

22420

STATE OF SOUTH CAROLINA

VOLUME I OF II

In The Court of Appeals

APPEAL FROM ALLENDALE COUNTY

J. Ernest Kinard, Jr., Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT

RECEIVED

V.

SEP 23 2015

MCKENZIE L. DAVIS,

SC Court of Appeals  
APPELLANT

APPELLATE CASE NO. 2014-001550

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA  
14TH JUDICIAL CIRCUIT  
COUNTY OF ALLENDALE  
COURT OF GENERAL SESSIONS  
CASE NUMBERS 2009-GS-03-00072,  
2009-GS-03-00073, 2009-GS-03-00074,  
2009-GS-03-00075, 2009-GS-03-00076

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

JULY 8, 2014

TRANSCRIPT OF BENCH TRIAL

ALLENDALE, SOUTH CAROLINA

MCKENZIE DAVIS

DEFENDANT

---

B E F O R E:

HON. ERNEST J. KINARD, JR., JUDGE

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7-8-14 STATE V DAVIS

1 TUESDAY, JULY 8, 2014

2 BEGINNING 9:10 A.M.

3 PRETRIAL MOTIONS:

4 BY THE COURT:

5 THE COURT: You may be seated.

6 MS. BURCHSTEAD: Judge, if I may just go get my co-  
7 counsel. Thank you.

8 THE COURT: All right. We need to get rolling.  
9 I'm sitting here. I've been here since 8:30.

10 MR. PLEXICO: I'm ready. I'm ready, Judge.

11 THE COURT: All right. On your motion to severe,  
12 it's a little late today. We already picked a jury.

13 MR. PLEXICO: Yes, but the jury's not sworn, your  
14 Honor. I believe it would be a matter of justice versus  
15 inconvenience, your Honor. If they believe that he has  
16 a prior DUI, it would confuse the facts.

17 THE COURT: Well, all you have to do is stipulate  
18 that his license was suspended.

19 MR. PLEXICO: I will do that.

20 THE COURT: DUI, I mean, I wouldn't even mention  
21 DUI.

22 MR. PLEXICO: That, I will -- I will agree to  
23 stipulate to that, your Honor.

24 THE COURT: Because that's just for penalty  
25 purposes, not --

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1 MR. PLEXICO: Your Honor, just to --

2 THE COURT: The offense is driving under  
3 suspension.

4 MR. PLEXICO: I understand, your Honor.

5 THE COURT: This looks like first, second, or  
6 third. It doesn't really matter. You stipulate to it,  
7 and it's just where they're driving under suspension.

8 MR. PLEXICO: We do stipulate to that, your Honor.

9 THE COURT: All right. What else do you have?

10 MR. PLEXICO: All right. I'm going to start with a  
11 motion, a motion to suppress all chemical testing  
12 results of the defendant's blood and urine. This is  
13 framed as an *Article 5, Section 1; Article 5, Section*  
14 *26; and a Code Section 17-13-140*. They made no effort  
15 at all to contact a magistrate, your Honor, when one was  
16 available. I believe it's an unconstitutional statute.  
17 I'm asking for a ruling that the statute itself is an  
18 unconstitutional statute, your Honor, and the results  
19 should be -- it should -- they should be suppressed, due  
20 to the fact that they acted under an unconstitutional  
21 statute, and the statute itself is a violation of the  
22 defendant's *Fourth Amendment* rights.

23 I believe the State has a duty to -- this is a  
24 state action, whether it's police action or whatever it  
25 is, it's a state action. The State has a duty to have a

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1 system in place to safeguard a citizen's *Fourth*  
2 *Amendment* rights. This statute clearly eliminates any  
3 safeguards for the defendant's *Fourth Amendment* rights,  
4 and I would ask, based on this motion, Judge, that the  
5 statute be declared unconstitutional, and the results  
6 should be suppressed under that, your Honor. Then, I'll  
7 move on to the next one.

8 The next one, if you want me to move on to the next  
9 one, the next one is, I'm moving that all the chemical  
10 testing results be suppressed. This is entitled, *Motion*  
11 *to Suppress All chemical Testing Results of the*  
12 *Defendant's Blood and Urine Taken Without Probable Cause*  
13 *for Arrest.*

14 Here, your Honor, I'm citing *South Carolina*  
15 *Constitutional Article Section 1, Section 2*, and the  
16 *U.S. Constitution, Amendment 4*, Judge. Here, there was  
17 simply no probable cause for arrest. There was an  
18 automobile accident. My client smelled of alcohol.  
19 There's nothing else in the discovery, your Honor, that  
20 I have that would justify a belief that my client was  
21 under the influence of alcohol. There's none of the  
22 usual verbiage about glassy eyes, bloodshot eyes, or  
23 anything else. So, I just don't believe that there was  
24 probable cause for arrest.

25 The statute they're relying under, which I believe

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1 is unconstitutional, 56-5-2946, states:

2           The test must be administered at the  
3           direction of law enforcement who has probable  
4           cause to believe that the person violated or  
5           is under arrest for violation of 56-5-2945.

6           They actually filled out a form, your Honor, with  
7           SLED, that stated that he was under arrest as of 14:40.  
8           So, they placed him under arrest. And, so, he either  
9           had to be under arrest or probable cause for arrest.  
10          Here, clearly, I don't think there's any probable cause  
11          from the facts that I've been given, Judge, to justify  
12          the arrest, which is a prerequisite for the taking of  
13          the blood and the urine.

14          Further, your Honor, if you find that the statute  
15          is constitutional, you find there was probable cause,  
16          then, well, if there's probable cause, why not go ahead  
17          and get a search warrant? Well, I think their argument  
18          obviously would be that they had exigent circumstances.

19          This is a motion to suppress all -- this is my  
20          third motion, Judge, Motion to Suppress All Chemical  
21          Testing Results of the Defendant's Blood and Urine Taken  
22          Without a Search Warrant, and not due to exigent  
23          circumstances.

24          Here, Judge, you're aware there were no exigent  
25          circumstances. I went through twelve factors showing

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1 that both parties, the defendant, the Highway Patrolmen,  
2 were at the hospital. Testing equipment is at the  
3 hospital.

4 The magistrate who is present and will testify  
5 today, Judge, lives within one mile of the hospital.  
6 You can take judicial notice that, in our system, and in  
7 2008 and 2009, we have magistrates on call 24 hours a  
8 day. This is in the afternoon. There's just no reason,  
9 when you look at these twelve factors, why an effort  
10 should not be made to obey the mandates of the  
11 *Fourteenth* -- or excuse me -- the *Fourth Amendment*,  
12 Judge. There was just no effort. And I believe it's  
13 because they relied on the statute, which, obviously, I  
14 have my argument about the constitutionality of that,  
15 Judge.

16 But, since they relied on the statute, the State  
17 failed to set up any safeguards, your Honor. It's State  
18 action through that, your Honor. It's a violation of  
19 the separation of powers, which is in my motion.

20 Now, they have a legislatively issued blanket  
21 search warrant, Judge, that I believe is just clearly  
22 unconstitutional in that there are no exigent factors.  
23 While one can consider that this is a serious accident,  
24 I think the cases that I've read, Judge, that is a  
25 consideration. In *Welch*, Judge, it was -- that is --

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1 and I'll -- they provided a Circuit Court ruling, Judge,  
2 that I have, *Menson versus Ohio [sic], Kentucky versus*  
3 *King*, all of which are cited in the Circuit Court ruling  
4 that was made earlier, which is not law, Judge, *Brigham*  
5 *City versus Stuart* and *Welch versus Wisconsin*. Can I  
6 approach, Madam Clerk?

7 REPORTER'S NOTE: Upon later asking  
8 Mr. Plexico to clarify the cite,  
9 *Menson versus Ohio*, Mr. Plexico meant  
10 to say *Minsey versus Arizona*.  
11 to clarify

12 And *Welch* involved a non-criminal, civil forfeiture  
13 arrest in the invasion of a home. The Court said, in  
14 the *Fourth Amendment* analysis, you can look at the  
15 seriousness of the crime. Well, I think that was taken  
16 out of context, Judge. Excuse me, your Honor. It says:

17 *Moreover, although no exigency is created*  
18 *simply because there is probable cause to believe*  
19 *that a serious crime has been committed.*

20 Then, they go on. But you can't take that line and  
21 jump to the conclusion that we have to -- because  
22 alcohol dissipates. And this is a 1984 case. Even  
23 then, they said:

24 *Given this discretion, the State's*  
25 *interest, a warrantless home arrest cannot*

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1       be upheld simply because evidence of the  
2       petitioner's blood alcohol level might be  
3       dissipated while the police obtain a search  
4       warrant.

5       Well, your Honor, when you look at the factors they  
6       have here and the facts -- take the factors of  
7       *Schmerber*. He had to be taken to the hospital. They  
8       had to take time to investigate the scene of the  
9       accident. The time delay in seeking a magistrate, they  
10      thought, would have threatened the destruction of  
11      evidence. This is not the way that *Schmerber* was  
12      decided, Judge, and I believe that was in the '60s.

13       What's going on today, Judge -- and that was 1966  
14      -- is email, texts, cell phones. There's no excuse for  
15      not having a system where you can contact a magistrate.  
16      We have magistrates on call 24 hours a day. Here, they  
17      were already at the hospital. One of the *Schmerber*  
18      Factors is gone. Secondly, there was no time to be  
19      taken to investigate the scene. There were troopers  
20      already there. There were Sheriff's Department.  
21      Indisputably, they were already there. They were  
22      securing the scene, your Honor. I think they have ten  
23      Highway Patrolmen who are witnesses in this case, Judge.  
24      There was no reason even for the Highway -- the trooper,  
25      since they have radio contact at least with each other,



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1 they could have known. The supervisor was already  
2 there, and he could have went on to the hospital to  
3 interview the witnesses, the next step.

4 There was an accident, a response, see to safety  
5 and injuries, and begin the investigation by talking to  
6 witnesses, who are all at the hospital.

7 Now, the hospital, the law enforcement center, they  
8 are four miles apart. The Magistrate's Office --  
9 Magistrate's home is a mile from the hospital, Judge.  
10 We're talking a delay of minutes for this to happen.  
11 And the slow dissipation of alcohol, under *McNeely*,  
12 *Missouri versus McNeely*, your Honor, and while it's a  
13 consideration, they ruled, if you can get a search  
14 warrant, get one. Even the three in the dissenting  
15 opinion, which is five in the majority opinion and  
16 three, Judge, that's eight to one, says that, if you can  
17 get a warrant, get one.

18 Here, there's no system set up to get one. So, any  
19 case that arises from this statute is -- since there's  
20 no effort to comply with the *Fourteenth Amendment* --  
21 excuse me, the *Fourth Amendment*, Judge -- through State  
22 action, which is substituted for police action, it just  
23 makes the whole thing unconstitutional under the *Fourth*  
24 *Amendment*, Judge.

25 COURT REPORTER: I'm sorry, under the?

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1 MR. PLEXICO: Excuse me, makes the whole search --  
2 it makes the taking of the blood and the urine  
3 unconstitutional under the *Fourth Amendment*. There are  
4 no factors under *Schmerber* which would justify the  
5 taking of the blood without an application to a neutral  
6 and detached magistrate, your Honor, who was minutes by.  
7 And there's no allegation he wasn't.

8 And my further motion is relating to the -- only to  
9 the marijuana. The marijuana, I believe, should be  
10 suppressed, your Honor, because there is no standard to  
11 determine when somebody is under the influence. While  
12 they can detect the presence of marijuana, there is no  
13 standard, I believe, that the State can put forth to say  
14 when someone is high on marijuana, when the average  
15 person is high, or when a specific person is high.

16 I believe that mentioning that there is marijuana  
17 present, and they don't know if he smoked it two weeks  
18 before, if he was around somebody two days before and  
19 inhaled it, they can't show that he ingested it  
20 purposely, himself, aside from mere association with  
21 somebody who's smoking in an enclosed space.

22 I believe it would be unduly prejudicial under 402,  
23 403, and the character evidence under 404. I move that  
24 that -- the mention of marijuana in this matter be  
25 suppressed or excluded from the trial, Judge.

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1 I think that -- I'd like to respond to anything  
2 that the State has.

3 THE COURT: All right.

4 MS. BURCHSTEAD: Thank you, Judge. I'll try to  
5 take it in order. I'm not sure I'll get it exactly in  
6 the order Mr. Plexico presented.

7 THE COURT: Well, we all agree the magistrate --  
8 you agree was minutes away?

9 MS. BURCHSTEAD: No, I don't know if the magistrate  
10 was minutes away or not.

11 THE COURT: But he had -- you are supposed to  
12 represent the State, you could easily have talked to  
13 him. This case is eight years old, the oldest case on  
14 the docket. You're unprepared, if you haven't talked to  
15 him.

16 MS. BURCHSTEAD: Yes, sir. And just so we're  
17 clear, the Attorney General's Office hasn't had it for  
18 eight years.

19 THE COURT: I can understand that, but that's  
20 beside the point.

21 MS. BURCHSTEAD: Just for clarification. Your  
22 Honor, I've talked to the trooper, and the trooper  
23 didn't know if the magistrate was available or not. And  
24 you know, just because he's a mile down the road doesn't  
25 necessarily mean he needs to get a search warrant.

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1 THE COURT: I understand that.

2 MS. BURCHSTEAD: Yes, sir.

3 THE COURT: All I'm saying, magistrates got other  
4 things to do.

5 MS. BURCHSTEAD: Yes, sir. If he says he was a  
6 mile down the road, well, that's fine.

7 THE COURT: Okay.

8 MAGISTRATE WILLIAM BRANCH: Yes, sir, I live about  
9 a mile from the hospital. And but dispatch has a copy  
10 of my on-call schedule. That's ordered by Court  
11 Administration. They determine. I think you're aware  
12 of that, sir. And I'm available by cell phone 24/7.  
13 And that's it, Judge, in my office.

14 THE COURT: You know, he doesn't need to hang  
15 around; does he? He was not sworn. We'll accept that.

16 MS. BURCHSTEAD: Yes, sir.

17 THE COURT: That's just a fact.

18 MS. BURCHSTEAD: Sure.

19 THE COURT: He's free to go. You all don't need to  
20 keep him here.

21 MAGISTRATE WILLIAM BRANCH: Thank you, sir.

22 THE COURT: All right.

23 MS. BURCHSTEAD: Yes, your Honor. Okay. So, let  
24 me go back to Counsel's first argument as to the  
25 constitutionality of the statute. Your Honor, I'm just

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1 going to be brief on that. I don't think we need to go  
2 into a thorough discussion about constitutionality. The  
3 State's position is, statutes are presumed to be  
4 constitutional. I believe, in this case, we would have  
5 a rational basis standard, your Honor. I'm not positive  
6 on that, but I believe I'm correct in that. And you  
7 know, I would just say that, clearly, the State has an  
8 interest in protecting the public and evidence of cases  
9 of this nature, especially where someone has died. And  
10 it's the State's position that there is nothing  
11 unconstitutional, blanketly, about the statutes in  
12 question.

13 As far as the probable cause for the arrest, your  
14 Honor, let me start by saying, I believe there was a  
15 preliminary hearing where probable cause was found.  
16 Additionally, the defendant is indicted where probable  
17 cause has to be addressed. But for purposes of  
18 addressing your Honor this morning, I would say we have  
19 Trooper Gates present, who would testify as to the  
20 probable cause for the arrest, which does include  
21 interaction with the defendant and his training and  
22 experience, acknowledging that he believed the defendant  
23 to be intoxicated at the time he was driving.

24 And clearly, because he did the implied consent and  
25 had the blood draw, we would suggest that, in and of

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1       itself, with an experienced trooper, he believed that he  
2       was dealing with someone driving intoxicated, your  
3       Honor.

4           I believe the more lengthy discussion we need to  
5       have this morning is the search warrant with exigency,  
6       and I understand Mr. Plexico's relying a lot on the new  
7       Supreme Court case of *Missouri versus McNeely*, your  
8       Honor. First, let me just point out, it is not the  
9       State's position that that case stands for the  
10      proposition that, if you can get a search warrant, get a  
11      search warrant. We do not believe that's a correct  
12      statement of what the case is addressing, your Honor. I  
13      believe the sole issue of *Missouri versus McNeely* was  
14      whether alcohol is, per se, exigency. And the holding  
15      on that is, no, it is not. However, it is a factor that  
16      may be considered in exigency, the dispensation -- the  
17      dispensation of -- I can't say it. The metabolizing of  
18      the alcohol and how quickly it leaves the system, your  
19      Honor, it is something to be considered as an exigent  
20      circumstance.

21           And again, I would just reiterate, as per our  
22      discussion about the magistrate being down the road, of  
23      course that's a factor involved. However, the State's  
24      position is that the issue is what the trooper believed  
25      at the time as to whether there was exigency. And the

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1 trooper doesn't know. Just because the magistrate lives  
2 a mile down the road, doesn't mean he's available. And  
3 we need to point out the fact that the trooper is  
4 working a wreck where there's a death, and there are  
5 children being Medivaced out to Richland County; you  
6 have major injuries; and the defendant is going back and  
7 forth on his story about whether he was driving or not  
8 driving, and the trooper has to first ascertain who was  
9 actually driving. So, under the very best of  
10 circumstances, identifying the driver, we get a blood  
11 draw two hours after the wreck.

12 So, to argue we need to be going and finding a  
13 magistrate when he's still just trying to figure out who  
14 the driver is, I believe that is just not the case, your  
15 Honor, and that we have serious exigency.

16 Again, we want to reiterate, we have the level of  
17 severity of the crime and working a wreck and having to  
18 go to the hospital. And again, we do not believe the  
19 statute is unconstitutional. The trooper was following  
20 the law that is on the books in South Carolina, and that  
21 this case is more akin to *Schmerber* than *McNeely*.  
22 *McNeely* was not addressing a situation with death and  
23 felony DUI. It was a regular DWI case, your Honor, and  
24 just -- the movement of alcohol through the body is  
25 still a factor to be considered, Judge.

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1           As for the marijuana, the statute says, and the  
2 indictments read:

3           *Whether under influence of alcohol or drugs.*

4           I believe Mr. Plexico's arguments go to the weight  
5 of the evidence, not the admissibility of the evidence.  
6 And he's free to cross-examine the chemist on the stand  
7 and make any arguments to the jury that are reasonably  
8 inferred from what he elicits on cross. And I would  
9 offer to the Court at this point, we do not expect our  
10 chemist to say that he smoked pot that day. We're going  
11 to -- he's going to discuss what's in the report; that  
12 THC was in the system at the time of the blood draw; and  
13 that he cannot say if it did affect or did not affect.  
14 But it's something that both parties can argue to the  
15 jury, because it is something for the jury to consider  
16 in determining whether he was under the influence or  
17 not.

18           I believe I've addressed everything, your Honor.  
19 If I have not, or if you have any questions, I'd be  
20 happy to answer them.

21           MR. PLEXICO: May I respond briefly?

22           THE COURT: I'm listening.

23           MR. PLEXICO: Your Honor, I did also file a motion  
24 to suppress introduction of testimony that violates Rule  
25 5. If they're going to come and clean their case up



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1 years -- over half a decade later, and did not give me  
2 any discovery that he had done all these tests, Trooper  
3 Gates made -- when they sent the incident report in the  
4 discovery about this, they gave me the 11/2/2000 arrest,  
5 your Honor, the incident report that was entirely  
6 different from the 2008 matter that was here.

7 They didn't even have an incident report that cites  
8 anything. They don't have an audio tape that he could  
9 have made at the hospital. He didn't draw up an  
10 incident report saying he observed all these things.  
11 And I would move to exclude that as a violation. I  
12 can't fix this now. I can't go out and study it now.  
13 If they're going to come up with all these things that  
14 he observed that he didn't record on paper, ever, ever,  
15 over half a decade, Judge, that's -- I mean, that's just  
16 too contrite. And certainly, I'm so surprised to hear  
17 they would do that, your Honor. I don't believe that.

18 Your Honor, this is just about whether or not  
19 you're willing to make a phone call. They didn't put  
20 down they did the field sobriety tests. They didn't do  
21 anything that would have shown that, that I know of. My  
22 client was ambulatory, walking around, talking to people  
23 at the hospital. He wasn't checked into a room. We're  
24 talking about panic. These cases aren't about panic.  
25 They aren't about some urgency. All right. Exigency of

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1 the circumstances is different from the urgency about a  
2 situation. That was already taken care of. These  
3 people are at the hospital. Valandria Bing, one. They  
4 have a DUI, a serious bodily injury, was discharged  
5 within hours. That couldn't have been serious. Then,  
6 you have the boy, who was diagnosed with a slight  
7 fracture of his shoulder. He was the one that was,  
8 quote, *Medivaced* out. There was no urgency. He never  
9 -- the trooper talked to him very briefly, and he made  
10 no statement. He's not even a factor in this, Judge.  
11 The death had already occurred. There was nothing he  
12 could do about it. People were at the accident scene.  
13 He didn't even have to go there. All he had to do was  
14 go through normal police work. My client could have  
15 done a field sobriety test. He could have done  
16 anything. They didn't make a report of any of this  
17 stuff to the Defense over half a decade, Judge. And I  
18 filed a motion in 2009, when I originally had the case,  
19 and I don't recall anything about that, and I filed  
20 another one April 1, 2014.

21 And this whole idea about the -- they seem to  
22 concede with the marijuana. They have no relevant  
23 evidence that it is a factor in this case. Yet, they  
24 want to argue the presence of marijuana to the jury,  
25 which is clearly prejudicial to the client. I mean, to

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1 -- I mean, I think it's just going to confuse the issue.

2 THE COURT: All right.

3 MR. PLEXICO: I'm done, Judge..

4 MS. BURCHSTEAD: Very briefly, your Honor, let me  
5 just state for the record, we also did have an order by  
6 Judge Gibbons addressing the *Missouri versus McNeely*  
7 issue that we offer as persuasive and in support.

8 THE COURT: Well, that's fact specific. You handed  
9 that to me yesterday.

10 MS. BURCHSTEAD: Yes, sir... Yes, sir. I just  
11 wanted to point out, I understand in this case -- and  
12 fact specific, just wanted to point out, we believe some  
13 of the legal arguments are in support of the arguments  
14 presented by the State today, and I won't go any further  
15 into that.

16 Let me just address, your Honor, that we have  
17 turned over everything that exists in this case, and if  
18 Mr. Plexico wants to cross-examine the trooper about  
19 what he put in reports and didn't report, obviously,  
20 that's fair game.

21 THE COURT: He can do all of that. Here is the  
22 situation.

23 MS. BURCHSTEAD: Yes, sir.

24 THE COURT: We've already picked a jury.

25 MS. BURCHSTEAD: Yes, sir.

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1 THE COURT: We have -- supposed to start the trial  
2 in ten minutes.

3 MS. BURCHSTEAD: Yes, sir.

4 THE COURT: I'm a road warrior, passing through.  
5 Nobody saw fit to send me anything about these serious  
6 motions so that I had time to read it. Mr. Plexico  
7 handed up four cases, and even though I'm a speed  
8 reader, one case is nine pages, and one is 15, one is  
9 12, and one is 17. All right?

10 MS. BURCHSTEAD: Um-hmm.

11 THE COURT: I did receive the case yesterday that  
12 everybody's relying on, the *Missouri versus McNeely*  
13 case.

14 MS. BURCHSTEAD: Yes, sir.

15 THE COURT: And I was really cognitive of that, and  
16 I have read it, and I read it in steps that I understand  
17 everything. And as I understand the general holding,  
18 that feeling that alcohol was present does not, per se,  
19 waive the need for getting a search warrant.

20 MS. BURCHSTEAD: Yes, sir.

21 THE COURT: And they went into great detail about,  
22 in today's age, you can just call a magistrate; it  
23 doesn't take any time; and so forth and so forth. So,  
24 it's fact-specific. Alcohol does dissipate. But in  
25 fairness to everybody, these motions should have been

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1 made earlier, and they should have been ruled on before  
2 today, because a judge has no possible chance of getting  
3 it right when he has to make a decision in five minutes  
4 on something the Appellate Court had six months, three  
5 law clerks, and everybody to research. All that I have  
6 read are the things that were handed to me yesterday,  
7 which was, of course, the motion, and the *McNeely* case,  
8 and the case that Judge Gibbons -- I mean, or that Judge  
9 Gibbons executed.

10 I did read the statute, and it's not a new statute.  
11 I mean, it's been on the books for awhile. None of you  
12 all referred to it, but it's South Carolina case. It's  
13 *State versus Cuebas*.

14 MR. PLEXICO: I couldn't hear you. State versus?

15 THE COURT: C/u/e/b/a/s. Basically, it held --  
16 they could have ruled it unconstitutional in that case,  
17 but they held that they obviously didn't need consent to  
18 force somebody to either take a chemical test or a blood  
19 test. So, that's the South Carolina law on it at this  
20 point, and that case was the Court of Appeals. It was  
21 not appealed further, so, and that was, like, an '05  
22 case. '05 case.

23 MS. BURCHSTEAD: Okay. Thank you, Judge.

24 THE COURT: So, the State has -- I mean, this had  
25 to have come up many times over the years, all the

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1 felony DUIs that we have. It's amazing that we don't  
2 have an appellate court order, but I would think that  
3 Mr. Plexico, not that he's not a legal scholar of great  
4 renown, is the only one that this has occurred to in all  
5 of these years. I think, probably, that case in point  
6 has kept everybody else from pushing it.

7 So, here is the situation. I have to listen to the  
8 officer. I don't know anything about the case. Mr.  
9 Plexico stands there and talks about people were hurt,  
10 people were there, too. I don't know any of that, you  
11 know.

12 MS. BURCHSTEAD: Yes, sir.

13 THE COURT: And I'm not going to have time know any  
14 of that.

15 Now, on the marijuana situation, if you don't have  
16 marijuana in the car, you know, some evidence of  
17 marijuana in the car, and you don't have a chemist that  
18 can say how much it impacted the reading that you've  
19 got, that's not going to come in, because marijuana  
20 stays in the blood for up to 28 days, from the previous  
21 cases that I have heard.

22 So, the problem, the thing is whether or not he was  
23 under the influence. And unless your -- but if your  
24 chemist can testify that it was a contributing factor,  
25 which he can't, since he didn't know when he smoked it

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1 or how it got in his system, as I understand the facts,  
2 which I don't know. Marijuana is -- the blood test,  
3 probably, we have to listen to what the officer says.

4 MS. BURCHSTEAD: Yes, sir.

5 THE COURT: So, call him, because we've got the  
6 jury back there ready to roll.

7 MS. BURCHSTEAD: So, do you want me to go ahead and  
8 have the testimony heard now, your Honor?

9 THE COURT: Quickly and to the point, yes.

10 PRETRIAL HEARING:

11 MS. BURCHSTEAD: Okay. Officer -- State calls  
12 Trooper Gates.

13 MADAM CLERK: Do you swear or affirm to tell the  
14 truth, the whole truth, and nothing but the truth, so  
15 help you God?

16 CORPORAL DENARD THEOTRICUS GATES: I do.

17 MS. BURCHSTEAD: Your Honor, if I may point out, we  
18 were potentially going to have a *Jackson v Denno* issue,  
19 so I'll just take this opportunity to go ahead and  
20 address that, as well, if you would like.

21 THE COURT: Well, the jury's already back there,  
22 but go ahead.

23 MS. BURCHSTEAD: Yes, sir. We'll get it quickly.

24 CORPORAL DENARD THEOTRICUS GATES

25 DIRECT EXAMINATION BY MS. BURCHSTEAD:

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1 Q Trooper Gates, what is your current title and rank?

2 A Corporal.

3 Q Corporal. Okay. Thank you. And did you work a  
4 wreck back on November 1, 2008, on Oswald Road?

5 A Yes, ma'am, I did.

6 Q All right. And that was Allendale County?

7 A Yes, ma'am, it was.

8 Q All right. And do you remember what --

9 THE COURT: Hold on just one second.

10 MS. BURCHSTEAD: Yes, sir.

11 THE COURT: Go tell the jury -- we've been here  
12 since 8:30.

13 BAILIFF: Yes, sir.

14 THE COURT: As soon as we finish -- we've got an  
15 hour or so -- we'll bring them in. We're not working on  
16 the case. Don't tell them what we're listening to; just  
17 that we're taking testimony for this case and evidence  
18 that's coming.

19 MS. BURCHSTEAD: Thank you, Judge.

20 BY MS. BURCHSTEAD:

21 Q Okay. And Trooper, about what time was the wreck?  
22 Do you recall?

23 A I was notified of the collision at 2:52 p.m.

24 Q Okay. And is that what time you arrived?

25 A I arrived at 3:20 p.m.



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1 Q All right. And could you briefly describe, for  
2 purposes of this hearing, just briefly describe the  
3 scene when you got there.

4 A When I arrived at the scene, I saw a white, SUV-  
5 type vehicle beside some trees. There were just trees.  
6 Heavy damage to the vehicle. There were some emergency  
7 vehicles there I reported to when I arrived at the  
8 scene.

9 I actually -- my viewpoint, looked, you know, just  
10 gave a brief view of the scene. A -- my previous  
11 supervisor was already there at the scene when I  
12 arrived. So, I looked at the scene, what they done,  
13 everything there. I did see a -- what appeared to be a  
14 body in the vehicle of the -- in the rear of the SUV. I  
15 saw that, and --

16 Q To clarify, the body was deceased?

17 A Yes, ma'am. Looked to be -- appeared to be  
18 deceased.

19 Q Okay. Thank you. Go ahead.

20 A And so, the supervisor at the scene said, *I'll take*  
21 *care of the scene*, the evidence. There were some other  
22 occupants that were in the vehicle, and they're at the  
23 hospital as of then. So, he secured the scene, and I  
24 drove to the hospital to check on the other occupants of  
25 the vehicle.

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1 Q Okay. About how long were you at the scene before  
2 you went to the hospital?

3 A At the most, 15 minutes, 20 minutes, at the most.

4 Q All right. Okay. Did you have an idea of the  
5 driver on the -- as you were going to the hospital?

6 A At the time, I did not have an idea of the driver.

7 Q Okay.

8 A I just knew there were -- there were some other  
9 occupants.

10 Q Okay. So, why were you going to the hospital?

11 A To check on the other occupants, and then check on  
12 the driver.

13 Q All right.

14 A My primary objective was to check on the driver.

15 Q Okay. So, did you actually go to the hospital,  
16 then?

17 A I did go to the hospital.

18 Q All right. And did you learn anything to help the  
19 investigation of the case at the hospital?

20 A Yes, I did. I learned -- was able to track down  
21 three occupants of the vehicle.

22 Q All right.

23 A I learned that one was a juvenile that was being  
24 prepared to be flown, according to medical personnel.  
25 So, I interviewed him first.

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1 Q Okay.

2 A I asked him his name, and he stated to me that his  
3 name as [Minor] . And his date of birth was [REDACTED]-  
4 [REDACTED] and he was 12 years old at the time.

5 Q Okay. Let me just stop you there. For purposes of  
6 this hearing, were you aware of his injuries or any  
7 issues with him for his treatment?

8 A I did not -- aware of what type of injuries?

9 Q Yes.

10 A By just looking at him, I could tell he was  
11 injured, and I knew he was being prepared to be flown.  
12 The helicopter was on the way, according to medical  
13 personnel.

14 Q So, you knew he was being flown out of Allendale  
15 County for treatment.

16 A Correct.

17 Q Okay.

18 A Correct.

19 Q All right. Now, you said there was another  
20 occupant. Who is the other occupant or occupants?

21 A The other occupant I saw, or that I was directed  
22 to, was Valandrea Bing.

23 Q All right. Did you talk to her?

24 A I did talk to her.

25 Q Were you aware of her injuries?

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1 A Visually, looking at her, I mean, it looked like  
2 her face was cut up. It was multiple cuts on the face.

3 Q All right.

4 A So, just looking at -- I'm not sure of anything  
5 else, but just on her face, I could tell that she had  
6 some injuries on her face.

7 Q Okay. Were you able to identify the driver at the  
8 hospital?

9 A What I saw there was a gentleman limping, walking  
10 around.

11 Q Okay.

12 A And where I went, he followed.

13 Q Okay.

14 A And that's when I saw him. I was walking, and  
15 also, I wasn't aware of who he was. Just saw someone  
16 walking with me.

17 Q Um-hmm.

18 A And when I went into the room with Valandrea is  
19 when the person that was limping, the gentleman, a black  
20 man with a walker, came in the room with me, also. And  
21 eventually, I asked him, was he involved, also. And he  
22 did confirm that he was in the collision, also.

23 Q Okay. Did you learn his identity?

24 A I did. I asked him for his driver's license or  
25 I.D. card. He handed it, but I can't recall which one.

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1 He handed me an identification card.

2 Q Okay. Not a license, but a card?

3 A Correct, it was an identification card, not a  
4 driver's license. And the name on it was McKenzie Lavar  
5 Davis.

6 Q Okay. And that's the defendant present today?

7 A Yes, ma'am.

8 Q All right. And did you determine him to be the  
9 driver?

10 A Yes. I had asked him initially was he driving, and  
11 he stated, no, he was not. And then, I asked the lady  
12 was she driving, and she stated she was not.

13 Q Okay.

14 A So then, that's when I knew we had an issue.

15 Q And when you were --

16 A The 12-year-old wasn't the driver. The deceased  
17 obviously wasn't the driver, from the position I saw the  
18 deceased at, at the scene. So, I knew I had a issue  
19 there, as far as the discrepancy in the two, saying that  
20 they both were not driving.

21 Q Okay. Now, when you were talking to Mr. Davis at  
22 this point, was he under arrest?

23 A No, he was not.

24 Q Okay. Did he appear to be speaking to you  
25 voluntarily?

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1 A Yes.

2 Q Did he appear to know that he was talking with law  
3 enforcement?

4 A Yes, ma'am. I was in uniform, as I am right now.

5 Q All right. And what was his demeanor like at the  
6 time? I know you said he was limping, but could you  
7 describe the rest of his demeanor? Was he coherent?

8 A He was -- like I said, he was limping. His eye --  
9 I seen his eyes as far as like he was somewhat  
10 distraught, maybe.

11 MR. PLEXICO: I didn't understand. Somewhat?

12 A Distraught.

13 BY MS. BURCHSTEAD:

14 Q Okay.

15 A He -- that -- he was kind of sort of following up  
16 there. But he -- he voluntarily answered my -- answered  
17 my questions. When I asked him for information, he gave  
18 it to me. He wasn't very -- he wasn't confrontational.

19 Q Okay.

20 A He just -- he just was -- from looking at him and  
21 asking questions, it did appear he was involved in some  
22 kind of collision as far as, let's say, somewhat  
23 traumatic. I mean, not saying completely, but his  
24 demeanor said, yes, he was involved in an incident.

25 Q Okay.

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1 A Of some type.

2 Q Okay. Got you.

3 MR. PLEXICO: He was what?

4 A Involved in an incident of some type.

5 BY MS. BURCHSTEAD:

6 Q All right. Did he ask to talk to a lawyer or  
7 anything like that?

8 A No.

9 Q Okay. And as far as his physical appearance, did  
10 you smell any alcohol on him?

11 A When I asked him for his driver's license, he came  
12 back with the card, is when I immediately smelled the  
13 odor of alcoholic beverage come from his breath.

14 Q All right. All right. And let me go backwards  
15 just a touch. This was back in 2008. At that time, how  
16 long had you been with the Highway Patrol?

17 A Ten years.

18 Q All right. And had you worked very many cases  
19 involving alcohol or driving under the influence?

20 A Yes, ma'am. For that ten years, about a hundred.

21 Q All right.

22 A It was about a hundred.

23 Q Okay. So, in your training and experience, the  
24 defendant appeared to be under the influence of alcohol  
25 at that time.

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1 A Yes, but I -- when I smelled the alcoholic beverage  
2 coming from his breath, when I asked for the  
3 information, and when I smelled it is when I asked him,  
4 had he drank any alcoholic beverages. He stated, yes.

5 Q Okay.

6 A Then, like I said, looking at his -- because that's  
7 when I started looking further into the clues that you  
8 look for.

9 Q Yes.

10 A So, he was possibly under the influence of alcohol  
11 or drugs.

12 Q Okay. All right. Now, I understand your testimony  
13 to this point, you had talked with Mr. Davis and Ms.  
14 Bing, and were determining the driver. So, at what  
15 point did you determine Mr. Davis -- or did you  
16 determine Mr. Davis was the driver?

17 A Yes. When I told both of them that both of them  
18 could not be -- could not be the driver, I got both of  
19 them together at the same time. It was the three of us,  
20 the three of us, and I told them that, it's impossible  
21 for both of you all so to drive that vehicle when both  
22 of you all were in the front seat at the same time.

23 Q All right.

24 A And that's when initially -- well, she, Ms. Bing,  
25 initially said she was not driving.



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1 Q She was not driving?

2 A Correct. And that's when Mr. Davis said he wasn't,  
3 also. And that's when I got both of them together.

4 Okay? And after I explained that to them is when Ms.  
5 Bing said, okay, she was the driver. She was taken off  
6 by medical personnel. I'm not sure for what reasons.

7 And then, Mr. Davis said, *I was the driver.*

8 Q Okay. So it's --

9 A *I was really the driver.*

10 Q So, at some point in this interaction with Mr.  
11 Davis at the hospital, he did say he was driving.

12 A Correct.

13 Q Okay. So, both of them have said they were driving  
14 at this point.

15 A Correct.

16 Q So, did you ultimately ask for a blood sample for  
17 Mr. Davis?

18 A I did.

19 Q All right. And what made you request that?

20 A The fact of, number one, we had a confirmed death.

21 Q Right.

22 A I smelled alcoholic beverages on his breath when I  
23 initially asked him for his I.D. The -- just  
24 interviewing both of them. And then, also, he came back  
25 and later said he was the driver, also, after she was

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1    taken off.    That's when I made the determination that  
2    alcohol was -- was involved in this collision.    And so,  
3    I mean, I start preparing the things I need to do for a  
4    felony case, because we have a death involved.

5    Q    All right.

6    A    So, I start preparing, getting my stuff ready for a  
7    felony, preparing for a criminal DUI.

8    Q    Okay.

9            MS. BURCHSTEAD:    Your Honor, for purposes of this  
10    hearing, I think that may be all that we need to get to  
11    the point of the blood draw.    Well, let me back up.

12            BY MS. BURCHSTEAD:

13    Q    Why did you not go to a magistrate?

14    A    Well, I didn't go to the magistrate because, at  
15    that time, we did not have a magistrate's office numbers  
16    as we do now.

17            MR. PLEXICO:    I didn't understand.    You didn't have  
18    a magistrate's office that --

19            THE COURT:    He didn't --

20    A    We didn't have the magistrates' numbers.

21            THE COURT:    He didn't have access to the  
22    magistrate's office numbers in his possession.

23    A    At that time.    Secondly, we didn't have -- we did  
24    not have a list of who or what magistrate was on call at  
25    that time on the weekend.    And -- and at that -- that

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1 time, as far as getting a search warrant for -- it was a  
2 felony case.

3 Q Yes.

4 A So, we -- we -- we're -- you know, we're, according  
5 to the statute that was implied consent is that we  
6 request urine and blood at the scene or at the hospital,  
7 or wherever we are.

