questions,
11 Your Honor.

12 THE COURT: All right, you may step down.

13 (Witness steps down.)

14 MR. PERRY: The State would call Frances Pate.

15 MR. KIRINCICH: Your Honor, could we approach
16 while Ms. Pate is being sworn in maybe?

17 THE COURT: All right. Yes, sir.

18 (WHEREUPON, a bench conference was
19 held.)

20 THE CLERK: Place your left hand on the Bible
21 and raise your right hand for me.

22 (Witness complies.)

23 THE CLERK: Do you swear or affirm to tell the
24 truth, the whole truth, and nothing but the truth,
25 so help you God?

1 THE WITNESS: I do.

2 THE CLERK: Have a seat right here, and they
3 will adjust the mic.

4 (Witness complies.)

5 THE CLERK: And would you state your name,
6 please, very plainly for the record?

7 MR. PERRY: Your Honor, I actually don't need
8 to call her. I was mistaken. I thought she had
9 information about that. Apparently not.

10 THE COURT: You can step down.

11 MR. PERRY: You can step down, Ms. Frances. I
12 was mistaken. That is my bad. You are good.

13 (Witness steps down.)

14 MR. PERRY: Your Honor, that would be the
15 extent of the evidence.

16 Your Honor, there was another -- Lloyd Pate
17 was there with Martha Pate. He is -- he had a
18 biopsy done today. He was planning on being here
19 tomorrow. I'm prepared to go forward without
20 putting him up.

21 But as far as -- I don't think I need to offer
22 his testimony as well at this time with respect to
23 whether or not this is going to be an excited
24 utterance or dying declaration, but he would also
25 testify as to, you know, what the decedent told him

1 at the scene.

2 THE COURT: All right. Do you have those
3 cases? I think you gave them to my law clerk.

4 MR. PERRY: Your Honor, I gave your law clerk
5 the main case we are relying on, State v. McHoney.
6 It speaks to the issue of excited utterance and
7 dying declaration.

8 THE COURT: Do you have a copy? Because she
9 is back there trying to get the computer --

10 MR. PERRY: Yes, ma'am. I will be glad to
11 hand you up mine. There you go, Judge.

12 (Complies.)

13 MR. PERRY: Your Honor, with respect to the
14 dying declaration, you know, 804(b)(2) is basically
15 just a statement made by the declarant while
16 believing that his death is imminent concerning the
17 cause or circumstances of what the declarant
18 believed to be impending death.

19 You know, clearly what he was talking about
20 would have been the causes or circumstances having
21 to do with impending death. And that is having
22 been, you know, run over by the vehicle. That is,
23 in fact, what caused his death.

24 The McHoney case basically says: The
25 declarant does not have to express in direct terms

1 his awareness of his condition for that statement
2 to be admissible as a dying declaration.

3 What the Court is to look at is the nature of
4 the injury and the declarant's critical condition
5 as circumstances that indicate his awareness of
6 approaching death.

7 Your Honor, you know, it is only common sense
8 that someone who is claiming to have been run over
9 by a vehicle, you know, hit by a vehicle, who is
10 laying on the ground crying out, God help me! who
11 can't get up, who can't move, who is in
12 excruciating pain, would believe that, you know,
13 that the death is or could be imminent.

14 Moreover, Your Honor, the focus is on the
15 declarant's state of mind when that statement is
16 made, not on, you know, any state of mind or any
17 possibility that, you know, the people who are
18 relaying that statement may or may not be accurate
19 with the statement that was given. You know, the
20 case law is pretty consistent with that, that it
21 looks to the declarant's state of mind.

22 And in this case, having known that he had
23 been run over, being in excruciating pain, crying
24 out for help and, you know, not being able to get
25 up, physically not being able to get up off the

1 ground, I believe is certainly enough to cause one
2 to believe that they could be in threat of imminent
3 death, and to have physically been run over by a
4 vehicle.

5 But, moreover, Your Honor, beyond dying
6 declaration -- again, the McHoney case speaks to
7 excited utterance. In that case they found that
8 both dying declaration and excited utterance would
9 allow the statement to come in from the victim.

10 In the McHoney case basically you had a
11 situation where a woman had been stabbed multiple
12 times and had her throat cut. She never was able
13 to speak, but in the hospital, at the instruction
14 of the doctor, a nurse who was caring for her
15 basically began asking her questions. And
16 ultimately the victim in that case was able to nod
17 her head in the affirmative whenever certain
18 letters spelling out the Defendant's name were
19 brought up.

20 Your Honor, with respect to excited utterance
21 in this case -- and that was a case where they
22 found excited utterance was applicable even after
23 the person had been transported to the hospital.
24 And with respect to excited utterance, you know,
25 803(2) basically says, It is a statement relating

1 to a startling event or condition made while the
2 declarant was under the stress of excitement caused
3 by the event or condition.

4 You know, in this case clearly he was still
5 under the stress caused by having been run over.

6 In State v. Sutton, Your Honor, which is one
7 of the cases that speak to excited utterance, you
8 know, factors that are useful in determining
9 whether or not a statement qualifies as an excited
10 utterance are the declarant's age and demeanor and
11 the severity of the startling event.

12 In this case we had a 66-year-old man who had
13 just been knocked off of his Moped, had his Moped
14 loaded up in the back of an SUV, and then had the
15 SUV turn around in the road and come back and run
16 him over. Clearly that is a very severe event. So
17 the severity of the startling event is very high.

18 With respect to his age, he was 65 or 66 years
19 old at this time, Your Honor. I apologize for not
20 knowing exactly how old he was, but he was elderly,
21 Your Honor.

22 And with respect to his demeanor, you know,
23 the testimony was that he was normally a quiet man.
24 He normally was not a man who was an extrovert and
25 talked a whole lot, but he was crying out and he

1 was in pain. You know, and he kept saying, Help
2 me! Help me! God help me!

3 So clearly in this situation you had his age
4 and demeanor and severity of the event clearly
5 indicating that it was a very startling event and
6 that at this time, you know, he was still in an
7 excited and agitated state.

8 These were the first people that he had seen
9 since this happened. We don't know exactly how
10 long it had been since it happened, but clearly he
11 was still in an excited and agitated state.

12 Your Honor, again, State v. Washington talks
13 about the rationale for the excited utterance
14 exception lies in the special reliability accorded
15 to a statement uttered in spontaneous excitement
16 that suspends the declarant's powers of reflection
17 and fabrication.

18 In this case, Your Honor, the medical evidence
19 will support the fact that he was actually run
20 over, not just simply bumped into and knocked off
21 of the vehicle.

22 It is critical to the State's case, Your
23 Honor, that this was more than just simply, you
24 know, a happenstance bumping into, because what in
25 essence happened was that after that happened and

1 he was knocked off the vehicle, his Moped was
2 loaded up into the back of the SUV, the SUV went
3 down the road, turned around, and came back. And
4 as the testimony was given, according to the
5 decedent, it actually accelerated, sped up, and ran
6 over him.

7 And, Your Honor, what I would point out is
8 this, is that if it happened the way that he said
9 it happened, when the SUV is driving down the road,
10 Your Honor, on the right-hand side of the road and
11 bumped into him and knocked him off, he is laying
12 on the right-hand side of the road. When you go
13 down and turn around and come back, you are driving
14 around on the complete opposite side of the road.

15 The testimony was that he was found off the
16 roadway on the left-hand side. And he claimed that
17 he was run into again by the SUV.

18 And, again, the medical evidence that we
19 would, you know, put up in this case is going to be
20 that he had four pelvic fractures. You know, that
21 is very consistent with the story that he told, but
22 I don't think it is necessary to have that evidence
23 before you right now to see that he was in an
24 agitated and excited state.

25 The statement, again, must relate to the

1 startling event and made while the declarant was
2 under stress caused by the startling event.

3 The statement that he made was about having
4 been run over once the vehicle loaded up his Moped
5 and turned around and came back down the road. So
6 it is clearly about what caused the stress.

7 And it is obvious to me from the testimony
8 that Ms. Pate gave that it was made while he was
9 still under stress from that.

10 So we believe that it comes in either under
11 dying declaration or excited utterance. And, in
12 fact, Your Honor, you know, whether or not he died
13 or how long from when this happened he died, I
14 mean, you know, there is another case out there, it
15 is State v. Hall, I believe it is, or maybe it is
16 State v. -- yes, State v. Hall, Your Honor, the
17 decedent -- the declarant didn't die for 33 days.
18 But yet a statement that was made that was fairly
19 contemporaneous in time to the event happening
20 which ultimately led to his death came in as a
21 dying declaration because of his inability to be
22 here and testify.

23 Your Honor, nothing will make me happier than
24 if we weren't dealing with a murder, if all we had
25 was the armed robbery and I had the decedent here

1 to testify to tell us what happened. But we don't
2 have that, Your Honor. The only thing we do have
3 is his family, who, fortunately, came upon him
4 while he is laying on the side of the road, having
5 had his Moped stolen and having been run over by
6 the SUV that stole his Moped.

7 We just ask that you let that come in either
8 under excited utterance and/or dying declaration.

9 THE COURT: All right. Yes, sir?

10 MR. KIRINCICH: Your Honor, I know this is a
11 pretrial ruling, but still the State has introduced
12 this evidence from Ms. Pate in hopes to be able to
13 use this in opening statement and to build their
14 case upon it.

15 Your Honor, I think it just clearly failed --
16 the State failed in its burden to prove that this
17 is in any way a dying declaration.

18 Ms. Pate has no idea what his thoughts were,
19 Mr. Robinson's thoughts were on his condition. She
20 just knew that he was in pain. She didn't know
21 what his medical condition was. We have heard no
22 testimony from anybody in the medical field to say
23 what his condition was and whether he would believe
24 that he would be facing his final moments, Your
25 Honor.

1 I think that the big thing -- and Your Honor
2 has actually heard from law enforcement today --
3 the big thing with dying declaration or any of
4 these hearsay exceptions has to come back to
5 reliability. Are these statements reliable?

6 And, Your Honor, for whatever reason, the
7 Courts have decided long before you and I were
8 practicing that we can trust the word of a dying
9 man or we can trust what somebody says in an
10 excited utterance.

11 Your Honor, here again, I think the State has
12 failed to show that he was in the mindset that he
13 believed that he was dying. So, therefore, I think
14 it fails to meet that reliability portion of it.

15 Your Honor, from the other witnesses we have
16 heard so far, I think it fails to meet the
17 reliability portion.

18 We have heard Chief Brown testify today. We
19 have heard Investigator Bailey testify today. They
20 don't believe there was a second person involved in
21 this whatsoever.

22 The statement that they want to rely on as a
23 dying declaration said there were two people
24 involved, a white male and a black male.

25 As Ms. Pate just testified, she said it was a

1 blue van the color of Scott's. But it wasn't a
2 van. We have heard testimony today --

3 THE COURT: Doesn't that go to the weight of
4 the evidence as to whether or not -- versus the
5 admissibility? I mean, whether or not he --

6 MR. KIRINCICH: But you are letting it in
7 because it is found to be reliable because of a
8 dying declaration. And we already know that there
9 are parts of it that it are not reliable.

10 MR. PERRY: Your Honor, the SUV has doors that
11 open like van doors, which we have got photos of
12 and we plan to introduce into evidence.

13 MR. KIRINCICH: They have not been --

14 MR. PERRY: And the vehicle that they
15 mentioned was in fact a Tahoe, just exactly like
16 this Defendant drives.

17 THE COURT: All right. You can continue.

18 MR. KIRINCICH: Your Honor, I think on both
19 counts it fails to meet the reliability test.

20 As far as the excited utterance goes, Your
21 Honor, we don't know the timeline of when this
22 happened. We don't know that he was -- how long he
23 was lying there to say this was simply an excited
24 utterance.

25 Even in that respect, Your Honor, I think the

1 State has just failed. Just by introducing one
2 witness here today, if that was the first witness
3 they would want to call, Your Honor, to introduce
4 this, it just completely fails.

5 And at this point, Your Honor, I don't think
6 they should be allowed to use it in opening
7 statement.

8 Again, it is a pretrial ruling. They would
9 have to build a much better foundation on both
10 aspects of it to be able to use this at trial, Your
11 Honor.

12 THE COURT: All right. Thank you.

13 (Pause.)

14 THE COURT: All right. And I have taken a
15 look at the case law and I have looked at 803(2)
16 and 804(b)(2).

17 In reviewing the case law and the rules, I
18 will first address the issue of 804(b)((2), dying
19 declaration, as the declarant is unavailable.

20 And from reading the case law, it appears that
21 our courts have stated that the person does not
22 have to be -- the victim in this case would not
23 have had to say, I am dying. There does not have
24 to be any expressed statement of the person
25 actually believing that they are dying.

1 I believe in one of the cases the person died
2 two weeks later. I think that is the case you are
3 talking about. The lady died two weeks later. And
4 the Court held that that was still, under
5 804(b)(2), to be admissible as a dying declaration.

6 I believe in this case the victim died the day
7 after after the incident.

8 Under 803(2), the witness just testified that
9 when she arrived on the scene that the victim was
10 hollering, Help me! Help me! Oh, God, help me!
11 And she said throughout the conversation he was
12 yelling, Help me! Help me! Oh, God, help me!

13 She did testify that there were two -- that
14 he -- the statement in and of itself said that
15 there was one white guy and one black guy.

16 I think the -- or I find that the
17 inconsistency of the statement would go to the
18 weight of the evidence versus the admissibility of
19 it. But under 803(2), I find that the victim's
20 statements under the totality of the circumstances
21 indicate that the victim was under the stress of
22 the startling event at the time when the witness
23 arrives and was under the stress of the startling
24 event of being hit by a car.

25 I further find at the time, although that was

1 not entered into evidence, how long he was laying
2 there is immaterial because the victim was in an
3 agitated and startled state when the first people
4 responded. And in the case that is cited, State v.
5 McHoney, I believe the Court in that case found
6 that it was immaterial. That the victim in that
7 case gave her statement or communicated her
8 statement at the first opportunity she had to
9 communicate it.

10 For that reason, I will allow the statement of
11 the victim under 803(2) and 804(b)(2) and/or
12 804(b)(2) to be admitted as an excited utterance
13 and/or dying declaration.

14 All right. Of course you can -- I mean, you
15 can object at the time that they try to call --

16 MR. KIRINCICH: Yes, Your Honor. And I think
17 I indicated to the Court but it wasn't on the
18 record that I plan to do that, and that if Your
19 Honor still allows it in, then I will have a
20 special instruction for you to read to the jury, if
21 we can all agree on it.

22 THE COURT: All right. We'll take a look at
23 that. All right. Well, I'm going to go watch the
24 video. I will see you all about 8:45 in the
25 morning.

1 Mr. Starnes' fate is not going to be decided based
2 on the search for a unicorn by law enforcement.
3 His fate is going to be decided by you.

4 So I just ask that you give all the evidence
5 and the witnesses careful attention. And at the
6 end, you will have the opportunity to decide
7 exactly what this puzzle is.

8 Thank you.

9 THE COURT: All right. Call your first
10 witness.

11 MR. PERRY: The State calls Lloyd Pate.

12 (Witness approaches.)

13 THE CLERK: Place your left hand on the Bible,
14 and raise your right hand, please.

15 (Witness complies.)

16 THE CLERK: Do you solemnly swear or affirm
17 the testimony you give in this case will be the
18 truth, the whole truth, and nothing but the truth,
19 so help you God?

20 THE WITNESS: Yes, ma'am, I do.

21 THE CLERK: Please be seated in the witness
22 chair, and state your full name for the record.

23 THE WITNESS: William L. Pate.

24 WILLIAM L. PATE,

25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MR. PERRY:

3 Q Good morning, Mr. Pate. I'm going to stand way
4 back over here for a purpose. If I'm standing over
5 here and you and I are talking and you are looking
6 over here towards me, you are also going to be
7 looking at the jury. I think that is a nice thing.
8 But, more importantly, if I'm standing over here
9 and you and I are talking, if I can hear what you
10 are saying, there is a good chance they can all
11 hear what you are saying.

12 A Yes, sir.

13 Q And because what you have got to say is very
14 important, I want to be sure that we all hear it.

15 If you will, Mr. Pate, just tell us a little
16 bit about yourself, where you live, where you are
17 from, born and raised, and how you are related, if
18 at all, to the victim in this case.

19 A I lived in Lancaster most of my life. Moved to
20 Bethune about ten years ago on a little farm. Al
21 was my uncle. He lived in a building with us on
22 our property.

23 Q All right. Now, Mr. Pate, I'm going to take you
24 back, if I can, back to a pretty traumatic date for
25 you. I'm going to take you back to August 24th of

1 last year, of 2013.

2 Tell me about that date. Tell me about
3 that -- it is a Saturday, I believe. Tell me about
4 that date.

5 A Yes, sir. Me and my wife were leaving to go to the
6 auction up in Pine Ridge.

7 Q What time was it?

8 A It was about 5:30.

9 Q Okay.

10 A Maybe 15 after 5:00. And as we turned the curve
11 off of Freeman Road onto -- off of Camp Road onto
12 Freeman Road, we could see something, couldn't make
13 it out, laying on the side of the road.

14 As we got closer, we realized it was my uncle.
15 And we stopped and we jumped out the car.

16 And he said, Lloyd, he hit me --

17 MR. KIRINCICH: Objection, Your Honor.

18 Hearsay.

19 A -- and knocked me off my Moped.

20 THE COURT: Hold on. I'm sorry?

21 MR. KIRINCICH: I objected to hearsay.

22 MR. PERRY: Your Honor, again, we're moving
23 that this come into evidence under both the dying
24 declaration exception to hearsay and the excited
25 utterance to hearsay pursuant to your ruling

1 yesterday.

2 THE COURT: Hold on, hold on, hold on. You
3 have got to lay the foundation.

4 MR. PERRY: Again --

5 THE COURT: Okay.

6 MR. PERRY: -- I intended to do that. I
7 didn't mean for him to get quite into what he said.

8 THE COURT: Okay.

9 BY MR. PERRY:

10 Q Now, before we get into what your Uncle Al said to
11 you, let's go over a few other things.

12 Lloyd, I'm going to put this map up here so
13 the jury can see what we're talking about, where
14 you can show them what we're talking about.

15 All right. Now, if you will, show them and
16 sort of describe for them -- I believe, if I'm not
17 mistaken, that is Freeman Road, but just show them
18 and describe for them -- bear in mind, they have
19 got to see behind you too -- show them where we are
20 talking about. Where were y'all coming from and --

21 (Witness steps down.)

22 A This is Freeman Road(indicating). We come off of
23 Camp Road and come down Freeman Road headed towards
24 341.

25 Q Okay.

1 A And we noticed my uncle laying on the side of the
2 road.

3 Q Approximately where was that on here?

4 A It is hard to tell by this map.

5 Q Okay.

6 A It is about a third of the way down Camp -- Freeman
7 Road.

8 Q Okay. All right. Just have a seat again. I just
9 simply wanted to use that to sort of give folks an
10 idea of where we were talking about.

11 (Witness returns to witness stand.)

12 Q Now, again, before you talk about anything that Al
13 might have said, you know, what kind of condition
14 did you find him in?

15 A He was laying on the bank with his head up on the
16 bank and his feet facing out towards the highway,
17 Freeman Road.

18 Q Okay. All right. Was he in the road? Was he off
19 the road?

20 A No, he was partially leaning on the bank.

21 Q Okay.

22 A His head was on the bank and his feet was out
23 towards the middle of the road.

24 Q All right. Now, first of all, a couple of things.
25 Ultimately, did your uncle die?

1 A Yes, sir.

2 Q Okay. When you found him laying there, what sort
3 of condition was he in as far as, you know, how he
4 appeared to you? Did he appear to be excited and,
5 you know, in a state of agitation? Or tell me how
6 he appeared in that sense. Not what he said, but
7 just what was he doing. Was he screaming anything
8 out?

9 A He was hollering, I'm hurting! God, help me!

10 MR. KIRINCICH: Objection, Your Honor.

11 Hearsay.

12 BY MR. PERRY:

13 Q Did he appear to be --

14 MR. KIRINCICH: Your Honor, may I get a ruling
15 on it before he continues questioning?

16 THE COURT: Hold on one second. Hold on one
17 second. The objection is sustained. Please
18 rephrase the question.

19 BY MR. PERRY:

20 Q Did he appear to be excited and agitated?

21 A Yes, sir.

22 Q All right. Did he tell you why he was excited and
23 agitated?

24 A He was crying.

25 Q Did he tell you, yes or no, did he tell you why he

1 was agitated?

2 A Yes, sir.

3 Q Okay. All right. Was he alone or was his Moped
4 there with him?

5 A No, his Moped wasn't there.

6 Q Okay. All right.

7 MR. PERRY: Your Honor, I think I've
8 established that he was in an agitated state, that
9 his Moped wasn't there, and that he was injured. I
10 would offer it under the excited utterance. And I
11 have established that, you know, he was saying, Oh,
12 God! Dying declaration.

13 THE COURT: Hold on.

14 MR. KIRINCICH: Your Honor, I don't think he
15 has -- as far as 804(b)(2), I don't think he has
16 established anything under that yet. The 803
17 argument, Your Honor, he might be on the right
18 track, but I don't think he has established it
19 quite yet. So I would still object to his next
20 line of questioning.

21 THE COURT: All right.

22 MR. PERRY: Your Honor, under 803 he has
23 clearly established that -- I have established --
24 his testimony was that he was agitated, that he was
25 excited.

1 THE COURT: All right. Under -- I will allow
2 you to ask the question under 803(2). I believe it
3 is (2).

4 MR. PERRY: Under excited utterance.

5 THE COURT: Yes. 803(4) has not been
6 established. So the objection is overruled as to
7 803(2), sustained as to 804(b)(2).

8 MR. KIRINCICH: Thank you, Your Honor.

9 BY MR. PERRY:

10 Q And just to clarify, did Al seem to be upset and
11 excited and startled because of anything that had
12 recently happened?

13 A Yes, sir.

14 Q All right. And what did he tell you had recently
15 happened?

16 A What he told me was, he said, They hit my Moped.
17 Somebody got out and knocked me off my Moped, hit
18 me in the face. But why did they have to go down
19 and turn around and come back and run over me?

20 Q So he specifically told you that that vehicle that
21 hit him went down and turned around in the road and
22 came back and ran him over?

23 A Yes, sir, that is what he said.

24 Q Did he say anything else to you then?

25 A He was mostly moaning and crying and saying, God,

1 help me!

2 Q Did he try to move or get up or anything?

3 A No, sir. He moved around a little bit, but he was
4 hurting and he was hollering -- screaming in pain.

5 Q Was he able to stand up and walk around?

6 A No, sir.

7 Q Did you stay there with him until the EMS got
8 there?

9 A Yes, sir.

10 Q Approximately how long was that?

11 A 20, 25 minutes.

12 Q Okay. During the course of that time, did he tell
13 you anything else or further describe anything that
14 happened to him?

15 A He just kept asking, Why did they have to run over
16 me?

17 Q And just to be clear again, if you will, just what
18 exactly did he say happened?

19 MR. KIRINCICH: Objection, Your Honor. Asked
20 and answered. He is trying to get something that
21 has been asked and answered twice.

22 THE COURT: Overruled. Objection overruled.

23 A He said they knocked him off his Moped.

24 Q All right.

25 A Took his Moped. Went down the road, turned around

1 at Camp Road, made a 3-point turn, and came back
2 and run over him.

3 Q Okay. Now, did he say anything to you about what
4 happened immediately prior to being hit by the
5 vehicle?

6 A Just that they had hit his Moped and somebody hit
7 him in the face and knocked him off of it and they
8 loaded his Moped up.

9 Q Let's talk about this. Did -- were you aware of
10 your uncle's normal practice when he was riding a
11 Moped?

12 A Oh, yes, sir.

13 Q Okay. And when he was riding that Moped, do you
14 know what, if any, normal practices he had with
15 respect to being overtaken by a vehicle?

16 A Oh, yes, sir. He --

17 Q How would you know that?

18 A He would automatically pull over on the side of the
19 road and stop, whether he was on a main road or the
20 dirt road. He never let a car pass him with him
21 moving. He always pulled over and stopped.

22 Q Okay. Did he say anything to you about that this
23 time?

24 A He said he stopped and they bumped him and somebody
25 knocked him off his Moped, hit him in the face.

1 Q Okay. All right. Now, ultimately, did you end up
2 going to the hospital?

3 A No, sir, I didn't. At the time I didn't know what
4 shape he was in. He didn't have any external
5 bleeding. I found out later that night that he had
6 passed away in the hospital.

7 Q Okay.

8 MR. PERRY: Beg the Court's indulgence.

9 (Pause.)

10 BY MR. PERRY:

11 Q Now, Lloyd, your wife Martha was with you; is that
12 correct?

13 A Yes, sir.

14 Q Okay. When you were talking to your Uncle Al --
15 you know, you basically described what he told you
16 happened -- did he describe the vehicle, or anybody
17 that was in the vehicle or anything else?

18 A He said it looked like a blue suburban.

19 Q Okay. At any time did he ever describe it as a van
20 perhaps?

21 A Yes. He said -- he said it was blue, like Scott's
22 van.

23 Q And who is Scott?

24 A Scott is my neighbor, but he doesn't have a van, he
25 has a Tahoe.

1 Q Okay. So he said it was like Scott's Tahoe?

2 A Yes.

3 MR. KIRINCICH: Your Honor, may I -- may we
4 approach?

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

8 THE COURT: Ladies and gentlemen, I am going
9 to send you all out for a short break.

10 Thank you.

11 (WHEREUPON, the jury retires to the jury
12 room at 10:25 a.m.)

13 MR. KIRINCICH: Your Honor --

14 THE COURT: First of all, under excited
15 utterance, he testified that he was excited. He
16 testified that he was agitated. He later actually
17 gave testimony that probably rises to the level of
18 excited utterance, that he was yelling and he was
19 crying and that he was in pain. That is the
20 excited utterance testimony.

21 Now, is he yelling and screaming that it is a
22 blue car and da-da-da? I mean, the questions you
23 were asking --

24 MR. PERRY: Your Honor, under McHoney, okay,
25 the case that I handed up yesterday, the case that

1 you agreed with us on, all right, they specifically
2 had to ask this woman, they had to call out the
3 initials, they had to call out letters of the
4 alphabet and get her to nod her head yes or no.
5 They were clearly questioning her, and she wasn't
6 yelling and screaming and in any way --

7 THE COURT: Well, she couldn't, because her
8 throat was cut.

9 MR. PERRY: Precisely.

10 THE COURT: But the McHoney case -- but if I
11 remember reading the McHoney case correctly -- and
12 if we are going to cite the case, let's cite it
13 correctly.

14 MR. PERRY: Yes, ma'am.

15 THE COURT: The McHoney case, the purpose of
16 them saying that was the time lapse between her
17 being able to speak and say what was said.

18 Now, you got it in under excited utterance
19 because of the questions you asked, although it is
20 probably borderline based on the questions that
21 were asked. But I'm not sure, the details of what
22 you are getting into, you have to establish that it
23 was said under the excitement and the stress of the
24 situation. That is where it comes in under excited
25 utterance.

1 MR. PERRY: Your Honor, McHoney says that the
2 fact that the murder victim didn't make her
3 identification of SP as her killer contemporaneous
4 with the attack didn't render the identification
5 inadmissible under excited utterance. They were
6 specifically asking her questions well after the
7 attack had taken place. She is at the hospital.
8 This is still on the scene of where it happened.
9 So the fact that they were asking him questions
10 about what happened to you, who did this, what did
11 the vehicle look like...it is just like McHoney,
12 Your Honor. They are asking her the initials of
13 the person who did it.

14 THE COURT: All right. Yes, sir?

15 MR. KIRINCICH: I think with the McHoney case,
16 Your Honor, that is also viewed as a dying
17 declaration. Your Honor specifically said this is
18 not allowed under dying declaration at this point.

19 As Mr. Pate has testified to, he didn't go to
20 the hospital with him because there was no evidence
21 of any external injuries.

22 MR. PERRY: Your Honor, under Key Cite 8 --

23 THE COURT: Mr. Perry --

24 MR. PERRY: -- it specifically refers --

25 THE COURT: -- can you please --

1 MR. PERRY: Yes, Your Honor.

2 THE COURT: -- please -- I already have this
3 case.

4 MR. PERRY: Okay.

5 THE COURT: He is speaking. Do not approach
6 the bench until he finishes speaking, unless you
7 are asking permission to approach the bench.

