

VOLUME I OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Kershaw County

Tanya A. Gee, Circuit Court Judge

RECEIVED

AUG - 4 2016

SC SUPREME COURT

DONNIE R. THIGPEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002280

APPENDIX

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THE FOLLOWING EXHIBIT IS ON FILE
WITH THIS COURT:
STATE’S EXHIBIT #135 (CD AUDIO)

STATE OF SOUTH CAROLINA)

County of Kershaw)

Court of General Sessions

2009-GS-28-1164

2009-GS-28-1171

State of South Carolina)

vs.)

TRANSCRIPT OF RECORD

Donnie Thigpen, Jr.)

Defendant)

March 19-23, 2012

Camden, South Carolina

BEFORE:

The Honorable Thomas G. Cooper, Jr., Judge

APPEARANCES:

Brett Perry, Deputy Solicitor
Ron Moak, Deputy Solicitor
Attorneys for the State

Alex Postic, Esq.
Derek Chiarenza, Esq.
Attorney for the Defendant

KAREN AMBROZIAK

Official Court Reporter

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<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
1	Breath result (withdrawn)		
2	Photo	69	432
3	Photo	69	432
4	Photo	69	432
5	Photo	69	432
6	Photo	69	432
7	Photo	69	432
8	Photo	69	432
9	Photo	69	432
10	Photo	69	432
11	Photo	69	432
12	Photo	69	432
13	Photo	69	432
14	Photo	69	432
15	Photo	69	432
16	Photo	69	432
17	Photo	69	432
18	Photo	69	432
19	Photo	69	594
20	Photo	69	594
21	Photo	69	594
22	Photo	69	432

EXHIBITS (Continued):STATE'S EXHIBITS:

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
23	Photo	69	432
24	Photo	69	432
25	Photo	69	432
26	Photo	69	432
27	Photo	69	432
28	Photo	69	432
29	Photo	69	432
30	Photo	69	432
31	Photo	69	432
32	Photo	69	432
33	Photo	69	432
34	Photo	69	432
35	Photo	69	432
36	Photo	69	432
37	Photo	69	432
38	Photo	69	432
39	Photo	69	432
40	Photo	69	432
41	Photo	69	432
42	Photo	69	432
43	Photo	69	432
44	Photo	69	432

EXHIBITS (Continued):STATE'S EXHIBITS:

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
45	Photo	69	432
46	Photo	69	432
47	Photo	69	432
48	Photo	69	432
49	Photo	69	594
50	Photo	69	432
51	Photo	69	432
52	Photo	69	432
53	Photo	147	432
54	Photo	147	432
55	Photo (withdrawn)	147	
56	Photo (withdrawn)	147	
57	Photo (withdrawn)	147	
58	Photo (withdrawn)	147	
59	Photo (withdrawn)	147	
60	Photo	147	
61	Photo	147	432
62	Photo (withdrawn)	147	
63	Photo (withdrawn)	147	
64	Photo (withdrawn)	147	
65	Photo (withdrawn)	147	
66	Photo (withdrawn)	147	

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<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
67	Photo (withdrawn)	147	
68	Photo (withdrawn)	147	
69	Photo (withdrawn)	147	
70	Photo (withdrawn)	147	
71	Photo (withdrawn)	147	
72	Photo (withdrawn)	147	
73	Photo (withdrawn)	147	
74	Photo (withdrawn)	147	
75	Photo (withdrawn)	147	
76	Photo	147	404
77	Photo (withdrawn)	147	
78	Photo (withdrawn)	147	
79	Photo (withdrawn)	147	
80	Photo (withdrawn)	147	
81	Photo (withdrawn)	147	
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86	Photo	147	258
87	Photo	147	258
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89	Photo	147	258
90	Photo	147	258
91	Photo	147	258
92	Photo	147	258
93	Diagram	203	204
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95	Jeep Video M.A.I.T.	265	266
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99	ADVICE of IMPLIED CONSENT	332	332
100	Blood Report	334	379
101	SLED Test	338	
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103	Photo	372	373
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105	Photo	372	373
106	Photo	372	373
107	Photo	372	373
108	Photo	372	373
109	Photo	389	406
110	Photo	389	406

EXHIBITS (Continued):STATE'S EXHIBITS:

<u>No.</u>	<u>Description</u>	<u>ID</u>	<u>EV</u>
111	Photo	389	406
112	Photo	412	414
113	Photo	412	414
114	Photo	412	414
115	Photo	412	414
116	Photo	412	414
117	Photo	412	414
118	Photo	412	414
119	Photo	412	414
120	Photo	412	414
121	Photo	412	414
122	Photo	412	414
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126	Photo	412	414
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129	Shirt/Undershirt	422	422
130	Shorts	422	422
131	Shoes	422	422
132	Towel	422	422

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135	CD Audio	434	434
136	Photo Records	452	452
137	Bank Records	452	452
138	Photo	532	537
139	Photo	532	537
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(There were no defense exhibits.)

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1 THE COURT: All right, ladies and gentlemen, we
2 are going to draw a jury at this time, and I'm going
3 to ask the solicitor to call the case that will be
4 tried this week, and then I will have some further
5 questions for you, mainly to find out if you know
6 anything about this case.

7 Solicitor, call your case.

8 MR. MOAK: Your Honor, before I call the case, as
9 a procedural matter, I'm going to hand Mr. Thigpen the
10 indictments, one was 2009-GS-28-1171 true billed by
11 the Kershaw County Grand Jury for leaving the scene of
12 the accident involving death and the other one is
13 2009-GS-28-1164 for felony DUI death. I'm serving the
14 indictments and that is the case we're going forward
15 on.

16 THE COURT: State vs. ...

17 MR. MOAK: Donnie Thigpen.

18 THE COURT: Donald Roland Thigpen, is that
19 correct?

20 MR. MOAK: Yes, sir.

21 THE COURT: Ladies and gentlemen, the solicitor
22 called the case. Now, I need to ask you, as I said, a
23 series of questions. To begin with, as you probably
24 know, any criminal case in South Carolina and frankly
25 anywhere else, the prosecution of that case, the

1 responsibility for prosecution, falls to the State
2 solicitor's office.

3 Now, in some states, they call that the district
4 attorney. Some places they call it the State's
5 attorney. In South Carolina, our prosecuting entity
6 is the State solicitor's office.

7 Your elected State solicitor for the Fifth
8 Judicial Circuit, that is, this area is Mr. Dan
9 Johnson. Dan Johnson is not going to try the case
10 today, two of his deputy solicitors are actually going
11 to conduct the trial. They are Mr. Brett Perry and
12 Mr. Ron Moak. Please stand, counsel. I'll ask if any
13 member of the jury panel is related by blood,
14 connected by marriage or employment or a close
15 personal acquaintance of either Mr. Brett Perry or
16 Mr. Ron Moak. Anybody know either of these two
17 lawyers?

18 (There was no response.)

19 THE COURT: All right. Any member of the jury
20 panel or any member of your family know or are related
21 to Dan Johnson? Any member of the jury panel know Dan
22 Johnson the actual solicitor or perhaps you are
23 related to him or have some other dealings with him,
24 the State solicitor?

25 (There was no response.)

1 THE COURT: All right. Any member of the jury
2 panel or any member of your family --- now, this is
3 because --- I ask this question because the
4 solicitor's office frequently works with law
5 enforcement, and interacts with law enforcement to a
6 great degree.

7 I need to know if any member of the jury panel or
8 any member of your family is involved in law
9 enforcement. For example, the City of Camden police
10 department or the Kershaw County sheriff's office or
11 the State Law Enforcement Division or the State
12 Highway Patrol or the Department of Public Safety or
13 DEA or any law enforcement agency that either you or
14 any member of your family is involved with.

15 All right. I just need your number. All right.
16 I'm going to ask you to stand and tell me your
17 number, please.

18 PROSPECTIVE JUROR: Twenty-eight.

19 THE COURT: What did I say?

20 Thank you. Mr. 28. Who is involved in law
21 enforcement?

22 PROSPECTIVE JUROR: My uncle.

23 THE COURT: Where?

24 PROSPECTIVE JUROR: In Camden with DEA.

25 THE COURT: In Camden? All right. And what was

1 your number again? Twenty-eight?

2 PROSPECTIVE JUROR: Twenty-eight.

3 THE COURT: Mr. 28, would that fact in any way
4 interfere with your ability to give both the State and
5 the defendant a fair and impartial trial in this case?

6 PROSPECTIVE JUROR: It could, sir.

7 THE COURT: All right. Just come forward for a
8 minute. Explain that to me, please.

9 (WHEREUPON, there was a bench conference.)

10 THE COURT: Yes, ma'am, with the white blouse on?

11 PROSPECTIVE JUROR: Number 89. I have a retired
12 brother-in-law that worked for the City of Camden.

13 THE COURT: Your retired brother-in-law?

14 PROSPECTIVE JUROR: He's retired.

15 THE COURT: All right. Is the City of Camden
16 police department involved in this case?

17 MR. MOAK: No, Your Honor.

18 THE COURT: All right. Ms. 89, would that fact
19 in any way interfere with your ability to give both
20 the State and the defendant a fair and impartial
21 trial?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Thank you very much.

24 Yes, sir.

25 PROSPECTIVE JUROR: Number 25.

1 THE COURT: Twenty-five?

2 PROSPECTIVE JUROR: I have a cousin who works
3 with the Highway Patrol.

4 THE COURT: In what area? What county?

5 PROSPECTIVE JUROR: Orangeburg.

6 THE COURT: Orangeburg.

7 Mr. 24, would that fact in any way interfere with
8 your ability to give both the State and the defendant
9 a fair and impartial trial?

10 PROSPECTIVE JUROR: No.

11 THE COURT: It was five, wasn't it?

12 PROSPECTIVE JUROR: Twenty-five.

13 THE COURT: Twenty-five, I'm sorry. Yes, sir
14 with the black shirt on.

15 PROSPECTIVE JUROR: Number 77.

16 THE COURT: Yes, sir.

17 PROSPECTIVE JUROR: I have a nephew that works
18 for the City of Camden.

19 THE COURT: All right. Would that fact in any
20 sway interfere with your ability to give both the
21 State and the defendant a fair and impartial trial?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: All right. Thank you very much
24 Mr. 77. Yes, sir.

25 PROSPECTIVE JUROR: At one time, me and my wife

1 were ---

2 THE COURT: What's your number, please?

3 PROSPECTIVE JUROR: Number 56.

4 THE COURT: Yes, sir.

5 PROSPECTIVE JUROR: At one time me and my wife
6 were at the time in charge of the mounted patrol.

7 THE COURT: Mounted parole.

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: What area in Kershaw County.

10 PROSPECTIVE JUROR: In the sheriff's department
11 here in Lugoff.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR: Also, I guess I need to
14 mention this. In January, my wife's daughter, my
15 stepdaughter, was shot and killed, and we're waiting
16 for that trial to come up.

17 THE COURT: And where is that?

18 PROSPECTIVE JUROR: That was here in Kershaw
19 County.

20 THE COURT: Also in Kershaw County? Also here in
21 Kershaw County?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: That case has not been resolved?

24 PROSPECTIVE JUROR: Sir?

25 THE COURT: That case has not been resolved?

1 PROSPECTIVE JUROR: No, sir, it has not.

2 THE COURT: All right. Mr. 56, would that fact
3 in any way interfere with your ability to give both
4 the State and the defendant a fair and impartial
5 trial?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Do you feel you could be fair and
8 impartial to both parties?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Thank you very much, Mr. 56.

11 Yes, sir.

12 PROSPECTIVE JUROR: Fifty, Your Honor. I have a
13 brother, State Law Enforcement Division, and it should
14 not affect my judgment.

15 THE COURT: All right. I still have to ask that
16 question, would that fact in any way interfere with
17 your ability to give both the State and the defendant
18 a fair and impartial trial?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: The answer is no, it would not affect
21 your ability?

22 PROSPECTIVE JUROR: No, sir, I'm sorry.

23 THE COURT: All right. Thank you very much,
24 Mr. 50. Anybody else?

25 (There was no response.)

1 THE COURT: Is this thing working?

2 THE BAILIFF: It seems to be working, yes, sir.

3 THE COURT: The back row says okay.

4 All right. Sort of an allied question, ladies
5 and gentlemen, any member of the jury panel support
6 groups which have as their primary function the
7 support of law enforcement? What I mean by that, does
8 any member of the jury panel donate services or time
9 or money to any groups which have as their primary
10 function the support of law enforcement or victims or
11 victim's rights? For example, Mother's Against Drunk
12 Driving or Students Against Drunk Driving or Citizen's
13 Against Violence or groups such as community watch
14 groups that work with the sheriff's office or groups
15 such as Sistercare which works with victims or even
16 groups such as the Alston Wilkes Society that works
17 with prisoners who have --- are coming out of prison.
18 Any --- and that's technically not in the realm of
19 support of law enforcement, but some other examples
20 might be if you contributed to the Sheriff's
21 Association or if you contribute to the
22 highway --- the State Trooper's Association is what
23 I'm trying to say. Any of these groups that you
24 either support financially or with your time as a
25 volunteer in some fashion or other, any member of the

1 jury panel?

2 Yes, ma'am, and your number.

3 PROSPECTIVE JUROR: Twenty-seven.

4 THE COURT: Twenty-seven?

5 PROSPECTIVE JUROR: Just to be on the safe side,
6 just to get everything out in the open, my husband
7 used to be a volunteer police officer with Richland
8 County.

9 THE COURT: He did?

10 PROSPECTIVE JUROR: And I believe he still
11 contributes to SCLEOA, or South Carolina Law
12 Enforcement ---

13 THE COURT: Law enforcement association?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: And that's your husband.

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: And your number is 27?

18 PROSPECTIVE JUROR: 187.

19 THE COURT: Oh, I'm sorry. Thank you very much,
20 Ms. 187. Anybody else?

21 (There was no response.)

22 THE COURT: Nobody contributes to the Trooper's
23 Association?

24 All right. Stand up, please.

25 PROSPECTIVE JUROR: Just a general. My number is

1 78.

2 THE COURT: Number 78, okay, sir?

3 PROSPECTIVE JUROR: Just general call when they
4 call around asking for support, I've done that before.

5 THE COURT: All right, sir.

6 PROSPECTIVE JUROR: It's not going to interfere
7 with my decisions.

8 THE COURT: Well, I always ask this question, did
9 you --- when you're made that contribution, did you
10 get the little sticker to go on the back of your car?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Did you put it on your car?

13 PROSPECTIVE JUROR: It's on my wife's car.

14 THE COURT: Did she ever get a ticket?

15 PROSPECTIVE JUROR: She has to go to court.

16 THE COURT: You know, there's an old joke that I
17 can't repeat the whole thing, but when the preacher
18 says I don't think I would have told that, I'm just
19 trying to drum up business for the Trooper's
20 Association.

21 Yes, ma'am.

22 PROSPECTIVE JUROR: Forty-five. We donate to the
23 prison fellowship.

24 THE COURT: All right. Thank you very much,
25 Ms. 45.

1 All right. Now, ladies and gentlemen, what I
2 hold in my hand are what are called indictments.
3 These are the --- what we call the charging documents.
4 They're merely pieces of paper. They are the formal
5 documents by which the case is brought into court. I'm
6 going to tell you what this case is about, but before
7 I do, I want to tell you that these documents, these
8 indictments, are not evidence of anything. You're not
9 to assume or presume anything from the fact that the
10 defendant was indicted on these charges.

11 Any individual in this county, in this state, in
12 this nation, is presumed innocent of the charges
13 brought against them until --- until the State proves
14 beyond a reasonable doubt the charges that are
15 contained in the indictments, so I caution you, as I
16 say, not to assume anything as a result of the fact
17 that these --- this individual was indicted.

18 The defendant in today's case is Mr. Donnie
19 Roland Thigpen. Mr. Thigpen, will you stand and face
20 the jury? Any member of the jury panel connected by
21 blood marriage or employment a close personal
22 acquaintance of Mr. Thigpen. Anybody know
23 Mr. Thigpen? If so, please stand.

24 (There was no response.)

25 THE COURT: Thank you very much, sir.

1 Mr. Thigpen is represented in this matter today
2 by Mr. Alex Postic, who practices law both in Kershaw
3 County and Richland County. Mr. Postic, will you
4 stand, face the jury and introduce your co-counsel, if
5 you will. I forgot to ---

6 MR. POSTIC: Thank you, Your Honor. My name is
7 Alex Postic and this is my co-counsel, and his name is
8 Derek Chiarenza.

9 THE COURT: Any member of the jury panel know
10 either of these two attorneys or perhaps been
11 represented by Mr. Postic or by Mr. Chiarenza at some
12 time in the past? Anybody know either of these two
13 jurors? I'm sorry, these two attorneys. You're the
14 jurors, they're the attorneys.

15 Thank you very much.

16 (There was no response.)

17 THE COURT: Now, ladies and gentlemen, the
18 indictments in this case charge Mr. Thigpen on or
19 about June 20th, 2009, with driving a motor vehicle
20 while under the influence of alcohol, drugs or a
21 combination of both, and did drive said motor vehicle
22 left of center and off the roadway as prohibited by a
23 certain section, 56-5-1810, and that those actions
24 proximately caused death of Melvin Wright, Jr.

25 This indictment is for felony driving under the

1 influence where death occurs, June 20, 2009.

2 The second indictment charges Donnie Roland
3 Thigpen on or about June 20th, 2009, while operating a
4 motor vehicle became involved in an accident which
5 resulted in the death of Melvin Wright, Jr. and did
6 leave the scene of an accident without first
7 reporting, rendering aid, or providing information as
8 required by state law.

9 This indictment charges the defendant,
10 Mr. Thigpen, with leaving the scene of the accident
11 that involves death. So those are the two charges,
12 felony driving under the influence where death occurs
13 and leaving the scene of an accident where death
14 occurs on June 20, 2009. Where did this occur,
15 allegedly occur, solicitor?

16 MR. PERRY: Your Honor, this took place on
17 Twenty-five Mile Creek Road, here in Kershaw County.

18 THE COURT: All right. Twenty-five Mile Creek
19 Road.

20 MR. PERRY: Over near the county line.

21 THE COURT: Any member of the jury panel know
22 anything about this case, heard anything about this
23 case, read anything about this case, or in any way
24 have any connection to the case one way or the other,
25 either through the defendant or have some knowledge of

1 this case? Any member of the jury panel? I don't
2 know whether it was reported in the press or not, it
3 could have been. You may have read something about
4 it. I'm just trying to find out if anybody knows
5 anything about it.

6 (There was no response.)

7 THE COURT: All right. Any member of the jury
8 panel ever served on a criminal jury in criminal
9 court? Any member of the jury panel?

10 Your number, please, on the back row.

11 PROSPECTIVE JUROR: Twenty-six.

12 THE COURT: Mr. 26. How long ago?

13 PROSPECTIVE JUROR: Approximately 15 years.

14 THE COURT: How long ago? What type case was it?

15 PROSPECTIVE JUROR: It was a peeping Tom case.

16 THE COURT: All right. Thank you very much.

17 Yes, sir, with the red shirt on.

18 PROSPECTIVE JUROR: Number 66. It was
19 approximately ten years ago, it was intimidation of a
20 witness in an ongoing federal investigation in
21 Columbia.

22 THE COURT: All right. Thank you very much
23 Mr. 56.

24 PROSPECTIVE JUROR: Sixty-six.

25 THE COURT: I'm sorry, 66.

1 Yes, sir.

2 PROSPECTIVE JUROR: 162.

3 THE COURT: Yes, sir.

4 PROSPECTIVE JUROR: Approximately 28 years ago.

5 THE COURT: What type of case?

6 PROSPECTIVE JUROR: The case involved a death.

7 It was in Texas.

8 THE COURT: Was it an alcohol related death?

9 PROSPECTIVE JUROR: No, it was not.

10 THE COURT: Thank you very much Mr. 162.

11 Yes, ma'am.

12 PROSPECTIVE JUROR: Number 187, thirteen years

13 ago.

14 THE COURT: What kind of case?

15 PROSPECTIVE JUROR: Convicted felon in possession

16 of a firearm.

17 THE COURT: Possession of a firearm. Thank you
18 very much, Ms. 187.

19 PROSPECTIVE JUROR: Number 190. Probably 20
20 years ago. It was a murder trial in Marion County and
21 in Kershaw County at least maybe eight to ten years
22 ago, and it was a child molestation.

23 THE COURT: All right. Thank you very much
24 Ms. 190.

25 Oh, I'm sorry, one more.

1 PROSPECTIVE JUROR: Number 25, federal court
2 approximately seven years ago in Florence, single car
3 DUI incident. It was settled out of court where a
4 jury wasn't needed.

5 THE COURT: Okay. That was a civil case?
6 Probably a civil case?

7 PROSPECTIVE JUROR: I believe so.

8 THE COURT: Okay. Thank you. Anybody ever
9 appeared as a witness in a criminal case?

10 Yes, sir, your number, please.

11 PROSPECTIVE JUROR: Number 157.

12 THE COURT: All right. And what kind of case was
13 it?

14 PROSPECTIVE JUROR: It's a case of armed robbery.

15 THE COURT: How long ago?

16 PROSPECTIVE JUROR: The incident happened in
17 2001.

18 THE COURT: 2001?

19 PROSPECTIVE JUROR: Well, yeah, it went to court
20 about four years ago, Fairfield County.

21 THE COURT: In Fairfield? All right. Thank you
22 very much, Mr. 157.

23 All right. Ladies and gentlemen, since this case
24 involves charges that the defendant was driving under
25 the influence of alcohol or drugs, I do need to ask

1 you a couple of questions on that subject.

2 Any member of the jury panel have moral feelings
3 about the consumption of alcohol, whether you have
4 moral feelings that the consumption of alcohol is not
5 right? In other words, you have either religious or
6 other moral feelings about the consumption of alcohol.
7 Any member of the jury panel?

8 Just briefly, ma'am, and what's your number,
9 please?

10 PROSPECTIVE JUROR: Thirty-two.

11 THE COURT: What?

12 PROSPECTIVE JUROR: Number 32.

13 THE COURT: Number 32, and do you have any
14 personal experience with people that have consumed
15 alcohol.

16 PROSPECTIVE JUROR: My young cousin was killed by
17 a drunk driver.

18 THE COURT: How long ago, ma'am?

19 PROSPECTIVE JUROR: It's been about 30 years ago.

20 THE COURT: Ms. 32. Do you think that fact would
21 in any way prevent you from sitting on this case and
22 being fair to both the State and the defendant?

23 PROSPECTIVE JUROR: (Indicating in the negative.)

24 THE COURT: You could or could not?

25 PROSPECTIVE JUROR: I could.

1 THE COURT: You could be fair to both parties?

2 PROSPECTIVE JUROR: I think so.

3 THE COURT: All right. Thank you very much,
4 ma'am.

5 MR. POSTIC: Your Honor, may we approach real
6 quick?

7 THE COURT: Just a minute.

8 Yes, sir.

9 PROSPECTIVE JUROR: Number 131, Your Honor.

10 Yes, sir.

11 PROSPECTIVE JUROR: My son was killed by a drunk
12 driver.

13 THE COURT: Your son was? How long ago?

14 PROSPECTIVE JUROR: Eleven years.

15 THE COURT: Eleven years?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Mr. 131, do you think you could be
18 fair and impartial to both parties in a case like
19 this?

20 PROSPECTIVE JUROR: Probably not, sir.

21 THE COURT: All right. Thank you very much,
22 Mr. 131.

23 Mr. Postic, just hold on a minute.

24 (WHEREUPON, there was a bench conference.)

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

1 attorneys have asked me to ask a series of questions.
2 The reason that I asked them to come forward was to
3 maybe streamline this process and rather than ask you
4 to stand after every question I ask. The suggestion
5 is that I read these questions to you and at the end,
6 after I've read these questions to you, if any of you
7 feel like you need to come forward and talk to me
8 about one of the questions that I asked, we'll do it
9 that way.

10 It may speed the process along a little bit and
11 expedite the process, so I think I will adopt that
12 procedure. It's a little bit unusual, but it may be
13 the best way to do it.

14 So it's just like when I read the list of --- I
15 will read a list of potential witnesses in this case,
16 and there will be one question that applies to all of
17 them: Does any member of the jury panel have any
18 relationship to any of the witnesses.

19 Well, just listen to the questions I ask. If any
20 of these questions apply to you and you think you
21 should respond, then you should respond if one of
22 these questions applies to you, then come forward when
23 I finish, and we'll discuss it privately.

24 All right. Is there any member of the jury panel
25 who has never consumed a beer, a mixed drink or a

1 glass of wine? Is there any member of the jury who
2 drank at one time, but does not drinking alcohol
3 anymore? Is there any member of the jury who has ever
4 consumed an alcoholic drink and then driven a car
5 within a reasonably short period of time after
6 drinking an alcoholic drink?

7 Any member of the jury panel believe you can tell
8 when you have had too much to drink to drive safely?
9 Any member of the jury panel feel that a person can
10 drive a car safely after drinking alcohol depending on
11 the circumstances of that case?

12 Has any member of the jury panel had any family
13 or personal experience with someone who had an alcohol
14 problem, and B, would that experience affect the
15 juror's ability to --- in giving the prosecution or
16 the accused a fair and impartial trial?

17 Now, this goes back to the question I posed a
18 little bit earlier, but in a little bit different
19 form. Does any member of the jury panel believe that
20 the consumption of alcohol is morally wrong or a sin
21 under your religious or moral beliefs?

22 Does any member of the jury panel believe that a
23 person can drink one alcoholic beverage and not be
24 materially or appreciably impaired?

25 Does any member of the jury panel prohibit the

1 storage or use of alcoholic beverages in your home?

2 Does any member of the jury panel have so strong
3 a belief against the use of alcohol that you could not
4 completely flush that out of your mind during your
5 deliberations in this case?

6 Any member of the jury panel believe it should be
7 a crime to drive your car if the driver has consumed
8 any --- to drive a car if the driver had consumed any
9 amount of alcoholic beverages?

10 Any member of the jury panel believe that a
11 person who drinks any amount of alcohol and then
12 drives an automobile should automatically be guilty of
13 driving under the influence?

14 Any member of the jury panel feel that you could
15 not find a person charged with driving under the
16 influence innocent under any circumstances?

17 Does any member of the jury feel that if someone
18 admits to drinking some alcohol, then driving a car,
19 that this alone would be enough for you to find them
20 guilty of driving under the influence?

21 Have any member of the jury panel --- has any
22 member of the jury panel now or in the past had a red
23 ribbon, a bumper sticker or other symbol on your car
24 to show a position against drinking and driving?

25 In some cases where a person is charged with

1 driving under the influence, a breath test is given.
2 The machine used --- used to be called a breathalyzer.
3 The machine now in use is called a DataMaster.

4 Does any member of the jury panel believe a
5 breath test result is always accurate?

6 If there was a breath test in this case, would
7 any member of the jury panel base your verdict solely
8 on the results of the breath test?

9 Finally, and I think number 32 and Mr. --- number
10 32 and 131 have already answered this question, has
11 any member of the jury panel or a close friend or
12 relative ever been in a traffic accident --- I'm
13 sorry, ever been in a traffic accident where the other
14 driver was allegedly to have been drinking alcohol? I
15 guess that would apply to those two jurors.

16 All right. Now, taking all of those questions,
17 any member of the jury panel feel they have --- could
18 or should answer one of those questions in response to
19 the court? If so, please come forward.

20 (WHEREUPON, the following sidebar discussions
21 were heard out of the presence of the jury
22 panel.)

23 THE BAILIFF: Seventy-six.

24 MR. POSTIC: Seventy-six?

25 THE COURT: How are you doing?

1 PROSPECTIVE JUROR: All right, sir. My release
2 is to consume alcohol.

3 THE COURT: All right.

4 PROSPECTIVE JUROR: And also I'm a recovering
5 alcoholic. I don't consume alcohol and I don't want
6 to be around people to consume it.

7 THE COURT: All right. Let me ask you this. Do
8 you think that belief would keep you from being fair
9 and impartial in this case?

10 PROSPECTIVE JUROR: I would be partial?

11 THE COURT: You would be partial? (Nods in the
12 affirmative.)

13 THE COURT: Thank you very much.

14 I think I'll just --- I don't want them to
15 believe that if they just come up here, they
16 automatically get excused.

17 MR. POSTIC: I understand.

18 THE COURT: What?

19 MR. POSTIC: I understand. Did you excuse 131?

20 THE COURT: What?

21 MR. POSTIC: He was the second one who stood up.

22 THE COURT: I haven't excused anybody yet.

23 MR. POSTIC: Okay. Thank you, Your Honor.

24 MR. PERRY: 131, judge?

25 THE COURT: I haven't excused anybody.

1 MR. PERRY: Yes, sir, yes, sir.

2 THE BAILIFF: Number five.

3 THE COURT: Yes, sir.

4 PROSPECTIVE JUROR: My stepdad is an alcoholic.

5 When I was young, he ---

6 THE COURT REPORTER: I'm sorry, I didn't hear
7 that part.

8 THE COURT: He said his stepfather handed him a
9 45 and asked him to blow his brains out.

10 Sir, with that experience in your past, do you
11 think you could sit on this case and be fair to both
12 parties?

13 PROSPECTIVE JUROR: To be honest with you,
14 probably not.

15 THE COURT: All right. Have a seat.

16 THE BAILIFF: 130.

17 THE COURT: I saw you standing up back there. I
18 just had to get through all the questions, okay?

19 PROSPECTIVE JUROR: All right.

20 THE COURT: Yes, sir.

21 PROSPECTIVE JUROR: My father was a convicted
22 drunk, when I was ten years old.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR: I don't believe anybody
25 should drink and drive and risk their life. I'm

1 against that.

2 THE COURT: Do you think you could sit on this
3 case?

4 PROSPECTIVE JUROR: Yes, but if I do see that he
5 took the risk of driving knowing he was drinking, and
6 might either hurt himself or other people, I wouldn't.

7 THE COURT: All right. Have a seat. Thank you
8 very much.

9 MR. PERRY: What number was that?

10 THE COURT: 130.

11 THE BAILIFF: Thirty-three.

12 THE COURT: How are you doing?

13 PROSPECTIVE JUROR: Fine. I have an ex-husband
14 about 20 years ago that had several alcohol related
15 things.

16 THE COURT: Incidents?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Were they driving drunk?

19 PROSPECTIVE JUROR: Some of them.

20 THE COURT: How would you feel about sitting on
21 this jury?

22 PROSPECTIVE JUROR: I just don't think this would
23 be a good one for me.

24 THE COURT: Could you be fair?

25 PROSPECTIVE JUROR: Could you give me another

1 date or something? I can do another time. This kind
2 of case for me wouldn't ---

3 THE COURT: Do you think you could be fair and
4 impartial? That's the question.

5 PROSPECTIVE JUROR: I do not. I could not be
6 fair and impartial. I'm sorry, I just can't.

7 THE COURT: All right. Thank you very much,
8 Ms. 33.

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: Have a seat.

11 THE BAILIFF: Thirty-two.

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: How are you doing?

14 PROSPECTIVE JUROR: I'm fine. I don't think
15 someone should have a drink and leave the accident.
16 It's sort of something --- but just you drinking and
17 driving, I don't think it's part of the facts. I just
18 have a feeling about that, you know.

19 THE COURT: Okay. Well, do you think you could
20 be fair and impartial?

21 PROSPECTIVE JUROR: I do.

22 THE COURT: Okay. Have a seat, ma'am. Thank you
23 very much.

24 THE BAILLIF: Sixty-six.

25 PROSPECTIVE JUROR: Your Honor, you asked a bunch

1 of questions.

2 THE COURT: I know.

3 PROSPECTIVE JUROR: I mean a bunch of questions.
4 I used to have a beer now and again. I have don't do
5 it anymore and don't allow it in my house.

6 THE COURT: Your don't allow it in your house?

7 PROSPECTIVE JUROR: No, sir. I have two sons
8 getting ready to turn 21 in a few days. They're not
9 allowed to do that. I feel real strong about it.

10 THE COURT: Do you think you can listen to this
11 case and be fair and impartial to both parties?

12 PROSPECTIVE JUROR: I think so. My wife is at
13 Doctor's Care. They do about 1500 a month. I believe
14 strongly about what the test results are. I could be
15 fair and impartial.

16 THE COURT: All right. Thank you, sir.

17 MR. PERRY: What is the number? The.

18 MR. POSTIC: Sixty-six.

19 THE COURT: There are too many marks on this
20 page.

21 THE BAILIFF: Twenty-four.

22 THE COURT: How are you doing?

23 PROSPECTIVE JUROR: Fine, sir.

24 THE COURT: What question did you feel like you
25 couldn't answer.

1 PROSPECTIVE JUROR: All of them. I'm a
2 recovering alcoholic now for about 11 years. I can go
3 out and talk to people about drunk driving. I have
4 real strong feelings about drunk driving, drinking and
5 driving.

6 THE COURT: Okay. Do you think you could sit on
7 this case and be fair to both parties?

8 PROSPECTIVE JUROR: Honestly, no.

9 THE COURT: Have a seat.

10 THE BAILIFF: Ninety-three.

11 THE COURT: How are you doing, ma'am?

12 PROSPECTIVE JUROR: I'm good. I'm a recovering
13 alcoholic.

14 THE COURT: You are?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: And how many years?

17 PROSPECTIVE JUROR: It's been 30 years.

18 THE COURT: Do you think you could sit on this
19 case?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Do you think you could be fair to
22 both parties?

23 PROSPECTIVE JUROR: Yes, I can.

24 THE COURT: There were --- there may be alcohol
25 involved.

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: You could be fair?

3 PROSPECTIVE JUROR: (Nods in the affirmative.)

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

5 THE BAILIFF: Forty-five.

6 PROSPECTIVE JUROR: I don't remember the specific
7 question, but in general just the drunk and drinking
8 alcohol and then driving a car is, you know...

9 THE COURT: Okay. Do you feel that with that
10 feeling that you have --- I'm not --- we all may feel
11 the same way, but the question is can you be fair and
12 impartial to both the State and the defendant ---

13 PROSPECTIVE JUROR: I think so.

14 THE COURT: --- in a case like this?

15 PROSPECTIVE JUROR: I think, so, I think so.

16 THE COURT: You could listen to the evidence,
17 make a decision based on the evidence?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Okay. Thank you very much.

20 What number was she? Forty-five.

21 MR. POSTIC: Yes, sir.

22 (WHEREUPON, there was an off-the-record
23 discussion.)

24 THE BAILIFF: Number 131.

25 THE COURT: I think you told me ---

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: --- how you feel about it.

3 PROSPECTIVE JUROR: Okay.

4 THE COURT: Have a seat.

5 I'm going to excuse him.

6 MR. POSTIC: Yes, Your Honor.

7 THE BAILIFF: 120.

8 THE COURT: How are you doing?

9 PROSPECTIVE JUROR: Okay. My son was just
10 charged with DUI in August.

11 THE COURT: How long ago?

12 PROSPECTIVE JUROR: This August.

13 THE COURT: In Kershaw County?

14 PROSPECTIVE JUROR: In Horry county.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR: I don't feel good about the
17 court system at all. To me, he was guilty until
18 proven innocent. He was proven innocent.

19 THE COURT: He was?

20 PROSPECTIVE JUROR: Yes. There are small amounts
21 of alcohol, that are not necessarily, you know, that
22 apply to all those cases there. I don't have a
23 problem with the Breathalyzer system as something that
24 really has the right concept of somebody's ability.

) 25 THE COURT: To drive, okay.

1 PROSPECTIVE JUROR: Uh-huh.

2 THE COURT: Well, the ultimate question is do you
3 think you could be fair and impartial and sit on this
4 case, and be fair and impartial to both parties?

5 PROSPECTIVE JUROR: I don't know if it's going to
6 come up. It's hard to say.

7 THE COURT: I don't either. I've told you about
8 as much as I can. He's charged with driving under the
9 influence. I asked about the DataMaster. It's all
10 the same thing that you said your son went through.

11 PROSPECTIVE JUROR: Uh-huh.

12 THE COURT: I got to leave it up to you whether
13 you feel that you could be fair and impartial.

14 PROSPECTIVE JUROR: Huh-uh. I don't think, not
15 with it being so recent.

16 THE COURT: All right. Thank you so much.

17 THE BAILIFF: 108.

18 MR. POSTIC: Did he say he could not be fair and
19 impartial?

20 THE COURT: No.

21 How are you?

22 PROSPECTIVE JUROR: There were three questions
23 that gave me pause, whether anyone could ever have any
24 an drink or whether a person could have one and still
25 drive.

1 THE COURT: The ultimate question, can you sit on
2 this case and be fair and impartial?

3 PROSPECTIVE JUROR: I think I can.

4 THE COURT: That's what I need to know. Thank
5 you very much.

6 THE BAILIFF: Twenty-five.

7 PROSPECTIVE JUROR: It was a question you asked
8 earlier, do I have any prior knowledge of the case.

9 THE COURT: Uh-huh.

10 PROSPECTIVE JUROR: I work for EMS. I was trying
11 to listen to the address and stuff, and I'm not
12 100 percent sure when.

13 THE COURT: 2009.

14 PROSPECTIVE JUROR: I've been working there since
15 2007. I can't say if I have or not because I've
16 worked those cases over and over, DUI. I'm not sure,
17 but I just want to be honest.

18 THE COURT: Well, well --- I'm going to read out
19 a list of names of the EMS people that are involved in
20 this case.

21 PROSPECTIVE JUROR: Okay.

22 THE COURT: I don't think your name is on there.

23 PROSPECTIVE JUROR: I just wanted to be honest
24 that I couldn't remember.

25 THE COURT: Thank you very much.

1 PROSPECTIVE JUROR: I do drink alcohol, though,
2 and I hope you have a good day.

3 THE COURT: You can be fair --- Mr. 25.

4 MR. PERRY: Sir?

5 THE COURT: Mr. 25, one more question.

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Do you feel like you could be fair
8 and impartial?

9 PROSPECTIVE JUROR: Yes, sir. I wanted to make
10 sure my name wasn't on it.

11 THE COURT: Okay. Good. Thank you.

12 THE BAILIFF: Eighteen.

13 THE COURT: How are you doing?

14 PROSPECTIVE JUROR: After sitting there for a
15 minute, I recognize the defendant.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: I saw him about four or five
18 years ago, but I do recognize him.

19 THE COURT: Is that all? You've seen him on any
20 other cases.

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: Don't go to church with him?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Socialize with him, have business
25 with him?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Do you think you could be fair and
3 impartial sitting on this case?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Okay. Thank you. Now, here is your
6 problem. You only have five and five, right?

7 MR. POSTIC: I will say that since they bring it
8 up every time, Judge Kinard did allow me ten because
9 it was a death and that's what I would ask for.

10 MR. MOAK: The statute clearly says five.

11 MR. POSTIC: I understand.

12 MR. MOAK: He has a list of offenses.

13 MR. POSTIC: I understand, but you would agree
14 with we had ten last time.

15 THE COURT: I never veer from the statute. There
16 are cases that clearly should, maybe this is one, but
17 I didn't write the book.

18 MR. POSTIC: Yes, Your Honor.

19 THE COURT: I didn't want to excuse so many of
20 them.

21 MR. POSTIC: Thank you.

22 THE COURT: Just come here.

23 (WHEREUPON, there was a bench conference.)

24 THE COURT: All right. Ladies and gentlemen,
25 we're getting close to the end of the question and

1 answer period.

2 Let me just go ahead and do this right now. Let
3 me just ask counsel, Mr. Postic --- Mr. Postic.

4 MR. POSTIC: Yes, Your Honor.

5 THE COURT: I identified certain jurors at the
6 bench that I would excuse for cause.

7 MR. POSTIC: Yes, Your Honor.

8 THE COURT: Any objection to any of those?

9 MR. POSTIC: No objection.

10 MR. MOAK: None from the State.

11 THE COURT: All right. Ladies and gentlemen,
12 maybe we can cut this a little bit short. The
13 following jurors are excused from the trial of this
14 case and are free to go. Juror number five, juror
15 number 24, juror number --- I'm sorry, 33, 33, juror
16 number 76, juror number 120, juror number 130, juror
17 number 131.

18 All right. Now, ladies and gentlemen, I'm going
19 to read a -- wait a minute.

20 (Pause.)

21 And juror number 35. Is juror number 167 still
22 here? I think I excused him.

23 All right. Ladies and gentlemen, I'm going to
24 read a list of names. The question is the same as to
25 each. Any member of the jury panel related by blood,

1 connected by marriage or employment or a close
2 personal acquaintance of any of the following. If any
3 of these witnesses are present, if you'll please stand
4 so the jury can identify you, Johnny Fellers, the
5 Kershaw County Coroner; D. M. McKenzie, South Carolina
6 Highway Patrol. This is Mr. McKenzie. Tom Borowski
7 with the Highway Patrol, Trooper First Class W.B.
8 Kelly, Corporal S.L. Farmer. All of these, ladies and
9 gentlemen, are with the Highway Patrol. Lance
10 Corporal C. M. Coats, Lance Corporal J.R. O'Donnell,
11 Sergeant Southern, Lance Corporal B.C. Ridgeway, Lance
12 Corporal Donkle, Phillip Odom, Rodney Frick, M.B.
13 Coffin, Robert Sears.

14 These are all with the State Law Enforcement
15 Division. Catherine Leisy, Stephanie Stanley, Patricia
16 Crooks, Doris Yarborough, Amy Stephens, Heather
17 Dailey, formerly with SLED, Brandon Williams, Toni
18 Broome, Verona Gibson, Megan Mebane, Brandon Landrum,
19 Sheree Brown, Nikki Hughes, Kimberly Mears, Tim
20 Grambow.

21 The following are with Kershaw County: Carolyn
22 Kirkland at the Kershaw County Medical Center, Russell
23 Ferguson with Kershaw County EMS --- number?

24 PROSPECTIVE JUROR: 25.

25 THE COURT: Number 25, and you know

1 Mr. --- how --- you work with him on a regular basis?

2 PROSPECTIVE JUROR: He's employed with Kershaw
3 County --- he is on the shift opposite of me.

4 THE COURT: Shift opposite of you?

5 PROSPECTIVE JUROR: I'm also his assistant
6 training officer.

7 THE COURT: He's ---

8 PROSPECTIVE JUROR: He is a training officer and
9 I'm his assistant.

10 THE COURT: Thank you very much, Mr. 25.

11 Dale Hornsby, fire department. Oh, I'm sorry.

12 PROSPECTIVE JUROR: Judge, I stood up a moment
13 ago when you said Thomas Borowski. I'm number 66.

14 THE COURT: Right.

15 PROSPECTIVE JUROR: I've known him as a personal
16 friend for about 12 years.

17 THE COURT: Okay. Do you live in the same
18 neighborhood?

19 PROSPECTIVE JUROR: Used to.

20 THE COURT: You're number 60?

21 PROSPECTIVE JUROR: Sixty-six. We used to coach
22 little league together.

23 THE COURT: Okay. Do you still feel you could be
24 fair and impartial to both parties, even though
25 Mr. Borowski is testifying for one side or the other?

1 PROSPECTIVE JUROR: If he testifies knowing how
2 he's been over the last 12 years, I would probably
3 tend to believe him more.

4 THE COURT: Okay. Thank you very much, Mr. 66.

5 PROSPECTIVE JUROR: Sir, I'm sorry. I thought
6 you were going to call the names out and I was going
7 to wait until the end.

8 THE COURT: Well, I've got two more.

9 PROSPECTIVE JUROR: I know Mr. Kelly. He and I
10 used to attend church together.

11 THE COURT: All right. What was your number
12 again?

13 PROSPECTIVE JUROR: 187.

14 THE COURT: You know Mr. Kelly?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: You used to attend church together?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: But he stopped going?

19 PROSPECTIVE JUROR: No. I did it.

20 THE COURT: Withdraw that. Withdraw that.

21 PROSPECTIVE JUROR: To that church.

22 THE COURT: Other than that, do you have any
23 other relationship with him?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: Social or business or anything like

1 that?

2 PROSPECTIVE JUROR: No.

3 MR. PERRY: Your Honor, before you call the next
4 two, can I clarify something at the bench?

5 THE COURT: Well, I'm talking to her about that.

6 MR. PERRY: Yes, sir.

7 THE COURT: Ms. 187, the last gentleman said he
8 would tend to believe Mr. Borowski maybe over other
9 witnesses. Would you feel the same way about
10 Mr. Kelly or do you have ---

11 PROSPECTIVE JUROR: I have no ---

12 THE COURT: --- no feelings one way or the other?
13 You said you have --- was there another name?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: Just that one?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: All right. Thank you very much,
18 ma'am.

19 What's ---

20 MR. PERRY: Your Honor, John Slaten used to be
21 with the Kershaw County sheriff's office. He is now
22 the chief of police in Mayesville. The last entry on
23 there, risk management with the South Carolina Federal
24 Credit Union, they haven't told us a specific person
25 yet. I'm still trying to get that.

1 MR. POSTIC: Judge.

2 THE COURT: All right. I wasn't quite finished
3 with the list. Dale Hornby with the Kershaw County
4 fire department, Charlie Catoe, Kershaw County fire
5 department, John Slaten, who used to be with the
6 Kershaw County Sheriff's Department and anybody
7 connected with the South Carolina Federal Credit Union
8 one way or the other?

9 Sharla Renee Overton? If any of these are
10 present, please stand. Tina Moore, Betty Babinski,
11 David Caywood, Larry Mason.

12 THE COURT: Is this Mr. Mason? Would you please
13 stand and let the jury identify you?

14 THE WITNESS: I'm Larry Mason. I'm a private
15 investigator.

16 THE COURT: That's all right. I just need to see
17 if anybody recognized you. Anybody recognize
18 Mr. Mason?

19 (There was no response.)

20 THE COURT: William Lehman.

21 (There was no response.)

22 THE COURT: All right. Ladies and gentlemen.
23 Now, final question, does any member of the jury panel
24 know of any reason --- I've asked you quite a few
25 questions. Does any member of the jury panel know of

1 any other reason why he or she could not sit, listen
2 to the evidence in this case, listen to my charge or
3 explanation of the law as it applies to this case and
4 sit and fairly decide this issue, and the issue
5 obviously is guilt or innocence of the defendant,
6 fairly and impartially?

7 Any member of the jury panel think of any other
8 reason why you could not do that?

9 (There was no response.)

10 THE COURT: Anything further from the State?

11 MR. PERRY: Nothing here.

12 THE COURT: Anything further from the defense?

13 MR. POSTIC: Just the matter of strikes, but I
14 can mention that after you draw the jury.

15 THE COURT: All right. Madam clerk, give us a
16 jury, please.

17 Ladies and gentlemen, what is taking place at
18 this time is that the clerk is entering all of your
19 names into the computer and we're going to have a
20 drawing, but it's not the lottery.

21 (WHEREUPON, a bench conference was held.)

22 THE COURT: All right. Ladies and gentlemen, I'm
23 sorry, the attorneys --- one more question, I have
24 read to you the indictment which indicated that the
25 State alleges that as a result of this accident,

1 Melvin Wright, Jr. met his death.

2 Now, obviously Mr. Wright is not here, but
3 members of his family are here, and they are Melvin
4 Wright, Sr., his mother, Candida Wright and his
5 brother Gary Wright. I need to know if any member of
6 the jury panel --- why don't you all please stand and
7 face the jury panel. Thank you very much.

8 All right. Does any member of the jury panel
9 know any of these --- any members of this family,
10 either the deceased, Melvin Wright, Jr., or any member
11 of his family?

12 (There was no response.)

13 THE COURT: All right. Fine. Thank you very
14 much.

15 (Pause.)

16 THE COURT: Well, what do you do when the
17 computer goes down? We can put a man on the moon, but
18 we can't get the computer to pull out names.

19 Anybody need a restroom break?

20 PROSPECTIVE JURORS: Yes, yes.

21 THE COURT: Mr. Bailiff, if you will assist
22 anybody that needs a restroom break. This may take a
23 few minutes, so that's why.

24 (WHEREUPON, a short break was taken.)

25 THE COURT: Is the State ready to proceed?

1 MR. PERRY: Yes, Your Honor.

2 THE COURT: Defense ready to proceed?

3 MR. POSTIC: Yes, sir.

4 THE COURT: All right. Ladies and gentlemen,
5 please remember the instructions given to you by the
6 clerk. Come up to the front. State your number and
7 that's about it, isn't it?

8 THE CLERK: Yes, sir.

9 THE COURT: All right. Madam clerk, give us a
10 jury, please.

11 THE CLERK: Number 187. (White Female)

12 MR. PERRY: Please present this juror.

13 THE CLERK: What says the defense?

14 MR. POSTIC: Please seat Ms. Turner.

15 THE CLERK: Thank you.

16 THE COURT: Juror number only please, Mr. Postic.

17 MR. POSTIC: Yes, Your Honor.

18 THE CLERK: Number 57. (White Female)

19 What says the State?

20 MR. PERRY: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. POSTIC: Please seat number 57.

23 THE CLERK: Thank you. Number 20. (White Male)

24 What says the State?

25 MR. POSTIC: Please present this juror.

1 THE CLERK: What says the defense?

2 MR. POSTIC: Please seat number 20.

3 THE CLERK: Thank you. Number 34. (White Female)
4 What says the State?

5 MR. PERRY: Please present this juror.

6 THE CLERK: What says the defense?

7 MR. POSTIC: Please seat number 34.

8 THE CLERK: Thank you. Number 78. (White Male)
9 What says the State?

10 MR. PERRY: Please present this juror.

11 THE CLERK: What says the defense?

12 MR. POSTIC: Please seat Mr. Harvey. I'm sorry,
13 please seat number 78.

14 It's a habit, Your Honor.

15 THE CLERK: Thank you. Number 61. (White Male)

16 PROSPECTIVE JUROR: I'm sorry, did you say 61?

17 THE CLERK: Sixty-one, yes, sir.

18 What says the State?

19 MR. PERRY: Please excuse this juror.

20 THE CLERK: Thank you. Number 67. (Asian Male)

21 What says the State?

22 MR. PERRY: Please present this juror.

23 THE CLERK: What says the defense?

24 MR. POSTIC: Please seat number 67.

25 THE CLERK: Thank you. Number 108. (White Male)

1 What says the State?

2 MR. PERRY: Please excuse this juror.

3 THE CLERK: Thank you. Number 97. (Black Female)
4 What says the State?

5 MR. PERRY: Please present this juror.

6 THE CLERK: What says the defense?

7 MR. POSTIC: Please seat number 97.

8 Thank you. Number 54. (White Female)

9 What says the State?

10 MR. PERRY: Please present this juror.

11 THE CLERK: What says the defense?

12 MR. POSTIC: Please excuse number 54.

13 THE CLERK: Thank you. Number 180. (White Female)
14 What says the State?

15 MR. PERRY: Please present this juror.

16 THE CLERK: What says the defense?

17 MR. POSTIC: What's the number again?

18 THE CLERK: 180.

19 MR. POSTIC: Please seat number 180.

20 THE CLERK: Thank you. Number 26. (White Male)
21 What says the State?

22 MR. POSTIC: Please present this juror.

23 THE CLERK: What says the defense?

24 MR. POSTIC: Please excuse number 26.

25 THE CLERK: Thank you. Number 103. (White Male)

1 MR. POSTIC: Number?

2 THE CLERK: 103.

3 What says the State?

4 MR. PERRY: Please excuse this juror.

5 THE CLERK: Thank you. Number 77. (White Male)

6 What says the State?

7 MR. PERRY: Please present this juror.

8 THE CLERK: What says the defense?

9 MR. POSTIC: Please excuse number 77.

10 THE CLERK: Excused.

11 Number 18. (White Male) What says the State?

12 MR. PERRY: Please excuse the juror.

13 THE CLERK: Thank you.

14 The strikes are State four, and the defense has
15 three.

16 Number 113. (Black Female)

17 What says the State?

18 MR. PERRY: Please present this juror.

19 THE CLERK: What says the defense?

20 MR. POSTIC: Please seat number 113.

21 THE CLERK: Thank you. Number 178. (White Male)

22 What says the State?

23 MR. PERRY: Please present this juror.

24 THE CLERK: What says the defense?

25 MR. POSTIC: Please seat number 178.

1 THE CLERK: Thank you. Number 55. (White Male)
2 What says the State?

3 MR. PERRY: Please present this juror.

4 THE CLERK: What says the defense?

5 MR. POSTIC: Beg the court's indulgence, please.
6 Please seat number 55.

7 THE CLERK: Thank you. Number 50. (White Male)
8 What says the State?

9 MR. PERRY: Please present this juror.

10 THE CLERK: What says the defense?

11 MR. POSTIC: I'm sorry? What's the number again?

12 THE CLERK: Fifty.

13 MR. POSTIC: Please excuse number 50.

14 THE CLERK: Thank you. Number 25. (White Male)
15 What says the State?

16 MR. PERRY: Please present this juror.

17 THE CLERK: What says the defense?

18 THE COURT: Challenge for cause?

19 MR. POSTIC: I ask that he be excused for cause,
20 Your Honor.

21 MR. MOAK: Your Honor, he has a strike left.

22 THE COURT: No, he doesn't.

23 MR. POSTIC: What, Your Honor?

24 THE COURT: Approach the bench.

25 (WHEREUPON, there was a bench conference.)

1 MR. POSTIC: Please excuse Mr. Burriss.

2 THE COURT: Just one minute.

3 MR. POSTIC: I'm sorry, number 25.

4 THE COURT: All right. Number 25, you can have a
5 seat; is that correct?

6 MR. POSTIC: Yes, Your Honor.

7 THE COURT: Have a seat back there.

8 THE CLERK: Number 37. (Hispanic Female)

9 What says the State?

10 MR. PERRY: Please present this juror.

11 THE CLERK: Does the defense challenge this
12 juror?

13 MR. POSTIC: No, please seat number 37.

14 THE CLERK: Thank you. For the alternates, the
15 first alternate, number 31, number 31. (White Male)

16 (There was no response.)

17 THE CLERK: There he is.

18 What says the State?

19 MR. PERRY: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. POSTIC: Please seat number 31.

22 THE CLERK: Thank you. For our second alternate,
23 number 75. (White Male)

24 What says the State?

25 MR. PERRY: Please present this juror.

1 THE CLERK: What says the defense?

2 MR. POSTIC: Please seat number 75.

3 THE CLERK: Thank you.

4 THE COURT: All right. Any objection to the jury
5 selection process from the State?

6 MR. PERRY: None from the State, Your Honor.

7 THE COURT: From the defense?

8 MR. POSTIC: Just the issue that I raised
9 earlier.

10 THE COURT: All right.

11 MR. POSTIC: Two issues, actually.

12 THE COURT: All right. Thank you very much.
13 That have been ruled on?

14 MR. POSTIC: Yes, Your Honor.

15 THE COURT: All right. Ladies and gentlemen of
16 the remaining members of the jury panel, I'm going to
17 excuse you now. Obviously you were not selected for
18 service on this jury. I do caution you or ask you to
19 please call in --- after what time?

20 THE CLERK: After six o'clock, please.

21 THE COURT: After six o'clock every afternoon
22 this week just to make sure that this case is still
23 going on, it hasn't been resolved one way or the other
24 in that we don't need your services any further this
25 week.

1 I will tell you that you probably can recall from
2 my questions earlier about serving on jury duty. This
3 will complete your jury service for this year and for
4 two more years so that --- well, this year and next
5 year is what I should say. You can't be called again
6 until 2014 for jury duty, so you have answered the
7 call, been here present and willing to serve on a
8 jury.

9 I do want to tell you that I want to thank you
10 very much for coming. I want to thank you on behalf
11 of myself and these attorneys. This system of justice
12 that we have, it depends so heavily on jurors who are
13 willing to come and sit and listen to these cases.
14 The cases must be decided in our community, and this
15 system of jury deliberation has been with us for over
16 250 years. It was written into our constitution, the
17 Constitution of the United States.

18 So that is how important your service is. We
19 can't operate without your willingness to come and sit
20 as jurors. So with that in mind, I do thank you.
21 You're now excused for the day and --- yes, sir?

22 PROSPECTIVE JUROR: Is there some way we are not
23 be needed tomorrow or we need to call?

24 THE COURT: You need to call. Just call every
25 day.

1 PROSPECTIVE JUROR: Thanks.

2 THE COURT: It shouldn't take but just a minute.
3 There will be a recording on there that says we don't
4 need your services or we do. I just can't predict the
5 future. I can't tell you what's going to happen
6 tomorrow.

7 So if you will do that, and thank you very much
8 for coming. You're now excused.

9 (WHEREUPON, the unselected members of the jury
10 left the courtroom.)

11 THE COURT: All right. Ladies and gentlemen of
12 the jury, I'm going to dismiss you now for the day.
13 Before we do that, the bailiffs are going to take you
14 to the jury room, show you where the jury room is. In
15 the morning when you come to the courthouse, come
16 straight to your jury room and sort of get to know
17 each other for a few minutes. The bailiffs will
18 probably have doughnuts.

19 THE BAILIFF: Ask the lady there.

20 THE COURT: Well, we'll probably have some coffee
21 for you at least. I can't promise doughnuts. There
22 are a number of matters that I need to take up with
23 these attorneys this afternoon before we start the
24 trial. There's no sense you sitting around while I do
25 that. It always happens on Monday that you have to

1 get everything in line so that the trial will go
2 smoothly when we start tomorrow. I'm going to ask you
3 to be in the jury room tomorrow at nine o'clock at
4 which time we'll be ready to start the trial. We may
5 not start right at that moment, but I'm going to ask
6 you to be there at nine. I anticipate starting the
7 trial at nine o'clock in the morning.

8 One thing I'm going to ask. Mr. 178, would you
9 be willing to serve as foreperson of the jury? You
10 really don't to answer that question. Will you,
11 please serve as foreperson of the jury?

12 THE JUROR: Yes, sir.

13 THE COURT: Thank you very much. Your
14 responsibility --- you don't get paid extra for doing
15 it. It's just I need somebody to speak for the jury
16 in the courtroom and if that becomes necessary, to
17 preside in the jury room during deliberations if that
18 becomes necessary. You will take a seat where the
19 lady in the blue jacket is seated right now.
20 Everybody else can just sit where you're most
21 comfortable tomorrow. All the witnesses will be
22 talking from right here. If you have a problem
23 hearing, you may want to sit closer to this end, but
24 otherwise, the seats have no numbers on them, no names
25 on them. Just sit where you're most comfortable.

1 I'm going to ask you to do a couple of things for
2 me. Over the evening hours, I'm going to ask you not
3 to discuss the case with anyone over the evening
4 hours. You can tell them that the judge told you that
5 and it's easy to want to tell your friends and family
6 what you're doing. You can tell them you're on a
7 jury. If you tell them what the case is about or what
8 the name of it is, somebody might be --- overhear what
9 you say, and they might say well, I think you need to
10 do this or that. That would be improper to try to
11 influence a juror.

12 The easiest thing for you to do is just tell them
13 I'm on a jury and the judge has instructed us that
14 we're not to talk about it until the case is over. If
15 you'll do that, please don't discuss the case with
16 anyone over the evening hours.

17 Also, I've got to mention in this day and time of
18 cell phones and smart phones and internet and blogs
19 and tweets and everything else, it would be very
20 improper for members of the jury to try to do internet
21 research or some kind of independent research about
22 the case. I don't know if there was any publicity
23 about it when it took place. There may or may not
24 have been. It would be --- you're going to hear all
25 the evidence right here in this case and to try to do

1 internet research --- or any kind of research outside
2 the courtroom would be highly improper, and it can
3 result in sanctions. I will tell you that. Jurors
4 around the State have been sanctioned sometimes
5 severely for disobeying the judge's instructions and
6 going and trying to find out the stuff independently
7 on their own.

8 I guess the best example of that is --- one
9 example is where there is an automobile wreck. Now,
10 this is not that kind of typical civil case where
11 somebody is seeking damages or something, but the
12 juror may feel it would be interesting to go by the
13 intersection where this occurred and see how it could
14 have occurred. I mean, that's doing independent
15 research, but I'm most concerned about the internet
16 and not that there's --- I don't know that there's
17 anything on there. I'm just using that as an example
18 of jurors who may decide they want to try to find out
19 more about the case than is presented in court, and
20 that would be improper.