8 Q So, was it your belief you were following what you  
9 were supposed to do?

10 A Yes, ma'am. I did. I read him his *Miranda* rights  
11 before I offered him the implied consent rights. And  
12 then, I offered the implied consent rights. I got  
13 medical personnel prepared. I did the blood collection  
14 and the form before we did the test. And so, I do -- do  
15 took the steps in order to -- to do it properly.

16 Q All right. And just to follow up, approximately  
17 what time was the blood draw, compared to the time of  
18 the wreck?

19 A I read him his implied consent rights at 4:22.

20 Q Okay.

21 A So, it was -- I don't have that form in front of me  
22 this -- but let's say maybe five, no more than ten  
23 minutes from the blood draw, from the time I read him  
24 his implied consent rights. I have to read that first  
25 before I can actually can get the --

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1 Q All right. And what was the time of the wreck?  
2 Did you determine a time or an approximate time of the  
3 wreck, the collision?

4 A Like I said, I was notified at 2:52.

5 Q Okay.

6 A We normally -- to give a safe assumption and say  
7 about 15 minutes before we were actually notified of the  
8 collision, you know. So, that's the time I wrote on the  
9 line, and then, by the time we normally get to the call  
10 from the Highway Patrol, 15 to 20 minutes is what we  
11 normally get before we actually get the call. Because  
12 we're one of the last to get the call to a collision or  
13 an incident.

14 Q Okay. So, if you back that up, what time would you  
15 put the wreck?

16 A Maybe 2:30.

17 Q All right. And I'm sorry, what time did you say  
18 the blood draw would have been?

19 THE COURT: After 4:22 some time.

20 A It was after 4:22, correct.

21 BY MS. BURCHSTEAD:

22 Q Okay. So, we're looking at approximately two hours  
23 after you identified the driver.

24 A Correct.

25 Q Okay.

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1      A      After -- yeah, well, after -- after I was notified.

2      Q      Right.

3      A      I didn't identify the driver until much later.

4      Q      Exactly. Okay.

5            MS. BURCHSTEAD: Judge, for purposes of this  
6 hearing, I think that's sufficient.

7            MR. PLEXICO: All right. Thank you. All right.  
8 I'm going to approach the court reporter so she can hear  
9 me, Judge, if that's fine.

10            CORPORAL DENARD THEOTRICUS GATES

11            CROSS-EXAMINATION BY MR. PLEXICO:

12      Q      All right. I want to -- I just want to be clear.  
13 You relied on the statute, is that correct, that you did  
14 not have to get a search warrant in order to order the  
15 defendant to give you a urine and blood sample? Is that  
16 correct?

17      A      Yes, sir. The statute and the felony implied  
18 consent laws.

19      Q      Okay. All right. So, you made no effort at all to  
20 contact a magistrate, correct?

21      A      No, sir, because I had no -- I had no number. I  
22 had no -- we have no number of who was on call, if  
23 anyone was on call. If they were, I don't know who was  
24 on call, and it was on the weekend, also. It was on a  
25 Saturday afternoon.

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1        Q      Okay, so --

2        A      So, I had no -- I had none of that information. I  
3        was never told that information to have access to them  
4        to use, if I had to.

5        Q      Did you not have access to that information because  
6        you were relying, as all the other highway troopers are,  
7        were relying on the statute that you didn't have to call  
8        a magistrate in order to order a suspect, if you thought  
9        -- felt you had probable cause, to give a blood and  
10       urine sample? Is that why you didn't have the list?

11       A      Sir, I never had a list give to me before, ever, of  
12       any magistrates who was on call, because -- and me being  
13       just a regular road trooper, I don't have the  
14       authorization to call and ask them myself. I'd have to  
15       call my supervisor to have -- to give a reason to give  
16       to call a magistrate for whatever reason. I have no --  
17       I have no power within the structure to even call and  
18       ask them myself at that time. I had no phone to call  
19       the magistrate at that time.

20       Q      All right.

21       A      But it's -- for me to call a magistrate, just for  
22       myself is -- I have to have some other reasons to call  
23       the man up. I have to call the supervisor, and they  
24       have to make the call.

25       Q      All right. And your supervisor was at the scene of

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1      the wreck, and that was Reed, right? Trooper Reed?

2      A      Correct.

3      Q      Okay. So, you saw Trooper Reed, and you knew he  
4      was at the scene of the wreck, correct?

5      A      Correct.

6      Q      You all are in radio contact, correct?

7      A      Correct.

8      Q      Okay. So, you made no effort to go through the  
9      hierarchy, as you call it, to get a search warrant. Is  
10     that correct?

11     A      No, sir, I did not get a search warrant, because I  
12     didn't have access to a magistrate to get a search  
13     warrant.

14     Q      Okay.

15     A      I followed the protocol for a felony implied  
16     consent rights, and I obtained the warrants. And I made  
17     the determination, based on the evidence I saw.

18     Q      Okay. So, you made -- you made no effort to  
19     contact the magistrate. That is true. Yes or no?

20     A      No, sir, I did not call a magistrate.

21     Q      Okay. All right. Did it occur to you to call 911  
22     to find out if -- what -- which magistrate was on call?

23     A      No, sir. I don't -- I didn't call 911, no, sir.

24     Q      You were at the -- you were at the hospital,  
25     correct?

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1        A        Yes, sir, I was at the hospital.

2        Q        And there are many phones at the hospital, correct?

3        A        Yes, sir.

4        Q        Okay. All right. But you're saying now that  
5        you're not authorized ever to contact a magistrate,  
6        unless you get approval through a hierarchy command  
7        structure at the Highway Patrol.

8        A        I would have to have a reason why to contact a  
9        magistrate, and usually go through my supervisor to find  
10       a reason why. So, that's just like anything else. No,  
11       sir, if I needed to contact a magistrate, I'll contact  
12       my supervisor for a reason why to contact a magistrate.

13       Q        Okay. Val Bing gave you a statement, correct?

14       A        Yes, sir, she did.

15       MR. PLEXICO: May I approach, your Honor?

16       THE COURT: Okay.

17       BY MR. PLEXICO:

18       Q        All right. Is this the statement of November 1st?

19       A        Yes, sir, it is.

20       Q        All right. And what time was it given?

21       A        It says 18:20.

22       Q        And what time would that be?

23       A        6:20.

24       Q        All right. So, the blood draw was at 4:20, you're  
25       saying, thereabouts?



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1        A        Yes, sir.

2        Q        Okay. All right. So, as of two hours later, she  
3        was still maintaining she was the driver of the vehicle,  
4        correct?

5        A        As of two hours after remaining from?

6        Q        Here. After the blood draw. After the blood draw.

7        A        No, sir.

8        Q        Okay. That doesn't say, *I lost control of the*  
9        *vehicle; it flew out from under?*

10       A        Give me just a second. It does say that.

11       Q        Okay. All right. Now, so the Highway Patrol has  
12       no system in place to contact the magistrate for body  
13       searches if you have to draw blood, is that correct, on  
14       a felony DUI case?

15       A        At that time, in 2008, no, sir, we did not, at that  
16       particular time, have the system we have now.

17       Q        Is your system now where you contact the magistrate  
18       for blood and urine samples to get a neutral and  
19       detached magistrate to make a decision to issue a search  
20       warrant?

21       A        When -- when the order came down, we all had  
22       instructions. Now we all had to have magistrates who  
23       give their schedule and their telephone numbers for who  
24       -- for out-of -- out-of-hours, after-hours, whatever, to  
25       who was on call, to call if we needed to have a search

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1      warrant or a blood draw for a felony case if we need to.  
2      And so, that's now. At that time, we did not have -- we  
3      didn't have that -- didn't have that structure. And  
4      that came from the magistrates. Now, the magistrates  
5      themselves have to give their -- their schedule to  
6      whoever the -- whoever the county dispatch is, and we  
7      contact them to find who is on call if we need a  
8      magistrate, and then -- then, we go from there. At that  
9      time, we did not have that, sir.

10     Q      Okay. Approximately when did that policy take  
11     place?

12     A      Within the year.

13     Q      Okay.

14     A      This is within -- within this year. Not 2014.  
15     Within 2013-2014.

16     Q      Okay. So, now the policy is to call 911 to see  
17     what magistrate is on call. Is that correct?

18     A      Correct. We call -- we call the dispatch, and they  
19     tell us who is on call. And then, they give us the  
20     telephone number to the magistrate that -- who is on  
21     call.

22     Q      Okay. So, it wouldn't be an issue of this today,  
23     as regards to a magistrate being involved, because,  
24     today, you would know that would be -- the proper  
25     procedure would be to get a magistrate involved and have

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1      a search warrant issued before the blood and urine is  
2      taken. Is that correct?

3      A      Correct. If we need to, and we see that that's  
4      what we have, then we do have to make the -- that is our  
5      protocol. We go through the chain of command, and then  
6      we go -- we call the magistrate and ask. That's the  
7      protocol to get a magistrate.

8      Q      Okay. All right. So, so, you still don't call a  
9      magistrate directly yourself.

10     A      If I need one, now, I find out who's on call, and  
11     yes, I do call them, if I need one.

12     Q      Okay. All right. Now, do you --

13           MR. PLEXICO: May I approach?

14           THE COURT: Okay.

15           BY MR. PLEXICO:

16     Q      Is this a statement from my client as of 6:30,  
17     maintaining that he is not the driver of the car?

18     A      Yes, sir. That's a form we use.

19     Q      Okay.

20           MR. PLEXICO: May I approach, your Honor?

21           COURT REPORTER: I'm sorry, what was your answer?  
22     Yes?

23     A      Yes, sir.

24           BY MR. PLEXICO:

25     Q      All right. Now --

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1            MR. PLEXICO: May I approach again?

2            BY MR. PLEXICO:

3            Q    Is this the urine and blood collection report, a  
4            SLED form that you filled out, placing my client under  
5            arrest at 4:20?

6            A    Yes, sir.

7            Q    Okay. So, you had made the decision at 4:20 to  
8            place my client under arrest.

9            A    That's correct.

10          Q    Okay. And he was still maintaining at that time he  
11          was not the driver.

12          A    No, sir.

13          Q    Okay. Val Bing signed a statement at 6:30 saying  
14          that she was the driver, two hours after that. Is that  
15          correct?

16          A    This is what happened.

17          Q    Just yes or no, and then explain, please.

18          A    Repeat the question one more time, sir.

19          Q    Val Bing, two hours after you arrested my client,  
20          was still maintaining that she was the driver. Is that  
21          correct? She wrote a statement saying she was the  
22          driver.

23          A    Correct.

24          Q    Okay.

25          A    That's when I placed him under -- told him he was

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1      under arrest. Not custodial, but a technical arrest.

2              COURT REPORTER: *Not custodial, but what?*

3      A      Technical.

4              BY MR. PLEXICO:

5      Q      He was just flat-out arrested. Let me put it -- he  
6      was arrested. He was under arrest. Not like a ticket-  
7      writing arrest. He was actually under arrest.

8      A      I didn't really place him in custody, no, sir.  
9      Because he was still in the hospital.

10     Q      So, what's the difference between a -- you --

11     A      Custodial is when I actually take them in my  
12     custody.

13     Q      So, you took him into your custody.

14     A      No, sir, I did not.

15     Q      I'm not sure what it is to you. Okay. Non-  
16     custodial arrest is you just write a ticket, see you  
17     later, see you at the magistrate's office to try your  
18     ticket. So, is this a custodial arrest?

19     A      No, sir. I didn't write a ticket at the scene,  
20     either. No, sir, I did not.

21     Q      All right. Was he free? Did you have custody of  
22     him long enough to demand that he give you a urine and  
23     blood sample?

24     A      Did I have custody long enough for him to give me  
25     urine at -- well, if -- after I read him -- when I read

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1       him his *Miranda* rights, which I did tell him he was  
2       under arrest for felony DUI, and I read him his felony  
3       implied consent rights, and he -- he -- and we got the  
4       sample after I filled all this out. Okay? Once we did  
5       that, he was still -- he was still under the care of the  
6       hospital, because he -- he had not been released from  
7       anybody from medical personnel. He wasn't -- he wasn't  
8       released until -- he wasn't released. He wasn't -- the  
9       doctor would have released him.

10      Q       Are you finished?

11      A       So, he -- so, I did not take him into my custody  
12       because he was not released, because he was in the  
13       hospital at the time. So, I did not take him into my  
14       custody after that.

15      Q       All right. Did you place an officer there to take  
16       him into custody when he was discharged?

17      A       No, sir, we did not.

18      Q       Okay.

19      A       The reason -- I'd like to -- if I could give a  
20       reason why. The reason -- the reason we did not take  
21       him -- I did not take him into custody afterwards, and  
22       is calling back to the statements, is because, after I  
23       got the samples is when Mr. Davis came back to me.  
24       There were -- there were two gentlemen there at the  
25       hospital, and they motioned for me to come to them. Who

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1      the gentlemen were, I'm not sure. But they motioned me  
2      to come to them, along with Mr. Davis, and they told me  
3      that Mr. Davis had something to tell me, so I listened.  
4      And Mr. Davis said that he was not driving the vehicle.  
5      This is after I got the samples. So, after I got the  
6      samples, I got with Ms. Bing, and I got Mr. Davis, and I  
7      brought them together again, and had them write me  
8      another -- a statement. And that is the reason why it  
9      was -- the time is afterwards, because that's when the  
10     -- that's when I went back again. So, that's when --  
11     so, this --

12             So, after Mr. Davis had given me the samples, after  
13     the two gentlemen approached me, along with Mr. Davis,  
14     is why I had them -- I got them together, and I had them  
15     to write me those statements that you presented to me.  
16     To -- and that's to confirm that, because the story kept  
17     going back and forth, and I wanted to get the gray out  
18     of it and see what's what. And so, that's why -- that's  
19     why that statement there was done after this factor,  
20     because he came back and said he wasn't driving.

21     Q      Okay. So, you had no idea between these two who  
22     was driving, correct? Because one of them could have  
23     been and the other one could have been, correct? You  
24     just didn't know.

25     A      Correct. And so, that's why I did not take Mr.

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1        Davis into custody that day, because we collected  
2        evidence, and we worked the evidence to show who was the  
3        driver.

4        Q     Okay. All right. Now, so, he's under arrest.  
5        He's told he's under arrest, and he must give this blood  
6        and urine sample, and he has no choice about it. It is  
7        mandatory, correct?

8        A     Correct.

9        Q     All right. And if you -- and the State -- and the  
10       form that you read to him says that, if he doesn't -- if  
11       he gives any resistance or opposition, it can be used  
12       against him in court, correct?

13       A     Yes, sir.

14       Q     Okay. All right. Now, you said you had a  
15       confirmed hit. What is a confirmed hit?

16       A     I'm sorry?

17       Q     You talked about my client, you said that you  
18       smelled alcohol, and you had a confirmed hit.

19       A     No, sir. I never said anything about a confirmed  
20       hit. I stated that I -- I smelled alcohol, the odor of  
21       alcoholic beverage. But nothing confirmed hit. I never  
22       said anything about a confirmed hit. No, sir.

23       Q     Okay. All right. So --

24       MR. PLEXICO: Court's indulgence.

25       BY MR. PLEXICO:



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1        Q      So, you based your -- you based your decision to  
2        ask for the blood and urine sample on the fact that he  
3        smelled of alcohol, and you asked him if he had been  
4        drinking, and he said, yes. And so, at that point in  
5        time, you didn't know who the driver was, but you went  
6        ahead and got a blood sample.

7        A      I did not get any sample or request anything until  
8        after he told me he driving.

9        Q      Okay. But both of them told you they weren't, and  
10       both of them told you they were.

11       A      After Valandrea was -- was taken off, Mr. Davis  
12       told me that he was driving, after -- after that.  
13       That's why -- that's what I based -- that's when --  
14       that's what I based it on, as far as making a decision,  
15       as far as going further into -- as far as who was  
16       driving. He told me after that, that he was driving.

17       Q      Okay.

18       A      After -- after -- initially, when both of them said  
19       they were not -- when she was taken off, then he said  
20       that, yes, *I was driving*.

21       Q      But she had already said she was driving, too,  
22       before she was taken off.

23       A      And he said the same thing, also.

24       Q      Okay. So --

25       A      He said, after she was taken off -- after both of

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1        them said it together, he said it again. But he changed  
2        the story and said, yes, he was driving.

3        Q        And she made a statement again that she was driving  
4        later. So, my -- it's true what you testified to  
5        earlier, you didn't know who was driving. You had no  
6        reason -- no -- you just didn't know who was driving,  
7        because both of them were claiming to be driving and not  
8        driving.

9        A        That's the reason I went to the hospital, to find  
10       out who was driving.

11       Q        Okay. So, that was -- that was the extent of your  
12       reasoning to draw that blood and urine is he smelled of  
13       alcohol, and that he said he was driving, and that was  
14       it.

15       A        Well, he was walking around limping. So,  
16       obviously, if you're looking as though -- I asked him,  
17       was he involved in it --

18       Q        So, he was there after the accident.

19       A        Correct. So, I confirmed all of that before I just  
20       make a decision. But yes, I -- he -- confirmed he was  
21       there. He was walking around limping, and he said he  
22       was involved in a collision.

23       Q        And you believe that the limping was due to the  
24       collision and the accident that he was involved in,  
25       correct?

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1        A     It would make sense to me, just looking at him.

2        Q     Okay.

3            MR. PLEXICO: I don't believe -- I don't have  
4 anything. I don't believe I have anything further,  
5 Judge.

6            MS. BURCHSTEAD: Briefly, some follow-up questions,  
7 Judge.

8                    CORPORAL DENARD THEOTRICUS GATES

9                    RE-DIRECT EXAMINATION BY MS. BURCHSTEAD:

10        Q     Was this a serious wreck?

11        A     Yes, ma'am.

12        Q     All right. And in your training and experience,  
13 working prior DUIs and alcohol cases, are you familiar  
14 with the dissipation of alcohol and how it moves through  
15 the system?

16        A     Yes, ma'am.

17        Q     Is that a concern for the preservation of evidence  
18 in working a felony DUI case?

19        A     Yes, ma'am.

20        Q     All right. Do you have defendants lie to you ever?

21        A     Yes, ma'am.

22        Q     All right. And did Ms. Bing -- how was it left  
23 with Ms. Bing in terms of a statement to you? Did she  
24 ultimately claim to be the driver or not?

25        A     Ultimately, she said -- she wrote another statement

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1        that said, no, she was not the driver, she was a  
2        passenger.

3        Q        All right. Okay. And going back to the  
4        defendant's physical appearance, I believe you said he  
5        was limping. Is that correct?

6        A        Correct.

7        Q        All right. Did that have any weight on determining  
8        whether he was the driver, based on your view of the  
9        wreck?

10       A        It could. Like I said, it made sense, you know,  
11       someone involved in a collision. And when I saw the  
12       scene before I got -- saw any of them, so it makes sense  
13       that you could possibly have a leg that was involved in  
14       a collision.

15       Q        You say you saw the scene. Was there anything  
16       driver's side that would relate to the type of limp he  
17       had?

18       A        It was damaged. It was damaged I believe all sides  
19       of the vehicle. It was up against a tree pretty heavy.  
20       Took a good impact on -- on the tree there. So, I can't  
21       recall which leg he was limping on.

22       Q        Sure.

23       A        I just recall that he was limping.

24       Q        Okay.

25       A        Some type of leg injury.

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1        Q     All right.    Okay.    And why did you ultimately make  
2        the arrest in this case?

3        A     I ultimately made the arrest because he -- as --  
4        after he told me that he was driving, --

5        Q     Right.

6        A     -- I was -- I did notice -- I did detect the odor  
7        of alcoholic beverage coming from his breath.

8        Q     Okay.

9        A     And so, just looked at those factors.

10       Q     All right.

11       A     He was -- he was in the collision.    First, he said  
12       he wasn't driving, and then he came -- came to me  
13       afterwards and said, *yes, I was driving*.    I smelled, you  
14       know, alcoholic beverage; we have a death involved; and  
15       so, I made -- that's when I made my decision, and to --  
16       to -- to get the samples from him.

17       Q     Okay.    So, to clarify, those were the -- that was  
18       the basis for obtaining the blood sample, right?

19       A     That's correct.

20       Q     And he was arrested later.    Is that correct?

21       A     He was arrested later because -- because of the --  
22       after I got the samples is when he went back on his  
23       story.    And that's when I made both of them write me  
24       their statement.

25       Q     Okay.

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1        A        And since it was still at the time, because I  
2        didn't take him under custodial arrest and in my  
3        custody, is when we had -- we collected the evidence,  
4        and I collected the samples on what I saw. And so, and  
5        basically, when he told me, also; but then, also, what I  
6        smelled and observed.

7        Q        Okay.

8        A        Is when we said, we will collect the evidence.  
9        We'll just collect our evidence, and we'll go and we got  
10       to arrest on a later date.

11       Q        All right. So, am I understanding you correctly  
12       that you obtained the blood sample after he said he was  
13       the driver?

14       A        Correct.

15       Q        But he changed his story again.

16       A        Correct. And the two gentlemen that came and  
17       talked to me, motioned for me to come, and that's when  
18       he told me he had something to say. And that's when he  
19       told me afterwards, after I got the samples, that he was  
20       not the driver.

21       Q        All right. And was there any additional evidence  
22       that you got, prior to actually making an arrest and  
23       charging him?

24       A        That I actually -- that I actually obtained myself,  
25       or?

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1    Q    That you're aware of, or that went into the arrest.

2    A    There's -- yes, there was some more evidence that  
3    was taken at the scene.

4    Q    Okay.

5    A    And that was -- that actually was -- got taken -- I  
6    didn't take it, but it was taken from the scene of the  
7    collision.

8            MS. BURCHSTEAD: All right. Thank you. That's all  
9    for this hearing.

10           MR. PLEXICO: Very, very briefly.

11           CORPORAL DENARD THEOTRICUS GATES

12           RE-CROSS-EXAMINATION BY MR. PLEXICO:

13    Q    Okay. All right. Now, you don't have -- did you  
14    have an audio recording of any of this that you were --  
15    that you had at the time?

16    A    No, sir, because the -- the video system did not  
17    work inside when it gets away from the vehicle, and I  
18    was at the hospital. So, it don't work after a certain  
19    distance from -- from my body.

20    Q    Okay. All right. I'm not asking you what Ms. Bing  
21    ultimately said, because that was days later. At the  
22    time you made the decision to place him under arrest and  
23    mandate that he give you the samples, okay, she is still  
24    going -- she was waffling or whether or not she was the  
25    driver, and you still, at that point, at the time you

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1    made that decision, didn't know who was driving. Is  
2    that correct?

3    A    Well, I've got both of them together. Both of them  
4    said they weren't driving. She was taken off. She --  
5    I'm not sure where she was taken to, which, when she was  
6    taken off is when Mr. Davis came and said that he was  
7    the driver. So, she was not in the -- she was not in  
8    our presence, as initially, the first time, both of us  
9    were. So, she was taken off, and that's when he said --  
10    he said he was the driver after that.

11    Q    Okay. And she said she was the driver, too,  
12    earlier, correct? She said she was the driver earlier,  
13    before 4:40, before you took the blood. She had already  
14    said that, correct? She was the passenger and the  
15    driver. Because -- just yes or no, please.

16    A    No. She said -- both of them said they weren't the  
17    driver, because I asked them both.

18    Q    Okay. All right. Didn't you just testify she was  
19    waffling on whether she was driving or not? Yes?

20            THE COURT: All right. I mean, he's testified  
21    about this enough.

22            MR. PLEXICO: Okay. Yes, your Honor. I --

23            THE COURT: You've got at 6:00 something that she  
24    says she's still the driver. He was one-on-one with  
25    this individual he arrested, and he had just told you he



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1      was driving. All that's factual stuff.

2            MR. PLEXICO: I understand. Yes, your Honor. I  
3      actually have nothing further.

4            CORPORAL DENARD THEOTRICUS GATES

5            EXAMINATION BY THE COURT:

6            THE COURT: All right. Officer?

7            CORPORAL GATES: Yes, sir?

8            THE COURT: See, I don't know anything about the  
9      case. I pick up pieces of it. Apparently, a vehicle  
10     hit a tree. What kind of road was it? Was it an  
11     interstate? Was this a regular two-lane road, what?

12           CORPORAL GATES: It was a regular two-lane road.

13           THE COURT: Was it a straight road, or a curvy  
14     road, at the accident?

15           CORPORAL GATES: If I can recall correctly, it was  
16     a slight curve where they -- where they -- when they  
17     started, because it -- when it started, it started to  
18     lose control.

19           THE COURT: All right. How far was the tree that  
20     he hit from the road, roughly?

21           CORPORAL GATES: Roughly? I'd say maybe 30 yards  
22     or so from the road.

23           THE COURT: Was there evidence of speed or anything  
24     like that? See, I don't --

25           CORPORAL GATES: Yes, sir, it was. Just from --

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1 just from looking at the -- there was a skid mark, and  
2 it was a very long skid mark. It looked like damage  
3 from where the skid mark started to where the tree, yes,  
4 sir.

5 THE COURT: Okay. You can step down.

6 CORPORAL GATES: Thank you, sir.

7 BY THE COURT:

8 THE COURT: All right. What else? Anything?

9 MS. BURCHSTEAD: Your Honor, I would just point out  
10 that McNeely, while we talk about that this isn't the  
11 Schmerber case, the McNeely court does note that:

12 *Warrants inevitably take some time*  
13 *for police officers or prosecutors to complete*  
14 *and for magistrate judges to review.*

15 And again, alcohol and the movement through the  
16 system is still a concern, and the Court notes:

17 *Context with blood testing is different*  
18 *in critical respects from other destruction*  
19 *of evidence cases in which the police are*  
20 *truly confronted with a now-or-never situation.*

21 And you've heard the trooper testify he had, you  
22 know, it was taking forever just to identify the driver  
23 and work the wreck and that sort of thing, and we do  
24 believe this is an exigency-type case, based on all of  
25 the factors I previously stated.

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1 THE COURT: All right. What was the blood alcohol  
2 reading?

3 MS. BURCHSTEAD: .1 on blood, .116 based on urine.  
4 So, we would have a concern with it moving below the  
5 level if we waited too long to get the warrant, Judge.

6 MR. PLEXICO: Your Honor, I just don't believe  
7 there's probable cause for the arrest because there's  
8 been an accident, whether there's a death involved or  
9 not. And my client smelled of alcohol. Without any  
10 other factors indicating inebriation, he had ample  
11 opportunity, with those lengthy explanations of his  
12 answers for the questions, to say anything that he  
13 thought indicated that the defendant was inebriated.

14 If you look at the case she passed up, the Circuit  
15 Court ruling, the printed ruling, Judge, he cited  
16 factors: the sobriety test, the refusal of the B.A.  
17 None of that is -- there's nothing here, aside from the  
18 smell of alcohol, and no testimony at all about the  
19 effect that alcohol had on the defendant, and I don't  
20 think there's any probable cause.

21 And once again, because the Highway Patrol, which,  
22 today, apparently, they'll call 911 and talk to a  
23 magistrate, because I believe they know their system was  
24 flawed and was denying due process and the *Fourth*  
25 *Amendment* rights to the individuals before that process

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1 was set up. It's fixed today, but we still a problem  
2 like what we used to have. This wouldn't happen today.  
3 Judge Branch would have been there in four minutes, and  
4 they could have done the search warrant, Judge. They  
5 should have at least called.

6 And I just don't -- and there's no factors here to  
7 exigency, Judge. Just didn't exist. Not even probable  
8 cause to arrest. And while I understand that you want  
9 to maintain evidence, you know, a few more minutes  
10 wouldn't have mattered. And that's all you're talking  
11 about here, is just no willingness to try to do  
12 anything, because they didn't have a policy. And if  
13 they choose to have a hierarchy where they have to jump  
14 through hoops, which slow them down, that's their  
15 choice.

16 Our troopers are the best-trained law enforcement  
17 officers that we have in this state. If they can't have  
18 initiative to pick up the phone and dial 911, there's  
19 something wrong with the State's system, and this is a  
20 state action we're talking about, and police action is  
21 state action.

22 THE COURT: Well, here's the problem that you have.  
23 I don't have time to research it. The Appellate Court  
24 might say I should adjourn and take two days off. I  
25 mean, we've got jury members already back there waiting.

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1 And based on what's presented, the highway policy was  
2 not at an even minimal standard. Everybody ought to  
3 know how to call up a magistrate. You can't do patrol  
4 and spend ten years and don't know how to call a  
5 magistrate. You just call 911 to see to that. They  
6 should have -- should have, even then, eight years ago,  
7 have listed the numbers of the magistrates and how to  
8 get in touch with them. I mean, that's total  
9 incompetence on one hand. On the other hand, I'm not  
10 supposed to be criticizing the Highway Department.

11 So, it's just what -- I have to decide a case based  
12 on what's been presented, and what's presented is based  
13 on the officer's experience. And he looks at the wreck  
14 scene, or remnants of the wreck, all kinds of people  
15 damaged. Two people killed, apparently. Or one person  
16 killed and another seriously injured and those people  
17 hurt. The gentleman said he was driving; smelled of  
18 alcohol; he's under arrest; and he looks at it and so  
19 forth. Should have give him some sobriety test or  
20 something, you know. Should have. But with the jury  
21 sitting back there, I can't just say he needed to.

22 Time is running, and the fact that when he did do  
23 the swabs or whatever he did, draw the blood, it just  
24 came back 1.0, which, at that point, was the minimum  
25 inference saying it shows that the officer did not know.

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1 The defendant said he had been drinking. How long ago  
2 he had been drinking; it's already about two hours from  
3 the time of the accident, and we've got, what, a three-  
4 hour deadline that you all haven't mentioned, that I'm  
5 aware of. So, he's not at that point, but it looks like  
6 -- and then, he says that he did not know how to contact  
7 a magistrate, and he should have known. He relied on  
8 the statute. What would a reasonable officer have done;  
9 he knows it dissipates; and by doing it when he did, he  
10 got the inference in. If he'd waited, chances are it  
11 would have been under the 1. inference. Not in this  
12 case.

13 So, at this point, I'm chucking the marijuana,  
14 based on what they've represented, but I'm letting the  
15 blood test in. And the reason they hadn't tried the  
16 case yet, is they don't know who was driving the car,  
17 obviously. So, good luck to you.

18 MR. PLEXICO: Your Honor, I understand your ruling.  
19 I just want to say, I wasn't relying on the implied  
20 consent statute, because I don't believe that it applies  
21 to these situations about --

22 THE COURT: When you say -- I understood. The  
23 statute itself gives them quasi judicial authority to  
24 decide who does what and so forth. And of course, there  
25 was a serious situation out there and all of that. You

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1 do have that case I mentioned.

2 MR. PLEXICO: I've read it. I've read it in prep.  
3 I didn't think it applied. The constitutionality issue  
4 wasn't ever addressed in that piece of legislation.

5 THE COURT: I understand it was not, but certainly  
6 could have been. And that's basically all the case I  
7 can find on it, so.

8 MR. PLEXICO: I have maps I'd like to put into  
9 evidence, Judge. I have copies for the Solicitor. This  
10 is -- just shows -- which, I don't think anybody argued  
11 that they were minutes away. But I just -- for the  
12 appellate record.

13 THE COURT: Well, now, I understand that they  
14 admitted to it. The magistrate's already stipulated he  
15 admitted to it.

16 MR. PLEXICO: Just out of an abundance of caution,  
17 I'm going to go ahead, if I could do that.

18 THE COURT: Sure.

19 MR. PLEXICO: They're 1 through 6. Do you even  
20 want a copy? I've labeled them just 1 through 6, or you  
21 can do it as 1, ma'am.

22 COURT REPORTER: We'll do it 1 through 6,  
23 Defendant's 1 through 6.

24 MR. PLEXICO: And this is a Court's Exhibit only.

25 COURT REPORTER: Oh, I'm sorry. Court's Exhibit.

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1 ITEMS IDENTIFIED AS MAPS MARKED

2 COURT'S EXHIBIT NUMBERS 1 THROUGH 6.

3 THE COURT: If it was seven -- if it had been seven  
4 years ago, we'd have had time if I ruled against them on  
5 that. The case has gone 36 minutes. You all should  
6 have argued this in front of somebody. You've got chief  
7 judges and you've got judges holding general sessions  
8 when I'm not here. You don't give it to the judge that  
9 doesn't have time to research it with a jury already  
10 sworn and sitting back there kicking the walls.

11 All right. We'll take six minutes, and then we'll  
12 strike it up.

13 OFF THE RECORD 10:25 P.M.

14 BACK ON THE RECORD 10:36 P.M.

15 BY THE COURT:

16 THE COURT: Okay. Is the State ready?

17 MS. BURCHSTEAD: Yes, your Honor.

18 THE COURT: Defense ready?

19 MR. PLEXICO: Yes, your Honor.

20 THE COURT: All right. Let's have the jury brought  
21 in.

22 JURORS ENTER COURTROOM 10:37 A.M.

23 THE COURT: Okay, jurors. I know you all were  
24 sitting back there. I could have had you all come in at  
25 10:30 just as easy as 9:35, and I've been here since



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1 8:30.

2 Jurors, you all elect somebody as foreperson?

3 JUROR: Yes, we have, your Honor.

4 THE COURT: Okay. Do you have a name?

5 JUROR: Yes, your Honor.

6 THE COURT: And?

7 JUROR: James Edward Padgett.

8 THE COURT: All right, Mr. Foreman. Let's swear  
9 them in.

10 JURORS SWORN BY MADAM CLERK:

11 MADAM CLERK: Will everyone please stand, and raise  
12 your right hand. Do you swear or affirm you shall truly  
13 -- truly answer all such questions -- I'm sorry. Do you  
14 swear or affirm that you shall well and truly try, a  
15 true witness make for the State of South Carolina and  
16 the accused at the Bar, and a true verdict give,  
17 according to the evidence, so help you God? If you  
18 accept the oath, please indicate by saying, I do, at  
19 this time.

20 RESPONSES FROM JURORS.

21 MADAM CLERK: Thank you. You may be seated.

22 THE COURT: Okay. Jurors, we're going to get right  
23 into the trial. We have a list of like, 36 witnesses,  
24 you know. Some of them won't take long. It just takes  
25 awhile to swear them in and get them to walk back and

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1     forth. And then, sure as you line up a witness to be  
2     here at 11:00, they have a flat tire or something and  
3     don't get here. Anyway. From now on, it should run  
4     pretty smoothly.

5             If you recall, we've got four indictments, which,  
6     as I mentioned to you when you were out in the general  
7     jury pool, that this charge in the case is an allegation  
8     that the defendant has committed a crime. The defendant  
9     is presumed innocent of all crimes charged in these  
10    indictments, and has absolutely no burden to prove that  
11    he's not guilty. In order to obtain a conviction under  
12    any of the four indictments, it's incumbent on the State  
13    to convince you twelve jurors unanimously, beyond a  
14    reasonable doubt, that the defendant is guilty of the  
15    crimes that are in the indictments that I'm going over  
16    with you.

17            Alternate jurors will need to pay attention.  
18    Sometimes we drop off somebody. They come in and say a  
19    child got sick or something and somebody has to go, and  
20    then, you get elevated to being a regular juror. So,  
21    the alternates will hang with us until the case is over.

22            I'll instruct the jury on the law at the end when  
23    the attorneys have made their summations. So, when we  
24    send the jury back to deliberate, if the original twelve  
25    are still with us, you all will be free. If somebody

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1 drops off, first alternate will take their place, and  
2 second, and so forth.

3 Mr. Foreman, like I mentioned, somebody will have  
4 to preside over the deliberations and you have to be the  
5 spokesperson for the jury, but I can't have any running  
6 conversations, you know. You just have to -- if  
7 questions occur during deliberations, you can write them  
8 down, and potentially, I'll talk to the attorneys and  
9 see if I can ask the question. Probably, I won't be  
10 able to, you know. If a jury sends back question like,  
11 is he guilty or not, I mean, you know, that's what a  
12 jury has to decide. Not for me.

13 Now, in no particular order, other than the most  
14 serious crimes are charged first, this particular  
15 indictment, which are just allegations, alleges that  
16 McKenzie Lavar Davis, back on November the 1st of 2008,  
17 was driving a vehicle in Allendale County; and while he  
18 was driving that vehicle, he was under the influence of  
19 alcohol or drugs, or a combination of alcohol and drugs;  
20 he was driving at speeds in excess of the posted speed;  
21 that a wreck occurred; the wreck was a result of his  
22 basic negligence; and that he proximately caused of  
23 death to Sierra Brooker, in violation of certain  
24 statutes.

25 Now, jurors, I'll explain the DUI law in a good bit

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1 of detail at the conclusion of the trial. It's not  
2 against the law, jurors, to drink alcohol. It's not  
3 against the law to drink alcohol and operate a vehicle.  
4 It's only against the law if, because of your ingestion  
5 of alcoholic beverages, your ability to drive has been  
6 materially and appreciably impacted so that you can't  
7 operate your vehicle like an ordinary, normal person  
8 would.

9 So, beyond that, at this point, I don't think I can  
10 explain anything to you, except felony DUI, driving  
11 while under the influence where death occurs, requires  
12 the State to prove a couple things by beyond a  
13 reasonable doubt. Of course, they've got to prove the  
14 defendant was driving the vehicle, prove that he was  
15 under the influence, and they've got to prove that he  
16 did some act that was prohibited by statute. And  
17 apparently, the question is the speeding statute. They  
18 say he was going too fast, in violation of speed limit.

19 And then, they have to prove the cause of that  
20 action on his part was due to negligence and failure to  
21 exercise good care under the circumstances and so forth.

22 And then, they've got to prove that, as a result of  
23 that negligent driving on his part, this action was the  
24 proximate cause of death of the individual alleged in  
25 the indictment.

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1 Proximate is a legal word meaning direct cause or  
2 sufficient cause. The bottom line is, is that, but for  
3 that negligence, the death would not have occurred.  
4 They have to prove that. Accidents happen all the time,  
5 with or without people drinking alcohol. They've got to  
6 show that, but for that changed circumstances, the  
7 person would not have died.

8 Secondly, the indictment charges on that same date;  
9 we're all talking about a particular incident that  
10 occurred November 1, 2008, that instead of death, great  
11 bodily injury occurred. In other words, there were  
12 other people in the car, and the person who was injured  
13 was Minor [REDACTED] And without going over it, the  
14 statute's the same thing. Whether it's death or great  
15 bodily injury, it's called felony DUI.

16 But it alleges that he, McKenzie Lavar Davis, did  
17 drive recklessly or at speeds at excess of the speed  
18 limit and so forth; and that, as a result of that  
19 negligence, great bodily injury was proximately caused  
20 to Minor [REDACTED] Same thing. The defendant's presumed  
21 innocent. He has no burden to prove he's not guilty.

22 Third indictment that I mentioned to you, is  
23 violation, allegedly, of a specific statute. That  
24 statute is Section 56-5-2947 of the Code of Law of South  
25 Carolina. It's called child endangerment. Again,

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1 talking about that same day, November 1, 2008, the  
2 statute says, while driving under the influence of drugs  
3 or alcohol, the defendant, McKenzie Lavar Davis, did  
4 have one or more passengers under the age of 16 in the  
5 vehicle. And most of these criminal laws put forth in  
6 the statute, these are just one of many, but this has a  
7 bunch of driving offenses in there. They've got other  
8 offenses in there. But this particular statute says a  
9 person who's over the age of 18 is guilty of child  
10 endangerment when the person is in violation of certain  
11 code sections. Included in those sections is driving  
12 under the influence or driving under the influence while  
13 a felony DUI occurs. That other code section might come  
14 into play. I just want to read it to you. Basically  
15 saying that the State has to convince you beyond a  
16 reasonable doubt that Mr. Davis was driving on that day;  
17 and at that time he was over 18; and there was somebody  
18 under the age of 16 in the vehicle.