8 Yes, sir, you may continue.

9 MR. KIRINCICH: Your Honor, as Mr. Pate
10 testified to so far, he didn't travel to the
11 hospital with Mr. Robinson. He didn't know the
12 extent of the injuries. I guess it is speculation
13 here, but him saying there was no external injuries
14 or he didn't think it was that serious they needed
15 to go to the hospital with him.

16 And as far as the McHoney case goes, it
17 doesn't talk about an excited utterance, Your
18 Honor, but it is also in context with dying
19 declaration. Your Honor made a very specific
20 ruling for excited utterance in this case, and you
21 said that they have not established for a dying
22 declaration. I think what --

23 THE COURT: Well, at the time he didn't lay
24 the foundation for the -- on the dying declaration.
25 That is the reason -- yesterday you did with the

1 other witness. This witness you did not.

2 MR. PERRY: Well --

3 THE COURT: So, I mean, you can't --

4 MR. PERRY: -- I'll have the other --

5 THE COURT: You have got to do it with each
6 witness.

7 MR. PERRY: Right.

8 THE COURT: You didn't do it with this
9 witness. That is the reason why it was -- he
10 wasn't here yesterday, is my understanding. He had
11 some doctor's appointment. But for purposes of the
12 witness that was yesterday, he did lay the proper
13 foundation and I did allow it under dying
14 declaration, but for purposes of today, the
15 questions that were asked only rose to the level of
16 excited utterance.

17 And unless you are going to be able to
18 establish that he is still in an excited state when
19 he is giving all these details, then it can come --
20 or if it comes -- or if you are able to establish
21 under dying declaration, then you can ask the
22 question. But it has to be under the stress and
23 under the excitement of the situation.

24 MR. PERRY: Your Honor, I'll happily have him
25 clear that up, but he testified that he was still

1 stressed, still excited, you know, he was crying
2 out, you know, Help me! Help me!

3 THE WITNESS: He was dying.

4 THE COURT: All right, sir, you can't answer
5 the question. Let --

6 MR. PERRY: Your Honor, again, specifically,
7 you know, Key Site 8 in the McHoney case, all
8 right, is specific to the issue of the
9 admissibility under the excited utterance. And the
10 fact that that victim didn't identify the killer
11 contemporaneous with it, you know, it happened
12 significantly after, and the fact that they had to
13 ask -- they had to go through the letters of the
14 alphabet and get her to nod yes or no, so the fact
15 that they were asking him questions doesn't mean
16 that he wasn't still excited and doesn't mean that
17 it still wouldn't come in under the excited
18 utterance.

19 THE COURT: I understand that. And that is
20 why I ruled the way I did on yesterday.

21 For purposes of today, that is the reason I
22 ruled as I did as to him saying what they said when
23 they arrived on the scene under the excitement at
24 that point in time.

25 I don't -- I think you have to be able -- you

1 are going into greater detail as to the car. It
2 has to be an utterance. An utterance is an
3 utterance. It has to be -- so you need to be able
4 to ask him the question, is he -- regarding is he
5 still under the stress at the time.

6 But you are getting into -- I think you are
7 missing the point, is you have gone beyond the
8 excited utterance in asking these questions.

9 MR. PERRY: And, Your Honor, I take the
10 position that I haven't. He testified he was only
11 there for about 20 minutes until EMS got there and
12 that during that time he was still excited.

13 THE COURT: But you have got -- but he has not
14 testified to that. You have got to lay the
15 foundation, Mr. Perry. You have got to lay the
16 foundation. Whether or not he is or isn't still
17 excited, you have got to lay the proper foundation.

18 MR. PERRY: Okay. I will reask that.

19 THE COURT: All right. Objection is
20 sustained. We can bring the jury back in.

21 Yes, sir?

22 MR. KIRINCICH: One other thing. If the State
23 is unable to cure the problem, Your Honor, I would
24 ask for a curative instruction for the jury that
25 this be stricken from the record at this point.

1 THE COURT: All right. What are you asking be
2 stricken from the record, the portion about the
3 color of the car?

4 MR. KIRINCICH: Your Honor, I had an objection
5 previously that while Your Honor did not
6 specifically say sustained, you told the State that
7 they did not lay the foundation. And you may have
8 cured that already by allowing them in under
9 excited utterance later, but what Mr. Pate was
10 testifying to about the car and, you know, blue
11 van, or whatever it might have been there.

12 THE COURT: And that objection is the
13 objection we are dealing with now.

14 MR. KIRINCICH: Yes, Your Honor.

15 THE COURT: All right. So I am going to
16 sustain the objection and ask him to rephrase the
17 question.

18 MR. KIRINCICH: Yes, ma'am.

19 THE COURT: All right.

20 MR. PERRY: And it would merely be the State's
21 position that if the victim continued to remain
22 excited while the witness was there with him, that
23 statements about the vehicle that hit him --

24 THE COURT: But you have got to ask him more
25 than just, did he continue -- what was he doing. I

1 mean, you have got to ask him more than just, did
2 he continue to remain excited.

3 He answered it earlier. He said he was
4 crying, he was hollering. I think the witness
5 yesterday -- I am not going to say what she said --
6 but you have got to ask. All right.

7 MR. PERRY: I thought that I had done that by
8 him saying that he was crying, that he was upset,
9 and that he was only there for 25 minutes.

10 THE COURT: All right. Okay.

11 MR. PERRY: It is not like he was there for an
12 hour or two, or whatever.

13 THE COURT: Okay. All right, Mr. Perry.

14 MR. PERRY: I thought I layed that foundation.
15 I apologize.

16 THE COURT: All right. Bring them back in.

17 (WHEREUPON, the jury came into open
18 court at 10:34 a.m.)

19 THE COURT: Yes, sir. The objection is
20 sustained. Please rephrase the question.

21 MR. PERRY: Yes, Your Honor. If it please the
22 Court?

23 DIRECT EXAMINATION CONTINUES

24 BY MR. PERRY:

25 Q Now, Mr. Pate, I believe your testimony was that

1 you were there for about 20 or 25 minutes until the
2 ambulance got there; correct?

3 A Yes, sir.

4 Q Okay. And your testimony was that your uncle had
5 told you that he had been run over?

6 A Yes, sir.

7 Q How old was your uncle at the time this took place?
8 Do you remember?

9 A He was crying.

10 Q No, how old was he?

11 A How old was he?

12 Q Yes. It is okay if you don't remember.

13 A He was around 68.

14 Q Okay. During that 25 minutes while you were
15 waiting on the ambulance -- you testified earlier
16 that he had been crying and he had been calling out
17 for help -- did he continue to do that?

18 A Yes, sir.

19 Q Did he continue to seem to be, you know, in an
20 upset and agitated state?

21 A Yes, sir.

22 Q While waiting on EMS? All right. So he never
23 really calmed down while you were waiting on EMS?

24 A The only time I could say he calmed down at all was
25 when he asked me why they turned around and run

1 over him.

2 Q Okay. All right. And during that continued
3 agitated state, did he tell you anything about the
4 vehicle that hit him or anything else?

5 A Yes, sir.

6 Q Okay. And specifically what did he tell you about
7 that vehicle?

8 A He said it was like Scott's.

9 MR. KIRINCICH: Objection, Your Honor. I have
10 to object. I don't know if that cures it, Your
11 Honor. Same objection.

12 THE COURT: All right, the objection is
13 overruled.

14 BY MR. PERRY:

15 Q All right, go ahead.

16 A He said it was like Scott's, which is my neighbor.
17 He drives a blue SU...it is like a Tahoe.

18 Q And how did the doors open on that vehicle? Did
19 they open like this or did they open like this
20 (indicating)?

21 A They open like this (indicating).

22 Q All right. Okay. All right. So, anyhow. And he
23 said it was blue?

24 A Yes, sir.

25 Q Okay.

1 MR. PERRY: Beg the Court's indulgence.

2 (Pause.)

3 BY MR. PERRY:

4 Q Just one moment. Let me just doublecheck my notes.

5 I want to be sure I covered everything with you.

6 (Pause.)

7 Q Please answer any questions that Mr. Kirincich may
8 have.

9 CROSS-EXAMINATION

10 BY MR. KIRINCICH:

11 Q Mr. Pate, I'm sorry you have to be here today. I'm
12 sorry for your loss. I'm sorry what you had to
13 experience at roadside with your uncle. I really
14 am. But I do have some questions that I need to
15 ask you before we can let you go.

16 Do you remember speaking with Investigator
17 Rick Bailey actually a year ago today?

18 A Yes, sir.

19 Q And do you remember writing a statement for him?

20 A Yes, sir.

21 Q And then earlier this month, a couple of weeks ago,
22 do you remember speaking with Investigator Miles
23 Taylor?

24 A Uh-huh.

25 Q Whenever you spoke with Investigator Miles Taylor,

1 did he have you write another statement?

2 A Yes, sir.

3 Q Do you know why he had you write another statement?

4 A No, sir.

5 Q Did you tell him you had already given your
6 statement previously?

7 A No, sir.

8 Q Did he give you an opportunity to review your prior
9 statement before you wrote another statement?

10 A No, sir.

11 Q This happened August 24th, 2013; correct?

12 A Uh-huh.

13 Q So would you remember better what happened a year
14 ago two days after the fact, or almost a year after
15 the fact?

16 A Kind of hard to forget.

17 Q Is there any reason that you would add additional
18 information in the statement that you gave a couple
19 of weeks ago?

20 A No.

21 Q Have you had an opportunity to look at your
22 statements at all?

23 A No, sir.

24 Q Did law enforcement ever give you your statements
25 to review or to keep?

1 A No.

2 Q If I hand them to you, do you think you might be
3 able to recognize them?

4 A I can't read without my glasses.

5 Q Do you have glasses with you today?

6 A No, sir.

7 Q Would you be able to recognize your handwriting?

8 A Yes, sir.

9 Q Even without your glasses? This first statement is
10 from last year. Is that your handwriting?

11 A Yes, sir.

12 Q Okay. And the second one underneath that, that is
13 not your handwriting, is it?

14 A No. My handwriting is bad. I have arthritis. My
15 wife wrote it out for me and I signed it.

16 Q Okay.

17 A She wrote what I said word for word.

18 Q Okay. So both of these statements -- the first one
19 you said was in your handwriting; right?

20 A Right.

21 Q And the second one your wife wrote for you in your
22 own words?

23 A That's correct.

24 Q Now, do you remember -- you said you do remember
25 talking with Investigator Bailey last year; right?

1 A Yes, sir.

2 Q And you do remember writing this statement for him?

3 A Uh-huh.

4 Q Why did you not put anything in this first
5 statement, that you gave two days later, about
6 Mr. Robinson telling you that they had struck him
7 in the face to knock him off the Moped?

8 A I don't remember.

9 Q Do you remember putting that in your statement a
10 couple of weeks ago?

11 A Yes, sir.

12 Q And you have no recollection, or you have no
13 explanation as to why --

14 A I was upset. My uncle was dying.

15 Q Yes, sir. At this point your uncle had already
16 passed away on the 26th; right?

17 A Yes, sir.

18 Q But you didn't put in there that anybody had struck
19 him to knock him off the Moped?

20 A I told him he hit him and knocked him off his
21 Moped.

22 Q This has been an emotional accident for your
23 family; right?

24 A Yes, sir, it has.

25 Q You said you are upset, it is hard to forget;

1 right?

2 A Uh-huh.

3 Q You have had time to think about it and talk about
4 it with your wife and your family?

5 A We don't talk about it.

6 Q You don't talk about it at all?

7 A No.

8 Q Didn't talk about it --

9 A It brings back too many painful memories for my
10 mother.

11 Q Did your uncle ever say anything about him turning
12 around and passing by him -- the vehicle turned
13 around and passed by him?

14 A No. He said they turned around and come back and
15 run over him.

16 Q Did you ever tell law enforcement?

17 A Yes, I did.

18 Q Gee, I'm sorry. I apologize. I paused. Did you
19 ever tell law enforcement that the vehicle passed
20 by him?

21 A No.

22 Q You always said that he had been run over?

23 A That is what he says.

24 Q All right. Thank you, Mr. Pate.

25 REDIRECT EXAMINATION

1 BY MR. PERRY:

2 Q Mr. Pate, I believe in your first statement -- you
3 said you can't read because you don't have your
4 glasses with you. But in your first statement I
5 believe you said that Alan told you that they took
6 his Moped and ran over him with the van?

7 A Yes, sir.

8 Q So that didn't change, did it?

9 A No, sir.

10 MR. PERRY: Nothing further of this witness.

11 THE COURT: All right, sir, you may step down.

12 (Witness steps down.)

13 THE COURT: Any objection to this witness
14 being excused?

15 MR. KIRINCICH: None, Your Honor.

16 MR. PERRY: None from the State.

17 THE COURT: Okay, sir, you are free to leave.

18 (Witness excused.)

19 MR. PERRY: The State would call Martha Pate.

20 (Witness approaches.)

21 THE CLERK: Place your left hand on the Bible,
22 and raise your right hand, please.

23 (Witness complies.)

24 THE CLERK: Do you swear or affirm the
25 testimony you give in this case will be the truth,

1 the whole truth, and nothing but the truth, so help
2 you God?

3 THE WITNESS: Yes, ma'am.

4 THE CLERK: Please be seated. And please
5 state your full name for the record.

6 MARTHA PATE,
7 after being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. PERRY:

10 Q Please state your name, Ms. Pate.

11 A Martha Pate.

12 Q All right. And, Ms. Pate, how are you related to
13 the victim in this case, Alan Robinson?

14 A That is my husband's uncle.

15 Q Okay. Back on August the 24th of last year -- I
16 believe that was a Saturday -- can you tell the
17 jury about that day?

18 A Me and my husband was leaving out to go to the
19 auction on Saturday afternoon about 5:15. And when
20 we got to the stop sign at the end of our road to
21 turn left on Freeman Road, we seen something laying
22 up on the side of the road. And the closer we got
23 to it, we realized it was his Uncle Al.

24 Q Okay. All right. And I'm going to ask you to tell
25 me what happened after that, but before you start

1 saying anything that he said to you, let's -- I'm
2 going to ask you some specific questions. But just
3 tell me what you saw and what you observed and
4 everything that happened whenever you guys stopped.

5 A When he got there, he was lying not in the road,
6 but kind of on the side of the road. His head was
7 towards the bank and his feet was towards -- going
8 towards the road. His tools from his Moped were
9 scattered all over the road. The oil, his cap.
10 And he was laying there holding his stomach.

11 Q Were there marks and stuff in the road? In the
12 dirt? Do you remember?

13 A I don't remember that.

14 Q Okay. That's fine. But if you were going down --
15 if you were driving down the road, all right, which
16 side of the road would he have been on?

17 A If we were going out towards 341, he was laying on
18 the left-hand side.

19 Q Gotcha. So it would have been across the road from
20 you?

21 A Yes, sir.

22 Q So when y'all saw him there and you stopped to help
23 him, you got out of your vehicle?

24 A Correct.

25 Q Okay. Did he appear to be okay?

1 A No, he wasn't okay.

2 Q Was he up walking around?

3 A No, sir. He was laying on the ground holding his
4 stomach.

5 Q Okay.

6 A And he was hollering, Help me!

7 Q Was he crying? Or hollering out or --

8 A He was hollering out, I'm in pain! Help me!

9 MR. KIRINCICH: Objection, Your Honor.

10 THE COURT: Objection overruled.

11 BY MR. PERRY:

12 Q Now, did he seem to be in an excited, agitated
13 state to you?

14 A He was in a lot of pain. And he was -- if you knew
15 Al, he was a very calm man. He didn't say a lot.
16 So when I got to that scene and I seen him laying
17 there and him hollering and holding himself, I knew
18 he was in a lot of pain.

19 Q Okay. So in addition to being in pain, you said he
20 was screaming out for help?

21 A Yes. He kept saying, Help me! I'm in pain! God,
22 help me! God, help me!

23 Q And at any time -- without saying what he said to
24 you -- at any time did he tell you about what had
25 caused that situation?

1 A Well, me and my husband went to questioning him
2 when we seen the tools and stuff laying all over
3 the road. We didn't see the Moped. And we asked
4 him, Where is your Moped, Al? All this stuff is on
5 the ground.

6 And he said, They took it.

7 Q Let's don't say what he told you just yet.

8 A Okay.

9 Q I'm trying to sort of lay the groundwork for that.
10 But at some point did he tell you about what had
11 him so excited and upset and in pain?

12 A Yes, sir.

13 Q And you said he was holding his stomach?

14 A Yes, sir.

15 Q He wasn't able to get up and walk around?

16 A No, sir.

17 Q Ultimately did EMS come and transport him?

18 A Yes, sir.

19 Q And ultimately did you find that Al had in fact
20 died?

21 A Yes, sir.

22 Q And during the time that you were there with him
23 until EMS came to get him, did he remain in sort of
24 an excited sort of agitated state during that time?

25 A Yes, sir.

1 MR. PERRY: Your Honor, I'd offer the
2 statements that he made to them or to her under
3 both the excited utterance and the dying
4 declaration.

5 THE COURT: You can go ahead and ask the
6 questions.

7 BY MR. PERRY:

8 Q Now, what did A1 tell you about what happened?

9 MR. KIRINCICH: Objection, Your Honor.
10 Hearsay.

11 THE COURT: All right. Objection is
12 overruled. 804 -- 803(2) and 804(b)(2).

13 BY MR. PERRY:

14 Q What, if anything, did A1 tell you about what had
15 happened, how he came to be there that way?

16 A He said they took his Moped.

17 And I said, Who is they?

18 And he said, It was two of them.

19 And I said, Who? Did you know who they were?

20 And all he said -- all he knew was it was a
21 white man and a black man.

22 Q Okay.

23 A And he said, They were driving a van. And he said,
24 They took my Moped.

25 Q When he said something about that they were driving

1 a van, did he relate it to anybody else's van?

2 A He did. We have a neighbor that lives down the
3 road from us that drives a dark blue SUV. And he
4 said, It was the color of Scott's.

5 Q Okay. All right. And did Al describe for you in
6 any detail about exactly what happened, how they
7 came to have taken the Moped? Not just that they
8 did it, but how they did it?

9 A He said they hit him and knocked him off the Moped,
10 not with the vehicle, with their fist, they hit
11 him, knocked him off the vehicle, off the Moped,
12 and took the Moped.

13 Q Did he describe what happened after they took it?
14 Did they just drive away, or what?

15 A They did drive away. They went down to Camp Road
16 and he said They turned around and was coming back
17 up Freeman Road towards him. And when they got
18 close to him, they sped up and hit him with the
19 vehicle.

20 Q Okay. Okay. Were you familiar with the way Al
21 rode his Moped as far as, you know, what he would
22 do whenever vehicles were overtaking him, that type
23 of thing?

24 A Yes, sir.

25 Q Okay. And in your experience, what would Al do

1 whenever he was being overtaken by a vehicle?

2 A He was very, very careful on that Moped. When he
3 would go -- even out on the main road, not just on
4 the dirt road, on the main road, if he was on the
5 main road and if there was a car coming behind him,
6 he would pull off the road till that car passed.
7 He was very, very careful on that Moped.

8 MR. PERRY: Beg the Court's indulgence.

9 (Pause.)

10 BY MR. PERRY:

11 Q Ms. Pate, ultimately, did you give the information
12 that you had to law enforcement?

13 A Yes, sir.

14 Q Okay. Did you talk to them that day, the day that
15 this happened, or fairly soon thereafter?

16 A Yes, sir.

17 Q Which was it? Did you talk to them that day?

18 A There was some officers that came to the scene and
19 they came to -- and, you know, I told them. I
20 didn't write a written statement that day, but,
21 yes, I did tell them.

22 Q But, ultimately, at some point recently you
23 actually did give a written statement; is that
24 correct?

25 A Yes, sir, I did.

1 Q Is everything in that written statement true?

2 A Yes, sir.

3 Q And is there anything in that written statement
4 that you, you know, were kind of fuzzy about or
5 were you pretty solid about everything that you
6 remember you gave recently?

7 A Everything I wrote I remember, yes, sir.

8 Q Okay. And, Ms. Pate, just clear this up for me.
9 Was it you that called 9-1-1 or did Lloyd call
10 9-1-1? Who actually got somebody to come and help?

11 A It was myself. I tried to call 9-1-1 on my cell
12 phone at the scene.

13 Q Okay.

14 A But I couldn't get any service, so I had to --

15 Q So what did you have to do?

16 A Sir?

17 Q What did you have to do?

18 A I had to go home and call 9-1-1 and go back.

19 Q Okay. All right. And did you leave Lloyd there
20 with Al?

21 A Yes, sir, Lloyd stayed.

22 Q Y'all didn't leave Al there by himself?

23 A No, sir. My husband Lloyd stayed with Al until EMS
24 got there, which I went back after I called 9-1-1.

25 Q Okay. All right. Please answer any questions

1 Mr. Kirincich may have for you.

2 CROSS-EXAMINATION

3 BY MR. KIRINCICH:

4 Q Good morning, Ms. Pate. As I told your husband,
5 I'm sorry you have to be here for this. I'm sorry
6 this happened to your family. But there are some
7 questions I need to ask you.

8 You said you did talk to law enforcement at
9 the time of the incident, maybe not right when EMS
10 was there, but at sometime around that time you
11 talked to law enforcement?

12 A Yes, sir.

13 Q Do you remember who you spoke with?

14 A I -- I don't know. There was several officers
15 there, not just one.

16 Q If you saw them again, would you recognize them?

17 A I know that Chucky Baxley was one of them, but I
18 don't know the other one's names.

19 Q Do you remember a young tall officer with dark
20 hair, a Corporal Justin Scott? Does that ring a
21 bell with you at all?

22 A Probably, but I ain't going to definitely say. I
23 don't know.

24 Q Was there an officer that held himself out to be in
25 charge of the scene that was collecting evidence or

1 talking to witnesses?

2 A Like I said, there was a lot of officers and
3 highway patrol there. And I don't know their
4 names.

5 Q Okay. You said you did talk to law enforcement at
6 the time. You didn't write a written statement;
7 right?

8 A Excuse me?

9 Q You didn't write a written statement?

10 A Not at that -- not that day, no.

11 Q You wrote one almost a year later when Investigator
12 Miles Taylor came to see you?

13 A Yes, sir.

14 Q And the reason I'm asking you about this is because
15 it seems like there is stuff that is in this
16 statement that is sort of coming out for the first
17 time almost a year later.

18 Did you tell officers that Mr. Robinson told
19 you that they physically struck him while he was on
20 the Moped?

21 A Yeah. We told the officers what he had told us.

22 Q Would you be surprised that it is not in any of the
23 incident reports from Highway Patrol or from the
24 Kershaw County Sheriff's Office?

25 A Why would I be surprised?

1 Q That the information that somebody physically
2 struck Mr. Robinson is not in any of the other
3 reports, they are only in your statement and your
4 husband's statement from this past month?

5 A Uh-huh. Me and my husband is the only two people
6 that spoke to Al before he was taken to the
7 emergency room.

8 Q So you are saying that law enforcement just forgot
9 to put that information in their incident reports?

10 A No, I'm not saying that.

11 Q Did you tell it to them?

12 A We told him exactly what I testified to here today.

13 Q He told you it was a blue van that hit him; right?

14 A He said it was a van, but I don't think that is
15 exactly what it was that hit him.

16 Q He said it was a blue van. He said two people got
17 out?

18 A He said two people.

19 Q Is that what he told you? All right. Did you tell
20 officers there were two people?

21 A Yes, sir.

22 Q Did you tell officers that Mr. Robinson said there
23 was one black male and one white male?

24 A Yes, sir.

25 Q Now, in your statement to law enforcement to begin

1 with, did you tell them about Scott's dark blue
2 SUV?

3 A I said, Al told us it was a blue van, and it was
4 the color of Scott's.

5 Q Okay. Blue van the color of Scott's. That is what
6 you told them.

7 Something that you put in your most recent
8 statement that was interesting to me is that you
9 asked Mr. Robinson about his wallet. Do you know
10 why you asked him about his wallet?

11 A Because I needed to know if he had his wallet
12 because his identification was in there, and he
13 needed to be identified. They needed to know who
14 he was.

15 Q But you talked to EMS while you were there, didn't
16 you? Did you help EMS with any paperwork or
17 identification?

18 A No, I didn't help EMS with no paperwork.

19 Q But he had his wallet, didn't he?

20 A Yes, sir, he did.

21 Q And it had all the contents of his wallet?

22 A As far as I know, yes, sir.

23 Q I know you weren't in here when your husband
24 testified, but something that y'all both testified
25 to is about Mr. Robinson's habit of stopping

1 completely along the side of the road when a car
2 was passing by?

3 A Yes, sir.

4 Q Why would he do that?

5 A Because he was very careful on that Moped. He was
6 very careful. If he heard a car coming up behind
7 him, he pulled over on the side of the road.

8 Q Freeman Road is a dirt road; correct?

9 A Yes, sir.

10 Q Road conditions change based on the weather, if
11 there is any washouts or the ground gets hard from
12 lack of rain; right?

13 A That's correct.

14 Q Do you remember the road being hard and bumpy?

15 A That road is -- a lot of times it is like a
16 washboard.

17 Q Yes.

18 A A lot of times.

19 Q So he knew that his best bet was to pull over
20 alongside of the road because it is possible that
21 he could be hit; right?

22 A He always done that when a car was coming up behind
23 him, even on the main road, not just the paved
24 road, the dirt road.

25 Q Had he almost been hit before?

1 A Not to my knowledge.

2 Q But something caused him to make his habit and
3 routine to come to a full stop?

4 A He done that from Day One. The first day he ever
5 got the Moped, he has always done that. He was
6 extremely careful on that Moped.

7 Q Thank you, Ms. Pate.

8 THE COURT: Yes, sir?

9 MR. PERRY: Beg the Court's indulgence.

10 (Pause.)

11 MR. PERRY: Nothing further from this witness,
12 Your Honor. I would ask that she be excused.

13 THE COURT: All right, ma'am, you may step
14 down.

15 THE WITNESS: Thank you.

16 (Witness steps down.)

17 THE COURT: Any objection to her being
18 excused?

19 MR. KIRINCICH: No, Your Honor, no objection.

20 THE COURT: All right, you are free to leave,
21 ma'am. Thank you.

22 (Witness excused.)

23 MR. PERRY: Ms. Pate, you may stay with us if
24 you want.

25 THE COURT: Call your next witness.

1 MR. PAULING: The State would call Brenda
2 Johnson.

3 (Witness approaches.)

4 THE CLERK: Place your left hand on the Bible,
5 and raise your right hand, please.

6 (Witness complies.)

7 THE CLERK: Do you swear or affirm the
8 testimony you give in this case will be the truth,
9 the whole truth, and nothing but the truth, so help
10 you God?

11 THE WITNESS: Yes, ma'am.

12 THE CLERK: Have a seat. State your full name
13 for the record.

14 BRENDA JOHNSON,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. PAULING:

18 Q Good morning, Ms. Johnson.

19 A Good morning.

20 Q Please tell the jury, ma'am, who you are and who
21 you work for.

22 A My name is Brenda Johnson. And I'm employed with
23 Kershaw County E-9-1-1 Communications.

24 Q Okay. And at E-9-1-1 Communications, what is your
25 role there?

1 MR. KIRINCICH: None, Your Honor.

2 THE COURT: All right, thank you.

3 (Witness excused.)

4 THE COURT: All right. Yes, sir?

5 MR. PAULING: Your Honor, at this time the
6 State would call Michelle Marble.

7 (Witness approaches.)

8 THE CLERK: Place your left hand on the Bible,
9 and raise your right hand, please.

10 (Witness complies.)

11 THE CLERK: Do you swear or affirm the
12 testimony you give in this case will be the truth,
13 the whole truth, and nothing but the truth, so help
14 you God?