21 The attorneys are going to present all the
22 evidence in this case. Your job is to judge the
23 evidence based on what you hear in this courtroom and
24 not what you might find out from some outside source.
25 So if you do that for me, have a pleasant evening.

1 We'll see you at nine o'clock in the morning. Thank
2 you very much.

3 (WHEREUPON, the jury left open court at
4 approximately 1:45 p.m.)

5 THE COURT: All right. Counsel, let's talk about
6 45 minutes for a lunch break. Does that suit
7 everybody?

8 MR. POSTIC: That's fine with me.

9 MR. PERRY: Yes, sir.

10 THE COURT: All right. We'll reconvene around
11 2:30. Try to be back at 2:30, at which time we'll
12 reconvene and review the pretrial matters.

13 MR. POSTIC: Thank you, Your Honor.

14 MR. PERRY: Your Honor, may we approach very
15 briefly about something unrelated?

16 (WHEREUPON, there was a bench conference.)

17 (WHEREUPON, a lunch break was taken.)

18 (WHEREUPON, Court's Exhibit Numbers 1, 2 and 3
19 were marked for identification only.)

20 (WHEREUPON, State's Exhibit Numbers 2 through 52
21 were marked for identification only.)

22 THE COURT: All right. Anything of a pretrial
23 nature that the court needs to take up at this time?

24 MR. POSTIC: Yes, sir.

25 THE COURT: You're on the record.

1 MR. POSTIC: Thank you, Your Honor. Just going
2 back to the jury, Your Honor, I had approached the
3 bench and asked about strikes. I had asked for ten
4 strikes as opposed to five for the defendant.
5 By --- although the statute does not list felony DUI
6 with death or leaving the scene with death as an
7 offense that gives the defendant ten strikes, I would
8 say that it is an offense that is analogous to those
9 charges that do allow ten strikes, especially
10 considering when the defendant is facing, with both
11 charges, a combined 1 to 50 years. I had asked Your
12 Honor to do that, just for the record, Your Honor, I
13 object to your only allowing five strikes, as it
14 certainly clouded my decisions while we were picking
15 that jury.

16 THE COURT: Went, as you correctly point out, the
17 statute does not provide for ten strikes. I wish the
18 legislature would clarify this whole strike rule, but
19 they have not chosen to do so up to this point, and I
20 don't feel that I'm at liberty to just to act in
21 contradiction to the statute when --- I mean, where
22 does it --- I mean, I tried a boating under the
23 influence case two weeks ago. The request probably
24 should have been the same there, but when the statute
25 doesn't list it, I don't feel free to act otherwise,

1 so I respectfully deny your motion.

2 MR. POSTIC: Thank you, Your Honor. The second
3 motion, and I can't remember the juror's name but it
4 was number 25 who was the EMS worker, Your Honor, I
5 made a motion during the striking of the jury to
6 excuse him for cause. He approached the bench early
7 on and stated that he worked with EMS and may have
8 been working on the night that this incident occurred,
9 and then when he stood up during the list of witnesses
10 and stated that he knew some of the witnesses and that
11 the day after --- that he actually worked with them.
12 Your Honor, I did have a strike left, as we pointed
13 out at the bench. However, Your Honor, at that point,
14 I felt like I had to strike him and use my final
15 strike. So again, Your Honor, for the record, I
16 object to your ruling on that.

17 THE COURT: All right. Well, in that case I did
18 an individual voir dire of the potential juror who did
19 say that he worked with one of the EMS workers that
20 may testify in this case. I don't think --- well, I
21 have no idea what that EMS worker will testify to,
22 whether he was --- he or she was directly involved in
23 anything in this case. I mean, as far as the
24 defendant is concerned, I don't know what EMS did
25 other than the fact that they were probably called to

1 the scene where there was a death, but then your
2 client was not there. That's the way I understand the
3 facts and he did testify that he has --- is
4 associated --- it's small unit, I'm sure at this
5 county hospital, but he didn't indicate that
6 he --- well, he did indicate that he could be fair and
7 impartial and he wouldn't necessarily be swayed by the
8 fact that one of his co-workers had some incident
9 involving the case. A juror has a right to serve
10 unless there are overbearing circumstances that would
11 convince me that he needed to be excused for cause. I
12 assume that's what the State would argue, and I
13 believe that to be true. Again, I must respectfully
14 deny your motion.

15 MR. POSTIC: Thank you, Your Honor. Your Honor,
16 I'm going to move on to motions that don't request
17 testimony just in the interest of moving on. I want
18 to make a motion to suppress the reading of the
19 DataMaster. I have handed that motion up to Your
20 Honor and gave a copy to the plaintiff's
21 attorney --- to the State's attorney. The basis of
22 that motion, Your Honor, is that the --- by the way,
23 on all my motions, for some reason, I mentioned
24 Mr. Perry is Deputy Solicitor for the 8th circuit. I
25 apologize. I know he's ---

1 MR. MOAK: Who did you give a copy to?

2 MR. POSTIC: To you. It's just the same motion
3 as last time.

4 Your Honor, the basis of that motion is that the
5 statute dealing with the DataMaster machine states
6 that the sample must be taken within two hours of the
7 arrest. In this case, the sample was taken two hours
8 and thirty-six minutes after the arrest. Your Honor,
9 I would ask --- I think the only remedy is to suppress
10 the reading as a violation of the statute 56-5-2950.

11 MR. MOAK: Your Honor, I'll point out that
12 56-5-2946 is the specific statute which refers to
13 alcohol and drugs in reference to a felony DUI case,
14 Your Honor. The third paragraph of that statute says
15 that the provisions of ---

16 THE COURT: What are you reading from?

17 MR. MOAK: 56-5-2946.

18 THE COURT: 2946?

19 MR. MOAK: 2946.

20 MR. POSTIC: I just wants to clarify, Your Honor,
21 because the law did change since this event, I don't
22 know if this is the new law or ---

23 THE COURT: It changed on February 10th, 2009,
24 which preceded this accident.

25 MR. POSTIC: Yes, Your Honor, that's correct.

1 MR. MOAK: Your Honor, the third paragraph of ---
2 well, actually the first two paragraphs essentially
3 say that ---

4 THE COURT: Hold on. So this is under the old
5 law?

6 (Pause.)

7 MR. POSTIC: New law.

8 THE COURT: I mean, 46 ---

9 MR. MOAK: 2946 is the submission test for
10 alcohol or drugs ---

11 THE COURT: I understand that.

12 MR. MOAK: --- for felony ---

13 THE COURT: I want to make sure you're reading
14 the right one. This says this is the 1998 Act. Now,
15 2950 was amended 2009, but I don't know that this one
16 was ever amended. Do you differ with that,
17 Mr. Postic?

18 MR. POSTIC: I'm looking it up right now, Your
19 Honor, but no, I don't think Mr. Moak would attempt to
20 defraud.

21 THE COURT: No, he wouldn't, but when the
22 legislature changes these acts, it's important that we
23 get the right one.

24 MR. POSTIC: Yes, sir.

25 THE COURT: What are you reading ---

1 MR. MOAK: Well, Your Honor, the first two
2 paragraphs of 2946 essentially say there's probable
3 cause when a felony DUI has occurred. The sub --- the
4 defendant must submit to testing. He does not have the
5 right to refuse.

6 THE COURT: Right.

7 MR. MOAK: The third paragraph adopts the
8 provisions of 56-5-2950 only relating to the actual
9 administration of the test, of his right to give an
10 additional test, and the availability of other
11 evidence and the question of whether or not the person
12 was under the influence of alcohol, drugs or a
13 combination of them, the availability of test
14 information to his attorney, the liability of the
15 people doing the test and all those other things.
16 Now, if you go over to ---

17 THE COURT: Wait a minute, you didn't read all of
18 them.

19 MR. MOAK: Well --- the liability of the medical
20 institutions and persons administering the test are
21 applicable to this section.

22 THE COURT: The tests are applicable to this
23 section. Sections of 2950 relating to the
24 administration of the tests to determine a person's
25 blood alcohol concentration, those tests are

1 applicable to 2946.

2 MR. MOAK: And that's --- I'm wanting to switch
3 over to 2950 --- 2950 has implied consent testing for
4 alcohol and drugs, perceived or inference of DUI, well
5 in 2946, there is no ability to refuse the test. And
6 2946 only adopts the procedures of actually
7 administering the test. If you read paragraph (A), I
8 guess ---

9 THE COURT: 2950?

10 MR. MOAK: Yes, 2950. It has a lot of stuff
11 relating to regular DUI, but then about three fourths
12 of the way through the paragraph, it says the breath
13 test must be administered by persons trained and
14 certified by the South Carolina Criminal Justice
15 Academy pursuant to SLED policies, before the breath
16 test is administered and .08 of a percent test must be
17 performed ---

18 THE COURT: Right.

19 MR. MOAK: --- and the result must reflect a
20 reading of between .076 and .084 percent and then
21 paragraph (B) has the actual procedure of actually
22 administering the test and requiring that he be
23 proactively in the video, that he is placed on notice
24 that he is being videoed and given a written copy of
25 the implied consent, which includes his right to an

1 administrative hearing and all those other rights.

2 THE COURT: Well, what about the two hour
3 statute?

4 MR. MOAK: Well, I would submit the two hour has
5 nothing to do with administering the test. He doesn't
6 have a right to refuse it. It says he shall submit to
7 it. The two hours has nothing do with the actual
8 administering of --- actually physically running the
9 test. It says ---

10 THE COURT: Well, the language, it says a breath
11 sample taken for testing must be collected within two
12 hours of the arrest. What's that mean?

13 MR. MOAK: Well, I mean, most of that paragraph
14 is in regards to a regular DUI because it includes the
15 language about having to get a nurse or licensed
16 medical person, a certified --- or somebody that is
17 physically able to provide the breath samples and all
18 those other issues that do not apply to felony DUI.

19 In addition, this test was done about an
20 hour --- the actual breath collection was an
21 hour-and-a-half, I believe, after the blood draw and
22 we would submit that even if the DataMaster result is
23 not admitted for the purpose of the issue of under the
24 influence, we were planning on using as it part of the
25 expert's --- the toxicology expert's --- the basis of

1 his opinion that Mr. Thigpen's blood alcohol was on
2 the down curve and was actually being eliminated
3 because we anticipate some testimony to the effect
4 that, you know, once you quit drinking your alcohol
5 continues to rise for a period of time and then starts
6 eliminating.

7 THE COURT: So do you think you can introduce the
8 blood test?

9 MR. MOAK: Well, I think blood test clearly was
10 in the timeframe. In addition, in the DataMaster
11 video itself, there is a lot of demeanor evidence and
12 a lot of somewhat incriminatory or we're going to
13 argue incriminatory statements and demeanor evidence
14 on the DataMaster video that Mr. Thigpen does that's
15 not, that is --- so the video itself we would argue
16 should be admissible either way, and the breath result
17 was a 19, Your Honor. The SLED blood draw result was
18 a 22 and again, that's part of our illustration of
19 the --- what the alcohol would have been --- as part
20 of the basis of the expert's opinion for the blood
21 alcohol, the estimated blood alcohol, at the time of
22 the wreck.

23 So I guess my argument is that the statute is not
24 clear whether the two or three hours is applicable to
25 felony DUI and also to the extent that it could be

1 considered to be, I would submit that the actual
2 result is going to be very probative to other issues
3 not specifically being the actual 19 being the number
4 we're going with, but it's going to be the basis of an
5 expert opinion, so I think you want to give a limiting
6 instructions of whether or not it can be used for ---
7 that may be appropriate.

8 THE COURT: You're not trying to back door the
9 blood alcohol content through an expert toxicologist
10 --- is that ---

11 MR. POSTIC: We have the toxicologist that signed
12 the report for the blood draw at approximately 12:30.

13 THE COURT: What was the basis --- maybe you
14 better put some testimony up, because what was the
15 basis for even drawing the blood?

16 MR. MOAK: Because felony DUI, you must submit to
17 blood, urine, or breath or a combination of all three.
18 He actually was asked to submit all three. He
19 actually did submit to them.

20 THE COURT: I thought there were only certain
21 conditions under which ---

22 MR. MOAK: That's the regular DUI.

23 THE COURT: So you agree with that?

24 MR. MOAK: Yeah, your don't have to offer a
25 DataMaster on a felony DUI if you've already got a

1 blood draw.

2 THE COURT: Do you have some case law to support
3 that?

4 MR. MOAK: The statute 56-5-2946.

5 THE COURT: How about that, Mr. Postic?

6 MR. POSTIC: Well I'd say the statute 2950, which
7 says it must be done within two hours, and I don't ---

8 THE COURT: Well, I'm questioning the blood draw
9 at this point.

10 MR. POSTIC: The blood draw, I'm not objecting to
11 that at this point.

12 MR. MOAK: The first paragraph ---

13 THE COURT: Wait a minute. Wait a minute. I'm
14 talking to him, okay.

15 MR. MOAK: Okay.

16 MR. POSTIC: I can't say that he wasn't under
17 arrest for felony D.U.I. because he under arrest for
18 felony DUI. He was arrested at eleven or so --- at
19 11:29 or so in the morning. At that point, they draw
20 the blood at 12:40. I mean, he's been charged with
21 felony DUI. The statute says he must submit to the
22 blood draw. I can't do anything about it.

23 THE COURT: Okay.

24 MR. POSTIC: However, the breath test is clearly
25 in violation of the statute, and it doesn't really

1 matter what they're going to use it for with an expert
2 in toxicology or anything like that. It's still in
3 violation of this act. It doesn't change it.

4 In fact, he is offered implied consent at the
5 video --- on the video where he is asked whether or
6 not he wants to refuse the test and he --- at first he
7 does refuse and then later he says he will take the
8 test.

9 THE COURT: Which test?

10 MR. POSTIC: The breath test. I'm also not
11 objecting at this point to the video. I'm only
12 objecting to the ruling --- I mean to the reading.

13 THE COURT: Even though you say he consented?

14 MR. POSTIC: He consented to give it, however,
15 the test was not given per the statute.

16 THE COURT: Okay. I think I understand it now.

17 MR. MOAK: My whole argument, there was nothing
18 to this DataMaster other than the time that the
19 DataMaster started. There were no actual procedural
20 defects in the way it was given. The statute, the
21 felony DUI statute says he must submit to it. He was
22 offered it. He did submit to it. The trooper
23 conducted the test the way he's supposed to. The
24 problem was they went to the hospital first and I
25 guess by the time they got the DataMaster, it appeared

1 to me that the DataMaster actually was started, the
2 observation time started right at about two hours
3 after the arrest, so it actually began around the two
4 hours and even 56-5-2950, gives --- for a regular DUI
5 if you start the DataMaster and you can't give the
6 test for whatever reason, then you can go to the
7 hospital, it gives you an additional hour to go to the
8 hospital to conduct the other test.

9 I will just submit that ---

10 THE COURT: You say 2946 trumps 2950?

11 MR. MOAK: Yeah, 2946 is what kicks in for the
12 felony DUI blood draw. This first paragraph says that
13 if somebody is --- if there is probable cause, if
14 somebody has violated that, they must --- I'm just
15 going to read it word for word.

16 THE COURT: I'm looking at it. You don't have to
17 read it to me.

18 MR. MOAK: You must submit to either one or a
19 combination of tests of breath, blood or urine for the
20 person to determine the presence of alcohol and drugs
21 if there is probable cause to believe that person is
22 under arrest for violation of 56-5-2945, which is the
23 felony DUI statute.

24 MR. POSTIC: And then it cites 2950 as ---

25 MR. MOAK: That's how to actually ---

1 MR. POSTIC: I don't know how one gets before the
2 other.

3 MR. MOAK: I don't think there's any objections
4 that the trooper did the test properly. The only
5 objection is the test began --- by the time it was
6 completed --- it was greater than two hours by the
7 time it was completed.

8 MR. POSTIC: The sample must be collected within
9 two hours, so that's blowing in the machine.

10 MR. MOAK: And the State will submit, we don't
11 see where the fact that it was completed two hours and
12 20 or 30 minutes after he was arrested, how that would
13 affect the reliability of that test result and
14 therefore, we were going to try to use that as the
15 basis of some expert opinion that we anticipate with
16 the toxicologist.

17 THE COURT: Okay.

18 MR. POSTIC: It's in the statute. It's like I
19 can't use ten strikes.

20 THE COURT: All right. Let me review this one.
21 What else?

22 MR. POSTIC: Your Honor, I have a motion under
23 that new case from February 2012, opinion 4941, which
24 is State vs. Collins. This is the --- that was the
25 case that involved the dog mauling and the pictures.

1 It was Judge Burch's case, the dog mauling and the
2 pictures of the child. In this case there are a lot
3 of photographs, some very disturbing and strong
4 photographs of the victim in the automobile. I would
5 make a motion in limine to suppress the introduction
6 of photographs of the victim in the automobile as
7 overly prejudicial.

8 THE COURT: Well, let me look at them.

9 THE COURT: Yes, sir.

10 MR. MOAK: I think Ms. Rawson (phonetic) is
11 getting them for you.

12 THE COURT: All right.

13 MR. POSTIC: Your Honor, just housekeeping, I'm
14 fortunate to have a close relationship with these
15 prosecutors and they have been very forthcoming on all
16 evidence and always handing it to me. I'm pretty sure
17 I've cleared discovery with them. I don't think there
18 is anything new that has come up.

19 THE COURT: Is there a Brady motion or a Riddle
20 motion?

21 MR. POSTIC: Your Honor?

22 THE COURT: Go ahead.

23 MR. POSTIC: I just wanted to make sure --- to
24 clear discovery in this matter.

25 MR. MOAK: If there is any other discovery, I'm

1 not aware of them.

2 MR. POSTIC: There's nothing new since the last
3 one?

4 MR. MOAK: I'm not aware of any.

5 MR. POSTIC: Your Honor, as part of --- well, in
6 order to help the efficiency of this matter go
7 forward, I have agreed to stipulate to a number of
8 chain witnesses. The State has been gracious enough
9 to show me subpoenas that have been accepted by
10 members of SLED that have come in contact with the
11 blood and DNA samples in this matter, so I just want
12 to put on the record, we're stipulating to a number of
13 chain witnesses.

14 Certainly, Your Honor, I'm going to make a
15 motion to sequester witnesses.

16 THE COURT: Which witnesses?

17 MR. POSTIC: All witnesses other than the chief
18 investigating officer.

19 THE COURT: Any objection?

20 MR. MOAK: No, no objection except, Your Honor,
21 the question is they would do that on. I guess Tom
22 Borowski is going to be the highest ranking one.

23 MR. POSTIC: The only other motion I have, Your
24 Honor, is related to the defendant's statement.

25 THE COURT: Go ahead.

1 MR. POSTIC: And if you're ready to hear that.

2 THE COURT: Yes, sir.

3 MR. POSTIC: Just to briefly outline it, Your
4 Honor, I did hand a motion to you and to the State on
5 this, as well. The defendant was arrested at eleven
6 in the morning. He is advised shortly thereafter by
7 Trooper McKenzie, on the record, of his rights under
8 Miranda.

9 THE COURT: At what time?

10 MR. POSTIC: 11:00 a.m., Your Honor, or was it
11 11:30, Ronnie?

12 MR. MOAK: I think it was 11:08.

13 MR. POSTIC: Okay.

14 MR. MOAK: My understanding --- around 11:00 is
15 when he got arrested, I think actually.

16 MR. POSTIC: Advised of Miranda.

17 MR. MOAK: 11:28.

18 THE COURT: 11:28.

19 MR. MOAK: Yes, 11:28.

20 MR. POSTIC: Did you get my written motion, Your
21 Honor?

22 THE COURT: I did.

23 MR. POSTIC: At that point, he is given a full
24 and complete Miranda. Argued under state law, the
25 full and completed Miranda involves the five prongs as

1 illustrated under State v. Kennedy. He is questioned
2 over and over again about the event, he denied
3 involvement in the incident dozens of times, asks for
4 a phone call and ultimately, of course, he is
5 given --- he gives a blood alcohol sample at
6 12:40 p.m. and his blood alcohol registered .21. That
7 is a blood draw. Your Honor, has already heard that
8 he gave a breath test at 2:05, which registered a .19.
9 He is booked at this time at the jail. He is placed
10 in a room at the jail with several officers of the
11 Highway Patrol. He gives a state --- there are three
12 officers of the Highway Patrol, and he gives a
13 statement that the point. He is reinterviewed. That
14 interview is audio taped.

15 THE COURT: Where was the first one?

16 MR. POSTIC: The first one was in the car, in the
17 patrol car.

18 THE COURT: Okay.

19 MR. POSTIC: And then there's several times when
20 he is just questioned about it in the DataMaster room,
21 in the car, at his home, and all times he denies any
22 involvement.

23 Finally, Your Honor, when he is taken into that
24 final interrogation and then it's ---

25 THE COURT: Where was that?

1 MR. POSTIC: At the jail.

2 THE COURT: At the jail.

3 MR. POSTIC: He is --- I'm trying to remember the
4 street name of the jail. It does not matter, but you
5 know where it is, Kershaw County Detention Center. He
6 is taken into a room there that is sort of a classroom
7 there where they interview clients --- they interview
8 defendants.

9 At that point the questioning is run by Trooper
10 Monty Coats of the M.A.I.T. unit. He ---

11 THE COURT: Is this a video or audio.

12 MR. POSTIC: Just audio and before the
13 questioning starts, he is re-Mirandized. In that
14 Miranda, Your Honor, they leave out the 5th prong
15 statement where it's --- he is not told that he has
16 the right to stop questioning at any time. It's on
17 audio. It's clear.

18 At first the defendant denies --- continues to
19 deny any driving and then after about an hour, I'd say
20 at 6:00 p.m., Donnie finally makes a statement,
21 inculpatory statement confessing to driving and to
22 leaving the scene.

23 The basis of our motion is the statement was
24 involuntary and we base that, Your Honor, on --- we
25 have to get through several hurdles. The first hurdle

1 is whether the initial advisement of rights by Trooper
2 McKenzie in the automobile --- or in his patrol car,
3 controls all the way through to this final interview.

4 We would say, just as a matter of course, he
5 is --- at the time severely intoxicated to the point
6 of having a blood alcohol level at almost a .23 an
7 hour after the initial Miranda, so we would say he
8 would be too intoxicated to understand his rights at
9 that points and ---

10 THE COURT: The first one?

11 MR. POSTIC: The first one.

12 MR. POSTIC: The next hurdle ---

13 THE COURT: That's the New Mexico case that you
14 handed up?

15 MR. POSTIC: Yes, Your Honor.

16 THE COURT: Is that as close as you can get?

17 MR. POSTIC: Yes, sir. I understand the State
18 has --- there are a lot of cases that say that the
19 defendant must be almost knocked out to give an
20 involuntary statement, which just doesn't make any
21 sense.

22 The point --- if you look at the totality and the
23 way this whole situation unfolded, the defendant
24 denies it so many times, and then he is taken to a
25 room in custody and at that point, he is an

1 unsophisticated guy. I mean, he doesn't know --- I
2 mean unsophisticated in the law --- I mean,
3 pejoratively. I mean, he doesn't know this is ever
4 going to end. We're talking about six hours later
5 we're in a new situation, in custody, and it's clear
6 that over and over again he denies involvement he is
7 really in a sort of situation where he doesn't even
8 know why he is there and then he finally --- it would
9 be our position that finally, he feels that's the only
10 way to end it because he doesn't understand at that
11 point that he has a right to stop it.

12 THE COURT: Did the officers do anything other
13 than question him, in terms of inappropriate comments
14 from the officers that you can tell at that point?

15 MR. POSTIC: There is no --- they don't promise
16 him anything. They don't threaten him. They don't
17 keep him from going to the bathroom. They don't keep
18 him from having a drink or whatever. The only thing
19 they keep them from is having a phone call, that's the
20 only thing, which he asks for several times.

21 And I just want to make sure, Your Honor, it's
22 clear that there was a separate recitation of the
23 Miranda without the 5th prong in that final
24 interrogation.

25 It's --- and I guess ---

Direct of Slaten by Moak
(Pretrial)

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1 THE COURT: So only two?

2 MR. POSTIC: That I think are important to this
3 motion. He may have been given Miranda at other
4 points during the day. Those are the two that are on
5 audio. I don't think the DataMaster ---

6 THE COURT: All right. That's your motion. I
7 think we better do a Denno hearing on these.

8 MR. POSTIC: Yes, Your Honor. Absolutely.

9 THE COURT: All right. Mr. Moak?

10 MR. MOAK: Thank you, Your Honor. I would first
11 call John Slaten.

12 THE COURT: All right. This is on the
13 voluntariness of the confession?

14 (There was no response.)

15 THE COURT: Is this on the voluntariness of the
16 confession?

17 MR. MOAK: Yes, Your Honor.

18 MR. POSTIC: Yes, sir.

19 THE COURT: Place your left hand on the Bible,
20 raise your right hand.

21 JOHN SLATEN,
22 after being duly sworn, testified as follows:

23 THE COURT: Have a seat in the witness box, state
24 your full name for the record.

25 THE WITNESS: John Slaten. The last name is

1 spelled S-L-A-T-E-N.

2 DIRECT EXAMINATION:

3 BY MR. MOAK:

4 Q Chief Slaten, what agency are you employed with
5 right now?

6 A Currently I'm the chief of police in the town of
7 Mayesville.

8 Q And before you were in Mayesville, where were you
9 employed at?

10 A I was a corporal with the Kershaw County
11 sheriff's office.

12 Q How long were you with Kershaw County?

13 A I started with Kershaw County in, I think, April
14 of 2001.

15 Q Okay. On June 20, 2009, were you employed with
16 the Kershaw County sheriff's department?

17 A Yes, I was.

18 Q You were a corporal?

19 A Yes.

20 Q Were you dispatched out to a wreck scene on
21 Twenty-five Mile Creek Road in Kershaw County?

22 A Yes, I was.

23 Q Did you go to that scene?

24 A Yes, I did.

25 Q Did you deal with First Sergeant Borowski?

Direct of Slaten by Moak
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1 A Sergeant Borowski arrived on the scene after
2 Trooper Kelly arrived first.

3 Q Trooper Kelly arrived first before you all were
4 there?

5 A Yes.

6 Q So you were there before they were?

7 A Yes.

8 Q At some point during your stay at that location
9 that morning, did y'all go to a --- I guess, it's a
10 trailer?

11 A Yes, sir, I believe it was a double wide mobile
12 home.

13 Q Was that associated with the registered owner of
14 the vehicle involved in the accident?

15 A Yes, it was.

16 Q Was that a Donnie Thigpen?

17 A Yes, it was.

18 Q Do you see Mr. Thigpen sitting over here?

19 A Yes, I do.

20 Q Did you encounter him that morning?

21 A Yes, we did.

22 Q What were your observations of him that morning?

23 A When he first came to the door, he was wearing a
24 towel. We identified who he were. He went to secure
25 a dog that was inside the residence.

1 Q Okay.

2 A Then went around the corner to the left side. We
3 were able to observe through the window while we
4 remained on the porch. When he came back out, he was
5 wearing a t-shirt and some pants.

6 Q Okay.

7 A We advised --- he stepped out on the porch, and
8 we advised him of the purpose of us being there.

9 Q Okay.

10 A And I did observe various scratches, abrasions
11 about his body, his face and his arms.

12 Q Did you smell any odor of what you would describe
13 as odor of alcohol about his person?

14 A Yes, he had an odor of alcoholic beverage about
15 his person. He also had the appearance of an
16 intoxicated person.

17 Q So he appeared to be intoxicated?

18 A Yes, he did.

19 Q At some point, did you Miranda him?

20 A Yes, I did.

21 Q Do you have a copy of the card that you read to
22 him?

23 A The actual card I do not have a copy of. It is a
24 card that is issued out by SCLEOA, and it's the same
25 card that I've got a copy of.

Direct of Slaten by Moak
(Pretrial)

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1 Q And you read that card to him?

2 A Yes, I did.

3 Q Can you read to the court what you read to
4 Mr. Thigpen that morning?

5 A One, you have the right to remain silent. Two,
6 anything you --- excuse me. Anything you say can and
7 will be used against you in a court of law. Three,
8 you have the right to talk to an attorney and have him
9 or her present with you while you are being
10 questioned. Four, if you cannot afford to hire an
11 attorney, one will be appointed to represent you
12 before any questioning, if you want. Five, you can
13 decide at any time to exercise these rights, not
14 answer any questions or make any statements. Six, do
15 you understand these rights I have explained to you?
16 I then waited for an answer from the defendant.
17 Seven, having these rights in mind, do you wish to
18 talk to us now? And both times Mr. Thigpen gave an
19 affirmative response.

20 Q Now, you were at his home with this, right?

21 A Yes.

22 Q And he indicated that he understood what you were
23 telling him?

24 A Yes, he did.

25 Q Did he understand what you were asking him?

Direct of Slaten by Moak
(Pretrial)

- 1 A Yes, he did.
- 2 Q Now, you said you were at his home?
- 3 A Say it again.
- 4 Q You were at his home?
- 5 A Yes.
- 6 Q You hadn't transported him anywhere?
- 7 A No.
- 8 Q Was he handcuffed when you Mirandized him?
- 9 A No.
- 10 Q Was Trooper McKenzie the one that actually placed
- 11 him under arrest?
- 12 A I believe it was --- well, I cannot recall
- 13 exactly which one of the troopers placed him under
- 14 arrest ---
- 15 Q Okay.
- 16 A --- and began the handcuff.
- 17 Q You didn't place him under arrest?
- 18 A No.
- 19 Q When you Mirandized him, he was not under arrest?
- 20 A No, Sergeant Borowski and I were just questioning
- 21 him.
- 22 Q Okay. Did he answer questions?
- 23 A Yes.
- 24 Q Did he appear to be confused or not know what's
- 25 going on?

Direct of Slaten by Moak
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1 A No.

2 Q At some point, did another trooper arrive at the
3 scene?

4 A Yes.

5 Q Did he take custody of Mr. Thigpen?

6 A Yes.

7 Q You don't remember the name of that trooper?

8 A No, I don't.

9 Q At that point, was your --- did you have any
10 other involvement with Mr. Thigpen?

11 A I remained on the scene when they transported him
12 to go get him booked in and to get the search
13 warrants. I remained outside the residence, securing
14 it.

15 Q After you Mirandized Mr. Thigpen, at any point
16 did he indicate that he did not want to answer any
17 questions?

18 A No, he did not.

19 Q Did he ever ask for an attorney?

20 A No, he did not.

21 Q So he actually was talking willingly?

22 A Yes.

23 Q Did you, or in your presence, hear Sergeant
24 Borowski or anybody threaten or coerce him?

25 A No, we did not.

1 Q Was he made aware of what you were asking him
2 about?

3 A Yes, he was.

4 Q And do you remember what he told you?

5 A He first denied driving the vehicle, claimed that
6 he was at party with some friends, that a friend
7 brought him home.

8 Q Uh-huh.

9 A Then as we continued questioning him, we asked if
10 he could give us the friend's name. That's when he
11 changed it and stated it was a stranger.

12 Q Okay. Also, was there something to do with the
13 door when you got there?

14 A The door --- when the sergeant and I arrived at
15 the front door up on the deck, we could tell that the
16 front door had footprints on it where it had been
17 forced open.

18 Q Did he have a story as to that?

19 A He ---

20 MR. POSTIC: Your Honor, I object. I don't know
21 what --- I thought we were just dealing with the
22 defendant's statement and his understanding of his
23 rights. This is obviously a trial issue that will
24 come up during trial. I don't know why it has to be
25 done during Jackson V Denno.

Direct of Slaten by Moak
(Pretrial)

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1 THE COURT: All right.

2 MR. MOAK: Your Honor, I'm just asking this to
3 show that he was actually giving pertinent answers to
4 the questions, which I think is relevant to the case.

5 THE COURT: It is relevant. Go ahead, but let's
6 don't go too far afield, because the issue is
7 voluntariness.

8 BY MR. MOAK:

9 Q Did he have an explanation for that?

10 A He advised that he had to force, to kick the door
11 open when he got home. He didn't have his keys with
12 him.

13 Q Did he have an explanation as to the marks on his
14 arms?

15 A No, he could not give us any clear answers for
16 those.

17 Q Okay. Is there anything else as far as
18 voluntariness that you can testify to that I haven't
19 asked you?

20 A We were standing on his front porch. The
21 sergeant and I are probability both maintaining at
22 least four to five feet distance from him. It's a
23 good size front porch. At any time he could have
24 easily turned right back and walked into his
25 residence. We weren't blocking the walkway or

1 anything from him or anything like that.

2 Q It was his house?

3 A It was his house.

4 MR. MOAK: No further questions of this witness.

5 THE COURT: Mr. Postic?

6 CROSS-EXAMINATION:

7 BY MR. POSTIC:

8 Q Chief Slaten, were you the first officer at that
9 residence?

10 A Me and the sergeant rode up together. I rode in
11 the sergeant's car.

12 Q You and the sergeant were the first ones to come
13 to the door?

14 A Yes.

15 Q And can we just get straight. He --- you smelled
16 a strong odor of alcohol?

17 A An alcoholic beverage, yes.

18 Q Did he appear sober?

19 A No, he appeared to be intoxicated.

20 Q But he certainly understood what you said?

21 A I believe he did, yes.

22 Q But he was intoxicated?

23 A He appeared to be intoxicated, yes.

24 Q Not sober?

25 A Not sober.

Direct of McKenzie by Moak
(Pretrial)

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1 MR. POSTIC: Thank you.

2 MR. MOAK: Your Honor, I have no further
3 questions of this witness.

4 THE COURT: Thank you, sir. You may come down.

5 MR. MOAK: I have a second witness to call.

6 We call Trooper McKenzie.

7 THE COURT: What is this computer?

8 MR. MOAK: That's got the video where he's
9 Mirandized by Trooper McKenzie. We have a problem
10 with the courthouse speakers. I did that so you could
11 hear it better, Your Honor.

12 THE COURT: That witness, can he be excused for
13 the day?

14 MR. MOAK: Yes, Your Honor. We'll probably use
15 him tomorrow.

16 MR. POSTIC: No objection, Your Honor.

17 THE COURT: Officer, if you'll place your left
18 hand on the Bible, raise your right hand.

19 DALTON PATRICK MCKENZIE,
20 after being duly sworn, testified as follows:

21 THE COURT: Please have a seat in the witness
22 box, state your full name for the record.

23 THE WITNESS: Dalton Patrick McKenzie, II.

24 THE COURT: All of that?

25 THE WITNESS: Yes, sir.

DIRECT EXAMINATION:

1
2 BY MR. MOAK:

3 Q Trooper McKenzie, on June 20, 2009, were you with
4 the Highway Patrol?

5 A Yes, sir.

6 Q And you're still with the high patrol?

7 A Yes, sir.

8 Q On June 20, 2009, were you dispatched in regards
9 to a fatality on Twenty-five Mile Creek Road, in
10 Kershaw County near the Richland County line?

11 A Yes, sir.

12 Q When you were out there, were you asked to go to
13 the address of Mr. Donnie Thigpen?

14 A Yes, sir.

15 Q And at that point, did you take him into custody
16 or you actually transported him?

17 A Yes, sir.

18 Q You put him in your car?

19 A Yes, sir, he was in my car, yes, sir.

20 Q Had you Mirandized him at that point?

21 A Yes, sir, he was Mirandized.

22 Q I'm going to show you what's marked Court's 2. I
23 believe this is a copy of the video from your in-car
24 camera?

25 A Yes, sir.

Direct of McKenzie by Moak
(Pretrial)

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1 Q Now, when you Mirandized him, was your camera
2 running?

3 A Yes, sir.

4 Q Okay.

5 MR. MOAK: So, Your Honor, I'd move this in as
6 Court's 2 for the purpose of this hearing.

7 THE COURT: Let me just find out, is there any
8 objection or question as to the authenticity of this?

9 MR. POSTIC: No objection.

10 THE COURT: No objection. All right.

11 MR. POSTIC: Is it going to play just there?

12 MR. MOAK: I think the only person who has to
13 hear it at this point is the judge. I just want to
14 make sure he hears it as clearly as possible.

15 MR. POSTIC: Do you mind if I stand behind the
16 judge?

17 THE COURT: I want defense counsel to be able to
18 hear it.

19 Is there a video on this?

20 MR. MOAK: There is a video. Once I get it on
21 here, I was going to --- we had problem with the
22 audio. The audio --- for this purpose, the audio is
23 more relevant than the video.

24 THE COURT: I know. What are you going to do
25 with the jury, though.

Cross of McKenzie by Postic
(Pretrial)

1 (WHEREUPON, the video was played for the Judge.)

2 THE COURT: I can see it.

3 BY MR. MOAK:

4 Q And that was the Miranda of Mr. Thigpen?

5 A Yes, yes, sir.

6 Q And you're --- the timestamp on your camera, what
7 time does it say?

8 A 10:29.

9 Q Now, was that time accurate or was it off?

10 A It was off, sir.

11 Q Like an hour or two or can you tell us how?

12 A Yes, the camera time may not have been changed
13 when the time changed.

14 Q So was it really 11:29?

15 A Yes.

16 Q Okay. But he was Mirandized there?

17 A Yes, sir.

18 Q By you?

19 A Yes, sir, by me.

20 MR. MOAK: No further questions of this witness
21 for this issue.

22 MR. POSTIC: Thank you, Your Honor.

23 THE COURT: Cross?

24 MR. MOAK: Briefly.

25 CROSS-EXAMINATION:

Cross of McKenzie by Postic
(Pretrial)

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1 BY MR. POSTIC:

2 Q Did Donnie appear under the influence when you
3 spoke to him?

4 A Yes, at that time, yes.

5 Q Not sober? He did not appear sober?

6 A Yes.

7 Q After --- we've seen briefly his answers to your
8 questions. Can you hear me okay?

9 A Yes, sir.

10 Q Okay. Does he ever confess at that point to you?

11 A No, sir.

12 Q Does he continue to deny involvement at that
13 point?

14 A Yes, sir.

15 Q And how --- after that, how much longer are you
16 with Donnie? Are you the officer who takes him to the
17 hospital to take the blood?

18 A Yes, sir.

19 Q Do you go with him to have the blood taken?

20 A Yes, sir.

21 Q And you actually see the blood being taken by the
22 nurse?

23 A Yes, sir.

24 Q And then you go from there and he gives a urine
25 sample, I guess; is that correct?

Cross of McKenzie by Postic
(Pretrial)

1 A I can't recall on the urine, sir.

2 Q That's fine.

3 Q You take him from the hospital to the detention
4 center?

5 A Yes, sir.

6 Q And at the detention center, you're the officer
7 who conducts the DataMaster test?

8 A Yes, sir.

9 Q And at that point --- and then after that --- is
10 he booked before or after he gives the DataMaster
11 test, do you remember, sir?

12 A After.

13 Q And after he is booked, are you in the room with
14 Trooper Coats when he is questioned?

15 A No, sir.

16 Q Okay. So your involvement with him ends when he
17 is booked with the jail?

18 A Yes, sir.

19 Q And during that period of time, which is --- I'm
20 guessing from 11:00 a.m. until probably about four, is
21 that about right, sir? Would you say?

22 A I would --- whenever the DataMaster was
23 concluded, sir. That would have been about the end of
24 it.

25 Q That would be the end?

Redirect of McKenzie by Moak
(Pretrial)

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1 A Yes, sir; yes, sir.

2 Q And that's at 2:05?

3 A Yes, sir.

4 Q At any point during those three hours with him,
5 does he make any sort of confession to you?

6 A Not to my knowledge, sir.

7 Q Okay. Well, you would remember that, I guess?
8 You would remember if he did?

9 A Yes, sir.

10 Q Okay. That's all I have. Thank you.

11 REDIRECT EXAMINATION:

12 BY MR. MOAK:

13 Q I'm going to show you --- this is a copy of your
14 DataMaster slip, correct?

15 A Yes, sir, it's a copy.

16 Q And the DataMaster is completed what, 2:05?

17 A Yes, sir, subject's sample, which would have been
18 the completion, is 2:05.

19 Q So 11:29 and 2:05 he is in your presence?

20 A Yes, sir.

21 Q On that DataMaster, he didn't confess to
22 anything?

23 A I don't recall, sir. No, not a confession,
24 questions maybe, but no specific explanation.

25 Q He got belligerent with you, didn't he?

Direct of Coats by Moak
(Pretrial)

1 A As I recall, sir, yes.

2 Q Did he accuse you of trying to make your quota of
3 tickets?

4 A I believe that was in some way, shape or form an
5 accusation that was made.

6 Q But he wasn't a happy camper?

7 A No, sir.

8 MR. MOAK: No further questions of this witness,
9 Your Honor.

10 MR. POSTIC: No further questions.

11 THE COURT: All right. You may come down. Thank
12 you very much.

13 THE WITNESS: Thank you, sir.

14 MR. MOAK: Your Honor, next we would call Monty
15 Coats.

16 THE COURT: Place your left hand on the Bible,
17 raise your right hand.

18 MONTY COATS,
19 after being duly sworn, testified as follows:

20 THE COURT: Please have a seat in the witness
21 box. State your full name for the record.

22 THE WITNESS: Sergeant C.M. Coats, South Carolina
23 Highway Patrol, State headquarters Blythewood.

24 THE COURT: Is that C-O-A-T-E-S?

25 THE WITNESS: Just "S."

Direct of Coats by Moak
(Pretrial)

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DIRECT EXAMINATION:

1
2 BY MR. MOAK:

3 Q Trooper Coats, obviously you're with the Highway
4 Patrol?

5 A Yes, sir.

6 Q How long have you been with the Highway Patrol?

7 A Since 1999.

8 Q And by educational background, what college did
9 you graduate from?

10 A Citadel.

11 Q What year?

12 A Ninety-four.

13 Q Tango Company?

14 A Tango Company.

15 Q But you have been in the Highway Patrol since
16 '99. Were you with the patrol highway on June 20th,
17 2009?

18 A Yes, sir.

19 Q Were you called as part of the M.A.I.T. Team to
20 help investigate a fatality on Twenty-five Mile Creek
21 Road, Kershaw County?

22 A Yes, sir.

23 Q As part of that, did you ended up going to the
24 Kershaw County Detention Center?

25 A Yes, sir.

Direct of Coats by Moak
(Pretrial)

1 Q On Bramblewood Plantation Drive?

2 A I couldn't tell you.

3 Q Okay. You went with Corporal O'Donnell?

4 A Yes, sir, Corporal O'Donnell and Sergeant
5 Borowski.

6 Q You all three went to the jail?

7 A Yes, sir.

8 Q And the subject, he is sitting right here?

9 A Yes, sir.

10 Q Is that Mr. Thigpen?

11 A Yes, sir.

12 Q That's the guy that you interviewed?

13 A Yes, sir.

14 Q Now, did you Mirandize him as part of that
15 interview?

16 A Yes.

17 Q I've already got marked as Court's 1 in the
18 laptop.

19 A Yes, sir.

20 MR. POSTIC: I've heard it. It's only audio.

21 MR. MOAK: This is only audio, Your Honor.

22 THE WITNESS: Can I do one thing?

23 MR. MOAK: Yeah, if you want to operate it, you
24 can operate it.

25 Can you start it at the beginning of it?

Direct of Coats by Moak
(Pretrial)

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1 Actually, before you start it, Your Honor, he's
2 going --- this audio has the Miranda, and it has some
3 questioning on the issue of whether or not --- you can
4 hear the reactions of the defendant. I'd rather not
5 play the whole thing, but I think we need to play
6 enough that Your Honor can listen to the voice and you
7 can hear from the audio whether or not he's responding
8 and everything, so I'd like to play it beyond that,
9 but if you could give us an indication when you've
10 heard enough, Your Honor.

11 THE COURT: Any objection?

12 MR. POSTIC: No, Your Honor.

13 MR. MOAK: Press play.

14 (WHEREUPON, a portion of the CD was played for
15 the Judge.)

16 THE COURT: Just pause it.

17 BY MR. MOAK:

18 Q Now, while you were at the jail, Trooper Coats,
19 did you make any observations about Mr. Thigpen's
20 person? Did he appear to be intoxicated, still?

21 A He was able to track what we were talking about.
22 You could smell the alcohol on him or coming from him.
23 As far as intoxication, I think he was coherent enough
24 or able to respond to questions. Actually make
25 arguments, if you listen more on the interview, he

1 makes pretty good arguments for a few things, but he's
2 tracking pretty good where he is asking questions
3 also.

4 Q For example, when he realized y'all thought
5 friends was a friend, he corrected you?

6 A Yes, sir.

7 Q And he actually told you like how to get there?

8 A Yes, sir.

9 Q And later on in the statement, did he indicate
10 that he made some phone calls?

11 A Yes.

12 Q He talked to his ---

13 A I believe it was his Nahna and his girlfriend.

14 Q And that's Betty Babinski?

15 A Yes.

16 Q He actually had found out he had gotten into a
17 fight that night?

18 A Yes, sir. Or had an altercation. I don't know
19 if he said a fight. I think he said that he had an
20 altercation.

21 Q And he actually confirmed --- I guess, was told
22 that --- you might be --- do you remember if he said
23 that he was told by his people that somebody had
24 actually died, or do you remember that?

25 A I don't remember that. I just remember him saying

Direct of Coats by Moak
(Pretrial)

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1 that his girlfriend told him that he was in an
2 altercation and P.J. or B.J. and had her that, told
3 her that he was in an altercation.

4 Q So he actually initiated his own investigation of
5 what went on?

6 A Yes.

7 Q And then later on if you forward to an hour and
8 five minutes on there, did he ultimately change his
9 story from, I don't remember?

10 (Pause.)

11 A Do you want it to go to an hour.

12 Q Like an hour and five minutes, I think. I'm not
13 sure that's the redacted copy or not?

14 A Hit play?

15 Q Yeah. Hit play.

16 WHEREUPON, another portion of the CD was played
17 for the Judge.)

18 BY MR. MOAK:

19 Q At the end of the audio, do you actually put a
20 time on it, 6:40, I think?

21 A Yes, sir, and I can't remember exactly.

22 Q And the audio is like an hour and 20 minutes
23 long?

24 A Yes, sir.

25 Q So you would have began around 5:20?

Direct of Coats by Moak
(Pretrial)

1 A Doing the math, yes, sir.

2 Q Okay. And he followed what you were asking, gave
3 you an itinerary of where he was at, told you what he
4 drank and where he drank it at. Then he was actually
5 initially saying he didn't know what happened or
6 couldn't remember, then ultimately admitted he was
7 driving?

8 A Yes, sir.

9 Q And I think he said, "I checked. He didn't have
10 a pulse." Is that what he said on there?

11 A I can't remember. We could play it, but I can't
12 tell you right now.

13 Q But he ended up actually taking responsibility
14 for what he did that night?

15 A Yes, sir.

16 Q Or that morning, I guess?

17 A Yes, sir.

18 Q Did you have any reason to believe he was not
19 acting of his own free will and accord?

20 A No, sir.

21 Q But he was in custody, right? He was at the
22 jail?

23 A He was in jail, right.

24 Q And you didn't beat him?

25 A No, sir.

Cross of Coats by Postic
(Pretrial)

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1 Q You didn't threaten him with anything?

2 A No, sir.

3 Q And he --- at no point did he ask for an
4 attorney?

5 A No, sir.

6 Q At no point did he ask to quit taking to you?

7 A No, sir.

8 Q And that Miranda warning you read was off of your
9 card?

10 A Yes, sir.

11 Q That was issued by the Highway Patrol?

12 A Yes, sir.

13 Q Did he ever ask to stop the interview?

14 A No, sir.

15 MR. MOAK: No further questions of this witness.

16 THE COURT: Mr. Postic?

17 CROSS-EXAMINATION:

18 BY MR. POSTIC:

19 Q You didn't tell him he could stop the interview,
20 though, did you?

21 A No, sir.

22 Q You now --- do you still interrogate people, do
23 you still question people?

24 A No, sir.

25 Q Have you done it since then?

Cross of Coats by Postic
(Pretrial)

1 A Mr. Postic, I can't be for certain. That was
2 June of '09 and I left the M.A.I.T. Team in
3 November of '09, so I did have an opportunity to.

4 Q Have you changed your Miranda reading?

5 A Have I?

6 Q Yes.

7 A No, sir, I still have the same card.

8 Q So, if you questioned someone off that card,
9 would you have that 5th prong?

10 A That's still up for debate and I have been
11 talking to the Solicitor's office about that, so I
12 can't tell you if I would or not.

13 Q Was this your first contact with Donnie on that
14 day?

15 A Yes, sir.

16 Q At that point, are you saying he could track the
17 conversation?

18 A Yes, sir.

19 Q And he was cognizant of what was going on?

20 A Yes, sir.

21 Q And he understood everything that you said to
22 him?

23 A Yes.

24 Q And at first, I think, what I wrote down is where
25 he says I don't think I was driving the car. At that

Cross of Coats by Postic
(Pretrial)

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1 the point there was --- and you go --- and let me ask
2 you. I'm sorry to jump around on you. Where did you
3 learn your questioning techniques?

4 A From the Criminal Justice Academy.

5 Q Okay. And it seems like to me that you go
6 through many --- tell me if this is purposeful or if
7 it's just your personality, but you go through several
8 different personalities almost. You are friendly.
9 You talk to him about golfing. You talk to him about
10 his girlfriend and his family, and then there are
11 times that you're very forceful. There's a period on
12 that audiotape that we just heard where you say, no, I
13 want the truth. You say it very loudly. This is
14 after Donnie tells you that I don't think I was
15 driving the car?

16 A That's correct.

17 Q Is that purposeful that you questioned him that
18 way?

19 A Different phases, yes, sir.

20 Q And is it purposeful that you tell him things
21 like we've got blood in the car, we've got
22 fingerprints, we've got DNA evidence?

23 A Was it purposeful what...

24 Q These are things that you tell him that there was
25 blood all over the place and things that --- I mean,

1 there was a little bit of blood, certainly, but it's
2 not copious amounts of blood as it sounds like in your
3 questioning.

4 A Okay.

5 Q Is it purposeful that you sort of exaggerate the
6 evidence to try and elicit a confession?

7 A I let him know exactly what I know at that time,
8 what I saw inside the vehicle, so yes, it's purposeful
9 that I explain to him, a level playing field, so that
10 he knows exactly what I know at that time.

11 Q The blood on the towel, the blood on the shoes?

12 A Yes.

13 Q The door being kicked in?

14 A Yes.

15 Q And what you tell him, too, is that you know that
16 he was driving that car.

17 A Yes.

18 Q You tell him that at the beginning, right?

19 A Yes.

20 Q And you tell him --- and this was a redacted
21 portion --- this is a redacted interview ---

22 A This is not, but there is one that is.

23 MR. MOAK: Actually that might be the redacted.

24 BY MR. POSTIC:

25 Q We'll get to that.

Cross of Coats by Postic
(Pretrial)

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1 A This is the total interview here.

2 Q That's the total interview?

3 A (Nods in the affirmative.)

4 Q I thought there was portion at the beginning
5 where you tell him --- is it possible there is a
6 portion where you tell him that he's facing twenty-
7 five years on each charge?

8 A I told him that in the portion we just played.

9 Q I must have been zoning out.

10 Would you say that until that hour and five
11 minutes he maintains that he was not driving or that
12 he doesn't remember?

13 A No. I mean, he goes as far as --- it's thirty
14 something minutes in. He was able to tell me what he
15 was drinking. Forty-two minutes he makes a statement
16 that --- 41 minutes, that he kicked the door in, so
17 less than the hour and five minutes.

18 Q Okay. So he does remember bits and pieces?

19 A Yes.

20 Q But he doesn't say that he remembers driving?

21 A He said he blacked out.

22 Q Yes. And he doesn't say --- let me ask you this,
23 do you believe him that he blacked out?

24 A Does he possess the ability to blackout after
25 drinking ten or more drinks, I would say, yes, he

Cross of Coats by Postic
(Pretrial)

1 probably would possess the ability to blackout.

2 Q Okay. And yet, despite ---

3 A Yet, he is still able to function, walk around
4 and know that. I have to listen to what he has to say
5 just like you have to listen to what I have to say and
6 kind of judge if he's telling me truth then or is he
7 trying to black or hold something from me at that
8 time.

9 Q So in your opinion, he was trying to block
10 something?

11 A I mean, I believe so, yes.

12 Q That's why you continued to question him even
13 though he continued to deny involvement?

14 A Yes, sir.

15 Q What do you mean by, "If you want any help at
16 all, it's better to come clean right now."

17 A I believe what I told him was about cooperating
18 with us and not having us to wait there an hour and
19 twenty-one minutes before he tells us what's
20 happening, that we can say to the solicitor's office
21 that he's cooperating, talk to the family, talk to
22 them. I think he made an honest mistake, he may not
23 have, you know, but the guy is not stonewalling us,
24 sandbagging us, or whatever you want to call it. He
25 is actually taking responsibility for his action and

Redirect of Coats by Moak
(Pretrial)

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1 moving on.

2 Q Could you see that for him in his mind, see that
3 in an impossible sort of situation, that there is a
4 possibility for leniency?

5 A It depends on --- I mean, it depends on a lot of
6 factors, yeah. You can go through several of these.
7 There could be some leniency, maybe not as harsh as 25
8 each to run concurrent to 50 years in prison, but it
9 could be some leniency.

10 Q That would be consecutive.

11 A Excuse me, consecutive. I apologize, but yes.

12 Q But yes then. And you went to the Citadel?

13 A Yes.

14 MR. POSTIC: Nothing further.

15 REDIRECT EXAMINATION:

16 BY MR. MOAK:

17 Q And the part where you're talking about telling
18 him to cooperate is toward the end of the audio,
19 right?

20 A Yes.

21 Q He's already told you that he was driving at that
22 point hadn't he?

23 A Yes.

24 Q As a matter of fact, he tells you something about
25 messing with the radio and jerking the wheel?

- 1 A Yes.
- 2 Q So he actually remembers details of how he was
3 driving, how the wreck started?
- 4 A Yes, sir.
- 5 Q And that was from him, not you?
- 6 A Yes, sir.
- 7 Q He was answering the questions?
- 8 A Yes.
- 9 Q He understood what you were saying?
- 10 A Yes.
- 11 Q You understood what he was saying?
- 12 A Yes.
- 13 Q And he started out saying, "I blacked out, I
14 don't know what happened" and ---
- 15 A Yes.
- 16 Q --- and ultimately came around to, "Yes, I was
17 driving, it was a mistake."
- 18 A Yes.
- 19 Q And telling you he jerked the wheel because of
20 the radio?
- 21 A Yes, sir.
- 22 Q And he told you when --- I think you asked about
23 what he told the parents, you told him you did
24 everything I could. His response was, "I didn't do
25 everything I could. I didn't call 9-1-1. I

Redirect of Coats by Moak
(Pretrial)

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1 panicked." That's actually a rational explanation for
2 what happened, is it not?

3 A Yes, sir.

4 Q So even like his story about how the wreck
5 happened, does it kind of make sense?

6 A Yes.

7 Q His explanation about panicking, did that make
8 sense?

9 A Yes.

10 Q And he started out saying that he blacked out,
11 but then he remembers details about how much he drank
12 and at specific places?

13 A Yes.

14 Q Is that consistent or inconsistent with blacking
15 out? How did he blackout; how did he remember that?

16 A I don't know.

17 MR. POSTIC: I object, Your Honor. He's not an
18 expert.

19 THE COURT: I sustain the objection.

20 I don't even know what the word blackout means.

21 BY MR. MOAK:

22 Q He --- did the defendant describe to you what he
23 can do when he blacks out?

24 A I ---

25 MR. POSTIC: I object, Your Honor.

Recross of Coats by Postic
(Pretrial)

1 THE COURT: Mr. Moak, I sustained the objection
2 again.

3 MR. MOAK: No further questions of this witness.

4 THE COURT: It's like, "I snapped." What does
5 that mean? I don't know. Unless you've got some
6 pathological description of what it means, I'm not
7 going to allow it. I mean, he can say what the
8 witness said, but questioning this witness about what
9 a blackout is ---

10 MR. MOAK: I'll withdraw the question.

11 MR. POSTIC: Thank you.

12 THE COURT: Go ahead, Mr. Postic.

13 RECROSS-EXAMINATION:

14 BY MR. POSTIC:

15 Q Monty, when he says ---

16 THE COURT: Trooper Coats.

17 BY MR. POSTIC:

18 A Trooper Coats, I'm sorry, when he says that you
19 just answered Mr. Moak's question that it's a
20 perfectly rational way that the accident may have
21 happened, okay.

22 Initially Donnie says, "I swerved. I saw a deer or
23 something." Then you said, "No, you didn't swerve.
24 You just ran off the road," right?

25 A Yes.

Recross of Coats by Postic
(Pretrial)

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1 Q So he really wouldn't remember?

2 A No. I --- with that line of how this was going
3 in the interview.

4 MR. MOAK: Your Honor, I'm going to object to
5 that question because the facts like they are
6 described on the interview ---

7 THE COURT: I'm going to allow it. It's
8 cross-examination. I'm going to allow it.

9 MR. MOAK: He's twisting it around.

10 THE COURT: Okay.

11 THE WITNESS: He said that once we got through
12 the initial, who are you, the Miranda and getting into
13 the situation, he said he doesn't remember. Then he
14 kept saying he didn't remember, so I gave him
15 plausible ideas that may have happened. A deer, I
16 would believe more if he had said that he swerved to
17 miss a deer or he swerved and did that instead of
18 just, "I don't remember, I don't remember." That's
19 what the line of questioning was. That's what I was
20 saying to him in the audio.

21 Q Didn't he initially say to you, "I swerved or I
22 jerked the wheel," and then you corrected him?

23 A Yes.

24 Q Thank you.

25 MR. POSTIC: That's all.

1 THE COURT: All right. You've may come down,
2 sir. Thank you very much.

3 MR. MOAK: Your Honor, at this time I'd call
4 Trooper First Sergeant Borowski.

5 THOMAS BOROWSKI,
6 after being duly sworn, testified as follows:

7 THE WITNESS: It's Thomas Borowski.

8 DIRECT EXAMINATION:

9 BY MR. MOAK:

10 Q First Sergeant Borowski, you were at Donnie
11 Thigpen's house when Chief Slaten Mirandized him,
12 right?

13 A Yes.

14 Q You actually went there with Chief Slaten?

15 A Yes.

16 Q What were your observations about Mr. Thigpen's
17 demeanor at that time?

18 A When he --- he had an odor of alcohol about his
19 person. When we started --- when he first entered ---
20 or opened the door, he came dressed in a towel, and
21 then he, you know, went back, changed, came out with a
22 t-shirt and pair of shorts on. We talked to him about
23 the events that happened.

24 Q You've been a trooper for how long?

25 A I've been a trooper for 24 years and spent four

Direct of Borowski by Moak
(Pretrial)

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1 years with the City of Florence.

2 Q So you have a lot of years of experience in
3 dealing with intoxicated people?

4 A Yes.

5 Q What was your opinion of whether or not he was
6 intoxicated when you first went to his house?

7 A When we first went to his house, he had an odor
8 of alcohol, like I said. He appeared to be
9 intoxicated.

10 Q Okay. And then later on, around five to
11 5:20 that same day, you went to the jail with Trooper
12 Coats?

13 A Yes, I did.

14 Q And you observed him there as well, did you not?

15 A Yes.

16 Q Was his demeanor --- was his condition improved
17 or worsened at that point?

18 A He was improved.

19 Q He was improved?

20 A Yes.

21 Q You were present during the questioning by
22 Trooper Coats?

23 A Yes.

24 Q Is it also your opinion he was understanding what
25 was going on?

Direct of Borowski by Moak
(Pretrial)

1 A Yes.

2 Q The question about the deer, was that an out that
3 Trooper Coats tried to give him?

4 A I believe so. That was his line of questioning,
5 yes.

6 Q And Mr. Thigpen actually denied there being a
7 deer?

8 A Correct.

9 Q Okay. So the deer thing actually was brought up
10 by Trooper Coats?

11 A Yes. Correct.

12 Q Not Mr. Thigpen?

13 A Correct.

14 Q And he denied that line of questioning?

15 A That's correct.

16 Q And you were there when he admitted to driving
17 the vehicle?

18 A Yes.

19 Q You were there when he said he took full
20 responsibility?

21 A Yes.

22 Q At any point did you hear either --- when you
23 were at his house prior to 11:30 that morning or
24 between 5:20 and 6:40, did you ever hear him ask for
25 an attorney?

