

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED

MAY - 2 2016

SC SUPREME COURT

DANIEL HAMRICK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002164

A P P E N D I X

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBITS #1-22 (PHOTOS)
STATE’S EXHIBITS # 35 AND #37 (VIDEOS)
DEFENDANT’S EXHIBITS #1-24 (PHOTOS AND DIAGRAMS)

1 State of South Carolina }
2 County of Charleston } Indictment No. 2012GS1001033
3 State of South Carolina, }
4 Plaintiff, }
5 vs. } Trial Transcript
6 Daniel D. Hamrick, }
7 Defendant. }

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10 VOLUME 1

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16 October 21, 2013

17 Charleston, South Carolina

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22 BEFORE:

23 The Honorable Deadra Jefferson

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APPEARANCES

PLAINTIFF'S ATTORNEYS:

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JURY PANEL QUALIFICATION

1 PROCEEDINGS

2 (Jury panel is brought into the courtroom.)

3 THE COURT: Are you all requesting a
4 court-ordered arraignment?

5 MR. BISCHOFF: No, Your Honor, we'll waive
6 that.

7 THE COURT: Ladies and gentlemen, we are
8 going to select a jury for the case of the State
9 of South Carolina versus Daniel D. Hamrick. An
10 indictment for felony driving under the influence
11 with great bodily injury, Indictment 2012GS101033.

12 That indictment alleges as follows: That in
13 Charleston County, South Carolina, on or about
14 November 14th of 2011, while driving a vehicle under
15 the influence of alcohol, drugs, or both alcohol and
16 drugs, the Defendant, Daniel D. Hamrick, did an act
17 prohibited by law or neglected a duty imposed by law in
18 driving in said vehicle speeding too fast for
19 conditions, failure to exercise due care, failure to
20 keep proper lookout, and/or failure to maintain lane,
21 and such act possibly caused great bodily injury to
22 Ahmad Garland, alleging the violation of Code
23 Section 56-5-2945 of the Code of Law as amended.

24 We're going to go through a process called "voir
25 dire," which is simply a legal term meaning that I'm

JURY PANEL QUALIFICATION

1 going to ask you all some questions so that the
2 attorneys can more effectively exercise their
3 peremptory challenges in jury selection.

4 If a question applies to you, please stand and in
5 a loud and clear voice give us your name, your juror
6 number, an answer to the question if applicable. And
7 remain standing until the Court has completed
8 questioning.

9 Before we begin that process I'm going to have
10 counsel for the State to introduce themselves, anyone
11 who will be assisting them in the trial of this case,
12 and also publish the names of the lawyers in their
13 office. And also have counsel for the Defense to
14 provide us with the same information.

15 Mr. Kidd, you may proceed.

16 MR. KIDD: Thank you, Your Honor.

17 THE COURT: You're welcome. Yes, sir.

18 MR. KIDD: Good morning, ladies and
19 gentlemen. My name is Culver Kidd, I'm the
20 Assistant Solicitor for the Ninth Circuit, which
21 is Charleston and Berkeley County. I work under
22 the direction of Scarlett Wilson. Trying this
23 case with me today is Chad Simpson, also Assistant
24 Solicitor in our office. And an intern law
25 student, Jordan Smith. You will also most likely

JURY PANEL QUALIFICATION

1 see my investigator, Sherry Niblock coming in and
2 out of the courtroom for a good bit.

3 And if you bear with me a little bit while I think
4 of all the attorneys in my office. I should have it
5 written up. As I said, Scarlett Wilson is the elected
6 Solicitor. Under her is the Deputy Solicitor, Bruce
7 DuRant. We have Assistant Solicitor Jennifer Shealy,
8 Julie Cardillo, Greg Voigt, Spencer Compton, Stephanie
9 Linder, Debbie Herring-Lash, Burns Wetmore, Shannon
10 Elliott, Jessica Baldwin, Emmanuel Ferguson, Tyler
11 Schachte -- or Tyler Whitaker now, excuse me, she is
12 married. Meg Haley, Lindsey Byrd, Kelly Flynn,
13 Elizabeth Riddle, Amy Harrell, Jennifer McCoy, Randell
14 Stoney, Alex Ziegler, Chris Lietzow, Richard Waring,
15 Drew Evans. I'm pretty sure that's all of them. Thank
16 you.

17 THE COURT: You may be seated.

18 MR. BISCHOFF: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 MR. BISCHOFF: Good morning, ladies and
21 gentlemen. My name is Scott Bischoff, I work with
22 Savage Law Firm. With me is Don McCune, another
23 associate attorney in our office. Mr. Andy Savage
24 is obviously the other attorney in our office. We
25 have three attorneys. We have three paralegals.

JURY PANEL QUALIFICATION

1 Helping me today is Laura Shaeffer. Heather Hill
2 is another paralegal. Cheryl Savage is another
3 paralegal. And then our receptionist, Sara
4 Duncan. That is pretty much everybody in our
5 office.

6 THE COURT: Ladies and gentlemen, I'm going
7 to ask some questions. If any of the questions
8 apply to you, please stand and in a loud and clear
9 voice give us your juror number, and an answer to
10 the question if applicable, and remain standing
11 until I have finished questioning you.

12 Is there any member of the panel related by blood
13 or marriage to Daniel D. Hamrick or Ahmad Garland? If
14 so, please stand at this time.

15 Does any member of the panel have a close personal
16 or social relationship with Daniel D. Hamrick, Ahmad
17 Garland, or anyone who is related to Ahmad Garland? If
18 so, please stand at this time.

19 The following are a list of potential witnesses in
20 this case. I would ask that you listen carefully.

21 Sergeant Kieviet Heyward; Detective Daniel P. Eckert,
22 also known as Dan Eckert; Sergeant Andrew T. Harris;
23 PFC Robert M. Bassile, B-a-s-s-i-l-e; A.R. Mitchell;
24 Sergeant Winstead; PFC Campbell; Jim Smith; Sergeant
25 Robert Googe, G-o-o-g-e; Corporal Herring; and PFC

JURY PANEL QUALIFICATION

1 Ballenger; all of the Mount Pleasant Police Department,
2 as well as PFC Lamb.

3 Carla Fallaw, F-a-l-l-a-w.

4 Ray Haupt also Mount Pleasant Police Department.

5 Selena Kinard, Nikki Perry Hughes, Brandon
6 Williams, Maribeth Coleman, Carmen Tucker, Jennifer
7 Brown, Laurie J. Shacker, all of the South Carolina Law
8 Enforcement Division.

9 Susan Johnson of T-Mobile.

10 Christopher Key, also known as Chris Key; Terry
11 Lee Johnston; James Faulkner; Michael Buchanan; Neva
12 Newman; Felipe Calzada; Henry Ford; Twan, T-w-a-n,
13 Roberts; Brian Sessions; Felix Figueroa, Jr.; Ralph
14 Crowe; Carrie Leadingham, also known as Kerry,
15 K-e-r-r-y, Leadingham; Alisha Burley; Jared Burley;
16 Lori Hamrick.

17 Dr. Leon Stuart of the Medical University of South
18 Carolina. Woodrow M. Poplin, M.S.E, P.E., also known
19 as Woody Poplin. Ruthie Garland, Meiko Garland.

20 J.L. Booker of the South Carolina Highway Patrol.

21 Dr. Stephan Murk and John Clayton.

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

JURY PANEL QUALIFICATION

1 please stand at this time.

2 Yes, ma'am?

3 THE JUROR: (6) Well, I know Dan Eckert
4 fairly well. My husband is friends with him.

5 THE COURT: And just tell me your name and
6 your juror number.

7 THE JUROR: Richard Allen, Juror Number 6.

8 THE COURT: And your husband is friends with
9 who?

10 THE JUROR: (6) Dan Eckert.

11 THE COURT: And how would you characterize
12 that friendship?

13 THE JUROR: (6) Fairly good friendship. They
14 are friends through the Cub Scout community. We
15 work together in the Cub Scouts.

16 THE COURT: As a result of this experience,
17 do you feel that you can remain fair and impartial
18 and render a fair and impartial decision in the
19 case based solely on the evidence as it will be
20 presented, and on the law that the Court will
21 instruct?

22 THE JUROR: (6) Yes.

23 THE COURT: Thank you, ma'am. You may take
24 your seat.

25 Has any member of the panel ever been represented

JURY PANEL QUALIFICATION

1 by any of the attorneys involved in this case or any of
2 the lawyers with whom they practice law? If so, please
3 stand at this time.

4 Is there any member of the panel related by blood
5 or marriage to or have a close personal or social
6 relationship with any of the attorneys involved in this
7 case, any of the lawyers in their law firms or in their
8 offices, or any person who is employed in their law
9 firms or in their offices? If so, please stand at this
10 time.

11 Yes, ma'am?

12 THE JUROR: (159) I know --

13 THE COURT: And then just tell me your name
14 and your juror number.

15 THE JUROR: Manon Brown, Number 159.

16 THE COURT: And you have a friendship with --

17 THE JUROR: (159) Mr. Chapman (phonetic).

18 THE COURT: And how would you characterize
19 that friendship?

20 THE JUROR: (159) We've been friends for
21 about ten years.

22 THE COURT: And how often would you say you
23 see him?

24 THE JUROR: (159) Maybe four or five times a
25 year.

JURY PANEL QUALIFICATION

1 THE COURT: You can remain standing.

2 Yes, sir?

3 THE JUROR: Ron Pearce, 267. Ran Stoney.

4 His father and I were law partners for an extended
5 period of time.

6 THE COURT: Okay. If you would remain
7 standing for me, sir.

8 Yes, ma'am?

9 THE JUROR: Deborah Farrell, 112.
10 Investigator Sherry Niblock and my husband worked
11 together for years at the city police department.

12 THE COURT: Okay. Did I get everyone? As a
13 result of these --

14 Yes, sir? Tell me your name and your juror
15 number.

16 THE JUROR: Bernard Glover, Juror Number 133.
17 My sister, Veronica Smalls, was an attorney -- or
18 was a judge, and she is still a practicing
19 attorney.

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

JURY PANEL QUALIFICATION

1 your seat.

2 (All jurors take their seats.)

3 THE COURT: Let the record reflect that all
4 answered yes.

5 Has any member of the panel formed or expressed an
6 opinion about any matter involved in this case? If so,
7 please stand at this time.

8 Is there any member of the panel aware of any bias
9 or prejudice towards either the State or the Defense in
10 this case? If so, please stand at this time.

11 Is there any member of the panel who was a member
12 of the grand jury which issued the indictment in this
13 case? If so, please stand at this time.

14 Is there any member of the panel a member of or
15 contributor to any group which has as its primary
16 concern the promotion of law enforcement or victim's
17 rights? These groups would include but are not limited
18 to: Mothers Against Drunk Driving, Students Against
19 Drunk Driving, Citizens Against Violent Crime, People
20 Against Rape, Citizens Advocating a Return to Decency
21 and Ethics, and Parents Empowered to Save Teens. If
22 so -- or any other type of community-watch group. If
23 so, please stand at this time.

24 Yes, sir?

25 THE JUROR: Bernard Glover, Juror Number 133.

JURY PANEL QUALIFICATION

1 I've worked with the Mothers Against Drunk Drivers
2 in the State of New York for a few years. I was
3 chapter president. Plus my sister was killed
4 in --

5 THE COURT: I'm sorry, I didn't hear the last
6 part. Your sister was killed where?

7 THE JUROR: (133) In Atlanta, Georgia.

8 THE COURT: As a result of a drunk driving
9 accident?

10 THE JUROR: (133) Yes.

11 THE COURT: Okay.

12 THE JUROR: (133) Do you need her name?

13 THE COURT: Yes, sir, tell me your name.

14 THE JUROR: (133) No, her name?

15 THE COURT: No --

16 THE JUROR: (133) My name is Bernard Glover.

17 THE COURT: Yes, sir. Number 133?

18 THE JUROR: (133) Yes.

19 THE COURT: As a part of these experiences,
20 do you feel that the you can remain fair and
21 impartial?

22 THE JUROR: (133) No audible response.

23 THE COURT: Yes, sir? Stand for me, please.

24

25 THE JUROR: Benjamin Richardson, Juror Number

JURY PANEL QUALIFICATION

1 282. My brother got killed by a drunk driver on
2 James Island.

3 THE COURT: Yes, sir?

4 THE JUROR: (282) I have --

5 THE COURT: Okay. If you would remain
6 standing.

7 Yes, ma'am?

8 THE JUROR: (371) My name is Cheryll
9 Woodsflowers. I don't know my juror number. I'm
10 not sure if this qualifies or not, but I chair Low
11 Country Crime Stoppers.

12 THE COURT: You said you chair?

13 THE JUROR: (371) Low Country Crime Stoppers.
14 I'm not sure if that's a qualifying organization
15 or not.

16 THE COURT: It would. And you are number
17 371.

18 THE JUROR: (371) Thank you.

19 THE COURT: You're welcome. As a result of
20 these experiences, do you all feel that you can
21 remain fair and impartial and render a fair and
22 impartial decision in this case based solely on
23 the evidence as it will be presented, and on the
24 law as the Court will instruct? If your answer is
25 yes, please take your seat.

JURY PANEL QUALIFICATION

1 Let the record reflect that all answered yes with
2 the exception of Number 133.

3 THE JUROR: (133) My answer would be no.

4 THE COURT: With the exception of Number 133,
5 who has indicated he cannot be fair and impartial.

6 Sir, you will be excused from this trial only, but
7 you may take your seat. Thank you.

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

12 Is there any member of the panel who has read,
13 watched, or listened to any media accounts about this
14 case? That includes anything that could have been read
15 in the newspaper, on the Internet, seen on television,
16 or heard on the radio. If so, please stand at this
17 time.

18 Is there any member of the panel who has any
19 personal knowledge of the facts and circumstances of
20 this case which is alleged to have taken place on
21 November 14, 2011? If so, please stand at this time.

22 Is there any member of the panel who has had what
23 they would characterize as an unpleasant experience
24 with law enforcement that affects your ability to be
25 fair and impartial? If so, please stand at this time.

JURY PANEL QUALIFICATION

1 Is there any member of the panel who has any
2 moral, philosophical, or religious view that prohibit
3 you from standing in judgment of a fellow human being?
4 If so, please stand at this time.

5 Is there any member of the panel who has ever done
6 business with Banks Construction, or who has done any
7 work in the performance of road construction and
8 improvements at Highway U.S. 17? If so, please stand
9 at this time.

10 Yes, ma'am? Tell me your name and your juror
11 number.

12 THE JUROR: Adrian Mitchell, 242.

13 THE COURT: And what was your interaction,
14 ma'am?

15 THE JUROR: (242) I work with Davidson
16 Florida. I am an administrative assistant.

17 THE COURT: That's an engineering firm,
18 correct?

19 THE JUROR: (242) Right.

20 THE COURT: Okay. And you worked in
21 conjunction with this particular project?

22 THE JUROR: (242) Somewhat, yes.

23 THE COURT: Yes, ma'am?

24 THE JUROR: Good morning. I'm 122, Kristin
25 McClausen.

JURY PANEL QUALIFICATION

1 THE COURT: And what was your connection?

2 THE JUROR: (122) About ten years ago I did
3 their IT work, did their networking at their
4 office.

5 THE COURT: As a result of these experiences,
6 do you both feel that you can remain fair and
7 impartial and render a fair and impartial decision
8 in this case based solely on the evidence as it
9 will be presented, and on the law that the Court
10 will instruct? If your answer is yes, please take
11 a seat.

12 Let the record reflect that both answered yes.

13 Is there any member of the panel who has a family
14 member who is employed in law enforcement? If so,
15 please stand at this time.

16 If you will tell me your name, juror number, which
17 member of the family it is, and what law enforcement
18 agency, and remain standing.

19 Yes, ma'am?

20 THE JUROR: (112) Deborah Farrell, Juror
21 Number 112. My husband is a lieutenant with the
22 City of Charleston Police Department.

23 THE COURT: Yes, ma'am?

24 THE JUROR: Sherri Brown, 53. My ex is a
25 police officer with Trident Technical College.

JURY PANEL QUALIFICATION

1 THE COURT: Yes, sir?

2 THE JUROR: William Bloss, 35. My
3 mother-in-law is a detention officer and works in
4 this courthouse.

5 THE COURT: You said that she is a detention
6 officer and works in the courthouse?

7 THE JUROR: (35) Yes.

8 THE COURT: Okay. Yes, sir?

9 THE JUROR: Arthur Wright, 372.

10 THE COURT: 372?

11 THE JUROR: (372) Yes, ma'am.

12 THE COURT: Uh-huh.

13 THE JUROR: (372) I have a cousin who is a
14 dispatcher.

15 THE COURT: With which agency?

16 THE JUROR: (372) Mt. Pleasant Police
17 Department.

18 THE COURT: And yes, sir?

19 THE JUROR: Juror 282. I have a
20 brother-in-law, county police department, city
21 police. And a cousin is also with the City Police
22 Department.

23 THE COURT: Okay. If you would remain
24 standing.

25 Yes, ma'am?

JURY PANEL QUALIFICATION

1 THE JUROR: Number 242, Adrian Mitchell. My
2 husband is a policeman for the County of St.
3 George.

4 THE COURT: Okay. Did I get everybody?

5 As a result of these experiences, do you all feel
6 that you can remain fair and impartial and render a
7 fair and impartial decision in this case based solely
8 on the evidence as it will be presented, and on the law
9 that the Court will instruct? If your answer is yes,
10 please take your seat.

11 Let the record reflect that all answered yes.

12 Is there any member of the panel who has been the
13 victim of a violent crime? If so, please stand at this
14 time.

15 Is there any member of the panel or member of your
16 immediate family ever been the victim of an accident
17 either involving great bodily injury or death where
18 alcohol was involved? If so please stand at this time.
19 And Mr. Glover, you do not have to stand again.

20 Yes, ma'am?

21 THE JUROR: Kelly Angus, Juror Number 18.

22 THE COURT: Nineteen or 18?

23 THE JUROR: (18) Eighteen.

24 THE COURT: And was it you or a family
25 member?

JURY PANEL QUALIFICATION

1 THE JUROR: (18) My mom, when I was a kid.
2 She ended up with back and neck problems.

3 THE COURT: As a result of this experience,
4 ma'am, do you feel that will you can remain fair
5 and impartial and render a fair and impartial
6 decision in this case based solely on the evidence
7 as it will be presented, and on the law that the
8 Court will instruct?

9 THE JUROR: (18) Yes.

10 THE COURT: Thank you, ma'am. You may take
11 your seat.

12 Does any member of the panel -- oh, I'm sorry.

13 THE JUROR: (20) Sorry -- I was wait -- for
14 you to get through. My husband's first cousin 40
15 years ago, but they both died in a car accident
16 involving drunk driving.

17 THE COURT: Your name and juror number?

18 THE JUROR: (20) Sorry. Barbara Barnes,
19 Number 20.

20 THE COURT: Number 20?

21 THE JUROR: (20) Yes.

22 THE COURT: Yes, ma'am?

23 THE JUROR: Sorry. Alison Champagne, Juror
24 Number 70.

25 THE COURT: Yes, ma'am?

JURY PANEL QUALIFICATION

1 THE JUROR: (70) I was rear-ended by a drunk
2 driver on New Year's Eve a few years back.

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

10 Let the record reflect that both answered yes.

11 Does any member of the panel know of any reason
12 whatsoever why he or she could not serve as a juror in
13 this case, with particular emphasis being placed on
14 your ability to be fair and impartial to both the State
15 and the Defense? If so, please stand.

16 THE JUROR: (371) This might be more of an
17 issue of the disclosure.

18 THE COURT: Yes, ma'am?

19 THE JUROR: (371) I was mayor from Mount
20 Pleasant and do know some of those officers. In
21 fact hired a number of those whose names were
22 mentioned. I do feel that I can still serve and
23 be impartial, but I felt that I probably should
24 disclose that.

25 THE COURT: And your name and juror number?

JURY PANEL QUALIFICATION

1 THE JUROR: (371) It's Cheryll Woodsflowers,
2 and it's 371.

3 THE COURT: And, ma'am, how long ago would
4 you say that you hired most of those officers?

5 THE JUROR: (371) Oh, goodness.

6 THE COURT: You can just give an estimate.

7 THE JUROR: (371) I have been out of office
8 13 years.

9 THE COURT: Okay.

10 THE JUROR: (371) So it's been some time ago.

11 THE COURT: Thank you very much for the
12 information. Okay. If you could remain standing.

13 THE JUROR: Janna Bolchoz, Juror 37. I'm not
14 sure if this counts, I did work for ten years with
15 alcohol and drug rehab, but that was ten years out
16 of college, so it's been quite some time ago.

17 THE COURT: Okay. If you would remain
18 standing.

19 Yes, sir?

20 THE JUROR: (290) Also a disclosure just for
21 the fact I do work for the fire department -- also
22 greatly affected first responder on scene for,
23 unfortunately, many of these accidents I still
24 feel fair and balanced; just for the record.

25 THE COURT: And your name and juror number?

JURY PANEL QUALIFICATION

1 THE JUROR: William Roper, 290.

2 THE COURT: As a result -- I need you to
3 remain standing for me, sir.

4 As a result of these experiences, do you all feel
5 that you can remain fair and impartial and render a
6 fair and impartial decision in this case based solely
7 on the evidence as it'll be presented, and on the law
8 as the Court will instruct? If your answer is yes,
9 please take a seat.

10 Let the record reflect that all answered yes.

11 Are there any additional questions from the State?

12 MR. KIDD: No, ma'am. Thank you.

13 THE COURT: You are welcome. From the
14 Defense?

15 MR. BISCHOFF: May I beg the Court's
16 indulgence, one moment?

17 THE COURT: Uh-huh.

18 MR. BISCHOFF: None, Judge. Thank you.

19 THE COURT: You are welcome. Strikes are
20 five and five.

21 (Pause.)

22 THE COURT: Ladies and gentlemen, if your
23 name is called please come forward as Mr. Chris is
24 doing, stand where he stands, and turn back around
25 as he is until you are either seated or excused as

JURY PANEL QUALIFICATION

1 a juror. We appreciate your patience and
2 hopefully we will be able to move through this
3 process expeditiously. Again, if your name is
4 called please bring all of your personal
5 belongings and come forward as he just
6 demonstrated.

7 THE CLERK: Ladies and gentlemen, as the
8 Judge instructed, if your name is called, gather
9 your belongings and please come forward.

10 Juror 126, Alice Gaillard. What you say for the
11 State?

12 MR. KIDD: Court's indulgence.

13 THE COURT: Uh-huh.

14 MR. KIDD: Please present the juror.

15 THE CLERK: What say you for the Defendant?

16 MR. BISCHOFF: Please present the juror.

17 THE CLERK: You have been selected as a juror
18 in this case.

19 Juror Number 57, Alan Burnett. What you say for
20 the State?

21 MR. KIDD: Court's indulgence. Please excuse
22 the juror.

23 THE CLERK: Please have a seat in the
24 audience. You have been excused from the trial in
25 this case.

JURY SELECTION

1 Juror Number 242, Adrienne Mitchell. What say you
2 for the State?

3 MR. KIDD: Please present the juror.

4 THE CLERK: What say you for the Defendant?

5 MR. BISCHOFF: Beg the Court's indulgence.

6 THE COURT: Uh-huh.

7 MR. BISCHOFF: Please seat the juror.

8 THE CLERK: You have been selected in this
9 case.

10 Juror Number 37, Janna Bolchoz. What say you for
11 the State?

12 MR. KIDD: Court's indulgence. Please excuse
13 the juror.

14 THE CLERK: Ms. Bolchoz, you have been
15 excused from the trial in this case. You may have
16 a seat back in the audience.

17 Juror Number 264, Penzola Parris. What say you
18 for the State?

19 MR. KIDD: Court's indulgence. Please
20 present the juror.

21 THE CLERK: What say you for the Defendant?

22 MR. BISCHOFF: Please excuse the juror.

23 THE CLERK: You may have a seat in the
24 audience, you have been excused from trial in this
25 case.

JURY SELECTION

1 Juror 21, William Barr. What say you for the
2 State?

3 MR. KIDD: Judge, may we approach?

4 THE COURT: Uh-huh.

5 (Off-the-record discussion.)

6 THE CLERK: Proceed, Your Honor?

7 THE COURT: Yes.

8 THE CLERK: What say you for the State?

9 MR. KIDD: The Court's indulgence. Please
10 excuse the juror.

11 THE CLERK: You have been excused from the
12 trial in this case. Please have a seat in the
13 audience. State has exhausted three strikes.

14 Juror 347, Suzanne Wallace. What say you for the
15 State?

16 MR. KIDD: Please present the juror.

17 THE CLERK: What say you for the Defense?

18 MR. BISCHOFF: Please excuse the juror.

19 THE CLERK: Have a seat back in the audience,
20 you have been excused from the trial in this case.

21 Juror Number 53, Sherry Brown. What say you for
22 the State?

23 MR. KIDD: Court's indulgence. Please
24 present the juror.

25 THE CLERK: What say you for the Defendant?

JURY SELECTION

1 MR. BISCHOFF: Please seat the juror.

2 THE CLERK: Please have a seat in the jury
3 box, you have been selected as juror for the trial
4 in this case.

5 Juror Number 267, Robert Pearce. What say you for
6 the State?

7 MR. KIDD: The Court's indulgence. Please
8 present the juror.

9 THE CLERK: What say you for the Defendant?

10 MR. BISCHOFF: Please seat the juror.

11 THE CLERK: Have a seat in the jury box, you
12 have been selected in this case.

13 Juror Number 322, Davon Stanley. What say you for
14 the State?

15 MR. KIDD: The Court's indulgence. Please
16 excuse the juror.

17 THE CLERK: Mr. Stanley, have a seat. You
18 have been excused as a juror in this case. The
19 State has exhausted four strikes.

20 Juror Number 290, William Roper. What say you for
21 State?

22 MR. KIDD: The Court's indulgence. Please
23 present the juror.

24 THE CLERK: What say you for the Defendant?

25 MR. BISCHOFF: Please excuse the juror.

JURY SELECTION

1 THE CLERK: You may have a seat in the
2 audience, you have been excused. The Defendant
3 has exhausted three strikes.

4 Juror 371, Cheryll Woodsflowers. What say you for
5 the State?

6 MR. KIDD: Please present the juror.

7 THE CLERK: What say you for the Defendant?

8 MR. BISCHOFF: Please excuse the juror.

9 THE CLERK: Okay. Ms. Woodsflowers, if you
10 can have a seat in the audience, you have been
11 excused in this case. The Defendant has exhausted
12 four strikes.

13 Juror 151, Nadara Hoffman, 151. What say you for
14 the State?

15 MR. KIDD: The Court's indulgence. Please
16 present the juror.

17 THE CLERK: What say you for the Defendant?

18 MR. BISCHOFF: Please seat the juror.

19 THE CLERK: Please have a seat, you have been
20 selected as a juror in this case.

21 Juror 171, Norman Jones. What say you for the
22 State?

23 MR. KIDD: Your Honor, may we approach?

24 THE COURT: Uh-huh.

25 (Side bar held as follows:)

JURY SELECTION

1 THE COURT: If you could approach with me,
2 please. Right here with the court reporter.

3 Sir, if you could tell me your name and your juror
4 number?

5 THE JUROR: 171, Norman Jones.

6 THE COURT: Mr. Jones, are you currently
7 engaged?

8 THE JUROR: (171) Yes, I am.

9 THE COURT: And what is your fiance's name?

10 THE JUROR: (171) Kate Summer (phonetic).

11 THE COURT: Okay. You are familiar with
12 Mr. Culver Kidd?

13 THE JUROR: (171) I am.

14 THE COURT: Are you familiar with their
15 previous relationship?

16 THE JUROR: (171) I am.

17 THE COURT: As a result of that do you feel
18 you can remain impartial, or do you have any angst
19 or bad feelings toward him?

20 THE JUROR: (171) Not really, we don't know
21 each other. I don't think so.

22 THE COURT: Okay. As a result of any of this
23 from their previous relationship, does that affect
24 your ability to be fair and impartial?

25 THE JUROR: (171) Maybe a little bit.

JURY SELECTION

1 THE COURT: Okay. I need you to search your
2 heart. Only you -- you are the only person that
3 can give me a direct answer and there is no right
4 or wrong answer.

5 THE JUROR: (171) Yeah.

6 THE COURT: I need to know -- I understand
7 that there may be lingering financial issues. But
8 otherwise I need to know that as a result of that
9 financial which could affect y'all's
10 relationship --

11 THE JUROR: (171) No.

12 THE COURT: I understand that y'all have a
13 child together, correct?

14 THE JUROR: (171) Yes.

15 THE COURT: Do you feel that you can be fair
16 and impartial in this case? And I need you,
17 again, to search your heart because only you can
18 only give me that answer. There's no right or
19 wrong answer. You will not be penalized.

20 THE JUROR: (171) I don't think that I could.

21 THE COURT: Be fair and impartial?

22 THE JUROR: (171) Yeah.

23 THE COURT: Okay. We will excuse you from
24 the trial in this case only. You may take your
25 seat.

JURY SELECTION

1 MR. KIDD: Thanks, Judge.

2 (Side bar concluded.)

3 THE COURT: He is excused from the trial in
4 this case.

5 THE CLERK: Juror 18, Kelly Hagen. What say
6 you for the State?

7 MR. KIDD: Court's indulgence. Please
8 present the juror.

9 THE CLERK: What say you for the Defendant?

10 MR. BISCHOFF: Please seat the juror.

11 THE CLERK: If you can have a seat in the
12 juror box, you are selected in this case.

13 Juror 372, Arthur Wright, 372. What say you for
14 the State?

15 THE COURT: Is that someone's telephone? I
16 need you to turn your phone off. If it goes off,
17 we will have to take it and you won't be able to
18 get it back. And that is unfortunately unfair.

19 THE JUROR: I apologize, Your Honor.

20 THE COURT: That's okay. I forget sometimes
21 too.

22 MR. KIDD: Please present the juror.

23 THE CLERK: What say you for the Defendant?

24 MR. BISCHOFF: Please seat the juror.

25 THE CLERK: Mr. Wright, please have a seat in

JURY SELECTION

1 the juror box, you are selected as a juror in this
2 case.

3 Juror 35, William Bloss. What say you for the
4 State?

5 MR. KIDD: The Court's indulgence. Please
6 present the juror.

7 THE CLERK: What say you for the Defendant?

8 MR. BISCHOFF: Please seat the juror.

9 THE CLERK: You have been selected as a juror
10 in this case.

11 Juror 277, Lucy Preyer. What say you for the
12 State?

13 MR. KIDD: Please present the juror.

14 THE CLERK: What say you for the Defendant?

15 MR. BISCHOFF: Please excuse the juror.

16 THE CLERK: Okay, you may have a seat back in
17 the audience. You have been excused from as a
18 juror in this case.

19 Juror 154, Bernadine Horne. What say you for the
20 State?

21 MR. KIDD: Please present the juror.

22 THE CLERK: Any challenge from the Defendant?

23 MR. BISCHOFF: No.

24 THE CLERK: Ma'am, you have been selected as
25 a juror in this trial of this case. Please have a

JURY SELECTION

1 seat.

2 Juror 96, Jill Desplaces. What say you for the
3 State?

4 MR. KIDD: Please present the juror.

5 THE CLERK: Any challenge from the Defense?

6 MR. BISCHOFF: None.

7 THE CLERK: If you can have a seat in the
8 juror box, you have been selected as a juror in
9 this trial of this case.

10 Juror 314, Lakesha Singleton. What say you for
11 the State?

12 MR. KIDD: The Court's indulgence. Please
13 excuse the juror.

14 THE CLERK: Ms. Singleton, you may have a
15 seat in the audience. You are excused from the
16 trial in this case. State has exhausted its five
17 strikes.

18 Juror 54, Kisha Bryan. Any challenge from the
19 State?

20 MR. KIDD: No challenge.

21 THE CLERK: Any challenge from the Defendant?

22 MR. BISCHOFF: None.

23 THE CLERK: Please have a seat in the juror
24 box, you are selected as a juror in this case.

25 Juror 195, Sandra Leahy. Any challenge from the

JURY SELECTION

1 State?

2 MR. KIDD: The Court's indulgence. No
3 challenge.

4 THE CLERK: Any challenge from the Defendant?

5 MR. BISCHOFF: No challenge.

6 THE CLERK: All right. Ms. Leahy, if you
7 will have a seat in the jury box, you are selected
8 as an alternate in this case.

9 How many alternates?

10 THE COURT: Two. Any objection from the
11 State?

12 MR. KIDD: None, Your Honor.

13 THE COURT: Any from the Defense?

14 MR. BISCHOFF: No.

15 THE COURT: Strikes will be one and two.

16 THE CLERK: Juror 342, Sirvasteen Ulmer.

17 What say you for the State?

18 MR. KIDD: Please present the juror.

19 THE CLERK: What say you for the Defendant?

20 MR. BISCHOFF: Please seat the juror.

21 THE CLERK: Please have a seat in the jury
22 box. You have been selected as a juror in this
23 case.

24 Selecting the second alternate now. Juror 60,
25 Nancy Butler. What say you for the State?

JURY SELECTION

1 MR. KIDD: Please seat the juror.

2 THE CLERK: What say you for the Defense?

3 MR. BISCHOFF: Please seat the juror.

4 THE CLERK: Ms. Butler, please have a seat in
5 the jury box. You have been chosen as a juror in
6 case.

7 THE COURT: Any objection to the jury from
8 the State?

9 MR. KIDD: None from the State, Your Honor.

10 THE COURT: From the Defense?

11 MR. BISCHOFF: No, Your Honor.

12 THE COURT: Ladies and gentlemen, we are
13 going to be selecting a civil jury at 2:00 and a
14 criminal jury at 2:00, so we will need you to
15 return to the jury assembly room at 2:00. We
16 appreciate your time and your patience. We hope
17 you have a wonderful lunch, and we will see you
18 again at two. Again, in the jury assembly room at
19 2:00.

20 (Jury panel not chosen exits the courtroom.)

21 THE COURT: Ladies and gentlemen, please
22 stand and raise your right hand and be sworn.

23 MR. KIDD: Judge. May we approach?

24 THE COURT: Sure.

25 (Off-the-record discussion.)

JURY SELECTION

1 THE COURT: Ladies and gentlemen --

2 Madam Foreperson -- I mean, they haven't even
3 appointed a foreperson yet.

4 Ladies and gentlemen of the jury, I need to speak
5 with the lawyers to see how we will be proceeding for
6 the afternoon. We have a lot of matters of law that we
7 need to deal with, and I need to estimate how long that
8 is going to take. If we are not realistically able to
9 start this afternoon, it may take us three or four
10 hours to hear what I need to dispose of. And if that
11 is in fact the case then I may let you all go for the
12 day and then resume in the morning, because it doesn't
13 make any sense to bring you all back at 3:00 or 4:00,
14 and we may not be done with those matters. So if you
15 could indulge me for just a few moments while I go over
16 some scheduling with attorneys.

17 During this break please don't discuss the case on
18 any manner whatsoever. Please don't speculate about
19 what you think it may or could be about.

20 Again, we appreciate your patience. If you will
21 go with the bailiff for me, please.

22 (Jury exits the courtroom.)

23 THE COURT: It is my understanding that the
24 Defendant's blood was drawn at the hospital
25 attendant to medical treatment, is that correct?

JURY SELECTION

1 MR. KIDD: No, ma'am.

2 THE COURT: Give me the facts exactly.

3 MR. KIDD: Placed under arrest, taken to the
4 Mount Pleasant -- refused breathalyzer.
5 Transported to the East Cooper Hospital had blood
6 draw and transported to the hospital for blood
7 draw.

8 THE COURT: Pursuant to which statute?

9 MR. KIDD: 56-5-2946.

10 THE COURT: Now, before we get into pretrial
11 motions I need to know, were any offers extended
12 to Mr. Hamrick?

13 MR. KIDD: A while back we offered a cap of
14 ten.

15 THE COURT: And when was that?

16 MR. KIDD: Judge, I forget the exact date.
17 It was probably about a year ago.

18 THE COURT: Have any other offers been
19 extended?

20 MR. KIDD: No, ma'am. That offer was
21 rejected and has since been revoked.

22 THE COURT: Does he have any record?

23 MR. KIDD: He has two prior DUIs.

24 THE COURT: And what years were those? And
25 what was the DUI? First, second, or what was it?

JURY SELECTION

1 MR. BISCHOFF: I believe they were both DUI
2 first, if that makes sense.

3 THE COURT: Were they handled in the
4 magistrate court?

5 MR. KIDD: The first one -- we have one
6 conviction date of February 16th, 2007, in the
7 magistrate court. And we have one from May 14th,
8 2006 --

9 MR. BISCHOFF: No, that --

10 MR. KIDD: Excuse me. The other one was
11 August 16th of 2002. It shows circuit court for
12 that.

13 MR. BISCHOFF: In transfer court.

14 THE COURT: Well, it would have been charged
15 as a DUI second, so it would have been for him to
16 go to transfer court.

17 MR. KIDD: Which to me makes me think that
18 there's another DUI out there that I don't know
19 about, and that was the '02 one. There must have
20 been another one that was expunged, or something
21 of that nature.

22 THE COURT: Okay. And what was Mr. Ahmad's
23 situation? Did he survive this incident?

24 MR. KIDD: He has survived as much as you can
25 say. He is in a vegetative State in a local care

JURY SELECTION

1 facility. He can't speak, walk, that sort -- I
2 mean, he is alive.

3 THE COURT: But he is in a vegetative State?

4 MR. KIDD: I don't know if "vegetative State"
5 is the right word.

6 THE COURT: What were the nature of his
7 injuries?

8 MR. KIDD: The main injury is traumatic brain
9 injury, which has left him unable to walk, unable
10 to talk. I mean, he needs round-the-clock
11 supervision of care. But he's not hooked to a
12 machine, so to speak, like life support. He had a
13 --

14 THE COURT: Okay, so, that is not a
15 vegetative State. Okay. Now, Mr. Bischoff, did
16 you explain this offer to your client?

17 MR. BISCHOFF: I did, Your Honor.

18 THE COURT: Did you fully explain that to
19 him?

20 MR. BISCHOFF: I did, Your Honor.

21 THE COURT: Did you believe he understood the
22 nature of the offer?

23 MR. BISCHOFF: Yes, ma'am, I did.

24 THE COURT: And did he accept or reject that
25 offer?

JURY SELECTION

1 MR. BISCHOFF: He rejected that offer.

2 THE COURT: And did he do that with or
3 without your advice? With or against your advice?
4 I'm asking this for PCA purpose.

5 MR. BISCHOFF: Yes, ma'am.

6 THE COURT: Memory can be very hazy.

7 MR. BISCHOFF: Yes, ma'am. I reviewed
8 discovery with him fully when the offer was made;
9 I explained to him the pros and cons of going to
10 trial. And he decided at that time the offer was
11 not something that he was willing to accept. I
12 think he made an educated decision when he
13 rejected the offer.

14 THE COURT: Sir, stand for me please and
15 raise your right hand to be sworn.

16 Thereupon,

17 DANIEL D. HAMRICK

18 was called as a witness, having been first duly sworn,
19 was examined and testified as follows:

20 THE COURT: You can put your right hand down.
21 State your full name for the record.

22 MR. HAMRICK: Daniel Derice Hamrick.

23 THE COURT: And, Mr. Hamrick, did you fully
24 go over the State's offer with your attorney?

25 MR. HAMRICK: Yes, ma'am.

JURY SELECTION

1 THE COURT: Did you understand the terms of
2 the offer?

3 MR. HAMRICK: Yes, ma'am.

4 THE COURT: Did you accept or reject the
5 offer?

6 MR. HAMRICK: I rejected it.

7 THE COURT: Did you do that freely and
8 voluntarily and of your own will?

9 MR. HAMRICK: Yes, ma'am.

10 THE COURT: Were you suffering any from
11 mental disabilities or under any duress?

12 MR. HAMRICK: No.

13 THE COURT: And did you do that with or
14 against the advice of your lawyer?

15 MR. HAMRICK: Did I reject it?

16 THE COURT: Did you do that with or against
17 the advice of your lawyer?

18 MR. HAMRICK: Oh. With.

19 THE COURT: Okay. You can take a seat.

20 (Pause.)

21 THE COURT: All right. Let's see here. Now,
22 what was the BAP reading, Mr. Kidd?

23 MR. KIDD: The blood draw was at 6:55, and
24 the accident occurred at 3:24, roughly. And the
25 BAP was at 0.113. We have testimony that at the

JURY SELECTION

1 time of accident retrograde would be over 0.15 to
2 the 0.7 range.

3 THE COURT: I assume you intend to try to
4 offer that evidence?

5 MR. KIDD: Yes, ma'am.

6 MR. BISCHOFF: Your Honor, if I may briefly,
7 limited about the retrograde?

8 THE COURT: Uh-huh.

9 MR. BISCHOFF: If he's planning on entering
10 or offering that information from an expert, we've
11 not been provided any report that they may use.

12 THE COURT: They only have to provide you
13 with a report if they generated one. It's not
14 been my experience that SLED generates one, but
15 that's their -- as well within and beyond the
16 qualifications of the person --

17 MR. BISCHOFF: Yes, ma'am, I just wanted to
18 bring --

19 THE COURT: -- and in general if they ask a
20 hypothetical and he --

21 MR. BISCHOFF: Yes, ma'am. I just wanted to
22 bring that to the attention of the Court. Thank
23 you.

24 THE COURT: Did he provide a report?

25 MR. KIDD: Well, a report was provided on the

JURY SELECTION

1 0.113.

2 THE COURT: Was there any kind of report on
3 the retrograde?

4 MR. KIDD: Not on the retrograde. No, ma'am.

5 THE COURT: Okay. There's a motion in limine
6 regarding lay witness testimony. It's very --
7 it's really an overly broad motion, and I would
8 not be able to rule on it until a witness
9 testifies and he makes a contemporaneous objection
10 because I don't know whether it's within the
11 rational perception and if they have the ability
12 to testify to it. So due to the over-broad nature
13 of that motion I wouldn't be able to rule on that.

14 MR. BISCHOFF: Yes, ma'am. Thank you, Judge.

15

16 THE COURT: Are there any photographs,
17 Mr. Kidd, videotape or --

18 MR. KIDD: Yes, ma'am, on both.

19 THE COURT: Actually, this is basically
20 asking did the Court rule in advance on every item
21 of evidence that the State seeks to introduce, and
22 I'm not going to do that. If I can get
23 contemporaneous objections at the time that they
24 seek to elicit that testimony and lay the
25 foundation for the admissibility of the evidence.

JURY SELECTION

1 Did the Defendant make any statements?

2 MR. KIDD: Judge, part of -- I think maybe
3 that prior ruling, or what you were just
4 addressing, was there are two cruiser videos --

5 THE COURT: Uh-huh.

6 MR. KIDD: -- that the State plans to
7 introduce in our case-in-chief, on which the
8 Defendant made a variety of statements to law
9 enforcement officers.

10 THE COURT: Actually, the motion that I just
11 referred to is a general motion that you not be
12 allowed to introduce any evidence until the Court
13 rules on it.

14 MR. KIDD: Okay.

15 THE COURT: I'm not going to do that.

16 MR. KIDD: Okay. Thank you.

17 THE COURT: Now, there's another motion that
18 limits statements made by the Defendant, and I
19 need to know if he made any statement?

20 MR. KIDD: Yes, Your Honor, he did. And I
21 think that this is really what's been taking the
22 bulk of the our pretrial time.

23 THE COURT: Uh-huh.

24 MR. KIDD: Just because there's a couple of
25 videos that I think you will need to see to in

JURY SELECTION

1 order to rule on the admissibility from the
2 Defendant's statements on those videos.

3 THE COURT: What's he saying?

4 MR. KIDD: Well, I guess there --

5 THE COURT: They will be Mirandized?

6 MR. KIDD: There's the original video from
7 the first responding officer to the collision
8 scene where he is not Mirandized before he says
9 anything to that officer. The officer's question
10 is, "What's going on?" And he proceeds to say
11 what he thought was going on, and: I just got off
12 of work, I didn't see anything, I heard a thump,
13 looked in my rear-view mirror, pulled over, came
14 out, saw all of this. The officer asked, you
15 know, how much -- did you have anything to drink.
16 He says, I had one beer. Statement, something
17 like: Well, did you just not see him or anything?

18 MR. BISCHOFF: Judge, I'm sorry to interrupt
19 but we're actually going to withdraw that motion.

20 THE COURT: Okay.

21 MR. BISCHOFF: I apologize. With regard to
22 the motion in limine statements by the Defendant,
23 we are withdrawing that motion.

24 THE COURT: You are withdrawing that motion?

25 MR. BISCHOFF: Yes.

JURY SELECTION

1 THE COURT: Okay. That will address that
2 404(b) testimony. Do you intend to introduce any
3 part of testimony such as that, Mr. Kidd?

4 MR. KIDD: I have no 404(b) testimony that I
5 would -- unless potentially the Defendant would
6 take the stand.

7 THE COURT: And --

8 MR. KIDD: It would open the door.

9 THE COURT: What would that be?

10 MR. KIDD: His prior DUI convictions.

11 THE COURT: How do those become relevant?

12 MR. KIDD: I don't think that they are unless
13 he opens the door from the --

14 THE COURT: Okay.

15 MR. BISCHOFF: I agree.

16 THE COURT: -- testimony regarding suffering
17 of victim or family. Do you all plan to introduce
18 any testimony like that?

19 MR. KIDD: Well, Judge, I mean, one of the
20 elements of great bodily injury is permanency of
21 his injuries.

22 THE COURT: Well, that can be presented in a
23 very sterile forum. What I understand this motion
24 to be about, you know, how this has affected his
25 family or their pain and suffering. And those are

JURY SELECTION

1 civil allegations.

2 MR. KIDD: Sure. And I don't plan on getting
3 into any of that, Judge. To be honest, I hope not
4 even to have to call the victim's family. I hope
5 to satisfy my elements through the doctor's
6 testimony. The only thing I would say is that
7 when it comes to a brain injury, a lot of times
8 you might not be able to document how severe or
9 permanent the injury is through x-rays or things
10 like that.

11 THE COURT: His attending physician can tell
12 us that.

13 MR. KIDD: Well, and sure. That just --
14 that's the testimony I seek to elicit.

15 MR. BISCHOFF: Judge, I'm a little concerned
16 because we tried to come to an agreement on the
17 stipulation --

18 THE COURT: Uh-huh.

19 MR. BISCHOFF: -- that great bodily injury
20 occurred in this case.

21 THE COURT: Uh-huh.

22 MR. BISCHOFF: But the prosecutor insisted on
23 going through a number of things about the nature
24 of the injury due to the fact that he's not able
25 to eat and he's not able to talk.

JURY SELECTION

1 THE COURT: Those are elements of the
2 statute.

3 MR. BISCHOFF: Well, I believe great bodily
4 injury can be satisfied by the fact that he
5 actually suffered a broken ankle or --

6 THE COURT: No. The statute is very specific
7 about what great bodily injury means, and it
8 defines it.

9 MR. BISCHOFF: -- that he suffered skull
10 fractures. I mean, I understand that he needs to
11 talk about the brain injury, but going on to about
12 how day-to-day activities -- I think that's
13 prejudicial and that it appeals to the emotion of
14 the jury and that's why I would ask --

15 THE COURT: Well, I don't hear him saying
16 that that's what he's going to do.

17 MR. BISCHOFF: Well, he told me that prior to
18 Court and that's why I'm bringing the motion in
19 limine, to make you aware.

20 MR. KIDD: The only thing that I seek -- to
21 make this a hundred percent clear to the Court
22 what I'm planning to say -- is in the great bodily
23 injury definition, permanence is one of the
24 qualifications. So it's permanence of the
25 injury -- is something I need to establish, and

JURY SELECTION

1 that two years later this victim is still
2 suffering from his injuries. And I have a -- if
3 you would like a copy of the statute, unless you
4 have it.

5 THE COURT: Nope. I have it.

6 MR. KIDD: But that is all I seek to
7 introduce, is his current condition resulting from
8 the accident.

9 THE COURT: I'll have to look at the elements
10 of the statute right quick. We will come back to
11 that in a moment.

12 Okay. There's a motion asking that you not refer
13 to Mr. Hamrick as "the Defendant" and that Mr. Garland
14 not be referred to as "the victim." Do you have any
15 exception to that?

16 MR. KIDD: Yes, Judge. I mean, I don't find
17 those terms to be prejudicial. And you know that
18 is just how I refer to parties in a case. I think
19 it's relatively standard that we do so.

20 THE COURT: I -- you know, I think I'm trying
21 to figure out what prejudice he suffered.
22 Regardless of who committed the act, Mr. Ahmad is
23 still the victim. So --

24 MR. BISCHOFF: Well, I mean, Judge, I --

25 THE COURT: It doesn't necessarily imply that

JURY SELECTION

1 your client did it, it simply means that he's the
2 victim of an accident.

3 MR. BISCHOFF: Well, I do take a little bit
4 of a different position on that, but I understand
5 your position, Your Honor.

6 THE COURT: I don't have a position. I'm
7 just asking you what is the prejudice.

8 MR. BISCHOFF: Well --

9 THE COURT: I guess -- I'm trying to -- I
10 don't see any prejudice is established by
11 referring to Mr. Ahmad as "the victim." Or I
12 would think that you all could refer to
13 Mr. Hamrick as "Mr. Hamrick."

14 MR. BISCHOFF: Thank you, Judge.

15 THE COURT: As a -- and split the baby. But
16 he is technically the Defendant in procedural
17 terms. I mean, I don't know that in the grand
18 scheme of things that it will really have any
19 effect on whether I can count where somebody's
20 been referred to as "the Defendant" and was
21 acquitted at trial, so I don't know if it makes a
22 hill of beans to anything. But does the State
23 have an exception to referring to Mr. Hamrick as
24 Mr. Hamrick?

25 MR. KIDD: Judge, only that I worry that I

JURY SELECTION

1 might call -- refer to him as "the Defendant."

2 THE COURT: I'm not going to -- if you slip
3 up I'm not going to sanction you in any way.

4 That's a normal --

5 MR. KIDD: I will do my best, Your Honor.

6 MR. BISCHOFF: Thank you.

7 THE COURT: Is there any exception to
8 sequestering the witnesses?

9 MR. KIDD: No, Your Honor. With the
10 exception of -- I did -- with the exception of my
11 investigator, Ms. Niblock and my lead
12 investigator, Andrew Harris.

13 THE COURT: All right. Any exception from
14 the Defense?

15 MR. BISCHOFF: No, Your Honor.

16 THE COURT: All right. So, that is resolved.

17 MR. KIDD: And that cuts both ways, correct,
18 Your Honor --

19 THE COURT: Yes.

20 MR. KIDD: -- as to their witnesses?

21 THE COURT: Witness's motion to compel.

22 MR. BISCHOFF: Judge, we can wait on that.

23 We can -- that has to do with trying to --

24 THE COURT: I would imagine you have already
25 gotten the substance of any statements Mr. Hamrick

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1 has made. You have gotten copies of the tapes,
2 haven't you?

3 MR. BISCHOFF: We have, Judge. I'm sorry, I
4 was confusing this motion with another one. But
5 with regard to the motion to compel I believe the
6 Solicitor has given us all of the records for
7 anybody that they intend to call at trial.

8 THE COURT: Uh-huh.

9 MR. BISCHOFF: I do believe that we are aware
10 of all of the statements by Mr. Hamrick. I have
11 not been given any statements that Mr. Garland may
12 have made. It is my understanding that he's not
13 able to speak or give statements.

14 THE COURT: I would imagine based on what I
15 have been told so far that the impact would have
16 been immediate, and I kind of doubt he would have
17 been saying anything at the scene.

18 MR. BISCHOFF: I would tend to agree with
19 Your Honor. I just want to make that perfectly
20 clear before we proceed.

21 MR. KIDD: I'm -- he's unable to speak.

22 THE COURT: Did he make any statements at the
23 scene to an EMT or any officer?

24 MR. KIDD: He was unconscious, Judge.

25 THE COURT: Okay.

JURY SELECTION

1 MR. BISCHOFF: Nothing to your investigator
2 when you met him?

3 MR. KIDD: He can't speak, no.

4 THE COURT: Okay. 56-5-2945 defines "great
5 bodily injury" as a bodily injury which creates a
6 substantial risk of death or which causes serious,
7 permanent disfigurement, or protracted loss or
8 impairment of the function of any bodily member or
9 organ. So based on that definitional section,
10 which is 56-5-2945, Subsection B, there are people
11 that recover from traumatic brain injuries. As a
12 matter of fact I see a great many of them in
13 criminal court who are incapable of controlling,
14 sometimes, their impulse control when they get off
15 of their medication. So there are people that
16 come to a level of improvement such that if they
17 would not come under -- not everybody with a
18 traumatic -- I mean you can get traumatic brain
19 injuries from being hit in the head by a baseball
20 bat. You can get traumatic brain injuries from
21 being in a car accident.

22 But the statute requires that they prove a
23 substantial risk of death or which causes serious
24 permanent disfigurement, which I don't think he has
25 scars or any kind of disfigurement. Or a protractive

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1 loss or an impairment of the function of any bodily
2 member or organ.

3 So they would be empowered to present evidence of
4 protracted loss or impairment of the function of any
5 bodily member or organ, which would be his brain, his
6 body, the inability to walk. All of that would come
7 in, at least based on my review of the statute. I
8 would have to see how it develops. And, of course, no
9 motion in limine is final. But, as we know, case law
10 provides the State is not required to stipulate to an
11 element of an offense if they want to prove it.

12 MR. BISCHOFF: And I would say we tried to
13 reach a stipulation and were not able to. And,
14 you know, I guess, at the time of the testimony we
15 will take that up if it becomes an issue.

16 THE COURT: I think you get to have, like, a
17 victim impact statement, stating my life has just
18 been grievously altered because of this event and
19 my loved one can't speak to me and I have lost
20 their -- I mean, those are civil laws. And I'm
21 certain that if he had insurance they've
22 already --

23 MR. BISCHOFF: Well, I mean, that's just
24 something that we are concerned with. I mean,
25 based on the dialogue here, Your Honor, I think

JURY SELECTION

1 you're aware of the issue and if it comes up then
2 we'll make the objection.

3 THE COURT: Yes, make the objection. But I
4 would think the doctor can testify to all of that.

5 MR. BISCHOFF: Thank you, Judge.

6 THE COURT: But the case law is very clear.
7 They don't have to stipulate; they can prove their
8 case as they see fit. And the line of cases that
9 really deal with that are proof of malice in a
10 murder case, where the Supreme Court has held over
11 and over again the State doesn't have to stipulate
12 to prove malice, they can prove it. They can
13 present whatever elements are apparent, and in
14 fact prove any element of any offense.

15 But I would just be very careful, Mr. Kidd, in how
16 you prove permanent -- protractive loss or impairment
17 of the function of any bodily member or organ. You
18 have to be very careful not to appeal to the
19 compassion, prejudice, sympathy of the jury.

20 And really what his family feels about it, what
21 they have -- you know, I mean, this may sound horrible
22 but -- and I don't mean to sound pejorative in any
23 sense, but I would not expect that you would have a
24 family member come in and testify that he drools or
25 that can't control his bowels and he has to have -- you

JURY SELECTION

1 know, he has to be changed, you know, all of that kind
2 of stuff. I mean that --

3 MR. KIDD: I hope not to have to do that.

4 THE COURT: Well, I wouldn't let you. Maybe
5 I'm just trying to be diplomatic. The doctor can
6 testify to all of that and can do it in a very
7 medicinal-type fashion.

8 MR. KIDD: That is my intent.

9 THE COURT: Okay. The motion to require the
10 State to open fully on the law, we will deal with
11 that on the closing charge.

12 MR. BISCHOFF: Thank you, Judge.

13 THE COURT: Motion in limine to prohibit
14 State from discussing the depth of victim's
15 injuries. We covered this haven't we?

16 MR. BISCHOFF: Yes, ma'am, I believe we have,
17 through the dialogue of the other motions.

18 THE COURT: Motion in limine to exclude
19 reference to the victim's character or prior
20 record by the Defense. I assume that you all
21 don't plan to do that, correct?

22 MR. BISCHOFF: We do not.

23 THE COURT: That is moot. That then leaves
24 us with motion in limine prohibiting the State
25 from mentioning the blood test results until

JURY SELECTION

1 admitted into evidence. I would assume that you
2 don't plan to do that, correct?

3 MR. KIDD: I would plan to do that, Judge.

4 THE COURT: I don't think --

5 MR. KIDD: If I -- if you keep kicking my
6 butt or something I'm in trouble. So --

7 THE COURT: Well, if I admit them, then you
8 can mention them in opening arguments, if that's
9 what the evidence will show.

10 MR. KIDD: Right.

11 MR. BISCHOFF: And I think that there's
12 issues with the chain of custody, and that's why I
13 made the motion. I mean, I think he's going to
14 have to establish the chain before --

15 THE COURT: He can only argue what the
16 evidence will show. There's a difference between
17 opening and saying what he believes his case will
18 show, and what you believe your case will show
19 versus the admissibility of evidence.

20 Now, you always run the risk of saying what the
21 evidence will show and then the evidence never shows
22 up. And that is just a strategic risk you take with a
23 jury. But then that affects your credibility because
24 jurors, unlike lawyers, are like: He said they were
25 going to have such and such and we never saw it. So,

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1 you know, even though you instruct them that they are
2 only to discuss, you know, what has come in through
3 sworn witnesses and other evidence that has been
4 introduced, you know, juries kind of tend to hold you
5 to what you say you're going to do. So, I mean, it
6 will be up to the State. That would have to be a
7 strategic decision on their part as to whether they can
8 effectively establish a chain of custody. Of course,
9 you know, they don't have to prove every step.

10 MR. BISCHOFF: Yes, ma'am.

11 THE COURT: Only as far as practicable. But
12 I don't think there's anything that restricts them
13 from arguing what they believe the evidence will
14 show. Okay.

15 Motion in limine anticipating the Defense
16 position.

17 MR. BISCHOFF: The nature of that motion,
18 Judge, is that we shared our expert report. In
19 this case, Woody Poplin is going to testify about
20 how he believes the accident may or may not have
21 occurred. And we've shared that report with the
22 prosecution, what was it, almost a year ago?
23 They've had it for a while. And I just -- I think
24 when they start anticipating our Defense position
25 and -- it tends to shift the burden a bit in the

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1 eyes of the jury.

2 THE COURT: Yeah. I don't know how that
3 would be done or not, and I wouldn't rule on that
4 in advance because it's really speculative and too
5 broad at this point. You would have to make a
6 contemporaneous objection, I just -- I'm at a loss
7 as to how I would -- I have to rule on things
8 contemporaneously. I have no idea, they may not
9 anticipate your position, they may under the
10 rules -- they're entitled to anticipate what you
11 may present. There's nothing that precludes them
12 from that.

13 But other than having something very specific or a
14 specific instance, it'd be very difficult for a court
15 to rule on that in advance. So at this point it would
16 be speculative and overly broad in terms of a motion.
17 And you would need to make a contemporaneous objection,
18 and at that time I would make that ruling.

19 That leaves us with the motion to suppress the
20 blood test results pursuant to 56-5-2950, and motion to
21 suppress under the Fourth Amendment.

22 MR. BISCHOFF: Judge, we currently did
23 actually file three additional motions this
24 morning.

25 THE COURT: Okay.

JURY SELECTION

1 MR. BISCHOFF: If I may approach?

2 THE COURT: Sure.

3 MR. BISCHOFF: I have given copies of these
4 to Mr. Kidd.

5 THE COURT: Okay. You want to suppress the
6 field sobriety test?

7 MR. BISCHOFF: Well, I just want to suppress
8 the horizontal gaze nystagmus test or any test --
9 testimony about that. Based on -- again, this is
10 all on the video. But based on my review of the
11 video and the qualifications of Andrew Harris, I'm
12 not so sure that he can lay a sufficient
13 foundation. I think it is something that needs to
14 be taken up because it can't be un-rung at that
15 point.

16 THE COURT: Well, we'll see. You can make a
17 contemporaneous objection. I am not aware of
18 anything in terms of field sobriety test that is
19 not a part of their manual, their training, and
20 hasn't been subjected to the standards of the
21 State Law Enforcement Division. And I don't think
22 you have to have scientific training for the
23 horizontal -- the HGN test, at least not in my
24 experience.

25 MR. BISCHOFF: Well, I think -- the case out

JURY SELECTION

1 there is State v Sullivan. It doesn't really
2 address the issue, but there are other
3 jurisdictions that have said you have to be
4 qualified --

5 THE COURT: I don't have to look for those
6 other jurisdictions.

7 MR. BISCHOFF: I know --

8 THE COURT: South Carolina doesn't establish
9 that standard, and I'm not going to impose a
10 standard that hasn't been bound by the Supreme
11 Court.

12 MR. BISCHOFF: I understand. But I would ask
13 that I be allowed voir dire of Officer Harris
14 prior to the start of the trial about whether or
15 not he's qualified --

16 THE COURT: I don't think they have to
17 qualify him as an expert. I think he can render
18 lay testimony on that. This is no difference than
19 a sex offender, I mean a sexual -- what's the word
20 that I'm looking for? A victim advocate or
21 otherwise. They kind of come within that same
22 kind of category of lay witness. But he's really
23 not a lay witness in the -- well, he is a lay
24 witness in some aspects. He doesn't have to be
25 qualified as an expert to testify to what he does

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1 every day, and what he's been trained to do.

2 MR. BISCHOFF: I would agree with you there.

3 I think there is a distinction with the horizontal
4 gaze nystagmus test if it's recorded in a way that
5 you can't see the eyes, and it's all about his
6 observations, because there's no way to validate
7 it. And it regards a knowledge of nystagmus and
8 how the eyes operate and how alcohol effects --

9 THE COURT: If they can establish the
10 training on it, I'll let it in. I'm just telling
11 you. But you can make a contemporaneous
12 objection. We'll take it up in-camera.