15 THE WITNESS: Yes, ma'am.

16 THE CLERK: Please have a seat. And state
17 your name for the record.

18 THE WITNESS: My name is Michelle Elizabeth
19 Marble.

20 MICHELLE ELIZABETH MARBLE,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. PAULING:

24 Q How are you doing, Ms. Marble?

25 A Fine, sir.

1 Q Would you please tell the members of the jury where
2 you are currently employed, ma'am?

3 A I'm employed with Kershaw Health as a 9-1-1
4 paramedic.

5 Q And how long have you been employed as a paramedic
6 there?

7 A I have been employed with Kershaw Health for a
8 little over five years.

9 Q And if you could just tell the jury just briefly,
10 what is your educational background?

11 A Educationally, I have a college degree from the
12 University of South Carolina, and then I have also
13 received a certification as an EMT Basic, an EMT
14 Intermediate, and then now as an EMT Paramedic.

15 Q Okay. And as an EMT and paramedic, do you have to
16 I guess continuously get certification to be
17 recertified?

18 A Yes. We are required to do so much in-service
19 training every month, and we have to have so many
20 hours every year to maintain our accreditation.

21 Q And what station are you currently assigned to?

22 A Currently I am stationed up at Station 6, which is
23 in Bethune.

24 Q Okay. And as far as Kershaw County is concerned,
25 how many stations do y'all have?

1 A During the past five years when I have been
2 employed there, we have had five stations.

3 Q Now, have you always been assigned a station there?

4 A No. No. We rotate. So we have a station in
5 Elgin, a station in Lugoff, three stations in
6 Camden, and the one station in Bethune. And we
7 will cycle through approximately every two weeks.

8 Q Back in August of 2013, and specifically
9 August 24th of 2013, what station were you assigned
10 to?

11 A I was assigned Station 6 in Bethune.

12 Q Okay. And was there any other EMT Paramedic
13 assigned to that station as well?

14 A Yes. We are typically -- if we are on an
15 ambulance, we always have another partner to
16 maintain the ALS type truck. I had an EMT
17 Intermediate partner. His name was Ethan Blackmon.

18 Q And if you can just describe to the jury, what are
19 your typical duties on any given day? What are
20 your duties?

21 A On any given day? I mean, we come in, immediately
22 handed off a report from the off-going shift,
23 immediately check off our truck for making sure
24 that everything is correct and that everything
25 works. And then we stay within our call zone and

1 are available for calls when we are toned out by
2 radio.

3 Q Now, back on August 24th of 2013, Ms. Marble, do
4 you recall being dispatched to Freeman Road?

5 A Yes, sir.

6 Q And is that off of Highway 341?

7 A I believe so, yes.

8 Q Is 341 also known as Bethune Road?

9 A Yes, sir.

10 Q And do you recall what that was in relation to --
11 that call was in relation to?

12 A We were toned out for what was considered an MVA
13 with a Moped.

14 Q Okay. And when you say MVA, what is that?

15 A A motor vehicle accident.

16 Q Okay.

17 A Sorry.

18 Q And when dispatch -- or when you are dispatched to
19 a scene, is there certain codes that go out? You
20 said you were toned out for a MVA. Were there
21 certain codes that are --

22 A Excuse me while I take a look just to make sure
23 that we were toned out for -- (Pause.) Right. We
24 do Plain Talk now over the radio instead of using
25 codes, for the most part, so they pretty much tell

1 you like it is over the radio.

2 Q And so when it was called out, what was your
3 understanding of what you were responding to?

4 A My understanding I was responding to a motor
5 vehicle accident.

6 Q All right. And do you recall on that particular
7 day what your response time was?

8 A Yes, sir. It took us -- we were dispatched out at
9 1729, which would be 5:29. We went en route three
10 minutes later at 5:32. And we arrived on scene at
11 41, 1741, 5:41.

12 Q And once you got to the scene -- well, let me ask
13 you this. Freeman Road, was this a main road, a
14 secondary road? Is it paved, dirt?

15 A This is a dirt road.

16 Q And, now, once you got to that particular scene, if
17 you can describe to this jury what you saw.

18 A Okay. Actually, I would like to make a small
19 correction.

20 Q Yes, ma'am.

21 A On my report we were dispatched as an assault.

22 Q You were dispatched as an assault?

23 A Yes.

24 Q And that was based upon the information you got
25 from where?

1 A Dispatch.

2 Q All right. And before I ask you that question, I
3 want to ask -- let me ask you this. When you go to
4 a scene, if you can just explain to the jury, what
5 is it that you are -- I guess what are you looking
6 for? What do you prepare for? It is called out as
7 an assault, so what is running through your mind as
8 you get to the scene?

9 A If we are called out on an assault, one of the
10 first questions that we ask typically is, Is law
11 enforcement on the way? We're very much supposed
12 to be, you know, scene-secure for the most part
13 when we get there.

14 I cannot recall because it is not directly on
15 my notes whether or not dispatch would have updated
16 us en route that it was a MVA, but we always ask,
17 Is law enforcement en route? And then we are
18 always doing a scene size-up. We are just trained
19 as an automatic thing to try to determine what is
20 going on, what may have happened out at the scene,
21 try to put things together to determine what kind
22 of injuries may have occurred to the patient so
23 that we know what we are dealing with. So that is
24 just something we just automatically do when we
25 are -- it is legally and technically called a scene

1 size-up.

2 Q And once you got to this particular scene, Freeman
3 Road off 341, what did you see? What did you come
4 upon?

5 A We came across a male patient from the direction
6 that we had come from. He was lying on the
7 right-hand side of the road propped up against a
8 dirt embankment. There were bystanders there as
9 well.

10 Q Do you know who those bystanders were at the time?

11 A No, I did not.

12 Q Okay. What was your focus at that time?

13 A Our focus is always on the patient.

14 Q And when you got to this particular patient, did
15 you know who he was?

16 A I did not know who he was, no, sir.

17 Q All right. When you got to this particular
18 patient, would you describe to the jury what
19 condition physically and emotionally he was in?

20 A He was conscious, alert and oriented at the time.
21 He had admitted to ETOH use, which is alcohol. And
22 probably the best thing to do would be to read what
23 I have written down, if you don't mind, because
24 that is what I can legally document.

25 On our scene information, patient found

1 conscious, alert and oriented times four, lying
2 propped up against a dirt bank on the side of the
3 road.

4 History of present illness was: Patient was
5 riding Moped on a dirt road when he states he was
6 struck by a van and knocked off his Moped. And
7 patient states the occupants of the van then stole
8 his Moped and drove away. Patient was found lying
9 in the dirt by passersby. When EMS arrived,
10 patient smelled of ETOH, which is alcohol, and
11 admitted to ETOH use. Patient said his side hurt
12 and that he needed something for pain. Patient was
13 trying to get up and of course the bystanders
14 were -- these are things that I'm recollecting now.

15 Q Yes, ma'am.

16 A So it is separate from what I have written down.
17 That he had been trying to get up. And I remember
18 they said that they had -- the bystanders had kept
19 him down.

20 Of course, when we come up, we're evaluating
21 everything. We're asking a bajillion questions.
22 We're asking questions of the patient and also of
23 the bystanders, if they witnessed anything, if they
24 saw anything, you know, what do they know about the
25 patient, any type of medical history that we can

1 get, because all of these are valuable in treating
2 the patient, you know, asking the patient if he has
3 any drug allergies, any other health conditions
4 that might impact the readings that we get. Any
5 type of medications that he might be taking that
6 might impact any of the readings that we get from
7 when we are doing blood pressure, heart rate, and
8 oxygen levels, and things like that. And so you
9 are just -- you know, you are throwing a lot of
10 information out there to get as much information
11 back as you can in a short time period.

12 Q Okay. And you mentioned that he smelled of
13 alcohol. Was he slurring his speech at all?

14 A I did not write that down, so I wouldn't be able to
15 testify after this length of time to that.

16 Q I guess my question is, did you clearly understand
17 what he was saying as far as --

18 A Yes.

19 Q -- as what had happened to him?

20 A Yes.

21 Q Now, the area where -- when this is going on, is he
22 still laying there on the road when you are talking
23 to him?

24 A Yes, he is. We try not to -- at this particular
25 point we had determined that -- he, of course, told

1 us that he had been hit and knocked off of his
2 Moped. So now we are looking at a motor vehicle
3 accident with a possible high mechanism of injury.
4 So we are always going to the next thing, which is,
5 What is the mechanism of injury? What possible
6 injuries might there possibly be? What can we
7 expect to have happen? How do we need to go about
8 treating this to prevent further injury? And to do
9 the best we can for the patient. So we constantly
10 at that point are now going to the next phase.

11 Q Before you get there, did you notice anything else
12 around him or anything else that you noticed, any
13 of his belongings? Did you notice any oil or
14 anything?

15 A No, we did not notice, but, then again, our focus
16 is oftentimes on the patient and looking for large
17 things as we drive up and then of course smaller
18 things related to the patient once we're there.
19 You know, we start to look at the injuries, you
20 know, possible injuries on the head, on the arms,
21 where is the bleeding coming from, are they
22 breathing, you know, are they able to talk to us,
23 et cetera, et cetera. So your focus changes once
24 you start to interact with the patient. Once you
25 determine the scene is safe, then it is all

1 patient-oriented interaction.

2 Q Okay. And you mentioned that second phase. Can
3 you tell the jury, what was that second phase, I
4 guess, of your examination?

5 A The preliminary phase is of course as we sized up
6 the scene we start asking questions to determine
7 the mechanism of injury. And then we start, you
8 know, talking to the patient on where does he hurt,
9 what hurts, anything that he can tell us about it.
10 We do a very quick -- it is called a rapid
11 assessment, you know, hands-on. We are checking
12 for crepitus, checking for major bleeding.

13 Obviously, because we had talked to him and he
14 could talk back, we knew that he was conscious,
15 which is one of the things that we check for. We
16 check to make sure that his airway is patent. If
17 he can talk and his airway is patent. And he is
18 obviously able to control his own breathing at this
19 point.

20 So then you move down to the physical -- rapid
21 physical assessment before you put him on a spine
22 board and then secure that, because whenever there
23 is that type of mechanism of injury, obviously we
24 go to protect the spine at that particular moment.
25 So --

1 Q And after you have done all those things, what
2 follows? What did you --

3 A You get them in the ambulance as quickly as you can
4 at that particular point, one, because a lot of
5 time you get more information -- once we have
6 gotten the initial things that we need from
7 bystanders, you try to get in and you are again
8 working on patient-oriented. From overlooking my
9 notes and everything, I could tell that he was a
10 little bit difficult to work with at the time,
11 which is often a sign of shock sometimes. So we
12 are struggling to try to get a blood pressure off
13 of this patient and an IV, and it took two people
14 to do that because he was trying to get up. He was
15 asking us to turn him loose. They get a little
16 claustrophobic sometimes and when you are secured
17 down, you know. So there is -- to us there was a
18 small delay on scene because it took two people to
19 work with the patient at that time. We normally
20 like to be out of the trauma scene within 10
21 minutes, and we were there for 16.

22 Q Okay. Now, did you have any information as to how
23 long you had been there prior to you arriving or
24 prior to the call going out?

25 A No.

1 Q Okay. Now, you mentioned wanting to make sure you
2 had a blood pressure and had to get an IV running.
3 Did any of those things cause you concern, or his
4 blood pressure --

5 A Yes.

6 Q And what was that, ma'am?

7 A His initial blood pressure -- his initial blood
8 pressure was 67 over 38, which is very, very low.
9 And that is an emergent situation at that
10 particular point. So I rechecked his blood
11 pressure on the other arm to confirm that it was
12 low and to make sure that my data was correct,
13 because whenever you get something that is that
14 extreme off the norms, you always do a doublecheck.

15 Also, at this point, because he was getting
16 panicky and starting to become diaphoretic, these
17 were all other symptoms of impending shock and that
18 his body wasn't compensating as it had been before.

19 So we were struggling to get an IV so that we
20 could start IV fluid to try to bring his blood
21 pressure back up.

22 Q What does diaphoretic mean?

23 A Diaphoretic -- I'm sorry. Diaphoretic is sweaty,
24 but it is a cold, clammy sweat that comes related
25 to shock.

1 Q And, now, how long had y'all been on the scene
2 before all of these factors came into play? I
3 mean, the fact that --

4 A Sure.

5 Q -- he became diaphoretic?

6 A Sure. We were on scene at 1741. We were out of
7 the truck and interacting with the patient at 1742.
8 And then I have my first BP is four minutes later
9 at 1746. So he was packaged up and in the
10 ambulance within four minutes. And that first BP
11 had been obtained.

12 Q And that was 67 over 38?

13 A That was the 67 over 38, yes, sir.

14 Q Okay.

15 A And so -- and, again, at this point he was becoming
16 agitated. And I will quote myself: Patient became
17 agitated and uncooperative for a few moments.
18 Which is why my next BP doesn't show up until 1749,
19 which is three minutes later.

20 Q But you are still on the ambulance at that point?

21 A Still on scene, because at this particular point
22 I -- it was just myself and my partner, and one of
23 us has to drive. And because he was agitated,
24 uncooperative, it was taking the both of us to hold
25 his arm still so that we could obtain an IV and to

1 try to get accurate readings and to get him prepped
2 and set up and the things that we needed to do
3 prior to transport.

4 Q Okay. And, now, in a normal situation, as it were,
5 where would you transport the patient to?

6 A Depending on the situation and what you find
7 initially, you may either try to go, one, to the
8 closest hospital -- with his blood pressure being
9 as low as it was, I was trying to get him to the
10 quickest hospital. Because he was conscious, alert
11 and oriented, and because of my -- you know, the
12 fact that he was able to move all of his
13 extremities and what he had going on, I was
14 thinking that at the time that we might could get
15 him to Kershaw Health, which was the closest
16 facility.

17 En route, of course, his blood pressure was
18 becoming worse and his symptoms were deteriorating.
19 I called Kershaw Health Emergency Room and spoke to
20 a Dr. Rogue at the emergency room and told her what
21 I had, what I suspected, and asked for permission
22 to fly the patient out.

23 Permission was obtained. At this point he is
24 considered a major trauma and would need to go to a
25 trauma center. The only one that we have close-by

1 is Richland. And typically when we are so far
2 away, there is a timeframe called that golden hour
3 with an injury that you have your best chance of
4 success for helping a patient who has suffered a
5 major trauma.

6 So at that particular point we called a
7 helicopter to fly him to Richland because we could
8 get him there quicker by helicopter than we could
9 by ground transportation.

10 Q And you indicated that you called and spoke with
11 Dr. Rogue about what you had suspected. What did
12 you suspect?

13 A I was suspecting internal bleeding. On my notes
14 that I have here, he had tenderness and had
15 complained of pain to his abdominal area, definite
16 tenderness when palpated to the abdominal area. He
17 had also been complaining of hip or, you know, he
18 was diffuse because he was still able to move his
19 legs and he was fighting us with that to stay down.
20 He kept asking us to turn him loose and he kept
21 grabbing at his legs. So at this particular point
22 I didn't know if he had a hip or a pelvic fracture,
23 which can bleed intensely and you can bleed out
24 from pelvic fractures as well as abdominal
25 injuries.

1 Q But internally, is that what you mean?

2 A Internally, yes. So you don't know if it is pelvic
3 or hip fractures that are causing the bleeding or
4 if it is organ bleeding.

5 So, again, it doesn't matter, it is abdominal,
6 and a lot of blood can be lost. And that was being
7 shown by the fact that he was very diaphoretic and
8 shocky and having these other issues.

9 And so at this particular point, you know, he
10 needs to go to a trauma center.

11 Q Okay. Now, you had asked for -- was it LifeNet?

12 A Yes, sir.

13 Q You asked for LifeNet to launch a helicopter. Did
14 they come to Freeman Road, or what happened?

15 A No, they did not. We had already -- at that point
16 had been moving. We had gotten the patient calmed
17 down enough that my partner was driving us,
18 emergent -- Code 3, emergent, lights and sirens, as
19 fast as we could get towards Kershaw Health.

20 We have always been told, Be -- always be
21 heading towards the closest hospital. There was
22 going to be a timeframe that it takes for the
23 helicopter to launch and to meet us somewhere.

24 The closest LZ in the direction that we were
25 going in the timeframe that LifeNet said that they

1 could launch and meet us was going to be North
2 Central High School.

3 Q That is the landing zone, LZ?

4 A Yes, a landing zone. LZ is short for landing zone.
5 And that was where they had said that the timeframe
6 was we could intersect. And of course we're always
7 pushing for a hospital as well. So we met at North
8 Central High School. And we got to the landing
9 zone just a few minutes prior to the helicopter
10 landing.

11 Q Okay. And approximately, to the best of your
12 ability, how long after you got on the scene were
13 you -- did you have the patient to the landing
14 zone?

15 A I can tell you exactly. We were on scene for 16
16 minutes, and it took us 14 minutes to go from
17 Freeman Road to the landing zone at North Central
18 High School.

19 Q And then you said you made it there before LifeNet.
20 Was LifeNet on the scene shortly thereafter?

21 A Shortly thereafter, yes, sir. And you should be
22 able to get that exact timeframe from your dispatch
23 records.

24 Q And after LifeNet arrived, then you turned over
25 care of patient to them?

1 A Correct.

2 Q Now, as far as -- and I had asked you earlier if
3 you knew who the patient was. Do you know if the
4 patient had his wallet or any identifying
5 information?

6 A Yes. Yes. And I do have that written down because
7 we are very careful about any personal effects.
8 And the patient had been conscious when we of
9 course first were there. And I have under my notes
10 for patient belongings: Patient wallet and
11 cigarettes brought with patient and turned over to
12 LifeNet crew. Patient says he has \$200 in his
13 wallet. EMS did not touch his wallet, which stayed
14 in his pants pocket.

15 Q Okay. Who was that patient, ma'am?

16 A The patient was Alan Robinson.

17 Q Alan Robinson. Okay. And, now, Ms. Marble, was
18 that the extent of your involvement in this
19 particular call?

20 A Yes, sir.

21 MR. PAULING: Beg the Court's indulgence.

22 (Pause.)

23 MR. PAULING: No further questions at this
24 time, Your Honor.

25 THE COURT: All right. Yes, sir?

1 THE WITNESS: All right.

2 (Witness complies.)

3 THE WITNESS: Charles Justin Scott,

4 CHARLES JUSTIN SCOTT,

5 after being duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PERRY:

8 Q Deputy Scott, if you will, please tell the Court
9 where you are from and what you do, who you work
10 for, and how long you have been employed with the
11 Sheriff's Department?

12 A I was born and raised in Camden. I've been with
13 the Sheriff's Department for a little over four
14 years total.

15 Q On August the 24th, 2013, were you working with the
16 Kershaw County Sheriff's Department? And, if so,
17 in what capacity?

18 A I couldn't --

19 Q If so, in what capacity?

20 A I couldn't hear you.

21 Q August 24th, 2013, were you working with the
22 Kershaw County Sheriff's Department? And, if so,
23 in what capacity?

24 A I was. I was supervising on the road at the time.

25 Q All right. And, more specifically, later in the

1 afternoon, approximately 5:00, 5:30 in the
2 afternoon, were you coming on shift, going off the
3 shift? What was your status at that time?

4 A At the time I was working night shift. And we come
5 in at 6:00, 6:15. And we take the road from the
6 day shift. I was coming in.

7 Q So when you came into work that night, did you get
8 a call about an occurrence out on Freeman Road out
9 in the eastern part of the county?

10 A I did.

11 Q And if you will, just tell the Court about that,
12 what happened, what you heard and saw and did.

13 A I received a call when I was coming in that there
14 was an accident on Freeman Road, but it happened
15 earlier before I come in. And the person that had
16 gotten hit on the Moped had -- was already being
17 flown to -- from North Central High School.

18 So I went up there at that time to see what
19 was going on. They said he wasn't doing good, so I
20 was going to try to, you know, do what I could to
21 help out.

22 Once we got up there, found out a near
23 location where it happened, at 321 Freeman Road,
24 they said that he got struck by a vehicle. At the
25 time we didn't know if it was intentional,

1 unintentional.

2 So I then went to Freeman Road. And I don't
3 know the distance off 341 down Freeman Road, but a
4 short distance down Freeman Road you could clearly
5 see where something had been disturbed, the dirt
6 was kicked up, and clearly there was a scene there.

7 At the time I was a supervisor, so -- but my
8 lieutenant did come out there. We just started
9 taking pictures, you know, treating it as, you
10 know, that -- like I said, we didn't know if it was
11 intentional, unintentional at the time.

12 MR. PERRY: May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 (Complies.)

15 BY MR. PERRY:

16 Q I show you what has been marked as State's Exhibit

17 1. What does that appear to be?

18 A That is the incident location.

19 Q And does that appear to be your cruiser there on
20 the scene?

21 A Yes, that is my car.

22 Q All right. And in the background, are those
23 Kershaw County deputies in the roadway?

24 A I believe so.

25 Q Okay. All right, please continue.

1 A Got to the scene. Just started basically just
2 setting up a, you know, not just directly looking
3 at the scene, but kind of going, you know, further
4 out, expanding the scene to see what we could find.

5 This had happened I guess -- I got there
6 around 6:30ish, somewhere around that time.

7 Q Did you talk to any family members or any other law
8 enforcement officers?

9 A When I first got there, there was -- I don't
10 believe there was no family members out there. But
11 once I was there, then family members -- or people
12 had started arriving. I can't remember if it was
13 family members or not, but it was other people than
14 law enforcement there that had arrived.

15 I saw some -- went up approximately 100 yards
16 from where the actual incident happened.

17 Q Go ahead.

18 A I saw basically where it looked like there was a
19 vehicle had come up the road, you know, did like a
20 3- or 4-point turn. And you could clearly see the
21 vehicle that had come from 341 did a 3- or 4-point
22 turn and then go back towards 341 on the left side
23 of the road. I followed the tire tracks all the
24 way back to the scene.

25 So me and Corporal McWhorter, we started

1 talking about it. And that is -- later on, that is
2 when he had went to, I believe it was Richland, and
3 spoke with some family members there. And then we
4 gathered information and found out that it was --

5 MR. KIRINCICH: Objection, Your Honor. I
6 don't know exactly what he is going to say, but I
7 think I know what he is going to say. I think he
8 has done a good job testifying about what he
9 observed, but now he is going to testify as to what
10 he thinks.

11 THE COURT: All right. At this point you
12 can't give any opinion testimony.

13 THE WITNESS: Okay.

14 THE COURT: But you can continue on. All
15 right.

16 BY MR. PERRY:

17 Q During the course of your investigation and through
18 talking with family members who had spoken with the
19 victim -- you talked about having gone down the
20 road and looked and saw where it appeared something
21 turned around, a vehicle turned around. Did that
22 fit with anything else that you had been told
23 during the course of your investigation?

24 A Yes, sir. There was -- like I say, I can't
25 remember who told me, but there was -- during the

1 conversation with somebody, they was saying that
2 the vehicle had struck him, then turned around, and
3 then come back and hit him again. But I didn't
4 know that until afterwards. And I had already
5 looked and saw where tire tracks -- and then they
6 ended up matching, you know, as far as being, you
7 know, what he said.

8 Q And prior to ever having heard the story that this
9 vehicle had hit the victim, gone down the road,
10 turned around and come back, and come back and run
11 him over again, prior to having heard that, you
12 were on the scene and went and observed these
13 things?

14 A Yes, sir.

15 Q Which then, when you heard that, matched up with
16 that?

17 A Yes, sir.

18 Q Okay. Now, during the course of all this -- I
19 assume as a road supervisor and deputy, it would
20 have been your responsibility to write a report
21 and, you know, to put all the information that you
22 had about this in the report?

23 A Yes.

24 Q Okay. At the time that you initially wrote that
25 report, if you had not put that information in

1 there, would there be a reason why? Or did you not
2 have that at the time? Or tell us about your
3 report that you wrote and all that, and what you
4 handed off, you know, what your involvement was,
5 and when you concluded your involvement in this
6 case?

7 A Can you repeat the part where you said --

8 Q Did you do a report?

9 A Yes, I did do a report.

10 Q Did you forward that report to investigations?

11 A I did.

12 Q For them to follow up on it?

13 A Yes, sir.

14 Q Have you seen or reviewed your report any time
15 recently?

16 A I briefly went over the report a few weeks ago when
17 I received a subpoena.

18 Q Okay. All right. At this time, was -- this
19 continued to be worked as an accident or was it
20 worked as an intentional act?

21 A Which time?

22 Q At the time that you were concluding your
23 involvement?

24 A When I first got on the scene, it was still -- it
25 wasn't determined at the time. It wasn't later

1 determined until after, you know, we were able to
2 make arrangements to meet up at the Richland
3 Hospital.

4 Q And would you have made that determination to
5 continue working this as an accident or working it
6 as an intentional act, or would someone else have
7 made that determination?

8 A Just -- I spoke with McWhorter, and me and him
9 spoke together, and so I ended up doing it as an
10 intentional --

11 Q That was based on the information that you had
12 received coming from the victim's family and what
13 you had seen there at the accident scene?

14 A Yes, sir.

15 Q Okay.

16 MR. PERRY: Beg the Court's indulgence.

17 (Pause.)

18 BY MR. PERRY:

19 Q If you would, quickly -- there is a map that is
20 right here. If you could kind of sort of show the
21 jury on that map approximately where all this took
22 place. As you'll see, I believe this is 341 --
23 that is Freeman Road. If you want to use the
24 pointer or use your hand or whatever else just to
25 sort of --

1 A 341 right here(indicating).

2 Q 341. And there is Freeman Road(indicating). If
3 you can sort of show them where all this took
4 place.

5 A Very briefly. Like I said, it wasn't far down the
6 road on Freeman Road. I mean, just
7 approximately -- the incident location was right
8 here(indicating). A hundred yards further from the
9 incident location still going this way is where the
10 vehicle had did a 3- or 4-point turn, turned
11 around, and came back towards 341, Bethune Road.

12 Q Okay. I'm just waiting on the projector to warm up
13 real quick. But, if you would, I want to clarify
14 with you one of the photos. If you could show us
15 in relation to, you know, to the photo
16 approximately where you noticed the tracks on the
17 road that indicated something had turned around and
18 come back?

19 A Okay.

20 THE COURT: Can someone turn that light off
21 back there so he can see a little bit better?

22 (Complies.)

23 MR. PERRY: And, Your Honor, may the witness
24 step down from the stand?

25 THE COURT: Sure.

1 (Witness steps down.)

2 BY MR. PERRY:

3 Q Deputy Scott, you can use the pointer here. Here
4 you go.

5 THE COURT: He can see and the jurors can see
6 a little bit better with that light off.

7 A Like I said, this right here is the actual area
8 that the incident happened(indicating). We always
9 try to, you know, expand the scene to look for
10 further evidence.

11 THE COURT REPORTER: I'm sorry, he is speaking
12 away from me.

13 THE WITNESS: Sorry.

14 THE COURT: Okay. Why don't you take that
15 microphone because your back is turned?

16 THE WITNESS: Okay.

17 THE COURT: She can't hear you. And try to
18 speak in there for us.

19 (Complies.)

20 THE COURT: Yes. Thank you. There you go.

21 A That right there is the actual scene(indicating).
22 But we always try to expand it, you know, to look
23 for further evidence. Approximately right here I
24 believe there was a picture of two deputies that
25 was at the area, and that is where I found the tire

1 tracks(indicating). I basically just followed the
2 tire tracks from right here, just followed them
3 down the road(indicating.) And you can clearly see
4 where the same tire tracks were right here and went
5 down approximately right in this area(indicating).
6 They took -- they went left towards this embankment
7 right here, and then they backed up and come
8 back(indicating). And when they come back, they
9 come back down this same side of the road right
10 here(indicating). That same tire track was going
11 up and that same tire track turned around and come
12 back down.

13 Q Technically on the wrong side of the road; right?

14 A Yes.

15 (Witness returns to witness stand.)

16 Q Please answer any questions Mr. Kirincich may have
17 for you.

18 A All right.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. KIRINCICH:

22 Q Good afternoon, Deputy Scott. How are you?

23 A I'm doing good. How are you?

24 Q You said you had an opportunity to review your
25 incident report in the last few weeks when you got

DIRECT EXAMINATION

1

2

BY MR. PERRY:

3

Q Good afternoon, Mr. Danzy.

4

A (Nods affirmatively.)

5

Q I'm Brett Perry, the Deputy Solicitor here in

6

Kershaw County. Before today we haven't met;

7

correct?

8

A Correct.

9

Q Okay. I did speak with you briefly just a few

10

moments ago, but we haven't really talked about

11

this case up to this point, have we?

12

A No, sir.