Direct of Borowski by Moak
(Pretrial)

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1 A No, he did not.

2 Q Did he ever tell y'all "I don't want to talk to
3 you."?

4 A No, he did not

5 Q Did he ever tell ya'll, "I'm done. I don't want
6 to talk to you anymore."?

7 A No.

8 Q At any point did he invoke any of his Miranda
9 rights?

10 A No, he did not.

11 Q When you were at his house, I think Trooper
12 McKenzie --- are you the one that called Trooper
13 McKenzie to come over?

14 A Yes.

15 Q That was around 11:30 when Mr. Thigpen was placed
16 in custody?

17 A Yes.

18 Q So you had already dealt with Mr. Thigpen before
19 that point?

20 A Yes.

21 Q And he had been Mirandized?

22 A Yes.

23 Q And did Mr. Thigpen, before he even left the
24 scene --- or left his home, did he appear to
25 understand Miranda?

1 A Yes, he understood what we were talking to him
2 about.

3 Q Did he indicate that he understood his rights?

4 A Yes, he understood them.

5 Q Did he answer questions then?

6 A Yes.

7 Q Did he give you answers that logically would be
8 in response to the questions?

9 A He kept denying his being or having any
10 involvement in a collision.

11 Q Okay.

12 A But he answered the questions.

13 Q But you didn't ask him, "Hey, were you driving?"
14 and he didn't tell you something about somebody being
15 on the moon or something that had nothing to do with
16 the question, did he?

17 A No.

18 Q So his responses were relevant to the questions?

19 A That's correct.

20 Q So he clearly understood the questions?

21 A Yes.

22 Q And did he appear to know what he was doing?

23 A Yes, at the time, yes.

24 Q And that was before he was taken by Trooper
25 McKenzie at 11:30?

Cross of Borowski by Postic
(Pretrial)

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1 A That's correct.

2 Q And it's your testimony that when you talked to
3 him at 5:20 his condition had improved?

4 A That's correct.

5 Q Was it significantly or slightly? What was
6 the ---

7 A It was a pretty good improvement. He seemed to
8 sober up a lot.

9 MR. MOAK: No further questions.

10 THE COURT: Mr. Postic.

11 MR. POSTIC: I'm going to be really quick.

12 CROSS-EXAMINATION:

13 BY MR. POSTIC:

14 Q You're a supervisor?

15 A Yes.

16 Q And you've been in the Highway Patrol for how
17 long?

18 A Twenty-four years.

19 Q A lot of questioning of subjects over those
20 years?

21 A Yes, we have questioning experience, yes.

22 Q You were there at the initial Miranda?

23 A Yes.

24 Q Was there a Miranda --- we're talking about two
25 Mirandas right now. There was Pat McKenzie's Miranda

1 and there's Monty Coats' Miranda.

2 A Yes.

3 Q Was there any other in between? Did you observe
4 any other Mirandas given to Mr. Thigpen?

5 A No, the only three that --- other than what we
6 did at the scene with the deputies and then one with
7 Monty Coats.

8 Q Yes.

9 A I don't think I was present at the time when
10 McKenzie gave Miranda.

11 Q But the initial one with Chief Slaten?

12 A That's correct.

13 Q Why was there Miranda again with Monty Coats?
14 Why did you do it again?

15 A I think it's just procedure. It was just a
16 procedural thing to read him his rights again just to
17 make sure we're doing everything, right.

18 Q Right. And that procedure is to make sure
19 somebody understands their rights, correct?

20 A That's correct.

21 Q And understand that they have certain rights
22 being accused of a crime, right?

23 A That's correct.

24 MR. POSTIC: That's all I have.

25 THE COURT: Anything further?

1 MR. MOAK: Nothing further of this witness.

2 THE COURT: You may come down.

3 Next witness.

4 MR. MOAK: Your Honor, I believe that's all the

5 witnesses we have for the issue of the Jackson v.

6 Denno hearing.

7 THE COURT: Any witnesses on behalf of the

8 defense?

9 MR. POSTIC: No, Your Honor.

10 THE COURT: Do you wish to argue?

11 MR. POSTIC: Yes, sir. Okay. Let's just take
12 the last witness, Sergeant Borowski. He stated the
13 defendant's demeanor is understanding, his composition
14 steadily improved, pretty good improvement from the
15 beginning to the confinement when he is giving his
16 statement and when he's at the detention center.

17 Our position would be wouldn't that be when you
18 would most --- when you would want him to know his
19 rights, so at the point when he is the most cognizant
20 of his rights is the point when he is given improper
21 rights under State v. Kennedy, which despite power is
22 the law in South Carolina.

23 THE COURT: Despite what?

24 MR. POSTIC: The Supreme Court, the recent ---

25 THE COURT: Okay.

1 MR. POSTIC: It's the law in South Carolina.

2 THE COURT: Well, where is the line? When should
3 the officer know that he needs to re-Mirandize an
4 individual? I mean, how does law enforcement make
5 that determination in a continuum of activity
6 over --- during an investigation?

7 MR. POSTIC: I would say that they did the right
8 thing. I think they were supposed to re-Mirandize him
9 at that position because it's clearly a different
10 scenario than the one scenario --- than the one from
11 earlier in the day.

12 At this point, he's in a room. He's in custody,
13 he's been booked. He's got three officers. He's no
14 longer, you know, his blood alcohol has gone down.
15 His ability to comprehend has gone up.

16 THE COURT: Why do you say his blood alcohol has
17 gone down?

18 MR. POSTIC: Well, he has .23 as of 12:30.

19 THE COURT: With the blood test.

20 MR. POSTIC: With the blood test and .19, which
21 I'm asking that that evidence be excluded when the
22 case in chief is presented, not for purposes of this.

23 And, also we have the testimony of Sergeant
24 Borowski indicating that he was improved and
25 cognizant. So at that point, Your Honor, it's our

1 position if they're going to re-Mirandize him, which
2 whether or not they have to or don't have to, I don't
3 think really matters, but they do do it. At that
4 point, they need to give him the proper Miranda. I
5 mean, when he denies it and it's on there. Also, Your
6 Honor, as far as improvement and cognizance, it's
7 clear from --- maybe it's clear to you and it's in
8 evidence that his demeanor at 11:00 and his demeanor
9 on the audio --- you can hear a marked difference in
10 the way he speaks and the way he answers these
11 officers.

12 When he denies it almost immediately to Trooper
13 Coats, he is scolded loudly and Trooper Coats tell us
14 him he wants to hear the truth. He goes on and tells
15 him he's facing 25 years on each count, for a
16 possible 50. He tells him that you can help yourself,
17 which I mean, I think that almost --- I know I didn't
18 put it in the initial argument, but that is a promise
19 for leniency, I can help you out if you help us out,
20 and that sort of thing, if you give us a statement.
21 Your bond is going to be really high. You're going to
22 be stuck in here probably.

23 It's our position that those sort of things make
24 his confession involuntary.

25 THE COURT: Well, what are you referring to? I

1 mean, taking your position in Kennedy is the lynchpin
2 case.

3 MR. POSTIC: The court can find the rights of the
4 defendant must be advised as the following: He has
5 the right to remain silent.

6 THE COURT: What are you looking at? Okay, I've
7 got it in front of me.

8 MR. POSTIC: I don't have the exact page, Your
9 Honor.

10 THE COURT: What subheading is it?

11 MR. POSTIC: It's under the talismanic
12 incantation of Miranda. I think I have the actual
13 case here.

14 (Pause.)

15 MR. POSTIC: I'm sorry. I don't have that case.

16 THE COURT: Well, there's --- I'm not sure I read
17 it the same way you did.

18 MR. MOAK: Your Honor, my copy of Kennedy doesn't
19 have a section called talismanic.

20 THE COURT: Well, here is what I'm reading from
21 Kennedy, and this is Judge Anderson. Once Miranda
22 rights are validly and voluntarily waived, the waiver
23 continues until such time as the individual being
24 questioned revokes the waiver or circumstances are
25 such that his will is overborne and his capacity for

1 self-determination is critically impaired.

2 So it's --- the Miranda rights that are given
3 continue throughout the interrogation. I don't
4 think --- I mean, I think that's pretty well
5 established law. You don't have to give them over and
6 over again during the course of an interrogation and
7 only --- it seems Kennedy and from this case, when
8 it's apparent that the defendant's will is overborne
9 and his capacity for self-determination is critically
10 impaired. Now, if I listen to that tape, I don't see
11 that. I mean, I see him responding to the officer's
12 questions.

13 All this business about a blackout, he said the
14 only thing --- I mean, the way I interpret it is the
15 only thing he doesn't remember is the only issue of
16 fact in this case, whether or not he was driving.
17 That's the only thing he doesn't remember about the
18 night before. I mean, that's a convenient lapse of
19 memory.

20 When you can recount everything that you did the
21 night before except the very issue that's at the heart
22 of this case, and that is, as you said, whether he was
23 driving or not. I mean, you can't go up to the
24 point --- you can't go through the whole day and the
25 whole evening, tell everything I did and then just

1 automatically or spontaneously, well, I don't remember
2 that or I don't remember the shooting. I don't
3 remember if I was there.

4 I mean, that defies logic in my opinion.

5 MR. POSTIC: Then, Your Honor, I would say that
6 his will was overborne by being continued to be --- by
7 not taking no for an answer. I understand they don't
8 have to reread him his Miranda, but they do.

9 THE COURT: And they don't have to tell him the
10 truth.

11 MR. POSTIC: I agree with that being the law,
12 too.

13 THE COURT: I'm not saying that either, but
14 that's what our jurisprudence says.

15 MR. POSTIC: I agree that that is the law.
16 However, they do give him Miranda again and they do
17 give it to him at a point where he is more aware of
18 what's happening. So why --- we're protecting the
19 unsophisticated who are being held under arrest like
20 Mr. Thigpen, and at that point when he can understand
21 better and that's through their witness, he is not
22 told he could stop at any time.

23 THE COURT: They just said he was more sober. It
24 doesn't mean he didn't understand.

25 MR. POSTIC: I would say that that means he

1 understands better.

2 THE COURT: Well, I'm not going to argue that
3 point. But I think ---

4 MR. POSTIC: At that point he is --- sure, they
5 don't have to give him Miranda again. Why do they do
6 it? They do do it and they don't give him Miranda.
7 What I'm saying about that 5th prong ---

8 THE COURT: It's a futile act. I mean, if they
9 don't have to give it, that assumes it was done
10 correctly the first time and that he understood it the
11 first time.

12 MR. POSTIC: Then why would they do it again?

13 THE COURT: You can't answer that.*

14 MR. POSTIC: I asked Borowski why would they do
15 it again and he says it's policy.

16 Your Honor, I handed this up last time. I just
17 think it's --- I'd like to make it a part of the
18 record.

19 THE COURT: Where does even the Kennedy case say
20 that the fourth or fifth prong of the Miranda warning
21 is critical when it's given the third time?

22 MR. POSTIC: It does not say it because that
23 wasn't in the facts of that case, but in that case
24 they say that these are the five prongs. Your Honor,
25 I will hand up and I've already given the

1 state --- these are ---

2 THE COURT: Tell me --- I'm asking you to
3 point --- I'm looking at State v. Kennedy, I'm giving
4 --- I'm asking you just to point to what you're
5 referring to. Do you want the book? I'll give you
6 the book.

7 MR. POSTIC: If I could. I'll still trying
8 to ---

9 THE COURT: Believe it or not, I still use books.

10 MR. POSTIC: No, I do have the case right here if
11 you'll give me ---

12 THE COURT: It happens to be --- I hate to say
13 it. I better not say it.

14 MR. POSTIC: Give me one moment, Your Honor.

15 (Pause.)

16 THE COURT: The interrogating officers...

17 MR. MOAK: Your Honor, from mine, I think that
18 Florida v. Powell is right on point to what you're
19 talking about.

20 THE COURT: Well, I've read that, too. I'm not
21 sure what you're referring to.

22 MR. MOAK: If you read Florida v. Powell ---

23 THE COURT: Tell me where. I mean, it's 20 pages
24 long.

25 MR. MOAK: On pages 5 and 16 on the copy that I

1 handed up, where it says first of all Powell's
2 contention ---

3 THE COURT: Wait a minute. It says what?

4 MR. MOAK: Where on the --- on Roman Number II,
5 where it says we first address Powell's contention,
6 that whole section.

7 THE COURT: Right.

8 MR. MOAK: It talks about how the defendant was
9 challenging the US Supreme Court's authority to rule
10 on the Miranda in his case because he was claiming
11 that the Florida constitution granted greater
12 protection and there was --- there is a discussion
13 there about whether or not his lower court case was
14 based upon the Federal versus the State constitution.

15 Well, in Kennedy, the case that Mr. Postic is
16 arguing about, the section that starts the Miranda
17 warnings, it lists the Miranda warnings, but the cite
18 for it is Miranda super. At no point does it state
19 State v. Kennedy is based upon --- the State
20 constitution is based upon the federal constitution.

21 THE COURT: Well, the federal constitution
22 doesn't say anything about Miranda.

23 MR. POSTIC: Your Honor, it is under --- on page,
24 I guess, 842 in your book. It says under Miranda
25 warnings the suspect in custody may not be subjected

1 to interrogation unless he is informed that he has the
2 right to remain silent. Do you see that portion, Your
3 Honor?

4 MR. MOAK: But that whole section.

5 THE COURT: Whoa, whoa, whoa. Wait a minute. I
6 can't do two at one. I listened to you for a moment.
7 I'm going to listen to him now.

8 Is it under some --- Anderson does these black
9 headings.

10 MR. POSTIC: These are ---

11 (WHEREUPON, there was a bench conference.)

12 THE COURT: So it's ---

13 MR. POSTIC: Yes, Your Honor. I have the pages
14 on --- if you start where it says law analysis.

15 THE COURT: Right. The Miranda rule.

16 MR. POSTIC: The Miranda rule and then there is a
17 paragraph. Then it says Miranda Warnings.

18 THE COURT: Unless he has ---

19 MR. POSTIC: Right, that is what I am hitting as
20 the law in South Carolina.

21 THE COURT: We know that and he got it, right.

22 MR. POSTIC: He got that at eleven. He did not
23 get that on the ---

24 THE COURT: Does it say anywhere in here that a
25 later Miranda warning has to comply with that same ---

1 MR. POSTIC: No, no.

2 THE COURT: Okay. Well, then ---

3 MR. POSTIC: In the version that I want ---

4 THE COURT: Well, that's why --- and I understand
5 that. And that's why I quoted under the voluntariness
6 of the statement section, the language I quoted, once
7 Miranda rights are validly and voluntarily waived, the
8 waiver continues until such time as they revoke or the
9 circumstances are such that his will is overborne, his
10 capacity for self-determination is critically
11 impaired, which follows two pages later from the
12 quotation that you've given me. I understand the
13 Miranda warning. I have questioned in my own mind in
14 many other --- in other different cases, why the right
15 to terminate didn't seem to have been given at any
16 time, but in this case it was given at the beginning
17 of the interrogation.

18 Now, Mr. Moak, do you have anything?

19 MR. MOAK: Your Honor, my only point was if you
20 read Kennedy, the actual list of the Miranda rights,
21 it cites that back to Miranda. At no point does it
22 say any --- does it have any allegation that the list
23 in Kennedy is from the State constitution or any
24 additional rights afforded by state constitution of
25 South Carolina.

1 My whole point in Florida v. Powell, which is a
2 2010 US Supreme Court case, Kennedy was a 1996 South
3 Carolina Supreme Court case actually ---

4 THE COURT: Court of Appeals case.

5 MR. MOAK: Court of --- yeah, Kennedy was Court
6 of Appeals. The US Supreme Court, on February 23rd,
7 2010, addressed the issue of whether or not they had
8 jurisdiction based on allegations based on the State
9 constitution or a Federal constitution and they ruled
10 anyway. So even if that --- and that wasn't even
11 asserted in Kennedy of the State constitutional right,
12 and the list given in 2010 by the US Supreme Court and
13 they cite numerous other US Supreme Court cases, they
14 list four --- only four Miranda prongs.

15 What they cite in the 2010 case, you have a right
16 to remain silent. Anything he can --- anything he
17 says can be used against him in a court of law. He
18 has the right to do it in the presence of an attorney,
19 and if he cannot afford an attorney, one will be
20 appointed before any questions, if he so desires.

21 Then it goes on and talks about how as long as
22 you substantially advise him of those four rights, you
23 don't have to have those four exact words. Well, in
24 2010 the US Supreme Court said Miranda had four
25 prongs. That's what Trooper Coats notified him of, so

1 I would submit that under the current standard of the
2 law and Federal constitution under Miranda, the actual
3 Miranda that Trooper Coats gave him was sufficient.

4 THE COURT: Have you reviewed the Kennedy case?
5 I mean, the Powell case?

6 MR. POSTIC: I'm aware of it, Your Honor. I just
7 haven't seen a South Carolina case that overturns
8 Kennedy. I ---

9 THE COURT: No, he is not saying it overturns
10 Kennedy. He is just saying in Powell, they describe
11 Miranda as prescribing the four familiar warnings.

12 MR. POSTIC: Yes, sir, and Miranda itself is only
13 the four familiar warnings. It's changed over time to
14 allow that 5th prong that Kennedy adopts and that
15 Judge Anderson says is the fifth --- that it's not a
16 good statement if he doesn't get that Miranda.

17 I think that's clear. I just --- I think that
18 once he gets a bad Miranda on top of the good one, it
19 supplants the good one.

20 THE COURT: Well.

21 MR. POSTIC: I mean, what if he had
22 given --- it's an erroneous Miranda. Under the law of
23 the state, it's an erroneous Miranda if he had been
24 told --- if he had been told, well, now that you're in
25 jail, you don't have the right to a lawyer. You don't

1 have the right, which is the same sort of thing as him
2 saying you don't have a right or leaving out that you
3 can stop it.

4 THE COURT: Terminate it. Well...

5 Well, I mean, I think you have pointed out
6 perhaps a conflict in the law that --- but there's no
7 discussion in Kennedy or even in Powell of a later
8 warning. I don't have a later warning case that is
9 inconclusive or insufficient.

10 MR. POSTIC: I could not find one, Your Honor.

11 THE COURT: But if the later warning is in
12 compliance with the US Supreme Court, with Powell,
13 then I can't see that your client's rights have been
14 ignored or that he's been deprived of his
15 constitutional rights under the fifth amendment or the
16 fourth amendment or the sixth amendment. It's an
17 interesting argument, but I don't think it --- I don't
18 think it holds water in this case.

19 I must respectfully deny your motion.

20 MR. POSTIC: Thank you.

21 THE COURT: Now, as to the --- well, let me look
22 at the pictures and then I need to take five minutes
23 and look at the DataMaster question again.

24 Well, let me look at the pictures.

25 MR. POSTIC: I've seen them.

1 MR. MOAK: You want to approach.

2 THE COURT: I know, but you object, and I need to
3 know which ones you object to. All of them?

4 Who is going to testify? Who is going to put
5 these in?

6 MR. MOAK: We have Coats, we have Campbell.

7 THE COURT: She is listening. The court reporter
8 is listening.

9 MR. MOAK: We've got about four possible
10 witnesses to put these pictures in. Basically, we
11 have two classifications of these.

12 THE COURT: These have not been premarked?

13 MR. MOAK: No. We anticipate an objection. A
14 lot of these will come in.

15 THE COURT: I'll tell you what. Let's get
16 numbers on them so we can talk about them.

17 MR. MOAK: We'll get somebody in our office to
18 mark them. I was going to number each of them on the
19 back so that you can identify them specifically.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: Let's look at the pictures.

22 (WHEREUPON, State's Exhibit Numbers 53 through 92
23 were marked for identification only.)

24 THE COURT: You're on the record.

25 MR. MOAK: Your Honor, 53 and 54 are the two that

1 I think are least objectionable.

2 THE COURT: Okay. 53 and 54, let's go.

3 MR. MOAK: The rest of them are pretty much
4 different angles of the same thing that I think
5 Mr. Postic is talking about.

6 MR. PERRY: There are actually two of them that
7 aren't. There are two that just show the steering
8 wheel.

9 THE COURT: These are the only two?

10 MR. MOAK: These are least objectionable. My
11 arguments for one of those is that one of the crimes
12 he has been called up for is leaving the scene of the
13 accident involving death. I think we have to prove in
14 those that somebody is hurt or injured or dying.

15 THE COURT: Well, who is ---

16 MR. MOAK: There was no autopsy, Your Honor.

17 THE COURT: No medical examiner?

18 MR. MOAK: No autopsy, but we have a coroner who
19 did a report finding that he was deceased.

20 THE COURT: Okay.

21 MR. MOAK: We don't have a medical examiner to
22 testify.

23 THE COURT: Well...

24 MR. PERRY: That's the one that is there.

25 There's no body. It's just whatever they recovered

1 from the steering wheel.

2 THE COURT: All right. Out of these, I'm going
3 to read them out for the record. Can you hear me
4 okay?

5 THE COURT REPORTER: Yes.

6 THE COURT: Okay. Let me just put 81, 79, 78,
7 77, 74, 73, 72, 71, 69, 70, 68, 67, 65, 66, 63, 64,
8 61, 62, 58, 57, 55 and 56 are largely, predominantly
9 duplicative, and I need to note for the record
10 what --- which of those you feel have probative value
11 in the proof of this case --- oh, add 59 and 60, 59
12 and 60 are photos of the windshield pretty much.

13 MR. MOAK: I think, Your Honor, 61, I believe,
14 shows a pretty good angle of what the driver would
15 have been looking at when the wreck ended, Your Honor.
16 On the issue of whether or not the driver knew that
17 the accident had resulted in death or serious bodily
18 injury ---

19 THE COURT: Which is up? Was this one vehicle
20 upside down?

21 MR. MOAK: That's the right side up.

22 MR. PERRY: That's properly oriented.

23 MR. MOAK: On the element of knowing that he was
24 leaving an accident involving a death, I think that's
25 probative for that issue.

1 THE COURT: What else?

2 MR. MOAK: Those two right there, Your Honor, I
3 mean, they don't really --- they show a small ---

4 THE COURT: Fifty-three and 54 show the vehicle.

5 MR. MOAK: They also show the impact damage on
6 the side of the vehicle. The way the photo is taken
7 there, there is a portion of the body that's still
8 visible. I don't believe that small portion is overly
9 prejudicial.

10 THE COURT: You're talking about the arm?

11 MR. MOAK: The arm.

12 THE COURT: Appears to be an arm.

13 MR. MOAK: Yes, sir.

14 THE COURT: All right.

15 MR. MOAK: The other ones, I mean, I --- the
16 other ones are pretty much copies of other angles of
17 that same one.

18 THE COURT: All right. With regard to 53, 54,
19 61, 62, Mr. Postic, what is your objection?

20 MR. POSTIC: I have no objection to 53, 54.

21 THE COURT: All right.

22 MR. POSTIC: However, Your Honor, I do have an
23 objection to 61 and 62 and the majority of the other
24 pictures as being overly prejudicial. There's blood.
25 There's a lifeless human form. I think that the

1 evidence that they're saying is probative is evidence
2 that can be easily elicited from troopers on the scene
3 who saw the car. It's a sort of picture --- any
4 pictures that have this sort of --- I mean, it has
5 this arterial blood and lifeless figure, it's just ---
6 it would overly inflame the passions of the jury.

7 THE COURT: Well, that is not in and of itself a
8 basis for an objection. Most crime scene photographs
9 involve blood.

10 MR. POSTIC: Yes, sir.

11 THE COURT: Unless it's a bank robbery.

12 MR. POSTIC: Yes, sir.

13 THE COURT: I do not see a difference between 61
14 and 62.

15 MR. MOAK: I think 61 is one of those.

16 MR. POSTIC: I object to both of those.

17 THE COURT: Okay. I'm going to allow one or the
18 other but not both. They are duplicative and they
19 just ---

20 MR. PERRY: The photo marked as 61.

21 THE COURT: Well, you're going to have to cut it.

22 MR. PERRY: Yes, sir.

23 THE COURT: As a matter of fact I'd cut all of
24 these three, allow these pictures. All the rest of
25 them are ---

1 MR. MOAK: Yeah, we've got ---

2 THE COURT: I want the record to show that I've
3 examined all of them and have ruled that only these
4 three may be admissible showing them to the jury.

5 MR. MOAK: We had an earlier series of State's 2
6 through 52 that we had --- basically, there are no
7 issues.

8 MR. POSTIC: Those aren't at issue. They don't
9 have a body in them.

10 MR. PERRY: Your Honor, just because you put
11 these on the record 75, 76, the State will --- those
12 just happened to be in that group and were numbered,
13 Judge.

14 THE COURT: I thought you said you did not want
15 to offer these?

16 MR. MOAK: I think he pulled --- when you
17 published the numbers, you actually pulled those out
18 and published those.

19 THE COURT: Do you wish to offer these, too?

20 MR. MOAK: Yes, that's the airbag.

21 MR. PERRY: That shows the steering wheel.

22 MR. MOAK: There's DNA evidence.

23 THE COURT: You need both of them?

24 MR. PERRY: Just one of them.

25 THE COURT: You can offer either 75 or 76.

1 MR. POSTIC: I don't have a problem with that.
2 If any of the pictures ---

3 THE COURT: That's fine.

4 MR. POSTIC: If they want to offer 1,000
5 pictures, I don't mind, as long as they don't --- I
6 object, Your Honor, to any pictures that are ---

7 THE COURT: I understand, I understand, but I've
8 let bloody body pictures in before. Overruled. I'm
9 sensitive to your concerns ---

10 MR. POSTIC: Thank you, Your Honor.

11 THE COURT: --- but it is what it is.

12 MR. POSTIC: Understood. Thank you, Your Honor.

13 THE COURT: All right. Now, Mr. Postic, with
14 regard to the breath test, I've looked at State v.
15 Long. Have you --- are you familiar with that? Or
16 State v. Cuevas? State v. Long is 363 SC360, 610
17 S.E.2d 809. The Supreme Court decision from 2005 and
18 State v. Cuevas is 365, which follows Long. State v.
19 Cuevas, 365 SC198, and 616 S.E.2d 718, a Court of
20 Appeals case from 2005 also, but Long seems to take
21 2946 and certainly says that any test, blood, breath
22 or urine, may be taken if there is probable cause to
23 believe the person violated or is under arrest for
24 violation of 56-5-2945, which the defendant was in
25 this case, but it --- the second or third paragraph of

1 2946, which I referred to earlier, incorporates
2 56-5-2950. 2950(A) is the two hour requirement.

3 Now, although the court in Long and Cuevas
4 doesn't say specifically that it incorporates the two
5 hour requirement and the three hour requirement, it
6 does say that the technical provisions of 2950 are
7 applicable to 2946, so by the language of Long,
8 section 56-5-2950 prescribes the technical testing
9 requirements, and incorporates and says that law
10 enforcement must follow the guidelines of 2950(A),
11 which is the two hour --- among other things, among
12 other things, is the two hour requirement.

13 So I think because this breath test was taken in
14 excess of the two hour requirement that the breath
15 test reading, DataMaster reading, would not be
16 admissible.

17 Now, there was some discussion about the use of
18 the breath test as affirming or somehow supporting the
19 blood alcohol in the blood test, and I'm not sure
20 exactly how that --- Mr. Moak talked about a
21 toxicologist.

22 I think you can use the fact that there was a
23 test given, but not the reading of the DataMaster at
24 that time.

25 Now, the courts --- I mean, the best we can find,

1 the courts have never specifically addressed this
2 issue since the statute was changed, the implied
3 consent law in February of 2009, but it --- I mean, it
4 does --- it appears --- I mean, it's logical that the
5 breath test --- and it's for the defendant's benefit
6 that it be taken early on and not waited for hours and
7 hours and hours to try to take it.

8 I mean, it's potentially exculpatory, but I think
9 both Long and Cuevas appear to incorporate the
10 technical specifications of 2950, which would include
11 the limitation on time in --- within which the test
12 should be taken.

13 There's no case specifically on point that says
14 that, but I think that appears to be the intention of
15 both the Supreme Court and the Court of Appeals.

16 All right.

17 Now, I'm not sure how you choose to proceed with
18 that information ---

19 MR. MOAK: Your Honor ---

20 THE COURT: --- but I grant your motion to
21 suppress the evidence of the DataMaster reading that
22 was taken in excess of two hours after the arrest,
23 after the arrest.

24 MR. POSTIC: Thank you, Your Honor.

25 MR. MOAK: Your Honor, I just have two questions

1 to make sure I don't get in trouble later on. Are we
2 still allowed to show the video? We can just stop it
3 before he informs him of the number.

4 THE COURT: What video?

5 MR. MOAK: The DataMaster video.

6 THE COURT: Oh, he informs the defendant?

7 MR. MOAK: He comes out, tells him on the video
8 what it is.

9 THE COURT: Yes, yes, if you're going to use the
10 DataMaster video, you're going to have to either
11 redact it or stop it.

12 MR. MOAK: Okay, so we can just stop it just
13 before he ---

14 THE COURT: Yes, if you use the DataMaster video,
15 yes, you will have to stop it.

16 MR. MOAK: Okay. And the other issue is ---

17 THE COURT: Or redact it, but yes.

18 MR. MOAK: --- when the toxicologist testifies, I
19 was planning on asking for the --- like the regression
20 of the alcohol via a hypothetical. Am I allowed to
21 include the result of DataMaster in the hypothetical?

22 THE COURT: No, you can say a test was given.
23 You can say it was less than the blood alcohol. You
24 can't just use the amount.

25 MR. MOAK: I was just making sure before I have

1 deal with it. That's why I'm asking.

2 THE COURT: Clear?

3 MR. MOAK: Yes, sir.

4 MR. POSTIC: Yes, sir.

5 THE COURT: Anything further?

6 MR. PERRY: Yes, sir, one other thing, now that
7 this case has been called, Mr. Thigpen is out on bond.

8 THE COURT: I know that.

9 MR. PERRY: We would just ask that at this point
10 he be taken into custody.

11 THE COURT: I know that. You're doing any job
12 for me.

13 MR. PERRY: No, sir, I just ---

14 THE COURT: What is his bond situation? How is
15 his bond posted?

16 MR. POSTIC: His bond was posted through a surety
17 agency.

18 THE COURT: Well, I need a written authorization
19 to continue that bond.

20 MR. MOAK: He's right there, Your Honor. Sorry.

21 THE COURT: I need to written authorization to
22 continue the bond through the trial or we'll have to
23 hold him in custody, okay?

24 MR. POSTIC: Your Honor, is there a form? I
25 mean, I don't ---

1 THE COURT: No, it's a handwritten "I agree to
2 continue the bond" statement. Is the bonding agent
3 here?

4 MR. POSTIC: She is right there.

5 THE COURT: Well, get a piece of paper and a
6 pencil.

7 THE BOND AGENT: Your Honor, after discussing the
8 matter with the insurance company that's on the bond,
9 they wish to be relieved of the bond due to the
10 amount.

11 MR. POSTIC: Then, Your Honor, maybe I'd ask that
12 you set a new bond and put him in custody of his
13 parents, and allow him house arrest.

14 THE COURT: I don't know what the bond was.
15 Where is the Court's file? See if you can
16 get --- somebody ask Ms. McDonald to come in here,
17 please.

18 MR. PERRY: Your Honor, I'll get that copy for
19 you.

20 THE COURT: Well, she's got it. She has got the
21 file.

22 MR. PERRY: Yes, sir.

23 THE COURT: I can't release him if I have no
24 assurance that he is going to appear --- I mean,
25 surety. That's what surety is for.

1 MR. POSTIC: Well, if I could argue, and sort
2 have a bond hearing right now, Your Honor. He has
3 come back to court. He has never missed a ---

4 THE COURT: I know, because he has had a
5 bondsman. He had a surety to assure his presence.

6 I mean, you understand what I'm talking about.

7 MR. POSTIC: I understand. I think it's uncalled
8 for, frankly.

9 THE COURT: Do you want to go on his bond?

10 MR. POSTIC: I don't know if I can.

11 THE COURT: No, you can't, legally you cannot.

12 Come around, Ms. Davis. I want you to put that
13 on the record.

14 THE COURT REPORTER: I got it.

15 THE COURT: Well, let me look at the bond.

16 All right. It appears that the bond was posted
17 by Donna Davis in the amount of \$230,000?

18 THE BOND AGENT: Yes, sir.

19 THE COURT: Under the power of attorney, two
20 powers of attorney, from Palmetto Surety Corporation.
21 It looks like June --- I don't know why this thing was
22 changed. Oh, because there are two charges. I'm
23 sorry. One at \$100,000 and one at \$130,000, and
24 Ms. Davis is present in the courtroom, and I ask if
25 Ms. Davis has authority under her power of attorney to

1 continue the bond while the trial of this case lasts.

2 You understand that, Ms. Davis?

3 THE BOND AGENT: Yes, sir.

4 THE COURT: All right. What's the position of
5 the bonding company?

6 THE BOND AGENT: The position is, Your Honor,
7 I've met my obligation to the court. The position is
8 it's \$230,000, and these are very serious allegations
9 on a defendant, and we looked at his welfare, as well.

10 THE COURT: All right. And your company declines
11 to continue the coverage --- the surety bond?

12 THE BOND AGENT: They said it's ---

13 THE COURT: The surety coverage.

14 THE BOND AGENT: They said it's my decision.

15 THE COURT: Well, you are Donna Davis?

16 THE BOND AGENT: Yes, and they prefer that I go
17 off the bond.

18 THE COURT: All right. And you agree with that?

19 THE BOND AGENT: Yes, sir.

20 THE COURT: All right. You're relieved of the
21 bond. Thank you very much, Ms. Davis.

22 All right. At this point in time, the defendant
23 is in custody. Now, what is your proposal?

24 MR. POSTIC: I prefer a bond ---

25 THE COURT: Well, it was set for \$230,000 at one

1 time. I don't know any reason to change it.

2 MR. POSTIC: He has appeared for court. I
3 understand he was under bond, but he was never under
4 any sort of ankle bracelet or anything like that. He
5 was free to leave. He was free to go wherever. I
6 mean, this case has been pending since 2009, June of
7 2009.

8 THE COURT: Well, he knew that someone would go
9 get him if he absconded jurisdiction.

10 MR. POSTIC: But he still showed up. I would say
11 that would be a reason to give a different bond.

12 THE COURT: Well, are you asking for a bond --- I
13 mean, the bonding company is off his bond. The bond
14 remains as is. That's ---

15 MR. POSTIC: Then I suppose it is a bond
16 reduction, Your Honor.

17 THE COURT: So you're asking for a bond
18 reduction?

19 MR. POSTIC: That a bond be set --- I mean, we're
20 talking about four days of trial.

21 THE COURT: Right.

22 MR. POSTIC: I mean, if his parents would --- his
23 mother would sign for his --- sign for his bond for
24 whatever amount, sort of a signature bond, that he
25 remain out on bond during this.

1 THE COURT: Well, the bond would have to be
2 secured by property; isn't that correct, Ms. McDonald?

3 THE CLERK: Yes, sir; yes, sir.

4 MR. POSTIC: The defendant has a home in Richland
5 County.

6 THE COURT: You understand the procedure for
7 posting?

8 MR. POSTIC: Well.

9 THE COURT: A relative's bond secured by
10 something, real estate, certificates of deposit.

11 THE CLERK: They passed a ruling they can't use
12 property of another county.

13 THE COURT: I'm understanding from the clerk that
14 property in another county is not sufficient.

15 MR. POSTIC: It must be property in this county?

16 THE COURT: The clerk is telling me that it must
17 be in this county, Kershaw County.

18 MR. POSTIC: Your Honor, I mean, it makes it hard
19 for me, too. I like to meet my clients during trial
20 to discuss strategy. He has to dress out every
21 morning when he comes in. I mean, he is --- he works
22 at BOSE. He has a job that he's been there for ---
23 how many years?

24 THE DEFENDANT: Going on five years.

25 THE COURT: What?

1 MR. POSTIC: BOSE in Columbia.

2 THE COURT: What is that?

3 MR. POSTIC: It's German company that makes
4 speakers.

5 THE COURT: Oh, BOSE. Okay. What's the State's
6 position? If you all can come to some agreement.

7 MR. POSTIC: They want to put him in jail.
8 That's what they want. I mean, they would put him
9 there ---

10 THE COURT: I'm asking --- you can't state what
11 the State's position is.

12 What is the State's position?

13 MR. MOAK: Your Honor, the State's position would
14 just be that there needs to be some sort of security
15 that he will be here. The State believes that as the
16 trial goes forward, it's going to become more and more
17 apparent that things aren't looking good for the
18 defendant. We believe there is a very strong
19 likelihood, if he has nothing to lose why not run, why
20 not abscond.

21 As Your Honor so properly pointed out, up to this
22 point he's been here every time he's supposed to be
23 because there's a \$230,000 insurance policy against
24 him not to show up. If there is not some sort of
25 security, then I have nobody to turn to if he doesn't

1 show up on the last day of trial.

2 THE DEFENDANT: I can assure you that I'll be
3 here.

4 THE COURT: I seem afraid that's not good enough,
5 sir.

6 THE DEFENDANT: I understand that.

7 THE COURT: We're talking about technical
8 requirements under the law. Your lawyer understands.

9 MR. POSTIC: I also understand, Your Honor,
10 that ---

11 THE COURT: Don't ---

12 MR. POSTIC: Unless the State moves for this,
13 that a bonding company is presumed to stay on the
14 bond.

15 THE COURT: No, sir. I've never taken
16 that --- never known that --- once the case is called
17 and your client is in jeopardy, the bonding company is
18 released. That's pretty much --- and because this
19 wasn't anticipated, it's not my fault.

20 MR. POSTIC: And he ---

21 THE COURT: And I will --- nine out of ten times
22 when a client is compliant with the terms of the bond,
23 the bonding company agrees to stay on the bond. It
24 happens most of the time, but I cannot make that
25 bonding company stay on this bond. They have asked to

1 be relieved, and I have relieved them.

2 The bond is still \$230,000.

3 MR. POSTIC: There's a home on the lake, but I
4 guess --- I don't think we can...

5 THE COURT: Mr. Postic, you're going to have to
6 speak with the clerk --- speak with the clerk about
7 the procedure for doing this. Please.

8 (Pause.)

9 MR. POSTIC: I'm sorry Your Honor is so upset. I
10 was a solicitor for five years and never did this. I
11 tried plenty of cases. I'm sorry to be so excited.
12 That's fine.

13 MR. PERRY: Your Honor, I would ask --- and I
14 understand this ruling. We would ask that he be in
15 custody.

16 MR. POSTIC: Your Honor, there was a portion of
17 the tape that I think is irrelevant. Trooper Coats
18 and attorney Moak has assured me he's going to redact
19 the portions that --- the portions that have to do
20 with the sentence, potential sentences, that he would
21 talk to the solicitor, the amount of the bond and that
22 sort of thing. I would ask that --- I mean, I just
23 want to put that on the record that he has agreed to
24 redact it.

25 THE COURT: Is that correct, Mr. Moak?

1 MR. MOAK: Yes, Your Honor.

2 THE COURT: I would order it even if you hadn't
3 consented.

4 Anything further for today?

5 MR. POSTIC: Just for purposes of my
6 argument --- not my argument, my opening tomorrow, has
7 Your Honor ruled the Manning reasonable doubt or the
8 Victor v. Nebraska, either firmly convinced or
9 hesitate to act or do you ---

10 THE COURT: Hesitate to act.

11 MR. POSTIC: Hesitate to act? Okay, thank you,
12 Your Honor.

13 THE COURT: Not firmly convinced.

14 MR. POSTIC: Yes, sir. I understand.

15 THE COURT: I'm afraid your client is going to
16 have to be held in custody.

17 MR. POSTIC: We understand.

18 THE COURT: Overnight. If something can be
19 worked out tomorrow, I'll be glad to consider it at
20 that time.

21 MR. POSTIC: Thank you, Your Honor.

22 THE COURT: All right. Court is adjourned until
23 nine o'clock in the morning.

24 MR. MOAK: Thank you, Your Honor.

25 MR. POSTIC: Thank you, Your Honor.

1 THE COURT: Mr. Thigpen, you're going to have to
2 remain in custody.

3 MR. POSTIC: Can Mr. Thigpen be back here by
4 eight? What time does the courthouse open?

5 THE DEPUTY: 8:30.

6 MR. POSTIC: Can he be here by 8:30?

7 THE DEPUTY: If the jail ---

8 THE COURT: Well, this is the only case this
9 week. Is he the only one that needs to be
10 transported?

11 MR. MOAK: Yes, Your Honor.

12 THE COURT: He is the only one that needs to be
13 transported, Craig.

14 MR. POSTIC: Thank you.

15 THE COURT: All right. I want him here by
16 8:30 in the morning.

17 Stand at ease until nine o'clock.

18 (WHEREUPON, There was an overnight recess).

19 THE COURT: Is the state ready to proceed?

20 MR. MOAK: Yes, Your Honor.

21 MR. POSTIC: Yes, Your Honor.

22 THE COURT: Anything before we bring the jury?

23 MR. MOAK: The only thing I can think of, and
24 this is --- I can either bring it up now or later.
25 There is a walk-through video where one of the

1 troopers walked through the scene while they were
2 collecting evidence. Part of that video has where he
3 basically walks around on the side of the Jeep where
4 you can see what the still of State's 61 is, and since
5 that's coming in, I'm assuming they're going to object
6 to that part, too.

7 MR. POSTIC: I object to anything that would be
8 overly prejudicial, Your Honor.

9 MR. MOAK: So we can either go to that point,
10 stop it and start back up after he walks away from
11 that part or ---

12 THE COURT: If you can do it, yeah, I think that
13 would be the best thing.

14 MR. MOAK: Okay.

15 MR. POSTIC: The only other thing, Your Honor,
16 Mr. Moak handed me this morning a redacted version of
17 the defendant's statement. I don't know when that's
18 going to come in today, but I imagine that he would
19 remove all portions and I'm satisfied with his answer.
20 If it's ---

21 MR. MOAK: I think I got all the stuff out where
22 they were discussing those things and there was
23 another section where they discussed bonds that I took
24 out, too.

25 MR. POSTIC: Anything that discussed bond or

1 potential sentences. There was --- it's just what I
2 was afraid of.

3 THE COURT: You know, you've got a number of
4 these CDs. How do you intend to play these? Do you
5 have any equipment?

6 MR. MOAK: Well, on this audio, I intend to play
7 it with --- just bring a laptop in and play it from
8 over here.

9 Because on this, it was recorded in the jail, and
10 it's got a lot of background noise, so it doesn't play
11 well in the courtroom audio, but I think the other
12 stuff will play where the projector is hooked into the
13 courtroom. I think that's going to work out okay.

14 THE COURT: All right. As long as you're
15 prepared.

16 THE BAILIFF: Ready?

17 THE COURT: Wait a minute.

18 MR. PERRY: Yes, sir.

19 THE COURT: Are you ready for the jury?

20 MR. PERRY: Yes, Your Honor.

21 THE COURT: Ready for the jury?

22 MR. POSTIC: Yes, Judge.

23 THE COURT: Bring the jury.

24 (WHEREUPON, the jury came into open court at
25 approximately 9:26 a.m.)

1 THE COURT: Good morning, ladies and gentlemen.

2 THE JURY: Good morning.

3 THE COURT: We're now ready to begin the trial.

4 Madam clerk, please swear the jury.

5 THE CLERK: Thank you, Your Honor.

6 Ladies and Gentlemen of the jury, please stand
7 and raise your right hand to be sworn.

8 You shall well and truly try and true deliverance
9 make, between the State of South Carolina, and the
10 defendant at bar, whom you shall have in charge, and a
11 true verdict give, according to the law and the
12 evidence, so help you God.

13 Please signify by saying I do.

14 (All indicated affirmatively.)

15 THE COURT: All right. Ladies and gentlemen,
16 before we begin, I want to take a few minutes and go
17 over some procedural matters with you.

18 PRETRIAL CHARGE:

19 To begin with, I want to tell you that the trial
20 may be different from what you expect. Many people do
21 not have a chance to attend actual court sessions as
22 you are doing now. They may think from watching
23 television or movies or reading books that trials are
24 always full of a lot of action and intense drama.
25 From time to time, while all these things may be true

1 at times, this trial is not for entertainment. It's a
2 fundamental part of our democracy, a search for the
3 truth in an effort to make sure that justice is done
4 between the parties before the court.

5 In searching for the truth and making sure that
6 justice is done, it is often a slow, deliberate and
7 repetitive process, the opposite of what you might
8 have seen on television or watched in movies or read
9 in box. This courtroom is a place of honor dedicated
10 to the protection and preservation of citizens' rights
11 through what many have called the greatest justice
12 system ever created.

13 The attorneys appearing before you are advocates
14 for the parties they represent, but first and
15 foremost, they are officers of this court sworn to
16 uphold the integrity and fairness of our judicial
17 system to help you in a search for the truth. You
18 should expect them to be professional and competent
19 and ethical in the representation of their clients and
20 remember that you've just taken an oath to try this
21 case and reach a fair and just verdict and you are
22 also expected to be professional, reasonable and
23 ethical.

24 Now, as I told you yesterday, the defendant is
25 charged in two indictments. The first indictment is

1 felony driving under the influence involving death and
2 the second is a leaving the scene of the accident
3 including death.

4 Now, the defendant has pled not guilty to these
5 indictments, and the State therefore has the burden of
6 proving all the elements of each indictment beyond a
7 reasonable doubt.

8 It will be your duty, ladies and gentlemen, to
9 decide whether the State has met that burden. You are
10 to determine the facts from the testimony you hear and
11 from any other evidence that's presented during the
12 course of the trial. It's especially important that
13 you perform your duty of determining the facts
14 diligently and consciously because ordinarily there is
15 no way to correct an erroneous determination of the
16 facts by a jury.

17 When you comply with your oath to impartially
18 determine the facts in this case, you will have
19 fulfilled your duties as jurors and no one will have a
20 right to criticize your verdict.

21 On the other hand with equal emphasis, the same
22 law that makes you the judges of the facts makes me
23 the judge of the law. You must accept and follow the
24 law, even though you may disagree with it. Now, I
25 cannot tell you what the facts are. You should not

1 disagree with me about what the law is or what the law
2 should be.

3 Your job is to take the law as I explain it to
4 you and apply it to these facts as you find them from
5 the testimony of the witnesses and any other evidence.

6 After doing that, you will render your verdict, a
7 true and just verdict, under the solemn oath you just
8 took as jurors.

9 Now, the procedure that we will follow is
10 basically that the State will present its evidence
11 first in the form of witnesses' testimony and/or
12 exhibits that will be made a part of the record.

13 The defendant will then have the opportunity to
14 present his defense bearing in mind, however, there is
15 absolutely no burden on the defendant to present any
16 evidence at all.

17 Following that, the attorneys will be allowed to
18 sum up their case and I'll instruct you as to the law
19 of South Carolina as it applies to this case, and
20 after that the case will be turned over to you for
21 deliberation.

22 Now, let me remind you of two legal principles.

23 First is what we call the legal yardstick you
24 will use in judging or measuring the evidence in this
25 case. That legal yardstick is known as the burden of

1 proof or the responsibility for proving the case, and
2 in a criminal case, the burden of proof is on the
3 State to prove guilt beyond a reasonable doubt.

4 Should the State fail to meet that burden of
5 proof, it would be your duty to find the defendant not
6 guilty.

7 There is absolutely no burden whatsoever on the
8 defendant to prove or disprove anything. There is no
9 burden on the defendant to testify or to present any
10 evidence, because the burden is and remains at all
11 times on the State to prove guilt beyond a reasonable
12 doubt.

13 Now, secondly, I want you to recall my earlier
14 comment to the entire jury panel concerning the
15 presumption of innocence. This is a cardinal and
16 fundamental rule of law that a defendant will always
17 be presumed innocent of the crime or crimes for which
18 he is indicted. The presumption of innocence, in
19 other words, is not just a simple legal theory or a
20 simple legal phrase. It is a substantial right to
21 which any accused, including this defendant, is
22 entitled.

23 Until I advise you to begin your deliberations,
24 again I'm going to ask you not to discuss this case
25 with anyone including your fellow jurors, family,

1 friends, family members or anyone involved in the
2 case.

3 After the case is submitted to you, you must
4 discuss it only in the jury room with your fellow
5 jurors. It's important that you keep an open mind,
6 not decide any issue in this case until all the
7 evidence has been presented to you, the parties have
8 made their closing arguments, and I have instructed
9 you on the law as it applies in this case.

10 Now, in just a moment, the attorney for the State
11 will make what's called an opening statement. The
12 attorney will explain what the issues in the case are,
13 or at least what the attorney thinks the issues are in
14 this case. The attorney for the defendant will also
15 make an opening statement. What the attorneys tell
16 you during their opening statements is not evidence in
17 this case. It's only their contention as to what the
18 issues are and what the evidence will show.

19 The evidence in this case will be presented to
20 you by the testimony of sworn witnesses from this
21 witness stand and any other exhibits that may be
22 introduced during the course of the trial.

23 Now, from time to time during the trial, you
24 might hear one of the lawyers say something like, Your
25 Honor, I believe we have a question of law or a matter

1 of law to discuss with you, may we approach the bench.
2 Sometimes I myself might find it necessary to excuse
3 you from the courtroom for a short period of time
4 while the attorneys and I discuss a matter of law.

5 The reason for this is because you are the judges
6 of the facts, and sometimes when I am discussing
7 matters of law with the attorneys, it may be necessary
8 to make some comment as to the facts in whether
9 to --- in ruling whether or not a particular law
10 applies or doesn't apply.

11 I'm not supposed to tell you what I think the
12 facts are, so I will discuss --- I will excuse you
13 from the courtroom while these discussions take place
14 so that you will not be influenced by anything I might
15 say or do in connection with the facts.

16 In determining what the true facts are, you must
17 decide whether or not the testimony of the witnesses
18 is believable. In deciding whether to believe a
19 witness, you have a right to consider whether the
20 witness has an interest in the result of the trial,
21 whether the witness is prejudiced towards either the
22 State or the defendant, the opportunity for the
23 witness to have seen the matters and things about
24 which the witness may testify and the way the witness
25 acts on witness stand.

1 Again, ladies and gentlemen, you and I do not ask
2 questions, and we do not offer any exhibits. This is
3 not CSI. Your duty is to listen openly and honestly
4 to the evidence. Keep an open mind. Do not form any
5 conclusions or judgments until you have received and
6 considered all the evidence, the arguments of counsel
7 and my instructions to you on the law as it applies in
8 this case.

9 It's your duty to pay close attention. Listen to
10 the witnesses, observe the witnesses, pay close
11 attention to the attorneys. Try not to let your
12 thoughts wonder, but pay strict attention to the
13 testimony so that at the end of the trial, you'll be
14 able to determine what the true facts are and apply
15 the law to those facts and render a true and just
16 verdict.

17 It will be your added duty, Mr. Foreman, to
18 preside in the jury room and be the jury spokesperson
19 here in court. Now, if you cannot hear a particular
20 witness, as I said yesterday, please let me know so I
21 can --- the witnesses will speak up more clearly. If
22 your view of an exhibit is obstructed for any reason,
23 please let me know and we'll correct that. If you
24 need to bring something to my attention during the
25 course of the trial, please notify one of the

1 bailiffs. If you do need to contact me, it may be
2 necessary for the bailiff to require you to put your
3 question or concern in writing so that we will have a
4 record of it. I will respond to you as quickly as I
5 can to the extent the law permits me to do so.

6 Now, ladies and gentlemen of the jury, Madam
7 Clerk has is going to furnish you with pencils and
8 notepads if you wish to take notes during the course
9 of the trial. I will tell you that the taking of
10 notes is perfectly fine. I will ask you that when you
11 do take notes or when you eventually begin
12 deliberating in the jury room, that you don't use
13 those notes to try to convince somebody else of
14 something you wrote down. Your notes are for your own
15 personal recollection and you're free to use them in
16 that manner only.

17 Madam clerk?

18 THE CLERK: Thank you, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, I
20 thank you for your kind attention. I trust you'll
21 give the same undivided attention to the attorneys and
22 to the parties in this case. We'll begin now with
23 opening statements.

24 Solicitor.

25 MR. PERRY: May it please the Court.

1 OPENING STATEMENT:

2 MR. PERRY: Good morning, ladies and gentlemen.
3 I'm Brett Perry and together with my co-counsel, Ron
4 Moak, I will be representing the State in this matter.
5 It's State vs. Donnie Thigpen.

6 Now, how I'd like to start this morning is by
7 telling you all a story, telling you a story about two
8 friends. Donnie Thigpen and Melvin Wright, Jr., but
9 only one of those friends is here today. The other
10 one, unfortunately is dead.

11 Melvin used to work at Brixx over at Village at
12 Sandhill. Some of you may remember when Brixx was
13 there. I think they're closed now, but Melvin worked
14 there, and Donnie worked over at BOSE, I believe over
15 in the Blythewood area.

16 Back on June 19th, 2009, I want to take you back
17 several years, Donnie worked earlier that day over at
18 BOSE and whenever he got off from work, he went home,
19 checked on his dog, picked up some videos that he had
20 to return, went to run some errands, picked up some
21 cigarettes while he was out, happened to find himself
22 over at Brixx later on that evening where Melvin was
23 working that night.

24 While he was at Brixx hanging out there, he and
25 Melvin, who were friends, knew each other, made plans

1 to get together at a place called Track Side Tavern
2 over on Two Notch Road in Richland County later on
3 that night.

4 Also, while he was at Brixx, by his own
5 admission, Donnie had three or four beers to drink
6 that night there at Brixx.

7 Now, after he left Brixx, Donnie made his way
8 over to Decker Boulevard there in Richland County to a
9 place called Friend's Club.

10 Now, while he was there at Friend's Club, he went
11 and shot pool, kind of hung out there, had another two
12 or three beers, had three liquor drinks while he was
13 there, went to shoot pool. Eventually, later on that
14 night, he made his way over to Track Side. While the
15 he was at Track Side, he had another two or three
16 beers to drink before he got into some sort of
17 altercation there.

18 Now, again this is by his own admission, you're
19 going to hear his own words. He'll tell you that he
20 had two or three beers at Brixx and two or three beers
21 at Friend's, liquor drinks at Friend's, more beers at
22 Track Side. About five o'clock in the morning, he
23 ended up paying his tab there at Track Side, and he
24 and Melvin left together in his 1997 blue Jeep
25 Cherokee. Melvin was riding in the passenger's seat,

1 Donnie was driving.

2 Now, apparently, Donnie was headed back to his
3 house located over here in Kershaw County at
4 . Now, I'm not sure about
5 Donnie, but we're sure of one thing, Melvin was
6 wearing a seat belt that night. We ended up finding
7 him with a seat belt still on him. Donnie almost made
8 it home, less than a quarter of a mile from his house,
9 whenever he crossed the centerline of the road, ran
10 off the left side of the roadway where his vehicle
11 struck a tree violently and came to rest upside down.

12 Now, the way the vehicle hit the tree, it just so
13 happened that the right side of the vehicle, the
14 passenger side of the vehicle, took the brunt of the
15 impact, caused severe damage on that side of the
16 vehicle and to use the terminology that you'll hear
17 some of our accident reconstruction experts use later,
18 some of our Highway Patrol M.A.I.T. Team use later,
19 the impact was so violent that it compromised the
20 integrity of the passenger compartment.

21 They're going to tell you how that passenger
22 compartment, at least on the passengers' side, was no
23 longer a survivable space. That impact was so violent
24 that the force of it caused the airbags to deploy, and
25 it was so violent that it tore the steering wheel from

1 the steering column in that vehicle.

2 Now, as a result of the collision, Donnie
3 suffered several injuries. He had a cut above his
4 right eyebrow. He had burn marks on his arm,
5 particularly his left arm where the airbag deployed.
6 When that airbag comes out, it's violent, it explodes.
7 It truly is an explosion that propels it out the
8 steering wheel, and it will burn you on the arms.
9 Again, you'll hear experts testify about that.

10 In addition, he suffered some impact injuries to
11 his torso and some other scrapes and bruises, but the
12 primary injuries, the ones I want you to remember as
13 you listen to this case, a cut over his right eyebrow,
14 burn marks where that airbag hit him on the arm.

15 Now, unfortunately, we'll never know what kind of
16 condition Melvin was in immediately following the
17 crash, because rather than check on his friend who was
18 still seat belted into the right passenger side seat,
19 Donnie Thigpen panicked. He didn't know what to do.
20 Those are his own words. He crawled out of the driver
21 side door window and ran away rather than help his
22 friend.

23 You're going to hear his own words here in this
24 courtroom. He's going to tell you, I lost control of
25 the vehicle and wrecked. He's going to tell you, I

1 didn't know what to do.

2 You're going to hear him say I panicked and ran,
3 and probably most disturbing, you're going to hear him
4 say if I was sober, I'm sure there was a lot that I
5 could have done. I didn't do everything I could. I
6 should have called 9-1-1, but I panicked.

7 Rather than trying to help Melvin or at least
8 call 9-1-1 so that somebody else could help him,
9 Donnie Thigpen walked home. It was a short walk to
10 his house. You'll see how close it was a little bit
11 later on.

12 There was only one problem, when he got home, he
13 hadn't thought about the fact that he left his keys in
14 the ignition of the vehicle. He had to kick his door
15 in whenever he got home. You're going to hear
16 officers who went to the house testify about how they
17 found the door with footprints on it, the door had
18 been kicked in.

19 Rather than help his friend or call anybody else
20 to help him, Donnie walked home, he kicked in the
21 door, played with his dog, and crawled into bed and
22 went to sleep. He never called 9-1-1. He never did
23 anything to help Melvin.

24 Now, later on in the morning of June 20th --- now,
25 remember this all started the night of the 19th, that

1 Friday and into the morning of June 20th, they left
2 Track Side about 5:00 a.m. Later on that morning
3 about 9:15, there was a triathlon that was taking
4 place over in Richland County, but the route of that
5 triathlon led it into the far western parts of Kershaw
6 County.

7 There was a deputy by the name of Matt Southern
8 who is now with the Highway Patrol who was escorting
9 that triathlon. They were on bicycles. You know, in
10 a triathlon they run, they swim and they bike. At
11 this point in time, they were on bicycles and they had
12 just crossed over into Kershaw County from Richland
13 County there on Twenty-five Mile Creek Road when one
14 of the cyclists alerted, at the time Deputy Southern,
15 that they noticed a vehicle that was crashed off the
16 roadway.

17 So Deputy Southern, of course, immediately
18 contacted his dispatch over in Richland County, said
19 hey, we got a problem here. We have a vehicle off the
20 roadway, it's crashed and we need to get some help
21 over here. Well, they, of course, told him it's in
22 Kershaw County. We'll notify Kershaw and get them to
23 send some people out.

24 At that time, Deputy John Slaten with Kershaw
25 County was dispatched. They sent EMS out there

1 because Deputy Southern didn't know what kind of
2 condition the one occupant of the vehicle was in.

3 You know, he saw somebody there. He saw they
4 were trapped and needed to get EMS out there, try to
5 get them some help, so we had Kershaw County deputies,
6 EMS and the South Carolina Highway Patrol dispatched
7 to this location.

8 When they got there, they found Melvin Wright
9 Jr., still seat belted into the passenger side seat
10 hanging upside down, dead from injuries sustained in
11 the crash.