19 And finally, the indictment alleges that on that  
20 particular day, November 1, 2008, Mr. Davis was driving  
21 a vehicle when his license had previously been  
22 suspended, compromised, or revoked. The defendant  
23 stipulated that his license was suspended on that day.  
24 He does not admit that he was driving that day. That's  
25 going to be the issue in the case. Normally, the State

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1 would have to prove that he was driving and why his  
2 license was suspended and how long it had been  
3 suspended. So, all that's beside the point. The only  
4 issue on this particular charge is whether or not he was  
5 driving. And the State has the burden of convincing you  
6 beyond a reasonable doubt that he was.

7 Now, jurors, you've got lots of witnesses. What  
8 you do is you're going to decide which testimony is  
9 believable on the indictments introduced by the court  
10 into evidence. You're just going to use your common  
11 sense to evaluate testimony. I'll explain that to you  
12 in a little bit more detail at the end of the trial. In  
13 fact, even though this is a most serious case, I'm going  
14 to keep this stuff short and to the point.

15 We'll take a break about every hour and a half,  
16 hour and 40 minutes. It's hard to stop a witness right  
17 in midsentence. If you need a break, just raise your  
18 hand. The thing is, if anybody takes a break, everybody  
19 has to take a break.

20 I don't know at this point how late we'll go this  
21 afternoon. Be able to tell you that probably at lunch  
22 time so you can call and make arrangements. So, anybody  
23 have any problems and have to leave early, you need to  
24 let me know before, you know, around lunch time, so the  
25 attorneys can speed up their witnesses and change the

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1 order of witnesses' presentation.

2 Now, the attorneys are going to make brief opening  
3 statements. Obviously, opening statements are not going  
4 to be evidence. Pay attention, because that's going to  
5 tell you what they're varied positions are. And after  
6 you listen to the evidence and decide, what have you.  
7 As a trial court judge, you kind of know what to look  
8 for.

9 So, without further ado, we'll let the State make  
10 its opening statement.

11 MR. FERNANDEZ: Thank you, your Honor. May it  
12 please the Court?

13 OPENING STATEMENT ON BEHALF OF

14 THE STATE BY MR. FERNANDEZ:

15 MR. FERNANDEZ: Good morning, ladies and gentlemen.

16 RESPONSES BY JURORS.

17 MR. FERNANDEZ: My name is David Fernandez, and I'm  
18 an attorney with the Attorney General's Office,  
19 prosecuting the case. I'd like to begin by thanking,  
20 you. I know that jury service is inconvenient. I don't  
21 think you all get enough gratitude for serving. So, to  
22 that extent, I do want to take this time and thank you  
23 all for being here.

24 The State's case is -- I'm going to take you back  
25 to the day of November 1, 2008. And on that day, there



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1 was Mr. Davis. He was driving on that day. He was  
2 driving the car totally and completely dangerous.  
3 Extremely dangerous. As a result, Mr. Davis's car ran  
4 off the road and slammed into a tree.

5 This happened on Oswald Road. For those of you who  
6 are unfamiliar, that's a road that's a winding road.  
7 It's not a very fast road, and speeding, to be traveling  
8 irresponsibly is shocking, especially when you have kids  
9 in the car. And that alone sets up one of the charges,  
10 which is child endangerment. And it's not very -- it's  
11 not a very difficult charge, and the judge, if  
12 necessary, will tell you all about those charges at the  
13 end of the trial.

14 But child endangerment is what it sounds like.  
15 There's a child in the car, and you were doing something  
16 that was extremely dangerous.

17 The driver alone was impaired. The accident  
18 itself, in this case, resulted in a death. And that's  
19 why there's, obviously, the felony DUI charge.

20 The State will show that Mr. Davis was impaired,  
21 resulting in a felony DUI. It's a huge problem,  
22 obviously. This is a collision that Mr. Davis had that  
23 was on Oswald Road, in Allendale, in South Carolina. He  
24 chose to get behind the wheel and drive extremely  
25 recklessly, and his car smashed into two trees. Smashed

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1 into them. Pictures, you'll see pictures. Lots of  
2 pictures. Very, very bad accident. Wrapped a big SUV  
3 around a tree.

4 As a result, you'll learn about a lady whose name  
5 was Sierra Brooker. And you won't hear from her today,  
6 because she died. She died in that accident. She was  
7 18 years old. And when this automobile accident  
8 happened, was helping .... She didn't survive the  
9 accident. Sierra ... very...this accident.

10 As the judge mentioned before, you may be a little  
11 confused about the law. You don't need to worry about  
12 that. The judge, at the end of the case, will tell you  
13 everything you need to know about the law and how it  
14 applies, and that's one of his jobs. Our job as the  
15 State is to present the facts to you. And that's called  
16 evidence. And your all's is to listen to the evidence  
17 and apply the facts of the case to the law. So, it's  
18 really quite simple.

19 And in this case, the facts will demand and justice  
20 will demand that you find Mr. Davis guilty of the  
21 charges in the indictment. He did drive the car. He  
22 was impaired. And he did drive recklessly. He did  
23 endanger a passenger, and he is responsible for her  
24 death. He is responsible.

25 So, that's what this case is about. You're going

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1 to hear a lot about this case. You're going to hear a  
2 lot of testimony. You're going to hear a lot about  
3 lies. You're going to hear about how he was setting up  
4 a defense that he could argue to try to find a way to  
5 prove. You're going to hear that that was all going on  
6 from the minute that accident occurred, the minute the  
7 first person was seen by the fire chief, the fire chief  
8 of Allendale. You'll hear about him setting up. You'll  
9 hear all the lies he tells.

10 You know, we mentioned accidents, and when we say  
11 accidents, it kind of evokes this feeling of, oh,  
12 whoops, it's just an accident, right; I didn't mean to  
13 do it. Well, there were decisions that were made on  
14 that day, on November 1, 2008, there were decisions.  
15 There was the actual decision that Mr. Davis made that  
16 ultimately led to this accident. And it wasn't an  
17 accident, because this accident was the inevitable  
18 conclusion of all the decisions that he made that day.

19 Sierra Shea Brooker is dead because of the  
20 decisions he made. Not just whoops; not just my bad,  
21 but decisions. And those decisions were he drank 'til  
22 mid-afternoon. It's, I'm driving; it's insane behavior;  
23 it's where children were involved, to the point where  
24 this accident was as tragic as it was predictable.

25 You know, ... DUI, so he shouldn't have been

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1 driving in the first place. If you get another DUI,  
2 decide you're going to go to the grocery store, and you  
3 wind up ... We're talking about a guy who shouldn't be  
4 driving, but not only shouldn't be driving, drove so  
5 very dangerously that it caused a death.

6 There is a law called reasonable doubt. And what  
7 is that? It's a doubt that would cause a reasonable  
8 person to hesitate to act. That's the definition. What  
9 does that mean? ... a reasonable doubt. But you all  
10 are reasonable people, you've already been ... on  
11 reasonable doubt. You use common sense. That's what we  
12 call common sense. ... That's reasonable doubt.

13 We're here today; it's very important day for the  
14 State. It's very important day for the victims. It's  
15 very important that you listen. ... makes sure that  
16 justice is served. We're asking for a conviction on all  
17 charges. Thank you very much.

18 OPENING STATEMENT ON BEHALF OF THE

19 DEFENDANT BY MR. PLEXICO:

20 MR. PLEXICO: If it pleases the Court, Mr. and Ms.  
21 Solicitor, jurors. I'm Steve Plexico. It's a pleasure  
22 to be here.

23 This is really a serious matter. It's a tragic  
24 matter. A life was lost. A bunch of young kids in a  
25 car. Hard to believe. Resulting in loss of life,

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1     precious, precious thing to us, and there's nothing we  
2     can do about it. But to compound ...

3             My client is here today. This will be his only day  
4     for justice. The judge will rule on the law. He is the  
5     ultimate arbitrator of what the potential law is in this  
6     matter. However, at the end of it, he will give you a  
7     set of instructions. Ultimately, you are the deciders  
8     of the facts. Individually. Nobody can take that right  
9     away from you. You will have to decide what, in fact,  
10    happened on that particular day. You will make these  
11    decisions.

12            I don't think that you will ever have a chance  
13    again to have such an impact, such sheer power, in  
14    regards to an individual's life. You have sheer power  
15    as a juror. You make your decisions based on ... and  
16    your conscience. The decisions you make, you can't come  
17    back and call for ... You may think, you know, I made a  
18    mistake, you know, I've been thinking about it; I want  
19    to change my mind. ...

20            I don't believe there's any way that the State can  
21    show beyond a reasonable doubt. Why do I say beyond a  
22    reasonable doubt? Who has the burden of proof? What  
23    are trials and juries all about?

24            You remember Madison, Jefferson, Washington. Do  
25    you think they would have a trial of their peers if they

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1 were caught by the British? They would have been lined  
2 up and shot or hanging from the nearest limb off a tree.  
3 Okay? ...

4 No. These people have a lot at stake to be sitting  
5 here in the ... of the United States of America.

6 What do we have in South Carolina? We have a trial  
7 by a jury of your peers. That's what's important. You  
8 don't just scoop someone up and punish them. We don't  
9 have that. You can't hire someone to be ... so and so  
10 ... so they could go ... trial. ... We have trials,  
11 decisions made by jurors as to what the facts are. This  
12 is based on ...

13 The State, the State has to prove beyond, starting  
14 at zero, has to prove to you beyond a reasonable doubt  
15 all the elements of their cases. They have many  
16 elements to prove. The defendant has nothing to prove.  
17 Nothing.

18 I believe that they can't get to the point where  
19 you don't have a reasonable doubt about this case.  
20 There's reasonable enough doubt about the evidence, the  
21 speed, the driver, the cause of the accident. And  
22 remember, these are complex cases, and they have to  
23 prove each and every element, starting with who the  
24 driver was.

25 You're going to hear testimony where two people are

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1 claiming to be the driver. Well, .... The first thing  
2 is, who's -- is anybody -- who's driving the car? ...

3 So, this isn't even an open-and-shut case. We're  
4 not here to ... justice ... somebody ... They have to  
5 show the person had consumed not ... You have to  
6 consume enough alcohol to materially affect your ability  
7 to operate a motor vehicle safely. That's what ...

8 Now, who's the driver? Is alcohol even involved?  
9 Depending on the driver, it may not have been -- may not  
10 even be involved. Then, the alcohol, they even have to  
11 ... Well, ... If you're under the influence; you don't  
12 do something right; you break some kind of a law; and  
13 then, as a result ...

14 Now, once you get past, go through all this  
15 information, they're trying to build a case on all these  
16 different factors. They even based their decision on  
17 the lack of, as well as the presence of. Why? ... this  
18 is about. It's a question of whether or not ...

19 As I said, my client has nothing to prove .... Why  
20 is that? One person ... ... That's what I'm asking  
21 you to do. ... ... verdict of not guilty. ... Thank  
22 you.

23 MR. FERNANDEZ: Your Honor, the State would call  
24 Rodney Stanley as our first witness.

25 MADAM CLERK: Do you swear or affirm to tell the

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Direct - Stanley

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

3 RODNEY STANLEY: Yes, I do.

4 FIRE CHIEF RODNEY STANLEY

5 DIRECT EXAMINATION BY MR. FERNANDEZ:

6 Q Good morning. Chief Stanley, your name, for the  
7 record, please.

8 A My name is Rodney Stanley, and I'm the Allendale  
9 County Fire Chief.

10 Q Okay. Rodney, sorry. You're the fire chief of  
11 Allendale County. Is that correct?

12 A That's correct.

13 Q Okay. And how long have you served as fire chief?

14 A Roughly 15 years.

15 Q Okay. I take it you were the fire chief on  
16 November 1st of 2008. Is that correct?

17 A That's correct.

18 Q Okay. Did you remember responding to an accident  
19 scene on Oswald Road and on that date?

20 A Yes, I did.

21 Q Okay. Could you tell us a little bit about why you  
22 were dispatched out there, and what you remember, at  
23 least at first, arriving on the scene.

24 A Dispatch called us out. It was a 1050, which is a  
25 wreck.



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Direct - Stanley

1 Q 1050 is a wreck.

2 A Gave us -- gave us the location.

3 Q Okay.

4 A I responded in the county fire truck that I drive  
5 every day. Upon arriving on the scene, I saw the SUV  
6 was -- was against a tree. I encountered the defendant  
7 and some young lady, I'm not sure who was in the front  
8 passenger seat, were standing in front of the vehicle.  
9 My first concern was to check the patients that were  
10 still in the car.

11 Q Okay. Let me stop you right there. Can you  
12 describe the accident to us. How would you describe the  
13 car accident? What did it tell you?

14 A It was a very severe accident. It's -- there was a  
15 lot of damage to the vehicle. A solid lick, apparently,  
16 from the condition of the vehicle.

17 Q Okay. And you pointed to the defendant, the  
18 gentleman seated at defense counsel. Is that the  
19 gentleman you also saw on the scene that afternoon?

20 A That's correct. That's correct.

21 Q Okay. All right. Were you able to see the  
22 passenger in the rear of the vehicle?

23 A I did.

24 Q Okay.

25 A Through the window on --

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Direct - Stanley

1 Q What did you determine at that point?

2 A As I tried to roll her over and get a pulse, the  
3 trauma, I realized at that point that she was deceased.

4 Q All right.

5 A We did not get a pulse.

6 Q All right.

7 A And that was prior to EMS arriving.

8 Q Okay. The two people that were outside the car,  
9 you said it was a young lady, and then the defendant.

10 A That's correct.

11 Q What were they doing?

12 A The young lady was covered in glass.

13 Q All right.

14 A And she was trying to get glass off of her. And  
15 repeatedly, she kept saying that she had asked the  
16 defendant to slow down.

17 MR. PLEXICO: I object, your Honor. I move to  
18 strike that as hearsay, your Honor.

19 THE COURT: All right.

20 BY MR. FERNANDEZ:

21 Q Without saying what she said, describe the glass  
22 for me for a minute. What kind of -- did she have cuts  
23 and scrapes on her? What did she -- what was her  
24 physical appearance?

25 A Yeah, minor.

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Direct - Stanley

1 Q Okay.

2 A But she had glass in her hair, over her entire  
3 body.

4 Q Okay. What did that tell you? Did you notice any  
5 windows that were --

6 A That's correct. I do -- when we arrive on a scene,  
7 I've been trained, like I said, I'm the fire chief 15  
8 years, but I've been on the service for 29.

9 Q Okay.

10 A And we to try to observe everything around us for  
11 our reports.

12 Q Okay.

13 A And I observed the passenger, front window busted  
14 out.

15 Q Okay. And by busted out, you mean that the glass  
16 shattered?

17 A It shattered upon the impact.

18 Q Okay. Would that have been consistent, in your  
19 opinion, given your experience, would that have been  
20 consistent with the glass that she had on her body and  
21 hair?

22 A That's correct.

23 Q Okay. Did the defendant have any glass on his  
24 person?

25 A No.

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Direct - Stanley

1 Q Okay. How would you describe the defendant's  
2 interaction? Did he say anything?

3 A He was very --

4 MR. PLEXICO: Your Honor, I would object, your  
5 Honor.

6 THE COURT: All right.

7 MS. BURCHSTEAD: Your Honor, may we be heard?

8 THE COURT: It's kind of an excited utterance.

9 MS. BURCHSTEAD: Present sense impression would be  
10 the State's argument.

11 THE COURT: He can go ahead.

12 BY MR. FERNANDEZ:

13 Q Please continue.

14 A He was very agitated. He was running from one side  
15 of the car to the other, and then encountering with the  
16 young lady that was there.

17 Q And what kind of things was he saying?

18 A I didn't hear it all, but it appeared that they  
19 were arguing.

20 Q Okay.

21 A Is what it appeared to me.

22 Q Okay. Did you get close enough to the defendant to  
23 smell him or anything like that?

24 A Yes, I did.

25 Q Okay. Did you smell anything on the defendant?

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Direct - Stanley

1 A There was a slight odor of alcohol.

2 Q Okay.

3 MR. FERNANDEZ: Beg the Court's indulgence one  
4 moment.

5 BY MR. FERNANDEZ:

6 Q So, if you were first on the scene, how long --  
7 approximately how long were you there until additional  
8 units, either police or the EMTs, arrived? How long  
9 would you estimate that for?

10 A I was there for probably a minute or so, maybe two  
11 minutes, before some of the other firemen started  
12 arriving.

13 Q Okay. So, your interactions with the defendant  
14 were prior to anyone else coming on the scene.

15 A That's correct.

16 Q Okay. And how long did you stay on the scene?

17 A The entire time.

18 Q Okay. And did you notice, were there skid marks in  
19 the area from where the car had veered off the road?

20 A Yes.

21 Q Could you describe how far off the road, Oswald  
22 Road, how far the accident actually occurred.

23 A Off the road, it was probably 15 feet to pavement.

24 Q Okay.

25 COURT REPORTER: *Fifteen feet to what?*

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Cross - Stanley

1 A To the pavement. But when you say skid marks,  
2 there were skid marks way above that where the car left  
3 the road.

4 MR. FERNANDEZ: Okay. Okay. No further questions,  
5 your Honor. Thank you.

6 FIRE CHIEF RODNEY STANLEY

7 CROSS-EXAMINATION BY MR. PLEXICO:

8 Q The driver's side window was down, too; wasn't it?

9 A The driver's side window was not busted.

10 Q Okay. But it was down, correct?

11 A Yeah, it was down.

12 Q Okay. All right. Now, you're not an expert in  
13 accident reconstruction or anything like that. You're a  
14 fireman.

15 A By no -- by no means, sir.

16 Q You're a fireman. Is that correct?

17 A Yes, but I'm also trained to observe the scene.

18 Q Okay. All right. And that's in case there was an  
19 arson or something, so you could be able to detect --

20 A For occasions, whatever it would be, sir.

21 COURT REPORTER: I'm so sorry. Would you say your  
22 answer again -- I mean, your question again.

23 BY MR. PLEXICO:

24 Q That's so you can, in case of an arson or  
25 something, a criminal act, something like an arson, you

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Cross - Stanley

1 can look and see how that happened. Is that correct?

2 A No, sir.

3 Q Okay.

4 A That's not correct.

5 Q All right. So, when you arrived, when you pulled  
6 up, you saw a man and woman standing in front of the  
7 vehicle. Is that what you actually saw?

8 A I saw the defendant and a young lady standing in  
9 the front of the vehicle.

10 MR. PLEXICO: Okay. I don't have any further  
11 questions, I believe, of this witness, for this  
12 individual Judge.

13 MR. FERNANDEZ: Nothing further, your Honor.

14 THE COURT: All right. May he be excused, or does  
15 he need to hang around?

16 MR. FERNANDEZ: We have no need for him to hang  
17 around.

18 MR. PLEXICO: I have -- no. He may be excused,  
19 your Honor.

20 THE COURT: You're free to go.

21 RODNEY STANLEY: Thank you, sir.

22 MS. BURCHSTEAD: Your Honor, State calls Corporal  
23 Denard Gates.

24 MADAM CLERK: Do you swear or affirm to tell the  
25 truth, the whole truth, and nothing but the truth, so

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Direct - Gates

1 help you God?

2 CORPORAL DENARD THEOTRICUS GATES: I do.

3 CORPORAL DENARD THEOTRICUS GATES

4 DIRECT EXAMINATION BY MS. BURCHSTEAD

5 Q Good morning.

6 A Good morning.

7 Q What is your title and rank?

8 A I'm a trooper with the South Carolina Highway  
9 Patrol, and my rank now is corporal.

10 Q All right. And what's your full name?

11 A My name is Denard Theotricus Gates.

12 Q Okay. And how long have you been with the Highway  
13 Patrol?

14 A I've been a trooper for 16 years.

15 Q All right. And you were employed with the Patrol  
16 back in 2008?

17 A Yes, ma'am, I was.

18 Q All right. And as of November 1st of 2008, what  
19 was your rank?

20 A I was a lance corporal.

21 Q Okay. And as a lance corporal, what were some of  
22 your duties?

23 A My duties were, enforcing of the traffic laws;  
24 collision investigation; and also, DUI detection. Those  
25 are just some of the major things. Radar operator.



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Direct - Gates

1 Those were the major things that -- that I did.

2 Q Okay. Let me back up for a second.

3 A Okay.

4 Q And to become a trooper, can you tell the jury an  
5 idea of your training to become a trooper.

6 A Yes, ma'am. We're -- we have to train for 20  
7 weeks, which is five months of training. During that  
8 training, we're -- we all have to go through legal; the  
9 constitution of the state; and also, the United States.  
10 We have to make at least a 75 on those tests. We have  
11 to train in defensive driving. We also train in  
12 weapons, also, and qualify. And we have to continue  
13 training in order to stay proficient in those things.

14 Along with, we're also trained in collision  
15 investigation, which is just the basics. And then, once  
16 we graduate, then you have to go through what is called  
17 at-scene collision, where we do a little further  
18 collision basics.

19 We also train in DUI detection. And those who  
20 graduate, we do even further DUI detection, also. But  
21 the -- during the training, we -- all we do is just the  
22 basics. After that, we have to ride with a trained  
23 officer for four months. And then, after six months,  
24 we're off the probation period.

25 So, you're looking at about a year before you

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Direct - Gates

1 actually -- actually on the road, working by yourself.  
2 And during that time, we are having to go back to get  
3 further certifications to actually be back on the road  
4 by ourselves.

5 Q Okay. Thank you. And I believe you mentioned DUI  
6 detection, and that was -- did you say that was one of  
7 your duties as a lance corporal in 2008?

8 A Yes, ma'am, it is.

9 Q All right. So, prior to November of 2008, had you  
10 worked some cases involving alcohol and driving?

11 A Yes, ma'am, I have.

12 Q All right. Again, as of November of 2008, about  
13 how many cases had you worked?

14 A About a hundred.

15 Q All right. And have those resulted in arrests?

16 A Yes, ma'am.

17 Q Okay. Were you called to work a wreck on November  
18 1, 2008?

19 A Yes, ma'am, I was.

20 Q All right. Was that on Oswald Road?

21 A Yes, ma'am, it was.

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

23 A It was around 2:52, almost 3:00 o'clock in the  
24 afternoon, I was given the call.

25 Q All right. That's when you got the call from

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Direct - Gates

1       dispatch?

2       A     Yes, ma'am. Yes, ma'am.

3       Q     Okay. And did you -- what time did you arrive?

4       A     I arrived at 3:20, is when I arrived.

5       Q     Okay. All right. And so, could you just describe  
6       the scene when you got there.

7       A     When I arrived to the scene, there was -- already,  
8       there was numerous medical personnel, medical, and fire  
9       and police officers there when I got to the scene.

10      Like, right next to my vehicle, I looked and I saw what  
11      appeared to be, like, a white SUV, up against some --  
12      some trees.

13      Q     Um-hmm.

14      A     And there was severe, severe damage to the -- to  
15      the SUV. When I approached the vehicle, just looking at  
16      it, just looking at the vehicle itself, just observing  
17      whatever there at the scene, I did look in the vehicle,  
18      and I did see a body in the vehicle there, in the -- in  
19      the back seat of the vehicle, or the rear of the  
20      vehicle, rather.

21            I looked. I looked further, and saw great damage  
22      to the vehicle. Looked for -- there was some debris on  
23      the ground around the vehicle itself. Just taking a  
24      mental picture, just looking to see what was there.

25      Like I said, just make the notes that I did make, I did

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Direct - Gates

1 notice that the damage, like I said, it was very severe  
2 amount of damage there. So, as a matter of fact, I  
3 recall seeing a tire detached from the vehicle itself,  
4 just laying there. Just looking at the scene, I could  
5 tell it was a major collision.

6 Q All right. Did you observe any skid marks or  
7 anything present?

8 A I did see some skid marks as I was approaching the  
9 scene. I didn't have a chance to really look at them  
10 that well when I arrived, because I was over there, not  
11 that long. But just driving up and just what I  
12 observed, just driving up to the scene.

13 Q All right. Was there a speed limit posted on  
14 Oswald Road?

15 A I don't recall there was one posted, at least from  
16 where I went, to the collision, I didn't see a sign  
17 posted there. You know, just a sign posted, somewhere  
18 at 55, you know, it was supposed to be. It's not posted  
19 on the asphalt on a rural road.

20 COURT REPORTER: I'm sorry. *I posted?*

21 A It's not posted on the asphalt on a rural road.

22 Q Okay. And Oswald Road, just for clarification, is  
23 that in Allendale County?

24 A Yes, ma'am, it is.

25 Q All right. I believe you said some of the locals

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1       were there. Was it Allendale Fire and -- who were the  
2       other on-scene?

3       A     I recall seeing some fire trucks. Also, some of  
4       the Sheriff's Office vehicle there, also. My supervisor  
5       was there before I was, also.

6       Q     And who was that?

7       A     That was First Sergeant Reed.

8       Q     First Sergeant Reed?

9       A     Yes, ma'am.

10      Q     All right. Did you see any occupants from the  
11      vehicle at the time?

12      A     No, ma'am. There was -- there was no occupants  
13      there when I was there at the scene.

14      Q     Okay.

15            MS. BURCHSTEAD: Beg the Court's indulgence. I  
16      just need to get something marked, your Honor, and show  
17      Defense counsel. Permission to approach, your Honor?

18            THE COURT: Okay.

19            BY MS. BURCHSTEAD:

20      Q     Okay. I'm showing you what's marked as State's  
21      Exhibit 1. What is this?

22      A     It's Oswald Road.

23      Q     All right. And does that look like Oswald Road did  
24      the day of the accident?

25      A     Yes, ma'am.

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1 Q Okay. Does it fairly, accurately, and correctly  
2 depicted as you saw that day on the scene?

3 A Yes, ma'am.

4 MS. BURCHSTEAD: At this time, your Honor, the  
5 State moves Exhibit 1 into evidence.

6 THE COURT: All right.

7 MS. BURCHSTEAD: Permission to publish.

8 MR. PLEXICO: That's without objection, your Honor.

9 THE COURT: All right.

10 MS. BURCHSTEAD: All right. And I'm not going to  
11 project it. I'll just hand it to you all, and you can  
12 pass it around.

13 ITEM IDENTIFIED AS PHOTOGRAPH

14 STATE'S EXHIBIT NUMBER 1, ADMITTED

15 AS EVIDENCE.

16 BY MS. BURCHSTEAD:

17 Q And I'm going to show you State's Exhibit 2. And  
18 what is that?

19 A That's the SUV that was -- crashed into the tree.  
20 These are some of the skid marks there that was there.

21 Q And does that accurately depict what you saw on  
22 November 1 of 2008?

23 A Yes, ma'am.

24 MS. BURCHSTEAD: State moves Number 2 into  
25 evidence, your Honor.

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1 MR. PLEXICO: May I see Number 2? It's without  
2 objection, your Honor.

3 THE COURT: All right.

4 ITEM IDENTIFIED AS PHOTOGRAPH

5 STATE'S EXHIBIT NUMBER 2,

6 ADMITTED AS EVIDENCE.

7 MS. BURCHSTEAD: And I'm going to show Defense  
8 Counsel Number 3 at this point, your Honor, just so he's  
9 aware.

10 MR. PLEXICO: That's without objection, also.

11 THE COURT: Okay.

12 BY MS. BURCHSTEAD:

13 Q If I may show the trooper State's 3, and just ask  
14 that you to explain what that is.

15 A This is another picture of the SUV. It's a closer  
16 picture, as it is up against the tree, also.

17 MS. BURCHSTEAD: All right. And permission to  
18 publish, your Honor.

19 THE COURT: Sure.

20 ITEM IDENTIFIED AS PHOTOGRAPH

21 MARKED STATE'S EXHIBIT NUMBER 3,

22 ADMITTED AS EVIDENCE.

23 MS. BURCHSTEAD: Beg the Court's indulgence. We're  
24 having to mark some more. I'll approach Mr. Plexico  
25 here, so he sees what's going on.

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1 BY MS. BURCHSTEAD:

2 Q Okay. So, if you'll look at State's Exhibit 4, and  
3 tell us what that is.

4 A It's another picture of the SUV, at a slightly  
5 different angle.

6 Q All right. And does that fairly and accurately  
7 reflect the 2008 wreck?

8 A Yes, ma'am. Yes, ma'am.

9 Q And if you'll look at State's 5.

10 A This is the -- the left-front side of it, and some  
11 -- some of the debris I saw from the clothing on the  
12 ground, also.

13 Q Okay.

14 MS. BURCHSTEAD: And State moves 4 and 5 in, your  
15 Honor.

16 THE COURT: Objection?

17 MS. BURCHSTEAD: And permission to publish.

18 MR. PLEXICO: No objection, your Honor.

19 MS. BURCHSTEAD: All right. Your Honor, permission  
20 to approach again.

21 ITEM IDENTIFIED AS PHOTOGRAPH

22 MARKED STATE'S EXHIBIT NUMBER 4,

23 ADMITTED AS EVIDENCE.

24 ITEM IDENTIFIED AS PHOTOGRAPH

25 MARKED STATE'S EXHIBIT NUMBER 5,



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1 ADMITTED AS EVIDENCE.

2 BY MS. BURCHSTEAD:

3 Q I'm showing Trooper Gates State's 6.

4 A This is the -- it's also a picture of the SUV.  
5 It's a picture with the door torn off, and also some of  
6 the debris. This is from the -- the right-rear.

7 Q All right. And does that accurately reflect?

8 A Yes, ma'am, it does.

9 Q All right.

10 MS. BURCHSTEAD: And at this time, the State moves  
11 6 into evidence. I believe it's without objection.

12 THE COURT: All right.

13 ITEM IDENTIFIED AS PHOTOGRAPH

14 MARKED STATE'S EXHIBIT NUMBER 6,

15 ADMITTED AS EVIDENCE.

16 MS. BURCHSTEAD: And show Trooper Gates State's 7,  
17 your Honor.

18 BY MS. BURCHSTEAD:

19 Q Can you identify that for us?

20 A Yes, ma'am. This is another picture of the -- a  
21 closer picture of the SUV. It's on the right side.

22 Q All right.

23 A And the passenger department, also.

24 Q And is there anybody in the vehicle?

25 A Yes, ma'am. There appears to be a body in the

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1 rear.

2 COURT REPORTER: I'm so sorry. I can't hear. It's  
3 just -- it's terrible in here.

4 A Yes, ma'am. It appears to be a body in the rear of  
5 the vehicle.

6 Q Okay. But is this the same vehicle?

7 A Yes, ma'am. It's the same white SUV.

8 Q All right.

9 MS. BURCHSTEAD: Your Honor, State moves 7 into  
10 evidence, and I believe it's also without objection.

11 THE COURT: All right.

12 MR. PLEXICO: Without objection, your Honor.

13 ITEM IDENTIFIED AS PHOTOGRAPH

14 MARKED STATE'S EXHIBIT NUMBER 7,

15 ADMITTED AS EVIDENCE.

16 MS. BURCHSTEAD: Just approach Mr. Plexico again,  
17 here. Your Honor, I'm going to approach Trooper Gates  
18 again, and I'm going to show him State's 8 through 12.  
19 We are going to seek to move them into evidence, and I  
20 believe it's without objection.

21 MR. PLEXICO: Without objection.

22 MS. BURCHSTEAD: Thank you, your Honor.

23 ITEMS IDENTIFIED AS PHOTOGRAPHS

24 MARKED STATE'S EXHIBIT NUMBERS

25 8 THROUGH 12, ADMITTED AS EVIDENCE.

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1 BY MS. BURCHSTEAD:

2 Q If you would look at -- Trooper Gates, if you'll  
3 look at Number 8 and tell us what that is.

4 A This is the -- this is the passenger side of the  
5 vehicle. Also showing the -- the rear of the vehicle,  
6 also, and the body and the seat belt there.

7 Q All right.

8 A White SUV.

9 Q Thank you. And show you State's 9. If you'll  
10 identify that for us.

11 A Yes, ma'am. This is the -- the left-rear, the rear  
12 of the vehicle. It shows the driver's-side damage.  
13 Also, license plate number, also.

14 Q Okay. And Number 10. Could you tell us what that  
15 is.

16 A This is the rear -- this is the rear of the  
17 vehicle. It also shows the -- the actual wheel broke  
18 off and other debris from the rear of the vehicle,  
19 another perspective of it.

20 Q Okay. State's 11.

21 A This is a close-up of the -- the right-rear of the  
22 vehicle. It shows the heavy impact on that side, and  
23 also some of the clothing on top of the vehicle, also.

24 Q And State's 12?

25 A This is another picture from the -- the left side

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1 of the vehicle, also showing -- you see the parts of a  
2 body still in a seat belt, along with some of the debris  
3 and glass.

4 MS. BURCHSTEAD: Beg the Court's indulgence. And  
5 I'm showing State's 13 to Corporal Gates.

6 BY MS. BURCHSTEAD:

7 Q And ask you if you'll describe State's 13.

8 A Yes, ma'am. This is the driver's-side airbag.  
9 It's showing deployed. It was like there was a purse or  
10 something on that side, but it was also showing  
11 deployment of the driver's side airbag.

12 Q All right.

13 MS. BURCHSTEAD: And State moves 13 into evidence.  
14 I believe 13 is without objection, your Honor. And your  
15 Honor, may we approach? Just for a moment.

16 ITEM IDENTIFIED AS PHOTOGRAPH  
17 MARKED STATE'S EXHIBIT NUMBER 13,  
18 ADMITTED AS EVIDENCE.  
19 OFF-THE-RECORD BENCH CONFERENCE,  
20 OUT OF HEARING OF JURORS. PRESENT:  
21 THE COURT, MS. BURCHSTEAD,  
22 MR. FERNANDEZ, MR. PLEXICO.  
23 END BENCH CONFERENCE.

24 MR. PLEXICO: Your Honor, I'm entering my objection  
25 to 14.

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1 THE COURT: All right.

2 BY MS. BURCHSTEAD:

3 Q And Corporal Gates, showing you State's 14. And  
4 I'm not sure if you have familiarity with that or not,  
5 but can you describe it?

6 A Yeah, it's like, maybe a right-rear, or I'm not  
7 sure. It may be the front seat, looks like. There's  
8 some blood all over the seat there.

9 Q All right.

10 A I can't tell which seat it is. Looks like it may  
11 be the front seat.

12 Q Okay.

13 MS. BURCHSTEAD: And moving State's 14 into  
14 evidence, I believe without objection.

15 THE COURT: All right.

16 MS. BURCHSTEAD: And I'd like to publish that to  
17 the jury.

18 ITEM IDENTIFIED AS PHOTOGRAPH

19 MARKED STATE'S EXHIBIT NUMBER 14,

20 ADMITTED AS EVIDENCE.

21 BY MS. BURCHSTEAD:

22 Q Okay. So, Corporal Gates, now that we've talked a  
23 little bit about the scene, could you tell us  
24 approximately how long you were there?

25 A Maybe 15 to 20 minutes, at the most.

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1 Q Okay.

2 A I was -- when I looked at the scene, my supervisor  
3 told me that the occupants were taken to the hospital.

4 Q Okay.

5 A And so, that I needed to go and check on the  
6 occupants of the vehicle.

7 Q All right. So, did you talk -- you didn't talk to  
8 any of the occupants at the scene, then. Is that  
9 correct?

10 A No, ma'am. There was no one at -- no occupants  
11 were at the scene.

12 Q Did you have any idea who the driver of the wreck  
13 was when you were on-scene?

14 A No, ma'am. No, I didn't.

15 Q Okay. So, did you go to the hospital?

16 A Yes, ma'am, I did.

17 Q Okay. And did you learn anything to help you work  
18 the wreck when you went to the hospital?

19 A When I walked into the hospital, we were walking  
20 through the door, and I was directed by medical  
21 personnel that there was a -- there was a juvenile that  
22 was -- if I recall this room, it was to the right --  
23 that was involved in the collision that was being  
24 prepared to be flown to Columbia.

25 Q Okay. Did you know there was a juvenile involved

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1 prior to going to the hospital?

2 A No, ma'am, I did not.

3 Q All right. You just knew occupants had gone to the  
4 hospital?

5 A Yes, ma'am, I did.

6 Q Okay. So, did you see the juvenile?

7 A Yes, ma'am, I did. I walked into the room, and I  
8 saw a young gentleman lying in the bed.

9 Q I'm sorry, you saw what?

10 A I saw a young gentleman lying in the bed.

11 Q Lying in the bed. Okay.

12 A Yes, ma'am.

13 Q Did you have any idea of his age?

14 A I had no idea of his age until I interviewed him.

15 Q All right. Okay. Did he tell you his age?

16 A Yes, ma'am. He told me his name and his date of  
17 birth.

18 Q And what was -- what --

19 A He gave me the name of Minor [REDACTED]

20 Q Okay.

21 A The date of birth he gave me was [REDACTED] the [REDACTED]  
22 [REDACTED]. So, he was twelve years old.

23 Q Twelve years old at the time?

24 A Yes, ma'am.

25 Q Okay. Did he appear to be injured to you?

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1 A He had, like, some blankets over him.

2 Q Um-hmm.

3 A And appeared like he was -- almost like he was  
4 cold, almost like, shaking, you would shiver, like a  
5 cold type.

6 Q Okay.

7 A But I couldn't see any visual -- just looking at  
8 him, I didn't, because I just remember seeing the  
9 blankets over him, and that was -- that's all I can  
10 recall there.

11 Q Okay. Did you talk to any other occupants or see  
12 any of the other occupants?

13 A Yes, ma'am. I was -- after I got his information,  
14 I was -- and I asked him where he was sitting, and also,  
15 he said he was sitting behind the driver, also.

16 MR. PLEXICO: Your Honor, --

17 A The driver.

18 MR. PLEXICO: -- note my objection to hearsay, your  
19 Honor.

20 THE COURT: That's all right. He's far enough.  
21 You've got to prove he was 16 and so forth -- or under  
22 16.

23 MS. BURCHSTEAD: Yes, sir.

24 BY MS. BURCHSTEAD:

25 A He said he was sitting behind the driver, to the



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1 left-rear, just there. I mean, there. I interviewed  
2 him first, because I knew he was being prepared -- that  
3 they were preparing him as I was interviewing him, to be  
4 flown out. I was also --

5 I was then directed to a room that was to the left.  
6 And I saw a young lady lying in the -- the bed. And as  
7 I was walking towards it, I did notice seeing a -- a  
8 guy, a gentleman walking that was limping.

9 Q Um-hmm.

10 A And it just caught my eye that he kind of followed  
11 me where I went. Had no idea who it was.

12 Q Okay.

13 A So, I went into the room, and I was directed by  
14 medical personnel that the other person was involved in  
15 the collision, also. I went to the young lady and asked  
16 her was she in the collision. She stated, yes. And I  
17 got her name, her information. And the information she  
18 gave me was Valandrea Champagne Bing. She gave me the  
19 date of birth of [REDACTED].