13 MR. BISCHOFF: Thank you, Judge.

14 THE COURT: Uh-huh. Jail recordings. Do you
15 have some jail recordings of him talking to
16 someone?

17 MR. KIDD: Yes, ma'am. Significant.

18 MR. SIMPSON: Yes, Your Honor.

19 THE COURT: Who was he talking to?

20 MR. SIMPSON: One, his mother, and one his
21 wife.

22 THE COURT: Did he make any admissions?

23 MR. SIMPSON: Yes, Your Honor. Several.

24 THE COURT: Okay. And why would those be --
25 not be admissible, Mr. Bischoff?

JURY SELECTION

1 MR. BISCHOFF: I'd like --

2 MR. SIMPSON: This may make it easier. It
3 seems to me after reading the motion -- correct me
4 if I'm wrong -- that they're really concerned with
5 what exactly it is we are going to use on these
6 tapes.

7 THE COURT: Well, I'll just clarify for --

8 MR. SIMPSON: And I think that given, you
9 know, the evening maybe we can take it up in the
10 morning. We are not seeking to admit them until
11 the end of our case.

12 THE COURT: Uh-huh.

13 MR. SIMPSON: And I think we can provide Mr.
14 Bischoff with some more specifics which happily
15 would have been done a week ago had we been
16 provided this motion.

17 MR. BISCHOFF: I didn't file the motion
18 because Mr. Kidd told me about a week ago he was
19 going to use the jail tapes.

20 THE COURT: Uh-huh.

21 MR. BISCHOFF: It took us that much time to
22 go through all of them and find out what can be
23 admitted and what can't.

24 THE COURT: Uh-huh.

25 MR. BISCHOFF: Judge, I would argue that the

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1 statements by Mr. Hamrick were not voluntarily ,
2 made, and that is the issue.

3 THE COURT: That's why that little recording
4 says, "You are being recorded."

5 MR. BISCHOFF: I know, Judge. And I
6 appreciate --

7 THE COURT: The only thing that's protected
8 on a jailhouse recording is you talking to your
9 lawyer. Otherwise, it's fair game.

10 MR. BISCHOFF: Yes, ma'am.

11 THE COURT: People are in jail.

12 MR. BISCHOFF: Yes, ma'am.

13 THE COURT: They get lonely and they get
14 bored and they talk too much. It's just the
15 nature of the beast.

16 MR. BISCHOFF: Yes, ma'am.

17 THE COURT: And it happens all the time.

18 MR. BISCHOFF: I know.

19 THE COURT: And I think subliminally and
20 subconsciously, most times, they don't even
21 remember what they said, they are in such a
22 vulnerable position. But that doesn't make it an
23 involuntary statement. And you are constantly
24 reminded by that nagging little voice that says,
25 "Everything that you are saying is recorded." And

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1 I think even when they process you they tell you
2 that, that they plan to listen to them and they
3 can be used against you.

4 MR. BISCHOFF: Thank you, Judge.

5 THE COURT: So if he has made any exculpatory
6 statements, I'll listen to them. But I can even
7 give you a heads up: They are going to come in.

8 MR. BISCHOFF: Yes, ma'am.

9 THE COURT: Now, anything that the attorney
10 and, you know, like about, I miss you and I love
11 you, and all that kind of stuff.

12 MR. BISCHOFF: There is. Moving beyond his
13 statement --

14 THE COURT: Uh-huh.

15 MR. BISCHOFF: -- there are hearsay
16 statements, there are irrelevant statements, there
17 are --

18 THE COURT: Well, I don't think that they
19 would seek to introduce those. The only thing
20 they're interested in is did he tell his wife or
21 his mother: I did it and I really didn't mean to,
22 and I don't know what I was thinking about. You
23 know, those kind of statements people make from
24 jail.

25 MR. SIMPSON: We have -- all we're going to

JURY SELECTION

1 seek to get into -- we have direct statements
2 about the quantity, several statements about the
3 quantity.

4 THE COURT: About how much he was drinking
5 that night?

6 MR. SIMPSON: He consumed that night. We
7 have several inconsistent answers to that
8 question. We have a statement from him regarding
9 the sobriety of a co-worker we may use to impeach
10 her if it becomes relevant.

11 THE COURT: You would have to give -- you'd
12 have to ask her the question, give her the
13 opportunity to admit it or deny it, and then only
14 would you be able to get in an extraneous
15 statement. And then I would have to listen to it
16 to see if it could even come within the parameters
17 of an extraneous statement.

18 MR. BISCHOFF: And that -- that's exactly.
19 I'm just going to be broad of all possibilities.
20 But there's some really inflammatory statements,
21 Your Honor.

22 MR. SIMPSON: And we wouldn't be using those
23 at this time, Your Honor, not in our
24 case-in-chief.

25 THE COURT: What kind of inflammatory

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1 statements?

2 MR. SIMPSON: Just, well we're -- I mean,
3 we're getting way ahead of ourselves. We would
4 not show it to the jury, but we're waiting to get
5 to sentencing. We would present to the Court what
6 we will be submitting, statements regarding his
7 frame of mind and concerns at time. Very little
8 concern for the person that he just hit and more
9 concern for his own.

10 THE COURT: But you're not seeking to
11 introduce that?

12 MR. SIMPSON: No, no, Your Honor.

13 THE COURT: You are seeking to introduce
14 those exculpatory -- well, those statements that
15 you contend are exculpatory?

16 MR. KIDD: Yes, Your Honor, and again, I --
17 given the evening, I could actually get a
18 transcript of those --

19 THE COURT: Why don't you all-- yeah, I was
20 going to say, why don't you all separate out what
21 statements you would intend to use.

22 MR. KIDD: I --

23 THE COURT: And maybe you all can work it
24 out. But I can tell you from a practical matter
25 is they are admissions against interest, they come

JURY SELECTION

1 in, and as a matter of fact it's my recollection
2 that before you use the phone system they give
3 you -- there's an agreement you have to -- they
4 keep you fully apprized of what is going on before
5 you -- because there are certain requirements to
6 use that phone system.

7 MR. BISCHOFF: Judge, that's absolutely
8 right.

9 THE COURT: Yeah. And you have to sign off
10 on it before you get that privilege. And in
11 addition to that, having listened to many of those
12 recordings, that annoying voice comes on every 20
13 seconds that tells you, "Everything that you say
14 is being recorded." I think people -- like I
15 said, in that situation people tend to ignore it,
16 and that is why it's right for the State to use
17 it.

18 MR. BISCHOFF: Yes, ma'am. Thank you.

19 THE COURT: But I would imagine that those
20 statements would be limited to those that can
21 exculpate him.

22 MR. SIMPSON: Yes, Your Honor. We are going
23 to play that pretty straight.

24 THE COURT: Anything else, I don't know, is
25 relevant to any element or issues in this case.

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1 Let's see here. So then that just leaves us then
2 with -- now, what is this about videos in the car?

3 MR. BISCHOFF: There are obviously a number
4 of officers who responded to the scene, and all of
5 their in-dash videos were operable and operating.

6 THE COURT: Uh-huh.

7 MR. BISCHOFF: And I know that Mr. Kidd and I
8 have met, and we talked about what videos he plans
9 to use.

10 THE COURT: Uh-huh.

11 MR. BISCHOFF: In light of what Mr. Kidd
12 tells me he plans to use, I thought it was
13 appropriate to go ahead and notify the Court that
14 there are portions of Officer Eckert's video and
15 Officer Harris' video which I believe ought not to
16 come in for the reasons I stated in the motion in
17 limine.

18 THE COURT: Do you plan to use these videos?

19 MR. KIDD: Some of them, Judge.

20 THE COURT: Do you plan to use the BA room
21 video?

22 MR. KIDD: And just to be perfectly frank
23 with you, Judge, at this point I do not.

24 THE COURT: Okay.

25 MR. KIDD: Now, if -- I just want to qualify

JURY SELECTION

1 that --

2 THE COURT: Well, if he were to testify and
3 bring some issue that --

4 MR. KIDD: And depending on how everything
5 goes, there is a chance that I could change my
6 mind, but as of now I do not plan on using the BA
7 room video.

8 THE COURT: There's something about Officer
9 Eckert's in-car radio, he --

10 MR. KIDD: Officer Eckert's video, Judge,
11 the -- I do know that his first objection, I
12 guess -- I think that's when he's saying, "Stay
13 with me, stay with me."

14 MR. BISCHOFF: But, Judge, A and B, there are
15 hearsay statements where someone says, "I smell
16 alcohol on him." And I also believe that we don't
17 know who they are, they're people at the scene.
18 You can hear them, but you can't see them, it is
19 off camera. So I would object to them coming in
20 for the reasons stated.

21 MR. KIDD: And those two, Judge, one is of
22 Terry Johnson, who will testify. The other one is
23 Brian Sessions, who will also testify. I do not
24 believe they're hearsay, but I don't think they're
25 all -- show that he was drinking. It was all --

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1 they're all going to show that that's how the
2 officer first started to investigate that this is
3 a DUI, when the construction workers said: We
4 smell alcohol on this guy who just, you know, hit
5 our co-worker. So it's all going to show what the
6 officer did next, not offered to prove that he was
7 actually drinking. We have plenty of other
8 evidence to show he was drinking. This is just to
9 show what the officer did next, which is then
10 shown on a video.

11 THE COURT: Well, we'll watch it and we'll
12 see.

13 Can you come to any agreement about any of this
14 stuff, or do I need to --

15 MR. BISCHOFF: I think we've tried.

16 MR. KIDD: We have tried, Judge, and --

17 THE COURT: What about Officer Harris? Do
18 you plan to enter those portions of --

19 MR. KIDD: I do, Judge. That's the standard
20 field sobriety test. I would agree to mute out
21 the part where he admitted to smoking marijuana.

22 MR. BISCHOFF: That would be Section B, Your
23 Honor.

24 MR. KIDD: Now, I need to double check those
25 time stamps to make sure that I agree to those --

JURY SELECTION

1 the time stamps.

2 THE COURT: Okay.

3 MR. KIDD: But I would agree to mute out his
4 admission to using marijuana.

5 THE COURT: Okay.

6 MR. KIDD: But I believe the other one,
7 which, once again, is a recap from another officer
8 about smelling alcohol on the Defendant. I
9 believe that should be admissible.

10 THE COURT: Okay. Well, I will have to watch
11 them and we will go from there.

12 Now, how many -- how many witnesses do we have on
13 this blood test issue, or is this purely a legal issue?

14 MR. BISCHOFF: I think it's purely a legal
15 issue, unless Mr. Kidd disagrees.

16 MR. KIDD: I think it's purely legal, Judge.

17 THE COURT: So you all don't plan to call any
18 witness on either one of these?

19 MR. KIDD: Not unless I need to, Judge. I
20 don't believe it's necessary.

21 THE COURT: Okay. So how long is it going to
22 take us to argue this motion?

23 MR. KIDD: I don't think it should take too
24 long, Judge. I mean, it might -- an hour, if
25 that. My only concern is I expect these to take

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1 longer as we plow through them, and I have most of
2 my witnesses coming in the morning. But I --

3 THE COURT: You might want to make some phone
4 calls. Well, I don't know, let's see. If we
5 break for lunch now, which is 1:12 -- might as
6 well say 1:15 by the time I excuse the jury.
7 That'd be 1:15, 2:15 and then 30, 2:30 to 3:30.
8 That's kind of late to be bringing them back. Do
9 you all think -- well, I don't know.

10 MR. BISCHOFF: I think that we can maybe work
11 out some of the issues, Judge, this afternoon.

12 THE COURT: Are you all calling all of these
13 witnesses?

14 MR. KIDD: I, I --

15 THE COURT: That's my concern.

16 MR. KIDD: Right now I --

17 THE COURT: I don't want to be until midday
18 Friday and closing and charging them.

19 MR. KIDD: We're not going to be, Judge.

20 THE COURT: It's not fair to the jury. It's
21 football season, and I don't want anyone mad at me
22 if their child is playing football.

23 MR. KIDD: I have them pared down, actually.
24 I think that we are looking at about the low 20s
25 of witnesses.

JURY SELECTION

1 THE COURT: A little --

2 MR. KIDD: It is, but, Judge, I think most of
3 them are -- I mean, we're talking eight of those
4 chain witnesses. They're going to be really fast.

5 THE COURT: Okay.

6 MR. KIDD: I expect us to actually finish
7 most of my case Wednesday. The only thing is I
8 have one witness who can't be here until Thursday
9 morning; she's out of the country.

10 THE COURT: How many witnesses do you call?

11 MR. BISCHOFF: Judge, I think we can wrap up
12 based on that schedule, by the end of Thursday. I
13 think we plan to call one definitely, maybe -- oh,
14 I'm sorry. Two definitely, and then maybe two or
15 three others, but they will be brief. The one
16 that will take the most will be our expert, Woody
17 Poplin.

18 THE COURT: How long is he on?

19 MR. BISCHOFF: I would say an hour and a
20 half, maybe two hours tops.

21 MR. KIDD: I would like to think that we can
22 finish Thursday, Judge. If not, arguing charge
23 Friday morning.

24 MR. BISCHOFF: And I agree based on my --

25 MR. KIDD: And that's starting tomorrow -- if

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1 we start tomorrow.

2 THE COURT: Who is your first witness,
3 Mr. Kidd?

4 MR. KIDD: My first witness would be Neva
5 Newman, and she is one of the workers on the
6 scene. And we have, I think, six or seven of the
7 workers, and I believe they'll all go relatively
8 quickly as well.

9 THE COURT: Okay. Because I have 43
10 witnesses. You said that you pared them down?

11 MR. KIDD: Right. We're talking low 20s.

12 THE COURT: And I have 12 for the Defense.
13 How many --

14 MR. BISCHOFF: Judge, I really think no more
15 than four.

16 THE COURT: Oh, okay.

17 MR. BISCHOFF: A lot of those witnesses are
18 just there depending on the way Mr. Kidd tries his
19 case. But we have discussed a lot of these things
20 last week, a week before, and I believe that in
21 light of that there will be no more than four.
22 Some of those were just to make sure that they
23 were under subpoena in case he decided not to call
24 them. So I think he's going to call a lot of
25 people on our list.

JURY SELECTION

1 THE COURT: Okay. Why don't we -- let me let
2 the jury go, and then I'll decide what time we are
3 going to break until. Because I need you all to
4 pre-mark your exhibits too, also, if you can.

5 MR. KIDD: Okay. I think we have a little
6 time for that. We might be able to streamline
7 some things too. Maybe if we had a little time
8 this afternoon we can agree to some things --

9 THE COURT: Get the jury for me.

10 (Jury enters the courtroom.)

11 THE BAILIFF: All present, Your Honor.

12 THE COURT: Thank you. You may be seated.
13 Ladies and gentlemen, we appreciate your patience.
14 We have been able to go through a great many of
15 the matters of law that we needed to dispose of;
16 however, we still have a great deal that we need
17 to do before proceeding with trial in the morning.

18 So, instead of having you all come back at 3:30 or
19 4 o'clock with it still being iffy as to whether we
20 would be finished or not, I'm going to excuse you for
21 the remainder of the day so that you can all -- instead
22 of you all having to hit or miss with us. I would not
23 want you sitting while we were still working.

24 So we are going to work on matters of law the rest
25 of the afternoon after we go to lunch, and I anticipate

JURY SELECTION

1 that should make us go through this process a little
2 more smoothly without having to stop and start, dealing
3 with matters of law.

4 So we appreciate your patience; please know that
5 we do not take your time for granted. We'll resume in
6 the morning at 9:30. You will come directly to your
7 jury room; the bailiff will show you how to do that.

8 During this break please do not discuss the
9 case in any manner whatsoever. Please do not
10 speculate about what you think it may or could be
11 about. I anticipate that there may be some media
12 accounts about this, there may be something
13 written in the newspaper, may be something on
14 radio or television, or even on the Internet. You
15 are strictly instructed that you are not to read,
16 watch or listen to any of those accounts. And you
17 are strictly instructed that you are not to do any
18 independent searches of any type on the Internet
19 to look for any old articles or otherwise because
20 that would be inappropriate. As the fact finders
21 you are bound to decide this case according to the
22 sworn testimony and other evidence that will be
23 issued in -- during the course of the trial.

24 I would also ask that you make no comments
25 regarding your jury service on any social networking

JURY SELECTION

1 sites, that includes Facebook, Instagram, Vine -- oh,
2 there are so many I've lost track. I like to live in
3 the fallacy but I have some anonymity in this life
4 which I'm very quickly realizing is, in fact, a
5 fantasy. But, nevertheless, you would be amazed how
6 many people who are not on jury duty monitor Facebook,
7 monitor Instagram, monitor -- oh, what is the other one
8 that is instant?

9 MR. BISCHOFF: Twitter.

10 THE COURT: Twitter. How could I forget
11 Twitter? And call our jury coordinator and advise
12 us of who's talking about their jury service on
13 social networking sites, which means that I have
14 to question you about what you said, which could
15 be something as innocent as: "I'm serving on jury
16 duty this week, and I'm not particularly happy
17 about it." And then, you know, they call the jury
18 coordinator and say, you know, "I'm not serving
19 jury duty this week, but I thought people weren't
20 supposed to talk about their jury duty." So then
21 we then have to go through another whole process,
22 which is time consuming and bothersome to you all.

23 So I would -- this is the better course, not to
24 mention this at all on any social networking site
25 because we would not want an innocent comment to be so

JURY SELECTION

1 very easily misinterpreted.

2 When you return to the courthouse, please
3 only have contact with those who have juror
4 stickers on, or the bailiff, or the court staff.
5 Otherwise, again -- we have about probably over 30
6 witnesses in this case, and people look -- a lot
7 of people are coming from Columbia and other
8 places, and you would not know that they are
9 witnesses. And we would not want an innocent
10 conversation about the weather or a TV show to be
11 misinterpreted by some third party who is
12 observing the conversation. In other words, we
13 would not want them to think you were
14 inappropriately discussing the facts and
15 circumstances of this case.

16 I hope that you all have a great afternoon. We
17 will see you in the morning at 9:30. And, again, the
18 bailiff will show you how to come directly to your jury
19 room. Have a good evening. You are excused for the
20 day.

21 (Jury exits the courtroom.)

22 THE COURT: All right, you may be seated. We
23 will break then -- why don't we break until a
24 quarter of 3:00. That gives you all enough time
25 to get your thoughts collected, get some lunch,

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1 start pre-marking your exhibits. And then we will.
2 hear arguments, and then we'll go from there.
3 Have a good lunch.

4 (Lunch recess.)

5 THE COURT: Who wants to go first?

6 MR. KIDD: It'll be the Defense's motion to
7 strike. If you want to hear it from me.

8 THE COURT: Let's see. Did y'all talk about
9 the -- we will deal with it. Did y'all talk about
10 the jail recordings that much?

11 MR. SIMPSON: We didn't, Your Honor, I
12 started on that document though. I shall provide
13 it to Mr. Bischoff this evening.

14 THE COURT: Okay.

15 MR. SIMPSON: I feel like I understand the
16 parameters though. It don't feel like that will
17 be a problem.

18 THE COURT: Okay. And then do y'all have
19 copies of the in-car videos for me, or are you
20 going to work that out as well?

21 MR. KIDD: You can use our copies this
22 evening if you would like.

23 THE COURT: Well, I only want to watch them
24 if I need to. I hate to sound selfish. If y'all
25 are going to work it out there's no point in my

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1 looking at them until the jury sees them.

2 MR. KIDD: It will only be -- there are a
3 couple of short, little clips that we can play for
4 you. I don't think that it'll be exhaustive.

5 THE COURT: Do I need special software to
6 look at them?

7 MR. KIDD: One of them, Windows Media Player.
8 The other one is --

9 MR. BISCHOFF: You may, Judge. We have
10 actually had some problems with -- there's a
11 specific software for Officer Harris' video that
12 Mt. Pleasant uses, but Office Eckert's video you
13 can play with any.

14 THE COURT: Media player?

15 MR. KIDD: But I think that the clips that we
16 have in contention are only a matter of seconds.

17 THE COURT: I would like to hear them all in
18 their full context though. We will see how it
19 goes. All right. So, what are we dealing with
20 first? The fourth amendment argument or the
21 56-5-2950 argument?

22 MR. BISCHOFF: Well, I think that we should
23 deal with the fourth amendment. Depending on what
24 you rule on that the other one may not be
25 necessary.

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1 THE COURT: Okay.

2 MR. BISCHOFF: Judge, this case has been
3 scheduled for trial before, and back in
4 January 22nd, 2013 we were on the eve of trial and
5 ultimately a continuance was ordered by Judge
6 McDonald. But just so there's no confusion for
7 the record, I've asked that the motion to suppress
8 for violation of the fourth amendment that was
9 filed on October 17th, 2013 sort of supersede the
10 previous motion in light of McNeely V Missouri --
11 Missouri V McNeely which was decided a short time
12 ago. The basis of our motion, Judge, in Missouri
13 V McNeely what the Supreme Court was faced with
14 was a situation where a gentleman by the name of
15 McNeely, obviously, was driving.

16 THE COURT: I'm familiar with the facts of
17 McNeely. I guess, really, the critical question
18 so we can cut to the chase in your argument is,
19 did the Missouri statute have a time frame element
20 like our statute does?

21 MR. BISCHOFF: It was -- no. I don't believe
22 it did. Not for the purposes.

23 THE COURT: I will help you. We have
24 researched it. It didn't.

25 MR. BISCHOFF: Three hours, yes. I don't

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1 think that it matters under implied consent --

2 THE COURT: I think it does.

3 MR. BISCHOFF: -- under the statute of
4 implied consent.

5 THE COURT: I think actually it does make a
6 difference.

7 MR. BISCHOFF: Not for purposes of McNeely in
8 the fourth amendment argument.

9 THE COURT: Well, continue your argument.

10 MR. BISCHOFF: So, our statute is a little
11 bit different. Our statute is when anyone is
12 accused of felony DUI you must give a sample of
13 your blood, breath or urine. Missouri doesn't
14 have a statute like that. So what our argument is
15 is the Supreme Court reminded everybody,
16 inherently warrantless blood draws, any search
17 without a warrant is unreasonable per se. And you
18 have to prove that the actions were reasonable,
19 vis-a-vis exigency or vis-a-vis consent in order
20 to get past the fourth amendment protection that's
21 been in place for a long time where if you search
22 someone or their property without a warrant it's
23 unreasonable and should be excluded.

24 So, essentially, what Missouri versus McNeely was
25 about was that the dissipation of alcohol in the blood

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1 is not a per se exigency. What McNeely really did is
2 remind everybody that the analysis under Schmerber
3 still holds true. But our statute forgets all of that
4 and it makes -- it mandates that somebody, whenever
5 they are accused of driving under the influence, and
6 there happens to be great bodily injury or death as a
7 result of an accident that they give up a sample of
8 their blood, and that is just not constitutional.

9 The fourth amendment protections, especially when
10 you are talking about sticking a needle in someone's
11 arm deserves the upmost protection. In this case the
12 State can't prove, or can't prove that exigency
13 existed. Mr. Hamrick was on the scene for three hours
14 and 15 minutes before blood was drawn. He refused to
15 take a blood test. He refused a breathalyzer test.
16 And he was told that he had to give blood pursuant to
17 the statute. There wasn't an exigency. Three hours
18 and 15 minutes, you can't have an exigency.

19 I know that there was an accident, but there were
20 multiple police officers on the scene on November the
21 14th, 2011 when the accident happened. So, they had
22 time to get a warrant. And even though McNeely didn't
23 come down until after the accident, I mean, Justice
24 Sotomayor was well aware of implied consent statutes.
25 She touches on it in her opinion. She was well aware

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1 that this may well be a detriment or inconvenience to
2 police officers, but that yields when you are talking
3 about the protections of the fourth amendment.

4 So, you know, everything that Mr. Kidd talks about
5 in his motion, in his reply motion, is touched on in
6 the opinion of McNeely. They talk about exigent
7 circumstances, they talk about how searches without a
8 warrant are inherently unreasonable. And in this case
9 I don't think that there was any exigency to excuse the
10 situation. And we ask that you suppress it for reasons
11 we stated in our motion.

12 THE COURT: Would the State like to respond?

13 MR. KIDD: Yes, Your Honor. I'll be somewhat
14 brief, but I believe that the most distinguishing
15 difference between McNeely and what we have here
16 is that McNeely is a regular DUI case. There is
17 no accident. It is a traffic stop refusal of a
18 blood draw.

19 What makes the exigent circumstances is this being
20 a felony DUI. There's an accident, there's injuries,
21 there's people going to the hospital, there's a major
22 thoroughfare being shut down and reopened. These are
23 the things: The fact that it takes three hours with
24 him on scene to investigate and understand what
25 happened, those are the exigent circumstances which is

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1 in essence affirmed by McNeely and through Schmerber,
2 which most people don't even remember Schmerber was a
3 felony DUI case. In which they say transporting people
4 to the hospital and things like that are exigent
5 circumstances which we find sufficient to allow a
6 search without a warrant.

7 And we have many more exigent circumstances in
8 this case than would be present in Schmerber. And in
9 addition to that, Judge, I think one of the most
10 important things which I cited in one of the last
11 paragraphs of my memo is Illinois V Krull, when you
12 have officers relying on an otherwise constitutional
13 statute the exclusionary rule is not proper.

14 And what we have is a statute in 2946 which is
15 a -- still an active South Carolina statute which does
16 mandatory blood draws on felony DUIs, which also
17 McNeely was aware of existence of statutes like this in
18 other jurisdictions, which they did not go so far as to
19 say that, per se, blood draws in felony DUI cases is
20 not proper knowing about statutes like that in other
21 jurisdictions.

22 And also relying on a then lawful statute and
23 still lawful statute, exclusion of the evidence is not
24 the proper remedy, were you to even find that 2946 is
25 now unconstitutional. Although it isn't. If you were

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1 to find 2946 unconstitutional, exclusion would still
2 not be the proper remedy.

3 But the reality is that 2946 is not
4 unconstitutional -- double negative there. 2946 is
5 constitutional because it deals with felony DUIs,
6 because it's not like McNeely, a simple DUI with no
7 other circumstances involved. That is the
8 distinguishing factor. That is why McNeely, while
9 applicable in some extent, does not override the case
10 and the facts that we have here to such an extent that
11 they warrant the always necessary blood draw. That is
12 not what McNeely is saying. McNeely is saying that we
13 have a totality of circumstance test. And the totality
14 of circumstance test is that we have an officer on
15 scene and a guy who is critically injured, unconscious,
16 EMS on the way, Highway 17 South was shut down.

17 He was transported to the hospital -- the
18 Defendant was transported to the station where he
19 refuses. We have dissipation of alcohol, which they
20 say alone is not enough. But we still have dissipation
21 of alcohol over a long period of time, which after
22 three hours you then say, they should have gone and got
23 a warrant. Well, then we are looking at another hour,
24 two hours of delay.

25 So, taking into consideration the facts of McNeely

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1 and how different and distinguishable they are from
2 this case, the exigent circumstances did exist to
3 warrant a draw. The warrant was pursuant to an
4 otherwise lawful statute. And if you do deem that
5 statute unconstitutional, then the exclusionary rule
6 would not be the proper remedy under Illinois V Krull.

7 THE COURT: Yes, sir?

8 MR. BISCHOFF: Thank you, Your Honor. First,
9 Krull is not applicable. What Mr. Kidd leaves out
10 of his brief or his reply is that Krull talks
11 about administrative searches. Administrative
12 searches of a car based on a statute. That is a
13 totally different situation than sticking a needle
14 in someone's arm, as far as his privacy is
15 concerned. Krull is not applicable. I'm sure
16 that Missouri V McNeely, Justice Sotomayor knew
17 about Krull before she issued her opinion.

18 THE COURT: I don't know what she thought. I
19 don't want to make a presumption. There are
20 distinctions, however, in the McNeely case and you
21 need to address them. One of which is the
22 Missouri statute is very different from our
23 statute. It provides that a blood draw should be
24 taken for any purpose, any reason that a person is
25 stopped. Which is very different than our

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1 statute.

2 There's a catch-all at the end of their statute
3 that says, any time a person is stopped they have the
4 authority to take a blood draw, for any purpose. It
5 doesn't have to be for DUI with great bodily injury,
6 although that is enumerated in their statute, their
7 statute is a whole lot broader than ours. The
8 interesting thing about the McNeely case factually, and
9 everything stands on a different set of facts, he was
10 stopped for a DUI, not great bodily injury. Although
11 the Missouri statute contemplates a stop for that
12 purpose because it enumerates that a person can be --
13 because, in essence, the Missouri statute codifies both
14 DUI, felony DUI, and with great bodily injury. It sort
15 of codifies it all in one statute.

16 And it is similar in some ways to our statute
17 which it reflects as a matter of public policy that
18 driving is a privilege, not a right, and that once you
19 subject yourself to having a driver's license you also
20 subject yourself to certain searches and other sets of
21 criteria and regulations that you become subject to as
22 protecting the public interest by driving on the public
23 highway of the State, and by virtue of that you give
24 consent to certain things.

25 MR. BISCHOFF: And I would agree with you, I

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1 would think that the blood draw is what I'm trying
2 to focus most on, that intrusion, that bodily
3 intrusion is what is most unreasonable under the
4 circumstances. And I think that's what McNeely
5 was talking about is that you take it -- there is
6 still an implied consent statute in Missouri.

7 THE COURT: It is very different. The
8 Missouri statute implies that tests shall be
9 administered at the direction of the law
10 enforcement officer whenever the person has been
11 arrested or stopped for any reason. Which means
12 in Missouri once you are stopped they can take
13 your blood for any reason, it doesn't have to be
14 DUI related. It is much broader, which of course
15 makes the Supreme Court's analysis -- it is, I
16 wouldn't say 100 --

17 MR. BISCHOFF: Specific.

18 THE COURT: It is. And it always is because
19 the Supreme Court cases always look at the nature
20 of it, they are not going to, in an overreaching
21 manner, validate every implied consent law in the
22 United States. That is not going to happen. They
23 look at State statutory framework State by State
24 and make an analysis based on that. And their
25 statutory framework is very different than ours.

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1 MR. BISCHOFF: What I will point out, though,
2 is that --

3 THE COURT: And the nature and the context of
4 the stop, which is very different from this as
5 well.

6 MR. BISCHOFF: Well, I think that you can
7 kind of slice it two different ways. But if you
8 are looking at it and say, yes, this is a felony
9 DUI, but pursuant to a statute, South Carolina
10 statute, law enforcement told Mr. Hamrick that he
11 had to give a blood sample.

12 THE COURT: Under the statute he does.

13 MR. BISCHOFF: That is what I'm saying, a
14 broad per se statement or law -- a broad, a broad
15 law like that that says that you have to give the
16 sample is exactly what McNeely considered. What
17 they should have done is gotten a warrant. And
18 they had plenty of time to do it. And in
19 Schmerber, Judge, that was a totally different set
20 of circumstance. That was 47 years ago in LA and
21 one officer --

22 THE COURT: That analysis is the same.

23 MR. BISCHOFF: Not now because of the
24 difference in time. McNeely touches on that. Now
25 with technological advancements, cell phone,

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1 internet they could have easily gotten in contact
2 with a magistrate. That is what McNeely spends
3 time talking about, is the fact that the
4 circumstances in Schmerber was decided 47 years
5 ago when it required, although they don't mention
6 it specifically, but in a huge municipality like
7 LA, to have to go from the hospital all the way
8 across town to search for the judge to get a
9 warrant signed, because he didn't have the ability
10 to contact someone directly or immediately. That
11 has changed now. And you can't just say because
12 there's an accident there's an exigency.

13 THE COURT: Oh, there's always an exigency
14 with an accident. Not every accident, but in an
15 accident like this one was, it was an exigency, it
16 was life and death. A fender bender is not an
17 exigency.

18 MR. BISCHOFF: But just because you have an
19 injury -- there's no per se position that --
20 excuse me, I respectfully disagree with the per se
21 statement that any time that there is an accident
22 there is an emergency.

23 THE COURT: I didn't say any time there was
24 an accident there was an exigency. What I said
25 was when an accident -- not a fender bender.

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1 MR. BISCHOFF: Yes, ma'am.

2 THE COURT: When someone is hit and an
3 ambulance is called because there's significant
4 trauma to a body, which there will always be when
5 it is a car and a pedestrian.

6 MR. BISCHOFF: Yes, ma'am.

7 THE COURT: That is tons versus a 200-pound
8 person at best.

9 MR. BISCHOFF: Yes, ma'am.

10 THE COURT: Probably the average man is about
11 150, 160 pounds. It varies on height. That is an
12 emergent situation.

13 MR. BISCHOFF: In a regular, routine type of
14 investigation that would be the case. But there
15 were multiple officers on scene. In fact,
16 Mr. Hamrick was in the custody of five different
17 officers throughout the duration of the night.
18 Any one of them could have easily radioed in the
19 magistrate.

20 THE COURT: Yes, but they don't do that when
21 the statute doesn't require them to do that.

22 MR. BISCHOFF: But it doesn't matter. That
23 is what McNeely is saying. We have been doing it
24 wrong, and I'm embarrassed to say that we have all
25 been doing it wrong for a long time. Because what

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1 they did is they said Schmerber is still alive and
2 well and all of the analysis under Schmerber still
3 holds true, you have to prove exigency. And our
4 per se statute saying, just because an officer
5 says that you are under arrest for felony DUI that
6 doesn't justify a warrantless intrusion into
7 somebody's skin for a blood draw.

8 THE COURT: That was not everything that
9 happened. Didn't your client have an opportunity
10 to do the breathalyzer and he refused it? So, you
11 have a lapse of time when all of that is taking
12 place as well. I don't want this record to
13 reflect that he was taken from there to have his
14 blood drawn. That is not what happened.

15 MR. BISCHOFF: No, and I don't say that in my
16 motion.

17 THE COURT: So, the officers just didn't
18 immediately jump from the scene of the accident to
19 the hospital. Although that can happen and that
20 is certainly permissible under our statute. That
21 when someone's blood is being drawn for purposes
22 of medical treatment, the statute isn't even
23 applicable.

24 MR. BISCHOFF: It is different, though. It
25 was a compelled blood draw against his will. He

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1 said that he didn't want to take the blood test
2 and they told him that he had to because of the
3 statute.

4 THE COURT: Anything further from the
5 Defendants?

6 MR. BISCHOFF: Judge, I mean, I -- I mean, I
7 think that the language is pretty clear about how
8 you go about figuring out if there is an exigency.
9 I just don't think that there was one in this
10 case. There are a number of factual scenarios
11 considered by the Court. When you have, for
12 example, at one point they talk about consider an
13 example in a situation where the warrant process
14 will not significantly increase the delay of
15 having the blood test conducted. The officer can
16 take steps to secure a warrant by another officer.

17 THE COURT: How would he have gotten a
18 warrant that quickly?

19 MR. BISCHOFF: Because he can pick up the
20 phone and he can call.

21 THE COURT: Call who?

22 MR. BISCHOFF: He can call the police
23 officers at the police station and say, I need you
24 to get in touch with Judge Sinclair or Judge
25 Hessler, anybody, and say, I need a warrant. They

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1 do it all of the time for going into houses to get
2 a search warrant for drugs. They call them at all
3 sorts of hours. It was between 3:40 and 6:45 a.m.

4 THE COURT: Who would they have procured a
5 warrant from at that time of the morning?

6 MR. BISCHOFF: Any of the municipal court
7 judges. They have their home numbers. They call
8 them all of the time and show up at their houses
9 to get search warrants. I mean, I think one of
10 the most important parts of this--

11 THE COURT: I think they would be challenged
12 to get a warrant in that short frame of time and
13 kept within the statute of having to draw the
14 blood within three hours.

15 MR. BISCHOFF: Because he was in custody at
16 3:40. They had multiple officers on the scene,
17 they could have easily done it.

18 And I think what we are getting at, Judge, is that
19 there were a number of situations here where it's not
20 that clear where there is an exigency or not. But we
21 have got a statute that mandates, whenever an officer
22 makes the determination that someone is under arrest
23 and a determination that someone is seriously injured,
24 then that in and of itself gives them the authority to
25 tell a citizen, you have got to give up blood. And

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1 that is a problem. And I think that in order to get
2 clarity on this the appropriate thing to do would be to
3 suppress it. And I'm sure Culver would appeal it. But
4 it is a confusing issue.

5 THE COURT: Not to me. I think the case is
6 very clear in its criteria. And I think factually
7 it is very clear in this situation. I would
8 find -- I don't think that it's -- can you order a
9 blood draw on a regular DUI stop if they refuse
10 the BA?

11 MR. KIDD: You would have to get a warrant.

12 THE COURT: That's what I thought. It is
13 very different than the South Carolina statute.
14 In Missouri you can draw blood at any time for any
15 reason. That is very different than our --

16 MR. BISCHOFF: That is at any time they are
17 under arrest, right?

18 THE COURT: It says at any time -- you can
19 draw blood at any time for any arrest for any
20 purpose it doesn't have to be for a DUI. Their
21 statute is very different from the South Carolina
22 statute. And I just wanted to make sure that my
23 memory was accurate. If you refuse a BA on a DUI
24 first, second, or third or subsequent, the police
25 can't draw your blood. There's a distinction

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1 between that and a felony DUI case.

2 And factually this case is very different because
3 his blood was drawn on a regular DUI stop and their
4 statute provides for that. Which I do find problematic
5 in regards to the fourth amendment because once he
6 refused a BA or otherwise they should have gotten a
7 warrant. It is very different than a felony DUI case.
8 But in the Missouri framework they can direct a test to
9 be administered by law enforcement whenever the person
10 has been arrested or stopped for any reason.

11 That is a very troubled system, a very broad sort
12 of a standard. But again, their statute is lumped --
13 they lump everything in there together, for DUI, felony
14 DUI. They don't call it felony DUI. They say whenever
15 a motor vehicle has been involved in a motor vehicle
16 collision which resulted in a fatality or rather
17 apparent serious physical injury as defined by their
18 code section or as directed by evidence of uniform
19 traffic ticket, and the rest of it I don't necessarily
20 need to go into. But the statute for the framework is
21 different. And ours is different. Ours acknowledges
22 that fourth amendment protection under a similar
23 factual set of circumstances.

24 MR. BISCHOFF: But it doesn't under felony
25 DUI. I mean, I just fail to see how the Supreme

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1 Court --

2 THE COURT: I don't think that it has to. I
3 don't think that the Supreme Court has changed our
4 statutory framework. I think it is invalidated.
5 And if it did it would have then invalidated
6 almost every statutory framework of implied
7 consent across the country and I don't think that
8 was their intention initially in this opinion.

9 MR. BISCHOFF: That is not true though. I
10 mean, there are a number of statutes that actually
11 require that you get a warrant first. There is
12 nothing that gives them the authority to say --

13 THE COURT: Every State is different.

14 MR. BISCHOFF: Right, I know.

15 THE COURT: If I were to follow your analogy
16 and your logic almost three-quarters of the
17 statutes in this country would be invalidated on
18 felony DUI based on that logic. And I have never
19 known the Supreme Court to do that. They usually
20 look at cases State by State, case by case,
21 statutory framework by statutory framework and
22 they do an analysis. It was never intended to be
23 read that broadly. You have -- you cannot ignore
24 one of the facts in the case and make sure they
25 are analogous, you have to also look to see if the

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1 statutory framework is analogous. Missouri
2 doesn't have the same statute. Their statute is
3 very different from ours. Our statutory framework
4 acknowledges you must possess a warrant to make a
5 blood draw in a regular DUI stop. That is a
6 distinction and it is an important distinction.

7 MR. BISCHOFF: It doesn't matter.

8 THE COURT: It does matter.

9 MR. BISCHOFF: This is a felony DUI case.

10 THE COURT: It does matter. Because the
11 analogous that you are relying on deals with a
12 regular DUI stop. I agree completely, that you
13 need to get a warrant. That is a gross intrusion
14 and violation of the fourth amendment because you
15 have -- one person refuses a BA you can't just go
16 to the hospital and trample on their rights and
17 request that they have a blood draw. That is why
18 our statute is different versus a felony DUI. Our
19 public policy has acknowledged that there is a
20 distinction and there is a difference.

21 Now, whether it does meet the criteria articulated
22 in the case or whether this case is even particularly
23 applicable to this factual situation, I will have to
24 think about it a little bit. But I'll tell you right
25 now I'm not particularly inclined to agree with your

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1 logic. But I'll think about it a little. Is there
2 anything further from the State?

3 MR. KIDD: Just briefly, Judge. It'll make a
4 little more sense when you see the video. It's
5 just hard, without the CD testimony, it is hard to
6 grasp how chaotic of a scene this was.

7 THE COURT: I can imagine how it was. You
8 have single-file traffic, you have a construction
9 zone. I imagine single-file traffic, usually
10 there's pylons and other things, and late at
11 night, still dark.

12 MR. KIDD: They have 20 other construction
13 workers out there, they are trying to separate
14 them and get statements from them. We have, you
15 know, someone with severe injuries. We have --
16 the time of accident 3:34, placed under arrest
17 4:40, transported to the station, you know, 6:40
18 offered to take a BA, breath test, and refusal.
19 So by the time we would have even thought about
20 going to get a warrant at the refusal of the
21 breath test, we have already had almost three
22 hours from the time of the accident elapse, so
23 then to receive additional time to get a warrant
24 wouldn't have made sense, especially in light of a
25 constitutional statute which we have in place.

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1 And when you distinguish that on a felony DUI
2 case, and that is really the main distinguishing
3 factor is in a felony DUI case these are the
4 circumstances outlined in McNeely.

5 When the Court says, particularly in a case such
6 as this, where time has to be taken to bring an accused
7 to the hospital and investigate the scene of the
8 accident, there was no time to seek out a magistrate
9 and secure a warrant. And given these special facts we
10 felt that it was appropriate for the police officer to
11 act without a warrant. And that is what we have going
12 on here. It is a chaotic situation, time consuming
13 tasks to have taken place, in order to reopen a major
14 thoroughfare that caused significant delay which then
15 triggered those exigent circumstances to justify a
16 warrant.

17 MR. BISCHOFF: Can the State give me a
18 statute where it says that a warrant is not -- you
19 have to get a warrant to draw blood on a regular
20 DUI? Are you familiar with that?

21 MR. KIDD: It just doesn't say that you don't
22 need one.

23 MR. BISCHOFF: So the Judge said earlier you
24 have to get one.

25 MR. KIDD: It doesn't give you the framework

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1 for getting one without a warrant.

2 MR. BISCHOFF: Okay.

3 THE COURT: Factually, did the Defendant in
4 this case refuse to give the blood sample?

5 MR. BISCHOFF: He did after the machine
6 malfunctioned.

7 MR. KIDD: My understanding is that he
8 refused to give the breath sample and then was
9 told that he didn't have a choice.

10 MR. BISCHOFF: The machine malfunctioned, he
11 then refused. They then took him to the hospital
12 to draw blood.

13 THE COURT: The State is relying on
14 56-5-2950?

15 MR. KIDD: No, Judge.

16 THE COURT: Which statute are you relying on?

17 MR. KIDD: Well, 2946 is the mandatory blood
18 draw statute. 2950 is the implied consent.

19 THE COURT: Exactly.

20 MR. KIDD: Which according to the statute
21 doesn't apply.

22 THE COURT: Exactly.

23 MR. KIDD: In a felony DUI.

24 THE COURT: That is why I asked that
25 question.

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1 MR. KIDD: 2946 is the one that has the
2 mandatory language, that the Defendant must submit
3 to one of the tests.

4 THE COURT: 2950 applies to a regular DUI
5 case, right?

6 MR. BISCHOFF: Yes, Your Honor.

7 THE COURT: Do y'all have the video clips
8 ready for me to see?

9 MR. KIDD: Yes, Your Honor.

10 THE COURT: Can we play those?

11 (Video playing.)

12 MR. KIDD: Judge, this goes on for quite some
13 time. I think that it may be a good idea to
14 switch to a separate officer's video.

15 THE COURT: Do you mean to introduce what
16 goes on?

17 MR. KIDD: To be perfectly frank, I think
18 that I would have stopped this video right before
19 that individual's statement. Right before when
20 the officer asked, Who saw what is going on, and
21 then that individual.

22 THE COURT: Okay. I assume that they are all
23 going to come to testify?

24 MR. KIDD: It's been reduced to a written
25 statement. And to be honest, I'm having trouble

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1 with this individual who gave that statement. He
2 is in North Dakota and works in Canada. Hopefully
3 he gets on his plane, you know, but we are fine if
4 he doesn't.

5 THE COURT: I guess -- does the Defense have
6 any exception to what's been played so far?

7 MR. BISCHOFF: Yes.

8 THE COURT: What is that? Those parts from
9 32630 to 32640 it was inaudible, I couldn't hear
10 anything. I am trying to figure out what you are
11 objecting to. It was just the officer driving
12 from 32630 to 32640, coming on scene, unless I
13 missed something.

14 MR. BISCHOFF: I think that entire stretch is
15 someone saying, Talk to me, Heck, talk to me.

16 THE COURT: No, that is farther down. That
17 is 32634.

18 MR. BISCHOFF: Sorry, Judge, when he arrives
19 on the scene there are a couple of people in the
20 background, I smell alcohol on him.

21 THE COURT: I couldn't have heard anything,
22 it was completely inaudible.

23 MR. BISCHOFF: I have got the transcript.

24 THE COURT: Anybody that says that they could
25 hear anything, you must have amplified it and wore

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1 headphones. You can't hear anything on that tape.
2 You basically can't hear anything. Talk to me,
3 talk to me, it was muffled.

4 MR. BISCHOFF: You can definitely hear them
5 say, I smell alcohol on him.

6 THE COURT: Go back to 32630 to 32640.

7 MR. BISCHOFF: Okay.

8 THE COURT: I didn't hear a thing. It was
9 inaudible.

10 MR. BISCHOFF: Could you hear that?

11 THE COURT: Yes. That is because you
12 listened to it a bunch of times and had on
13 headphones. The average person couldn't hear what
14 they said. Play it again for me please.

15 (Video playing.)

16 MR. BISCHOFF: Okay.

17 THE COURT: Based on what you played for me,
18 32630 to 32651 I couldn't hear anything.

19 MR. KIDD: All I could hear is the word
20 "alcohol."

21 THE COURT: I couldn't hear that.

22 MR. BISCHOFF: I heard it twice, I could
23 smell alcohol.

24 THE COURT: Y'all have better hearing than
25 me. My daddy says that I have ears like an eagle.

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1 And you know a woman has better hearing than all
2 of you, we can hear everything, or we like to
3 think that. And I couldn't hear that. I think
4 that ya'll can hear it because you have amplified
5 it and played it with headphones on. But the
6 average person cannot hear it.

7 MR. KIDD: The next one which is about to
8 take place is a little bit clearer. I think you
9 will hear it.

10 THE COURT: Okay. If y'all say so.

11 (Video playing.)

12 MR. KIDD: Did you hear that one?

13 THE COURT: Huh-uh. (negative.) It all
14 sounds like inaudible garble. You don't -- I
15 mean, the average person hearing it doesn't hear
16 any of that. Go ahead, I'm listening. Go ahead.

17 (Video playing.)

18 MR. KIDD: Terry Lee Johnson was the African
19 American individual who walked across from the
20 camera and said, I could smell alcohol on him. I
21 couldn't let him go anywhere. I mean, he will
22 testify to that.

23 THE COURT: Did you hear that?

24 THE CLERK: I could hear, I smell alcohol.

25 THE COURT: I couldn't hear nothing over the

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1 static, maybe because it was so distracting to me.
2 And frankly, if I were to let it in, I'm not
3 letting any transcripts in. It is only going to
4 be what the jury can hear.

5 MR. KIDD: Sure.

6 THE COURT: I don't have a transcript. I
7 can't hear anything but static. If they can hear
8 anything more than that they have better ears than
9 I do. Maybe because that's distracting and
10 everything else, all of the activity is going on
11 in that video -- I mean, at the scene of the
12 accident you can't hear what is being said. I
13 think it's relevant. The video in and of itself,
14 however, is relevant to -- is relevant to the
15 scene as it existed at the time.

16 MR. BISCHOFF: Yes, ma'am.

17 THE COURT: Now, if somebody is saying, I
18 smell alcohol, is he going to testify?

19 MR. KIDD: He is.

20 THE COURT: Why don't you just have him
21 testify? On what issue would that come in? Is
22 probable cause really an issue in this case?

23 MR. KIDD: No, ma'am.

24 THE COURT: Then why would that even come in?

25 MR. KIDD: Why would it come in that he

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1 smelled alcohol?

2 THE COURT: Evidence of impairment?

3 MR. KIDD: Evidence that he's been drinking.

4 Also, I don't think that that's why we are
5 offering it.

6 THE COURT: Why are you offering it?

7 MR. KIDD: We are offering it to show why the
8 officers began a DUI investigation.

9 THE COURT: I think the fact that because
10 somebody hit somebody in a construction zone is
11 sufficient probable cause to think someone is
12 drinking. I don't think that you need to have
13 somebody say, I smell alcohol. You don't have to
14 be checked to see if the person is high. You can
15 be high on prescription meds you took
16 irresponsibly, you can overtake prescription meds,
17 you can have marijuana in your system, you can be
18 having a seizure. There are lots of things that
19 the statute encompasses, not just -- it is a whole
20 panoply of things that it incorporates.

21 I think the fact that a vehicle hits somebody in a
22 35-mile per hour construction zone is sufficient for
23 the police to give them a sobriety test and go from
24 there. I think that is the first thing a police
25 officer, they would assume, absent somebody walking out

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1 in front of a car, that somebody was impaired when they
2 hit someone.

3 MR. KIDD: Sure.

4 THE COURT: And I don't know that -- I would
5 imagine that the officers came on to scene fairly
6 quickly in response to this and they could make
7 their own observations about what they smell and
8 saw.

9 MR. KIDD: And they will. And I think the
10 only reason that we are having this debate is he's
11 making a hearsay objection to the fact that that
12 video says they smelled alcohol.

13 THE COURT: I can't hear it. Maybe it's just
14 me. But all I hear is a bunch of crackling and
15 static. I really don't hear it.

16 MR. KIDD: My argument to hearsay would be
17 that it is not offered to prove that he was
18 drinking, it was just offered to show why the
19 officers then switched gears and say, you know,
20 you are under investigation.

21 THE COURT: You really think that they
22 switched gears at that point, they didn't suspect
23 him on it as soon as they came on the scene?

24 MR. KIDD: No, not right away. And I think
25 that --

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1 THE COURT: So, you are saying that the
2 officer didn't smell alcohol on him?

3 MR. KIDD: I am saying Officer Eckert did not
4 smell alcohol on him, and he will testify that he
5 didn't smell alcohol on him. When Officer Eckert
6 arrived on scene his attention is on the victim
7 laying on the back of the paving machine severely
8 injured. The workers are telling him, This is the
9 guy that hit him. We smell alcohol. So, Officer
10 Eckert says, Stand over here.

11 THE COURT: I don't have a problem with a
12 person testifying to that. But you can't hear it
13 on the video, it is inaudible. I mean, you can
14 play the video, but frankly I don't think that the
15 jury can hear it. And unless I can hear it and I
16 can hear those words articulated I'm not going to
17 let you argue to the jury what you think it is
18 saying.

19 MR. KIDD: I am not going to argue to the
20 jury --

21 THE COURT: It says what it says and whatever
22 they hear, they hear. But frankly I think all
23 they are going to hear is crackling and static.

24 MR. KIDD: If they do, that is fine. All I
25 want to do is be able to play the video.

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1 THE COURT: And what is the basis of the
2 objection?

3 MR. BISCHOFF: Under hearsay, also under the
4 confrontation clause of Crawford V Washington.

5 THE COURT: He is going to be here.

6 MR. BISCHOFF: But playing the video is
7 different.

8 THE COURT: No, it is not. Crawford deals
9 with when the person is not available to
10 cross-examine. He will be here.

11 MR. BISCHOFF: He don't know that Terry Lee
12 Johnson made the statement.

13 THE COURT: Do you know who made the
14 statement?

15 MR. KIDD: I do. I've talked to him.

16 THE COURT: Who is it?

17 MR. KIDD: Terry Lee Johnson.

18 THE COURT: Then you have the opportunity to
19 cross-examine. That goes to weight, not
20 admissibility. The problem is your ability to
21 confront someone and cross-examine them and
22 cross-examine the weight of their knowledge.

23 MR. BISCHOFF: This is the first time that I
24 had knowledge that that is Terry Lee Johnson.

25 THE COURT: Well, I don't know that it really

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1 would have made any appreciable difference because
2 I doubt Mr. Johnson would have talked to you until
3 then anyhow.

4 MR. BISCHOFF: Yes, they refused.

5 THE COURT: So, you probably will only be
6 able to talk to him when he comes to court. But
7 if he don't want to talk to you I'm not going to
8 force him to. He will be advised of what his --
9 the basic scope of testimony but you will have the
10 opportunity to cross-examine him. So, there is no
11 confrontation clause issue.

12 MR. BISCHOFF: I submit that it's hearsay.
13 They are only offering it to show that someone
14 said he was drinking.

15 THE COURT: I don't know, I'll have to hear
16 it in context. It is believable to me that it
17 wouldn't have been in res gestae before the Court
18 and that is why they started his investigation.

19 MR. BISCHOFF: That is not what he argued.

20 THE COURT: That is what he said, the
21 statement precipitated them beginning the
22 investigation on DUI.

23 MR. BISCHOFF: I think that is just not a
24 credible argument.

25 THE COURT: Well, we will decide what is

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1 credible. I'll hear the context and I will make a
2 final decision. But at this point, it is a
3 conceivable argument.

4 MR. BISCHOFF: Over my objection.

5 THE COURT: Noted.

6 MR. BISCHOFF: Thank you, Judge.

7 THE COURT: But it's still inaudible, you
8 can't hear it. I am objective. I don't have
9 anybody to reward or punish and I don't have to
10 win anymore, I haven't in 17 years. I was as big
11 of an advocate as anybody in this room and liked
12 to win as much as anybody else. I can't hear it.

13 MR. BISCHOFF: I appreciate that, Judge.

14 THE COURT: All right. What is the next one?

15 MR. BISCHOFF: The next one is under 403
16 Judge. I think the, Talk to me, Heck, talk to me,
17 talk to me.

18 THE COURT: Why does it have to go on for
19 five minutes? What is the purpose of that; what
20 does it show?

21 MR. KIDD: And, Judge, that is a res gestae
22 argument. I think that is the immediate aftermath
23 of an accident. And it's not -- I mean, to be
24 perfectly --

25 THE COURT: Don't you get the effect of it

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1 playing for just a couple of seconds? Why do I --
2 it goes on forever.

3 MR. KIDD: I think that's what's important,
4 Judge, when you have the Defendant making
5 statements to the police minutes after this
6 officer arrives. The timing from those statements
7 from the arrival of the officers are incredibly
8 important.

9 THE COURT: We will get to that, though, I
10 assume. Do y'all have an objection to the
11 statements? I thought that you withdrew those.

12 MR. BISCHOFF: I don't know how we even got
13 to his statements. We are talking about the, Talk
14 to me, Heck 403.

15 MR. KIDD: That is what I'm saying. I think
16 the temporal proximity of his statements to the
17 time that the officer arrives --

18 THE COURT: Let's backtrack. You all are
19 withdrawing -- as I understood you all withdrew
20 any objections to your client's statements on this
21 video, correct?

22 MR. BISCHOFF: Yes.

23 THE COURT: All right. Start over, come at
24 me again.

25 MR. KIDD: I agree, Talk to me, Heck said

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1 over and over doesn't prove an element of the
2 offense that I'm here to prosecute. I think from
3 a res gestae standpoint it's important. I think
4 it is very important from a temporal proximity for
5 the Defendant's statement to show the continuity
6 from the time that the officer was there.

7 THE COURT: I don't have a problem with you
8 showing it. But it seems like it just goes on
9 indefinitely. It's clear that the man has a
10 significant injury and he is not going to respond.
11 So what is it being offered to prove, his asking
12 him 25 times to talk to him and he's not
13 responsive.

14 MR. KIDD: I know that it happens a lot but
15 it really only happens, though, over two minutes.

16 THE COURT: That is a long time to listen to,
17 Talk to me, talk to me. At some point you know
18 he's not going to be responsive and they are
19 waiting on him to answer.

20 MR. KIDD: Judge, my only argument is the
21 context of when the officer arrived until he takes
22 the Defendant's statement. I think that
23 everything that happened in between that is
24 extremely important so that the jury understands
25 everything that led up to when those words were

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1 spoken. I think if we break it up it is going to
2 be very misleading the jury.

3 THE COURT: I'll think about it. What is the
4 other objection? That "talk to me" objection,
5 that is 328 to 334 correct?

6 MR. BISCHOFF: Yes.

7 THE COURT: Okay. So, that covers everything
8 with Officer Eckert's car video, correct?

9 MR. BISCHOFF: Yes. And, Judge, there is
10 a -- I guess, are you going to shut it down at
11 341?

12 MR. KIDD: I am to protect myself under
13 Crawford and I am able to make sure that the
14 relief comes out of it here. I might seek to put
15 the rest of it in.

16 MR. BISCHOFF: But as of now?

17 MR. KIDD: As of now, that is it.

18 THE COURT: What is the next video?

19 MR. BISCHOFF: Officer Harris.

20 THE COURT: All right.

21 (Video playing.)

22 MR. BISCHOFF: Judge, I guess you probably
23 didn't hear that either, but I think that what
24 Officer Eckert is saying is that the crew men from
25 the construction company said that he had been

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1 drinking. That was the basis of 1A.

2 THE COURT: He didn't finish his statement,
3 did he? You cut it off before he finished his
4 statement?

5 MR. BISCHOFF: No, it is 41528 through 41535.

6 THE COURT: Can I see the counter please?

7 MR. KIDD: I'll show it in the more breakdown
8 mode so the counter will be more clear.

9 MR. BISCHOFF: The counter hides in the
10 bottom left when you maximize it.

11 THE COURT: Well, we haven't gotten to 41528,
12 have we, we stopped short of 35. We got to 30 so
13 I didn't hear the whole thing.

14 MR. BISCHOFF: We did. He just backed it up.

15 (Video playing.)

16 THE COURT: I heard it that time. Aren't all
17 of these people coming to testify? Because that
18 would be offered for its truth?

19 MR. BISCHOFF: It is double hearsay.

20 THE COURT: Actually, officers are allowed to
21 say certain things as part of the investigation
22 that are hearsay because they are not offered for
23 the truth, they are offered to show the underlying
24 basis for why they investigated.

25 MR. BISCHOFF: In some cases.

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1 THE COURT: In most cases.

2 MR. BISCHOFF: Well, this is a felony DUI
3 case.

4 THE COURT: He isn't saying he told me so and
5 so, he's saying that a group of people said to me,
6 He's been drinking.

7 MR. BISCHOFF: I think that that ought not to
8 be played in front of the jury.

9 THE COURT: Are all of those people coming to
10 testify, the group of people that he separated to
11 talk to as individual witnesses?

12 MR. KIDD: I believe that in two of the
13 witness statements we have people who are coming
14 in who are going to say that they personally
15 smelled alcohol on Mr. Hamrick.

16 THE COURT: And they are going to report that
17 they told the police officers that they thought he
18 had been drinking?

19 MR. KIDD: They are, and they are in their
20 written statements.

21 THE COURT: And for what purpose is the State
22 offering this?

23 MR. KIDD: That is the same as the last. We
24 are not offering it to show that he has been
25 drinking or drunk. We have blood evidence and

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1 things like that for that, we are just offering it
2 to show what officers did next and why they
3 conducted the investigation.

4 MR. BISCHOFF: But Harris knew about the
5 suspected drinking beforehand because Officer
6 Eckert told him before he arrived he refused the
7 field sobriety test and then he says, Should we do
8 a 95 or take him into custody. So, he knows that
9 he has already refused to take the test. So, he
10 is not going to -- he is already concerned that
11 they might have a drunk driver.

12 THE COURT: I don't know that they are
13 limited to that. I think they can present
14 evidence of why they pursued the course of the
15 investigation, and it is very important that they
16 can do that. It is not being offered for the
17 truth, it's showing the underlying basis or
18 foundation for the investigative process. And as
19 long as it's being offered for that purpose I
20 really cannot discern any prejudice to your
21 client, especially where you now removed any
22 objections of him admitting that he had alcohol
23 earlier in the day. When you look at it in the
24 totality I can't discern prejudice to him. It's
25 not being offered for the truth. And they are

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1 going to have the witnesses present and you will
2 have ample opportunity to cross-examine them on
3 any actual statements they made to the police.

4 MR. BISCHOFF: Thank you, Judge.

5 THE COURT: You are welcome. 43010 through
6 43038, and we have listened to that already.

7 MR. BISCHOFF: That is the marijuana.

8 THE COURT: I thought that you agreed not to
9 play that.

10 MR. KIDD: I'll hit mute on that.

11 THE COURT: Okay.

12 MR. KIDD: But I would like to double check
13 it, the time line, the times, if we could.

14 MR. BISCHOFF: That is fine.

15 MR. KIDD: What were the time stamps?

16 THE COURT: 43010 through 43038.

17 MR. KIDD: That is it, Judge.

18 THE COURT: Is there anything else that you
19 need to take up other than the blood test?

20 MR. KIDD: No, Your Honor.

21 MR. BISCHOFF: I don't believe so, Your
22 Honor.

23 THE COURT: So y'all are going to look at the
24 redacted jail recordings this evening, correct,
25 and then we will take up the horizontal gaze

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1 nystagmus test at the time of the officers
2 testimony?