12 Now, there was no sign of the driver. There was
13 no other occupant in the vehicle. Thinking, as is so
14 often the case in a violent impact like that,
15 sometimes people get ejected from the vehicle if they
16 don't have their seat belt on, so a very diligent was
17 search was made, a very thorough search was made, of
18 the area surrounding the vehicle to see if they could
19 find the driver.

20 Now, that search was in vain. No driver was
21 found because the driver, Donnie Thigpen, was home in
22 bed. Now, the vehicle still had the plates on it. It
23 was easy enough for officers to run the registration.
24 When they did, they discovered it was registered to
25 Donnie at the address just down the road.

1 So officers went on down to Donnie's house, which
2 again was, you know, about a quarter of a mile or so
3 away, definitely within easy walking distance. When
4 they got there, they found that his front door had
5 been kicked in. They attempted for some ten minutes
6 to get somebody to come to the door to no avail.

7 Finally after repeated efforts to get somebody to
8 come to the door, Donnie shows up at the front door
9 wearing nothing but a towel, obviously having just
10 showered.

11 Now, in addition to noticing that, you know, he
12 was improperly dressed and appeared to have just tried
13 to shower off, they noticed injuries on Donnie. They
14 noticed a cut of his right eye. They noticed the, you
15 know, very easily discernible marks on his arm from
16 the airbag. You know, these were highway patrolman.
17 These were officers who regularly work wrecks.
18 They've seen people burned by the airbags being
19 deployed before. They've seen what was going on. It
20 was pretty obvious.

21 In addition to that, they noticed shards of
22 glass, shards of glass in his hair, shards of glass in
23 his beard. He had a beard at the time, a little shard
24 of glass in his ear. It was pretty obvious to them
25 that Donnie had been driving that vehicle and that,

1 you know, he appeared to them to be under the
2 influence of some sort of intoxicants, alcohol, drugs,
3 something of that nature, so Donnie was placed under
4 arrest.

5 He was Mirandized, told him his rights, told him
6 he didn't have to talk to them, but rather than admit
7 to what he had done or express any sort of remorse or
8 any sort of concern for Melvin, Donnie insisted that
9 he hadn't been driving the night before. He knew
10 nothing about the wreck and he had no explanation for
11 what happened. No explanation at all for why his
12 vehicle was less than a quarter of a mile from his
13 house, wrecked, with his keys still in his ignition,
14 footprints on the door where he had to kick it in.
15 Obvious signs of injuries sustained in a wreck
16 himself. Airbag burns, the cut over his eye, shards of
17 glass, no explanation for any of that whatsoever
18 except I don't remember, I don't know anything about
19 it. I wasn't driving.

20 Now, at this point, having been arrested, they
21 were charging him with felony DUI resulting in death.
22 They were charging him with leaving the scene of an
23 accident resulting in death.

24 They took him to the Kershaw hospital to
25 determine what his blood alcohol level was. Now, by

1 the time they got him placed under arrest, by the time
2 they got him to the hospital, it was afternoon on the
3 20th, all right.

4 Now, we know that he left Track Side about
5 five o'clock. We know that it takes about 15 to 18
6 minutes to get from Track Side to where this took
7 place, but the vehicle wasn't found until about
8 nine o'clock in the morning. So we can say it
9 happened some time between 5:15, 5:30 and 9:15, but at
10 12:30, all that time later, when his blood and urine
11 was taken at the hospital and it was tested, his blood
12 alcohol was a .22 percent, almost three times the
13 legal limit of .08, all those hours later, all that
14 time for his body to absorb, metabolize that alcohol,
15 get it out of his system, he is still a .22, almost
16 three times the legal limit.

17 Now, while all this was happening, the blood was
18 being drawn and all that was going on. Officers were
19 investigating a wreck, and what they found was very
20 disturbing. They found that Melvin was dead as a
21 result of injuries sustained in that collision. They
22 found a car full of bottles of Ice House beer. They
23 found airbags deployed, the steering wheel torn from
24 the steering column and very notably, they found the
25 blood on the headliner above the driver's seat. Do

1 you remember the cut to Donnie's right eye?

2 Ultimately, the blood on that headliner was
3 tested for DNA, and it comes up to an absolute perfect
4 match for one person, Donnie Thigpen.

5 Do you remember the airbag, talked about the
6 airbag deploying? It deployed so violently it caused
7 marks and burns on his arm. They tested that airbag
8 for DNA. Guess whose DNA was on that airbag? Donnie
9 Thigpen's DNA was on that airbag.

10 No explanation at all for how his DNA gets on the
11 airbag except he's behind the wheel when the crash
12 took place and the airbag deployed, no explanation.

13 Officers also executed a search warrant on
14 Donnie's residence to see if they could find any
15 evidence there of what had happened, anything that he
16 might have tried to do to cover up what had happened.

17 Of course, I told you before they found the door
18 kicked in, but they also found the clothes that he had
19 worn the night before, the clothes that he told him he
20 had worn the night before.

21 Guess what those clothes had on them? Shards of
22 glass. His clothes had shards of glass on it.
23 Something else that is interesting that they found
24 there and you'll see photographs of this, they found
25 drops of blood, drops of fresh blood on Donnie

1 Thigpen's shower. Do you remember that cut over the
2 eyebrow, do you remember that he came to the door
3 fresh from the shower, wearing a towel?

4 Now, later that afternoon approximately
5 5:00 p.m., troopers with the South Carolina Highway
6 Patrol went to the Kershaw County Detention Center to
7 interview Mr. Thigpen to talk to him, try to find out
8 more details of what happened, try to get his side of
9 the story.

10 Now, rather than be concerned about Melvin,
11 Melvin's family or anyone else, all Donnie was
12 concerned about was himself. His own words that you
13 will hear in this courtroom, "I don't deserve this. I
14 don't understand why this is happening to me."

15 Well, what would you ask for Donnie? I'd ask for
16 leniency because I'm not a bad person. The only
17 mention at all for Melvin or his family was that it
18 was an honest mistake. It was an honest mistake.

19 Now, although Donnie first tried to insist that
20 he couldn't remember what happened the night before,
21 it's notable that during that interview he remembered
22 some really important stuff.

23 He remembered the clothes that he was wearing the
24 night before, described them perfect. He remembered
25 where he had gone the night before. He remembered

1 what and how much he had to drink.

2 He remembered meeting Melvin at Brixx, talking
3 about making plans to get together at Track Side
4 later. He remembered paying his tab at those bars
5 with his debit card, which was, in fact, verified. We
6 have the bank records. We'll talk about that, too.

7 He even remembered when the wreck took place that
8 Melvin had his seat belt on and he didn't. He
9 remembers crawling out of the car and walking home.
10 He remembers kicking in the door. He remembers the
11 sun coming up as he's getting home. He remembers his
12 dog greeting him when he gets home, but at first he
13 refuses to admit that he remembers he was driving the
14 vehicle.

15 Somebody else was driving it, I wasn't, but
16 ultimately, Donnie did remember. He remembered and he
17 admitted to driving the vehicle and losing control and
18 wrecking, being in a ditch, panicking and running,
19 rather than helping Melvin or calling for help, going
20 home after the wreck. Donnie's own words, you're
21 going to hear him say, I take full responsibility. I
22 was driving, I lost control, and I wrecked. I
23 panicked and I didn't know what to do.

24 I didn't do everything I could have. I could
25 have called 9-1-1 and again, probably most

1 disturbingly, if I was sober, I'm sure there was a lot
2 I could have done.

3 Now have it's going to be your job as the jury to
4 listen to all the evidence that's presented. Nothing
5 that I've told you so far this morning is evidence.
6 You're going to hear testimony. You're going to see
7 evidence. You're going to hear evidence as this trial
8 goes on, and your job is going to be to render a
9 verdict.

10 Verdict comes from Latin. It means to speak the
11 truth. Your job, all of our jobs here should be to
12 find the truth, and the truth, ladies and gentlemen,
13 in this case, I would submit to you, is that Melvin
14 Wright, Jr. is dead from injuries suffered in an
15 automobile crash on the night or early morning hours
16 of June 20, 2009.

17 That crash took place in Donnie Thigpen's
18 vehicle. It happened within walking distance of
19 Donnie Thigpen's house. Donnie Thigpen's keys were
20 still in the ignition. Donnie Thigpen's door was
21 kicked in. There was a cut over Donnie Thigpen's
22 eyebrow. Donnie Thigpen's blood is on the headliner
23 above the driver's seat and the DNA match was perfect.
24 There's blood in Donnie's shower. There's burn marks
25 on his arm from the airbag. There is his DNA on the

1 airbag.

2 Donnie is at home in bed. He didn't call for
3 help. There's glass shards in his hair, his beard,
4 his ear and his clothes. Donnie's own admission later
5 on is that's he was driving, that he should have
6 called 9-1-1 and could have done more if he was sober.
7 The last thing I remind you is that the truth was his
8 blood alcohol level, hours after this took place, was
9 almost three times the legal limit.

10 Listen to the evidence as it's presented to you.
11 You're going to hear a whole lot about beyond a
12 reasonable doubt, hesitate to act and all these
13 things. All I would ask is this, follow the judge's
14 instructions about what beyond a reasonable doubt is.
15 You don't leave your common sense at the door when you
16 come in here as jurors. Listen to the evidence, you
17 weigh the evidence. Think about any bias that people
18 may have to testify or they may not have.

19 You determine what you believe to be true beyond
20 a reasonable doubt, and I submit to you that at the
21 end of this trial, the only verdict that you're going
22 to be able to reach beyond a reasonable doubt is
23 guilty of felony DUI involving death and guilty of
24 leaving the scene of an accident involving death.

25 Thank you.

1 THE COURT: Mr. Postic.

2 MR. POSTIC: Thank you, Your Honor. Good
3 morning, ladies and gentlemen.

4 OPENING STATEMENT:

5 This is the opening statement part of the trial,
6 and it is my least favorite part, absolute least
7 favorite part. I've been a lawyer for over 15 years.
8 I've spoken to hundreds of jurors. I still get
9 nervous when I talk to you all for the first time,
10 especially for opening statements because you don't
11 know anything about this case yet.

12 Solicitor Perry did a wonderful job in his
13 opening, laid out the foundation of their case.
14 That's not evidence. You don't know that yet.

15 I saw some of you taking notes. If I was a bossy
16 kind of person, I would tell you to rip them up, but
17 I'm not going to do that. The reality is that that is
18 not evidence. Evidence only comes in through the
19 witness stand and through materials brought in, so you
20 don't know anything right now.

21 But, you know one thing, and this is what you
22 know: this guy right here, Donnie Thigpen, he's
23 innocent, you know that right now. Judge Cooper told
24 you that at the beginning. He's innocent. He's been
25 innocent for almost three years waiting for this

1 trial. He is innocent sitting right there, he is
2 innocent when he walks into court. He is innocent
3 while they put up their evidence. He is innocent as
4 he's sitting over there with his defense attorneys.
5 He has got the presumption of innocence. We all have
6 it. The judge mentioned that to y'all. Just because
7 he's sitting with me, just because he has two
8 indictments with his name on it, doesn't mean he's not
9 innocent.

10 I mean, I know that is a crazy concept to wrap
11 your heads around. We have taken special care in
12 selecting y'all as people who would understand that
13 concept. It's a huge concept. It's what this whole
14 country's judicial system is set on, but if y'all
15 can't understand that, that's fine. We understand
16 that. You can raise your hand, you can tell the
17 bailiff at some point, I can't be fair and impartial.
18 There's jurors all the time that --- we just want a
19 fair jury.

20 Now, I may hate openings, I may get nervous about
21 talking to you for the first time, but I'm not going
22 to pass up the opportunity to advocate for my client,
23 Donnie Thigpen.

24 What you heard doesn't sound good today. I just
25 have to ask y'all to keep an open mind while this

1 whole case is going on. They've got plenty of
2 witnesses. There are issues with their case.

3 The way solicitor Perry outlined the case, it
4 sounded like there was an eyewitness to everything,
5 but there isn't. I mean, he would suggest that, but
6 there is no camera on this. There is no video on
7 this. This case is based on --- their case is based
8 on circumstantial evidence.

9 There are two kinds of evidence, and the judge
10 will explain this at some point. There is it direct
11 evidence which you can see and testify to. There's
12 direct evidence, which is what you or I see that we
13 can testify to, and there's circumstantial evidence
14 which is people coming in and testifying to different
15 facts, different circumstances, that leads someone to
16 believe that he's guilty or not guilty.

17 The hardest thing about a circumstantial evidence
18 case is that every one of their witnesses can come up
19 here and tell the truth, no one is lying, and an
20 innocent person can still get convicted because nobody
21 saw anything different. Maybe there is DNA on the
22 bag. Maybe that can be explained. Maybe there is DNA
23 on the roof line. Maybe that can be explained. Maybe
24 there is a statement. Maybe that can be explained.

25 Like the judge said, please don't rush to

1 judgment in this case until your deliberations are
2 told to start. That means deliberations within your
3 being, as well as deliberations among yourselves. You
4 know, the cartoons with the devil and the angel on the
5 shoulders? Well, sometimes during a trial you have a
6 solicitor and a defense attorney on your shoulders and
7 they're saying things.

8 I'm not going to say which one is the devil and
9 which one is the angel, but they're on your shoulders
10 saying things, but you can't start your deliberations
11 until you hear everything. This is really hard to do.
12 This is a really, really hard job y'all have, because
13 not only is there a tragedy that happened here that's
14 going to be very difficult for you. We have a young
15 man whose liberty is at stake. I mean, that's serious
16 business.

17 Frankly, it's just not a fair fight without
18 y'all. They have got investigators, labs,
19 technicians. Donnie has got me, Mr. Chiarenza, a
20 couple of people, investigators and such, but we don't
21 have their resources, but we have you because y'all
22 can't find someone guilty unless they prove beyond a
23 reasonable doubt that he did this.

24 Our position is that the officers made a rush to
25 judgment. They had one suspect within an hour and

1 that's it. Their investigation was closed.
2 Everything else was trying to put that square peg into
3 a round hole. I'm going to question them on it. I'm
4 going to question them on what they got. I'm going to
5 question them on what they didn't get.

6 You're going to hear a lot about reasonable doubt
7 and that's a fundamental right that everyone has.
8 They must prove their case beyond a reasonable doubt.
9 That's different than an arrest.

10 Officers just need probable cause to arrest
11 somebody. That means you look at the scales of
12 justice. It just tips one way. It's more probable
13 than not that somebody is guilty in a case of the
14 charges.

15 It's a low hurdle or steeple, since I'm in
16 Camden. A high one is reasonable doubt. If y'all
17 have a doubt that causes you to hesitate to act, then
18 you've got to find in favor of Donnie. The tie goes
19 to the runner. If y'all can't make up your mind, you
20 can't flip a coin on a man's liberty. You've got to
21 go with Donnie.

22 There are three major parts to their case. There
23 is the investigation, which is finding the car. The
24 cars belongs to Donnie. You go to Donnie's house,
25 there's all these signs. There are issues with that,

1 but reasonable doubt issues as to that.

2 There are the forensics, the blood, the blood
3 alcohol, the scratches, those sort of things, the
4 accident reconstruction, there are problems with that,
5 reasonable doubt problems, and there is a statement.
6 That's hard.

7 What the solicitor hasn't told you, and it's
8 going to come out, the statement came after six hours
9 of questioning and six hours of being in custody by a
10 young man, an unsophisticated young man, not a lawyer,
11 and you are going to hear a lot of it.

12 We submit to you there's a lot of suggestibility
13 there for a young man. Again, I just ask y'all to
14 wait for your deliberations before you make up your
15 mind. It's going to be hard to do, but we appreciate
16 it very much because essentially, this is a one issue
17 case.

18 Was Donnie driving when the accident happened? I
19 mean, frankly, this is a DUI case, and there are two
20 elements to DUI, which is driving and being under the
21 influence.

22 Now, he's clearly, when they get him, he is
23 clearly under the influence. He has a high blood
24 alcohol, but was he driving that night? Was he
25 driving while he was under the influence, and

1 certainly because there was a death involved, that's
2 why we're here instead of in magistrate's court
3 downstairs. Leaving the scene of the accident with
4 death, that's a hit and run, same thing. One of the
5 big elements is that was he the one driving. That's
6 the issue. It's a one issue case, and that's what
7 we're going to be concentrating on.

8 If by the end of this case y'all find that you're
9 not --- there's no hesitation in your decision, then
10 you made the right decision.

11 If you go home, and you can finally talk to your
12 significant other or your friends, or your parents
13 about what happened in court this week, you can tell
14 them, we did the right thing. We did the right thing.
15 That's all we want.

16 Now, we're going to start the trial. Thank you.

17 THE COURT: All right. Solicitor, call your
18 first witness.

19 MR. PERRY: The State would call Matt Southern.

20 MATTHEW SOUTHERN,
21 after being duly sworn, testified as follows:

22 THE WITNESS: I'm Matthew Southern, South
23 Carolina Highway Patrol.

24 DIRECT EXAMINATION:

25 BY MR. PERRY:

1 Q Trooper Southern, have you always worked for the
2 Highway Patrol?

3 A I have not. This is my second year on the
4 Highway Patrol. Prior to that I was employed by the
5 Richland County Sheriff's Department.

6 Q And if you will, tell the court a little about
7 your history with Richland County. How long were you
8 with them? What did you do prior to that?

9 A For about eight-and-a-half years, I was with the
10 Richland County Sheriff's Department. I started there
11 as a road patrol officer, worked my way up through the
12 ranks and became a traffic division officer and became
13 the sergeant over the traffic division, oversaw a nine
14 man unit, and I made a decision to come over here to
15 the Highway Patrol in 2010.

16 Q So on the morning of June 20, 2009, who did you
17 work for and in what capacity?

18 A I was a Richland County sheriff's deputy. I was
19 a sergeant over the traffic unit.

20 Q Was there anything remarkable about that morning?
21 What were you doing on the morning of June 20, 2009?

22 A Well, one of the duties that we had to do, we had
23 to do special duties, and that particular day there
24 was a triathlon that was taking place in the Lake
25 Carolina subdivision and it crossed into the Richland

1 County and Kershaw County and back into Richland
2 County. It encompassed running, biking and swimming,
3 and so we were in the portion of biking when I was
4 notified by several folks that were biking that they
5 noticed a vehicle off the roadway.

6 So we went and looked for that vehicle off the
7 side of the roadway and noted that when we found it,
8 it was in Kershaw County. It was a blue Jeep and it
9 had an individual in the passenger's seat with a seat
10 belt on.

11 Q At that time, could you tell what condition that
12 individual was in, as far as injuries, if he was alive
13 or dead?

14 A Didn't know if he was alive, didn't know if he
15 was dead. I made notification through my Richland
16 County dispatcher to have them notify Kershaw County
17 to send EMS and fire, because we did not know his
18 condition. We wanted to make sure he was okay.
19 Shortly thereafter members of the Kershaw sheriff's
20 office, Kershaw fire service and Kershaw EMS responded
21 to the scene.

22 Q And did the South Carolina Highway Patrol
23 eventually respond, as well?

24 A Troopers from the Highway Patrol did respond
25 also, and that was shortly thereafter.

1 MR. PERRY: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes.

4 (WHEREUPON, State's Exhibit Numbers 93 and 94
5 were marked for identification only.)

6 BY MR. PERRY:

7 Q Trooper Southern, if you will take a look at the
8 photos on both sides of this foam board to see if you
9 can identify what that appear to be?

10 A Yes, sir, that's Twenty-five Mile Creek Road and
11 it's known as Mickle Road in Richland County.

12 Q Is that the incident location of this?

13 A That's correct. The route that the bicyclists
14 took actually brought them up Langford to Mickle Road
15 and then it changed to Twenty-five Mile Creek Road in
16 Kershaw County, back onto Mickle Road to Kelly Mill
17 Road, which you can see off on the right hand side
18 here.

19 Q Okay. On the other side of it, is that just a
20 more close up view of it?

21 A That's correct.

22 Q In addition to the incident location, are there
23 any other locations that are denoted on there?

24 A There is one noted as
25 Road.

1 MR. PERRY: Your Honor, we would offer this into
2 evidence.

3 THE COURT: Have you shown it to defense counsel?

4 MR. POSTIC: Without objection.

5 THE COURT: Without objection.

6 (WHEREUPON, State's Exhibit Numbers 93 and 94
7 were admitted into evidence.)

8 BY MR. PERRY:

9 Q Trooper Southern, before I release you to defense
10 counsel, if you would, just kind of show the jury on
11 here again the route where this took place both in the
12 larger sense and the closer up.

13 A Okay.

14 Q Go ahead. Go over there.

15 A Yes, sir.

16 THE COURT: You can get up, just so everybody can
17 see.

18 THE WITNESS: This is Twenty-five ---

19 THE COURT: You have people at the other end,
20 too.

21 THE WITNESS: This is Twenty-five Mile Creek Road
22 here and it comes into Kelly Mill Road. This is where
23 Richland County jumps back and forth, but this is
24 route that the bicyclists were taking, down Twenty-
25 five Mile Creek Road and it came on Kelly Mill Road

1 here and took a right here.

2 This is the point where the collision was
3 located, what you can clearly see is on Twenty-five
4 Mile Creek Road. That particular portion is in
5 Kershaw County. Me, being a Richland County deputy,
6 that's why I notified Kershaw County to come to that
7 location.

8 BY MR. PERRY:

9 Q If you should show them the backside, the closer
10 up view.

11 A This is the closer view of it. Here is the
12 collision location, Twenty-five Mile Creek Road. This
13 is the route they took.

14 Q Can you point out the defendant's residence?

15 A I'm not sure where that really was, but I'm
16 assuming ---

17 MR. POSTIC: I'm going to object, Your Honor.

18 MR. PERRY: Okay. Very well. Thank you very
19 much, Trooper Southern, please answer any questions
20 that defense counsel may have for you.

21 THE COURT: Cross-examination?

22 MR. POSTIC: Just briefly, Your Honor.

23 CROSS-EXAMINATION:

24 BY MR. POSTIC:

25 Q Trooper Southern, did you have any contact

1 whatsoever with Donnie?

2 A No, sir.

3 Q You just saw the accident?

4 A Just the collision, yes, sir.

5 MR. POSTIC: Okay. No further questions.

6 THE COURT: You may come down. May this witness
7 be excused?

8 MR. POSTIC: Yes.

9 MR. PERRY: Yes.

10 THE COURT: Without objection?

11 MR. POSTIC: Without objection.

12 THE COURT: Next witness.

13 MR. PERRY: Your Honor, the State would call
14 James Slaten.

15 THE COURT: James or John?

16 MR. PERRY: John, I'm sorry.

17 JOHN SLATEN,

18 after being duly sworn, testified as follows:

19 THE CLERK: Thank you. Please be seated. State
20 your full name for the record.

21 THE WITNESS: John Slaten, S-L-A-T-E-N.

22 DIRECT EXAMINATION:

23 BY MR. PERRY:

24 Q Mr. Slaten, with whom are you presently employed
25 and in what capacity?

1 A I'm employed for the Mayesville police department
2 as chief.

3 Q And Chief Slaten, how long have you been with the
4 City of Mayesville?

5 A I've been there for a year and a month now.

6 Q Prior to being the chief of police there in
7 Mayesville, who did you work for?

8 A I worked as the Kershaw County sheriff's office
9 as a line supervisor and corporal.

10 Q More particularly, on the day of June 20, 2009,
11 were you working with Kershaw County as a corporal?

12 A Yes, I was.

13 Q Is there anything remarkable about that day?

14 A I was on routine parole, and I was dispatched for
15 a vehicle accident on Twenty-five Mile Creek Road,
16 which is inside Kershaw County. I responded to that
17 and met with a Richland County deputy.

18 Q Do you remember approximately what time in the
19 morning --- or what time of the day that was?

20 A Going to my incident report, that was about
21 9:39 in the morning.

22 Q All right. Speaking of your incident report,
23 let's go ahead and clarify that. Have you had an
24 opportunity to review your incident report ---

25 A Yes, I have.

1 Q --- on this incident? Did you write that
2 incident report contemporaneous to this happening?

3 A Yes.

4 Q In reviewing your incident report in preparation
5 for coming in for this trial, did you notice anything
6 unusual in that incident report, anything that caught
7 your attention?

8 A Yes, in the narrative, there is an error. It
9 states that when I had the fire department do a search
10 of that area, and the report was saying that the
11 driver was found, when it was meant to read was not
12 found.

13 Q Okay. I just want to clear that up. Was there
14 anybody else found at or around this location, this
15 incident location other than the passenger that was
16 seat belted into the passengers seat?

17 A No, there was nobody else found.

18 Q All right. Now, to get back to your narrative of
19 what happened, just tell us how you happened to arrive
20 there, what you found, what you did.

21 A As I said, I was dispatched, arrived on the
22 scene, a Richland County deputy was already present.
23 They notified us of the accident. I met with that
24 deputy. He informed me of how they came across the
25 accident scene. I then walked down to the vehicle,

1 observed victim laying in the vehicle still. Notified
2 dispatch for EMS and the coroner and also called for
3 the fire department and then walked back up to the
4 road, to secure the scene and noted everything as
5 found.

6 Q So you didn't really do anything much to
7 investigate the actual vehicle or the cause of the
8 wreck or anything like that?

9 A The only other thing I did was to call the tag in
10 to the dispatcher on my cell phone and get the owner
11 information and the address that it came back to.

12 Q So what did your find?

13 A The vehicle came back to the Thigpen subject and
14 the address was about mile to a half mile down the
15 street on the same road.

16 Q Was that, in fact, Donnie Thigpen the defendant
17 here today?

18 A Yes, it was.

19 Q That the vehicle was registered to?

20 A Yes.

21 Q At a location just down the road?

22 A Yes.

23 Q Do you remember that location?

24 A The address came back to

, which is also inside Kershaw County.

1 MR. PERRY: Your Honor, again if I may approach
2 the witness?

3 THE COURT: Sure.

4 BY MR. PERRY:

5 Q Chief Slaten, I'd show you what's already been
6 introduced as State's Exhibits 93 and 94, ask you to
7 see if you can identify that, what it appears to be,
8 tell us a little bit about it?

9 A This would be an aerial photograph of Twenty-five
10 Mile Creek Road with what would be towards Richland
11 County being off to the right and saying Kershaw
12 County to the left again in opposition.

13 Q And what does it portray?

14 A It portrays the location where the vehicle was
15 found in the woods and the location of the defendant's
16 address.

17 Q Okay. Can you look at the back side of that,
18 which I believe is a closer up view?

19 A I can.

20 Q Okay. What does that appear to be?

21 A That is a closer shot of --- gives a more
22 relative position of the vehicle location to that
23 address.

24 Q Are you able to locate the incident location of
25 the crash on that photo?

1 A Yes, I am.

2 Q Are you able to locate the residence to which the
3 vehicle was registered and which Mr. Thigpen lived at
4 on that photo?

5 A Yes, clearly.

6 MR. PERRY: Your Honor, if he may approach the
7 jury.

8 THE COURT: All right.

9 BY MR. PERRY:

10 Q Would you please show the jury on that photo
11 these locations, with Your Honor's consent?

12 A All right. This is the closer shot.

13 Q And chief, if you can step down more towards the
14 middle so everyone can see. Thank you.

15 A This is Twenty-five Mile Creek Road going on out.
16 This would take you over to Richland County. The rest
17 of this section all up through here is going to be
18 Kershaw County. This is the location where the
19 vehicle was found. It was found off in the woods off
20 the highway. And this is the address of the
21 defendant.

22 Q And chief, you mentioned that it's fairly close
23 there. Obviously there's no denotation of scale.

24 Now, you didn't take a pedometer and actually walk it
25 off?

1 A No.

2 Q To see how many steps it would be?

3 A No.

4 Q Or even measure it with the odometer on your
5 vehicle to get the precise distance, did you?

6 A Yeah, I'm just giving a rough estimate on
7 distance.

8 Q Let me just ask you this question. Would it be
9 an easy walk?

10 A Most definitely. I had no trouble walking it.

11 Q All right, sir. Thank you very much. Resume the
12 stand, please.

13 Now, you testified that you called in the
14 registration of the vehicle, determined that it was
15 registered to that location ---

16 A Yes.

17 Q --- that was close and registered to Mr. Thigpen.
18 What if anything was done with that information? What
19 took place after?

20 A I made note of it in my notepad, held on to it
21 until the first trooper with the Highway Patrol got on
22 the scene, which was Trooper Kelly. Upon his arrival,
23 I gave that information to him and a brief account of
24 what I observed and what my actions were until his
25 arrival.

1 Q All right. At some point subsequent to that, did
2 any officers, yourself included, have occasion to go
3 to the residence location to investigate?

4 A Yes. After First Sergeant Borowski got on the
5 scene, we conferred for a little bit. EMS and the
6 fire department had already been there for a little
7 bit. Because my vehicle was being used to block one
8 end of the Twenty-five Mile Creek Road, I rode with
9 Sergeant Borowski to the subject address.

10 Q What did you find when you got to the address?

11 A We went to the front door, knocked probably for
12 about five or ten minutes, a rough estimate. We
13 finally got a subject to come to the door, which was
14 the defendant, Donnie Thigpen. That the time, he was
15 wearing a towel. We identified ourselves, told him
16 that we needed to talk to him in reference to his
17 vehicle. He then went back to secure an animal inside
18 the house, a rather large dog, and then moved back
19 around to the left back towards --- what turned out to
20 be his bedroom and got some clothes on and walked back
21 out and talked to us on the front porch.

22 Q So you guys didn't go into the house, did you?

23 A No.

24 Q You didn't go in his space?

25 A No.

1 Q So he came outside?

2 A We remained on the front porch the whole time. He
3 came out on the front porch and talked to us there.

4 Q At this point, was he in handcuffs? Was he under
5 arrest yet?

6 A No. We identified why we were there. When we
7 started to talk to him, I did reach in my breast
8 pocket in my shirt, pulled out my notepad. In that I
9 maintained a Miranda card, which I read to him first
10 and then Sergeant Borowski --- we began ask about the
11 vehicle accident.

12 Q And during the course of your interaction with
13 Mr. Thigpen, in addition to the questions that were
14 asked and the responses that were given, what were
15 your observations of him, his physical condition, his
16 demeanor, his speech, just tell the jury about what
17 your impressions were that morning, please.

18 A Well, Mr. Thigpen came back out to talk to us.
19 He did appear to still be intoxicated and had an odor
20 of alcohol about him, his ability to stand and his
21 speech appeared to be somewhat slurred. There were
22 also abrasions on his arms, a cut over one of his
23 eyes, and I also observed some green plant material,
24 leaves and grass on one of his arms.

25 Q Did you observe an injury above his eyebrow?

1 A Yes, I did.

2 Q Tell the jury about that, please.

3 A Bear with me just a moment while I check my
4 notes.

5 He had cut --- according to my notes I have
6 listed a cut over the eyebrow upper right side. He
7 also had scratches and green leafy material going down
8 the right elbow and a black scuff mark on the palm of
9 one of his hands.

10 Q What, if any, explanation did Mr. Thigpen give
11 for the injuries that ---

12 A He couldn't give us an explanation for those
13 injuries.

14 Q Did he try to describe them away, did he try to
15 explain them away in any fashion?

16 A No, he did not.

17 Q Okay. When you first arrived at the house, did
18 you --- was there anything notable or remarkable about
19 the door?

20 A The front door had shoe prints on it where it had
21 been forced open.

22 Q Did that appear to be fresh or did it appear to
23 be something that could have been done days before or
24 could you tell?

25 A I couldn't tell you exactly how long ago. It's

1 been my experience it wasn't real old. It was
2 somewhat recent.

3 Q Okay. Did he have any explanation for that?

4 A He did explain that he had to force the door open
5 so he could get in.

6 Q Did he elaborate about that?

7 A He said he didn't have his keys with him.

8 Q Was he asked --- did he discuss how he came to be
9 home if his vehicle was not there?

10 A During the questioning, as we continued he
11 advised that he had been at, I think it was a friend's
12 house, and that a friend had brought him home and he
13 had left his keys with a friend.

14 Q About did you ask him who that friend was so you
15 could go talk to him?

16 A A couple questions later we went back to ask him
17 the friend's name. At that the point he changed it to
18 that it was a stranger. He didn't know who it was.

19 Q So you never did receive a name or an address?

20 A No.

21 Q Any information at all about where he supposedly
22 was?

23 A He never gave us an indication of where the
24 friend's house was that he was supposed to be at or
25 who had brought him home or who had the keys to his

1 car.

2 Q Do you personally have any knowledge about where
3 the keys were?

4 A Yeah, they were in the vehicle.

5 Q Did you see them there when you were checking the
6 vehicle out?

7 A I believe they were still stuck inside the
8 ignition switch.

9 Q Very well. Back to be that, I don't want to get
10 too confusing, but back to the vehicle, you mentioned
11 earlier that you had Kershaw County go ahead and
12 dispatch the coroner on out?

13 A Yes, I did.

14 Q Did you make any observations with respect to the
15 victim in this case, Melvin Wright?

16 A The victim was still seat belted in the
17 passenger's seat of that vehicle. The vehicle was in
18 an upside down position. My experience both as a law
19 enforcement officer of almost eighteen years and also
20 as a fire medic and stuff, I was able to make a
21 reasonable assumption that he was dead on the scene,
22 and that was the reason I called for the coroner to
23 respond to it.

24 Q Did you check his pulse or anything like that to
25 try to determine if he was still breathing?

1 A I reached in, tried to check the pulse on what's
2 called the carotid artery, didn't get anything. He
3 was cold to the touch.

4 Q Specifically, where was he located in relation to
5 the vehicle? I know you said he was seat belted in
6 the passenger's side ---

7 A He was in the front seat. The vehicle was in an
8 upside down position. He was still strapped in that
9 passenger side seat, and the seat belt holding him
10 into the seat somewhat in a twisted manner.

11 Q Was he fully in the vehicle, partially out of the
12 vehicle? What was that ---

13 A I believe he was still fully inside the vehicle.

14 Q Okay.

15 A I don't have any ---

16 Q You didn't actually investigate the wreck itself,
17 right?

18 A No, no.

19 Q Now, back to the house. You're there. You guys
20 are interviewing him. You're talking to him. It's
21 you and First Sergeant Borowski, correct?

22 A Yes.

23 Q As that process continued, tell the jury what
24 happened next, what your involvement was, how things
25 progressed from there.

1 A As I said, I did read him the Miranda warning off
2 my card. We questioned him at one point. Sergeant
3 Borowski stepped down off the porch for a call. I
4 remained on the porch, just a casual conversation, I
5 can't recall what I talked about with Mr. Thigpen.
6 After Sergeant Borowski got done with his phone call,
7 he stepped back up on the porch, and another trooper
8 arrived on the scene. Mr. Thigpen was placed under
9 arrest. I assisted in the handcuff, and I assisted in
10 placing him in the patrol car.

11 Q Did he offer any resistance, give any difficulty,
12 anything like that?

13 A No, he did not.

14 Q Now, once he was taken into custody, did they
15 take him from that location?

16 A Yeah, he was taken from that location and was
17 taken to be booked in at the jail and for medical
18 treatment.

19 The first sergeant left the scene to get what
20 would be required for a search warrant. I remained on
21 the scene to secure the location, remaining just in
22 the yard, never going inside the house and waiting for
23 animal control also to respond because I had called
24 about them about the dog.

25 Q Your responsibility at that point was to secure

1 the location, make sure it was not tampered with in
2 any way?

3 A It was not tampered with in any way, no, I just
4 secured it.

5 Q While you were there until they came back to
6 execute the search warrant ---

7 A Yes.

8 Q --- was that incident location actually secure?

9 A Yes, it was.

10 Q Did anybody tamper with it in any way?

11 A Nobody came in and nobody came out.

12 Q Very well. Also, you said animal control came
13 out?

14 A Yeah, animal control arrived before the search
15 warrant did. They remained marked an Twenty-five Mile
16 Creek until the troopers came back with the search
17 warrant. Once the search warrant was brought back,
18 Sergeant Borowski executed the search warrant and then
19 myself and the animal control sergeant entered to take
20 control of the dog and the troopers conducted their
21 search.

22 Q You stayed there at the incident location while
23 the search warrant was being executed? Is that what I
24 understand?

25 A Yes, we it took me and the animal control

1 sergeant several minutes to get the dog under control
2 and removed, and then after the dog was removed, I
3 remained on the scene.

4 Q Did you actually participate in the search? Did
5 you find any evidence there on the property or was
6 that left to the Highway Patrol?

7 A No, that was left up to the Highway Patrol
8 officers.

9 Q The only involvement you had was to secure that
10 location while they were doing that?

11 A Yes.

12 Q And to secure the dog?

13 A Yes.

14 Q Once the execution of the search warrant was
15 complete, did you have any further duties or
16 involvement with this matter?

17 A No, I did not.

18 Q You didn't find or secure any evidence, correct?

19 A No, I did not.

20 Q You didn't make any logs of anything else that
21 was found or anything else?

22 A I did not.

23 Q You didn't actually investigate the cause of the
24 wreck or anything else about the wreck other than the
25 observations you already told the jury about?

1 A Correct.

2 Q Is there anything else at all that you remember
3 about that morning that's remarkable to you and that
4 you feel like the jury needs to know with respect to
5 this case? Anything that we left out as far as your
6 notes, incident report?

7 A Just that I have in my notes that while we were
8 questioning him, the defendant made a comment that he
9 had gotten off work at approximately --- I have in my
10 notes written as 23:00 which in military time is about
11 11:00 p.m. at night the previous night.

12 He made a comment that around 0300 or 3:00 a.m.
13 in the morning, left keys with someone, did not know
14 name, and I also have down what I said about what time
15 we entered the residence for the search warrant.

16 Q And I believe that --- and I want to clarify
17 this, I believe you previously that he had first said
18 that he had been with a friend who brought him home
19 and then when you questioned him about the friend's
20 name ---

21 A It turned out to be a stranger that he did not
22 know.

23 Q Just two more quick points. You mentioned the
24 injuries to Mr. Thigpen; do you recall, now some
25 three years later, any glass shards in his hair,

1 beard, ears, did you notice anything?

2 MR. POSTIC: I'd object to the leading questions,
3 Your Honor.

4 THE COURT: That's right.

5 MR. POSTIC: He can ask if he had anything that
6 was remarkable or like that.

7 THE COURT: I understand.

8 MR. POSTIC: Thank you.

9 BY MR. PERRY:

10 Q Did you notice anything remarkable about him?

11 A Let's see. He has a cut on the left arm. I
12 don't have anything in the notes. Trying to remember
13 back like almost three years. I do recall there being
14 some flaking of paint or something about him on his
15 clothes or on his skin and some glass or something in
16 his hair.

17 Q Let me ask you this question, too. This it is
18 last thing, back at the incident location and how we
19 started this whole thing with the bit about the driver
20 being found that wasn't found?

21 A Yes.

22 Q Let's just clarify that again for the jury. Were
23 you involved in the search for another party?

24 A I asked the fire department to conduct that
25 search because of the time of year for possibly coming

1 across snakes and everything, they have better
2 protection being down in that brush. When EMS first
3 arrived, just me and E.M.T. walked down to the
4 vehicle. The E.M.T. reaching in confirming the death.
5 We walked back up to the road. I asked the fire
6 department to search the surrounding area. They
7 didn't approach the car. After conducting their
8 search of the brush area, nobody was found.

9 Q There was nobody in the driver's seat of the
10 vehicle, was there?

11 A Nobody in the driver's seat and nobody in the
12 backseats.

13 Q To the best of your knowledge, and you were there
14 securing that scene until you went to the house,
15 correct, no one who searched the area found anyone
16 that had been ejected from the vehicle or crawled out
17 of the vehicle, no other person was found anywhere
18 near or around the vehicle, correct?

19 A No, each one of the fire fighters that came up on
20 the road ---

21 MR. POSTIC: Object to hearsay, leading.

22 THE COURT: All right.

23 MR. PERRY: I asked him to the best of his
24 knowledge did anybody find anyone. I didn't ask him
25 what anybody said.

1 THE COURT: Overruled. Well, what anybody said
2 is probably hearsay. Whether it's offered for the
3 truth or not, I don't know. Go ahead and answer the
4 question.

5 THE WITNESS: All right. We were that informed
6 nobody was found.

7 MR. PERRY: No further questions for this
8 witness. Please answer anything the defense has.

9 THE COURT: Cross-examination?

10 MR. POSTIC: Thank you, Your Honor.

11 CROSS-EXAMINATION:

12 BY MR. POSTIC:

13 Q Chief Slaten, do you have your report in front of
14 you, sir?

15 A Yes, I do.

16 Q And you're referring to it quite a bit because it
17 happened about three years ago, correct?

18 A Yes, sir.

19 Q I noticed in that report, there's a little thing
20 at the bottom about who made the report and there's
21 your name?

22 A Yes.

23 Q And there's a little box up there that says
24 approving officer and it's your name?

25 A Yes.

1 Q Is it policy?

2 A I'm the supervisor. I'm --- only the supervisors
3 can approve the reports written by the deputies and
4 I'm the approving officer.

5 Q So you approved your own reports?

6 A Yes.

7 Q Okay. So you've read it through, and other than
8 the one mistake where you say the driver was found,
9 everything else is the best of your memory?

10 A Yeah.

11 Q At the time?

12 A Yes.

13 Q And it was --- and obviously your memory then is
14 better than your memory now.

15 A Correct.

16 Q I didn't see any mention of --- maybe I
17 overlooked it in the 50 times that I read it, but I
18 didn't see any mention of glass or flaking in your
19 report. Is this just something that's in your memory
20 now?

21 A Yeah, later on as we start to think back, there's
22 going to be little details. I try to be as detailed
23 as possible in my report. My report was not written
24 at the location. The report was written later on in
25 the afternoon. Actually I did the report at ---

1 according to this, at 8:14 a.m.

2 Q What day?

3 A That should have been the following day.

4 Q Do you have a date on it?

5 A Well, that's when it was printed. I'm sorry.

6 Yeah, it was done on the 21st and the accident

7 occurred on the 20th.

8 Q You said you were the supervisor there. Did you
9 have a supervisor?

10 A Yes, Lieutenant Ty Cobb.

11 Q I'm sorry. I hit the microphone.

12 A My other supervisor on the shift was Lieutenant
13 Ty Cobb of the sheriff's office.

14 Q Okay. Well, couldn't he have approved your
15 report?

16 A He can look it over. It's not required by
17 policy.

18 Q Okay.

19 A I'm normally the one that approved all the
20 reports on my shift.

21 Q What's the point of approving a report?

22 A We're going through trying to proofread, and what
23 we're looking for is are all the statistics in place
24 that are required there. Are all the errors corrected
25 that the computer will pick up on. We're now using a

1 computer programming system. For statistical purposes
2 there are certain things that have to be checked off.
3 If it's not checked off, the computer will kick up an
4 error. If the deputies aren't able to fix it, it goes
5 to me and I'm supposed to look through the system and
6 try to make the corrections.

7 Q For instance, if one of your deputies had written
8 that and you had gone through it, you would have said,
9 "Well did you find somebody there or is that a typo?"
10 Is that what you would have said to them?

11 A Yeah, but when you're writing your own statements
12 out, your own narratives, when you're proofreading it,
13 you tend --- I tend to overlook an error because I'm
14 automatically in my mind putting in that word that I
15 forgot.

16 Q Right. Because that's whole point of having
17 somebody put a second pair of eyes on something,
18 right?

19 A Yes.

20 Q Okay. Are you familiar with that part of the
21 county? Where is the map?

22 A Yes. That's one of the areas I patrolled
23 regularly.

24 Q Okay. A couple of things. I'm from the city,
25 from Columbia, okay?

1 A Yeah.

2 Q Snakes? There's a bunch of snakes out there?

3 A Yes, it's swamp area of the county.

4 Q Okay. All right. So that's why you got the guys
5 with those kind of boots that ---

6 A Well, the firefighters, we have bunker boots.

7 Q Okay.

8 A They protect us from the heat and from sharp
9 objects penetrating them.

10 Q Okay. And the other thing is, this area is
11 called Tookiedoo?

12 A That's Tookiedoo area of Kershaw County.

13 Q What does that mean?

14 A That's just the community name for that area.

15 Q How did they come up with the name?

16 A I don't know. I don't know the full history of
17 Kershaw County.

18 Q Okay. That's just an interesting name.

19 What is the time that you go and knock on the
20 defendant's, on Donnie's door?

21 A I want to say it was sometime around about
22 11:25, I believe, or shortly there before. Bear with
23 me a minute, please.

24 (Pause.)

25 Okay. By eleven o'clock, we left the accident

1 location and myself and Sergeant Borowski rode in his
2 patrol car to the ---

3 Q All right. You and Sergeant Borowski are the
4 first two people, I mean, the first two law
5 enforcement officers there?

6 A Yes, sir.

7 Q And you said you were dispatched to the accident
8 about 11 --- I mean, about 9:39?

9 A That morning, yes, sir.

10 Q Yes. And what time would you have arrived at the
11 accident?

12 A At 9:39 I was dispatched and the call log showed
13 me signing out on the scene at 9:44.

14 Q What's that?

15 A About five minutes.

16 Q 9:44?

17 A Yeah.

18 Q Okay, and so you spent about an hour and sixteen
19 minutes before you get to the defendant's house?

20 A Yes.

21 Q All right.

22 Q And during that time, you --- what, are you
23 blocking the road?

24 A Yes, my patrol car is moved up towards Kelly Town
25 Road, blocking the road off because we have to measure

1 and everything and the Highway Patrol vehicle blocked
2 the other end.

3 Q Okay. And then you're also walking down there to
4 see the state of the vehicle; is that correct?

5 A When I first arrived, after I met with the deputy
6 from Richland County, I stepped down to the vehicle,
7 observed the passenger and then walked back up to the
8 residence.

9 Q Would you agree it's a violent accident, very,
10 very ---

11 A Yes, it was very violent.

12 Q Okay. And the car was --- if you were an
13 insurance adjustor, you would total the car?

14 A It was totaled.

15 Q Okay.

16 Q And you drive from there to the Donnie's house,
17 right?

18 A Yes, I rode with Sergeant Borowski in his patrol
19 car.

20 Q That's one minute, 90 second drive?

21 A Maybe a minute.

22 Q All right.

23 Q When you got there, there was no vehicle at the
24 residence?

25 A No, no vehicle at the residence.

1 Q Okay. Then you knock on the door. There's no
2 answer?

3 A We knocked for about five, ten minutes. I noted
4 in my notes.

5 Q Okay, and you note in your notes that you guys
6 were about to leave?

7 A Yeah.

8 Q Okay, and what was --- just because no one was
9 answering at that point?

10 A Because we weren't getting an answer. We were
11 getting ready to walk off the porch when Mr. Thigpen
12 opened the front door.

13 Q You said it looked like he had just been in the
14 shower?

15 A He had a towel on, yes, sir.

16 Q But you also observed that he had --- well, let
17 me ask you, he had towel on or did he take a shower?

18 A He had towel on and appeared to be wet.

19 Q Okay. So circumstantial evidence, shower. Okay.

20 Q And he had a scuff mark --- I don't quite get
21 this, but he had a scuff mark on his hand?

22 A I had noted in the report that there was like a
23 black scuff mark up inside the heel part of his right
24 palm hand.

25 Q Okay. Did you ask him about that?

1 A I didn't.

2 Q Okay. And you also mentioned green plant material
3 on him?

4 A Leafy material.

5 Q Just like leafy material?

6 A It was leaves or grass and things. I'm not a
7 plant expert. I can't tell you what it came from.

8 Q Okay. And you're the one who gave him the
9 Miranda rights; is that right?

10 A Yes.

11 Q I can't remember if the solicitor asked you to
12 read those. Do you mind reading those for us, please?

13 A Yeah. Okay.

14 Q Is this the same card you had back then?

15 A Yes, this is --- my routine is when I'm in my
16 regular uniform, my notepad is kept in my breast
17 pocket and my Miranda card is kept inside it.

18 Q The that's the same card at Kershaw?

19 A It's either this very same card or a very similar
20 card that's in my wallet right now.

21 Q Does Sheriff Matthews know that you took his
22 card?

23 A This is not Sheriff Matthews' card.

24 Q Oh, okay, thank you. Go ahead.

25 A One, you have the right to remain silent. Two,

1 anything you say can be --- can and will be used
2 against you in a court of law. Three, you have the
3 right to talk to an attorney and have him or her
4 present with you while you're being questioned. Four,
5 if you cannot afford to hire an attorney, one will be
6 appointed to represent you before any questioning, if
7 you want.

8 Five, you can decide at any time to exercise
9 these rights, not answer any questions or make
10 statements. Six, do you understand these rights I have
11 explained to you? After that, you wait for an answer
12 either yes or no or affirm, to give us an affirmative.

13 Q How did he --- do you remember exactly how he
14 gave you an affirmative?

15 A I don't remember the exact word if it was just
16 yes or a nod of the head, yeah.

17 Q Okay. At that point, he didn't break down and
18 confess or anything?

19 A No.

20 Q You would have marked that down in your report,
21 I'm guessing?

22 A Yes.

23 Q And you said he appeared under the influence,
24 right?

25 A He appeared to be intoxicated.

1 Q Okay. Was he unsteady on his feet?

2 A He was unsteady on his feet. Speech was a little
3 slurred.

4 Q Did he make much sense?

5 A He was answering the questions and seemed to
6 understand the questions and was able to give
7 cognitive answers.

8 Q Okay. And he denied it, right?

9 A Yeah.

10 Q He denied any involvement?

11 A He denied any knowledge of where the car was or
12 being involved in an accident.

13 Q Okay. And were you the one who rode him to the
14 scene?

15 A I didn't take him to the scene. He was
16 transported, it's my understanding by a highway
17 patrolman. I thought to the hospital. I'm not sure
18 exactly what route they took.

19 Q Okay. Did he seem kind of confused?

20 A Confused, no.

21 Q Okay. All right. Is it possible that --- when
22 you say the thing about the friends, about friends,
23 could that possibly be a place called Friends?

24 A I don't know. We didn't get into that. We tried
25 to get a location, but he never specified.

1 Q When does your involvement in this case end?

2 A Once the Highway Patrol got done with their
3 search warrants at the scene, we all cleared about the
4 same time.

5 Q And you went from there back to ...

6 A I went on back to finishing our regular parole
7 duties and then, right now I'm trying to remember
8 exactly why there was the time discrepancy on why I
9 did the report, and I'm thinking that time is when it
10 is showing up as the print time. The computer system
11 the county uses will print out any time we make a
12 modification to the report, we note what time it was
13 modified and what time we print them, which was also
14 the reason I didn't go back a couple months later when
15 they brought to my attention there was an error in the
16 narrative. I didn't want to change anything that
17 might not be easily explained or understood.

18 Q All right. Well, let me ask you, because the
19 solicitor asked you about the keys. When you ---
20 during that hour and sixteen minutes that you were at
21 the scene, did you notice that the keys were still in
22 the car?

23 A From my recollection, I believe they were.

24 Q Did you actually see them?

25 A I cannot say 100 percent yes or no. My first

1 responsibility was going down to check on the victim
2 and I walked back up.

3 Q So you couldn't tell us if it was like a key ring
4 with multiple rings on it or if it was ---

5 A The way the car was banged I up, it was hard to
6 try to see exactly where the steering column was in
7 the vehicle. I'm looking at it trying to look across
8 at the victim.

9 Q Okay. So really you don't even know if there was
10 a house key on that key ring, do you?

11 A Correct. I couldn't tell you.

12 Q Just one second.

13 (Pause.)

14 Were you involved in the collection of any
15 evidence at all?

16 A No.

17 Q Okay. Were you involved in photographing any of
18 the material --- anything?

19 A No.

20 Q Okay.

21 Q Since your car wasn't involved, there was no
22 video that you have ---

23 A No.

24 Q --- of anything involved in this?

25 A No.

1 MR. POSTIC: That's all.

2 THE COURT: Any redirect?

3 MR. PERRY: Nothing further.

4 THE COURT: You may come down. May this witness
5 be excused?

6 MR. POSTIC: No objection.

7 THE COURT: You're free go.

8 MR. PERRY: Your Honor, the State would next call
9 Russell Ferguson with the Kershaw County EMS.

10 RUSSELL FERGUSON,
11 after being duly sworn, testified as follows:

12 THE CLERK: Please be seated, state your full
13 name for the record. Right this way, please.

14 THE WITNESS: Russell H. Ferguson.

15 DIRECT EXAMINATION:

16 BY MR. PERRY:

17 Q Good morning, Mr. Ferguson. I'm Brett Perry.

18 I'm the Deputy Solicitor here in Kershaw County.

19 We've never met before, have we?

20 A No, sir, I don't think so.

21 Q I appreciate your coming in this morning. If you
22 would, please tell the jury how you're presently
23 employed?

24 A With Kershaw County Medical Center as a
25 paramedic.

1 Q All right and how long have you been employed
2 with them as a paramedic?

3 A Since November of '97.

4 Q So on the morning of June 20th of 2009, were you
5 employed with them as a paramedic?

6 A Yes, I was.

7 Q Is there anything remarkable about that day,
8 anything that you remember about that day? Any
9 incidents that you worked or got called out on?

10 A On that particular day, if my memory is correct,
11 we did respond to an accident in the Elgin area, which
12 we were based, to an overturned vehicle of which there
13 was a fatality involved.

14 THE BAILIFF: Excuse me a minute, sir.

15 BY MR. PERRY:

16 Q Was that out on Twenty-five Mile Creek Road?

17 THE COURT: Just hold on.

18 THE BAILIFF: Judge, the jury needs to take a
19 break.

20 THE COURT: All right. Let's just suspend the
21 examination at this point. All right, ladies and
22 gentlemen, it's eleven o'clock. It's probably time
23 for our morning break. Just go to the jury room for a
24 few minutes and relax and don't discuss the case among
25 yourselves while you're in the jury room. We'll call

1 you in just a few minutes. Leave your pads on your
2 chairs; that will be fine.

3 (WHEREUPON, the jury left open court at
4 approximately 11:01 a.m.)

5 THE COURT: All right. We'll stand at ease for
6 about ten minutes.

7 MR. POSTIC: Thank you, Your Honor.

8 (WHEREUPON, a short break was taken.)

9 MR. PERRY: Your Honor ---

10 THE COURT: Bring the jury.

11 MR. PERRY: Your Honor, just for scheduling
12 purposes ---

13 THE COURT: What?

14 MR. PERRY: Just for scheduling purposes,
15 Mr. Ferguson, I anticipate being a fairly short
16 witness. Our next witness, Trooper Kelly I anticipate
17 will be a fairly long witness. I don't know if you
18 want to start with him before lunch and then finish up
19 after or how you want to do that.

20 THE COURT: I sure do.

21 MR. PERRY: I just wanted to let you know.

22 THE COURT: Let's keep moving.

23 MR. PERRY: Okay, well, I just wanted to let you
24 know what we had.

25 THE COURT: Bring the jury.

1 (WHEREUPON, the jury came into open court at
2 approximately 11:18 a.m.)

3 THE COURT: All right. You may continue.

4 MR. PERRY: May it please the Court.

5 BY MR. PERRY:

6 Q Mr. Ferguson, to go back over a little bit what
7 we covered before we took this break, you're employed
8 with Kershaw County Medical, correct?

9 A Yes, sir.

10 Q In what capacity, again?

11 A As a paramedic.

12 Q In June 2009, you were employed as a paramedic,
13 correct?

14 A Yes, sir.

15 Q We mentioned about a motor vehicle collision that
16 you were involved with working that day; is that
17 correct?

18 A That's correct.

19 Q And did that happen out sort of over in the
20 western part of the county, the Elgin area? Tell the
21 jury a little about that.

22 A Kershaw County Medical Center has ambulances
23 stationed at various locations throughout the county
24 to minimize response times. That particular day ---
25 we rotate stations, and it just happened to be my turn

1 to be at the Elgin station which is the closest one to
2 the accident.

3 MR. PERRY: Your Honor, may I approach the
4 witness?

5 THE COURT: Certainly.

6 BY MR. PERRY:

7 Q Mr. Ferguson, I show you what's already been
8 admitted as State's Exhibit No. 93 and 94.

9 Does that look familiar to you at all? Can you
10 tell us what that appears to be?

11 A It's certainly a map. I recognize the name of
12 some of the roads.

13 Q Would that be out in the western part of the
14 county, the Tookiedoo area, I believe they call it?

15 A Yes, sir, that looks to be correct.

16 Q And what roads appear to be denoted on that
17 aerial view?

18 A Twenty-five Mile Creek Road. There is also Kelly
19 Mill Road, and I see a Charlie Road.

20 Q Okay. And as you turn the map over on the other
21 side, does that appear to be relatively the same
22 thing, maybe a closer view?

23 A Yes, sir, this is an up-close view it.

24 Q All right. Does that map, does that aerial view
25 show the incident location of that motor vehicle wreck

1 that day?

2 A That would seem to be appropriate.

3 Q Okay. What was your involvement with working
4 that wreck, sir?

5 A We were dispatched as per protocol to a vehicle
6 accident. We responded emergently. I arrived on the
7 scene to find, if my memory is correct, a one vehicle
8 accident, the vehicle was off the road with severe
9 damage. One occupant who was dead on arrival when we
10 got there.

11 Q And do you remember where in that vehicle the
12 occupant was located?

13 A Front seat, right side, non-driver.

14 Q Passenger?

15 A Yes.

16 Q Mr. Ferguson, in your time working as a
17 paramedic, EMS with Kershaw County, have you worked a
18 lot of motor vehicle accidents, a lot of fatalities?

19 A Yes, sir, unfortunately I have.

20 Q When you arrived at this scene, was there any
21 doubt in your mind that the passenger was deceased?

22 A None whatsoever.

23 Q Did you formulate any opinion or idea about what
24 had caused his death?

25 MR. POSTIC: I'm going to object to speculation.

1 I don't think he is an expert in that.

2 THE COURT: Overruled, go ahead. He just can't
3 give a ---

4 BY MR. PERRY:

5 Q Did he appear to have died from the crash?

6 A He was involved in a motor vehicle accident and
7 that was the mechanism or, in my opinion, was the
8 mechanism of injury that caused his death.

9 Q Okay. Let's go back, if you would, because the
10 question has been raised about your rendering an
11 opinion about this. What type of training does one go
12 through to become an EMS worker, to be in the position
13 that you're in? What type of training, more
14 particularly, have you been through?

15 A The training, as mandated by the State of South
16 Carolina depending upon the certification level, in
17 this state currently there are three levels of medical
18 technicians, one at the basic level, one is known as
19 an intermediate emergency medical technician and the
20 most advanced is the paramedic.

21 Q And which level are you on, sir?

22 A Currently I'm a paramedic, but I went through all
23 three levels.

24 Q At the time in 2009, were you a paramedic at that
25 point this time?

1 A In 2009, I was a paramedic and had been so since
2 1992.

3 Q Are there ongoing trainings, on the job training,
4 classroom training, ongoing training that you have to
5 go through to maintain your proficiency as a
6 paramedic?

7 A Yes, there is. It's mandated by the State. At
8 the time of this accident, a State certification is
9 good for only three years. During that three year
10 period at all levels the State mandates the amount of
11 continuing education you must get and also the topics
12 of which must be covered, of which we do on a monthly
13 basis.

14 Q And have you always maintained your number of
15 hours, your training, and maintained your
16 certifications?

17 A Yes, I have.

18 Q Have you even gone on and gotten maybe additional
19 training above and beyond what you would be required
20 to receive as your mandatory training?

21 A Yes, I have, as is common for most of us and I'm
22 also certified as a critical care paramedic.

23 Q And specifically what does that mean?

24 A That one is geared more towards critical care,
25 such as medical conditions. It does include some

1 trauma, the sickest patients.

2 Q I know it's probably very difficult for you to
3 quantify by way of a number, but over the course of
4 your career in working in this field, do you have any
5 idea how many motor vehicles collisions you may have
6 worked, any idea?