13

Q All right. Do you see anybody here in the

14

courtroom at this table or the Defense table that

15

you recognize that you know?

16

A Yes. Tahoe.

17

Q You referred to the gentleman in the white shirt?

18

A Yes.

19

Q And you refer to him as Tahoe?

20

A Correct.

21

Q Had you ever known him by his proper given name?

22

A No, sir.

23

Q Okay. You had always known him as Tahoe?

24

A Correct.

25

Q Why was it that he was called Tahoe, do you know?

- 1 A I guess because he drives a black Tahoe truck.
- 2 Q Okay. How long had you known him, and in what
- 3 capacity had you known him?
- 4 A I didn't know him all that long. I met him through
- 5 my brother.
- 6 Q Through your brother?
- 7 A Yes.
- 8 Q Your brother is?
- 9 A Jonathan Wise.
- 10 Q Okay. Now, where do you live? Where are you from?
- 11 A I'm from Kershaw, South Carolina.
- 12 Q Okay. And last year, in August of last year, about
- 13 a year ago now, did you have occasion to be
- 14 contacted by Tahoe?
- 15 A Yes.
- 16 Q Can you tell the Court about what happened?
- 17 A Yes. He pulled up at my house and he had a scooter
- 18 that he wanted to sell for \$100, and I didn't want
- 19 to purchase it, but I called my friend, and he
- 20 purchased it.
- 21 Q Was he by himself in the vehicle?
- 22 A Yes, sir.
- 23 Q He didn't have anybody with him?
- 24 A No, sir.
- 25 Q Okay. Do you see that scooter here in the

1 courtroom today?

2 A Yes, that is it right there(indicating).

3 Q That is it right there(indicating)?

4 A (Nods affirmatively.)

5 Q Why is it that you didn't want to buy that scooter?

6 \$100 seems like a pretty good deal for a scooter.

7 A \$100 was, but I didn't have the money right at the
8 time, and it seemed like it was mighty hot, so I
9 didn't purchase it.

10 Q Okay. When you say mighty hot, what do you mean by
11 that?

12 A Like hot. He was nervous about it when he told me,
13 like it was hot. If I didn't buy it, he was going
14 to throw it across the bridge and get rid of it.

15 Q Okay. Did he tell you how he came to have that
16 scooter?

17 A No, he didn't tell me how.

18 Q Okay. But you didn't want to buy it, so you
19 contacted a friend who was Lakendrick Miller; is
20 that correct?

21 A Yes, sir.

22 Q About buying it? Did he want to buy it, do you
23 know?

24 A Yes, he bought it.

25 Q Okay.

1 A Well, his uncle purchased it for him.

2 Q Were you with him when he actually purchased that?

3 A Yes. It happened at my house.

4 Q Did Tahoe say anything to you about anybody else
5 being with him when he got that scooter or did you
6 see anybody else with him at the time?

7 A No, sir.

8 MR. PERRY: Beg the Court's indulgence.

9 (Pause.)

10 BY MR. PERRY:

11 Q I know it has been a little while since this
12 happened, but do you remember what day of the week
13 this was? Was it a Saturday, Sunday, Monday? Do
14 have any idea about that?

15 A No, sir.

16 Q Okay. Do you remember what time of the day it was?

17 A Probably 12:00, 1:00 o'clock, somewhere in that
18 time.

19 Q Okay. All right. Were you accustomed to seeing
20 Tahoe come to your house or come to Kershaw?

21 A No. I used to deal with Tahoe myself.

22 Q Okay. Did he ever come to your house before?

23 A Yes, he has been to my house.

24 Q Okay. How was -- was he acting any way that was --
25 was there anything about how he was acting that

1 made an impression on you?

2 A Yes. That is my first time seeing him that
3 nervous. But he was like pretty much sweating. He
4 was like he had to get rid of it fast.

5 Q Okay. Was it daytime or nighttime?

6 A Nighttime. No, daytime.

7 Q Daytime?

8 A Yes.

9 Q Okay. Was it normal for you to see him that time
10 of day?

11 A No.

12 Q Okay. All right, thank you. Please answer any
13 questions Mr. Kirincich may have.

14 CROSS-EXAMINATION

15 BY MR. KIRINCICH:

16 Q Good afternoon, Mr. Danzy.

17 A All right.

18 Q You said you knew -- his name was actually Willie
19 Thomas Starnes. You know him as Tahoe; right?

20 A Correct.

21 Q Because you had seen him up on the hill driving
22 that black Tahoe?

23 A Correct.

24 Q Clarify everything you said here. You said he
25 approached you, but he also approached other

1 THE COURT: Any objection to this witness
2 being excused?

3 MR. PERRY: None from the State.

4 THE COURT: All right, sir, you are free to
5 leave.

6 (Witness steps down and is excused.)

7 THE COURT: Call your next witness.

8 MR. PERRY: It is going to be Jerry Crawford.

9 (Witness approaches.)

10 THE CLERK: Place your left hand on the Bible,
11 and raise your right hand, please.

12 (Witness complies.)

13 THE CLERK: Do you swear or affirm the
14 testimony you give in this case will be the truth,
15 the whole truth, and nothing but the truth, so help
16 you God?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Please be seated in the witness
19 chair, and state your full name for the record.
20 Right this way please, sir.

21 (Witness seated.)

22 THE WITNESS: My name is Jerry Crawford.

23 JERRY CRAWFORD,
24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

JERRY CRAWFORD -- DIRECT BY MR. PERRY

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1 BY MR. PERRY:

2 Q Mr. Crawford, where are you from?

3 A Kershaw.

4 Q And are you related to Lakendrick Miller that was
5 in here?

6 A Yes, sir.

7 Q Are you his uncle?

8 A Yes, sir.

9 Q All right. Back last August, around August 24th,
10 25th, that timeframe last year, did you have
11 occasion to see anybody that might be seated in
12 this room here at this table?

13 A I couldn't say for sure.

14 Q Okay. Fair enough. Tell us what did happen last
15 August with respect to --

16 A On that date, Lakendrick called me and said it was
17 a gentleman on the Mill Hill that had a scooter for
18 sale. And he said he wanted \$100 for it. And
19 asked me could I bring him \$100 down there. So
20 I --

21 Q Now, does this appear to be that scooter?

22 A Yes, sir, it looks like it.

23 And I went down to the Mill Hill and I took
24 the hundred dollars with me.

25 And when I got there, I asked the gentleman, I

JERRY CRAWFORD -- DIRECT BY MR. PERRY

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1 said, This scooter looks mighty good. I said, You
2 sure it is not stolen?

3 He said, No, it is not.

4 So I asked him -- I said, I will give you \$100
5 if he would write out a statement and sign it that
6 the scooter is not stolen.

7 So he wrote out a statement and signed it
8 saying it wasn't stolen.

9 And I gave Lakendrick the hundred dollars to
10 give to him.

11 MR. PERRY: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, sir.

14 (Complies.)

15 BY MR. PERRY:

16 Q Mr. Crawford, I'm going to show you what has been
17 marked as State's Exhibit 21 and ask you if you can
18 identify that?

19 A This is what -- the number that the guy that
20 said -- that wrote it, he gave his phone number on
21 here.

22 Q So the guy that gave you that Moped gave you that
23 piece of paper and said that that is who he was and
24 that was his phone number?

25 A Yeah. Gave it to Lakendrick.

JERRY CRAWFORD -- DIRECT BY MR. PERRY

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1 Q Okay.

2 MR. KIRINCICH: Your Honor, again, I would
3 object to whatever they are going to do with this.
4 There is no chain of custody. I don't know where
5 it came from, who was in possession of it, if it is
6 even the original.

7 MR. PERRY: Your Honor, he identified it as
8 the item that he received from the Defendant -- or
9 from the man who bought -- who he sold the -- or
10 who he bought the scooter from.

11 Your Honor, we'll wait and ask this be
12 admitted through another one of our witnesses.

13 THE COURT: All right.

14 BY MR. PERRY:

15 Q But this is the piece of paper that you received
16 from the individual that you --

17 A From --

18 Q -- that you gave the \$100 to?

19 A He gave it to Lakendrick, and LaKendrick showed it
20 to me. Left him that piece of paper.

21 Q Very good. You didn't have a whole lot of
22 interaction with that individual that was selling
23 the Moped, did you? Was that mostly Lakendrick, or
24 was that you?

25 A Lakendrick. I came to the Mill Hill and brought

JERRY CRAWFORD -- DIRECT BY MR. PERRY

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1 the \$100. And once I was there, once they had
2 bought the Moped, we put a plug in it because he
3 said he was selling it because it wouldn't run that
4 good why he was selling it, so -- it wouldn't run.
5 So at that time I left.

6 Q Do you remember about what time of day it was?

7 A It was in the afternoon, but I can't -- I don't
8 remember exactly what time it was. I knew it was
9 after dinner. I know it was afternoon.

10 Q And at any point in time did law enforcement
11 contact you about this scooter?

12 A Yes, sir.

13 Q Talk with you about it?

14 A Yes, sir.

15 Q Okay. And did you speak with them and cooperate
16 with them?

17 A Yes, sir.

18 Q Give them the information that you just now shared
19 with the Court?

20 A Yes, sir.

21 Q And at that time was law enforcement provided this
22 piece of paper?

23 A Yes, sir.

24 Q Okay. And you had never dealt with the individual
25 before that sold the scooter this day; correct?

JUSTIN DILL -- DIRECT BY MR. PERRY

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1 A No, sir.

2 Q Okay. Thank you.

3 MR. KIRINCICH: I don't have any questions for
4 Mr. Crawford.

5 THE COURT: All right, sir, you may step down.
6 Any objection to this witness being excused?

7 MR. PERRY: None from the State.

8 THE COURT: All right, sir, you are free to
9 leave.

10 (Witness steps down and is excused.)

11 MR. PERRY: The State calls Justin Dill.

12 (Witness approaches.)

13 THE CLERK: Place your left hand on the Bible,
14 and raise your right hand, please.

15 (Witness complies.)

16 THE CLERK: Do you swear or affirm the
17 testimony you give in this case will be the truth,
18 the whole truth, and nothing but the truth, so help
19 you God?

20 THE WITNESS: Yes, ma'am, I do.

21 THE CLERK: Please be seated, and state your
22 full name for the record.

23 (Witness seated.)

24 THE WITNESS: Justin Dill. Kershaw County
25 Sheriff's Office.

1 THE CLERK: Please be seated in the witness
2 chair, and state your full name for the record.

3 (Witness seated.)

4 THE WITNESS: My name is Patricia Starnes.

5 PATRICIA STARNES,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. PERRY:

9 Q Ms. Starnes, are you related to the Defendant,
10 Willie Starnes?

11 A Yes, sir. I'm his wife.

12 Q You are his wife? August of last year, August of
13 2013, were y'all still living together as husband
14 and wife?

15 A Yes, sir.

16 Q At some point did law enforcement get in touch with
17 you about an incident that took place last year on
18 August 24th, 2013?

19 A Sir?

20 Q At some point did law enforcement get in touch with
21 you about an incident that took place over on
22 Freeman Road in August of last year?

23 A Yes.

24 Q And how is it that they got in touch with you? Did
25 they come out and see you where you work? What did

1 they do?

2 A They come out to my job.

3 Q All right. And did they take you and talk with you
4 and interview you and stuff?

5 A Yes, sir.

6 Q Did you cooperate with them and tell them what you
7 knew about that situation?

8 A Yes, sir.

9 Q And you remember giving a written statement and
10 being interviewed?

11 A Yes, sir.

12 Q Okay. If you will, tell the Court about what
13 happened last August, on August the 23rd -- it was
14 Friday night -- of 2013?

15 A Let's see. Friday evening -- well, late Friday
16 evening -- it was around -- it had done got dark.
17 My husband was acting crazy. He done got all
18 bug-eyed and everything. And --

19 Q When you say acting crazy and bug-eyed, can you
20 describe that a little bit for the people on the
21 jury? It is kind of hard to understand exactly
22 what that means.

23 A Well, he was doing drugs at the time, so --

24 Q Okay.

25 A And kept wanting to know where my cell phone was.

1 So he looked for my cell phone. He got it off the
2 charge. And then he said he was going to go
3 outside and make a phone call.

4 And then all of a sudden I heard my truck
5 crank up and --

6 Q You say your truck. What kind of truck was it?

7 A It was a Chevy Tahoe. A black Chevy Tahoe.

8 Q Okay.

9 A And I ran out the door trying to stop him. And he
10 wouldn't stop. So he kept going. And then I
11 haven't seen him since Saturday night midnight,
12 about around midnight, so -- and then that is when
13 he came to my room and said that -- said something
14 about, What you going to do?

15 And I said, What you talking about?

16 And then he walked out of my room and then
17 went to the kitchen and then he came back into the
18 room and asked me again, fell to his knees, and
19 said, What you going to do?

20 And I kept saying, What you talking about?

21 And then I had to go to work that morning, and
22 so --

23 Q Do you remember him telling you about what he had
24 done Saturday?

25 A All he told me was that he done something bad.

1 That is all he said.

2 Q Okay. Do you remember talking to him about the
3 incident that happened on Freeman Road, people down
4 there taking pictures, that type thing?

5 A No, sir.

6 Q Okay. You and I haven't talked about this case
7 before -- in fact, we have never met before, have
8 we?

9 A Huh-uh.

10 MR. PERRY: Your Honor, I'd ask to approach
11 the witness.

12 THE COURT: Yes, sir. Let Mr. Kirincich see
13 what you are about to show her.

14 (Pause.)

15 BY MR. PERRY:

16 Q I ask you to take a look at something and tell me
17 if you recognize that.

18 A Yes, sir.

19 Q Okay. What does that appear to be?

20 A A written statement.

21 Q In your handwriting?

22 A Yes, sir.

23 Q With your signature?

24 A Yes, sir.

25 Q Both pages?

1 A Yes, sir.

2 Q Okay. And will you take a look at that statement
3 and see if it refreshes your recollection about
4 anything that he may have told you, specifically
5 about what he had done Saturday?

6 A All he said, he done some stupid -- some crazy
7 stuff.

8 Q Did you not write that he said that he had hit
9 someone on a Moped? Is that not your writing?
10 Down towards the bottom.

11 A Yes. Yes.

12 Q So he told you that night that he had hit someone
13 on a Moped?

14 A Well, that morning. Sunday morning.

15 Q Sunday morning?

16 A Uh-huh.

17 Q And you went on to work; correct?

18 A I sure did.

19 Q Okay. Do you remember how long it was before law
20 enforcement came and talked to you? A day or two?

21 A I think it was that Monday, if I'm not mistaken.

22 Q Okay. I believe your statement stated the 26th.
23 It would be that Monday.

24 MR. PERRY: Beg the Court's indulgence.

25 (Pause.)

1 MR. PERRY: Just one moment, Your Honor.

2 (Pause.)

3 (WHEREUPON, State's Exhibit Nos. 22

4 THROUGH 24 were marked for

5 identification only.)

6 BY MR. PERRY:

7 Q Ms. Starnes, I am going to show you what have been
8 marked as State's Exhibits 22, 23, and, 24 and just
9 ask if you can identify them. I am not trying to
10 put them into evidence through you. Does that look
11 familiar to you?

12 A Huh-uh.

13 Q That is not your Tahoe?

14 A Yes, that is my Tahoe. I'm just saying --

15 Q Okay.

16 A (Pause.) I can't recall any of them.

17 Q But that does appear to be a picture of your Tahoe?

18 A Yes, sir.

19 Q Okay. You recognize it by the license plate?

20 A Uh-huh.

21 Q Since that early morning Sunday hours whenever he
22 came in your bedroom and talked to you about this
23 and told you that he had hit somebody on a Moped,
24 did you have any discussions with Willie about
25 this?

1 A Later on, let's see, after I got off work. And
2 that's it.

3 Q That Sunday?

4 A Uh-huh.

5 Q What was the substance of that conversation that
6 you had whenever you got off from work?

7 A I can't recall.

8 Q Okay. Please answer any questions Mr. Kirincich
9 has for you.

10 THE COURT: Yes, sir?

11 CROSS-EXAMINATION

12 BY MR. KIRINCICH:

13 Q Ms. Starnes, I know the Solicitor handed you a copy
14 of your statement and you identified it. Did you
15 get an opportunity to actually read it to -- the
16 entire thing to refresh your recollection?

17 A No, I just overlooked it.

18 Q Would you like to read it before I question you
19 about it?

20 A Yes.

21 (Witness complies.)

22 Q If you can just look up when you are done.

23 (Witness complies.)

24 Q I'll get it back. If you need to look at it again
25 I'll give it back. I'm not trying to confuse you,

1 I am just trying to make sure we get this out
2 there.

3 Do you remember now telling law enforcement
4 through this written statement that not only did
5 your husband come in and tell you about it, but he
6 actually woke you up in the middle of the night to
7 tell you?

8 A No, he didn't tell me right then what he had done.
9 He just kept saying, I done -- he done some
10 stupid -- he done stupid -- something stupid.

11 Q Do you remember writing here?

12 A Yes, but what I'm saying, he told me that Sunday
13 when I said something about a girl came to work and
14 told me that they was taking pictures over there on
15 341.

16 Q All right, well, correct me if I'm wrong here, that
17 you wrote, I didn't see him until Saturday around
18 midnight?

19 A Yes.

20 Q And my husband Willie came and woke me up and said
21 he had done some stupid shit?

22 A Yes. That is what I was saying.

23 Q That is what you wrote down?

24 A Yes.

25 Q So he came in and woke you up Saturday midnight,

1 early Sunday morning hours?

2 A Uh-huh.

3 Q To tell you he had done some stupid shit?

4 A Yes. He never did say at the time what he did,
5 because I kept asking him and asking him what he
6 was talking about.

7 Q And then as you read here, you can probably
8 remember better, you went to work, or you told him
9 that somebody from work had mentioned something
10 about pictures being taken on 341?

11 A Uh-huh. That was after I came home from work.

12 Q And that is when he told you that he had hit
13 someone on a Moped?

14 A Yes.

15 Q And he said he was scared?

16 A Yes.

17 Q And --

18 A Talking about going our separate ways. And I asked
19 him why. He said maybe it is for the best.

20 Q It is not like you had to drag this out of him, he
21 woke you up to tell you he had done something
22 pretty stupid?

23 A (Nods affirmatively.)

24 Q And he thought you needed to know about it?

25 A Uh-huh.

1 Q And whenever you told him about the accident on
2 Freeman Road, he said that was him; right?

3 A Yes.

4 Q Thank you.

5 MR. PERRY: Nothing further for the witness.
6 I would ask that she be excused.

7 THE COURT: All right, ma'am, you may step
8 down.

9 Any objection to her being excused?

10 MR. KIRINCICH: None at all, Your Honor.

11 THE COURT: Thank you, ma'am, you are free to
12 leave.

13 (Witness steps down and is excused.)

14 MR. PERRY: The State would call Tom Borowski.

15 (Witness approaches.)

16 MR. PERRY: Your Honor, may we approach real
17 quick?

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

21 THE COURT: All right, ladies and gentlemen,
22 at this time we will go ahead and take our
23 afternoon break. It is about 3:30 now. And we'll
24 start back in about 10 or 15 minutes.

25 All right, thank you.

1 (WHEREUPON, the jury retires to the jury
2 room at 3:31 p.m.)

3 THE COURT: All right, is there something you
4 wanted to put on the record?

5 MR. PAULING: As to -- there were two
6 witnesses we were intending on calling. One being
7 Kukila Stanley, from SLED; the other is Michael
8 Moskal, also with SLED.

9 Your Honor, Kukila Stanley was with the Crime
10 Scene Unit of SLED. They didn't report to the
11 crime scene on the day of the incident to the
12 Sheriff's Office.

13 There are exhibits marked 8 through 18, Your
14 Honor, that the State and Defense have agreed will
15 come into evidence. These were photos that were
16 actually taken by -- when I say photos, these are
17 photos of the '99 Chevy Tahoe belonging to
18 Ms. Starnes. These photos were taken by SLED.
19 There is an agreement that these are in evidence.
20 There won't be any need for Ms. Stanley to testify.

21 Also Exhibits 19 and 20: 19 being an orange
22 panel piece of the Moped belonging to the Decedent,
23 Alan Robinson; 20 being the rubber molding of the
24 bumper from the Chevy Tahoe that was also analyzed
25 by SLED.

1 Michael Moskal's testimony would be that he
2 analyzed paint chips that were recovered from the
3 Tahoe, these paint chips being recovered by
4 Investigator Bailey. That, along with this
5 orange -- this panel from the Moped, these all were
6 taken directly to SLED by Investigator Bailey. It
7 was analyzed by Michael Moskal. And his findings
8 were that the paint chips that were recovered from
9 the Tahoe, my understanding is the passenger side
10 front area of the Tahoe, are consistent with the
11 paint that came from the Moped belonging to the
12 Decedent.

13 As far as the stipulation, we want the
14 stipulation to be as to that, that there was paint
15 transfer, but also just a stipulation that SLED
16 Crime Scene did investigate, did process both the
17 Tahoe and the Moped belonging to Alan Robinson.
18 And the findings of Michael Moskal would be the
19 results of those examination.

20 THE COURT: Is that correct?

21 MR. KIRINCICH: Everything Solicitor Pauling
22 said is correct, Your Honor.

23 THE COURT: All right. So you all are going
24 to put that on the record. Are you going to put
25 that before the jury, the stipulation? Or how do

1 Your Honor.

2 THE CLERK: Place your left hand on the Bible,
3 and raise your right hand, please.

4 (Witness complies.)

5 THE CLERK: Do you swear or affirm the
6 testimony you give in this case will be the truth,
7 the whole truth, and nothing but the truth, so help
8 you God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Thank you. Be seated in the
11 witness chair, and state your full name for the
12 record.

13 THE WITNESS: John C. Hunter.

14 JOHN C. HUNTER,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. PERRY:

18 Q All right, Mr. Hunter, if you will, tell the jury a
19 little bit about yourself. How old are you? Where
20 are you from?

21 A Thirty-six.

22 Q How long have you been living in this area?

23 A I'm 36 years old. I've been in Kershaw County most
24 of my entire life. Since I was probably nine or
25 ten years old I have been a resident of Kershaw

1 County. I have worked here. I have got family
2 here. I have got children here.

3 I am recently -- I'm in jail right now for
4 child support. It is cutting me real bad. I'm up
5 here now. I didn't make any deal. This was -- I'm
6 not here to make a deal or anything. The only
7 reason I brought this forward is because I feel
8 like it is just the right thing to do.

9 Q Let's talk about this real quick before we get into
10 the substance of this. Obviously you are in jail
11 now?

12 A Yes, sir.

13 Q For owing child support; right?

14 A Yes, sir.

15 Q But you have been charged with things and been in
16 jail before; right?

17 A Yes, sir.

18 Q And I think it is fair to say you have got a pretty
19 extensive record; right?

20 A Yes, sir.

21 Q In fact, whenever I go back and look at your
22 record, it looks to me like back in -- as far back
23 as '96, at least, you have got charges?

24 A '95, '96.

25 Q '95, '96? All right.

1 A Yes, sir.

2 Q It looks like you have got a burglary back then?

3 A Couple of them, yes, sir.

4 Q And you were convicted of that; correct?

5 A Yes, sir.

6 Q In fact, I believe that was two counts of burglary
7 that you were convicted of; correct?

8 A Yes, sir.

9 Q You have got a driving under the influence from
10 1996; correct?

11 A Yes, sir.

12 Q 2005, driving without a license; correct?

13 A Yes, sir.

14 Q How about -- it looks like 2006, another burglary?

15 A Well --

16 Q Is that correct?

17 A Yes, sir.

18 Q It shows where you are back in the Department of
19 Corrections?

20 A Yes, sir. That was a violation of probation.

21 Q That was a violation of probation?

22 A Yes, sir.

23 Q From the other charge that you had; correct?

24 A Yes, sir. I couldn't pay the restitution.

25 Q Right. And then you had a -- I want to be sure I'm

1 covering everything. I don't want to hold anything
2 back. You had a simple possession of marijuana it
3 looks like in 2009; right?

4 A Yes, sir.

5 Q 2010, a seatbelt violation?

6 A Yes, sir.

7 Q And you have got charges pending right now, don't
8 you?

9 A Yes, sir.

10 Q In Kershaw County?

11 A Yes, sir.

12 Q Tell us about those.

13 A I broke into Cassatt Water Company. I worked in
14 Charleston. I had -- I took my family and three
15 kids down there to live with me. We spent the week
16 down there. I spent the money that we had down
17 there with the promise of a job coming back to
18 Camden I had to do for a weekend. I come back that
19 weekend to do the job. The job was postponed until
20 the following weekend, so I couldn't make the
21 money. I don't have family to where I can go ask,
22 say, I need to borrow \$100 to get back to
23 Charleston. So I didn't -- I took it upon myself
24 to go to Cassatt Water Company. Instead of going
25 to the neighbor's -- my neighbor's house, because

1 they work just as hard for their money as I do
2 mine, so I went to the Cassatt Water Company and
3 took gas.

4 Q Well, you don't have to get into all those details,
5 but, nonetheless, it is fair to say you have had a
6 pretty extensive criminal record; right?

7 A Yes, sir. Yes, sir.

8 Q Okay. And those charges are still pending?

9 A Yes, sir.

10 Q All right. And previously you had offered to give
11 testimony in a murder case that ultimately ended up
12 pleading; correct?

13 A Yes, sir. I think it was two.

14 Q Okay.

15 A Yes, sir.

16 Q All right. And that was prior to you ever giving
17 any statements about this case?

18 A Yes, sir.

19 Q Correct?

20 A Yes, sir.

21 Q Okay. So, now, let's talk about this case in
22 particular. Back in August of 2013 is when this
23 case took place. Did you have occasion to find
24 yourself in jail at the same time as the Defendant?

25 A Yes, sir.

1 Q In this case? Mr. Willie Starnes?

2 A Yes, sir.

3 Q All right. And, if you would, tell the Court what
4 happened. Tell the Court your story about how that
5 went.

6 A I was in a holding cell at the time waiting to be
7 released. I was waiting to go home. And, well, he
8 came -- he was in there prior to me getting there.
9 I pulled up in -- I got in the holding cell and he
10 was like -- he was just laughing and giggling like
11 it was all a big -- and I thought he was in there
12 for something minor, for a minor charge. And he
13 was like, Well, ain't you heard? I'm a celebrity
14 inmate.

15 And I was like, Yeah? I said, Well, what are
16 you in here for?

17 And he says, Well, they got me charged with
18 murder.

19 And, well, I have been -- I have been in jail
20 several times, and that is -- to me, that is just
21 not something to be funny and laughing and giggling
22 about.

23 And he says -- he showed me his warrant. I
24 read his warrant and everything. And he was
25 like -- and I said, Well, yeah. Well, we was in

1 there for several hours. And, you know, we talked,
2 this and that. And over the time we was in there,
3 he said -- he told me what he done. He told me how
4 he was riding down the road. He was about half
5 drunk, or whatever. He had been drinking a little
6 bit. He was riding down the road. He seen the guy
7 riding a Moped and he thought it was a easy -- a
8 easy lick, or a quick lick, or something the way he
9 said it was like that.

10 And he said he pulled up beside him, he bumped
11 into the -- bumped him, run him off into the ditch.
12 He said he didn't try to hit him too hard because
13 he didn't want to mess up the Moped.

14 He said that when he seen the Moped he knew it
15 would be a quick fix or a quick lick, or something
16 like that. He said he stopped, he loaded up the
17 Moped.

18 And said -- and then he laughed and he said --
19 he made a comment, he said, They thought there was
20 another guy with me. He said, I wish there would
21 have been, I wouldn't have had to load that Moped
22 by myself. You should have seen me trying to load
23 that Moped by myself.

24 And I was like, Well, I -- and he just -- it
25 was just all fun and games. It was all funny. You

1 know.

2 And I -- even at that time he didn't reveal to
3 me that the gentleman was as old as he was. I
4 thought it was a young child out there. You know,
5 I thought it was like an 18- or 19-year-old boy
6 that he had done bumped off into the road, or
7 something, you know.