3 MR. BISCHOFF: Yes, ma'am.

4 THE COURT: I'll issue an opinion in the
5 morning regarding the blood test. But I can tell
6 you that I'm not inclined to grant the motion at
7 this moment unless something changes over the
8 evening in my thought process.

9 MR. BISCHOFF: Shall we wait until tomorrow
10 to talk about the other motion?

11 THE COURT: What other motion? I thought
12 that you said depending on how the Court ruled.

13 MR. BISCHOFF: Yes, ma'am. I didn't know if
14 you wanted to hear arguments and talk about all of
15 this now. We can talk about it in the morning. I
16 think the key part, you have to make the
17 clarification that he's under arrest.

18 THE COURT: He is not under arrest until he's
19 under arrest. Detention is not an arrest. Even
20 though his liberty is restrained, he's not under
21 arrest. Once they place him under arrest he is
22 clearly -- from the time of the accident.

23 MR. BISCHOFF: 3:23.

24 MR. KIDD: 3:24.

25 MR. BISCHOFF: I say 3:23, I know that it

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1 doesn't mean a lot to you right now.

2 THE COURT: And the test was done at 6:55?

3 MR. KIDD: Yes, ma'am.

4 THE COURT: What time did they actually place
5 him under arrest?

6 MR. KIDD: 4:40.

7 THE COURT: I think that there's a
8 distinction between investigative detention and
9 arrest. Certain things deal with restraint of
10 liberty, which is why we draw the distinction
11 between detention and an arrest. I think for
12 purposes of the statute, the statute is clear that
13 the time doesn't begin until he's placed under
14 arrest, based on the pleading and unambiguous
15 language of the statute.

16 MR. BISCHOFF: Based on my objection, Your
17 Honor, I think my argument is it's clear that he's
18 absolutely under arrest at 3:40.

19 THE COURT: As I said, we are mixing apples
20 and oranges. We are dealing with the deadline
21 imposed by statute that clearly articulates that
22 the time frame doesn't run until he's placed under
23 arrest. Which in this instance is not until the
24 police say, You are under arrest, they put the
25 handcuffs on him and they Mirandize him. We have

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1 a whole different set of principles that apply
2 Constitutionally when a person is under an
3 investigative detention stop and when their
4 liberty is restrained, a whole different set of
5 criteria, a whole different set of circumstances
6 that that's applicable to. Which could be
7 applied, theoretically, if the statute was not in
8 place. However, the statute is very clear, it
9 articulates that a particular time period runs
10 from when he's actually placed under arrest, not
11 at the time of investigative detention or stop.

12 MR. BISCHOFF: And that is the point. I
13 don't think that it's investigative detention at
14 3:40. He's under arrest if you look at it
15 objectively.

16 THE COURT: I look at it differently.

17 MR. BISCHOFF: His freedom is restrained and
18 he's not free to leave. They go around the rules
19 so they can get another go at the field sobriety
20 test, and that is exactly what happened at 3:40.

21 THE COURT: I think that the officers can
22 detain and investigate you without putting you
23 under arrest and that not amount to an arrest.

24 MR. BISCHOFF: Okay.

25 THE COURT: And under these circumstances

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1 they are certainly not going to let him go home
2 and then come back and question him later. That
3 would not have been reasonable under the
4 circumstances. Could they have placed him under
5 arrest then? They could have, but they didn't. I
6 think that they were trying to flush out exactly
7 what happened. Which it could have been to your
8 client's benefit. It could have turned out
9 totally different and we wouldn't be having this
10 argument saying they could have let him go home
11 with a ticket and said you are simply guilty of
12 reckless driving, they could have processed him
13 for that. Or if there was some indication that
14 the person had walked out into the front of his
15 on-coming vehicle and he had the right-of-way.

16 I think that the arguments are equally applicable
17 depending factually on what happened. And that is what
18 they were trying to flush out. Did this person, in
19 fact, walk in front of this vehicle and into the lane
20 of travel when he had the right-of-way? Did he dart
21 out in front of the car? Did he in fact not have
22 enough time to stop? I think that the police are
23 entitled to make an accurate investigation and keep you
24 in the vicinity while they investigate absent or short
25 of placing you under arrest.

PRE-TRIAL MOTIONS

1 MR. BISCHOFF: I'll tell you everything that
2 you mentioned about the investigation didn't
3 happen until he was in handcuffs.

4 THE COURT: Not based on my review of those
5 videos so far. It looks like they were
6 investigating and trying to flush out what
7 happened. And since none of us were there.

8 MR. BISCHOFF: Well, that is -- Officer
9 Harris is the lead investigator. He didn't
10 investigate until after 3:40.

11 THE COURT: I don't know. The lead
12 investigator is not the person who does all of the
13 investigation. The lead is called after all of
14 the preliminary stuff is done. The first
15 responders are the people who flush out exactly
16 what's happening and then they call the lead
17 investigator out afterward to decide who is going
18 to be charged or what is going to be charged. So,
19 I think the investigation starts as soon as the
20 police officers arrive.

21 MR. BISCHOFF: I just wanted to put my
22 argument on the record.

23 THE COURT: And I'll let you make full
24 argument if it's necessary. I didn't go into it
25 because you told me that it was moot based on what

PRE-TRIAL MOTIONS

1 the -- based on the Court's ruling on your first
2 motion.

3 MR. BISCHOFF: If you grant it -- because
4 Constitution trumps statute.

5 THE COURT: Oh, I misunderstood you.

6 MR. BISCHOFF: Okay. Thank you, Judge.

7 THE COURT: Okay. If there's any further
8 argument that you need to make on your argument, I
9 misunderstood you. I thought that you said it
10 would be moot either way.

11 MR. BISCHOFF: Just so there's no confusion,
12 what I said is that my motion to suppress under
13 the fourth amendment, I believe, if it's granted
14 there's no need to get to the statutory
15 violations.

16 THE COURT: Then you need to make your full
17 argument on your other motion then.

18 MR. BISCHOFF: Well that's -- okay.

19 THE COURT: Unless you just want to rely on
20 your memo, which you can do. Because I really
21 don't -- I have read it, so I don't need you to
22 repeat the facts.

23 MR. BISCHOFF: I think we did cover the
24 arrest. You disagree with me, Your Honor.

25 THE COURT: Courts don't have a posture. I

PRE-TRIAL MOTIONS

1 don't agree or disagree. I review case law and
2 make a ruling.

3 MR. BISCHOFF: So you have ruled?

4 THE COURT: I have told you my inclination is
5 based on my interpretation of the case law.

6 MR. BISCHOFF: Okay. Then I'll wait until
7 tomorrow morning on your ruling if that's fair.

8 THE COURT: That's fair. But there will be
9 no further argument once I have ruled, so if you
10 need to make further argument you need to make it
11 now.

12 MR. BISCHOFF: Judge, I'll let the motion
13 speak for itself. Thank you.

14 THE COURT: You are welcome. Does the State
15 want to respond?

16 MR. KIDD: No, not in any detail other
17 than --

18 THE COURT: I just need you to address his
19 argument about when he was under arrest. And what
20 is the State's position on that?

21 MR. KIDD: You do want me to address that?

22 THE COURT: Yes. I think the record needs to
23 be complete.

24 MR. KIDD: I agree, Judge. And my -- and I
25 will also rely on my memo. The State V Grant

PRE-TRIAL MOTIONS

1 which is cited in my memo, it is a case dealing
2 with resisting arrest besides when an arrest
3 occurs. And when someone -- the arrest occurs
4 based on subjective intentions of both the
5 arresting officer and the Defendant. It is very
6 clear on the video, which we didn't show you that
7 specific section, at 4:40 when Officer Harris
8 places the Defendant under arrest. He says,
9 Mr. Hamrick, turn around, you are under arrest for
10 driving under the influence and he puts him in
11 handcuffs. That is when the arrest occurs, the
12 manifestation of the intent of Officer Harris.
13 That is when he has established probable cause to
14 place him under arrest.

15 Everything up until then is interviewing
16 witnesses, conducting field sobriety test, gathering
17 information and determining whether he is going to make
18 an arrest or not. Office Harris can tell you, had he
19 successfully completed those field sobriety tests he
20 would not have placed him under arrest. And that is
21 why the subjective intention is important. And I think
22 it is a very strategic thing to hear is the subjective
23 intention of the Defendant -- excuse me, Mr. Hamrick.

24 The only reason that he would have submitted to
25 that field sobriety test was in hopes of successfully

PRE-TRIAL MOTIONS

1 completing it and then being released. So that clearly
2 showed that he didn't have the subjective understanding
3 that he was under arrest. He knew that he wasn't free
4 to leave. Statutorily under leaving the scene of an
5 accident he wasn't free to leave anyway. If he had
6 left it would have been leaving the scene of an
7 accident.

8 And additionally, Judge, I think that you agree
9 with me on the time of arrest, but quite frankly the
10 three-hour time limit is the implied consent three-hour
11 time limit, it doesn't apply to 2946. Now, there is a
12 relating blurb in 2946 which deals with how parts of
13 the implied consent statute in 2950 do relate to the
14 administration of additional testing. Now, the implied
15 consent statute reads about how you have two hours to
16 obtain a breath sample. And then it says, three hours
17 for any additional tests. Well, that doesn't apply to
18 2946. 2946 is about mandatory blood draw, not an
19 additional test.

20 And it says, the administration. When you look up
21 the word "administration," it is about the act of
22 giving medication or something like that. That deals
23 with the qualified personnel, the medical liability,
24 the act of drawing the blood, not the time limit within
25 which it can be done. And so obviously our first

PRE-TRIAL MOTIONS

1 argument is, Judge, that the arrest didn't occur until
2 4:40 when the intentions of the officer and the
3 Defendant are clear. '

4 And if you don't mind, I would love to play that
5 quick blurb of that video for you, Your Honor.

6 (Video playing.)

7 MR. KIDD: And, Judge, that occurs at 4:40
8 after the officer has gained the probable cause
9 from the field sobriety test to then place the
10 Defendant under arrest. You know, whether or not
11 probable cause exists is not really a dispositive
12 issue. I mean, they could have had probable cause
13 and not effectuated an arrest. But just because
14 an accident occurs and some officers -- some
15 construction workers say that they smell alcohol,
16 I'm not sure too many courts are going to find
17 that that's probable cause.

18 What's important here is that by 4:40, after the
19 field sobriety, after talking to the witnesses, after
20 investigating the scene, at least partially, the
21 officers made a determination that an arrest was proper
22 and then they conducted the arrest at 4:40. And I
23 think that is kind of a summation of our argument, is
24 that, you know, first, the time of arrest is at 4:40
25 and it is -- and it's investigative detention up to

PRE-TRIAL MOTIONS

1 that point.

2 I mean, if you look at, I believe it is the
3 Sullivan case, Judge, you can be at gun point and in
4 handcuffs and not be under arrest. So I think the
5 officer says he is under investigative detention. What
6 the officer is doing is investigating. I think this is
7 a perfect scenario for investigative detention. Once
8 that switches to arrest the officer lets the Defendant
9 know. And even if you were to disagree with me on
10 that, Judge, I don't believe that the three-hour time
11 limit is applicable for the reasons that I stated
12 earlier.

13 MR. BISCHOFF: Your Honor, may I briefly
14 respond to a couple of things? The crux of his
15 argument is based on State V Brannon. State V
16 Brannon is a case where the man fled when the
17 officer told him to stop. At that point he was
18 not -- you can argue that he was not in custody.
19 It is completely different than investigative
20 detention. ID is actually meant to be brief.
21 This is not brief, 30 plus minutes on the side of
22 the road is not brief.

23 And regarding the probable cause, actually the
24 case law is clear, when there's been an accident,
25 someone admits to having consumed alcohol and refuses

PRE-TRIAL MOTIONS

1 field sobriety test, that is enough for probable cause.
2 I would just like you to take that under consideration
3 when you rule. I mean, it is objective standard, it is
4 not subjective. That is just wrong. Determination of
5 custody is objective analysis of whether or not a
6 reasonable person would feel like they are free to
7 leave. It has nothing to do with the subjective
8 intentions of the police, especially in this situation.

9 THE COURT: Again, I have observed, and you
10 are talking about apples and oranges. One set of
11 circumstances triggers one set of constitutional
12 protections. The statute is a trigger, which is
13 the arrest. It doesn't talk about investigative
14 detention. Investigative detention, whether I
15 have the right to leave, whether my freedom is
16 encumbered triggers a certain set of
17 Constitutional protections, about whether you are
18 questioning me or other things does not act as a
19 trigger in the statute. The statute denominates a
20 very specific time frame which is the time of
21 arrest.

22 MR. BISCHOFF: Right, and to analyze when you
23 are under arrest you have to do it according to
24 fourth amendment principles. You have to.

25 THE COURT: I think that we are looking at

PRE-TRIAL MOTIONS

1 two separate things. I think that you can be
2 under investigative detention for more than 30
3 minutes. It should be brief, but brief is
4 relative depending on the set of circumstances and
5 what is being investigated.

6 A drop down on the street and you are talking to
7 me for more than five minutes, that is different than a
8 DUI where there is injury and you are trying to sort
9 out whether -- let's just take DUI out of the equation
10 altogether. It is no different than when you have an
11 auto/pedestrian accident, investigation of that is
12 going to take longer than whether I am trying to
13 determine if somebody riding on a bicycle threw down a
14 packet of crack. Two different sets of circumstances.

15 I think that it's been three hours, but I'm going
16 to think about it over the evening. I need you to also
17 address your argument under 56-5-2950(a) about
18 withdrawing that, regarding a person who can draw
19 blood.

20 MR. BISCHOFF: Yes, thanks, Judge. I am --
21 it is my understanding based on information
22 provided by the State that Ms. Fallow is
23 undoubtedly a lab technician for --

24 MR. KIDD: East Cooper.

25 MR. BISCHOFF: -- East Cooper. And I have

PRE-TRIAL MOTIONS

1 obtained her résumé, her employment records, and
2 it appears as though she was a phlebotomist for a
3 very brief period of time some 13 years ago. Now
4 she works, not as a doctor, not as a nurse, but as
5 a lab tech. And for the sake of clarity before
6 the Court she is authorized by the hospital to do
7 blood draws, right?

8 MR. KIDD: Correct.

9 MR. BISCHOFF: But I would argue that a lab
10 tech, in and of itself, is not sufficient to
11 satisfy --

12 THE COURT: That is a part of her job
13 description?

14 MR. BISCHOFF: She is a lab technician.

15 THE COURT: What is her job description and
16 what is she allowed to do?

17 MR. BISCHOFF: In the laboratory.

18 THE COURT: You said the hospital allows her
19 to take draws.

20 MR. BISCHOFF: They have allowed lab
21 technicians to do blood draws, but it is not in
22 her job description.

23 THE COURT: How do you know that she's
24 allowed to do it?

25 MR. BISCHOFF: Because we have records from

PRE-TRIAL MOTIONS

1 the hospital that says that they have allowed her
2 to do the blood draws.

3 THE COURT: That is part of the regulatory
4 scheme, that they allow -- that is part of who
5 they have determined is allowed to take blood
6 draws?

7 MR. BISCHOFF: I would say yes. They have
8 said that the lab technician specially qualified
9 is allowed to do blood draws.

10 THE COURT: I would imagine that she's had
11 training.

12 MR. BISCHOFF: I don't think that she's had
13 training in quite some time.

14 THE COURT: Once you have been trained to be
15 a lawyer, do you forget how to do it?

16 MR. BISCHOFF: No, but you have to do CLEs
17 and continuing education and a number of things to
18 keep up with technology.

19 THE COURT: There isn't a new technology in
20 drawing blood, is there?

21 MR. BISCHOFF: I would argue that there is,
22 and I appreciate you listening to my argument.

23 THE COURT: You have got to show me something
24 independent of your surmise that that in fact is
25 supported medically. I think once you learn how

PRE-TRIAL MOTIONS

1 to draw blood, you can draw it, especially if you
2 are working in that field. A phlebotomist, once
3 you get that certification --

4 MR. BISCHOFF: I don't think that she has the
5 certification -- though, that is the thing.

6 THE COURT: Do you have to? I think once you
7 get certification. I think people that fall in
8 the criteria of CNAs, they get all of that
9 training, don't they?

10 MR. BISCHOFF: There's certification.

11 THE COURT: Is it really required becomes the
12 question.

13 MR. BISCHOFF: That is the thing, it is not a
14 doctor, it is not a nurse, it is other --

15 THE COURT: What does the statute --

16 MR. BISCHOFF: Medical qualified.

17 THE COURT: Other medical personnel trained
18 to obtain the samples in a licensed medical
19 facility.

20 MR. BISCHOFF: Right. And the reason behind
21 all of this, Judge, or the thought process is that
22 I do have out of our employment records a letter
23 from the national credentialing agency for
24 laboratory personnel to the hospital basically
25 listing out a number of different qualifications

PRE-TRIAL MOTIONS

1 inside of the NCAA accreditation process. She
2 could be a laboratory director, she could be a
3 laboratory supervisor, you could be a laboratory
4 technician, you could be a laboratory
5 phlebotomist, you could be a laboratory compliance
6 professional. There's no doubt that she does not
7 have phlebotomist certification at this point, as
8 far as her employment records show me.

9 THE COURT: I don't think that she has to.
10 There's no mystery to finding a vein, drawing the
11 blood and putting it into a tube, sealing it, and
12 putting it in a kit. And there's usually somebody
13 in the hospital that is designated to do that who
14 is there -- sometimes in Charleston I have seen
15 where they use an RN and I have seen when they use
16 a phlebotomist and they have used lab personnel.
17 I don't know that the statute requires anything
18 more than your ability to know how to take a blood
19 sample without contaminating it and knowing how to
20 seal it in the tube and putting it in the box and
21 labeling it and turning it over to the officer who
22 is there to collect it.

23 MR. BISCHOFF: Yes, ma'am.

24 THE COURT: I don't know that it requires any
25 more than that.

PRE-TRIAL MOTIONS

1 MR. BISCHOFF: Well, I don't think that
2 there's any case law on the point, that is for
3 sure.

4 THE COURT: I don't know that you need really
5 any. I mean, it is just common sense.

6 MR. BISCHOFF: I am arguing for purposes of
7 the suppression that she was not qualified.

8 THE COURT: I don't think -- I have just seen
9 it done so many different ways. The real issue
10 becomes if somehow the sample was contaminated, if
11 somehow the person didn't have on gloves or they
12 showed some lack of training on how to take, you
13 know, a blood sample. You know, I'm not sure that
14 the nurse at my doctor's office has a
15 certification in phlebotomy to take my blood for
16 testing.

17 MR. BISCHOFF: Well, I know for sure, I have
18 given blood before and I thought that the people
19 had no business sticking a needle in my arm. Some
20 people do it wrong.

21 THE COURT: I don't know. I think that a
22 range of people are trained to do it. You have
23 all of these schools where people go and they get
24 trained in phlebotomy, but of course as we have
25 all experienced, some people are more gifted at

PRE-TRIAL MOTIONS

1 doing it than others.

2 MR. BISCHOFF: Well, that is sort of the
3 reason that I have made the argument. Because if
4 she comes on the stand and says, yes, I am a
5 phlebotomist, I don't have an argument. But I
6 think that she is a lab tech and I don't think
7 that she has that training.

8 THE COURT: I think if she's trained in
9 taking blood she doesn't have to be a
10 phlebotomist. But I will hear her testimony.
11 What is her testimony going to be?

12 MR. KIDD: She is a lab tech. She has been a
13 phlebotomist. She works currently as a --

14 THE COURT: Has been; when was she a
15 phlebotomist?

16 MR. KIDD: It was a long time ago. I don't
17 know the dates.

18 THE COURT: Does she draw blood currently at
19 the hospital?

20 MR. KIDD: Yes, she does, she works as a
21 back-up at East Cooper where East Cooper has
22 trained her in blood collection.

23 THE COURT: That resolves that, doesn't it?
24 Because the statute says, and other medical
25 personnel trained to obtain the samples in a

PRE-TRIAL MOTIONS

1 licensed medical facility. Clearly East Cooper is
2 a license medical facility. And they have trained
3 her to take blood samples as their back-up
4 phlebotomist. I would have to hear the extent of
5 her training, but I can't imagine there's any
6 mystery in learning how to take blood. The main
7 thing is make the patient comfortable and not
8 stick 20 veins and to find a vein and to make sure
9 that it's not contaminated, which involves the use
10 of, I would imagine, gloves. But the kit is
11 provided?

12 MR. KIDD: Right.

13 THE COURT: And the officer has to observe it
14 and they all have to sign off on it. So, I
15 anticipate that her testimony would be that she's
16 done this on more than one occasion for purposes
17 of DUI collection.

18 MR. BISCHOFF: Thank you for listening to my
19 argument.

20 THE COURT: Huh?

21 MR. BISCHOFF: I said, Thank you for
22 listening to my argument.

23 THE COURT: You are welcome. I think that's
24 sort of -- well, I'll see what her testimony is
25 and make a final ruling at that time regarding

PRE-TRIAL MOTIONS

1 whether she fits within the other medical
2 personnel to obtain the samples in a licensed
3 medical facility. But based on what I have heard
4 so far it seems like she meets that criteria in
5 light of the fact that she's received training and
6 has had what appears to be some level of
7 experience for doing this for East Cooper as their
8 back-up phlebotomist.

9 I am going to think about the three-hour argument
10 and as well as other arguments made pursuant to the
11 McNeely case and we will resume in the morning after I
12 have had time to think.

13 MR. BISCHOFF: Thank you, Judge.

14 THE COURT: Have a good evening.

15 MR. KIDD: Judge, while we are on the record,
16 right before we started you asked me what the
17 Defendant's record was and I told you he had two
18 prior DUIs. And I have since looked a little
19 deeper, there's a third one in '98.

20 THE COURT: So he has one in '98?

21 MR. KIDD: '02 and '07.

22 THE COURT: '02 and '07 is what I have.

23 MR. BISCHOFF: Yes, but outside of the two
24 year, obviously, for purpose of the sentencing.

25 THE COURT: Well, that would explain why the

PRE-TRIAL MOTIONS

1 one in '02 goes to transfer court.

2 MR. BISCHOFF: And there is also a handful of
3 check charges, Your Honor.

4 THE COURT: Well, that goes to honesty, they
5 wouldn't be subject to the balance.

6 MR. KIDD: Correct.

7 THE COURT: Those would only be allowed if he
8 were to testify. We will cross that bridge when
9 we come to it. Okay. Thank you.

10 (Trial adjourned for the day.)

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CERTIFICATE PAGE

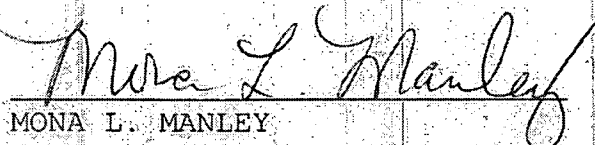
CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 1st day of May, 2014.



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1 State of South Carolina }
2 County of Charleston } Indictment No. 2012GS1001033
3 State of South Carolina, }
4 Plaintiff, }
5 vs. } Trial Transcript
6 Daniel D. Hamrick, }
7 Defendant. }

8

9 VOLUME 2

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13

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15 October 22, 2013

16 Charleston, South Carolina

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20

21 BEFORE:

22 The Honorable Deadra Jefferson

23

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1 PROCEEDINGS

2 THE COURT: You may be seated. Would counsel
3 approach for me, please.

4 THE COURT: One through 22 in without
5 objection. And Defendant's 1 through 11 without
6 objection. And 12 through 18 marked for
7 identification, subject to the foundation being
8 laid.

9 *(Whereupon, State's Exhibit Nos. 1-22 were marked*
10 *for identification and received in evidence.)*

11 *(Whereupon, Defendant's Exhibit Nos. 1-11 were*
12 *marked for identification and received in evidence.)*

13 *(Whereupon, Defendant's Exhibit No. 12-18 was*
14 *marked for identification.)*

15 THE COURT: We now have all of our jurors
16 present. I don't know what the state of the
17 traffic was this morning. But, in any event, we
18 have two motions that are pending before the
19 Court, that being the Defendant's motion to
20 suppress blood tests for violation of his rights
21 under the Fourth Amendment pursuant to Missouri v.
22 McNeely, and his motion to suppress blood tests
23 for the violation of Code Section 56-5-2950. Each
24 of those was filed on October 17th of 2013.

25 The case that the Defense relied on is Missouri v.

IN-CAMERA MOTIONS/ARGUMENT

1 McNeely, which is 133 Supreme Court 1552, which is a
2 2013 decision most recently handed down from the United
3 States Supreme Court. There's several observations
4 that the Court would make that distinguish the McNeely
5 case from the case that we are dealing with, one of
6 which is the Missouri statutory framework is very
7 different from that of South Carolina. And I made that
8 observation on yesterday during our colloquy regarding
9 your arguments on the issue.

10 Is there a reason that you are standing up?

11 MR. BISCHOFF: You said your, so I didn't
12 know if you were addressing me. I'm sorry.

13 THE COURT: No.

14 And the Missouri statutory framework is a little
15 different from South Carolina in that South Carolina
16 has two separate statutes, one that deals with driving
17 under the influence and one that deals with felony DUI,
18 unlike the Missouri statute that basically lumps it all
19 into one statute. It covers felony DUI, it covers
20 death, it covers great bodily injury, and it covers
21 simply driving under the influence.

22 Of particular note is the fact that the Missouri
23 statute has a very broad catch-all that states the test
24 shall be administered at the direction of the law
25 enforcement officer whenever the person that has been

IN-CAMERA MOTIONS/ARGUMENT

1 arrested or stopped for any reason, which is a great
2 deal overly broad than our South Carolina statute.

3 The other distinction is that in the McNeely case,
4 the Defendant in this case was tested after a simple
5 driving under the influence arrest or stop, and he was
6 after -- let me make sure that I'm accurate in my
7 facts. The Defendant in that case declined to take a
8 breath test after a, as I've indicated before, a simple
9 arrest for driving while under the influence --
10 suspicion of driving under the influence.

11 And immediately after he refused to take that
12 breath test the officer immediately took him to a
13 nearby hospital where, against his consent, where he
14 actually refused to take the blood test, the officer
15 directed the lab tech to take a sample, after which he
16 was prosecuted for driving while intoxicated. And he
17 then moved to suppress a blood test result based on
18 that blood drawn, and his contention is that his Fourth
19 Amendment rights were violated at that time.

20 And the Supreme Court articulated -- and, again,
21 the factual circumstances of the McNeely case is very
22 different than this case because the State, in
23 appealing the McNeely suppression issue, was seeking
24 that the court basically put in place a per se
25 exception to the Fourth Amendment based on driving

IN-CAMERA MOTIONS/ARGUMENT

1 while impaired and the fact that alcohol quickly
2 dissipates from a person's -- theoretically, very
3 quickly dissipates from a person's blood stream. And
4 the United States Supreme Court rejected the adoption
5 of any type of a per se rule and articulated a standard
6 which is on a case-by-case basis.

7 Again, however, this varies different factually
8 than the case that we are dealing with. This was a
9 simple driving under the influence case not a felony
10 driving under the influence case with great bodily
11 injury. And in and of themselves they are very
12 different factually. And I agree completely with the
13 analysis of the United States Supreme Court in this
14 case. There really is no exigency, unless, of course,
15 there can be circumstances where there's an exigency,
16 for example, if a person has a one-car accident and
17 they are arrested for driving under the influence and
18 they are injured. Clearly, there's an exigency under
19 those circumstances and, frankly, makes the analysis
20 moot to some extent because the medical officials are
21 going to draw the blood under those circumstances for
22 the purposes of the medical diagnosis and treatment.

23 But under the average circumstances there really
24 is nothing generally exigence absent medical
25 consideration that is going to require that a

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1 warrant-less search or a warrant-less blood test take
2 place in your average driving under the influence
3 prosecution. Frankly, I think the only time that I
4 have ever seen it in a case in South Carolina was when
5 the Defendant requested it pursuant to the statute
6 because they were not in agreement with the BA results
7 and they wanted a separate test to either confirm or
8 refute their blood alcohol reading. Or, again, where
9 there's been something, such as maybe a one-car
10 accident where the Defendant was the person who was
11 injured and the blood was not drawn pursuant to law
12 enforcement, but was drawn as necessitated for medical
13 treatment and diagnosis.

14 And the Supreme Court, of course, went through the
15 Fourth Amendment's analysis on search warrant
16 requirements and the exigency exception and articulated
17 that there were a variety of circumstances that may
18 give rise to an exigency sufficient to justify a
19 warrant for a search, including law enforcement's need
20 to provide emergency assistance to an occupant of a
21 home, in hot pursuit of a suspect, or to enter a
22 burning building and put out a fire and investigate the
23 cause. And, of course, it also articulated that these
24 examples were not exhaustive.

25 But what the U.S. Supreme Court adopted was a

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1 totality of circumstances approach in applying and
2 determining when Fourth Amendment reasonableness in the
3 context of the warrant-less search where a law
4 enforcement officer faced an alleged exigency because
5 the police action at issue would lack a traditional
6 justification that a warrant provides and looks at a
7 reasonableness inquiry that the Court evaluate each
8 case of alleged exigency based on its own facts and
9 circumstances on a case-by-case basis, again rejecting
10 any adoption of a per se rule that in every DUI or DWI,
11 in this instance case, that a per se rule of drawing
12 blood would be appropriate because of the dissipation
13 of alcohol in the system. And the argument regarding
14 the preservation of any evidence, that being the blood
15 alcohol level of a Defendant.

16 They also articulated that in drunk driving
17 investigations where police officers can reasonably
18 obtain a warrant before a blood sample may be drawn
19 without significantly undermining the efficacy of the
20 search, the Fourth Amendment mandates that they do so.
21 However, again, there's a distinction that this case is
22 factually different; this case was a driving under the
23 influence case where clearly no exigency existed.

24 Immediately after the refusal of the BA, he was
25 taken immediately to the hospital and nothing else was

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1 investigated by the officers in terms of -- but he
2 relied on the statute. I mean, clearly under the
3 statute he was entitled to do that. However, no
4 exigency existed.

5 The main crux of the exigency exception is to
6 prevent the imminent destruction of evidence. And the
7 Defense is correct, there are technological
8 developments that enable police to secure warrants more
9 quickly and to do so without undermining the magistrate
10 judge's essential role to check on police discretion.
11 And that is, of course, also relevant in any exception
12 of exigency as a basis of a warrant-less search.

13 Again, the Supreme Court also draws the
14 distinction that there are certain factors that are
15 present in the ordinary traffic stop of a suspected
16 drunk driver that also affect the expeditiousness of
17 being able to obtain and procure a search warrant. The
18 relevant factors, according to McNeely, in determining
19 whether a warrant-less search is reasonable include the
20 practical problems of obtaining a warrant in the time
21 frame that still preserves the opportunity to obtain
22 reliable evidence. And that, no doubt, varies
23 depending upon the circumstances in each case.

24 What they articulated is that the metabolism of
25 alcohol in the blood stream and the ensuing loss of

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1 evidence are among factors that must be considered when
2 deciding whether a search warrant is required for a
3 blood draw from a motorist suspected of driving while
4 intoxicated.

5 In the McNeely case the Court found that there
6 were no circumstances to suggest that the officer faced
7 an emergency. The Supreme Court again relied on the
8 Smerger analysis which deals with whether there's an
9 emergency in which the delay necessary to obtain a
10 warrant under the circumstances threatened the
11 destruction of evidence.

12 The court also found that the dissipation, the
13 natural dissipation of alcohol in the bloodstream does
14 not constitute an exigency in every case sufficient to
15 justify conducting a blood test without a warrant.
16 However, it did find that it is one of the elements
17 that the court can consider in determining the totality
18 of the circumstances of whether an exigency existed,
19 that exception being the exigency of the situation
20 which makes the need of law enforcement so compelling
21 that a warrant-less search is objectively reasonable.

22 The Court finds under the circumstances in this
23 case that the exigency of this particular circumstance
24 and situation made the need of law enforcement so
25 compelling that a warrant-less search was objectively

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1 reasonable under the circumstances.

2 I have looked at the totality of the circumstances
3 in determining whether an exigency did in fact exist in
4 this case. Again, there's a distinction between a
5 simple stop for a driving while impaired, which this
6 case -- or driving under the influence, as is
7 articulated in the South Carolina statutory framework,
8 versus a felony DUI with great bodily injury. The
9 circumstances are simply different. One involves a
10 simple stop of a person on the highway where, arguably,
11 there are no particular emergent circumstances. Of
12 course there can be emergent circumstances, I think
13 that's why the court articulated that it should be
14 considered on a case-by-case basis, and rejected any
15 per -- adopting any per se rule.

16 But a felony DUI case with great bodily injury is
17 completely different because within that context you
18 have a flurry of other activities going on; that being,
19 of course, the -- and a felony DUI with great bodily
20 injury is very different, as articulated by the
21 statute. It is not just somebody simply being in a
22 fender bender or somebody sort of being injured; it
23 articulates really great injury that anticipates either
24 something that would cause death or significant,
25 complete and permanent injury impairing the bodily

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1 functions of an individual. And in great bodily injury
2 cases the Defendant could be injured, which happens in
3 a lot of cases, and sometimes a passenger could be
4 injured, as well as a third party not within the
5 vehicle.

6 In this case, clearly, there were exigent
7 circumstances that existed. Just based on my review of
8 the video on the scene of that evening, it was chaotic
9 at best. It was in the early morning hours, a
10 construction crew was on the highway, doing highway
11 improvements, and the Defendant struck one of the
12 workers.

13 In the course of the investigation of this matter
14 it took a -- I wouldn't say a considerable amount of
15 time, but it took an adequate amount of time for the
16 police to sort of sort out what was happening; in other
17 words, whether alcohol was either involved in the
18 incident. You had a person who was gravely injured at
19 the site, so you were dealing with emergency medical
20 personnel. They had to determine whether the driver of
21 the vehicle was injured. They had to corral witnesses
22 at the scene to determine whether in fact -- or really
23 how the incident came about, because you have the
24 statements of the Defendant that basically indicated
25 that this person had entered into his lane of travel

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1 and he arguably had the right of way.

2 And there was a lot that had to be sorted out at
3 that scene which really -- even though law enforcement
4 was in control of the scene, it was organized chaos.
5 It was a chaotic situation. It was not a simple
6 situation where someone was being pulled over for being
7 suspected of drunk driving. So it took what was a
8 reasonable amount of time for them to sort out exactly
9 what was going on at the scene, whether someone -- in
10 terms of detaining both the Defendant and also speaking
11 to the other witnesses who were there who witnessed
12 what happened. And also getting attention, medical
13 attention, for the victim in this case, Mr. Garland.

14 There has been an argument by Defense counsel that
15 because of the advances in technology, that it would
16 have been easy to procure a warrant. I do not find
17 that argument persuasive or convincing under the
18 context of the circumstances. And having signed many
19 warrants myself -- of course, not along the lines of
20 the magnitude or the number of those that a magistrate
21 signs, but it is not reasonable to believe that a
22 magistrate -- that you could have procured a warrant
23 from a magistrate at 3:00 or 4:00 in the morning with
24 sufficient time to come within the three-hour window of
25 the statute. It is just unreasonable.

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1 Theoretically, arguably, I guess, that you could
2 find that maybe a persuasive argument in theory; but in
3 reality, it's unlikely that -- first of all, you would
4 have had to have gotten an affidavit done. Somebody
5 else could not have done that. The officer arriving on
6 the scene would have had to have done that. And,
7 frankly, would not have been able to procure that
8 warrant until the field sobriety test was done or the
9 Defendant had time to perform them. By the time they
10 did their initial investigation of what actually
11 happened -- which, arguably, took an hour, it would
12 have taken more than two hours to procure a warrant for
13 any blood draw of the Defendant.

14 And, quite frankly, there's a reason that that
15 three-hour window is in the statute, because
16 scientifically we know that to get an accurate reading
17 regarding any level of impairment or level of alcohol
18 in the blood, that beyond that three-hour period would
19 have rendered any testing unreliable and inaccurate.
20 So there's a reason that three-hour window is in the
21 statute. They didn't just pull it out of the air.
22 There's a scientific basis for it. Not only for the
23 protection of the public, but for the protection of the
24 Defendant, so that there's an accurate reading of what
25 is actually in their system.

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1 So it is unreasonable to believe that a warrant
2 could have been procured. Not just anybody could have
3 gotten it. They couldn't just call anybody to do it.
4 The person who observed the behavior would have had to
5 have done the warrant. They would have had to appear
6 before the magistrate. They would have had to be
7 sworn. And, frankly, you know, there's been a lot of
8 talk about how they get warrants all of the time. That
9 really isn't true. That is misleading.

10 Generally warrants are procured way in advance any
11 time there is a search of a house. Generally it's
12 something that's been observed, it has been under
13 surveillance. At least in my experience they have
14 gotten those warrants at least a day in advance,
15 sometimes two days in advance, in anticipation of what
16 they plan to do. And even when they happen upon a
17 residence or a business or whatever they need to
18 search, generally you don't procure a warrant right at
19 the moment. What happens is the residence is secured,
20 the person is placed under arrest, and then the police
21 go about getting a warrant.

22 So it is unreasonable under -- based on the
23 totality of the circumstances to believe that the
24 officers would have been able to secure a warrant with
25 this very limited amount of time and comply with the

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1 applicable statute for any type of blood draw in this
2 case.

3 There -- I think I have already outlined the
4 exigencies that were present, that being the chaotic
5 scene, the significant injury of Mr. Garland, and just
6 the flurry of activity and the sorting out of what
7 actually happened on the scene with Mr. Hamrick's
8 contention that this person had stepped into his lane
9 of travel and really not initially -- basically,
10 initially the police were investigating this as a
11 pedestrian/car accident not as a felony DUI accident
12 until after they had corralled the witnesses and then
13 spoken with them regarding the fact that they, at least
14 what has been represented to the Court, that they
15 smelled alcohol on the Defendant, after which the
16 investigation then shifted into another direction
17 regarding whether in fact he was impaired, and then
18 with the police then asking him to perform the field
19 sobriety test.

20 And again, as the Supreme Court has required, this
21 is a case-by-case assessment in determining whether
22 exigency existed. And I find for the record that the
23 police in this case could not have reasonably obtained
24 a warrant before having the blood sample drawn without
25 significantly undermining the efficacy of the search.

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1 And that the -- trying to obtain a warrant under these
2 circumstances was impractical in light of the
3 dissipation of alcohol, which supports a finding of
4 exigency.

5 Considering this case on a case-by-case approach
6 to exigency, as well as relying -- looking at the
7 totality of circumstances, the defendant's motion to
8 suppress the blood test based on the Fourth Amendment
9 is denied. And that is supported by the McNeely
10 precedent as well as, really, the entire line of South
11 Carolina cases that deal with -- that have -- well,
12 actually we don't have a case on point that really
13 deals with the issues.

14 Again, it is almost apples and oranges, in my
15 estimation, because this is a DUI case, not a felony
16 DUI case. But I applied to the logic and the whole
17 analysis of the McNeely case to this particular set of
18 circumstances, as it being factually dissimilar to this
19 case.

20 The next motion deals with the fact that the
21 Defendant contends that his blood was collected more
22 than three hours after he was under arrest, in
23 violation of South Carolina Code 56-5-2950A. And the
24 Court denies that --

25 You need to take your seat, please.

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1 MR. BISCHOFF: May I respond?

2 THE COURT: No. Once I've heard full
3 argument -- the rules provide once the Court has
4 ruled there shall be no further argument. And so
5 I allowed you all to argue fully on yesterday. I
6 considered all your arguments. The Court has made
7 it's finding of fact based on law. Your
8 objections are preserved and you can appeal them
9 if you would like, certainly you are entitled to.
10 But I'm not going to hear further argument now.

11 MR. BISCHOFF: I just want to make sure that
12 the objection is noted.

13 THE COURT: Your objections are noted. You
14 made them yesterday. I gave you a full
15 opportunity and whenever -- if I am making a
16 finding of fact --

17 MR. BISCHOFF: I just wanted to make sure
18 that the record is clear.

19 THE COURT: The record is clear. That is why
20 I let you all argue for two hours yesterday.

21 MR. BISCHOFF: Thank you.

22 THE COURT: You're welcome.

23 As regards to the draw, the Defendant is claiming
24 that the draw was made two hours -- was made outside of
25 the time frame provided by statute, and the Court finds

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1 that there is no support for that contention.

2 The Defense has argued that an investigative
3 detention is the same as an arrest, and the State law
4 simply does not support that contention. The law and
5 the constitution allows the person to be stopped for a
6 reasonable amount of the time for an investigative
7 detention. There are two separate things that happened
8 in this case. There was an incident. The Defendant
9 was stopped for investigative detention to determine
10 the facts and circumstances attended to this case for
11 the police to sort out basically what happened at the
12 scene, and to decide how they should proceed in this
13 case.

14 And as with any other investigative detention,
15 sometimes they result in an arrest, sometimes they
16 don't. Under these circumstances, the amount of time
17 that the Defendant was detained was reasonable under
18 the circumstances. And it did fall within the nature
19 of what would be characterized as an investigative
20 detention, where a person is reasonably detained.

21 In this instance an investigative detention must
22 be temporary and last no longer than is necessary to
23 effectuate the purpose. And the scope of the detention
24 must be carefully tailored to its underlying
25 justification. And once the purpose of the stop has

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1 been fulfilled, the continued detention amounts to, of
2 course, a second detention.

3 Really, investigative detentions most often come
4 up in the context of a traffic stop. Under these
5 circumstances, I guess, you almost have a mix sort
6 of -- it is a traffic stop even though it was a result
7 of a pedestrian/auto accident. But, under the
8 circumstances, the amount of time that the Defendant
9 was detained was reasonable. The purpose of that
10 detention was to determine how an accident -- well, to
11 flesh out actually what happened at the scene, whether
12 this person was -- came into the lane of travel of a
13 car and was hit or whether there was something more to
14 the incident, and then whether that was going to move
15 into a circumstance where the Defendant was ultimately
16 arrested.

17 So I would find for the record that the stop in
18 and of itself was reasonable and that the time frame
19 for which he was stopped was reasonable. There
20 certainly was sufficient probable cause to have stopped
21 him and to question him regarding the incident.

22 And our courts have found that the traffic stop is
23 a limited seizure, more like an investigative detention
24 than a custodial arrest, and under these circumstances
25 that is more like what this was. It was almost a

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1 combination traffic stop which was necessitated by the
2 accident. And while he was detained, it was more in
3 the nature of an investigative detention to determine
4 the attended facts and circumstances of the incident.

5 And clearly there was a reasonable and articulable
6 suspicion to have stopped him based on the totality of
7 the circumstances. And under the circumstances, the
8 time frame which he was detained was reasonable and it
9 did not last any longer than was necessary to effect
10 the purpose of the stop and scope of detention and it
11 was carefully tailored to the underlying justification,
12 that being the determination of the facts and
13 circumstances of this auto/pedestrian accident.

14 Subsequently, the Defendant was arrested. So
15 pursuant to -- pursuant to the statute, it would be
16 within the three-hour time frame that is required for
17 his blood draw and, therefore, the motion to suppress
18 based on that basis is denied.

19 The other part of the motion dealt with
20 56-5-2950A. Preliminarily I'm inclined to deny that
21 motion because, based on what was presented to the
22 Court on yesterday, you all represented to me that,
23 pursuant to the statute, this individual has been
24 trained by East Cooper for the purpose of making blood
25 draws and as the replacement phlebotomist for the

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1 purpose of taking blood draws. Preliminarily I'll deny
2 that motion, but I need to hear exactly what foundation
3 is going to be laid to come within the statute, that
4 being 2950A, which specifically states that blood and
5 urine samples must be obtained by physicians licensed
6 by the state board of medical examiners, registered
7 nurses licensed by the state board of nursing, and
8 other medical personnel trained to obtain the samples
9 in a licensed medical facility.

10 So the applicable portion of that statute would be
11 other medical personnel trained to obtain the sample in
12 a licensed medical facility. So once I hear the
13 appropriate foundational testimony, I'll make a final
14 decision regarding her ability to have made the draw.
15 But it would not be unusual as I observed on yesterday
16 for a hospital to take -- first of all, the hospital is
17 not going to allocate a physician the time to make
18 blood draws. It takes up too much time and resources
19 to do that. Sometimes they do have a nurse designated
20 at that facility for that purpose, to take those draws.
21 Sometimes they have a phlebotomist who is trained to do
22 that. And some times they designate other personnel to
23 do it, whichever they feel is most efficient in terms
24 of the allocation of their resources.

25 So it would not be unusual -- again, as I observed

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1 on yesterday, there's no mystery in taking a blood
2 sample. The main concern or reason, at least as a
3 matter of public policy interest, is the protection of
4 a defendant's constitutional rights, is to make sure
5 that the sample wasn't contaminated and it was taken
6 pursuant to appropriate medical standards so that the
7 chain of custody in terms of the preservation of the
8 evidence is observed. And so I need to hear that
9 testimony to see if the appropriate foundation can be
10 laid for the admissibility of her testimony.

11 And preliminarily, from what I have heard, I think
12 that she can meet those requirements, but I need to
13 hear that testimony to make a final ruling on that
14 issue. Now, the Court will note, all of the arguments
15 on yesterday and notes that you filed will be
16 incorporated as part of the record. I assume that you
17 have filed them. If not --

18 MR. BISCHOFF: They have been filed, Judge.
19 Thank you.

20 THE COURT: Okay. Because if they hadn't, I
21 would have to find a clean copy and make sure that
22 they were, and your arguments are preserved. And
23 we will now move to -- in court, of course it goes
24 without saying, that any ruling is subject to your
25 objections.

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1 We will now move to opening instruction and
2 opening argument.

3 Is the State ready to proceed?

4 MR. KIDD: We are, Judge.

5 THE COURT: Is Defense ready to proceed?

6 MR. BISCHOFF: We are, Your Honor. Thank
7 you.

8 THE COURT: You are welcome.

9 If you could get the jury for me.

10 Also, while we are waiting on the jury, just so
11 that you all -- Mr. Kidd is aware of this, as well as
12 Mr. Simpson, and Mr. Bischoff and Mr. McCune may not be
13 aware of this, but I do not take speaking objections.
14 If there's an objection you need to stand and say you
15 object. I'll ask you for the basis of your objection.
16 If I need argument I will ask for that. If not I'll
17 make a contemporaneous ruling with regard to the
18 objection. And if necessary, if we need to create a
19 proffer, I will excuse the jury to do that or take it
20 up in-camera, I'll do that.

21 I'm debating, but I may do a written order on the
22 motions. I have not decided yet. I may supplement the
23 record with a written order.

24 (Jury enters the courtroom.)

25 THE BAILIFF: Jurors all present.

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1 THE COURT: Thank you.

2 You may be seated.

3 Good morning, ladies and gentlemen. The bailiffs
4 are going to pass out a notebook to you. There's a
5 white sticker on the front of each of those notebooks.
6 If you will write your juror number on the sticker so
7 you can identify which notepad belongs to you. During
8 the course of this trial you will be given the
9 opportunity to take notes. And I'm going to give you
10 some further instructions regarding that near the
11 conclusion of my preliminary instructions to you.

12 I hope that you all had a restful evening and I
13 hope that everyone made it in today without incident.
14 I apologize for you all having to wait, but we worked
15 until late on yesterday and we still had a few matters
16 of law that we needed to deal with this morning. So we
17 appreciate your patience and we do not take your time
18 for granted. Hopefully, the time that we have taken
19 dealing with those matters beforehand will eliminate us
20 having to stop and start a great deal during the course
21 or progression of this trial.

22 Ladies and gentlemen, the case that we are about
23 to try is the case of State of South Carolina v. Daniel
24 D. Hamrick, Indictment 2012GS1001033. What I will now
25 say to you is intended to be general instructions or an

JUDGE'S OPENING

1 introduction to the trial of this case. Again, as I've
2 said to you on many occasions, we do this every day, so
3 we know procedurally how a case proceeds, but this is
4 probably novel or new to you all and you have never had
5 this opportunity, so the Court's opening instructions
6 serve to let you know how a case will proceed or how it
7 will progress procedurally throughout the next
8 remaining days.

9 These remarks are not a charge on the law in this
10 case. I will instruct you on the law at the end of the
11 case, at the end of the trial, before you retire to
12 consider your verdict. So that you know, when you hear
13 us use the term "charge," charge is a legal term of art
14 that simply means instruction. So charges and
15 instructions are interchangeable terms when you hear me
16 use them.

17 This is merely an explanation of the procedure
18 that we will follow in the trial of this case so that
19 you may better understand what is happening. The
20 Defendant is charged by an indictment filed in this
21 court with the offense of felony driving under the
22 influence with great bodily injury. The elements of
23 which I will explain to you at the conclusion of the
24 trial.

25 The indictment, ladies and gentlemen, is simply

JUDGE'S OPENING

1 the charge by which the case is brought into court.
2 And it is not, in any sense, evidence of any of the
3 allegations it contains. The Defendant has pled not
4 guilty to the indictment. The State, therefore, has
5 the burden of proving each of the elements of the
6 indictment beyond a reasonable doubt. And it will be
7 your duty, ladies and gentlemen, to decide whether the
8 State has met that burden or not.

9 Your purpose as jurors is to find and determine
10 the facts. You are the sole judges of the facts in
11 this case. If at any time I make any comment regarding
12 the facts, you must disregard it. Our Constitution
13 doesn't allow me to have an opinion about the facts of
14 case with a trial jury. You are to determine the facts
15 from the testimony that you hear and the other evidence
16 introduced in court.

17 It is up to you to determine the inferences which
18 you feel may be properly drawn from that evidence. It
19 is especially important that you perform your duty of
20 determining the facts diligently and conscientiously,
21 because ordinarily there's no way to correct an
22 erroneous determination of facts made by a trial jury.

23 On the other hand, and with equal emphasis, the
24 same law that makes you the judges of the facts, makes
25 me the judge of the law. The law as given by the Court

JUDGE'S OPENING

1 is the only law that you may consider. You must accept
2 and follow it even though you may disagree with it.
3 The Court cannot tell you what the facts are and you
4 may not disagree with me about what the law is or what
5 the law should be.

6 Your responsibility, ladies and gentlemen, is to
7 take the law as I instruct it and apply it to the facts
8 as you find them from the testimony of the witnesses
9 and the other evidence that will be introduced. After
10 doing that you will render your verdict, a true and
11 just verdict, under the solemn oath that I'll have the
12 clerk administer to you. If you will stand for me,
13 please, and raise your right hands.

14 (Whereupon, the jurors were duly sworn by the
15 Clerk.)

16 THE CLERK: Thank you. You may be seated.

17 THE COURT: Ladies and gentlemen, until I
18 advise you to begin your deliberation, you must
19 not discuss this case with anyone. That includes
20 your fellow jurors, your friends, your family
21 members, and anyone involved in this case.

22 After the case is submitted to you, you must
23 discuss it only in your jury room with your fellow
24 jurors. The attorneys and the parties have been
25 advised that they should not talk to you at all, so if

JURY INSTRUCTIONS

1 you should see them in the hallway, in the elevator,
2 which is very common, or even in the garage as you
3 leave for the evening, or around the courthouse, and
4 they don't speak with you, please don't think they're
5 being untoward or rude. They are simply following the
6 Court's instructions. Again, we would not want an
7 innocent conversation to be observed and
8 misinterpreted.

9 During the trial you're not to read, watch, or
10 listen to any media account about this case. That
11 includes anything that might be in the newspaper, on
12 the Internet, radio, or television. And you're not to
13 do any independent research, as tempting as that can
14 be, on the Internet, including regarding any facts or
15 circumstances in this case.

16 You must not consider anything you may have read
17 or heard about the case outside the courtroom, whether
18 before or during the course of the trial. It is
19 important and essential that you maintain an open mind
20 and not decide any issue in this case until all of the
21 evidence has been presented, the parties have made
22 their closing arguments, and I have instructed you on
23 the law applicable to this case.

24 It is your solemn responsibility to determine the
25 guilt or innocence of the defendant. And your verdict

JURY INSTRUCTIONS

1 must be based solely on the evidence as it is presented
2 to you in this trial and on the law as I will instruct
3 you during and at the close of the trial.

4 In just a moment the Solicitor will make what is
5 called an opening statement, in which he will outline
6 what he believes the evidence in this case will show.
7 Keep in mind that the opening statements of the
8 attorneys do not represent evidence in this case. It
9 is only their contention as to what they believe the
10 issues will be in this case.

11 The attorney for the Defendant may also make an
12 opening statement, although he is not required to do
13 so.

14 Again, I remind you, ladies and gentlemen, that
15 what the attorneys tell you during their opening
16 statements is only their contention as to what they
17 believe the evidence will show in this case and what
18 they believe the issues to be in this case. Their
19 opening statements are not evidence in this case.

20 The evidence in this case will be presented to you
21 by the testimony of sworn witnesses from the witness
22 stand and/or by exhibits that may be introduced into
23 evidence.

24 From time to time during the trial you may hear
25 one of the attorneys say, Your Honor, I object. Just

JURY INSTRUCTIONS

1 as in sports, business, or any other structured
2 activity, there are certain rules that we must obey in
3 the presentation of evidence. These rules ensure that
4 you receive the most trustworthy and reliable evidence
5 available.

6 An objection is the procedure that an attorney
7 uses to call a possible violation of these rules to my
8 attention as the Judge of this court. And for this
9 reason you should never hold an attorney's objection
10 against them, nor should you conclude from the Court's
11 overruling or sustaining an objection that I favor one
12 side or the other.

13 Also, from time to time you may hear one of the
14 attorneys say something like, "Your Honor, we have a
15 matter of law or a question of law we need to discuss
16 with you. Sometimes they may ask to approach the
17 Bench. Sometimes I may have them approach the Bench.
18 And sometimes it might be necessary for us to exclude
19 you from the courtroom for a short while while we
20 discuss matters of law.

21 The reason we do this is because you are the
22 finders of the fact. And sometimes when we're
23 discussing matters of law it might be necessary for me
24 to make some comment about the fact in connection with
25 rulings, whether procedural rule or statute, or

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1 evidentiary rule applies. And for this reason, we
2 exclude you from the courtroom so that in no way will
3 you be influenced by anything that the court may say or
4 do in connection with the facts of this case.

5 And sometimes, to save time, we will have Bench
6 conferences, and you will have what I best describe as
7 white noise over your heads, like the AM radio. It's
8 right over your head, it's loud, and it is designed to
9 interfere with your hearing. It saves us from sending
10 y'all back and forth -- and I always get tickled when I
11 think about this. I had a gentleman one time raise his
12 hand and, I said, yes, sir, he said, We can't hear you.
13 I said, You are not supposed to. It's working.

14 So I tell you that so that you know it's designed
15 to interfere with your hearing. It's a time saving
16 device. Sometimes it works better than others.
17 Sometimes we have to have longer, more protracted
18 discussions, and so it might be necessary for us to
19 excuse you from the courtroom for that purpose.

20 Ladies and gentlemen, in determining what the true
21 facts are, you must decide whether or not the testimony
22 of a witness or witnesses is believable. It's my
23 responsibility to rule as a matter of law as to whether
24 certain testimony is admissible at all or not.

25 But once it is admitted, whether or not you

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1 believe it is solely a matter for you to determine in
2 your fact finding province as the jurors in this case.

3 In deciding whether to believe a witness you have
4 the right to consider the interest of any witness, the
5 bias of any witness, the prejudice of any witness, the
6 opportunity for the witness to have seen the matters
7 and things about which the witness may testify, and the
8 way that the witness acts on the witness stand,
9 something we commonly refer to as demeanor.

10 You have a right to consider anything that is in
11 the record that will help you evaluate the testimony of
12 the witnesses. That means, ladies and gentlemen, that
13 it is your duty to pay close attention to the
14 witnesses, to observe them, to listen to them. And to
15 pay close attention to the attorneys and the Court.

16 Although I know it's very difficult, especially in
17 a room that has no windows or any natural ventilation
18 to not allow your thoughts to wander, but keep strict
19 attention to the testimony so that at the end of the
20 testimony, after the arguments of the attorneys and the
21 charge or instructions on the law given by the Court,
22 you will then be in position to determine what the true
23 facts are in this case, and thus render a true and just
24 verdict.

25 During the course of this trial, you will be given

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1 the opportunity to take notes. Note taking is a
2 privilege that you may choose to exercise or choose not
3 to exercise. Please do not feel you are compelled or
4 required to take notes. Not everyone finds note taking
5 helpful to them.

6 If you should decide to take notes, please don't
7 try to record everything that is said. It's physically
8 impossible. Even the average speaker talks at about
9 200 words a minute, so as you can well imagine, that
10 would be physically impossible to take down. And the
11 only reason the Court reporter can do it is because
12 she's trained in the very complicated and specialized
13 form of shorthand that basically allows her to take
14 down and stroke phonetically what we say. But even
15 with that oversimplistic explanation, you see all these
16 microphones, she has back up tapes that she listens to
17 when she does a transcript to make sure that she has
18 not missed anything.

19 And if you're anything like I am, I generally tend
20 to substitute words for those that I would typically
21 use, or I'd be summarizing entire sentences in a couple
22 of words, and I'm sure everybody has their own form of
23 note taking. But do not allow note taking to become a
24 distraction to you.

25 Because as I've explained, it is absolutely

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1 essential that you rely on your powers of observation
2 so that you are able to make the appropriate
3 credibility determination about each witness who
4 testifies in this case.

5 You may want to keep an outline of the main points
6 that are being made and the general arguments that are
7 being made by the attorneys, so that when you retire to
8 deliberate, you can allow your notes to refresh your
9 own memory.

10 Please be reminded that your notes will be for
11 your specific and your individual purposes, they are
12 not to be shared with anyone else. They're only to be
13 used to refresh your own memory. And I would remind
14 you that your notes should not be considered any more
15 reliable than someone else's memory. Another juror's
16 memory should be considered just as reliable as notes
17 that may have been taken by a fellow juror.

18 Also, during breaks and recesses your notes will
19 be left in your seats, and we do that so that there's
20 no premature temptation to deliberate or talk about
21 anything you may have heard prior to any breaks or
22 recesses, prior to you all being allowed to fully
23 deliberate regarding this case.

24 It is your active duty, Mr. Foreman, to fill out
25 the verdict form and to write out any questions the

JURY INSTRUCTIONS

1 jury may have during deliberations, but I'll give you
2 further instruction regarding that at the conclusion of
3 the case.

4 Ladies and gentlemen, your foreperson is purely
5 administrative. It is a purely random process that the
6 Court employs in selecting a foreperson so that a
7 cross-section of the community is represented. But I
8 emphasize that that person does not have any greater
9 vote or voice than you do. It is purely
10 administrative. They fill out the verdict form, and if
11 you have any questions during deliberation, they write
12 those out to be provided to the Court.

13 In order to preserve everyone's rights, I will
14 give the parties the opportunity to take exception to
15 anything that the Court has said by way of opening
16 instruction.

17 Are there any exceptions from the State?

18 MR. KIDD: None from the State, Your Honor.

19 THE COURT: From the Defense?

20 MR. BISCHOFF: No, Your Honor.

21 THE COURT: Ladies and gentlemen, I would ask
22 that you give the attorneys your undivided
23 attention as they take their turn before the
24 Court.

25 MR. KIDD: Thank you, Your Honor.

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1 THE COURT: You're welcome.

2 MR. KIDD: May it please the Court.

3 Ladies and gentlemen of the jury, you know when I
4 was thinking about how to -- my opening words to you,
5 what they were going to be today, I went back and I
6 talked to some other attorneys with more experience
7 than myself, and I read other cases.

8 A common theme that developed in cases like this,
9 when we have a victim involved, a lot of the opening
10 lines that I saw would go something like, November 14th
11 of 2011 was a day that Ahmad Garland will never forget.
12 But that doesn't really work here because
13 November 14th, 2011 was the day that Ahmad Garland will
14 never remember.

15 November 14th, 2011 for Ahmad Garland was like any
16 other. He went to work for Banks Construction. They
17 were repaving 17 South in Mt. Pleasant, just south of
18 Park West, the southbound lane coming towards
19 Charleston. And they were getting ready for what they
20 refer to as a pull, another pull. They had the paving
21 machines, the equipment set up.

22 As you know, 17 South is a two-lane road, so they
23 had the right-hand lane closed off for this paving.
24 And they had their paving equipment set up, and dump
25 trucks with asphalt, and they were getting ready to

STATE'S OPENING STATEMENT

1 make this other pull. And this is at 3:20 in the
2 morning, you know. They work at night so you and I can
3 get to work the next day without having so much
4 traffic.

5 And as they were getting ready for this pull, you
6 have a -- some workers milling around the paving
7 machine, and Mr. Garland and some other workers were
8 approaching the paving machine from behind in the
9 closed lane, separated by cones from the active lane of
10 traffic.

11 In that time, this man right here, Daniel Hamrick,
12 with a blood alcohol content almost twice the legal
13 limit, driving his SUV, speeding through a work zone,
14 swerved into the closed lane and struck Ahmad Garland
15 from behind. He hit him with such force that it
16 flipped his body upon the hood of the car, onto the
17 windshield, and over the top. He did a back flip in
18 the air, he landed face first in the back of the paving
19 machine.

20 You're going to hear from the doctors who describe
21 his injuries to you. And he had a lot of physical
22 injuries, ankle fractures, multiple facial fractures,
23 skull fractures, depressed skull fractures. But the
24 most important injury isn't really documented by
25 x-rays, it is traumatic brain injury. An injury that

STATE'S OPENING STATEMENT

1 leaves him unable to walk, unable to talk, unable to
2 complete the basic functions we take for granted.

3 Ladies and gentlemen, as the State, the burden is
4 on me, and I accept that burden with open arms. I have
5 to prove to you beyond a reasonable doubt every element
6 of the offense that he is being charged with today.
7 That is felony DUI.