7 A No, sir. I would hesitate to say so other than
8 it's many since 1989 when I started.

9 Q More than 100?

10 A Yeah, that would be fair, I think.

11 Q And motor vehicle fatalities, do you have any
12 idea how many of those you've worked?

13 A Fifty over the years, 40 to 50.

14 Q I venture to say it would be more than you care
15 to work.

16 A Exactly.

17 MR. PERRY: Your Honor, at this time I'd offer
18 him as an expert in the field of paramedic EMS.

19 THE COURT: Any voir dire? Objection?

20 MR. POSTIC: I don't have a --- not in that
21 field.

22 No objection. Thank you.

23 THE COURT: All right. Go ahead.

24 BY MR. PERRY:

25 Q As a paramedic, I assume there are a great many

1 different types of calls that you would be dispatched
2 to?

3 A That's correct.

4 Q Among those, would motor vehicle accidents
5 compose a fairly high percentage?

6 A Yes, it does.

7 Q And I believe you've already testified that you
8 have probably worked over 50 motor vehicle fatalities,
9 correct?

10 A Yes, sir.

11 Q With all your training, with all your experience
12 working motor vehicle fatalities, when you arrived at
13 this scene, what impressions were made about what you
14 saw, what opinions if any, did you render as a
15 paramedic about the scene situation and the occupant
16 of the vehicle?

17 A Arrived to find one vehicle off the road with
18 severe damage to the front, top, rear right side, one
19 occupant inside who was unresponsive, apneic, which is
20 not breathing, and pulseless with no signs of life, no
21 other explanation for that situation other than the
22 vehicle accident at that time.

23 Q You mentioned the damage to the vehicle, the
24 front, right, rear top. Did you see or observe where
25 the worst of that damage seemed to be?

1 A The worst would be to the front and top.

2 Q Okay. As a paramedic, were you able to make any
3 determination as to the cause of this person's death
4 based on what you observed this that day?

5 A Based on observations ---

6 MR. POSTIC: Your Honor, I'm sorry, again, I
7 object. I think that's beyond the scope. I think
8 he's not a medical examiner. He's not a coroner. As
9 far as causation ---

10 THE COURT: Sustained.

11 MR. POSTIC: Thank you, Your Honor.

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

13 (Pause.)

14 BY MR. PERRY:

15 Q I believe you did say earlier that there was no
16 other reason besides the wreck that could have caused
17 this, correct?

18 A Not obvious to me.

19 Q All right. Now, while you were there, did you
20 see anybody else inside the vehicle other than this
21 individual?

22 A No, sir.

23 Q Okay. Did you participate in any type of a
24 search for another occupant who may have been thrown
25 from the vehicle?

1 A With the fire department and law enforcement, we
2 quickly scanned around the vehicle, it being off the
3 road in a wooded area covered with vines and so forth
4 to make someone --- in an attempt to make sure no one
5 was lying outside the vehicle that could have possibly
6 been ejected at the time of the accident.

7 Q Did you find anyone else any where around the
8 vehicle, personally?

9 A No, sir, we did not.

10 MR. PERRY: No further questions for this
11 witness, Your Honor.

12 THE COURT: Cross-examination?

13 MR. PERRY: Please answer any questions the
14 defense may have.

15 MR. POSTIC: Beg the Court's indulgence.

16 (Pause.)

17 MR. POSTIC: I have no questions of this witness,
18 Your Honor.

19 THE COURT: All right. You may come down. Thank
20 you very much.

21 THE WITNESS: Thank you.

22 THE COURT: Is this witness free to go?
23 Without objection.

24 MR. POSTIC: Yes, I'm sorry, Your Honor.

25 THE COURT: Next witness.

1 MR. PERRY: Your Honor, the state would next call
2 Brent Kelly with the South Carolina Highway Patrol.

3 WILLIAM BRENT KELLY,
4 after being duly sworn, testified as follows:

5 THE CLERK: Have a seat. State your name for the
6 record.

7 THE WITNESS: William B. Kelly.

8 DIRECT EXAMINATION:

9 BY MR. PERRY:

10 Q Trooper Kelly, if you will, please tell the jury
11 a little bit about yourself, where you're from, what's
12 your educational background, who you work for, how
13 long have you been working them?

14 A I live in Lugoff now. Originally from Winnsboro
15 up in Fairfield County. I graduated from Richard Winn
16 Academy. I have an associates degree in criminal
17 justice. I work with the Highway Patrol now and
18 started my career with the Fairfield County sheriff's
19 department.

20 Q How long were you with the Fairfield County
21 sheriff's department?

22 A Six-and-a-half years.

23 Q And when was it that you made that transition
24 over to the Highway Patrol?

25 A March of '07.

1 Q And currently what are your duties with the South
2 Carolina Highway Patrol?

3 A I'm the community relations officer.

4 Q And specifically what do you do in that capacity?

5 A We go around and do safety talks. We do the
6 education side for the Highway Patrol and also handle
7 all media inquiries.

8 Q Back on June 20th, 2009, what capacity were you
9 working with the Highway Patrol then?

10 A I was a trooper on the road in Kershaw County.

11 Q Anything remarkable about that day? Anything
12 about that day that you remember that happened?

13 A Yes, sir, I was dispatched to a single car
14 collision on Twenty-five Mile Creek Road in Kershaw
15 County.

16 Q Do you remember approximately what time of day it
17 was, nighttime, morning?

18 A It was in the morning.

19 Q And when you arrived at that scene, if you will,
20 please tell the court what you found.

21 A When I arrived on the scene, there were a number
22 of emergency personnel already on the scene, EMS, fire
23 department, sheriff's department, and we found a blue
24 Jeep that was overturned off the side of the road in
25 the trees.

1 After approaching the vehicle, I noticed a male
2 who was still seat belted there in the passenger's
3 seat, deceased.

4 Q When you say you found a Jeep, was it one of the
5 rag top Jeeps, was it an SUV? What type of Jeep was
6 it?

7 A It was an SUV.

8 Q Jeep Cherokee, I believe?

9 A Yes, sir.

10 Q All right. Were you the first South Carolina
11 Highway Patrol trooper to arrive there?

12 A Yes, sir.

13 Q Now, you described what you saw, what you
14 observed at the scene. What did you do when you got
15 there in your capacity as a Highway Patrolman? What
16 would your obligations be, your responsibilities be,
17 and what, in fact, did you do?

18 A When I first arrived, after locating and seeing
19 everything, I notified Trooper McKenzie, who also was
20 working that day and advised him what we had and then
21 notified First Sergeant Borowski to respond. At that
22 time, I then secured the scene and First Sergeant
23 Borowski notified the M.A.I.T. Team. I secured the
24 scene, making sure that nobody tampered with the
25 vehicle or anything until the M.A.I.T. Team arrived.

1 Q Now, what is the M.A.I.T. Team? We're going
2 to --- we'll get into those guys later on with
3 testimony, but since you mentioned it, just tell the
4 jury what the M.A.I.T. Team is and what it is that
5 they actually do.

6 A That's actually the reconstruction team with the
7 Highway Patrol.

8 Q And M.A.I.T.?

9 A Yes, M.A.I.T. It stands for multi accident ---
10 multi-disciplinary accident investigation team.

11 Q Okay. So those guys basically, do they work the
12 really serious wrecks; is that correct?

13 A Yes, sir.

14 Q Are all South Carolina Highway Patrol troopers
15 instructed in and taught how to, I guess, work a
16 wreck, if you will, try to do accident reconstruction
17 type stuff?

18 A Yes, sir.

19 Q But on the serious ones, would you, as just a
20 regular trooper working the road, would you do that or
21 call somebody else?

22 A Call somebody else.

23 Q And that would be?

24 A That would be the M.A.I.T. Team.

25 Q Clearly in this case, you felt that was

1 necessary?

2 A Yes, sir.

3 Q And why was that? Tell the jury why you felt it
4 was necessary to call the M.A.I.T. Team?

5 A At that point, we did not have a driver of the
6 vehicle. All we had was the deceased male that was in
7 the passenger's seat. Due to the damage of the
8 vehicle and just the evidence, what we seen then, we
9 felt that it was necessary for the M.A.I.T. Team to
10 respond to the scene.

11 Q Did you yourself participate in or observe anyone
12 else while you were there conduct any sort of a search
13 to see if anyone else had perhaps been ejected from
14 the vehicle or had crawled out of the vehicle and was
15 nearby?

16 A Yes, sir, I searched the immediate area around
17 the vehicle myself and also several of the firemen
18 from the fire department searched the woods, deeper
19 into the woods.

20 Q Did you find anyone or did you observe anybody
21 else who was conducting the search to find any other
22 subjects nearby?

23 A No, sir.

24 Q Now, you said you called First Sergeant Borowski
25 to get him to come out, the M.A.I.T. Team, and you

1 secured the location. What did you do next?

2 A Once the M.A.I.T. Team got on the scene, I
3 assisted them with their investigation.

4 Q Are you actually a member of the M.A.I.T. Team?

5 A No, sir.

6 Q Have you done any type of training that would
7 have prepared you to be helpful to them or to assist
8 them or are you somehow associated or affiliated with
9 them in any way?

10 A I've been through At Scene, which is a basic
11 accident reconstruction.

12 Q How many of the M.A.I.T. Team guys came out? How
13 many typically respond to it?

14 A Two.

15 Q So you assisted them with their efforts to work
16 this accident?

17 A Yes, sir.

18 Q Specifically what did you do to assist the
19 M.A.I.T. Team with their duties and obligations with
20 regard to this accident?

21 A I do the video recording of the scene for
22 M.A.I.T.

23 Q So you actually shot a video while you were there
24 while it was going on?

25 A Yes, sir.

1 Q Of all the different things that the M.A.I.T.
2 Team did?

3 A Yes, sir.

4 Q Did you do anything other than shoot the video to
5 assist them?

6 A I took several photos.

7 Q All right. In addition to shooting video there
8 at the scene, did you at any time have occasion to go
9 down the street to a residence located nearby?

10 A No, sir.

11 Q Okay.

12 A I never left the scene once I arrived.

13 Q How long were you there before you actually
14 cleared the scene? Do you remember approximately what
15 time it was, or about what time it was, before you
16 left?

17 A It was late in the afternoon. I don't know the
18 exact time.

19 Q Okay. Now, by the time you left, had the
20 deceased, had Mr. Wright been removed there from the
21 scene and had the vehicle been removed from the scene?

22 A Yes, sir.

23 Q So you were there from early in the morning? Do
24 you remember approximately what time?

25 A If I can recall, it was around ten o'clock when I

1 arrived on the scene.

2 Q Until late in the afternoon?

3 A Yes, sir.

4 Q And during that whole time, nobody else was found
5 anywhere else around the scene of this crash that
6 could have been involved in the crash either driving
7 or in the vehicle, crawling from the vehicle or
8 anything like that?

9 A You're talking about in the vicinity of the
10 wreck?

11 Q Yes, sir, in the vicinity of the wreck.

12 A No, sir.

13 Q Now, you said in addition to the video, which
14 we'll get to in just few minutes, that you took some
15 photos. What were those photos of? And how did you
16 go about taking those photos? What happened?

17 A The photos were of the defendant.

18 Q Okay. How did the defendant come to be there?

19 A Once we found out who the vehicle was registered
20 to, First Sergeant Borowski and Slaten went to the
21 residence, the owner's residence of the vehicle, and
22 they located the defendant and talking with him during
23 their interview with him, they brought him back down
24 to the incident location, and I took photos of some
25 injuries that he had on his body.

1 Q Do you specifically remember who brought him back
2 to the incident location? Was it First Sergeant
3 Borowski any other trooper or was it Deputy Slaten?
4 Do you remember who brought him back?

5 A No, sir, I don't remember who brought him back.

6 Q Somehow or another he got back to the incident
7 location where you were still standing by; is that
8 correct?

9 A Yes, sir.

10 Q You say you took some photos?

11 A Yes, sir.

12 (Pause.)

13 MR. POSTIC: Without objection, Your Honor.

14 THE COURT: All right.

15 (WHEREUPON, State's Exhibit Numbers 82 through 92
16 were admitted into evidence.)

17 MR. PERRY: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes.

20 BY MR. PERRY:

21 Q Mr. Kelly, I'd hand you up what's been marked for
22 identification purposes only as State's Exhibits 82
23 through 92. I'd ask you to take a look at them and
24 see if you can identify those. Can you tell us what
25 they are?

1 A This first one is a picture of Mr. Thigpen.

2 Q First of all, are those photos that you took?

3 A Yes, sir.

4 Q You can identify them all with specificity as
5 photos that you took as opposed to photos that anyone
6 else took?

7 A Yes, sir.

8 Q All right. The first one you said?

9 A That's the first one of Mr. Thigpen.

10 Q Okay. All right?

11 THE COURT: They're admitted in evidence. If
12 you're going to --- you can display them to the jury,
13 they're in evidence.

14 MR. PERRY: All right. That's good. We can go
15 ahead and put them up then.

16 BY MR. PERRY:

17 Q To help you see better, you may want to stand up,
18 and tell the jury.

19 A Okay.

20 THE COURT: You can stand if you'd like.

21 THE WITNESS: Yes, sir.

22 BY MR. PERRY:

23 Q All right, go ahead.

24 A This one is a photo of Mr. Thigpen.

25 Q This is State's 83.

1 A This photo is a picture of a cut over his right
2 eye.

3 Q All right. Eighty-four?

4 A Again, this is another photo. It's a little bit
5 further away of the cut over his right eye.

6 Q It gives you a better scale?

7 A Yes, sir.

8 Q All right.

9 A These were some marks that were on the inside of
10 his forearm.

11 Q Now, let's talk about these marks for just a
12 second. In the course of your duties as a South
13 Carolina Highway Patrol trooper, you work a lot of
14 wrecks. Is that fair to say?

15 A Yes, sir.

16 Q Do many of these wrecks involve deployment of
17 airbags in vehicles?

18 A Yes, sir.

19 Q Tell the jury a little bit --- some of them may
20 have experienced that. Some of them probably haven't.
21 First of all, do you know what happens when an airbag
22 deploys, the mechanics of it, how it actually deploys,
23 are you aware of that personally?

24 A Basically just whenever you strike something, the
25 airbag comes out of the steering wheel.

1 Q Does it come out very slowly, does it come out
2 fast?

3 A No, it comes out, I've heard anywhere from 150 to
4 200 miles an hour is what I've heard that they say
5 when an airbag comes out.

6 Q When it comes out, does it come out with a great
7 deal of force, a little bit of the force --- how would
8 you say it comes out?

9 A A great deal of force.

10 Q Okay. Have you observed drivers who have been in
11 motor vehicle collisions who have had airbags deploy?

12 A Yes, sir.

13 Q And was there anything in particular about those
14 drivers that you noticed whenever the airbags deploys?

15 A Yes, sir, it leaves marks on their arms
16 consistent with these marks here.

17 Q Specifically what would cause those?

18 A Just burns from the airbag being deployed.

19 Q Okay, like a rug burn, an abrasion, from the heat
20 or ---

21 A Yeah, like a rug burn.

22 Q So when the airbag does that, it's actually
23 striking the arm?

24 A Yes, sir.

25 Q All right. Thank you very much. Go to the next

1 photo. This is State's 86.

2 A Again, this is just another photo of the marks on
3 the inside of his forearm.

4 Q All right. Hold on. Let's put that photo back
5 up. Let's talk about something else just a second
6 here.

7 In addition to the darker red patches, do you see
8 some --- it looks like maybe some scratches or bite
9 marks right down here. Did those appear to be fresh
10 to you at the time?

11 A No, sir.

12 Q Okay. How about on this part where there's ---
13 it looks like another mark that's more of a red color?

14 A Right here?

15 Q Yeah.

16 A Yeah, that appeared to be fresh.

17 Q Okay. Next photo. This is State's 87.

18 A These are some marks of some scratches and dried
19 blood on his elbow.

20 Q Okay. This is State's 88.

21 A Some scratches and blood on his knees.

22 Q All right. What about State's 89?

23 A Same thing, some other shots of scratches and
24 blood on his knees.

25 Q State's 90?

1 A It's hard to see in this photo, but he actually
2 has some markings on his torso area, which was
3 consistent with --- would be consistent with striking
4 something.

5 Q All right. State's 91?

6 A These are some cuts on his hand.

7 Q Thank you. And State's 92?

8 A This was like dirt or some type of dried mud or
9 something that was on the palm of his hand.

10 Q Okay. Thank you very much, Trooper Kelly. You
11 may be seated. You took all these photos?

12 A Yes, sir.

13 Q Every last one of them was of the defendant,
14 Donnie Thigpen?

15 A Yes, sir.

16 Q The marks that you saw on Mr. Thigpen, the
17 injuries that were documented by way of the photos,
18 what were they consistent with?

19 A A vehicle crash.

20 Q Did you interview Mr. Thigpen? Did you discuss
21 with him how he got those injuries at all?

22 A No, sir.

23 Q You just simply took the photos?

24 A Yes, sir.

25 Q More specifically, do the injuries that you

1 observed that you documented in the photos, do they
2 appear to be consistent with having been involved in
3 this particular crash?

4 A Yes, sir.

5 Q Why so?

6 A Evidence in the vehicle. We found dried blood on
7 the headliner over the driver side of the vehicle.

8 Q Was an airbag deployed in this vehicle?

9 A Yes, sir.

10 Q On the driver's side?

11 A Yes, sir.

12 Q How about the steering wheel on this vehicle?

13 Whenever you found the vehicle, was the steering wheel
14 still attached to the steering column?

15 A No, sir. It had been torn off from the steering
16 column.

17 Q Damage to the vehicle, was there a lot of damage
18 to the driver's side, passenger's side, where was the
19 vehicle damaged?

20 A Most of the --- not all of it, but most of the
21 damage was on the passenger's side.

22 Q The driver's side door window, what condition did
23 you find it to be in?

24 A I can't recall.

25 Q All right. You said you shot the video while you

1 were there, while you were helping the M.A.I.T. Team?

2 A Yes.

3 Q If I were to play that video, could you identify
4 it, say whether or not this was the video that you
5 shot?

6 A Yes.

7 Q How would that you have been forwarded from you?
8 How would it have gotten from you into evidence, if
9 you will?

10 A It was turned over to M.A.I.T.

11 Q Okay. So you shot the video, you gave it to the
12 M.A.I.T. Team?

13 A Yes, sir, I was actually using M.A.I.T.'s video
14 camera.

15 Q Were you?

16 A Yes, sir.

17 (Pause.)

18 MR. POSTIC: I'm okay with it, Your Honor, the
19 same objections I had before.

20 THE COURT: All right.

21 MR. POSTIC: With assurances from the solicitor's
22 office.

23 (WHEREUPON, State's Exhibit Number 95 was marked
24 for identification only.)

25 BY MR. PERRY:

1 Q Trooper Kelly, this has just been marked for
2 identification purposes as State's 95. I submit to
3 you it's a DVD with video on there. If you would,
4 please observe and see whether or not this is, in
5 fact, the video that you shot and if you could please
6 narrate what the video shows.

7 A Yes.

8 MR. POSTIC: I'm sorry. Is it for identification
9 purposes?

10 THE COURT: It's without objection. It's in
11 evidence.

12 MR. PERRY: Okay. Thank you.

13 MR. POSTIC: Thank you.

14 (WHEREUPON, State's Exhibit Number 95 was
15 admitted into evidence.)

16 BY MR. PERRY:

17 Q Trooper Kelly, if you would, please describe for
18 the jury what we're looking at here, where this is
19 located?

20 A This is on Twenty-five Mile Creek Road. What
21 you're looking at here is back up the road traveling
22 up the direction that the vehicle was traveling.

23 Q So this is what anyone who was riding in that
24 vehicle would have seen headed towards the direction
25 of the crash?

1 A Yes, sir.

2 Q What's the condition of the roadway?

3 A Dry, asphalt, highway.

4 Q Pot holes, smooth?

5 A Rather smooth.

6 Q In bad condition?

7 A No, it was in good condition.

8 Q Double yellow lines, would that denote the center
9 line of the roadway?

10 A Yes, sir.

11 Q Under South Carolina law, are folks required to
12 drive on one side of the road or the other?

13 A Yes, sir.

14 Q To the best of your knowledge?

15 A Yes, sir.

16 Q The right side?

17 A The right side of the road, yes, sir.

18 Q Is it against the law for them to drive on the
19 left side of the roadway unless they're passing a
20 vehicle or for some other purposes?

21 A Yes, sir.

22 Q For this vehicle to have crashed in the manner
23 that it did, would it have necessarily had to have
24 drive across the center line to the left side of the
25 road?

1 A Yes.

2 Q Would that be in violation of the State law? In
3 fact, if you had observed the same, would you have
4 ticketed the driver for that?

5 A Yes, sir.

6 Q Is this a bridge that we're on here, Trooper
7 Kelly?

8 A It is. It's a bridge and coming up here is where
9 the first sign of when he went off the left side of
10 the roadway.

11 Q Do you have that pointer that Mr. Moak handed you
12 earlier? I presume that to be sort of the concrete
13 abutment of the bridge?

14 A Yes, sir.

15 Q Why do you say that's the first sign that he
16 drove over off the left side of the roadway?

17 A The vehicle actually clips the corner of this
18 bridge right here.

19 Q How do you know that?

20 A There was a metal pole or some kind of stake that
21 was sticking out that was bent and there were markings
22 right on the corner of that cement wall.

23 Q Did it appear to be fresh?

24 A It appeared to be fresh, yes.

25 Q Was it also consistent with the track of the

1 vehicle that we see right here?

2 A This is the first track that we see. There were
3 no skid marks or anything on the roadway. This is the
4 first track that we found, which is consistent with
5 the left tires of the vehicle.

6 Q Did the vehicle appear to have swerved or to have
7 veered in any sort of erratic fashion or did it just
8 simply appear to be driven off the road?

9 A No. It just appeared to have driven off the left
10 side of the roadway. Coming up on the scene, this is
11 the left tire marks over here.

12 Q Stop for just a second. I keep seeing orange
13 dots. Tell this jury what those orange dots are.

14 A We mark the tire tracks.

15 Q Okay.

16 A To --- it helps with M.A.I.T.'s investigation.

17 Q Thank you very much. Please proceed.

18 A At this point, this is where the right tires of
19 the vehicle come off the road and over here, this is
20 left tire marks that's going down into the ditch at
21 this time.

22 Q Did it drop off pretty steep there or was it
23 gradual? What was the decline?

24 A It was a pretty steep drop.

25 Q At this point both -- the vehicle is entirely off

1 the roadway; is that correct?

2 A Yes, sir.

3 And this is the vehicle, where it initially
4 struck that tree right here and then turned over on
5 its top.

6 Q Okay. If you would, just describe what we're
7 seeing there.

8 A Just videos of the vehicle and the scene itself,
9 the condition that the vehicle was in, the location,
10 how it's positioned and now I'm going backwards from
11 the way I just came just showing the view going away
12 from the scene.

13 Q Okay. Now, you're just going back up the track?

14 A Right, yes, sir.

15 Q What was your impression of this wreck, Trooper
16 Kelly? Did it seem pretty straight forward when it
17 happened here?

18 A Yes, sir.

19 Q If you would, just tell the court --- I mean,
20 what happened here?

21 A Just ---

22 MR. POSTIC: Asked and answered, Your Honor. He
23 already said he didn't observe the accident.

24 THE COURT: I'm not sure about the objection.

25 MR. POSTIC: The objection --- asked and

1 answered. He has already answered that question.

2 THE COURT: Asked and answered. I'll allow it.

3 Go ahead.

4 BY MR. PERRY:

5 Q Go ahead.

6 A It appeared that the vehicle just ran off the
7 left side of the road, down in the ditch, struck a
8 tree and overturned.

9 Q Okay. Trooper Kelly, did you find any evidence
10 at all that the vehicle ever attempted to brake or
11 slow its speed as it was heading off in this direction
12 off the road?

13 A No, sir.

14 Q Is there anything else in particular about this
15 incident that you worked, the video, the photos, that
16 we haven't covered that you'd like to share with the
17 court?

18 A No, sir.

19 Q Were you --- and you were not involved at all in
20 any video that may have been taken at the residence?

21 A Yeah, whenever the M.A.I.T. initiated the search
22 warrant at the residence, I videoed that to assist
23 M.A.I.T. with that.

24 Q You did video the residence, as well?

25 A Yes, sir.

1 Q We should have that video coming up here in just
2 a second. Tell us --- before we get to that point,
3 tell us how you came to be there, what you did, as far
4 as how that goes?

5 A They got a search warrant to go to the
6 defendant's residence to look for items that --- his
7 clothing or something he may have been wearing at the
8 time of the crash and once that was granted, once the
9 search warrant was granted, we went to the residence
10 and while M.A.I.T. was photographing, taking their
11 photos and collecting evidence, I did the video
12 portion for them.

13 Q Would it be normal procedure for it to be videoed
14 while they were conducting that search warrant?

15 A Yes, sir.

16 Q Stand by just one moment while we get the other
17 video running.

18 MR. POSTIC: Your Honor, can we approach before
19 we play this next video?

20 THE COURT: Yes.

21 (WHEREUPON, there was a bench conference.)

22 MR. PERRY: Your Honor, we'll withdraw showing
23 that video at this time of the residence.

24 Trooper Kelly, I don't have any further questions
25 for you at this time. Please answer any questions

1 that Mr. Postic has.

2 THE COURT: Cross-examination?

3 MR. POSTIC: Thank you, Your Honor.

4 CROSS-EXAMINATION:

5 BY MR. POSTIC:

6 Q All right. Trooper Kelly, obviously you don't
7 have any firsthand knowledge of how the scratches came
8 on the defendant or how his injuries happened?

9 A No, sir.

10 Q Okay. And you have no witnesses with firsthand
11 knowledge?

12 A No, sir.

13 Q And scratches and abrasions can come from many
14 different places, right?

15 A (Nods in the affirmative.)

16 Q Let me ask you about that scene. We've seen the
17 film of it. I've heard there were snakes and that
18 just kind of freaked me out.

19 So, is it swampy terrain?

20 A It's close to a creek.

21 Q Close to a creek?

22 A Yes, sir.

23 Q Is it a twenty-five mile creek?

24 A I think that's the name of it.

25 Q Is it actually 25 miles?

1 A I don't know.

2 Q It's water.

3 Did you --- the vegetation looks very dense and
4 thick. Is that true? Is that an accurate statement?

5 A Yes, sir.

6 Q Okay. And it's swampy, so it appears to be kind
7 of muddy, as well, right?

8 A Yes, sir.

9 Q Okay. And you mentioned that on one of the
10 photographs, you have a smudge on Donnie's hand,
11 right?

12 A Uh-huh.

13 Q You said it looked like mud or dirt or something
14 like that?

15 A Yes, sir.

16 Q Do you know if that was collected or was there
17 any sort of test on what was on his hand?

18 A I don't know.

19 Q You mentioned that --- you mentioned a lot of
20 things about the accident, about the way it looked,
21 that it happened, but since you're not on M.A.I.T.,
22 these are just sort of observations of yours, right?

23 A Yes, sir.

24 Q You didn't do an accident reconstruction
25 yourself, right?

1 A Right.

2 Q And when you mentioned that it clips the bridge
3 and it appears to be fresh, how do you --- that one
4 spot where the car hit the bridge ---

5 A Uh-huh.

6 Q Did you --- what makes you say that it appears to
7 be fresh?

8 A Because there was just markings on the bridge
9 that were fresh that, you know, didn't appear to be
10 old. The cement was chipped off the bridge.

11 Q It didn't appear to be weathered or anything like
12 that?

13 A No, sir.

14 Q Did you have any contact with Donnie other than
15 the pictures?

16 A No, sir.

17 Q Okay. Did you talk to him at all?

18 A No, sir.

19 Q Even when you were taking pictures?

20 A No, sir.

21 Q One of the officers mentioned earlier that there
22 was glass in his beard. Did you take a picture of
23 that?

24 A No, sir. Those are the only photos that I took
25 of what we observed.

1 Q Or paint? Paint chippings, did you see any paint
2 chippings or take pictures of that?

3 A No, sir.

4 Q Did you see any glass in his beard?

5 A I didn't see any.

6 Q Okay. And certainty if you had, you would have
7 taken a picture of it, right?

8 A Yes, sir.

9 (Pause.)

10 Q Did you see the keys in the car?

11 A Yes, sir.

12 Q Do you know if --- did you take a picture of
13 that --- is that ---

14 A No. I did not take a picture of that.

15 Q Do you know if --- do you have any firsthand
16 knowledge if the house key was on the key chain?

17 A I don't have any, no.

18 Q Okay. Hang on one second.

19 (Pause.)

20 MR. POSTIC: Thank you.

21 THE COURT: Anything further?

22 MR. PERRY: Very briefly, Your Honor.

23 REDIRECT EXAMINATION:

24 BY MR. PERRY:

25 Q Trooper Kelly, it was asked whether or not you

1 were specifically the accident reconstruction guy in
2 this wreck, and you weren't, right?

3 A Right.

4 Q But in the normal course of your duties as a
5 South Carolina trooper, do you reconstruct accidents?

6 A Yes, sir.

7 Q In fact, you do that all the time when there is a
8 collision. That's one of your primary
9 responsibilities, is it not?

10 A Yes, sir.

11 Q And you've been through training on accident
12 reconstruction, correct?

13 A Yes, sir.

14 Q Based on your training, based on your experience,
15 the narrative that you gave on that video, is there
16 any doubt in your mind that the narrative you gave is
17 how this accident took place?

18 A Yes, sir.

19 Q There is a doubt or there isn't?

20 A No, there is no doubt.

21 MR. PERRY: Nothing further, Your Honor.

22 MR. POSTIC: No re-cross.

23 THE COURT: All right, sir. You may come down.

24 May this witness be excused?

25 (There was no response.)

1 THE COURT: Without objection. You're free to
2 go, sir. Thank you very much.

3 MR. PERRY: Your Honor, if he's excused is there
4 any problem with him staying?

5 THE COURT: Absolutely not. It's public
6 courtroom. He's welcome to stay.

7 Who is your next witness?

8 MR. PERRY: Your Honor, the State would next call
9 Sergeant Tom Borowski.

10 THOMAS BOROWSKI,
11 after being duly sworn, testified as follows:

12 THE CLERK: Please and seated. State your full
13 name for the record.

14 THE WITNESS: It's Thomas A. Borowski.

15 DIRECT EXAMINATION:

16 BY MR. PERRY:

17 Q Sergeant Borowski, if you will, please tell the
18 jury a little bit about yourself, where you're from,
19 your educational background and your work history.

20 A I was actually born in Pennsylvania, moved down
21 here to South Carolina back in 1984. I moved down
22 here and went into --- got my associate's degree in
23 law enforcement and then I was in the military, in the
24 military police, came down here looking for a law
25 enforcement job. I first started in 1984 with the

1 city of Florence. I was a patrolman there until 1988.
2 In 1988, I came on in November of 88, I went on the
3 Highway Patrol and have been on the Highway Patrol
4 since then.

5 Q And during the course of working with the Highway
6 Patrol, what have your various positions been? What
7 duties have you held, and how did you come to rise to
8 this rank of first sergeant?

9 A Well, I was on the road in Kershaw County, been
10 assigned to Kershaw County since 1988. I rose through
11 the ranks within this county. I first became a
12 corporal, which was your first line supervisor. After
13 about eight years on the road, about four years later,
14 I then got promoted to sergeant over the area. Two
15 years after that I became a first sergeant. My duties
16 now are I'm the administrator of Kershaw and Lee
17 Counties. I'm the ranking supervisor for both
18 counties. I do scheduling, make sure all the
19 paperwork is in, that kind of thing and then I respond
20 to all the major collisions that happen in the county
21 or interstate --- when the interstate gets blocked,
22 stuff like that, I respond, make sure that things get
23 done right.

24 Q During the course of working with the Highway
25 Patrol, you've had occasion to work motor vehicle

1 collisions, both multicar and single car?

2 A Yes, I have worked many collisions.

3 Q Motor vehicle fatalities, unfortunately?

4 A Yes, I respond to most fatalities.

5 Q It's been an awful long time, a lot of the years
6 with the Highway Patrol. Do you have any idea how
7 many motor vehicle collisions, fatalities you may have
8 worked?

9 A It's a lot. I can't tell you the number. I
10 respond to --- I respond to most of the fatalities
11 that we have and, you know, we have average 20 a year
12 or so. That adds up to be about 100, I guess, or
13 more.

14 Q Sergeant Borowski, on June 20, 2009, in what
15 capacity were you serving with the Highway Patrol?

16 A I was a first sergeant.

17 Q You were the supervisor?

18 A I was the supervisor.

19 Q Basically the same position you're in now?

20 A Same position I'm in now.

21 Q What involvement, if any, did you have with the
22 events that took place on Twenty-five Mile Creek Road
23 on the morning of June 20, 2009?

24 A I was the supervisor that morning. I also have
25 supervisors that work for me. I have a sergeant and

1 corporals. I was the supervisor that day. I
2 responded to the major collision to ensure that all
3 the people are notified about the collision and it's
4 worked right.

5 Q Sergeant, if you will, you referred to this as a
6 major collision. What was it about this collision
7 that made it a major collision? And what was it about
8 this collision that warranted you being called to this
9 scene rather than simply one of your other supervisors
10 or a corporal or maybe just a regular sergeant handle
11 this?

12 A It was involving a fatality.

13 Q Okay.

14 A I respond to the fatalities within Kershaw and
15 Lee Counties.

16 Q Now, when you arrived at the scene, did you
17 happen to look at your watch or the clock in your car
18 to see exactly what time it was?

19 A No, I did not.

20 Q Do you remember approximately what time of day it
21 was whenever you arrived there?

22 A I would think it's about 11:00 o'clock.

23 Q Okay. And who contacted you or notified you that
24 you needed to come out to the scene? Did you hear
25 about it on the radio? Did somebody call you? What

1 happened?

2 A I heard it on the radio, that there was a
3 fatality out there on Twenty-five Mile Creek Road and
4 I just responded.

5 Q Were you working that day or was it a day off for
6 you?

7 A I believe I was working that day, yes.

8 Q Okay. Now, when you arrived at the scene, what
9 did you find?

10 A When I arrived on the scene, all the emergency
11 personnel was already on the scene, the fire
12 department, the sheriff's department, EMS, Trooper
13 Kelly and McKenzie were there. I talked to both of
14 them to find out what happened, what's going on here,
15 and they advised me about the one car collision. I
16 noticed the vehicle, which was a blue Jeep off the
17 roadway, off the left side of the road turned upside
18 down.

19 Q Tell the court, if you will, about your
20 particular observations with respect to this vehicle?
21 What was remarkable about it? What was notable about
22 the vehicle and the condition that you found it?

23 A When you looked at the vehicle, it was just like
24 it was on the pictures you've seen. It was turned
25 upside down with a lot of extensive damage to it. It

1 appeared to have collided with the tree because you
2 could see the bark missing off the tree itself. It
3 was --- it drove off the left side of the road. The
4 vehicle just appeared to have gone off the left side
5 of the road and struck a tree and overturned.

6 Q Now, did you specifically yourself have anything
7 to do with the investigation of or re-creation of this
8 accident? In other words, the physical aspects of how
9 this collision took place?

10 A No.

11 Q All right.

12 A M.A.I.T. did that.

13 Q So you were just there more in a supervisor
14 capacity to make sure all the I's got dotted and the
15 T's got crossed?

16 A Yes.

17 Q When you arrived there, was anyone still in the
18 vehicle?

19 A Yes, there was a person still in the vehicle in
20 the passenger's side, seat belted in.

21 Q While you were there, did you observe anyone
22 conduct or participate in any sort of search of the
23 immediate area for other persons?

24 A I was not --- I don't believe I was there when
25 they searched the area. I got there afterwards, but I

1 was told --- when I asked where the driver was, they
2 said they searched the area to see if the driver was
3 ejected and there were no signs of any other people
4 around the vehicle.

5 Q The entire time that you were there on the scene,
6 did you ever yourself personally observe anyone else
7 found in the area that was reportedly in the vehicle?

8 A No one else was found around the vehicle.

9 Q All right. What other involvement did you have
10 in this matter? Did you come to find out where the
11 vehicle was registered to and, if so, what did you do?

12 A Yes, I believe it was Deputy Slaten that was the
13 one who advised that the owner of the vehicle lived
14 right down the street, was on the road, just a little
15 bit down the way.

16 Q Who was the owner of that vehicle?

17 A Donnie Thigpen. We decided to get --- I mean, I
18 decided for me and him to get my vehicle. His vehicle
19 was blocking off the road so no traffic could get
20 through. We decided to go down to the residence to
21 see if the registered owner of the vehicle was home.

22 Q And so you drove your vehicle from the accident
23 scene to the residence. Approximately how long did
24 that take?

25 A Less than a minute. It wasn't that far.

1 Q Okay. In your opinion, would it be an easy walk?

2 A Yes, you can walk to it.

3 Q What did you find whenever you got to the
4 residence?

5 A We got to the residence. It was a trailer. I
6 believe it was a double wide trailer there.

7 Q Were there any vehicles there when you got there?

8 A There were no vehicles there.

9 Q Okay.

10 A We decided to knock on the door to see if anybody
11 was home. We knocked on the door for a little bit.

12 Q What kind of condition did you find the door in?
13 Let's talk about that. Could you see ---

14 A You could see the door had ---

15 Q Were there marks about the door?

16 A It had footprints on the door itself and had some
17 damage where the lock mechanism is.

18 Q Did the damage appear to be fresh or did it
19 appear to be old?

20 A It appeared to be fresh.

21 Q Is there any reason you would say that? Was
22 there anything you can say about that, anything about
23 the damage that caused you to think it was fresh?

24 A I think the wood was kind of splintered. You
25 could see that it wasn't --- I mean, if the door would

1 have been --- it's red, so I would assume somebody
2 would have fixed it and make sure it's ---

3 Q So there were footprints on the door?

4 A There were footprints on the door, yes.

5 Q So then what happened?

6 A We knocked on the door, we got no response after
7 a while. We decided that we didn't think anybody was
8 at home. We were going to leave, and then somebody
9 did answer. Mr. Thigpen answered the door.

10 Q What kind of condition did you find Mr. Thigpen
11 to be in?

12 A When he came to the door, he was wrapped in a
13 towel around his waist. Appeared that he just got out
14 of the shower.

15 Q Did you engage him in conversation?

16 A Yeah, we wanted to --- he asked what we wanted.
17 We told him that we were there about his vehicle being
18 involved in a crash down the road. He said something,
19 to wait a minute that he had to go put his dog up. He
20 put his dog up, went and got changed and put on a
21 t-shirt and shorts.

22 Q What happened next?

23 A He came outside the house. We talked to him on
24 the outside of the house, questioned him about the
25 collision itself.

1 We were asking him if he knew his vehicle was
2 involved in a collision, and he said, "No." Then I
3 started looking at him. It was almost obvious that he
4 was in some type of collision because he had damage to
5 his arms. He had scrapes and cuts. He had a cut over
6 his eye. You could see the burn mark on his arm as
7 was shown.

8 Q Let's talk about that for just a second. Let's
9 talk about your observations of his physical
10 appearance and things that you saw about him that
11 caused you to think he had been involved in a
12 collision. First of all, you testified that you
13 worked a great many collisions. Have you had occasion
14 to observe folks who have been involved in collisions
15 after the fact?

16 A Yes.

17 Q Were there physical things that you observed
18 about them, about injuries, or their demeanor or
19 things of that nature that you observed about
20 Mr. Thigpen on this morning in question?

21 A Yes.

22 Q Okay.

23 A I mean, he had --- like I said, the cut over his
24 eye. It wasn't bleeding at the time, but it was a
25 noticeable cut. He did have scratches on his hands,

1 his feet, knees area had scratches, elbows had
2 scratches. He had a --- when he first came to the
3 scene, he did have some kind of mark on his chest. At
4 first I didn't know if it was a seat belt mark or was
5 it from the steering wheel. I wasn't sure.

6 Q Did the injuries you observed appear to be fresh
7 or did they appear to be older injuries?

8 A They were fresh.

9 Q What about these injuries caused you to believe
10 they were fresh and not days old?

11 A They weren't scabbed over, just open cuts. Blood
12 still on the edge of them, that kind of thing.

13 Q And we talked about and we've seen the photos of
14 the marks on his arms. You've had a lot of experience
15 as a highway patrolman. If you would, just explain to
16 the jury again about these marks and about why you
17 thought those marks were caused from an airbag
18 deployment?

19 A Normally when people are driving, they have both
20 hands on the steering wheel. When the airbag deploys,
21 it deploys out fast, and it deploys out hard. When it
22 does, it pushes --- goes against your skin. When it
23 does, it kind of burns it or gives it like a rug burn
24 as described, and it just scrapes your arm. It's
25 visibly noticeable. You can tell that. That's just

1 one of the things that we look at like when we talk to
2 people --- when I have talked to people in the past
3 about being a driver of a vehicle.

4 Q Did the marks on Mr. Thigpen's arms appear in
5 your opinion to be consistent with the deployment of
6 an airbag?

7 A Yes.

8 Q And you've observed those same types of marks on
9 other folks who have been in vehicles where airbags
10 have deployed?

11 A Yes.

12 Q Many times?

13 A Many times, yes.

14 Q Yes. Did Mr. Thigpen offer any alternative
15 explanation for the injuries that you observed and
16 pointed out?

17 A No. He gave us no explanation about his
18 injuries.

19 Q If you would, just continue with how that
20 interview went?

21 A We started talking to him more, and I noticed
22 that he was intoxicated. You could tell he was
23 intoxicated.

24 Q What about him made you think that he was
25 intoxicated or under the influence of something?

1 A He had a strong odor of alcohol still on his
2 person. His speech was somewhat slurred, but he was
3 understanding.

4 Q And let's go back to the strong odor of alcohol
5 about his person. I think we've all heard that. It
6 rolls off the tongue nicely, but specifically what
7 does that mean? I mean, tell the jury, was it from
8 his body, his breath, where was it coming from?

9 A It was coming from his person. When he talked,
10 you could smell it.

11 Q Okay.

12 A You know, when you drink alcohol, it's not the
13 alcohol you smell, it's the impurities or the stuff
14 that's in the alcohol, the beer that makes the smell.
15 You can smell it. You could smell it from him. It
16 was obvious. I smell alcohol a lot, just the way he
17 looked, he appeared to be intoxicated.

18 Q And during the course of your tenure with the
19 Highway Patrol, have you received extensive training
20 about observing folks who may have been drinking and
21 being able to ascertain, in fact, whether or not they
22 appear to be under the influence of some sort of
23 intoxicants?

24 Q Yes. We go through a lot of training about the
25 intoxicated driver. It's one of our main focuses of

1 the Highway Patrol is to apprehend the intoxicated
2 driver.

3 Q At that point in time, there was no doubt in your
4 mind that Mr. Thigpen was under the influence of some
5 sort of intoxicant?

6 A That's correct.

7 Q In addition to the smell of the alcohol that was
8 coming from his person, what other reasons caused you
9 to believe that?

10 A When he talked, he had slurred speech. His eyes
11 were slightly bloodshot and he just had the overall
12 appearance of being intoxicated.

13 Q At this point, was he under arrest?

14 A No.

15 Q Where were you guys located? Were you in the
16 house, out of the house, on the porch, on the ground?

17 A We were on his porch.

18 Q Okay. As you continued the conversation with
19 him, did you ask him about driving the vehicle, where
20 he had been the night before, what he had been doing?

21 A Yes, we talked with him.

22 Q Did you offer any explanation?

23 A Yeah, we talked to him. When he first answered
24 the door, we kind of had an idea that he might have
25 been driving the vehicle just from first impressions.

1 When he came outside on the porch, I started looking
2 at him some more. You could tell he had injuries to
3 him. It was his vehicle. It was within walking
4 distance. At that time we decided to Mirandize him,
5 which Deputy Slaten did, he read him his rights. We
6 started talking to him about the collision itself. He
7 denied anything about being involved in the collision,
8 and he didn't have any explanation for why his vehicle
9 was down the road. He just denied everything.

10 Q Did he have give any explanation for how he come
11 to home without his vehicle being there or where he
12 had been the night before?

13 A I believe he said he got a ride home and ---

14 MR. POSTIC: Your Honor, can we approach quickly?
15 Very, very quickly?

16 (WHEREUPON, there was a bench conference.)

17 THE COURT: You may continue.

18 BY MR. PERRY:

19 Q Did Mr. Thigpen have any discussion with you
20 about what he had been doing the night before?

21 A I don't remember all the circumstances. I just
22 remember him denying that he was involved in a crash
23 or that he had anything to do with it.

24 Q And Mr. Thigpen, when asked, did he have any
25 response as to how his vehicle came to be where it

1 was?

2 A No. He had no explanation of how it got there.

3 Q Taking everything in the totality, everything
4 that you observed, both at the accident scene and at
5 the residence, at that point, had you made a decision
6 about what to --- how to proceed in that manner?

7 A Yes, just looking at talking to him on his porch,
8 finding out that the vehicle was --- finding out the
9 person the vehicle was registered to was him, and that
10 it was within walking distance of his house. We went
11 to his house, talked to him. It looked like he had
12 freshly showered. I noticed that he had been drinking
13 and smelled of alcohol. He had abrasions and cuts all
14 over his person.

15 It was determined that, you know, it's obvious
16 that he was the driver of the vehicle even though he
17 denied it and he was placed under arrest for driving
18 under the influence involving a death and leaving the
19 scene of the accident involving death.

20 Q And did you take him into custody at that time?

21 A I believe --- I don't know if I was me or Pat
22 McKenzie that did. He was handcuffed. I'm not sure
23 which one of us, but I think it was Pat McKenzie.

24 Q Pat McKenzie?

25 A Trooper McKenzie. He's a trooper that actually I

1 conferred with him. He came in --- I first talked to
2 Deputy Slaten. I used my cell phone to call Trooper
3 McKenzie to come to the scene. Trooper McKenzie came
4 to the scene. I talked to him about what we had here
5 going back up there. I questioned him about the
6 collision and he still denied it. I talked to Trooper
7 McKenzie again. We both determined that he was the
8 driver of the vehicle and he was then placed under
9 arrest.

10 Q All right. Did either yourself or Trooper
11 McKenzie have occasion to transport him back town
12 to ---

13 A Yeah, I believe I transported him --- at one
14 point when we were looking at him, we did notice that
15 he had like glass in his beard. He had little shards
16 of glass in his beard and you could see it shining.
17 He had it in his hair, and he had --- also, in his
18 right ear he had a piece of paint, like blue paint
19 that was in his ear.

20 After we arrested him, I talked to the deputy to
21 see if we had a Q-tip or something so we could get it
22 out of his ear. Trooper McKenzie then went back to
23 the --- the Q-tips that we were looking for were in
24 the deputy's vehicle. He went back to the scene to
25 retrieve the Q-tips, and I transported him back to the

1 scene so we could maybe match it up. By the time we
2 got to the scene and got him back out to the car, the
3 paint chip was gone. I don't know what happened to
4 it, but it was obviously a blue paint chip that was in
5 his ear.

6 Q When you went to the residence, did you have any
7 sort of camera with you at that time?

8 A I had nothing, no.

9 Q So you weren't able to take any photographs of
10 the tiny glass shards that you saw in his hair, in his
11 beard?

12 A You could see them, but it was like real fine.
13 Like glass that's really shattered. You could just
14 see pieces of glass in his hair and beard. The blue
15 paint chip was just a small blue paint chip in his
16 ear.

17 Q What color was the vehicle again?

18 A It was blue.

19 Q Was glass shattered in the vehicle?

20 A Yes.

21 Q What happened next?

22 A We took him --- I took him back to the scene
23 where we met up. That's where Trooper Kelly took
24 pictures of Mr. Thigpen and his injuries. That's when
25 we got a camera then and the pictures were taken of

1 him, and he was transported to the hospital to get
2 some blood and urine by Trooper McKenzie.

3 Q And after that, what was your involvement? What
4 did you do?

5 A I asked Deputy Slaten if he could stay at the
6 subject's house to secure the house and talk to
7 M.A.I.T. We wanted to get a search warrant of the
8 house to see if there was any evidence left in the
9 house, his clothing, examples, stuff like that.

10 I met with Judge Hartis here at the courthouse,
11 obtained a search warrant for the residence and we
12 went back to the residence and executed the search
13 warrant and found objects or items in the house
14 itself.

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

16 (Pause.)

17 MR. PERRY: Your Honor, may I approach?

18 (Pause.)

19 THE COURT: Just have a seat. Yes, sir, go
20 ahead.

21 (WHEREUPON, State's Exhibit Number 96 was marked
22 for identification only.)

23 BY MR. PERRY:

24 Q Trooper Borowski, I would hand up to you what's
25 been marked for identification purposes only as

1 State's 96 and in particular, after you've seen
2 whether or not you can identify that, refer you to the
3 last page.

4 A Yeah, this is the search warrant that I initiated
5 on this case and signed by Judge Hartis --- or I
6 signed it, and then the return part of the search
7 warrant, which was signed by Trooper Kelly.

8 Q All right. And specifically what sorts of
9 things --- in general, what sorts of things were you
10 looking for whenever your went to execute that search
11 warrant? What were you hoping to find at the
12 residence?

13 A The first part of this search warrant is just a
14 description of the premise to be searched. I put down
15 the address of . It's
16 a tan in color double wide trailer with dark green
17 shutters, wood door on the front, chain link fence on
18 the back, middle glass missing in the storm door to
19 include any outlying curbages, which is any other
20 buildings or anything there. The description of
21 property that we were looking for was all clothing
22 worn in a traffic collision that may have blood, paint
23 chips or any other type of evidence to include DNA.
24 Any first-aid material that was used to clean wounds
25 that might have occurred from a traffic collision and

1 material which might contain evidence from a crime
2 that may contain blood, paint chips, or DNA.

3 Q And when you went there to execute this search
4 warrant, were you by yourself or were there other
5 officers that went with you?

6 A Other officers went with us, members of the
7 M.A.I.T. Team and Trooper Kelly.

8 Q Did you actually find and secure any evidence
9 yourself or would that have been the guys on the
10 M.A.I.T. Team that did that? Were you just there to
11 supervise?

12 A I was there to supervise and they were there to
13 collect the evidence, the M.A.I.T. Team.

14 Q So that you can better explain to us what was
15 found; is that correct?

16 A That's correct.

17 Q In addition to your involvement with obtaining
18 and executing the search warrant, were there any other
19 things that you were involved in with respect to this
20 case at all?

21 A As soon as the search warrant was done, we went
22 to the detention center here in Kershaw County, where
23 M.A.I.T. also did an interview with Mr. Thigpen.

24 Q You and what other officers were there?

25 A I think it was O'Donnell and ---

1 Q Coats?

2 A Yeah, yeah, Monty Coats.

3 Q So Coats, O'Donnell and yourself?

4 A Yes, we were there.

5 Q Approximately what time of day was that that you
6 went there?

7 A It was in the afternoon. I would say it was
8 5:30, six o'clock, I would assume.

9 Q So approximately what time did you originally go
10 to the house and initially take Mr. Thigpen into
11 custody?

12 A I would say it was --- when I got to the scene,
13 it was around 11:00. It probably was around 12:30, I
14 would imagine, around there, around 12:20 when he was
15 placed under arrest.

16 Q And you asked him some questions there, right?

17 A Yes.

18 Q And then Trooper McKenzie transported him,
19 correct?

20 A That's correct.

21 Q Took him, as you understand it, to the Kershaw
22 County hospital to have blood, urine taken, and then
23 eventually transported him on to the jail?

24 A That's correct.

25 Q So no doubt about it, he was in custody at that

1 point, he wasn't going anywhere, right?

2 A That's correct. He wasn't going anywhere.

3 Q But after you had initially questioned him, was
4 there ongoing interrogation of this defendant, of
5 Mr. Thigpen throughout the day to your knowledge?

6 A My involvement was just at the scene. I'm not
7 sure what Trooper McKenzie did when he took him from
8 the scene to the hospital. I don't know if he was
9 questioning him still, and then when he got to the
10 jail shortly half that, we arrived at the jail and
11 questioned him some more.

12 Q And that was later in the day?

13 A That was later in the day.

14 Q Approximately five p.m.?

15 A Yes, it was five, six o'clock, I'm not sure
16 exactly what time it was. That would be on --- when
17 there is a statement, the time would be on there.

18 Q Trooper Borowski --- Sergeant Borowski, you were
19 the supervisor in charge of all highway patrolman
20 involved in this investigation; is that correct?

21 A Yes.

22 Q So would you have been aware of everything your
23 officers did and how they conducted this
24 investigation?

25 A Yes, some of it I instructed them to do and some

1 of it they told me.

2 Q Sure, and to the best of your knowledge, was
3 there a six hour interrogation of this defendant?

4 A No, there was no six hour interrogation, no.

5 MR. PERRY: Nothing further of the witness.

6 THE COURT: Cross-examination?

7 MR. POSTIC: Thank you.

8 CROSS-EXAMINATION:

9 BY MR. POSTIC:

10 Q Good afternoon. I'm going to ask you a lot of
11 questions about this investigation, and if it's
12 something that's out of your scope, please let me
13 know. I don't want to beat a dead horse.

14 A Sure.

15 Q All right. Let's start with the ---

16 THE COURT: Counsel, let me see you a minute.
17 Approach.

18 (WHEREUPON, there was a bench conference.)

19 THE COURT: All right. Ladies and gentlemen of
20 the jury, the cross-examination in this case may
21 take --- I'm not sure, a fair amount of time. It is
22 approaching the lunch hour, so I think at this time,
23 the most efficient use of our time --- just have a
24 seat, counsel --- would be to go ahead and take a
25 lunch break. I'm going to ask you to be back in the

1 jury room at two o'clock. That will give you about an
2 hour 15 minutes for lunch and we'll continue at that
3 time. So remember my instructions. Don't talk about
4 this case when you return to the jury room or with
5 anyone else over the lunch hour. Have a pleasant
6 lunch and we'll see you at two o'clock. Thank you
7 very much.

8 (WHEREUPON, the jury left open court at
9 12:44 p.m.)

10 THE COURT: Folks, just stay seated until the
11 jury leaves the room, please.

12 All right. Stand at ease until two o'clock.

13 MR. POSTIC: Your Honor, just I want to make sure
14 that the witness is ---

15 THE COURT: That's my job.

16 MR. POSTIC: Thank you.

17 THE COURT: Just don't talk to the solicitors or
18 anybody else over the lunch hour. Then you can go
19 ahead back out.

20 THE WITNESS: Thank you, Judge.

21 (WHEREUPON, a lunch break was taken.)

22 THE COURT: State ready for the jury?

23 MR. PERRY: Yes, sir.

24 THE COURT: Defense ready for the jury?

25 MR. POSTIC: (Nods in the affirmative.)

1 THE COURT: All right. Bring the jury, please.

2 (WHEREUPON, the jury came into open court at

3 approximately 2:11 p.m.)

4 THE COURT: All right. Mr. Postic, you may begin
5 your cross-examination.

6 CROSS-EXAMINATION:

7 BY MR. POSTIC:

8 Q Sergeant Borowski?

9 A Yes.

10 Q Good afternoon.

11 A Good afternoon.

12 Q You've been with the Highway Patrol since 1988,
13 correct?

14 A Yes.

15 Q You've dealt with many, many cases, as you
16 pointed out before?

17 A Yes.

18 Q And many, many car accidents?

19 A Yes.

20 Q And many fatal accidents, as well?

21 A Yes.

22 Q And each case is somewhat unique, right?

23 A Yes.

24 Q I mean, like almost like a snow flake. There are
25 just no two the same?

1 A They have similarities.

2 Q But there's always, you know, there might be a
3 little something different in each one?

4 A Yes, usually --- I mean, I can pinpoint usually
5 what kind of accidents we have or the fatalities we
6 have, those are one that are more prominent than the
7 others.

8 Q Okay. And this one is somewhat unique in that
9 there was no driver at the scene; is that correct?

10 A Correct.

11 Q And you can't even actually pinpoint an actual
12 time of the accident?

13 A Correct.

14 Q Within the only --- the way you worked it out
15 was --- and I can't remember if this was part of your
16 direct testimony. How did you work out that it
17 happened some time between five in the morning and
18 nine in the morning?

19 A I think the M.A.I.T. Team, the actual
20 reconstruction team, is the team that did that.

21 Q Okay.

22 A They did the timing.

23 Q But still, there's a four hour window?

24 A Yes, there was some time between the crash and
25 when we found Mr. Thigpen.

1 Q And --- well, that's not what I'm talking about.
2 I'm talking about there is a time between when the
3 accident may have happened?

4 A And when we arrived.

5 Q Correct. And then y'all get to Mr. Thigpen
6 around 11:00, I think is what we get to?

7 A Yes.

8 Q Okay. And you're the supervising officer over
9 the entire investigation; is that correct?

10 A Yes.

11 Q And so again and again if this is going to be
12 more M.A.I.T. related, I suppose that's going to be a
13 little different than what you can testify to,
14 correct?

15 A Correct.

16 Q Please stop me if I'm asking you something you
17 don't feel like you can answer.

18 A Sure.

19 Q This case is different because there is no driver
20 when you get there?

21 A Correct.

22 Q So there has to be an investigation to find out
23 who that driver is, correct?

24 A Yes, sir.

25 Q And pretty quickly you find a suspect?

1 A Yes.

2 Q And that's Donnie?

3 A Yes.

4 Q Okay. Is there any point when there was any
5 other suspects that you thought of or that anybody
6 spoke of at any time?

7 A No, there was no other suspect.

8 Q Okay. Any witnesses?

9 A To the crash, no witnesses to the crash, no.

10 Q Okay. I'm sorry.

11 MR. POSTIC: I'm approaching, Your Honor. I
12 apologize.

13 THE COURT: Go ahead.

14 BY MR. POSTIC:

15 Q There are homes nearby. I mean, it's pretty ---
16 it's not a densely populated area; is that correct?

17 A That's correct.

18 Q Did anybody go and talk to the neighbors? Do you
19 know if anybody spoke to the neighbors?

20 A I did not. I don't think anybody did.

21 Q Okay. Wouldn't that have helped to have had
22 somebody maybe pinpoint a time when they might have
23 heard a crash?

24 A I know we didn't do that. I don't know if

25 M.A.I.T. went by and talked to somebody further on.

1 Q Okay. I'll ask them, too, but as far as you
2 know, nobody went to ask anybody to see if they had
3 heard a crash?

4 A No.

5 Q Or seen somebody leaving an accident, nobody?

6 A No, we did not.

7 Q The scene of the accident is in sort of a wooded
8 area?

9 A Correct.

10 Q In fact, when we see the video, we don't even see
11 the car until we're almost on top of it, correct?

12 A Correct.

13 Q Is it a muddy area?

14 A I mean, it's just a wooded area. I'm guessing it
15 was muddy. It was on a slope ---

16 Q Okay.

17 A --- where the car was, yes.

18 Q And it is part of your testimony that part of the
19 items that you removed from my client's house are his
20 shoes; is that correct?

21 A I didn't testify to that.

22 MR. PERRY: Your Honor, that wasn't on direct.

23 THE COURT: Sir?

24 MR. PERRY: Objection, Your Honor.

25 THE COURT: Yes, sir. He can answer the

1 question.