20 Q Okay.

21 A I asked her, where was she sitting, and --

22 MR. PLEXICO: I would object, your Honor. It's  
23 hearsay.

24 THE COURT: Well, that's a part of his  
25 investigation that she's a victim.

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1 MS. BURCHSTEAD: Yes, sir.

2 BY MS. BURCHSTEAD:

3 A I asked her, where was she sitting, and she told  
4 me, the front-seat passenger. She had no seat belt on,  
5 and she was ejected.

6 Q Okay. Did you learn the driver that day?

7 A The gentleman who was limping came into the room,  
8 also.

9 Q Okay.

10 A And I asked him was he involved, also. And he  
11 stated to me that he was involved in the collision.

12 Q That he was involved in the collision.

13 A Correct.

14 Q Okay.

15 A I asked him was he the driver. He initially  
16 stated, no.

17 Q He initially stated, no, correct?

18 A Correct.

19 Q Okay. So, at this point, the individual with the  
20 limp says he's in the collision, not driving.

21 A Correct.

22 Q Okay. Now, was the limp of any significance to  
23 you?

24 A After he said that he was in the collision, then it  
25 was, because, you know, it kind of fit. You know,

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1 someone involved in what I saw before I got there. At  
2 least that from, you know, from what I saw before I got  
3 there.

4 Q Okay. And in talking to this individual, did you  
5 learn his identity?

6 A I did. I asked him for a -- I asked him for a  
7 driver's license. He handed me an identification card.

8 Q Okay. Identification card?

9 A Correct. And the name on the identification card  
10 was McKenzie Lavar Davis.

11 Q Okay. Now, the person you were talking to and gave  
12 you the identification card, McKenzie Lavar Davis, is he  
13 in the courtroom?

14 A Yes, ma'am, he is.

15 Q Would you point him out, please.

16 A It's the gentleman there.

17 MS. BURCHSTEAD: And if we could just have the  
18 record note that he was pointing to the defendant at  
19 Defense counsel table.

20 BY MS. BURCHSTEAD:

21 Q All right. So, after you get his identification --  
22 well, let me just ask you -- other than the limp, could  
23 you describe his physical appearance to the jury.

24 A Yes. I noticed that he looked a little distraught.  
25 His eyes were sort of red, but like I said, he was

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1 involved in a collision, also. And this is just -- it's  
2 been so long ago, so I just kind of recall.

3 Q Sure. Just tell us what you remember.

4 A But he -- like I said, I do recall the limp. I do  
5 recall him sort of -- he seemed sort of distraught.

6 Q Okay.

7 A That's about all I recall. Like I said, that was  
8 just initial.

9 Q Okay.

10 A Just initial, making contact, and then learning  
11 that he was in the vehicle.

12 Q All right. And based on your training and  
13 experience with DUI detection, were you evaluating  
14 whether he may have been under the influence of alcohol?

15 A At that particular moment I asked him, who was he,  
16 not initially.

17 Q Okay.

18 A Just -- just -- out of just investigation.

19 Q Right.

20 A Then, you use that, you know, based off of what you  
21 -- you know, if you see or interview there as you go  
22 along.

23 Q Sure.

24 A Well, as I asked him for his identifi -- I asked  
25 him for his information; he gave his I.D. card; I

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1 started asking him information, is when I immediately  
2 smelled the odor of alcoholic beverage coming from his  
3 breath.

4 Q All right.

5 A And I asked him, *have you drank any alcoholic*  
6 *beverages.* He said, *yes, two beers.* That's when I  
7 started looking at this could be a possibly alcohol-  
8 related collision.

9 Q All right. Were there any other physical signs.  
10 You smelled alcohol. How did his eyes look?

11 A His eyes appeared to be red, initially, you know,  
12 glassy, initially.

13 Q All right.

14 A. And this -- that was the first contact. But then,  
15 as, -- you know, I talked to him, and when I got the  
16 first indicator that I did smell alcoholic beverage on  
17 him, then I paid more closer attention to those little  
18 details. I did notice his eyes were red and glassy  
19 there, also, along with the -- with the odor.

20 Q So, based on your training and experience to the  
21 point of 2008, did you believe him to be under the  
22 influence of alcohol?

23 A Yes, ma'am.

24 Q Okay. So, when you're talking with him -- well,  
25 let me just back up. Let's go back to did you ever

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1 actually identify the driver that day? Or who you  
2 believed to be the driver.

3 A That day, yes, I did, eventually.

4 Q Okay. And could you tell the jury how you did  
5 that.

6 A When I go back to Ms. Bing, when she told me she  
7 was the front-seat passenger, and she didn't have her  
8 seat belt on and she was ejected, that's where I placed  
9 her, based off of what she told me. And also, too,  
10 **Minor** when I interviewed him, he told me he was  
11 sitting behind the driver. I also based that off of  
12 what he told me, also. I do recall seeing Ms. Bing with  
13 some scratches on her face --

14 Q Um-hmm.

15 A -- when I talked to her, was interviewing her. So,  
16 when I spoke to Mr. Davis, he told me that he was the  
17 front-seat passenger, initially.

18 Q Okay.

19 A I knew then that I had a problem.

20 Q Right.

21 A Or that there was a problem. So, --

22 Q Let me just stop you right there. When he said he  
23 was a front-seat passenger, is that before or after you  
24 got his identification?

25 A I can't recall the before and after. It was during

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1 the time of getting it. So, I can't recall if it was I  
2 initially asked him. I initially asked him was he  
3 involved before I even asked for his identification.

4 Q Sure.

5 A I can't recall if it was after that or beforehand.

6 Q Okay.

7 A But it was during that time or that time frame.

8 Q Sure.

9 A When I got his information.

10 Q Okay. So, in terms of time, about how long after  
11 the wreck or -- or --

12 A The collision itself, or when I arrived?

13 Q You know, just give us kind of a time frame.

14 A I -- from when I arrived to when I left the scene  
15 and got to the hospital and got to that point, we're  
16 looking at about 35 minutes. It doesn't take me no more  
17 than -- no more than ten minutes to get there from --  
18 from the -- from where the scene is to the hospital.

19 Q All right.

20 A And so, I was -- I was there maybe five to ten,  
21 from interviewing Minor, [REDACTED] and then Valandrea, and to  
22 that point.

23 Q Okay. All right. So, at this point, you're still  
24 trying to determine the driver. Is that correct?

25 A That's correct.

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1 Q All right. And Mr. Davis has told you he was not  
2 the driver.

3 A That's correct.

4 Q Did he ever tell you he was the driver?

5 A What I did was this. I knew when both of them told  
6 me that they were the passengers, I knew that a twelve-  
7 year-old wasn't driving. And so, I knew that someone  
8 wasn't telling the truth.

9 MR. PLEXICO: Your Honor, I would -- I believe at  
10 this point would be an appropriate time for a matter of  
11 law under *Miranda*.

12 THE COURT: All right. You all, don't talk about  
13 the case.

14 JURORS LEAVE COURTROOM 11:45 A.M.

15 BY THE COURT:

16 THE COURT: All right. What kind of law?

17 MR. PLEXICO: Your Honor, I believe under *Miranda*,  
18 at this point, if he's the focus of the DUI  
19 investigation and it was determined that, in his  
20 opinion, he's under the influence and arrest is  
21 imminent, that he's due his *Miranda* rights.

22 MS. BURCHSTEAD: Your Honor, at this point, the  
23 State is just merely entering a statement by the  
24 defendant, which we just have to show is voluntary. I'm  
25 happy to back up the testimony and lay the foundation



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1     for the voluntary nature, which we, of course, did  
2     address pretrial when Trooper Gates testified. So,  
3     maybe we do need to get a clear point from your Honor of  
4     whether, you know, finding it voluntary. And then, I'll  
5     go into it and re-lay the foundation through his  
6     testimony. But it doesn't have anything to do with  
7     whether he's arrested or not. I'm going to talk about  
8     that. We'll have him talk about whether he was arrested  
9     and talked to a lawyer, and all, you know, the *Miranda*  
10    stuff, but it's a statement by the defendant.

11       THE COURT: Well, he alluded to the fact that some  
12    time he gave him the *Miranda* before he arrested him.

13       MS. BURCHSTEAD: Yes, sir.

14       THE COURT: I mean, this is just investigative at  
15    this point.

16       MS. BURCHSTEAD: Yes, sir, it was just talking to  
17    the defendant, yes, sir.

18       THE COURT: And at this point, he's talking to both  
19    of them together.

20       MR. PLEXICO: Yes, your Honor.

21       THE COURT: You go into that.

22       MS. BURCHSTEAD: I'll just clean up, back it up,  
23    and talk about the voluntary nature.

24       THE COURT: All right. Unfortunately, once I send  
25    the jury out, there's 14 of them, so it takes 15

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1 minutes. Now, I know that we were running short of  
2 jurors, and we did place that juror on the panel who has  
3 to go at 4:30. Remember that, now. That's by design so  
4 you Columbia lawyers can get back to Columbia.

5 MS. BURCHSTEAD: Yes, sir.

6 THE COURT: So, we just have to plan your witnesses  
7 so you finish at 4:30.

8 MS. BURCHSTEAD: Yes, sir.

9 THE COURT: Or 4:32 or '3.

10 MS. BURCHSTEAD: 4:30, yes, sir. We will.

11 THE COURT: You have any other pictures or anything  
12 else you can agree to while the jury's out, about --

13 MS. BURCHSTEAD: I can go ahead and have the court  
14 reporter mark some things. I think for this witness,  
15 we've just got some -- the written statements. But I  
16 think the pictures are the only thing.

17 THE COURT: I would think there are no surprises at  
18 this point. They should have shown you everything they  
19 planned on putting in.

20 MS. BURCHSTEAD: Right. Yes, sir. I mean, we've  
21 discussed the photos, and I don't think, other than the  
22 two we approached with at the Bench, there's nothing the  
23 State's trying to seek that's objectionable. So, I  
24 think we're okay on the photos.

25 THE COURT: And the statements, I think you're

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Continue Direct - Gates

1 going to allow them in, probably. Or part of them.

2 MR. PLEXICO: Yes, Judge.

3 THE COURT: Okay.

4 MS. BURCHSTEAD: Yes, sir.

5 THE COURT: All right. We're at ease, then, for  
6 another twelve minutes.

7 MS. BURCHSTEAD: Thanks, Judge.

8 OFF THE RECORD 11:54 A.M.

9 BACK ON THE RECORD 12:05 P.M.

10 CORPORAL DENARD THEOTRICUS GATES

11 CONTINUE DIRECT EXAMINATION BY

12 MS. BURCHSTEAD:

13 Q Trooper Gates, I think when we left off, you were  
14 at the hospital and still telling us how you identified  
15 the driver. Could you just go back into that, please.

16 A Excuse me. Yes, ma'am. Excuse me. As I was  
17 saying, well, when both of them had told me that they  
18 were the front-seat passenger, then, I knew something  
19 was wrong.

20 Q Okay.

21 A So, at that time, at that point, I got both of them  
22 together, and we were all sitting in a room. And I told  
23 them in a very stern way that the occupant of that other  
24 [sic] vehicle was dead, and that -- that what they were  
25 doing now is playing; this is a serious matter; this is

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1 nothing to play with. I can't remember my exact words,  
2 but it was along that context. I was very stern with  
3 them, and I told them, this is nothing to play with;  
4 that young lady is deceased; and you all two are  
5 playing. There's no way that both of you all could be  
6 in the front seat of that vehicle.

7 It got very emotional. There was some tears shed.  
8 And at that particular time is when Ms. Bing said that  
9 she was the driver.

10 Q All right. Let me back up and just ask a couple of  
11 questions.. When you were speaking with Mr. Davis, --

12 A Yes, ma'am.

13 Q -- did he appear to be cut up at all, have  
14 lacerations on his face or anything?

15 A No, ma'am. Just the limp is all.

16 Q All right. And while you were having this  
17 conversation with Mr. Davis and the young lady, did Mr.  
18 Davis ever ask to talk to a lawyer?

19 A No, ma'am.

20 Q All right. Was he under arrest at the time?

21 A No, ma'am.

22 Q All right. Did you feel like he was talking to you  
23 freely?

24 A Yes, ma'am.

25 Q All right. Did he understand you were -- were you

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Continue Direct - Gates

1 in uniform?

2 A The same uniform I'm in now, today.

3 Q All right. Okay. So, at this point, you were  
4 having a conversation, and I stopped you. The young  
5 lady, did you identify her?

6 A Yes, ma'am, as Valandrea Bing.

7 Q All right. I can't remember if we had covered that  
8 or not. So, at this point you knew it to be Valandrea  
9 Bing?

10 A Yes. After that, she became emotional. I think it  
11 was maybe someone else in the room with her, also, in  
12 the room with us. I can't recall. It was an emotional  
13 time.

14 Q Okay.

15 A It was an emotional point.

16 Q All right.

17 A And is when she said that she was the driver.

18 Q Okay.

19 A She was taken out of the room by medical personnel.  
20 I'm not sure. X ray, CAT scan, I'm -- I can't recall  
21 what, but she was taken out. When she was taken out is  
22 when Mr. Davis then said that he was driving. And --

23 Q What did you do after that?

24 A Once he said that he was the driver, I can't recall  
25 exactly what I said to him after that.

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Continue Direct - Gates

1 Q Sure.

2 A I can't -- you know, I can't recall exactly. But I  
3 started preparing to treat this case as a felony DUI.

4 Q What does that mean?

5 A Felony DUI means that there's at least a death or  
6 great bodily injury, or a combination that was caused by  
7 alcohol impairment while you're driving the vehicle.

8 Q Okay. So, now you're thinking that might be the  
9 situation.

10 A Correct. I start preparing as -- I started  
11 gathering special, you know, for this. And it looks  
12 like I have a juvenile that is injured that is going to  
13 be flown.

14 Q Okay.

15 A And I have another occupant with at least cuts on  
16 her face.

17 Q All right. And then, another deceased?

18 A Oh, yes. So, we did have a deceased, also.

19 Q And how did you know that?

20 A I saw the deceased at the scene before I came to  
21 the hospital. I knew -- I knew of the deceased at the  
22 hospital, before I came to the scene [sic].

23 Q Okay. All right. So, now you're working a felony  
24 DUI.

25 A Started preparing for a felony DUI.

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Continue Direct - Gates

1 Q And what did you do after that?

2 A What I did was, I went and I got with medical  
3 personnel and let them know that I was going to need a  
4 -- some samples taken. I got the paperwork. And when I  
5 got the paperwork, before I said anything else to Mr.  
6 Davis, I read him -- him his *Miranda* rights.

7 Q Okay. And you say you needed samples. What kind  
8 of samples were you talking about?

9 A I was going to request --

10 MR. PLEXICO: Your Honor, I'll renew my prior  
11 motions at this time.

12 THE COURT: All right. Ms. Burchstead.

13 BY MS. BURCHSTEAD:

14 Q What type of samples?

15 A I was going to request blood and urine.

16 Q Okay. Why?

17 A I couldn't -- because we weren't at the scene, we  
18 were at the hospital, and he appeared to be somewhat  
19 injured, at least with a limp. So, I couldn't, as far  
20 as sobriety testing, one of the parts of the sobriety  
21 test, a field sobriety test, is using your -- your --  
22 his walk, using your legs. And so, with him having a  
23 limp and him being in the hospital, at the time, I  
24 couldn't give him a sobriety test, and I wasn't sure if  
25 he had been admitted or not into the hospital. So, I --

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1 I requested a breath sample -- I mean, I'm sorry -- a  
2 blood and urine sample, based off the felony implied  
3 consent rights there, also. But that was the main  
4 reason, because I couldn't give him a sobriety test on  
5 the side of the road, and it wasn't been a fair sobriety  
6 test, because he was -- already had the limp, and he was  
7 involved in a collision.

8 Q Sure.

9 A So, I requested that blood and urine be -- be  
10 taken.

11 Q Okay. So, does that aid in determining  
12 intoxication, potentially?

13 A Yes, ma'am, it does. I initially smelled the odor.

14 Q All right.

15 A From his breath. He did tell me that he drank,  
16 about the beers. I observed some, also, some of the  
17 glassiness and the redness in his eyes. And so, that's  
18 -- we had the death, had the great bodily injury. So, I  
19 asked the -- the blood and urine is what the blood is  
20 for we test for blood alcohol; and the urine, there  
21 could be drugs, also.

22 Q Okay.

23 A And so, that's what the felony DUI also says, blood  
24 and/or -- I mean, alcohol and/or drugs. Excuse me.

25 Q Okay.



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Continue Direct - Gates

1 A And so, those are two things.

2 Q All right. So, you're going to have the samples  
3 taken. How is that done?

4 A The way that is done is, I have --

5 Q Or was done in this case?

6 A In this case. I have the kit, the sample kit, in  
7 my possession. I get the -- the medical personnel, the  
8 lab technician, they actually -- we -- I have to fill  
9 out the -- the collection report, initially.

10 Q Okay.

11 A I have to fill out -- in this case, there are two  
12 vials, and there's also a cup for urine. There's two  
13 vials for blood, and then a cup for urine. I have to  
14 fill out these seals. The -- the medical technician, he  
15 or she actually draws the blood from the individual. I  
16 have to witness it. I have to write down when the blood  
17 draw -- when the blood is drawn. And then, I myself  
18 took the defendant into the restroom and watched him  
19 urinate into the cup.

20 When I got -- once I got the blood from the -- the  
21 medical technician, I actually sealed it myself. The  
22 technician actually signs the seal. I sealed it myself,  
23 both vials. And when I got the urine from the  
24 defendant, I sealed it myself, also.

25 Q All right. Now, before the samples are taken, did

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1       you explain anything to him about the process?

2       A     Yes, ma'am. I read him -- I read him what is  
3       called a felony -- it's implied consent for felony DUI.

4       Q     All right.

5       A     That basically tells him that what -- what it is  
6       I'm going to -- I'm going to request, and what it is, at  
7       that time, he's under arrest for.

8       Q     Okay. So, you did that in this case.

9       A     I did. I did it after I -- after I read his  
10      *Miranda* rights, I then read him his felony implied  
11      consent rights.

12      Q     Okay. Now, you said you actually filled out a form  
13      for the blood?

14      A     Yes, ma'am. It's called a Blood and Urine  
15      Collection Report.

16            MS. BURCHSTEAD: I beg the Court's indulgence. And  
17      permission to approach.

18            BY MS. BURCHSTEAD:

19      Q     All right. Corporal Gates, I'm showing you State's  
20      16. Can you tell us what that is.

21      A     Yes, ma'am. It's the South Carolina Law  
22      Enforcement Division Urine and Blood Collection Report  
23      that I filled out.

24      Q     All right. And is this in relation to requesting  
25      the sample?

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Continue Direct - Gates

1 A Yes, ma'am, it is.

2 Q All right. Who does this form go to?

3 A This form actually -- this actually goes to SLED,  
4 and we get a copy of it. But actually, this goes to  
5 South Carolina Law Enforcement Division for testing.  
6 This is actually the report in order to get the samples  
7 tested.

8 Q Okay. So, this just starts the process, then?

9 A Correct.

10 Q All right.

11 MS. BURCHSTEAD: And at this time -- well, I'll  
12 wait to publish it, Judge. Okay. Let me approach Mr.  
13 Plexico again.

14 And if I may approach.

15 BY MS. BURCHSTEAD:

16 Q I'm showing State's 17. Could you tell us what  
17 that is.

18 A Yes, ma'am. These are the implied consent rights.

19 Q All right.

20 COURT REPORTER: I'm sorry, these are what?

21 A Implied consent rights.

22 Q Okay. And did you go through that form with the  
23 defendant?

24 A Yes, ma'am.

25 Q All right. Thank you.

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1 MS. BURCHSTEAD: At this time, your Honor, the  
2 State moves 17 into evidence.

3 THE COURT: All right.

4 MR. PLEXICO: Subject to my prior objections.

5 THE COURT: All right.

6 MS. BURCHSTEAD: And permission to publish. Beg  
7 the Court's indulgence.

8 ITEM IDENTIFIED AS COPY OF  
9 IMPLIED CONSENT RIGHTS MARKED  
10 STATE'S EXHIBIT NUMBER 17,  
11 ADMITTED AS EVIDENCE.

12 BY MS. BURCHSTEAD:

13 Q Okay. So, I believe your testimony is that you  
14 talked with Mr. Davis and Ms. Bing, that they both had  
15 claimed to be passengers at one point.

16 A Yes, ma'am.

17 Q And Mr. Davis, at some point, claimed to be the  
18 driver.

19 A Yes, ma'am.

20 Q All right. And am I correct that effected your  
21 determination to take a blood and urine sample?

22 A Correct.

23 Q All right. Now, Ms. Bing, did you tell us that she  
24 claimed to be the driver at some point?

25 A She did. She did when I had both of them together.

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1 Q All right. So basically, both of them claimed to  
2 be driving and not driving. Is that correct?

3 A That's correct.

4 Q Okay. Did you take statements from them that day,  
5 written statements?

6 A Yes, ma'am, I did.

7 Q All right.

8 MS. BURCHSTEAD: I beg the Court's indulgence here.  
9 Approach Mr. Plexico. Thank you. May I approach?

10 BY MS. BURCHSTEAD:

11 Q Okay. I'm showing you State's Exhibit 18. What is  
12 that?

13 A That is a statement from Mr. Davis that he wrote on  
14 that day.

15 Q Okay. So, at what time -- is there a time denoted  
16 of when the statement was written?

17 A Yes, ma'am. It's 6:30 p.m.

18 Q Okay.

19 A November 1st.

20 Q Okay. So, was that after the blood collection?

21 A Yes, ma'am.

22 Q Okay.

23 A What happened was, after I did get the sample from  
24 Mr. Davis, --

25 Q Um-hmm.

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1       A     -- there were two gentlemen standing outside.  
2       Where the lab is situated, it was closest to where the  
3       doors for where the visitors sit.

4       Q     Um-hmm.

5       A     Two gentlemen initially wanted to talk to me before  
6       we did -- I did the sample. I do recall that. And I  
7       told them they had to wait until I got finished.

8       Q     Okay.

9       A     When I was finished with the sample, getting the  
10      samples, while Mr. Davis was speaking to the two  
11      gentlemen, they spoke to him, and then they motioned for  
12      me to come to them. So, I walked over to the two of  
13      them, and I didn't get their names, but they said, he,  
14      pointing to Mr. Davis, that he had something to tell  
15      you, or wanted to tell you. Something to that effect.

16      Q     Sure.

17      A     I asked him, what was it that he wanted to tell me.  
18      And that's when he told me that he was the driver.

19      Q     Okay. So, the statement that was memorialized in  
20      writing, who actually wrote it out, referring to State's  
21      Exhibit 18 again?

22      A     Mr. -- Mr. Davis. Excuse me.

23      Q     That's his handwriting?

24      A     Yes, ma'am.

25      Q     He wrote it?

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1 A He wrote that.

2 Q All right. And --

3 A Within my presence.

4 Q Okay.

5 MS. BURCHSTEAD: At this time, State moves 18 into  
6 evidence, Judge.

7 MR. PLEXICO: Your Honor, that may be -- and I have  
8 no objection.

9 THE COURT: All right.

10 MS. BURCHSTEAD: Okay. And permission to publish.

11 THE COURT: All right.

12 ITEM IDENTIFIED AS STATEMENT

13 OF DEFENDANT MCKENZIE DAVIS

14 MARKED STATE'S EXHIBIT NUMBER 18,

15 ADMITTED AS EVIDENCE.

16 BY MS. BURCHSTEAD:

17 Q All right. If you would, just read the statement  
18 out.

19 A Okay. It says:

20 I pick up Vale and --

21 I think that's --

22 -- Minor [REDACTED] and Shea. I let Vale dive

23 -- drive to my house first. We stopped by

24 the store and dropped off Dean. We

25 was on the way to my house to clean up. We

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1           was just leaving Allendale, and Vale was  
2           diving. The truck hit the grass and with  
3           out -- with out of control and hit two trees.

4       Q    All right. And this was written after he had --  
5           after Mr. Davis had talked with a couple of -- a couple  
6           of folks, a couple of guys?

7       A    Yes, ma'am. When he told me that -- after that, he  
8           wasn't driving, is when I got he and Ms. Bing together,  
9           and I had them both write a statement there. That was  
10          the statement he wrote in my presence, and I had her  
11          write one, also.

12       Q    Okay. All right.. Now, you just mentioned you had  
13          her write one, also.

14       A    Correct. I had both of them write me one.

15       Q    Could you give us the details of having her -- did  
16          Ms. Bing write the statement herself?

17       A    She did. Both of them wrote them at the same time.  
18          This was the second time that I got them together again.

19       Q    Okay.

20       A    From the second discrepancy.

21       Q    All right. Okay. All right. Now, did you  
22          actually make an arrest that day? Did you actually fill  
23          out the paperwork to charge Mr. Davis that day?

24       A    I did not.

25       Q    You did not.



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1       A     What I did was, I called my supervisor after he  
2       came and told me that he was not driving the second  
3       time, after I took the samples. I called my supervisor  
4       at the scene to ask the question about, what do we  
5       need to do. And what he told me and what we decided on  
6       was --

7           MR. PLEXICO: Your Honor, I would object to  
8       hearsay.

9           THE COURT: All right.

10          BY MS. BURCHSTEAD:

11       Q     Go ahead and tell us why you didn't arrest him.

12       A     What I -- so, what -- what I did was, based off of  
13       what he initially told me, Mr. Davis did, that he was  
14       driving, from what I gathered at the hospital, and, you  
15       know, by evidence I got at the hospital, and then  
16       getting the samples, under the -- at that point, I was  
17       believing he was the driver, based off of what I saw and  
18       the statement he gave me.

19           And then, after, he was going back on his story.  
20       What we decided was, since there was the discrepancy  
21       again, we needed to have -- we needed to let evidence  
22       show who would be the driver. So, I did not take Mr.  
23       Davis into custody that day, Number 1, because I wasn't  
24       sure he was released from the hospital and was going to  
25       be able to be seen from a doctor. We knew if we needed

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1 to find him, we could. We knew we had evidence at the  
2 scene of the collision, and we needed to find out, since  
3 we do have two people telling me two different things at  
4 two different times, that we needed to let evidence show  
5 who was the driver.

6 So, I did not place him under what I call -- what  
7 we call a custodial arrest, is where I actually put him  
8 in handcuffs and take him into my custody. I actually  
9 did a technical arrest at that time, while reading his  
10 *Miranda* rights. So, he was under arrest, reading his  
11 felony DUI statement. I did not take him under arrest  
12 at that time because of that fact, because we still had  
13 what I call a grey area at that time. We couldn't --  
14 so, we were going to let evidence show who would be the  
15 driver.

16 Q Okay. And was he later arrested?

17 A Yes, ma'am, he was later arrested.

18 Q All right. So, without going into details, to your  
19 knowledge, there was additional evidence obtained?

20 A Yes, ma'am, there was additional evidence obtained.

21 Q All right. Now, after you left the hospital that  
22 day, the day of November 1, 2008, --

23 A Yes, ma'am.

24 Q -- did you continue your investigation?

25 A Yes, ma'am, I did.

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1 Q What did you do?

2 A Excuse me. The -- what I did was, I went to the  
3 Children's Hospital in Richland, Columbia, South  
4 Carolina, Richland Memorial.

5 Q How come?

6 A And to speak to Minor [REDACTED]

7 Q All right. So, was Minor [REDACTED] -- that's where he was  
8 now?

9 A Yes, ma'am.

10 Q All right. And what day is this?

11 A I believe it's going to be November the 3rd.

12 Q The 3rd?

13 A Correct.

14 Q All right. So, you talked to him two days later?

15 A Yes, ma'am.

16 Q All right. So, Minor [REDACTED] was in the hospital two  
17 days later.

18 A Yes, ma'am.

19 Q In Richland County.

20 A Yes, ma'am.

21 Q All right. And at what hospital did you say?

22 A It was the Children's Hospital in -- I think at  
23 Richland Memorial.

24 Q All right.

25 A In Columbia.

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1 Q Okay.

2 A So, I drove there. I made sure that his mother was  
3 there, because he was a juvenile, to interview him  
4 further.

5 Q Okay. And so, you actually talked with Minor [REDACTED]

6 A Yes, ma'am, I did.

7 Q All right.

8 A I did, I interviewed him.

9 Q Okay. And did you learn anything to assist in your  
10 investigation?

11 A Yes, ma'am. He actually gave me a statement. This  
12 is when I got a statement from Minor [REDACTED] He couldn't  
13 write, I think, because of -- I think he had an issue  
14 with his arm or shoulder.

15 Q Um-hmm.

16 A So, I wrote it verbatim from what he told me. And  
17 so, I actually wrote the statement from what came out of  
18 his mouth.

19 Q Okay. And did he give you any indication of a  
20 driver at that point?

21 MR. PLEXICO: That would be hearsay, your Honor.

22 THE COURT: That's right. Sustained.

23 BY MS. BURCHSTEAD:

24 Q So, did you say you wrote the statement?

25 A I had to write the statement because he could not

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1 write it.

2 Q Okay. All right.

3 MS. BURCHSTEAD: Beg the Court's indulgence.

4 BY MS. BURCHSTEAD:

5 Q Just one last question. Other than the blood and  
6 urine sample, did you obtain any evidence yourself? Did  
7 you collect any evidence yourself?

8 A No, ma'am, I did not. Just those two.

9 Q All right. And that was, again, after you had read  
10 the implied consent to --

11 A Correct. I had read him his *Miranda* rights, and  
12 then I read him his -- the implied consent rights. And  
13 then, I got the samples.

14 Q Okay.

15 MS. BURCHSTEAD: Your Honor, that's all the State's  
16 questions at this time.

17 THE COURT: All right.

18 MR. PLEXICO: May I approach the witness?

19 THE COURT: You can do it.

20 CORPORAL DENARD THEOTRICUS GATES

21 CROSS-EXAMINATION BY MR. PLEXICO:

22 Q Is this, the one page, your notes?

23 A Yes, sir. That's one page of my notes that I wrote  
24 at the scene or at the hospital.

25 Q Is that --

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1 MS. BURCHSTEAD: May I see what Defense counsel is  
2 referring to? Thanks.

3 BY MR. PLEXICO:

4 Q Are there notes on the back of that?

5 A Yes, sir, there are.

6 Q Are there any notes -- are those notes -- when were  
7 those notes placed on the back of that?

8 A Should be the same day that I was at the hospital.

9 Q Okay. All right. Do you have a formally-written  
10 -- these are all hand-written notes on what, one blank  
11 sheet of paper?

12 A Yes, sir. This is a -- this is what I normally use  
13 if I go to a collision. It's -- has a little kind of  
14 format I kind of made up. And you know, you've got the  
15 GPS coordinates and what time I was notified, what time  
16 I arrived, the date, where was the road. And so, I kind  
17 of use that, especially in a collision.

18 Q Are there even lines on the page?

19 A No, sir. This is something I made up myself off of  
20 a letterhead, and I just put it together as my own -- my  
21 own little thing, so I could take notes at a collision.  
22 Has things that, you know, on the top that are pertinent  
23 to the collision itself, like when I get there, so I  
24 won't forget things, you know, like GPS coordinates and  
25 things of that manner. And the time I arrive and time,

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1     those are things that we need to put on the main report  
2     itself. So, these are just field notes. This is  
3     something I have as field notes, just for myself that I  
4     made up.

5     Q     All right. Did you do a formal incident report in  
6     regards to this matter and place it in your file? Did  
7     you type up a --

8     A     I did a -- I did a wreck report. I believe I did  
9     the -- this report. I did so many reports. I had to --  
10    I did so many -- many reports. Wreck reports. This was  
11    a -- ended up being a MAIT case, also. So, we have  
12    protocols far as how we do our reports. And then, the  
13    MAIT team actually goes and -- and takes -- they do the  
14    more -- the other things as far as collision itself, as  
15    far as investigating the collision.

16    Q     Is that the entire sum of your file there in front  
17    of you, all of it?

18    A     No, sir. These are just some of the statements  
19    that I took there at the scene, because those things  
20    were taken, once I did -- once -- I don't have any of  
21    the reports themselves in front of me now, because all  
22    those were taken after I admitted the reports and put it  
23    into one big file. These are -- these are just -- these  
24    are actually copies of the -- that is what I -- the same  
25    thing that you got that is what I gave as far as copies.

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1 Q Okay. So, you didn't do an actual incident report  
2 on this matter, in recording what was said?

3 A Recording what was said?

4 Q Yes.

5 A I took -- well, according to -- okay. Let's get  
6 that straight. Recording what was said at the scene or  
7 at the hospital?

8 Q Did you make an incident -- just to start with, did  
9 you --

10 A Okay.

11 Q -- did you do an incident report, aside from that  
12 handwritten -- those handwritten notes?

13 A I did numerous reports. I can't recall if I did a  
14 actual incident report. I can't recall if I did. I did  
15 numerous reports on this particular collision. These  
16 are just field notes that I took at the -- just for at  
17 the scene then. As far as that, I can't recall. I did  
18 numerous reports, numerous reports on this wreck.

19 Q Do you have one you can produce today for us?

20 A I don't have one in front of me, no, sir.

21 Q Okay.

22 A I have statements, but I don't have the actual --  
23 any of those reports. I have the wreck reports, but I  
24 did those reports.

25 Q Okay. All right. There is a line drawn across



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Cross - Gates

1       that page that you're looking at from your field notes.

2       Is that correct?

3       A     There's a line drawn across --

4       Q     Is that a line, in the middle of the page, from the  
5       left to the right, there's a line drawn.

6       A     In the middle, yes, sir.

7       Q     Okay. And below that is some information about Mr.  
8       Davis. Is that correct?

9       A     Yes, sir.

10      Q     All right. Does that say anything at all there  
11     about two beers?

12      A     No, sir, there's not.

13      Q     Okay. All right. Here, at the bottom part of the  
14     page, referring to Mr. Davis, it says, *driver*, correct?

15      A     That's correct.

16      Q     All right. And on the top part of the page, you  
17     have FSPASS. Is that front-seat passenger?

18      A     That's what I use for a reference, correct.

19      Q     And you made these notes contemporaneous that day,  
20     right?

21      A     Yes, I did.

22      Q     Okay. So, your eyes made out that he was the  
23     driver. Is that correct? At that time.

24      A     No, sir, it was not.

25      Q     Okay. But you wrote *driver* in reference to him,

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1 correct?

2 A I did, once I determined he was the driver, but I  
3 didn't write it before.

4 Q All right. Now, so, you had determined he was the  
5 driver that day, before 16:40 -- or 16:20, correct?

6 A Before I *Mirandized* him, before I gave him his  
7 implied consent, I did, correct.

8 Q Okay. All right. And you gave him his implied  
9 consent, correct?

10 A Correct.

11 Q All right. Now.

12 MR. PLEXICO: Court's indulgence, please.

13 THE COURT: Okay.

14 BY MR. PLEXICO:

15 Q On 11/2, did you not fill out accident reports that  
16 -- is this -- did you not fill out accident reports?  
17 Yes or no.

18 A Yes, I filled out numerous reports.

19 MR. PLEXICO: May I approach him?

20 BY MR. PLEXICO:

21 Q And you filled out many accident reports. There's  
22 many -- is that correct?

23 A Yes, sir.

24 Q All right. And does that have your signature on  
25 the bottom?

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1 A Yes, sir, it does.

2 Q And does that have a date of 11/2, beside your  
3 signature?

4 A Yes, sir. That's not my signature.

5 Q Okay.

6 A Let me -- let me explain. Let me explain this, how  
7 this works. The investigating officer name is my name,  
8 my rank, and my badge number, and my -- and my -- and  
9 the code for our particular area. The date, as a  
10 reviewer, that's the date it was reviewed, on the 2nd.

11 Q Okay. And what does it say about who the driver  
12 is? Does that form, in that space, does it say,  
13 *Unknown*?

14 A It does say, *Unknown*.

15 Q So, your supervisors, who's overlooking your  
16 investigation, they filled out a report saying we don't  
17 know who the driver is. Is that correct?

18 A No, sir. I filled the report out. The reason I  
19 filled it out and it says, *Unknown*, is because, when he  
20 came back and they wrote those statements, is that we  
21 still kept it at that, and we were going to go -- and  
22 that's when we kept it as we did initially. And that's  
23 when I -- that's why I did not place him under -- in my  
24 custody, as far as arrest.

25 Q Thank you.

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1       A     And we were going to -- we had evidence, and we  
2       collected the evidence, and we were going to let the  
3       evidence show that. So, that's why we left it as that,  
4       until we had further proof.

5       Q     Okay. Now, then, so, after that, you said you had  
6       evidence, and you checked out [sic] the items into a  
7       storage locker, correct? Is that correct?

8       A     I did not say that. No, sir.

9       Q     You didn't?

10      A     I said that I collected blood and urine.

11      Q     All right.

12      A     But that's the only evidence that I collected.

13      Q     All right. Now, have you ever heard of the South  
14      Carolina Department of Public Safety Evidence Locker?

15      A     Yes, sir.

16      Q     Okay. Do you recall signing it out of this log?

17      A     I don't recall signing that one. I mean, it's been  
18      six years ago. I don't recall it.

19      Q     Okay. Do you doubt that you did?

20      A     Do I doubt that I signed that one?

21      Q     Yes.

22      A     I don't doubt that I signed one.

23      Q     All right.

24      A     I just don't recall signing it.

25      Q     Is there a warrant number --

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1 MR. PLEXICO: May I approach the witness?

2 THE COURT: Sure.

3 BY MR. PLEXICO:

4 Q First, is this an evidence log?

5 MS. BURCHSTEAD: May I see what we're referring to?  
6 Okay.

7 BY MR. PLEXICO:

8 Q Is this an evidence log?

9 A Yes, sir, it is.

10 Q Is it a Highway Patrol evidence log?

11 A Yes, sir, it is.

12 Q Is this dated 11/2 and your name?

13 A Yes, sir, it is.

14 Q And did you check in samples under Warrant K007946?

15 A Yes, those samples were checked in, but --

16 Q Under that warrant number?

17 A Yes, sir. Yes, sir. That's it, yes, sir.

18 Q So, the next day, you testified that you don't --  
19 your department and you do not know who the driver is,  
20 correct? That's on 11/2, the next day, correct?

21 A Yes, sir. That's what we put on the report at that  
22 time. We still have as the driver on the --

23 Q On the other hand, the same day, you got a warrant  
24 on my client, without knowing who the driver was. Is  
25 that right?

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1 A We did not get a warrant the next day.

2 Q Is that a warrant number that you put down on 11/2?

3 A We did not -- the warrant was not got -- gotten on  
4 the next day. We did not -- we did not obtain a warrant  
5 the next day.

6 MR. PLEXICO: May I approach the witness?

7 THE COURT: Okay.

8 BY MR. PLEXICO:

9 Q Is this Warrant Number 007946?

10 A Yes, sir, it is.

11 Q Is that signature of affiant is Gates, being  
12 Trooper Gates?

13 A Yes, it is.

14 Q Okay. Now, so, you've seen this warrant. Is the  
15 number on this log, K007946, the same as that warrant  
16 number?