8 And you ask any two lawyers to describe to you
9 what beyond a reasonable doubt means, you will probably
10 get two, three different definitions. I try to keep
11 mine as close to the judge's as I can. I mean, if I
12 ever tell you something different about the law that's
13 different than the way Judge Jefferson charged it, I
14 defer to her. She is the authority in this courtroom
15 on the law. Just as you're the authority in this
16 courtroom on the facts.

17 But reasonable doubt is not absolute certainty.
18 There are very few things in this world that are
19 absolutely certain, and that's not what's required of
20 me.

21 Beyond a reasonable doubt, that just leaves you
22 firmly convinced that the Defendant is guilty. And so
23 what I --- the burden that I have to prove is that the
24 Defendant committed each one of these elements of
25 felony driving under the influence beyond a reasonable

STATE'S OPENING STATEMENT

1 doubt. And if I meet that burden, you must return a
2 verdict of guilty.

3 So, let's look at the elements of felony DUI,
4 which I must prove to you. The first thing I must
5 prove is that he was driving a motor vehicle. And
6 you're going to see video from the scene, and you're
7 going to see Mr. Hamrick admit to driving a motor
8 vehicle.

9 And I have to prove that he was under the
10 influence of alcohol. You're going to hear testimony
11 from Officer Harris, who conducted the field sobriety
12 tests, and how the clues that he observed indicated
13 that he was impaired.

14 You're going to hear testimony from SLED agents,
15 who tested his blood -- who are going to tell you that
16 at 6:55 a.m, three and a half hours after the accident,
17 his blood alcohol content was .113. And she's going to
18 retrograde that back through the natural metabolism of
19 alcohol in the blood system to a range of about .15 to
20 .17 at the time of the accident.

21 Number two, the second element I must prove to
22 you, that any act forbidden by law or neglect any duty
23 imposed by law.

24 Speeding, you're going to hear him admit to
25 speeding on video.

STATE'S OPENING STATEMENT

1 Failure to maintain lanes, you're going to hear
2 from multiple witnesses on the scene, construction
3 workers who were out there, who saw him swerving in the
4 construction zone.

5 Failure to maintain proper lookout. He struck a
6 man with a reflective vest and a hard hat on, without
7 touching the brakes.

8 Failure to exercise due care. Ladies and
9 gentlemen, construction zones are inherently dangerous.
10 That's why we have lower speed limits, that's why we
11 slow down. We do so to navigate them safely so we
12 don't hurt anybody. You have a duty to navigate a
13 construction zone, which I don't object to getting into
14 an argument --

15 THE COURT: Please approach.

16 (Off-the-record discussion.)

17 MR. KIDD: I'll move on. Thank you.

18 THE COURT: Okay.

19 MR. KIDD: Any one of which of those acts or
20 duties, if found, is a proximate cause of the
21 victim's injuries. And if I meet all those
22 elements, and I prove them to you beyond a
23 reasonable doubt, I have met my burden.

24 Ladies and gentlemen, I want to take a quick
25 opportunity to thank you in advance for being here. I

STATE'S OPENING STATEMENT

1 know you all have obligations in your personal lives
2 and places that you'd rather be, and I know it's
3 taxing. And there are going to be times this week when
4 you will feel like it's never going to end. But I
5 humbly ask you to pay close attention, to see the
6 evidence for what it is, to judge the credibility of
7 the witnesses on that stand. Ask yourself what reasons
8 they have to lie.

9 And when we finish, and when the dust settles,
10 you'll see the truth. And when you do so, I'm going to
11 ask you to return a verdict, to return a just verdict
12 supported by the evidence, required by the law. And
13 that's going to be a verdict that finds Daniel Hamrick
14 guilty of felony driving under the influence.

15 THE COURT: You may proceed.

16 MR. BISCHOFF: Thank you, Judge.

17 THE COURT: You're welcome.

18 MR. BISCHOFF: You're going to see that
19 picture. Right here. That's where Mr. Garland
20 was struck. The problem with the State's theory
21 is that you have got all of these barrels. How
22 does a car traveling 35 or 40 miles an hour, which
23 is the speed limit, the speed limit is 35 -- you
24 will hear my client say he was going 40 -- we'll
25 have an expert testify that the speed is

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1 consistent with a range. Not a certainty, a
2 range.

3 How do any of these barrels not get hit if he
4 enters a work zone? It's virtually impossible.

5 You will hear our expert testify about how a car
6 reacts when it's going a certain distance at a certain
7 speed, how much a car travels as far as distance is
8 concerned, in an amount of time. Considering hard
9 facts like that, signs, how did it happen the way the
10 State just described it?

11 It didn't. And that's why we're here. You, the
12 jurors, citizens of this county, get to decide what
13 happened. But there's no way that Daniel Hamrick went
14 into a work zone, as Mr. Kidd just said, and not hit a
15 single barrel. Not hit a single -- not hit the paver.
16 Not hit any of the construction workers around the
17 paver at the time of the collision. It didn't happen.
18 But that's their theory, and that's exactly why we're
19 here.

20 In a civil case, which you have a dispute between
21 two parties, when they can't agree you have a trial.
22 And the same thing goes in a criminal case, but the
23 standards are different. Each one of us is protected
24 by Constitutional protections. Beyond a reasonable
25 doubt, innocent until proven guilty. You can't just

DEFENDANT'S OPENING STATEMENT

1 read the headline. And that's exactly what they've
2 done.

3 Any time there's a tragedy, what do we want to do?
4 We want to assign blame. It's human nature. I'm
5 guilty of it. But that has to be left at the doorstep
6 when you enter a courtroom because you have to -- the
7 Judge will instruct you -- you have to apply the law,
8 which is beyond a reasonable doubt. People are
9 innocent in this country until the government proves
10 them guilty beyond a reasonable doubt.

11 And it's not just about being under the influence.
12 There are a lot of things in this trial that you're
13 going to hear that we agree on and we disagree on. I
14 can tell you without question that we both agree that
15 Mr. Garland absolutely did not deserve to have what
16 happened to him, and what he told you is true. He is
17 terribly injured. He didn't deserve that. We're not
18 saying he did. By trying this case, we're not
19 suggesting that Mr. Garland doesn't deserve justice.
20 He does. But unfortunately, this is not about justice
21 for Mr. Garland.

22 Our heart goes out to him, but don't misconstrue
23 what the Solicitor said. You have to decide this case
24 based on facts and evidence, and the law. Even as
25 painful as it may be, that's your duty. That's what

DEFENDANT'S OPENING STATEMENT

1 you said you would do when you took the oath.

2 All right. So, how are you going to do that?

3 Just as Mr. Kidd said, you're going to hear a number of
4 witnesses testify. Some of those witnesses that you're
5 probably going to hear from today are construction
6 workers. What -- I can't think of a more traumatic
7 experience than being on the side of the road, in the
8 middle of the night, working, and one of your
9 co-workers is struck. I mean, it's panic. Total
10 pandemonium. It's a tragedy. But any time there is a
11 tragedy, people want to assign blame. And I don't
12 blame a single one of those construction workers for
13 thinking what they thought about the circumstances.
14 But the cops don't ask them the questions that they
15 need to ask to make sure that they're getting the
16 truth.

17 Emotions are running high. What would you say 15
18 minutes after a collision in which you were
19 traumatized?

20 But then you step backwards and reflect on it.
21 You know, in football, there's a call on the field,
22 correct? And then what do you do? You're uncertain
23 the call on the field, or somebody challenges it, you
24 go to videotape. Videotape doesn't lie.

25 You're going to see videotape of Mr. Hamrick at

DEFENDANT'S OPENING STATEMENT

1 the scene of the accident, at the scene of the
2 collision, in the middle of Highway 17. You're going
3 to see him for over an hour. You're going to get to
4 observe him on videotape. Videotape doesn't lie. It's
5 objective. You get to determine whether or not the
6 State's .113 is accurate. Or as they told you, .16.

7 What do you expect a person to look like at .16?
8 What do you expect a person to talk like at .16? Can
9 they walk around without stumbling? Can they hide
10 behind the intoxication for over an hour?

11 No, they can't. And the law is not that .08 means
12 you're automatically under the influence. Your Honor
13 will tell that the law is such that there's an
14 inference that someone is over the influence, but it's
15 all about whether or not you had so much alcohol in
16 your system that your ability to drive a car is
17 materially, appreciably impaired by alcohol.

18 You will get to hear how he drove. You'll get to
19 hear that none of these cones were hit. The paver
20 wasn't hit. Not a single person other than Mr. Garland
21 was hit on the scene, and there are people all over the
22 place.

23 You'll hear them talk about how they're paving the
24 north side, the one to Georgetown. And then they
25 transition to the south side. You'll hear about how

DEFENDANT'S OPENING STATEMENT

1 they were just setting up.

2 What do they do when they're just setting up?

3 Where are the lights? Where are the cones? What do we
4 know for absolute certainty? It's going to be tough.
5 The State is going to have a tough time. They think
6 that they've already figured out they know exactly what
7 happened. And I'm telling you, when you hear the
8 testimony of the witnesses from the scene and our
9 expert, you're going to find out that unfortunately
10 bodies fly certain ways when they're hit by a car.
11 It's just the way it is.

12 And you're going to hear from our expert, who is
13 going to tell you that Mr. Garland entered the travel
14 lane, and he was clipped unfortunately at the last
15 second, and his body did flip up, and he did land on
16 the back of the paver. But you're going to find out
17 where it landed on the paver. And I don't say that
18 lightly. We are -- we do not wish for anybody to have
19 to go through what Mr. Garland did, but you can't say
20 that someone enters a work zone when the body ends up
21 on one side of the paver. You can't say that somebody
22 enters the work zone who doesn't hit all of the cones
23 that are in all the pictures surrounding the work zone.

24 What happened was a tragedy. Anytime there's a
25 tragedy, people want to assign blame. And the State

DEFENDANT'S OPENING STATEMENT

1 has assigned blame to Mr. Hamrick.

2 I know it's going be a long week, but I do
3 appreciate your attention and ask that you listen
4 closely and attentively. I promise you, you're going
5 to see pictures, you're going to see videos, you're
6 going to hear expert testimony about what really
7 happened. And it's not just DUI. They have to prove
8 it's a proximate cause. It's a legal standard, but
9 it's extremely important. Just because someone's under
10 the influence of DUI doesn't mean that they're felony
11 DUI. The State has to prove that they were doing
12 something wrong, they neglected a duty, and they
13 proximately caused Mr. Garland's injuries.

14 It's our position, contrary to what they told you
15 their position, that Mr. Garland stepped out in the
16 roadway at the last second.

17 I appreciate your attention, and I appreciate your
18 service. Thank you.

19 THE COURT: The State may proceed.

20 MR. KIDD: Thank you, Your Honor. The State
21 calls Neva Newman.

22 Thereupon,

23 NEVA NEWMAN

24 was called as a witness, having been first duly sworn,
25 was examined and testified as follows:

TESTIMONY OF NEVA NEWMAN

1 THE CLERK: Please give us your full name and
2 spell your last name, please.

3 THE WITNESS: Neva Newman, N-E-W-M-A-N.

4 DIRECT EXAMINATION

5 BY MR. KIDD:

6 Q Good morning, Ms. Newman. I apologize for the
7 delay.

8 Can you tell the jury where you're currently
9 employed?

10 A I'm employed with HDR, Incorporated.

11 Q And what is HDR?

12 A We are a construction and engineering firm, and
13 we are hired sometimes from the State to provide inspection
14 and represent the State on roadway projects.

15 Q Okay. So, you are not an employee of Banks
16 Construction; is that right?

17 A No.

18 Q What was your relationship with Banks Construction
19 Banks Construction back in November of 2011?

20 A Kind of a love-hate relationship. Crews love me;
21 management doesn't.

22 Q And why is that?

23 A I have guidelines I have to follow by the State,
24 and certain ways things are supposed to be done. And just
25 because things I needed them to do by guidelines, they tried

TESTIMONY OF NEVA NEWMAN

1 to have me removed off the job a couple of times.

2 Q So you -- would it be safe to say that you're like
3 a safety inspector?

4 A I'm not so much a safety inspector as DOT provides
5 guidelines in the way that construction is to be done as far
6 as placement of materials, the way traffic is controlled.
7 And so I inspect the whole process going on that I'm
8 assigned to.

9 Q Okay. And if you see something that is not
10 appropriate -- if you see something on site that is set up
11 incorrectly, or that is not appropriately going on, what do
12 you do about it?

13 A Then I contact the superintendent out there that
14 night, which would be the paving superintendent, and then I
15 also contact the traffic control supervisor that's on duty
16 that night.

17 Q Okay. I'm going to bring you back to
18 November 14th of 2011. Do you remember that day?

19 A Yes.

20 Q And where were you that day?

21 A I was on 17. We had just relocated up to an area
22 to start paving.

23 Q Okay. And do you remember the collision that
24 occurred that day?

25 A Yes, sir.

TESTIMONY OF NEVA NEWMAN

1 Q I'm going to show you a series of photographs --
2 let me just get my numbers straight here -- what's been
3 marked, and I believe already admitted into evidence, Judge?

4 THE COURT: One through 22 has been marked
5 and admitted into evidence.

6 BY MR. KIDD:

7 Q I'm going to show you State's Exhibit 2, 3, 5, 6,
8 18, 19, 17, 20, and 21. If you could just flip through
9 those and tell me if you recognize these photographs.

10 A Yes, sir.

11 Q Do they fairly and accurately represent kind of
12 the scene on November 14th of 2011 that you were working
13 that night?

14 A Yes, sir. Some of these barrels had been moved
15 over to allow traffic to flow.

16 Q Okay. And I'll address that for you.

17 I'm first going to show you again -- and it
18 should be on a monitor in front of you, hopefully, if I can
19 get this thing out.

20 And so that image that's on the screen behind
21 you, is on the screen in front of you, right?

22 A Yes, sir.

23 Q Okay. Can you tell the jury a little bit about
24 what -- what we see in this photograph right here, State's
25 Exhibit 17?

TESTIMONY OF NEVA NEWMAN

1 A You'll see the larger barrels.. Those are over in
2 the median. And the taller, skinnier cones are the ones
3 that we use to close the lane.

4 Q Okay. And I don't know if you noticed, but when
5 you write on that screen, it's fine. You can do it as much
6 as you want.

7 When you mark on that screen, it shows up on
8 these other screens. So if there's ever anything you want
9 to help explain to the jury.

10 So, that little red dot you marked on State's
11 Exhibit 17, would those skinnier cones be the ones that were
12 dividing the active and closed lanes?

13 A Yes, sir.

14 Q And not in this photograph -- because this
15 photograph was taken -- when, before or after the accident?

16 A It was taken after the accident.

17 Q Okay. So, at the time of the accident, where were
18 those large barrels?

19 A Those large barrels were over in the median.

20 Q And why were they moved over?

21 A They were moved over to cordon off this area and
22 allow traffic to start flowing again.

23 Q Okay. So, after the accident, to keep traffic
24 away from the accident scene?

25 A Uh-huh.

TESTIMONY OF NEVA NEWMAN

1 Q Okay. But the small cones, the small skinny
2 cones, they were the ones that were in place at the time of
3 the accident; is that correct?

4 A Yes, sir.

5 Q And I'm going to show you what's been marked and
6 entered as State's Exhibit No. 18. And is that generally
7 how those small cones would have been set up?

8 A Yes, sir. It looks like maybe some were bumped
9 out a little bit more, just for the taping off, but that's
10 generally how they're spaced to close a lane.

11 Q Okay. And do you recognize where this photograph
12 is on the scene that evening?

13 A Yes, sir.

14 Q Where is it?

15 A This is just in front of the paving equipment,
16 where the vehicle stopped inside the closed lane.

17 Q After?

18 A After.

19 Q After. Okay.

20 And I'm going to show you State's Exhibit No.
21 20, and if you could tell me what we're looking at here?

22 A This is a back view of the paving operation, and
23 the paving machine is inside the closed lane.

24 Q Okay. So, that machine we're looking at right
25 there, that's the paving machine?

TESTIMONY OF NEVA NEWMAN

1 A Yes, sir.

2 Q Okay. And is that -- is that a light on the top
3 of it? What is that?

4 A Yes, sir. That's a light.

5 Q Would it have been on at the time of the accident?

6 A Yes.

7 Q Okay. And is that a bright light?

8 A It's pretty -- pretty bright. It meets the DOT
9 standards.

10 Q Okay. Now -- so, which direction would y'all be
11 paving when you got started?

12 A We were paving southbound.

13 Q Southbound. So, you would have been moving away
14 from the camera in this image?

15 A Right.

16 Q Okay. Now, I want to get to specifically at the
17 time of the accident. Okay? Where were you at the time of
18 impact? And you can draw on that little screen to show the
19 jury, if you would like.

20 A I was in this area -- I didn't mean for it to
21 draw.

22 Q There's like a -- can you hit clear?

23 Okay. Maybe draw an X where you were
24 standing.

25 A (Witness complies.)

TESTIMONY OF NEVA NEWMAN

1 Q Okay. So, you were kind of on the side of the
2 paving machine, is that --

3 A I was on the side of the paving machine.

4 Q And just so -- and just so, to give a little bit
5 of perspective, I'm going to show you State's Exhibit No. 2
6 real fast.

7 And is this just a different angle at that
8 paving machine?

9 A Yes, sir.

10 Q And what's the purpose of the dump truck in front
11 of the paving machine?

12 A The dump truck is the one that is holding the
13 asphalt.

14 Q Does it sort of feed the paving machine the
15 asphalt?

16 A It dumps into the paving machine, and it -- the
17 paving machine pushes it along as we go.

18 Q Okay. And we go back to State's Exhibit No. 20.
19 And can you tell the jury what you saw, heard, and observed
20 at the time of impact?

21 A I was by the paver retrieving the tickets and had
22 my head down. I heard a loud crash noise, looked up, and
23 when I looked up I saw a vehicle jerking back into the open
24 lane. And at that time I stuck as close to the paver as I
25 could get as the car went by me.

TESTIMONY OF NEVA NEWMAN

1 Q Did it pass by you closely?

2 A Yes, sir.

3 Q Specifically, did you notice anything about that
4 white line behind the paving machine?

5 A At the time of the accident?

6 Q In regards to the vehicle's tires.

7 A No, sir. I just saw the vehicle jerking back into
8 the lane.

9 Q Okay. I want to talk a little bit about -- about
10 the cone spacing. What's the appropriate cone spacing for
11 your set-up as it is this evening?

12 A On this evening, it would have been 50 feet.

13 Q So, the appropriate space between cones would be
14 50 feet?

15 A Yes, sir. It averages about every other skip
16 line.

17 Q And a skip line is the white stripe?

18 A This. Uh-huh.

19 Q And just, and I'm -- I get a little dumb
20 sometimes.

21 You mentioned load tickets before, you were
22 collecting load tickets. Can you explain to the jury what a
23 load ticket is?

24 A Every time that a truck brings asphalt, they have
25 a load ticket, and I'm required to keep up with those and

TESTIMONY OF NEVA NEWMAN

1 run rates and stuff on how much asphalt they're putting
2 down, and monitor the temperatures. So I would have been
3 retrieving the load tickets from their dump man.

4 Q Okay. And I'm going to -- is 22 in evidence?

5 THE COURT: Yes.

6 MR. KIDD: It is. Thank you, Your Honor.

7 BY MR. KIDD:

8 Q I'm going to show you what's been marked as
9 State's Exhibit 22. Do you recognize that aerial area?

10 A Yes, sir.

11 Q Is that where y'all were paving that day?

12 A Yes, sir.

13 Q Can you indicate on the map about where y'all were
14 at the time of the accident?

15 A We were about there (indicating).

16 Q Okay. Does the Department of Transportation have
17 cone spacing guidelines for an intersection, or a merge
18 lane?

19 A Yes, sir.

20 Q And what would those spacing guidelines be?

21 A I haven't looked at the drawings in over a year,
22 so I really don't want to say something --

23 Q Is it safe to say that they would be closer
24 together than 50 feet at the section --

25 A Yes. Yes.

TESTIMONY OF NEVA NEWMAN

1 MR. BISCHOFF: Objection, Judge. Calls for
2 speculation.

3 THE COURT: Overruled.

4 BY MR. KIDD:

5 Q At the time that you all were paving, was George
6 Browder, which is that road right by the dock, was that an
7 open lane?

8 A No, sir.

9 Q So -- and so there were no cars that could have
10 been coming from George Browder onto U.S. 17?

11 A There were no cars supposed to be coming through
12 there.

13 Q Okay. Right. So, what we have is a straightaway
14 and 50-foot cone spacings; is that accurate?

15 A Yes, sir.

16 Q What did you do after the accident?

17 A After I heard the crash, I crossed back over the
18 live lane, got in the median, and observed Hector laying on
19 the ground. And I called 911, and then I called a co-worker
20 that was out there.

21 Q And just so the jury knows, did you know Hector's
22 real name?

23 A I have heard it.

24 Q So, did you know Hector was Ahmad Garland?

25 A Uh-huh. Yes, sir.

TESTIMONY OF NEVA NEWMAN

1 Q But everyone called him Hector, right?

2 A Yes, sir. We did.

3 Q Okay. Did you see where Hector's body ended up
4 after the impact?

5 A Yes, sir.

6 Q Can you indicate on this photograph where he was
7 after the impact?

8 A His head was laying on this step that's here.

9 Q And --

10 A And his body was about like that. I was on the
11 phone with 911.

12 Q Were there a lot of other workers kind of out
13 there around that evening?

14 A Yes, sir. There was -- the crew had just walked
15 up to that location. We had just finished paving one area
16 and were walking the equipment inside the closed lane, and
17 had just set the paver down. So the crew was walking up to
18 the equipment.

19 Q Now, have you spent a lot of time on work sites?

20 A Yes, sir.

21 Q Is that safe to say?

22 A Yes, sir.

23 Q And what was the speed limit at this work site?

24 A I really don't remember at that specific time
25 because we had the speed limit lower, and I don't recollect

TESTIMONY OF NEVA NEWMAN

1 whether it was before or after the accident that the speed
2 limit got lowered. But I believe at the time the normal
3 speed limit would have been 50, and then it got reduced
4 later by the town.

5 Q Fifty through the work zone?

6 A No. It's 35 through the work zone always.

7 Q And that's what I was asking. What's the speed
8 limit --

9 A Yeah. Okay. It's 35; it's 35 through work zone.

10 Q Okay. And as you said, you spent a lot of time
11 out on these work sites, right?

12 A Yes, sir.

13 Q And as a part of that do you get to see a lot of
14 cars safely navigate through the work site?

15 A Yes, sir.

16 MR. BISCHOFF: Objection, Judge. Leading.

17 THE COURT: Sustained. Leading. Rephrase.

18 BY MR. KIDD:

19 Q Do you -- are you able to recognize a car, how
20 fast it's going when it goes through your work zone?

21 A We can usually tell if it's going over the 35.

22 Q And based on what you saw that night, do you have
23 an opinion about the speed of the car that struck Hector?

24 A The only -- the only opinion -- I don't have -- I
25 can't estimate how fast he was going, but when I sucked into

TESTIMONY OF NEVA NEWMAN

1 the paver and he went past me, I mean, I felt a breeze from
2 his vehicle.

3 Q Do you know what Mr. Hector, or Mr. Garland, was
4 doing at the time of impact?

5 A They were -- like I said, they were walking up to
6 the equipment, so he was following the equipment and the --
7 where the paver stopped was where the next paving operation
8 was going to happen.

9 Q Was he wearing his reflective vest?

10 A Yes, sir.

11 Q Was he wearing a hard hat?

12 A Yes, sir.

13 Q If you had noticed a worker out there not wearing
14 their safety gear, what would you have done?

15 A I would have said something to the -- to the guy,
16 and then I would have let his superintendent know.

17 MR. KIDD: The Court's indulgence?

18 THE COURT: Uh-huh.

19 BY MR. KIDD: Indulgence

20 Q And I don't want to get overly repetitive, but can
21 you describe for the jury one more time how that car
22 appeared to you when it jerked out of that closed lane?

23 A I would have been facing towards the back of the
24 paver. And when I looked up, I saw a car jerk back into the
25 open lane that it was supposed to be in, and then that's

TESTIMONY OF NEVA NEWMAN

1 when I turned and sucked into the paver as close as I could.

2 Q Okay. And I've been -- I want to be clear, did
3 you see all four tires in the closed lane, or two, or just
4 parts of the car?

5 MR. BISCHOFF: Objection. Leading.

6 THE COURT: Sustained. Leading.

7 BY MR. KIDD:

8 Q How much of the car did you see in the closed
9 lane?

10 A I would say just -- just part of it. Maybe half
11 or a little less.

12 Q And just one more time, just to -- to be clear.
13 According to your testimony, these large barrels were not
14 there at the time of impact?

15 A No, sir.

16 MR. KIDD: I have no further questions of
17 this witness.

18 THE COURT: Any cross of the witness?

19 MR. BISCHOFF: Yes, Your Honor. .

20 THE COURT: You may proceed.

21 MR. BISCHOFF: Thank you.

22 THE COURT: You're welcome.

23 CROSS EXAMINATION

24 BY MR. BISCHOFF:

25 Q Good morning.

TESTIMONY OF NEVA NEWMAN

1 A Good morning.

2 Q You testified earlier that you had disagreements
3 with Banks from time to time.

4 A Uh-huh.

5 Q About their safety set-up.

6 A Not about their safety set-up.

7 Q What was the disagreement about?

8 A It was just through the process of guidelines that
9 DOT puts out as far as how to place asphalt, temperatures of
10 trucks. Any time that I noticed something with the traffic
11 control, as soon as I said something, it was immediately
12 fixed. Like a sign blow over.

13 Q Sure. And so what was the disagreement really
14 about? It sounded like, from your testimony, that you left
15 on bad terms; is that not --

16 A It was just -- no. It's not bad terms. I was
17 just -- Banks tried to have me removed a few times because
18 they felt that I was being too overly strict on them.

19 Q Too cautious?

20 A I was following the DOT guidelines.

21 Q Let me show you.

22 *(Whereupon, Defendant's Exhibit No. 19 was marked*
23 *for identification.)*

24 BY MR. BISCHOFF:

25 Q You're familiar with the DOT guidelines?

TESTIMONY OF NEVA NEWMAN

1 A Yes, uh-huh.

2 Q Let me show you what's been marked as Defense
3 Exhibit No. 19.

4 Would you take a look at that and let me know
5 if you recognize that?

6 A Yes, sir.

7 Q And what is that?

8 A This is one of the DOT standard drawings for
9 traffic control.

10 Q And is that the standard drawing that should have
11 been followed, or guidelines that should have been followed
12 for the lane closure that we're talking about?

13 A Yes, sir. It's the standard that should have been
14 followed.

15 Q Thank you.

16 A But they are adjusted depending on conditions.

17 MR. BISCHOFF: Your Honor, I move to admit
18 Defense Exhibit No. 19.

19 THE COURT: Any objection?

20 MR. KIDD: Foundation, Judge.

21 THE COURT: Sustained. Subject to
22 foundation, it's marked for ID only.

23 BY MR. BISCHOFF:

24 Q So, you are familiar that -- when -- you are
25 familiar that when you're paving a highway, the set-up is

TESTIMONY OF NEVA NEWMAN

1 such that the workers are supposed to be protected. There's
2 a buffer zone; would you agree?

3 A What do you mean by "a buffer zone"?

4 Q Well, the work area should be protected by a
5 buffer zone to separate the work area from the traffic lane.
6 Is that fair to say?

7 A That would be the cones. We close a lane.

8 Q Right. Cones or barrels, or just cones?

9 A We use the cones at night.

10 Q And they're supposed to be placed into the travel
11 lane to give you a buffer, a work -- a separation between
12 the cones and the actual part of the highway that you're
13 paving; is that fair to say?

14 A They are usually one foot off the skip line.

15 Q And I believe -- let me show you what's been
16 marked and admitted into evidence as State's 21.

17 So, your testimony here today is that those
18 barrels that you see on the left-hand side of the screen
19 were not there at the time of the collision?

20 A Those were not -- that was not the lane division.
21 Those barrels were moved over there after the accident to
22 make a travel lane for the cars.

23 Q And so there's nothing protecting -- separating
24 the work zone from the travel zone?

25 A There -- there were cones.

TESTIMONY OF NEVA NEWMAN

1 Q Do you see any cones in that picture?

2 A Not in this particular picture, but it's not wide
3 enough to see if there was a cone back here.

4 Q Let me show you what's been entered into evidence
5 as State's 19. Do you see any cones in that picture?

6 A Yes, sir. Right there.

7 Q So, other than that cone, there were no cones at
8 the time of impact; is that fair to say?

9 A No, sir. There's another cone here, and then
10 there would have been more going up this way. This is after
11 the accident, when everything had been shuffled around.

12 Q Yes, ma'am. So, these barrels had been brought
13 from the northbound side of the highway?

14 A Those barrels had been brought from this side over
15 here, where these other ones are, to make a visible lane for
16 cars to follow after the accident.

17 Q Okay. I'm going to again refer to State's 19.

18 So, if the cone is situated there --

19 A Uh-huh.

20 Q -- and traffic is expected to travel and sort of
21 straddle the solid yellow line on the right-hand side?

22 A Yes, sir.

23 Q So, the car -- lane of travel was half in the
24 median, half in the lane where the barrels are in the
25 picture. Is that fair to say?

TESTIMONY OF NEVA NEWMAN

1 A This picture is after the accident.

2 Q I understand that.

3 A So, we had to make a lane for cars to travel.

4 Q How was the lane set up prior to the accident?

5 A Prior to the accident, this cone and this cone
6 here would have been over here by the white skip lines, and
7 those barrels were over to the median, giving them this lane
8 where this gentleman's standing.

9 Q I'm sorry. I don't see a cone where you drew the
10 red line. You're saying at the corner where the tape is
11 there's a cone?

12 A You can see the -- you can see a cone in between
13 those two big barrels right -- right about there.

14 Q And so your testimony is that those two cones that
15 you just testified about were in those positions at the time
16 of the collision?

17 A They were -- those two cones were not in that
18 position. These -- all these cones and barrels had been
19 moved around after the accident. Those are not the proper
20 positions for any of those, and it's not the way they were.

21 Q Were there any cones in position at the time of
22 the accident?

23 A All the -- all the traffic cones were in position
24 the way they were supposed to be, and the barrels were over
25 there in the median.

TESTIMONY OF NEVA NEWMAN

1 Q At the time of the accident, how many cones were
2 in the marked-off area?

3 A I don't recollect. It -- I can't give you a
4 number. I'm not -- I don't remember that far back.

5 Q Well, I'm trying to say, that's an important part
6 of the case. Were the cones moved, or were the barrels
7 moved?

8 A After the accident happened, these cones and these
9 barrels were moved to allow police and everyone in. This
10 was all taken after the accident, when everything had been
11 just moved around in confusion.

12 Q Well, earlier you testified that you were standing
13 next to the dump truck that's parked in front of the paver,
14 correct?

15 A Uh-huh.

16 Q And that you were facing northbound. You were
17 facing this direction that State's 19 shows; is that fair to
18 say?

19 A Yes, sir.

20 Q And you testified that a car swerved into the work
21 zone and then back out?

22 A I did not say that. I said I saw the car
23 swerving, jerking back out of the -- I did not see it go in,
24 I just saw it jerking out, coming back into the live lane.

25 Q So, in order to jerk out it had to be in to begin

TESTIMONY OF NEVA NEWMAN

1 with; is that fair to say or --

2 A I'm just telling you what I saw. I saw the car
3 jerk out.

4 Q But you testified earlier that there would have
5 been cones in the work site.

6 A The cones are spaced approximately every 50 feet,
7 every other skip line, yes, sir.

8 Q But you're not sure whether or not there were
9 cones lining the picture that we're looking at right here?

10 A This picture, they're not correct. At the time of
11 the accident and that night, all the cones were in place
12 dividing the live lane from the closed lane. I would not
13 have let them work if the cones had not been in their proper
14 locations.

15 Q Yes, ma'am. And so the proper spacing would be to
16 put -- I mean, more than just the cone you see in the
17 picture would have been there in the roped off area?

18 A There's two cones in that roped off area. You've
19 got one next to the gentleman, and you've got one over there
20 next -- in between those two barrels that had been moved.

21 Q Okay. Thank you.

22 And your testimony is 50 feet would have been
23 appropriate for this particular set up?

24 A I have not looked at the standard drawing in over
25 a year.

TESTIMONY OF NEVA NEWMAN

1 Q If you don't remember, it's okay if you don't
2 remember.

3 A No. I -- I -- I'm not going to recall with
4 recollection any specific numbers because I haven't looked
5 at the drawing in over a year, and I undergone some medical
6 issues in that year. So, the standard drawing would have
7 been followed that night and inspected that night.

8 Q And -- but you agree with me, that they're
9 sometimes 50 feet apart, as far as spacing of the cones is
10 concerned, is appropriate?

11 A Yes.

12 Q And sometimes 25 feet is appropriate?

13 A It depends on --

14 Q It depends on the speed?

15 A It depends on the speed, and it also depends on
16 the area. A lot of times we adjust -- we adjust the cones
17 tighter, like if we're going through an intersection or add
18 extra cones just to try and keep people out of our lane that
19 are not specifically called for in the drawings. So, we do
20 tighten those up if -- if we need to, so we can adjust the
21 drawing.

22 Q And the cones protect you from traffic?

23 A Right, but we follow the DOT standard.

24 Q Ms. Newman, on direct you testified that you
25 called 911 shortly after the collision?

TESTIMONY OF NEVA NEWMAN

1 A Yes, sir.

2 Q And have you had a chance to listen to the 911
3 tape?

4 A No, sir.

5 Q Would you recognize your voice if you heard it?

6 A I would think I would.

7 Q Just so we're clear, after the accident there was
8 panic?

9 A There was on my part.

10 Q Yeah. And you walked to the median, which would
11 be to the right of State's 19 that we're looking at?

12 A Yes, sir.

13 Q And that's where you called 911?

14 A I walked over across the live lane into the
15 median, walked to the back of the paver, because at this
16 point I still didn't know what exactly had happened. And
17 when I saw Hector, I got on the phone with 911.

18 Q We'll play the first portion of the 911 call. Let
19 me know if you recognize your voice when you hear it.

20 (CD playing.)

21 BY MR. BISCHOFF:

22 Q Is that you, Ms. Newman?

23 A Yes, sir.

24 MR. BISCHOFF: I move Defense 20 into
25 evidence.

TESTIMONY OF NEVA NEWMAN

1 THE COURT: Any objection?

2 MR. KIDD: No objection, Judge.

3 THE COURT: Marked and received without
4 objection.

5 *(Whereupon, Defendant's Exhibit No. 20 was marked*
6 *for identification and received in evidence.)*

7 BY MR. BISCHOFF:

8 Q Ms. Newman, at the time, you thought that
9 Mr. Hamrick was trying to leave?

10 A I observed him -- he walked to the back of the
11 paver, looked, and then I observed him running back towards
12 his car.

13 Q But he didn't leave?

14 A No. Several of the crew members ran and blocked
15 him from getting to his car, just stood between him and his
16 car.

17 Q And he stayed at the scene after police arrived
18 and was there? I mean, he never left?

19 A I did not keep track of him the rest of the time.

20 Q Thank you, Ms. Newman.

21 THE COURT: Any redirect?

22 MR. KIDD: Very briefly, Judge.

23 THE COURT: You may proceed.

24 MR. KIDD: Thank you.

25 RE-DIRECT EXAMINATION

TESTIMONY OF NEVA NEWMAN

1 BY MR. KIDD:

2 Q I just want to talk real briefly about something
3 Mr. Bischoff said. He was asking about the buffer zone.

4 In an ideal world, you would have a large
5 buffer zone?

6 A It would be real nice, yes, sir.

7 Q But the pavement has to match up?

8 A Yes, sir.

9 MR. BISCHOFF: Objection, Judge. Still
10 leading.

11 THE COURT: Sustained. Leading. Rephrase.

12 And refrain from any editorial comment, please,
13 sir.

14 BY MR. KIDD:

15 Q Is it possible to pave lanes without overlap?

16 A No, sir.

17 Q And as far as the Department of Transportation
18 guidelines, what was the appropriate cone spacing on this
19 night?

20 A It would have been 50, every 50 feet.

21 Q And that's every other skip line?

22 A Yes, sir. Every other skip line.

23 Q Okay. And you told Mr. Bischoff that y'all
24 reviewed the Department of Transportation guidelines before
25 y'all started paving?

TESTIMONY OF NEVA NEWMAN

1 A Every night before the crew starts working, their
2 traffic control goes out and sets up the traffic control. I
3 ride through the job, check the traffic control to make sure
4 all the signs are up and they've got their cones up. And
5 then if I see a problem, they usually are not allowed to
6 start until it's fixed.

7 Q Okay. And -- and when you were testifying for
8 Mr. Bischoff, you said there were times when y'all would add
9 cones to a diagram?

10 A Yes, sir. We have problems with a lot of cars
11 coming into our lane, so we -- I will -- if the place has
12 more than one entrance, I'll let them close off an entrance,
13 cone through it. If, when we go through an intersection, we
14 put the cones extremely tight to keep people from turning
15 into the cones.

16 Q So, how would the cones have been spaced at the
17 intersection of Park West and 17, right in this area?

18 A While we were paving there would have been cones
19 protecting the perimeter. And then once they got done there
20 would be a radius put in of cones to guide people around the
21 closed lane.

22 Q So, what would those cones' spacing have been
23 like?

24 A A lot of times we put -- we put them closer to
25 keep cars from turning in, coming out of those. We have

TESTIMONY OF NEVA NEWMAN

1 just been out there so many times that cars will turn in, so
2 we tighten up the cones.

3 Q Okay. What about on -- on a sharp curve, would
4 you tighten cones at a curve?

5 A On a curve, we would have a flagging operation.

6 Q Okay. Is there a curve in this area?

7 A No, sir. This is a straightaway.

8 Q Is it hilly?

9 A No, sir. It's straight, flat.

10 Q Was there anything out there that could obscure
11 the vision of a driver?

12 A No, sir.

13 MR. KIDD: No further questions, Your Honor.

14 MR. BISCHOFF: None, Your Honor. Thank you.

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

17 MR. KIDD: No, ma'am.

18 THE COURT: From the Defense?

19 MR. BISCHOFF: No, Your Honor.

20 THE COURT: Ma'am, you're excused.

21 THE WITNESS: Thank you.

22 THE COURT: You're welcome.

23 Mr. Foreman, ladies and gentlemen, we're going to
24 take a very brief restroom break. During the break,
25 please do not discuss the case, and please leave your

TESTIMONY OF NEVA NEWMAN

1 note pads in your seats. We'll be out about ten
2 minutes.

3 (Jury exits the courtroom.)

4 THE COURT: You may be seated.

5 The Court will be at ease for a few moments.

6 Who is the State's next witness?

7 MR. KIDD: It is Henry Ford.

8 THE COURT: Of these witnesses that you have
9 listed, who is not going to be called? If you
10 could just give me the numbers.

11 MR. KIDD: Oh. Can I hand you this? This
12 might help. This is who I intend to call.

13 THE COURT: I have a numbered list.

14 MR. KIDD: Judge, I'll be calling witnesses No. 1,
15 2, 3, 5, 6.

16 THE COURT: So, you're not calling four, but
17 five and six?

18 MR. KIDD: I don't anticipate calling 4,
19 Judge, but I would like a little bit of leeway on
20 4.

21 Seven, 8, 9, 11, 12, 14, 16, 17, 18, 19, 20, 21
22 just testified, 22 is in limbo, 23, 24, 25. 26 is a
23 maybe; 27, 43, and I'm hoping that I can stop there.

24 THE COURT: So, you're not going to call
25 then, 28 through 42?

TESTIMONY OF NEVA NEWMAN

1 MR. KIDD: I hope not. I believe that we
2 have a stipulation as to 42.

3 THE COURT: We'll be at ease until 12.

4 (Brief recess)

5 THE COURT: State ready to proceed?

6 MR. KIDD: Yes, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MR. BISCHOFF: Yes, Your Honor.

9 THE COURT: Please call your next witness so
10 we aren't waiting.

11 MR. KIDD: The State calls Peter Ford.

12 THE COURT: Ford, correct? F-O-R-D?

13 MR. SIMPSON: Yes, Your Honor.

14 (Jury enters the courtroom.)

15 THE BAILIFF: Jury all present, Your Honor.

16 THE COURT: Thank you. Please be seated.

17 State, call your next witness.

18 MR. SIMPSON: Thank you, Your Honor. The

19 State calls Henry Ford.

20 Thereupon,

21 HENRY FORD

22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 THE COURT: Have a seat please, and speak up
25 a little bit. Give us your full name and spell

TESTIMONY OF NEVA NEWMAN

1 your last, please.

2 THE WITNESS: Henry Ford.

3 THE COURT: Spell your last name for us, sir.

4 THE WITNESS: F-O-R-D.

5 THE COURT: Thank you. You may proceed,

6 Mr. Simpson.

7 MR. SIMPSON: Thank you.

8 DIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q Mr. Ford, good afternoon.

11 A Good afternoon.

12 Q How old are you?

13 A Twenty-eight.

14 Q And where do you live?

15 A Charleston, South Carolina.

16 Q And have you lived in Charleston your whole life?

17 A Yes, sir.

18 Q Where do you work currently?

19 A Banks Construction.

20 Q And what kind of work does Banks Construction do?

21 A What I do, or what they do?

22 Q Both.

23 A Lay asphalt and all type of road stuff.

24 Q Mainly roadwork?

25 A Mainly roadwork.

TESTIMONY OF NEVA NEWMAN

1 Q And what kind of work do you specifically do for
2 Banks?

3 A Laying asphalt. Lay the asphalt.

4 Q Did you work for Banks back in 2011?

5 A Yes, sir.

6 Q And did you work with an individual named Ahmad
7 Garland?

8 A Yes, sir.

9 Q How long did you work with Ahmad -- approximately?

10 A I would say about a year and a half. It was about
11 between a year and a half, so I work with him about a year
12 and a half.

13 Q Did you know him well?

14 A Yeah. When we started working together, you know.

15 Q What kind of guy was Mr. Garland?

16 A He was all right. You know, he make me laugh
17 every day. He was all right. He cool, good to hang around
18 with.

19 Q Good worker?

20 A Yeah, he a good worker.

21 Q Competent worker? Did he know his job?

22 A Yeah, very well.

23 Q By your estimation, having spent that time working
24 with him, did he understand rules and regulations of the
25 job?

TESTIMONY OF NEVA NEWMAN

1 A Yes.

2 MR. BISCHOFF: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. BISCHOFF: 611, speculation.

5 MR. SIMPSON: Withdrawn.

6 THE COURT: Question withdrawn. You may
7 proceed.

8 BY MR. SIMPSON:

9 Q Is the type of work that you do, is it dangerous?

10 A It is dangerous.

11 Q In what way?

12 A We got to watch out for the traffic and, you know,
13 people driving fast, stuff like that.

14 Q Is -- in your opinion, is Banks -- how would you
15 qualify the job Banks does in keeping you guys safe?

16 A How do you mean?

17 Q Do you feel that they adequately keep their
18 workers safe, follow the rules?

19 A Yeah, we safe. Yeah, we safe.

20 Q I want to get, if I can, to the night in question.
21 And you understand why you're here today, correct?

22 A (Nods in the affirmative.)

23 Q Can you please -- and I may stop you from time to
24 time, and we're going to look at some pictures, but can you
25 describe just in your own words to this jury, what occurred

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1 that night -- where you were and what you observed, what you
2 saw?

3 A All right. Well, I was walking towards the paver,
4 me and James.

5 Q Do you know James' last name?

6 A I can't pronounce it, but --

7 Q Okay. We'll just keep it James.

8 I hate to stop you so early, but since you
9 said walking toward the paver, let me pause for a second.

10 MR. SIMPSON: I'm showing the witness what's
11 been marked and admitted as State's 19, Your
12 Honor.

13 BY MR. SIMPSON:

14 Q When you say the paver, do you see the paver in
15 that picture?

16 A Yes, sir.

17 Q And when you touch the screen, it'll make a mark.
18 And feel free, can you just kind of point at what you mean
19 when you say the paver?

20 A We was like back here, walking toward coming back
21 up to the paver.

22 Q And what's -- put a dot on the paver.

23 A This is the paver here. This is the paver.

24 Q What's that, that dark piece of machinery?

25 A Yeah.

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1 Q The first mark that you made on there, that's
2 about where you were standing at this time?

3 A No. I just tapped it because we were walking.

4 Q Okay. Well, could you indicate to the jury where
5 you were when you walking towards the paver?

6 A We was on the inside, where that white line is, we
7 were inside here, coming back towards the paver.

8 Q What does the white line indicate to you about the
9 work zone?

10 A There's supposed to be a cone in here, but I don't
11 see no cones. Supposed to be inside the cones.

12 Q Is it a closed area?

13 A Yeah, it's a closed area.

14 Q Do you see anything next to that guy standing with
15 that vest?

16 A Yes. That's the cone. But that cone there was
17 moved. It was not right there in the area. It was closer
18 to that white line.

19 Q Okay. Inside, or I guess from my perspective, to
20 the left of that -- where that cone would have been; is that
21 the work zone?

22 A Yeah.

23 Q Okay. And were you inside the work zone?

24 A Yeah. We were walking towards, me and James
25 walking towards the paver at the time.

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1 Q And is it important to stay inside the work zone?

2 A Very important.

3 Q While we're addressing cones, you see a bunch of
4 large barrels in this picture. Do you see those?

5 A Yeah.

6 Q Were those there at the time of the accident?

7 A I don't know where that come from.

8 Q Okay. Could you, as you and James were walking
9 towards the paver, could you see Ahmad Garland?

10 A Yeah, I could see him -- before the accident or
11 after the accident?

12 Q Before the accident?

13 A Yeah, I could see -- well, I was walking to the
14 scene, like on the screed. There's a thing behind the paver
15 called the screed. You can't see it now because it's facing
16 this way. We could see him on it, as we was walking towards
17 it, I could see him.

18 Q And I refer to him as Ahmad Garland. But what did
19 you guys call him?

20 A We call him Hector. Heck. Short for Hector, we
21 call him Heck.

22 Q Okay. Heck or Hector, we're talking about the
23 same person?

24 A Yeah.

25 Q If you could, again, by indicating by touching the

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1 screen, about where was Heck when you saw him when you were
2 walking up?

3 A Well, Heck was -- he was on the back end of this
4 machine. Someone had come and told Hector, my boss man,
5 Chris, had needed him to do something for him. So, we --
6 the time he stepped down, I guess, it was like right here,
7 in this area right here. He stepped down. The car then --

8 Q Well, let me slow you down here. Let's establish
9 this.

10 The dot here, where the crime scene tape is,
11 that's about where you and James were standing?

12 A Yeah. We were coming up towards there.

13 Q And you were facing the paver?

14 A Yes, facing.

15 Q You saw Heck around the area of that dot you just
16 put on it?

17 A Yeah.

18 Q Now, I want you to -- just in your own words, with
19 as much detail as you can recall, explain to the jury what
20 you saw from that point forward.

21 A All right. Well, when me and James was coming up
22 right here, where that red dot was at, a car came from
23 behind us, which is on my left side, and I could feel the
24 breeze coming. So when I feel the little breeze on my left
25 side of my shoulder, I jump in on the mat. The mat is over

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1 here. This part we called the mat.

2 When I jump in, the car either coming -- the
3 car was in the work zone, and went in our work zone, and
4 Heck stepped down off with his red hard hat he had, that
5 when the car struck him and he flew in the air.

6 Q Can you describe to the jury what you mean when
7 you say you had to jump in?

8 A Yeah. Jump in -- like, I was in the work zone,
9 but when the car came behind me, he had already been in the
10 work zone. So, when he came past me on my left side -- see,
11 me and James was side by side, walking towards the paver.
12 And when the car came, the car came down, started to go
13 inside the work zone, and at the same time Hector jumping
14 off the -- off the screed, the paver, and that when he hit
15 Hector and come back out, come back out the work zone and
16 going around the paver.

17 Q So, to be clear, were you inside the work zone
18 when this occurred?

19 A Yes, sir.

20 Q Is it fair to say that you got spooked or scared
21 by --

22 A Yeah, I was scared.

23 Q And you jumped -- felt that you had to jump away?

24 A Yeah.

25 Q When you -- did you observe Heck the entire time

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1 this was happening? You could see him during this whole
2 thing?

3 A Yeah, I could see him. While we walking up to
4 towards, I could see Hector.

5 Q And was Heck inside the work zone?

6 A Yes, sir.

7 Q And you saw the collision?

8 A Saw the whole thing. The collision, when he flew
9 in the air, came back down, and all that.

10 Q And I know this isn't a pleasant subject, but what
11 do you mean when you say Heck flew through the air?

12 A The car struck him. He was going up, he going up,
13 and came back down.

14 Q And where did he come back down?

15 A Back of the paver, where all of the electronics at
16 and, you know, stuff like that.

17 Q Okay. I want to --

18 MR. SIMPSON: Your Honor, I'm showing the
19 jury -- the witness what's been marked and
20 admitted as State's 20.

21 BY MR. SIMPSON:

22 Q What are we looking at in this photograph?

23 A The paver.

24 Q Is that similar to the picture we just saw from a
25 different angle?

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1 A Yeah, different angle.

2 Q If, in fact, this picture, can you indicate from
3 this view, about where you were when you saw this accident
4 take place?

5 A I was like -- like right here, walking, going back
6 up.

7 Q And where was Heck again, from this point of view?

8 A Heck was -- he was standing -- he was standing on
9 top of the screed right here until someone told him Chris
10 had needed him to do something. And when he -- when he
11 jumped -- when he come off the screed, he end up like about
12 right here. And that when he saw the car, and the car hit
13 him and he flew in the air.

14 Q And did the car collide with the paver?

15 A No. The car didn't touch the paver.

16 Q Okay. Did -- was the car -- did you observe the
17 car in the work zone? Did you see it inside the work zone?

18 A Yeah. I saw it when he was going in, and I saw
19 him when he come out.

20 Q What were you wearing that evening for work?

21 A Hard hat, vest, pants, boots.

22 Q Did -- was Heck dressed similarly?

23 A Yeah. We were required to have that on.

24 Q Okay. A hard hat and a vest?

25 A Yeah. Reflective vest and reflective hard hat and

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1 all that.

2 Q And Heck was wearing his vest?

3 A Yeah.

4 Q He was wearing his hard hat?

5 A Yes.

6 Q Did you ever come to know where that hard hat
7 ended up?

8 A In the dump truck, the one in front of the paver.

9 Q On the opposite side of the paver?

10 A Yeah. In front right there, you can see the truck
11 and the front of the paver.

12 Q And it ended up there from the collision?

13 A Yeah.

14 Q How did you react to seeing this happen right in
15 front of you?

16 A I was shocked just when they -- when I saw it,
17 when I saw him going inside the air and come back down, I
18 just hold my head down because I knew he was injured.

19 Q Was it apparent to you fairly immediately that
20 this was going to be a pretty serious accident?

21 A Yeah.

22 Q And what occurred -- what did you observe or do
23 just after the accident?

24 A I really couldn't do nothing but just look and,
25 like I said, in shock. Because while me working, it's been

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1 so long, I never saw nothing happen like that before. So --

2 Q And how long again have you worked for Banks?

3 A Two and a half years.

4 Q During that time, you've never seen another
5 accident like that?

6 A Huh-uh (negative).

7 Q Do you recognize the gentleman sitting at the far
8 right at the table here?

9 A That guy over there?

10 Q Yes, sir.

11 A Yeah, that him.

12 Q Did you see him that night?

13 A Yes, sir.

14 Q And can you describe what -- how that occurred?

15 A After, I guess, he pulled over, and he pulled
16 over, he came to the back. And he came to the back, and I
17 guess he -- he say something about a cell phone. He need to
18 get his cell phone. And he ran back up to the front.
19 That's the last time I seen him.

20 Q And what did you think was going on when he
21 started to run?

22 A I thought he was going to try to get away.

23 Q And how did you and your co-workers respond to
24 that?

25 MR. BISCHOFF: Objection, Judge. Hearsay.

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1 THE COURT: Based on his perception of what
2 he did, overruled. You may proceed.

3 BY MR. SIMPSON:

4 Q And what did -- how did you and your co-workers
5 respond to that?

6 A Well, me, I really didn't move. I just saw him
7 did it, so --

8 Q Did you see any co-workers react to that at all?

9 A Yeah. I saw -- I think I saw, it was Terry.
10 Terry react to it.

11 Q In what way?

12 A I think Terry had, you know, chased him down and
13 actually even run -- we thought he was going to --

14 MR. BISCHOFF: Objection. Hearsay.

15 THE COURT: Objection sustained. Hearsay.

16 You cannot say what someone else said.

17 MR. SIMPSON: The Court's indulgence.

18 THE COURT: Uh-huh.

19 MR. SIMPSON: Mr. Ford, thank you so much.

20 I'll ask you to answer any questions that

21 Mr. Bischoff has for you.

22 THE COURT: Any cross-examination of the
23 witness?

24 MR. BISCHOFF: Yes, Your Honor.

25 THE COURT: You may proceed.

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1 MR. BISCHOFF: Thank you.

2 CROSS EXAMINATION

3 BY MR. BISCHOFF:

4 Q Mr. Ford, good afternoon.

5 A Good afternoon.

6 Q You still work for Banks?

7 A Yes, sir.

8 Q At the time of the accident, how long had you
9 worked for Banks? The accident was November 14th, 2011. At
10 that point, how long had you worked for Banks?

11 A Before or after?

12 Q On the day of the accident, how long had you
13 worked before that?

14 A Till now.

15 Q Do you remember when you started working for
16 Banks?

17 A No, I can't remember.

18 Q So, you're not sure how long you had been working
19 for Banks?

20 A About two years, two and a half years.

21 Q Two and a half years now, today?

22 A Yes.

23 Q Has anybody from Banks talked with you about the
24 testimony?

25 A No, sir.

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1 Q They haven't said anything about coming to Court
2 today or anything like that?

3 A No, sir.

4 Q You still work for them as a paving operator?

5 A Yes, sir.

6 Q And at the time -- you weren't paving -- paving
7 had not begun at the time of the accident on November 14th,
8 2011, right?

9 A No, sir.

10 Q But when paving actually goes on, there are a
11 number of people around the paver. Safe to say six people?
12 Seven people? How many people were working around the paver
13 at the time that --

14 A At the time of the accident?

15 Q Yeah.

16 A Well, I was walking up, I didn't really see -- I
17 didn't see nobody when I walking up. I know I -- I think I
18 saw -- I know I saw Heck on the paver, and it was Phillip on
19 the -- on this side of the paver, and the driver, which is
20 Crow, and me and James was coming up. So there wasn't that
21 much people.

22 Q Did you see Neva Newman?

23 A Yeah, I saw Neva.

24 Q She was there?

25 A She was on this side of the paver, like body --

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1 Q When you say this side -- you're looking at --

2 A On the left side. If you're looking straight
3 ahead, she was on my left side, this way around the paver.

4 Q Let me see if we can get the picture to help you
5 out.

6 Let me show you what's been marked and
7 entered into evidence as State's 20.

8 So, you were walking up, you testified, from
9 the back towards the paver, and you had somebody with you?

10 A Yeah.

11 Q Who was it? Was it James, you said?

12 A Yeah, James.

13 Q And then Hector was on top of the -- is it called
14 a catwalk?

15 A Yeah, a catwalk.

16 Q Will you mark so that the jury knows what a
17 catwalk is?

18 A The catwalk is this thing right here.

19 Q Okay. And then where was Neva?

20 A Neva was up here like -- almost by the truck, with
21 the dump man.

22 Q Can you put a mark on the picture where Neva was?

23 A Like up here. She was with the dump man, I guess
24 getting the tickets or whatever. But she was up here.

25 Q But she was definitely standing to the left of the

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1 truck?

2 A Yeah -- the dump truck?

3 Q Yeah.

4 A Yeah.

5 Q And those barrels that you see in the picture, in
6 State's 20, those were there at the time of --

7 A I don't know nothing where those barrels came
8 from.

9 Q What about cones, were there any cones?

10 A Yeah. The cones was -- cones would have been
11 lined up right here. I guess it was removed, because it was
12 right here.

13 Q Can you mark where the cones were?

14 A The cones should be up in the area here.

15 Q So, multiple cones at the time of the accident?

16 A Yeah. Yeah.

17 Q And you testified that Chris -- is that Chris Key?

18 A Yeah, Chris Key.

19 Q Chris is the supervisor?

20 A Yeah.

21 Q He had told Hector to do something?

22 A Yeah. Someone coming towards Hector -- Chris had
23 said like come -- come run the broom, broom tractor. That
24 was this other duty, run the broom tractor.

25 Q And the broom tractor, is it sometimes called a

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1 sweeper?

2 A Yeah. Sweeper, to sweep up everything here.

3 Q And the sweeper is sort of like a bulldozer but
4 with a rotating broom on the front?

5 A Yeah.

6 Q And that travels behind the paver when the paving
7 operation is going on; is that correct?

8 A No, no, no.

9 Q It doesn't?

10 A No.

11 Q But is it an important part of paving?

12 A Yeah. You got to sweep up everything in order to
13 pave, yeah.

14 Q Okay. And Chris told Hector to go get the
15 sweeper?

16 A Yeah. To come -- the sweeper broom should have
17 been like behind. We just had moved and come down here, so
18 it was behind us. Somewhere behind.

19 Q It was on the north side, because you were paving
20 the north side earlier?

21 A Like I said -- I don't know where it was at. But
22 it was behind us. So when he -- you know, when they sent
23 him to come get it, we was right here, and he was coming
24 back toward behind us to go get it.

25 Q But you were paving the north side of Highway 17

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1 earlier in the night, right?

2 A This right here, south -- south side right here?

3 Q Right.

4 A Yeah.

5 Q You were setting up to start paving the south
6 side?

7 A Yes, yes. Setting up to pave the south side.

8 Q And then earlier in the night, before the accident
9 happened, you were paving the north side?

10 A I don't know what side we paved before then. But
11 I know that we were paving right here on the south side.

12 Q Do you remember what time you came to work that
13 day?

14 A No. Well, we were on night shift. So, most
15 likely we came in about 6:00, 6:00 p.m., 7:00 p.m.

16 Q And the accident happened just after 3 o'clock
17 a.m? You are not sure?

18 A I'm not sure. I can't remember.

19 Q But you had been working on another project, or
20 another part of the highway prior to paving this side; is
21 that correct?

22 A Yeah. Everybody was moving up towards this side
23 right here.

24 Q And they were moving across the highway?

25 A No. You could see in this picture the crew cab

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1 right here. So we was paving. Got to be still on this side
2 right here. Everybody was moving up south side, to get
3 ready to pave.

4 Q Okay.

5 A Yeah.

6 Q Okay. And those barrels were moved after the
7 accident; that's what you remember?

8 A Yeah. They must have been moved.

9 Q And there were cones there where you marked?

10 A Yeah. The same cones -- the same cones that you
11 see right here, they marked, way up to the front?

12 Q Yep.

13 A Those type of cones supposed to be right here
14 where I got these dots at.

15 Q I gotcha. And no doubt that when Hector -- Mr.
16 Garland landed, he landed on the left side of the paver?

17 A No. When he jump off -- when he jump off where
18 that marker is, when he jumped off about up in here is where
19 the car was coming in at. So when he step off right here,
20 the car done hit him and he land -- he was in here, and he
21 land like --

22 Q Let me just -- let me just clear it. That's all
23 right. So we get everything out of the way.

24 Now, can you show us where Hector -- what
25 side of the paver Mr. Garland -- I'm sorry, I keep using

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1 them interchangeably, but you guys call him Hector, right?

2 What side of the paver did he land on after the accident?

3 A He land like up here, on the catwalk. After he
4 done hit everything right here, he land up there on the
5 catwalk good.

6 Q On the left side?

7 A Yeah, on the left side.

8 Q And after -- you testified that you recognized
9 Mr. Hamrick, and after the accident he went back to his car,
10 and he told you that he was getting his cell phone?

11 A He ain't told me. He said -- I heard him say that
12 he going to get his cell phone.

13 Q But he stayed at the scene though?

14 A Yeah, he stayed.

15 Q Thank you, Mr. Ford.

16 A All right.

17 THE COURT: Any further direct of the
18 witness?

19 MR. SIMPSON: Yes, Your Honor.

20 THE COURT: You may proceed.

21 MR. SIMPSON: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. SIMPSON:

24 Q Mr. Ford, you were asked, or suggested, that did
25 anybody talk to you about your testimony today. Have you

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1 felt in any way, shape, or form whatsoever any pressure from
2 any source, be it Banks, or the solicitor's office, or the
3 police to alter your testimony in some way today?

4 MR. BISCHOFF: Objection. Compound, Judge.

5 THE COURT: Please rephrase the question.

6 BY MR. SIMPSON:

7 Q Have you felt in any way that Banks suggested to
8 you or -- or tried to influence your testimony today?

9 A No, sir.

10 Q Have you felt in any way that the police tried to
11 influence your testimony here today in any way?

12 A No, sir.

13 Q Have you felt that my office, myself or Mr. Kidd
14 have in any way tried to influence your testimony today?

15 A No, sir.

16 Q Has your testimony today here been truthful?

17 A Yes, sir.

18 Q Do you seek to gain anything whatsoever from your
19 testimony today?

20 A No, sir.

21 Q You pointed out for Mr. Bischoff the cones on the
22 scene, and made several dots. Are the cones on the scene
23 one foot apart from one another, or were you illustrating?

24 A No, it's in -- I put the dots where they been at.

25 Q Okay. What's the distance -- at the scene when it

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1 happened, what's about the distance between one cone and the
2 next, as it was set up that night?