2 MR. POSTIC: Thank you.

3 BY MR. POSTIC:

4 Q So as far as you know, was there any sort of
5 testing as to the mud on my client's clothing or my
6 client's shoes?

7 A As far as I know, no, there was no testing on the
8 mud.

9 Q And we make a big point of the shoe print on the
10 door where the door had been kicked in?

11 A Yes.

12 Q And you saw this yourself?

13 A Yes.

14 Q Do you know if there was any photograph taken of
15 that?

16 A Yes.

17 Q Okay. Did y'all try to match Donnie's shoe to
18 that door, to that footprint?

19 A I did not. I don't know if M.A.I.T. did.

20 Q Okay.

21 A That would be part of their investigation if they
22 did that.

23 Q Okay, I'll ask them that, too. Actually, let's
24 move to Donnie's house. You initially come to the
25 scene of the accident and shortly thereafter you and

1 Corporal Slaten go to Donnie's house?

2 A Yes, sir.

3 Q Okay. And you drive?

4 A Yes.

5 Q Okay. Why did y'all drive instead of walking,
6 just curious?

7 A No reason. Just easier for us, I guess.

8 Q Okay.

9 A Easier for us to get in the car and go.

10 Q Okay.

11 A We knew about where the house was. We didn't
12 know how far down it was, so we had to look at the
13 addresses and ---

14 Q That makes sense.

15 A We didn't know if it was going to be two miles
16 down the road or 100 yards.

17 Q That makes sense. Did you and Corporal Slaten
18 leave the car together to go and knock on the door?

19 A Yes, we rode in my car.

20 Q Okay. And when you arrived there, you said it
21 took some time for him to answer the door; is that
22 correct?

23 A Yes, it took some time.

24 Q And when he did answer, it looked like he had
25 just gotten out of the shower?

1 A Correct.

2 Q And was it then or later that you observed the
3 things that you talked about, the scratches and the
4 glass in the beard?

5 A I mean, just my personal impression, when you see
6 him, you could see marks on him. I didn't get a full
7 good look at where he had his injuries. You could
8 tell he had some scrapes and stuff on him. You could
9 see the cut on his eye. Then he went to get changed,
10 or put his dog up and then put some clothes on.

11 Q Okay. And I got to ask you about this glass in
12 the beard. Why didn't you collect that?

13 A Why didn't I collect it out of his beard?

14 Q Yeah.

15 A It was just real fine pieces of shiny ---

16 Q I know, but why didn't you take a picture of it?

17 A I didn't have a camera at that time.

18 Q Well, Kelly had a camera, right?

19 A Yeah. They took a picture of his face, but you
20 couldn't see the ---

21 Q You didn't direct him to take that? I mean, they
22 might want to see that. So you didn't direct them to,
23 you know, let's take a close up picture of this glass?

24 A No, we did not take a picture.

25 Q Or of the paint?

1 A At the time I didn't have a camera with me. When
2 we were trying to retrieve the paint out of his ear,
3 it just ---

4 Q Blew away?

5 A I don't know if it went like --- I don't
6 remember, but when we went to check it again, it was
7 gone.

8 Q Okay. And are you --- let me check the return.
9 (Pause.)

10 Were you part of the team that executed the
11 search warrant?

12 A Yes.

13 Q Do you know what members of your team took out of
14 the house?

15 A I seen them taking items out, but they
16 wrote --- it was written on the form what was taken
17 out.

18 Q Did you have any idea what they did where those
19 items?

20 A I know they put them in paper bags when they took
21 them to our central evidence. I would assume that's
22 what they did. That's protocol.

23 Q Okay. Do you know if there was any testing done
24 on those items?

25 A No.

1 Q Any testing of his --- you don't know if there
2 was any testing?

3 A I don't know if there was any testing. I don't
4 know if they did any testing. If there was any
5 testing, I don't know what they did.

6 Q Okay. And you said it was obvious that he had
7 gotten into a collision?

8 A Yes.

9 Q But you don't have any firsthand knowledge that
10 he was in that collision, do you?

11 A Other than my observations, no.

12 Q Okay. Did you --- it was under your direction
13 that Donnie was arrested for felony DUI; is that
14 correct?

15 A Me and Trooper McKenzie. We talked and we both
16 agreed that he was, you know, we believed that he was
17 the driver of the vehicle and that's when he was
18 placed under arrest, yes.

19 Q Okay. At the point that you arrest him, you
20 don't know what his blood alcohol is or anything like
21 that, do you?

22 A No, I do not.

23 Q Okay. And you don't --- but don't you have tests
24 to determine whether or not somebody is under the
25 influence?

1 A We have blood tests and DataMaster tests that we
2 use.

3 Q No. I mean at the scene, when you are talking to
4 someone?

5 A We can do sobriety tests, yes.

6 Q Were those done on Donnie?

7 A No, we didn't do any sobriety tests. He was
8 obviously intoxicated.

9 Q Well, I mean, there are different levels of
10 intoxication. Isn't that's why you all do those
11 tests; isn't that correct?

12 A We have what they call a field sobriety, standard
13 field sobriety test, that we do and it's just a series
14 of things that we do to show intoxication, yes.

15 Q And what is it about someone that makes you say
16 that they're obviously intoxicated, that you don't
17 even need to do the field sobriety tests?

18 A Just by way he looks, the demeanor, the smell of
19 it, the bloodshot eyes, the slurring of speech. It's
20 just you don't really pick out one specific item. You
21 try to combine them all into one, and then that's when
22 you come up with the idea. That's what we --- that's
23 what I do.

24 Q Okay. And you ---

25 A But if he just had slurred speech, I would not do

1 that. If he had slurred speech, but did not smell of
2 alcohol, you'd say is he drinking or not. If you have
3 a combination of all of those, the police believe that
4 he is intoxicated.

5 Q And he --- so he smelled of alcohol, slurred
6 peach. Did you say he was unsteady maybe a little
7 bit?

8 A No, I did not say that.

9 Q Okay. Did he appear confused?

10 A I don't know if confused is it. He was
11 just --- I wouldn't say confused is a good word. He
12 knew where he was and what he was doing.

13 Q Well, was he sort of questioning while y'all were
14 there?

15 A Yeah, he questioned us while we were there.

16 Q Okay.

17 A We explained to him about his vehicle being in a
18 collision.

19 Q All right. And he denied it?

20 A He denied it.

21 Q Okay. And he was Mirandized; is that correct?

22 A Yes, he was.

23 Q Okay, and by Miranda, you mean that his rights
24 were read to him, his right to remain silent, the
25 right to answer questions, the right to be used in

1 court?

2 A Yes.

3 Q Those questions?

4 A Correct.

5 Q And the right to stop questioning at any time,
6 too?

7 A Yes.

8 Q Okay. And he appeared to you to understand those
9 rights at that point, correct?

10 A Yes, he did.

11 Q Even though he was very intoxicated?

12 A He was intoxicated, but he understood what we
13 were staying.

14 Q Okay. And he answered y'all, right?

15 A Yeah, he answered us when we asked him questions,
16 he answered, and it mostly was, "I wasn't involved."
17 He wasn't involved in a collision and he doesn't know
18 nothing about it. That kind of thing.

19 Q You said the scratches and stuff appeared to be
20 fresh on him, in your opinion?

21 A Yes.

22 Q And the burn on his arm, as well, the abrasion on
23 his arm?

24 A Yes.

25 Q Appeared to be?

1 A Yes.

2 Q And he had some other scratches that appeared to
3 be older that you could compare them to?

4 A The only one I recall is the one that they showed
5 on the film or on the wall.

6 Q Yes.

7 A I don't remember any other scratches other than
8 the fresh ones that I had seen on his legs or arms,
9 hands.

10 Q And as part of your search warrant, y'all wanted
11 to find items that would be used to clean wounds; is
12 that correct?

13 A Yes.

14 Q And you did not --- I mean, I didn't see it in
15 your return. I'll asking you, you didn't find any?

16 A No, we are didn't find any --- I don't think
17 there were any bandages. It would have been listed on
18 that list. If I could see the list, I could tell you
19 exactly what was found.

20 Q It's just clothes and a towel.

21 A Okay.

22 Q So you take him from --- is he placed under
23 arrest at his house?

24 A Yes.

25 Q Handcuffed?

1 A Yes.

2 Q Okay. Put in your car?

3 A Yes.

4 Q Or McKenzie's car?

5 A I believe it was my car, yes.

6 Q Okay. And then taken to the scene of the
7 accident; is that correct?

8 A Yes.

9 Q Okay. And why did y'all take him to the scene of
10 the accident?

11 A Trooper McKenzie was instructed to go to the
12 deputy's car to retrieve a Q-tip or something we could
13 remove the paint chip from his ear. We left to go
14 there, and I secured him in my car, followed behind
15 him. When we got him out of the car, the paint chip
16 was gone, and then he was instructed to take pictures
17 of him by Trooper Kelly.

18 Q Okay. And then do you stay with him or what do
19 you do that the point?

20 A At that point I obtained a search warrant. I met
21 with Judge Hartis here at the courthouse.

22 Q So you leave Donnie that the point?

23 A I leave --- well, he is put in Trooper McKenzie's
24 custody, and then I leave to go obtain a search
25 warrant.

1 Q Okay. And then you don't come back into contact
2 with Donnie until when?

3 A At the detention center.

4 Q Okay. When there is that questioning?

5 A Yes.

6 Q That we discussed earlier?

7 A Yes.

8 Q And you were there and you heard --- I think you
9 are mostly an observer at that point, correct?

10 A I'm just an observer.

11 Q Did you ask him any questions?

12 A I don't believe I asked him at that point.

13 Q Okay. And you heard the Miranda warnings that
14 were given to Donnie in the detention center were
15 different than the Miranda warnings given to him
16 earlier that day; isn't that right?

17 A Two different formats.

18 Q Yes. In fact, he wasn't told when he was in the
19 detention center, he wasn't told he could stop
20 questioning, right?

21 A If that's a part of the --- whatever the Miranda
22 that he gave him, that would be correct.

23 Q We heard it?

24 A Yes.

25 Q It doesn't have the right?

1 A No.

2 Q Right, and at that point, you didn't tell Trooper
3 Coats, who gave that warning, hey, you missed one?

4 A No, I did not.

5 Q Okay. And you don't know the period that you
6 leave Donnie and then the period that you get back in
7 touch with him is probably about five hours, I would
8 think?

9 A That would be about right.

10 Q And he's always secured by an officer, he's
11 always in the presence of an officer during that time;
12 is that right?

13 A Other than when McKenzie booked him into the
14 jail, he might have been by himself until we arrived
15 later.

16 Q That's true. He might have been left in a patrol
17 car by himself, too?

18 A In a patrol vehicle, no, I wouldn't think so.

19 Q I mean, even if he is handcuffed?

20 A I don't think there is any time that --- once we
21 had him and placed him under arrest, he was placed in
22 my car, placed in McKenzie's car, he was transported
23 to the detention center and then booked into the jail
24 and then we came and arrived later.

25 Q All right. So during those five hours, you don't

1 know if he spoke to officers or not?

2 A No. I do not.

3 Q Okay. You don't know if they questioned him
4 further, do you?

5 A No, I don't know of any questioning that was done
6 to him after he was booked into the jail.

7 Q Okay. And since you saw him early in the day
8 when he was first in contact and then you saw him much
9 later, would you say he became more sober as the day
10 went on?

11 A Yes.

12 Q And he was more coherent at the end of the day?

13 A Yes.

14 Q Okay. And until, you know, 45 minutes to an hour
15 into that last questioning, he was continuing to deny
16 any involvement; is that correct?

17 A Yes.

18 MR. POSTIC: One minute. Beg the Court's
19 indulgence.

20 (Pause.)

21 MR. POSTIC: Thanks so much for your patience.
22 That's all I've got.

23 THE COURT: Redirect?

24 MR. PERRY: Just very briefly on redirect, Your
25 Honor.

REDIRECT EXAMINATION:

1

2 BY MR. PERRY:

3 Q Sergeant Borowski, you were asked about the fact
4 that we can't place a specific time that this took
5 place. It's about a four hour window roughly in which
6 this could have taken place. Do you remember that?

7 A Yes.

8 Q If the driver of that vehicle that had caused
9 that crash, had called 9-1-1, would we know exactly
10 when it took place?

11 A Yes.

12 Q That didn't happen, did it?

13 A No, it did not.

14 Q You were asked about other suspects. Do you
15 remember that?

16 A Yes.

17 Q About looking for other suspects, talking to
18 other people about this, right?

19 A Yes.

20 Q You were there at the Kershaw County jail when
21 Donnie was interviewed, were you not, Sergeant?

22 A Yes.

23 Q And during the course of that interview, did you
24 at any time hear him admit that he did it?

25 A Yes.

1 Q To the best of your recollection, what did you
2 hear him admit during the course of that interview?

3 A That he was involved in a collision. He was
4 driving the vehicle and got involved in a wreck, went
5 home, got scared and left and went home.

6 Q Did he admit to ---

7 MR. POSTIC: Judge, I'm sorry, just renewing my
8 original objections from yesterday.

9 THE COURT: Overruled.

10 BY MR. PERRY:

11 Q Did he admit to being intoxicated that night when
12 he was driving?

13 A Yes.

14 Q So by six o'clock, roughly, the afternoon of the
15 20th, the same day that this took place ---

16 A Yeah, we had ---

17 Q You had an admission by the defendant that he had
18 done this, correct?

19 A That's correct.

20 Q In your mind at that time, is there any point in
21 trying to find any other subjects that may have been
22 driving this vehicle?

23 A No, we were positive we had the driver of the
24 vehicle and we didn't need to do a search of who was
25 driving because we had the driver.

1 Q Is that based on his admission?

2 A It's based on his admission and our observations.

3 Q On physical evidence that you saw?

4 A Physical evidence that we saw and his admission
5 of driving the vehicle. It was his vehicle. He was
6 at or near his house. He was intoxicated. He drove
7 it. He said he did. He's involved in a wreck, and a
8 passenger died as a result of that.

9 Q At any time during the course of you being around
10 Mr. Thigpen and either questioning him yourself or
11 hearing other people question him, did he ever mention
12 that he had given anyone else permission to drive the
13 vehicle, that someone else was driving it, that that's
14 who you should talk to?

15 A No. We had no other drivers.

16 Q Let's talk about the interview again very briefly
17 at the jail. You were there the whole entire
18 interview, were you not?

19 A Yes.

20 Q At any time during the course of that interview,
21 did Mr. Thigpen say, I don't want to keep talking to
22 y'all?

23 A No.

24 Q At any time did he ask for a lawyer?

25 A No, he did not.

1 Q At any time did he ask to go to the bathroom,
2 that he was denied the ability to do that?

3 A No.

4 Q At any time did he ask to make a phone call that
5 you told him no, he could not make a phone call?

6 A No.

7 Q In fact, during the course of the interview, did
8 he not mention having made phone calls while he had
9 been there at the jail, before he was interviewed?

10 A I know he said he did make a phone call, but I
11 don't know who he called or recall to whom he talked
12 to.

13 Q Is it true that the entirety of that interview
14 lasted maybe slightly over an hour?

15 A Yeah, around an hour, yes.

16 Q And during the entirety of the time that you
17 dealt with him, from the time you first knocked on his
18 door until the time that interview concluded at
19 roughly 6:20 in the evening, was there any point in
20 time during that that you had any doubt in your mind
21 that he understood what was going on?

22 A He understood what we were doing.

23 Q What he had being accused of?

24 A Yes.

25 Q What you were saying he had done, what you

Recross of Borowski by Postic
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1 believed he had done?

2 A Yes, we explained it to him several times.

3 Q In fact, he admitted it, correct?

4 A He told us he did do it, yes.

5 MR. PERRY: No further questions.

6 THE COURT: Anything further?

7 MR. POSTIC: One question.

8 THE COURT: Go ahead.

9 MR. POSTIC: Well, it might turn into three.

10 RECROSS-EXAMINATION:

11 BY MR. POSTIC:

12 Q Do you have any idea when the sun rose on that
13 day?

14 A I'm sorry, I didn't hear you.

15 Q When did the sun rise on that day?

16 A I have no idea. If it's in the summer, probably
17 6:30, 7:00. I'm not sure.

18 Q All right.

19 MR. POSTIC: Thank you very much.

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

22 MR. PERRY: State calls Trooper McKenzie.

23 DALTON PATRICK MCKENZIE,

24 after being duly sworn, testified as follows:

25 THE WITNESS: Dalton Patrick McKenzie, II.

DIRECT EXAMINATION:

2 BY MR. MOAK:

3 Q Trooper McKenzie, you are obviously a highway
4 patrolman?

5 A Yes, sir.

6 Q How long have you been with the Highway Patrol?

7 A Ten years.

8 Q And where were you employed before that?

9 A Lake City police department.

10 Q How long have you been involved in law
11 enforcement?

12 A Twelve years total.

13 Q Okay. And so you've been a trooper for ten
14 years?

15 A Yes, sir.

16 Q Over the past ten years or actually including
17 Lake City, how many occasions have you had to
18 investigate DUI cases?

19 A More than I can count.

20 Q Is that one of your primary responsibilities?

21 A Yes, sir.

22 Q Have you had any specific training in DUI
23 detection and enforcement?

24 A Yes, sir.

25 Q Do you have regular in-service training on that?

Direct of McKenzie by Moak

1 A Yes, sir.

2 Q Have you --- are the majority of your cases in
3 magistrate court or General Sessions?

4 A Magistrate's court.

5 Q Have you successfully prosecuted those cases?

6 A Yes, sir.

7 Q Resulting in convictions?

8 A Yes, sir.

9 Q And one of the things you're doing in making a
10 DUI case is getting probable cause?

11 A Yes, sir.

12 Q And is that a probability standard, somebody is
13 probably under the influence?

14 A Yes, sir.

15 Q And is that what you have to have to make an
16 arrest?

17 A Yes, sir.

18 Q Okay. Once you make an arrest for a DUI case, do
19 you have to Mirandize them?

20 A Yes, sir.

21 Q And do you normally videotape the Miranda on DUI
22 cases?

23 A Yes, sir.

24 Q On June 20, 2009, did you arrest Donald Thigpen
25 for felony DUI?

1 A Yes, sir.

2 Q And you Mirandized him?

3 A Yes, sir.

4 Q And you Mirandized him on video?

5 A Yes, sir.

6 Q Did you make him do any field sobriety tests?

7 A No, sir.

8 Q Now, can you talk about what the probable cause
9 is for DUI normally; what you take into account, like
10 what things you normally see?

11 A You just pretty much see the same as far as a
12 person's appearance goes, you see the bloodshot eyes,
13 the slurred speech. You smell the odor of alcohol on
14 their person, just different little innuendos that
15 kind of clue you in.

16 Q Is there any one thing that does it or is it a
17 combination of everything?

18 A It's a combination, sir.

19 Q At times, do you make a probable cause
20 determination without having to use standardized field
21 sobriety tests?

22 A Yes, sir.

23 Q And what is the purpose of the standardized field
24 sobriety test?

25 A Basically the purpose is just to help us build a

1 better case with the standard field sobriety test.

2 It's just another kind of tool that we can use to help
3 us determine.

4 Q And if you already feel you have probable cause,
5 would you have a need to do a field sobriety test?

6 A No, sir.

7 Q Okay. Now on Mr. Thigpen's case can you tell us
8 what lead you to believe that you had probable cause
9 for him being under the influence?

10 A If --- the first thing I noticed was just his
11 appearance, the strong odor of alcohol coming from his
12 person.

13 Q Okay.

14 A The bloodshot eyes, the slurred speech. He just
15 fit all those brackets.

16 Q Did you have any doubt in your mind whether or
17 not he was under the influence?

18 A No, sir.

19 Q Now, I think we have some pictures marked State's
20 82 to 92. Were you present when those pictures were
21 taken?

22 A Yes, sir.

23 Q Do those pictures --- were they a part --- or do
24 they confirm your belief that he was --- that he
25 committed a DUI?

1 A They most certainly confirm the nature of
2 injuries that he has.

3 Q Okay.

4 A And that he was involved in a vehicle collision.

5 Q And specifically the arm pictures, what do those
6 tell you when you see those?

7 A The pictures of his arm are consistent with what
8 I've seen over my years of experience with airbag
9 burns is what I've known them to be called.

10 Q And you could see that when you first saw him,
11 right?

12 A Yes.

13 Q Okay. So you didn't have to take a picture just
14 to see that?

15 A No, it was very clear.

16 Q And you placed him under arrest for DUI?

17 A Yes.

18 Q And you put him in your patrol car?

19 A Yes.

20 Q Turned your camera around on his face?

21 A Yes.

22 Q And Mirandized him?

23 A Yes.

24 Q No field sobriety test?

25 A No.

1 Q And this was not a traffic stop?

2 A No.

3 Q This was not a stop where you activated your blue
4 lights?

5 A No.

6 Q Okay. But the entire arrest was on video?

7 A Yes.

8 Q And that video is marked --- I believe it's
9 Court's 2. Is this the copy of your video that we
10 played yesterday?

11 A Yes.

12 MR. MOAK: Your Honor, at this time, I'd mark
13 what was previously marked as Court's 2 as State's
14 whatever number we're on now?

15 THE COURT REPORTER: Ninety-seven.

16 MR. MOAK: Ninety-seven?

17 MR. POSTIC: That's fine, Judge.

18 THE COURT: What?

19 MR. POSTIC: That's fine, no objection, Your
20 Honor.

21 THE COURT: Admitted without objection.

22 (WHEREUPON, State's Exhibit Number 97 and 98 were
23 marked for identification.)

24 (WHEREUPON, State's Exhibit Number 97 was
25 admitted into evidence.)

1 BY MR. MOAK:

2 Q You've seen that video. I mean, it does show
3 that you Mirandized him and placed him under arrest,
4 correct?

5 A Yes.

6 Q Okay. I'm not going to play it for the jury.
7 Just you've seen it, I've shown you that, right?

8 A Yes.

9 Q Okay. Now, from the scene, once you had him
10 under arrest, where did you take him to?

11 A Once we left the scene, he was transported to
12 Kershaw County Medical Center.

13 Q Okay. And at the medical center, did you read
14 him his implied consent rights?

15 A Yes.

16 Q This is a copy of that?

17 A Yes.

18 (WHEREUPON, State's Exhibit Number 99 was
19 marked for identification only.)

20 MR. MOAK: Your Honor, I'd move that in as
21 State's 99.

22 MR. POSTIC: No objection.

23 THE COURT: Okay. Without objection.

24 (WHEREUPON, State's Exhibit Number 99 was
25 admitted into evidence.)

1 BY MR. MOAK:

2 Q And can you read to us what you read to him at
3 the hospital?

4 A Yes, it reads up at the top "Advisement of
5 Implied Consent Rights." Under that there is another
6 subsection that reads "Felony Driving Under the
7 Influence Advisement."

8 Q Uh-huh.

9 A Right under that it starts reading, "You are
10 under arrest for felony driving under the influence
11 (Felony DUI section 56-5-2945).

12 Q But you read what you needed to read off of that
13 form?

14 A Yes.

15 Q And that's the form that's provided to you by the
16 Highway Patrol?

17 A Yes.

18 Q And did you sign the bottom of it indicating that
19 you read it to him?

20 A No, his signature is not on it.

21 Q Did you ---

22 A Yes, I simply put "refused to sign."

23 Q Yeah.

24 A And then initialed it and put the date and time
25 on it.

1 Q Was he being real cooperative at this point?

2 A No.

3 Q Okay.

4 (WHEREUPON, State's Exhibit Number 100 was marked
5 for identification only.)

6 BY MR. MOAK:

7 Q And after you've gave him --- did you give him a
8 copy of that?

9 A Yes.

10 Q Okay. After you gave him that, you were at the
11 hospital, did you request anything be done at the
12 hospital?

13 A Yes.

14 Q And what was that?

15 A (There was no response.)

16 Q I'm going to show you what's been marked right
17 now as State's 100 for ID only.

18 A Yes.

19 Q What is that?

20 A It's a urine and blood collection kit report.

21 Q Okay. Does that have the time of arrest on
22 there?

23 A Yes.

24 Q And what time was that?

25 A The time of arrest was 11:29 a.m.

1 Q And what's --- is there a time of test?

2 A Yes.

3 Q What time was that?

4 A 12:40 p.m.

5 Q So that would be when the blood or urine was
6 collected?

7 A Yes.

8 Q And did a nurse actually accomplish this
9 collection?

10 A Yes.

11 Q What's the name of the nurse?

12 A Ms. Carolyn Kirkland.

13 Q Were you present when she actually drew the
14 blood?

15 A Yes.

16 Q Now, is there like a SLED kit that comes in?

17 A Yes.

18 Q And it has blood vials on there?

19 A Yes.

20 Q And she drew that and put it in the kit?

21 A Yes.

22 Q Now, did she seal the kit or did you seal the kit
23 or do you remember?

24 A The tubes would have been sealed by her.

25 Q Okay.

1 A The tubes would have been placed in the kit and
2 sealed by me.

3 Q And where did you take the kit from there? What
4 would you normally do with the kit at that point?

5 A The kit was transported directly to the Kershaw
6 County Highway Patrol office and placed in a locked
7 refrigerator.

8 Q And from there was it sent to SLED or was it sent
9 to the Highway Patrol evidence room?

10 A From there to SLED, yes.

11 Q Okay. So the blood was collected at 12:40?

12 A Yes, 12:40.

13 Q Once you accomplished that, where did you take
14 Mr. Thigpen to?

15 A Kershaw County Detention Center.

16 Q And what did you do there?

17 A He was taken into the DataMaster room.

18 Q Okay. And is there a video of that proceeding?

19 A Yes.

20 Q Is that what's been marked as State's 98, what's
21 was previously marked as Court's 3?

22 A Yes.

23 Q So this is the DataMaster video?

24 A Yes.

25 MR. MOAK: Move this into evidence?

1 THE COURT: Objection?

2 MR. POSTIC: Just the limitation we went into
3 pretrial.

4 THE COURT: Redacted form?

5 MR. POSTIC: Your Honor?

6 THE COURT: Redacted form?

7 MR. POSTIC: Yes. Thank you, Your Honor.

8 (WHEREUPON, State's Exhibit Number 98 was
9 admitted into evidence.)

10 BY MR. MOAK:

11 Q And the video depicts his demeanor during that
12 process?

13 A Yes.

14 Q Were you interrogating him during this time?

15 A No.

16 Q Was he asking you questions?

17 A He was inquisitive on certain things, sir, yes.

18 (WHEREUPON, the video was played for the jury.)

19 BY MR. MOAK:

20 Q On the DataMaster, you, similar to the implied
21 consent you read at the hospital, you did it again
22 with the DataMaster, right? You advised him again,
23 did you not?

24 A Yes.

25 Q So you did that twice?

1 A Yes.

2 (The tape was continued to be played to the
3 jury.)

4 (WHEREUPON, State's Exhibit Numbers 101 and 102
5 were marked for identification only.)

6 BY MR. MOAK:

7 Q Now, the thing about the twenty minutes, Trooper
8 McKenzie, what is that about?

9 A That's, I guess, what you could say regulation
10 for the DataMaster. You're required for the subject
11 to wait twenty minutes before you're allowed to give
12 him the actual Breathalyzer test.

13 Q And the machine won't even let you do the test
14 unless you have waited twenty minutes, right?

15 A No. You have to wait twenty minutes before the
16 test will allow you the opportunity to give it to the
17 subject.

18 Q The DataMaster slip, they always have a test date
19 and operation start time?

20 A Yes.

21 Q From that start time, it's twenty minutes from
22 that time?

23 A Yes.

24 Q And during that time, the machine will do a blank
25 test?

1 A Yes. It actually runs a self-check.

2 Q And if the machine is working, it will let you
3 continue, right?

4 A Yes.

5 Q And the slip will print what the results of the
6 blank test are?

7 A Yes.

8 Q So it let's you know --- the machine itself let's
9 you know if it's working properly?

10 A Yes.

11 Q Now, a DataMaster isn't --- don't you have to do
12 that within two hours of the arrest?

13 A Yes.

14 Q Now, Mr. Thigpen was arrested at 11:29 that
15 morning?

16 A Yes.

17 Q And the start time of this particular DataMaster
18 is 1:42?

19 A Yes.

20 Q So that's two hours and thirteen minutes?

21 A Yes.

22 Q So it wasn't within the two hours?

23 A No.

24 Q Be the blood draw was within the two hours?

25 A Yes.

1 Q And obviously, he was offered a DataMaster?

2 A Yes.

3 Q And other than the --- within the two hour time
4 limit, did you comply with all the requirements to
5 offer the DataMaster?

6 A Yes.

7 Q You gave him his advisement in writing?

8 A Yes.

9 Q You waited the twenty minutes?

10 A Yes.

11 Q And there was a DataMaster?

12 A Yes.

13 Q Okay. But it wasn't within the two hours?

14 A Correct.

15 Q Okay. Now, on that video, you hear him say that
16 he's in there because somebody took his car on a
17 joyride?

18 A Yes.

19 Q And he keeps running his fingers through his
20 hair?

21 A Yes.

22 Q Did you notice anything --- when you dealt with
23 him, did you notice anything in his hair or beard or
24 anything?

25 A Yes, before that, yes.

1 Q And what did you notice?

2 A I immediately noticed upon my first contact with
3 him, a blue paint chip in his ear.

4 Q But anything in his hair, too, any ---

5 MR. POSTIC: This is kind of leading, Your Honor,
6 I object.

7 THE COURT: Well, go ahead.

8 BY MR. MOAK:

9 Q Did you notice anything in his hair?

10 A Yes.

11 Q What was that?

12 A Some glass.

13 Q And he's --- on that video, he's rubbing his
14 hands through his hair repeatedly?

15 A Yes.

16 Q Now, the DataMaster slip, I'm going to show you
17 what's been marked as State's Exhibit 101 for ID only.

18 (Pause.)

19 For ID only is State's 101. Is that the
20 DataMaster slip from that DataMaster?

21 A Yes.

22 Q Did he sign that?

23 A Not this copy.

24 Q Doesn't it say "refused to sign" on it?

25 A Yes.

1 Q Okay. And that DataMaster slip indicates the
2 machine was working?

3 A Yes.

4 Q It does not indicate any problems with the
5 machine?

6 A No.

7 Q Does not indicate any problems with that test?

8 A No.

9 Q The only issue was that it was greater than two
10 hours after arrest?

11 A Yes.

12 Q Okay. Now, I'm going to show you what's been
13 marked as State's 102. Is this the forensic, the SLED
14 Forensic Service Request?

15 A Yes.

16 Q Now, is that form filled out in conjunction with
17 the kit from the hospital?

18 A Yes.

19 Q Now, the kit from the hospital, the nurse draws
20 the blood, the two vials?

21 A Yes.

22 Q And she seals those?

23 A Yes.

24 Q Okay. And you end up with the kit?

25 A Yes.

1 Q And is it filled out on the outside, the case
2 number, the name?

3 A Yes.

4 Q What do you write on there?

5 A The vials are placed in a bag.

6 Q Uh-huh.

7 A It's got a sticky seal on it.

8 Q Uh-huh.

9 A That's placed over it. You initial over that
10 seal ---

11 Q Uh-huh.

12 A --- to make sure the compromise of the seal is
13 not broken and then there's general information on the
14 outside of the box that we fill out, whose blood it
15 is, where it's coming from, date and time of the
16 collection.

17 Q Okay.

18 A Just basic information.

19 Q And each one of these kits, does it have like a
20 control number?

21 A Yes.

22 Q Like a kit number?

23 A Yes, it has a number assigned to it, yes.

24 Q So you can look that number up and look in the
25 system and figure out which kit it is?

1 A Yes.

2 Q And that's to make sure their don't get mixed up,
3 right?

4 A Correct.

5 Q Your dealings with this kit were important to
6 your policies?

7 A Yes, it was per policy, yes.

8 Q You requested the nurse to draw the blood. She
9 draw it and gave it back to you in the kit?

10 A Yes.

11 Q You took the kit with you in a refrigerator.

12 A Yes.

13 Q It was taken from there to SLED?

14 A Yes.

15 Q And from there SLED dealt with it?

16 A Yes.

17 Q And they did their testing procedures with it?

18 A Yes.

19 Q Did you --- after the kit was sealed, did you
20 open it up?

21 A No.

22 Q Did you tamper with it?

23 A No.

24 Q Do you have any reason to believe it was ever
25 tampered with?

1 A No.

2 Q You did what you were supposed to with it?

3 A Yes.

4 Q And other than --- a lots of the questions I have
5 asked are, I guess, procedural. Why did you place him
6 under arrest for felony DUI, just tell us why?

7 A He was placed under arrest for felony DUI because
8 of basically the totality of the circumstances. We
9 have a vehicle that's flipped over with an unknown,
10 unfortunately dead person inside of it.

11 Q Uh-huh.

12 A Not far from his house. The tag was ran. It
13 came back registered to Mr. Thigpen.

14 Q Uh-huh.

15 A Contact was made with Mr. Thigpen. Like I
16 stated, the first thing other than the intoxication of
17 him was that blue chip, that blue paint chip.

18 Q Okay.

19 A That came off the car, the injuries that he
20 sustained from it.

21 Q Uh-huh.

22 A Just the whole totality of the circumstances.

23 Q And you also had some observations about his
24 level of intoxication?

25 Q Yes. What were those?

1 A As I stated before, the strong odor of alcohol
2 coming from his person, the bloodshot eyes, the
3 slurred speech.

4 Q And y'all's investigation did not stop with you,
5 did it?

6 A No. It did not stop with me, no.

7 Q While you were doing this, don't y'all have some
8 M.A.I.T. troopers at the scene collecting evidence?

9 A Yes.

10 Q And on State's 102 for ID, is there also --- does
11 that also indicate when you --- when you sent that kit
12 in, was there a buccal swab or some DNA evidence on
13 there?

14 MR. POSTIC: If he doesn't have personal
15 knowledge, Your Honor, I'm going to object.

16 MR. MOAK: It's on the same form.

17 MR. POSTIC: If he doesn't have personal
18 knowledge, I'm going to object.

19 BY MR. MOAK:

20 Q You filled that sheet out, didn't you?

21 A Yes.

22 Q At the bottom, does it have some DNA information
23 on there?

24 A Yes, it does.

25 Q And that was submitted, as well, wasn't it?

1 A Yes.

2 Q So it wasn't just your opinion of whether or not
3 he did it, isn't the end of it, right?

4 A No, sir.

5 Q There's more to it than that?

6 A Yes.

7 Q You didn't do those for any quota or anything
8 like that?

9 A No.

10 MR. MOAK: No further questions.

11 THE COURT: Cross-examination?

12 MR. POSTIC: Yes, thank you.

13 CROSS-EXAMINATION:

14 BY MR. POSTIC:

15 Q Trooper McKenzie?

16 A Yes, sir.

17 Q Good afternoon.

18 A Good afternoon, sir.

19 Q This is your report? May I approach, sir?

20 THE COURT: Sure.

21 BY MR. POSTIC:

22 Q This is your report?

23 A Yes.

24 Q Okay. When did you write that report, sir?

25 A Sir, it doesn't have a specific date as to when I

1 wrote it.

2 Q Within a week, within a day?

3 A Oh, absolutely, yes.

4 Q Okay. So that's when your memory is pretty fresh
5 on this, correct?

6 A Yes.

7 Q Okay. Tell me where in that report there is
8 anything about any glass in his beard, and tell me
9 where in that report there is anything about any paint
10 in his ear.

11 Maybe I'm mistaken.

12 (Pause.)

13 A I don't see anything in the report stating that,
14 sir.

15 Q Okay. Let me get it back. Let me just try to go
16 along with what Solicitor Moak asked you. You've been
17 in law enforcement for about twelve years, right?

18 A Yes.

19 Q And you've done a lot of DUIs; is that right?

20 A Yes.

21 Q And Solicitor Moak asked you if a number of those
22 DUIs related in convictions; is that correct?

23 A Yes.

24 Q Okay. Have you had acquittals before, not
25 guilties?

1 A Yes.

2 Q So that happens sometimes?

3 A Yes.

4 Q And you understand that there is a different
5 level for arrest, which is probable cause and then
6 there is a different level for guilt or acquittal
7 which is reasonable doubt, do you understand that,
8 sir?

9 A Yes, sir.

10 Q Okay, and that leads me also to think about
11 something that you say on the video. When Donnie
12 denies driving and when he says somebody took his car
13 for a joyride, you say to him, that's going to be
14 something for you to prove, sir. Do you remember
15 seeing that just now?

16 A Yes.

17 Q And you understand, sir, that the defendant in a
18 criminal trial does not have to prove himself
19 innocent. Do you understand that, sir?

20 A Yes.

21 Q Okay. And you understand that it is the duty of
22 the State and the burden of the State to prove beyond
23 a reasonable doubt that he is guilty?

24 A Yes.

25 Q All right. Solicitor Moak asked you about field

1 sobriety test, the standard field sobriety tests.

2 A Yes.

3 Q You told Solicitor Moak the reason you do those
4 standard field sobriety tests is to build a better
5 case; is that correct?

6 A Yes. It's a tool used, yes.

7 Q A tool used to bring to a jury a better case; is
8 that correct?

9 A To help us make a better determination, yes.

10 Q Okay. But occasionally it happens you'll enter a
11 scene and you'll think this person is --- it's readily
12 apparent to me that he is under the influence. I
13 don't need to do field sobriety test?

14 A Yes.

15 Q And that's what you felt like was the case in
16 Donnie's case, right?

17 A Yes, that was my opinion, yes.

18 Q Okay. And it was also Sergeant's Borowski's
19 opinion, right, sir?

20 A Yes.

21 Q Did he not direct you to arrest Donnie on these
22 charges?

23 A Yes, it was a mutual understanding, yes.

24 Q And he made that understanding of that arrest at
25 11:29; is that correct, sir?

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1 A Yes.

2 Q And that would be approximately 29 minutes after
3 you first got to Donnie's house; is that correct?

4 A I'm not sure what time I arrived at his house,
5 sir.

6 Q That's true. Borowski was already there; is that
7 correct?

8 A Yes.

9 Q And he was with Corporal Slaten of the
10 Kershaw --- Kershaw Sheriff's Department, correct,
11 sir?

12 A Yes, yes, sir.

13 Q Okay. And they already had Mr. Thigpen out of
14 the house; is that correct, sir?

15 A Yes.

16 Q Okay.

17 A Yes, he was already out, yes.

18 Q And was Mr. Thigpen, was Donnie dressed when you
19 saw him, or was he in the towel?

20 A Sir, I don't remember exactly. If I recall
21 right, he may have been in clothes by the time I
22 arrived.

23 Q You don't remember if he was in a towel or not?
24 I mean, his injuries that y'all see at the scene are
25 really important to your case, right?

1 A Yes.

2 Q Do you remember --- so do you remember seeing
3 those injuries when you got there?

4 A Yes, yes.

5 Q And do you remember if he was wearing a shirt or
6 not?

7 A (There was no response.)

8 Q That's okay. Do you remember?

9 A No, I don't know.

10 Q Okay. And you --- were you there when he was
11 given his Miranda rights by Corporal Slaten?

12 A No.

13 Q Okay.

14 A Do you believe that he understood the questioning
15 that y'all were giving him?

16 A Yes.

17 Q But you also think he was too intoxicated to even
18 do a field sobriety test?

19 A Yes.

20 Q Okay, I'm just trying to reconcile, how --- does
21 he understand his rights, or is he too drunk? Are you
22 saying that he is too drunk and he understands his
23 rights, is that what you're saying?

24 A No.

25 Q So what are you saying?

1 A I understood --- when I read him his Miranda
2 rights, the impression I got from him was that he
3 understood them.

4 Q All right. But you also think he was too drunk
5 or he was drunk?

6 A I feel he was under the influence, yes.

7 Q Or just grossly intoxicated to the point that you
8 didn't feel like you needed extra field sobriety tests
9 for this jury?

10 A Right. I felt that I didn't need any field
11 sobriety to make any determination.

12 Q Okay. You saw his arm; is that correct?

13 A Yes.

14 Q Okay. Did he have a burn --- and you're saying
15 that's consistent with a burn mark?

16 A What I would describe as an airbag burn, scuff
17 mark.

18 Q Could it also be a rug burn, a rash?

19 A Just from my experience, because I've had one
20 before.

21 Q An airbag burn?

22 A I know what one looks like, yes.

23 Q Okay. Any other burns on him on the other arm?

24 A If I recall correctly, they were on both arms.

25 Q They were on both arms, okay. How about the

1 face? Were they on his face?

2 A There were no burn or scuff marks on his face
3 that I've seen --- that I seen, as far as what you
4 would call as being the same mark that was on his arm,
5 no.

6 Q Okay. And this is something that comes out at
7 150 to 200 miles per hour, an airbag?

8 A Yes.

9 Q When you first get to the scene, you have your
10 camera on; is that correct?

11 A Yes.

12 Q Okay. I'm sorry. When I say the scene, when you
13 first get to Donnie's house, your camera is on?

14 A Yes.

15 Q And your audio is on?

16 A Yes.

17 Q Because I'm going to ask you some questions about
18 the stuff that he says when you first see him, if you
19 need to refresh yourself. He immediately denies it,
20 is that correct?

21 A Yes, yes.

22 Q And he's confused and sort of at a loss as to why
23 y'all are even there; is that right?

24 A Yes, that's what he stated, yes.

25 Q Okay. That would be fair to say, right?

1 A Yes.

2 Q And he continues that way the whole time you're
3 with him; is that right, sir?

4 A Yes.

5 Q And you take him from his home --- let me ask you
6 this. Do you write the tickets? Are you the one who
7 arrested him? It's your handcuffs?

8 A Yes.

9 Q Okay. And you do that at his home; is that
10 correct, sir?

11 A Yes, he was placed in custody in the yard of his
12 home, yes.

13 Q And you take him from the yard of his home into
14 your car; is that correct, sir?

15 A No, sir.

16 Q What happens then, sir?

17 A There was a point in time where the blue paint
18 chip was, as I testified earlier, was in his ear. I
19 was sent down to the wreck scene to EMS to try to get
20 some kind of a swab to try to get that out of his ear,
21 so he was left in the yard of his home with First
22 Sergeant Borowski while I went back down to the scene
23 to try to secure a swab or a Q-tip.

24 Q Okay. And by --- and so you're at the scene to
25 get a Q-tip?

1 A Right.

2 Q And at that point, he was brought to you?

3 A Yes, he's placed in First Sergeant Borowski's car
4 and down --- and then he is drove down to the scene
5 where I'm at.

6 Q And he is taken out of his car; is that correct,
7 sir?

8 A Yes, auto of First Sergeant Borowski's car, yes.

9 Q Oh, yes, out of Borowski's car.

10 A Yes.

11 Q And you observed this, sir?

12 A Yes, I was there, yes.

13 Q And that was the understanding, that you were
14 going to drive down there to get the swab or the Q-tip
15 and that Borowski was going to follow you with Donnie?

16 A No, that was --- we hadn't discussed a plan.

17 Q Okay.

18 A I assumed that I had --- that too much time had
19 passed and that it would just better expedite the
20 process if he was taken down to the scene.

21 Q All right. At that point, are you there with
22 Lance Corporal Kelly when Kelly takes the photographs?

23 A Yes.

24 Q And do you direct Kelly to say, hey, take some
25 pictures of both arms?

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1 A Sir, I don't recall making that statement to
2 Trooper Kelly.

3 Q Okay. Well, are there pictures of both arms or
4 just one arm? You've got them right there.

5 (Pause.)

6 A Sir, from the photographs it looks like there was
7 just one arm photographed in the photos that I have
8 here.

9 Q Do you mention to Kelly about the glass that you
10 saw in his beard?

11 A I don't recall, sir.

12 Q Okay. Now, you got a swab to get the paint chip
13 out of his ear; is that correct?

14 A Yes.

15 Q And then the paint chip is gone, right?

16 A Yes. Somewhere along the line. The paint
17 chip --- it fell out of his ear and we couldn't find
18 it.

19 Q Are you telling us that the glass is still there
20 in the beard and in the hair?

21 A At what point, sir? At the point where the
22 photographs were taken?

23 Q Yes, yes, sir.

24 A I don't recall, sir.

25 Q Okay.

1 A I don't ---

2 Q Well, so you went up --- I'm guessing --- this is
3 my --- I'm visualizing this, but you come up there
4 with the swap to get this paint chip out of his ear
5 and you don't see it. Do you still see the glass?

6 A Well, I never really got up on him to retrieve
7 the paint because by the time First Sergeant Borowski
8 brought him back down, I was informed the paint chip
9 is gone and I don't know where it went.

10 Q Okay.

11 A So that idea kind of got abandoned.

12 Q All right.

13 A As far as us trying to get the paint chip.

14 Q Did anybody ever have an idea of getting the
15 glass out of his beard so we can see it?

16 A I don't know, sir.

17 Q Okay. I'm moving on.

18 Oh, here is another thing. When you first get to
19 the scene --- oh wait. No, he's in Borowski's car.
20 So the video --- no, no, I'm sorry. I'm sorry. I'm
21 on the right track. The pictures are taken, and then
22 he's placed in your car, sir?

23 A Yes.

24 Q Okay. At that the point, you turn the camera on
25 him to read him Miranda?

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1 A Yes.

2 Q Is that correct, sir?

3 A Yes.

4 Q And in the --- at that point, does Donnie say,
5 where is the car?

6 A Yes. I believe he did say something to the
7 effect of what car.

8 Q Yes.

9 A At one point, yes.

10 Q Does he not look to the opposite side of the
11 road, not to the side where the car is?

12 A I don't recall, sir. I remember him making a
13 head movement as to illustrate that he didn't see a
14 car.

15 Q Okay. And you tell us he completely understood
16 his rights at that point?

17 A Yes.

18 Q Okay. And he just felt open with you enough to
19 tell you that he had no idea what had happened; is
20 that correct?

21 A Voluntarily, sir. I didn't ask him any questions
22 as far as that went.

23 Q And you take him from there to the Kershaw County
24 Medical Center; is that correct?

25 A Yes.

1 Q And that's in Camden, sir?

2 A Yes, in Camden.

3 Q Okay. And right there, he is there for the
4 purposes of having blood drawn; is that correct?

5 A Yes.

6 Q Because when somebody is charged with felony DUI,
7 they automatically have to give a sample of blood,
8 urine or breath, right?

9 A Yes.

10 Q Okay. And blood is the most accurate, as people
11 usually say; is that correct?

12 A Yes.

13 Q And so blood is taken from Donnie; is that
14 correct?

15 A Yes.

16 Q And you observe Nurse Kirkland take the blood; is
17 that correct?

18 A Yes.

19 Q And how many vials of blood does she take? Do
20 you know?

21 A My paperwork indicates six.

22 Q Okay. What --- do you take all six of those,
23 sir, and place them in the kit?

24 A Yes, to --- yes.

25 Q There's not a vial of blood that's given to the

1 defendant in every case?

2 A If it's requested, sir, that's always --- that's
3 my understanding.

4 Q Do you have any indication that he requested
5 blood in this case?

6 A I don't recall, sir. If he asked for any type of
7 affirmative assistance for that.

8 Q Okay. Do you remember him --- so you remember
9 placing the vials of blood in the kit, sir?

10 A Yes, I would have done that, yes.

11 Q And they're labeled?

12 A Yes, they would be properly labeled and placed in
13 the kit.

14 Q Okay. And you keep that kit on your person?

15 A That kit is turned over to me until I can get it
16 to it where it's supposed to properly be, yes. It's
17 in my custody.

18 Q Who turns its over to you?

19 A The nurse would --- I guess she is never --- she
20 would actually turn over the vials of blood to me, and
21 then it would stay with me until it's placed in a
22 locked area that's controlled.

23 Q Did you just hold it the whole time, or did you
24 put it down ever?

25 A No, sir. I mean, I didn't keep it in my hand.

1 It was properly placed in my patrol car. It was
2 sealed and placed there until I could finish up with
3 Mr. Thigpen and then get it to the Kershaw County
4 Highway Patrol office to put it in the proper place.

5 Q The proper place is a refrigerator; is that
6 correct?

7 A Yes, a small refrigerator that has a lock on it,
8 yes.

9 Q What's the purpose of putting it in a
10 refrigerator?

11 A It's my understanding that blood has to be kept
12 cool to preserve it. I'm not an expert on it.

13 Q That's okay. Neither am I.

14 A Yes.

15 Q Okay, so you have in your possession for how long
16 before you put it in the --- in there? Do you have
17 any idea?

18 A No, sir, I don't have a time span on it. It was
19 a fairly reasonable time. It wouldn't have been ...

20 MR. POSTIC: Beg the Court's indulgence.

21 (Pause.)

22 BY MR. POSTIC:

23 Q You don't have a time on there? I'm looking,
24 too. I've got the same thing.

25 (Pause.)

1 No time on there, so we don't have any idea of
2 when you would have put it in the refrigerator, sir?

3 A Not that I'm aware of, sir. There could be a
4 time placed on the box as to when it was placed in the
5 refrigerator. I'm not really that keen on if there is
6 a time for that or not.

7 Q All right. I'll move on.

8 While he's at --- well, you didn't leave Donnie
9 and go put it in the refrigerator; you stayed with
10 Donnie?

11 A Yes, yes.

12 Q All right. And Donnie is in the hospital. How
13 long would you say he is there in the hospital?

14 A Sir, as far as a timeline goes, I'm not sure.
15 However long it took to do whatever we needed to do
16 and leave. There would have been no, you know,
17 hanging around or nothing. Just however long it took
18 to do whatever to get those six tubes of blood and for
19 him to properly understand what we were doing, and
20 then we would have been on our way.

21 Q Okay. Was he treated for any injuries or
22 anything?

23 A No, sir.

24 Q Was he ---

25 A I don't believe so, not at that time hospital,

1 no.

2 Q Was he examined for any broken bones or soft
3 tissue injuries?

4 A Not that I'm aware of.

5 Q Whiplash or anything like that?

6 A No, sir, we didn't actually go in the ER portion
7 of it.

8 Q Why doesn't he have any shoes?

9 A Shoes, sir?

10 Q Yeah. Why doesn't he have any shoes?

11 A That's how he was when he was initiated to me at
12 the scene.

13 Q So the entire time he is with you, he is without
14 shoes?

15 A Yes.

16 Q Let me ask you about the twenty minute
17 observation that we saw a portion of.

18 A Yes.

19 Q And you said you --- in answering --- I almost
20 called you professor. In answering Solicitor Moak's
21 questions, you said that the purpose of the twenty
22 minute observation is policy. Is that what you said?

23 A It's standard procedure.

24 Q Procedure?

25 A Yes.

1 Q Okay.

2 A Everybody must wait the twenty minutes, the
3 standard twenty minutes.

4 Q Yes. Is that --- tell me if this is crazy to,
5 allow alcohol in the mouth to dissipate, is that
6 correct?

7 A Yes.

8 Q Okay, and also to observe the subject to make
9 sure he doesn't put anything in his mouth, is that
10 correct?

11 A Yes, to observe, yes.

12 Q Because something like that could mess up the
13 reading; is that correct?

14 A Yes.

15 Q Okay. And I can't --- I'm pacing right now. I
16 can't help noticing that Donnie paces in and out of
17 the room several times while your observing him,
18 correct?

19 A Yes.

20 Q Can you see him when he is comes out of the room
21 and he is out of our sight?

22 A Yes. It's a big glassed area.

23 Q Okay.

24 A It's two rooms. The door was off for some
25 reason. I don't know why, but yes, I could observe

1 him from one side of the room to the other as he ---

2 Q So you would have observed if he had put
3 something in his mouth?

4 A Yes, yes.

5 Q I believe it's in your report that you indicate
6 that the shoes, that Donnie's shoes had mud and blood
7 on them; is that correct? Do you want to ---

8 A Yes.

9 (Pause.)

10 Yes. That's what's stated.

11 Q Yes. And you say that the mud is consistent with
12 the mud at the scene of the accident, is that what you
13 say, sir?

14 A It says mud is consistent with the terrain where
15 the collision occurred.

16 Q As far as you know, is there any sort of
17 comparison done of the mud on his shoes and the mud of
18 the terrain?

19 A No.

20 Q Were you there when the items were taken, when
21 the search warrants items were taken?

22 A No.

23 Q Okay. Is that --- is this something that you
24 would have told an officer that they should get,
25 should get his shoes? Was that you or Sergeant

1 Borowski?

2 A No, sir, I wouldn't have been directing that, no,
3 no, sir.

4 Q Okay. Then I'll move on from that.

5 Did you see the actual accident? Did you see the
6 accident, sir?

7 A Yes.

8 Q Just my report, please, sir. Just my copy of
9 your report. Thank you.

10 The car is pretty much totaled?

11 A Yes. It's damaged heavily, yes.

12 Q I mean, it's a fatal car accident, right?

13 A Yes.

14 Q It's upside down?

15 A Yes.

16 Q In the trees, caught between two trees?

17 A Yes, sir.

18 Q Did you see the keys in the car?

19 A Yes.

20 Q Were those keys taken into evidence?

21 A I didn't take them, sir.

22 Q Any idea if the house key was among those keys?

23 A I don't know what those keys were to, sir, other
24 than obviously one of those keys on that set of keys
25 was to the car.

1 Q Yes.

2 A Was to the vehicle.

3 Q I mean, it's in your report that his door was
4 kicked in?

5 A Yes, that's correct.

6 Q And it's an assumption that y'all make because he
7 left --- because your theory is that he left the keys
8 in the car?

9 A Yes.

10 Q Okay. And those keys were never tested to see if
11 there was a house key there?

12 A Not to my knowledge, sir.

13 Q Did you see the door kicked in?

14 A Yes.

15 Q Can you tell if that was something that happened
16 like that night or maybe something that happened a
17 week ago or two days before?

18 A It appeared to be fresh, sir.

19 Q What makes it appear fresh?

20 A The one thing that stuck out to me was the mud
21 that was on the door.

22 Q Okay.

23 A It was white standard door that comes on those
24 models of trailers and you could see the mud.

25 Q And a footprint?

1 A I wouldn't necessarily call it a footprint. I
2 mean, I don't recall seeing the defined outline of a
3 footprint, but it was definitely kicked in and there
4 was mud on the door.

5 Q Mud. I heard blood. Mud, right?

6 A Mud.

7 Q Okay. I think a Sunday school class has blood on
8 the door. Hang on one second.

9 MR. MOAK: Your Honor, may we approach?

10 (WHEREUPON, there was a bench conference.)

11 THE COURT: The jury needs a break, so move right
12 along.

13 MR. POSTIC: Put some pressure on me there.

14 THE COURT: Well, don't ---

15 BY MR. POSTIC:

16 Q I'll ask you just a few more questions, Trooper
17 McKenzie.

18 A Yes.

19 Q I have as part of your documentation, part of the
20 Highway Patrol's documentation, that the toxicology
21 screen was done on the passenger, on Mr. Wright. It's
22 got your name has the person directing that. I was
23 wondering if you knew why that was done?

24 A I have no knowledge of that, sir.

25 Q Okay.

1 MR. POSTIC: I'm done. Thank you.

2 THE COURT: Any redirect?

3 MR. MOAK: Yes, Your Honor.

4 REDIRECT EXAMINATION:

5 BY MR. MOAK:

6 Q Trooper McKenzie, Mr. Postic keeps asking about
7 your report. You didn't collect any of the evidence
8 from the home, did you?

9 A No.

10 Q The M.A.I.T. troopers, which would be Coats and
11 O'Donnell, were they the ones that collected that?

12 A Yes.

13 Q But you have that stuff referenced in your
14 report?

15 A Yes.

16 Q He's asking you about the shoes with the mud
17 that's consistent with the scene?

18 A Yes.

19 Q Now, do you have your incident report in front of
20 you?

21 A No.

22 Q I'm going to show you the last page of your
23 incident report.

24 MR. POSTIC: I got it, Your Honor.

25 BY MR. MOAK:

1 Q What's the last two sentences of that report?

2 A Several clothing items were removed from his
3 residence with mud consistent with the terrain of
4 where the collision occurred. Those clothing items
5 had blood and glass from the collision scene, as well.

6 Q You didn't collect those items, did you?

7 A No.

8 Q O'Donnell and Coats did?

9 A Yes.

10 Q While this trial has been going on, you've been
11 sitting in our office waiting to testify?

12 A Yes.

13 Q Isn't there a big box of evidence over there?

14 A Yes.

15 Q From this case?

16 A Yes.

17 Q And that's coming in through those troopers?

18 A Yes.

19 Q But you know it exists?

20 A Yes.

21 Q And also on the map --- this mud is consistent
22 with the incident location?

23 A Yes.

24 Q How close are these two spots?

25 A From the collision scene?

1 Q Yes.

2 A Walking distance.

3 Q It's not far enough apart you would expect to
4 have two different kinds of dirt in those two places,
5 would you?

6 A No, that would be consistent with the same area.

7 Q So his front yard would be consistent with the
8 wreck scene?

9 A Yes.

10 Q Now, just a bunch of questions about this.

11 MR. POSTIC: Without objection.

12 (WHEREUPON, State's Exhibit Numbers 103 through
13 108 were marked for identification only.)

14 BY MR. MOAK:

15 Q I'll show you what's been marked as State's
16 exhibits 103 through 108. What are these pictures of?

17 A These appear to be of the residence's front door.

18 Q That's the one you say got kicked in?

19 A Yes.

20 Q Okay. Do those fairly and accurately depict the
21 door as you saw it?

22 A Yes.

23 Q Your Honor, may the witness step down?

24 THE COURT: They're not in evidence yet.

25 MR. MOAK: I would move these into evidence, Your

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1 Honor.

2 MR. POSTIC: I don't object, Your Honor.

3 MR. MOAK: May the witness step down?

4 THE COURT: Go ahead.

5 (WHEREUPON, State's Exhibit Numbers 103 through
6 108 were admitted into evidence.)

7 BY MR. MOAK:

8 Q I show you what's been marked as State's 107.

9 What is that? Can you explain to the jury what that
10 is?

11 A This is --- it's the front door as we noticed it
12 with the visible mud on it.

13 Q I'm going to show you State's 108. Are those the
14 same pictures, but closer up?

15 A Yes.

16 Q Up here on 108 and 107, is there like a mark up
17 there up top?

18 A Yes.

19 Q Just like a lot of dirt down at the bottom?

20 A Yes.

21 Q Like maybe that's where a foot and there's one on
22 top like my hand level?

23 A Yes.

24 Q I show you what's been marked as State's 92. Is
25 that a picture of his hand?

1 A Yes.

2 Q As a matter of fact, that is his right hand?

3 A Yes.

4 Q And as he is facing that door, that is the right
5 side?

6 A Yes.

7 Q And that's the sand color, dirt?

8 A Yes.

9 Q Now, this door, what does that show?

10 A That shows the wood and stuff that's been broken
11 around when it was kicked in.

12 Q Does 104 also show that?

13 A Yes.

14 Q And 105 and 106, is that the doorframe?

15 A Yes.

16 Q All that. Are those what you would call clues
17 that the door was kicked in?

18 A Yes.

19 Q Now, were you present when First Sergeant
20 Borowski and Deputy --- then Deputy Slaten were
21 talking to Mr. Thigpen?

22 A No.

23 Q You weren't?

24 A No.

25 Q You weren't there when he told them that he

1 kicked the door in? You weren't there when that was
2 said?

3 A No.

4 Q Okay.

5 A I was not there during that conversation.

6 Q Okay. Now, the felony DUI, I think you ---
7 Mr. Postic asked, and I think we all agreed, you can't
8 really refuse the test for felony DUI, can you?

9 A That's correct.

10 Q But a DataMaster, you really can?

11 A Yes.

12 Q So somebody could always just not blow?

13 A That's their right.

14 Q And you have a timeframe you have to get these
15 tests accomplished by?

16 A Yes.

17 Q If you don't get them done within two hours, they
18 can't be used against them; is that correct?

19 A That's correct.

20 Q But you tried to get it done in two hours, didn't
21 you?

22 A Yes, that was my intention, yes.

23 Q You just couldn't get it done?

24 A No.

25 Q But you ran the machine the way you were supposed

1 to, right?

2 A Yes.

3 Q The machine was working?

4 A Yes.

5 Q You just can't get that in against him because it
6 was over two hours?

7 A Yes.

8 Q After you got done with the DataMaster, and I
9 think we stopped the video before we got there, didn't
10 he tell you he was drunk that night? Do you remember
11 him saying that?

12 A I don't recall that, no.

13 Q You don't remember that?

14 A No, sir. I don't recall a specific conversation
15 with him at that time.

16 Q He didn't make that statement?

17 THE COURT: He's answered the question.

18 MR. MOAK: Okay. No further questions.

19 MR. POSTIC: Nothing further.

20 THE COURT: May this witness be excused? Without
21 objection.

22 MR. POSTIC: Thank you, Your Honor.

23 THE COURT: All right. Ladies and gentlemen,
24 let's take a short afternoon break. Don't discuss the
25 case among yourselves while you're in the jury room.