17 A It is.

18 Q May I have it back? Is the defendant, McKenzie  
19 Davis, in that warrant number?

20 A Yes, sir. I see that.

21 Q Okay. All right. So, on the one hand, you're  
22 saying, I don't know what's -- I don't know who the  
23 driver is. On the other hand, you're out getting  
24 warrants on my client. Is that correct?

25 A Like I said, the information that I got at the

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1 hospital, the reason I didn't place him under arrest is  
2 because of the discrepancy.

3 Q Okay. Now, let's talk about the arrest, if we may.  
4 Okay. And I'll waive into evidence -- is this an  
5 advisement of an implied consent, Item -- this is  
6 Plaintiff's Exhibit 17?

7 A Yes, sir, it is.

8 Q All right. Now, was this test video recorded?

9 A No, sir, it was not. The reason was, because my  
10 video camera, the mic does not reach into buildings that  
11 where our vehicle is parked. So, it doesn't go -- it  
12 won't work inside of a building.

13 Q Okay.

14 A It won't work.

15 Q All right. So, if it says, *if the answer is no,*  
16 *start here.* Is that correct?

17 A Are you reading from which one? It's two different  
18 ones.

19 Q The felony driving under the influence advisement.

20 A Under felony? Okay.

21 Q Okay. *Will it be videorecorded? If answer is no,*  
22 *it says, start here,* and it has a line, correct?

23 A Correct.

24 Q And that's into evidence, correct?

25 A Correct. It says exhibit.

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1 Q All right. So, that's where you started that day.

2 A Right.

3 Q Okay. So, you tell him he's under arrest. He's  
4 directed -- so, you order him to give the samples. Is  
5 that right?

6 A That's correct, according to what it says there.

7 Q Okay. And it's, you tell him, *you must*, an  
8 imperative, a demand, a command, he must submit to your  
9 test, correct?

10 A I only read to him what it says here.

11 Q Is that what it says?

12 A Which -- which line are you -- line are you on?

13 Q On the fourth bar down. *Pursuant* -- starting with  
14 *pursuant to*. Fourth little star.

15 A Yes. It says:

16 *You must submit to either one or a*  
17 *combination of chemical tests for the purposes*  
18 *of determining the presence of alcohol or drugs,*  
19 *and/or a combination of alcohol or drugs.*

20 Q Okay. All right. Now, so, he's --

21 MR. PLEXICO: Court's indulgence, please, Judge.

22 THE COURT: All right.

23 MR. PLEXICO: This is a -- may I approach the  
24 witness?

25 THE COURT: Okay.



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1 BY MR. PLEXICO:

2 Q Do you have a copy of the sample collection?

3 A I don't have it with me here -- with me in here.

4 Q All right. Could you examine that.

5 A Sure. Okay.

6 Q All right. Did you put a time of arrest? Did you  
7 put a time of arrest in regards to that?

8 A I did.

9 Q And what time was that?

10 A 4:20.

11 Q And that was the afternoon, correct?

12 A That's correct.

13 Q All right. Now, you checked that he's been implied  
14 -- that he's been advised of his implied consent rights.  
15 Is that correct?

16 A That's correct.

17 Q Okay. So, implied consent means that they can  
18 consent or not. Is that correct?

19 A No, sir.

20 Q Okay. Just want to be clear on that.

21 A No, sir.

22 Q So, you checked -- did you not check, where it  
23 says, *Subject is under arrest*?

24 A Correct.

25 Q So, there's no doubt about him being under arrest,

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1 correct?

2 A Correct, there's no doubt. When I read his *Miranda*  
3 rights at 16:20 is when he's placed under arrest.

4 Q Okay. All right.

5 A That doesn't mean he was in custody. That means he  
6 was handcuffed. He was under arrest after I read him  
7 his *Miranda* rights.

8 Q Did you follow that form to the letter?

9 A Which one are you speaking of? The police report?

10 Q The implied consent form that I gave you earlier,  
11 that's into evidence, did you start where it says, *If*  
12 *not being videotaped, start here?*

13 A I did.

14 Q Okay. And you're certain of that? This is six  
15 years ago, but you're certain you stopped there, right?

16 A You said I stopped there or I started?

17 Q That's where you started. Excuse me.

18 A Yeah, started.

19 Q Okay. All right. So, you really didn't read him  
20 his implied consent rights -- excuse me -- his *Miranda*  
21 rights, because that's only done in the section where it  
22 says that it's being videotaped.

23 A Well, I read -- I read his *Miranda* rights before I  
24 even done anything -- investigating. There's nothing --  
25 I could -- I read him his *Miranda* rights before I asked

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1 him anymore questions.

2 Q Right.

3 A So, before I started anything further, I *Mirandized*  
4 him first.

5 Q Okay.

6 A I read him his *Miranda* rights first before I did  
7 anything further, before I even told him about anything  
8 else I was going to do, or anything further to the  
9 investigation, once I made my determination. So, that's  
10 why I read him his rights, so he -- so he would know his  
11 rights, and then I went further. So, before I did  
12 anything else, I *Mirandized* him.

13 Q All right. Could I see the exhibits back and my  
14 form, please. Thank you. Okay. All right. Now, and  
15 you take notes of important matters, correct?

16 A Yes, sir.

17 Q And if you don't properly advise clients of their  
18 rights, those things are looked down upon. Isn't that  
19 correct? Defendants, arrestees? That's not approved by  
20 Highway Patrol, is it?

21 A Repeat the last question.

22 Q The Highway Patrol policy is you should advise  
23 people of their rights, correct?

24 A Yes, sir.

25 Q All right. Now, this is Exhibit 17. Now, did you,

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1 on your handwritten page of notes, that's all you have  
2 from that day, those notes, correct?

3 A Yes, sir.

4 Q Did you put anything down where he was advised of  
5 his rights?

6 A Yes, I did.

7 Q And that is in the form that I just showed you?

8 A No, sir. This is the form -- this is the -- the  
9 copy of the notes that you have is the same copy I have.  
10 I wrote it on the back of the -- of the copy of the  
11 notes.

12 Q Did you provide that to anybody?

13 A I guess, if you have a copy.

14 Q May I see your copy?

15 A Sure.

16 Q Is there anything on the back of this? Do you have  
17 ample room to write on the back? There's one page. Is  
18 that correct?

19 A Do I have ample room?

20 Q Yes.

21 A Yes, I have some room.

22 Q Did you notice -- did you put down anything about  
23 having two beers?

24 A No, sir, I did not.

25 Q Okay. Did you testify previously, not in front of

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1 this jury, in regards to this matter?

2 A Did I testify previously?

3 Q Not in front of this jury, about this, under oath?

4 A I believe I have at a prelim -- a preliminary  
5 hearing.

6 Q Okay. All right. Is it not true that you did not  
7 testify at that time, when the defendant was asked, *did*  
8 *you have something to drink*, that his answer was yes;  
9 not *two beers*?

10 A I can't recall. I can't recall.

11 Q Is it because it was six years ago?

12 A That's got something to do with it. I can't recall  
13 as far as that prelim hearing. That was more than two  
14 years ago. I can't recall exactly what was said at that  
15 preliminary hearing.

16 Q So, you don't know what he said, because you didn't  
17 write it down.

18 A No, sir, that's not true. I don't recall exactly  
19 what was said at the preliminary hearing, as you asked.

20 Q Okay. Well, do you remember six years ago?

21 A Yes, sir, I do.

22 Q Okay. About that time, did you fill out an  
23 affidavit to accompany that warrant that I showed you  
24 earlier?

25 A That you showed me.

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1 Q Yes.

2 MR. PLEXICO: May I? May I approach?

3 BY MR. PLEXICO:

4 Q Is this the affidavit you attached your name to,  
5 sir? Please examine that.

6 A Yes, sir, this is the affidavit.

7 Q Have you read it?

8 A I read it before, but let me read it now.

9 WITNESS READING DOCUMENT.

10 A Okay.

11 Q May I have it back?

12 A Sure.

13 Q The affidavit that you filled out says nothing  
14 about two beers; does it not?

15 A No, sir. It says that he drank alcohol.

16 Q All right.

17 *I asked him if he had any alcoholic*  
18 *beverages to drink. He stated yes.*

19 Is that what you swore to under oath in 2009?

20 A Yes.

21 Q If he had stated he had two beers, you would have  
22 put that down instead; wouldn't you?

23 A Well, two beers is considered alco -- beer is  
24 considered alcoholic beverage, so.

25 Q Did he say yes, or did he say two beers? Those are

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1 different words. What words came from my client's lips?  
2 Do you remember?

3 A I remember just what I put in the affidavit. Yes,  
4 he had alcoholic beverages; yes, they were beers.  
5 Because it was six years ago, and that was done then.  
6 But yes, he did tell -- state to me that he did drank  
7 some beers. I recall two beers today. At that time, I  
8 put, yes, he did drink some alcoholic beverages.

9 Q So, this is in 2009, correct?

10 A That's correct.

11 Q And you're taught to be full and complete at the  
12 academy, correct.

13 A Yes, sir.

14 Q All right. So, this is 2014, five years later,  
15 correct?

16 A Yes, sir.

17 Q So, you have a better memory of an event five years  
18 later than you did right afterwards?

19 A It's not that it was a better memory of the event.  
20 It is -- that is my recalling. Okay? That's what I  
21 recalled at that day, today, when I spoke to him. At  
22 that time, during -- when I wrote the affidavit, then  
23 that's what I had at the time I wrote the affidavit.  
24 So, this is what I recalled at that time.

25 Q Okay. Thank you.

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1 A That time, as far as -- when that was written and  
2 where I am today. Should I have had better time to  
3 review the case further, --

4 Q Excuse me?

5 A -- to review the case further, to refresh my memory  
6 from six years ago, so I could -- so I could refresh my  
7 memory. But --

8 Q Did you just ask for more time to review the case,  
9 sir?

10 A No, I had more time to review. Other words, I've  
11 been looking at it more to refresh my memory, just like  
12 these notes here.

13 Q Other words. Okay. Did you forget? Is that why  
14 you had to refresh your memory is because you had  
15 forgotten?

16 A Well, it was six years ago, but it's always best to  
17 refer to whatever notes I have, because, then, that way,  
18 I can be more accurate as possible. So, I always refer  
19 to notes that I've written to refresh, because that --  
20 the more -- it has been six years ago. But even if it  
21 weren't six years ago, if it was six months ago, it's  
22 still advantageous to use whatever I have that I wrote  
23 down at the scene to refresh my memory.

24 Q What indicates in all that material that you  
25 reviewed, two beers? Where does it say two beers, and



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1     you said, oh, two beers; here's where I wrote it down?  
2     Where, in all of that material that you have, and you  
3     have a big stack up there, right? It's a pretty big  
4     stack. Hold it up. Don't you have a folder up there?

5     A     I do, but that's not concerning -- that's not --  
6     has nothing to do with this case.

7     Q     So, that's all you have?

8     A     Yes, sir, that's all I have that I still have in my  
9     possession. Everything else has been turned over.

10    Q     Okay. All right. Can you show me where any  
11    document you've had where you recorded that my client  
12    said he had two beers?

13    A     My --

14    Q     When you interviewed him in 2008.

15    A     I don't have anything here that -- that's -- that I  
16    wrote down *two beers*. But that's what -- that's what I  
17    recall him saying to me.

18    Q     All right. Does a document exist, yes or no --

19    A     No, sir.

20    Q     -- where you wrote down that he said he had two  
21    beers?

22    A     No, sir, it does not.

23    Q     So, entirely in your memory of that day, correct?

24    A     Yes, sir.

25    Q     All right. And it's in opposition to what you said

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1 in 2009, right, months -- a couple of months after the  
2 accident where he merely said -- you asked if he had any  
3 alcoholic beverages to drink. He stated yes.

4 A No, sir, that's not opposition. That just -- that  
5 just doesn't say two beers.

6 Q All right. Yes and two beers are two different  
7 answers, correct? One is yes, and one is two beers.  
8 They're two different things.

9 A No, sir.

10 Q Okay. All right. All right. You get to the  
11 accident scene, correct?

12 A Yes, sir.

13 Q Can you see this photograph?

14 A Yes, sir, I can.

15 Q Okay. The vehicle's in the top-left quadrant.

16 A Yes.

17 Q Is this the wreck scene?

18 A Yes, sir.

19 Q Is this the road down the hill from the wreck  
20 scene?

21 A Yes, sir.

22 Q All right. And it goes around a curve, correct?

23 A Yes, sir.

24 Q Are there deep ruts in the roadway?

25 A The deep ruts?

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1 Q Do you see the deep ruts in the bottom-left  
2 quadrant.

3 A Are you speaking here?

4 Q On the right lane.

5 A Oh, here.

6 Q On the bottom-right quadrant.

7 A This here. Is this what you're referring to?

8 Q Right.

9 A Yes, I see like, four, like, little indentations in  
10 the road there.

11 Q Okay. All right. How deep are those ruts?

12 A By looking at the picture, I can't say how deep  
13 they are.

14 Q Okay. But it's a series of visible ruts in that  
15 lane of the road, approaching going up the hill, which  
16 was the direction of the travel of the vehicle, correct?

17 A Yeah, they're in that lane, and I see the ruts.  
18 Now, which way they came from or where they came from, I  
19 don't know. But I see the -- I do see the -- the ruts  
20 on that side there.

21 Q Did you measure those ruts as part of your  
22 investigation?

23 A No, sir, because I did not see those ruts.

24 Q Did you examine the road as part of your  
25 investigation?

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1       A     I -- well, as I turned off -- turned onto Oswald  
2       Road and I drove towards the scene, I drove to where I  
3       saw the emergency vehicle and when I saw -- when I saw  
4       the crash. So, I saw the crash to my left as I came up,  
5       but I did not recall seeing that as I drove there.

6       Q     All right. You have the ruts in the lane. You  
7       have where the grass is struck and the vehicle veers  
8       over into the trees, correct?

9       A     Those ruts are not in the same as where I saw the  
10      marks going from the edge of the trees. That's not in  
11      the same area.

12      Q     Correct. So, if the vehicle hit the ruts, bounced,  
13      slid on a South Carolina country road, two wheels went  
14      off the road into the grass and it spun around, it could  
15      have hit those ruts.

16      A     Well, I may have hit them, but I didn't do the same  
17      thing going up there.

18      Q     Excuse me?

19      A     I didn't recall running over them or notice that  
20      they were there myself.

21      Q     Okay. But they're there. There's no question  
22      about that.

23      A     According to that picture.

24      Q     They're there. And it's a series of ruts, correct?

25      A     Like, four or five.

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1 Q Okay. All right. All right. And my client was --  
2 you were going to take those samples that you took. He  
3 had no choice about the matter. You followed him into  
4 the bathroom, as a matter of fact, correct? You were  
5 going to get your samples, correct?

6 A Make sure that he gave a proper sample, and he did  
7 a proper.

8 Q Okay. All right. Now, isn't it true that the  
9 back-rear window, where Ms. Sierra was seated, that was  
10 broken, correct?

11 A I can't -- could I look at a picture?

12 Q Okay.

13 MR. PLEXICO: May I -- may I, Madam Court Reporter?

14 COURT REPORTER: Yes, please.

15 BY MR. PLEXICO:

16 Q Is this where Ms. Sierra was sitting?

17 A That, I do not know, because there's -- because Ms.  
18 Sierra was still in the vehicle when I arrived.

19 Q Okay. All right.

20 A And when I left, she was still there.

21 Q Okay.

22 A There was nobody in that seat there.

23 Q All right. Is there blood in this seat?

24 A Yes, sir. There appears to be blood.

25 Q All right. A goodly amount?

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1 A Yes, sir.

2 Q Okay. And there's broken glass in the seat? I'll  
3 withdraw that question. Let me ask it this way. Based  
4 on your experience as an accident investigator, would it  
5 appear to you that there is glass in that seat?

6 A Yes, it looks black. It must have been tinted,  
7 been tinted glass or something. It was black, broken  
8 glass there.

9 Q Could it be blood stains?

10 A No, because it looks like it's red, this one here.  
11 I would think would be blood, and those are black specks  
12 there. So, I don't think that would be -- the black  
13 would be blood. I think the red would be, but not the  
14 black.

15 Q All right. But that is -- there are glass chips  
16 there, correct?

17 A Yes, it appears to be glass, yes, sir.

18 Q Okay. All right. Did the sunroof shatter?

19 A It's kind of hard to tell on that picture. The  
20 roof is damaged, but I --

21 Q Is that severe?

22 A I wouldn't -- I don't even -- oh, yeah.

23 Q Severe. Is that severe damage to the roof?

24 A It's -- you can definitely see where the tree was,  
25 and it bent -- and it pushed on the top of that roof.

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Cross - Gates

1 Yes, sir.

2 Q Okay. All right.

3 A But I don't even know if the vehicle had a sunroof.  
4 I don't even recall that. I can't tell in this picture.  
5 I just see that the roof is bent upward, but I don't see  
6 where a sunroof is or was.

7 Q Do you see the light spot there? Would that  
8 indicate a sunroof to you, sir?

9 A It could, but I don't see anything where -- it  
10 looks like there's a -- like a roof rack. I think they  
11 call it a ski rack or something, but I don't even see --  
12 I don't see -- I just see metal. I don't see where,  
13 like, something was or is. I just see metal, and I see,  
14 like, the thing going across the top of the roof. But I  
15 don't see any opening where some glass was or was at  
16 some point in time. I don't see that.

17 Q All right. Was the window on the back-right,  
18 passenger door broken, shattered?

19 A If you have a picture, I could --

20 Q Do you recall?

21 A I don't -- I don't think the window where you're  
22 speaking of was there. I don't think that window was  
23 there when I went to the scene.

24 Q Okay. All right.

25 A I think it wasn't, but I just can't -- you know,

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Cross - Gates

1 I'd have to see a picture to refresh my memory. I don't  
2 think it was.

3 Q All right. The front-right passenger window was  
4 down at the time of the accident, correct?

5 A If you're meaning this picture here, that window's  
6 down.

7 Q Okay.

8 A And it looks like there's something -- like it was  
9 broken. There's, like, some glass or wood was hanging  
10 down from there where, I guess, where they had to make  
11 the plastic stay together.

12 Q May I see? May I see?

13 A That's what it looks like hanging from there. In  
14 that little -- in the -- where the apex of the --  
15 between the door and window. It looks like kind of a  
16 greenish-looking -- where the glass is broken and it's  
17 held together.

18 Q Does that appear to be the same dark-colored glass  
19 that's in the back seat? Would you point to what you're  
20 talking about.

21 A This right here. This piece right here.

22 Q Where the buttons are?

23 A Where my finger is. See that little piece that's  
24 right here?

25 Q Is that the mirror? Is that a reflection --



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Cross - Gates

1       A     That's the mirror right there. But this here looks  
2       like there's a glass where the window was, and it was  
3       broken, and it's -- it has -- in other words, the glass  
4       is made to where it won't shatter all over everywhere.  
5       It's like, together, like almost a plastic on it, and  
6       it's kind of held together. That's what it looks like.

7       Q     And that's not another piece of the car.

8       A     I don't know, but that's what it looks like, the  
9       glass together. And that, I don't know.

10      Q     Looking at that in there, does there now appear to  
11      be a shadow?

12      COURT REPORTER: *Does there now appear to be?*

13      Q     A shadow.

14      A     Can I look at the other picture right beside it?  
15      No, sir, that's not a shadow. You can actually see --

16      Q     Look at both pictures.

17      A     A shadow of -- I don't know what it's a shadow of.  
18      No, sir. That's -- that's got some color to it. A  
19      shadow is usually black, but that's got -- that's got,  
20      like, a greenish tint to it. I don't --

21      Q     Well, you can't see it in that one; can you?

22      A     No, sir, I don't see it in that one, but I see it  
23      in this one.

24      Q     Okay.

25      A     But it's not a shadow in this one. I don't see a

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Cross - Gates

1 shadow.

2 Q Okay. May I have that one? That was State's  
3 Exhibits 3 and 4.

4 A Yes.

5 Q Okay. Here. All right. So, you have two pictures  
6 of the same thing, correct?

7 A Yeah, at different distances.

8 Q 3 and 4 are two pictures of the same thing.

9 A Yeah, different distances.

10 Q Okay. All right. All right. When you encountered  
11 my client, he had no shirt on, correct?

12 A I can't recall if he had a shirt on or not.

13 Q Okay. Did he have -- you don't remember how he was  
14 dressed?

15 A I don't -- I don't remember if he -- if he had a  
16 shirt on, the color of it. I believe there were blue  
17 jeans on.

18 Q Did he have on a hospital smock when you  
19 encountered him at the hospital?

20 A I don't recall if he had a hospital smock on or  
21 not. I just remember seeing that -- when I first saw  
22 him, I just remember seeing a gentleman limping, walking  
23 and limping. I didn't know who he was or what -- what  
24 was -- anything about him until I started interviewing.  
25 I don't think he had on a hospital smock, but exactly

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Cross - Gates

1 the color shirt, I can't recall.

2 Q Okay. You said you testified earlier about this  
3 matter. Is that correct?

4 A About which matter?

5 Q About this case, you testified earlier.

6 A Yes, at a hearing. It was some years ago, but I  
7 did have a hearing on it.

8 Q Is that the only time?

9 A Yes, the only time I've been -- had a hearing --  
10 there was a preliminary hearing that I had in front of  
11 the magistrate.

12 Q Not including -- did you testify any other time,  
13 not in front of this jury?

14 A Not as -- as far -- that was the only hearing I  
15 had, was with the preliminary hearing we had with the  
16 magistrate. That's -- that's it. I haven't testified  
17 to anyone else under oath about anything else.

18 Q Did you testify --

19 A Last thing happened at that hearing.

20 Q Did you have a hearing earlier today?

21 A Earlier today?

22 Q Yes. And not in front of the jury?

23 A Yes, we did. That was today.

24 Q And you were truthful during that hearing?

25 A Yes, sir.

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1 Q And you told your answers wholly and completely and  
2 truthfully, as your oath requires?

3 A Yes, sir.

4 Q Okay. Is it not true that you didn't say anything  
5 at all about my client having any glassiness or redness  
6 in his eyes, when asked about his condition?

7 MS. BURCHSTEAD: Objection, your Honor.

8 BY MR. PLEXICO:

9 Q You were asked about the condition of the  
10 individual and what lead you to think that he was under  
11 the influence. Now, you're saying he was glassy- and  
12 red-eyed. Then, you did not. And that was just today;  
13 wasn't it?

14 MS. BURCHSTEAD: Your Honor, may we approach?

15 BY THE COURT:

16 THE COURT: No, you can't approach. He needs to  
17 answer that. He didn't -- he did not testify he had any  
18 red eyes. Move on. How much longer are you going to  
19 go?

20 MR. PLEXICO: I'm done.

21 THE COURT: That's what I said.

22 MR. PLEXICO: Thank you, Judge. Yes, sir.

23 MS. BURCHSTEAD: Re-direct?

24 THE COURT: I don't know. How much time you  
25 talking about? The jury's only good for two-and-a-half

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1 minutes.

2 MS. BURCHSTEAD: Yes, sir.

3 THE COURT: I mean, we can do it after lunch.

4 MS. BURCHSTEAD: That might be best, your Honor, if  
5 that suits.

6 THE COURT: If you just take five minutes, and  
7 then, he asks five more minutes, and then you take two  
8 more, and our back closes.

9 MS. BURCHSTEAD: Yes, sir, Judge. I suspect the  
10 jury would like lunch.

11 THE COURT: All right. Jurors, try to be back at  
12 2:15. You don't have any choice in the matter. You  
13 don't talk about the case. We will get rolling. I  
14 recognize one of the jurors has to go at 4:30 today, so  
15 we'll be out of here at 4:30 to 4:35 today.

16 JURORS LEAVE COURTROOM 1:05 P.M.

17 THE COURT: Okay. We'll crank it back up. A  
18 couple things. Corporal Gates, you can't talk to  
19 anybody, including the attorneys, about anything you've  
20 testified to. And you're still under oath and they're  
21 going to question you. You can't talk to either of  
22 those attorneys at this --

23 CORPORAL GATES: Okay.

24 THE COURT: I mean, you can say, where's a good  
25 place to eat lunch? But you can't talk about the case

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1 or what you've testified to, to either of them.

2 CORPORAL GATES: Okay.

3 THE COURT: Nobody has mentioned, since there are  
4 no statements that he made incriminating, I guess you're  
5 just going to say *Miranda* was okay. He hasn't testified  
6 -- he's said *Miranda*, but like the jury knows what  
7 *Miranda* is, you know.

8 MR. PLEXICO: Well, I'm not -- I'm not pursuing  
9 that any further. I mean, unless there's something  
10 unknown, like --

11 THE COURT: That's all I'm saying, and I don't want  
12 to say later that he didn't, you know, he didn't  
13 properly *Mirandize* him, you know. Some of us would just  
14 say, I'm giving him *Miranda* rights and know what they  
15 are. But at any rate, it doesn't look like it impacts  
16 the case, so I'm not going into it. I'm just telling  
17 you now if you later say he didn't go into what a  
18 *Miranda* was and he's still under oath. All right.

19 MS. BURCHSTEAD: What time are we starting back,  
20 Judge?

21 THE COURT: 2:15, if we can.

22 MS. BURCHSTEAD: Thank you.

23 OFF THE RECORD 1:07 P.M.

24 BACK ON THE RECORD 2:18 P.M.

25 BY THE COURT:

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1 MS. BURCHSTEAD: Judge, if it's okay, before the  
2 jury comes out, I did have a quick matter of law.

3 THE COURT: All right. I'm just signing 40  
4 expungement orders. I'm listening.

5 MS. BURCHSTEAD: Fantastic. Thank you. Just  
6 before we put Corporal Gates back on the stand and then  
7 have re-direct, I wanted to touch on something. On my  
8 direct, I started to go into the furtherance of his  
9 investigation, and that he spoke to Minor [REDACTED] at the  
10 hospital. Then, I was going to go into the fact that  
11 he's talked again with Valandrea Bing. They did provide  
12 statements. I understood the objection at the time.  
13 However, I believe that cross-exam was -- the emphasis  
14 of cross-exam had to do with knowing who the driver was,  
15 you know, why did he put it in affidavit, and you know,  
16 what was known at the time of arrest, et cetera. The  
17 arrest was made a couple months later, after additional  
18 investigation.

19 I believe, if nothing else, the door has been  
20 sufficiently opened for me to go into the rest of the  
21 investigation and what went into the ultimate arrest. I  
22 would like the Court's permission to inquire of Corporal  
23 Gates as to the statements provided to him by Valandrea  
24 and Minor [REDACTED] as it relates to his investigation and the  
25 ultimate decision to make an arrest.

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1 THE COURT: Like what?

2 MS. BURCHSTEAD: Like, that the defendant was the  
3 driver.

4 THE COURT: I understand that's the State's  
5 position.

6 MS. BURCHSTEAD: Yes, sir.

7 THE COURT: Like, what additional information are  
8 you trying to elicit?

9 MS. BURCHSTEAD: That, because he hadn't gotten a  
10 full statement from [Minor] because [Minor] hadn't  
11 been able to talk, he was being Medivaced out. So, he  
12 goes two days later to Richland County to talk to  
13 [Minor] to further his investigation, and I believe  
14 that that needs to be presented to the jury.

15 THE COURT: You didn't open that up; did you?

16 MR. PLEXICO: No, your Honor.

17 THE COURT: Make it quick.

18 MR. PLEXICO: Yes, your Honor.

19 MS. BURCHSTEAD: And we will, your Honor. Very  
20 well. Okay. Thank you, Judge. Just wanted to be clear  
21 on that.

22 THE COURT: All right.

23 MS. BURCHSTEAD: We're ready at this point.

24 THE COURT: All right. He needs to re-take the  
25 stand, or are you through with him?



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Re-direct - Gates

1 MS. BURCHSTEAD: Yes, your Honor.

2 THE COURT: Okay. Brief re-direct.

3 MS. BURCHSTEAD: Yes, your Honor. Thank you again.  
4 If I may just have that one marked. And permission to  
5 approach.

6 CORPORAL DENARD THEOTRICUS GATES

7 RE-DIRECT EXAMINATION BY MS. BURCHSTEAD:

8 Q All right. Corporal Gates, I'm showing you State's  
9 Exhibit 19. Will you take a look at that, please. Do  
10 you recognize that?

11 A Yes, ma'am.

12 Q What is it?

13 A It's an evidence log.

14 Q All right. And is that something that Mr. Plexico  
15 was asking you about a little while ago?

16 A Yes, it was.

17 Q All right. And what does an evidence log mean?

18 A It's where anytime we collect evidence, it has to  
19 be logged in, who collected it, and what it is. And  
20 there's a ticket on them.

21 Q All right. Is this a standard form used by the  
22 Highway Patrol?

23 A Yes, ma'am.

24 Q That particular form is?

25 A Yes, ma'am.

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Re-direct - Gates

1 Q All right. Is your name on there?

2 A Yes, it is.

3 Q All right. And what does that mean?

4 A That means I was the officer who made the -- made  
5 the arrest or the officer who collected the evidence.

6 Q All right. And what evidence are we talking about  
7 here?

8 MR. PLEXICO: I would object, your Honor, on my  
9 previous objections to naming of alcohol samples.

10 THE COURT: All right. Go ahead.

11 BY MS. BURCHSTEAD:

12 Q And what are we talking about here?

13 A Blood and urine.

14 Q All right. And where did the blood and urine come  
15 from?

16 A It came from me. Well, actually, I got the blood  
17 and urine from McKenzie Davis, and it was in my  
18 possession.

19 Q Okay. So, is that what was taken at the hospital?

20 A Correct, it was taken at the hospital.

21 Q All right. And it was -- you were there while the  
22 sample was given?

23 A Yes, ma'am. I witnessed it.

24 Q All right. And how did you -- how was it logged  
25 into evidence?

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Re-direct - Gates

1 A It was written down. The case number was written  
2 down, and then the -- the date it was logged in. And  
3 the evidence -- evidence tech who had the evidence. Who  
4 the subject -- who the subject was, what it is, and what  
5 the warrant was.

6 Q All right. And was it packaged and sealed?

7 A Yes. I did that at the scene.

8 Q Okay.

9 A I packaged and sealed all three -- two vials of  
10 blood and one jar of urine.

11 Q All right. And you didn't tamper with it after it  
12 was taken from the suspect?

13 A No, ma'am.

14 Q All right.

15 A Because I had the -- I put the seal on it that day  
16 at the hospital.

17 Q Okay. All right. So, let's go back to the scene.  
18 What was your primary responsibility at the scene on  
19 November 1, 2008?

20 A I was the investigating officer of that collision.

21 Q Okay. And was a duty to identify the driver?

22 A Yes, ma'am.

23 Q All right. Was anyone called in to help you on the  
24 scene with the Highway Patrol?

25 A Yes, ma'am. The --

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Re-direct - Gates

1 Q Okay.

2 A The -- the MAIT Teams, reconstructive team, was  
3 called by my supervisor, but they were called after --

4 Q Okay.

5 A -- I arrived at the scene.

6 Q All right. So, MAIT Team responded after you were  
7 gone?

8 A Correct.

9 Q Okay. So, is it your understanding that the MAIT  
10 Team may have conducted additional investigation at the  
11 scene?

12 A Yes, ma'am.

13 Q All right. So, is it fair to say you were not  
14 responsible for working everything at the scene?

15 A Not everything, no. No, ma'am.

16 Q Okay.

17 A I was just the primary officer there at the scene.  
18 The scene was secured by my supervisor, and he arrived  
19 before I did. And I was directed to go to the hospital  
20 to check on the occupants, and then to investigate, you  
21 know, who was driving and their conditions and things of  
22 that nature.

23 Q Okay. Did you fill out any reports at all in this  
24 case?

25 A Oh, yes, ma'am.

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Re-direct - Gates

1 Q All right. What kind of reports did you fill out?

2 A Eww. I filled out numerous statements, written  
3 statements. Numerous written reports as far as the  
4 collision. I do recall that. Many other reports. I  
5 can't recall exactly how many of them or exactly where  
6 they are right now, but --

7 Q Sure.

8 A -- it was -- I think I made report, I think at  
9 least about ten times.

10 Q All right. Traffic collision report, that type of  
11 thing?

12 A Yes, ma'am.

13 Q All right. Are these standard reports for the  
14 Highway Patrol?

15 A Oh, yes, ma'am.

16 Q All right. So, were you following protocol in the  
17 forms that you filled out?

18 A Yes, ma'am. Yes, ma'am.

19 Q All right. Okay. So, when the arrest warrant was  
20 ultimately obtained, was there an affidavit with that  
21 warrant?

22 A Yes, ma'am.

23 Q All right. Was that an affidavit that came from  
24 you?

25 A Yes, ma'am.

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Re-direct - Gates

1 Q All right. Do you include absolutely everything in  
2 the case in an affidavit?

3 A Not everything. Just what's pertaining to the --  
4 what I'm trying to get a warrant for in the affidavit.

5 Q All right. So, at that point, what was the purpose  
6 of the arrest warrant?

7 A To get a warrant for a felony DUI for the great  
8 bodily death -- I'm sorry -- the great bodily injury and  
9 the death.

10 Q All right.

11 A And also for the -- I think for driving under  
12 suspension, also.

13 Q Okay.

14 A And the child endangerment.

15 Q And attached to the warrant is not your entire case  
16 file. Is that correct?

17 A No, ma'am. Just a brief description of the what  
18 I'm asking for, that warrant for those particular  
19 charges.

20 Q Okay. All right. Now, I believe that Mr. Plexico  
21 was asking you about the statement of two beers. Are  
22 you sure that the defendant said he had two beers?

23 A Yes, ma'am. That's what I recall him telling me at  
24 the scene there.

25 Q All right. And where was that that he told you?

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Re-cross - Gates

1 A At the hospital, in the room.

2 Q Okay. Okay. All right. And without telling us  
3 the reason why, did you -- let me back up. Well, again,  
4 without telling us the basis, the reason why, was the  
5 defendant's license suspended at the time?

6 A Yes.

7 Q Okay.

8 MS. BURCHSTEAD: Beg the Court's indulgence.  
9 That's all on re-direct, your Honor. Thank you.

10 CORPORAL DENARD THEOTRICUS GATES

11 RE-CROSS BY MR. PLEXICO:

12 Q You were interviewed on audio tape by Trooper Ashe,  
13 correct, in regards to this, that evening?

14 A That evening?

15 Q About 7:00 o'clock.

16 A I don't recall it. I don't know if you have  
17 something there, but I don't recall that interview at  
18 7:00 o'clock. He asked me -- later questioned me, but I  
19 don't recall that well.

20 Q Do you recall telling him that, that evening, once  
21 you determined the driver, you were either going to  
22 charge Valandrea Bing with driving too fast for  
23 conditions and driving without a license, or charge my  
24 client with felony DUI and other charges?

25 A I don't recall, sir. I'm not saying I didn't say

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Re-cross - Gates

1       it. I just don't recall, sir.

2       Q     You aren't denying you said that.

3       A     No, sir. I just don't recall it.

4       Q     Did you prepare for this case? For the trial of  
5       this case?

6       A     Yes, sir.

7       Q     Did you prepare for this case in view of the fact  
8       that it was six years old?

9       A     Yes, sir.

10      Q     Did you listen -- did you read all of the  
11     documentary material in regards to this case?

12      A     I read the material that I -- that I had available  
13     to me. So, I reviewed the material that I had.

14      Q     Okay. Did you listen to any audio tapes that were  
15     made in regards to this case?

16      A     No, sir, I did not listen to any audio tapes.

17      Q     Did you meet with Madam Assistant Attorney General  
18     Burchstead in regards to this case?

19      A     Yes, I did.

20      Q     Okay. All right. So, you have had ample time to  
21     review all the matters that this case -- that are  
22     important to this case. Is that correct?

23      A     Yes, sir.

24      Q     All right. When you reviewed the files that she  
25     had from the Highway Patrol, did you see any document in



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Direct - Ashe

1 it that said anything about two beers?

2 A I don't recall seeing anything that said two beers.

3 Q Okay. That you wrote down on any form or notation  
4 or incident report, a note card, a sticky, a piece of  
5 paper, anything?

6 A Wrote down what?

7 Q Anything about the defendant saying he had two  
8 beers.

9 A No, sir, I didn't write that down. No, sir, not  
10 that -- not that I recall. Not on what I have with me  
11 here.

12 MR. PLEXICO: The Court's indulgence. I don't have  
13 anything further. Your Honor, Court's indulgence. I  
14 don't have anything further, Patrolman Gates.

15 THE COURT: All right. You can step down.

16 MS. BURCHSTEAD: Beg the Court's indulgence, your  
17 Honor.

18 MR. FERNANDEZ: Your Honor, the State would call  
19 Russell Scott Ashe.

20 THE COURT: All right.

21 MADAM CLERK: Thank you, sir. Do you swear or  
22 affirm to tell the truth, the whole truth, and nothing  
23 but the truth, so help you God?

24 RUSSELL SCOTT ASHE: I do.

25 RUSSELL SCOTT ASHE

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Direct - Ashe

1 DIRECT EXAMINATION BY MR. FERNANDEZ:

2 Q All right, sir. Your full name for the record,  
3 please.

4 A Russell Scott Ashe.

5 Q And you go by Scott, correct?

6 A Yes, sir.

7 Q Okay. And with whom are you currently employed?

8 A A company called SAIC.

9 Q Okay. And what does SAIC do?

10 A I'm a contractor for the Space and Naval Warfare,  
11 out of Charleston, South Carolina.

12 Q Okay. You previously were in law enforcement. Is  
13 that correct?

14 A Yes, sir.

15 Q Okay. Tell us a little bit about your law  
16 enforcement experience, your law enforcement time with  
17 the Highway Patrol, and then, when you decided to leave.

18 A I retired from the Highway Patrol in December of  
19 2012.. The last five years of my career, I served on the  
20 MAIT Team. MAIT is an acronym, M/A/I/T, for the Multi-  
21 Disciplinary Accident Investigation Team.

22 Q Okay. And what does the -- what did you do with  
23 the MAIT Team? What's their primary responsibilities  
24 and duties?

25 A Primarily, it's a collision reconstruction team.

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Direct - Ashe

1 It's a specialized unit that reconstructs collisions,  
2 especially complex collisions, and even fatal  
3 collisions. Not all fatal collisions, but certainly one  
4 that warrants a little bit deeper investigation into the  
5 causality of it.

6 Q Okay. And I assume you did go -- you attended the  
7 Criminal Justice Academy?

8 A Yes, sir.

9 Q To become a law enforcement officer?

10 A Yes, sir.

11 Q And then, did you receive any additional training  
12 in order to be a part of the MAIT Team?

13 A Yes, sir. Prior to being on the MAIT Team, I went  
14 through three different phases of collision  
15 reconstruction. They were separate classes that are put  
16 on. But then, during the -- my time on the MAIT Team, I  
17 attended thousands of hours worth of training. I don't  
18 know how many pages worth of training that I've got, but  
19 my curriculum vitae there has got all the -- the classes  
20 that are on there specific for collision reconstruction.

21 Q Okay. Now, I'm going to direct your attention to  
22 November 1, 2008. Do you recall that day or the  
23 accident that we're here for today?

24 A A little bit of it, yes, sir.

25 Q Okay. You were then a member of the MAIT Team. Is

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Direct - Ashe

1       that correct?