3 A Well, I don't do traffic control, so I don't know
4 how the cones set up. But it should have been closer to the
5 -- to the joint. Like, this is what we call a joint right
6 here. That's the seam, the joint, whatever you want to call
7 it. But instead, the cones should have been like right
8 there, all the way down. See? They supposed to be down --
9 I don't know how far apart it should be, but like that.

10 Q By putting them in a row, you are illustrating all
11 the way the road?

12 A Yeah, all the way down.

13 Q Not in that picture --

14 MR. BISCHOFF: Objection, Judge. Leading.

15 THE COURT: Sustained. Leading. Rephrase.

16 BY MR. SIMPSON:

17 Q Are the cones your responsibility?

18 A No. No, sir.

19 Q Would Neva be a good person to talk to about the
20 cones?

21 A No.

22 Q Someone else at Banks would have --

23 A Yeah, someone else.

24 Q -- a better understanding of that job?

25 A To talk to somebody else about it?

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1 Q Is that your job?

2 A Oh, no.

3 Q I mean, your job is to tell us not how the cones
4 were set up, that's not your responsibility.

5 A No.

6 Q Mr. Bischoff referenced a sweeper that perhaps
7 Heck was going to get. I believe your testimony is the
8 sweeper would have been behind the paver somewhere?

9 A Yeah.

10 Q Not on the northbound lane?

11 A No.

12 Q Would the sweeper have been somewhere in that
13 photograph?

14 A It would be.

15 Q Is the sweeper anywhere in that photograph?

16 A No, it is not here.

17 Q Can you just draw an arrow for me about what area
18 the sweeper would have been in that Heck was going to get?

19 A Where it should have been at?

20 Q Yes.

21 A I don't know where he was supposed to go and sweep
22 at. I just know he was told to come get it. And it was
23 behind this machine, all the way in the back.

24 Q Okay. You stated on direct that you could observe
25 Heck, you had a clear view of Heck when he was hit?

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1 A Yeah.

2 Q Can you estimate for me about how far?

3 A Probably back up some. But that place right there
4 was me. Yeah, right there, that close.

5 Q And you were facing -- you were facing Heck?

6 A Yeah.

7 Q Was Heck in the work zone when he was hit?

8 A Yeah, he was in the work -- he was in the right
9 side of the cones, yeah.

10 MR. SIMPSON: I have nothing further, Your
11 Honor.

12 THE COURT: Any objections to the witness
13 being excused, from the State?

14 MR. KIDD: No, Your Honor.

15 THE COURT: From the Defense?

16 MR. BISCHOFF: No, Your Honor.

17 THE COURT: Sir, you're excused. You may
18 call your next witness.

19 MR. KIDD: Thanks, Your Honor. The State
20 calls Twan Roberts.

21 THE COURT: Sir, if you would come forward
22 for us, please.

23 MR. KIDD: Judge, may we approach?

24 (Off-the-record discussion.)

25 Thereupon,

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1 TWAN ROBERTS

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 THE COURT: Sir, if you would have a seat and
5 state your full name for the record, spelling both
6 your first and last name for the Court Reporter.

7 THE WITNESS: Twan Roberts.

8 THE COURT: And spell your first name for us.

9 THE WITNESS: T-W-A-N.

10 THE COURT: And your last name.

11 THE WITNESS: R-O-B-E-R-T-S, Roberts.

12 THE COURT: Okay. Thank you.

13 DIRECT EXAMINATION

14 BY MR. KIDD:

15 Q Good afternoon, Mr. Roberts.

16 A How you doing?

17 Q Can you tell the jury where you're employed?

18 A Banks Construction.

19 Q How long have you worked for Banks Construction?

20 A Two, going -- two going on a little over three
21 years now.

22 Q A little over three years now.

23 Were you employed by Banks Construction on
24 November 14th of 2011?

25 A Yes.

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1 Q And you know why we're here today, right?

2 A Of course.

3 Q And you remember the collision that occurred on
4 that day?

5 A Right.

6 MR. KIDD: The Court's indulgence one moment
7 while I find it.

8 BY MR. KIDD:

9 Q And what are your duties with Banks Construction?

10 A At the time, I was the dump man and they -- like
11 they was dumping asphalt in the truck, towards in the paver.
12 I used to get the tickets from the truck driver.

13 Q Okay. So you wouldn't drive the dump truck?

14 A No.

15 Q You would get the tickets from the driver of the
16 dump truck?

17 A Exactly.

18 Q Okay. Let me show you what's been marked as
19 State's Exhibit No. 2. I'm just going to get kind of right
20 to it.

21 At the time of the accident -- all right, at
22 the time of the collision where were you standing?

23 A I was more or less by the paver.

24 Q And that screen is actually a touch screen. So if
25 you mark it, it'll show up wherever your finger touches on

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1 the photograph.

2 A I was in the process of getting the ticket from
3 the truck driver, and I was walking back towards the paver
4 to get the -- inspect the ticket.

5 Q Can you put a little X on the screen where you
6 were at at the time of the collision?

7 A About right here.

8 Q So, kind of on the side of the paver; is that
9 right?

10 A Exactly.

11 Q And was there anyone standing near you?

12 A The inspector.

13 Q Did you know her name?

14 A Neva -- Neva, something like that. I can't
15 pronounce her name.

16 Q Okay. And in your own words, tell the jury what
17 you saw and what you observed at the time of the collision.

18 A Okay. After we heard the loud noise on the back
19 of the paver, I thought it was the car that the paver was
20 hit and the vehicle. And as we -- as I was giving the
21 inspector the ticket, that's when the car shuffled behind
22 the paver, in the dead lane. He came out like that, from
23 the dead lane. And he was so close to us, and she screamed
24 out, the inspector screamed out to where we -- we squeezed
25 up against the paver before the car wouldn't hit us.

TESTIMONY OF NEVA NEWMAN

1 Because he was like inches from us, hitting us.

2 So after that, that's when we walked back
3 towards the paver, that's when we saw Heck laying out on the
4 screed.

5 Q How long had you been out there paving at that
6 time?

7 A At that time probably five, six hours. I think it
8 was around 2:00 or 3:00 when it happened. I'm not really
9 sure the time it was.

10 Q Had any cars passed through that zone already?

11 A Yeah.

12 Q Through your experience working on these road
13 construction sites, do you have a pretty good idea whether a
14 car is speeding or not?

15 A Yeah. You can tell whether it's speeding or not.

16 Q Do you have an opinion on how fast this car was
17 going?

18 A He was going over the speed limit.

19 Q I'm going to show you State's Exhibit 21, and put
20 it up on the screen for you.

21 Can you indicate to the jury on that
22 photograph where Mr. Garland was when -- where he ended up?

23 A Yeah. Because like I said, when I turned around
24 and we heard the noise, he shot from like right behind the
25 paver, and come like that. Because he was coming for him

TESTIMONY OF NEVA NEWMAN

1 and he was like boom, going like that.

2 Q Where was -- where was Hector's body after the
3 collision?

4 A Maybe in between, laying right here on the screed.

5 Q Okay. You see those big barrels in the
6 photograph?

7 A Uh-huh.

8 Q Were they there at the time of the collision?

9 A No.

10 Q Why were they moved there?

11 A It was moved after the accident and the police
12 came, and they rearranged it for -- continue the traffic
13 going through.

14 MR. KIDD: The Court's indulgence.

15 (Pause.)

16 MR. KIDD: I have no further questions for
17 Mr. Roberts.

18 THE COURT: Any questions for the witness?

19 MR. BISCHOFF: Yes, Your Honor.

20 CROSS EXAMINATION

21 BY MR. BISCHOFF:

22 Q Mr. Roberts, good afternoon.

23 A How you doing?

24 Q Good. How are you?

25 A All right.

TESTIMONY OF NEVA NEWMAN

1 Q I want to ask you a little -- I'll show you what's
2 been marked as State's 19. Do you recognize that photo?

3 A Yeah.

4 Q Now, where -- you were standing right next to the
5 paver; is that right?

6 A Right.

7 Q So, what direction were you looking from this
8 picture?

9 A You're looking -- the paver is facing -- it's
10 coming this way, as far as traffic coming this way.

11 Q Traffic is coming towards you?

12 A Exactly. And I would say by the -- the road flows
13 out by the paver, where the axle falling.

14 Q Outside of the picture?

15 A Right. No, not outside of the picture. But we
16 have cones, the cones are moved. They were moved closer to
17 the lines, these barrels were over there because they got
18 the tape there.

19 Q My question is, were there cones in place that you
20 don't see on the picture here at that time of the accident?

21 A Yeah, they was in place here.

22 Q And the cones would have -- I'm sorry, the barrels
23 would have been moved over after the accident?

24 A Yeah, because they wasn't there.

25 Q Okay. Did you move any barrels?

TESTIMONY OF NEVA NEWMAN

1 A No.

2 Q Do you know who was responsible for moving
3 barrels?

4 A The officer, the police officers after that
5 situation happened, blocked the whole accident area off.

6 Q Police officers moved the barrels?

7 A Yes, with the help of other people.

8 Q Okay. You described earlier that you thought that
9 the car that was driven essentially performed a maneuver
10 where it went in and out; is that what you described?

11 A Yeah. It came from behind the vehicle, actually
12 in the dead zone. The dead lane.

13 Q But you didn't hear any braking?

14 A No.

15 Q You didn't hear any tires squealing?

16 A No.

17 Q The car didn't hit any cones?

18 A Well, I don't know whether it hit any cones or
19 not. But like I said, I heard something hit the paver,
20 which I thought was the car. So after that, I saw the car
21 coming from behind the paver, which is in the dead lane.

22 Q But the car didn't hit the paver?

23 A No, it didn't hit the paver. Heck hit the paver.

24 Q And he hit the paver on the back left, if you're
25 facing the paver?

TESTIMONY OF NEVA NEWMAN

1 A Right.

2 Q Thank you, sir. Appreciate it.

3 MR. KIDD: No more questions, Your Honor.

4 THE COURT: Mr. Foreman, ladies and
5 gentlemen, I have a very brief matter of law to
6 take up with the attorneys. During this break,
7 please do not discuss the case, and please leave
8 your note pads in your seats.

9 Y'all could take them in the hallway, you don't
10 have to take them all the way to the jury room.

11 (Pause.)

12 THE COURT: Are you still seeking to impeach
13 him for the conviction of obstruction of justice?

14

15 MR. BISCHOFF: I'm not anymore, Your Honor.

16 THE COURT: Resume redirect?

17 MR. KIDD: Well, I think that he might be
18 finished. I don't have any further questions.

19 MR. BISCHOFF: I don't have any further
20 questions.

21 MR. KIDD: And, Judge, that went much faster
22 than I thought, and I sent my next witness to
23 lunch. I apologize.

24 THE COURT: Who is your next witness?

25 MR. KIDD: Brian Sessions. I apologize

TESTIMONY OF NEVA NEWMAN

1 because that witness went much faster than I
2 anticipated.

3 THE COURT: Who would be after Mr. Sessions?

4 MR. KIDD: Chris Key.

5 THE COURT: Is he here? Is he a fact witness
6 as well?

7 MR. KIDD: He is, Your Honor.

8 THE COURT: Is he as short as this witness?

9 MR. KIDD: I don't believe any will be as
10 short as that last witness, Judge.

11 THE COURT: Is he going to testify to
12 anything different other than what this witness
13 testified to?

14 MR. KIDD: The next handful of witnesses were
15 all on scene, so the same context, generally. But
16 Christopher Key, however, was the supervisor on
17 scene. So the scope of his testimony will be
18 greater.

19 THE COURT: Do you have any other witnesses
20 here present that would be simple, short, fact
21 witnesses?

22 MR. KIDD: No, ma'am.

23 THE COURT: Who is Mr. Crowe?

24 MR. KIDD: He will be a short witness, Judge,
25 but he is -- I apologize. I just sent him to

TESTIMONY OF NEVA NEWMAN

1 lunch, I didn't really think that we would finish
2 in time.

3 THE COURT: Okay. You can bring in the jury.

4 (Jury enters the courtroom.)

5 MR. KIDD: If you would like to call another
6 witness, I do have one witness who is here.

7 THE COURT: Who is that?

8 MR. KIDD: Terry Lee Johnson.

9 THE COURT: Fairly brief?

10 MR. KIDD: Fairly. I mean, the same context
11 as these last two.

12 THE COURT: Okay. I wanted to try to break
13 at 1:00. Let's see.

14 MR. KIDD: I apologize, Your Honor.

15 THE BAILIFF: They are all back, Your Honor.
16 Everyone is present.

17 THE COURT: You may be seated. Any redirect
18 of the witness?

19 MR. KIDD: No, ma'am.

20 THE COURT: Any objection to the witness
21 being excused?

22 MR. KIDD: None from the State, Judge.

23 THE COURT: From the Defense?

24 MR. BISCHOFF: None from the Defense.

25 THE COURT: Sir, you're excused.

TESTIMONY OF NEVA NEWMAN

1 The State may proceed.

2 MR. KIDD: The State calls Terry Lee Johnson.

3 Thereupon,

4 TERRY LEE JOHNSON

5 was called as a witness, having been first duly sworn,

6 was examined and testified as follows:

7 THE CLERK: Please state your full name and
8 spell your last for the record, please.

9 THE WITNESS: Terry Lee Johnson,
10 J-O-H-N-S-O-N.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MR. KIDD:

14 Q Good afternoon, Mr. Johnson..

15 A Hey.

16 Q Can you tell the jury where you're currently
17 employed?

18 A Now, I'm at Mason -- Mason Bythe (phonetic)
19 Construction Company.

20 THE COURT: Sir, could you speak directly
21 into the microphone for us? You are a little soft
22 spoken.

23 A Mason Bythe Construction Company.

24 Q Did you used to work for Banks Construction?

25 A Yes, sir.

TESTIMONY OF NEVA NEWMAN

1 Q How long did you work for Banks Construction?

2 A About four, four and a half, maybe five years.

3 Q How long have you worked in the paving business,
4 or the road construction business?

5 A All together, it comes up to be about, 18, 19
6 years.

7 Q And once again, I'll get to kind of right why
8 we're here. Do you remember November 14th of 2011?

9 A Yes, sir.

10 Q And was that the date that Hector got hit?

11 A That night.

12 Q That night?

13 A Yes, sir.

14 Q I'm going to show you some exhibits. The first
15 exhibit I'm going to show you is State's Exhibit 20. Do you
16 recognize that photograph?

17 A Yes, sir.

18 Q And what are we looking at?

19 A You looking at the paver and the highway there
20 where the accident happened at.

21 Q Okay. And I'm going to show you another, State's
22 Exhibit 17. Do you recognize that angle?

23 A Yes, sir.

24 Q Okay. Can you indicate to the jury where you were
25 located at the time of the collision?

TESTIMONY OF NEVA NEWMAN

1 A I was back maybe about -- about 30, 35 feet back
2 from the paver.

3 Q So, kind of outside of this photograph?

4 A No, laid behind it. Breaking everything down the
5 highway --

6 Q You know, that screen in front of you is a touch
7 screen. So if you make a mark on it with your finger, it'll
8 show up on that picture.

9 Can you show where you were to the jury?

10 A Yeah. I was back down the road, back in here
11 about 35, 40 feet in the middle, back from the highway,
12 where the paver coming down the road.

13 Q And where -- were you heading a specific direction
14 at the time of the collision?

15 A Yes, maybe. Straight -- the paver back out in the
16 front of us, I was walking down just like behind the paver.

17 Q Walking towards the paver?

18 A Yes, sir, coming up to the paver, behind it
19 following --

20 Q So which way was the traffic coming from?

21 A Traffic was coming back from behind me like --

22 Q From behind?

23 A Yes, sir.

24 Q All right. Were you able to see the car that
25 struck Hector?

TESTIMONY OF NEVA NEWMAN

1 A Yes, sir. A white pickup.

2 Q A pickup truck or like an SUV or what was --

3 A It's like a -- like a style -- like a pickup.

4 Seemed like it's got like an SUV or something like that, a
5 camper on the back.

6 Q Okay. And did you react in any certain way when
7 that car passed you?

8 A Yes, sir. Well, approximately before that, maybe
9 about like 15, 20 minutes, cars were coming behind me, still
10 were running, you know, kind of fast. And I told Will to
11 see -- which was the driver of the crew cab, he parked on
12 the side over here. And I was walking in the road, like
13 middle down the road, I guess, and Wilteba driving on the
14 side with a big bright light behind. And cars were flying.
15 I told her, you think you can slow these cars down, the cars
16 still running, you know, the speed limit sign that they got
17 on the road. And approximately at that time, coming on up,
18 walking down the road behind the paver like this. That when
19 the pickup shot by. And when they shout at me, got on up
20 and see him drift over into the inside of the white lines
21 here. And I heard the thing, it was a loud pop sounding
22 shot out. And I told Wilteba in the pickup -- well, I can't
23 say exactly like I told him, I said the D word -- I said,
24 you know, he done hit somebody, hit one of the cones in the
25 road there. And so at that time I kind of start dropping,

TESTIMONY OF NEVA NEWMAN

1 you know, jogging up toward the paver. Then that when
2 Henry, which we call Moffit (phonetic), he come -- when I
3 got there he was running with his head down like this. And
4 then I said, What happened? I said, That thing hit you?
5 And he said, No.

6 MR. BISCHOFF: Objection, Your Honor.
7 Hearsay.

8 THE COURT: Sustained. Hearsay. You can't
9 say what someone else said.

10 MR. KIDD: You just can't say what Henry said
11 or anyone else out there said. You just have to
12 testify to what you saw and what you observed, if
13 that makes sense.

14 THE WITNESS: Okay.

15 BY MR. KIDD:

16 Q So I want to concentrate a little bit on that
17 point in time before the car collided with Heck, and when it
18 passed. Did you say anything out loud, or did you react any
19 specific way?

20 A I hollered, you know, telling, you know -- well, I
21 used kind of foul words, you know, your car needs to slow
22 down out here before they hit somebody.

23 Q Okay. So, you yelled out?

24 A Yes, sir.

25 Q And did you see the car enter the work zone?

TESTIMONY OF NEVA NEWMAN

1 A Yes, sir. The white -- we had it drift over each
2 side of the white lines, and I heard a loud pop sound.

3 Q And did you see where -- where Heck's body ends up
4 after the collision?

5 A His body?

6 Q Yes, sir.

7 A Like right up by the screed, back in here, after
8 he flew up and hit, back here by the screed, face down.

9 Q And a little bit graphic, I'll show you what's
10 marked as State's Exhibit 16. Is that what you were
11 referring to there?

12 A Yes, sir.

13 Q Is that where Hector's body ended up?

14 A Right back over here by the screed over here.
15 Right here.

16 Q I'll clear that in one second. All right.

17 All right. Try that again.

18 A Right back over here by the screed.

19 Q And was he on top of that catwalk, or where was
20 he?

21 A He was -- he was face down. But he had a jacket
22 on, and he was laying face down. You could hear him like
23 gag, you know, for breath like at the time I went there.
24 And I took his hat, pulled his hat back off of his head
25 because it was pretty cool that night. We all had on

TESTIMONY OF NEVA NEWMAN

1 jackets and our vests and vest everything. So it was kind
2 of cold, you know, during that time.

3 Q You say his hat, are you talking about his hard
4 hat?

5 A No, it's the regular hood on a jacket.

6 Q Like a hoodie?

7 A Hood on the jacket, yes, sir.

8 Q Okay. And did he -- did you have any experience
9 with the driver of the vehicle that evening?

10 A Yes.

11 Q Can you explain to the jury your interaction with
12 the driver?

13 A After they trying to clean up and got on the
14 ground, they had him, you know, pull his head up and see all
15 of the blood and stuff coming out of him. The guy was
16 standing back over by the side with the -- crying. Talk to
17 me, you know, feel -- people down on the ground there at
18 Hector, like he was gagging for breath. Like he couldn't
19 breath. So that's the time the police came up. So he told
20 us, let's get him over. So we rolled him over on his back
21 and cut his jacket and stuff off. And then the officer had
22 his glove on, he take his hand and kind of like opened his
23 mouth, you know, he tell him like, kind of like trying to
24 get him to breathe and -- eyes rolled back to the -- the guy
25 that hit him, he was standing there and he kind of like got

TESTIMONY OF NEVA NEWMAN

1 up, you know, stirred like, really nervous and shaking. And
2 at that time he hollered, said he had to go to his truck to
3 get his phone. So he started around to the right side of
4 the paver, you know, like a fast motion, so I jump up and I
5 ran to the left side of the paver, and I ran out in front
6 and -- after John and -- not John, James and Ron came
7 running up behind me, and I ran past the guy and I got in
8 front of him. I faced him off. And I told him, I said, no,
9 you aren't getting in that pickup. I said, you need a
10 phone, I just grabbed my phone in my pocket. I told him you
11 could use my phone.

12 And so at that time, he said no, he had to
13 get his phone, because he didn't know the number. So I
14 stand there, face him off, and I told -- I say, one of y'all
15 get his phone out of his truck. I ain't going to let him
16 get back in that pickup.

17 And the reason why I did that before, because.
18 during the time I worked on Myrtle Beach before and seen an
19 accident happen like this, the individual took off and, you
20 know, they never know who the guy was that done that. So I
21 wouldn't let him get in his pickup during that time.

22 Q And you've been working in construction, road
23 construction, for a long time?

24 A Yes, sir.

25 Q And based on that experience and, you know, on

TESTIMONY OF NEVA NEWMAN

1. this occasion, were you able to see cars pass through that
2. site?

3. A Yes, sir.

4. Q And were they able to navigate that site?

5. MR. BISCHOFF: Objection, Judge. Relevance.

6. THE COURT: Please repeat the question.

7. BY MR. KIDD:

8. Q Were other vehicles able to navigate through that
9. site safely?

10. A Yes, sir.

11. MR. BISCHOFF: Objection, Judge.

12. THE COURT: You need to lay the appropriate
13. foundation.

14. MR. BISCHOFF: Move to strike and a curative
15. instruction for the question.

16. MR. KIDD: Move to strike and jury
17. instructions.

18. THE COURT: Ladies and gentlemen, you are to
19. disregard the last question and answer and give it
20. no consideration in your deliberations.

21. You may proceed.

22. MR. BISCHOFF: Thank you, Your Honor.

23. BY MR. KIDD:

24. Q How long had y'all been set up out there that
25. evening?

TESTIMONY OF NEVA NEWMAN

1 A Well, we had been set up, I'd say approximately,
2 anyway, we had been set up maybe about -- I mean, we go in
3 at 6:00,-- we probably set up like about two -- anyway from
4 like two, two and a half hours when he got hit, because they
5 were waiting on the temperature that night. Because it was
6 kind like cold like, and certain temperature, they just let
7 us put our hats on, and the inspector lady, she had us like
8 on hold for a few.

9 Q What was the flow of traffic like? Was there a
10 lot of cars, a few cars?

11 A When it first began, the traffic was pretty heavy
12 like. So that's -- you know, like we might have had some
13 kind of hold up, and then on the temperature had us on hold
14 for a while. And then the cones and everything already
15 lined up. You know, all the signs up, you know, just
16 waiting until they tell us it's okay to get into the road.

17 Q And so -- and what time did y'all -- you say you
18 set up -- what time did you say you set up that evening?

19 A Well, we got to be out there around like about --
20 I think we been on the road like 5:00, 5:30, 6:30. They got
21 a crew that comes up, the safety crew, the cone guy, you
22 know, they put the signs up, the cones and everything, you
23 know, up. Like we gets our paver, you know, and the
24 machines and everything, you know, full of water, check the
25 oil and everything like that, and get the paver all warmed

TESTIMONY OF NEVA NEWMAN

1 up and everything before we get on them.

2 So, we be out there approximately like, you
3 know, an hour and a half, two hours, you know, during the
4 time on the job site.

5 Q So it's safe to say that those cones and that site
6 had been set up for a few hours?

7 A Yes, sir.

8 Q And how was that flow of traffic through there in
9 those few hours? Did y'all have any problems?

10 A No, we didn't have no problem. The cars went
11 through there.

12 Q So the other cars that went through there were
13 able to navigate it safely?

14 MR. BISCHOFF: Objection, Judge.

15 THE WITNESS: Yes, sir.

16 MR. KIDD: May we approach?

17 THE COURT: You may.

18 (Off-the-record discussion.)

19 THE COURT: You may proceed.

20 BY MR. KIDD:

21 Q And were you able to observe other cars pass
22 through that intersection -- or pass through that
23 construction zone?

24 A Yes, sir.

25 Q Did you get an idea of -- through your -- I'm

TESTIMONY OF NEVA NEWMAN

1 sorry, 18 years you been doing that construction work?

2 A Yes, sir.

3 Q During 18 years, did you get a pretty good idea of
4 what a car looks like when it's going 35 miles an hour?

5 A Yes, sir. Pretty close, yes.

6 Q Do you have an opinion on how fast you believe the
7 car that collided with Mr. Garland was going?

8 A He came through, he had to run it somewhere around
9 about -- I'd say about 45, 50. Over the speed limit, yes,
10 sir.

11 MR. KIDD: Court's indulgence?

12 THE COURT: Uh-huh.

13 BY MR. KIDD:

14 Q Was Heck wearing his reflective vest?

15 A Yes, sir. We all do.

16 Q Was he wearing his hard hat?

17 A Yes, sir, at that time.

18 MR. KIDD: I have no further questions of
19 this witness.

20 THE COURT: Any questions for the witness?

21 MR. BISCHOFF: Judge, I have no questions for
22 this witness.

23 THE COURT: Any objection to the witness
24 being excused, from the State?

25 MR. KIDD: No, ma'am.

TESTIMONY OF NEVA NEWMAN

1 THE COURT: From the Defense?

2 MR. BISCHOFF: No, ma'am.

3 THE COURT: Sir, you're excused.

4 Mr. Foreman, ladies and gentlemen, we're going to
5 take advantage of this break in testimony to take our
6 lunch recess. We're going to break until 2:15, which
7 gives you just a little over an hour to get lunch and
8 then return directly to your jury room.

9 During the break, please do not discuss the case
10 in any manner whatsoever. Please don't have any
11 contact with anyone when you return to the courthouse.

12 Please leave your note pads in your seat. And you
13 will return directly to your jury room at 2:15, at
14 which time we will resume testimony. Enjoy your lunch.

15 (Jury exits courtroom.)

16 THE COURT: You may be seated. Is there
17 anything before we break for lunch, from the
18 State?

19 MR. KIDD: Nothing from the State, Judge.

20 THE COURT: From the Defense?

21 MR. BISCHOFF: No, Your Honor.

22 THE COURT: Have a good lunch. See you at
23 2:15.

24 (Lunch recess. Proceedings continued in Volume
25 3.)

REPORTER'S CERTIFICATE PAGE

1. CERTIFICATE

2.

3. STATE OF SOUTH CAROLINA:

4. COUNTY OF CHARLESTON:

5. I, MONA L. MANLEY, Court Reporter, certify that I was
6. authorized to and did stenographically report the foregoing
7. proceedings and that the transcript is a true and complete
8. record of my stenographic notes.

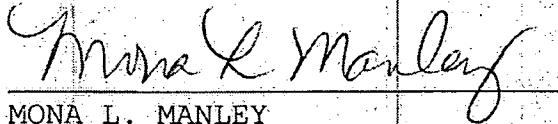
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DATED this 1st day of May, 2014.

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1 State of South Carolina }
2 County of Charleston } Indictment No. 2012GS101033
3 State of South Carolina, }
4 Plaintiff, }
5 vs. } Trial Transcript
6 Daniel D. Hamrick, }
7 Defendant. }

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VOLUME 3

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October 22, 2013

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Charleston, South Carolina

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21 BEFORE:

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The Honorable Deadra Jefferson

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2

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1 PROCEEDINGS

2 THE COURT: Is the State ready to proceed?

3 MR. KIDD: We are, Judge.

4 THE COURT: Is the Defense ready to proceed?

5 MR. BISCHOFF: We are, Judge.

6 MR. KIDD: I think there's an issue with
7 possible impeachment based on convictions of one
8 of the construction workers that's going to be
9 called to testify today. I don't know if you want
10 to take that up now?

11 THE COURT: Who is that?

12 MR. KIDD: Brian Sessions.

13 THE COURT: And what is his record?

14 MR. BISCHOFF: Well, it's extensive. What we
15 want to bring in are 35 counts of fraudulent
16 check, convicted on February 23rd, 2005. And then
17 --

18 THE COURT: Say that date again.

19 MR. BISCHOFF: February 23rd, 2005.

20 THE COURT: Uh-huh.

21 MR. BISCHOFF: And then six counts of
22 fraudulent checks on August 10th, 2006.

23 THE COURT: What's the State's position?

24 MR. KIDD: Judge, these are misdemeanor
25 convictions.

1 THE COURT: That is conduct regarding -- my
2 mind went blank, irregardless of punishment.

3 MR. KIDD: Is a fraudulent check a crime of
4 dishonesty? I'm not sure.

5 THE COURT: Uh-huh. I think it is. Let's
6 double check.

7 MR. KIDD: I think if they're forged checks
8 or they're stolen check, but if they're just a
9 check with insufficient funds, I'm not sure that
10 that reaches a crime of dishonesty, would be my
11 argument, Judge.

12 THE COURT: What is the actual charge?

13 MR. BISCHOFF: It says, fraudulent check more
14 than \$1,000 with 35 counts. Offense 341160, and
15 then the other one is the same exact offense. The
16 other six convictions.

17 MR. KIDD: If it's over a thousand, Judge, it
18 might be a felony. I might be mistaken. In which
19 case I'll --

20 Judge, it is a crime of dishonesty.

21 THE COURT: I was about to -- fraud implies
22 that it was dishonest.

23 The statute articulates that when a check, a
24 draft, or other written order is not paid by the
25 drawee, it says it was made for a draw that did not

1 have an account with, or sufficient funds on deposit
2 with the bank, or the person on which it was drawn when
3 presented on the draft check or other written order has
4 incorrect insufficient signature on it, does not pay
5 the amount due on it.

6 Basically, you can't be charged with fraudulent
7 check. It takes more than your check just bouncing, if
8 you haven't made it good, which, in fact, is a theft
9 because you haven't paid it. Because under the
10 statute, you always have the right to cure that lack of
11 payment by paying the fee and then making good on the
12 check prior to there actually being a charge of a
13 fraudulent check.

14 So, I think that would come in irregardless of
15 penalty because it involves theoretically a crime of
16 dishonesty.

17 Is this any exception from the State?

18 MR. KIDD: No, ma'am.

19 THE COURT: Okay. How many counts of
20 fraudulent check does he have? Because every
21 count is a check.

22 MR. BISCHOFF: Yes, ma'am. It shows that
23 he's got 35 counts on February 23rd, 2005 and then
24 six more counts on August 10th, 2006.

25 THE COURT: Any exception from the State?

1 MR. KIDD: No, ma'am.

2 THE COURT: Okay. We ready to proceed?

3 MR. KIDD: Yes, ma'am.

4 THE COURT: Who is your next witness?

5 MR. KIDD: We will call that witness. The
6 State calls Brian Sessions.

7 THE COURT: And who's after Mr. Sessions?

8 MR. KIDD: Mr. James Faulkner.

9 THE COURT: And then who is after him?

10 MR. KIDD: Chris Key.

11 THE COURT: Mr. Sessions, Mr. Faulkner, and
12 who else?

13 MR. KIDD: Mr. Key.

14 THE COURT: Key, K-E-Y?

15 MR. KIDD: K-E-Y, yes, ma'am.

16 THE COURT: Is your witness present in the
17 courtroom?

18 MR. KIDD: No, ma'am.

19 THE COURT: You need to get him.

20 Go ahead and get the jury.

21 (The Jury enters the courtroom at 2:35 p.m.)

22 THE BAILIFF: All Jury present now.

23 THE COURT: Thank you. You may be seated.

24 Ladies and gentlemen, I hope you enjoyed your
25 lunch recess. We are now going to resume the State's

1 case.

2 You may now call your next witness.

3 MR. KIDD: Your Honor, the State calls Brian
4 Sessions.

5 THE CLERK: Please state your full name and
6 spell your last, please.

7 THE WITNESS: Brian Anthony Sessions,
8 S-E-S-S-I-O-N-S.

9 MR. KIDD: Thank you, Your Honor.

10 Thereupon,

11 BRIAN SESSIONS

12 was called as a witness, having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BISCHOFF:

16 Q Good afternoon, Mr. Sessions.

17 A Hi.

18 Q Are you currently employed?

19 A Yes, I am.

20 Q Where do you currently work?

21 A I'm a superintendent for Sterling Excavating.

22 Q Work for an excavating company; what does that
23 entail?

24 A We build highways.

25 Q What does that entail?

TESTIMONY OF BRIAN SESSIONS

1 A We build highways.

2 Q So you're back in the road business; is that
3 right?

4 A Absolutely.

5 Q Would you tell the jury where you were employed in
6 November 2011?

7 A Banks Construction.

8 Q And how long had you worked for Banks Construction
9 at that point?

10 A Little over a year.

11 Q Okay. And what was your job with Banks back in
12 November 2011?

13 A I was an operator.

14 Q An operator. What did you operate?

15 A Various equipment.

16 Q I'm going to show you -- do you remember the
17 collision that occurred on that day, the reason we are here?

18 A Yes, sir.

19 Q I'm going to show you what's been marked as
20 State's Exhibit No. 20. And is that on the screen in front
21 of you as well?

22 A Yes, sir.

23 Q Okay. That screen is a touch screen, so if you
24 write on it with your finger, it'll make a mark on all of
25 these screens that everyone can see.

TESTIMONY OF BRIAN SESSIONS

1 A Okay.

2 Q Do you recognize that photograph?

3 A Yeah. It's the back of the paver.

4 Q Is that the way it looked back in November 2011,
5 November 14th, 2011?

6 A Yes, sir.

7 Q And can you tell the jury where you were located
8 at the time of the collision?

9 A Do you want me to touch it?

10 Q Yeah. Put a little X on there or something.

11 A Right there.

12 Q So you were right at the back corner of the paving
13 machine?

14 A Yeah. I was operating it -- the left side of the
15 screed.

16 Q And what is that -- what did you say, screed?

17 A Yeah.

18 Q What is that?

19 A The asphalt travels through it, it gives an
20 initial compaction. That's what gives your starting of a
21 smooth road and a mat.

22 Q Okay. And had y'all started paving yet?

23 A No. We had just -- we had moved up and sat down.

24 Q So, y'all -- you were getting ready to start
25 paving?

TESTIMONY OF BRIAN SESSIONS

1 A Yes, sir.

2 Q Right before the collision, where was Ahmad, or
3 Heck -- did you call him Hector or Ahmad?

4 A Everybody on the crew called him Hector.

5 Q Hector. Where was he right before the collision?

6 A I don't know. I know he was behind me somewhere.

7 Q What were you focusing your attention on?

8 A Gnawing out the machine, getting it all ready to
9 start paving.

10 Q What was the first thing that occurred to where
11 you knew something was wrong, or something had happened?

12 A When he hit the -- the extension bars on the
13 paver, part of his body hit me and knocked me into the live
14 traffic. That's is when I knew -- I thought somebody at the
15 time was playing, horse-playing, and then I realized that he
16 was hurt.

17 Q Okay.

18 A At that time, that's when I felt the breeze of the
19 passenger side mirror of the vehicle come out of the work
20 zone.

21 Q So, when you say he hit me, you're not talking
22 about the vehicle, you're talking about Hector?

23 A Yeah, part of him. Whether it was his arm or his
24 leg or something brushed me and knocked me out into the live
25 traffic.

TESTIMONY OF BRIAN SESSIONS

1 Q And that's when you said you were able to --

2 A That's when I realized he -- something was wrong.

3 Q And what did you do from that point?

4 A I -- can I think about it for a second?

5 Q Sure, take your time.

6 A It's been a while.

7 Q Yes, absolutely.

8 A I want to say that I reached over and touched
9 Hector on his left shoulder. Didn't move him, but touched
10 him, and it was a matter of seconds that, I guess, the
11 Defendant came up. I smelled alcohol on his breath, I told
12 another employee not to let him leave the scene. And by
13 that time, Mt. Pleasant police had already got there.
14 And --

15 Q How much time do you think had passed from the
16 time of the collision until the police arrived on scene?

17 A No more than five minutes.

18 Q So it happened pretty quickly?

19 A Yes.

20 Q And do you remember -- was Hector wearing his
21 reflective vest?

22 A Yes. It's mandatory before we even get on the
23 job. We have a safety meeting every day. We call it a crew
24 huddle. We all get together and discuss what's going to be
25 done, make sure everybody has all their PPE on, which is

TESTIMONY OF BRIAN SESSIONS

1 just personal protection equipment, and then we proceed.

2 Q When, after the police arrived there, and Hector
3 was -- did he kind of remain in that position on that
4 catwalk for a while?

5 A At that time, yes, until the police officer showed
6 up and the police officer started to move him. And I told
7 the police officer, Don't touch him, he might have a spinal
8 injury or something like that.

9 Q Did y'all eventually move him?

10 A I didn't.

11 Q Did the police officer eventually move him?

12 A The police officer did.

13 Q And what -- where did he move him to?

14 A Can I --

15 Q Sure. Sure.

16 A Hector was here, the police officer moved him
17 right here.

18 Q So just kind of rolled him over?

19 A Rolled him over. I mean, they braced his neck the
20 best they could, rolled him over.

21 Q Was he responsive?

22 A Absolutely not. He was gurgling.

23 Q I'm going to show you State's Exhibit 16. I'll
24 show you this to sort of give a little bit of direction.

25 Could you indicate about where on that

TESTIMONY OF BRIAN SESSIONS

1 catwalk he was when you first saw him, Hector?

2 A When he first hit the paver?

3 Q Correct.

4 A Right here.

5 Q And --

6 A He was there by me.

7 Q Right there by you; is that where you were
8 standing?

9 A No. I was standing right here, right here on this
10 skip line.

11 Q And the way the body was positioned, was it laid
12 out across -- I mean, tell me how was the body positioned on
13 that catwalk?

14 A Laying just like that, with this being his head.
15 We'll say -- we'll do it like this. That's Hector.

16 Q All right. And then, can you see that kind of
17 stain on the pavement, the two different stains on the
18 pavement?

19 A Yeah. Right there and right there.

20 Q Right. Is that -- the first one you put the dot
21 dot on, is that from before or after the body was there?

22 A That was -- I'm pretty sure that was after the
23 body was moved.

24 Q And we'll talk a little bit about -- so you
25 personally smelled alcohol on the driver?

TESTIMONY OF BRIAN SESSIONS

1 A Absolutely. I'm the one that told the other
2 employee, Terry, to not let him leave.

3 Q And what -- how -- how close in proximity was he
4 to you when you smelled alcohol?

5 A Less than a foot.

6 Q And had he come around --

7 A Because he came around, after he parked his
8 vehicle. He came down through the live traffic past the
9 dump truck and the paver and was trying to grab Hector and
10 shake him and asking if he was all right. And we stopped
11 him from touching him, and that's when I was less than a
12 foot away from him and smelled the alcohol.

13 Q Did you see the vehicle that collided with Hector
14 enter the work zone?

15 A No. My back was to it.

16 Q Did you see it come out of the work zone?

17 A Yeah. Because the passenger mirror, if you look
18 where that paver is -- these cones were not here. Our cones
19 for our work zone is usually no more than a foot off that
20 leading edge. That's is our work zone. That gives us
21 enough room to work, that leading edge right there that's
22 getting paved.

23 So, when he came out, he came out -- I
24 wouldn't say that close, but he came out and he was right
25 there by me.

TESTIMONY OF BRIAN SESSIONS

1 Q And I just want to be clear, he came out of your
2 work zone; is that what your testimony is?

3 A Yeah.

4 MR. KIDD: The Court's indulgence.

5 I have no further questions.

6 THE COURT: Any questions of the witness?

7 MR. BISCHOFF: Beg the Court's indulgence.

8 THE COURT: Uh-huh.

9 CROSS EXAMINATION

10 BY MR. BISCHOFF:

11 Q Mr. Sessions, how long had you been working for
12 Banks that night after this accident took place?

13 A A little over a year.

14 Q How much longer did you work for them after that?

15 A Six, maybe eight months.

16 Q Then you moved on to the new company where you
17 are?

18 A Absolutely.

19 Q But you're pretty familiar with the whole paving
20 operation?

21 A Yes, sir.

22 Q And you testified that your back was toward
23 Mr. Hector when the car came through and the accident
24 happened?

25 A Yes.

TESTIMONY OF BRIAN SESSIONS

1 Q And then you turned around and saw Hector laying
2 on -- they called it a catwalk?

3 A Yeah. It's a catwalk.

4 Q And when you're paving, or setting up to pave,
5 there are a lot of people around the catwalk or around the
6 work area; is that fair to say?

7 A Actually, no. The only people who are there is
8 the superintendent, both screed operators, and the man
9 operating the paver, up top. Everybody else has got their
10 own things that they need to be doing.

11 Q And on the night the accident took place, cones
12 were separating your work zone from the traffic zone?

13 A Yes.

14 Q I'll show you what's been marked as State's
15 Exhibit 5. Do you recognize that picture?

16 A Yeah. That's two crews working northbound and
17 southbound lanes.

18 Q Does it look like somebody may have taken that
19 picture on the night of the accident?

20 A Oh, I don't know. I wasn't holding the camera.

21 Q I know that. What about State's 18? Do you
22 recognize that picture?

23 A No.

24 Q What about State's 20, do you recognize State's
25 20?

TESTIMONY OF BRIAN SESSIONS

1 A Absolutely.

2 Q Do you recognize the car that is parked in front
3 of the dump truck? Do you see that car?

4 A No, not really. I see the taillights.

5 Q You see the tail lights, so you see the car?

6 A Yeah.

7 Q Do you see cones lining the roadway there, up by
8 the taillights?

9 A No -- no.

10 Q You don't see any cones?

11 A No. Can you blow it up a little bit then? But,
12 no, I don't see no cones laying on the ground.

13 Q That's not what I said.

14 Mr. Sessions, my question was, do you see --
15 where you see the taillights in front of the paver, do you
16 see any cones lying in the roadway?

17 A No. In between the dump truck and that first
18 cone, no.

19 Q Were there supposed to be cones lining the roadway
20 when you're working?

21 A Yeah. There always is, it's a lane closure.

22 Q Were there cones in place at the time of the
23 accident?

24 A Absolutely.

25 Q Thank you, sir.

TESTIMONY OF BRIAN SESSIONS

1

2

MR. BISCHOFF: No more questions.

3

THE COURT: Any redirect of the witness?

4

MR. KIDD: Just briefly for a quick

5

clarification.

6

THE COURT: You may proceed.

7

REDIRECT EXAMINATION

8

BY MR. KIDD:

9

Q And I think that you might have been

10

misunderstanding. He wasn't saying lining -- do you see

11

these cones back here?

12

A Uh-huh.

13

Q And those are how the cones are normally set up on

14

that job site?

15

A No. They're set up on every other skip line,

16

50 feet apart.

17

Q And that's those skinny cones?

18

A Yes. Those are the ones that traffic control

19

uses.

20

MR. KIDD: Nothing further, Judge.

21

THE COURT: Any objection to this witness

22

being excused, from the State?

23

MR. KIDD: No, ma'am.

24

THE COURT: From the Defense?

25

MR. BISCHOFF: No, Your Honor.

TESTIMONY OF BRIAN SESSIONS

1 THE COURT: Sir, you're excused.

2 You may call your next witness.

3 MR. SIMPSON: Thank you, Your Honor. The
4 State calls James Faulkner.

5 (The witness was sworn.)

6 THE WITNESS: Yes, sir.

7 THE CLERK: Have a seat. State your full
8 name and spell your last, please.

9 THE WITNESS: My name is James Larry
10 Faulkner, Jr. It's F-A-U-L-K-N-E-R.

11 THE COURT: You may proceed.

12 MR. SIMPSON: Thank you, Your Honor.

13 ,

14 JAMES FAULKNER

15 was called as a witness, having been first duly sworn,

16 was examined and testified as follows:.

17 DIRECT EXAMINATION

18 BY MR. SIMPSON:

19 Q Mr. Faulkner, good afternoon.

20 A Good afternoon.

21 Q How are you?

22 A Pretty good.

23 Q Where do you currently work?

24 A Banks Construction.

25 Q And how long have you been working there?

TESTIMONY OF JAMES FAULKNER

- 1 A About three years.
- 2 Q So, did you work there also in November of 2011?
- 3 A Yes, sir.
- 4 Q And you know why you've been called here today?
- 5 A Yes, sir.
- 6 Q Did you have occasion to witness an accident on
- 7 the work site?
- 8 A Yes, sir.
- 9 Q Auto collision?
- 10 A Yes.
- 11 Q Did you work, at the time, at Banks Construction
- 12 with an individual named Ahmad Garland?
- 13 A Yes, sir.
- 14 Q And what did you guys call him?
- 15 A Heck.
- 16 Q How long did you work with Heck, approximately?
- 17 A Seven months.
- 18 Q Seven months. Did you know Heck well?
- 19 A I worked with him, I knew him well.
- 20 Q Good worker?
- 21 A Very good.
- 22 Q Confident in his job?
- 23 A Confident, religious, all around good guy.
- 24 Q Did you like him?
- 25 A Oh, yeah. Plenty of conversations.

TESTIMONY OF JAMES FAULKNER

1 Q Heck, in the time that you spent working with him,
2 was he a safe worker, followed the rules?

3 A Yes, sir.

4 Q We'll get right to it, Mr. Faulkner.

5 Could you describe for the jury what you
6 observed happen that evening that Heck was hit, starting
7 from where you were.

8 A Well, I'm a machine operator, but that night we
9 weren't using my machine. I was working a shovel. We had
10 positioned at a new spot we were getting ready to lay down
11 and pave. A few of us were behind after cleaning some -- up
12 a pile of asphalt, and we were approaching the paver.

13 Q Let me stop you. I may interrupt you from time to
14 time.

15 A That's fine.

16 Q You said the two of us. Do you know who the other
17 person was?

18 A Me and Henry Ford.

19 Q Henry Ford?

20 A Right.

21 Q I'll pause for a second, too, and show you what's
22 previously been admitted as State's 19.

23 That screen, do you see that photograph on
24 the screen in front of you?

25 A Yes, sir.

TESTIMONY OF JAMES FAULKNER

1 Q The screen in front of you is actually a touch
2 screen. If you need to indicate a spot, you can indicate it
3 by touching the screen, and it'll leave a mark.

4 What is that large piece of machinery we're
5 looking at to the left?

6 A That's our paver.

7 Q So, when you say paver, you're referring to that.

8 A It's what laid the asphalt.

9 Q And in the direction this photograph is facing,
10 can you indicate about where you would be standing with
11 Mr. Ford?

12 A (Indicates.)

13 Q And direction were you facing?

14 A I was facing towards the paver.

15 Q Towards the paver. Were you walking in that
16 direction?

17 A Yes, sir.

18 Q Next to Mr. Ford?

19 A Correct.

20 Q And what did you observe?

21 A Me and Henry were just walking up to the paver,
22 chatting as we walked up. Heck and another gentleman named
23 Phil were walking in, and Ahmad -- or Heck -- was almost
24 directly in front of me. And I remember hearing like a
25 shout almost, but I couldn't tell what the words were

TESTIMONY OF JAMES FAULKNER

1 because it just -- it happened so fast.

2 Q Is that a person?

3 A Right.

4 Q Shouting?

5 A Right.

6 Q Did you ever later figure out who that person was?

7 A I believe it was Terry.

8 Q Okay. Go on.

9 A But as I heard the shout, that's about the time a
10 car came into our work zone, and it was actually right
11 beside Henry. And it came in right in front of us, and as I
12 said, somebody shouted. And whenever you hear somebody
13 shout, you know, you turn around to kind of see what it is.
14 But it also happened so fast that I remember seeing Heck
15 start to turn, and I guess as he was turning he might have
16 seen the headlights coming and he actually tried to jump out
17 of the way, but he just wasn't quick enough.

18 Q You said the car -- you were right next to Henry?

19 A I was right next to Henry.

20 Q And the car came very close to Henry?

21 A Right. I was standing -- see, I was right here,
22 Henry was right here, and our work zone ended on the other
23 side of Henry.

24 Q And how is that work zone delineated, set apart?

25 A Well, that's not my job to set up the cones, but I

TESTIMONY OF JAMES FAULKNER

1 do know that they're a foot over from the white skip line.

2 Q Okay. And when you say skip line, can you
3 indicate it to us on the --

4 A There's one, and there's one also.

5 Q And typically one foot -- a one foot buffer zone
6 outside that?

7 A Correct.

8 Q Do you see the gentleman in that photograph with
9 the reflective vest on?

10 A Uh-huh.

11 Q What is that to his left?

12 A That's one of the cones that preserve our work
13 zone.

14 Q These large barrels that we see there -- do you
15 see those?

16 A Yes, sir.

17 Q Were those there when the accident occurred?

18 A No. Those were moved in after the area was shut
19 down.

20 Q Do you know about how -- I know this is not your
21 job, if you don't know, that's fine -- but do you know how
22 far apart these cones are that delineated your work zone,
23 typically? You can use me if you want to approximate.

24 A I would say 50 feet.

25 Q So, to get back to the actual incident, you stated

TESTIMONY OF JAMES FAULKNER

1 that the car came pretty close to Henry?

2 A Yes, sir. It -- from the way I look at it, if me
3 and Henry are walking right here, he had to come in almost
4 diagonally from the way the lane travels to come into our
5 work zone. If I'm standing on the other side of Henry, and
6 Heck's directly in front of me --

7 MR. BISCHOFF: I'm going to object to this
8 line of testimony. He's a lay witness.

9 (Discussion off the record.)

10 THE COURT: You may proceed.

11 MR. SIMPSON: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 BY MR. SIMPSON:

14 Q James, to get back to where we were. Just please,
15 if you're guessing or speculating about what happened, we're
16 here just to talk about what you actually saw. So when you
17 were saying it, it's what you actually witnessed.

18 A This is what I actually witnessed.

19 Q Okay. Please continue.

20 A What I was getting at was if I'm -- if I'm
21 standing here, Henry's right here, our work zone is right
22 here, Heck was walking directly in front of me with another
23 man to his right.

24 Q Now, let me stop you for a second. You were in
25 the work zone, correct?

TESTIMONY OF JAMES FAULKNER

1 A Correct.

2 Q In fact, so far into the work zone that there was
3 another person next to you.

4 A Correct, and he was in the work zone as well.

5 Q And you're certain that Henry was in the work
6 zone?

7 A I'm certain of it.

8 Q You said --

9 A I'm sorry.

10 Q -- Heck was directly in front of you?

11 A Yes, sir.

12 Q In other words, in a straight line with you?

13 A Yes, sir.

14 Q Was Heck in the work zone?

15 A Yes, sir. Because I, as well, was in the work
16 zone.

17 Q He was the same as you?

18 A Correct.

19 Q Okay. So, continue.

20 A As we were walking and we heard the yell,
21 everybody turned, but it happened so fast. And as I said, I
22 assume Heck saw the lights of the vehicle, and I remember
23 seeing him try to jump out of the way, but it just happened
24 so fast. And -- but for him to be hit at that angle, he had
25 to have come in diagonally.

TESTIMONY OF JAMES FAULKNER

1 MR. BISCHOFF: Your Honor, I'm going to
2 object. Approach?

3 (Discussion off the record.)

4 THE COURT: You may proceed.

5 MR. SIMPSON: Thank you, Your Honor.

6 BY MR. SIMPSON:

7 Q James, I think the objection is to the "I think"
8 or any hypotheticals. It's just how you preface it. It's
9 not a problem though, we can certainly move on. But just
10 please stick to what you actually observed.

11 Did you observe the car inside the work zone?

12 A After he passed us. I didn't know it was coming
13 behind me, I didn't know to turn around and look. But after
14 it passed us, it was in our work zone. Because at the rate
15 of speed he was going, if he didn't jerk the wheel back to
16 the left, he would have ran into the back of the paver.

17 Q And did he almost hit the paver?

18 A Running down the side of it, yes, he did almost
19 hit the paver. Because our inspector and our dump man had
20 actually jumped on the side of the paver to not be hit.

21 Q And do you recall the name of the inspector?

22 A Neva.

23 Q And the name of the dump man?

24 A Twan.

25 Q But you observed the vehicle nearly hit the paver?

TESTIMONY OF JAMES FAULKNER

1 A Yes, sir.

2 Q Do you feel like you had a clear view of
3 everything that occurred out there that night?

4 A Yes, sir.

5 Q Any concern to you whatsoever about Heck is, when
6 he was hit, inside the work zone?

7 A No.

8 Q Any uncertainty about the car coming into the work
9 zone to collide with Hector --

10 MR. BISCHOFF: Leading.

11 THE COURT: Sustained. Rephrase.

12 MR. SIMPSON: Thank you, Your Honor. I
13 withdraw.

14 BY MR. SIMPSON:

15 Q What happened after Heck was hit?

16 A After the car passed the paver and the dump truck
17 that was dumping to it and pulled over in front of the dump
18 truck, at that time all of us had ran up to Heck. Because
19 whenever he got hit, he flew through the air, did like a
20 summersault. And whenever he made a full rotation, his head
21 is actually what hit the back of the paver. And the way he
22 was laid out on the back of the catwalk, he wasn't moving.
23 We all ran up to him. Just like, oh, my God, what's going
24 on.

25 Around that time, a police officer arrived.

TESTIMONY OF JAMES FAULKNER

1 A little bit before the police officer arrived, the driver
2 of the car ran back to us and mentioned, Did I hit somebody?
3 And we said yeah, and Heck was right there on the back of
4 the screed on the paver. And he had ran back to his car
5 saying he needed to get his phone. Three of us followed him
6 to his car.

7 Q And why did you follow him to his car?

8 A Because we weren't sure if he was going to leave.

9 Q You obviously didn't want him to leave?

10 A Correct.

11 Q I'm going to backtrack for a second.

12 If I understand your perspective, and correct
13 me if I'm wrong, the car came in in front of you?

14 MR. BISCHOFF: Judge, leading.

15 THE COURT: Sustained. Leading. Rephrase.

16 BY MR. SIMPSON:

17 Q So you -- was your view of the vehicle from the
18 front of the vehicle or the rear of it?

19 MR. BISCHOFF: Your Honor, I'll object.

20 Asked and answered.

21 THE COURT: Overruled.

22 THE WITNESS: When I noticed the vehicle it
23 was to my side. I caught it out of my peripheral.
24 The best view I had of it, because it happened so
25 fast, was the rear of the vehicle as he came in.

TESTIMONY OF JAMES FAULKNER

1 BY MR. SIMPSON:

2 Q Were the brake lights of the vehicle visible to
3 you during this incident, once it passed you?

4 A Once it passed, and it's on the side of the paver.
5 But as I said, you know, it happened so fast, I wasn't
6 really looking for brake lights at that time.

7 Q Did you ever notice any brake lights?

8 A Once he was coming to a stop around the paver, and
9 pulling in, in front of the dump truck.

10 Q Did you ever hear any -- and we're talking about
11 at the time Heck was hit, did you ever hear any skidding or
12 anything associated with braking?

13 A No. No. I imagine there would have been a
14 different outcome, if there was braking, because that would
15 have been more noise, and more people would have gotten out
16 of the way.

17 MR. BISCHOFF: Your Honor, objection.

18 THE COURT: Overruled.

19 MR. SIMPSON: The Court's indulgence?

20 THE COURT: Uh-huh.

21 MR. SIMPSON: James, if you would answer any
22 questions that the Defense has for you. Thank
23 you.

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

TESTIMONY OF JAMES FAULKNER

1 MR. BISCHOFF: Please, Your Honor.

2 THE COURT: You may proceed.

3 CROSS EXAMINATION

4 BY MR. BISCHOFF:

5 Q Mr. Faulkner, good afternoon.

6 A Good afternoon.

7 Q You, Henry, Hector, anybody else in the work zone
8 that you remember?

9 A Our -- our whole crew was in the work zone.

10 Q Okay. And you said it happened very quickly. The
11 thing that you remember most is that Hector was turning just
12 before impact?

13 A It's one of those things that -- one of the main
14 things that stick out in your mind. As it happened, I
15 stated I heard somebody yell, and I'm assuming somebody was
16 saying watch out or something like that because they
17 witnessed the car coming. But at the time, I didn't hear it
18 as watch out, all I heard was a voice ooh, ooh, ooh.

19 So, whenever you hear something like that,
20 you go to turn and see where the voice is coming from, or at
21 least to see what's going on.

22 When I heard that, I saw Heck in front of me.
23 Also I had started to turn my head, and I seen Heck going
24 like that, and that's about the time the car come by me.

25 Q Now, if you don't mind, because she's taking down

TESTIMONY OF JAMES FAULKNER

1 everything that you're doing or saying, but she can't take
2 down body movement. So, can you describe what you just
3 testified to?

4 A Slightly turned my head to the left and noticed
5 the vehicle coming by.

6 Q Thank you.

7 And it's loud out there on the scene; is that
8 fair to say?

9 A Not at that particular time, because we hadn't
10 actually started working.

11 Q Okay. After the accident happened, everybody ran
12 around to look after Hector, right?

13 A We ran to him.

14 Q Ran to him. And Mr. Hamrick ran to Hector as
15 well?

16 A After he stopped.

17 Q After he stopped. And he said he had to get his
18 cell phone?

19 A I wouldn't necessarily say he ran back to Heck, he
20 ran back and said, Did I hit somebody?

21 Q Well, earlier you testified he ran back and said,
22 Did I hit someone?

23 A Right.

24 Q So he ran back, said, Did I hit someone?

25 A Right.

TESTIMONY OF JAMES FAULKNER

1 Q And then he ran to get his cell phone, and you
2 guys followed him. And then the police arrived?

3 A Shortly after.

4 Q Within a minute?

5 A Within a minute to two.

6 Q Okay. And those cones -- or I'm sorry, the
7 barrels that are shown here in this picture in State's 19,
8 they were brought over?

9 A Afterwards.

10 Q After the accident took place?

11 A Yes, sir.

12 Q Thank you, Mr. Faulkner.

13 THE COURT: Any redirect of the witness?

14 MR. SIMPSON: No, Your Honor.

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

17 MR. SIMPSON: No, Your Honor.

18 THE COURT: From the Defense?

19 MR. BISCHOFF: I apologize. I got
20 disoriented. I'm saying no. No reason for us to
21 keep him here. Sorry.

22 THE COURT: Sir, you're excused.

23 You may call your next witness.

24 MR. SIMPSON: Thank you, Your Honor. The
25 State calls Christopher Key.

TESTIMONY OF CHRISTOPHER KEY

1 Thereupon,

2 CHRISTOPHER KEY

3 was called as a witness, having been first duly sworn,

4 was examined and testified as follows:

5 THE CLERK: State your full name and spell
6 your last.

7 THE WITNESS: Christopher Wayne Key. Last
8 name spelled K-E-Y.

9 THE COURT: You may proceed.

10 MR. SIMPSON: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. SIMPSON:

13 Q Mr. Key, where do you work currently?

14 A With Banks Construction.

15 Q How long have you been working for Banks?

16 A Three years.

17 Q And what is your job title/duty for Banks?

18 A I'm the asphalt paving superintendent.

19 Q And superintendent, that's a managerial role?

20 A Yes. Yes, it is.

21 Q What does the superintendent do on the site? What
22 are some of your jobs?

23 A I'm in charge of the lay down, the paving
24 operations, overseeing the crew. Doing the reports for the
25 job, the time and the hours that the crew worked, and -- and

TESTIMONY OF CHRISTOPHER KEY

1 overseeing the -- the overall site, you know. I look at the
2 safety of the job and at that the crew itself is in a safe
3 environment to work in.

4 Q Okay. And how long did you say again you have
5 been working in that field?

6 A I've been in this industry for 27 years now.

7 Q Okay. So the three years is just with this
8 company?

9 A That's correct.

10 Q In, you know, drawing on that, you know, over two
11 decades of experience, do you think Banks handles their work
12 sites in a fairly consistent and safe manner?

13 A I'm very satisfied with the consistency and the
14 traffic control that Banks Construction provides for myself
15 and our co-workers, yes.

16 Q Okay. And I believe you already hit on this, but
17 part of your job, is that to review the safety of the site
18 and look things over and make sure everything is on the up
19 and up?

20 A Yes.

21 Q Are there any checks in place with any third
22 parties not associated with Banks that also overlook that?

23 A The South Carolina Department of Transportation
24 overlooks the traffic control set up and -- and recommends
25 and sees to it that all corrections are -- or any

TESTIMONY OF CHRISTOPHER KEY

1 corrections need to be made.

2 Q Okay. So, there are, you know, even beyond your
3 role in the safety, you're checked by the Department of
4 Transportation?

5 A Yes, sir.

6 Q And do they have an actual individual that's on
7 site at the work zone to do that?

8 A Yes, sir.

9 Q And you know why you're here today, what the
10 incident is, correct?

11 A Yes, sir.

12 Q Do you recall who the overseeing safety inspector
13 was on the night of this incident?

14 A Ms. Neva Newman.

15 Q Okay. If Neva, representing the Department of
16 Transportation, noticed something askew or something wrong
17 with the way that you guys had laid out this work site, what
18 would occur? How would she handle that?

19 A She would come to me directly, if she could not
20 directly speak with the traffic control supervisor, and
21 instruct me of any and all corrections that would need to be
22 made.

23 Q And has she done that before on prior dates, come
24 to you?

25 A It has happened before, yes.

TESTIMONY OF CHRISTOPHER KEY

1 Q On the night of this incident, did Neva review the
2 site?

3 A Yes, sir.

4 Q Did she come to you with any problems with how it
5 was set up?

6 MR. McCUNE: Objection, Your Honor. Leading.

7 THE COURT: Sustained. Leading. Rephrase.

8 BY MR. SIMPSON:

9 Q Were you made aware that evening of any problems
10 with the work site?

11 A No, sir.

12 Q Let me talk about, if I may, work sites in general
13 before we get to how the work site was on the night in
14 question.