1 (WHEREUPON, the jury left open court at
2 approximately 4:16 p.m.)

3 THE COURT: Ready for the jury?

4 MR. POSTIC: I'm sorry. Before we bring in the
5 jury, can I ask something? It looks like we'll be
6 excusing them after this witness. Could we have the
7 jury come back at 9:30. My client didn't get here
8 from the jail until after nine.

9 THE COURT: Well, there was a mix up.
10 Transportation tells me that's been resolved.

11 MR. POSTIC: I understand that. I may want to
12 have time to confer with him. I may also have some
13 housekeeping matters to come up.

14 THE COURT: Sure you will. That will be fine.

15 MR. POSTIC: Thank you, Your Honor.

16 As long as we're moving forward.

17 MR. PERRY: Your Honor.

18 THE COURT: The State's case.

19 MR. PERRY: I don't see any reason why the state
20 can't rest starting at 9:30.

21 THE COURT: All right. We'll see. Bring the
22 jury.

23 (WHEREUPON, the jury came into open court at
24 approximately 4:40 p.m.)

25 THE COURT: All right. Solicitor, call your next

1 witness.

2 MR. MOAK: The State calls Carolyn Kirkland.

3 CAROLYN KIRKLAND,

4 after being duly sworn, testified as follows:

5 THE WITNESS: My name is Carolyn M. Kirkland.

6 DIRECT EXAMINATION:

7 BY MR. MOAK:

8 Q Ms. Kirkland, where are you employed?

9 A Kershaw Health.

10 Q That's the hospital?

11 A Yes.

12 Q How long have you been there?

13 A Fifteen years.

14 Q And what do you do there?

15 A I draw blood.

16 Q And were you drawing blood there on June 20th,
17 2009.

18 A Yes.

19 Q And that's your job?

20 A Yes.

21 Q And you know how to do it?

22 A Yes.

23 Q You do it good, don't you?

24 A Yes.

25 Q Now, on June 20, 2009, do you remember a highway

1 patrolman brought an individual in and requested a
2 blood draw?

3 A Yes.

4 Q I'm going to show you what's been marked as
5 State's 100 to see if you recognize that?

6 A Yes.

7 Q Is that your signature on there?

8 A Yes, sir, it is.

9 MR. MOAK: Your Honor, at this time I'd move
10 State's 100 into evidence.

11 THE COURT: Any objection?

12 MR. POSTIC: No objection, Your Honor, thank you.

13 THE COURT: Without objection.

14 (WHEREUPON, State's Exhibit Number 100 was
15 admitted into evidence.)

16 BY MR. MOAK:

17 Q Now, what did you do that day for the trooper?

18 A The trooper brought the guy in for the test, and
19 I drew a blood sample and collected a urine sample
20 with him as well.

21 Q Okay. Now, the blood sample, I think you
22 collected six vials?

23 A Yes.

24 Q And why did you collect so many vials?

25 A Well, normally when we bring patients in through

1 the ER, we draw extra blood just in case the physician
2 wants to be order any additional tests. We go ahead
3 and draw it all at once so we have it.

4 Q So you draw extra just in case you needed it?

5 A Yes.

6 Q Now, the vials that you use, what cap do they
7 have on them?

8 A It's a gray cap.

9 Q What does the cap mean mean?

10 A It's the one we use for alcohol with the -- it
11 has a certain enzyme in it that we use for alcohol
12 testing.

13 Q It prevents the breakdown or --- prevents it from
14 changing?

15 A Well, we just clean and prep. We do the non-
16 alcohol prep when we draw the blood.

17 Q But the gray cap has something it?

18 A Yes, it had like a powder like substance.

19 Q And that's intended for alcohol or toxicology
20 testing?

21 A Yes.

22 Q So that's the kind you're supposed to use and
23 that's what you used?

24 A That's what we used.

25 Q Now, the prep, can you explain to the jury what

1 the non-alcohol prep means?

2 A Yes, that's the procedures that we do for
3 alcohol -- when we're testing for alcohol that we
4 clean the site with before we actually draw the
5 specimen.

6 Q So it's almost like a piece of cotton or
7 something?

8 A It's like a betadine swab that is non-alcohol
9 related.

10 Q So obviously you don't want to put alcohol in a
11 spot and then test it?

12 A Right.

13 Q That's what you're doing?

14 A Right.

15 Q So you did the non-alcohol prep, and it's like a
16 needle that goes in there?

17 A Right. After I prep the area, I kind of let it
18 air dry a little bit before we insert the needle in.
19 Once the needle is in, then I put tube in to let the
20 blood go in the tube. Once the tube is full of blood,
21 I have this tape that we wrap it around the specimen
22 to secure it. Once that is done, then I give it to
23 the officer. I put it in a biohazard bag and give it
24 to the arresting officer.

25 Q Do you write anything on the vials when you're

1 doing it?

2 A Yes, we have to put the patient's name, date of
3 birth, and I put my initials and the time of the draw,
4 and then I show it to the ---

5 Q The officer?

6 A The officer and to the patient so he can verify
7 that the information on the specimen is correct.

8 Q So if I say that my name is Ron Moak and if you
9 did mine and said, "Brett Perry," I would be able to
10 pipe up and say, "Hey, that ain't me?"

11 A Say it again.

12 Q Like if there's a wrong name on there, the
13 patient can speak up and say that's not me. They
14 could say, object if you have the wrong name on there?

15 A Right.

16 Q So you make sure they know that you have the
17 right name on there?

18 A Right.

19 Q And you did that?

20 A Uh-huh.

21 Q You put the six bottles in the biohazard bag and
22 gave them to the trooper?

23 A I only put the one that the trooper requested in
24 the bag.

25 A Okay. The extra two I took back to the lab in

1 case the ER doctors wanted additional lab work.

2 Q So if the trooper's paperwork had six vials on
3 it, you would disagree with that?

4 A I only drew the gray top for the trooper.

5 Q Uh-huh.

6 A Now, if he took the six --- I can't remember if
7 he took the six. I know we normally give the gray to
8 the trooper.

9 Q How about this. Do you specifically remember
10 this day?

11 A No.

12 Q You just know what you to?

13 A Right. I normally keep a copy of all the drug
14 screens that we do, my lab manager keeps records of
15 everything that we do in the lab.

16 Q Do you know what you do every time you are
17 requested to do that?

18 A Right. We have a certain protocol we have to
19 follow.

20 Q Okay. And you sign that piece of paper and you
21 acknowledge that you did that?

22 A Yes.

23 Q You got a copy of that?

24 A Yes.

25 Q You kept a copy?

1 A Yes.

2 Q There's no question you draw this blood?

3 A No.

4 Q There's no question you sealed the vial?

5 A No, there's no question.

6 Q So there's no question you gave it to the
7 trooper?

8 A No.

9 No further questions.

10 THE COURT: Cross-examination?

11 MR. POSTIC: Thank you, Your Honor.

12 CROSS-EXAMINATION:

13 BY MR. POSTIC:

14 Q Nurse Kirkland, thank you for coming. You don't
15 remember this day; is that correct?

16 A No.

17 Q Okay. Nothing stands out to you about this day?

18 A No.

19 Q Okay. When you look at your notes or what the
20 solicitor's office has given you, it indicates that
21 you took six vials of blood?

22 A Well, I have a copy of what I draw and he
23 requested a urine sample and blood draw. That's what
24 I drew.

25 Q Well, what --- it says six vials.

1 A Well, because we normally draw an extra two when
2 the doctor --- we have what you would call a rainbow
3 and we draw every color we have. Like I said, just in
4 case the ER doctor wants to order additional labs or
5 if the trooper had wanted anything extra. I mean,
6 that's just the protocol. We have to draw extra so we
7 don't have to be backtracking.

8 Q So you don't remember in this case if you gave
9 this blood to the trooper?

10 A Well, I know I gave it to the trooper because I
11 wrapped paraffin around it, I secured it, I put it in
12 a Ziploc after I made sure the name, the initial, the
13 time and date and everything was correct on it. He
14 verified what I had, along with the guy that I draw
15 from and we both agreed on the time and the name and
16 that everything was correct. Then I wrapped paraffin
17 tape around it, put it in a biohazard bag and then
18 placed it in the officer's hand. After we finish our
19 paperwork, I have him sign on there that he gave him a
20 copy.

21 Q That's one tube that you gave to the trooper?

22 A I gave it to him in the bag.

23 Q One tube?

24 A Yes.

25 Q What happens to the rainbow, minus one?

1 A I carried it back to the lab.

2 Q You carried it back to the lab and then where
3 does it go from there?

4 A We keep it's in the lab.

5 Q Until what?

6 A If the doctor doesn't order anything, we just put
7 it in an extra rack.

8 Q In an extra rack?

9 A Yeah, we save it for that day and if we want to
10 go back, we can pull it. It's good for 72 hours.

11 Q Okay. So it's good for 72 hours?

12 A If it's refrigerated.

13 Q So once it's refrigerated, it's good for 72
14 hours?

15 A Yes.

16 Q I'm sorry if I'm being a stickler. I don't quite
17 understand what happens, why there is a need for
18 extra --- if he is not a patient, why there is a need
19 for extra blood.

20 A Well, I mean, I don't know if he wasn't a
21 patient. When the officer asked me to draw the blood,
22 that's protocol for everybody is what I'm saying.

23 Q Okay.

24 A We draw extra blood. I mean, I just draw the
25 extra blood.

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1 MR. POSTIC: One second, please. Beg the Court's
2 indulgence.

3 (Pause.)

4 BY MR. POSTIC:

5 Q Nurse Kirkland, closing up here. Once you have
6 the extra blood and you take it to the lab, you leave
7 and you go take care of the next patient; is that
8 correct?

9 A Well, I have the process that --- I mean, I have
10 to take it to a centrifuge and get it spun down. You
11 know, I have the right identification on it and take
12 it to its proper area that we store blood. Then yeah,
13 I go take care of the next patient.

14 Q And you'll write whoever the patient is, what his
15 name is or her name is?

16 A Name, date of birth.

17 Q Okay.

18 A My initials and the time.

19 Q Okay. Wonderful. Thank you very much. Thanks
20 for coming.

21 THE COURT: Redirect examination?

22 REDIRECT EXAMINATION:

23 BY MR. MOAK:

24 Q This thing you're talking about, the rainbow,
25 that's different color caps on the vials, right?

1 A Yes.

2 Q And the gray cap is the one that has the powder
3 in it?

4 A Yes.

5 Q And that's designed to preserve it. What's that
6 powder for, do you know?

7 A I don't know. I don't process it. All I do is
8 draw it.

9 Q Okay. But the other colors don't have that?

10 A No.

11 Q Okay. Now, if the defendant, Mr. Thigpen is not
12 a patient, would y'all keep the six or would y'all
13 give it back to the trooper?

14 A If he asked for it, we would have given it back.

15 Q So if the trooper asked for all of them, he would
16 have got all of them?

17 A Yes.

18 Q And you don't remember?

19 A No.

20 MR. MOAK: No further questions.

21 THE COURT: Anything further?

22 (Indicating in the negative.)

23 THE COURT: All right. Ma'am, you may come down.

24 May this witness be executed?

25 Without objection. You're free to go, ma'am,

1 thank you very much.

2 All right. Ladies and gentlemen, during the
3 break, I spoke with the attorneys about the schedule
4 for this evening, and they tell me the next witness is
5 going to be rather long, so I think the best use of
6 our time would be to go ahead and adjourn for the day
7 now, and I'm going to ask you to be back in the jury
8 room at 9:30 in the morning. It's a little bit later.
9 We have some things we have to do before we get
10 started, so I didn't want to have you sitting in the
11 jury room waiting for us.

12 So if you'll be back in the jury room at 9:30 in
13 the morning, we'll be prepared to start. Have a
14 pleasant evening and again, please don't discuss the
15 case among yourself when you return to the jury room
16 or with anyone else over the evening hours, and I ask
17 you please don't try to do any research about this
18 case. I trust you will not. Thank you very much.

19 (WHEREUPON, the jury left open court at
20 approximately 4:53 p.m.)

21 THE COURT: Stand at ease until 9:30 tomorrow.

22 MR. PERRY: Thank you, Your Honor.

23 MR. POSTIC: Thank you, Your Honor.

24 (WHEREUPON, State's Exhibit Numbers 109, 110,
25 111, and 128 were marked for identification

1 only.)

2 (WHEREUPON, there was an overnight recess).

3 THE COURT: State ready to proceed?

4 MR. PERRY: Yes, sir.

5 THE COURT: Defense ready to proceed?

6 MR. POSTIC: Just a matter of housekeeping before

7 we ---

8 THE COURT: Yes, sir.

9 MR. POSTIC: Maybe at the morning break he could
10 --- my client was unable to shave at the jail. I
11 would like to allow him to shave, and his family will
12 bring him a shaving kit, if the Court will allow him
13 to shave.

14 THE COURT: No problem. Electric razor?

15 MR. POSTIC: I don't know what they're bringing.
16 A shaving kit. Certainly somebody can watch over him
17 while he shaves.

18 THE COURT: All right. Bring the jury, please.

19 (WHEREUPON, the jury came into open court at
20 approximately 9:42 a.m.)

21 THE COURT: Good morning.

22 THE JURORS: Good morning.

23 THE COURT: All right, ladies and gentlemen,
24 we're now ready to continue with the trial.

25 Solicitor, call your next witness.

1 MR. PERRY: Your Honor, the State would call
2 Trooper Monty Coats.

3 MONTY COATS,
4 after being duly sworn, testified as follows:

5 THE CLERK: Have a seat and state your name for
6 the record.

7 THE WITNESS: Sergeant C.M. Coats, South Carolina
8 Highway Patrol, Emergency Traffic Management,
9 Blythewood headquarters.

10 DIRECT EXAMINATION:

11 BY MR. PERRY:

12 Q Sergeant Coats, if you will, please tell the
13 court a little bit about your work history, your
14 educational background, where you work, where you're
15 from, where you live.

16 A I'm a resident of Irmo. I was born in South
17 Carolina. I graduated from Laurens High School. I
18 graduated from the Citadel. I worked for the Laurens
19 County Sheriff's office for three years. I went to
20 the Highway Patrol in 1999, been there ever since.
21 Worked mainly road enforcement in Richland County. I
22 transferred to the M.A.I.T. Team in 2006, 2007, was
23 there until 2009 and presently at State headquarters
24 in our emergency traffic management.

25 Q All right. You mentioned the M.A.I.T. Team,

1 Trooper Coats. In June of 2009, do you remember the
2 M.A.I.T. Team?

3 A Yes, sir.

4 Q If you will, please explain to the court what the
5 M.A.I.T. Team is, what its mission is, how one comes
6 to be on the M.A.I.T. Team, the sort of training you
7 have to receive, just everything you can about the
8 M.A.I.T. Team.

9 A The M.A.I.T. Team stands for Multi-disciplinary
10 Accident Investigation Team. It was started back, I
11 believe the history of it was 1996 with a select few,
12 13 to 16 members. Since that time it's grown to an
13 actual troop, troop number eight. They have --- the
14 M.A.I.T. Team consists of regions that are in
15 Greenville, the Piedmont Region, the Foothills Region
16 which is in Greenwood area, the Midlands Region that
17 is here in Columbia and is the Columbia metro region,
18 and the Charleston region, which is the Coastal Region
19 and the Pee Dee Region over in Florence, Horry. They
20 have a select number of counties for which they are
21 responsible.

22 The particular M.A.I.T. Team that I was involved
23 with was the Midland Region, which encompassed,
24 Richland, Lexington, Kershaw, Lee, Sumter, Clarendon
25 and Aiken, so the mid state, the mid portion of the

1 state.

2 I got involved with the M.A.I.T. Team by being
3 selected as a M.A.I.T. associate, which required me to
4 have and I cannot even tell you how many hours of
5 accident reconstruction that I've had, but there's
6 three phases of the M.A.I.T. associate training which
7 lasts two weeks, so you're looking at 80 hours each,
8 each session. So I took that at the Criminal Justice
9 Academy. Technical, at scene and reconstruction are
10 the three that qualifies you to become a member of the
11 M.A.I.T. Team.

12 Since then there's conferences that I have gone
13 to, other type of classes that I've had dealing with
14 reconstruction, dealing with collecting evidence,
15 dealing with crash data retrieval, the black box, if
16 you will, of a vehicle, so forth and so on.

17 Q What type of accidents does the M.A.I.T. Team get
18 involved in? Is this your ordinary everyday fender
19 bender?

20 A No, sir. It can be if the troop captain requests
21 us to come and assist the line troops with
22 documentation, photographs, or video, but mainly
23 fatalities, chargeable fatalities, in which the at-
24 fault person is not deceased and there's actually
25 going to be a charge made. Any major high profile

1 collision, maybe something that deals with a container
2 truck carrying some type of hazardous material,
3 something that's going to keep the interstate clogged
4 up for many hours.

5 Anything that's high profile, the troop captain
6 may just request M.A.I.T. to come in to assist the
7 line troops with the investigation in the collision.

8 Q Does the M.A.I.T. Team work traffic fatalities
9 where the at-fault driver is potentially going to be
10 charged with an alcohol related offense or some other
11 sort of felony charge?

12 A Yes, sir.

13 Q If you will, please tell the court about your
14 involvement with this particular case, the one in
15 which the defendant Donnie Thigpen was charged
16 resulting from the accident out on Twenty-five Mile
17 Creek Road in the early morning hours of June 20,
18 2009?

19 A Can I refer to my ---

20 Q Absolutely. If you have your notes there with
21 you, by all means.

22 A Okay. All right. On June 20, 2009, the troop
23 lieutenant, probably the on call lieutenant that day,
24 Lieutenant Robbie Rabon, requested M.A.I.T.'s
25 assistance, the multi-disciplinary accident

1 investigation team to go to Twenty-five Mile Creek
2 Road to a collision involving one vehicle.

3 I received the call --- I'm not sure exactly who
4 it was. I think it was Sergeant Breeding. I think at
5 the time he was the team leader. He called myself and
6 Lance Corporal O'Donnell to go to the scene and begin
7 documentation and evidence collection of this scene.

8 Let's see. We --- I'm trying to see what time I
9 got the call. We were notified about 10:26 a.m. on
10 June 20th, 2009, and arrived on scene about 12:05 on
11 June 20, 2009, myself and O'Donnell.

12 Q All right. When you arrived on the scene out
13 there on Twenty-five Mile Creek Road, in fact, before
14 you get to that question ---

15 MR. PERRY: Your Honor, may I approach?

16 THE COURT: Yes, sir.

17 BY MR. PERRY:

18 Q I show you what's been admitted into evidence as
19 State's Exhibit 93 and on the backside, 94. I just
20 ask you if is familiar in any way. If so, what does
21 it appear to represent?

22 A This is a Google Earth shot of the aerial
23 location. It has indicated the approximate location
24 of the actual collision of the S.U.V. and the tree and
25 it ---

1 Q Can you turn that where the jury can see?

2 A Sorry.

3 THE COURT: He can get up if you want him to.

4 BY MR. PERRY:

5 Q Yes, sir, thank you.

6 A This is Twenty-five Mile Creek Road with the
7 approximately location of the collision of the S.U.V.
8 versus the tree and the location of the registered
9 owner of the vehicle, and the backside is a blown up
10 copy or a typed copy of the same registered owner's
11 vehicle address and the approximate collision
12 location.

13 Q Not to get too far ahead of our ourselves, but I
14 want to talk about what you found when you got to the
15 accident scene, but did you have occasion at some
16 point to go from the accident scene down to the
17 registered owner's residence?

18 A Yes.

19 Q Looking at that map and your recollection that
20 day, what was the distance that you traveled?

21 A My estimation, it was about a quarter mile,
22 quarter mile or less.

23 Q Would your describe it as being easily walkable?

24 A Yes.

25 Q Thank you. Now, when you arrived there at the

1 scene of the accident out on Twenty-five Mile Creek
2 Road, what did you find?

3 A The emergency services were on scene, fire and
4 EMS. I don't know exactly what department, from
5 Kershaw County.

6 Trooper Kelly, the investigating officer, I can't
7 remember if a tow truck was on the scene at that time
8 or if we had to call one a little later on.

9 Q Had the vehicle been moved?

10 A The vehicle was still in its original location.

11 Q In fact, your responsibility there would be to
12 investigate how it came to rest in that location,
13 right?

14 A Yes, sir. Just to get in what I did when I got
15 there, I have indicated here that I took the
16 photographs of the scene and photographs of the
17 vehicle. Generally we divide up the job
18 responsibilities once we get on the scene, as far as
19 documentation, and we asked Trooper Kelly to take
20 video. We do document with still photographs, digital
21 photographs and also videography of the scene and
22 asked Trooper Kelly to assist us out. We only had two
23 people at the time, and it was kind of hot, so I was a
24 little embarrassed about that at the time.

25 Myself and now Corporal O'Donnell took the plot

1 evidence plot of the total station.

2 Q When you talk about taking the evidence plots,
3 what does that entail? Explain that to the jury.

4 A We use the Sokkia station, which is a survey, a
5 piece of survey equipment. You see them on the side
6 of the road with the D.O.T. and a lot of the
7 engineering companies. It's the same method.

8 We take the total station, you look through it,
9 it's magnified, and you line it up onto a point on a
10 prism and it's nothing more than a stick with a prism
11 on the end of it. It takes a laser shot. By that
12 laser shot and the workings of it, the angle in which
13 the station was tilted, so forth and so on. Anyway,
14 it gives you a measurement --- it plots a point, and
15 then we take that raw evidence, put it into a computer
16 piece of software and are able to generate a C.A.D.
17 drawing or computer aided diagram of the actual
18 traffic collision scene or the accident scene.

19 Q I'll have Trooper O'Donnell give more in detail.
20 I just wanted you to give more of an overview of how
21 that worked.

22 A So instead of taking a tape measure and measuring
23 from one point to the other, we kind of use a little
24 bit of technology to make it a little easier and a
25 little more precise.

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

2 (Pause.)

3 MR. POSTIC: No objection.

4 THE COURT: Without objection.

5 (WHEREUPON, State's Exhibit Number 128 was
6 admitted into evidence.)

7 MR. PERRY: Your Honor, may the witness step
8 down?

9 THE COURT: Okay.

10 BY MR. PERRY:

11 Q I would show you what has been admitted as
12 State's 128. Would you just kind of look at that and
13 see if there is anything on there that relates to what
14 you just explained to the jury, and if so, show it to
15 them and explain.

16 A Okay. This is a photograph that I took, one of
17 my responsibilities. It also shows the ambulance on
18 scene and in the forefront, it's what I talking about
19 the prism poles that we actually go through and plot
20 the points for the evidence. That's the orange ---
21 the little mechanism there is the prism block. That's
22 what we use to plot the evidence.

23 Q Looks a bit like a tripod?

24 A Yes.

25 Q Thank you, Sergeant Coats. All right. So please

1 go ahead and continue telling us what you did whenever
2 you got there on the scene?

3 A Okay. Again, like I said, I took the
4 photographs. That takes a little bit of time to
5 actually take the photo. I cannot tell you how many.
6 I usually like to take a great deal of them, double
7 taking a couple of the shots just to make sure that I
8 capture everything. We do an overall view of the
9 scene and then kind of focus in on the way that the
10 vehicle traveled, taking pictures of that progressing
11 along, shooting the shot, progressing along, shooting
12 the shot so that we can kind of capture everything.
13 We do an overall of the vehicle or vehicles involved
14 and then any evidence inside the vehicle, outside the
15 vehicle. That's --- I mean, as far as the photographs
16 go.

17 Q Now ---

18 MR. POSTIC: I renew my objections, Your Honor,
19 to the next photograph.

20 THE COURT: Which one is it?

21 MR. POSTIC: This.

22 THE COURT: All right.

23 (WHEREUPON, there was a bench conference.)

24 THE COURT: Over the defendant's objection.

25 BY MR. PERRY:

1 Q Trooper Coats, I'm going to hand you up what's
2 been marked State's Exhibit 61, entered in as 61. I'd
3 ask you if you can identify that photograph, who took
4 it, what it appears to represent and just tell the
5 jury a little bit more about what you did that morning
6 as your continued to investigate?

7 A This is the photograph I took, again as I was
8 explaining prior to this that we take photographs of
9 the vehicle and inside the vehicle for evidence, key
10 points. This is one that I took that day prior to the
11 vehicle being moved, prior to any victims being
12 removed from the victim, and this one shows the
13 deceased that was seat belted in the vehicle at the
14 time as the vehicle lay on its topside.

15 Q When you got there, you found the vehicle to be
16 crashed, resting upside down on its roof, the
17 defendant still --- not the defendant. Excuse me, the
18 victim still seat belted into the passengers' side
19 seat; is that correct?

20 A Yes, sir, that's correct.

21 Q And is --- you took that photograph?

22 A Yes.

23 Q It's a fair and accurate representation of what
24 you took that morning?

25 A Yes, sir.

1 Q If you would, with Your Honor's permission,
2 please step down and approach the jury, show them what
3 you found.

4 A This is the inside of the vehicle at the time
5 that I took the photograph as it was resting upside
6 down.

7 Q If you could walk down this way.

8 So the photograph as it exists now is properly
9 oriented, the vehicle being upside down?

10 A Yes.

11 Q Okay. Trooper Coats, to the best of your
12 knowledge, does that photograph represent how the
13 interior of that vehicle would have looked at the time
14 of the accident? At the time the accident occurred?

15 A Not at the time. After the collision, yes, sir.

16 Q Yes, sir.

17 A That's what it looks like after.

18 Q In other words, immediately following the
19 collision?

20 A Yes, sir.

21 Q To the best of your knowledge, had anybody
22 tampered with the interior of the vehicle up to that
23 point?

24 A No, sir.

25 Q So it would be fair to say that immediately

1 following the accident that that's an approximation of
2 what anyone else in that vehicle, the driver of that
3 vehicle would have seen?

4 A Yes, sir.

5 Q In addition to taking photographs, did your
6 responsibilities at the scene entail gathering any
7 evidence of any potential crime?

8 A Yes, sir, and again myself and now Corporal
9 O'Donnell with the help of Trooper Kelly collected
10 evidence after photographing the vehicle and the
11 scene. We went in and took pieces of evidence from
12 the vehicle. Videoing that also, along with taking
13 still digital shots while we took evidence from the
14 vehicle.

15 Q Were there any particular items of evidence,
16 anything that was remarkable that you recall having
17 gathered from the scene itself?

18 A Okay. One remarkable thing --- or something
19 that's --- if I didn't point it out in the photo, I'm
20 not sure if you saw it, the actual steering mechanism,
21 the steering wheel, was not intact as it would be in a
22 regular car due to the force of the vehicle and the
23 actual dynamics of the collision, so the steering
24 wheel came off at impact. We took the steering wheel
25 as a piece of evidence.

1 MR. POSTIC: Without objection, Your Honor.

2 THE COURT: Without objection.

3 (WHEREUPON, State's Exhibit Number 76 was
4 admitted into evidence.)

5 BY MR. PERRY:

6 Q Sergeant Coats, I show you what's been admitted
7 as State's 76. I would ask you if you can identify
8 that. Show the jury, and tell the jury if you will,
9 what it is.

10 A This is the steering wheel, the steering
11 mechanism from the Jeep SUV, due to the damage from
12 the impact, not intact to the steering column. We
13 removed it for evidence to be tested for DNA.

14 Q In addition to showing that you recovered the
15 steering wheel, you mentioned you had the airbag
16 there. Were you were taking that to be tested for
17 DNA?

18 A That's correct.

19 Q Just briefly, why would you expect the airbag to
20 have any DNA on it?

21 A Once an airbag goes off, generally speaking and
22 due to the case, it makes some nice marks on the
23 inside of your arms.

24 Q What causes that?

25 A Just the explosion. The way it comes out, what

1 the force is. It comes out really quick. The heat
2 inside that occupant compartment, instead of slamming
3 up against the steering wheel, it kind of keeps you
4 inside the seat, inside the compartment, but when it
5 comes out, the force and friction of the airbag
6 exploding is what causes the marks or the abrasions on
7 the inside of your arms.

8 Q So the airbag touches you whenever it comes out?

9 A Yes, sir.

10 Q Okay. And because the airbag will touch the arm
11 with such force that it would leave marks, you would
12 expect that to ---

13 A To contain DNA, yes, sir.

14 Q In addition to recovering the steering wheel and
15 the airbag to be tested for DNA, were there any other
16 items of note of evidence that you recovered from the
17 accident scene from the vehicle itself?

18 A Inside the vehicle above the driver's portion of
19 the occupant compartment is the headliner. We
20 retrieved a bloody stain from the headliner, we
21 photographed it prior to placing any markers showing
22 this particular piece of evidence and then
23 photographing the headliner with the marker on it.
24 And then we extract it by cutting the actual piece of
25 headliner with the D.N.A. material.

1 MR. POSTIC: Without objection, Your Honor.

2 (WHEREUPON, State's Exhibit Numbers 109, 110 and
3 111 were admitted into evidence.)

4 BY MR. PERRY:

5 Q Sergeant Coats, I would hand up to you what's
6 been admitted without objection as State's 109, 110,
7 and 111. I'd ask you if you can identify these, who
8 took them, what they appear to be and anything of
9 particular note in those photos.

10 A Okay. I took all these photographs. Again, as I
11 was saying, there is a, if you will, pristine, without
12 the evidence marker tape being placed down, what the
13 piece of evidence looks like prior to laying that
14 down. Then a piece of --- a far away aspect of it,
15 and then a close up aspect of the actual piece of
16 evidence or DNA material that were collected.

17 Q What is, in fact --- at the time, what did that
18 material appear to be? What was that photo of?

19 A A photo of blood that's on top of the headliner
20 as the vehicle was rolled over right above the
21 driver's seat or driver's portion of the vehicle.

22 Q Why would you have thought that was evidence of
23 anything? Why was that important to you?

24 A If the driver was cut, and in which this case it
25 was. It was a cut later identified over his --- I'm

1 not sure exactly which eye. I'd have to look back
2 over the picture to see, but a cut over his brow and
3 this is consistent with being cut and blood dripping,
4 being flipped over onto the headliner, so we took that
5 as a piece of evidence identifying the driver to the
6 vehicle at that time.

7 Q In addition to the blood, do you notice anything
8 in particular in the close-up photograph there?

9 A It appears, through these photographs and it
10 looks like, dark colored hairs.

11 Q And those hairs, were they recovered as evidence?

12 A No, sir, we didn't recover them. To be honest
13 with you, I didn't --- it didn't draw my attention to
14 it until I started looking at it and preparing for the
15 case.

16 Q Now, if he would, with Your Honor's permission,
17 just step down, if you would just step down and show
18 the jury those three photos, and again point out the
19 photos in pristine condition as well as the ones with
20 the evidence markers.

21 THE COURT: Go ahead.

22 BY MR. PERRY:

23 Q Go ahead.

24 A With the vehicle being flipped upside down,
25 normally the headliner would be up. At this time, the

1 vehicle is upside down. This is a picture of the
2 pristine without any type of evidence marker. What
3 we're talking about here is this blood stain.

4 The next one is going to be a far away aspect of
5 the same with an evidence marker laid next to it,
6 right next to it, and then also to show the
7 orientation of the vehicle being upside down within
8 the driver's occupant's section. And then a close up
9 with an evidence marker and, as you can see here, what
10 appears to be some dark colored hair.

11 Q Trooper Coats, with respect to the airbag and the
12 cutting of the headliner that had what appeared to be
13 a blood stain on it, did you take those items into
14 evidence, secure them? Explain exactly what you do
15 with those when you take possession of them; how do
16 you maintain the integrity of those items to be sure
17 they aren't tampered with?

18 A Okay. With this we use latex. I think it's
19 nitrate gloves now. These are particular blue gloves
20 so we're not transferring anything to the vehicle and
21 also protecting ourselves from any biohazards, blood
22 or any other type of bodily fluids.

23 With that we cut with scissors a piece of
24 material and place it in a paper bag so that it can
25 dry or either air come through, not plastic bags but

1 paper bags, and then we submit that to the State Law
2 Enforcement Division to their DNA lab for DNA
3 analysis. The same with the steering wheel.

4 I believe it's a large bag for it. It could have
5 been a box, a corrugated paper box, nothing in plastic
6 so it still could breathe if the material is not
7 totally dry at the time.

8 Q All right. When you did take those into
9 evidence, what did you do with them? Were they
10 maintained in your custody?

11 A Yes, maintained in our custody, and then we
12 transported them back to our office to log them in to
13 the evidence locker, and then they're transported to
14 the State Law Enforcement Division, how they maintain
15 them I cannot tell you, but they maintain them, I
16 would assume in the same manner that we do in their
17 evidence locker until it's pulled out for analysis.

18 Q And is there somebody in an evidence repository
19 that's responsible for making sure that these things
20 are maintained safety, securely and not tampered with?

21 A We have an evidence custodian within the office
22 and then for the State --- or the Department of Public
23 Safety, there's a central evidence facility there on
24 Shop Road that maintain custody of everything. If
25 we're not needing it to go to SLED, and then we

1 transport it to the C.E.F.

2 Q That's the Central Evidence Facility?

3 A Yes, sir.

4 Q Whose in charge of that? Would that be Trooper
5 Coffin?

6 A Trooper Coffin was the evidence custodian within
7 our office, the evidence locker, and then at C.E.F.
8 the actual commanding officer is First Sergeant
9 Wendell Rivers and then he has some officers under
10 him, Corporal Frick, Lance Corporal Donkle and Officer
11 Odom.

12 Q And those folks would have been responsible for
13 maintaining the security and integrity of those items
14 of evidence until at such time that they needed to go
15 to SLED?

16 A That's correct.

17 Q Any reason at all for you to believe that was not
18 the case?

19 MR. POSTIC: I object to any speculation, Your
20 Honor, or any assumptions or anything that's not his
21 personal knowledge.

22 MR. PERRY: Do you know ---

23 THE COURT: Sustained.

24 BY MR. PERRY:

25 Q I'm sorry. Do you know of that not being the

1 case.

2 A No, sir, I don't know of anything.

3 Q In addition to --- was there anything else of
4 note that you did there at the accident scene other
5 than help Officer O'Donnell, Trooper O'Donnell with
6 the investigation of the wreck?

7 A Other than taking the photographs, collecting the
8 evidence, specifically the evidence pieces here that
9 we use for testing, photographing the interior of the
10 vehicle, nothing else. We had Trooper Kelly do a
11 field sketch.

12 Corporal O'Donnell did a vehicle inspection and
13 that's all I see noted here in the case notes.

14 Q In addition to your duties and responsibilities
15 there at the accident scene, did you at some point
16 during the course of your investigation in this matter
17 have occasion to go to the residence and if so in what
18 capacity and to do what?

19 A Okay. After processing the scene there, and by
20 processing, I mean taking the photograph
21 documentation, video documentation, field sketch,
22 shooting evidence points, collecting the evidence and
23 then allowing the vehicle to be uprighted and placed
24 on the wrecker to be taken out, we left the scene
25 after the scene was clear and went to the residence,

1 like I said some quarter mile or less away to that
2 address on Twenty-five Mile Creek Road that's
3 indicated there, and we served a search warrant on the
4 house.

5 MR. POSTIC: Your Honor, can we approach one
6 second, please?

7 (WHEREUPON, there was a bench conference.)

8 THE COURT: You may continue.

9 MR. POSTIC: Without objection on these, Your
10 Honor.

11 Well, there is one, Your Honor. There is one. I
12 just want to know the relevance of it.

13 (WHEREUPON, State's Exhibit Numbers 112 through
14 126, were marked for identification only.)

15 BY MR. PERRY:

16 Q Trooper Coats, I show you what's been marked as
17 State's 96 for identification purposes only and refer
18 you in particular to the last page of that document.
19 Does that appear to be familiar to you?

20 A Yes, sir.

21 Q And what does that appear to be?

22 A This was a return for evidence that was seized
23 pursuant to the search warrant and it was actually
24 written in my handwriting.

25 Q What is the return and what was its purpose?

1 A The return was to go back to the issuing judge in
2 this case. It was a Kershaw County Magistrate R
3 Eugene ---

4 Q Hartis.

5 A Hartness?

6 Q Hartis.

7 A I'm not familiar with him, but anyway, that was
8 the issuing judge and the return goes back to the
9 judge indicating the items that were seized pursuant
10 to the search warrant.

11 Q And what items did you seize at the residence
12 pursuant to the search warrant?

13 A It indicates here one pair of gray tennis shoes,
14 one pair of white tennis shoes. One pair of black
15 shorts, black short pants with brown belt and cell
16 phone holder. Contents were removed. One blue bath
17 towel, one pair of blue plaid boxer underwear, one
18 yellow with blue stripes golf shirt and one white
19 undershirt.

20 Q All right. Thank you.

21 MR. PERRY: Your Honor, items 112, 113, 114, 115,
22 116, 117, 118, 119, 120, 121, 122, 123, 124 and 126,
23 photographs from the residence are being offered up, I
24 believe without objection.

25 MR. POSTIC: No objection.

1 THE COURT: All right. Without objection.

2 (WHEREUPON, State's Exhibit Numbers 112 through
3 124 and 126 were admitted into evidence.)

4 MR. PERRY: I also am going to be hand him photos
5 that were admitted yesterday, photographs of the door
6 that have been admitted without objection.

7 MR. POSTIC: They're already in. I won't object
8 again.

9 THE COURT: Okay.

10 BY MR. PERRY:

11 Q Trooper Coats, whenever you got to the residence
12 to execute the search warrant, did you take
13 photographs while you were there?

14 A Yes, sir.

15 Q The photographs that you have in your hand at
16 this time, did you take those photographs?

17 A Yes, sir.

18 Q And tell the jury about the condition you found
19 the residence in and what you did when you got there
20 to execute the search warrant.

21 A Again, arriving at the scene, I prepared myself
22 to take photographs. Again, with our job duties,
23 however we split them up, I'll start taking
24 photographs of the collision scene, then I'll continue
25 on with the processing or serving the search warrant

1 while we're out on the call. I had an opportunity to
2 take the photographs. One thing that was remarkable
3 when we got there, the front door to the mobile home
4 was --- it appeared to be kicked in. I photographed
5 the door, the doorjamb, the door locking mechanism.
6 It appeared to be foot marks, footprint marks on the
7 front door. It looks like a hand mark down the side
8 of the door, broken wood from -- it looks like the
9 corner round molding from the doorjamb, the actual
10 lock showing the damage to it from being kicked in.

11 Q Trooper Coats, why would that be remarkable?

12 A Why would that be remarkable?

13 Q Yes.

14 A It had been forced.

15 Q It had been forced. Okay.

16 A The keys to the vehicle were still inside the
17 vehicle and it appeared that the defendant did not
18 have keys to open the --- I mean, the door to his
19 residence, so he had to make forced entry.

20 Q All right. As you went into the house to execute
21 the search warrant, just tell the jury about what you
22 did, what you found.

23 A Okay. We went into the house, did a cursory just
24 look around, and then we started to take shots of the
25 evidence that was indicated there on the search

1 warrant, photographs and video as we collected the
2 evidence and this was, I guess, notable because in the
3 conversation or the interview that I had with the
4 defendant later on at the jail that afternoon, the
5 actual items that we collected were the items that he
6 stated that he had on that night.

7 Q So let me be really clear about this. The items
8 that you recovered that day there at the residence,
9 did they appear to be fresh worn?

10 A Yes, sir, they were wet. Some of it did have
11 blood or what appeared to be blood on some of the
12 articles of clothing. The shoes were --- it looks
13 like you walk through grass in the morning dew, again
14 the pants were wet, the shirt was wet, the t-shirt was
15 wet.

16 Q Did you find them neatly folded in a drawer
17 somewhere or where did you find them?

18 A Just haphazardly strewn about, as you would take
19 clothes off and just leave them on the floor.

20 Q At this time, had you ever seen, talked to, had
21 any communication with Donnie Thigpen or anyone else
22 who might have given you advice to let you know he was
23 wearing this kind of clothing or that kind of
24 clothing?

25 A Not at this point. I didn't have an opportunity

1 to talk to him until sometime later at the Kershaw
2 Detention Center.

3 Q So the clothing that you recovered at the scene
4 that appeared to be freshly worn for all those reasons
5 you just gave, in fact, when you interviewed him later
6 on, he confirmed to you that those were the clothes he
7 had worn the night before?

8 A Yes, sir.

9 Q Did he describe them with specificity?

10 A Yes, sir.

11 Q In detail?

12 A Yes, sir.

13 Q In addition to the clothing, you mentioned a
14 towel?

15 A Yes, sir.

16 Q You recovered a towel, as well?

17 A Yes, sir.

18 Q Was there any other thing that was remarkable
19 that you either recovered or memorialized while you
20 were there going through the property?

21 A Looking through these photographs again, the
22 towel appeared to be damp, wet, and it appeared to
23 have some blood marks, if you will, blood, as if
24 someone may have wiped a wound, or wiped himself. In
25 the shower, there appeared should be a blood mark in

1 the shower.

2 Q Do you have a photograph of that?

3 A Yes, sir.

4 Q Can you please step down and show the jury what
5 you observed, what you took photographs of?

6 A There's three photographs of this. Again, one
7 from far off of the shower.

8 One closer up of the shower and one even a little
9 closer.

10 Q Now, Trooper Coats, the blood that you found in
11 the shower, you mentioned possible blood on the towel,
12 possible blood on the clothing, was any of that blood
13 tested to see whether or not it was the defendant's,
14 to the best of your knowledge?

15 A No, sir, we did not test that.

16 Q To the best of your knowledge did anyone else
17 live in the residence at that time other than the
18 defendant?

19 A I believe that's what he stated at that time that
20 no one else lived with him.

21 Q Did you have any reason to believe that the blood
22 on the towel was not his blood or the blood on the
23 shower was not his blood?

24 A No other reason.

25 Q Okay. The evidence that you recovered there, the

1 clothing in particular, with respect to say the shirt
2 and the T-shirt, do you have photographs of that? Did
3 you photograph it where you found it in its pristine
4 condition?

5 A Yes, sir.

6 Q Can you show that to the jury, please?

7 A Okay. This photograph shows the shirt as it was
8 found at the residence, it appeared to be beside a
9 coffee table. That was going to be the living portion
10 of the residence there.

11 Q Is that just a T-shirt and another shirt?

12 A This is a T-shirt as you would take your clothes
13 off and the shirt folded inside and T-shirt was on
14 outside. It's a white t-shirt and a yellow plaid
15 shirt.

16 Then this is ---

17 Q Orient it ---

18 A Oriented ---

19 Q Hold it --- there we go.

20 A Actually, this one should probably come
21 beforehand. This one is showing the type of shirt.

22 Q And that matches precisely what Donnie told you
23 later on that he was wearing when you interviewed him?

24 A And then a little closer, a yellow plaid shirt,
25 and this is what appears to be a blood mark.

1 Q In addition to the possible blood stains on his
2 clothes, was there anything remarkable about the
3 defendant's clothes that you recovered?

4 A Again, they were wet, covered with grass. Not at
5 this particular time, but as we had a conference with
6 the solicitor's office and the defense attorney at the
7 Midlands' M.A.I.T. office to examine the evidence, as
8 the clothing was opened on a piece of butcher paper or
9 a piece of ---

10 Q You say as the clothing was opened, when you
11 recovered the clothing, did you secure it the same way
12 as you did the other evidence?

13 A Yes, I placed it in paper bags so that --- since
14 they were not totally dry that air could flow through
15 and not be in plastic and did not open them back again
16 until we opened them in front of the solicitor's
17 office and the defense attorney at the Midland's
18 M.A.I.T. office.

19 When we did so, debris came from the clothing.

20 Q What sort debris?

21 A It was just grass type organic debris, and then
22 also shards of glass that would be indicative of maybe
23 a windshield.

24 MR. POSTIC: I object to the speculation, Your
25 Honor.

1 BY MR. PERRY:

2 Q Trooper Coats, you worked the accident scene?

3 A Yes, sir, the windshield was cracked. The
4 windshield was cracked, shattered, due to how it hit
5 the tree.

6 Q Were there shards of glass inside vehicle, inside
7 the passenger compartment of the vehicle?

8 A All over the place, yes, sir.

9 Q And in this particular case, you were saying
10 whenever the clothes were opened, shards did fall out
11 of the clothing?

12 A Yes, sir, and that was collected and we do also
13 have that collected in the evidence inside that
14 butcher paper of what fell off the clothes.

15 Q We actually have that and the clothing?

16 A Yes, sir.

17 Q You have it here with you today?

18 A Yes, sir.

19 MR. PERRY: Your Honor, can he step down and get
20 that?

21 THE COURT: Where is it?

22 MR. PERRY: Your Honor, Trooper Coats, I believe,
23 has the steering wheel. I'd like to offer that, as
24 well.

25 THE COURT: These are without objection?

1 MR. POSTIC: Without objection.

2 (WHEREUPON, State's Exhibit Numbers 127, 129,
3 130, 131, 132 were marked for identification and
4 admitted into evidence.)

5 BY MR. PERRY:

6 Q Go ahead.

7 A This was the steering wheel on the Jeep that was
8 taken from the scene. The airbag was cut and
9 submitted to SLED for airbag analysis. Again, the
10 photograph showed when we processed the car and
11 actually took the evidence. This is the actual
12 steering wheel as it was broken off from the steering
13 column.

14 Q And the shirt?

15 A Anyway, that's the shirt, the undershirt that
16 was photographed when we collected the evidence at the
17 residence.

18 And then these were the pants that were
19 collected, along with the brown belt and the cell
20 phone carrier.

21 The white pair of tennis shoes.

22 Q Trooper Coats, you've had a photo of the door.
23 You looked at the door closely. Were you able to find
24 any discernible footprints that specifically matched
25 those shoe prints on that door?

1 A Not specifically, but if you look also it, I
2 mean, you can look at it and see with the smudge I
3 guess from the wetness of the shoe, the organic
4 material, mud or whatever and the grass stains. It
5 looked like that might be what has gone down beside
6 the door, and then in the interview, this is what the
7 defendant had stated that he had worn.

8 The bottom of the bag, it's got the grassy
9 material that came off of the side of the shoes, the
10 organic material.

11 The blue bath towel that was taken that appeared
12 to have maybe some blood that was on the bath towel
13 that was damp, and this is the debris from the
14 clothing, the glass when we had a conference with the
15 solicitor's office and the defense attorney at the
16 Midlands M.A.I.T. office. We laid out a piece of
17 butcher paper, and that material is contained in here.
18 Do you want me to open this up?

19 Q First of all, let's talk about that meeting for
20 just a second. What was the purpose of that meeting?

21 A To examine the evidence.

22 Q Okay.

23 A Prior to court.

24 Q Would it be normal procedure to cover-up the
25 table with butcher paper or something like that if

1 you're going to pull that evidence out and view it?

2 A Yes, sir, I didn't want to mess up the table or
3 anything that fell off, the debris, the glass shards
4 and stuff, I didn't want to mess up the conference
5 table first thing, but anything that may have fallen
6 off, we can pack it back up there together.

7 Q And you actually observed glass shards as they
8 fell off onto the paper on the table?

9 A Yes, sir, we marked that with the defense
10 attorney at that time with the glass shards coming off
11 the pants and the shirt.

12 Q And in addition, the organic debris?

13 A Yes.

14 Q That's in there --- This has not been opened
15 since that day; is that correct?

16 A As you can see in this crease here of the glass
17 shards, the organic debris and the hair. You can have
18 the light hit it and see the shards. That's what fell
19 off the clothing.

20 Q Thank you, trooper.

21 Trooper Coats, with respect to the evidence that
22 we just viewed that you recovered from the scene that
23 day, was it maintained with the same sort of --- would
24 it have been normal procedure for it to be maintained
25 with the same sort of integrity as the other evidence

1 we mentioned earlier, the blood?

2 A Yes, sir.

3 Q Okay. And to the best of your knowledge, was it?

4 A Yes, sir, the only time again that it was opened
5 up was when we met at the M.A.I.T. office. That's
6 when we opened it up after being packaged.

7 Q And collected it today?

8 A Yes, sir.

9 Q Up to this point, you had never seen, talked to,
10 had any communication with Donnie Thigpen; is that
11 correct?

12 A No, sir. Not until we went to the detention
13 center.

14 Q And when you did go to the detention center, you
15 actually saw him, viewed him?

16 A Yes, sir.

17 Q I would hand you up what's already been entered
18 as State's Exhibits 85, 86, 82, 83, 84, 87, 88, 89,
19 90, 91, 92. Take a look at those and see if those are
20 a fair and accurate representation of how you
21 remembered Mr. Thigpen to look that afternoon whenever
22 you saw him at the jail.

23 A Yes, sir.

24 Q Now, in particular, I draw your attention to
25 photographs that show his arms --- or an arm.

1 A Yes, sir.

2 Q Can you tell whether or not --- first of all, are
3 there marks on his arm?

4 A Yes, sir.

5 Q Can you tell whether or not there are marks on
6 both arms?

7 A Not from these two pictures, no, sir.

8 Q What do those marks appear to be?

9 A It appears to be airbag burn marks or friction
10 marks from the airbag exploding.

11 Q Why do you say that?

12 A Because that's what happens when your airbag
13 explodes and you're hand is on the steering wheel.

14 Q And, what is your basis for that? I mean, have
15 you observed other folks that have had airbag burn
16 marks?

17 A Yes, sir.

18 Q Is there any doubt in your mind that the marks on
19 Mr. Thigpen's arms as captured in those photographs is
20 caused by the deployment of an airbag?

21 A Yes, sir.

22 Q There is doubt in your mind?

23 A No, no, no. That's what I believe it to be.

24 Q Okay. At any time during the course of your
25 interview with Mr. Thigpen, not to get too far ahead

1 because I'll get into that whole interview in just a
2 few minutes, was any --- did he give you any other
3 explanation for how those marks came to be on his
4 arms?

5 A I believe he might have stated on the audio in
6 the interview where we talked that he wrestled with
7 his dog whenever he got home after he kicked the door
8 in.

9 Q Do those marks appear to have been caused by
10 scratches, bites or other ---

11 MR. POSTIC: I'm going to object to --- that's
12 kind of leading and speculation.

13 THE COURT: Yes, sir, we're leading. Sustained.
14 Judge, before we get to the interview, can we
15 approach?

16 THE COURT: Well, when we do ---

17 MR. POSTIC: I just ---

18 (WHEREUPON, there was a bench conference.)

19 BY MR. PERRY:

20 Q Trooper Coats, after you completed the search of
21 the residence, and gathered the evidence and secured
22 the evidence, what was your next step in the
23 investigation in this matter?

24 A At that time, the next step, we went to the
25 detention center, Kershaw Detention Center.

1 Q Approximately what time of day was that?

2 A I mean, it was late afternoon. I believe when we
3 did the search warrant, it was around three --- it was
4 around 3:40 to four o'clock. Without looking at it
5 exactly what time it was executed, so maybe an hour or
6 so after that.

7 Q So you went to the Kershaw County Detention
8 Center to interview the suspect. Did anybody else go
9 with you?

10 A First Sergeant Borowski and Corporal O'Donnell
11 with the M.A.I.T. Team.

12 Q During the course of your interview of the
13 subject, did you make any type of video or audio
14 recording?

15 A I did the digital audio recording, yes, sir.

16 Q Have you maintained a copy of that recording and
17 do you have a copy of that here with you today?

18 A Yes, sir.

19 Q Are you prepared now to present that to the jury,
20 to the court?

21 A Yes, sir.

22 MR. POSTIC: Without objection, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, I
24 had a little prior knowledge of this interview with
25 the defendant. It does take a fair amount of time.

Direct of Coats by Perry

1 It's almost eleven o'clock. Let's take a morning
2 break before we listen to that.

3 As I say, I'm not sure what the time on it is,
4 but I know it will be a while. We hate to interrupt
5 testimony, in the middle of testimony, so let's take
6 our morning break. Just relax in the jury room a few
7 minutes. Don't discuss the case among yourselves
8 while you're in the jury room. Thank you very much.

9 (WHEREUPON, the jury left open court at
10 approximately 10:49 a.m.)

11 THE COURT: All right. Stand at ease for ten
12 minutes.

13 MR. POSTIC: Thank you, Your Honor.

14 (WHEREUPON, a short break was taken.)

15 (WHEREUPON, State's Exhibit Number 134 was marked
16 for identification only.)

17 THE COURT: All right. Ready for the jury?

18 MR. PERRY: Yes, sir.

19 MR. POSTIC: Before we do that, I want to place
20 on the record my objection to the confession, to the
21 statement. I just wanted to renew my objection as to
22 foundation and, also, I was ready for the break.

23 THE COURT: All right.

24 MR. POSTIC: Thank you, Your Honor.

25 THE COURT: Voluntariness is an issue in this

1 case. Overrule your objection.

2 MR. POSTIC: Yes, Your Honor. I understand your
3 ruling. Just renewing the objection.

4 THE COURT: All right. Ready for the jury?

5 MR. PERRY: Yes, sir, Your Honor.

6 THE COURT: Bring the jury.

7 (WHEREUPON, the jury came into open court at
8 approximately 11:13 a.m.)

9 THE COURT: All right. Solicitor, you may
10 continue.

11 MR. PERRY: May it please the Court.

12 BY MR. PERRY:

13 Q Sergeant Coats, before we go on with the
14 interview that you conducted with Mr. Thigpen, I want
15 to go back real quick to some photographs that you
16 took at the scene. You mentioned earlier in your
17 testimony that it was remarkable that the door had
18 been forced because it appeared to be --- the keys
19 were still in the vehicle?

20 A Yes, that's correct.

21 Q Whenever you were working the accident scene did
22 you take a photograph of the keys still in the
23 vehicle?

24 A Yes, I did.

25 MR. PERRY: This is 134 without objection.

1 (WHEREUPON, State's Exhibit Number 134 was
2 admitted into evidence.)

3 BY MR. PERRY:

4 Q Sergeant Coats, I would hand up to you what's
5 been admitted without objection as State's 134, and
6 ask you if that appears to be a photograph that you
7 took?

8 A Yes, sir.

9 Q What does it portray?

10 A It shows the inside compartment of the vehicle
11 with the steering wheel detached from the steering
12 column and a picture of the keys still in the ignition
13 switch.

14 Q Does it also show the headliner above the
15 driver's side of the vehicle?

16 A It does show the headliner and the actual piece
17 that we cut out for DNA evidence and the cracked
18 windshield.

19 Q It does show the shattered windshield?

20 A Yes.

21 MR. PERRY: Your Honor, may the witness step down
22 and show that to the jury?

23 THE COURT: Yes.

24 BY MR. PERRY:

25 Q Please, if you would.

1 A The cracked windshield, the headliner in the
2 vehicle, the piece that we used for the DNA and then
3 the steering column.

4 MR. PERRY: Your Honor, just to have him identify
5 those photos that he took and get them into evidence,
6 we're offering them, I believe, without objection.
7 It's items 2 through 18, items 22 through 48, items
8 50, 51, 52, 53, and 54.

9 (WHEREUPON, State's Exhibit Numbers 2 through 18,
10 22 through 48, and 50 through 54 and 61 were
11 admitted into evidence.)

12 BY MR. PERRY:

13 Q Trooper Coats, if you would just take a look
14 through these photos to be sure you can identify all
15 those photos as photos that you took at the accident
16 scene.

17 (Pause.)

18 A Yes, sir.

19 Q Are those photos that you took?

20 A Yes, I took these photographs.

21 Q Have you seen them before in the course of
22 preparing for this trial?

23 A Yes, sir.

24 Q And they are ---

25 A Prior to doing any evidence collection, again,

1 the overall scenes of the collision as the vehicle
2 traveled into the crash site and the crash site back
3 out, just general overall observations of the crash
4 scene.

5 Q Thank you very much, Sergeant Coats.

6 A I'm sorry, and there's also some that I took
7 after the vehicle, after the deceased was removed from
8 the vehicle, the vehicle was upright and brought out
9 by the wrecker company.

10 Q Thank you, sir. Now, back to the interview,
11 before we took our break, you testified that yourself,
12 First Sergeant Borowski, and Corporal O'Donnell went
13 to the Kershaw County Detention Center to interview
14 the defendant?

15 A Yes, sir.

16 Q And that was sometime late in the afternoon?

17 A Yes.

18 Q On the 20th?

19 A Yes, sir.

20 Q You also said that you had a copy of that
21 interview --- or you audio recorded the interview,
22 correct?

23 A Yes.

24 Q Do you have a copy here today that we can play
25 for the jury?

1 A Yes.

2 Q Are you prepared to play that now, at this time?

3 A Yes.

4 Q And do you have that this ---

5 MR. PERRY: We want to enter it into evidence and
6 then just press play.

7 MR. POSTIC: Same objection just to renew it.

8 THE COURT: Sir?

9 MR. POSTIC: Same objection.

10 THE COURT: Right.

11 (WHEREUPON, State's Exhibit Number 135 was
12 marked for identification and admitted into
13 evidence.)

14 BY MR. PERRY:

15 Q Can you get that to play, Trooper Coats?

16 A Yes.

17 Q Now, you actually made this audio recording,
18 correct?

19 A Yes, sir.

20 Q Did you Mirandize the defendant and re-advise
21 him of his rights?

22 A Yes, sir.

23 Q Now, is that something you would have done ---

24 A Yes, sir.

25 Q Trooper Coats, you had never seen or talked to

1 this defendant before, correct?

2 A This was the first time, when I met him at the
3 detention center.

4 Q Even though he may have been Mirandized earlier
5 in the day and fully understood his rights at this
6 time, is that something you would have done to re-
7 Mirandize him just as a matter of policy?

8 A Yes, that's correct, yes, sir.

9 Q And when you first saw the defendant, can you
10 describe his appearance, his demeanor, his interaction
11 with you?

12 A Again, you could tell that he had been in a
13 collision. He had some --- again, the marks that were
14 indicated by the picture. You can notice those. He
15 seemed a little more --- I mean, seemed to me to be
16 calm. We asked him to step into the classroom portion
17 of the detention center. He was cooperative as far as
18 that goes, yes, sir.

19 Q To the best of your knowledge and during the
20 course of this interview, did he indicate whether or
21 not he had the opportunity to make phone calls?

22 A Yes, sir, I believe he indicated on the audio
23 that he spoke to his Nahna and to Betty, and had
24 already had an opportunity to give them a call.

25 Q Did he make any complaints at this time about

1 wanting to make any phone calls and not being allowed
2 or needing to go to the bathroom or anything else
3 before you started to talk to him?

4 A No, sir.

5 Q After having been advised of his rights, did he,
6 in fact, choose to talk to you, carry on a
7 conversation and interview him?

8 A Yes, sir.

9 Q Now, do we have this where we can listen to it?

10 A Yes, sir.

11 Q Trooper Coats, if during the course of that there
12 is something of particular note that you feel the need
13 to comment on, please feel free to pause it.

14 A Okay. The recording is about an hour and 21
15 minutes.

16 (WHEREUPON, the audio was started for the jury.)

17 BY MR. PERRY:

18 Q Trooper Coats, did I just --- did he mention to
19 you during the course of that interview that he was
20 known to drinking to the point of passing out.

21 A Yes.

22 Q Blacking out?

23 A Yes, sir.

24 Q Okay. All right. Go ahead.

25 (WHEREUPON, the tape was continued to be played

1 for the jury.)

2 Q Trooper Coats, at this time during the course of
3 the interview, the fact that Mr. Thigpen was telling
4 you that he didn't remember anything about wreck, he
5 didn't remember driving, but he remembered all these
6 details about the other things that he was sharing
7 with you, where he had been, who he had been with,
8 what he had to drink, did that cause any red flags for
9 you? What did that tell you as far as your
10 investigation?