8 And -- but he just made it out like it was
9 just all fun and games, like it was just a big
10 joke, you know.

11 Q John, did you know Mr. Starnes before this
12 happened?

13 A No, sir, never laid eyes on him.

14 Q Did you have any personal beef with him or
15 anything?

16 A No, sir. Last night was the only time me and
17 Mr. Starnes there had any kind of words at all.
18 Well, last night I --

19 Q Last night?

20 A Yes, sir. I worked in the laundry in the
21 jailhouse. Like I say, I'm a trustee, because I'm
22 in there for child support. And I have got to do
23 another 19 days before I'm released. And last
24 night I was passing out uniforms and everything.

25 And the officer was standing there. He opened

1 the whole truth, and nothing but the truth, so help
2 you God?

3 THE WITNESS: I do.

4 THE CLERK: State your full name for the
5 record.

6 THE WITNESS: It is Thomas A. Borowski.

7 THOMAS A. BOROWSKI,

8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. PERRY:

11 Q Trooper Borowski, if you will -- obviously you are
12 employed with the Highway Patrol. Tell us about
13 your employment, how long have you been with them,
14 and what you have done through your career as a
15 highway patrolman.

16 A I have been with the Highway Patrol. And prior to
17 this I was with the City of Florence. I have 29
18 years in as of now. I started back in 1984 with
19 the City of Florence and went to the Highway Patrol
20 in 1988. And I have been assigned here in Kershaw
21 for 25 years. I moved up the ranks through here,
22 got promoted within, corporal to sergeant, first
23 sergeant. Now I have been assigned to
24 headquarters. I got -- I left the Camden area and
25 went to headquarters about three months ago. And

1 it is called regulatory and compliance. We make
2 sure everybody in the state is in compliance. And
3 we regulate things. Hence, the name of it.

4 Q Back in August of 2013, you were the first sergeant
5 for the Kershaw and Lee County area; correct?

6 A Yes.

7 Q And what does that entail being the first sergeant?
8 Explain to the jury, if you will, what exactly that
9 means, what your job responsibilities are.

10 A They call me the post commander. What I do is run
11 Kershaw and Lee County and all the troopers that
12 are underneath me. And I take care of the
13 scheduling, the courts. Anything disciplinary that
14 comes up, I'll do that. But basically an
15 administrator over the area.

16 Q As part of your job responsibilities, do you also
17 actually get out and work where the rubber meets
18 the road, so to speak, with the Highway Patrol?

19 A Yes. It is not often, but I do go out on the road
20 and still write, you know, write citations and
21 speeding, and stuff.

22 Q And did you have occasion in August of 2013 to be
23 involved in your capacity as first sergeant with
24 the investigation involving a collision that took
25 place out on -- out in the northeastern part of the

1 county, out in the Bethune area on Freeman Road?

2 A Yes, I did. And one --

3 Q Tell us about your involvement in that.

4 A Well, one of the things I also do is, any time we
5 have any -- everything has to get notified through
6 me so I can pass it up the chain of command. Any
7 time we have any bad collisions, fatalities or
8 anything involving vehicles, I'm the one that has
9 to respond most likely to make sure that things get
10 done. But that is one of the things I wanted to
11 say.

12 But my involvement was, I was notified by
13 Corporal McWhortor that we had a collision out
14 there on Freeman Road, which is a dirt road in
15 Bethune, the northern part of the county.

16 He just advised me that it was a -- probably a
17 hit-and-run with a larceny involved. And at that
18 time, when he called me, I think it was Saturday
19 night, it wasn't a fatality at the time, he just
20 said the guy was hurt and he was transported by air
21 to, I think Palmetto Richland Hospital.

22 And, you know, he just notified me. Normally
23 I don't do anything unless it had become a
24 fatality. Or if it is a felony DUI with great
25 bodily injury, then I get involved.

1 Q Talk about investigative responsibilities. In this
2 scenario that we're talking about, you know, a
3 motor vehicle colliding with a Moped, someone is
4 injured, possibly dying, maybe even eventually
5 dies, what is the dispositive factor, or what is
6 the determinative factor, I guess I should say,
7 with respect to whether or not the Highway Patrol
8 investigates a matter or whether or not Kershaw
9 County Sheriff's Department investigates a matter?

10 A If it is a collision -- if it is a collision that
11 just happens, it is a --

12 Q An accident?

13 A If it is an accident, then we work it. If it is
14 intentional, then we do not work it. Then we would
15 turn that over to the Sheriff's Department.

16 Q And is that just a policy matter with the Highway
17 Patrol, just a thing that you are tasked with
18 investigating versus other law enforcement
19 investigators?

20 A An intentional -- any intentional act when you are
21 driving a motor vehicle is not considered a
22 collision. And our -- you know, the Highway
23 Patrol's primary duties is to work traffic
24 collisions and to try to reduce fatalities and
25 issue summons, and stuff.

1 But we -- when we get into stuff that is where
2 it is -- where they do it on purpose, then that is
3 turned over to the Sheriff's Department, because it
4 is an assault with a vehicle.

5 Q Please continue telling us about your involvement
6 in this matter. And, if you would, please be
7 specific about, you know, how things developed and
8 the decision that was made to have Kershaw County
9 handle the investigation versus the Highway Patrol.

10 A Okay. Like I said, Corporal McWhorter called me
11 and just told me about the collision. That, you
12 know, it might be -- we'll be working in part
13 because it is going to be a hit-and-run, and the
14 other part would be a larceny.

15 The next day, which would be Sunday, I was
16 informed that the person on the Moped, he had died
17 as a result of the collision.

18 Then Monday morning I received a call from the
19 Chief Deputy, Marvin Brown, that they received
20 information about a collision that happened
21 Saturday night involving a Moped, that they found
22 the vehicle, and that they were going to send one
23 of his investigators over to come to my office over
24 in Camden and we'd ride together and go up to find
25 out some more information about this.

1 So Rick Bailey, with the Sheriff's Department,
2 came by in his pickup truck, and I just rode with
3 him, and we rode out to Cal-Maine, up in the
4 northern part of the county, to where we met with a
5 guy named -- I believe his name was Daniel. I
6 can't remember what his last name is. But he was
7 advising that he heard about this lady who has a
8 car there.

9 MR. KIRINCICH: Objection, Your Honor.
10 Hearsay.

11 THE COURT: Sustained.

12 BY MR. PERRY:

13 Q Go ahead and tell us about the investigation.
14 Nothing that he said to you, but just how the
15 investigation followed.

16 A We met with a manager. Then we went and talked to
17 a Ms. Starnes, I think Patricia. Talked to her
18 about the collision, and she gave us information
19 about it. And also the vehicle, which was there on
20 scene. It was there parked in the parking lot. We
21 did look at the vehicle, me and the deputy. We
22 did -- the vehicle was kind of a mess inside and
23 out. We did find on the right front bumper there
24 was a mark on it that looked like something was --
25 that somebody -- it was hit by something. And I

1 believe she said that at that time that was not
2 there. Other marks that I was pointing out she
3 would say that happened, that is old. And that was
4 one that was new.

5 We did interview her and talked to her about
6 it. And she told us who actually did do it. She
7 did tell us that Willie Starnes, her husband, is
8 the one that got involved in this collision with
9 the Moped.

10 Q Let's talk about that just a second. The damage to
11 the vehicle, the SUV, how would you characterize
12 that damage?

13 A It was minimal. It was just -- I don't know, four
14 to six inches, I guess, on the right front bumper
15 on the curve of the bumper itself, there was just
16 some damage.

17 Q At any time did you have occasion to view the Moped
18 in this case?

19 A No, I did not.

20 Q Okay. All right. So the damage to the vehicle, at
21 the very least, that you saw was minimal?

22 A Yes, sir.

23 Q Is how you would characterize it? Okay, go ahead
24 and continue with how the investigation proceeded.

25 A We talked with her and she told us about it. And

1 she actually had -- inside the vehicle she had an
2 ID card of her husband, which we had a picture of
3 now, we knew who he was, or had a picture of him
4 with his name and stuff on it, and his birthdate.

5 We then --

6 Q At this point had the decision been made to
7 investigate this as an intentional act versus an
8 accidental act?

9 A No, not at that time. We were just still kind of
10 up in the air. When I -- you know, we had
11 information to believe -- that is why we were both
12 together, because we are thinking it was more
13 than -- it was more of an intentional act than a
14 hit-and-run, but, you know, so we just worked
15 together because it is going to have to be one or
16 the other agency that is going to have to work it.
17 If it was going to end up as a hit-and-run, then
18 the Highway Patrol would have took over. And if it
19 ended up as an intentional act, then the Sheriff's
20 Department would take over.

21 Q Okay.

22 A So we left Cal-Maine, went to the Pates. I think
23 they live off Camp Road. And we talked to the
24 family. And the family gave us information, upon
25 talking to them, to believe that it was an

1 intentional act.

2 There were several people there. And we
3 talked to three or four of them, I imagine. And
4 one was -- I think one was William Pate. He is the
5 one that actually took us back to the scene. And
6 when we went back to the scene, he marked it with a
7 flower. I don't know if it was a red or orange
8 flower that he put on the side of the road. And we
9 went back. He showed us where it was. We went
10 back. Me and the deputy went back in his truck.
11 And, you know, the Sheriff's Department, they took
12 pictures of the scene. It was really just off the
13 right side of the road. Not much to it. Just the
14 dirt was kind of, you know, moved or shuffled. No
15 parts were left there. Nothing was on the ground.
16 We just kind of took a couple of pictures of the
17 distance from the road and, you know, and back and
18 the general area.

19 You know, the information we got in talking to
20 the family and talking to his wife, we believed it
21 was an intentional act. We believed that it was --
22 the reason is to take the Moped. So that is the
23 way it went.

24 From there, when we were sitting in the car,
25 or in his truck, we seen two men walking down the

1 road towards us.

2 When we started looking -- we looked at the
3 one fellow, who actually it was -- we looked at his
4 picture and looked at him and said, That is Willie
5 right there. He is walking right to us.

6 So we got out of the car and asked them to
7 come towards us. They did. We asked them their
8 names. He identified himself as Willie Starnes.
9 And the other one was Thomas Ott.

10 Rick Bailey got -- talked to Willie Starnes at
11 the front of his truck. I pulled Thomas Ott to the
12 back of the truck and I talked to him.

13 When I was talking to Thomas Ott, he really
14 didn't have anything to do with the collision. I
15 talked to him about it, what happened, did he see
16 anything, did he hear anything. And he absolutely
17 had nothing to do with it.

18 When I went back up to talk to Deputy Bailey,
19 he advised that Willie Starnes told him that, you
20 know, he is the one that did it. He was involved
21 using the truck.

22 So he was arrested at that time and taken to
23 the Sheriff's Department. I believe we called a
24 road deputy to come up and the deputy put him in
25 his -- in the marked vehicle and took him back to

1 the Sheriff's Department.

2 Q Again, at this time, had a decision been made to
3 work this as an intentional or accidental act?

4 A It was -- yeah, we were going to -- we were working
5 it as an intentional act.

6 Q What caused you to believe it was an intentional
7 act and therefore have the Sheriff's Department to
8 work it versus you guys continue to work it?

9 A Just by talking to Corporal McWhorter, what he told
10 me and what his wife had said, talking to the
11 family members about what they said, going out to
12 the scene. And it just -- one just led to another
13 just to believe it wasn't done as a hit-and-run.
14 It wasn't something where he just hit it and, you
15 know, took the Moped and left. It was determined
16 that he hit the Moped, the Moped fell on its side.
17 They obtained the Moped. He went down the road and
18 turned around and came back and subsequently ran
19 over the victim and left the scene.

20 Q I would direct you to the item that is here with us
21 that has been identified by several people as the
22 Moped that is in question in this matter. And if
23 you need to get up and come closer to look at it,
24 you can. You said that you really hadn't looked at
25 it very closely and examined it very much before.

1 I would ask you, if you could, to come and just
2 take a look at it. You looked at the vehicle, the
3 SUV?

4 A Yes, sir.

5 Q You saw it; correct?

6 A Yes, sir.

7 Q If you need to move around to see it better, you
8 can. But I just want you to kind of take a look at
9 it, if you will.

10 (Complies.)

11 Q I believe there was another piece that had been on
12 the Moped that I think had come off. They took it
13 off to have it examined. The piece that fits here
14 somehow, much the same way you can see the other
15 side. You can see.

16 (Witness returns to witness stand.)

17 Q How long have you been with the Highway Patrol
18 again?

19 A I have been with the Highway Patrol 25 years.

20 Q All right. And during the course of that time -- I
21 would assume that the nature of your job is such
22 that you work a lot of motor vehicle accidents?

23 A Yes, I have.

24 Q Worked a lot of accidents involving motor vehicles
25 versus motorcycles, motor vehicles versus Mopeds?

1 A Yes.

2 Q And I don't know that there is any typical, but
3 what do you normally see as far as damage to the
4 respective vehicles in these accidents and the
5 damage to those vehicles specifically?

6 A Most motorcycle crashes we have involving another
7 vehicle, there is a lot of extensive damages to
8 motorcycles when they get hit by a car. The person
9 who is on it usually goes -- flies off the -- off
10 these -- the Moped or motorcycle.

11 A lot of times there is a lot of damage
12 because of the -- I mean, you can look at that and
13 look at a truck hitting that. There is going to be
14 way more damage done to the Moped than there would
15 be a truck.

16 Q What sort of injuries do you typically see in folks
17 that are involved in those sorts of --

18 A Most injuries I see are head injuries. Most people
19 that we have that get involved with a crash with
20 motorcycles and Mopeds are head injuries.

21 Q Why is that?

22 A Just because of the momentum. It always seems like
23 the head goes first. It always hits the pavement.
24 That is normally what happens. And that is -- we
25 don't have, you know -- or if it hits it on -- if

1 they are riding and they hit it, they are going to
2 have a leg injury. Usually it is a broken leg. Or
3 when they fly off it is mostly head injuries. That
4 is why we always suggest they wear helmets.

5 Q And the damages to this Moped, the vehicle that you
6 observed, again, how would you characterize those?

7 A I mean, both of them -- I mean, they look minimal.
8 Most of the times when you look at vehicles that
9 flip or get hit or tossed, you look if the mirrors
10 have been broken, if the handlebars are bent in, if
11 the seat falls off. A lot of time the seats fall
12 off. You know, there is no -- I don't know how it
13 was at the time, but just looking at it now, there
14 doesn't seem as much damage to the vehicle.

15 Q Based on what you saw of these two vehicles, would
16 you have expected the rider of the Moped to have
17 been killed?

18 A No. Minimal damage. Minimal damage and minimal
19 speed. There was no -- I think we looked at the
20 scene. It all happened in a 3-foot area. So it
21 wasn't -- there was no high speed to it or any
22 excessive speed. If a vehicle hit another vehicle,
23 the momentum of the person on the Moped or on the
24 motorcycle is going to push them forward or push
25 them backwards. It just depends on the angles.

1 Q So you wouldn't have expected the rider to have
2 been killed in this situation?

3 A No. Unless there was medical -- I mean, he just --
4 if he just fell off. It just looked like he got
5 bumped off it.

6 Q Are you familiar at all with the injuries that were
7 sustained by the rider in this case?

8 A Other than what was told.

9 Q Okay.

10 A Yeah. Other than that, no. I didn't go to the
11 hospital or anything like that.

12 Q So you didn't actually go to Richland Memorial?

13 A No, I did not.

14 Q I take it you weren't involved with any of the
15 autopsy, or any of that stuff?

16 A No.

17 MR. PERRY: Beg the Court's indulgence.

18 (Pause.)

19 BY MR. PERRY:

20 Q Trooper Borowski, were you involved at all with the
21 interview process with this Defendant?

22 A Yes.

23 Q So you were there?

24 A Yes, I was there.

25 Q At all times during your involvement with that, was

1 Investigator Bailey there? Was he the one that
2 was, I guess, conducting the interview?

3 A Yes, he was conducting it. I was just there. We
4 just wanted to make it 100 percent sure that it was
5 actually a Sheriff's Department case or it was
6 intentional.

7 MR. PERRY: Nothing further for this witness
8 at this time, Your Honor.

9 BY MR. PERRY:

10 Q Please answer any questions Mr. Kirincich has for
11 you.

12 CROSS-EXAMINATION

13 BY MR. KIRINCICH:

14 Q Trooper Borowski, there was no accident
15 reconstruction, there was no report done as to
16 actually the speeds of these two vehicles at the
17 time of the collision, was there?

18 A There was not.

19 Q There is nothing to indicate at which angle
20 Mr. Robinson was hit, what his body position was on
21 the Moped when he was hit, is there?

22 A No.

23 Q Okay. And there is damage? I mean, this whole --
24 this panel is completely cracked; right?

25 A It -- yes, it is.

1 A I have more authority at the office than
2 Investigator Bailey, yes, sir.

3 Q More authority to cut deals?

4 A We don't cut deals. We leave that strictly up to
5 the Solicitor's Office. Once they are charged, we
6 leave it up to the Solicitor's Office.

7 Q That's it. You get to decide what somebody is
8 charged with at first, don't you?

9 A I don't decide it. The case itself and the law
10 decides it. We charge them by what the law will
11 allow us to charge them.

12 Q And this case came in as a hit-and-run with a
13 larceny; right?

14 A It came in -- it was called in as a possible
15 hit-and-run, yes, sir.

16 Q And that is why your office decided that Highway
17 Patrol should investigate it first; correct?

18 A Highway Patrol -- after my deputy got out there,
19 Highway Patrol was called also, because that is
20 what the call came into, is what I was told.

21 Q Okay. And when this tip came in that somebody
22 should talk to Ms. Starnes --

23 A Uh-huh.

24 Q -- at Cal-Maine --

25 A Right.

1 Q -- the Sheriff's Office went back out there; right?

2 A I went to Cal-Maine.

3 Q After telling Sergeant Borowski?

4 A That's when I called Sergeant Borowski and told him
5 I had some other information to get him to ride
6 with me out to Cal-Maine.

7 Q Okay. Did anything that you received with that tip
8 change this from a hit-and-run with a larceny to a
9 murder charge?

10 A What do you mean *received*?

11 Q I mean, you went back out there. You said Highway
12 Patrol was going to investigate a hit-and-run.
13 Were you going out there to investigate the
14 larceny?

15 A I was going out there to investigate the
16 information that was given to me to see what she
17 was talking about.

18 Q Just that she knew -- she had information on who
19 did this?

20 A Yes.

21 Q Mr. Starnes, in his interview; the part that you
22 saw, said this was an accident, that he didn't mean
23 to do it, that he was both drunk and high, hit a
24 bump on this road; right?

25 A That is what he told them, yes, sir.

1 Q But because you didn't believe that was the right
2 answer to the question, you decided to go in there
3 and -- I don't know if take over the interview was
4 the right thing, but Investigator Bailey moved out
5 of his seat and you got in his seat; right?

6 A Yes, sir.

7 Q You identified yourself to Mr. Starnes?

8 A Uh-huh.

9 Q Said that you knew his children from church?

10 A Uh-huh, yes, sir.

11 Q Told him you had gone and talked to his mom?

12 A Yes, sir.

13 Q Do you think it is possible that he knew that you
14 were the Chief Deputy, the Number 2 man?

15 A No, sir, I don't -- I really don't think
16 Mr. Starnes knew exactly who I was at first, until
17 I told him. And then I think he got -- you know,
18 he knew who I was then.

19 Q Then he knew who you were?

20 A Yes. I don't even know if I ever told him I was
21 Chief Deputy. I may have, but I don't remember if
22 I did.

23 Q And I'm not sure that that would have registered
24 with him if you had said Chief Deputy, would it?

25 A No.

1 Q If you said, I'm the Number 2 guy, that registers,
2 but --

3 A I don't even know -- I don't recognize myself as
4 the Number 2 guy.

5 Q It was after that break, that ten-minute break
6 where you and Sergeant Borowski and Investigator
7 Bailey got up, you know, and gave Mr. Starnes that
8 ten minutes to think about his story, he comes back
9 in -- or you come back in, excuse me. That is when
10 he asked you about murder? Or you may have said
11 something about murder before. And you said, There
12 is something that concerns me. Why did you ask if
13 this was to be a murder charge?

14 Do you remember that?

15 A I don't specifically remember it, no, sir.

16 Q You don't remember that?

17 A No.

18 Q And what point did the Sheriff's Office decide that
19 this was a murder case?

20 A I guess after we got through with the investigation
21 of it and got to talking to him and he finally got
22 with Investigator Bailey and told him that he was
23 the one that did it. Investigator Bailey was --
24 finally got it out of him that he was the only one
25 that was there.

1 (Witness approaches.)

2 THE CLERK: Place your left hand on the Bible,
3 and raise your right hand, please.

4 (Witness complies.)

5 THE CLERK: Do you swear or affirm the
6 testimony you give in this case will be the truth,
7 the whole truth, and nothing but the truth, so help
8 you God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Please have a seat in the witness
11 chair, and state your name for the record.

12 THE WITNESS: My name is Kristen Nathe.

13 KRISTEN NATHE,
14 after being duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. PAULING:

17 Q Is that N-A-T-H-E?

18 A Yes.

19 Q How are you doing?

20 A Good. Thank you.

21 Q Would you please tell the jury, ma'am, where you
22 are from?

23 A I'm originally from Dayton, Ohio.

24 Q And where are you currently employed?

25 A I currently work for Palmetto Health Richland.

1 Q Okay. And what is your position there?

2 A I'm one of the orthopedic surgery resident
3 physicians.

4 Q And what does that mean?

5 A So a resident physician is essentially an
6 apprenticeship program to be certified, legally
7 certified as a physician, but to train into
8 orthopedic surgery as a specialty.

9 Q Let's go back a little bit. If you could tell the
10 jury what your educational background is.

11 A I went to medical school, Wright State, in Dayton,
12 Ohio, which was four years. And then came down
13 here for a residency. So I am currently a fourth
14 year resident physician at the hospital.

15 Q Okay. And I apologize. You did your undergraduate
16 where?

17 A University of Kentucky.

18 Q Okay. And med school at Wright State?

19 A Yes. Correct.

20 Q And as far as -- well, just tell the jury, in med
21 school -- and I'm not talking about every subject,
22 every book, but what is it essentially that you
23 would study during your time in med school?

24 A So in our time in medical school you study
25 essentially everything relating to the body, from

1 diseases, infection, pediatric things, adult
2 injuries -- the whole scope of medicine,
3 essentially -- within four years.

4 Q And once you graduate is when you begin your
5 residency?

6 A Yes.

7 Q And if you could explain, what is residency? How
8 long does that last? What is the purpose of a
9 residency?

10 A So a residency is when you pick your determined
11 field that you want to be in within medicine,
12 whichever specialty that you want to do. And so it
13 is varying lengths of time. For orthopedic surgery
14 it is five years. And so in that time you learn --
15 specifically just study orthopedic surgery.

16 Q And currently what year are you in? Of this five
17 years, what year are you in?

18 A I'm in my fourth year.

19 Q In your fourth year. All right. Now, if you could
20 just kind of explain to the jury, your first year
21 residency, what all does that entail? I mean, what
22 do you get to do during your first year of
23 residency?

24 A So your first year of residency is a lot of
25 reading, learning about the specialty itself, when

1 you are in the operating room, getting to scrub in
2 on cases, but not getting to do a majority of it.
3 So a little bit more of a shadowing-type physician.
4 We still can write prescriptions and see patients
5 on our own, but more -- much more supervised.

6 Q You said you could write prescriptions. So you are
7 licensed?

8 A Yes.

9 Q Even at that point?

10 A Yes.

11 Q But you are supervised; is that correct?

12 A Yes.

13 Q And, now, during your second year of residency --
14 I'm assuming you build upon the other. So what
15 happens in your second year of residency? Are you
16 given more duties? More responsibilities?

17 A Yes. So as you advance you are able to do more
18 things on your own, especially in terms of the
19 surgical setting in the operating room. You are --
20 in your second year we take call by ourselves in
21 the hospital, so we will be the only orthopedic
22 physician in the hospital at that time to see any
23 sort of patients with any injury. So it just
24 continues to keep advancing.

25 Q When you say take call, is that one particular

1 facility or are you on a rotation?

2 A My second year we took call at both the Dorn VA
3 here in Columbia and at Richland. But halfway
4 through my second year we changed and now we only
5 take call at Richland.

6 Q And just to give an example, if you were on-call
7 and you had a patient come in -- and I'm talking
8 about during your second year --

9 A Uh-huh.

10 Q -- what all would you be able to do? Or what would
11 you do?

12 A So it would be the same both my second and third
13 years. You would get a call either from the
14 emergency department or another physician, go to
15 see the patient. So you would do a full history in
16 terms of asking them how their injury happened or
17 where their pain is located. All their extensive
18 medical history. You would physically examine the
19 patient so -- to look for any sort of injury. Get
20 any sort of imaging studies that you would need to
21 evaluate further. And then kind of make a decision
22 based on all the information that you have gathered
23 at that point.

24 Q Okay. And you say make a decision. Is that part
25 of a treatment plan?

1 A So, yes. So, for instance, whether or not in your
2 opinion somebody needs surgery, whether they don't
3 need surgery, whether you think that it is a
4 condition that needs to be hospitalized or whether
5 they can go home and be seen at an outpatient
6 clinic. So --

7 Q And when you would formulate that treatment plan,
8 would you run that by another doctor?

9 A So if it is something that you think needs surgery,
10 it gets run by either a chief resident that is on
11 call, which is somebody who is a fourth or fifth
12 year, or your supervising attending physician.

13 Q And you mentioned chief resident. Is that your
14 position now?

15 A Yes.

16 Q Now, during your residency, I guess these last
17 three years, if you could -- approximately how many
18 patients have you seen, do you think you would have
19 seen, treated?

20 A At least several thousand.

21 Q And on a typical day, when you say you are on-call
22 on a typical day, how many patients might you have
23 come in contact with?

24 A During a typical day on-call you will still do your
25 normal work day, and then you are on-call for 28

1 hours. So on average I probably did about ten
2 consults a night.

3 Q And you say 28 hours. You are talking about 28
4 straight hours you are on-call?

5 A Yes.

6 Q And when you say consult, what does that mean?

7 A Number of patients that I was asked to see.

8 Q Okay. Okay. And the area that you were working in
9 is orthopedics; is that correct?

10 A Yes.

11 Q Okay. And what is that? What is orthopedics?

12 A So any injury, pains relating to the
13 musculoskeletal system, so your muscles, tendons,
14 bones, ligaments.

15 Q And as far as surgery is concerned --

16 A Uh-huh.

17 Q -- during these past three or four years, have you
18 participated in any facet in surgery?

19 A Yes.

20 Q Okay. And can you explain to the jury to what
21 degree? And how many?

22 A So at this point I've done over 1,000 cases. And
23 so, again, you work your way up, so there would be
24 holding things for other physicians, helping keep
25 the field clear by suctioning off any fluids,

1 suturing or sewing, putting stitches at the end.

2 So at the point now a lot of surgeries I can do on
3 my own, or will be supervised and perform on my
4 own.

5 Q Well, let's say your first year.

6 A Uh-huh.

7 Q Do you recall -- well, let me ask you this. Do you
8 keep a case log of how many --

9 A Yes. We have a specific case log.

10 Q Let's say your first year. Do you recall how many
11 surgeries you were able to assist in?

12 A Approximately 150.

13 Q And then your second year?

14 A About 450.

15 Q And these are surgeries of any varying degree?

16 A Yes.

17 Q Okay. And I don't know if I can define minor
18 surgery or major surgery, but typically what type
19 of surgery are we talking about?

20 A It varies depending on what physician you are
21 currently being supervised by. So sports medicine,
22 surgeries like ACL injury or a tendon rupture. It
23 can be major trauma cases, broken bones. Pretty
24 large variance.

25 Q And back in August of last year, August of 2013,

1 that would have been -- you would have already, I
2 guess, started your third year; is that correct?

3 A Third year.

4 Q Third year residency? Where were you assigned back
5 in August of 2013?

6 A Good question.

7 Q And when I say where were you assigned, I guess I'm
8 saying, would you have been at one particular
9 hospital for six months at a time or --

10 A I was at Richland Hospital for that entire year.

11 Q Okay. And as far as August 24th is concerned,
12 August 24th of 2013, do you recall working that
13 particular day?

14 A Yes, I was on-call that night.

15 Q And you still would have been -- I guess been
16 supervised by another doctor; is that correct?

17 A Yes.

18 Q And do you recall who that would have been?

19 A That was Dr. Robert Campbell.

20 Q And, now, you are employed with Palmetto Health; is
21 that correct?

22 A Yes.

23 Q Now, Dr. Campbell, is he also employed with
24 Palmetto Health?

25 A No.

1 Q Do you know where he was employed at the time?

2 A He is a contract physician that does locum tenens,
3 somebody that comes in to fill a temporary void and
4 comes in to take call for the weekends.