2       A     Yes, sir.

3       Q     Okay. And were you dispatched to the incident  
4       location out on Oswald Road?

5       A     I wouldn't use the term dispatched. I was notified  
6       by my supervisor through Highway Patrol policy. The  
7       supervisors on the scene would then notify their chain  
8       of command, who would notify our chain of command.

9       Q     Okay.

10      A     And it would make its way down to the officers who  
11     were on call at that particular time, and -- and then we  
12     would respond.

13      Q     Okay. And where were you actually stationed, or  
14     where was your home, headquarters for the MAIT Team?

15      A     Out of the district headquarters in Charleston.

16      Q     Okay.

17      A     Which is in North Charleston. And I live ten  
18     minutes from there.

19      Q     Okay. And the district headquarters in Charleston  
20     covers a wide area of the state?

21      A     Yes, sir. They cover twelve counties, which  
22     includes Allendale County.

23      Q     Okay.

24      A     But it's the surrounding twelve counties around  
25     Charleston.

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Direct - Ashe

1 Q Okay. So, do you recall approximately when you  
2 would have arrived on scene?

3 A Approximately two hours after I got the  
4 notification.

5 Q Okay.

6 A I don't remember the exact time. I'm -- it was  
7 still daylight, but it --

8 Q Was it the evening time or was it daylight?

9 A It was afternoon, late afternoon or so.

10 Q Okay.

11 A It was still daylight outside, though.

12 Q Okay.

13 A I believe it was daylight the entire time we were  
14 there.

15 Q Now, what was your -- what did you do upon on  
16 arrival on the scene? What was your goal?

17 A For -- each collision is -- is an individual. So,  
18 each one, you may handle a little differently. But  
19 there are still a few tasks that you handle on every  
20 scene, to include just basic documentation. We'd take  
21 some photographs. We would take video of the scene,  
22 just using a little, small handy-cam. Maybe draw a  
23 field sketch that's just a rough pencil drawing on a  
24 piece of paper, just a basic field sketch of it.

25 If there are any witnesses there, then, we would

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1 interview them at the scene. At this particular wreck,  
2 there was no one left that was involved in the  
3 collision, and there were no witnesses there for us to  
4 interview at that particular time. So, our role at that  
5 particular time was basically in -- in evidence  
6 collection and documenting the scene itself.

7 Q Do you recall anything about the crash in  
8 particular, what it looked like, when you got on scene?

9 A Certainly, it's -- like the pictures I know that  
10 you all have seen, there was the -- the white SUV was  
11 still there at its resting point. No one had moved the  
12 vehicle since the time of the collision 'til time we  
13 arrived there. And the -- the vehicle was still there.  
14 The debris was still there. The vehicle had extensive  
15 damage to the right-hand side from an apparent strike to  
16 a tree, and it had damage to the left-rear side from an  
17 impact with another tree that was just prior to this.  
18 The -- there were several trees that were lined up down  
19 the side of the road, probably private property. Owner  
20 had planted them there some years ago or something,  
21 because they were -- had a nice little line through  
22 there. There was the left wheel assembly, the whole  
23 tire, rim. Everything had been sheared off from the  
24 vehicle.

25 And then, there were some marks that were

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1     apparently made from the vehicle itself as it, what  
2     appeared to be, went off the right-hand side of the  
3     road. And there were some tire marks that started from  
4     that point that went across the roadway, down a little  
5     embankment, up the grassy area, up towards the -- the  
6     trees that were there. You could see impact damage to  
7     the trees themselves.

8             The first tree, you could see where bark had been  
9     removed. You could see scratches and scrapes. You  
10    could see the debris had kind of start in that area.  
11    And then, the second tree was right next to where the  
12    vehicle was at, and the damage to it, the height of the  
13    damage, where it was at on the tree. Everything was  
14    very consistent with the damage that was there on the  
15    side of the vehicle, where it appeared that the -- the  
16    vehicle was sort of sideways, almost, as it struck the  
17    tree, and then it rotated around to its final rest,  
18    pretty much next to the tree itself.

19    Q     Okay. I guess part of your responsibilities on  
20    this particular accident scene was the removal and  
21    preservation of the airbag. Do you recall that?

22    A     Yes, sir. My -- my supervisor was on scene, as  
23    well, Sergeant Lee.

24    Q     Okay.

25    A     And he had directed me to go ahead and collect the

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Direct - Ashe

1       airbag as evidence.

2       Q     And you mentioned Sergeant Lee, and you also  
3       mentioned the field sketch, which was essentially a  
4       drawing of what happened.

5       A     Yes, sir. The field sketch is something that can  
6       be very detailed, or it could be very general. Really,  
7       it's just, I'm standing here at the moment, and I just  
8       want to make a rough sketch while I'm standing in the  
9       evidence, and I want to kind of make a little rough  
10      sketch of what it is I'm seeing. But in all actuality,  
11      we're going to take measurements of all the data that --  
12      or, of all the evidence that we see, we're going to take  
13      measurements of those, using scientific equipment, so  
14      that we can tell exactly where everything was at, and  
15      create what's called a scale drawing. It is to-scale.  
16      You can take measurements from it, and you can actually  
17      create a lot of -- or, not create, but you can -- you  
18      can gather all of that information just from getting  
19      that scale drawing.

20      Q     And you assisted with this field sketch, as well as  
21      Sergeant -- Sergeant Lee. Is that what you recall?

22      A     I think I did the field sketch itself.

23      Q     Okay.

24      A     And again, it was just a rough, hand-printed  
25      drawing on a --



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1 Q Okay.

2 A -- on a clipboard, while walking through the  
3 evidence scene, just so that we would have what we  
4 needed. We could refer to it later on and see whether  
5 or not we had collected everything.

6 Q Now, what would be the purpose of removing the  
7 airbag?

8 A In this particular case, it was my understanding at  
9 the scene that the -- the driver was in -- in question.  
10 Again, I didn't go to the hospital, and this would have  
11 been during the same time as conversations were going on  
12 at the hospital, and the investigating officer would --  
13 I didn't speak with him there at the scene, per se. But  
14 you know, that would have been one of the things that  
15 we'd have been looking at, as well, we'd try to  
16 determine the identity of the driver.

17 Q So, the airbag you ultimately removed. Was it the  
18 driver's side or the passenger's side airbag?

19 A Driver's.

20 Q Okay. And so, what would that -- what would the  
21 removal of the airbag, and what would you then do with  
22 the airbag? What would be the purpose?

23 A We -- we would take it, put it into an evidence  
24 container of some sort, just a box, just a -- you know,  
25 separate it from everything else so that it's not

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1 necessarily contaminated by anything. But we would have  
2 it separated away from everything. And then,  
3 ultimately, it's taken to SLED.

4 Q Okay.

5 A Up in Columbia. And they would take and take the  
6 airbag out and, through their process, would take  
7 sections of it so that they would be able to get any DNA  
8 that they might get off of there. Certainly, an airbag  
9 going off creates a -- a large impact area in the front  
10 of a person. So, the airbag going off most likely is  
11 going to strike the person in the face, or if the hands  
12 are in that area or something, through there. And then,  
13 they deposit part of their DNA onto the airbag. So, the  
14 idea is to let them examine it and see if they can find  
15 any traces of human material from any cells or hair or  
16 anything else, skin, something they can get a DNA  
17 profile off of.

18 Q Okay. I'm going to mark this, please. I have two  
19 more.

20 All right. Scott, I'm handing you State Exhibit  
21 Number 20. Could you describe to us what that is.

22 A This is just a standard bag that we use for  
23 evidence collection. They come in various sizes. But  
24 inside is a paper bag. On the MAIT Team, a lot of times  
25 we would collect the evidence, and then, put them into,

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1 of course, various sizes of bags, as well. But it would  
2 be anything from a vehicle part to a piece of clothing.  
3 Anything you can imagine.

4 So, we would put it in the paper bag if it was  
5 nothing that -- that would require it, you know, to be  
6 separated, another reason. In other words, if it was  
7 maybe bloody clothes or something, we might handle that  
8 a little differently. But this is something that did  
9 not appear to have anything on there, that -- no kind of  
10 fresh blood or anything that was still dripping wet or  
11 anything, so we could just put it into a paper bag. And  
12 on the bag itself, on the outside of it, I've wrote on  
13 here -- it's got the case number. Each case has an  
14 individual number that we assign on the MAIT Team. In  
15 this case, it was CL-058-08. Or the 58th case of a  
16 limited variety, which is what the L would stand for,  
17 and the coastal region, which is what the region is.  
18 So, you get CL, the 58th case, and the year is '08.

19 My name is on there. The date of the collection is  
20 11-01-08. And then, I've got a note on here. It says:

21 *Airbag taken from scene at 50 --*

22 *or 17:50, which would be 5:50.*

23 Q Okay.

24 A There appear to be other notes on here, but these  
25 may have been wrote on by SLED. They're not in my

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1       handwriting, and wouldn't have been on there prior to me  
2       turning it over to SLED.

3       Q     So, inside that -- just to be clear, inside that  
4       paper bag would be the actual airbag that you removed.

5       A     Yes, sir.

6           MR. FERNANDEZ: Okay. All right. I'm going to  
7       move to place this into evidence.

8           THE COURT: All right.

9           MR. PLEXICO: Court's indulgence, your Honor. I  
10      would have no objections to it, to the airbag.

11      THE COURT: All right.

12                   ITEM IDENTIFIED AS AIRBAG

13                   MARKED STATE'S EXHIBIT NUMBER 20,

14                   ADMITTED AS EVIDENCE.

15           BY MR. FERNANDEZ:

16      Q     Now, I'm going to hand you another piece of paper,  
17      Mr. Ashe, or a diagram, I'm sorry, and mark this. I'm  
18      marking it as State Exhibit Number 21. Are you familiar  
19      with that piece of paper, what that document is?

20      A     Yes, sir. It's a chain of custody.

21      Q     Okay. Could you explain what its titled and what  
22      the purpose of that document would be?

23      A     The title of it's *South Carolina Department of*  
24      *Public Safety Chain of Custody and Evidence Destruction.*  
25      And it's just like it states. We would use this

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1 paperwork to follow evidence. The original would stay  
2 with the evidence, and then, a copy could just be kept  
3 with each place it went to. But regardless, the  
4 original would always stay with the evidence. And it  
5 just, with detail, a chain of events, if the evidence  
6 went from one person to another person, and the location  
7 that happened and the date that that happened. And  
8 then, if it was any subsequent changes of custody after  
9 that, then, it would detail those on there, as well.

10 Q Okay. And for that piece of paper, did you fill  
11 that actual form out, the one that we marked as State  
12 Exhibit 21?

13 A Yes, sir.

14 Q Okay. And what does it relate to? What piece of  
15 evidence does that particular chain of custody relate  
16 to?

17 A There were two of them. One was a black shirt that  
18 was found at the scene.

19 Q Okay.

20 A And Item Number 2 is the airbag itself.

21 Q Okay. Now, the airbag itself, what did you -- what  
22 does that document indicate? Did you deliver it  
23 somewhere?

24 A Yes, sir. I would have delivered it to SLED.

25 Q Does the document itself actually state that?

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1 A Yes, sir. Location is SLED. Yes, sir.

2 Q And did you initial it where the actual --

3 A Well, the initials on this one is actually the  
4 initials of the evidence custodian at SLED --

5 Q Okay.

6 A -- as they received it.

7 Q Okay.

8 A So, they would simply just initial on there. And  
9 then, their paperwork shows where they've received it.  
10 And they have internal paperwork, as well.

11 Q And when you dropped this airbag off at SLED, would  
12 it have been sealed by you?

13 A Yes, sir.

14 Q Okay. And did you open it at any point prior to  
15 delivering it to SLED?

16 A No, sir.

17 MR. FERNANDEZ: I move to place this document into  
18 evidence as State Exhibit Number 21.

19 ITEM IDENTIFIED AS CHAIN OF  
20 CUSTODY DOCUMENT, MARKED  
21 STATE'S EXHIBIT NUMBER 21,  
22 ADMITTED AS EVIDENCE.

23 BY MR. FERNANDEZ:

24 Q And Mr. Ashe, since you also mentioned it, there  
25 was a black shirt on the form. I'm handing you a

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Direct - Ashe

1 container. Can you tell me what that is.

2 A It's essentially the same thing. The description  
3 on here says, *one black shirt*. And again, it was  
4 delivered to SLED at the same time. It's -- it's still  
5 sealed in here.

6 Q Okay.

7 A And actually still has my name and the -- and the  
8 --

9 Q Okay.

10 A -- date and everything on there.

11 Q Okay. And would that be the black shirt referenced  
12 in your chain of custody form?

13 A Yes, sir.

14 Q Okay. And as far -- you sealed it, and apparently,  
15 it hasn't been opened since then, correct?

16 A It doesn't appear to be, no, sir.

17 COURT REPORTER: I'm sorry. *Apparently it has not*  
18 *been opened since then?*

19 A Has not; that's correct.

20 MR. FERNANDEZ: That's correct. Beg the Court's  
21 indulgence one moment.

22 BY MR. FERNANDEZ:

23 Q All right. Mr. Ashe, lastly, I'm handing you  
24 another form, probably very similar to the one you just  
25 described, but please tell us what that one is.

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Direct - Ashe

1       A     It is another chain of custody.  It's a separate  
2       one.  Again, it's for a separate piece of evidence.  
3       This one, the item number is Item Number 4, and the  
4       description is:

5               *Buccal swabs taken from McKenzie Lavar Davis.*

6       Just for clarification, a buccal swab is like a  
7       long Q-tip or something that would have been used to  
8       collect DNA evidence, usually from the inside of the  
9       mouth or something like that.

10      Q     Okay.  I'm going to mark this as State Exhibit  
11      Number 22.  And as you mentioned, these are the -- the  
12      buccal swabs, or the DNA swabs, of who, again?  Sorry?

13      A     Say again?  I'm sorry?

14      Q     Who were the swabs from?

15      A     From McKenzie Lavar Davis.

16      Q     Okay.  And what was your role in that chain of  
17      custody?

18      A     The swabs were originally taken from Mr. Davis by  
19      G.S. Brinson.  And then, he transferred custody of the  
20      evidence collection kit.  It's not just the swabs.  It  
21      would have been a -- you would put the swabs in a box,  
22      and then the box would have been sealed inside of  
23      another box of some sort, I believe.  But regardless,  
24      it's not just handing me two Q-tips and say, here --  
25      here you go.  It is sealed up..



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1 But this paperwork would have catalogued the chain  
2 of custody of that particular piece of evidence. It  
3 indicates it went from Brinson to myself; and then from  
4 myself to the evidence room; and then later, from the  
5 evidence room, back to myself again, logging it back out  
6 of evidence; and then from myself to SLED.

7 Q Okay. Now, when you receive -- when you receive  
8 that -- an item that's sealed, did you have any -- did  
9 you make any alterations to that item?

10 A No, sir.

11 Q Okay. And when you -- when you hand it off, you  
12 said the first part, you handed it off to the evidence  
13 room. Would you have -- would you have put it in --  
14 would you have touched it in any way or opened it in any  
15 way, the swabs?

16 A No, sir.

17 Q Okay. When you received the swabs again, before  
18 taking them to SLED, was the swab open? Was it exposed?  
19 Was it in any way different than the way you put it into  
20 the evidence room?

21 A If -- if it would have been -- I don't remember --  
22 but if it would have been, certainly, that would have  
23 been cause for us to --

24 Q Okay.

25 A -- you know, send up an alarm. But in my career

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Direct - Ashe

1       --

2       Q     Would you have --

3       A     -- I've never known evidence to be different than  
4       what it was when we put it in -- in.5       Q     And had that have been the case, would you have  
6       made a note of it somewhere?

7       A     Yes, sir.

8       Q     Would this be something that is relatively  
9       important for a --

10      A     Yes, sir.

11      Q     -- for a DNA test?

12      A     Yes.

13      Q     If it were somehow tampered with? Okay. And I  
14      think you said you delivered it to SLED. Is that  
15      correct?

16      A     Correct.

17      Q     Okay. And by delivering it to SLED, you had it  
18      physically in your custody, and then, took it over to  
19      SLED for testing?

20      A     Yes, sir.

21      Q     Okay.

22           MR. FERNANDEZ: No further questions, your Honor.

23           Thank you.

24           MR. PLEXICO: Your Honor? May I approach?

25           THE COURT: Go ahead.

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Cross - Ashe

1 RUSSELL SCOTT ASHE

2 CROSS-EXAMINATION BY MR. PLEXICO:

3 Q Do you recognize this document, Mr. Ashe?

4 A It appears to be the same one he just showed me,  
5 the one with the buccal swab.

6 Q Okay. And what date was it impounded? The buccal  
7 swab itself.

8 A Well, *impounded* is the word that's on there, but  
9 the inference on there would be date collected.

10 Q Yes, sir.

11 A So, that would be 10-28-2009.

12 Q Okay. And what was the date of this accident?

13 A I believe November 1st of '08.

14 Q So, this is two days shy of being a year later,  
15 correct?

16 A Closely, yes, sir.

17 Q Were you there at the time?

18 A Of what?

19 Q You weren't there. You weren't in the chain of  
20 custody.

21 A Correct. I did not collect it and was not present  
22 when it was collected.

23 MR. PLEXICO: I don't have anything further, Judge.

24 BY THE COURT:

25 THE COURT: You can step down.

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1 MR. FERNANDEZ: Nothing further.

2 MS. BURCHSTEAD: Your Honor, may Mr. Ashe be  
3 excused?

4 MR. PLEXICO: I have no intention of re-calling  
5 him.

6 THE COURT: He's free to go.

7 MR. PLEXICO: Thank you for coming.

8 MS. BURCHSTEAD: Beg the Court's indulgence.

9 Your Honor, I believe we have a matter of law.

10 THE COURT: All right. The jury doesn't like to be  
11 sent out this soon. I mean, we had all morning.

12 MS. BURCHSTEAD: May we approach, then, Judge?

13 THE COURT: Hmm?

14 MS. BURCHSTEAD: May we approach, then?

15 THE COURT: That's what I meant.

16 MS. BURCHSTEAD: Yes, sir.

17 THE COURT: We may have to send them out. If we  
18 can take care of it here.

19 MS. BURCHSTEAD: Yes, sir. Yes, sir.

20 OFF-THE-RECORD BENCH CONFERENCE,

21 OUT OF HEARING OF JURORS.

22 PRESENT: THE COURT, MS. BURCHSTEAD,

23 MR. FERNANDEZ.

24 END BENCH CONFERENCE.

25 MS. BURCHSTEAD: Judge, may I approach?

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1 THE COURT: All right. You all just step out.  
2 They've got to try to find some document. They thought  
3 they could find it, but obviously, they can't.

4 JURORS LEAVE COURTROOM 3:00 P.M.

5 MS. BURCHSTEAD: We're going to look, Judge,  
6 together.

7 THE COURT: All right. All right. I told the  
8 Court staff, once I send them out, I have to leave them  
9 out 15 minutes. So, you all might as well be at ease.

10 OFF THE RECORD 3:02 P.M.

11 BACK ON THE RECORD 3:16 P.M.

12 BY THE COURT:

13 THE COURT: All right. About how long has the  
14 Attorney General been on the case?

15 MS. BURCHSTEAD: Your Honor, our file was open  
16 December of 2012. I actually got the guts of the file  
17 in February of 2013. I was ready to try it April of  
18 2013, with Mr. Moore as counsel at the time. That was  
19 continued because of an order of protection for medical  
20 reasons, and then I was out an attorney. And in  
21 January, counsel was relieved, and blah, blah. So,  
22 we've had it a year and a half, roughly.

23 THE COURT: All right.

24 MR. PLEXICO: Well, we've had -- and I was -- I've  
25 had it, to start with. Then Tim Moore had it for years.

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Direct - Brinson

1 And then, I was re-appointed April 1, 2014, this year.

2 And that's where I'm at today.

3 THE COURT: All right. I need the jury.

4 JURY ENTERS COURTROOM 3:17 P.M.

5 THE COURT: Okay. Let's proceed.

6 MR. FERNANDEZ: Thank you, your Honor. The State  
7 would call Grover Scott Brinson to the stand.

8 MADAM CLERK: Do you swear or affirm to tell the  
9 truth, the whole truth and nothing but the truth, so  
10 help you God?

11 GROVER SCOTT BRINSON: I do.

12 GROVER SCOTT BRINSON

13 DIRECT EXAMINATION BY MR. FERNANDEZ:

14 Q All right. Your full name for the record, please.

15 A Grover Scott Brinson.

16 Q And you go by Scott?

17 A Yes, I do.

18 Q Okay. And where are you currently employed?

19 A I'm employed by Silla Engineering.

20 Q Okay. And what kind of work do you do for them?

21 A I provide subject-matter expertise support services  
22 to the Space and Naval Warfare Center in Charleston,  
23 South Carolina.

24 Q Okay. Now, you also had a career in law  
25 enforcement. Is that correct?

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Direct - Brinson

1 A Yes, sir, that's correct.

2 Q Okay. Speak up, please, if you don't mind. I'm  
3 having a little trouble hearing you back here.

4 A Yes, sir. That's correct.

5 Q How long were you in law enforcement?

6 A I joined the Highway Patrol in January of 2003, and  
7 left in 2010. So, seven-and-a-half years.

8 Q Okay. And you heard a little bit of the testimony  
9 before with Mr. Ashe, but you did attend the Criminal  
10 Justice Academy, as well?

11 A Yes, sir, I did.

12 Q Okay. Were you also a member of the -- what's  
13 called the MAIT team?

14 A Yes, sir, I was.

15 Q Okay. And did you receive any advanced training to  
16 become a member of the MAIT Team?

17 A Yes, sir. Similar to what Mr. Ashe described.

18 Q Okay.

19 A Same similar-type training.

20 Q Very good. Thank you. I'm going to direct your  
21 attention back to November of 2008. You were a trooper  
22 at that point, correct?

23 A Yes, sir.

24 Q Okay. And do you recall this accident that we're  
25 here for today?

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Direct - Brinson

1 A I -- not at the time the collision occurred.

2 Q I'm sorry?

3 A I wasn't -- I wasn't at -- I didn't have any part  
4 in the collision when it actually occurred.

5 Q Right.

6 A So, I didn't gain any knowledge of this until 2009.

7 Q Okay. Correct. And your role in 2009 was what?

8 A I was -- had just recently become a member of the  
9 MAIT Team, and was asked to collect a buccal swab from  
10 Mr. Davis.

11 Q Okay. And I think Mr. Ashe kind of already went  
12 over what a buccal swab is, but would you, since you  
13 actually did the swab, would you tell us a little bit  
14 about what that involves, and what kind of kit you would  
15 have to accomplish it.

16 A Sure. The -- the buccal swab is, as described, is  
17 a long Q-tip, and it's in a sterile package. You  
18 usually will have someone open their mouth and swab the  
19 inside of their cheek, and it collects a DNA sample that  
20 can then be analyzed and compared against some other  
21 sample to determine if there is a match.

22 Q Okay. I'm going to hand you -- I'm going to mark  
23 as 23. Thank you. I'm going to hand you one document  
24 already marked as State Exhibit Number 22. I'm also  
25 handing up another document just recently marked as



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Direct - Brinson

1 State Exhibit Number 23. Concerning Document 22, are  
2 you familiar with that form?

3 A Yes, sir, I am.

4 Q Okay. Could you tell us what that form is.

5 A It's the chain of custody.

6 Q Okay. And is that form that Highway Patrol would  
7 use as a standard, as a matter of course when collecting  
8 evidence?

9 A Yes, sir. This is a standard chain of custody  
10 form.

11 Q Okay. And for that -- what does that particular  
12 form -- excuse me -- relate to?

13 A It relates to the buccal swab of Mr. Davis.

14 Q Okay. And what -- and did you fill out that form?

15 A I don't recall filling out the form, no, sir.

16 Q Did you initial that form?

17 A Yes, sir, I did initial it.

18 Q Okay. What's your part of that form? What role  
19 did you play, as far as the chain of custody, for this  
20 particular swab?

21 A Once I performed the test, I would have placed it  
22 into the evidence bag, sealed the evidence bag. And in  
23 this situation, Mr. Davis was present, so it would have  
24 been done in his presence.

25 Q Okay.

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Direct - Brinson

1 A I then initialed the chain of custody, showing that  
2 I've collected the evidence, and would transport it back  
3 to the evidence custodian, which was Mr. Ashe.

4 MR. FERNANDEZ: Okay. Now, I guess I would -- I'll  
5 move to place Number 20 -- State's 22 into evidence at  
6 this point.

7 MR. PLEXICO: I would like to cross-examine him on  
8 this and -- if you please.

9 THE COURT: All right.

10 BY MR. FERNANDEZ:

11 Q Moving on to State 23, are you familiar with what  
12 this piece of evidence is?

13 A Yes, sir.

14 Q All right. As far as you know, what is in that --  
15 what is in that container? Can you tell us how you know  
16 that it matches the chain of custody?

17 A This it would be Mr. Davis's buccal swab, the  
18 SCDPS, the South Carolina Department of Public Safety,  
19 evidence labels illustrate that.

20 Q Okay.

21 A The numbers match.

22 Q And the numbers match on the form, as well as the  
23 swab itself?

24 A Yes, sir.

25 Q Okay. And when you did take the swab? I think you

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Cross - Brinson

1 already testified what you did; you placed it into this  
2 container, sealed, and then sealed it in the envelop  
3 before transport?

4 A Yes, sir.

5 Q Okay.

6 MR. FERNANDEZ: I'm going to move to place 23 into  
7 evidence at this point. I don't know if you --

8 MR. PLEXICO: Your Honor, I would think it would be  
9 subject to the chain, and may I cross-examine him?

10 THE COURT: All right.

11 MR. FERNANDEZ: Thank you. Court's indulgence one  
12 moment. Nothing further, your Honor.

13 GROVER SCOTT BRINSON

14 CROSS-EXAMINATION BY MR. PLEXICO:

15 Q Thank you for coming today. This has been six  
16 years ago, correct, sir? Almost? Very close to that?

17 A Yes, sir.

18 Q Okay. Now, your only contact with my client is,  
19 what you're saying, is to take that swab. Is that  
20 correct? You went to see him.

21 A Yes, sir, that is correct.

22 Q All right. But after all this time, can you really  
23 remember the face of the person you got it from?

24 A The face? Is that the question?

25 Q Of the person you got it from, yes, sir.

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Re-direct - Brinson

1 A Mr. Davis looks familiar, but I would need more  
2 than just a picture of him to positively identify him.

3 Q Okay. But you aren't sure that's the person that  
4 you got that from, because you can't remember, correct?

5 A No, sir, I'm saying, I recognize Mr. Davis, and  
6 with this evidence, that is the reason why I can say I  
7 recognize him, is what I'm getting at.

8 Q All right.

9 MR. PLEXICO: I don't have anything further, Judge.

10 GROVER SCOTT BRINSON

11 RE-DIRECT EXAMINATION BY MR. FERNANDEZ:

12 Q Mr. Brinson, the paperwork lists on the -- who does  
13 the paperwork list on there, as far as where the buccal  
14 swab came from?

15 A Who it -- whom it came from?

16 Q From whom did it come? Correct.

17 A McKenzie Lavar Davis.

18 Q When you collect a sample, what would be the  
19 procedure, as far as identifying the subject you are  
20 then going to label as having -- it having come from?

21 A In this particular case, what I remember is, this  
22 was a consensual sample. Mr. -- it was collected at Mr.  
23 Davis's place of employment. He was expecting me.

24 Q Okay.

25 A I was directed to go collect the sample. When I

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Re-direct - Brinson

1 pulled up, Mr. Davis met me in the parking lot. I asked  
2 him to confirm that he was Mr. Davis, which he  
3 confirmed. I explained the test to him, and we  
4 proceeded from there.

5 Q Okay.

6 MR. FERNANDEZ: At this point, we'd move both --

7 THE COURT: All right. We'll put it in.

8 ITEM IDENTIFIED AS CHAIN OF CUSTODY

9 FORM MARKED STATE'S EXHIBIT NUMBER 22,

10 ADMITTED AS EVIDENCE.

11 ITEM IDENTIFIED AS BUCCAL SWAB OF

12 DEFENDANT MARKED STATE'S EXHIBIT

13 NUMBER 23, ADMITTED AS EVIDENCE.

14 MR. FERNANDEZ: Okay.

15 THE COURT: You can step down.

16 MS. BURCHSTEAD: May he be excused?

17 THE COURT: You may be excused.

18 MS. BURCHSTEAD: Thank you.

19 THE COURT: You're free to go. If I said excused,  
20 it'd be like a school teacher.

21 MR. FERNANDEZ: Your Honor, State would call D.W.  
22 Lee to the stand, your Honor.

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

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Direct - Lee

1 MR. D.W. LEE: I do.

2 MS. BURCHSTEAD: Beg the Court's indulgence.

3 DAVID W. LEE

4 DIRECT EXAMINATION BY MR. FERNANDEZ:

5 Q All right. I apologize. Your name, for the  
6 record, please.

7 A David W. Lee.

8 Q All right. And with whom are you currently  
9 employed?

10 A I'm a private contractor. I work with a group  
11 called Crash Teams, South Carolina. I do collision  
12 reconstruction.

13 Q Okay. And where did you receive your training?

14 A In a couple of different places. I was employed by  
15 the Highway Patrol for 20 -- 27 years. I retired this  
16 year. I had started in 1987 as a trooper, was stationed  
17 in Berkeley County. After about eight-and-a-half, nine  
18 years, the opportunity came -- came open to join the  
19 MAIT Team. Notifications were sent out, if you wanted  
20 to test for it, you could apply. I was actually one of  
21 the founding members of the -- of the MAIT Team within  
22 the state of South Carolina.

23 For several years, I worked under -- who is  
24 Lieutenant Dixon, noted on my report. He actually moved  
25 into a different position, and I became the team leader

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1 somewhere around 2002, 2003.

2 I have somewhere in the neighborhood of 2,300 hours  
3 of collision-reconstruction specific training, and then  
4 several hundred hours more as a trainer. I actually  
5 instructed the majority on the people who are on the  
6 MAIT Team currently, as well as Scott Ashe and Scott  
7 Brinson.

8 Q Okay. And in addition to attending the Criminal  
9 Justice Academy, have you received formal training,  
10 concerning accident reconstruction?

11 A Yes. Collision reconstruction, that started in  
12 1995-96. I went through at-scene, technical, and  
13 reconstruction. That would have been all prior to  
14 starting full-time with the MAIT Team, which was in  
15 January of 1996. We also did forensic mapping class and  
16 some computer-aided diagraming classes.

17 Q Okay.

18 A From there --

19 Q When you said --

20 A I'm sorry.

21 Q Sorry to interrupt you. Please continue.

22 A From there, we went forward to take advanced  
23 classes. Some of those would be commercial motor  
24 vehicles. There's a specific class for that. It's a  
25 90-hour class. There are -- motorcycle investigations

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1 has its own specialty. Pedestrian, bicycles, has their  
2 -- has its own specialty. Each of those have been  
3 there's some bio-mechanics stuff, some applied physics,  
4 and then, some advanced re-con classes that we went  
5 through, as well. Any number of seminars or  
6 conferences, And in 2000, I went through, 2000 in Texas.

7 As I stated, I'm a founding member of the  
8 reconstruction for the Highway Patrol MAIT unit. We  
9 actually started our own conferences SCARS, SCARS  
10 conferences, and we have that on a yearly basis here. I  
11 actually did a presentation in the first year, I believe  
12 it was, that we started that conference.

13 Since then, we've grown from there. But I have  
14 attended Pennsylvania State Police conferences, and IARS  
15 conferences. I can't think of what the IARS stands for  
16 at this point.

17 Q Approximately how many times have you testified in  
18 court, would you say?

19 A Somewhere in the neighborhood of ten. I've -- I've  
20 been qualified as an expert in general sessions, in  
21 common pleas, in federal court, as well as in the court  
22 martial and magistrate's court.

23 Q All right. At this point, we do move to place Mr.  
24 Lee as an -- or designate him as an expert in accident  
25 reconstruction.



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1 MR. PLEXICO: I have no objection to that.

2 THE COURT: Okay. Jurors, once somebody's  
3 qualified as an expert, that just means they, through  
4 education, work experience, or a combination of those  
5 factors, have acquired more knowledge than you or I have  
6 in a particular area. Once they are qualified an  
7 expert, you understand, they're entitled to give  
8 opinions within their field of expertise. They have to  
9 give them to a reasonable degree of certainty, and you  
10 don't have to accept the opinion, because, you know, any  
11 opinion is based upon the underlying facts on which  
12 assumptions are made, so, it may be other people qualify  
13 as experts.

14 MR. FERNANDEZ: Accident reconstruction.

15 THE COURT: Yeah.

16 MR. FERNANDEZ: Or collision reconstruction.

17 THE COURT: Accident reconstruction is what he's  
18 being qualified in. In the course of the trial, if they  
19 put somebody else up as an expert, and I'm not going to  
20 go through this again. Same thing applies. You know,  
21 they just have to have more knowledge in a particular  
22 field than you or I have to have. You know, in a case  
23 involving electricity, I might just qualify an  
24 electrician who works, got into the field of  
25 electricity. An electrician might not do it. It might

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1       require an electrical engineer to give an opinions. So,  
2       okay But an electrician might, depending on work  
3       experience and so forth. Okay.

4               MR. FERNANDEZ: Thank you, your Honor.

5               BY MR. FERNANDEZ:

6       Q       All right. Mr. Lee, I'm going to -- I'm going to  
7       talk about November of 2008, the accident we're here  
8       for, for this case. Do you recall that date and time,  
9       Oswald Road location?

10      A       Yes, sir, I do.

11      Q       Okay. Did you respond out there? Were you one of  
12      the members of the MAIT Team that actually went to this  
13      collision location?

14      A       Yes, sir. I was on call for that weekend.

15      Q       Okay.

16      A       And I received a phone call indicating that there  
17      was a crash in that particular location in Allendale  
18      County. And I contact -- I believe I'm the one that  
19      contacted Scott Ashe, as well.

20      Q       Okay.

21      A       To notify him to come to the scene. And we met on  
22      that location to start our investigation.

23      Q       Okay. And what would the -- why would the MAIT  
24      Team respond to a crash scene like this? What would be  
25      your all's purpose?

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1 A : We investigate collisions that are a little more  
2 difficult than the average collision. The -- this one  
3 fit our protocol for a call-out, which is, there was a  
4 potential for a felony DUI charge; there was a death  
5 involved; there was some concern as to who the driver of  
6 the vehicle might have been, as there was some  
7 contradicting statements that were being made at the  
8 time. So, we were called to help answer those  
9 questions. We have specific training that helps us make  
10 those determinations.

11 Q Okay. And you also -- I think you already  
12 mentioned, didn't you supervise Mr. Ashe, at least back  
13 in 2008, correct?

14 A That's correct. And as well as Mr. Brinson.

15 Q Okay. What time of day do you remember responding  
16 out there? Whatever you remember is fine.

17 A This was sometime in the afternoon. I'm not sure.  
18 We got there, it was still daylight.

19 Q Okay.

20 A And it was daylight through -- we were able to  
21 complete our work on the scene before we lost daylight.

22 Q Now, you took a few pictures of the area. Is that  
23 correct?

24 A That's correct. I photographed the scene and the  
25 vehicle while -- while we were there.

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1 Q Okay. Describe, if you would, what you noticed  
2 coming on the scene. Like, what was your first  
3 impression?

4 A When I -- when I first got to the scene, there was  
5 a large SUV. It's a -- it was a Cadillac Escalade, that  
6 had -- had been damaged through impact with two  
7 different trees. There was a good deal of -- a good bit  
8 of debris that was down on the ground. As I started  
9 walking around the vehicle to see what was there, I  
10 noticed that -- like I said, there was two trees that  
11 were damaged. One was -- had a good deal -- deal of  
12 bark torn off of it. It was the -- would have been the  
13 first impact with the truck.

14 At that point, the -- it appeared that the left-  
15 rear tire had been torn off the vehicle. It had  
16 actually broke the rim and took the wheel with it.  
17 There was a lot of damage done to that side of the  
18 vehicle, as well. It -- it pushed in the side of the  
19 truck on that side, right around the wheel itself.

20 From there, the vehicle was re-directed, and the  
21 passenger-side of the vehicle struck the next tree. And  
22 that's -- that's what took most of the energy away from  
23 its progress. It hit the tree, rotated around, and came  
24 to rest just off the tree behind it. The vehicle itself  
25 struck it at or about the rear-passenger-side door of

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1 the -- of the SUV. And it's -- it's actually bent  
2 around. You can see where there's a -- I wouldn't say  
3 it's a horseshoe, but it's not far from that. It's a  
4 very obvious impression where it struck the tree.

5 The tree itself was damaged, and the bark was  
6 peeled away. And I went from there and looked at the --  
7 there was some evidence that had been left on the tree,  
8 as well, so I photographed that, as well.

9 Q Okay. I'm going to hand you a few pictures that  
10 are already marked as State's Exhibits. This is State  
11 Exhibit Number 2 and State Exhibit Number 1. Could you  
12 identify, like, what you see in those pictures.

13 A In State's Exhibit 1, it's the roadway as it  
14 approaches where the collision took place. And in  
15 State's Exhibit 2, it's the -- the tire marks that lead  
16 up to the trees where the SUV struck.

17 Q What were you able to determine, based on the  
18 location of the -- the bend of the road and then the  
19 location of the skid marks and the tire marks in the  
20 grass?

21 A It appears that the -- that the vehicle lost  
22 control and ran off -- it's hard to see in this -- in  
23 State's Exhibit 1, but it appears that it ran off the  
24 shoulder of the road, on the right side. There was  
25 evidence on that side of the road we did document. And

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1 then, the vehicle -- or driver over-corrected, and came  
2 back across the center line and into the tree line on  
3 the opposite shoulder. So, he crossed into the oncoming  
4 lane, and then onto that shoulder, out of control. And  
5 at that point, it -- it got up to where the trees were,  
6 and it made contact there.

7 Q Okay. You described -- I'm handing you State  
8 Exhibit Number 3. You've already described the location  
9 of the two trees and the bark marks. Is that -- does  
10 that picture more accurately -- accurately show what you  
11 were referring to, as far as the two trees that were  
12 struck and then the damage to them?

13 A Yes, sir, it does.

14 Q Okay. Where it ultimate -- where the car in that  
15 picture, State 3, -- and you can show the jury if it  
16 helps -- where it ultimately came to rest, would that be  
17 the second tree that it struck, the first one having  
18 most of the damage on it, the first tree?

19 A Yes, sir. The -- the first tree is this one, the  
20 one with the majority of the bark missing, in a  
21 relatively straight line. And then, the second tree,  
22 the one where it struck and came to rest, it actually  
23 hit the tree. There was enough energy left for it to  
24 spin around the tree and stop behind it. And that's the  
25 second tree that it struck, and there is actually damage

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1 to the front side of that tree it wraps around.

2 Q I'm showing you what's been marked as State Exhibit  
3 Number 15. Are you familiar with that picture?

4 A Yes, sir, I am.

5 Q Did you take that picture?

6 A I did.

7 Q Why did you take that picture?

8 A In the second tree, and it's visible from here, but  
9 you have to know which one you're looking at in State's  
10 Exhibit 3, but this particular picture, there is hair  
11 and what could have been tissue.