11 A I felt at that time that he was holding something
12 back. You know, as my grandfather used to say, that
13 dog just doesn't hunt. It seemed like he was holding
14 something back from us. He knew the details about how
15 much he had to drink at a certain place, what he did
16 from this point, what he did from that point, so there
17 was a little more --- it seemed to me on the surface
18 that we needed to get to, and he was still holding
19 that back.

20 Q Okay.

21 (WHEREUPON, the tape was continued to be played
22 for the jury.)

23 A Just to note here, that was the items that we
24 found at the residence and took pursuant to the search
25 warrant, and that I showed here was the items that he

1 had described.

2 Q And the description matched?

3 A Yes.

4 Q Thank you.

5 (WHEREUPON, the tape was continued to be played
6 for the jury.)

7 Q Trooper Coats, I believe I just heard on there,
8 he articulated the question of how do I just get up
9 and walk out, correct?

10 A Yes, sir.

11 Q You observed accident scene?

12 A Yes, sir.

13 Q And again, I'm going to get into this more with
14 Trooper O'Donnell in just a little bit, but explain to
15 the jury the damages to the vehicle and how it's
16 conceivable that one person sitting in the passenger
17 side of the vehicle ends up dead and one person in the
18 driver side of the vehicle is able to survive that
19 horrendous crash, and theoretically walk home?

20 MR. POSTIC: Your Honor, I object to what --- he
21 has elicited some speculative answers here.

22 THE COURT: I do, too, sustained.

23 MR. POSTIC: Thank you, Your Honor.

24 BY MR. PERRY:

25 Q Tell the jury about the damage to the vehicle.

1 A Okay. Just from one of the pictures, I believe,
2 that's up here in the stack, you could see that a
3 representation of the occupant compartment of the
4 vehicle --- let me --- if you don't mind.

5 Q Okay.

6 A From some of the pictures that I've shown and the
7 ones that I took and the dynamics of the collision,
8 the majority of the damage or the intrusion into the
9 occupant compartment was going to be on Melvin
10 Wright's side of the vehicle, on the passenger side of
11 the vehicle. Some of the pictures I've shown you, the
12 driver's compartment pretty much stayed intact.

13 Mr. Perry, can I show --- I'm going to put them
14 up on the projector.

15 Q I'll give you a laser pointer so you can point
16 out --- do you have them in the order you want me to
17 put them up in?

18 A No, it's not.

19 Q Put them how you'd like Mr. Moak to show them.
20 We'll go through them step by step.

21 (WHEREUPON, photos were displayed on the overhead
22 projector.)

23 MR. MOAK: This is State's 48.

24 THE WITNESS: Now, as you can tell from this
25 picture here, this is the driver's side and, you know,

1 in all practical sense, not much intrusion into the
2 driver's occupant compartment, okay, not really bad
3 damage on the driver's side, okay.

4 MR. MOAK: State's 47.

5 THE WITNESS: This is showing the front of the
6 vehicle. You can tell there's a lot of damage done
7 towards the front. I don't have one right here
8 showing the other side, but I have a couple other
9 photos in. The damage is more to the front and more
10 to the passenger occupant side. That's where the
11 intrusion occurred as it hit the tree.

12 MR. MOAK: State's 111.

13 THE WITNESS: This again, and we've already seen
14 this photograph. This is the driver's occupant
15 section. The driver's occupant section here. It's
16 pretty much intact, the capsule, if you will,
17 maintained its integrity.

18 MR. MOAK: 134.

19 THE WITNESS: And again, the driver's --- the
20 driver occupant section, the capsule maintained its
21 integrity absent the steering wheel being torn off or
22 being --- from the impact being removed from the
23 driver --- or the steering column.

24 MR. MOAK: 139.

25 THE WITNESS: Okay. The opposite side, the

1 passenger's side of the vehicle, you can see where all
2 the damage was done, where the intrusion came in. I'm
3 going to believe you'll --- that's going to be kind of
4 where the tree hit and intrusion into the passenger
5 occupant section.

6 MR. MOAK: State's 45.

7 THE WITNESS: Again another shot of the
8 driver's --- I mean the passenger's occupant section,
9 the passenger's side of the vehicle. There's a great
10 difference between the passenger's side of the
11 vehicle, what damage was done to it as opposed to the
12 driver's side of the vehicle, which pretty much
13 remained intact absent the steering wheel.

14 MR. MOAK: It says 48 and 39.

15 THE WITNESS: And this is how I would submit to
16 you that the defendant was about to get out of the
17 vehicle to survive the crash.

18 MR. POSTIC: Object to the speculation. I mean,
19 he's not there. He can't ---

20 THE COURT: I understand.

21 MR. POSTIC: The picture is --- thank you, Your
22 Honor.

23 THE COURT: The pictures speak for themselves.

24 THE COURT: Thank you.

25 BY MR. PERRY:

1 Q Thank you, Trooper Coats. With respect to the
2 issue of it being possible for someone driving that
3 vehicle and exiting the vehicle and being able to walk
4 away.

5 A Yes.

6 MR. POSTIC: He's asking if it's possible, Your
7 Honor. It's continued speculation.

8 THE COURT: Just get back to the tape.

9 MR. POSTIC: Thank you.

10 BY MR. PERRY:

11 Q Go ahead and move on to the interview.

12 (WHEREUPON, the tape was continued to be played
13 for the jury.)

14 A There's no pictures of this, no video of this,
15 but at that time in talking with Mr. Thigpen, it shows
16 the injuries that he had on his arm, the injuries
17 where he said are here, he felt that his ribs were
18 hurting and that would be indicative of being in a
19 crash, hitting the steering wheel, the steering wheel
20 coming off due to the impact.

21 (WHEREUPON, the tape was continued to be played
22 for the jury.)

23 BY MR. PERRY:

24 Q At any point in your investigation in this
25 matter, did you investigate the possibility that

1 anyone else was driving this vehicle?

2 A No, sir.

3 Q Why not?

4 A I mean, everything pointed to the defendant,
5 Mr. Thigpen. The airbag abrasions to his arms, the
6 glass shards that was recognized, the clothing, the
7 organic debris from walking to the house in the early
8 morning hours after this collision, nothing pointed to
9 anyone else driving the vehicle, leaving the keys in
10 the car, having to break in your own door. Just
11 everything pointed towards Mr. Thigpen.

12 Q At any point in time, did he tell you that he had
13 allowed anyone else to borrow his vehicle or drive his
14 vehicle?

15 A No, sir, he just heard here that someone must
16 have had my keys or something, nothing definitive,
17 just throwing out red herrings, if you will, nothing
18 definitive that he's adamant that someone --- the only
19 thing he kept saying was that, I don't remember, I
20 don't remember and that you must have the evidence. I
21 must have been driving. I don't know how I crawled
22 out, I don't know how I made it back home.

23 Q Okay.

24 (WHEREUPON, the tape was continued to be played
25 for the jury.)

1 Q Did Mr. Thigpen ever explain to you how he had
2 gotten home?

3 A No, sir.

4 Q Or why he remembered the dog attacking him when
5 he entered the door, but not how he got to the door?

6 A It's may be a little later on here, talking about
7 sunrise and so forth, but not at the point he doesn't,
8 no.

9 (WHEREUPON, the tape was continued to be played
10 for the jury.)

11 Q I want to clarify something. I believe that was
12 your voice telling the defendant, telling Mr. Thigpen
13 that now is the time to help himself out?

14 A That's correct.

15 Q What exactly did you mean by that? What were you
16 trying to convey to him by that?

17 A For him to go ahead and take responsibility for
18 his actions, again, getting to that below the surface
19 of what's going on here, where it would look more
20 favorable upon him later on in the process and come to
21 some, you know, conclusion to this whole situation.

22 Q Were you attempting to get him to do anything
23 other than simply telling you the truth about what
24 happened?

25 A That's all, the truth.

1 Q Okay.

2 (WHEREUPON, the tape was continued to be played
3 for the jury.)

4 Q At this point in time, did you believe that he
5 was telling you the whole truth about what happened?

6 A I believe he was telling me some truths,
7 understanding that he remembered his dog, but then at
8 the end there's still some --- he is not telling me
9 everything.

10 Q What was it about your investigation up to this
11 point that caused you to believe that he wasn't
12 telling you the whole truth about what had happened?
13 Why did it seem you weren't getting everything from
14 him?

15 A The marks on his arms, again, the way he looked,
16 the glass shards. I'm not sure if I have mentioned it
17 yet in here, but seeing some glass shards in his
18 facial hair and his hair. Again, from the evidence we
19 collected and him being able to tell us what clothing
20 he was wearing, what was on those clothes, the wetness
21 of it, the organic material, just not telling us the
22 whole truth.

23 Q So at this point in the investigation, did you
24 believe that the words that he was saying matched up
25 with the physical evidence and the facts as you knew

1 them to be at that point?

2 A No, sir.

3 Q Was this based on assumptions that you were
4 making or was this based on the factual evidence that
5 you actually collected that you knew to be the case?

6 A It was the evidence that we collected that led us
7 to that conclusion.

8 (WHEREUPON, the tape was continued to be played
9 for the jury.)

10 Q Did you, in fact, find beer at the crash scene?

11 A Yes.

12 Q What type of beer was it?

13 A It was Ice House.

14 Q Okay, thank you.

15 (WHEREUPON, the tape was continued to be played
16 for the jury.)

17 Q So he remembered what type of cigarettes he was
18 buying?

19 A I'm sorry?

20 Q He remembered what type of cigarettes he was
21 buying?

22 A Yes.

23 (WHEREUPON, the tape was continued to be played
24 for the jury.)

25 Q Did I correctly hear him saying that he remembers

1 drinking three or four beers at Friends and he
2 specifically remembered that he was drinking
3 Yuengling?

4 A Yes, sir.

5 Q Okay.

6 (WHEREUPON, the tape was continued to be played
7 for the jury.)

8 Q So, now, you just asked him if he would give a
9 swab for his DNA; is that correct?

10 A That's correct.

11 Q Okay. Did you, in fact, take that swab?

12 A I believe Lance Corporal O'Donnell was actually
13 the one who administered the swab test.

14 Q We'll ask him about that later.

15 A Yes.

16 Q Now, I just heard where we're starting
17 into --- you asked about the shards in his beard?

18 A Yes.

19 Q Okay. Go ahead with that.

20 (WHEREUPON, the tape was continued to be played
21 for the jury.)

22 Q Trooper Coats, you asked him about the glass
23 shards in his beard. I couldn't hear really well; the
24 quality wasn't that great at that point. Do you
25 remember --- did he give any explanation for the glass

1 shards in his beard?

2 A He said --- what was said there was, really, "Are
3 you sure that's not just the way it looks." It wasn't
4 the way it looked. It was the same type of shards
5 that was on the butcher block paper and the light
6 glistened in the beard or the facial hair.

7 Q And what we're doing now, you're talking to him
8 about the injuries?

9 A Yes, sir.

10 Q Asking him about that?

11 A Yes, sir.

12 (WHEREUPON, the tape was continue to be played
13 for the jury.)

14 Q Trooper Coats, at the point in the interview, I
15 mean, how long had this been going on?

16 A By indication on the time here, it's about 42
17 minutes.

18 Q Okay. So it's not like you guys have been there
19 for hours on end continuously questioning him about
20 this, correct?

21 A No, sir, the entire recording is an hour and
22 twenty-one minutes.

23 Q At any point in time did he ask to go to the
24 bathroom and ya'll wouldn't let him or ask for
25 something to drink and ya'll wouldn't give it to him?

1 At any point in time did he ever ask to stop talking
2 to you?

3 A No, sir.

4 Q At this point in the course of the interview, are
5 you pretty certain he understands what's going on and
6 that he's talking to you freely and voluntarily about
7 it? That he wants to continue with this interview
8 process?

9 MR. POSTIC: These are heading questions, Your
10 Honor.

11 THE COURT: Yes.

12 BY MR. PERRY:

13 Q Okay. What was your impression of him at this
14 point in the interview process?

15 A That he was tracking. He understood exactly what
16 I was saying. He understood what we're saying. We
17 were having a back and forth conversation. He was
18 actually making some arguments, one that I recall is
19 about this why we asked him to submit a buccal swab of
20 the interior portion of his mouth that he has already
21 given blood, so forth and so on, so I mean, we're
22 having a dialogue back and forth.

23 Q All right. Go ahead and proceed with the rest of
24 the interview.

25 THE COURT: Just hold on a minute. Approach the

1 bench, counsel.

2 (WHEREUPON, there was a bench conference.)

3 THE COURT: Just checking on the time, ladies and
4 gentlemen.

5 (WHEREUPON, the tape was continued to be played
6 for the jury.)

7 BY MR. PERRY:

8 Q Are we pretty much about to get to the end of
9 this, Trooper Coats?

10 A Yes, sir.

11 Q About how many more minutes?

12 A This one goes to 113 and it's 109 right now.
13 Three minutes.

14 (WHEREUPON, the tape was continued to be played
15 to the jury.)

16 MR. PERRY: Your Honor, that concludes the audio.
17 I just have three quick questions.

18 THE COURT: Go ahead.

19 MR. PERRY: And then I think we'll be through
20 with direct.

21 BY MR. PERRY:

22 Q Trooper Coats, it appeared in the photographs
23 that the marks on the arm that you mentioned from the
24 airbag, that was perhaps only on one arm. Is that
25 unusual?

- 1 A No, sir, one arm on the steering wheel ---
- 2 Q Okay.
- 3 A --- would be indicative of that.
- 4 Q All right.
- 5 A Or rather, one hand on the steering wheel.
- 6 Q During the course of the interview, your asked
- 7 him about where he banked. As a result of the answers
- 8 that he gave you, did you take any actions after this
- 9 interview to secure phone records, bank records,
- 10 anything else?
- 11 A We got a subpoena for phone records from AT&T
- 12 with that phone number and also banking records for
- 13 that month, banking statements.
- 14 Q Did the phone records show any phone calls
- 15 between five o'clock that morning and 9:30 that
- 16 morning?
- 17 A No, sir.
- 18 Q Did the bank records verify him having used his
- 19 debit card for pay for tabs at Brixx, Friends and
- 20 Track Side?
- 21 A Yes, sir.
- 22 Q Do you have copies of those records?
- 23 A Yes, sir.
- 24 Q How did you obtain those?
- 25 A Through subpoena.

1 Q Do you have them with you here today?

2 A Yes, sir.

3 Q May I see them?

4 A The bank records.

5 MR. POSTIC: Your Honor, I've spoken to the
6 solicitor on these two issues. I'm going to
7 stipulate. There is not a reason to bring the bank
8 records in.

9 THE COURT: Without objection.

10 MR. POSTIC: Yes, without objection.

11 (WHEREUPON, State's Exhibit Numbers 136 and 137
12 were marked for identification only.)

13 MR. PERRY: Your Honor, I would offer in without
14 objection, stipulated to, the phone records for the
15 defendant and the bank records for the defendant.
16 State's 136 and 137 respectively.

17 THE COURT: Without objection.

18 (WHEREUPON, State's Exhibit Number 136 and 137
19 were admitted into evidence.)

20 MR. POSTIC: Thank you, Your Honor.

21 MR. PERRY: I have no further questions for the
22 witness at this time, Your Honor.

23 THE COURT: All right. Thank you very much.
24 It's one o'clock. I'd take our lunch break at this
25 time. I'd ask you to be back in the jury room at

1 two o'clock, at which time we will continue with the
2 trial. Please, again, don't discuss the case with
3 anyone else or when you return to the jury room. Have
4 a pleasant lunch hour. We'll see you at two o'clock.
5 Thank you very much.

6 (WHEREUPON, the jury left open court at
7 approximately 12:59 p.m.)

8 THE COURT: Stand at ease until two o'clock.

9 MR. POSTIC: Thank you, Your Honor.

10 MR. PERRY: Yes, Your Honor.

11 (WHEREUPON, a lunch break was taken.)

12 THE COURT: State ready to proceed?

13 MR. PERRY: Yes, Your Honor.

14 THE COURT: Defense ready to proceed?

15 MR. POSTIC: Yes. Thank you, Your Honor. Yes,
16 Your Honor.

17 THE COURT: Bring the jury, please.

18 (WHEREUPON, the jury came into open court at
19 approximately 2:04 p.m.)

20 THE COURT: All right, ladies and gentlemen. I
21 hope you had a pleasant lunch. We're now ready to
22 continue with the trial.

23 Mr. Postic, you may cross-examine him.

24 MR. POSTIC: Thank you, Your Honor.

25 CROSS-EXAMINATION:

1 BY MR. POSTIC:
2 Q Sergeant Coats.
3 A Yes, sir.
4 Q Good afternoon.
5 A Good afternoon.
6 Q You have a lot of pictures in this case.
7 Pictures of the car, pictures of my client's home,
8 pictures of my client. You've got clothing. You've
9 got a towel. You have video. Do you have a camera,
10 sir, at the scene?
11 A A camera?
12 Q Yes, a camera?
13 A Digital camera.
14 Q You have --- Trooper Kelly had a camera?
15 A Yes, sir.
16 Q Y'all have video cameras?
17 A Yes, sir.
18 Q Ya'll have a search warrant?
19 A Yes, sir.
20 Q That describes items to be taken from his home?
21 A Yes, sir.
22 Q And these are all things that make your case
23 better, right?
24 A Parts of the evidence, yes, sir.
25 Q Okay. I real want you to show me a picture of

1 glass in Donnie's beard, and I want you to show me
2 remnants of glass from his beard that was collected by
3 y'all. Do you have that?

4 A It's in the ---

5 Q From his beard?

6 A Oh, I didn't collect anything from his beard.

7 Q Okay. But you said you saw it, right?

8 A Yes, sir.

9 Q You don't think a jury would like to see that? I
10 mean, that is prettying damming stuff, if it exists,
11 and I have not seen it.

12 A Again, I didn't collect any glass from his beard,
13 from his clothing.

14 Q You had the presence of mind when we were all
15 together to put butcher paper underneath the clothes?

16 A No, sir. That was Corporal Farmer who put the
17 butcher paper down.

18 Q One of y'all had the presence of mind, somebody
19 in your troop?

20 A Yes, sir.

21 Q When you questioned him, and when you're with
22 Borowski and --- who else is in the room when you
23 questioned him, O'Donnell?

24 A Corporal O'Donnell.

25 Q Okay. There are three of y'all?

1 A Yes, sir.

2 Q One of Donnie in a prison, in a jail, I'm sorry.

3 A In a classroom.

4 Q In a glass room.

5 A Classroom.

6 Q A classroom.

7 Q Okay, classroom, a classroom that's in the
8 detention center?

9 A Yes, sir.

10 Q Is he dressed in civilian clothes or is he
11 already in ---

12 A No, I think he was in civilian clothes.

13 Q Civilian clothes.

14 A He was in the detention room not back with the
15 population.

16 Q But he's booked in?

17 A Yes, sir.

18 Q And he's been charged with these charges?

19 A I'm sure the charging documents had been filed,
20 yes.

21 Q Yes. Very serious charges, right?

22 A Yes, sir.

23 Q And you told him how serious they were?

24 A I told him they were serious, yes, sir.

25 Q Okay. And nobody has the presence of mind there

1 to take a piece of butcher paper and comb his beard
2 out or his hair?

3 A We didn't have butcher paper at the jail.

4 Q Any sort of paper, anything?

5 A No, sir, again, I said we did not collect it at
6 the jail.

7 Q Or to use the cameras to take pictures of it?

8 A We didn't bring the camera in.

9 Q And when you make --- when you question --- I
10 mean, you've got a lot of experience, right?

11 A Some, yes, sir.

12 Q And you've been taught about interrogation,
13 right?

14 A Yes, sir.

15 Q And you know that it's okay for you to sort of
16 exaggerate the truth when you question somebody,
17 right?

18 A Yes, sir.

19 Q In order to elicit a confession, right?

20 A In order to get to the truth, yes, sir.

21 Q Is that what you did with the beard?

22 A No, sir.

23 Q Okay. Something I noticed that was before you
24 mentioned the beard and before you make Donnie lift up
25 his shirt, one of the troopers says, "We've got to

1 talk for a second," and Solicitor Perry asks you,
2 "What's going on right now?". That was during your
3 direct. And you said, "Oh, we had little conference
4 out of the room."

5 At that point, did they say to you, "Let's bring
6 up the glass, the glass in the beard."?

7 A No, sir.

8 Q They didn't say to bring up the, you know,
9 steering wheel imprint on his chest?

10 A No, sir.

11 Q Is there a picture that says "Jeep" backwards on
12 his chest?

13 A The pictures are there. I don't see Jeep
14 backwards.

15 Q You know what I'm talking about?

16 A I do understand what you're talking about.

17 Q Of course ---

18 A There is a picture showing airbag marks.

19 Q On one arm or both?

20 A It was on one arm.

21 Q Why would somebody say it was on both arms? Was
22 it on both arms?

23 A I don't believe so. The only pictures I see here
24 is on one.

25 Q Okay. Not pictures. When you saw him?

1 A I believe it was still just on one when we were
2 at the detention center.

3 Q Okay. Just one arm, okay. In your experience,
4 you say that in your experience, that's an airbag?

5 A Yes, sir.

6 Q Do you have a medical degree?

7 A No, sir.

8 Q I'm sorry. That's kind of a jerk question.

9 This couldn't be a skin rash?

10 A No, sir, not in my estimation.

11 Q Not in your estimation. This couldn't be a rug
12 burn?

13 A No, sir.

14 Q Poison ivy?

15 A No, sir.

16 Q An abrasion?

17 A An abrasion.

18 Q Okay. An abrasion that could only be caused by
19 an airbag in your estimation?

20 A In my estimation.

21 Q Because you understand that a rug burn is an
22 abrasion?

23 A Yes, sir.

24 Q One of the pictures that y'all showed of the car
25 when you were comparing the two sides was this picture

1 right here?

2 A Yes, sir.

3 Q And the car at this point has been turned
4 upright; is that correct?

5 A That's correct.

6 Q Has the car been cut open or something to remove
7 the victim at this point?

8 A At this point in this picture, that's correct.

9 Q Okay. So this is not exactly what it looked like
10 when it was upside down?

11 A No, sir. It's right side up after being cut to
12 remove Melvin's body from the vehicle.

13 Q As part of --- you're on the M.A.I.T., right?

14 A At that particular time, yes, no longer.

15 Q Okay. I don't want to call at this time M.A.I.T.
16 Team because that's not, right. It's like saying P.C.
17 college or CD disk?

18 A Yeah.

19 Q Okay.

20 A That's how we refer to it.

21 Q I understand, and we'll refer to it that way. As
22 part of the M.A.I.T. Team, do you look into the
23 history of this vehicle?

24 A Do --- me personally or does the M.A.I.T. Team?

25 Q The M.A.I.T. Team.

1 A The M.A.I.T. Team will.

2 Q Yes. How about you personally in this case?

3 A No, sir, not in this case.

4 Q Did somebody look into the history of it?

5 A Yes, sir.

6 Q Who was that person?

7 A Corporal O'Donnell.

8 Q Okay. And he would be able to say whether or not
9 that steering wheel had ever been removed?

10 A I can't put words in his mouth, but he should be
11 able to.

12 Q Okay. Or if the airbag had ever come out before?

13 A Yes, sir.

14 Q While you are at the scene of the accident and
15 you're removing evidence from the car, the first step
16 is when you get there --- and what time do you say you
17 got there, sir?

18 A Notified at 10:26 and arrived at 12:05.

19 Q Okay. So you get to the scene at 12:05?

20 A (Nods in the affirmative.)

21 Q Do you know that there is already a suspect in
22 detention?

23 A I don't know if I know at that particular time.

24 Q Okay.

25 A Possibly. Yes, it's possible, but I don't know

1 if he's --- if it was right when I got on the scene or
2 after, sometime during the process. I think we made
3 contact with First Sergeant Borowski then to know that
4 someone is actually in custody.

5 Q And this has been almost three years, right?

6 A June of 2009, so almost three years.

7 Q I know you went to the Citadel?

8 A Yes.

9 Q It's a good school.

10 A Yes, sir.

11 Q I'm sorry. I can't help it.

12 So you used your notes to refresh your memory
13 obviously?

14 A Yes, sir.

15 Q Much fresher than it was now, right?

16 A It probably would have been a whole lot fresher
17 if it happened on June 20th, but yes, yes, using the
18 notes to help me recall my memory, yes.

19 Q Are you saying that it's still pretty fresh in
20 your mind --- is that what you're saying?

21 A After looking although it and looking at it to
22 recall, yeah.

23 Q Are these notes that you took at the scene or
24 when did you take these notes?

25 A This particular sheet that you questioned earlier

1 is the one that's our case note sheet that we get once
2 we arrive, so yes, I took this particular sheet or
3 these notes on the scene as I arrived at Twenty-five
4 Mile Creek.

5 Q Okay. Did you take any notes during the
6 interview process?

7 A Yes, sir, and they're more scribbled than actual
8 notes.

9 Q Is this it here?

10 A No, sir.

11 Q No, no, no.

12 Q These notes, sir?

13 A No, sir, that's Sergeant Freeland's notes.

14 Q On the back side of this?

15 A No, sir. The way I had it, I printed it back and
16 front trying save some trees, so do you want me to use
17 mine?

18 MR. POSTIC: If I could. May I approach, Your
19 Honor?

20 THE COURT: Yes, sir.

21 BY MR. POSTIC:

22 Q I've seen this. These are all your notes that
23 you took during the course of the interview?

24 A Yes.

25 Q And this and the page you showed me before and

1 the drawing that you have in there are the extent of
2 your notes?

3 A The drawing is not my notes. Trooper Kelly
4 actually did the field sketch.

5 Q Okay.

6 A It should have his name on the there.

7 Q And you didn't take many notes during the
8 interview because you knew it was being audio taped,
9 correct?

10 A That's correct.

11 Q Right, and you told Donnie it was being audio
12 taped, correct?

13 A Yes, well, I guess he saw me place the audio
14 recorder out front and hit record, so I don't know if
15 I verbally said, but in my actions I would assume that
16 he recognized that I was audio recording.

17 Q Okay. Let's --- so this one page of scene case
18 notes is the extent of any notes that you would have
19 taken at the scene?

20 A Yes, sir.

21 Q Okay. And it indicates that you took
22 photographs?

23 A Yes, sir.

24 Q Photographs of the scene and of the vehicle, and
25 that these photographs were secured. What does that

1 mean in how did you secure those photographs?

2 A That was securing the photographs that were
3 taken. I believe that might have been Trooper Kelly
4 that took those pictures, and either taking their card
5 from the digital camera and uploading it on the drive,
6 so that's what it means by securing the officer's
7 photographs.

8 Q And there is a video?

9 A Yes, sir.

10 Q And there is mapping?

11 A Yes, sir.

12 Q There's a field sketch, and you're, right. It
13 does say W.B. Kelly. What is the yawl?

14 A A yawl will be a mark that's left on the roadway.
15 When a vehicle reaches a critical speed it goes into
16 what we call a yawl, where the tires track and leave a
17 mark, not a straight line, but a curvature mark.
18 That's a yawl.

19 Q So in this case if the defendant or whoever was
20 driving had jerked the car, there would be a yawl?

21 A No, sir, not necessarily.

22 Q Okay.

23 A But in this particular case there was.

24 Q The M.A.I.T. team determined that that because it
25 just drove right off the road?

- 1 A Drove right off the road.
- 2 Q Missed a turn?
- 3 A No, sir, no turn.
- 4 Q No turn?
- 5 A No turn.
- 6 Q Just went off the road?
- 7 A Yes, sir.
- 8 Q What is a drag sled?
- 9 A A drag sled is a device. It's a half or a
10 quarter portion of a tire filled with cement with eye
11 hooks that are placed inside the cement. Once the
12 cement cures, dries, then you can take that particular
13 drag sled, weigh it, lay it down on the roadway, pull
14 it with a scale, if you will, that's hooked to it that
15 shows you the foot pounds or the amount of force
16 that's needed to put it into a calculation and tell
17 you exactly what the coefficient of friction of the
18 roadway surface on the drag factor.
- 19 Q And you didn't need to do that?
- 20 A No, sir, there were no skid marks or anything of
21 that in the roadway to use a drag sled to find the
22 coefficient of friction or the drag footprint.
- 23 Q Okay. I skipped one, airborne?
- 24 A I'm sorry?
- 25 Q Airborne. I skipped one between yawl?

1 A The vehicle went airborne possibly hitting an
2 embankment or a ditch leaving the surface of the earth
3 coming up some portion and then coming back down, so
4 there was no airborne to this.

5 Q Okay. And there was a vehicle inspection and
6 that's going to be ---

7 A Corporal O'Donnell, yes, sir.

8 Q Okay. There was no mechanical exam. What is a
9 mechanical exam?

10 A There was no mechanical exam done at the scene.
11 Corporal O'Donnell did a mechanical exam at the
12 wrecking yard.

13 Q That's to determine whether or not there was a
14 mechanical issue with the car?

15 A That's correct.

16 Q See, I can get some of these.

17 All right, what's an S.D.M. download?

18 A S D M is a black box, if you will, airbag control
19 model. Some vehicles are supported, some vehicles are
20 not. I do not believe --- probably the reason there
21 was not one there --- and I would have to go back and
22 look at what was supported there at the time, but the
23 '97 Jeep would not be supported where you can actually
24 download the black box.

25 Q That only has to do with the airbag?

1 A That's what it's called, A.C.M., Airbag Control
2 Module. There's a lot to get into with it. It can be
3 kind of confusing. Anyhow, in certain vehicles, and
4 again, this one is not supported, it will start
5 capturing data from the vehicle, once a certain
6 algorithm picks up, let's say you get into an O.S.
7 factor.

8 In black letter terms, to try to put it the best
9 way --- the little man inside the box starts doing
10 what he's doing and it starts capturing the
11 information. This one does not --- is not supported,
12 so we cannot retrieve it or image the data from the
13 airbag.

14 Q So your more modern cars will have that GPS
15 system and such ---

16 A It has nothing to do with GPS. These have to do
17 with P.C.M., Power Control Module. Several are ---
18 Chevrolets are really good at capturing or allowing
19 that information to be imaged. I think it was after
20 --- it has to be after 2012 to sell vehicles in the
21 United States. Companies must provide more of an
22 access to the airbag control data to sell their cars
23 in the US.

24 Q Okay. Well that's fascinating.

25 A But anyhow, that doesn't apply.

1 Q That doesn't apply here. Neither does the E
2 friction. Just tell us what that has to do with
3 anything.

4 A I'll tell you right now, I've never done the E
5 friction. That's used in a Vericom, maybe a Vericom
6 2000. It's a device looks kind of like the old KR 10
7 radar that you're familiar with that that you set on
8 top of your vehicle. It's got a mechanism inside.
9 You take off, you hit your brakes to the point of a
10 skid and it then gives you the same thing that you get
11 from the drag sled. The coefficients of friction on
12 the drag factor on the roadway.

13 Q Okay. That's fine --- to explain how much the
14 car would have slowed down?

15 A Yes.

16 Q Autopsy, none?

17 A From my understanding, no autopsy was performed.

18 Q Okay.

19 A That would have meant if it was indicated there
20 that we sent someone to an autopsy. To my
21 understanding, there wasn't an autopsy.

22 Q What's the purpose of an autopsy?

23 A The cause of the death, I believe, if I'm not
24 mistaken.

25 Q There's no need for that in this case?

1 A That's not my call to make. That's the coroner
2 of the county.

3 Q Okay. No medical examiners on your staff?

4 A No, sir.

5 Q Okay. So nobody there who can give us a cause of
6 death?

7 A No, sir.

8 Q Thank you. All right. When you're collecting
9 evidence, you explained that you wore these gloves,
10 right?

11 A No, sir, I did not wear those gloves.

12 Q Well?

13 A Mine were blue, but yeah.

14 Q Do you wear gloves when you collect evidence?

15 A Yes, sir.

16 Q Not these gloves?

17 A No, sir.

18 Q But gloves?

19 A Yes, sir.

20 Q Okay. So you're wearing gloves, do you change
21 between every piece of evidence that you take out?

22 A No, sir, not necessarily, some yes, some no, just
23 depends on how filthy my gloves get.

24 Q How what your gloves get?

25 A How filthy my gloves get.

1 Q Okay, but in a case involving blood, DNA,
2 something like that, would you change your gloves?

3 A Sometimes yes and sometimes no.

4 Q Because you don't want to transfer DNA ---

5 A Right.

6 Q --- from one ---

7 A Or depending on how sweaty my hands get.

8 Q Do what?

9 A Depending on how sweaty my hands get, I may
10 change gloves.

11 Q All right. Would that affect DNA collection?

12 A Would that affect DNA collection?

13 Q For instance, would your DNA appear on things if
14 your hands were sweaty underneath those gloves?

15 A My DNA, if it gets on an article where there is
16 sweat dripping from the top of my forehead, then yes,
17 it will show my DNA there.

18 Q I got you.

19 A But my DNA is on file with the State Law
20 Enforcement Division from when we went through some
21 DNA classes with them, so they can use it to rule out
22 my DNA.

23 Q When you get to the scene, Mr. Wright is seat
24 belted in, correct?

25 A Yes.

1 Q Do you have any way of determining whether or not
2 the driver, who ever the driver was, was seat belt in
3 or not?

4 A I believe we looked at that, and our
5 determination with the seat belt that we determined
6 that he was not wearing a seat belt at that time.

7 Q Okay. And you believe or are you certain, my
8 friend?

9 A I'm telling you right now that I believe --- or
10 it was a consensus that he was not wearing a seat belt
11 at that time.

12 Q So the driver was not wearing a seat belt?

13 A Yes, sir.

14 Q What made you think or what makes you come to
15 that realization?

16 A It's may have been the positioning of the seat
17 belt in vehicles, and I cannot be certain for this
18 particular vehicle, but when a vehicle goes into a
19 crash or the airbags fire, there's also an incendiary
20 device or an explosive device in some of the seat belt
21 mechanisms that lock it in place, so if you have a
22 seat belt on, locked in, then if you pull it, retract
23 it, the belt wouldn't retract. If the seat belt is
24 down in a situation where it wasn't on, then you can't
25 pull it forward.

1 Q Am I going to see that in the notes of somebody?

2 A I do not see it. I do not know. It may be ---

3 Q Well, let me ask you this ---

4 A It may be in Lance Corporal O'Donnell's notes and
5 photographs from the vehicle examination.

6 Q Okay.

7 A I can't tell you right now. I do not have it in
8 my notes.

9 Q All right. Let me ask you this. A driver, a
10 suspected driver in an accident of this force, if he
11 was wearing a seat belt, or she, would have markings
12 perhaps?

13 A Should have markings.

14 Q Okay. And you know that Donnie didn't have those
15 markings, right?

16 A No, sir, I don't know that.

17 Q You made him lift his shirt.

18 A I understand that. It does take some time for
19 bruising to come into effect. If you recall a case
20 that we worked, the Mazaratti case in Greenville ---
21 I can't think of the gentleman's name. It was several
22 days later before the actual seat belt marks appeared,
23 so no. The time that I met with him at the detention
24 center, that was the first and last time that I met
25 the defendant until we came here to court.

1 Q Okay.

2 A So I cannot tell you that.

3 Q Well, that's really interesting. Did anybody
4 come to try to find out whether or not Donnie had
5 those marks two or three days later?

6 A I can't tell you that.

7 Q I mean, don't you think that's important?

8 A I can't tell you that.

9 Q Don't you think it's important if somebody is in
10 an accident and they're being accused of these crimes,
11 of being the driver if they had a seat belt mark or
12 not?

13 A In this particular case or in general?

14 Q In general?

15 A I mean, it's up to the person. I don't know.

16 Q Did it help you in the Mazaratti case?

17 A Did it what?

18 Q Did it help you in the Mazaratti case?

19 A Yes, it helped the Mazaratti case.

20 Q Because you knew that guy was driving. He had
21 the seat belt --- he had driver's side seat belt
22 marks, right?

23 A He admitted to driving.

24 Q Okay. If the confession hadn't gone through, it
25 would have been nice to have that, right?

1 A I'm sorry?

2 Q It would have been nice to have that if the
3 confession had been thrown out?

4 A Well, it was continued --- I mean, I can't ---

5 Q You brought up the case.

6 A I understand that.

7 Q Okay. It probably wouldn't be that hard for
8 somebody to come and just inspect him afterwards, just
9 to see, right?

10 A Would it have been difficult?

11 Q Yes.

12 A It probably would be --- yes.

13 Q How is that?

14 A Getting back up with the defendant at that time.
15 It would have been better if he would have called on
16 the phone and said, "Hey, I have these marks now. I
17 know now that I was driving." That would have been
18 great, too.

19 Q We don't have that, right?

20 A No, sir, we don't have that.

21 Q And Solicitor Perry asked you about the airbag,
22 and you were very clear that if it touches an arm it
23 burns an arm, right?

24 A Yes, sir.

25 Q I'm guessing it would also make impact on

1 somebody's body, right?

2 A Uh-huh. There's been cases that I've worked
3 while I was on the road, especially older females that
4 drive with their seat up further that you'll have
5 airbag markings on the face also.

6 Q What fills up an airbag?

7 A I could not tell you. It's a nasty smell.
8 Whatever the powder they use inside the airbag to keep
9 it, to preserve it, it's --- I mean, it stinks.

10 Q Powder?

11 A A powder, yes.

12 Q Is that powder ---

13 A A powder substance or whatever it is, yes.

14 Q A substance or powder that maybe you could look
15 at on a defendant's clothing in the case?

16 A If he's close enough, it should be. Yeah, you
17 could look at it.

18 Q Was there any indication that was done in
19 Donnie's case?

20 A No, sir.

21 Q Would that help a jury?

22 A If you could --- if the clothing wasn't so wet.
23 You know, I don't know. It could. Mainly as soon as
24 the airbag goes off, in some collisions that I've
25 seen, it's a powder. It's a very fine --- just a

1 light fog, if you will. Anyhow, whatever the
2 preservative they put in there, it stinks.

3 Q Okay.

4 A So if you're inside the compartment of the
5 vehicle, you're going to smell it.

6 Q Was his clothing tested for that?

7 A No, the clothing was not tested for that.

8 Q Let's get to the wet clothing.

9 A Okay.

10 Q You say they were wet?

11 A Yes, sir.

12 Q Okay. The towel was wet?

13 A Yes, sir.

14 Q But he had just taken a shower?

15 A Yes, sir.

16 Q But towels get wet after you've taken a shower,
17 right?

18 A Yes, sir.

19 Q That's no big deal. The clothes, you made some
20 mention maybe --- I can't remember if it was during
21 your testimony or on the tape about there being
22 spilled beer?

23 A Okay.

24 Q Were you saying that his clothes were wet from
25 beer?

1 A There was beer that was --- I guess the bottles
2 were compromised, broken inside the vehicle. So, yes,
3 beer on that. Wet clothing, wet shoes from the dew in
4 the early morning hours, yes, sir.

5 Q Okay.

6 A The clothes were not dry when we went to serve
7 the search warrant.

8 Q Smelled like beer?

9 A Some smelled like beer, yes.

10 Q Did you test them for beer?

11 A No, sir.

12 Q Because you knew someone like me would say it
13 probably came from the bar, right?

14 A No, not like anybody would say that, we just
15 don't test for alcohol on the clothing.

16 Q Okay. So the beers that were in the car were
17 full then, I'm guessing?

18 A At some point in time they were full.

19 Q Were any of them unbroken?

20 A To be honest with you, I'm not sure. I'm sure
21 there are some pictures that are in here somewhere
22 that may ---

23 Q Okay.

24 A --- that may show some, but there were a number
25 of them that were comprised and the contents no longer

1 in them.

2 (Pause.)

3 Q That's of clothing. I'll let you know if I come
4 across any pictures of glass in his beard.

5 A Okay.

6 Q This is a two door Jeep or a four door?

7 A I believe it was a four door.

8 Q You are correct.

9 A Actually a five door, if you will, counting the
10 back trunk hatch.

11 Q And there's glass shattered --- well, let's get
12 to the glass, man. There's glass shattered all over
13 the car, right?

14 A Yes, sir.

15 Q And you showed --- there was some glass that came
16 out of his clothes, right?

17 A Yes, sir, we found that together.

18 Q Yes, we did. Was that glass ever matched to the
19 car's glass?

20 A No testing was done, no, sir.

21 Q Okay. Wouldn't that help?

22 A I don't know if there's a way to test glass to
23 where it matched.

24 Q Well, compare --- maybe bring glass from the
25 truck. Okay, well, let me ask you this. I had a

1 broke --- somebody broke into my car once, all right.
2 The glass was all in these little cubes, okay does
3 glass come --- I mean, somebody told me that this was
4 like shatter proof glass or what is that called. Do
5 you know what I'm talking about?

6 A Tempered.

7 Q To avoid sharding?

8 A I'm trying to track you, but go ahead with your
9 question.

10 Q Okay. What I'm just saying is, isn't it normal
11 when glass in vehicles breaks that it's a different
12 kind of glass than let's say, you know, a pint glass
13 or something like that that breaks?

14 A I don't know. I do not know that.

15 Q Okay. I'll tell you what. When I'm looking
16 through these pictures ---

17 Well, there is a shoe in here somewhere. Whose
18 shoe is this?

19 A I believe that was one of his golf shoes, if I'm
20 not mistaken.

21 Q Did he identify it as his golf shoe?

22 A I'm not sure. I never asked him.

23 Q Did you guys ever --- well, you never asked him?
24 There is a shoe found in a car with a missing driver,
25 and you don't find out whose shoe it is?

1 A I didn't find out whose golf clubs they were in
2 the back either.

3 Q So you think that somebody might have been out
4 golfing in the middle of the night? Night golf?

5 A I don't know if we have any --- I don't know of
6 any course that may have lights out where you can go
7 out and shoot golf at night, I don't know.

8 Q Okay.

9 A That was my first time around Twenty-five Mile
10 Creek in Kershaw County.

11 Q Okay. Now, let's get to the blood spot on the
12 roof.

13 (Pause.)

14 Oh, for crying out loud. These are a mess. What
15 --- here it is. You pointed out in this picture that
16 there was some hair there, right?

17 A Yes, sir.

18 Q Some black hair?

19 A I believe I said dark, but whatever.

20 Q Whatever. Black hair, dark hair. Dark hair.

21 Okay. That hair was never tested, right?

22 A No, sir.

23 Q And obviously it's Donnie's car, right?

24 A Uh-huh.

25 Q And you'd imagine he's doing a little better with

1 his hair than I am, but you would imagine he has some
2 hair in his car that's his, right?

3 A Yes, sir.

4 Q Let me ask you, about this headliner, by the way.
5 Is this headliner affixed or do you remember if it
6 might have been sagging?

7 A I don't remember what it was prior to the
8 collision. I just know once the vehicle was upright.

9 Q Okay. When you found it, what was it?

10 A It appeared to be sagging.

11 Q And frankly, you would think that --- if you
12 tested my car, if you tested your car, if you tested
13 Judge Cooper's car, you would find our DNA in our
14 cars, right?

15 A Probably, yes.

16 Q Probably. So it's not --- I mean, it's not
17 fanciful to say that even if he wasn't in the car,
18 that his DNA would be in the car?

19 A State that one more time.

20 Q It's not an absurd comment on my part to say that
21 his hair might be --- his DNA or his hair may be in
22 the car, even if he's not there?

23 A His hair, the DNA, yeah, but this right here is a
24 blood spot, though.

25 Q I understand that. I mean, is there any age on

1 that blood spot?

2 A It appeared to be fresh at the time possibly from
3 the cut on his eye.

4 Q Possibly but what makes you say it's fresh? Are
5 you serologist? Can you figure out the age of a blood
6 spot?

7 A Because it's looks fresh.

8 Q Looks fresh?

9 A Uh-huh.

10 Q Was it wet?

11 A I didn't touch it. I had gloves on.

12 Q I've got to understand how you --- what is a
13 fresh blood spot?

14 A A fresh banana doesn't have any of the black age
15 spots on it. It's nice and yellow. I mean, I can
16 look at it. This looks fresh.

17 Q Was it red, brighter red than it would have been
18 if it had ---

19 A It looks just like it does right there on the
20 picture.

21 Q Okay. And in your opinion that's fresh?

22 A In my opinion at that time, that's fresh, yes,
23 sir.

24 Q Let's just --- while I'm asking you these
25 questions, let's just get one thing straight. In your

1 opinion, he's the driver?

2 A In my opinion, yes, sir.

3 Q Okay, and you have no doubt, right?

4 A The evidence points to Mr. Thigpen as the driver,
5 yes, sir.

6 Q Okay. All right. Let's just get that straight.
7 You're not going to give me any gifts here and tell me
8 there might be an issue, right?

9 A Any gifts?

10 Q I'll move on.

11 Oh, during the interview, he says he got in a
12 fight at the bar. Do you remember that?

13 A No, sir.

14 Q You don't remember during the interview, he
15 said --- you questioned him and he said he got into an
16 altercation with a guy named B.J.?

17 A He got into an argument with someone there. He
18 called his girlfriend big. Never said anything about
19 a fight or altercation.

20 Q Did you guys go back and talk to witnesses at
21 that bar?

22 A No, sir.

23 Q Wouldn't it have been nice to have a witness that
24 said I saw Donnie get in that car with Melvin?

25 A Would it have been nice?

1 Q I mean, that's a rhetorical question, trooper.

2 A Yes, sir.

3 Q I mean, you know what I'm saying?

4 A Yeah.

5 Q Did y'all talk to any witnesses, any neighbors?

6 A I did not.

7 Q Did anybody?

8 A Not that I know of.

9 Q Did anybody come forward and tell you I heard an
10 accident, an enormous accident, in the middle of the
11 --- in the very early morning? Did anyone come
12 forward with that information?

13 A No one called and told me that, no, sir.

14 Q Did anybody come forward and say to you I saw my
15 neighbor Donnie Thigpen walking through the swamp or
16 walking up the street to his house after I heard an
17 accident?

18 A Again, no, sir, no one called me and told me
19 that.

20 Q Did anybody ask anybody if they had seen or heard
21 that?

22 A Not that I know of.

23 Q When you collected the evidence, did you put
24 everything in one bag or several different bags?

25 A Separate bags.

1 Q Okay. That includes the evidence that was taken
2 from Donnie's house, correct?

3 A That's correct.

4 Q Let's go to Donnie's house. The door is kicked
5 in. Did you see that door?

6 A Yes, sir.

7 Q Okay. Can that door --- is it a metal door or a
8 wooden door? Do you remember?

9 A Probably a little bit of both. The exterior
10 would be the metal sheeting, probably some wood on the
11 inside for a frame, if I had to guess.

12 This looks like it's a metal door, metal sheeted
13 door.

14 Q Okay. And then it looks like the doorjamb, tell
15 me if I'm wrong, because I'm not a carpenter?

16 A Nor am I.

17 Q You're probably more of a handyman than I am,
18 though.

19 A No, sir, I'm not.

20 Q That's not saying much.

21 A Call my father-in-law.

22 Q Okay. Is there a deadbolt on Donnie's door?

23 A I don't see it. I do see a spot for a deadbolt
24 here, but I don't see one on the doorway.

25 Q Okay.

1 A Do you have one that shows a picture of a dead
2 bolt? Looks like a place for it but nothing is dead.
3 bolted.

4 Q Okay. Were you able to determine whether or not
5 that door could still be locked even though it had
6 been kicked in?

7 A I didn't examine it anything further other than
8 taking the photographs.

9 Q Okay. You took those pictures?

10 A Yes, sir.

11 Q There's something that confused me about this
12 picture, because I think this is a metal door. What
13 is that piece of wood right there?

14 A It appears to me and I said in my direct that
15 looked like a piece of the corner round.

16 Q What's a corner round?

17 A A piece of molding.

18 Q Okay. Part of the --- a doorjamb is what I ---

19 A The back portion or it.

20 Q Okay. The doorjamb is still in place, though,
21 right?

22 A Yes.

23 Q Okay.

24 A On the opposite interior side like where that
25 piece might have ---

1 Q Might have chipped on it?

2 A Yes, sir.

3 Q Okay. And let me ask you this, okay, man. This
4 --- you're saying you see a footprint somewhere?

5 A No, sir.

6 Q Okay.

7 A It looks like markings from a shoe, but I don't
8 see any pristine footprint. You can see the
9 striations from the shoe tread.

10 Q Can you point that out to me?

11 A See the dark colored spots and the light colored
12 spots inside? The striations?

13 Q Right.

14 A Mine wouldn't show too much of anything because
15 they're kind of --- yours would show nicely.

16 Q You --- was there any attempt to match any of
17 Donnie's shoes to that?

18 A No, sir.

19 Q It's these shoes?

20 A They would show a pretty good striation.

21 Q Okay. And ---

22 A Be careful. There was some biological material
23 on that and you're not using gloves.

24 A Sorry if I compromised the integrity.

25 Was there any testing done on the biological

1 material?

2 A No, sir.

3 Q What are you talking about biological material?

4 A I believe there was some blood on the shoe.

5 Q There was blood on the shoe?

6 A Yes, sir, it looked like it.

7 Q Did you guys test that blood?

8 A (Indicating in the negative.)

9 Q Man. What if it was Melvin Wright's blood? I
10 mean, he was bleeding. You said before he was
11 bleeding pretty heavily, right? In the car, there was
12 a lot of blood?

13 A I don't believe I said he was bleeding pretty
14 heavily.

15 Q I think you said in your interview with Donnie?

16 A I said there was blood in the car, yes, sir.

17 Q Why wouldn't you test the shoe? Why wouldn't you
18 give us that?

19 A I didn't test the shoe.

20 Q So when you collect the evidence, sir, and you're
21 maintaining the integrity by using gloves and putting
22 them in paper bags to keep the moisture; is that
23 correct, sir?

24 A Plastic bags will retain the moisture, but paper
25 bags will allow it to breathe, so anything that's not

1 totally dry, that will allow it to dry, breathe.

2 Q Why would your want to allow things to dry if
3 there was potential evidence?

4 A So that the State Law Enforcement Division can
5 utilize that for whenever they do for DNA testing.

6 Q Even it dries out you can use it for DNA testing?

7 A Yes, sir.

8 Q I'll ask ---

9 A The swabs that we took, they had to dry before we
10 submitted them to SLED.

11 Q I'll get to that. I'll ask the DNA expert. You
12 don't --- are you a DNA expert?

13 A No, I am not an expert, but I know enough about
14 that it, a little about it, but not anything to the
15 point where they know it.

16 Q Okay. You collect it, though, right?

17 A Yes, sir, we collect it.

18 Q Is it ever --- do you ever collect it off of
19 materials or just from people?

20 A Well, I collect the materials and allow the DNA
21 experts ---

22 Q Okay.

23 A --- to extract that.

24 Q So you don't swab it or extract it from material?

25 A Collect it, no, sir. They do the processing of

1 the DNA.

2 Q Okay. And, you know, let me talk to you about
3 that organic material, the grass and dirt and that
4 sort of stuff. Donnie --- does Donnie have a paved
5 driveway?

6 A You know, I can't remember. Maybe in a picture
7 there we could can see it. If I had to guess, I would
8 probably say no.

9 Q I don't know if you can tell from that picture or
10 not.

11 A The tree is in the way. If I had to say, I would
12 say no.

13 Q But certainly this is not an urban setting?

14 A No, sir. It's out in the country.

15 Q This is out in the country, right?

16 A Yes, sir.

17 Q And there's a yard and Donnie --- does he say he
18 did yard work or something in the interview? Am I
19 imagining that?

20 A I think he said that he works at BOSE.

21 Q I understand that, but he was going to do yard
22 work the next day or something like that?

23 A No. He was going to play golf the next day.

24 Q Some people call that yard work.

25 All right. And you said that this was

1 transferred to homicide after you bundled all this
2 stuff and you transferred it, right?

3 A Yes, sir.

4 Q And you say --- you assume that it maintained
5 the integrity --- that headquarters maintained the
6 integrity, right?

7 A Yes, sir.

8 Q Okay, but you don't have any personal knowledge
9 once you give it to them, right?

10 A No.

11 Q But y'all do have safeguards to make sure that
12 happens?

13 A Yes, sir, there's protocol.

14 Q Wonderful. Okay. Let's move to --- I'm jumping
15 around ---

16 A That's all right.

17 Q --- but I'm trying to keep it linear. You then
18 go to the residence to serve the search warrant; isn't
19 that correct?

20 A We went to the residence to serve the search
21 warrant, yes, sir.

22 Q And to collect what was asked for in the search
23 warrant; isn't that correct? The clothing, the shoes,
24 the belt?

25 A On the return of what we actually collected, that

1 was enumerated there on the search warrant.

2 Q Because the description of the property that you
3 guys were seeking was this, right?

4 A Okay.

5 Q Did you draw up that search warrant, sir?

6 A Yes, sir.

7 Q Were you present when it was drawn up?

8 A No, sir.

9 Q But you were aware of what was being searched
10 when you went in the house, right?

11 A Aware of what was being searched, yes, sir.

12 Q And the purpose for the search warrant, of
13 course, is that everybody has got a right to privacy,
14 right?

15 A Yes, sir.

16 Q But if there is some sort of probable cause that
17 any sort of materials that would help in an
18 investigation were somewhere, you could get a search
19 warrant to go in there, right?

20 A Yes, sir.

21 Q Okay. So you guys go in there and get the
22 clothing. You get the clothing and --- well, let
23 me ask you this: why two pairs of shoes? Why did you
24 get two pairs of shoes?

25 A Because I didn't know at that time.

1 Q Okay.

2 A It wasn't until later that we got into the
3 interview that we confirmed the article that we picked
4 up from the house or seized from the house were the
5 ones he was actually wearing, so I didn't know that.

6 Q What's the importance of that clothing?

7 A The importance of the clothing?

8 A The pretty big importance when we opened it up
9 and saw the glass shards and the debris fall out.

10 Q That's really important, but you didn't test it,
11 did you?

12 A No, sir.

13 Q And you didn't test the blood on the clothing
14 either, did you?

15 A No.

16 Q And you didn't test the blood on the shoes
17 either, did you?

18 A We tested the blood or the DNA on the airbag and
19 the DNA from the headliner.

20 Q I got you, but that's his car, okay?

21 A Yes, sir.

22 Q And you said that when you got to the car, the
23 steering wheel was bouncing all over --- I mean, is
24 not in its column, is that correct?

25 A The steering wheel was not intact, no.

1 Q Okay. So it's not absurd of me, as a non-
2 accident reconstructionist, to think that the steering
3 wheel is bouncing all over this guy's car.

4 A It could, yes.

5 Q Okay. And that he's got DNA in his own car?

6 A Yes, sir.

7 Q So DNA on his clothing that was in his house to
8 me, as a layperson, would have more weight. For
9 instance, if Mr. Wright's clothing was on his
10 clothes --- on those clothes, wouldn't that
11 be --- wouldn't that have a lot of weight?

12 A Mr. Wright's clothes was on those clothes?

13 Q Mr. Wright's blood was on those clothes? I think
14 I misspoke.

15 A Could be the blood from his head.

16 Q That's true.

17 A The same that translates on top of the headliner.

18 Q But we don't know, do we?

19 A We do know on the headliner.

20 Q We don't know if it came from his head at that
21 time. We don't know that. Do you have personal
22 knowledge of that?

23 A We know who it came from, yes, sir.

24 Q That is true or we're going to find out that,
25 right?

- 1 A Yes, sir.
- 2 Q But we don't know that it came from that night?
- 3 A Or that morning.
- 4 Q Or that morning, sorry.
- 5 A That's right.
- 6 Q Do you know if that spot was a smear or a drop?
- 7 A (There was no response.)
- 8 Q You don't know?
- 9 A (Indicating in the negative.)
- 10 Q So you went into his home, right?
- 11 A Yes, sir.
- 12 Q Clean home, messy home?
- 13 A I believe the description was a bachelor, so...
- 14 Q Okay.
- 15 A So think back when you were 20 something years
- 16 old or when I was 20 something years old.
- 17 Q I didn't know you.
- 18 A No, sir.
- 19 Q But --- so messy?
- 20 A I wouldn't call it messy, no, sir.
- 21 Q Okay.
- 22 A But lived in.
- 23 Q Would you say he was a regular house cleaner?
- 24 A Lived in, yes, sir.
- 25 Q Lived in. Okay.

- 1 A Yes.
- 2 Q And a dog?
- 3 A Uh-huh.
- 4 Q Did you ever meet this dog?
- 5 A (Indicating in the negative.)
- 6 Q This picture from the shower?
- 7 A Uh-huh.
- 8 Q You say that's blood, right?
- 9 A That's what it appears to be, yes, sir.
- 10 Q Okay. Did you test it?
- 11 A No, sir.
- 12 Q Where the heck is that picture?
- 13 (Pause.)
- 14 Okay. Did you ask Donnie about it?
- 15 A I don't know if I specifically asked him,
- 16 listening to the audiotape, I don't think I
- 17 specifically asked him, hey, what about the blood in
- 18 your shower.
- 19 Q Okay. How many bathrooms does he have in his
- 20 house?
- 21 A I believe it was just one if I'm not mistaken.
- 22 Q Okay.
- 23 A The one we went in.
- 24 Q So he could have had two?
- 25 A I can't recall.

- 1 Q Okay.
- 2 A That was in the master portion of the residence.
- 3 Q So this blood in this shower, this is blood?
- 4 A Appears to be, yes, sir.
- 5 Q Is it blood?
- 6 A It appears to be, yes, sir.
- 7 Q Do you know if it's blood, absolutely certain
- 8 that it's blood? Do you know that?
- 9 A It has the appearance of blood.
- 10 Q Did anybody come and test it?
- 11 A No, sir, no testing.
- 12 Q All right. Let's get to your statement --- or,
- 13 I'm sorry, to Donnie's statement.
- 14 This is the first time that you ever meet my
- 15 client, right?
- 16 A Yes, sir.
- 17 Q Okay. And you said his appearance --- that he
- 18 seemed calm?
- 19 A Yes, sir.
- 20 Q And cooperative?
- 21 A Yes, sir.
- 22 Q And you have a tape recorder, and your guys are
- 23 in --- I've been in that glass room.
- 24 A Yes, sir.
- 25 Q There are long tables, right?

- 1 A Uh-huh.
- 2 Q Are you guys sitting all around one table?
- 3 A Probably those big long tables that are up front.
- 4 We had to move some chairs around to ---
- 5 Q Like this?
- 6 A Yes.
- 7 Q And you've got Donnie?
- 8 A Uh-huh.
- 9 Q And the three of y'all sitting at the table?
- 10 A Yes, sir.
- 11 Q And there's a tape recorder in the middle?
- 12 A There's an audio recorder, yes, sir.
- 13 Q Okay. How is it?
- 14 A Digital.
- 15 Q Digital. Okay, and it's horrible acoustics in
- 16 that room?
- 17 A Yes, sir.
- 18 Q And again, you've been through school, Criminal
- 19 Justice Academy.
- 20 Did you study criminal justice at the Citadel?
- 21 A I was an English major.
- 22 Q English major?
- 23 A Yes, sir.
- 24 Q But you studied interrogation techniques?
- 25 A Yes, sir.

1 Q You know --- because at the beginning, you say at
2 the beginning, you say, look, this has to be on the up
3 and up, right?

4 A That reference was made to Miranda. I had heard
5 before that he had been Mirandized when he was taken
6 in, so I wanted to re-Mirandize him again. That's
7 what we --- let's do this on the up and up.

8 Q Okay. And when you do Miranda?

9 A Uh-huh.

10 Q You and the --- you and I may differ on this. Is
11 there some question that you may not have given him a
12 complete Miranda?

13 A I gave him a Miranda from a Miranda card
14 that --- what is it Arizona versus Miranda that says
15 that you have to Mirandize a subject to let him know
16 his Miranda Warnings or Miranda rights, so yes, sir, I
17 gave him Miranda.

18 Q Okay. Did you tell him that he could stop
19 questioning at any time?

20 A No, sir.

21 Q Did you know that when he was Mirandized earlier
22 in the day that he was told he could stop questioning
23 at any time?

24 A I do now.

25 Q And you had two officers in the room with you,