5 Q Okay. Locum tenens. I don't know if that is Greek
6 or Latin or what. What is -- can you tell the jury
7 what that means?

8 A I think it is a physician's specialty group, I
9 think.

10 Q Oh.

11 A That places physicians in temporary positions
12 across the country.

13 Q Okay. All right. But you said across the country?

14 A Yes. So you apply to be kind of a temporary
15 physician. But he only worked locum tenens at
16 Richland. He had another full-time practice
17 elsewhere.

18 Q Now, even in that capacity, would he have been
19 there the entire year, or six months, or how often
20 would he have been at Palmetto?

21 A I believe that year he took call approximately four
22 weekends total.

23 Q Four weekends total?

24 A At our hospital.

25 Q At your hospital?

1 A Uh-huh.

2 Q Is he in South Carolina now? Do you know?

3 A No.

4 Q Do you know where he is?

5 A I believe his practice is in Connecticut.

6 Q In Connecticut. But, again, you were working on
7 August 24th or 23rd being under the supervision of
8 a Dr. Robert Campbell?

9 A Yes.

10 Q And did you have the occasion to come in contact
11 with a patient by the name of Alan Robinson?

12 A Yes.

13 Q And if you would explain to the jury how that came
14 about.

15 A So the general surgery trauma team had called me or
16 paged me to consult on him after they identified
17 that he had had pelvic fractures.

18 Q Okay. Before we get there, if you have an
19 individual who comes -- is admitted to the hospital
20 in the trauma unit, is there, I guess, one set of
21 doctors that sees them throughout, or does that
22 patient, depending on their injuries, see a variety
23 of doctors?

24 A Will likely see a variety of doctors, but there is
25 one group that will globally coordinate their care.

1 Q And you had indicated that you were to consult with
2 him after it was found that he had extensive health
3 injuries; is that correct?

4 A Yes.

5 Q And whenever you do a consult with a patient, do
6 you make a record of that some way?

7 A Yes.

8 Q And how is that done?

9 A So electronically. So you dictate a full
10 consultation report, which will then be uploaded
11 once it is typed out into the electronic medical
12 record, as well as a short handwritten medical
13 record note that I put in.

14 Q Okay. But your notes would go with the entire --
15 and I say case file, but the entire medical record?

16 A It will go into the full medical record, into the
17 patient's chart, yes.

18 Q And, Dr. Nathe, in this particular case regarding
19 Alan Robinson, have you had an opportunity to
20 review that particular record?

21 A Yes.

22 MR. PAULING: Beg the Court's indulgence.

23 (Pause.)

24 BY MR. PAULING:

25 Q Now, Dr. Nathe, you can describe for the jury the

1 consult that took place with Alan Robinson back on
2 August 24th of last year.

3 A Yes. So I was called when the patient was in the
4 operating room for emergent surgery by the general
5 surgical team, and asked me to see the patient
6 based on pelvic injuries. So I had seen the
7 patient in the post-operative care unit where he
8 was already intubated, sedated, meaning that he
9 couldn't interact with me in terms of answering any
10 sort of questions.

11 So I did a full body exam, documenting
12 bruising and any sort of cuts or abrasions to the
13 patient, as well as any sort of a physical exam.

14 Q And what were the results of that physical exam?

15 A So I did not see any bruising or abrasions in the
16 hip or pelvic area. He did have a significant
17 amount of bruising --

18 THE COURT REPORTER: I'm sorry, you need to
19 speak up.

20 THE COURT: Yes, if you can speak into the
21 microphone.

22 A He had no bruising in his hip or pelvic area. He
23 did have bruising noted on his left ankle, with a
24 significant amount of swelling.

25 He was unable to physically assist me in the

1 exam, so I moved every joint and felt every bone in
2 his body to make sure that nothing else was broken
3 that we needed to investigate further. I did not
4 notice any other obvious broken bones except for
5 the left ankle.

6 He was unable to tell whether he had any sort
7 of motor movement or sensation to his extremities
8 since he was unable to interact with me.

9 So based on that, really the main physical
10 findings, just looking at him on exam, were
11 bruising and swelling to the left ankle.

12 Q And you mentioned that you didn't find any other
13 fractures.

14 Prior to you treating Mr. Robinson, did you
15 have information regarding the pelvic fractures?

16 A Yes.

17 Q Okay. And what information was that?

18 A At that point in time all I had was a X-ray that
19 was taken when he first came into the trauma bay,
20 which showed he had bilateral, meaning both left
21 and right side, superior and inferior pubic rami
22 fractures. It also indicated it looks like he had
23 some fractures going into his sacroiliac joints.

24 Q Okay. That is a mouthful. I'm going to ask you to
25 kind of break that down and explain that a little

1 further to the jury.

2 And the best I can do is take the first thing
3 you said. What type of fracture was that again?

4 A So the global conglomerate of fractures was
5 consistent with something called a lateral
6 compression Type II injury to the pelvis. But he
7 had pubic rami fractures. So it is the interior
8 part of your pelvis, your pubic ring gets broken.

9 Q Isn't that that side(indicating)?

10 A Yes.

11 Q Front side?

12 A Front side.

13 Q On the front side?

14 A Uh-huh.

15 Q That was broken?

16 A Right.

17 Q Okay. And you mentioned this lateral
18 compression --

19 A Uh-huh.

20 Q -- fracture?

21 A So he also had fractures on the back side as well.
22 Those are the ones going into the sacroiliac
23 joints.

24 Q Where is the sacro --

25 A Sacroiliac joints.

1 Q Sacroiliac joints. Where is that?

2 A So it is the joint that connects your pelvis to
3 your sacrum. The sacrum is the lowest part of your
4 spine.

5 Q And I know I stopped you, but you were mentioning
6 the lateral compression?

7 A Yes.

8 Q Lateral compression?

9 A Lateral compression Type II fracture.

10 Q Type II fracture. What is that?

11 A We have classifications for the fractures that we
12 use, or that we see. And it is a fracture
13 typically of one side of the pelvis in which you
14 see the pubic rami fractures that are vertically
15 oriented in the front, as well as fractures that
16 are down through the SI joints posteriorly, which
17 is called a crescent fracture.

18 And so he had those actually bilaterally, so
19 the same consolation of fracture pattern on the
20 right and left side of his pelvis.

21 Q You mentioned that every fracture has a
22 classification system. And let me back up. You
23 saw all that by looking at the X-ray; is that
24 correct?

25 A So not the specific classification system. I was

1 able to determine that after a CT scan, but --

2 Q After --

3 A After CT scan, but --

4 Q So there was further testing that you did?

5 A Yes.

6 Q Okay. Now, but you mentioned every fracture has a
7 classification system. Is there a journal,
8 handbook, is there a reference book that you, you
9 know, consulted to determine the type of fracture?

10 A Yes. There is multiple. The one I typically use
11 is called the Handbook of Fractures. You can also
12 use a set called Rockwood and Green's Fractures.
13 And there is also another large 4-volume set called
14 Skeletal Trauma.

15 Q But the Handbook of Fractures is the one that you
16 use?

17 A Correct.

18 Q And that is the one I assume you studied many times
19 over?

20 A Yes.

21 Q Is that one that is widely accepted in your field
22 of training in orthopedics?

23 A Yes.

24 Q And, now, every fracture has a classification
25 system. And I understand you to say it was a

1 bilateral compression Type II. I understand that.
2 But what does that tell you about -- if anything,
3 what does that tell you about the impact of the
4 injury?

5 A So typically that is an injury that is a blow from
6 coming from the side, so typically it is a
7 impact -- blunt trauma impact to the side of the
8 body, not from the front, but from the side. And
9 typically you see that just on one side of the
10 pelvis.

11 Q But in this case did you see it on just one side of
12 the pelvis?

13 A No, it was on both sides.

14 Q The fact that it was on both sides of the pelvis,
15 what did that indicate to you?

16 A So that usually means that he would have had trauma
17 to both sides of the pelvis or some sort of a crush
18 injury or being pinned on both sides where he had
19 kind of equal force on both sides of the pelvis.

20 Q Pinned on both sides at the same time?

21 A Likely it would have been at the same time. But it
22 would be hard to determine that based on just the
23 images.

24 Q Okay. But based on the images -- is that
25 consistent with just being hit on one side?

1 A Not just a isolated direct blow to one side, no.

2 Q You mentioned those particular fractures. Was
3 there any other type of fracture that you found?

4 A Yes. He also had a clavicle fracture, so a
5 collarbone fracture.

6 Q Okay. And you said collarbone fracture. And I
7 assume you are right-handed?

8 A His --

9 Q Which side was his on?

10 A His was on the left side.

11 Q On the left side? Now, you said it was a clavicle
12 fracture. By looking at -- and you saw that on the
13 X-ray and CT scan?

14 A Yes.

15 Q Okay. Could you determine from looking at that --
16 is that the type of injury that is caused when you
17 are, say, bracing yourself or --

18 A It can.

19 Q -- or is it an impact?

20 MR. KIRINCICH: Objection. He is leading this
21 witness.

22 THE COURT: All right. Yes, sir.

23 BY MR. PAULING:

24 Q What type -- how would that injury occur?

25 A So multiple different ways. It can be a direct

1 force onto your shoulder. It can also be falling
2 onto an outstretched arm. Those are the most
3 common ways that that injury happens.

4 Q And if it was falling on an outstretched arm, would
5 you assume it would be the left arm?

6 A Yes.

7 Q And if it were a direct impact, would you assume it
8 would be coming from the left side?

9 A Yes.

10 Q Dr. Nathe, I know you indicated earlier that this
11 was -- this examination was post-op; is that
12 correct?

13 A Yes.

14 Q Okay. Do you know what type of operation that Mr.
15 Robinson had just come out of?

16 A Yes. I had discussed that both with the trauma
17 surgeons as well as looked at their documentation.
18 So he had had an exploratory laparotomy, which
19 means opening up the entire abdomen and looking at
20 your entire abdominal contents for any sort of
21 bleeding or injury.

22 Q And did he have some injury to his abdomen?

23 A Yes. He had multiple tears of his small and large
24 bowel, as well as significant areas of blood
25 vessels that were bleeding.

1 Q And as far as surgery is concerned, did you -- and
2 I guess prior to your examination --

3 A Uh-huh.

4 Q -- were you asked -- and you may have testified to
5 this -- but were you asked to assist in any manner
6 as far as I guess post-op regarding this injury or
7 surgery?

8 A Not from his surgery. I was just asked to
9 specifically treat him for the pelvic and clavicle
10 fractures.

11 Q Are you aware of who actually performed the
12 laparotomy?

13 A The first one performed by Dr. Bynoe.

14 Q Say that again, I'm sorry?

15 A Dr. Raymond Bynoe.

16 Q And, now, as far as Dr. Bynoe, is he employed with
17 Palmetto Health?

18 A Yes.

19 Q Okay. Does Dr. Bynoe work in Palmetto Health at
20 this time?

21 A No. He is currently on sick leave.

22 Q But, again, this was all information you would have
23 had?

24 A Uh-huh.

25 Q Prior?

1 A Uh-huh.

2 Q Now, as far as, I guess, anatomy is concerned, you
3 indicated that Mr. Robinson had these injuries to
4 his abdomen. You said there were tears where
5 again?

6 A In the mesentery, so that would be kind of the base
7 that connects all the bowel loops together. That
8 is where most of the big blood vessels -- that is
9 where the blood vessels to the bowels run, as well
10 as some of the kind of intra-abdominal fat.

11 Q Now, where is that -- I guess this is basic Anatomy
12 101 -- but where is that in reference point to
13 the --

14 MR. KIRINCICH: Objection, Your Honor. She
15 performed consultation as an orthopedic surgeon.
16 He is asking her about the surgery and the injuries
17 that were observed by Dr. Bynoe and the trauma
18 staff.

19 MR. PAULING: No, I'm not. Your Honor, may we
20 approach?

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

24 MR. KIRINCICH: Your Honor, Solicitor Pauling
25 at the bench conference explained what his next

1 question would be. I withdraw my objection.

2 THE COURT: All right.

3 BY MR. PAULING:

4 Q Doctor, all I'm asking is you tell the jury
5 where -- you mentioned the injuries he had --

6 A Uh-huh.

7 Q -- to the bowels. Where is that? When I say where
8 is that, as far as the bowel, where is that in
9 relation anatomically to the pelvic region?

10 A So the pelvic region is a ring that consists of
11 anterior and posterior. It does hold some of the
12 bowel and contents of the bowel. The rest of it is
13 above in the abdominal compartment. But the
14 bladder, the colon, part of the bowel, the large
15 intestine, and some of the bowel loops would be in
16 the, what we call the intra-pelvic region. It is
17 hard to say because the small bowel typically is
18 above the pelvic region. The large bowel is
19 usually partly within the pelvic region.

20 MR. PAULING: Beg the Court's indulgence.

21 (Pause.)

22 BY MR. PAULING:

23 Q Thank you, Dr. Nathe. Please answer any questions
24 Mr. Kirincich may have.

25 CROSS-EXAMINATION

1 credibility you believe is appropriate.

2 All right. Yes, sir, you may continue.

3 MR. PAULING: Thank you, Your Honor.

4 BY MR. PAULING:

5 Q Now, Dr. Durso, were you employed with PPS back in
6 August of 2013?

7 A Yes, I was.

8 Q Okay. And as far as that practice is concerned,
9 are there other doctors in that practice?

10 A Yes. There are -- at the time there were two
11 forensic pathologists, as well as I think about ten
12 surgical pathologists.

13 Q And as far as an autopsy is concerned, I mean, are
14 you in a rotation? I guess if there needs to be an
15 autopsy performed, how is it that you are assigned
16 at that particular point?

17 A So usually we take call for a week or two at a
18 time, and so whoever is on that week -- whatever
19 autopsies come in, they would be assigned to that
20 pathologist.

21 Q Okay. And do you recall being -- do you recall
22 being on-call the week of, I guess it was
23 August 26th?

24 A Yes.

25 Q Okay. And do you recall performing an autopsy on

1 the decedent, Alan Robinson?

2 A Yes. I did perform an autopsy on Alan Robinson on
3 August 26th, 2013, at 9:00 o'clock in the morning.

4 Q Okay. And as far as autopsies are concerned, what
5 information do you get either prior to or in
6 conjunction with receiving the body?

7 A Well, typically we are contacted by the Coroner's
8 Office, since they are the ones requesting us to do
9 the autopsy. So I was contacted by the Kershaw
10 County Coroner's Office and stated that
11 Mr. Robinson had expired at Palmetto Health
12 Richland, which is where I do the autopsies at.
13 And wanted to know if we could do the autopsy
14 there.

15 And so, because, you know, I work at Palmetto
16 Health Richland, I have access to the electronic
17 medical records, so I was able to pull up his
18 medical records from his treatment there and review
19 that prior to the autopsy.

20 Q And as far as autopsy is concerned, did you
21 perform -- when I say perform by yourself, was
22 there anybody else there with you observing or --

23 A Yes. There is an autopsy assistant that helps me
24 move and lift the bodies because I'm not actually
25 strong enough to do that all the time. And then

1 there is typically a representative from the
2 Coroner's Office there to take pictures and collect
3 evidence if they need to.

4 Q Okay. Can you explain to the jury just the steps
5 you go through when performing an autopsy?

6 A Sure. So we start out, you know, making sure we
7 have the correct body, the decedent. We look for
8 identifying marks on the body bag.

9 After opening the body bag, we just start with
10 our external examination. So we'll get the body
11 weight, the body length, eye color, hair color, any
12 identifying marks such as tattoos, scars. And then
13 we start looking at injuries, any injuries in the
14 body, abrasions, scrapes, bruises.

15 After we complete that, we make a large
16 incision that comes from both shoulders down to the
17 middle of the sternum and down.

18 Q Dr. Durso, I am going to slow you down.

19 A Oh, sure.

20 Q It is my fault. Let me ask you this. When you
21 conduct the autopsy, do you -- I mean, I guess, do
22 you prepare notes or do you -- is there a diagram
23 of any sort?

24 A So my external exam, I basically -- I have a blank
25 diagram, based on whether it is male or female.

1 And I basically take notes on my diagram and kind
2 of draw out where the injuries are, what my
3 measurements are, and the location, yes.

4 Q Is that before you actually start the incision that
5 you were describing?

6 A Yes.

7 Q Okay.

8 (Pause.)

9 MR. PAULING: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes, sir.

12 (Complies.)

13 BY MR. PAULING:

14 Q Dr. Durso, I am going to show you what is marked
15 for identification purposes as State's 25.

16 A Uh-huh.

17 Q And ask you if you recognize that particular
18 document, ma'am?

19 A I do.

20 Q And what is that?

21 A It is a copy of the external exam diagram I
22 prepared at the time of the autopsy of Alan
23 Robinson.

24 Q Okay. Back in, I guess it was August 26th of 2013?

25 A In -- yes, August 26th, 2013.

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1 Q Okay.

2 MR. PAULING: Your Honor, at this time the
3 State would offer Exhibit 25 into evidence.

4 THE COURT: Any objection?

5 MR. KIRINCICH: No, Your Honor.

6 THE COURT: All right, so admitted. Exhibit
7 25 will be entered without objection.

8 (WHEREUPON, State's Exhibit No. 25 was
9 marked for identification and received
10 into evidence.)

11 BY MR. PAULING:

12 Q Dr. Durso, would this particular State's diagram
13 assist the jury in understanding what you found
14 before you performed the autopsy?

15 A Yes.

16 MR. PAULING: Your Honor, if I may publish
17 this to the jury?

18 THE COURT: Yes, sir.

19 (Exhibit published to jury.)

20 THE COURT: You can step down.

21 THE WITNESS: Okay. That would be great.

22 MR. PAULING: She might be able to use the
23 pointer, Judge. I'm trying to --

24 THE COURT: Okay.

25 (Witness steps down.)

1 BY MR. PAULING:

2 Q Now, Dr. Durso, using State's 25, can you explain
3 to the jury what you found prior to performing your
4 autopsy, your external --

5 A Right. So, like I said, we document up here all
6 the findings, such as body length and weight. And
7 this is the diagram(indicating). It is kind of
8 hard to read my handwriting from here. But I also
9 failed to mention that we also document any kind of
10 medical intervention, so you can see there is a
11 tube, some tubes entering his mouth, IV lines, you
12 know, different -- a catheter, that sort of thing.

13 The other things we found -- you can see where
14 I kind of colored in this area over here and over
15 here(indicating). Those were actually contusions,
16 which are bruises, so that is bleeding underneath
17 the skin. That is consistent with a blunt force
18 injury.

19 Other injuries that I noted, there was this
20 contusion here on the upper part of the left
21 arm(indicating).

22 I also noted there is an abrasion down here on
23 the left lower arm(indicating), so it is kind of
24 like a scrape, an abrasion.

25 And there were several abrasions down here on

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1 the lower legs as well(indicating).

2 And these colored-in lines down
3 here(indicating) is just -- it is edema, which is
4 swelling. He had been resuscitated due to low
5 blood pressure, so he had a lot of swelling just
6 from them trying to give him fluids to try to get
7 his blood pressure back up.

8 And he also had a chest tube, I believe, on
9 the left-hand side, another source of medical
10 intervention. And I think --

11 Q What is that in the center there, Doctor?

12 A Oh, I'm sorry. Here in the center(indicating),
13 this is an open incision. And so he had undergone
14 a laparotomy, which is surgery to explore his
15 abdomen, because he had abdominal bleeding. So
16 they make a very large incision over the midline of
17 the abdomen. And because he had so much bleeding
18 and swelling, they were unable to close this, so he
19 actually had packing inside the abdominal cavity as
20 well as a, what we call a wound vacuum on the front
21 of it, because they were unable to close it at the
22 time of surgery.

23 Q And would that be the extent of the external
24 observations?

25 A Yes.

1 Q You can take a seat, Doctor. Thank you.

2 (Witness returns to witness stand.)

3 Q Now, I stopped you. You were going through the
4 process of explaining what you did as far as the
5 actual autopsy is concerned. You said they began
6 with an incision?

7 A Right. So we make a large incision that goes from
8 the shoulders down to the lower sternum and then
9 down all the way to the pubic bone where we flip
10 back the skin and then we remove the front of the
11 rib cage. And after that we can actually see all
12 of the internal organs: The heart, the lungs, the
13 liver, the intestines. And we're able to kind of
14 see if there is blood in there. Exactly, you know,
15 what kind of injuries or abnormalities we can see.

16 And after that, we remove the organs one by
17 one, weigh them in a weigh pan just to see, you
18 know, if they are heavier than normal, lighter than
19 normal. And then I assess each organ, again just
20 documenting anything out of the ordinary.

21 And after that is completed, we actually also
22 need to examine the brain, so we do that by making
23 an incision on the back of the head where we can
24 reflect the scalp forward and remove the top
25 portion of the skull where we can then remove the

1 brain, weigh it, and examine it as well.

2 Q And what were your findings as far as your final
3 anatomical diagnosis? What is that?

4 A So the major findings we found on the internal
5 examination, he had multiple rib fractures on the
6 right and left, kind of what we call the
7 anterolateral aspect, so kind of along the edges
8 here towards the front side of the
9 ribs(indicating). They were slightly worse on the
10 left than the right.

11 He had a left clavicular fracture, so that is
12 that bone right here that that you can feel pretty
13 well on yourselves(indicating).

14 He had hemorrhage in his abdominal cavity. He
15 had already had major surgery related to that. And
16 there were several towels, surgical towels packed
17 into his abdomen that were just saturated in blood.
18 So we removed all of those. It was evident that he
19 had had some very recent surgeries to remove
20 portions of his bowel that, according to his
21 medical record, there was bleeding.

22 He had some vascular injuries, so injuries to
23 some of the major arteries going down towards the
24 pelvis. One of these had already been embolized, I
25 believe, on the left side prior to him coming to

1 autopsy.

2 And then he had several pelvic fractures
3 comminuted, which means that they weren't just
4 linear fractures. I could actually put my hand in
5 there and feel the shards of broken bone.

6 Q Doctor, these types of injuries, would you consider
7 these severe traumatic injuries?

8 A These are very severe traumatic injuries, yes.

9 Q And as far as autopsy is concerned, as far as
10 reaching a cause of death or manner of death, can
11 you explain to the jury what is meant by cause of
12 death?

13 A The cause of death is kind of a diagnosis as to
14 what caused your death. So it can be anything from
15 a heart attack, to complications of metastatic
16 breast cancer, to gunshot wound to the head. So,
17 what is the diagnosis, what actually caused the
18 death of this person.

19 Manner of death is actually divided into five
20 categories. And that is: Suicide, which is the
21 taking of one's own life; homicide, which is the
22 taking of someone else's life; accident, you know,
23 such as a fall, something along those lines; and
24 then there is natural, such as heart attack, cancer
25 kinds of death; and then there is undetermined,

1 which we just don't have enough information to make
2 a determination that they fall into one of the
3 other four categories.

4 Q And in this particular case, Dr. Durso, after you
5 performed this autopsy on Alan Robinson, were you
6 able to determine a cause of death?

7 A Yes.

8 Q And would you please tell the jury, ma'am, what
9 that was?

10 A The cause of death is blunt force injuries to the
11 torso due to a Moped driver struck by a motor
12 vehicle.

13 Q And, now, as to the manner of death, were you able
14 to determine that?

15 A Yes. Based on the investigative findings, I would
16 categorize this as a homicide.

17 Q And, now, Doctor, you had indicated that these
18 injuries were very severe and traumatic. You said
19 it was blunt force trauma; is that correct?

20 A Yes.

21 Q In your experience, are these type of injuries
22 consistent with a bump from one side of the body?

23 A Well, there were bruises on both sides of the lower
24 torso, so it would have to have come directly from
25 the back with those sides protruding, or they are

1 kind of symmetrical, so either that or he was
2 laying somewhere and something struck him pretty --

3 Q From the top?

4 A Yes, from the top.

5 MR. PAULING: Beg the Court's indulgence.

6 (Pause.)

7 BY MR. PAULING:

8 Q Thank you, Dr. Durso. Please answer any questions
9 that Mr. Kirincich may have.

10 CROSS-EXAMINATION

11 BY MR. KIRINCICH:

12 Q Good morning.

13 A Good morning.

14 Q How are you doing today?

15 A Good.

16 Q Dr. Durso, you noted that he had contusions right
17 above, or it looks like midline based on your --

18 A Yes, fairly -- I think just below midline.

19 Q Below midline.

20 A Kind of more towards the pelvic area, lower
21 abdomen/pelvic area, yes.

22 Q And you said before you completed your autopsy you
23 had an opportunity to review medical records on the
24 computer system at Richland Health; right?

25 A Yes.

1 occasion to work a case regarding the death
2 investigation of Alan Robinson?

3 A Yes, sir.

4 Q If you could tell the jury, sir, how that came
5 about. How were you first -- how did you become
6 involved in it?

7 A It was an incident that happened that weekend. I
8 was off that weekend. When I came in Monday
9 morning I was approached by Chief Brown -- I think
10 that y'all met earlier -- stating that there was an
11 incident over the weekend that he had got some
12 information on, and I needed to get in touch with
13 First Sergeant Tom Borowski of the Highway Patrol.
14 And went into brief details about the situation,
15 but not really in depth. I got a copy of the
16 incident report and met with First Sergeant
17 Borowski.

18 Q And after you met with First Sergeant Borowski, did
19 he provide you information the Highway Patrol had
20 at that point?

21 A As far as the information about detailed
22 information, no, sir, I just had an overview I
23 think of what he had. It was alleged that there
24 was a hit-and-run resulting in a fatality.

25 At that time it was a joint effort because we

1 did not -- we could not determine at that time if
2 it was a traffic accident or an intentional act.

3 I think Trooper Borowski testified that all --

4 MR. KIRINCICH: Objection, Your Honor.

5 THE COURT: All right. Sustained.

6 A Okay.

7 Q Don't tell me what Trooper Borowski said. And I'll
8 move on. But you discussed the matter with Trooper
9 Borowski?

10 A Yes, sir, I did.

11 Q And then what was your next step? What did you do
12 next as far as the investigation is concerned?

13 A We had information that there was a person at
14 Cal-Maine that would have information that would
15 assist us in this case.

16 Myself and Trooper Borowski met with a person
17 at Cal-Maine that didn't have first-hand knowledge,
18 but directed us where we needed to go. And at that
19 time we went to that person.

20 Q And who was that individual that you went to?

21 A Ms. Patricia Starnes.

22 Q And who is Patricia Starnes? Did you know who she
23 was at the time?

24 A No, sir, I have never met her.

25 Q Okay. And what discussion did you have from

1 Ms. Starnes?

2 A We were advised Ms. Patricia Starnes had
3 information to the hit-and-run. We went to the
4 plant manager, which pulled Ms. Patricia Starnes
5 out. We went to a break room that is right there
6 at the front entrance. Ms. Starnes was Mirandized.
7 And she gave us information that her husband was
8 involved in the hit-and-run over the weekend.

9 Q And where was this incident location again?

10 A The incident location?

11 Q Yes, sir.

12 A Was on Freeman Road, which is off of 341 in the
13 Bethune community of Kershaw County.

14 Q And after you spoke with Ms. Patricia Starnes, was
15 there anything else you did while you were there at
16 Cal-Maine?

17 A Yes, sir. We did get a detailed statement from
18 her. We asked if it would be possible to look at
19 her vehicle that was on scene. She gave consent to
20 that. We went outside and viewed her vehicle. And
21 photographs were taken of her vehicle.

22 I did find something on the vehicle that was
23 potential evidence in the case, and I collected
24 that evidence.

25 MR. PAULING: May I approach the witness, Your

1 Honor?

2 THE COURT: Yes, sir.

3 (Complies.)

4 BY MR. PAULING:

5 Q Investigator Bailey, I'm going to show you what has
6 been marked for ID purposes State's 22, 23, and 24,
7 sir. I am going to ask you if you recognize those
8 particular items?