15 Explain to the jury a little bit about when
16 you're repaving a lane, what sort of things you do with that
17 lane? How do you -- do you have to close the lane, for one,
18 to work on it? I know, that's a very silly question.

19 A Yes. I mean, you have -- you have your dual
20 lanes, you know, that are -- you have -- in the north,
21 south, east, or west direction. I mean, if you have two
22 lanes in each direction, then you need to work in one lane,
23 then, therefore, you close the lane that needs to be worked
24 in, allowing the public or the traffic to travel in adjacent
25 lane, and -- to give you a work zone to work in.

TESTIMONY OF CHRISTOPHER KEY

1 Q Okay. I'm going to show you what's been marked
2 and entered as State's 22. Do you recognize this area?

3 A Yes, sir.

4 Q The screen in front of you is a touch screen, so
5 if you need to indicate a spot, you can just touch it.

6 A Okay.

7 Q When this incident occurred, approximately where
8 was your crew working?

9 A Just here, south of George Browder Boulevard.
10 That is in the south direction, so I would -- I would point
11 right here.

12 Q Okay. Again, obvious question, but is this a
13 straight road?

14 A It is in this exact location, this is a straight
15 road, yes.

16 Q And is it relatively flat? Any hills?

17 A In this location, this is a flat. Flat.

18 Q And when you -- how do you close off the lane?
19 How do you indicate to the traveling public that a lane is
20 closed for work? What do you use?

21 A Well, there's a message board that's put out that
22 indicates that the work area ahead, and it -- generally it
23 will read -- in this case, right lane closed ahead, one
24 mile. This is a large message board, and then that's
25 preceded with several signs that are half-mile ahead, right

TESTIMONY OF CHRISTOPHER KEY

1 lane closed 1500 feet, 500 feet. Followed then by the arrow
2 board with the flashing move, to move to your left in this
3 case, with the proper taper that's put up at the arrow
4 board, and the cones at their proper spacing. And with --
5 well, I mean with the signs, the signs that are put out and
6 the message board and the cones to delineate and --

7 Q The close?

8 A The closed lane, correct.

9 Q And let's discuss the cones for a second. Once
10 you have blocked off the beginning of that lane --

11 A Yes, sir.

12 Q -- do you still mark it closed with further cones
13 in place?

14 A The cones are spaced according to the regulations
15 specified by the South Carolina Department of
16 Transportation.

17 Q And what are those specifications, as to the
18 distance between cones?

19 A I don't know the exact answer to that because I'm
20 not certified in that spiel, so I can't give an honest
21 answer to the exact distance that that should be.

22 Q Okay. Do you ever refer to the road lines,
23 stripes, I believe?

24 A I do know that we -- because I am the field
25 supervisor, when I -- when I do see that -- I feel like

TESTIMONY OF CHRISTOPHER KEY

1 sometimes that they're not placed properly, but they --
2 traffic control uses the lane line, the skip line as a
3 standard procedure to placing cones, and I know that those
4 are generally around 40 feet in distance.

5 Q Were the cones out there that evening in the
6 manner that you just described?

7 A Yes, they were.

8 Q And are the cones placed on the skip line; is that
9 where you place the cones, or do you allow a zone?

10 A We need the cones one foot to the left of the --
11 to the skip line.

12 Q Mr. Key, how -- do you and your workers wear any
13 particular equipment when you're on the work site?

14 A We are -- it's mandatory, it's company policy, and
15 it's standard procedure to wear personal protective
16 equipment as in a reflective vest, as well as a hard hat.

17 Q And in referring to that vest, is that something
18 that's provided by the company?

19 A Yes, sir.

20 Q And these are -- if you saw one of the vests, like
21 your workers and yourself would wear, would you be able to
22 recognize that?

23 A Yes, sir.

24 MR. BISCHOFF: Your Honor, I think we have a
25 matter of law?

TESTIMONY OF CHRISTOPHER KEY

1 THE COURT: You may proceed.

2 MR. SIMPSON: Approach?

3 THE COURT: Uh-huh.

4 (Discussion off the record.)

5 THE COURT: Yes, sir. We'll take a brief
6 recess to go to the restroom. Please do not
7 discuss the case during the break. Leave your
8 note pads in your seat. If you will go with the
9 bailiff, and let the bailiff know as soon as you
10 have completed using the restroom.

11 (Break at 3:20)

12 THE COURT: While we're having this break,
13 please let Defense counsel see the vest that you
14 all were wearing.

15 We'll be at ease for a moment until the jury
16 advises us they have completed using the restroom.

17 Sir, if you'd like to go to the restroom, you can
18 as well, but please don't discuss your testimony with
19 anyone during the break.

20 THE WITNESS: I'm fine. Thank you.

21 THE COURT: You're welcome, sir.

22 (Recess.)

23 (Jurors enter courtroom.)

24 THE BAILIFF: All jurors present, Your Honor.

25 THE COURT: Thank you. You may be seated.

TESTIMONY OF CHRISTOPHER KEY

1 Ladies and gentlemen, we will now resume the
2 witness' testimony.

3 You may proceed, Mr. Simpson.

4 MR. SIMPSON: Thank you, Your Honor.

5 BY MR. SIMPSON:

6 Q Mr. Key, when we left off I asked you, does Banks
7 issue these reflective vests that you were referring to?

8 A Yes.

9 Q They're given to each worker by the company?

10 A Yes.

11 Q And if you saw a Banks issued reflective vest,
12 would you be able to identify it?

13 A Yes.

14 Q And was Heck wearing that type of vest on the
15 night of the incident?

16 A Yes, sir.

17 *(Whereupon, State's Exhibit No. 25 was marked for*
18 *identification.)*

19 MR. SIMPSON: Your Honor, at this time I'm
20 going to show the witness what's been marked as ID
21 only as State's 25.

22 THE COURT: You may proceed.

23 MR. BISCHOFF: And, Your Honor, we would like
24 to renew our objection under 403?

25 THE COURT: Overruled, based on 403.

TESTIMONY OF CHRISTOPHER KEY

1 MR. SIMPSON: Your Honor, I'm talking about
2 State's 23, not 25.

3 THE COURT: Marked for ID only. You may
4 proceed.

5 BY MR. SIMPSON:

6 Q Mr. Key, take a moment, take a look at that item.

7 A Sure.

8 Q Mr. Key, is that an example of the vests that are
9 issued by Banks to their employees?

10 A Yes, it is.

11 Q And to be clear, that's not the vest that Hector
12 was wearing that night, correct?

13 A No, sir.

14 Q But is that, nevertheless, a fair and accurate
15 version of what Hector would have been wearing that night?

16 A Yes, sir.

17 Q And you observed him wearing that vest that night?

18 A Yes. Yes, sir.

19 MR. SIMPSON: May I approach the witness,
20 Your Honor?

21 THE COURT: You may.

22 MR. SIMPSON: The State at this time moves to
23 put State's 23 into evidence.

24 THE COURT: Any objection?

25 MR. McCUNE: Your Honor, we just renew the

TESTIMONY OF CHRISTOPHER KEY

1 objection as previously stated.

2 THE COURT: Objection's overruled. It goes
3 to weight, not accuracy. It is a fair and
4 accurate representation. It does not have to be
5 identical.

6 MR. SIMPSON: Thank you.

7 THE COURT: It will be admitted.

8 MR. SIMPSON: Thank, Your Honor.

9 *(Whereupon, State's Exhibit No. 23 was marked for*
10 *identification and received in evidence.)*

11 BY MR. SIMPSON:

12 Q Mr. Key, in your experience and your role as the
13 supervisor of that site, was the work site properly set up
14 on the night of the incident?

15 A Yes, sir.

16 Q How long approximately that evening had you been
17 working on 17 prior to the accident?

18 A Six hours.

19 Q About what time would you have begun work?

20 A Nine p.m.

21 Q Okay. And if you -- if you can recall, what was
22 the approximate time of the actual accident?

23 A Three a.m.

24 Q Okay. During that time frame -- let me ask you
25 this. How many days had you been out working on the 17

TESTIMONY OF CHRISTOPHER KEY

1 project in general, about?

2 A About? Several months, probably close to a year
3 at that time. Close to a year.

4 Q Nearly every day for the year?

5 A Five and six days a week, yeah.

6 Q Okay. During that time, did you set up this work
7 zone and direct this traffic in the same manner as you did
8 on the night of the accident?

9 A Yes, sir.

10 Q And during that nearly a year, were there any
11 other near fatal accidents?

12 A No. No.

13 Q Did traffic, during the near -- nearly a year that
14 you worked on 17, did traffic move through these work zones
15 successfully?

16 A Yes.

17 Q Are the work zones -- you're working overnight,
18 correct?

19 A Correct.

20 Q Are the work zones lit in any way?

21 A There -- there are light plants to -- and there's
22 lighting on all the equipment. There's lighting on the
23 paving machine for the workers in the area to see, and there
24 are -- occasionally there are light plants set out through a
25 project to help in seeing the operations.

TESTIMONY OF CHRISTOPHER KEY

1 Q And are there safety rules and regulations that
2 govern the amount and how you light a work zone?

3 A There is, yes.

4 Q And do you follow them?

5 A Yes, we do.

6 Q Does Neva double check behind you on those as
7 well?

8 A That's a yes, sir.

9 Q Gotcha. And Neva can be a stickler at times; is
10 that correct?

11 A That's a fair accusation, yes.

12 Q And on the night in question, did she again bring
13 anything to your attention that was wrong with the work
14 zone?

15 A Not -- not that night that I recall of that
16 particular night, no, sir.

17 Q And if she would have brought anything to your
18 attention, would you have changed it?

19 A We would have corrected it, yes, sir.

20 Q I want to get now, Mr. Key, to the actual event in
21 question. I may interrupt you from time to time, and I'm
22 going to show you some pictures, but if you could just begin
23 recounting for the jury what you observed on the night in
24 question.

25 A Okay.

TESTIMONY OF CHRISTOPHER KEY

1 Q Leading up to and including Hector being hit.

2 A You would like me to start just from -- from that
3 night? I mean, I know -- I know we report to work at 8:00
4 p.m., and the 9:00 p.m. is the lane closures. That's the
5 restricted hours, 9:00 p.m. to 6:00 a.m. And this
6 particular night we were working southbound on 17 at and
7 near the Park West intersection going south. This is -- we
8 had a moving operation this night.

9 We had started, and we had moved from one
10 location to this next location, which was just past this
11 street here. I recall it just as the entrance to the
12 Publix, and we were setting up there to proceed going
13 forward when I -- I walked from the back of the paving
14 machine crossing back to -- if we're going south, it's to my
15 right to the grass not -- and --

16 Q Let me pause just for a second.

17 I'm showing you what's been entered as
18 State's 20. Does this help you in any way?

19 A Yes. Yes. Okay. This paving machine has moved
20 from its previous location to re-set up to start another
21 operation. And this particular night, I was on the left
22 side, the backside of the paving machine. I guess, if you
23 point, is that -- yes. That's where I -- that was my work
24 station for the night because -- I guess because I could say
25 because the person that normally runs that station was on

TESTIMONY OF CHRISTOPHER KEY

1 vacation, and so I fill in for that spot. Being the
2 supervisor, I covered that position for the night.

3 And I walked back, now with my back to the
4 paving machine, heading to about where this white truck is
5 here on the shoulder.

6 Q Okay. Is the spot you just indicated, by the
7 white truck, is that approximately where you were when Heck
8 was hit?

9 A Where I was at was in the middle of that lane
10 right there when Heck crossed my path. By -- I say by a
11 matter of inches. I saw his body passing by me, and then
12 proceeding to land on the back of the paving machine, where
13 I first pointed at him landing on the back of the machine.

14 Q Okay. You said Heck passed by you. Was he on
15 foot?

16 A He was airborne.

17 Q Okay. And so this is after impact with the
18 vehicle?

19 A Yes.

20 Q How did you -- were you staring in Heck's
21 direction when he was hit?

22 A I was not staring, I was -- I was off to the side
23 and walking toward this truck with something else on my mind
24 to do in my position. I had -- I was thinking about
25 something when, you know, (snaps fingers) just like that --

TESTIMONY OF CHRISTOPHER KEY

1 I mean, here, out of the corner of my eye, there he comes.

2 I mean, I saw him land, and, I mean, it's like right here is
3 my cell phone at work, and that's my instinct was -- I mean,
4 I knew I needed to call 911.

5 Q And did you call 911?

6 A Yes, sir.

7 Q When -- I know it's difficult to talk about, but
8 when Heck's body is flying past you, was that -- were both
9 you and Heck within the work zone?

10 A Yes, sir.

11 Q I want to backtrack, if you don't mind. We
12 discussed earlier the cones placement, and you said exact
13 measurements are not the forte, but -- correct me if I'm
14 wrong, approximated on a straight road, a distance of about
15 40 feet between the cones?

16 MR. BISCHOFF: Objection, Your Honor.

17 Leading.

18 THE COURT: I can't hear. Repeat.

19 MR. SIMPSON: Sure.

20 BY MR. SIMPSON:

21 Q What was the approximate distance between cones on
22 the straightaway?

23 A 40 feet.

24 Q Okay. At an intersection, if you have an
25 intersection where traffic is coming into the road--

TESTIMONY OF CHRISTOPHER KEY

1 A Yes.

2 Q -- does that affect at all the cone space?

3 A Yes, it does.

4 Q And how does it affect the cone space?

5 A At an intersection or a side street that the
6 traveling public must come out of, there are numerous cones
7 placed out of that turn. And in this case here, I would say
8 out of a right turn heading south, there are several cones
9 placed with a short taper to delineate the lane that you
10 should be traveling in.

11 Q Let me go back to State's 22. Would what you just
12 described, would the difference of the cone placement then
13 be used for this intersection here?

14 A Yes, sir.

15 Q Would it have been used for this intersection
16 here?

17 A Yes, sir.

18 Q Can -- on the night in question, could traffic
19 come out of this intersection here?

20 A That night in question, that intersection there
21 was -- to my best recollection was closed off to the
22 traveling public because they do have an alternative route.

23 Q So, the George Browder Boulevard intersection was
24 closed?

25 A Yes, sir.

TESTIMONY OF CHRISTOPHER KEY

1 Q Okay. Thank you.

2 Mr. Key, how long did Heck work for you
3 approximately?

4 A He had -- well, I've been there three years, and
5 this now is two years later. So I had only been there one
6 year at that time. He had been with me nine months.

7 Q Good employee?

8 A Very good employee.

9 Q Were you happy with the work he had done for you?

10 A Yes, sir.

11 Q A guy that paid attention to the rules?

12 A He did. He did, yes.

13 Q Was he a safe worker?

14 A Yes, he was.

15 MR. SIMPSON: The Court's indulgence.

16 THE COURT: Uh-huh.

17 MR. SIMPSON: Thank you.

18 Sir, please answer any questions that the Defense
19 has. Thank you.

20 THE COURT: Any cross-examination for the
21 witness?

22 MR. BISCHOFF: Thank you, Judge.

23 THE COURT: You may proceed.

24 MR. BISCHOFF: Thank you.

25 THE COURT: You're welcome.

TESTIMONY OF CHRISTOPHER KEY

1 CROSS EXAMINATION

2 BY MR. McCUNE:

3 Q Good afternoon, Mr. Key.

4 A Good afternoon.

5 Q You said you'd worked in this area for about 27
6 years; is that correct?

7 A I said in the industry for 27 years.

8 Q Okay. And as an asphalt superintendent, how long
9 have you held that position?

10 A I've held that position for 24 of the 27.

11 Q Okay. And you said you supervised a crew of how
12 many?

13 A In this case, 14.

14 Q Okay. A crew of 14. The evening in question,
15 were you working the northbound as well as the southbound?

16 A No. I was not in charge of the northbound
17 operation, no.

18 Q Is there a separate asphalt supervisor on the
19 northbound side?

20 A That's correct, yes.

21 Q And is equipment ever shared between the
22 northbound and southbound operation?

23 A Not shared at -- in the same shift, no.

24 Q So, each shift has its own set of equipment and
25 works with that equipment either going northbound or

TESTIMONY OF CHRISTOPHER KEY

1 southbound?

2 A Yes, sir.

3 Q And you said at the time of this accident you had
4 just moved into a new position to begin paving; is that
5 correct?

6 A That's correct.

7 Q Okay. And if you could explain to the jury how
8 the paving process works, if you wouldn't mind. There's the
9 paver itself, correct?

10 A Yes, sir.

11 Q And let me show you what's previously been
12 admitted into evidence as State's No. 20. Now, this -- you
13 do recognize that?

14 A That is the paving machine, yes.

15 Q That is the paving machine. But that's not the
16 only part that goes into this operation, correct?

17 A Correct.

18 Q And what is it that's in front of the paving
19 machine?

20 A In this case, in this night in question, is a dump
21 truck that hauls the material.

22 Q Okay. And showing you what's been previously
23 entered as State's Exhibit 2. Do you recognize that photo?

24 A Yes, sir.

25 Q And is that the dump truck that is in front of the

TESTIMONY OF CHRISTOPHER KEY

1 paver in that situation?

2 A Yes, sir.

3 Q Okay. What else is used on the job? We've heard
4 of rollers. Are there rollers on this job?

5 A Yes, sir.

6 Q And where would they be located?

7 A They're somewhere in this picture. They're
8 behind this operation in the lane closure, finishing their
9 compaction procedures at the previous location, or
10 proceeding to this location.

11 Q So, would they be behind the paver as we look at
12 it now or in front of the paver?

13 A They would be behind the paver as you look at this
14 picture.

15 Q Okay. And then there's -- do you know what a
16 sweeper is?

17 A Yes, I do.

18 Q Okay.

19 MR. McCUNE: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes.

22 BY MR. McCUNE:

23 Q I'm showing you a picture. It's not been marked
24 yet for identification. Do you recognize that?

25 A That is a -- as you say, a sweeper or a broom

TESTIMONY OF CHRISTOPHER KEY

1 tractor, yes.

2 Q Okay. And is that the sort of device that you
3 would use on your job site?

4 A That is correct, yes.

5 Q And does it fair and accurately depict the kind of
6 sweeper you would use on your job site?

7 A Yes.

8 Q Thank you.

9 MR. McCUNE: Your Honor, I would like to
10 enter this as Defendant's Exhibit No. 21.

11 THE COURT: Any objection?

12 MR. SIMPSON: Just my previous objection.

13 No, Your Honor.

14 THE COURT: Please approach.

15 (Discussion off the record.)

16 THE COURT: Defense 21 marked and admitted
17 without objection.

18 *(Whereupon, Defendant's Exhibit No. 21 was marked*
19 *for identification and received in evidence.)*

20 BY MR. McCUNE:

21 Q I'm showing you what's just been admitted as
22 Defendant's Exhibit 21, and could you explain to the jury
23 what that device is?

24 A That is a broom tractor. That is for cleaning the
25 asphalt surface prior to a new application.

TESTIMONY OF CHRISTOPHER KEY

1 Q Okay. So, we have, in order of work that's being
2 done, would that precede the dump truck and the paver, and
3 then be followed by the roller after the paver?

4 A I'm sorry. Could you repeat that?

5 Q Yes, I will. And I'll make it simpler for you.

6 Which is the first piece of equipment that
7 would go on the mat if you're going to lay asphalt?

8 A The roller.

9 Q Okay. The roller goes first. And then when does
10 the sweeper come in?

11 A If I could explain this as to -- as if we're out
12 there to do a job for you. Is that okay?

13 Q Well, you know, we do have rules, and we want to
14 make sure that --

15 THE COURT: He can explain his answer.

16 MR. McCUNE: Okay. Thank you.

17 THE COURT: Sir, you may proceed.

18 THE WITNESS: On this particular night, or
19 most generally any night of a paving operation, a
20 broom tractor or a sweeping device is the first
21 piece of equipment to go on the road, to clean the
22 surface. Then that is followed by a distributor
23 that applies a tack coat that gives a bonding
24 between the old surface and new surface. Then the
25 application of new asphalt is placed by the paving

TESTIMONY OF CHRISTOPHER KEY

1 machine, followed by the rollers that provide the
2 compaction. And then on this, on a night like
3 this, because we are moving from one location to
4 another, the sweeping machine is then again used
5 to clean the road of any other debris that could
6 be put on the road from moving to locations.

7 That's the way that I would like to answer that
8 question.

9 BY ATTORNEY2:

10 Q That's very good. Thank you very much. You're
11 very helpful.

12 The sweeper can be first -- and the -- and it
13 could be last, actually. It just depends on where you need
14 to clean up debris?

15 A That's correct.

16 Q Do you need any special training to operate the
17 broom?

18 A You do require training to operate the broom, yes.

19 Q And are -- do you have designated employees that
20 operate the broom?

21 A We have designated and we have cross-trained
22 operators -- we have operators that are qualified to operate
23 certain and numerous pieces of equipment.

24 Q Okay. Was Mr. Garland qualified to operate the
25 broom?

TESTIMONY OF CHRISTOPHER KEY

1 A Yes, he was.

2 Q All right now. Moving to the site itself that
3 evening, I'm going to again show you what's been marked as
4 State's Exhibit 20. You said you -- earlier that you
5 recognized that photo, correct?

6 A Yes.

7 Q And if you look behind the paver, facing
8 southbound, there is a row of cones; do you see that row of
9 cones?

10 A I see that row of cones, yes, sir.

11 Q And is that how the job site is normally set-up,
12 with cones in that manner, linear fashion?

13 A That's proper set-up, yes. For this picture that
14 I'm looking at, and under these conditions, that appears to
15 be correct, yes.

16 Q And the cones are set up different under different
17 conditions; isn't that correct?

18 A I mean, I would have to -- you'd have to be more
19 specific on the conditions. But there's -- I mean,
20 there's -- I mean, there's one way and there's a right way
21 to set it up. And that's the way we generally do it, is to
22 set it up the correct way.

23 Q Is there a document that you look to, to see the
24 right way to set up the cones?

25 A There are documents, and there are qualified

TESTIMONY OF CHRISTOPHER KEY

1 people that attend State held classes that have
2 certifications in this field, yes.

3 Q Okay. But you do not possess that certification,
4 correct?

5 A I do not currently possess that certification, no.

6 Q You have had in the past?

7 A I have in the past, yes.

8 Q And have you had it in South Carolina?

9 A I do not have it in South Carolina. No, sir.

10 Q Okay. Basically, if there's -- there's different
11 spacing required for different speeds; is that not correct?

12 A I do not know.

13 Q Okay. You don't know that. How about daytime or
14 nighttime?

15 A I do not know.

16 Q Okay. And near an intersection and not near an
17 intersection?

18 A I do not know.

19 Q Okay. Thank you.

20 When you were working that evening, you said
21 you occupied a position on the left rear side of the paver
22 as we're looking at this, correct?

23 A Yes, sir.

24 Q And could you put a mark there.

25 Okay. Were you facing the paver at that

TESTIMONY OF CHRISTOPHER KEY

1 time?

2 A At the time of the accident?

3 Q As you were at your duty station, are you facing
4 the paver?

5 A When you're at your position, you are -- at
6 nighttime, you're facing a lot of directions. Your head's
7 on a swivel.

8 Q Okay. But it was your testimony that you departed
9 that position and headed over to the right?

10 A That -- that -- that is correct.

11 Q Okay. And during this time, you think that's when
12 the accident occurred?

13 A That's correct.

14 Q Now, how many people were in the vicinity of the
15 paver at that time?

16 A How many people in the vicinity? Well, I could --
17 I could say there's two, three, four, five -- there's at
18 least six in that vicinity when this -- when this happened.

19 Q Okay. You had given some instructions to be
20 relayed to Mr. Garland that evening, hadn't you?

21 A Yes, I did.

22 Q Okay. And the instructions included to have
23 someone tell him to go get the broom; isn't that correct?

24 A That is correct.

25 Q Okay. And this was just shortly before the

TESTIMONY OF CHRISTOPHER KEY

1 accident occurred; isn't that correct?

2 A That's correct.

3 Q Do you know where the broom was parked at that
4 time?

5 A The broom would be located back to the north, in
6 the lane closure, somewhere in the area of a, you know, 100
7 to 200 feet back to the north in the closed area, in the
8 same location like that backhoe that you see that is parked
9 to the right of the paver. The broom tractor would have
10 also been parked back several hundred feet and to the right
11 side there.

12 Q Okay. Thank you.

13 Let me show you -- one moment here -- what's
14 been previously entered as State's Exhibit 19. Do you
15 recognize that photo?

16 A Yes, I do.

17 Q Okay. And explain to the jury what view we have
18 here?

19 A You have a view from the left side, the front left
20 side of the paving machine, looking back over the screed
21 itself of the paver, looking to the back of the paver
22 machine.

23 Q Okay. As you look along the edge of the new
24 asphalt there, do you see a gentleman standing next to a
25 device, a cone?

TESTIMONY OF CHRISTOPHER KEY

1 A I see a gentleman standing there, yes.

2 Q Okay. Is that how it looked that evening out
3 there at the job site?

4 A That -- I mean, that picture there does not
5 resemble how it looked because there's -- I mean, if I
6 answer -- that's not how it looked when the accident
7 occurred.

8 Q Okay. And we'll step through this.

9 The large drums that are in the photo, they
10 weren't in there at the time of the accident?

11 A No, sir.

12 Q When were those moved in there?

13 A Those were moved in there after the accident and
14 the police had arrived on the scene, and they were placed
15 sometime shortly after that to allow for public traffic to
16 continue through the site.

17 Q Okay. How about the cone that the gentleman who
18 was standing beside, was it in that position the night of
19 the accident?

20 A Not in that position, no.

21 Q Do you know where it was the night of the
22 accident? Could you mark it on the screen?

23 Okay. Were there any other cones between
24 that one and the paver itself, to your knowledge?

25 A According to the spacing that I know that it

TESTIMONY OF CHRISTOPHER KEY

1 should be -- there should be another one right here, but you
2 know, it's not in this picture now.

3 Q Okay. Do you recall whether it was on the scene
4 the night of the accident?

5 A I do not.

6 Q Are there -- do you sometimes use the lighting
7 plants near the paver to help with visibility?

8 A Yes.

9 Q Okay. Was there a lighting plant in place at the
10 time of the accident there?

11 A Yes, there was.

12 Q Okay. Let me show you what's been previously
13 marked as State's Exhibit 20, and show me, if you could,
14 where that lighting plant would have been if that picture is
15 helpful for you?

16 A I know that this truck here that we see the front
17 end of is transporting that light plant. So that light
18 plant is attached to the back -- if I could go back just a
19 second, Your Honor, I'm -- I'm 99 percent positive that that
20 is my company work truck. That's why -- because that is it,
21 I'm sure, and the light plant is attached to that vehicle.

22 Q Okay. Who moves the light plant around?

23 A We have designated people to move it. It just
24 depends on who is freed up to move it.

25 Q And whose decision is it where to place the light

TESTIMONY OF CHRISTOPHER KEY

1 plant; is it yours?

2 A It is mine, yes.

3 Q Do you know who Will Gilliard is?

4 A Will Gilliard, yes, I do. Yes.

5 Q Do you know if he was driving the light plant the
6 night of the accident?

7 A I don't recall.

8 MR. McCUNE: May I beg your indulgence, Your
9 Honor?

10 Thank you very much, Mr. Key.

11 Pass the witness, Your Honor.

12 THE COURT: Redirect?

13 MR. SIMPSON: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. SIMPSON:

16 Q Mr. Key, I'm showing you again, regarding
17 referred-to State's 22. Would you mark for me again the
18 approximate location of the paver that evening?

19 A (Witness complies.)

20 Q Okay. You were asked about the sweeper. In fact,
21 I think you identified a photograph of a sweeper. When we
22 say get the broom or get the sweeper, we're not talking
23 about a broom.

24 A Yeah. Yes, sir.

25 Q And you were asked on cross, where would the

TESTIMONY OF CHRISTOPHER KEY

1 location of that sweeper have been; do you recall that?

2 A Yes.

3 Q And you said back and to the right?

4 A Yes. Yes.

5 Q Can you, from the overhead site, show me where the
6 sweeper would have been that evening?

7 A The sweeper would have been in this vicinity back
8 here because we had just -- we had just finished an
9 application back here, and it would have been -- I said, you
10 know, several hundred feet behind this, this operation that
11 we were just beginning to start.

12 Q You indicated on cross that you had sent out the
13 word, so to speak, that Heck was to go get the sweeper; is
14 that correct?

15 A Yes, sir.

16 Q If a person is walking from the paver to where the
17 sweeper was, would they have crossed into the open lane of
18 traffic?

19 A No, sir.

20 MR. McCUNE: Objection, Your Honor. That
21 calls for speculation.

22 THE COURT: Please repeat the question.

23 BY MR. SIMPSON:

24 Q If a person was asked to go retrieve the sweeper
25 from the back of the paver -- I'm sorry, the sweeper, the

TESTIMONY OF CHRISTOPHER KEY

1 broom machine, assuming traveling the most direct path,
2 would they have crossed over the open lane of traffic?

3 A No, sir.

4 THE COURT: Objection is overruled. It's
5 rational perception within the scope of his
6 employment.

7 MR. McCUNE: Thank you, Judge.

8 THE COURT: You are welcome.

9 I need y'all to speak up for me. I have a fan
10 directly over my head, and it sounds like you are
11 mumbling sometimes.

12 MR. SIMPSON: I have no further questions of
13 the witness.

14 THE COURT: Any questions of the witness, or
15 any objection to excusing the witness?

16 MR. SIMPSON: None from the State, Your
17 Honor.

18 MR. McCUNE: None from the Defense, Your
19 Honor.

20 THE COURT: Sir, you're excused.

21 THE WITNESS: Thank you.

22 THE COURT: You're welcome, sir.
23 State, call your next witness.

24 MR. KIDD: The State calls Ralph Crowe.

25 Thereupon,

TESTIMONY OF RALPH CROWE

1 RALPH CROWE

2 was called as a witness, having been first duly sworn,
3 was examined and testified as follows:

4 THE CLERK: State your full name and spell
5 your last, please.

6 THE WITNESS: Ralph Kevin Crowe, C-R-O-W-E.

7 THE COURT: You may proceed.

8 MR. KIDD: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 DIRECT EXAMINATION

11 BY MR. KIDD:

12 Q Good afternoon, Mr. Crowe. I appreciate you being
13 patient with us.

14 Can you tell the jury where you are currently
15 employed?

16 A Banks Construction.

17 Q And how long have you worked for Banks?

18 A A little over four years.

19 Q All right. I'm going to get right to it. You
20 know why you're here, right?

21 A Yes, sir.

22 Q All right. You recognize that photograph, State's
23 Exhibit 20?

24 A Yes.

25 Q What are we looking at?

TESTIMONY OF RALPH CROWE

1 A That's the back of the paver, where everything
2 happened at.

3 Q What kind of -- what are your general duties with
4 Banks?

5 A Mostly I run the paver.

6 Q So, you are -- do you have a title, are you paver
7 operator?

8 A Paver operator. Paver operator.

9 Q And when you're operating the paver, where are you
10 located in that photograph?

11 A Kind of up on top of the paver, where those white
12 seats on the top are.

13 Q Are those chairs?

14 A Yeah, those are seats.

15 Q That screen in front of you is a touch screen.
16 So, if you touch it, it'll write and it'll show up on these
17 other screens as well.

18 A Okay. Right around those two.

19 Q All right. On -- do you remember the collision on
20 November 14th, 2011?

21 A Yes.

22 Q Where were you at the time of the collision?

23 A Sitting right there.

24 Q Sitting right there on the left-hand seat, on top
25 of that paver?

TESTIMONY OF RALPH CROWE

1 A Yes.

2 Q Do you remember where your attention was directed
3 at the time of the collision?

4 A I was looking forward.

5 Q Looking forward toward this -- which way is
6 forward, southbound?

7 A Yeah, southbound.

8 Q Okay. So, your back would have been to traffic?

9 A My back was to traffic.

10 Q Did you see the collision?

11 A I did not see the collision.

12 Q All right. Can you tell the jury what you
13 observed, saw, or heard as the collision took place?

14 A Pretty much what I heard was I heard somebody say
15 something behind me, and then I heard the sound of the car
16 hitting -- at the time I wasn't sure what it was, and I
17 stood up and seen everybody running to the back of the
18 paver. And I seen the car come around by me, and I
19 learned -- leaned over the seat and looked down. That's
20 when I seen Ahmad laying right there at the bottom of the
21 paver.

22 Q Were you able to see the car come around the
23 paver?

24 A No. I just seen the car come by the paver.

25 Q Okay. Where was Hector on the back of the paver

TESTIMONY OF RALPH CROWE

1 after the collision?

2 A He was laying almost directly below where the seat
3 was. He was right there.

4 Q All right. And do you know about how long from
5 the time of the collision until officers arrived on the
6 scene?

7 A I don't remember exactly. It wasn't real awful
8 long. Everything was kind of hectic.

9 Q Do you know if Hector was wearing his protective
10 gear that evening?

11 A Yes. We -- everybody wears theirs every day. We
12 don't go out there without it.

13 Q I'm going to show you State's 23. Do you
14 recognize a vest like this?

15 A Yeah.

16 Q Is this a fair example of what he would have been
17 wearing that night?

18 A Yeah. That's our typical night vest.

19 Q That's your night vest at Banks?

20 A (Nods in the affirmative.)

21 MR. KIDD: I have no further questions of
22 Mr. Crowe.

23 THE COURT: Any question of this witness?

24 MR. McCUNE: Just very briefly, Your Honor.

25 THE COURT: You may proceed.

TESTIMONY OF RALPH CROWE

1 MR. McCUNE: Thank you.

2 CROSS EXAMINATION

3 BY MR. McCUNE:

4 Q Good afternoon, Mr. Crowe.

5 A Good afternoon.

6 Q You gave a statement after this incident, correct?

7 A Yes.

8 Q Written statement. Who did you give that

9 statement to?

10 A I turned it into -- I forget his name.

11 Q One of the solicitors?

12 A Yes.

13 Q And it was a handwritten statement on your part,

14 correct?

15 A Yes.

16 Q And do you recall when you did that statement, was

17 it the day of, day after?

18 A It was -- I don't remember exactly, but it was a

19 little while after.

20 Q Okay. And when you were sitting in the seat, as

21 you are driving, you said that you saw the vehicle pass the

22 paver?

23 A Yes.

24 Q Did you see it come to a stop?

25 A I was ahead. I couldn't really see where it

TESTIMONY OF RALPH CROWE

1 stopped. Because I seen it come past the paver, and then
2 from where I'm sitting, the dump truck was sitting in front
3 of me. But I seen him go in front of the dump truck. I
4 didn't see him actually stop there, but it turned out he
5 stopped out in front of it.

6 MR. McCUNE: Thank you, Mr. Crowe.

7 No further questions, Your Honor.

8 THE COURT: Any redirect?

9 MR. SIMPSON: No, Your Honor.

10 THE COURT: Any objection to the witness
11 being released, from the State?

12 MR. SIMPSON: No, ma'am.

13 THE COURT: From the Defense?

14 MR. McCUNE: No, Your Honor.

15 THE COURT: Sir, you're excused.

16 THE WITNESS: Thank you.

17 THE COURT: You're welcome.

18 Call your next witness.

19 MR. SIMPSON: The State calls Daniel Beckert.

20 (The witness was sworn.)

21 THE WITNESS:

22 THE CLERK: Please state your full name for the
23 record and spell your last name, please.

24 THE WITNESS: Sure. My first name is Daniel,
25 last name is Beckert, B-E-C-K-E-R-T.

TESTIMONY OF RALPH CROWE

1 DIRECT EXAMINATION

2 BY MR. KIDD:

3 Q Good afternoon Officer Eckert. I appreciate you
4 being patient with us since about 2. Can you tell them
5 where you are employed?

6 A Currently I am employed with the town of Mt.
7 Pleasant. I'm working at the police department, the
8 investigative bureau.

9 Q How long have you worked there?

10 A Starting with Mt. Pleasant on November the 5th,
11 2001. I started as a dispatcher and worked myself up the
12 ranks. Currently I am holding a position with the
13 detective's office.

14 Q Got you. Back in November 2011, what was your
15 duties with Mt. Pleasant Police Department then?

16 A I was assigned as a patrol supervisor. I was a
17 recently-promoted Corporal and assigned to a patrol bureau
18 as a road supervisor.

19 Q Do you recall -- to get right to it, do you recall
20 responding to an auto/pedestrian collision that evening?

21 A Oh, I do.

22 Q November 14th, 2001?

23 A Yes, sir.

24 Q Do you remember approximately what time of the
25 morning?

TESTIMONY OF RALPH CROWE

1 A It was after 3. I want to say like 3:25 in the
2 morning.

3 Q Okay. And you have met with me and talked about
4 this case before?

5 A We have.

6 Q Okay. And I'm going to show you what's been
7 marked as State's 24. Do you recognize this disk?

8 A I do.

9 Q How do you recognize it?

10 A Those are my initials from our meeting on
11 10-10-2013.

12 Q Okay. So, you had the opportunity to view the
13 contents of this disk?

14 A I did.

15 Q What is on it. What does it contain?

16 A That is my in-car dash camera. I was driving in
17 state patrol unit 480 that night which was assigned to me.

18 Q Do the contents of that disk fairly and accurately
19 represent how the scene appeared and how the events unfolded
20 as you arrived on that scene?

21 A Yes.

22 Q And were you the first officer to arrive?

23 A I was.

24 Q Was there anyone in the cruiser with you?

25 A It was just me. We ride single in Mt. Pleasant

TESTIMONY OF RALPH CROWE

1 unless you are working a certain special project. We were
2 one man short so I was working up in that area that night.

3 Q Okay. Let me find it. I am sorry.

4 (Pause.)

5 BY MR. SIMPSON:

6 Q I'll show you what's been marked as State's 22.

7 Do you recognize that photograph?

8 A I do.

9 Q What is that?

10 A That is the intersection between George Broward
11 Boulevard and Highway 17, the town of Mt. Pleasant, City of
12 Charleston, State of South Carolina.

13 Q So, in Charleston County?

14 A Uh-huh.

15 Q Can you put a mark on the screen where you
16 responded to?

17 A Just with my finger, it was right down here. Just
18 down -- oh, I see.

19 Q Sorry, it is a touch screen.

20 A It was right down here in this area of US 17 in
21 the southbound lanes directly in front of the Church of Life
22 park that sits in front of Publix.

23 Q Okay.

24 MR. KIDD: We would offer 23.

25 THE COURT: Any objection?

TESTIMONY OF RALPH CROWE

1 MR. BISCHOFF: Yes, Your Honor, as stated
2 earlier.

3 THE COURT: Admitted subject to the Court's
4 ruling. You may proceed.

5 MR. KIDD: Thank you, Your Honor.

6 BY MR. KIDD:

7 Q Officer Eckert, we have now entered your -- as I
8 have now entered your video into evidence I'm going to play
9 it and I'm going to ask you some questions as we go through
10 it. All right.

11 A Okay.

12 (Playing video.)

13 THE COURT: What number is that?

14 MR. KIDD: Twenty-three.

15 THE COURT: Sorry, I couldn't hear you.

16 BY MR. KIDD:

17 Q I'll stop it for one second to get our bearings
18 straight. And in regards to where this camera view is right
19 now, where is the paving machine?

20 A It's going to be -- it's going to be to the left
21 of my car. It's going to -- the paving machine is in the
22 southbound lane. The cones were up. I pulled in between
23 some cones that were up.

24 The paver is on the left of my vehicle. I
25 didn't have time to spin my car around and get a perfect

TESTIMONY OF RALPH CROWE

1 picture of the paver. So the paver is off to my left.

2 I exited out of my car and walked across 17
3 South; and see a bunch of construction workers gathered
4 around, and the paving machine was off to the left.

5 Q So, is your car right now -- are you parked in the
6 median?

7 A If that's what you want to call it that night.
8 I'm in what I thought was a median when I arrived. You
9 know, it wasn't like a raised median or anything like that.

10 I had on my emergency equipment activated,
11 and wanted to park in what I thought was the safest place.

12 Q So, when we show you this overhead picture, is
13 your car between the southbound and the northbound lanes?

14 A Yes.

15 Q And this video, is that coming through the front
16 windshield of your cruiser?

17 A The front windshield, yes.

18 Q So, when you said that the paver was to left, that
19 would be --

20 A To the left of the driver's side. My car is
21 facing northbound, it's going to be to the left in the
22 southbound lane, facing south.

23 Q Gotcha.

24 (Playing video.)

25

TESTIMONY OF RALPH CROWE

1 BY MR. KIDD:

2 Q What are you doing at this point?

3 A At this point, I was directed to an individual who
4 had been -- what was told to me was struck by a motor
5 vehicle. I found him face down on the rear of a paver
6 spreader, one of those big pieces of machinery that spread
7 pavement out, you see them working on the roadway at night.
8 He was face down.

9 At this point I was trying to render aid to
10 him. I have some basic first aid knowledge, through my
11 training at the Mt. Pleasant Police Department. Our yearly
12 in-service training, they give us basic first aid, and we
13 had recently just had it. And, I mean, it's what you don't
14 want to see.

15 I was doing everything I could. I first
16 checked him for a pulse on his arm. It was faint. So I
17 checked up under his carotid artery and didn't feel
18 anything. And he's face down, and I'm doing everything that
19 I need to do to maintain this individual and protect life
20 you know. What police officers sign up to do. And I'm
21 trying to keep him with me.

22 There was another construction worker that
23 was down there with me, and it got to the point where I
24 didn't think things were going good, the way he was
25 positioned on this paver spreader. So I made the

TESTIMONY OF RALPH CROWE

1 determination that we had to move him as safe as we could
2 without compromising his neck, you know. You always are
3 worried about someone's neck, and you also want to make sure
4 that their airway stays open to keep them breathing.

5 So at that point I made the decision to move
6 him by stabilizing his head and his neck onto the pavement
7 and open up the airway. I couldn't feel the pulse in his
8 carotid artery. When I originally got there, like I said, I
9 felt a faint pulse on his arm. And, I mean, I was going to
10 work to keep this guy going that night. That was what I was
11 there first to do.

12 Q Can you kind of describe the overall scene?

13 A It's chaos, man. I mean, you can see it on the
14 tape. You got people walking up in front of my car.
15 There's lit up everywhere, there's cars everywhere. People
16 are gathered around me. There's cones on the road. You
17 know, I'm trying to save this guy's life. I'm telling -- I
18 don't know if it came up yet, you can hear me a few times on
19 the radio, EMS, you got to expedite. I mean, I knew we had
20 a station in the back of Park West, and I'm like, where are
21 you, you know? It's 3:30 in the morning, not like we're in
22 rush hour traffic, let's get here. This guy wasn't doing
23 well.

24 Q And I just want to talk about why the audio is so
25 good. Is it coming off -- do you have a --

TESTIMONY OF RALPH CROWE

1 A I have a body mic. I mean, we wear a body mic.
2 There's a mic in our car from where we're transporting
3 people that you can turn your camera on. And then you also
4 have a mic on your body. So I had a mic on me.

5 Any time you flip the lights on in that car,
6 your camera comes on, you're recording, you're live. So, I
7 mean, I had it. I was in close proximity to my car, picking
8 up, everything was working properly as it should be.

9 Q All right.

10 (Playing video.)

11 BY MR. KIDD:

12 Q At this point, has EMS arrived?

13 A Yeah. EMS medical was the first unit on scene.

14 Q And so are you -- are you -- what are you shifting
15 your attentions to at this point?

16 A At this point, we go from life saving, you know,
17 trying to save a life, because EMS is there, to figuring out
18 what happened. What caused this incident to occur, to put
19 this man on the back of the paver spreader. Starting an
20 investigation.

21 Q And do you recognize Mr. Hamrick in this case?

22 A I do.

23 Q Did you have the opportunity to speak with him
24 some that evening?

25 A I did.

TESTIMONY OF RALPH CROWE

1 Q Is that kind of about what's about to occur on
2 this video?

3 A Yes.

4 Q Okay. And at this point, what are your
5 intentions?

6 A To figure out what I got. I mean, I didn't know
7 what I had.

8 When I originally arrived on scene, there was
9 a group of construction workers around a guy on the back of
10 a paver spreader who had serious head trauma. There was
11 blood pooling up under the machine. I had just got done
12 focusing all my attention on him, working with him, trying
13 to maintain him until EMS arrived, and now it's time I got
14 to figure out what's going on. What brought me to this
15 intersection tonight.

16 Q All right.

17 (Playing video.)

18 BY MR. KIDD:

19 Q And that ticker in the top right corner of the
20 video, what is that?

21 A That's -- in the top right corner is the time,
22 under my name.

23 Q And what time is it at this point?

24 A It's 3:34.

25 Q What time did Mr. Hamrick tell you it was?

TESTIMONY OF RALPH CROWE

1 A Three o'clock.

2 (Playing video.)

3 BY MR. KIDD:

4 Q It might not have been 100 percent clear, but what
5 was his response when you asked him did you not see him?

6 A I didn't see him. You know, he said something to
7 the effect that I don't want to say what happened, but he
8 wasn't there. I didn't see him.

9 (Playing video.)

10 BY MR. KIDD:

11 Q Officer Beckert, do me a favor. Would you stand
12 up for me? How tall are you?

13 A About 6'7".

14 Q Six-seven?

15 A Yeah.

16 Q How much do you weigh?

17 A About 285.

18 Q Two eighty-five. You're a little bit taller than
19 Mr. Hamrick?

20 A Yes.

21 Q But you can see in the video, he's not much
22 shorter than you; is that accurate?

23 A Correct.

24 Q Thank you. You may have a seat.

25 (Playing video.)

TESTIMONY OF RALPH CROWE

1 BY MR. KIDD:

2 Q At this point, what did you start to do?

3 A Continue the investigation even further.

4 Sergeant Winstead had arrived on scene. He
5 was briefed on everything we had. He was in the process of
6 calling out the traffic investigation bureau to come assist
7 in this serious collision.

8 At this point, I was trying to begin
9 separating people. I wanted to get independent stories of
10 people's accounts from this collision, what they witnessed.
11 I didn't want five or six people sitting around, trying to
12 make -- embellish the story and make it bigger than what it
13 was. I wanted to get each person's individual account.

14 Q And that's something you're trained to do as a
15 police officer when you're interviewing witnesses?

16 A That's correct.

17 Q And did you do that in this case?

18 A I did.

19 Q Did you take written statements?

20 A We did.

21 Q Did you attempt to keep the witnesses you took
22 statements from separate from one another?

23 A I was putting people in the front seat of my car,
24 and other cars of officers that arrived, telling people
25 don't talk to anyone, doing everything I could to keep

TESTIMONY OF RALPH CROWE

1 everyone separated.

2 Q And you arrived on scene within minutes of this
3 collision?

4 A I was in the north end of the town. Yeah.

5 Q Where were you?

6 A I want to say I was in the area of 17 and 41, if I
7 -- to the best of my recollection. Because I remember at
8 one point when we reviewed this, that dispatch wasn't really
9 a hundred percent sure where the collision was, but I knew
10 that I'd been up and down 17 that night patrolling, and I
11 said at one point, hey, they were up near Publix, so that's
12 where I'm heading to.

13 Q Okay. So, you were south of where the collision
14 occurred?

15 A Correct.

16 Q At 17 and 41?

17 A Correct.

18 Q And how -- can you approximate how far 17 and 41
19 is from where this occurred?

20 A Probably about two mile, three miles, at best
21 guess.

22 Q So, assuming a little delay for 911, and dispatch
23 and some transport time, within a few minutes would be a
24 fair guess?

25 A Yes. That would be a fair guess.

TESTIMONY OF RALPH CROWE

1 MR. KIDD: Court's indulgence.

2 BY MR. KIDD:

3 Q So that conversation you had with Mr. Hamrick, did
4 he tell you where he was employed?

5 A He did. He said at Dog and Duck.

6 Q Do you know where the Dog and Duck is located?

7 A It is in the Publix shopping center, right behind
8 where this collision occurred at.

9 Q Can you -- do you see the Publix shopping center
10 on this?

11 A This is -- I mean, it's full size. This is the
12 Publix shopping center right here. Dog and Duck sits more
13 up like right up in there.

14 Q So, he told you that's where he was employed?

15 A Correct.

16 Q And he told you that he only drank one beer?

17 A One beer. One Yuengling.

18 Q And what time did he tell you he drank that?

19 A One o'clock.

20 Q Did you smell alcohol on the Defendant?

21 A There was so much stuff going on, I mean, I didn't
22 note it in my report. I can't answer that. I really don't
23 remember.

24 I mean, it was a chaotic scene. I mean, you
25 could see on the video. Even when I was interviewing him,

TESTIMONY OF RALPH CROWE

1 officers were still arriving on scene, EMS personnel were
2 telling me that they are going to fly the victim. You know,
3 people were saying, do we need to set up a landing zone?

4 Yeah, I was trying to talk to him, I was
5 trying to focus on him, but, I mean, I was multi tasking at
6 its best that night.

7 Q And then you offered him field sobriety tests?

8 A I did.

9 Q Are you trained in giving them?

10 A Yes.

11 Q And did he agree to do those tests?

12 A He said he wouldn't do the tests.

13 Q And at that point, what did you do from there?

14 And that might be kind of what we just talked about.

15 A I told him he wasn't free to go. I mean, we had a
16 collision to investigate, we had witnesses to interview. I
17 mean, the night was young. We had a lot more paperwork to
18 do. We had to put this back together.

19 I was getting worried that the traffic team
20 was coming out. And they come out when you got serious
21 collisions, and they investigate them to the fullest.

22 Basically, we were in the holding pattern.
23 We were waiting for the traffic team to get there and, you
24 know, we had a crime scene that we had to tend to.

25 Q I'll show you what's been marked as State's

TESTIMONY OF RALPH CROWE

1 Exhibit 20. Do you recognize that photograph?

2 A That's the paver spreader.

3 Q In relation to this paver, where was your vehicle?

4 I mean, when you arrived?

5 A My vehicle was way up here. The paver spreader
6 sat back behind me.

7 Q And where was Mr. Garland's body positioned when
8 you got there?

9 A He was face down right on the back of the paver
10 spreader. Like his legs were folded up under him.

11 MR. KIDD: The Court's indulgence.

12 THE COURT: Uh-huh.

13 BY MR. KIDD:

14 Q Did y'all begin to close down the active lane
15 while you were out there?

16 A I didn't mess with any cones. My focus was on the
17 individual who was on the back of the paver spreader.

18 Q Was traffic still coming through by you when you
19 arrived?

20 A I don't even remember because I know this lane --
21 they were working in this lane, so I felt fairly safe and
22 fairly confident there. I had at least one set of blue
23 lights, that being mine.

24 I mean, I don't -- I really don't remember if
25 people were moving cones, if people were doing traffic.

TESTIMONY OF RALPH CROWE

1 Again, my sole focus was the victim that night, at that
2 point in the investigation.

3 Q And I just want to recap, just to make sure. Some
4 of the audio is kind of hard to hear.

5 When you were speaking with the Defendant,
6 Mr. Hamrick, did he ever indicate that he saw the victim
7 that he struck before he struck him?

8 A No.

9 Q Did he indicate that he didn't see him until in
10 the rear view mirror?

11 MR. BISCHOFF: Objection, Judge. Leading.

12 THE COURT: Sustained. Leading. Rephrase.

13 MR. KIDD: No further questions, Judge.

14 THE COURT: Any questions of the witness?

15 MR. BISCHOFF: Yes, ma'am, please.

16 THE COURT: You may proceed.

17 CROSS EXAMINATION

18 BY MR. BISCHOFF:

19 Q Officer, good afternoon.

20 A Hey. Good afternoon.

21 Q You really ought to be commended for the job you
22 did. Obviously, though, you were the first responder, and
23 it was chaotic, but you did a truly fantastic job.

24 Let me ask you, can we be sure what time you
25 arrived on scene by looking at dispatch records?

TESTIMONY OF RALPH CROWE

1 A Well, I would answer that -- I mean, we're
2 required to have a camera. It's required to have a clock in
3 it. It's required to be tested and be functioning. I don't
4 know that my camera coincides exactly with what the dispatch
5 time was on their computer. I mean, everyone's, you know,
6 clocks can be a minute off here. You know, there can be
7 time off.

8 Q No, I understand. That's not my question, though.

9 But my question is, if dispatch said the call
10 came in at 3:24:19, would you agree with that number?

11 A I mean, if that's what time they gave me.

12 Q Would you recognize a dispatch log if you saw one?

13 A Sure.

14 MR. BISCHOFF: Your Honor, may I approach the
15 witness?

16 THE COURT: You may.

17 BY MR. BISCHOFF:

18 Q Let me know if you recognize that. Tell me what
19 time the call came in, or if you recognize what time you
20 arrived.

21 A The call was received at 3:24:19. It says, first
22 unit on scene. Hang on one second. It said I was on scene
23 at 3:25:30.

24 Q Okay.

25 A 3:25. And that is the town of Mt. Pleasant Mt.

TESTIMONY OF RALPH CROWE

1 Pleasant dispatch log.

2 Q Correct. Okay. Yeah. So, I believe your clock
3 in your car is correct?

4 A Sure, I guess -- I mean, I guess. I don't know.

5 Q Well, let's pull it up. Was it 25?

6 MR. KIDD: Twenty-four.

7 (Playing audio.)

8 BY MR. BISCHOFF:

9 Q Yes.

10 A Well, it's saying 3:25:50, and I believe that said
11 3:25.

12 Q It's off by a couple seconds.

13 A 3:25:30, when I came on scene. I mean, if we're
14 going to get technical here. I'm not even there yet, I'm
15 not even parked in the road or out of my car.

16 Q So it could be off by a second or a minute, but
17 fairly close.

18 A Sure.

19 Q And when you responded, you testified earlier that
20 EMS arrived on scene rather quickly?

21 A No. It seemed like it took forever. Medical 11
22 was the first to arrive. I questioned myself why the fire
23 department wasn't there when they're at the back of the Park
24 West.

25 Q But you were the only one there until EMS arrived?

TESTIMONY OF RALPH CROWE

1 A Yes.

2 Q And then they took over?

3 A Yes.

4 Q And then you began to separate witnesses, and you
5 do that so that people are separated, they can't talk with
6 one another about what happened. And it basically maintains
7 integrity about what they saw, correct?

8 A Correct.

9 Q And you testified that after you spoke with
10 Mr. Hamrick -- that's you on the video talking with
11 Mr. Hamrick, correct?

12 A Correct.

13 Q And after you testified -- you testified that you
14 spoke with him, you separated him, I told him to stay with
15 Officer Ballinger -- was that who was at the scene?

16 A I told him to hang out at the front of my car, you
17 know, that he wasn't free to go. Eventually, we put Office
18 Ballinger up there with him, yes.

19 Q So, after you were done talking with him --

20 A To keep him separated from the other people there.

21 Q And other officers had arrived on scene at that
22 point, when you told him he wasn't free to go?

23 A Correct. I told him he wasn't free to go.

24 Q And you testified that the attempt, when you are
25 investigating everything, is to put everything back

TESTIMONY OF RALPH CROWE

1 together. Essentially, to recreate what happened?

2 A Yes.

3 Q Because you didn't see it, you weren't there.

4 A I wasn't there, no.

5 Q And the attempt is to try to figure out exactly
6 where everybody was at the moment of the accident?

7 A To try to figure out what occurred, yes.

8 Q But you were not the lead investigator?

9 A No. No.

10 Q You've been promoted since then, and now you are a
11 detective. But that night you are just sort of working
12 patrol?

13 A We called out the traffic reconstruction team that
14 night, yes. I was assigned to a patrol district that night.
15 Yeah.

16 Q So, even though, you were actually the first
17 responder and had a lot of duties, your responsibility was
18 not necessarily to figure out what happened, but to help aid
19 the traffic?

20 A Correct.

21 Q And in the video, it shows you arriving on scene.
22 You're traveling northbound?

23 A Correct.

24 Q And you testified that you drove as close to the
25 paver as you could?

TESTIMONY OF RALPH CROWE

1 A I drove to where I could -- where there was a
2 group of people congregating.

3 Q And in order to do that you had to cross over what
4 used to be a median, but now it's paved?

5 A I think it was a raised median now. There were
6 cones up all over the place that night. I put myself in
7 what I thought was a safe area, you know, with my lights on.

8 Q It was difficult to tell?

9 A It was, I mean.

10 Q And -- but everything was paved. There's no grass
11 median, there's no curb. You didn't have to hop over
12 anything?

13 A They were in the process of tearing it up. I
14 mean, it was -- I think I went home with some tar on my
15 shoes that night.

16 Q But ultimately everything is essentially paved or
17 being paved. I mean, there's no grass median or anything,
18 you were able to go to the southbound side?

19 A Correct.

20 Q And one more thing, just for clarification. You
21 wrote in your report that when you got there, you noticed
22 Mr. Garland was wearing a heavy work jacket?

23 A Yes.

24 Q And did he have his vest over top of that?

25 A I don't remember.

TESTIMONY OF RALPH CROWE

1 Q You don't remember?

2 A I really don't remember.

3 MR. BISCHOFF: Detective, thank you.

4 THE WITNESS: Thank you.

5 THE COURT: Any redirect?

6 MR. KIDD: No further questions, Your Honor.

7 THE COURT: Any objections to the witness
8 being excused subject to being recalled?

9 MR. BISCHOFF: No, ma'am.

10 THE COURT: Sir, you're excused subject to
11 being recalled.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: You're welcome, sir.

14 MR. SIMPSON: Judge, can we approach?

15 THE COURT: Uh-huh.

16 (Discussion off the record.)

17 THE COURT: Mr. Foreman, ladies and
18 gentlemen, we're going to take an advantage of
19 this break in testimony to take our evening
20 recess. We will resume in the morning at 9:30
21 with testimony.

22 During the break, please do not discuss the case
23 in any manner whatsoever among yourselves with anyone
24 else. Please do not read, watch, or listen to any
25 potential media accounts about this case, as well as a

TESTIMONY OF RALPH CROWE

1 reminder that you are prohibited from doing any
2 independent research of any type on the Internet.

3 Please do not discuss your jury service on any
4 social networking sites, and again, please be reminded
5 not to have any contact with anyone in or about the
6 courthouse.

7 If you will leave your notes pads in your seat, we
8 will secure those during the recess.

9 And again, we'll resume in the morning at 9:30.
10 You'll come directly to the jury room.

11 Have a great evening. We'll see you in the
12 morning.

13 (Jury exits.)

14 THE COURT: Anything before we adjourn for
15 the evening, from the State?

16 MR. KIDD: No. I apologize, there was one
17 thing. Mr. Banks the owner of the construction
18 company advised me at the lunch break. Sorry, I
19 meant to advise you earlier, that he knows our
20 foreman. The nature is not a social one. I
21 believe that they both served on a board at
22 Trident Tech.

23 THE COURT: I imagine that is a fairly large
24 board, isn't it?

25 MR. KIDD: I would think so. I don't see any

TESTIMONY OF RALPH CROWE

1 problem. I told Mr. Bischoff as soon as I was
2 advised of it.

3 THE COURT: He was on the list of witnesses?

4 MR. KIDD: No, ma'am, he was not a potential
5 witness.

6 THE COURT: But we asked, did anybody know of
7 anyone regarding Banks -- I remember I asked a
8 question specifically.

9 MR. KIDD: You did, you asked on voir dire
10 about anyone with Banks Construction.

11 THE COURT: He didn't acknowledge that. Is
12 there any objection.

13 MR. BISCHOFF: No, ma'am.

14 THE COURT: I need to know how many remaining
15 witnesses does the State have. Do you -- I guess,
16 if you could tell me the numbers.

17 MR. KIDD: Eleven remaining.

18 THE COURT: Tell me who you are -- are you
19 calling Andrew Harris?

20 MR. KIDD: Yes, Judge.

21 THE COURT: Kievet Heyward, Basille?

22 MR. KIDD: Yes, ma'am.

23 THE COURT: Fallaw, F-A-L-L-A-W. Mitchell,
24 Haupt, Kinard, Williams, Coleman, Brown, Johnson,
25 Michael Buchanan?

TESTIMONY OF RALPH CROWE

1 MR. KIDD: No, ma'am. All yes before that.

2 THE COURT: Calzada?

3 MR. KIDD: No, ma'am. Other than that, all
4 we have is Dr. Murk. Other than that, the ones
5 that we just called out.

6 THE COURT: Okay, Figueroa?

7 MR. KIDD: No, ma'am.

8 THE COURT: That leaves J. L. Booker with the
9 Highway Patrol.

10 MR. KIDD: I assume we have a stipulation
11 that we are going to publish as to his testimony.

12 THE COURT: So you are not calling him?

13 MR. KIDD: I'm not calling him.

14 THE COURT: And then Dr. Murk.

15 MR. KIDD: Correct. I know that it might be
16 convenient. Jennifer Brown is out of the country
17 and comes back tomorrow night.

18 THE COURT: You might want to gauge at lunch
19 Mr. Bischoff whether you need to have witnesses
20 here in the afternoon depending on how quickly
21 this goes. I would imagine that these chain
22 witnesses would go very quickly.

23 MR. BISCHOFF: Okay, we can do that.

24 THE COURT: I would gauge it at lunch. Which
25 witness deals with the HSN -- sorry, HGN?

TESTIMONY OF RALPH CROWE

1 MR. KIDD: That would be --

2 MR. BISCHOFF: Andrew Harris.

3 MR. KIDD: Andrew Harris.

4 MR. BISCHOFF: We can do him in the morning.

5 THE COURT: He don't testify until Thursday.

6 MR. KIDD: No, he's here.

7 THE COURT: Aidan?

8 MR. KIDD: Andrew.

9 THE COURT: Andrew Harris, sorry. I'm trying
10 to monitor which motions we have left. Did y'all
11 work out the jail recordings?