12 MR. PLEXICO: I would object to that, your Honor.  
13 He's not qualified as a medical expert. He had no idea  
14 of what that substance is, your Honor.

15 THE COURT: That's his discretion. He can testify  
16 not as an expert, but his impression of what he sees.  
17 Go ahead.

18 BY MR. FERNANDEZ:

19 Q The basis of why you thought it was important to  
20 take that picture.

21 A I took that picture because, in my opinion, that's  
22 what it was.

23 Q Okay.

24 A It had to do with the -- with the passenger in that  
25 vehicle, so I took pictures of it as a -- a direct

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1 contact.

2 Q Now, when you arrived on the scene, was the young  
3 lady who was deceased, was she still in the vehicle?

4 A No, sir.

5 Q Were you aware that there was a fatality involved  
6 with this accident?

7 A Yes, sir. I had been notified of that when we got  
8 the original call.

9 Q Okay. Now, this tree, this picture, State's 15, is  
10 a close-up, obviously. Do you know which tree that --  
11 that was ultimately taken from? Which of the two trees?

12 A That was on the second tree, the one that the  
13 vehicle comes to rest next to.

14 Q Okay.

15 MR. FERNANDEZ: Move to place 15 into evidence.

16 MR. PLEXICO: I've already stated my objection to  
17 this, your Honor.

18 THE COURT: All right.

19 MR. PLEXICO: That's all I can do is put it on the  
20 record.

21 THE COURT: Okay. Put it in.

22 ITEM IDENTIFIED AS PHOTOGRAPH

23 MARKED STATE'S EXHIBIT NUMBER 15,

24 ADMITTED AS EVIDENCE.

25 MR. FERNANDEZ: Permission to publish to the jury.



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1 Beg the Court's indulgence one moment.

2 BY MR. FERNANDEZ:

3 Q Okay. Now, Mr. Lee, you also downloaded some data  
4 from the vehicle when you were on the scene. Is that  
5 correct?

6 A Yes, sir. This particular vehicle has an airbag  
7 control module. Our unit has the ability to download  
8 that information, or image it. We don't really download  
9 anything. Download sounds like we take it from.  
10 Basically, we just take a snapshot of what's on that  
11 ACM, or airbag control module. And we get that data and  
12 print it out, and it's part of our report.

13 Q Okay. What does that data tell you?

14 A In this case --

15 MR. PLEXICO: Your Honor, I object. He has not  
16 laid the proper foundation. We'd like to hear this at  
17 the Bench.

18 THE COURT: All right.

19 MR. PLEXICO: May I approach?

20 THE COURT: You can always approach.

21 OFF-THE-RECORD BENCH CONFERENCE,

22 OUT OF HEARING OF JURORS.

23 PRESENT: THE COURT, MS. BURCHSTEAD,

24 MR. FERNANDEZ, MR. PLEXICO.

25 END BENCH CONFERENCE.

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1 BY MR. FERNANDEZ:

2 Q All right. Mr. Lee, going back to the date of the  
3 ACM, the airbag control module, tell us a little bit  
4 about the data in the general sense. When you download  
5 it from a car, tell us, tell the jury a little bit about  
6 what that data is, in general; but then, also, whether  
7 or not it could ever be manipulated, or what it tells  
8 you when you're looking at that data.

9 A When we go back and you download this airbag  
10 control module, basically, we're dealing with -- we're  
11 taking information that the vehicle itself uses to  
12 determine whether or not it should deploy the airbags.  
13 We're able to -- or the module itself actually records  
14 events as the occur.

15 If -- if you've ever hit a really bad pothole, it  
16 could wake up the airbag control module in your car. It  
17 doesn't necessarily make the airbags deploy. It just  
18 wakes it up and tells it something really bad just  
19 happened to us; we need to be aware that something is  
20 going on, so we can be ready for it if it happens.  
21 That's kind of the way this works.

22 Data is stored. So, if another event more  
23 catastrophic occurs, we would know that there was a non-  
24 deployment; and then, that there was an event that was  
25 bad enough to make the airbags deploy. In this case,

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1       there was.

2               But specifically, it records the information that  
3       it -- that the airbags are looking for, to determine  
4       whether they should go off, and that's a change in  
5       speed. If you're going 35 miles an hour, and you come  
6       to an abrupt stop, meaning a sudden stop, like you  
7       strike a tree, then it's going to tell the airbag, the  
8       airbag control module's going to say, the people inside  
9       the car are in danger; we need to set the airbags off.  
10      And that's what it does. It's looking for a change in  
11      velocity or a change in speed. So, it records that  
12      data, depending on which model that you're looking at.  
13      In this case, I believe it was up to eight seconds for  
14      the -- for some information, and then, up to five  
15      seconds for other information. And it cycles every  
16      second.

17             Now, when I say that, it's not doing it at one  
18      second and then two seconds and then three seconds.  
19      It's -- it's cycling somewhere between zero and one  
20      seconds, or zero or one and two seconds. So, each piece  
21      is cycling somewhere in there. So, it's a -- it's  
22      cycling in that area about of a second apart, so it can  
23      determine what that information is and what it needs to  
24      do, how it needs to react. And if the change of speed  
25      is so great over any one period of time, it activates

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1 the airbags. That's what that control module's for.

2 Q Okay. Now, are you -- when you use the software to  
3 download the actual data from the computer chip, or the  
4 computer in the car, are you able to manipulate the data  
5 in any way?

6 A No. The only data that we -- we actually input  
7 data, and that is, I've put my name in as the  
8 investigator, the date, the time that we do it, that  
9 sort of thing. But other than that, the -- all the  
10 other data that's collected as far as the vehicle  
11 itself, what the data recorder itself did, that comes  
12 from them. We can't alter that at all.

13 Q Okay.

14 A There's not a place for us to go in and edit it.

15 Q And by downloading that data from the computer of  
16 that car, are you changing it in any way? This image  
17 that you create to then review later, is it changed? Is  
18 it in any way affected by the download?

19 A No. And that -- that's why -- that's why I  
20 corrected myself a few minutes ago. And I do find  
21 myself doing it regularly, because that was the initial  
22 term that was used, was *download*. But we image it. We  
23 actually take a picture of what that is. We don't do  
24 anything else to it. Downloading would indicate that  
25 there was data there that you could have some means of

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1 altering. We just take a photograph of it. It's  
2 basically an image of what is already on that machine --  
3 on that piece of machine. And we get a picture of it,  
4 and then we can look at it and see what the -- what the  
5 events were that occurred during that crash.

6 Q Okay. Now, on this particular accident, going  
7 case-specific, did the airbags deploy in this case?

8 A Yes, they did.

9 Q Is that consistent with what you would have  
10 expected, having seen the accident scene?

11 A Yes.

12 Q Did you have a chance to review the data that you  
13 down -- imaged?

14 A I didn't look at it. I'm not an analyst. I -- I  
15 am a technician. So, I just -- I downloaded the data,  
16 and then, somebody else does the analysis of it.

17 Q And you have certifications in order to accomplish  
18 that or to down -- or to image the data?

19 A That's correct.

20 Q Okay. And what do you do with the data once  
21 imaged?

22 A Just -- I print a copy of it and I put it in my  
23 file.

24 Q Okay. And then, someone else would then review it  
25 to sort of figure out what that means.

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1 A That's correct.

2 Q Okay.

3 MR. FERNANDEZ: Beg the Court's indulgence one  
4 moment.

5 BY MR. FERNANDEZ:

6 Q I'm going to ask you a few questions about airbag  
7 deployment. An airbag that is deployed as you said it  
8 was deployed in this vehicle, is it possible for that  
9 airbag to have been deployed previously in the same car?

10 A You mean, could it have been -- could it have  
11 deployed and then stuffed it back in the --

12 Q Correct. Is there -- is it possible -- once an  
13 airbag deploys, is there any mechanism for re-using that  
14 airbag, or do they have to re-install a new system?

15 A That air -- that airbag system has to be -- it has  
16 to be re-installed. Once you -- once you trip that, you  
17 can't fold it back into the -- back into the console, or  
18 back into the dash, or wherever it came from. For it to  
19 be an effective airbag, it has to be re-installed,  
20 meaning a new -- a new airbag has to be purchased, and  
21 the -- somebody with some specific skills has to put it  
22 in there, because, if you don't do it properly, you can  
23 set the airbag off while you attempt to install it, and  
24 it can injure you.

25 Q Okay. Now, what would be the -- as the supervisor

7-8-14 State v. Davis

Direct - Lee

1 on the scene, did you direct that the airbag be removed  
2 for DNA testing?

3 A Yes, sir. When we arrived on-scene and we realized  
4 that there was an issue with who the driver was, that  
5 was -- our original intent was to make that  
6 determination if we could, through various means, one of  
7 them being DNA sampling. So, I instructed Scott Ashe to  
8 -- to remove those bags and take them into custody.

9 Q And you feel certain that the airbag that was  
10 deployed in this case would not have been previously  
11 deployed in either this car or another car?

12 A That's correct. Only -- on the format that -- that  
13 you look at, one of the things that we would look for in  
14 making the determination is that, if it was a -- if it  
15 was consistent with the crash that we were  
16 investigating, is the ignition cycles. There are times  
17 when the -- if it's ten or 15 cycles, then it may or may  
18 not be part of it. If it's a hundred cycles, it's not  
19 part of the collision that you would investigate, or  
20 more. If it's within one or two cycles, because  
21 sometimes, when wrecker drivers move the vehicle,  
22 they'll actually turn the ignition over, because it's  
23 easier to move the car. And if we get in it and turn it  
24 over one time before we actually take it out and do the  
25 sampling, it may show one or two. This one, I think,

7-8-14 State v. Davis

Cross - Lee

1 was two ignition cycles.

2 Q Okay.

3 A Which was consistent with it being from the crash  
4 that we were investigating.

5 Q Okay.

6 COURT REPORTER: I'm sorry. Which was consistent  
7 with?

8 A It being from the crash we were investigating.

9 MR. FERNANDEZ: I don't have any further questions,  
10 your Honor. Thank you.

11 DAVID W. LEE

12 CROSS-EXAMINATION BY MR. PLEXICO:

13 Q Thanks for coming today. All right. So, you went  
14 to the crash scene at -- you went to the crash scene on  
15 November 1st, correct?

16 A That's correct.

17 Q You directed the removal of the airbag.

18 A Yes, sir.

19 Q Okay. And this is the day of the crash.

20 A Yes, sir.

21 Q All right. And part of that job of what you did  
22 was, I'm not quite sure, I'm going to have to ask you  
23 again because it's so hard to hear in here, about the  
24 mechanics of downloading this module, the airbag module.  
25 What is it exactly, again, that you did? Not to be



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Cross - Lee

1 redundant. You can speed through it.

2 A No, we just -- we have some computer software that  
3 specifically reads the airbag module. It's a -- it  
4 images the data that's on it. And I connected that and  
5 downloaded that image, and had a copy of the -- or made  
6 an image of that and had a copy of it, and printed it  
7 out.

8 Q So, you hooked wires, so to speak, to the module  
9 and copied the data that was on it and read it. And  
10 that's what you had done, is read the module.

11 A Yes, sir. That was -- that was part of what I did.  
12 There were other things I did prior to that, but not for  
13 the airbag control.

14 Q Okay. All right. Are there any --

15 A I was involved in the mapping of the scene itself,  
16 as well as photography. And I directed Scott Ashe in  
17 some of the things that he was doing, as well.

18 Q But you certainly did this on 11-1, correct?

19 A Yes, sir.

20 Q All right: And you said that you don't read the  
21 data. Is that right?

22 A No, sir. I look at the data that's -- that comes  
23 out, the image, so I'm familiar with what it says. But  
24 I'm not an analyst, so I would not do an analysis of the  
25 data that's there.

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Cross - Lee

1 Q Okay.

2 A There's a -- there's a difference. There's -- you  
3 have technicians, and those are people that download the  
4 data. They're capable of hooking up to the machinery  
5 and pulling -- and pulling the data off, or imaging the  
6 data. And then, there are any number of different types  
7 of consoles, or ACM, and those require specific skills  
8 to analyze those, to determine if they're consistent  
9 with the crash itself.

10 Q Okay. All right. You were in charge of the  
11 investigation, correct, sir?

12 A Yes, sir.

13 Q All right. Now. Now, what's the name of the  
14 module that you examined? What's the initials for?  
15 What is it?

16 A ACM.

17 Q ACM.

18 A Yes, sir.

19 Q Okay. All right.

20 A They're -- they're known by several different  
21 things -- CER, ACM, SDM. I mean, but it's all basically  
22 the same thing, which is an airbag control module.

23 Q You said it was ACR, SCM. What is the other one?

24 A It's ACM, CER, or SDM. And I'm not -- the only --  
25 the only one I use, because that's the one I remember,

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Cross - Lee

1 is the airbag control module. I just know that those  
2 other acronyms exist.

3 Q All right. But that's the only data that you got  
4 that day, correct?

5 A I'm sorry?

6 Q That's the -- all the data that day so nothing  
7 would happen to it if the car got crushed or whatever.  
8 Is that right?

9 A We took the -- yes, sir. We imaged that data while  
10 we had it impounded.

11 Q Okay. All right. On 11-1, correct?

12 A I'm sorry?

13 Q 11-1, correct?

14 A No, sir. There was a -- there was a search warrant  
15 executed on 11-3, and that was when the -- the data  
16 collector, or the ACM, was actually collected.

17 Q Okay. But you didn't have a search warrant on  
18 11-01, when you were taking out all this other data,  
19 right?

20 A When we were taking the airbags, no, sir.

21 Q You didn't have a search warrant when you took that  
22 data, correct? Did you take the data from the airbag  
23 module on 11-1? Is that what you testified to?

24 A No, sir, that's not what I testified to. I said,  
25 we took the airbags on 11-1. We took the airbag control

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Cross - Lee

1 module on 11-3. And then, we downloaded -- or imaged  
2 the data after we had taken possession.

3 Q All right. Now, you were the lead investigator on  
4 the case?

5 A I was the team leader. Yes, sir. And myself  
6 and --

7 Q Okay.

8 A I'm sorry, go ahead.

9 Q Were you looking for any other causes or any other  
10 malfunctions on the case, in regards to the vehicle?

11 A Something that we ordinarily do is, go through and  
12 look for anything that might be re-calls and that sort  
13 of thing. There's a national database that has those,  
14 and we print those out and put them in our -- put them  
15 in our file, so that we have copies of it.

16 Q Okay. And were there any re-calls on this car?

17 A I -- I don't recall, sir. I -- I haven't looked  
18 back at that part of the file.

19 MR. PLEXICO: May I approach the witness, your  
20 Honor?

21 THE COURT: Okay.

22 BY MR. PLEXICO:

23 Q Could you look over this.

24 MR. FERNANDEZ: Your Honor, may I see it.

25 MR. PLEXICO: I'm so sorry. May I? This is the

7-8-14 State v. Davis

Cross - Lee

1 report from the Highway Patrol.

2 BY MR. PLEXICO:

3 Q Are you finished, sir?

4 A I -- yes, sir. I mean, I'm not sure. I've seen  
5 it -- I've seen it on police --

6 Q Well, you go ahead and study it if you don't  
7 remember, please.

8 A Well, I don't remember -- I don't think this is --  
9 this is anything that we did specifically, so. It  
10 doesn't -- it doesn't have our headers on it. So, I  
11 mean, I'm not sure if it's our report or not.

12 Q Well, I --

13 MS. BURCHSTEAD: I'm sorry.

14 BY MR. PLEXICO:

15 Q Okay. All right. In your investigation, didn't it  
16 show that there was a brake seal with a manufacturer's  
17 re-call for that vehicle that you were investigating,  
18 about a bad brake seal on those Escalades?

19 A I don't recall that, no, sir.

20 Q Okay. It's been six years ago, right?

21 A That's correct.

22 Q So, --

23 A I'm not saying it wasn't; I'm just saying I don't  
24 recall. I don't re-call seeing this.

25 Q Okay. All right. Do you recall if that car had a

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Cross - Lee

1 salvage title to it when it was sold?

2 A That's what it appears to have on it at this point  
3 when I -- in this particular form. But I don't -- I  
4 don't -- like I said, I don't recall it.

5 Q Okay. Now, after this accident, it appears to have  
6 a salvage title again in Florida, correct?

7 A On 4-23-09, new owner reported a salvage title  
8 issued; not actual mileage.

9 Q And that was 4-23-09, a new salvage title.

10 A Yes, sir.

11 Q Okay. All right. Was there an accident before  
12 with structural damage to that vehicle?

13 A It shows that on 11-1-08, which is this crash, a  
14 total loss on the vehicle.

15 Q Okay. All right. So, may I have the report back,  
16 please.

17 A Yes, sir.

18 Q Thank you. All right. Now, does it not show the  
19 -- on 8-22-05, a salvage title issued three, more than  
20 three years before this accident?

21 A I'm sorry, what date did you say?

22 Q 2005, salvage title issued for this vehicle,  
23 correct?

24 A 2000 -- 8-22-05. New Jersey Department of Motor  
25 Vehicles, salvage title certificate issued.

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Cross -- Lee

1 Q Yet, it got a clean title here in South Carolina?

2 I'm asking. Do you see where salvage title was issued  
3 in South Carolina? Was it a clean title?

4 A It says, *Title Issued and Updated*. It doesn't say  
5 salvage title.

6 Q Okay.

7 A That's on 4-26-06.

8 Q And you weren't --

9 A Is that what you're asking for?

10 Q I'm sorry?

11 A I mean, I'm reading off your form. I'm assuming  
12 this is the same vehicle.

13 Q All right. Well, you don't recall, from your data,  
14 about the investigation you did of the history of the  
15 vehicle to see if that contributed to that, correct?

16 A No, sir. I -- I don't recall that.

17 Q Okay.

18 A I don't recall it being an issue. So, no, sir, I  
19 don't recall any of that data, so.

20 Q Do you remember weld marks around the vehicle,  
21 making it appear to be two vehicles put together, during  
22 your investigation?

23 A No, sir, I don't recall it.

24 Q Did you do up an incident report, or is everything  
25 in the MAIT report that you all made?

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Cross - Lee

1 A Everything's in the MAIT report.

2 Q Okay. May I look at that, please.

3 A Yes, sir.

4 Q Do you recall anything about the oil seal being re-  
5 called, or the bad brakes being fixed on that car?

6 A No, sir. I don't recall any of that. And like I  
7 said, I didn't re-read that section when -- in preparing  
8 for today, so.

9 COURT REPORTER: *I didn't re-read that section*  
10 *what?*

11 A In preparing for today.

12 Q But according to this, it had been re-called. It  
13 had a salvage title. It had major structural damage.  
14 And all that was before 2005.

15 A Well, sir, I can't testify to that, because I don't  
16 know where that form came from, and I didn't do it.

17 Q Okay. Do you have your form with you today where  
18 you did a vehicle history on that car?

19 A If it's within the -- the paperwork that the  
20 Attorney General has, then, yes, it's -- it's in there.  
21 But I can't testify to what's in there. I haven't  
22 looked at it specifically at this point.

23 MR. PLEXICO: Could we pause court and let him  
24 through the records and see if the Highway Patrol has  
25 any -- and as much as I hate to do this, Judge -- if



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1 they have a history on the car that they actually looked  
2 at --

3 MS. BURCHSTEAD: May we approach, your Honor?

4 THE COURT:

5 OFF-THE-RECORD BENCH CONFERENCE,

6 OUT OF HEARING OF JURORS.

7 PRESENT: THE COURT, MS. BURCHSTEAD,

8 MR. FERNANDEZ, MR. PLEXICO.

9 END BENCH CONFERENCE.

10 MR. PLEXICO: All right. I don't have anything  
11 further.

12 BY THE COURT:

13 THE COURT: You may step down.

14 A Thank you.

15 MS. BURCHSTEAD: May he be excused, your Honor?

16 THE COURT: He's free to go.

17 MS. BURCHSTEAD: Thank you, Judge.

18 MR LEE: Thank you, your Honor.

19 MS. BURCHSTEAD: May we approach, very briefly?

20 I'm sorry.

21 MR. FERNANDEZ: Scheduling issue.

22 OFF-THE-RECORD BENCH CONFERENCE,

23 OUT OF HEARING OF JURORS.

24 PRESENT: THE COURT, MS. BURCHSTEAD,

25 MR. FERNANDEZ, MR. PLEXICO.

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1                   END BENCH CONFERENCE.

2                   THE COURT: All right. Jurors, the next witness  
3 they have is going to take a long time, and we agreed to  
4 let you all go today at 4:30. They've got to find some  
5 documents, anyway. Take about 15 minutes, and it would  
6 just be 15 minutes of testimony. We're just going to go  
7 ahead and break. Be back in the morning.

8                   Now, you all don't have any surprises in the  
9 morning; do you?

10                  MS. BURCHSTEAD: Not from us, Judge.

11                  THE COURT: Be back at 9:30. They're saying they  
12 don't have anything they need to take up. We'll see.  
13 All right. Oh, don't be riding out to the wreck scene  
14 to take any measurements.

15                  JURORS LEAVE COURTROOM 4:05 P.M.

                  OFF THE RECORD 4:07 P.M.

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CERTIFICATE OF REPORTER

JULY 8, 2014 TRANSCRIPT OF BENCH TRIAL

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing July 8, 2014, Transcript of Bench Trial in the case of State versus McKenzie Davis, Allendale County, South Carolina, Court of General Sessions, Case Numbers 2009-GS-03-00072, 73, 74, 75, 76, is a true and accurate record of exhibits admitted and proceedings had on said date, excepting opening statements; that a piece of equipment malfunction during opening statements; that my backup equipment was working, but because Allendale is a particularly difficult courtroom to hear in, and the attorneys had their backs to me during opening, I was not able to transcribe brief portions of opening statements, which portions are indicated by three periods.

I further certify that I am of neither kin, counsel, nor interest to any party hereto.

Witness my signature September 26, 2014.

S/Wanda H. Rowe  
Wanda H. Rowe CVR-M  
Official Court Reporter

1                   In the Court of Common Pleas for the  
2                   State of South Carolina, County of Allendale

3

4                                           Case No.: 2009-GS-03-00072+

5       State of South Carolina,

6                   Plaintiff(s),

7       vs.                                           Transcript of Record

8       McKenvie Levar Davis,

9                   Defendant(s).

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15                                           July 9, 2014

16                                           Allendale, South Carolina

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21       BEFORE:

22                   The Honorable Judge Kinard

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## APPEARANCES

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## JOEY OSWALD-DIRECT

1 PROCEEDINGS

2 THE COURT: Okay. Is the State ready?

3 MS. BURCHSTEAD: Yes, Your Honor, State's ready.

4 THE COURT: I couldn't see you down there.

5 MS. BURCHSTEAD: Sorry, I was fishing for my  
6 files.

7 THE COURT: Is the Defense ready?

8 MR. FERNANDEZ: Yes, Your Honor.

9 (Jury enters the courtroom.)

10 THE COURT: Okay. The jury is present. You may  
11 proceed.

12 MS. BURCHSTEAD: Thank you, Your Honor. The State  
13 calls Joey Oswald. I believe he's outside, Your Honor.  
14 I know he's here, Judge.

15 THE COURT: All right.

16 MS. BURCHSTEAD: Mr. Oswald?

17 Thereupon,

18 JOEY OSWALD

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

21 DIRECT EXAMINATION

22 BY MS. BURCHSTEAD:

23 Q Good morning, Mr. Oswald.

24 A Morning.

25 Q Thank you for being here. If you could just state



## JOEY OSWALD-DIRECT

1 your full name so we get it for the record.

2 A Joey Oswald, III.

3 Q All right. You go by Joey?

4 A Right.

5 Q All right. Mr. Oswald, what do you do?

6 A I farm.

7 Q You farm? All right. And do you live here in  
8 Allendale?

9 A Yes, ma'am.

10 Q What's your address?

11 A 1375 Oswald Drive.

12 Q And do you recall back on November 1st of 2008, of  
13 having a wreck on your property?

14 A Yes, ma'am.

15 Q All right. And is that in Allendale County?

16 A Yes, ma'am.

17 Q Okay. What's the road that your property's on? I  
18 think you just gave us the address.

19 A Oswald Drive..

20 Q Right. Could you describe the road a little bit  
21 for us?

22 A I'm on a secondary paved road. It's a County  
23 maintained road that runs through our property.

24 Q All right. Do you know, is there a posted speed  
25 limit?

## JOEY OSWALD-DIRECT

1           A     No, ma'am.

2           Q     All right. Let's talk about November 1st, 2008  
3 and the wreck. Were you present that day in the area?

4           A     Yes, ma'am.

5           Q     All right. Did you actually see the wreck occur?

6           A     Well, I was working over inside the  
7 headquarters -- the shed, which is behind my father's house.  
8 And I heard a noise, and I looked up and I saw a big cloud  
9 of dust. And me and my son went to look at it.

10          Q     Okay.

11          A     But we didn't actually see it happen.

12          Q     Okay. What did you see that day?

13          A     Well, we rode up west. The accident happened in  
14 my father's yard. And when we got there, we saw that it  
15 was -- the wreckage had hit the trees. And we started  
16 checking on them, the situation, the passengers, you know,  
17 seeing if anybody was hurt.

18          Q     All right. Do you remember what kind of vehicle  
19 it was?

20          A     It was a Escalade, Cadillac Escalade.

21          Q     All right. Any other cars involved?

22          A     No, ma'am.

23          Q     Okay. You say you checked on the occupants. Can  
24 you describe that for us? Tell us what you did?

25          A     Yes, ma'am. Well, when I was going up there I

## JOEY OSWALD-DIRECT

1 called my other son and told him to call 911 to report it.  
2 And then when my younger son and I arrived there at the  
3 scene. It was three passengers still in the car, and the  
4 driver was out just kind of walking around.

5 Q You say, the driver. Do you have an opinion on  
6 who the driver is?

7 A Well, I would certainly assume that it was the  
8 driver, because the other three was in -- one in the front  
9 passenger seat, and there was two in the backseat.

10 Q All right. Can you describe the driver?

11 A A male, black male.

12 Q Male? Okay. Go ahead.

13 A That's all I can describe him by, you know, other  
14 than just young male.

15 Q Okay. What else can you tell us? What do you  
16 remember doing?

17 A Well, I went and checked. The first one, we went  
18 to the back passenger seat, and there was a young man in the  
19 backseat. Checked on him. I couldn't -- I tried to talk to  
20 him, but he was incoherent. You know, he was kind of  
21 mumbling. And I'm assuming he was in shock, but I'm not a  
22 doctor. Then I went and checked on the other one in the  
23 backseat. And it was a girl. I knew right then she was  
24 dead.

25 Q Okay.

## JOEY OSWALD-DIRECT

1           A     And I checked on the one in the front seat. She  
2     was injured pretty good. I talked to her and tried to  
3     comfort her until help got there.

4           Q     Okay. You say you tried to comfort her and help  
5     her?

6           A     Ma'am?

7           Q     Did you tried to help her?

8           A     Well, I'm not a doctor. I didn't try to do  
9     anything medical. I just tried to, you know --

10          Q     Got you.

11          A     Just carried on a conversation with her and tried  
12     to, you know, make her feel better --

13          Q     Okay.

14          A     -- in that situation.

15          Q     Okay. Got you. And who called 911? Was it --

16          A     My older son, Joe.

17          Q     Your older son. Okay.

18                MS. BURCHSTEAD: Beg the Court's indulgence.

19     BY MS. BURCHSTEAD:

20          Q     Okay. You said you -- there was a man outside of  
21     the car that you believed to be the driver; is that correct?

22          A     Yes, ma'am.

23          Q     Can you describe how he was behaving?

24          A     Well, he was walking around and talking to himself  
25     and mumbling, kind of saying -- using some profanity. I.

## JOEY OSWALD- CROSS

1 decided that I didn't want to talk to him because I, you  
2 know, I -- was kind of like a rabid dog. I didn't want to  
3 deal with a rabid dog in that situation. That's kind of the  
4 way he was acting.

5 MS. BURCHSTEAD: All right. I believe that's all  
6 the State's questions, Judge.

7 MR. PLEXICO: Thank you for coming sir.

8 CROSS-EXAMINATION

9 BY MR. PLEXICO:

10 Q Okay. Now, you gave a statement; is that correct?

11 A Yes, it is.

12 Q Okay. You gave a statement, April 15th, 2013?

13 A I guess. I guess that's correct.

14 MR. PLEXICO: May I approach the witness?

15 THE COURT: Sure.

16 BY MR. PLEXICO:

17 Q Are you familiar with that?

18 A Yes, I am.

19 Q Could you refresh your memory by reading that?

20 A I've already read it.

21 Q Okay. When's the last time you read it?

22 A Say what?

23 Q When's the last time you read the statements?

24 A This morning.

25 Q Okay. All right. And that was preparing for this

## JOEY OSWALD- CROSS

1 case, correct?

2 A That's correct.

3 Q All right. And in 2013 you said that there was a  
4 girl in the front, but I can't remember her condition; is  
5 that right?

6 A Yes, that's right.

7 Q Okay. And -- but today you said she was seriously  
8 injured, right?

9 A I didn't say serious.

10 Q Okay. All right. So, you stayed there and talked  
11 to them until the rescue squad arrived and the police  
12 arrived?

13 A That's correct.

14 Q Okay. And then the rescue squad got the boy and  
15 the girl out, and the front passenger out of the car?

16 A I'm assuming so, I don't know.

17 Q But you're certain that the girl was in the car  
18 when everybody was there? That's the girl in the front  
19 seat, the girl in the backseat, and the boy in the back  
20 passenger seat?

21 A That's correct.

22 Q Okay. All right. Do you have any reason to be  
23 upset with my client?

24 A You could say that.

25 Q Did you have -- did you -- I'll withdraw that

## JOEY OSWALD- CROSS

1 question.

2 Did you sue my client, you and your trust?

3 A Did I what now?

4 Q You and your trust, did you sue my client?

5 A Did I sue him?

6 Q Yes.

7 A For the damage to the tree.

8 Q Did you sue my client, yes or no?

9 A I don't know whether I did or not.

10 Q Okay.

11 MR. PLEXICO: May I approach the witness?

12 THE COURT: (No response heard.)

13 BY MR. PLEXICO:

14 Q Are you Joseph C. Oswald, Junior?

15 A No, sir.

16 Q Are you Joseph C. Oswald, III?

17 A Yes, sir.

18 Q Are you listed as the Plaintiff, the moving party  
19 against my client?

20 A Looks like I am.

21 Q Okay.

22 MR. PLEXICO: May I approach again?

23 THE COURT: (Nods in the affirmative).

24 BY MR. PLEXICO:

25 Q And does that say Plaintiff's dismissal with.

## VALENDRIA BING - DIRECT by BURCHSTEAD

1 prejudice? To the right.

2 A Yeah, it does.

3 Q So, the case was dismissed? The lawsuit was  
4 dismissed?

5 A It was settled.

6 Q Are you upset -- were you upset with my client?

7 A Uh-huh. (Indicating affirmatively.)

8 Q Did you talk about that this morning? You called  
9 my client -- you said my client was a rabid dog?

10 A Well, that's what I said.

11 MR. PLEXICO: I don't have anything further.

12 MS. BURCHSTEAD: Nothing further, Judge. May he  
13 be excused?

14 THE COURT: You're free to go.

15 THE WITNESS: Thank you.

16 MS. BURCHSTEAD: The State calls Valandrea Bing.

17 Thereupon,

18 VALANDREA BING

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

21 DIRECT EXAMINATION

22 BY MS. BURCHSTEAD:

23 Q Good morning, Ms. Bing.

24 A Good morning.

25 Q Can you just put your full name on the record for



## VALENDRIA BING - DIRECT by BURCHSTEAD

1 us?

2 A My name is Valandrea Champagne Bing.

3 Q All right. You go by Valandrea?

4 A I go by Val.

5 Q You go by Val, okay. Thanks for coming this  
6 morning. How old are you?

7 A I'm 23 now.

8 Q Okay. Are you in school?

9 A I am in college.

10 Q Okay. And where do you live?

11 A I live in Martin now.

12 Q Okay. And are you -- how are you feeling this  
13 morning?

14 A Nervous.

15 Q You're a little nervous? All right. Were you  
16 involved in a wreck, November 1st of 2008?

17 A Yes, ma'am.

18 Q Okay. Can you describe for us that day before the  
19 wreck? What you were doing, what was going on?

20 A Well, we were home. It was me, Sha, my brother,  
21 Minor my sister. We was home watching -- well, we was  
22 about to watch a movie. I think my mama had just came. And  
23 I think "Transformers" or something came out, and we was  
24 about to watch it.

25 Q All right. What time of day was it?

VALENDRIA BING - DIRECT by BURCHSTEAD

1 A It was like about 11:00. It wasn't quite 12:00.

2 Q Okay. And then what?

3 A Well, my uncle came by. I think he --

4 Q Who's your uncle?

5 A McKenvie.

6 Q McKenvie?

7 A Davis.

8 Q Is he in the courtroom?

9 A Uh-huh, that's him.

10 Q Okay.

11 MS. BURCHSTEAD: So, she's pointing to the  
12 Defendant.

13 BY MS. BURCHSTEAD:

14 Q So, he came by?

15 A He came by.

16 Q Then what?

17 A Him and his -- I think his -- that's his uncle,  
18 Dion, he came by.

19 Q Dion?

20 A Uh-huh. (Indicating affirmatively.)

21 Q Okay. And what did y'all do after that?

22 A He came by and asked us -- first he asked us, did  
23 we want to come to his house.

24 Q Who asked you that?

25 A My uncle asked us did we want to come to his

## VALENDRIA BING - DIRECT by BURCHSTEAD

1 house. And first it was about cleaning up. So I said,  
2 yeah, of course. Anybody that knows me knows I like to  
3 clean up.

4 Q All right. So he asked you to help clean his  
5 house?

6 A Uh-huh. (Indicating affirmatively).

7 Q Okay. Did y'all go clean his house?

8 A No.

9 Q All right. What happened?

10 A We left. Well, when we first left we went and  
11 dropped his uncle off.

12 Q Okay. Let me just back you up.

13 Who's "we," who all left?

14 A Oh, it was me, my uncle, Sha, and Minor and  
15 Dion.

16 Q All right. And Minor is your brother?

17 A That's my little brother.

18 Q Okay. So, at the time how old were you?

19 A I was 18.

20 Q All right.

21 A I just turned 18 that September.

22 Q All right. How old was Minor

23 A Twelve.

24 Q Okay. And you said Sha was with you?

25 A Yes.

## VALENDRIA BING - DIRECT by BURCHSTEAD

1 Q All right. Who's Sha?

2 A That's my cousin. Well, my sister, you might as  
3 well say. We were like sisters.

4 Q Okay. What's her full name?

5 A Cieara NaSha Brooker.

6 Q Okay. So y'all leave with Mr. Davis and Dion?

7 A Yes, ma'am.

8 Q All right. Was Minor in school at the time?

9 He was 12.

10 A He was in school.

11 Q Are you close to your brother?

12 A Oh, we real close. That's my best friend.

13 Q All right. Y'all like to do stuff together?

14 A We all we got. That's all we --

15 Q Yeah. And Cieara, you call her Sha; is that

16 right?

17 A Sha.

18 Q All right. How old was Sha at the time?

19 A Eighteen. She was a couple of months older than  
20 me.

21 Q A couple of months older? All right.

22 MR. PLEXICO: I didn't understand what she said.

23 BY MS. BURCHSTEAD:

24 Q How old was she?

25 A She was 18. A couple of months older than me.

## VALENDRIA BING - DIRECT by BURCHSTEAD

1 Q Okay. And was she in school?

2 A She was in college.

3 Q She was in college. All right.

4 MS. BURCHSTEAD: Beg the Court's indulgence.

5 We're trying to get our numbers straight here.

6 MS. BURCHSTEAD: May we approach, Judge?

7 MR. PLEXICO: May we approach?

8 (Off-the-record discussion

9 held.)

10 MS. BURCHSTEAD: Permission to approach, Judge?

11 THE COURT: Yes.

12 BY MS. BURCHSTEAD:

13 Q All right, Val, I'm showing you what's marked as  
14 State's Exhibit 24. Will you take a look? What do you have  
15 in your hand there?

16 A A picture of my cousin.

17 Q Okay. Is that Sha?

18 A That's Sha.

19 Q All right. Is that about how she looked at the  
20 time of the accident?

21 A Uh-huh. (Indicating affirmatively.)

22 Q Okay. So you all went out with McKenvie in the  
23 car?

24 A (Nods in the affirmative).

25 Q Okay.

VALENDRIA BING - DIRECT by BURCHSTEAD

1 MS. BURCHSTEAD: Your Honor, at this time, the  
2 State moves 24 into evidence.

3 THE COURT: Okay.

4 MS. BURCHSTEAD: Permission to publish?

5 *(Whereupon, State's Exhibit No(s). 24 marked for*  
6 *identification and received in evidence.)*

7 MS. BURCHSTEAD: Beg the Court's indulgence.

8 BY MS. BURCHSTEAD:

9 Q All right. So, I think where we paused, you all  
10 had gotten in the car with McKenvie, and what happened after  
11 that? Were y'all going to go clean his house?

12 A Initially, that was where we were supposed to go  
13 at first.

14 Q Okay.

15 A We dropped his uncle off first, Dion.

16 Q Dropped his cousin off?

17 A Cousin? No, that's his uncle.

18 Q Not -- all right, Dion. Okay.

19 A Dropped Dion off first.

20 Q All right.

21 A Then we went to the store. We went to the El  
22 Cheapo.

23 Q El Cheapo. All right. Did anything happen at El  
24 Cheapo?

25 A He asked us did we want anything out of the store.

## VALENDRIA BING - DIRECT by BURCHSTEAD

1 Q Okay. Did anybody go in the store?

2 A No. He went in by himself.

3 Q Mr. Davis went in the store?

4 A Uh-huh. (Indicating affirmatively.) He went in  
5 by himself.

6 Q Did he buy anything?

7 A I think he brought Sha back some candy, I think.  
8 I can't recall what I got. And he bought something.

9 Q What did he have?

10 A It was in a brown bag. It was a beer.

11 Q All right. Do you remember anything about it,  
12 other than a brown bag?

13 A No. It was just in a brown bag.

14 Q Okay. All right. So, is that everything that  
15 happened at the El Cheapo that you can remember?

16 A Uh-huh (indicating affirmatively).

17 Q Okay. Then what?

18 A I think we left El Cheapo and -- okay. We left El  
19 Cheapo and went to the SRP machine.

20 Q To the what, I'm sorry?

21 A The SRP machine.

22 Q Okay. What's that?

23 A It's a teller.

24 Q Okay. It's like an ATM?

25 A Uh-huh. (Indicating affirmatively.) The ATM

## VALENDRIA BING - DIRECT by BURCHSTEAD

1 machine.

2 Q Okay. All right. Okay.

3 A And then we went to the Pinewood Apartments.

4 Q All right. Now, at this point, who's driving?

5 A He was the driver the whole time.

6 Q Okay. And I think you said you dropped off Dion.

7 Can you tell me, after you dropped off Dion, where's

8 everybody positioned in the car?