9 A Yes, sir.

10 Q Okay. And what are those, sir?

11 A These are pictures of the 1999 Tahoe that belonged
12 to Ms. Patricia Starnes.

13 Q Okay. Are those the pictures that you took when
14 you were at Cal-Maine that particular day?

15 A Yes, sir. You can actually see my reflection in
16 the bumper of some of these actually taking the
17 photographs.

18 Q So do those photographs fairly and accurately
19 depict the way the vehicle looked on that
20 particular day?

21 A Yes, sir, it does.

22 MR. PAULING: Your Honor, at this time I would
23 offer State's 22, 23, and 24 in evidence.

24 MR. KIRINCICH: No objection, Your Honor.

25 THE COURT: All right, they will be entered

1 22, 23, and 24?

2 MR. PAULING: Yes, 22, 23, and 24, yes, ma'am.

3 THE COURT: Without objection.

4 (WHEREUPON, State's Exhibit Nos. 22-24
5 were marked for identification and
6 received into evidence.)

7 MR. PAULING: May the witness step down for
8 just a moment?

9 THE COURT: Yes.

10 BY MR. PAULING:

11 Q Now, Investigator Bailey, you can step down, sir.
12 (Witness steps down.)

13 Q As to State's 24, like you said, you can see
14 yourself in the reflection there.

15 A Yes, sir.

16 Q What were you taking a picture of or -- when I say
17 what were you taking a picture of, what were you, I
18 guess, looking for at that particular time?

19 A The reason I took the picture of the -- this is the
20 front corner of the bumper here. Looking at the
21 vehicle, it would be on this side. But as we were
22 standing, this is the passenger's side of the
23 vehicle. This is the front bumper with the broken
24 molding that goes through the center of the bumper
25 (indicating.)

1 I had noticed that there was minor damage to
2 the front bumper and that was a point of interest
3 because of what I had learned in the investigation,
4 so it was photographed.

5 Q Do you know who else that is in the reflection
6 there?

7 A That is First Sergeant Borowski in the center
8 holding a notebook, and that appears to be
9 Ms. Patricia Starnes(indicating).

10 Q And as to State's 22, what does that show there in
11 the picture?

12 A This is an actual close-up photo of the damage I
13 noted to the front corner bumper of the Tahoe
14 vehicle. You can see myself squatting to take the
15 picture. That is the pants leg of First Sergeant
16 Tom Borowski(indicating).

17 Q And then, sir, as to State's 23?

18 A This is the back of the Tahoe(indicating). And the
19 reason I take these pictures -- I take this picture
20 on every case I'm working involving a vehicle. I
21 want a back picture with the actual license plate
22 of that vehicle in the picture so it can be later
23 identified using that tag number.

24 Q Thank you, sir. You can take your seat.

25 (Witness returns to witness stand.)

1 Q Now, at that particular time -- you said you
2 photographed the vehicle. And what type of vehicle
3 was that again, I'm sorry?

4 A It is a 1999 Chevrolet Tahoe.

5 Q Tahoe. And, now, after that meeting with
6 Ms. Starnes and after you had viewed the Tahoe, did
7 you remain there or did you go somewhere? What did
8 you do after that?

9 A I went -- an overview of the outside of the
10 vehicle. And the reason I pinpointed that area of
11 damage is there was minor damage all about the
12 vehicle. It was an older vehicle. I had Ms.
13 Starnes, which is the owner of the vehicle, walk
14 around the vehicle with me. And I would point out
15 different, you know, blemishes in it and, Was this
16 here or is this something new?

17 The damage that I took photographs of, she
18 said, That was new, it must have happened this
19 weekend.

20 Also from the vehicle, she provided me with a
21 pocketknife and two picture identification cards.

22 Q Okay. Okay. And what did you do after you
23 collected those particular items?

24 A After I collected those particular items, I went
25 back towards the incident location, but I wanted to

1 stop by the victim's residence.

2 Q And when you say the victim's residence, whereabout
3 is that in relation to the incident location?

4 A His actual residence is on Camp Road, which is
5 right off of Freeman Road.

6 Q Freeman Road?

7 A Yes, sir.

8 Q And what happened when you went to that location?

9 A When we pulled into the driveway that was listed as
10 his address, I was met by his niece, a Ms. Theresa
11 Moore. She directed me next-door to Mr. Pate's
12 house. She stated that Mr. Pate had actually been
13 with the victim at the time of the incident and he
14 had made statements -- the victim had made
15 statements to Mr. Pate. So I went to Mr. Pate's
16 house, which is next-door.

17 Q Okay. And did you have a discussion with him?

18 A Yes, sir. Mr. Pate, his wife, and I think there
19 was a couple of other people in the yard, but they
20 didn't have any information relevant to the case.

21 Q And at some point did you go back out there and --
22 let me back up. Did First Sergeant Borowski go
23 with you at that point?

24 A Yes, sir, he was with me that whole day.

25 Q And did you go back to the -- back down Freeman

1 Road for any reason?

2 A Yes, sir. When we talked to Mr. Pate, at that time
3 the scene was several days old, like I said. I was
4 notified Monday. This allegedly happened on
5 Saturday. I wanted to go back to the scene itself
6 to take a look for myself. So Mr. Pate agreed to
7 show me the location.

8 Q And did he in fact show you the location?

9 A Yes, sir, he did.

10 Q Did you photograph that location?

11 A Yes, sir.

12 MR. PAULING: May I approach the witness, Your
13 Honor?

14 THE COURT: Yes, sir.

15 (Complies.)

16 BY MR. PAULING:

17 Q Investigator Bailey, I am going to show you what
18 has been marked for ID purposes State's 26, 27, and
19 28, sir. I am going to ask you if you recognize
20 those particular items?

21 A Yes, sir, I recognize them.

22 Q Okay. And what do those particular items depict,
23 sir?

24 A The first picture is a picture of Freeman Road, the
25 length from the road from actually 341 back to my

1 location. And my patrol vehicle is also in the
2 picture.

3 Q Okay. State's 28? Okay.

4 A The second picture is what I was advised by
5 Mr. Pate was the incident location where he found
6 his uncle laying in the roadway and there is a red
7 flower.

8 Q State's 27?

9 A And the third picture is a picture taken by me. It
10 is also a picture of the alleged incident location
11 with Mr. Pate actually pointing to the area.

12 Q And that is State's 26.

13 MR. PAULING: And, Your Honor, at this time
14 the State would offer 26, 27, and 28 into evidence.

15 THE COURT: Any objection?

16 MR. KIRINCICH: No, Your Honor.

17 THE COURT: They will be entered without
18 objection.

19 (WHEREUPON, State's Exhibit Nos. 26-28
20 were marked for identification and
21 received into evidence.)

22 MR. PAULING: May I publish these to the jury,
23 Your Honor?

24 THE COURT: Yes, sir.

25 (Exhibits published to the jury.)

1 BY MR. PAULING:

2 Q And in State's -- I apologize -- in State's 28,
3 whose vehicle is that?

4 A That is my vehicle.

5 Q That is your vehicle?

6 A Yes, sir.

7 MR. PAULING: May we approach, Your Honor?

8 THE COURT: Yes, sir.

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

12 BY MR. PAULING:

13 Q Now, Investigator Bailey, once you viewed that --
14 was there anything in particular you were looking
15 for at the scene or was it just Mr. Pate -- was
16 this William Pate?

17 A Yes, sir.

18 Q Okay. Or was he just showing you the incident
19 location?

20 A He was showing me the incident location, but I kind
21 of wanted to get a general view of it. I wanted to
22 see for myself what the alleged incident location
23 was, possibly look for any trace evidence that may
24 have been left behind.

25 Q Okay. May the witness step down one more time,

1 Your Honor?

2 THE COURT: Yes.

3 (Witness steps down.)

4 BY MR. PAULING:

5 Q Investigator Bailey, this -- you had mentioned --
6 I'm sorry, you can come this way. And you had
7 mentioned going to the Pates' home?

8 A Yes.

9 Q Then to the location on Freeman Road?

10 A Yes, sir.

11 Q On that particular map there, can you show the jury
12 where the Pate home is, where Mr. Robinson's home
13 is, or was, in relation to the incident location?

14 A Yes. This long stretch here is 341. It runs
15 from -- well, actually from Lee County all the way
16 up into Kershaw. It is a fairly long road. It is
17 also known as Bethune Road. Freeman Road is a dirt
18 road off the right, on the right off of Highway
19 341.

20 If you come up Freeman Road, this road right
21 here, the next available right is actually Camp
22 Road. Mr. Robinson was staying in this residence
23 right here, that long dirt driveway off of Camp
24 Road.

25 There is a dirt road in between that is not

1 accessible by vehicle. You can see on the map it
2 appears it is, but we had to come back out to Camp
3 Road and come down to the next driveway, and Mr.
4 Pate lives in this home right here.

5 The actual incident location -- it kind of
6 varies. This is an open field. This is a horse
7 pasture here. My best recollection was that it was
8 somewhere right in this area right near this wooded
9 area right behind the pasture.

10 Q Investigator Bailey, I am going to show you what is
11 in evidence as State's 3, sir. And in this
12 particular photograph, is this Freeman Road looking
13 down Freeman Road?

14 A Yes, sir, this is.

15 Q Okay. Now, in that particular photograph, State's
16 3, can you see whereabouts Camp Road begins where
17 the intersection is?

18 A Yes, sir, it appears -- I'm sorry -- it appears
19 like -- depth perception in a two-dimensional
20 photograph. But it appears between -- like someone
21 was walking possibly a dog, and there is a vehicle
22 coming that way, and it is right past that, in
23 between the two.

24 Q And, again, where up on the picture would that be?
25 On the map, rather? Camp Road?

1 A Camp Road?

2 Q Camp Road, yes, sir.

3 A Camp Road is right here(indicating). It comes off
4 of Freeman Road, right turn onto Camp Road.

5 Q Thank you, sir. You can take your seat.

6 (Witness returns to witness stand.)

7 Q And you mentioned you were looking for trace
8 evidence. Did you find any trace evidence, as you
9 call it, at the scene?

10 A Nothing that was collected. I did find -- there
11 was a bag of beans laying in the grass that was
12 alleged to have been in the cubby compartment of
13 that -- the Moped standing there.

14 Q Now, after -- or while you were out there, did
15 anything else occur that was significant to your
16 investigation?

17 A Yes, sir. After Mr. Pate showed us the -- what he
18 said was the incident location and we photographed,
19 Mr. Pate returned home. Myself and First Sergeant
20 Borowski got back in my truck. Our intent was to
21 go to M & M in Kershaw. It is an auto place. It
22 is where Mr. Robinson was supposed to have bought
23 the Moped in question.

24 At that time we knew that the Moped was still
25 considered stolen or missing, so we were looking

1 for identification numbers or VIN numbers, serial
2 numbers to the Moped so it could be entered into
3 what they call the NCIC computer.

4 We were heading towards 341 to make a right
5 turn on -- we were heading down Freeman Road to
6 make a right turn onto 341 to head to Kershaw to
7 try to acquire this information. And we were
8 approached by two individuals walking 341 -- or
9 Freeman Road from 341 towards us, towards Camp
10 Road.

11 Q And did you encounter or stop those two
12 individuals?

13 A Yes, sir, I did. I had a photograph of
14 Mr. Starnes, and I recognized the man walking
15 towards us as Mr. Starnes. So we stopped.

16 Q And did you have a discussion with Mr. Starnes?

17 A Yes. After he confirmed his identity with us, I
18 explained why I was out there and what I was doing.
19 I advised him that he was a topic or a person of
20 interest in this based on statements that I had
21 retrieved earlier that morning. He was Mirandized
22 and we sat on the back of my truck and talked about
23 the situation.

24 Q Okay. You said he was Mirandized. How did you
25 Mirandize him?

1 A And that has come up. We have little cards we keep
2 in the truck, but we also have forms, or a lot of
3 times it is done verbally.

4 To answer your question, I'm not sure whether
5 I read from a card or did it from memory or read
6 from a sheet. I don't remember.

7 Q But did he waive his right to agree to talk to you?

8 A Yes, sir, he did.

9 Q And when that was going on, I mean, had you
10 handcuffed him, or what was the situation?

11 A No, sir, we were just sitting on the back of my --
12 the tail-- I dropped the tailgate on my truck and
13 we were just sitting there talking.

14 Q That same truck that is in Exhibit 28, I believe?

15 A The one I am still driving, yes, sir.

16 Q And, now, First Sergeant Borowski is still with
17 you; is that correct?

18 A Yes, sir.

19 Q Now, are you and First Sergeant speaking with
20 Starnes? Or what about the other individual?

21 A At first we were together. He witnessed my Miranda
22 and me actually dropping the tailgate and talking
23 to him. But he took the other individual to the
24 front of my pick-up truck and they started talking
25 there.

1 Q And do you recall or did y'all ever identify who
2 that other individual was?

3 A T.J. Ott.

4 Q T.J. Ott. What was the discussion that you had
5 with Willie Starnes?

6 A After we Mirandized, I advised him of the
7 information we had leading up to why he was the
8 person of interest, the vehicle, the statements we
9 retrieved earlier.

10 And he admitted to being a part of the action.
11 At the time he told us that someone else was
12 driving -- or told me that someone else was
13 driving. He stated that it was the dope man
14 driving. He said when the actual incident took
15 place he got scared and he ran. He said that the
16 dope man was loading the vehicle up.

17 Q When you say loading the vehicle up, what --

18 A The Moped. Into the vehicle.

19 Q Okay.

20 A I asked him, I said, Well, if you ran from the
21 scene, how do you know the dope man loaded it up?

22 He recanted, came back and said, Well, I came
23 back and helped him, then I ran.

24 We went further into actually who was driving
25 the vehicle or what the involvement was.

1 We went into -- he stated these were some
2 pretty serious people. He really didn't want to
3 give up a name of another person that may have been
4 involved in it. But he did admit his involvement
5 in it.

6 At that time I determined we had enough
7 probable cause to at least take him into custody,
8 whether it be for the hit-and-run resulting in
9 death, or what was told to us is that he was
10 actually part of being hit and robbed.

11 Q Okay. And while y'all were out there on the scene
12 on Freeman Road -- and just so I understand,
13 State's 3, when you and First Sergeant Borowski are
14 leaving, you are heading away from Freeman Road, or
15 on Freeman Road but heading towards 341?

16 A Yes, sir.

17 Q And Mr. Starnes and --

18 A Mr. Ott.

19 Q -- Mr. Ott are coming --

20 A From 341 towards us.

21 Q -- towards you?

22 A We were going out and he was coming in.

23 Q Okay. And you may have testified to it. Were they
24 on foot?

25 A Yes, sir, they were on foot.

1 Q And how long did that conversation between you and
2 Mr. Starnes -- how long did that last?

3 A That was a fairly short conversation. I would
4 guess -- or give an approximate 20 minutes maybe,
5 if that.

6 Q And in that 20 minutes, how many times did he
7 change his story?

8 A Well, he changed it from -- the part I have
9 testified to already is being in the vehicle but
10 not the driver to actually after it happened him
11 jumping out and running. Then it changed to him
12 saying, Well, I did help load it.

13 That is why I felt like there was enough
14 there. He placed himself at the scene, but not
15 being the responsible party.

16 Q But he changed his story three times within 20
17 minutes; is that correct? Approximately 20
18 minutes?

19 A Approximately, yes, sir.

20 Q And, now, did you actually transport him to the
21 Sheriff's Office or did you call for a unit? What
22 happened?

23 A I called for a marked unit. Y'all have seen the
24 picture I have. It is just a standard work truck.
25 Because the area I work in, 4-wheel drive is a

1 necessity sometimes. So it is not marked as a
2 regular patrol unit. It is not equipped as a
3 regular patrol unit. I didn't have a cage. By
4 cage, I mean the partition between the front and
5 back seat of the patrol car everybody is familiar
6 with.

7 I felt it appropriate that he be transferred
8 down there because I was still in the initial
9 stages of the investigation. I had more
10 information I needed to collect.

11 If y'all know anything about Bethune, the area
12 we were in is probably a good 25, 30 miles from the
13 local Sheriff's Office, which is in Lugoff. In the
14 effort of saving time, I called in to have him
15 transported down. I had to make one more stop,
16 then I was going to go to the Sheriff's Office to
17 interview him. So I had that marked unit come in
18 and actually cuff him and take him to the Sheriff's
19 Office.

20 Q Okay. And you described your truck. How were you
21 dressed that day? Were you in a full-out uniform,
22 or how were you dressed?

23 A Our everyday work uniform is a pair of tan, like --
24 the best way to describe them is cargo pants. They
25 have pockets on the side. It is a more tactical,

1 more breathable, more comfortable pair of pants,
2 unlike this shirt and tie. But we have polo shirts
3 that -- it has got the sheriff's badge embroidered
4 on it and our name. And I also wear a ball cap
5 that has the Sheriff's Office logo embroidered on
6 it. And that is what I was wearing that day.

7 Q Now, as far as T.J. Ott is concerned, what happened
8 with him?

9 A We -- myself and First Sergeant talked to him for a
10 little bit. We did not feel that there was enough
11 probable cause or reasonable suspicion to detain
12 him or question him any further. He was released.

13 It is my understanding that they were walking
14 to a family member's house, so he continued walking
15 to that family member's house when he left.

16 Q Now, at that particular time, did you know where
17 Willie Starnes lived?

18 A I had a general idea. I had never been to his
19 residence, but I had a general idea based on the
20 Department of Motor Vehicle information that I had.

21 Q Do you know what road it was?

22 A Was it Mangum Road? Mangum.

23 Q Do you know where that is in relation to the
24 incident location, Freeman Road?

25 A May I approach the map?

1 Q Yes. If this map will help, yes, sir.

2 (Witness steps down.)

3 A It is not shown on this map, but on Freeman Road
4 you can actually drive all the way around. It
5 circles back around out towards Porter and Mangum
6 Road where he lives. From the incident location to
7 where he lived, an approximation or a guesstimation
8 would probably be five miles.

9 Q Thank you, sir. You can take jury seat.

10 (Witness returns to witness stand.))

11 Q Now, Investigator, you mentioned you had one other
12 stop to make before you went to the Sheriff's
13 Office. Is that relating to this investigation?

14 A Yes, sir, it was.

15 Q What was that, sir?

16 A Chief Brown overheard my conversation, my radio
17 traffic requesting an officer and that we were
18 detaining someone. He requested that I meet him
19 back at Cal-Maine.

20 We went back to Cal-Maine, pulled Ms. Starnes
21 back out again, advised her of where I was at in
22 the investigation, and that I felt like it was
23 necessary to seize her vehicle as evidence in this
24 case.

25 Q And did you get a search warrant in relation to

1 that?

2 A I called Investigator Dill over the telephone and
3 advised him I needed a search warrant for the
4 vehicle because we were seizing it. And I was en
5 route back to the Sheriff's Office, but it was
6 probably a 35-, 40-minute ride.

7 Q So the vehicle was seized?

8 A Yes, sir, it was.

9 Q Okay. And where was it taken?

10 A It was taken to the Kershaw County Sheriff's
11 Office. We have an enclosed space between the
12 Coroner's Office and our office, commonly known as
13 the sallyport. There is two doors that close down
14 on either side so it is secured, so it was taken
15 there until we could get the search warrant secured
16 and myself getting back down there.

17 I think Chief Brown also called SLED Crime
18 Scene in at that time to process the vehicle.

19 Q And you do recall SLED Crime Scene --

20 A Yes, sir, I do.

21 Q -- coming out and processing the vehicle?

22 A I do, sir.

23 Q And once you got back to the Sheriff's Office, what
24 did you do next as far as this investigation was
25 concerned?

1 A Went into the interview room where Mr. Starnes was
2 located.

3 Q And can you describe this interview room to the
4 jury?

5 A Single door leading in. What we call at the fire
6 service, or with a SRT Team, corner-fed room. The
7 door is not exactly centered. It is a little off
8 to the side. It is probably a 10x10 room. A
9 single desk. Maybe a little bit smaller than the
10 desk that the Defense is sitting at. And some
11 chairs sitting around it. And there is a video
12 camera above your head. When you come in the door,
13 it is right above the door facing down into the
14 room.

15 Q Why is it that it is equipped with video recording
16 equipment? Why is that?

17 A Evidentiary purposes.

18 Q And did you have another interview with
19 Mr. Starnes?

20 A There was actually two interviews: One the first
21 day I had contact with him; and one the second day.

22 Q And the first day still being August 26th; is that
23 correct, sir?

24 A Yes, sir, it is.

25 Q And, now, who was with you on this interview at the

1 Sheriff's Office?

2 A The first interview?

3 Q Yes, sir, the first one.

4 A Myself, First Sergeant Tom Borowski, and later on
5 in the interview Chief Deputy Brown came in.

6 Q But at the beginning, was it just you and First
7 Sergeant Borowski?

8 A Yes, sir.

9 Q Okay. And when you began this interview, did you
10 Mirandize Mr. Starnes?

11 A For the second time, yes, sir.

12 Q And how did you do that, sir?

13 A That was a written form. We have a standard form
14 where it is all listed out. They can either read
15 it or we can read it to them to make sure that they
16 understand what was -- they read or had read to
17 them, and have it signed off on.

18 (Pause.)

19 MR. PAULING: May I approach the witness, Your
20 Honor?

21 THE COURT: Yes, sir.

22 (Complies.)

23 BY MR. PAULING:

24 Q Investigator, I am showing you what is marked for
25 ID purposes State's 29 and ask you if you recognize

1 that document, sir.

2 A This is the standard Miranda -- statement of
3 Miranda from the Kershaw County Sheriff's Office.

4 Q And is your signature on it?

5 A Yes, sir, it is.

6 Q And is the Defendant's signature on it, Willie
7 Starnes, is his signature on it?

8 A It is under the Waiver of Rights, and he has signed
9 it.

10 Q Okay. And you indicated that you would use that
11 form. So if you can describe to the jury, what
12 would you have done? I mean, did you read it
13 straight from there?

14 A I do read straight from here. After each of the --
15 there is five parts of the Miranda, and after each
16 one is read, I make sure that they understand it
17 and it is checked off. And each five of these are
18 checked off.

19 I asked him if there is any part that he
20 didn't understand or if he needed -- or if he had
21 any questions to stop me and we would go over them.
22 He stated that he understood all five as read to
23 him. And at that point I sign off with my name
24 stating that he was Mirandized and he stated to me
25 he did understand them.

1 Q And what are the five? If you can read them.

2 A Okay. The first one is: You have the right to
3 remain silent. It was checked off that he
4 understood.

5 Anything you say can and will be used against
6 you in a court of law. Checked off as he
7 understood.

8 Third is: You have the right to talk to a
9 lawyer and have him or her present with you while
10 you are being questioned. It was checked off that
11 he understood.

12 If you cannot afford to hire a lawyer, one
13 will be appointed to represent you before any
14 questioning, if you wish. It was checked off that
15 he understood.

16 You can decide at any time to exercise these
17 rights and not answer any questions or make any
18 statements. It was checked off that he understood.

19 Do you want me to go into the waiver or --

20 Q Yes, you can go into the waiver. I'm sorry.

21 A Okay. Before I get into the waiver, I always
22 reiterate: You can invoke your rights at any time.
23 That is standard practice for me. That is what I
24 do every time to make sure they understand that at
25 any time in the interview they can stop.

1 But the waiver states: This is to certify
2 that I have read or have had read to me the above
3 statement of my rights. At this point I always
4 say: This is the five we just went over.

5 I understand each of these rights and, having
6 these rights in mind, I waive them and am willing
7 to make a statement. No promises or threats have
8 been made to me and no pressure or coercion of any
9 kind has been used against me. I always make sure
10 that they understand that there has been no threats
11 or coercion, or if they understand what the word
12 coercion means.

13 Once they state that, I usually -- I don't
14 know if I did in this case, but usually I will tell
15 them, you know: This is not an admission of guilt
16 to anything, it is just stating that you understand
17 your rights. Once they understand all the rights
18 and they agree to talk or waive their rights, that
19 is when they sign the statement form.

20 Q And while you were going over the rights with
21 Mr. Starnes, did he appear to have any difficulty
22 understanding what you were saying to him or
23 understanding his rights?

24 A No, sir, none noted to me.

25 Q Did he appear to have any physical or mental

1 infirmity or disability that would cause him not to
2 understand what was going on?

3 A None that I have noted, no, sir.

4 Q Did he appear to be under the influence of alcohol
5 or drugs that would cause him not to understand
6 what was going on?

7 A None that I noted, sir.

8 MR. PAULING: Your Honor, at this time I would
9 offer State's 29 into evidence.

10 THE COURT: Any objection?

11 MR. KIRINCICH: No objection.

12 THE COURT: All right, that will be entered
13 without objection.

14 (WHEREUPON, State's Exhibit No. 29 was
15 marked for identification and received
16 into evidence.)

17 BY MR. PAULING:

18 Q Now, after that was done, did you begin conducting
19 the interview?

20 A Yes, sir, I did.

21 Q And as far as when you start recording the
22 interview, does that happen at the time that
23 Miranda is done, or when do you actually start the
24 recording process?

25 A I start my recording -- well, it records as soon as

1 there is motion in the room, but for court purposes
2 I always back it up to at least a minute or so
3 before the Defendant or the person I'm interviewing
4 actually walks into the room so there is no mistake
5 in, did I cut anything off, is there something I'm
6 trying to hide. So I always make sure that there
7 is a minute or so before the recording and a minute
8 or so after the interview on both sides.

9 Q And, again, so when the door opens, it invokes the
10 sensor and the recording activates?

11 A Yes, sir.

12 Q Now, if you could just kind of summarize the
13 interview, that first interview that you had with
14 Mr. Starnes.

15 A Okay. I continued my line of questioning from the
16 interview out on roadside. I reiterated to him
17 that he was Mirandized, you know, I was going to do
18 it again. We did that. To the point of the
19 involvement as far as, you know, him telling me
20 that the dope man was driving. Then, you know,
21 that he ran away and came -- we started off with
22 that again, and then went into the information that
23 I had that there were two parties, that the
24 deceased actually mentioned two parties being
25 involved. And at that point that was our

1 understanding, that the two people were involved.
2 We had no reason to believe that there wasn't.

3 He finally came up with a name. I believe it
4 was -- if you don't mind me looking at my notes, I
5 don't want to misquote.

6 Q Yes, sir.

7 A If I'm not mistaken, it is Patrick Jones was the
8 name given to us.

9 I also noted -- usually in my interview
10 process I like to do what they call a timeline. It
11 keeps everybody on the same page. I don't like
12 people to get confused, you know, giving out --
13 start giving some facts and then get further on
14 down the road and say, Well, you know, this
15 happened about the same time. So I try to get it
16 all out in a line.

17 So we started with that timeline. And the
18 name Patrick Jones was given. Later on in the
19 interview we were told that he was not the -- he
20 was with him earlier that day, but then he was
21 actually dropped off.

22 The impression we got, myself and First
23 Sergeant Borowski, was that Patrick Jones was
24 actually in the vehicle at the time of the
25 incident. Later on in the interview he says he

1 wasn't.

2 Then it went into Mr. Starnes was actually the
3 driver of the vehicle, and it was done by mistake,
4 it was an accident.

5 And then I think later on, back further into
6 the interview, it turned back into the dope man was
7 driving. We were given a street name. It was a
8 Lancaster County street name, so I wasn't familiar
9 with it.

10 But the interaction between myself,
11 Investigator Dill, and Investigator Crawford,
12 Investigator Crawford knew who Brown was. He
13 actually, you know, gave us a name on that.
14 Coupled with, I think, as mentioned, the initials
15 that was given to Mr. Starnes. That turned out --
16 it turned out being bogus.

17 A lot of names were similar, there were two
18 different names. We pulled a DMV photo to show
19 Mr. Starnes. And he looked at the photo and said,
20 That is your guy. That is your guy.

21 Further investigation revealed it was nowhere
22 close. I felt like we were being given another
23 rabbit chase, I guess you would call it. It wasn't
24 a true -- it felt like we were being sent down a
25 different location than we were actually looking

1 for.

2 But the whole interview was based on the
3 information we had at the time. There were two
4 parties involved. They loaded the Moped and took
5 off.

6 So our line of thinking in that whole time
7 was, We're looking for two guys. I felt that -- I
8 was being told that there was only one guy because
9 the statement made out at the scene, You don't know
10 these guys, these guys are dangerous. So I was
11 thinking that, you know, he was trying to protect
12 somebody because he might be scared of retribution
13 if he actually gave up the other party that was
14 allegedly involved.