12 MR. KIDD: I believe that we did.

13 MR. BISCHOFF: Yes, we did.

14 THE COURT: That is resolved; I don't need to
15 be worried about that?

16 MR. KIDD: I think that we agreed to it. If
17 you are interested I can submit to you --

18 THE COURT: Not particularly. Unless you
19 have someone screaming about it I don't need to
20 listen to it. If you have agreed to what you are
21 going to publish, I don't need to listen to it in
22 advance. I guess my question is, have you all
23 resolved those things and come to an agreement
24 about what will be published?

25 MR. SIMPSON: I believe that we have, Your

TESTIMONY OF RALPH CROWE

1 Honor.

2 THE COURT: Mr. Bischoff, is that your
3 understanding?

4 MR. BISCHOFF: I believe that we have agreed
5 about what can be played to the jury, but you
6 still need to lay the foundation.

7 MR. SIMPSON: Oh, certainly.

8 MR. BISCHOFF: Then we are in agreement.

9 THE COURT: Okay. Is there anything else
10 that we need to take up before we adjourn for the
11 evening from the State?

12 MR. KIDD: No, ma'am.

13 THE COURT: From the Defense?

14 MR. BISCHOFF: Judge, not at all. What time
15 in the morning, 9:30?

16 THE COURT: 9:30.

17 MR. BISCHOFF: Thank you, Judge.

18 THE COURT: You are welcome. Have a good
19 evening.

20 (Trial is adjourned for the day. Proceedings
21 continued in Volume 4.)

22

23

24

25

REPORTER'S CERTIFICATE PAGE

CERTIFICATE

1

2

3

STATE OF SOUTH CAROLINA:

4

COUNTY OF CHARLESTON:

5

6

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

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DATED this 1st day of May, 2014.

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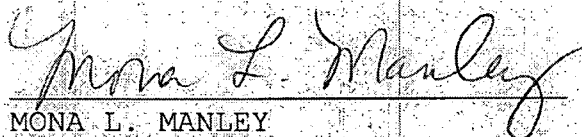
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1 State of South Carolina }
2 County of Charleston } Indictment No. 2012GS101033
3 State of South Carolina, }
4 Plaintiff, }
5 vs. } Trial Transcript
6 Daniel D. Hamrick, }
7 Defendant. }

8

9 VOLUME 4

10

11

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13

14

15 October 23, 2013

16 Charleston, South Carolina

17

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19

20

21 BEFORE:

22 The Honorable Deadra Jefferson

23

24

25

1 **APPEARANCES**

2

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THE COURT: Is the State ready to proceed?

4

MR. KIDD: We are, Judge.

5

THE COURT: Is the Defendant ready to

6

proceed?

7

MR. BISCHOFF: We are, Judge. We have a

8

couple of stipulations, or at least I think. We

9

will do one of them now. One is a stipulation,

10

the MAI team was involved in evaluating

11

Mr. Hamrick's vehicle. We agreed upon the

12

stipulation with regard to what they did. And

13

then also a stipulation regarding the weather, if

14

I may approach.

15

THE COURT: Uh-huh.

16

(Pause.)

17

THE COURT: Okay. Do y'all want to publish

18

these to the jury?

19

MR. BISCHOFF: I'll ask them to be published

20

this morning.

21

THE COURT: I don't generally publish them.

22

MR. BISCHOFF: Okay.

23

THE COURT: You have to depend on whether you

24

want to make it a joint exhibit and how you would

25

like to do it. I will inform the jury that it is

STIPULATIONS

1 a joint agreement, but you will have to decide in
2 whose case.

3 MR. KIDD: If you don't mind me reading them
4 to the jury, I'll publish both of them.

5 THE COURT: That's fine. Any exception by
6 the Defendant?

7 MR. BISCHOFF: No, ma'am.

8 MR. KIDD: Would we then mark them and number
9 them?

10 THE COURT: If you would like. It depends on
11 what you agree upon. Joint Exhibits 1 and 2.

12 *(Whereupon, Joint Exhibit Nos. 1-2 were marked for*
13 *identification and received in evidence.)*

14 *(Jury enters the courtroom.)*

15 THE COURT: You may be seated. Ladies and
16 gentlemen, I hope that you all had a great
17 evening. We are now ready to resume testimony.
18 I'll ask that you give the attorneys your
19 attention. You may call your next witness.

20 MR. KIDD: Thanks, Judge. First, we would
21 like to enter two stipulations.

22 THE COURT: Mr. Kidd is going to read a joint
23 stipulation entered as a joint exhibit by both the
24 Defense and Plaintiff -- State and Defense. You
25 may proceed.

STIPULATIONS

1 MR. BISCHOFF: Judge, briefly, may I renew my
2 objection to this witness?

3 MR. KIDD: To the stipulation?

4 MR. BISCHOFF: Sorry, not to the stipulation,
5 to the doctor.

6 THE COURT: Yes. We are mixing apples and
7 oranges. Let's stay in one lane. You may
8 continue.

9 MR. KIDD: The State and the Defense hereby
10 agree and stipulate that the Jeep Commander owned
11 and operated by Daniel Hamrick was inspected by
12 the MAI team, and the MAI team is the
13 Multi-disciplinary Accident Investigation Team of
14 the South Carolina Highway Patrol on
15 December 14th, 2011.

16 The conclusion of that mechanical inspection was
17 that no mechanical failure of that vehicle contributed
18 to the collision that occurred on November the 14th,
19 2011.

20 The second stipulation is the State and counsel
21 for the Defendant hereby stipulate and agree that on
22 November 14th of 2011 the maximum temperature for Mt.
23 Pleasant, South Carolina was 77 degrees Fahrenheit and
24 the minimum temperature was 48 degrees Fahrenheit.

25 They also stipulate and agree that the

STIPULATIONS

1 temperatures by hour on November 14th, 2011 in Mt.
2 Pleasant, South Carolina were as follows: One, at 3:15
3 a.m. it was 50 degrees; at 3:35 it was 50 degrees;
4 3:55, 48.2 degrees; 4:15 a.m., 48.2; 4:35 a.m., 48.2;
5 4:55 a.m., 48.2.

6 THE COURT: Call your next witness.

7 MR. KIDD: The State calls Dr. Murk.

8 MR. BISCHOFF: Judge, at this time I renew my
9 specific objection, under 403, as I did in my
10 Motion in Limine.

11 THE COURT: Overruled. It goes to the weight
12 of the Defense, which the State has to prove
13 beyond a reasonable doubt.

14 Thereupon,

15 DR. STEPHAN MURK

16 was called as a witness, having been first duly sworn by the
17 Clerk, was examined and testified as follows:

18 THE CLERK: Please, Doctor, state your full
19 name and spell your last name.

20 THE WITNESS: Dr. Stephan M. Murk. Last name
21 is spelled M-U-R-K.

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MR. KIDD:

25 Q Thank you for being here, Dr. Murk. I know that

TESTIMONY OF DR. MURK

1 you have a busy schedule. Can you tell the jury where you
2 work?

3 A Currently I work for AGAPE Senior Primary Care.
4 And I am the medical director at the Sandpiper Rehab and
5 Nursing Center.

6 Q And what is your profession?

7 A I practice internal medicine as a physician.

8 Q Are you licensed in South Carolina?

9 A I am.

10 Q And how long have you held your medical license in
11 South Carolina?

12 A In South Carolina, for five years.

13 Q Where did you go to medical school?

14 A Medical school was the Medical College of
15 Wisconsin. I graduated in 1992.

16 Q Did you then go on to do a residency?

17 A I trained in internal medicine at Brown University
18 in Rhode Island.

19 Q About what year did you do that residency?

20 A My training was 1992 to 1995.

21 Q And is that kind of general area of practice that
22 you currently participate in, internal medicine?

23 A Yes, I have practiced internal medicine my whole
24 career. And I have been doing some geriatric work recently.

25 Q And so -- how many years have you practiced

TESTIMONY OF DR. MURK

1 medicine?

2 A From '95 until now. I guess that's 18 years.

3 MR. KIDD: Judge, at this point we would like
4 to have Dr. Murk qualified as an expert in
5 internal and general practice medicine.

6 THE COURT: Any objections or questions as to
7 his expertise?

8 MR. BISCHOFF: Not to internal medicine, no,
9 Your Honor.

10 THE COURT: Is that the scope of his
11 expertise?

12 MR. KIDD: And as a general physician.

13 MR. BISCHOFF: General physician specializing
14 in internal medicine?

15 MR. KIDD: Yes.

16 MR. BISCHOFF: No objection.

17 THE COURT: So accepted, you may proceed.

18 BY MR. KIDD:

19 Q Through your practice at Sandpiper; is that
20 correct?

21 A Correct.

22 Q Did you have the opportunity to treat and see
23 Ahmad Garland?

24 A Yes.

25 Q Is he currently one of your patients?

TESTIMONY OF DR. MURK

1 A Yes.

2 Q Can you, as part of your duties in treating
3 Mr. Garland, would you review some of his past medical
4 history?

5 A Yes.

6 Q Can you describe to the jury some of the original
7 injuries he suffered as a result of the collision back in
8 2011?

9 A Yes. From the records that I have reviewed he
10 suffered a depressed skull fracture. He had internal
11 bleeding in the brain, subarachnoid hemorrhage and
12 intracerebral hemorrhage. He suffered multiple facial
13 fractures. He had a collapsed lung which required
14 mechanical ventilation on a ventilator. He had an ankle
15 fracture and he also had internal bleeding in his abdomen
16 which required exploratory surgery.

17 Q Would you describe these surgeries as serious
18 injuries?

19 A Very serious injuries.

20 Q Were they life-threatening?

21 A At the time, yes.

22 Q And can you tell the jury a little bit -- did
23 Mr. Garland suffer a brain injury?

24 A He suffered very significant brain injury.

25 Q Can you describe to the jury what Mr. Garland's

TESTIMONY OF DR. MURK

1 current situation is?

2 A Yeah. Mr. Garland is essentially -- he is -- he
3 doesn't walk, he's not ambulatory, so he's either in bed or
4 in a wheelchair. He has very, I would say, minimal or no
5 meaningful interaction with people. When he is awake he
6 doesn't really focus his attention when I'm in the room with
7 him. He doesn't respond to any voice commands. He doesn't
8 respond to -- he doesn't follow commands. He doesn't really
9 speak. He is pretty much just laying there in bed.

10 Q Were he here would he be able to participate in
11 this trial?

12 A No.

13 Q Going forward in life, does he have a chance of
14 improving?

15 A He is two years out from his injuries just about
16 and I would say he has very little chance of improving at
17 this point.

18 Q Can you tell the jury what kind of facility
19 Sandpiper is?

20 A Sandpiper is a skilled nursing rehab facility.
21 Basically it is a nursing home.

22 Q And he receives kind of around-the-clock care
23 there?

24 A He receives 24-hour care, correct.

25 Q And do you expect that level of care to be

TESTIMONY OF DR. MURK

1 necessary in the future?

2 A Yes, he has several skilled nursing needs. He is
3 fed through a tube into his stomach and he needs constant
4 repositioning to prevent bed sores and things like that.

5 MR. KIDD: I have no further questions for
6 Dr. Murk.

7 THE COURT: Any questions for the witness?

8 MR. BISCHOFF: Your Honor, I don't have any
9 questions for this witness.

10 THE COURT: Any objection to Dr. Murk being
11 excused?

12 MR. KIDD: Not from the State.

13 THE COURT: From the Defendant?

14 MR. BISCHOFF: No, Your Honor.

15 THE COURT: Doctor, you are excused.

16 You may call your next witness.

17 MR. SIMPSON: The State calls Susan Johnson.

18 *(Whereupon, State's Exhibit No. 36 was marked for*
19 *identification.)*

20 Thereupon,

21 SUSAN JOHNSON

22 was called as a witness, having been first duly sworn by the
23 Clerk, was examined and testified as follows.

24 THE CLERK: Please state your full name,
25 spelling your last name.

TESTIMONY OF SUSAN JOHNSON

1 THE WITNESS: Susan Johnson, J-O-H-N-S-O-N.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MR. SIMPSON:

5 Q Thank you, Your Honor. Good morning, Ms. Johnson.

6 A Good morning.

7 Q How are you today?

8 A Good.

9 Q Okay. Where do you currently work?

10 A For T-Mobile.

11 Q And what kind of company is T-Mobile?

12 A It is a cellular telephone company.

13 Q And what is your occupation at T-Mobile?

14 A I am a senior specialist. As a senior specialist

15 we respond to subpoenas from various law enforcement

16 agencies across the United States as well as testify as the

17 custodian of records in court across the United States.

18 Q Where do you live?

19 A In New York.

20 Q Thank you for being here.

21 A couple of things, you said that you are the

22 custodian of records for T-Mobile?

23 A Correct.

24 Q What kind of records does T-Mobile maintain for

25 its customers?

TESTIMONY OF SUSAN JOHNSON

1 A Subscriber information, which tells us who the
2 account holder is and then call detail records, which is
3 incoming and outcoming phone calls and text messages which
4 are made or received by a cellular phone.

5 Q If you receive a subpoena, how do you respond?

6 A We respond electronically or through the fax
7 machine.

8 MR. SIMPSON: Your Honor, may I approach the
9 witness?

10 THE COURT: You may.

11 BY MR. SIMPSON:

12 Q Ms. Johnson, I'm showing you what's been marked
13 for ID only as State's 36. Can you take a moment and review
14 that?

15 A I have looked at it.

16 Q Okay. And do you recognize that document in front
17 of you?

18 A Yes, I do.

19 Q And what is that?

20 A Call detail records.

21 Q And these are maintained in the regular course of
22 your business?

23 A Yes, they are.

24 Q For what number -- what number do those call
25 detail records apply to?

TESTIMONY OF SUSAN JOHNSON

1 A [REDACTED] .

2 Q And what sort of information would those business
3 records reflect?

4 A The incoming and outgoing phone calls made to that
5 cellular telephone.

6 Q Does it include phone calls made by that cellular
7 phone?

8 A Yes.

9 MR. SIMPSON: Your Honor, at this point, I
10 would seek to admit State's 36 into evidence as
11 business records.

12 THE COURT: Any objection?

13 MR. BISCHOFF: Your Honor, I don't believe
14 that a sufficient foundation has been made. I
15 would object under relevance at this point.

16 THE COURT: Approach please, with the
17 document.

18 (Off-the-record discussion.)

19 THE COURT: Proceed.

20 MR. SIMPSON: Thank you, Your Honor. May I
21 approach the witness?

22 THE COURT: Yes, you may.

23 BY MR. SIMPSON:

24 Q I am handing the witness again what's marked as
25 State's 36 for ID only. Ms. Johnson, in the top right-hand

TESTIMONY OF SUSAN JOHNSON

1 corner does it indicate that the number for which the
2 records apply?

3 A Yes, it does.

4 Q And I am sorry, I think it was a slip-up, but can
5 you read the number one more time?

6 A [REDACTED].

7 Q And you are the custodian of these records for
8 T-Mobile?

9 A Yes, sir.

10 MR. SIMPSON: Your Honor, pursuant to our
11 discussion at the Bench the State moves it into
12 evidence at this time.

13 MR. BISCHOFF: No objection.

14 THE COURT: Marked and admitted without
15 objection.

16 *(Whereupon, State's Exhibit No. 36 was received in*
17 *evidence.)*

18 MR. SIMPSON: May I approach the witness,
19 Your Honor?

20 THE COURT: You may.

21 Q Ms. Johnson, do you see the records reflected up
22 on this screen -- on the screen in front of you?

23 A Yes, I do.

24 Q Are those zoomed in sufficiently for you to
25 identify those records?

TESTIMONY OF SUSAN JOHNSON

1 A Yes.

2 Q Can you explain to the jury what the non-redacted
3 records, what information that reflects to you as the
4 custodian of the cell phone?

5 A Sure. The first column gives us the date that the
6 call was placed or received. The next column indicates to
7 me this is an outbound call. The reason being is the city
8 of Charleston, South Carolina is listed. What that means is
9 that the [REDACTED] exchange belongs to Charleston, South
10 Carolina. The call was made at 1:01 a.m. in the morning and
11 the number that the cellular telephone called was
12 [REDACTED]. We then billed that call at three minutes.
13 We round up in one-minute increments, so if the call is one
14 minute we are going to -- one minute two seconds we are
15 going to bill it at two minutes. If it's 53 seconds we will
16 round it up and bill it at one minute.

17 Q Okay. And the next call?

18 A The next call is November 14th, 2011 made to Mt.
19 Pleasant, South Carolina at 2:25 a.m. The number that was
20 called was [REDACTED] and we billed that call at two
21 minutes.

22 Q And this is perhaps clearer looking at the whole
23 document, but the numbers 3, 2, 2, and 5 indicate the
24 duration of the call, assuming the rounding, of course?

25 A Correct.

TESTIMONY OF SUSAN JOHNSON

1 Q So, a two-minute call lasted somewhere between one
2 minute and two minutes?

3 A Correct.

4 Q Okay. Can you indicate the third call?

5 A Sure. November 14th, 2011 at 3:20 a.m., there was
6 an outbound call to Mt. Pleasant, South Carolina to the same
7 phone number of the [REDACTED]. And we billed that call
8 at two minutes.

9 Q Next call?

10 A November 14th, 2011, an outbound call to Mt.
11 Pleasant, South Carolina at 3:24 a.m. to the same phone
12 number of [REDACTED] and we billed that call at five
13 minutes.

14 Q Ms. Johnson, so the call that began at 3:20 would
15 have ended in what time range?

16 A 3:22, 3:21.

17 Q And the call at 3:24?

18 A Would have ended five minutes later, 3:29.

19 Q Between four and five minutes later?

20 A Correct.

21 MR. SIMPSON: I have no further questions of
22 this witness?

23 THE COURT: Any questions of the witness?

24 MR. BISCHOFF: Yes, briefly.

25 CROSS EXAMINATION

TESTIMONY OF ANDREW HARRIS

1 BY MR. BISCHOFF:

2 Q And can you tell whether or not the [REDACTED] is a
3 land line or cellular telephone?

4 A No.

5 Q And you can't tell whether the call was actually
6 made from?

7 A Correct.

8 Q Okay. Thank you.

9 A Sure.

10 THE COURT: Any redirect?

11 MR. SIMPSON: No, Your Honor.

12 THE COURT: Any objection to the witness
13 being excused?

14 MR. SIMPSON: No, Your Honor, not from the
15 State.

16 THE COURT: From the Defense?

17 MR. BISCHOFF: No, Your Honor.

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

19 THE WITNESS: Thank you.

20 THE COURT: You are welcome. You may call
21 your next witness.

22 MR. KIDD: The State calls Andrew Harris.

23 Thereupon,

24 ANDREW HARRIS

25 was called as a witness, having been first duly sworn,

TESTIMONY OF ANDREW HARRIS

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. KIDD:

4 Q Good morning, Officer Harris.

5 A Good morning.

6 Q Can you tell the jury where you are currently
7 employed, please?

8 A The Mt. Pleasant Police Department.

9 Q And how long have you been with the Mount Pleasant
10 Police Department?

11 A I have been with them for ten years.

12 Q What are your current duties with Mt. Pleasant?

13 A Currently field training officer with the patrol
14 division. I train the new officers that come in.

15 Q And back in November of 2011 what were your duties
16 at Mt. Pleasant at that time?

17 A I was assigned to the traffic division as a road
18 officer.

19 Q Can you tell the jury what the traffic division
20 is?

21 A We enforce traffic laws. We are -- primarily do
22 traffic enforcement, traffic education, DUI enforcement,
23 collision reconstruction, special events, Christmas parade,
24 July 4th, those types of things.

25 Q As a part of your job at Mt. Pleasant did you

TESTIMONY OF ANDREW HARRIS

1 receive any specific training in the detection of impaired
2 drivers?

3 A I have.

4 Q Can you tell the jury about that training?

5 A I received advanced -- advanced DUI detection back
6 in, I believe it was '04 or '05. It was a two-day class
7 where you learn horizontal gaze nystagmus, walk and turn and
8 just an advanced class offered through the State.

9 Q When you said, horizontal gaze nystagmus and the
10 walk and turn, what are those?

11 A Those are the standard field sobriety tests.

12 Q Do you receive any kind of follow-up training on
13 that?

14 A The State did begin to offer a re-qualification,
15 or whatever you want to call, a re-cert beginning last year,
16 so I had that last year. But until then, as far as that
17 class goes, that is the last time that I had it.

18 Q Do you have any certifications in that field?

19 A I do have a certification for that course. And I
20 have also been offered or I have taken a course that they
21 offered, which is prosecuting the impaired driver. I have
22 had that twice, in '08 and '09, I believe.

23 Q As part of your duties at Mt. Pleasant, did you
24 have the chance to make traffic stops in which impaired
25 drivers were involved?

TESTIMONY OF ANDREW HARRIS

1 A Yes.

2 Q And conduct these tests on the job?

3 A Yes.

4 Q Do you know approximately how many times you have
5 prosecuted drunk drivers?

6 A I don't know for sure. I mean, if I had to throw
7 a number out, in ten years I would say around 50. I'm not
8 sure at all, but probably in that area.

9 Q Approximately 50?

10 A Approximately 50 DUIs and I have been involved
11 directly with three felony DUIs.

12 Q In the majority of those cases did you conduct
13 field sobriety tests?

14 A Yes.

15 Q So, you have some on-the-job experience in giving
16 them; is that correct?

17 A Yes, sir.

18 Q Have you ever conducted a field sobriety test and
19 felt that the person was not impaired?

20 A I have.

21 Q Do you have any training in accident
22 reconstruction?

23 A I do.

24 Q Can you tell the jury about that?

25 A In the state here they offer collision

TESTIMONY OF ANDREW HARRIS

1 reconstruction which consists of -- they consider it three
2 phases. I have had phase one, which is at-scene collision.
3 That is an 80-hour two-week course offered through the
4 State. I have also had phase two, which is a 80-hour
5 two-week course which they recognize as technical collision
6 investigation. And I have had phase three, which is an
7 80-hour two-week course, they call it collision
8 reconstruction. Those are the three phases.

9 In addition, I have had an advanced class
10 which is recognized as auto bicycle collision
11 reconstruction, which is a 40-hour class as well as a
12 separate class which is designed for motorcycle
13 reconstruction, which is a 40-hour one-week class.

14 Q Do you remember the date of November 14th, 2011?

15 A I do.

16 Q Were you on duty that night?

17 A No, sir, I was -- I was off. I was at home
18 sleeping when they called me.

19 Q So, were you technically on call; or how does that
20 work?

21 A With the traffic bureau we are pretty much on call
22 all of the time. If something like this happens they will
23 call us out. If it's a serious collision that may need
24 advanced investigation or a known fatality, they call us
25 out.

TESTIMONY OF ANDREW HARRIS

1 Q And do you remember investigating the collision on
2 November 14th, 2011?

3 A Yes.

4 Q What vehicle did you take to the scene?

5 A I drove -- it was my assigned car. It was a Crown
6 Vic, big marked car, numbered 412.

7 Q Is it equipped with audio and video capabilities?

8 A Yes, sir.

9 Q Were they working properly at the time?

10 A Yes, sir.

11 Q I'm going to show you what's been marked as the
12 State's Exhibit 35. Do you recognize this?

13 A I do. Those are my initials. We met on 10-10.

14 Q Have you had the opportunity to see what it
15 contains?

16 A Yes.

17 Q What does it contain?

18 A The in-car dash video of my assigned car that
19 night.

20 Q And does it fairly and accurately represent what
21 took place this evening?

22 A Yes.

23 MR. KIDD: At this time we would offer
24 State's 35 in evidence.

25 THE COURT: Any objection?

TESTIMONY OF ANDREW HARRIS

1 MR. BISCHOFF: Your Honor, same objection as
2 in my motion in limine.

3 THE COURT: Please approach.

4 (Off-the-record discussion held.)

5 THE COURT: Mr. Foreman, ladies and
6 gentlemen, we have a brief matter of law that we
7 need to take up. During the break do not discuss
8 the case and please leave your note pads in your
9 seat. We appreciate your patience.

10 (Jury exits the courtroom at 10:35.)

11 MR. KIDD: Your Honor.

12 THE COURT: Give me one second.

13 MR. KIDD: Sorry.

14 THE COURT: Okay. Proceed with your
15 questions.

16 MR. KIDD: First --

17 THE COURT: I want to you ask him the
18 question that you plan to ask him.

19 (Pause.)

20 MR. KIDD: Okay. Can I bring up a point that
21 is not related to this? I just got handed a note
22 that says a prosecutor in our office does business
23 with our alternate juror. I think that she owns
24 that jewelry store, Skatell's. I wanted to bring
25 it to the Court's attention.

TESTIMONY OF ANDREW HARRIS

1 THE COURT: He sells a lot of jewelry. I
2 don't think that she would probably remember
3 unless he spent about \$40,000.

4 MR. KIDD: It wasn't that Your Honor.

5 THE COURT: I think that Skatell's is a very
6 popular store in town. They sell a lot of jewelry
7 to a lot of people. I would imagine that this
8 Defense has no exception.

9 MR. BISCHOFF: No, Judge.

10 THE COURT: No umbrage, because I wouldn't be
11 able to spend enough money for her to remember me.

12 MR. KIDD: I wanted to err on the side of
13 caution, that is all.

14 THE COURT: No, that is always best.

15 MR. KIDD: So, you want me to --

16 THE COURT: I want you to ask him what you
17 plan to ask him so I can hear the questions.

18 MR. KIDD: I believe what I had asked is to
19 admit his dash camera in evidence and I was going
20 to play it.

21 THE COURT: I have seen that.

22 MR. KIDD: Yes, ma'am.

23 THE COURT: So, what questions were you going
24 to ask of him?

25 MR. KIDD: As to? I think that I had already

TESTIMONY OF ANDREW HARRIS

1 asked him, I was just going to publish it.

2 THE COURT: You were just going to play it
3 and that is it?

4 MR. KIDD: I was going to play it and at
5 certain times I was going to ask questions about
6 the field sobriety test.

7 THE COURT: What is he objecting to?

8 MR. KIDD: I think that it was the statement
9 from the other officers to Officer Harris.

10 THE COURT: We need clarity. Tell me the
11 basis of your objection.

12 MR. BISCHOFF: Initially the objection was
13 under the motion in limine. Certain sections of
14 the video violates the South Carolina Rules of
15 Evidence that we filed on Monday.

16 THE COURT: No, we discussed all of the video
17 in total and resolved everything. And it was my
18 understanding that they were not going to admit
19 any portions of it that referenced any portion of
20 him using marijuana or something like that. And I
21 have ruled on all of the other portions of the
22 video.

23 MR. KIDD: That was my understanding, we
24 would mute the marijuana part and it was about the
25 alcohol coming in. It was about what he did next.

TESTIMONY OF ANDREW HARRIS

1 It was not offered for the proof of the truth.

2 THE COURT: I was not able to hear it on the
3 video as I recall. But play the video for me
4 again so I can make sure.

5 MR. KIDD: Yes, Your Honor.

6 (Video playing.)

7 MR. KIDD: I think that it might be skipping
8 on us right now. It's normally clearer than that.

9 I believe that is the statement that we were
10 referring to.

11 THE COURT: Play it for me again. It still
12 was muffled.

13 (Video playing.)

14 THE COURT: What portions of those, in terms
15 of the counter, are those for the record?

16 MR. KIDD: 41528 through 35.

17 THE COURT: 41528 through 35?

18 MR. KIDD: Yes, ma'am.

19 THE COURT: Go ahead. Which officer is this
20 saying this?

21 MR. KIDD: This is Eckert who testified the
22 other day, or yesterday.

23 THE COURT: Was he questioned about that
24 statement?

25 MR. BISCHOFF: No.

TESTIMONY OF ANDREW HARRIS

1 MR. KIDD: Not about the statement to this
2 officer, no.

3 THE COURT: But was he questioned in general
4 as to why they initiated an investigation for
5 felony driving under the influence?

6 MR. KIDD: I don't recall his testimony.
7 Well, I mean, Brian Sessions, a construction
8 worker out there, said that he thought that he
9 smelled alcohol and told the officer.

10 THE COURT: I got that part, but that was not
11 my question. My question was: Did the officer
12 who told him this testify as to why they initiated
13 the investigation?

14 MR. BISCHOFF: He talked about on the video
15 or the solicitor played the video where the
16 Defendant told Officer Eckert, I had one beer. So
17 Officer Eckert was aware at that time that
18 Mr. Hamrick on scene told him he had one beer.
19 But this is when Harris arrived and he's briefing
20 Harris. And my objection is to him making
21 statements that the construction workers said. He
22 is the one that was driving and they think that
23 he's been drinking.

24 THE COURT: I guess I'm trying to figure out,
25 what prejudice does he suffer? Several people

TESTIMONY OF ANDREW HARRIS

1 have already testified to it, the reason that they
2 initiated the investigation of the felony DUI. It
3 is not offered for the truth but for the purpose
4 was initiating the investigation. But beyond that
5 it allows officers to testify to hearsay as to why
6 they initiated an investigation. Because the case
7 law recognizes that it's not offered for the
8 truth.

9 MR. BISCHOFF: I understand that, if Officer
10 Harris told Eckert that. But if the construction
11 workers said he is the one that was driving and
12 he's been drinking I think that this implies that
13 everyone thinks that.

14 THE COURT: I don't know what it implies. I
15 can only take it at face value. That is not what
16 he said. He didn't say everybody said.

17 MR. BISCHOFF: But he said that.

18 THE COURT: That is not everybody, that could
19 mean one or two people. In this case it only says
20 that they told the officers that. And it is not
21 offered for the truth. It can't be distinguished
22 that it is hearsay upon hearsay, it just says that
23 an officer can testify as to hearsay when it comes
24 to why they initiated an investigation. But in
25 this context I don't think that it's hearsay; they

TESTIMONY OF ANDREW HARRIS

1 are not offering it for the truth, to prove that
2 he was impaired.

3 It couldn't prove that he was impaired, it
4 couldn't. It was just a statement of what someone
5 thought. But in this instance, it only triggered an
6 investigation and it served to show why the police
7 officers embarked upon a certain course of action
8 toward your client. And that is the only purpose for
9 which it's being offered, which is in the context of
10 the investigation.

11 MR. BISCHOFF: Then I would argue that the
12 probative value then under those circumstances is
13 substantially outweighed by the prejudice or
14 misleading of the jury as to what the construction
15 workers thought at the scene.

16 THE COURT: Would you like to respond?

17 MR. KIDD: Judge, I think that it's relevant
18 to show why we were investigating this as a DUI as
19 opposed to just a traffic accident. I think the
20 statement has already been testified about from
21 the construction workers themselves, this is just
22 a relaying of the information to show why it is
23 proceeding like this, as a DUI case. I don't
24 think that it proves anything about the
25 Defendant's level of intoxication at all. It is

TESTIMONY OF ANDREW HARRIS

1 not offered for that reason. We have other
2 evidence which is going to prove that. This is to
3 prove why -- the investigation.

4 THE COURT: It is relevant and probative as
5 to why they initiated their investigation. And it
6 would be misleading if the jury didn't know why
7 they initiated an investigation against him.
8 Otherwise it is just pulled out of the air
9 arbitrarily to isolate or target your client. The
10 police are entitled to articulate why they have
11 pursued a certain course of action in terms of
12 investigating a matter. The statement is not
13 being offered for its truth. It is probative. It
14 is not prejudicial. I cannot discern any
15 prejudice suffered by your client in regard to the
16 statement. And it is a passive statement and it
17 indicates why the officer began to investigate
18 this case. The objection is overruled.

19 MR. KIDD: While we have the jury out would
20 you like me to ask the questions as to the
21 horizontal gaze now?

22 THE COURT: I would like to know if he's
23 still objecting to that. He said that that was
24 not his objection.

25 MR. BISCHOFF: That is not what I said,

TESTIMONY OF ANDREW HARRIS

1 Judge.

2 THE COURT: Well, you said what I said you
3 said.

4 MR. BISCHOFF: Yes, ma'am. I am still
5 objecting to his ability to testify regarding the
6 horizontal gaze nystagmus test.

7 THE COURT: Okay, then I need to hear it. I
8 didn't hear the scope of the question that you are
9 going to ask him regarding that and then I need to
10 hear Mr. Bischoff's objection. You may proceed.

11 MR. KIDD: Thank you, Your Honor.

12 (Following examination held in-camera:)

13 BY MR. KIDD:

14 Q As we talked about before, you have been trained
15 in the horizontal gaze nystagmus; is that correct?

16 A Yes.

17 Q What do you look for when conducting that test?
18 Or can you first describe to the Court what the nystagmus
19 is?

20 A Nystagmus is considered the involuntary jerking or
21 bouncing of the eye.

22 THE COURT: I need you to speak up.

23 A The involuntary jerking or bouncing of the eye as
24 it tracks an object.

25 Q Could an ordinary person, if told what to look

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1 for, recognize it?

2 A They should be able to notice the difference
3 between -- or notice the jerking or bouncing.

4 Q Can you tell the Court what steps you take when
5 conducting that test?

6 A The first thing that you do is you look for --
7 when I hold the stimulus up I look for resting nystagmus and
8 then track two passes for equal pupil size and equal
9 tracking in each eye.

10 Q Did Mr. Hamrick's eyes track equally?

11 A Yes.

12 Q And did you conduct that for each eye?

13 A I did.

14 Q And then what about -- what do you check for next,
15 after you check for smooth pursuit of tracking?

16 A Lack of smooth pursuit.

17 Q Which was not present in this case?

18 A Correct.

19 Q And then you check for maximum deviation?

20 A Distinct nystagmus at maximum deviation.

21 Q What does that mean?

22 A Where you track the stimulus out to approximately
23 45 degrees. You will notice when you hold it there you will
24 notice the jerking of the eye at that angle.

25 Q So you track it about as far as the eye can move

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1 and see without turning the head?

2 A Yes.

3 Q Is that approximately right?

4 A Yes.

5 Q And what are you looking for in the eye at that
6 point?

7 A Looking for the distinct and sustained nystagmus
8 at maximum deviation.

9 Q And again that is involuntary jerking of the
10 eyeball?

11 A Yes.

12 Q Would there be a way for an individual to mask
13 that?

14 A No.

15 Q And at what angle did the nystagmus occur in each
16 eye?

17 A At that point it was 45 degrees. That test is
18 distinctly sustained at 45 degrees.

19 Q Did you observe nystagmus prior to 45 degrees?

20 A I did.

21 Q In both eyes?

22 A Yes.

23 Q With these signals what -- what would that
24 indicate to you?

25 A Well, these are -- you have six clues. You are

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1 looking for lack of smooth pursuit, distinct and maximum
2 deviation and onset of nystagmus prior to 45 degrees. And
3 each eye is considered a clue and in each step I saw two per
4 time, so a total of six out of six clues that I saw.

5 Q I thought that you said there was smooth tracking?

6 A Smooth tracking but lack of smooth pursuit. Equal
7 tracking. Yeah, that is -- each eye tracked equally.

8 Q Okay.

9 A But as far as smooth pursuit, lack of smooth
10 pursuit was visible.

11 Q Okay. So, you observed lack of smooth pursuit?

12 A Yes.

13 Q And onset of nystagmus prior to 45?

14 A Yes.

15 Q And at maximum deviation?

16 A Yes.

17 Q And what would those clues indicate to you?

18 A Well, based on the training manual, it states the
19 effectiveness and the arrest of BAC in the body of above .10
20 would be above 77 percent, based on HGN with four out of six
21 clues. In this case, I saw six out of six.

22 MR. KIDD: The Court's indulgence for a
23 moment?

24 THE COURT: Uh-huh.

25

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1 BY MR. KIDD:

2 Q Did you test for vertical nystagmus?

3 A Yes.

4 Q What was your observation for testing for vertical
5 nystagmus?

6 A I did two tests for the vertical nystagmus and I
7 did not see it.

8 Q What would the presence of the horizontal gaze
9 nystagmus indicate to you again?

10 A The training shows 77 percent effectiveness in
11 making an arrest decision that BAC would be above a .10 and
12 above.

13 Q So, in essence, the HGN test has 77 percent
14 accuracy rate at a .1 percent BAC or a little higher?

15 A Yes.

16 Q Are there a certain number of clues that you look
17 for out of the six?

18 A You do.

19 Q In order for it to qualify?

20 A Right, four out of six.

21 Q Four out of six. And that is what you observed?

22 A I saw six out of six.

23 Q Six out of six, excuse me.

24 A Uh-huh.

25 (In-camera examination concluded.)

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1 MR. KIDD: And I believe as to the HGN,
2 Judge, that would be the testimony that I would
3 seek from the witness.

4 THE COURT: What is the objection?

5 MR. BISCHOFF: Judge, I think I don't really
6 have one at this point. I think that he's done a
7 fine job of explaining his expertise and that
8 Mr. Culver -- Mr. Kidd asked the questions and he
9 answered them. I don't have any objection. I
10 think that I withdraw it based on his testimony.

11 THE COURT: You are withdrawing your
12 objection?

13 MR. BISCHOFF: Yes.

14 THE COURT: Okay. All right then, are we
15 ready to proceed or do you need to go to the
16 restroom before everyone comes back?

17 MR. KIDD: I'm fine.

18 THE COURT: Y'all good?

19 MR. BISCHOFF: I'm good.

20 MR. KIDD: I'm good.

21 THE COURT: All right. Bring in the jury.

22 (Jury enters the courtroom.)

23 THE BAILIFF: All jurors are present, Your
24 Honor.

25 THE COURT: Thank you. You may be seated.

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1 We will now resume with the witness' testimony.

2 MR. KIDD: At this time the State would offer
3 State's Exhibit 35 into evidence.

4 THE COURT: Show it to counsel.

5 MR. KIDD: It is the disk.

6 THE COURT: I apologize, be marked and
7 accepted subject to the Defense's objection. You
8 may proceed.

9 MR. KIDD: Thank you, Your Honor.

10 *(Whereupon, State's Exhibit No. 35 was marked for*
11 *identification and received in evidence.)*

12 THE COURT: You are welcome.

13 (Video playing.)

14 BY MR. KIDD:

15 Q Officer, do you recall what time you arrived on
16 the scene?

17 A Approximately 4:08.

18 Q Officer Harris, could you explain to the jury why
19 you had the blue lights turned off on the back right there?

20 A That is what we normally do if I know that I'm
21 about to conduct a field sobriety test on someone. Not only
22 did you notice that picture is a lot clearer when the lights
23 went off, but when you do horizontal gaze test it could
24 affect the nystagmus. It could cause the jerking, or follow
25 an object. And that is normal operating procedure, so to

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1 speak.

2 Q Just so we get the jury up to speed. Can you
3 explain what nystagmus is and why you are looking for it?

4 A Nystagmus is the involuntary jerking or bouncing
5 of the eye as it follows a nystagmus. Which we use a pen
6 and hold it out from the eye. As it tracks the stimulus you
7 will notice an involuntary jerking or bouncing. People
8 explain it kind of like a marble rolling across a smooth
9 countertop versus rolling across sandpaper.

10 Q So the nystagmus is bounciness?

11 A The jerking or bouncing of the eye.

12 Q And what does that indicate to you, if you observe
13 nystagmus?

14 A That there's a level of intoxication.

15 Q And so, just so I'm following you, you turn off
16 the blue lights why?

17 A Turn off the blue lights to avoid any optokinetic
18 nystagmus, which is a, you know, kind of an outside
19 interference so to speak.

20 Q A flashing light could trigger nystagmus?

21 A Yes. Kind of like when you watch the video right
22 here the lights are kind of blinding, and they found out
23 that those lights can cause optokinetic nystagmus which is
24 something that you don't want to have. You want to have a
25 fair and impartial test and not have outside interference.

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1 Q Potentially something like that could trigger a
2 false positive?

3 A Yes.

4 (Video playing.)

5 Q Officer Harris, I just want to go through the
6 procedure that you just performed there on video. What was
7 that procedure again?

8 A Horizontal gaze nystagmus test.

9 Q Did you test vertical as well?

10 A Yes.

11 Q Can you tell the jury what you were looking for
12 and what you observed when you performed that test on
13 Mr. Hamrick?

14 A Beginning of the test, using the stimulus you
15 check the resting nystagmus. You hold it out and keep it 12
16 to 15 inches from the subject's face. And you elevate it
17 slightly above eye level. Holding it at that distance you
18 check for the resting nystagmus. And initially you do the
19 test of the left eye. I go from my right to his left. The
20 passes go out to the shoulder width, 15 inches out and 15 to
21 the shoulder, keeping a 45-degree angle and check for pupil
22 tracking and pupil size. And you do two passes for that,
23 which this is the left and this is the right eye. I do two
24 of those and check for equal tracking and equal pupil size.

25 Q I'll stop you. Did you check for equal tracking

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1 and equal pupil size?

2 A Yes.

3 Q What next did you do?

4 A Do the same thing, two passes, check for lack of
5 smooth pursuit.

6 Q Did you observe smooth pursuit?

7 A No, lack of smooth pursuit.

8 Q What does lack of smooth pursuit look like?

9 A That jerking or bouncing of the eye as it follows
10 the stimulus.

11 Q So, as you move the pen the eye doesn't track it
12 smoothly, it jerks?

13 A Correct.

14 Q What does that indicate to you?

15 A That's a response that indicates a level of
16 intoxication.

17 Q What is the next clue that you look for?

18 A Onset of nystagmus prior to 45 degrees. So, if
19 it's 15 inches out and 15 inches to this side, you should
20 keep a 45-degree angle. Sorry, that is -- this time we are
21 looking for distinct and sustained deviation. And on the
22 third pass, on the second pass, looking for a distinct and
23 sustained nystagmus at maximum deviation. Maximum
24 deviation, that is at the 45 level. You hold it there so
25 that the eyes are trained on that angle and you look for the

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1 twitching so to speak at that angle.

2 Q How long do you hold it at maximum deviation?

3 A Four seconds.

4 Q You did that for each eye?

5 A Yes.

6 Q What did you observe in his eyes at maximum
7 deviation?

8 A I did observe the deviation, twitching, jerking
9 like that.

10 Q Is that a clue of intoxication to you?

11 A Yes, sir.

12 Q What else did you look for?

13 A The onset of nystagmus prior to 45 degrees. In
14 this case you track the stimulus slowly and you wait to see
15 if or when the nystagmus begins to be prevalent or visible.
16 So, if you track all the way out to 45 degrees and you don't
17 see it then the onset is not present. In this case I did
18 see nystagmus, you know, an onset of it prior to 45 degrees.

19 Q And did you observe those three clues in both
20 eyes?

21 A I did.

22 Q And a combination of observing all of those clues,
23 three in each eye, what does that indicate to you?

24 A When we are trained in it. They state, by NHTSA
25 standards, 77 percent standard necessity to come to making

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1 an arrest. Actually four out of six clues would show a
2 77 percent effective rate with someone of a .01 BAC or
3 higher. In this case I saw six out of six.

4 Q After you performed the horizontal gaze nystagmus
5 test, what did you do next?

6 A We are trained to do vertical, you check vertical,
7 two passes up, hold it. And another pass up and hold it
8 down. I did not see vertical nystagmus.

9 Q When you finished with the nystagmus tests, what
10 is the next field sobriety test you performed?

11 A The walk and turn.

12 Q Can you explain to the jury what this test that
13 you are about to perform is?

14 A The walk and turn, you know, the walk and turn and
15 one-leg stand we will see next. Those are considered
16 psychophysical tests. That is what they call them in
17 training and it measures one's ability to perform mental and
18 physical tasks or measure their impairment, mental and
19 physical impairment.

20 Q Is it multi-tasking?

21 A Right. Divided attention.

22 Q Divide attention. Can you explain that to the
23 jury?

24 A One's physical and mental ability to safely drive
25 the vehicle would consist of coordination, balance,

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1 information processing, you know, short term memory and
2 reaction times. Those are all things that we need to drive
3 a car and those are the things that these tests do reveal,
4 and they could reveal some impairment in those.

5 Q When you set up an area to conduct a walk and
6 turn, what are you trying to ensure?

7 A We are trained to find a flat level dry spot,
8 reasonably flat level and dry. I mean every road is
9 designed to grade, so there's not a perfectly flat, level
10 road. So, I found -- that is what I was asking for is a
11 duct tape to put on the road. You know, in a perfect world
12 we don't have all of that. So, in this case we found a
13 white line which was relatively reasonably flat, level, dry
14 and straight. So, that is what I decided to use based on
15 where we were at and what we had.

16 Q And based on your training, is that proper and
17 sufficient for performing this test on?

18 A Yes.

19 (Video playing.)

20 BY MR. KIDD:

21 Q Can you tell the jury about what you observed
22 while he was performing the walk and turn test?

23 A Sure. What we look for in this test, we look
24 for -- we are trying eight clues. And in the instruction
25 stage, which is while I'm demonstrating and explaining it to

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1 him we ask him to maintain his position of your foot heel to
2 toe on the line and then maintain eye contact while we
3 demonstrate it. Two of the clues that we noticed is that he
4 was unable to do that. And then, of course, starting too
5 soon. You don't start until we tell you to. So, those are
6 the first two clues. Then while the test is going on if
7 they step --

8 Q Let me slow you down. So, you instruct them to
9 put one foot in front of the other, hands by your side and
10 maintain this position while you do the instructions of the
11 test; is that right?

12 A Yes, I think if I looked at it correctly there
13 was, you know, a couple of two or three times that I said --
14 He said, Do you want me to do this? And I said, Yes. And
15 he was unable to do it.

16 Q His not holding that starting position is one of
17 the clues?

18 MR. BISCHOFF: Object to leading.

19 THE COURT: Sustain leading, rephrase.

20 BY MR. KIDD:

21 Q Was he able to maintain the starting position?

22 A No.

23 Q Is that a clue that you look for?

24 A Yes.

25 Q What is the next clue that you observed while

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1 asking him to perform this test?

2 A I noticed that he was unable to walk heel to toe,
3 you know. And in training if the steps are more than half
4 of an inch -- they don't have to be heel to toe, but if it's
5 more than half of an inch it counted as a clue. In this
6 test his steps were approximately 4 to 5 inches apart just
7 like he was walking slowly. So, that was the second clue
8 that I noticed. And we told him to count each step out
9 loud. You notice that he didn't count out loud while he was
10 walking.

11 Q Is counting a clue?

12 A It is not a clue. It is just something that they
13 teach us to ask them to do, tell them to do it. In this
14 case I didn't hear it, he didn't do it. So, it is just
15 something that you note that -- it might be sub par for
16 divided attention task.

17 Q And that is one of the things, there's multiple
18 instructions; is that sort of accurate?

19 A Yes.

20 Q So, overall how many clues did you observe on the
21 walk and turn?

22 A Two out of the eight.

23 Q And what is observing two out of the eight clues
24 indicate to you?

25 A When we train they tell us per NHTSA standards --

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1 Q What is NHTSA?

2 A That is our National Highway Traffic Safety
3 Administration.

4 Q So what does two clues on the walk and turn
5 indicate to you?

6 A They give a percentage for that for effectiveness
7 as well. And just that test alone would be considered
8 68 percent effectiveness that their BAC would be a .10 or
9 higher.

10 Q And you indicated that the nystagmus test was how
11 accurate?

12 A 77 percent alone.

13 Q Can you combine those percentages to --

14 MR. BISCHOFF: Object to him leading.

15 THE COURT: I haven't heard the whole
16 question.

17 BY MR. KIDD:

18 Q Can you combine the 68 and 77 percent accuracy to
19 receive some result?

20 A They do give us a combination percentage for
21 effectiveness. It is 80 percent if you see the clues in
22 both those tests; those tests combined would be 80 percent.

23 Q What is the alcohol level?

24 A On a .10 or higher.

25 Q What is the next field sobriety test that you

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1 performed?

2 A The one-leg stand.

3 (Video playing.)

4 BY MR. KIDD:

5 Q And can you explain to the jury what clues you
6 noticed on the one-leg stand test?

7 A He used his arms for balance. They say when you
8 train that if they extend more than 6 inches from the body,
9 in this case, you know, it was more than 6 inches. And he
10 also put his foot down. That is two out of -- there are
11 four clues and that is two out of the four.

12 Q Is counting a clue?

13 A It is not a clue. You know, it is the same as the
14 walk and turn where they are instructed to do so, but it is
15 one of those things that you note that if it doesn't occur.
16 It is divided attention; something that you note.

17 Q Were you able to perform the one-legged stand out
18 there?

19 A I did, I think, when I reviewed it.

20 MR. BISCHOFF: Objection, relevancy.

21 THE COURT: Please approach.

22 (Off-the-record discussion.)

23 THE COURT: You may proceed.

24 BY MR. KIDD:

25 Q Does the one-legged stand have a percentage of

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1 effectiveness?

2 A 65 percent.

3 Q And just once again, I might have already asked,
4 how many of the four clues did you observe on the one-legged
5 stand?

6 A Two.

7 Q Is there a combination of all three tests that can
8 give you a percentage of effectiveness?

9 A Well, during the course of training or in the
10 manual they provide for the course it states in -- I'm not
11 100 percent sure, but it does. Between '05 and '08 there
12 was another test done for the validity of these tests.
13 These are validated studies from '05 --

14 MR. BISCHOFF: Object, speculation.

15 THE COURT: Please approach.

16 BY MR. KIDD:

17 Q Are you unsure about what the tests say, or are
18 you unsure about the date that the tests came out?

19 A No, I know the dates were between '05 and '08,
20 three validation studies done by three different states.
21 I'm not sure what state, what year, but I'm confident it was
22 the percentages that each study yielded.

23 Q Thank you. What percentages did those tests
24 yield?

25 A There were three validation studies done by three

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1 states. One showed 91 percent effectiveness, when combined,
2 all three tests. And the other one was 93. And the other
3 one, the third, was 95 percent.

4 Q So, by observing the indicators on each of those
5 three field sobriety tests that would be the level of
6 effectiveness from -- or the level of accuracy of those
7 tests on impairment?

8 A Right. That would be, you know, effectiveness on
9 arrest, BAC -- and those were done at a .08.

10 Q So, those new numbers are the .08?

11 A Yes, .08 or higher. It was .10 and we have since
12 went down to a .08.

13 Q After you placed Mr. Hamrick under arrest, what
14 did you do next?

15 A I advised him of his Miranda rights. I put him in
16 handcuffs and advised him of his Miranda rights. I walked
17 him over to the police officer's car, Campbell's, Campbell's
18 police car and had him sitting there. And then I directed
19 them to transport him to the police station and then
20 directed Officer Bastille to authorize the data master
21 breathalyzer. Because at that time, I mean, I was so busy,
22 just got there, did the field sobriety talking to him and I
23 wasn't sure what the condition was, you know, of the victim.
24 So, at that point, you know, it was a DUI and he was being
25 transported to do the breathalyzer, which was the normal

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1 procedure.

2 Q On scene what did you do next?

3 A At that point, once he left I directed my
4 attention to the scene where it all occurred since before
5 that I didn't know much about it. So I walked over there,
6 my sergeant was there at the time, Sergeant Googe. And me
7 and the Sergeant, we looked at what we had. I did a
8 drive-through of the scene of my police car thinking that I
9 should gather as much as I can for video. The in-car
10 cameras are mounted, you can't take them out and see
11 everything as much as I wish you could, so I drove through.
12 We gathered what we could as far as evidence and we spoke to
13 witnesses who we had. We took a statement. And noted where
14 the Defendant's car ends up at. We noted evidence on the
15 scene. We found some headlight fragments under the paver,
16 under that screen that debris laying there, found some
17 headlight fragments there.

18 Q Let me stop you for a moment. Let me show you
19 what's been marked as State's Exhibit 16. Do you recognize
20 that photograph?

21 A I do.

22 Q All right. The first thing that I want to direct
23 your attention to is right there. Do you recognize that?

24 A I do.

25 Q That mark right there, what is that?

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1 A That is a piece of the headlight.

2 Q Okay. And I'm going to try to -- and it is kind
3 of hard to see. Let me turn it around so I can get it -- do
4 you recognize that object right there?

5 A That is another piece of the headlight.

6 Q Where is that smaller piece of the headlight in
7 relation to the paving machine?

8 A That is on -- like to the right side. That would
9 be on the right side of the lane.

10 Q Those are the pieces of headlight that you
11 documented on the scene?

12 A Yes.

13 Q Did you recover a hard hat from the scene?

14 A We did. I remember at the time the workers were
15 saying, We don't know where his hard hat is, Mr. Garland's
16 hard hat. During the course of the time we didn't know
17 where it went. Someone saw it in that dump truck in front
18 of the paver. And his orange hard hat was all the way in
19 the front of the bed of the dump truck laying on top of the
20 asphalt they would have been using.

21 Q I'll show you what's been marked and entered into
22 evidence as State's Exhibit 14. Do you recognize that
23 photograph?

24 A Yes, that is the hard hat and that is like this --
25 you would be looking -- you know, that's the front of the

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1 truck, so that is almost where the back of the driver would
2 be sitting.

3 Q That is the dump truck?

4 A That is the dump truck.

5 Q Where was the dump truck parked at the scene?

6 A Right in front of the paver.

7 Q Let me show you what's been marked and entered as
8 State's 17. Do you recognize that photograph?

9 A Yes.

10 Q Do you know if the cones were in the location
11 there in that photograph at the time of the accident?

12 A I wasn't there at the time of the accident, but
13 what I was told is that they weren't. They were moved
14 afterwards.

15 Q But did you document their location anyway?

16 A We did.

17 Q Did you measure from that skinny cone to the
18 paver?

19 A I did.

20 Q Do you remember what your results were of that
21 measurement?

22 A If I remember correctly, 43.1 feet.

23 Q I'm going to hand you this measuring tape right
24 here, all right. And I'm going to grab this end of it. And
25 you tell me when I get to 43.1 feet.

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1 A Slow down. That is 41. Keep going. That is 43.

2 Q That is 43 feet there. So the distance from me in
3 this doorway is the distance from where that cone was to
4 that paver?

5 A Yes, 43.1 right here.

6 *(Whereupon, State's Exhibit No. 37 was marked for*
7 *identification.)*

8 BY MR. KIDD:

9 Q Officer Harris, I'm going to show you State's
10 Exhibit 37. Do you recognize this disk?

11 A Scene footage, yes.

12 Q Are your initials on that disk?

13 A Yes.

14 Q And the date?

15 A 10-10-13.

16 Q What is on this disk?

17 A The scene footage, the drive-through.

18 Q That is what you testified to earlier about, when
19 you were trying to document the scene?

20 A Yes, I was trying to gather what we could so we
21 could preserve what we had at that time.

22 Q And you used the camera on your cruiser for that?

23 A Yes, sir.

24 Q Does this fairly and accurately depict the scene
25 as you saw it that morning?

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1 A At that time, yes.

2 Q Which was about how long after the collision?

3 A I can't recall because I was there at 4:08. I was
4 there -- I arrived 40, 45 minutes afterwards. And then the
5 field sobriety test took 40 minutes. So it was well over an
6 hour after.

7 Q So, it was that same morning but some period of
8 time after the collision?

9 A Yes, that same morning, yes.

10 MR. KIDD: Your Honor, at this time we offer
11 37 in evidence.

12 THE COURT: Any objection?

13 MR. BISCHOFF: None, Judge.

14 THE COURT: Marked and entered without
15 objection.

16 *(Whereupon, State's Exhibit No. 37 was received in*
17 *evidence.)*

18 THE COURT: You may proceed.

19 *(Video playing.)*

20 BY MR. KIDD:

21 Q And just so you can explain to the jury once we
22 get started, which direction are you traveling right this
23 second?

24 A Traveling northbound now. I just pulled out and
25 headed up to Park West to turn around.

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1 Q And they are paving the northbound side as well?

2 A Yes, I believe that they were. You can see it
3 right here.

4 MR. BISCHOFF: What intersection is this?

5 THE WITNESS: Seventeen at Park West
6 Boulevard.

7 MR. KIDD: Stop there please.

8 BY MR. KIDD:

9 Q Now, these large barrels that you are passing
10 right now, were they -- do you know if they were in place at
11 the time of the collision?

12 A No, they weren't in place, because where those
13 barrels are on the right of that picture, they would have
14 been moved from the center where you see all of those. I
15 think one in one of my videos prior I saw construction
16 workers walking around with two of them. You can see where
17 you are heading southbound in that picture, that is where
18 Mr. Hamrick would have pulled out. Where I made a u-turn,
19 that is where he would have pulled right out of Park West
20 and headed southbound. You can see that left lane was the
21 travel lane and the right lane was closed by these tall boys
22 they call them.

23 Q The skinny ones?

24 A Skinny ones. And they were spaced, you know, like
25 every one or two dashes or however they space them. And

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1 then once you got here you noticed how I veered around the
2 paver. That is how it was set up.

3 Q For what reason was it set up?

4 A To try to preserve what we had, preserve the
5 evidence.

6 Q Protect the crime scene?

7 A Keep us safe, keep the evidence safe.

8 Q Preserve the crime scene.

9 MR. KIDD: If you could go full screen and
10 back up a little bit and play it.

11 BY MR. KIDD:

12 Q So, you are going northbound right here, correct?

13 A No, that is the scene..

14 Q Oh, excuse me, I apologize. I thought we backed
15 up. I'll stop it. Well, we are not getting the big picture
16 right now, but can you see the small top left picture on the
17 screen. Can you see that? Do you recognize that vehicle in
18 the screen right there?

19 A I think that's too far. If you back up a little
20 bit. I believe his -- I know that the Jeep is on the right
21 side. There you go. There you can see the Jeep on the
22 right.

23 Q Do you know approximately how far the Jeep was
24 from the point of impact?

25 A I can't recall exactly. Approximately, you know,

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1 100, 100 or so.

2 MR. KIDD: If you can go back.

3 *(Whereupon, State's Exhibit No. 38 was marked for*
4 *identification.)*

5 BY MR. KIDD:

6 Q I'm going to show you what's been marked as
7 State's Exhibit 38. Do you recognize that?

8 A The orange hard hat. I do.

9 Q And did you collect that item from the scene?

10 A Yes. And secured it into evidence.

11 Q Can you open the bag and take a look at it for me?
12 Is that the hard hat collected on the scene?

13 A Yes.

14 Q Your Honor, at this time the State would offer
15 State's 37 into evidence.

16 MR. BISCHOFF: No objection.

17 THE COURT: Marked and received without
18 objection.

19 BY MR. KIDD:

20 Q And just so --just so we are clear, that is that
21 hard hat right there; is that correct?

22 A Yes.

23 Q Thank you. You can put it back in the bag.

24 And just to -- probably overkill it a little
25 bit; is that the dump truck you were referring to?

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1 A Yes.

2 Q And that would be this one right here?

3 A Correct. This is the -- right here is where it
4 was found if you are on the inside.

5 Q Thank you. Did you have the opportunity to see
6 the Defendant's vehicle?

7 A Yes.

8 Q Do you recall what kind of vehicle it was?

9 A A Jeep Commander.

10 Q I'm going to show you some photographs, show you
11 first State's Exhibit 15. Do you recognize that?

12 A That is the front right of the Jeep.

13 Q Let me show you -- do you notice some damage to
14 the front of that car?

15 A Yes.

16 Q I'm going to show you State's Exhibit 1. Do you
17 recognize that photograph?

18 A I do, that is the hood.

19 Q Is there something specific that you noticed about
20 the hood there?

21 A Yes, there were -- do you want me to mark them?

22 Q That would be great, thank you.

23 A There's damage in this area. You can see that
24 there's dents in here on that area and some -- this down
25 here would be damaged.

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1 Q I'm going to show you -- do you see that little
2 green arrow on the top right of your screen?

3 A Yes, sir.

4 Q Can you click that and then hit clear? Thank you.
5 I'm going to show you State's Exhibit 7. Do
6 you recognize that photograph?

7 A Yes, sir, that is the same area, the damage, the
8 same area.

9 Q I'll show you State's Exhibit 13. Do you
10 recognize that?

11 A Yes, sir, the antenna was bent back.

12 Q What was significant about the antenna?

13 A It was bent. It wasn't straight up. It had a
14 bend to it. It had been damaged.

15 Q And I'm going to show you State's Exhibit 4. Do
16 you recognize that photograph?

17 A Yes, that is the windshield like the same general,
18 you know, area on the right side of the windshield.

19 Q Do you notice any damage in that area?

20 A There was no -- you notice marks as well on the
21 top of the windshield, there was -- on the top right of the
22 windshield there was a mark. It wasn't damaged, it wasn't
23 cracked or anything but there was kind of a scuff if you
24 want to say that -- like a marking. It could have been
25 caused by a helmet, a hat hitting it.

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1 Q What about that on that A pillar?

2 A Yes, you can see here where there was contact.

3 Q Through your investigation and documentation of
4 the scene did you develop an approximate point of impact?

5 A On the roadway, no. You know, this -- that scene,
6 the road conditions, that wasn't the final layer of pavement
7 so it's -- the roadway was at the time was inconsistent, you
8 know. It was like pitted; had loose gravel on it. It
9 wasn't like roads that you have in your neighborhood or 17
10 now, pristine, you can notice something out of the ordinary.
11 But in this case there was gravel pits and as we are
12 looking, we are like, Gosh, it is hard to tell -- you know,
13 in our training, you can notice shoe marks and it can leave
14 a drag mark from the shoe or leg or something, but in this
15 case we weren't able to find anything so we -- I did talk to
16 a witness on scene, Christopher Key, the supervisor, I
17 walked around with him at the scene and tried to get a
18 better idea of what happened. And as we are walking around
19 he did point --

20 MR. BISCHOFF: Objection, Your Honor.

21 THE COURT: Sustained, hearsay. You may
22 proceed.

23 MR. KIDD: Thank you, Judge. You just can't
24 testify what someone else told you.

25 THE COURT: You can state the result of the

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1 conversation.