15 Q Now, at some point did Chief Deputy -- was the
16 Chief Deputy involved? Was Chief Deputy Brown
17 involved?

18 A Later on in the interview, he did come in.

19 Q Prior to him coming into the interview, were you
20 still getting inconsistent stories from
21 Mr. Starnes?

22 A Bits and pieces here and there were inconsistent.
23 I mean, we had already had several different
24 versions of what happened given to us, and now we
25 were getting another version. And Chief Deputy

1 Brown came in.

2 Q Now, at some point did Mr. Starnes tell you where
3 the Moped was located?

4 A Yes, sir.

5 Q Okay. And whereabouts was that?

6 A I'm familiar with the location, Mr. Starnes is,
7 because, you know, of different reasons, but I knew
8 the location. He mentioned Second Street behind
9 Founders Bank in Kershaw. They call it the Mill
10 Hill because it is close to ADM. I have actually
11 worked some cases where I have had the opportunity
12 to be in that neighborhood before, so I was
13 extremely familiar with where he was saying.

14 Q And were you able to actually run down the Moped?

15 A I wasn't. Investigator Crawford actually found the
16 vehicle through contacts he has in that community.

17 Q Okay. Was that then brought to the Sheriff's
18 Office?

19 A Yes, sir. After we identified positively, I think
20 Investigator Crawford went to the M & M and
21 actually found the serial numbers, and we verified
22 that this was in fact the Moped that we were
23 looking for. We did take it and bring it to the
24 Sheriff's Office.

25 Q All right. And do you recall if you had

1 photographed the Moped?

2 A I'm sure I did.

3 (Pause.)

4 Q Investigator Bailey, I am going to show you what
5 has been marked for ID purposes State's 30 through
6 37, and ask you if you recognize those items, sir.

7 A Yes, sir, I recognize it.

8 Q Okay. And what are those, sir? 30 through 37,
9 what do those depict?

10 A These are photographs of the Moped that is sitting
11 in the courtroom. And they were taken in the
12 sallyport at the Sheriff's Office.

13 Q Okay. And so does that accurately depict the
14 condition it was in when it arrived at the
15 Sheriff's Office?

16 A Yes, sir. If you'll notice some of the closer-up
17 pictures I was taking of the damage, consistent
18 with the damage I found on the Tahoe.

19 Q Okay.

20 MR. PAULING: Your Honor, at this time I would
21 offer State's 30 through 37 in evidence.

22 THE COURT: Any objection?

23 MR. KIRINCICH: No, Your Honor.

24 THE COURT: They will be entered in evidence.

25

1 (WHEREUPON, State's Exhibit Nos. 30-37
2 were marked for identification and
3 received into evidence.)

4 MR. PAULING: And may I publish these to the
5 jury, Your Honor?

6 THE COURT: Yes, sir.

7 (Exhibits published to the jury.)

8 BY MR. PAULING:

9 Q Now, at some point were you able to speak with the
10 individual who had the actual Moped?

11 A Yes, sir.

12 Q And who did that end up being?

13 A Mr. Miller.

14 Q Is that Kendrick Miller?

15 A Yes, sir.

16 Q Okay. And do you recall where you met with him?

17 A The day I retrieved the Moped on Second Street.

18 Q Okay. Okay. And what was your understanding of
19 how he came to be in possession of that Moped?

20 A As related to me that day, he received it from
21 someone he only knew as Tahoe.

22 I asked them why he was known as Tahoe, and
23 they stated because of the vehicle he is always
24 seen driving in the Mill Hill.

25 Q And did he describe to you the circumstances upon

1 which he got the Moped?

2 A That day he stated he was approached by Tahoe,
3 offered to sell the Moped, the asking price was a
4 hundred dollars.

5 He stated he didn't have the money on him, so
6 he had his uncle bring him the money.

7 While we were there, Investigator Crawford got
8 a hold of the uncle, which is Mr. Crawford.
9 Investigator Crawford called Mr. Crawford. It is
10 two different individuals.

11 Q No relation?

12 A No relation. Mr. Crawford arrived on the scene.
13 He stated -- he reiterated what Mr. Miller had told
14 me about the gentleman approaching, offering the
15 sale of the Moped, stated he was looking -- it
16 belonged to his uncle, he was trying to get rid of
17 it because he couldn't keep it running.

18 Mr. Crawford asked who they knew at the time
19 as Tahoe to sign a piece of paper stating it wasn't
20 stolen. That paper was given to me.

21 Q Who provided you with that paper?

22 A I want to say it was Mr. Miller, but at the
23 direction of Mr. Crawford, if I could remember
24 correctly.

25 Q I am going to show you, Investigator, what has been

1 marked as -- for ID purposes -- as State's 21. I'm
2 going to ask you if you recognize this, sir?

3 A Yes, sir, I do.

4 Q Okay. And what is that? Is that the piece of
5 paper you were just referring to?

6 A That was the paper that was given to Mr. Miller as
7 proof that it was allegedly not stolen.

8 MR. PAULING: Your Honor, at this time I would
9 offer State's 21.

10 MR. KIRINCICH: Your Honor, I object. I
11 looked at it yesterday. I don't have any chain of
12 custody with the piece of evidence. I don't know
13 where it came from or where it has been, Your
14 Honor.

15 A With me the whole time.

16 THE COURT: All right. Hold on. Objection
17 sustained. You can lay the foundation.

18 BY MR. PAULING:

19 Q Investigator, as to State's 21, once that piece of
20 paper was given to you, provided to you, what did
21 you do with it?

22 A I put it in my case file.

23 Q Have you maintained care of it and holding custody
24 of it?

25 A The whole time.

1 Q Okay. Have you allowed anyone to tamper with or
2 alter that piece of paper that was provided to you
3 by Jerry Crawford?

4 A No, sir. Even when y'all asked for discovery, I
5 made the copies to give to y'all.

6 Q So you have always maintained it?

7 A Yes, sir.

8 Q Correct? It hasn't been changed?

9 A No, sir.

10 Q Hasn't been altered?

11 A No, sir.

12 Q And you brought it to court with you today?

13 A Yes, sir. I have kept it in that folder right
14 there.

15 Q Okay.

16 MR. PAULING: Your Honor, at this time I would
17 offer State's 21 in evidence.

18 THE COURT: Any objection?

19 MR. KIRINCICH: I still object, Your Honor. I
20 don't think that is the proper way to store
21 evidence for a trial.

22 THE COURT: Is it 21? All right, State's 21
23 will be entered over the objection of Defense.

24 (WHEREUPON, State's Exhibit No. 21 was
25 marked for identification and received

1 into evidence.)

2 BY MR. PAULING:

3 Q Investigator Bailey, as to State's 21, if you could
4 tell the jury, what is written on that?

5 A The first -- on the top line it says, To. There is
6 no one that it is addressed to, but it says To. A
7 couple of lines down, the name T.J. Ott. The line
8 directly below that is a Kershaw exchange telephone
9 number.

10 Q And what is the number?

11 A Area code (803)475-5172.

12 Q Okay. And were you able to run down that actual
13 number?

14 A I tried calling it, but I didn't get any response
15 from it.

16 MR. PAULING: May I publish this to the jury,
17 Your Honor?

18 THE COURT: Yes, sir.

19 MR. PAULING: State's 21.

20 (Exhibit published to jury.)

21 BY MR. PAULING:

22 Q And after you had gotten that information, or the
23 information that T.J. Ott, that name was given,
24 what did you do to try to verify, not the number,
25 but the fact that it was T.J. Ott?

1 A I re-interviewed Mr. Ott.

2 Q And after re-interviewing Mr. Ott, what conclusion
3 did you come to as far as your investigation is
4 concerned?

5 A The conclusion I came to? That he was not involved
6 and that was not his signature.

7 Q Now, back to the interview. I have kind of skipped
8 around. But as far as the interview is concerned
9 that you had with Mr. Ott -- excuse me, with
10 Mr. Starnes -- at any time did he ask for a break
11 during the interview? Do you recall him asking for
12 a break?

13 A I don't recall him asking for a break, but we took
14 several breaks during the interview process.

15 Q Okay. Do you recall him asking for anything to eat
16 or anything to drink?

17 A Not so much to eat. I do remember the first
18 interview I made a comment to him looking like he
19 needed something to drink, so I left the room, came
20 back with a glass of water for him.

21 Q At any time during this interview, whether it was
22 you and First Sergeant Borowski or you and First
23 Sergeant Borowski and Chief Deputy Brown, did he
24 ever ask for an attorney, say, you know, I don't
25 want to talk to y'all anymore, I need an attorney,

1 I want to talk to an attorney? Did that ever
2 happen?

3 A If it did I would have stopped, but he never asked.

4 Q Do you remember approximately about how long the
5 interview took? Just approximately?

6 A The actual interview time or actually how long he
7 was in the room?

8 Q Well, just approximately?

9 A Approximately two hours, maybe a little bit more.
10 I'm not sure.

11 Q But that is including breaks; is that correct?

12 A Yes, sir.

13 Q Now, at the end of the interview, did you end up
14 charging Mr. Starnes?

15 A He was arrested, yes, sir.

16 Q And, again, that was on August 26th of last year?

17 A Yes, sir.

18 Q Did you have occasion to speak with him again?

19 A The very next day.

20 Q Okay. And why did you go back to see him?

21 A There were some inconsistencies in his stories and
22 some of the information I had. I was just trying
23 to make it all make sense. Bring the timelines,
24 the information I had, bring it all together. So I
25 wanted to go over that with him again. And that is

1 pretty much what we talked about. It was nothing
2 new, it was just trying to tie all those loose ends
3 together.

4 Q And before you conducted that particular interview,
5 did you Mirandize him again?

6 A Yes, sir, I did.

7 Q Okay. Was it in the manner that you described as
8 on the interview on August 26th?

9 A Yes, sir.

10 (Pause.)

11 Q I show you what is marked as State's for ID
12 purposes State's 38 and ask you if you recognize
13 that?

14 A Yes, I recognize it.

15 Q What is that, sir?

16 A It is the standard statement of Miranda rights just
17 like the one that we just looked at. The only
18 difference is I wrote at the top his name and
19 second interview, and his name is not under the
20 Waiver of Rights.

21 Q Okay. But did you go through his Waiver of Rights
22 like you have done --

23 A Yes, sir, we did go through them.

24 THE COURT: Excuse me one second. I think one
25 of the jurors needs a break. We will take -- I'm

1 (WHEREUPON, the jury came into open
2 court at 2:57 p.m.)

3 THE COURT: Are you okay? If you start
4 feeling bad, just let the bailiff know. And I'll
5 keep looking over.

6 All right.

7 THE JUROR: (Nods affirmatively.)

8 THE COURT: All right. You can take the
9 stand.

10 (Investigator Bailey returns to stand.)

11 THE COURT: Yes, sir, you may continue.

12 MR. PAULING: Thank you, Your Honor.

13 DIRECT EXAMINATION CONTINUES

14 BY MR. PAULING:

15 Q Now, Investigator Bailey, you had mentioned that
16 SLED had come to process the Tahoe and I guess as
17 well as the Moped?

18 A Yes, sir.

19 Q Okay. Well, I guess even prior to them getting
20 there, did you collect any items from the Tahoe?

21 A I collected it when we were first -- still out at
22 Cal-Maine, when I told you we did the walk-around
23 the vehicle.

24 Q Yes, sir.

25 A And I photographed a particular area of the vehicle

1 that was of interest to me. I collected what is
2 commonly called a paint transfer, packaged it and
3 labeled it.

4 Q What did you do with those items? Did you
5 transport those to SLED?

6 A I remember transporting the Moped itself. That
7 paint transfer may have been turned over to the
8 Crime Scene Unit that showed up from SLED the day
9 that they processed the vehicle.

10 Q And Crime Scene Unit, that being Kukila Stanley and
11 Michael Moskal from SLED?

12 A I know the first name of the person you mentioned,
13 but I'm not -- I would have to agree, yes, sir.

14 Q But it was a male and a female; is that correct?

15 A Yes, sir.

16 THE COURT REPORTER: I'm sorry, I didn't hear
17 your question.

18 MR. PAULING: I'm sorry.

19 Q But it was a male and female?

20 A Yes, sir, it was.

21 Q Agent?

22 A Yes, sir.

23 Q But those are the paint chips that you had gotten
24 off the Tahoe?

25 A That is the ones I collected and packaged according

1 to our guidelines, yes, sir.

2 Q And, now, you had mentioned that the statement
3 was -- the August 26th statement was video
4 recorded; is that correct?

5 A Yes, sir, it was.

6 (Pause.)

7 Q I show you what is marked for ID purposes State's
8 39, sir, and ask you is that the video recording of
9 the August 26th interview that you conducted of
10 Willie Starnes?

11 A It is labeled as, Willie Starnes, First Interview,
12 yes, sir.

13 MR. PAULING: Your Honor, at this time the
14 State would offer Exhibit 39 into evidence.

15 THE COURT: Any objection?

16 MR. KIRINCICH: Yes, Your Honor. And those
17 have been laid out previously on the record.

18 THE COURT: All right. What is the number
19 again?

20 MR. PAULING: 39.

21 THE COURT: All right. Exhibit Number 39 will
22 be entered into evidence over objection of the
23 Defendant.

24 (WHEREUPON, State's Exhibit No. 39 was
25 marked for identification and received

1 into evidence.)

2 THE COURT: All right.

3 MR. PAULING: Your Honor, may I publish this
4 to the jury at this time?

5 THE COURT: Yes, sir.

6 (Pause.)

7 THE COURT: All right, ladies and gentlemen of
8 the jury, there is a video that you all are about
9 to see. It is a -- you will see on the top of the
10 thing where it says it is "redacted." What we did
11 is there are some portions in there that are not
12 relevant for you all to hear, so we have redacted
13 those out of the video. It has made it somewhat
14 shorter, but I still think that it is about an hour
15 and a half.

16 MR. PAULING: That's correct, Your Honor.

17 THE COURT: If you all need a break during
18 that time or if you need to stand and stretch,
19 please feel free to do so.

20 If you do not feel any better, just grab our
21 attention and we will stop the video and send you
22 all back into the jury room if you need a bathroom
23 break or anything.

24 All right. Thank you. Let me know if you
25 can't see it or hear it. Can you all see it?

1 THE JURY: Yes, ma'am.

2 (Exhibit 39 published in open court.)

3 MR. PAULING: May I approach the witness, Your
4 Honor?

5 (Complies.)

6 BY MR. PAULING:

7 Q Investigator Bailey, I believe before we played
8 that first interview I discussed with you State's
9 Exhibit 38 and you indicated that was the waiver
10 form from the second interview; is that correct?

11 A Yes, sir.

12 Q And you have gone through his rights, Mr. Starnes'
13 rights, the second time like you did the first time
14 you did it; is that correct?

15 A Yes, sir, I did.

16 Q Did he state that he understood his rights?

17 A He stated he did.

18 Q And did he have any issue understanding his rights?
19 Was there anything about him that caused you
20 concern as to whether or not he understood what you
21 were saying as you were going through the rights
22 with him?

23 A Nothing noted.

24 Q Is that correct?

25 A Yes, sir. Nothing noted.

1 Q And during that second interview did he ever ask
2 you to stop the interview or did he ask for an
3 attorney?

4 A No, sir, he didn't.

5 MR. PAULING: At this time, Your Honor, I
6 offer State's 38 into evidence.

7 MR. KIRINCICH: No objection, Your Honor.

8 THE COURT: You said no objection?

9 MR. KIRINCICH: No objection.

10 THE COURT: All right. And that is what
11 number?

12 MR. PAULING: 38.

13 THE COURT: All right, Number 38 will be
14 entered without objection.

15 (WHEREUPON, State's Exhibit No. 38 was
16 marked for identification and received
17 into evidence.)

18 BY MR. PAULING:

19 Q And, again, Investigator Bailey, at that second
20 interview, was there anything significant about
21 that second interview?

22 A Nothing -- it was more -- we were rehashing what we
23 went over the day before. Like I said, I was a bit
24 concerned that it went from, I was a driver -- or,
25 I was a passenger in the vehicle, the dope man was

1 driving, and being scared of retaliation to
2 actually naming a person as the driver to then
3 recanting on that and stating he was the driver,
4 but it was an accident, and then later in the
5 interview saying, Well, you know, the dope man that
6 we got another name -- and he actually went into
7 detail of what happened, and what he was stating in
8 that interview matched everything I collected.
9 While we gave him bits and pieces of the
10 information that we were investigating, he had
11 certain what I call facts of the case that to my
12 knowledge hadn't been released to him at that time.

13 When we left the interview room that day, I
14 went out and did some follow-up on some of the
15 things he was telling me. We talked to his wife,
16 Ms. Patricia Starnes, again, and other people in
17 the community. And I think the second day we had
18 actually went and re-interviewed Mr. Miller, the
19 individual identified as the one buying the Moped.

20 And, like I stated previously, you know, I
21 like to draw a timeline and try to figure things
22 out so people don't get confused so we're all on
23 the same page.

24 And things just -- you know, there was a few
25 things here and there that didn't match up, so I

1 went and talked to Mr. Starnes again to see if we
2 could kind of clear up some of those
3 inconsistencies.

4 Nothing new, that I remember. It was just,
5 like I said, rehashing some of the facts from the
6 previous day.

7 Q And is that kind of common in your line of work
8 that that happens?

9 A Yes, sir, it is common to reinterview, like I said,
10 if we are trying to tie up loose ends, trying to
11 figure out why the timeline wasn't matching, get
12 new information to add to what we had the day
13 before. A lot of times we will bring that forward
14 and try to reinterview and get, you know, get
15 everybody on the same page, so to speak.

16 Q And just so we're clear, though, after that first
17 interview, is that when you got the warrants? You
18 had already gotten the warrants then; is that
19 correct?

20 A I believe it might have been the next morning. I'm
21 not real sure.

22 Q Okay. So I'm clear, the next morning after the
23 26th?

24 A If I'm not mistaken.

25 Q After the first interview?

1 A After the first interview.

2 Q Okay. But you already had the warrants, you
3 already had him charged in the second interview,
4 that's what I'm asking?

5 A Yes.

6 Q And you sought warrants for what crime? What were
7 the charges?

8 A The charges?

9 Q Yes.

10 A Murder and armed robbery.

11 Q And as far as armed robbery, what was the weapon?

12 A A 1999 Chevrolet Tahoe.

13 MR. PAULING: Beg the Court's indulgence.

14 (Pause.)

15 MR. PAULING: Your Honor, I have no further
16 questions at this time.

17 MR. KIRINCICH: Thank you, Your Honor.

18 THE COURT: Let me ask before you start, does
19 anyone need a break? Okay, we'll take about a five
20 or ten minute break, bathroom break.

21 (WHEREUPON, the jury retires to the jury
22 room at 4:33 p.m.)

23 (WHEREUPON, the jury came into open
24 court at 4:44 p.m.)

25 CROSS-EXAMINATION

1 Somebody did it?

2 A Yes, sir, somebody did it.

3 Q Somebody did it. But now, because they have a
4 name, we are going to treat this like it is a
5 murder case?

6 A No, sir. We didn't make the determination for
7 murder until after the interview.

8 Q Which interview?

9 A The first interview.

10 Q The first interview with Mr. Starnes?

11 A Yes, sir.

12 Q Let's talk about those interviews with Mr. Starnes.

13 A Yes, sir.

14 Q You already knew he went and told his wife he did
15 something stupid, or some stupid shit, like she
16 wrote in her --

17 A That was her sworn statement.

18 Q -- report?

19 A Yes, sir.

20 Q And you go back out to the scene and, lo and
21 behold, Mr. Starnes walks up; right?

22 A Yes, sir.

23 Q All right. And you are just going to -- you are
24 going to play it cool out there, so you put the
25 tailgate down and y'all are just talking, y'all are

1 Q Was that a blue van?

2 A No, sir.

3 Q State's 23?

4 A No, that is a Tahoe.

5 Q And what color is it?

6 A It appears black from that picture.

7 Q You know the blue van isn't right, so you harp on
8 two guys; right? That is what y'all want to know,
9 Who was the other guy?

10 A There again, you are saying -- you are
11 concentrating, Well, that it is a black Tahoe.
12 They said, Like the neighbor across the street.
13 When you look across the street, there is a
14 dark-color Tahoe. Both of them have the opening
15 doors like this.

16 Q You concentrate on the black guy and the white guy;
17 right?

18 A We concentrate on two people, yes, sir, because
19 that is the information we have at the time.

20 Q What does he tell you? What did he tell you?

21 A Which time?

22 Q The interview we just watched, the beginning?

23 A He told me two or three different things.

24 Q We are still at the beginning.

25 A Okay.

1 Q What did he tell you?

2 A At the beginning, at first we was on the Patrick
3 Jones. That was the first thing. Well, away from
4 the roadside in the interview is Patrick Jones. On
5 the roadside it was the dope man.

6 Q How many times did Mr. Starnes tell you he was the
7 one driving? Numerous? More than one? A couple?

8 A Which time? Because it went from him --

9 Q On the video we just watched, Investigator Bailey,
10 how many times did he tell you he was driving?

11 A He told me once, then he changed his story, then he
12 said he was doing it again. So actually during the
13 interview he told me twice that he was the actual
14 driver. But he also told me that two other people
15 were driving.

16 Q How many times did he say it was an accident?

17 A One time he went that line of questioning, that it
18 was an accident.

19 Q How many times did he say, I didn't mean to hit
20 him?

21 A That was in that one conversation where he said it
22 was an accident.

23 Q At this point, what do you have that this as an
24 intentional act?

25 A Why do I think it was an intentional act? Or what

1 do I have to say to that? Everything that was
2 presented here, plus the last statement made by the
3 deceased, that he heard the vehicle speed up, hit
4 him, he hit the ground, he watched, what he said
5 were two people, load his personal property, go to
6 the end of the road, turn around, intentionally run
7 over him. The person that is sitting in this
8 courtroom admits to taking that man's property and
9 selling it to a drug dealer.

10 Q Now, your characterization of that statement
11 combines all the best elements for you, doesn't it,
12 and leaves out what he said was a blue van? And he
13 said there was two guys, I'll give you that.

14 A Yes, sir.

15 Q He didn't deny that he hit Mr. Robinson, did he?

16 A Or be a part of the action, no, sir, he never
17 denied that.

18 Q In fact, I got to admit, when I watched the video,
19 it seemed almost backwards to me, all right?

20 A Okay.

21 Q And I'll explain and give you a chance to explain
22 yourself. There is three officers in there with
23 probably 75 years of experience amongst the three
24 of you?

25 A Easily, yes, sir.

1 (Complies.)

2 THE COURT: All right. I am going to ask the
3 clerk to publish the verdict.

4 THE CLERK: Thank you, Your Honor.

5 This is: State of South Carolina, County of
6 Kershaw. State of South Carolina v. Willie Thomas
7 Starnes, Defendant. Indictment Numbers 2013-GS-28-
8 1040 and 1041.

9 As to the indictment alleging armed robbery:
10 We, the jury, unanimously find the Defendant
11 guilty.

12 As to the indictment alleging murder, We, the
13 jury, unanimously find the Defendant guilty.

14 And it is signed by the foreman.

15 Mr. Foreman, and ladies and gentlemen of the
16 jury, if this is your verdict, please signify by
17 raising your right hand.

18 (Complies.)

19 THE COURT: All right, thank you. You may put
20 your hands down.

21 (Complies.)

22 THE COURT: Anything else from the jury from
23 the State?

24 MR. PAULING: None from the State, Your Honor.

25 THE COURT: Anything from the Defendant?

1 tied in this issue. That if you find that notice
2 to be proper -- and I have already handed up the
3 certified conviction for what would normally be a
4 most serious conviction. I don't know if the State
5 had done that on their own, but I did. It is not
6 checked most serious. That is the reason I object
7 because the State has to show that Mr. Starnes had
8 a most serious conviction. For whatever reason, it
9 is not checked there. I think the State has failed
10 to show that at this point. I do object to the
11 automatic imposition of a life without parole
12 sentence. I'll handle the rest of it with ink and
13 paper, Your Honor.

14 THE COURT: All right. All right, have
15 Mr. Starnes stand.

16 (Defendant stands.)

17 SENTENCE

18 THE COURT: All right. On Indictment
19 2013-GS-28-1040 and 1041, Mr. Starnes, you will be
20 sentenced to the State Department of Corrections
21 for life on both indictments. And I put concurrent
22 on here. But it is life without parole. And I
23 have checked the appropriate box under 17-25-45 of
24 mandatory life without parole on the sentence.

25 All right. Thank you. Good luck to you all.

WITNESSES

(S) R Bailey

- Kershaw County Sheriff

ARREST WARRANT NUMBER

2013A2810101227

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

AUG 20 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-28-1040

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

DECEMBER TERM 2013

K96

THE STATE
vs.

Willie Thomas Starnes

AMENDED

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2014 AUG 20 PM 2:46
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW.

AMENDED INDICTMENT

At a Court of General Sessions, convened on DECEMBER 9, 2013,

the Grand Jurors of Kershaw County present upon their oath:

ARMED ROBBERY

That Willie Thomas Starnes did in Kershaw County on or about August 24, 2013, commit robbery by feloniously taking from the person or presence of ALAN ROBINSON, by means of force or intimidation, goods or monies of ALAN ROBINSON, such goods or monies being described as MOPED, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon TO WIT, A MOTOR VEHICLE, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC 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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) R Bailey
- Kershaw County Sheriff

ARREST WARRANT NUMBER

2013A2810101228

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

AUG 20 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013-GS-28-1041

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

DECEMBER TERM 2013
K96

THE STATE
vs.

Willie Thomas Starnes

AMENDED
Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2014 AUG 20 PM 2:46
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

AMENDED INDICTMENT

At a Court of General Sessions, convened on DECEMBER 9, 2013,

the Grand Jurors of Kershaw County present upon their oath:

MURDER

That Willie Thomas Starnes did in Kershaw County, on or about August 24, 2013, willfully, feloniously, and intentionally kill the victim, ALAN ROBINSON, with malice aforethought, either express or implied, by means of STRIKING VICTIM WITH A VEHICLE, and the victim did die as a proximate result thereof on or about AUGUST 25, 2013 in Kershaw County, in violation of Section 16-03-0010, S. C. 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.


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Kershaw
STATE VS.
Willie Thomas Starnes

AKA:

Race: WHITE Sex: M Age: 33DOB: SS#:

Address:

City, State, Zip: Bethune, SC 29009DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponINDICTMENT/CASE#: 2013GS281040A/W#: 2013A2810101227Date of Offense: 8/24/2013S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Perry, BrettSC Bar# 6991

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment
of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ — plus 20% fee: — \$ —

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

— days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ — beginning —\$ — paid to Public Defender FundOther: —

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

W/B
2/6/14
8/28/14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Kershaw
 STATE VS.
Willie Thomas Starnes
 AKA:
 Race: WHITE Sex: M Age: 33
 DOB: 1 SS#:
 Address:
 City, State, Zip: Bethune, SC 29009
 DL#: SID#:
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

INDICTMENT/CASE#: 2013GS281041
 A/W#: 2013A2810101228
 Date of Offense: 8/24/2013
 S.C. Code § : 16-03-0010
 CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45
 The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: Brett 6991
Kerry, Brett SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
 Total: \$ plus 20% fee: \$
 Payment Terms:
☐ Set by SCDPPPS
 Recipient:

*Fine:
 § 14-1-206 (Assessments 107.5 %) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114(BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Jane M. Danner

Court Reporter: Michael M. Andy

SCCA/217 (03/2011)

Presiding Judge W/B

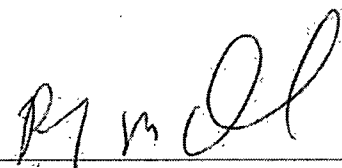
Judge Code: 2161

Sentence Date: 8/28/14

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this 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."

March 28, 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

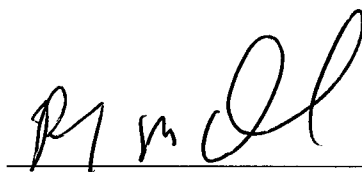
ATTORNEY FOR APPELLANT

RECEIVED
MAR 28 2016
SC Court of Appeals

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March 28, 2016



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ATTORNEY FOR APPELLANT

RECEIVED

MAR 28 2016

SC Court of Appeals