2 BY MR. KIDD:

3 Q As a result of that conversation, did you make any
4 measurements?

5 A I marked a possible point of impact based on what
6 information I had been given. I didn't locate the direct
7 point of impact. I marked the spot of possible point of
8 impact based on what someone told me. It was the best that
9 we had. I had to go with what we had.

10 Q That was based on the observations of people?

11 MR. BISCHOFF: Objection, leading.

12 THE COURT: Sustained. Rephrase.

13 Q What was it based on?

14 A I marked it based on the opinion of one person.

15 Q Did you find any tire marks on the scene?

16 A No.

17 Q As a law enforcement officer, and I'll kind of
18 jump around a little bit here, have you had the opportunity
19 through, as a traffic officer or in any other way in your
20 duties, to come in contact with people under the influence
21 of alcohol?

22 A Oh, absolutely. In our line of work, especially
23 in traffic, I mean we do some in traffic, we come in contact
24 with alcohol on the road. You know, majority -- a lot of
25 calls that we go to, whether it be domestic violence, fight

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1 in a bar or disturbance at some point, especially on the
2 third shift it is most of the time involving alcohol,
3 unfortunately. So, I have come in contact with intoxicated
4 people in different states. You know, some people are
5 falling down and some people aren't.

6 MR. BISCHOFF: I'm going to object to
7 relevance.

8 THE COURT: I'll overrule subject to
9 connection.

10 BY MR. KIDD:

11 Q Based on your observation and experience with
12 Mr. Hamrick, in your opinion, was he under the influence of
13 alcohol?

14 A Yes.

15 Q In making that determination do you fall back on
16 that experience that you have had over the years in law
17 enforcement?

18 MR. BISCHOFF: Objection, leading.

19 THE COURT: Sustain to leading. Rephrase.

20 MR. KIDD: Thank you, Judge.

21 BY MR. KIDD:

22 Q At some point later in the evening did you arrive
23 at East Cooper Hospital?

24 A I did. After I cleared from the scene which was
25 7:00, 7:30, somewhere around -- I think that it was like

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1 7:20 I drove to the hospital and met with Officer Bastille
2 who had done the breathalyzer and succeedingly went to the
3 hospital and got blood. So I met with him at East Cooper
4 Hospital and retrieved blood that was drawn.

5 Q I'll show you what's been marked as State's
6 Exhibit 26. Do you recognize that?

7 A I do.

8 Q What is that?

9 A Mt. Pleasant Police Department evidence form that
10 we fill out when we secure something into our evidence --
11 department evidence locker. And this one specifically was
12 for the SLED blood kit on that night or that morning.

13 Q Did you take custody of that SLED blood kit that
14 evening?

15 A I did.

16 Q Do you know about what time that was?

17 A If I remember right, in my report it is around
18 7:30, 7:33, somewhere around there.

19 Q I'm going to show you what's been marked for ID
20 three photographs, State's 29, 30, and 31 and see if you can
21 recognize those photos.

22 A I do.

23 Q And what is in those photographs?

24 A The SLED blood kit.

25 Q Is that the blood kit that you took into your

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1 possession?

2 A Yes.

3 Q Do those photographs fairly and accurately
4 represent what the blood kit looked like when you took it in
5 your possession?

6 A Yes.

7 Q Is that sealed in any way?

8 A It is. I covered it with an evidence slip that I
9 can identify my writing as being on here, that slip.

10 Q The sticker?

11 A Sticker. Kind of like both sides, when you open
12 both sides of something you have to break the seal. I put
13 the seal on this after I did it.

14 Q Is the seal broken?

15 A No.

16 Q Where did you get that blood kit?

17 A From Officer Bastille.

18 Q And where were you when you received it?

19 A East Cooper Hospital.

20 Q And what time and day was that?

21 A Same day, 11-14-11 and that was 7 -- I'll look in
22 my report if you want me to look.

23 Q Just approximately?

24 A 7:31.

25 Q After you got the blood kit in your possession

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1 what did you do with it next?

2 A I drove to the police station, I got out of the
3 police station, walked inside. And would have had to spend
4 time filling out the form, the evidence sheet, and then gave
5 it to the evidence department.

6 Q And may I see the forms? Thank you. And based on
7 State's 26, do you know what time it was when you turned
8 that kit into evidence in Mt. Pleasant?

9 A To Officer Mitchell received it at 11-14th at 8:33
10 is what she wrote on here.

11 Q 8:33 a.m.?

12 A Yes.

13 Q Okay.

14 MR. KIDD: Your Honor, at this time the State
15 would offer 26, 29, 30, and 31 in evidence.

16 THE COURT: Any objection?

17 MR. BISCHOFF: No, Your Honor.

18 THE COURT: Marked and admitted without
19 objection, 26, 29, 30 and 31?

20 MR. KIDD: That is correct, Your Honor.

21 THE COURT: Marked and admitted without
22 objection.

23 *(Whereupon, State's Exhibit Nos. 26, 29, 30, and*
24 *31 were marked for identification and received in*
25 *evidence.)*

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1 BY MR. KIDD:

2 Q While that kit was in your custody, did you ever
3 open it?

4 A No.

5 Q Did you ever tamper with it in any way?

6 A No.

7 MR. KIDD: The Court's indulgence?

8 THE COURT: Uh-huh.

9 MR. KIDD: I don't have any further questions
10 for Officer Harris.

11 THE COURT: Ladies and gentlemen, we will
12 take a brief restroom break. During the break do
13 not discuss the case in any manner whatsoever.
14 And please leave your note pads in your seats. We
15 will be out about ten minutes.

16 (Break taken at 12:15 p.m.)

17 THE COURT: State ready to proceed?

18 MR. KIDD: We are, Judge.

19 THE COURT: Defense ready to proceed?

20 MR. BISCHOFF: We are, Judge.

21 THE COURT: Please get the jury.

22 (Jury enters the courtroom.)

23 THE COURT: You may be seated. Mr. Kidd,
24 have you finished your direct examination of the
25 witness?

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1 MR. KIDD: I have, Your Honor.

2 THE COURT: You may proceed.

3 MR. BISCHOFF: Thank you, Judge.

4 THE COURT: You are welcome.

5 CROSS EXAMINATION

6 BY MR. BISCHOFF:

7 Q Mr. Harris, good afternoon I guess at this point.

8 A Good afternoon.

9 Q You would agree with me that in your investigation
10 none of the tall boys were hit?

11 A Correct.

12 Q And you would agree with me that none of the
13 barrels on the scene were hit?

14 A Correct.

15 Q And you would agree that there were cones and
16 barrels both that were lining the highway at the time of the
17 accident?

18 A Yes.

19 Q Now, Officer, you understand that -- how important
20 this trial is; correct?

21 A Absolutely.

22 Q You understand this is a criminal trial?

23 A (Nods in the affirmative).

24 Q You understand the charges that you have levied
25 against Mr. Hamrick?

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1 A Yes.

2 Q You understand that it's felony DUI?

3 A Yes.

4 Q And you understand that you have to prove felony
5 DUI?

6 A Yes.

7 Q And you have to prove that he did something while
8 driving that approximately caused the injury to Mr. Garland?

9 A True.

10 Q And before -- there are a number of steps along
11 the way before we got here today, correct?

12 A Correct, yeah.

13 Q And when you responded to the scene that night you
14 responded maybe almost an hour after this accident took
15 place?

16 A I arrived there 43, 45 minutes later
17 approximately.

18 Q But you would agree that it was after the
19 accident?

20 A Yes.

21 Q And you had the initial conversation with my
22 client, Mr. Hamrick, about whether or not he had been
23 drinking earlier in the night?

24 A Yes.

25 Q And we saw the field sobriety test that you gave

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1 him?

2 A Yes.

3 Q So, that was the first thing that you did?

4 A Not really, no.

5 Q Well, when you arrived on scene you were briefed
6 first by officers already on scene?

7 A Correct. Yes.

8 Q And they told you that Mr. Hamrick said that he
9 didn't see Mr. Garland?

10 A Yes.

11 Q And they told you that he admitted that he had had
12 a beer?

13 A Uh-huh. Yes.

14 Q And he told you, or the officers told you that he
15 had basically been staying with another officer standing on
16 the side of the road for about 30 minutes before your
17 arrival?

18 A Yes, give or take.

19 Q Is that fair?

20 A Uh-huh.

21 Q And so your first inclination was to find out
22 whether or not you had suspicion of DUI?

23 A I would say when I arrived -- you could see on the
24 video when I got there, I got out of my car, I was almost
25 mobbed by Sergeant Winstead and Eckert who started giving me

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1 a lot of information. So before I could even gather my
2 train of thought I was told that the construction workers
3 felt he was hauling ass through the work zone is what I
4 believe what he said, the words, you know, hauling ass and
5 speeding. And Eckert said that they thought he had been
6 drinking, that he was drinking, so before I could even
7 gather my thoughts about what I was going to do, what my
8 responsibility was -- my sergeant -- my supervisor wasn't
9 there, so as I got out of the car they apprised me of these
10 thoughts or facts, that they considered facts at that time,
11 so that did direct my attention to that.

12 Q The first thing that you did after arriving on the
13 scene and talking to your officers is talking to Mr. Hamrick
14 about whether he was under the influence?

15 A That was part of it.

16 Q The first thing that you did after talking to the
17 officers is to find out whether Mr. Hamrick was under the
18 influence?

19 A Yes, at that point. I think that I started
20 talking about setting up to do field sobriety.

21 Q On the video you can actually hear yourself ask
22 the officers the question of whether it is a 1095. Meaning
23 that --

24 A I did because --

25 Q 1095.

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1 MR. KIDD: Objection, Judge.

2 THE COURT: Basis?

3 MR. KIDD: If he would be allowed to explain
4 his answer.

5 THE COURT: Sir, if you can answer the
6 question yes or no and then you can explain your
7 answer.

8 THE WITNESS: Repeat it please.

9 BY MR. BISCHOFF:

10 Q When you arrived on scene, you told Officer Eckert
11 and Ballenger that you believed he was a 1095?

12 A No, it wasn't Ballenger, it was Sergeant Winstead.

13 Q Winstead, I am sorry. You told Officer Eckert and
14 Winstead you believed he was a 1095?

15 A No. Did I believe he was a 95?

16 Q Did you?

17 A I referenced a 95, which 95 is a code for arrest.
18 So, I referenced a 95. I didn't say that I believed he was
19 a 95.

20 Q Sure. That is because he had already refused the
21 field sobriety test?

22 A Well, what happened -- can I answer without
23 answering yes or no first?

24 Q You are allowed to explain your answer.

25 A Okay. When I arrived on scene, you know, it was

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1 chaotic, as you tell on the video. They called me and told
2 me to go out to this scene, it was an auto accident. I show
3 up, my supervisor is not there. I was the first one that
4 was called out. I was the first one of those guys there. I
5 am not really sure of what my role is. My sergeant isn't
6 there yet. I wasn't sure what was expected of me. We don't
7 do this a lot. I mean, it is not a certain protocol. So,
8 as I get out of the car I was barraged with their
9 information.

10 I do direct my attention to we should do
11 field sobriety test because that could be the contributing
12 factor to this. So, as I was doing that Corporal Eckert
13 states, I talked to him and he told me he wasn't going to do
14 field sobriety test. And at that point, if they don't have
15 any probable cause for arrest, what am I going to have by
16 his not wanting to do anything?

17 So, at this point I'm thinking and I do say,
18 Do you want me to leave it with y'all, you know, I mean, or
19 do y'all want to make the 95? And before I finish my
20 response you can hear him respond, Do what? And then at
21 that point I'm gathering my thoughts and I make the
22 decision, I'm called out for a reason, this is what we do,
23 my sergeant isn't there yet and I am going to go ahead and
24 make the decision to be the one to handle the case and be
25 the investigating officer.

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1 And I told them, Give me everything that you
2 have. If there's a decision to be based on arrest, then
3 give me everything that you have so I can have that
4 information, what you have heard, smelled, seen. At that
5 point that is what they give me. They give me what they
6 have and I run with it to make the decision, so to speak.

7 Q So, before you arrived you had no idea that you
8 were the lead investigator?

9 A Correct.

10 Q No one told you that?

11 A No.

12 Q Who was the lead investigator before your arrival?

13 A There was no -- to this day I don't think that
14 there was a specific lead investigator.

15 Q Who was in control?

16 A Assume the chain of command, Sergeant Winstead,
17 Corporal Eckert. There were officers on scene, so our chain
18 of command would have taken effect at that point.

19 Q I'm going to ask you that during your testimony
20 you only testify to things that you are sure about. You
21 cannot speculate. Who was in charge prior to your arrival?

22 A The lead supervisor on scene.

23 Q Who was that?

24 A Sergeant Winstead.

25 Q And after your arrival you were the one who took

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1 over. So after that point it is your scene?

2 A Uh-huh.

3 Q You are responsible for the investigation?

4 A Yes.

5 Q And you are responsible for interviewing any
6 witnesses?

7 A Yes.

8 Q And you are responsible for figuring out what
9 happened?

10 A Yes.

11 Q Because you are the accident reconstructionist?

12 A Yes.

13 Q And you are the one who has had the training?

14 A Yes.

15 Q You are the one who ought to know about crime
16 scene preservation?

17 A Yes.

18 Q You are the one who knows that you weren't there
19 so you have got to try to figure out what happened?

20 A Yes.

21 Q Because, Heaven forbid we charge somebody who is
22 innocent; correct?

23 A Oh absolutely. Listen, in this line of work I'm
24 given a serious responsibility. You know, I can take away
25 somebody's rights, you know, I can arrest you and I don't

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1 take that lightly. I have been here -- been doing this ten
2 years and I understand that importance.

3 Q But you haven't been an accident reconstructionist
4 for ten years?

5 A Correct.

6 Q You actually, as of July 25th, 2011, 4 months
7 before this accident took place you haven't had really much
8 training at all in accident reconstruction have you?

9 A I consider that pretty false.

10 Q Okay.

11 MR. BISCHOFF: I have got -- may I approach
12 the witness, Your Honor?

13 THE COURT: You may.

14 BY MR. BISCHOFF:

15 Q I have your training records here, you are going
16 to tell me -- you become a police officer in 2004?

17 A Yes, I was hired in 2003 as a police officer in
18 Mt. Pleasant.

19 Q You were on patrol first and you worked your way
20 up. Can you tell me between 2003 and 2011, tell me the
21 classes that you took in accident reconstruction?

22 A Let's see, in '05 I had accident collision, an
23 80-hour course, two weeks.

24 Q Right. And you testified on direct examination
25 that was phase one?

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1 A Phase one of three, right.

2 Q How many hours?

3 A Eighty.

4 Q Okay.

5 A I had technical collision investigation in 2009,
6 which was followed by traffic collision reconstruction in
7 2009.

8 Q How many hours?

9 A Eighty per, so that was a total of 160. So, with
10 those three, you know, 240.

11 Q And then did you have something in July?

12 A July?

13 Q 2011.

14 A Yes, I had auto pedestrian, pedestrian and bicycle
15 reconstruction, which was an additional 40 hours.

16 Q Okay.

17 A So, you know, up to 2009 I had 240 hours in
18 collision reconstruction.

19 Q Okay. Thank you. Overall, since you were a
20 police officer, 915 hours?

21 A I am not sure.

22 Q That is all right. You have had a lot of
23 training, I understand?

24 A I have never seen one of these printed out.

25 Q I understand. If you will flip to the last page?

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1 A That is what this says, yes. I mean, you know.

2 Q And the way that it works is when you go to the
3 academy to become a police officer you take a couple of
4 weeks training; is that accurate? Is that fair to say?

5 A A couple, no, that is not accurate.

6 Q How many hours do you take when you are at the
7 academy?

8 A The academy, the basic academy?

9 Q Right. You graduated high school and then you
10 went to college and then you went to the academy to become a
11 police officer. You can't be a police officer without being
12 certified; correct?

13 A No, you can't be a police officer without being
14 certified within a year.

15 Q How do you get certified?

16 A Within that year you have to go -- you go to
17 Columbia, I think, roughly, it was nine weeks for me, now it
18 is 12ish, I think, I'm not sure.

19 Q At the academy they teach you how to shoot a gun
20 and how to write a report?

21 A Yes.

22 Q And they teach you general police stuff?

23 A Yes.

24 Q And when you graduate you are able to carry a
25 badge, carry a weapon?

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1 A Yes.

2 Q And when you are at those classes at the academy
3 they tell you about the significance of writing police
4 reports?

5 A They do.

6 Q And one of the main things about writing a report
7 is that you do it because you know you are going to trial
8 potentially and that memory can fade over time. And they
9 teach you that when you write these reports you ought to do
10 it as close to the incident as possible so your memory is
11 fresh?

12 A Time frame as close to --

13 Q Yes, I'm asking what they taught you. Do they
14 teach you to write a report soon after the incident?

15 A It's been ten years. What they taught me at the
16 academy, if they said do it as soon as the time frame, I
17 can't recall, it's been ten years since I have been to the
18 academy.

19 Q What do you do now?

20 A As far as a report?

21 Q In writing a report.

22 A If I'm on patrol and I have a domestic violence or
23 any type of arrest I'll do a report before I go home that
24 night.

25 Q You write an initial report?

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1 A If there's a reason to leave it active, then I
2 will leave it active and I can add stuff to it down the road
3 as I gather information. So, we do do an initial report.
4 If there is reason to leave it active then I leave it
5 active, then I leave it active. If I can tell them, this is
6 active for this reason, they will say, That is fine. And
7 then I can add information to it at a later date once we
8 gather it and have time to do that.

9 Q But the initial report is written soon after the
10 incident?

11 A Sure.

12 Q While everything is fresh in your mind?

13 A Yes, like that day or so.

14 Q Now, this accident was two years ago. And have
15 you had a chance to review your report since then?

16 A I have.

17 Q Have you had a chance to discuss your report with
18 the prosecutor?

19 A We did.

20 Q Did you provide -- did you write up any
21 supplemental reports since that time?

22 A Since what time?

23 Q Since -- I know that you have written a couple of
24 supplemental reports, I have seen them, you turned them over
25 in discovery. But since the week or so following the

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1 incident, have you written any supplemental reports about
2 anything that developed in the investigation?

3 A I have my reports here if I can look at them and
4 see for sure. If you can give me a week time frame.

5 Q I'm not going to hold you to a hard figure like
6 that. I am just asking any new information.

7 A Here is a supplement that I did from
8 December 22nd. Let's see, no, it says on December 13th I
9 met with the Judge. On December 14th I met with Booker at
10 the highway patrol. So, there was a report done in December
11 which was about a month after.

12 Q What about anything since January of this year?

13 A Not that I can recall.

14 Q You didn't have a chance to review our expert
15 opinions report?

16 A No. I mean we -- he -- the prosecutor mentioned
17 to it to me. I haven't reviewed it.

18 Q You didn't review it?

19 A No, I didn't.

20 Q You didn't think that it was important to consider
21 his opinion in figuring out what happened?

22 A We gathered as a team, my supervisor and I. We
23 looked at what we had. I consulted with my instructors that
24 taught me this class in Columbia about what route I could --
25 you know, what we could do as far as the collision and with

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1 the car. I documented everything I could. I spoke with all
2 of the witnesses that I could. As you can see I was doing
3 these reports a month later, you know. I met with witnesses
4 in the middle of the night when they were on the side of the
5 road. You know, I did everything that I could to complete
6 this case.

7 Q That is not what you said on direct. You said
8 that you wrote your report about the cone placement in
9 particular based on a conversation that you had with one
10 man, Christopher key?

11 A No, that was the possible point of impact.

12 Q Right, but you testified that you actually tried
13 to figure out the possible point of impact after just
14 talking with Christopher Key?

15 A No, he was the reason that I marked a possible
16 point of impact was he said, Oh, I believe that he was
17 standing right here when it happened. So, I didn't have
18 anything else so I marked that one.

19 Q Did you talk to Henry Ford that said that the
20 cones were placed up and down the line there along the
21 pavement?

22 A Uh-huh.

23 MR. KIDD: Objection, Judge, calls for
24 hearsay.

25 THE COURT: You may proceed. But be careful.

TESTIMONY OF ANDREW HARRIS

1 MR. BISCHOFF: Yes, Your Honor.

2 BY MR. BISCHOFF:

3 Q But your theory of the case is that Mr. Hamrick's
4 car entered the work zone and then out before hitting the
5 paver, hitting a cone, or hitting anybody else?

6 A It is possible.

7 Q Well, we are not dealing with possibilities. I
8 mean, you have the burden of proof here. I mean, that is
9 your theory of the case; correct?

10 A If you are asking me if I believe that that is
11 what happened.

12 Q I am asking you, is that the bases for your
13 reports; is that what you believe happened?

14 A I believe that there's a possibility that his car
15 entered the work zone and struck Ahmad.

16 Q Without hitting a cone?

17 A Correct, he didn't hit a cone.

18 Q Without hitting the paver?

19 A Correct.

20 Q Traveling at a rate of 35 to 40 miles an hour?

21 A Correct, going above the speed limit.

22 Q Driving at a rate of 35 to 40 miles per hour?

23 A It could have been higher. He said --

24 Q What did you write in your report? Do you want me
25 to get it and refresh your memory?

TESTIMONY OF ANDREW HARRIS

1 A Sure.

2 Q You know what a TR310 is, correct, Officer?

3 A Yes.

4 Q What is that? Can you explain it to the ladies
5 and gentlemen of the jury?

6 A It is the traffic collision report that we do when
7 we respond to a collision that you are in, we will do a
8 TR310.

9 Q Your Honor, may I approach the witness?

10 THE COURT: Yes.

11 BY MR. BISCHOFF:

12 Q I will show you -- sorry, let me mark this.

13 *(Whereupon, Defendant's Exhibit Nos. 22 and 23*
14 *were marked for identification.)*

15 BY MR. BISCHOFF:

16 Q Let me show you what's been marked as an exhibit.
17 Do you recognize that document?

18 A I do, that is the TR310.

19 Q And does it fairly and accurately represent what
20 happened that night, what you observed?

21 A It does.

22 Q And you filled this out shortly after the
23 accident?

24 A Shortly after. I can't remember exactly when I
25 filled it out but it would have been after.

TESTIMONY OF ANDREW HARRIS

1 Q But it's your document?

2 A It would have been shortly after.

3 MR. BISCHOFF: Your Honor, I move to admit
4 Defense 22 into evidence.

5 MR. KIDD: Hearsay.

6 THE COURT: Approach.

7 (Off-the-record discussion.)

8 MR. BISCHOFF: May I approach the witness?

9 THE COURT: Yes.

10 BY MR. BISCHOFF:

11 Q I'll show you again Defense 22. Will you tell me
12 what the document says about the speed?

13 MR. KIDD: Objection.

14 THE COURT: You need to ask him the question
15 and give him the opportunity to admit or deny it
16 and then you may use the document to impeach,
17 otherwise he can only use it to refresh his
18 memory.

19 BY MR. BISCHOFF:

20 Q Do you agree that the speed that you indicate
21 there is 40 miles an hour?

22 A Yes.

23 Q And this is the official document that you used or
24 that you do use when you are investigating accidents?

25 A Yes.

TESTIMONY OF ANDREW HARRIS

1 Q Do you know how fast a car or truck travels at
2 40 miles an hour?

3 A Speaking velocity, speed?

4 Q Right. I mean, you are an accident
5 reconstructionist, right?

6 A Uh-huh.

7 Q I'm asking you as an accident reconstructionist,
8 are there not standards for how fast a car travels?

9 A I know that there is issues of drag and et cetera,
10 et cetera.

11 Q Sure.

12 A Speed times velocity, speed times 1.466 is your
13 velocity, so I would say that it is approximately 58 feet
14 per second.

15 Q And at 35 miles an hour?

16 A Times 1.466. I mean, that has got to be --

17 Q Do you use these calculators?

18 A The blue blitz (phonetic)?

19 Q Yes.

20 A We have some.

21 Q But you know how fast a car travels at 35 miles an
22 hour, right?

23 A Sure.

24 Q And at 40 you said that it travels at 58 feet?

25 A I mean, I am just saying, I don't have a

TESTIMONY OF ANDREW HARRIS

1 calculator, if you want to give me a calculator.

2 Q So your testimony was that the distance between
3 the cone behind the paver was 43 feet?

4 A 43.1, I believe. It was in the report.

5 Q And you testified that no cones were hit?

6 A Correct. Correct.

7 Q And that the paver wasn't hit?

8 A Correct.

9 Q So your testimony is that a car traveling around
10 50 feet per second gets in and out of a 43 foot zone without
11 hitting anybody?

12 A It is possible.

13 Q Without hitting the paver?

14 A I would say it is possible.

15 Q Did the car hit the paver?

16 A No.

17 Q Did the car hit the cone?

18 A No.

19 Q So your testimony is that -- your theory of the
20 case is that a car traveling 50 feet per second enters a
21 zone of 43.2 feet is your testimony?

22 A 43ish, 43.1, 43.

23 Q Since you weren't the first person to respond, you
24 reviewed the videotapes of the initial responding officer,
25 correct?

TESTIMONY OF ANDREW HARRIS

1 A Yes.

2 Q That would be Officer Eckert?

3 A Yes.

4 Q Did that have any influence on your decision about
5 what happened?

6 A I mean, it confirmed some things, sure.

7 Q What about cone placement?

8 A I'm sorry, what is the question?

9 Q What about cone placement? Did Officer Eckert's
10 video confirm anything with you about cone placement at the
11 time of the accident?

12 A Not that I can recall.

13 Q Let me show you what's been marked as State's 17.
14 So your testimony, your belief, is that these barrels were
15 not there at the time of the accident?

16 A Correct.

17 Q But that cone that we see was there?

18 A In that area I was told that it was moved.

19 Q Well, where was it?

20 A That is the thing. I mean, these cones were moved
21 before I got there. I documented everything that I could
22 where things were when I got there. But unfortunately, you
23 know, I wasn't there to see what happened. So, I documented
24 what I had. Talked to as many people as I can. I measured
25 it to put it in for his benefit as well as mine, that is

TESTIMONY OF ANDREW HARRIS

1 what I had. I mean, I'm trying to be impartial.

2 Q Look, I understand that. And the scene was
3 compromised, you would agree?

4 A Yes, the cones.

5 Q You had no idea what was there at the moment of
6 impact?

7 A Correct.

8 Q And you have no idea whether or not the lane, the
9 travel lane, was properly separated from the work zone?

10 A I would say -- you said no idea? I mean, from
11 driving the scene and you saw the video when I did the loop
12 and you can see that the cones are relatively consistent one
13 foot outside of the dividing lines. Some were on the
14 dividing lines. So, this cone could have been on the
15 dividing line, not one foot out. So, no idea? I would say
16 that from me driving it it was consistent throughout the
17 year or however long it had been going on, and it did go on
18 for a long time.

19 Q But even in the video that we just looked at on
20 direct states 37 when you drove northbound from the Park
21 West intersection and turned around, you didn't recognize
22 cones lying in the roadway then?

23 A There was one cone laying on the road I think in
24 the video.

25 Q Let me show it. (Pause.)

TESTIMONY OF ANDREW HARRIS

1 While this is loading, Officer, are you
2 familiar with the SCDOT guidelines?

3 A No.

4 Q So you have no idea what the cone placement ought
5 to be like in a construction zone?

6 A Well, the term "no idea," I mean, once again, that
7 is broad.

8 Q You don't know what the guidelines are?

9 A Correct.

10 Q We will just watch this video. This is you
11 driving northbound?

12 A Correct.

13 Q The other side of the highway from where the
14 accident took place?

15 A Right. I went up and then turned around.

16 Q Okay.

17 (Video playing.)

18 Q So far we have traveled a short distance but we
19 have seen two cones; would you agree with me?

20 A Okay.

21 Q Do the workers look protected to you at that
22 point? Your car is inches from people that are paving?

23 A I was looking at the cones. I thought that you
24 were addressing the cones; I wasn't looking at the workers.

25 Q I'm addressing the cones, I am addressing the

TESTIMONY OF ANDREW HARRIS

1 workers, I am addressing the situation on the highway. Does
2 that look safe to you? Do we need to look at it again?

3 A That looks like it has for the majority of the
4 time that they had the construction going on. I mean, they
5 put the cone a foot over for a reason. When I talked to
6 them, they pave up to the other line. It is inherently
7 dangerous.

8 Q When you say "them," are you talking about Banks
9 Construction?

10 A I don't know who it is out there. These are
11 Banks, but whoever it is paving, the workers on the road.

12 Q Today you are saying that Daniel Hamrick did
13 something wrong and did something to cause this accident,
14 correct?

15 A Yes.

16 Q And I'm showing you a picture of the situation
17 opposite of where the accident took place; does that look
18 safe to you?

19 A If you want to play it again and I'll look. I
20 mean, I'm not a safety consult inspector, it looks
21 consistent with what we have seen over the years.

22 Q I understand that you are not a safety inspector
23 and it is not your job to place cones in the roadway, I get
24 that. But you are an accident reconstructionist and you are
25 responsible for this investigation and you are responsible

TESTIMONY OF ANDREW HARRIS

1 for knowing whether or not a man stepped out into the road
2 or whether Mr. Hamrick entered the work zone, correct?

3 A Yes.

4 Q That is what we are here to decide?

5 A Sure.

6 Q Seeing that clip do you not see how it's possible
7 for someone to step into the roadway?

8 A Is it possible, yes.

9 Q Yes, thank you. Officer, I would like to direct
10 your attention now to Mr. Hamrick's car. The Solicitor went
11 over some pictures with you. I want to talk about the
12 damage and what that tells you about the collision.

13 A Uh-huh.

14 Q Now in your training and experience, again, you
15 told the ladies and gentlemen of the jury that you have 240
16 hours of accident reconstruction training. You are aware
17 that bodies travel or are trajected differently at different
18 speeds?

19 A That is possible. Yes. I mean --

20 Q You are aware based on your study, expertise as an
21 accident reconstructionist, that when a body and a car
22 collide it gets trajected differently depending on the
23 relationship of where each is with regard to the other?

24 A Yes, speed has something to do with it.

25 Q And you know that at certain speeds you are going

TESTIMONY OF ANDREW HARRIS

1 to have damage to a windshield. No damage to the windshield
2 here?

3 A There wasn't -- there was some noticeable impact
4 or contact with the windshield.

5 Q Was it shattered?

6 A No.

7 Q Was it broken at all?

8 A No.

9 Q And you also know something about where a
10 pedestrian is in relation to the car at the point of impact
11 based on the damage to either -- to the body of the car,
12 correct?

13 A I am sorry, repeat that. I am sorry.

14 Q You know based on the damage to the body of the
15 car where a pedestrian is at the point of impact?

16 A No, I mean, that is hard to determine because -- I
17 mean, can you rephrase the question? I'm not sure that I
18 understand what you are asking.

19 Q Sure. I'm trying to ask at impact if you have got
20 damage to the passenger's side of the car and you don't have
21 any damage to the center of the car, you know that the
22 pedestrian could not have possibly been in the center of the
23 car at the point of impact?

24 A The damage would be caused by the pedestrian where
25 it's at. There is different types of damage that occur to a

TESTIMONY OF ANDREW HARRIS

1 vehicle.

2 Q But in this case -- I'm showing you State's 9.

3 A Uh-huh.

4 Q That is the only damage to the front of the car?

5 There's no damage in the center?

6 A Right.

7 Q There's no damage on the driver's side?

8 A Right.

9 Q Right. You thoroughly inspected the car?

10 A I did.

11 Q Top to bottom, left to right?

12 A Uh-huh.

13 Q And the only damage was to the front passenger

14 side, would you agree?

15 A Yeah, the front and the passenger's side.

16 Q Well, you can't just say the front, can we?

17 A It is the front and the passenger's side, correct.

18 Q Correct, the front passenger's side of the car?

19 A The front and the front right side of the

20 passenger's (SIC) car.

21 Q And then there was also damage -- I'm showing you

22 State's 11 -- to the upper part of the hood on the

23 passenger's side?

24 A Yes.

25 Q Would you agree that it's likely that the body

TESTIMONY OF ANDREW HARRIS

1 crawled up that side of the car after impact?

2 A Can I mark it up for you?

3 Q Sure.

4 A Yes, roughly I would say this area, you are right,
5 there is damage here. The body more than likely traveled up
6 the car.

7 Q And the antenna is bent, so more than likely the
8 body traveled on the extreme passenger side of the car?

9 A On this side, yes, on the front.

10 Q Where you have marked?

11 A Uh-huh.

12 Q So if we know that the damage is as you have
13 marked, then the body couldn't have -- then Mr. Garland
14 couldn't have been in the middle of the road at impact, in
15 the travel lane?

16 A Correct.

17 Q Right?

18 A Correct.

19 Q Because we would expect to see damage to the
20 front, center part of the car. We would expect to see
21 damage maybe on the windshield, maybe on the hood depending
22 on speed?

23 A Yes.

24 Q Would you agree?

25 A Yes.

TESTIMONY OF ANDREW HARRIS

1 Q So, you agree with me that based on the damage to
2 the car, we know that the impact that -- at impact that
3 Mr. Garland was just at the passenger side of the car, just
4 at the extreme passenger's side of the car, meaning that he
5 wasn't --

6 A At the front, in the front right passenger side?

7 Q Yes.

8 A Right front by the headlight?

9 Q Right. You agree?

10 A Yes.

11 Q And you agree that once that collision happened,
12 then depending on where the car was traveling at impact you
13 would expect to find Mr. Garland's body at a certain
14 location, a specific location?

15 A Uh-huh.

16 Q Because what you are really talking about is
17 physics and a lot of math, but essentially if a car is
18 moving it is not going to toss a body to the left side if
19 it's actually moving in a particular direction?

20 A Yes.

21 Q And you would agree that Mr. Garland was found on
22 the back left side of the paver?

23 A Yes.

24 Q Now, what does that tell you about the moment of
25 impact?

TESTIMONY OF ANDREW HARRIS

1 A Well, you know, we -- with collision
2 reconstruction they talk about conservation of linear
3 momentum, which is what I think that you were talking about,
4 two things collide they go in a certain direction. If you
5 have a T-bone impact this way it is not going to end up
6 here, it is going to go this way. He's talking about if
7 somebody is hit, with the momentum, if the vehicle is
8 traveling at a certain angle, then the object would be
9 projected in a certain direction based on linear momentum.
10 In this case the possibility that he was hit straight on and
11 the vehicle was possibly even exiting the closed lane as the
12 pedestrian was struck could be a possibility.

13 Q But you are not sure?

14 A I'm not sure, you are right. I don't have a point
15 of impact. The cone placement is questionable so --

16 Q That is all vital to you figuring out what
17 happened?

18 A I wish that we had skid marks or a point of
19 impact. But we have a lot of witnesses that were on the
20 scene.

21 Q May I stop you right there? You are telling the
22 jury that there were no skid marks?

23 A Correct.

24 Q Sorry, I didn't mean to interrupt you, I just
25 wanted to make that clear. No skid marks?

TESTIMONY OF ANDREW HARRIS

1 A No.

2 Q Nobody heard any skid marks or any screeching of
3 tires or anything like that?

4 A Correct. And while we are on the subject of
5 linear momentum or objects deflect. You know, we pointed
6 out earlier, I located evidence of a fragment of a headlight
7 which was determined to come from Mr. Hamrick's car. We did
8 indicate -- may I mark on here, do you mind?

9 Q Go for it.

10 A We pointed out a fragment of the headlight and one
11 over here on the right side. So, the basis that there was
12 no confirmation of linear momentum in that direction, you
13 know, items did go into the closed lane. Does that make
14 sense?

15 Q So -- but, again, you testified that you don't
16 know how long the scene -- how long it was before the scene
17 was roped off?

18 A Correct.

19 Q You don't know whether or not it was preserved.
20 You don't know whether or not a fire truck drove through
21 there and carried any evidence that could have been there to
22 the paver?

23 A Correct.

24 Q Would you be shocked if one of your officers show
25 a truck driving through the crime scene?

TESTIMONY OF ANDREW HARRIS

1 A Through the crime scene, I would be shocked. They
2 were passing by. There was a Corporal and a Sergeant on the
3 scene and they are not a Corporal and Sergeant for no
4 reason, they know our policies of crime scene preservation,
5 which is why you see all of this crime scene tape and you
6 see it extended. They are supervisors for a reason. They
7 know our crime scene preservation well.

8 Q But you don't note anything in your report about
9 the crime scene being preserved. That is an important part
10 in figuring out what happened, right?

11 A Sure.

12 Q Based on your testimony, if a car is entering the
13 roadway like that you would expect the body to be on the
14 right side of the paver?

15 A At impact.

16 Q At impact?

17 A Right.

18 Q And then if the car is traveling that direction
19 and somebody walks out into the middle of the road --

20 A Uh-huh.

21 Q -- and they get clipped and they rotate up the
22 side, the passenger side of the car, and they land on the
23 left side of the paver, that is absolutely possible is it
24 not?

25 A At 40 miles an hour, 43 feet back, if you were hit

TESTIMONY OF ANDREW HARRIS

1 where this line is I wouldn't expect him to be on the left
2 side of the paver. Just from my experience, at 45 miles an
3 hour, if he did a somersault I would expect him to be, from
4 my experience, to be farther down the road.

5 Q I am not talking about the body through the air,
6 I'm talking about where it lands.

7 A Exactly, that is what I am saying. It would land
8 farther down that lane.

9 Q I am sorry, can you mark?

10 A This way. I mean, in this lane here.

11 Q That is if he is in the roadway?

12 A You drew this line and said if impact is right
13 here.

14 Q I am sorry, so we are not confusing one another.
15 What I'm saying is, if the car is traveling in the travel
16 lane, the one that you don't know if it was marked off by
17 cones or not at the time of impact?

18 A Sure.

19 Q And the pedestrian was not in the middle of the
20 travel lane but maybe just entering the travel lane, based
21 on the damage of the car would you not expect it to land on
22 the backside of the paver if it just got brushed?

23 A It is hypothetical. So, you know, it is hard to
24 say where -- you are saying "in the lane," where at in the
25 lane? It is all hypothetical. I'm putting somebody

TESTIMONY OF ANDREW HARRIS

1 somewhere and you are saying it could have happened this
2 way, where would it have landed you know.

3 Q I understand. But you are the accident
4 reconstructionist.

5 A Sure.

6 Q And this is your case.

7 A Right.

8 Q And we are here trying to figure out what
9 happened. Did this man enter the work zone, which is the
10 theory of your case, or was he traveling in his traffic lane
11 when Mr. Garland stepped in front of him unexpectedly,
12 right? And your testimony is that both of them are
13 possible?

14 A It is possible.

15 Q But you don't know?

16 A I don't know for sure. I know that he admitted to
17 exceeding the speed limit.

18 Q Regarding Mr. Garland's injuries, did you review
19 that before you came to your conclusion about what happened?

20 A Yes, I did. I tried to -- I went to the hospital.
21 You know, it is hard to get information out of doctors when
22 you go there. I tried to check on the injuries, and there
23 are constraints they have, legal constraints to tell me what
24 the injuries are, but I did.

25 Q You know, but afterwards? Surely you talked to

TESTIMONY OF ANDREW HARRIS.

1 family and you talked to the prosecutor. I mean, you want
2 to know, right, as an accident reconstructionist you want to
3 figure out what happened to the body?

4 A I do.

5 Q Where was he at impact. I can figure out anything
6 based on the injuries to the victim about what happened;
7 right?

8 A Right.

9 Q And you did that, right?

10 A Yeah.

11 Q You know what his injuries are. You know that
12 he's only got a broken right ankle from essentially the neck
13 down. You know that there's not a broke arm, either one,
14 left, right. You know that there's not a broken pelvis,
15 right; I'm asking you?

16 A I heard the doctor say the same as you.

17 Q You don't have to be a doctor to know what kind of
18 injury he sustained in the accident.

19 A Right, great bodily injury.

20 Q Look, nobody wishes what happened to Mr. Garland
21 to happen. And we understand that he is -- there's great
22 bodily injury. But what my question is: That doesn't tell
23 you anything about the moment of impact. You are the
24 accident reconstructionist, we have to find out what
25 happened at the moment of impact, right? That is our theory

TESTIMONY OF ANDREW HARRIS

1 of the case, you are proving beyond a reasonable doubt that
2 something that Mr. Hamrick did caused the accident?

3 A Correct.

4 Q So, if you know that he doesn't have a broken hip,
5 wouldn't that tell you that he couldn't have been in the
6 middle of the roadway at 35 -- sorry, 40 miles an hour?

7 A I'm not sure of that. You know, in our training
8 we are not trained medically as to what injuries are caused
9 by what part of the car.

10 Q That didn't enter your mind at all?

11 A It did. I went and I prepared a search warrant
12 for medical records of his. When you go to the hospital
13 they are limited on what they can give you. I prepared a
14 search warrant for his records and I went to MUSC and got
15 CDs containing images and looked through them.

16 Q I understand that and you have had time to review
17 all of that stuff. You had access to everything, x-rays,
18 doctor reports, the ER doctor, EMS reports. Based on your
19 review of that information would you agree with me that the
20 only injury to Mr. Garland was a lower extremity right ankle
21 injury?

22 A Yes.

23 Q Thank you. Now I would like to talk about the
24 visibility. That has got to be something that you consider?

25 A Uh-huh.

TESTIMONY OF ANDREW HARRIS

1 Q When you are talking about accident
2 reconstruction, correct?

3 A Yes.

4 Q And the reason for that is not so much during the
5 day, although I guess it is important during the day, but
6 really is at night; right?

7 A Yes.

8 Q And are you familiar with the fact that there are
9 reflective vests that are worn by construction workers, even
10 you guys, policemen?

11 A Yes.

12 Q Now, in the video you guys all wear these bright
13 neon green or yellow vests?

14 A Uh-huh.

15 Q No orange. Do you know why that is?

16 A No.

17 Q No idea?

18 A No.

19 Q Got no idea why that color might be preferred over
20 orange at nighttime?

21 A I guess where you are going, I would assume that
22 one color has been designated brighter than the other.

23 Q Or maybe easier to see at night?

24 A Sure.

25 Q The barrels are orange, right?

TESTIMONY OF ANDREW HARRIS

1 A Yes.

2 Q But regarding visibility, do you know what the
3 visibility was at the point of impact, lighting?

4 A As far as lighting?

5 Q Yes.

6 A They had this dome light on. Whomever I talked
7 to, the dome light was on. And whatever I was told, that is
8 the normal. As you saw in the drive-through, that is the
9 normal lighting they have for a paving operation, that is
10 sufficient I was told.

11 Q But just that dome light?

12 A Yes, and there was a road sign on the side street
13 but it didn't provide additional lighting. That is a
14 relatively dark stretch of highway.

15 Q That is right, and Highway 17 is totally different
16 now?

17 A It is getting there.

18 Q I'm sure that you have been dealing with it for a
19 while. I don't live over there but it is a bit awkward, but
20 up and down the roadway you don't have lights shining on
21 everything.

22 A Right.

23 Q And this happened right at the Publix shopping
24 center, and there is a sign there, but it doesn't really add
25 any visibility or illumination or nothing to that effect?

TESTIMONY OF ANDREW HARRIS

1 A No.

2 Q So this picture that you are seeing, that is with
3 the aid of additional lighting?

4 A Yes, and this truck over here, I believe it is
5 that one, that has lighting that has a -- has a trailer with
6 lights on it and a generator that I was told was brought in
7 after the fact.

8 Q That is right. And you spoke with Banks, you did
9 an excellent job in this regard, you spoke with him and
10 said, How did this truck get here?

11 A Because I wanted to know.

12 Q Right, you did a great job. And they told you, It
13 was moved there after the accident.

14 A Right.

15 Q Meaning at the time of the accident we have got
16 this light on the top of the paver?

17 A Right.

18 THE COURT: Please approach.

19 (Off-the-record discussion.)

20 THE COURT: Mr. Foreman, ladies and
21 gentlemen, we appreciate your indulgence, we have
22 gone far into the lunch hour. I know that you are
23 hungry. We apologize. We didn't mean to test
24 your patience in that regard.

25 We will break until 2:30. During that break don't

TESTIMONY OF ANDREW HARRIS

1 discuss the case amongst yourselves or anyone else.

2 Please leave the note pads in your seat. And return to
3 the jury room and we will resume the cross-examination
4 of the witness at that time. Have a good lunch.

5 THE COURT: You may be seated. Is there
6 anything from the attorneys, from the State prior
7 to breaking for lunch?

8 MR. KIDD: No, ma'am.

9 THE COURT: Is there anything from the State
10 before we break for lunch?

11 MR. KIDD: No, ma'am.

12 THE COURT: From the Defense?

13 MR. BISCHOFF: No, Your Honor.

14 THE COURT: Have a good lunch. See you at
15 2:30. During the break, Officer, you are not to
16 discuss your testimony with anyone.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Thank you, sir.

19 (Whereupon, a lunch recess was taken. Proceedings
20 continue in Volume 5.)

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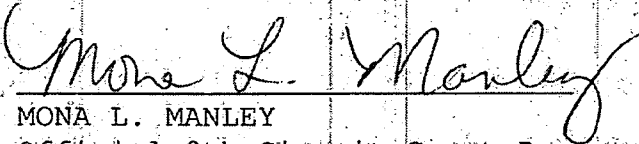
TESTIMONY OF ANDREW HARRIS

1
2 CERTIFICATE3
4 STATE OF SOUTH CAROLINA:

5 COUNTY OF CHARLESTON:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

10 DATED this 1st day of May, 2014.

11
12 
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1 State of South Carolina }
2 County of Charleston } Indictment No. 2012GS1001033
3 State of South Carolina, }
4 Plaintiff, }
5 vs. } Trial Transcript
6 Daniel D. Hamrick, }
7 Defendant. }

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VOLUME 5

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October 23, 2013

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Charleston, South Carolina

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21 BEFORE:

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The Honorable Deadra Jefferson

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1 PROCEEDINGS

2 (Jury enters courtroom following a lunch recess.)

3 THE BAILIFF: All present, Your Honor.

4 THE COURT: You may be seated. Ladies and
5 gentlemen, I hope that y'all had a pleasant lunch
6 recess. We will now proceed with the witness'
7 cross examination. You may proceed.

8 MR. BISCHOFF: Thank you, Judge.

9 THE COURT: You're welcome.

10 Thereupon,

11 ANDREW T. HARRIS

12 resumed the stand, having been previously duly sworn,
13 continued his testify as follows:

14 CROSS EXAMINATION (CONTINUED)

15 BY MR. BISCHOFF:

16 Q Officer Harris, I want to talk now a little bit
17 about when you first arrived at the crime scene and you were
18 briefed by some of the other officers and then you turned
19 your attention to Mr. Hamrick and you started communicating
20 with him, talking with him.

21 Before that night, had you ever met him?

22 A No.

23 Q Y'all had never had any interaction?

24 A I mean, I didn't recognize him. I'd not know him
25 to this day.

TESTIMONY OF ANDREW T. HARRIS

1 Q Didn't know him. That was the first time that you
2 ever met him?

3 A Yes.

4 Q So you knew nothing really about his coordination?

5 A Right.

6 Q You knew nothing really about any neurological
7 disorders that he may have?

8 A Right.

9 Q You did ask him about whether he had any ailments,
10 but all of that is so you can get a better idea of the
11 individual that you're talking to --

12 A Yes.

13 Q -- correct?

14 And you talked about on direct that nystagmus
15 is a jerking of the eye, right?

16 A Yes.

17 Q And it's true that there are a number of other
18 things besides the consumption of alcohol that cause
19 nystagmus?

20 A Yes.

21 Q And it could be some medication?

22 A Yes.

23 Q It could be motion sickness.

24 Are you familiar with vestibular nystagmus?

25 A Yes.

TESTIMONY OF ANDREW T. HARRIS

1 Q And rotational nystagmus where you turn around
2 rotational and post rotational.

3 A Right. Right.

4 Q And you can actually do it, that's what they teach
5 you in training, you rotate people around and you can see
6 the eye jerking?

7 A Yes.

8 Q So there are other things that cause nystagmus.
9 It's not just the consumption of alcohol?

10 A Correct.

11 Q And you test all of that, I know, with a
12 horizontal gaze nystagmus test, and you testified on direct
13 about that test. And then you did give a vertical test,
14 correct?

15 A Yes.

16 Q And that vertical test is really to determine the
17 presence of drugs?

18 A The vertical would -- they teach you that shows,
19 if you see vertical nystagmus it's usually an indicator of
20 their blood alcohol content. As far as just drugs in
21 vertical, I'm not aware of that. I know drugs can cause
22 horizontal as well as vertical.

23 Q But it is a separate test and it just helps you
24 figure out what --

25 A It's part of the --

TESTIMONY OF ANDREW T. HARRIS

1 Q It is part of your investigation?

2 A Correct.

3 Q And you were referencing the NHTSA manual, right,
4 it's the DWI standard manual. And there have been other
5 additions since the test studies were done in the early --
6 well, the late '70s, early; 80s?

7 A Right.

8 Q And they update them occasionally?

9 A Correct.

10 Q But the idea is that this is sort of what you
11 follow?

12 A Correct.

13 Q And you would agree that in this case, because you
14 didn't really have a traffic stop, Phase One of DWI testing,
15 vehicle in motion, you didn't have to worry about that?

16 A That's right. There's no establishing guidelines
17 or a basis to stop a car.

18 Q And usually when you're out in the field what
19 you're doing is you may see a driver do something, jerk the
20 wheel or maybe use a signal when they're not turning or
21 maybe a wide turn, traffic or vehicle-related things that
22 cause you some concern and that's Phase One; is that a fair
23 statement?

24 A Yes.

25 Q Okay. And then in Phase Two you do have the

TESTIMONY OF ANDREW T. HARRIS

1 personal contact where you speak with the individual

2 sometime in their car, correct?

3 A Yes.

4 Q Sometimes out of their car?

5 A Yes.

6 Q And then you make a determination in Phase Two
7 whether to go to Phase Three, which is the field sobriety
8 test that you testified to on direct?

9 A Uh-huh, yes.

10 Q Yes.

11 And during this personal contact, Phase Two,
12 there are clues that you look for just like the clues that
13 you look for when you're doing Phase Three, right?

14 A Yes.

15 Q And one of those clues would be bloodshot eyes?

16 A Yes.

17 Q You didn't notice bloodshot eyes in this case?

18 A I noticed his eyes were bloodshot and glassy in
19 appearance.

20 Q You didn't indicate it in the report, did you?

21 A Can I look?

22 Q Sure.

23 A (Witness reviewing documents) No, I can't find it
24 in my report.

25 Q Okay. And usually during that, again, personal

TESTIMONY OF ANDREW T. HARRIS

1 contact, people are trying to give you their wallet or their
2 license or registration, you look for fumbling of fingers or
3 those sorts of things to give you an indication, right?

4 A Right.

5 Q And you also are looking for whether or not they
6 give you inconsistent answers to your questions?

7 A Sure, yes.

8 Q Where are you coming from, yes?

9 A Yeah.

10 Q Where are you going, yes?

11 A Yes.

12 Q What have you been doing tonight, just to get an
13 idea. And, generally, when you're dealing with a drunk
14 driver they will say, oh, I'm coming from downtown. And
15 then, you know, an example may be well, then why are you
16 heading toward downtown. You look for those sorts of
17 things, inconsistencies, right?

18 A It happens.

19 Q All right. And then you testified on direct that
20 another part of your training is that you look for psycho --
21 what did you call them, they're basically divided attention
22 tests, right?

23 A Psychophysical?

24 Q Psychophysical test.

25 And that's the field sobriety test where you

TESTIMONY OF ANDREW T. HARRIS

1 stand on one leg.

2 A A word that they have in the manuals, you know,
3 that addresses the main concept of these tasks.

4 Q And you're right. I mean, the whole idea is that
5 you want to give them divided attention, you guys call them
6 tasks?

7 A Test/tasks.

8 Q Tests/tasks.

9 But the idea being that someone that is under
10 the influence is going to have trouble doing more than one
11 thing at once. They're going to have trouble maybe
12 following directions, yes?

13 A Yes.

14 Q And you would agree that you didn't have the most
15 ideal set-up in this case?

16 A In a lot of situations we don't. It's roadside,
17 dark, traffic.

18 Q You're on the side of the road --

19 A That's right.

20 Q -- and you're wherever they stop. I mean, in this
21 case, you're in the middle of 17, there's a lot going on.
22 But, yet, you had to do it objectively to try and figure out
23 is this individual under the influence?

24 A Yes.

25 Q And you did that, right?

TESTIMONY OF ANDREW T. HARRIS

1 A Yes.

2 *(Whereupon, Defendant's Exhibit No. 24 was marked*
3 *for identification.)*

4 BY MR. BISCHOFF:

5 Q Officer, let me show you what's been marked --
6 what we're going to mark as Defense 24 for identification
7 purposes. Do you recognize that document?

8 A I do.

9 Q Do you know what it is?

10 A This was a drawing -- a drawing that was produced
11 by Officer Lamb of the police department, Mt. Pleasant
12 Police Department, in reference to the collision. He came
13 out with his mapping equipment and documented the scene.

14 Q Based on your investigation?

15 A Yeah, we were all out there as well, and we walked
16 around and we marked individual locations of evidence, cars,
17 pavers.

18 Q Thank you.

19 MR. BISCHOFF: No more questions, Officer.

20 Thank you.

21 THE COURT: Any redirect?

22 MR. KIDD: Thank you, Judge.

23 THE COURT: You may proceed.

24 REDIRECT EXAMINATION

25

TESTIMONY OF ANDREW T. HARRIS

1 BY MR. KIDD:

2 Q Officer Harris, had you determined that the point
3 of impact was right there, would you still have made an
4 arrest?

5 A It depends on the totality of circumstances. If
6 he had said he was speeding --

7 Q Well, under these circumstances --

8 A Under these circumstances, the same circumstances,
9 yes, based on what I had.

10 Q Why would you have made an arrest -- had arrested
11 him?

12 A He made statements to me that he recognizes a
13 35 construction zone. He said he was doing 35/40. Let's
14 make it clear, I don't know how fast he was going, I can't
15 determine that. I can't determine the point of impact. I
16 cannot determine that he was in the work zone, but he told
17 me he was doing 35/40. He made a comment that states he --
18 the only reason he said he's going over 35 is that this
19 stuff had been going on for so long. So to me that shows a
20 conscious failure to exercise due care.

21 And underneath South Carolina's Code of Laws
22 failure of responsibility to drive and exercise due care.
23 As well if you admit to doing five over, that's in violation
24 of our speeding code, Section 265-15-20 in the Code of Laws.
25 Here we have an absolute speed limit in South Carolina, if

TESTIMONY OF ANDREW T. HARRIS

1 you're going five over, that's speeding.

2 Q Are there other possibilities associated with
3 traffic tickets?

4 A There are. Under the code of laws there's a
5 statute that references and talks about temporary work
6 zones, driving in a temporary work zone.

7 MR. BISCHOFF: Judge, may we approach?

8 THE COURT: Yes.

9 (Off-the-record discussion held.)

10 THE COURT: Proceed. Overruled.

11 BY MR. KIDD:

12 Q Are there additional responsibilities that a
13 driver must adhere to inside a work zone?

14 A There are. There's Statute 265-15-36 that
15 specifies driving in a work zone and it -- I can't word for
16 word explain it, but it does reference that every driver has
17 a responsibility to exercise care in a work zone. That is
18 not word for word but it does state that along those lines.

19 Q As an accident reconstructionist or when
20 investigating an accident, do you interview witnesses?

21 A We do.

22 Q Does that play a role in your determination of
23 what happened on a scene?

24 A Sure, it does.

25 Q So you combine what someone says with measurements

TESTIMONY OF ANDREW T. HARRIS

1 and other things like that?

2 A Right.

3 Q Okay. Now, I think on cross you testified that --
4 that no cones were hit?

5 A Yes.

6 Q Do you know what for a fact?

7 A Based on what I saw at the time, I saw no markings
8 on the car that were indicative of a car hitting a cone or
9 any cones laying down or any witnesses saying that. So I'm
10 not 100 percent sure, but I have no evidence that shows he
11 did. So in fairness I say that there's no evidence.

12 Q Well, it could have happened; it could not have
13 happened?

14 A Sure.

15 Q As part of doing reconstruction defense counsel
16 mentioned you use body trajectory.

17 Had the paving machine not been there, would
18 the body have ended up in a different place?

19 A Yes. This, I mean, this situation I think was
20 referencing -- this was a controlled rest where the body was
21 stopped by an object.

22 Q Can you explain the difference and why that is
23 important?

24 A Because if a, you know, when the body -- when
25 Mr. Garland was hit, the paver kind of interjected his fall,

TESTIMONY OF ANDREW T. HARRIS

1 his throw distance, you know, if he were allowed to continue
2 his path, I don't mean to talk about it so technically, but
3 when Mr. Garland went in a direction, something stopped him.
4 So it's hard for us to tell where it would have ended up.
5 If it would have been, you know, an uncontrolled stop where
6 it just went along the roadway, bounced along the roadway
7 and came to an uncontrolled stop, we can measure distance,
8 determine a better angle, you know, a better total distance
9 then can then be used for calculation for reconstruction.

10 In this case when it comes to a controlled
11 stop, it inhibits our ability and anyone's ability to
12 determine what would have happened.

13 Q So had the body not hit the paver, you would have
14 had a better opportunity --

15 MR. BISCHOFF: Objection; leading.

16 THE COURT: Sustained. Rephrase.

17 BY MR. KIDD:

18 Q Would it have been easier for you without the
19 paver there?

20 A Yes, we could have gotten more consistent numbers
21 that we could use for -- and whatnot.

22 Q Okay. Can you indicate on that paver where
23 Mr. Garland ultimately was?

24 A I didn't see him there. I can tell you where I
25 saw blood.

TESTIMONY OF ANDREW T. HARRIS

1 Q Okay.

2 A There was blood here and then over here
3 (indicating) as well, in those two spots. So you can see a
4 bag right here, which is like a medical bag, had some
5 medical stuff in it, if I recall. So right in here would
6 have been impact.

7 Q And that would have been impact with the paver?

8 A With that catwalk, as they called it, with that.

9 Q And if from a trajectory standpoint we're talking
10 about something moving that direction and it strikes that
11 paver, where would it end up if the paver weren't there?

12 A If the paver weren't there, I mean, I would
13 assume --

14 MR. BISCHOFF: Objection; calls for
15 speculation.

16 THE COURT: Repeat the question, please.

17 BY MR. KIDD:

18 Q Based on body trajectory and where the body was
19 ultimately discovered, had the paver not been there, where
20 would it have ultimately come to rest, approximately?

21 THE COURT: Objection sustained, foundation.

22 BY MR. KIDD:

23 Q Officer, have you received training in automobile
24 pedestrian collisions?

25 A Yes.

TESTIMONY OF ANDREW T. HARRIS

1 Q Could you describe some of that training that you
2 have had for the jury, please?

3 A During that class they trained us specifically
4 what to look for when a vehicle and a pedestrian or a
5 bicyclist collide. During that course they do teach us
6 formulas that you can utilize that are approved, you know,
7 are utilized throughout the community of reconstruction that
8 you can gauge the speed of a car when it comes into impact
9 with a pedestrian based on throw distance is one of them,
10 and then there is final rest from the point of impact.

11 It teaches you that through the air you can
12 have a vault distance, and, you know, a lot of times in this
13 situation something comes into contact with the pedestrian
14 or bicyclist before it comes to final rest. At that point,
15 in this situation, the injuries were so significant that
16 were caused by the paver that it obviously stopped the
17 momentum of the pedestrian. So if the paver had not have
18 been there, the pedestrian would have been further down the
19 street before he came to final rest.

20 MR. BISCHOFF: Objection. Your Honor, has he
21 been qualified to voice this opinion?

22 THE COURT: Approach for me, please.

23 (Off-the-record discussion.)

24 THE COURT: Proceed.

25 MR. KIDD: Your Honor, at this time the State

TESTIMONY OF ANDREW T. HARRIS

1 moves to have Officer Harris qualified as an
2 expert in accident reconstruction.

3 THE COURT: Any objections or questions?

4 MR. BISCHOFF: Your Honor, may I ask one
5 question?

6 THE COURT: You may.

7 MR. BISCHOFF: Officer, have you ever been
8 qualified as an expert before?

9 THE WITNESS: No.

10 MR. BISCHOFF: Judge, I would move that on
11 that basis he's not qualified.

12 THE COURT: Come forward, please.

13 (Off-the-record discussion.)

14 You may proceed.

15 BY MR. KIDD:

16 Q In your training on an auto/pedestrian collision,
17 did they talk to you about variety of different trajectories
18 in which bodies depart from vehicles when they're struck?

19 A Yes.

20 Q What are some of the different ways that can
21 occur?

22 A Based on the different types of vehicles, for one.
23 Different speeds. I mean, if a Corvette versus a dump
24 truck, there are different fronts so the body would traject
25 above, you know, go above the car or it could go straight

TESTIMONY OF ANDREW T. HARRIS

1 forward based on the size of the vehicle or speed is a
2 factor to do with it as well.

3 Q Are you familiar with how far up a car a body
4 would go at different speeds?

5 A I have seen videos in training that have shown me
6 bodies that go completely over a car and the car proceeds
7 under the pedestrian. And I've seen ones where the body is
8 trajected straight forward in front of the car.

9 Q So based on that training, would you agree that
10 there's a variety of possible angles a body can depart a
11 vehicle?

12 MR. BISCHOFF: Objection; leading.

13 THE COURT: I'm going to give him a little
14 latitude. Overruled, you may answer the question,
15 sir.

16 THE WITNESS: Yes, there's a difference.

17 BY MR. KIDD:

18 Q If -- I'll move on.

19 Can you tell me some of the things about this
20 specific scene which made accident reconstruction difficult
21 for you?

22 A I can. At this scene we are unable to locate a
23 point of impact. And you can see in this picture, the
24 roadway being somewhat unclean, unkept, you know, it's --
25 looks rough. It's pitted, there's rocks, there's some