9 A I'm the passenger. **Minor** is sitting behind  
10 McKenvie, and Sha was sitting behind me.

11 Q And what kind of vehicle are you in?

12 A A white Cadillac Escalade.

13 Q Okay. Now, after you go to the ATM, and I stopped  
14 you, can you pick up there and tell us what happened?

15 A Could you repeat that?

16 Q Yes. After you stopped at the ATM, tell us what  
17 happened?

18 A Okay. We went to the Pinewood Apartments.

19 Q Okay. Anything happen there?

20 A He got out -- McKenvie got out and talked to a  
21 couple of people. That was about it.

22 Q All right. Were you there very long?

23 A No, we weren't there for probably about, maybe two  
24 or three minutes. It wasn't long. No longer than five  
25 minutes, I can tell you that.



## VALENDRIA BING - DIRECT by BURCHSTEAD

1 Q Yes. Okay. Did anybody else get out of the car?

2 A No.. We stayed in the car. I didn't have no  
3 clothes, so I wasn't getting out.

4 Q You didn't have on clothes?

5 A No.

6 Q What were you wearing?

7 A Just a little green dress.

8 Q All right. Fair enough. Okay. So, do you  
9 remember were the windows down or up; do you remember?

10 A Like my window was probably cracked, not that  
11 much.

12 Q Do you remember what the weather was like that  
13 day? Do you remember?

14 A But it was November, it was kind of cool. It  
15 wasn't cool, but it was cool outside. You needed a jacket.

16 Q All right. A jacket. Okay. So, after the stop  
17 at Pinewood, what happened after that?

18 A We left. And my uncle, he was the driver. He  
19 sped out. He was going a little fast through the parking  
20 lot. We came to a stop sign. There's a stop sign when you  
21 come out of the apartments, or the yield. And he left out  
22 kind of going a little bit -- he was speeding a little bit  
23 going down the road. Probably slowed down just a tad to  
24 make a left turn down Oswald.

25 Q Took a left down Oswald?

## VALENDRIA BING - DIRECT by BURCHSTEAD

- 1           A     Yes.
- 2           Q     Okay.
- 3           A     When you come from that direction, it's only left.
- 4           Q     Okay. All right. So you're going down Oswald,
- 5 then what?
- 6           A     He was going pretty fast. He was going fast.
- 7           Q     Okay. Was it like -- was it fun? How did you
- 8 feel driving down the road?
- 9           A     Scared.
- 10          Q     Okay.
- 11          A     Because he was going too fast.
- 12          Q     All right.
- 13          A     You know Oswald Road. It's got like -- there's
- 14 some curves on it.
- 15          Q     Okay.
- 16          A     And the ditches -- well, the ditches beside it,
- 17 they're real big, too.
- 18          Q     Big ditches?
- 19          A     Uh-huh. (Indicating affirmatively.)
- 20          Q     So, you're going down Oswald Road at -- speeding
- 21 along, then what happened?
- 22          A     I asked him to slow down.
- 23          Q     Okay. Did he slow down?
- 24          A     No.
- 25          Q     Okay. Then what?

## VALENDRIA BING - DIRECT by BURCHSTEAD

1           A     I think I got down. You know, in the car, when  
2     you get down. There's some space you can get down in. I  
3     got down there.

4           Q     Like in the floorboard?

5           A     Yes. Okay. That's what you call it, the  
6     floorboards.

7           Q     So you got down in the floorboards?

8           A     Uh-huh. (Indicating affirmatively).

9           Q     Okay.

10          A     Because I was scared.

11          Q     Right. Okay. Just tell us what else you remember  
12     going into the wreck?

13          A     I got down in the floorboards, and Cieara -- okay,  
14     Cieara sat behind me. So she was laughing or whatever.  
15     Because she was, you know, that's all she ever did was  
16     laugh. She said, oh, we're going to die.

17               MR. PLEXICO: Your Honor, I'll object, Your Honor.

18               That's hearsay, and I'm -- the exception. I move to  
19               strike that. And I would ask for a Brady instruction.

20

21               THE COURT: All right. Strike.

22               MS. BURCHSTEAD: Your Honor, may I be heard?

23               THE COURT: Nope.

24     BY MS. BURCHSTEAD:

25           Q     Okay. Without saying what anybody said, just keep

## VALENDRIA BING - DIRECT by BURCHSTEAD

1     telling us what happened?

2           A     Okay. Well, as I said, I was in the floorboards,  
3     and we was going down the road speeding. And I asked him to  
4     slow down. He didn't slow down. So I started -- like when  
5     I was in the floorboards, I was just praying that I hope  
6     nothing to happen. And the next thing I knew, he was off  
7     the road.

8           Q     Okay. So, do you remember the actual crash?

9           A     Well, when we got through, all I know that I was  
10    laying on the ground.

11          Q     Okay. Do you remember where everybody else was?

12          A     Well, my glasses was off, so my vision was like  
13    blurry. But I could see -- I couldn't see my little  
14    brother. He was like 12 at the time, so he was like real  
15    short. So, I couldn't see him. He sat on the opposite  
16    side. I know I saw some blood, and I saw Cieara in the  
17    back. But I couldn't really see because my glasses was off.

18          Q     Okay. Do you remember any trees or anything about  
19    kind of the environment where you were at the time?

20          A     There was some trees.

21          Q     Okay. All right. What's the next thing you  
22    remember?

23          A     Somebody came and put a towel over me.

24          Q     Okay.

25          A     And my uncle had came over by me. And he first

## VALENDRIA BING - DIRECT by BURCHSTEAD

1 asked me was I okay. Could I hear him? And I could hear  
2 him, but my -- you know, I couldn't really see because I  
3 didn't have any glasses on whatever. I know I remember  
4 seeing EMS, some police officers, and that's it.

5 Q Okay. What after that? So, you got -- somebody  
6 covered you up?

7 A Uh-huh. (Indicating affirmatively.)

8 Q You saw some folks?

9 A Uh-huh. (Indicating affirmatively.)

10 Q Did you get medical treatment?

11 A Oh, at the hospital?

12 Q Yeah, on scene, at the hospital?

13 A Well, he -- well, on scene, he just covered me up  
14 with a towel and put me in the back of the EMS.

15 Q All right. And did you go to the hospital?

16 A Yes, ma'am, I went to the hospital.

17 Q Okay. What happened after you got to the  
18 hospital?

19 A Okay. When I got to the hospital I was leaning --  
20 I was in a room by myself, first of all. And there was a  
21 couple of people there that I seen.

22 Q Like hospital people?

23 A Yeah, just like nurses or whatever.

24 Q All right.

25 A And I saw one of my aunts and my mama and my other

## VALENDRIA BING - DIRECT by BURCHSTEAD

1     auntie, my great aunt, which is my granny's sister, and my  
2     aunt, which is my daddy's sister, and my mama.

3           Q     Okay. So, your mama was there at the hospital?

4           A     Uh-huh. (Indicating affirmatively.) She came,  
5     and my friends.

6           Q     All right. Now, did you know that Sha had died in  
7     the wreck?

8           A     No, ma'am.

9           Q     Okay. And let me be clear, do you call her Cieara  
10    or Sha?

11          A     Sha Sha.

12          Q     Sha Sha. Okay. So, as -- when you were at the  
13    hospital at that point, did you know that Sha Sha had died?

14          A     No.

15          Q     Okay. Do you remember talking to Trooper Gates at  
16    the hospital?

17          A     Yes, ma'am, I do.

18          Q     What can you tell us about that? What do you  
19    remember talking to him about?

20          A     First -- well, he came in and he asked me, what  
21    was my name and I told him. And he asked me was I the  
22    driver -- who was driving?

23                THE COURT: He came and asked you?

24                THE WITNESS: Uh-huh. (Indicating affirmatively.)

25                And at first I told him that I was, in fact, the

## VALENDRIA BING - DIRECT by BURCHSTEAD

1 passenger. Which I was.

2 BY MS. BURCHSTEAD:

3 Q Okay. Did you ever tell him you were the driver?

4 A Yes, ma'am, I did.

5 Q When did you tell him that?

6 A I told him that -- at first I told him I was the  
7 passenger, okay? And then, after I'd spoke with my uncle, I  
8 told him that I was the driver.

9 Q All right. So, was that after you talked with  
10 your uncle?

11 A Yes, ma'am.

12 Q Did he ask you to tell the trooper?

13 MR. PLEXICO: That's leading, Your Honor. I'll  
14 object.

15 THE COURT: That's all right. She can rephrase  
16 it.

17 MS. BURCHSTEAD: I'll rephrase it. That's fine,  
18 Judge.

19 BY MS. BURCHSTEAD:

20 Q Why did you tell Trooper Gates you were the driver  
21 after you talked to your uncle?

22 A Because he asked me to tell Trooper Gates that I  
23 -- he asked me to tell State trooper, which is Mr. Gates,  
24 that I was the driver because his license was suspended.

25 Q Okay. So, you did that?

## VALENDRIA BING - DIRECT by BURCHSTEAD

1           A     Yes, ma'am, I did.

2           Q     Okay. Did you write that down for Trooper Gates?

3           A     Yes, ma'am, I did.

4           Q     All right. When did you learn -- or did you learn  
5 that Sha Sha died that day?

6           A     Yes, ma'am, I did.

7           Q     How did you find that out?

8           A     My mom came and told me.

9           Q     At the hospital, your mom told you?

10          A     She told me.

11          Q     Okay. Now, did you ever tell Trooper Gates -- did  
12 you talk to Trooper Gates, again? Like -- did you talk to  
13 him again that day at the hospital? After you wrote down  
14 that you were the driver, did you talk to him again that  
15 day?

16          A     No, ma'am.

17          Q     Okay. So, after you wrote down that you were the  
18 driver, did you ever say again that you were not the driver?

19          A     No, not after that, I didn't say it.

20          Q     Did you ever say that -- after you said you were  
21 the driver, did you ever say that you were the passenger  
22 again?

23          A     That day?

24          Q     Ever?

25          A     Okay. Yes, ma'am, I did.



## VALENDRIA BING - DIRECT by BURCHSTEAD

1 Q All right. When was that?

2 A Two days later.

3 Q All right.

4 A When Trooper Gates came to our house, I told him.

5 Q Okay. So, two days later you talked to Trooper  
6 Gates again?

7 A (Nods in the affirmative).

8 Q How come?

9 A Because I knew that I had told him a lie, and my  
10 cousin had died. And I knew I wasn't the driver. So, it  
11 was just the right thing to do. And so, I told my mama that  
12 I was not the driver, in fact, because I wasn't. And I just  
13 needed -- so, I just needed to tell him that, to clear it  
14 all up. Because I wasn't -- indeed, I was not the driver.

15 Q All right.

16 A I didn't have a driver's license. I just got a  
17 drivers license last year.

18 Q Okay. So, a couple of days later you tell Trooper  
19 Gates you're not the driver. Did you write that down?

20 A Yes, ma'am.

21 Q All right. Did do you remember if he recorded  
22 that?

23 A Yes, ma'am, he recorded it.

24 Q All right. What -- what injuries did you have in.  
25 the wreck?

## VALENDIRA BING - Cross by Plexico

1           A     Cracked ribs, a broken nose, all the -- like this  
2     side of my face, there was nothing on it. It was like brown  
3     and another color over here. I had a gash by my eye, black  
4     marks all over my arms and my legs. I couldn't really walk  
5     -- when I walked my leg was sore.

6           Q     All right. Is there anything permanent from the  
7     wreck, the injuries, that you still have?

8           A     This gash by my -- like I have makeup, so you  
9     can't see. I had this -- my leg hurts from time to time,  
10    but my back sometimes.

11          Q     Okay.

12                   MS. BURCHSTEAD: Beg the Court's indulgence.

13                   That is all of the State's questions at this time,  
14     Judge. Answer any questions that Mr. Plexico has, okay.

## 15                                   CROSS-EXAMINATION

16   BY MR. PLEXICO:

17          Q     You were at the Allendale County Hospital,  
18     correct, ma'am?

19          A     Yes.

20          Q     All right. And did -- about 3:50; is that when  
21     Trooper Gates talked to you?

22          A     I can't remember what time it was I talked to him.

23          Q     Okay. But it wasn't long after you got there,  
24     right?

25          A     It wasn't long.

## VALENDIRA BING - Cross by Plexico

1 Q All right. Now, he told you he was investigating  
2 the matter, okay; is that correct?

3 A Repeat yourself?

4 Q Well, police come, they're investigating  
5 something, correct?

6 A Correct.

7 Q Okay. Now, he talked to you, then he came back to  
8 talk to you again, didn't he?

9 A Yes.

10 Q And he told y'all that he had to have the truth;  
11 is that right?

12 A Yes, he did.

13 Q And you sat down and you wrote out a statement,  
14 correct?

15 A I did.

16 Q And in that statement that you gave --

17 MR. PLEXICO: May I approach the witness?

18 THE COURT: (Nods in the affirmative.)

19 BY MR. PLEXICO:

20 Q This is the statement that you gave that day, the  
21 top part?

22 A Uh-huh. (Indicating affirmatively.) That's the  
23 one I gave.

24 Q All right. Did you write in that statement, when  
25 you were there, telling the truth in that emotional moment.

## VALENDIRA BING - Cross by Plexico

1 "I lost control over the vehicle, I flew out of the  
2 window." Did you put that in that statement?

3 A Could you bring that paper back so I can see?

4 Q Could you read it from there?

5 A You want me to read it out loud?

6 Q Sure. Read the whole statement.

7 A My uncle --

8 MS. BURCHSTEAD: Your Honor, I object. It's not  
9 in evidence. She's publishing it to the jury first.

10 THE COURT: It's her statement. She admitted it  
11 was, she can certainly read it.

12 MS. BURCHSTEAD: Very well, Your Honor.

13 A "My uncle picked me up from my house to go clean  
14 up his room. We left my house and we dropped off Dion. We  
15 went to the El Cheapo, then we went to Pinewood. And then  
16 we left to go back to Fairfax. But on Oswald Road, my uncle  
17 was showing -- showing me how to drive, I lost control of  
18 the vehicle and I flew out the window. We left around 2:00  
19 p.m." Okay, I wrote that. I know my handwriting.

20 Q Okay. Now, you changed your mind, correct? And  
21 you said, I want to give another statement, right? Now,  
22 you knew -- Trooper Gates said -- he's told you, he's  
23 investigating the death of Ms. Cleara, correct? Sha Sha?  
24 And you knew then this was a real serious matter, right?

25 A No, I didn't know that it was a serious matter.

## VALENDIRA BING - Cross by Plexico

1 Q Then you had two days. And on the 3rd is when you  
2 called up Trooper Gates and said, I need to talk to you,  
3 right?

4 A I don't --

5 Q Your family called up or you called up?

6 A I don't remember. I just know I talked to him.

7 Q Okay. All right. But y'all initiated the  
8 contact, you and your family, right?

9 A Correct.

10 Q Okay. So y'all got Trooper Gates over there. And  
11 then you gave him a statement saying I wasn't driving?

12 A Because I was not.

13 Q Okay. And that's not because you had talked to  
14 your family and realized that you were in a world of trouble  
15 if you were driving that vehicle; is that correct?

16 A That's correct.

17 Q All right. And you were all emotional and crying  
18 at the hospital. And you were very sad over what happened?

19 A I was.

20 Q Okay. All right. Now --

21 MR. PLEXICO: The Court's indulgence.

22 (Pause.)

23 BY MR. PLEXICO:

24 Q Is this --

25 MR. PLEXICO: May I approach?

VALENDIRA BING - Cross by Plexico

1 THE COURT: Sure.

2 BY MR. PLEXICO:

3 Q Is this your second statement?

4 A Yes. This is my second statement.

5 Q Did you read the last page, again?

6 A No.

7 Q On the last page, did you write, "I told him,"  
8 meaning Mr. Gates, "it was McKenvie who was driving. And  
9 Mr. Gates asked me again who was driving. And again, I said  
10 McKenvie. The only reason that I lied was because I was  
11 scared and frustrated"?

12 A I wrote that.

13 Q That's the way you began that second sentence.  
14 And then you go into, you want to do the right thing; is  
15 that right?

16 A That's right.

17 Q Okay. Now, you were talking about driving that  
18 day, right? Do you admit that much? You were talking about  
19 driving the vehicle that day; is that right?

20 A That's right.

21 Q Okay. But you were talking about it, but you  
22 didn't put that in your statement, because it would make you  
23 look like the driver, like you said you were to start with,  
24 right? You wanted to hide that, didn't you?

25 A I wanted to what?

## VALENDIRA BING - Cross by Plexico

1 Q You wanted to hide that, because it would make you  
2 look like the driver, correct?

3 A No. What I said was, when he asked me who was the  
4 driver, I said McKenvie. He asked me again, and I said  
5 McKenvie. Because like I said, he was the driver and not  
6 me.

7 Q But you wrote -- you were writing this out,  
8 correct?

9 A To who?

10 Q You said again it was McKenvie. And then you  
11 wrote: "The only reason that I lied was because I was  
12 scared and frustrated"?

13 A I lied -- the first time they said that I was  
14 driving, because he asked me to. And I wasn't thinking  
15 about the consequences legal. That's why I lied and said  
16 that I was the driver, because I was trying to help him.  
17 Understand that.

18 Q Okay. But you've been telling the truth today,  
19 right?

20 A Yes, I am telling the truth today.

21 Q And when you gave this statement --

22 MR. PLEXICO: May I approach the witness?

23 THE COURT: Sure.

24 BY MR. PLEXICO:

25 Q Could you read that? Read it to yourself.

## VALENDIRA BING - Cross by Plexico

1 A Read what now, to the bottom?

2 Q Read the bottom print.

3 A All right. (Witness complies.)

4 Q This is your signature on that statement?

5 A That's my signature.

6 Q And you signed it. And it says, "I certify this  
7 statement is true and correct to the best of my knowledge  
8 and belief," correct?

9 A That's what it says at the bottom. I read it.

10 Q All right. And it also says, I lost control over  
11 the vehicle and I flew out of the vehicle, right?

12 A Yes.

13 Q That you certified to be true and correct, right?

14 A That was true.

15 Q Okay. So you have two stories?

16 A Excuse me?

17 MR. PLEXICO: I withdraw that question. I don't  
18 have anything further.

19 MS. BURCHSTEAD: Briefly, Your Honor?

20 I beg the Court's indulgence.

21 (Pause.)

22 *(Whereupon, State's Exhibit No(s). 25 marked for*  
23 *identification.)*

24 *(Whereupon, State's Exhibit No(s). 26 marked for*  
25 *identification.)*



## VALENDRIA BING - Redirect by Burchstead

1 MS. BURCHSTEAD: Permission to approach, Judge?

2 THE COURT: Granted.

3 REDIRECT EXAMINATION

4 BY MS. BURCHSTEAD:

5 Q Okay, Val, I'm showing you what's marked as  
6 State's Number 25. This is one of the statements that  
7 Mr. Plexico was asking you about.

8 A Yes, ma'am, he did.

9 Q All right. And is that the first written  
10 statement that you gave to Trooper Gates?

11 A Yes, it was. This is my first one.

12 Q All right. Can you read at the bottom of that,  
13 what does that say?

14 A This?

15 Q Right here.

16 A This statement is not true.

17 Q And is that your signature under that?

18 A That's my signature.

19 Q And what's the date on that?

20 A The date is November the 1st.

21 Q So the first written statement was November 1st;  
22 is that correct?

23 A November 1st. Yes, ma'am.

24 Q And the statement I just had you read, what was  
25 the date on that?

VALENDRIA BING - Redirect by Burchstead

1 A November 3rd, 2008.

2 Q All right. And I'm showing you State's 26. Is  
3 that the other statement Mr. Plexico was asking you about?

4 A Yes, ma'am.

5 Q And is that the second written statement that you  
6 gave to Trooper Gates?

7 A Yes, ma'am. This is my second written statement.

8 Q All right. What's the date on that?

9 A This one is November the 3rd, 2008.

10 Q Okay. So was that given the same time as the  
11 second portion on State's 25?

12 A No, ma'am.

13 Q Was it given the same day?

14 A Okay. I did this one on the 1st.

15 Q Right.

16 A On the day the wreck occurred. And I did this one  
17 two days later.

18 Q Right. And the part where you said it's not true;  
19 is that the same day as your second statement?

20 A Yes, ma'am.

21 Q All right.

22 MS. BURCHSTEAD: Permission to publish it to the  
23 jury. After moving into evidence first.

24 MR. PLEXICO: And I have to object. That's  
25 hearsay. That needs to be redacted under Rule 802.

## VALENDRIA BING - Redirect by Burchstead

1 MS. BURCHSTEAD: I'll withdraw it. It's fine.

2 It's no problem.

3 THE COURT: All right.

4 BY MS. BURCHSTEAD:

5 Q So those are your written statements, right?

6 A Yes, ma'am.

7 Q What were your first oral statement to Trooper  
8 Gates? What did you tell him first about the driver?

9 A At the hospital?

10 Q At the hospital. Yes. When you first talked to  
11 Trooper Gates and he asked you about the driver, what did  
12 you say?

13 A I told him I was the passenger and my uncle was  
14 the driver.

15 Q Okay. And why did you change your story? Why did  
16 you tell him that you were driving?

17 A Because my uncle asked me to tell him that I was  
18 driving, because his license was suspended.

19 Q All right. How does that make you feel now?

20 A Honestly?

21 Q Uh-huh. (Indicating affirmatively.)

22 A I don't like it. Because it's selfish of him.

23 Q Okay. Is there any question about who was  
24 driving?

25 A No, ma'am. I'm not -- I wasn't the driver.

## VALENDRIA BING - RECROSS BY PLEXICO

1 MS. BURCHSTEAD: Nothing further, Your Honor.

2 MR. PLEXICO: Briefly.

3 RE-CROSS EXAMINATION

4 BY MR. PLEXICO:

5 Q Ma'am, that's a lot of responsibility to have  
6 killed Sha Sha, isn't it?

7 A It is.

8 Q You don't want that responsibility. And you could  
9 have killed your precious little brother?

10 A That's right.

11 MR. PLEXICO: Thank you.

12 THE COURT: All right. You may step down.

13 THE WITNESS: Thank you.

14 MS. BURCHSTEAD: I beg the Court's indulgence.

15 Judge, we have got to find a form for the next  
16 witness. It was marked as an exhibit. We just need to  
17 track it down. But the State calls Cynthia Alamia.

18 THE COURT: All right.

19 Thereupon,

20 CYNTHIA ALAMIA

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

23 DIRECT EXAMINATION

24 BY MR. FERNANDEZ:

25 Q Good morning, Cynthia. Could you please state.

## CYNTHIA ALAMIA - DIRECT by Fernandez

1 your name for the record?

2 A Cynthia Alamia.

3 Q All right. And where were you currently employed?

4 A I work in a hospital.

5 Q Okay. And what do you do for Allendale Hospital?

6 A I'm a phlebotomy lab assistant.

7 Q Okay. Could you tell the jury a little bit about  
8 yourself. What -- how -- you know, where you grew up, what  
9 you do for a living in general and where you live?

10 A I grew up the majority of time in Allendale. And  
11 I've been here for about 40 some years. And I have been  
12 working at the hospital 16 years.

13 Q Okay. And you are a phlebotomist; is that  
14 correct?

15 A Yes, I am.

16 Q Could you tell us what that is? What you do?

17 A I draw blood and I do other samples, like run  
18 pregnancy tests, for strep throat, different kind of lab  
19 testing.

20 Q Okay. And how long have you been a phlebotomist?

21 A Ten years.

22 Q Did you receive any training or education in order  
23 to work at the hospital?

24 A Yes, I went to school.

25 Q Okay. Where did you go to school?

## CYNTHIA ALAMIA - DIRECT by Fernandez

1           A     Beaufort Tech.

2           Q     Okay. And I'm going to bring you back to November  
3 of 2008. Were you working at Allendale County Hospital at  
4 that time?

5           A     Yes, I was.

6           Q     Okay. And were you working there as a  
7 phlebotomist?

8           A     Yes, I was.

9           Q     All right. You have heard a little bit about the  
10 case that we're here for today. Do you recall anything  
11 about November 1st, 2008, in general?

12          A     No, I don't.

13          Q     Okay. I'm going to hand you a document that is  
14 labeled -- or that's marked as State Exhibit No. 16. Are  
15 you familiar with that form?

16          A     Yes, I am.

17          Q     Okay. Could you tell the jury what that form is?  
18 Just read the top of it, if you would?

19          A     South Carolina Law Enforcement Division, urine and  
20 blood collection report.

21          Q     Okay. Have you filled out those forms before?  
22 Are you familiar with the form?

23          A     Yes, I have.

24          Q     Okay. Could you please tell us a little bit about  
25 what that form is for, and what boxes are checked?

## CYNTHIA ALAMIA - DIRECT by Fernandez

1           A     That form is for whenever we're called to draw  
2 blood on a chain of custody we have to come back and we have  
3 to fill it out.

4           Q     Okay. Now, did you fill out that form? Do you  
5 see your signature on that page?

6           A     Yes, I did.

7           Q     Okay. And what does it say -- what action does it  
8 say that you took?

9           A     Subject -- do you want me to read the one that's  
10 checked?

11          Q     Correct.

12          A     Subject is -- oh, you said, okay, I got it.  
13 "Subject is under arrest for, or in violation of Section  
14 56-5-2945 or 50-14, and pursuant to Section 56-5-2946 or  
15 50-21-116, a blood sample or a blood and urine sample is  
16 being requested."

17          Q     Okay. And what's the date on that report?

18          A     Eleven 1, 2008.

19          Q     Okay. And who -- what does it indicate -- whose  
20 blood sample does it indicate you took?

21          A     Blood.

22          Q     From whom? Is there a name of an individual?

23          A     Yes, McKenvie Levar Davis.

24          Q     Okay. And again, you did certify that that's your  
25 signature, correct?

CYNTHIA ALAMIA - DIRECT by Fernandez

1           A     Yes, it is.

2                   MR. FERNANDEZ: Move to place this into evidence.

3           The report. It's already been marked.

4                   MR. PLEXICO: No objection.

5                   *(Whereupon, State's Exhibit No(s) 16 received in*  
6                   *evidence.)*

7 BY MR. FERNANDEZ:

8           Q     Ms. Alamia, could you tell us, what do you do to  
9           ensure that you take a true and accurate blood sample from  
10          an individual, under these circumstances?

11          A     Well, whenever I'm called to do the thing, my  
12          concern is that I go into them, identify myself, who I am.  
13          And I get the patient to identify as to who they are. And I  
14          check their armband to make sure they're the right person.  
15          And I explain to them I'm coming in to draw some blood  
16          samples.

17          Q     Okay.

18          A     Then when I draw a blood sample, we use  
19          non-alcohol. We don't use alcohol swabs. We use water to  
20          clean the area, to do a blood sample.

21          Q     Okay.

22          A     And I draw the tubes and I label them. Put the  
23          name on them. And then I hand them directly to the officer.

24          Q     Okay. And in the case, who does it indicate the  
25          officer was?



## CYNTHIA ALAMIA - Cross by Plexico

1 A Gates.

2 Q And as far as you were aware, that's who you would  
3 have handed the samples to?

4 A Yes, sir.

5 Q Okay. And I think you just said that you use  
6 non-ethanol --

7 A Non-alcohol swabs.

8 Q -- sterilization of the area?

9 A Yes.

10 Q Okay. Beg the Court's indulgence.

11 MR. FERNANDEZ: No further questions, Your Honor.

12 MR. PLEXICO: Briefly, Your Honor.

13 Beg the Court's indulgence.

14 (Pause.)

15 THE COURT: Cross?

16 CROSS EXAMINATION

17 BY MR. PLEXICO:

18 Q Do you specifically remember this person.

19 A No, I don't.

20 Q Okay. Do you specifically remember the procedure  
21 that you used?

22 A Yes, I do. We use what we call alcohol -- any  
23 blood draw we do that's pertaining to alcohol, we use  
24 non-ethanol. We use water to clean the site.

25 Q Now, my question --

## CYNTHIA ALAMIA - Redirect by Fernandez

1           A     We do it in the same way in any case, regardless  
2     of what they come in for.

3           Q     Thank you. Now, my question: Do you specifically  
4     remember this blood draw out of the thousands of blood draws  
5     that you've done this six years ago?

6           A     Would I remember that specific one?

7           Q     That was the question.

8           A     No, I don't.

9           Q     Okay. So you don't remember that -- doing it that  
10    day, and you don't remember him?

11          A     No, I don't. We're going back five years. I do  
12    millions of people probably in five years.

13          Q     Okay. Thank you.

14                MR. FERNANDEZ: One question, Your Honor.

15                       REDIRECT EXAMINATION

16    BY MR. FERNANDEZ:

17          Q     Is there any reason that you can think of that you  
18    would have possibly deviated from your normal procedure for  
19    this case?

20          A     No.

21          Q     If you had deviated for whatever reason, would you  
22    have written that down or would you have made note of it?

23          A     Yes, I would.

24          Q     Okay. Thank you.

25                MR. FERNANDEZ: I have nothing further.

MARK TURNER -- Direct by Fernandez

1 THE COURT: You may step down.

2 MR. FERNANDEZ: Permission to be excused?

3 THE COURT: Free to go.

4 WITNESS: Thank you.

5 MS. BURCHSTEAD: The State calls Mark Turner.

6 Thereupon,

7 MARK TURNER

8 was called as a witness, having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. FERNANDEZ:

12 Q All right. Mr. Turner, your name for the record,  
13 please.

14 A It's Mark William Turner.

15 Q All right. Mark, and you're a -- while it may be  
16 obvious, but with whom are you employed?

17 A The South Carolina Highway Patrol.

18 Q Okay. And how long have you been working with  
19 Highway Patrol?

20 A On August the 14th it will be 20 years.

21 Q Twenty years?

22 A Yes.

23 Q Did you do anything before joining law  
24 enforcement?

25 A I went to college.

MARK TURNER - Direct by Fernandez

1 Q Okay. Where did you go to school?

2 A Greenville Tech.

3 Q Okay. Why don't you tell us what you do for the  
4 Highway Patrol?

5 A Currently, since October of 2009, I've been  
6 assigned to the Highway Patrol's Multidisciplinary Accident  
7 Investigation Team.

8 Q Okay. Now, we've heard a little bit about that,  
9 that's called the MAIT team?

10 A M-A-I-T team, correct.

11 Q We've heard a little bit about the MAIT team  
12 already from prior testimony. But why don't you tell us  
13 what, in particular, you do for the MAIT team?

14 A Reconstruct collisions is our general purpose job.  
15 In particular, I specialize in analyzing CDR data that's  
16 collected from air bag control modules.

17 Q We've heard that CDR is just another name that --  
18 we've also heard APM. Are they similar data?

19 A Crash Data Retrieval is a Bosch software, Bosch  
20 Technology, that downloads the data from the air bag control  
21 modules, the ACM.

22 Q Okay. Why don't you give us a little bit of info  
23 on your training and education? Tell us a little bit of the  
24 classes you've attended.

25 A Well, in the realm of accident reconstruction, I

MARK TURNER - Direct by Fernandez

1 have roughly 1500 hours of reconstruction, including, as it  
2 applies to the case today, including since March 2013, I've  
3 been certified an analyst by Rusty Haig in CDR Technology.

4 Q What does that involve, in becoming an analyst?

5 A Excuse me. You have to be a Tech One and a Tech  
6 Two, which essentially allows you to download and collect  
7 the data from the Airbag Control Module. The CDR analyst  
8 class takes that a step further. And you're taught -- Rusty  
9 Haig is essentially the world's foremost expert on CDR  
10 Technology. It allows you to look at the data from that  
11 report, from the CDR report, and determine if that data's  
12 correct, as it applies to your collision.

13 Q As far as it relates to accident reconstruction or  
14 collision reconstruction, what training have you received in  
15 that respect?

16 A I'm also certified as an -- I'm certified in  
17 accident reconstruction.

18 Q What is that?

19 A It's the accreditation for traffic accident  
20 reconstruction. It's essentially the only accreditation in  
21 the world for traffic accident reconstruction.

22 Q Okay. And how often -- how many times have you  
23 testified in court, any court?

24 A Ten times.

25 MR. FERNANDEZ: Your Honor, at this time, we would

MARK TURNER - Direct by Fernandez

1 designate Mr. Turner as an expert.

2 MR. PLEXICO: In what, Your Honor?

3 MR. FERNANDEZ: In collision reconstruction.

4 MR. PLEXICO: Okay. No objection then.

5 THE COURT: Qualified.

6 MR. FERNANDEZ: Thank you, Your Honor.

7 BY MR. FERNANDEZ:

8 Q Mr. Turner -- Mark, I'm going to turn your  
9 attention to this accident on -- that happened on November  
10 1st, 2008. Have you done any -- have you done any  
11 investigation into this particular accident with the data?

12 A Yes. I was asked to look at the CDR report in  
13 relation to this collision.

14 Q Okay. And did you, in fact, take a look at that  
15 CDR report?

16 A Yes, I did.

17 Q Tell the jury what you learned, and what you were  
18 able to determine by looking at that data, in particular?  
19 And how you came to that conclusion. Explain what process  
20 you used and how you've come to the conclusion that you  
21 reached?

22 A You had -- if you want to be a little more  
23 specific, that's a broad --

24 Q All right. Tell us a little bit -- you did look  
25 at the downloaded CDR data, correct?

MARK TURNER - Direct by Fernandez

1 A Correct.

2 Q All right. Tell us a little bit what that data  
3 shows you, in the general sense?

4 A Well, depending on the resolution rate, this gets  
5 a little technical. But depending on the airbag control  
6 module in that vehicle, you'll have a different resolution  
7 rate. Meaning that it reports -- let me back up.

8 The primary job of the airbag control module  
9 is to keep you safe. Depending on the severity of the crash  
10 that you're in, it will deploy air bags, seat belt  
11 re-tensioners, which is, for lack of a better term, you  
12 know, pyrotechnic, firecracker kind of thing, that keeps  
13 your seatbelt tight, keeps you from going forward. And a  
14 front air bag, side air bags. It determines, again, based  
15 on the severity of your collision, whether to fire those  
16 things or not. Whether to keep you safe or not.

17 In addition to doing that, as a secondary  
18 function, it records crash data and pre-crash data. And  
19 that's going back to the resolution rate, depending upon the  
20 particular airbag control module, this one in particular, if  
21 I'm not mistaken, gave five seconds of pre-crash data. So  
22 what I do in analyzing the report, obviously, we're  
23 interested in the pre-crash data, because that will give  
24 you speed, braking. It basically gives you -- you can  
25 determine about when that impact would have taken place,

MARK TURNER - Direct by Fernandez

1 based on the timeframe. But in this particular collision,  
2 going back five seconds, the vehicle was traveling 107 miles  
3 per hour. And with -- with an open brake switch, which  
4 means that the brake switch was not depressed.

5 Q Okay. And that's how long before the collision?

6 A That's five seconds before.

7 Q And so five seconds before, traveling 107 miles an  
8 hour?

9 A Correct.

10 Q Okay. And how did you come to that conclusion?

11 What kind of data do you run in order to achieve that?

12 A It's on the CDR report -- the CDR printout. But  
13 again, the CDR -- Bosch is the German company that makes the  
14 software to download this data from the air bag control  
15 module.

16 Q Okay.

17 A And basically it gives to you the readout of the  
18 -- again, the parameters can be different. This is kind of  
19 difficult to understand. The parameters can be different,  
20 considering the airbag control module. But again, this  
21 particular model gave five seconds of pre-crash data. So,  
22 at the five-second mark -- mark before impact the speed,  
23 again, was 107 miles an hour, with an open brake switch.

24 Q All right. Now, did the airbags deploy in this  
25 case?



MARK TURNER - Direct by Fernandez

1       A     Yes. There was a non-deployment event, as well as  
2 deployment event that occurred.

3       Q     Okay. And a non-deployment event would mean --  
4 would mean what? It means essentially that something was  
5 happening that was waking up the machine?

6       A     What this -- to get more technical. This is what  
7 the airbag control module in relation to the sensors  
8 throughout the vehicle. Also the airbag control module has  
9 accelerometers inside the module itself. So what it does  
10 is, it senses. It's predictive, it's not reactive. But it  
11 senses that you're about to be in a wreck. Again, depending  
12 on the severity, of course. That one hit a -- if you hit a  
13 pothole it may sense -- it's called algorithm enabled. It  
14 wakes up and it says, Something's going on. Do I need to  
15 help my person in the car by deploying airbags? Or has it  
16 not reached that severity level? And then it's not -- it  
17 can be just the seatbelt tensioner applied and not the  
18 airbag deployment.

19            So again, it senses, you know, the severity  
20 of it. It predicts the -- if you hit a pothole, it wakes  
21 up, which is called the algorithm enabled, that goes, Okay,  
22 something's going on here. What do I need to do? If it's  
23 not severe enough collision, what it's going to do is not  
24 deploy the airbags. And then you will have a  
25 non-deployment. And again, you can have those from hitting

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1 a pothole. You can have those as part of, obviously, you  
2 can have those as part of a collision as well.

3 Q And since we're talking about airbag deployment,  
4 if an airbag is deployed how can someone -- can someone  
5 simply just stuff the airbag in and reuse it? What's the  
6 process for a new airbag?

7 A If it's a deployment then the airbag has to be  
8 replaced, as well as the airbag control module.

9 Q So you're certain that an airbag could not be  
10 reused from a prior event in that same car?

11 A No.

12 Q Okay. You did a report for this case; is that  
13 correct?

14 A That's correct.

15 Q Okay. I'm handing you a collection of papers.  
16 Are you familiar with what I'm handing you?

17 A Yes, sir.

18 Q Could you tell me what that is?

19 A That's my analysis of the data of the CDR report.

20 Q Okay. And in this did you list -- among the  
21 things you just previously testified to, did you list the  
22 deployment and the non-deployment events in your report?

23 A Yes.

24 Q Okay. What other things did you touch on in your  
25 report?

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1           A     The analysis of the data is not all inclusive.  
2     Essentially, what I do is look at it and say, it's okay,  
3     this is -- based on what I'm seeing, this is correct.  If  
4     there's any anomalies present in any case I reviewed, then I  
5     mention those.  Again, this was a non-deployment event, as  
6     well as deployment event in the collision.  Essentially, it  
7     can do -- began to out track and enter into a yaw.  Kind of  
8     if you watch a NASCAR race, you see a car go down in the  
9     pits, so as not to go down in the grass.  And it starts --  
10    the rear-end starts to come around.  That's what's called a  
11    yaw.

12                     The vehicle enters into it, then the forces  
13    acting on it are from the side that's coming in.  So, it  
14    registered a non-deployment event before the deployment  
15    event.  Before the deployment event.  It was five seconds  
16    before the deployment.  So it locked the data for both  
17    events.  So, some of the data overlaps.  It's just a  
18    different timeframe.

19           Q     Were you able to determine what eventually caused  
20    the deployment event?

21           A     I am assuming it was an impact with a tree.

22           Q     Okay.  And you've taken a look at the pictures,  
23    correct?

24           A     Yes.

25           Q     Okay.  Did you have an opportunity to inspect this

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1 vehicle?

2 A I did not.

3 Q Okay. What were you able to determine, as far as  
4 how the accident occurred from the data? The pictures you  
5 saw.

6 A Yeah, I didn't -- essentially I was asked to look  
7 at the CDR data. So, as far as what may or may not have  
8 caused the wreck, I couldn't speculate on that. But it  
9 appears that it was traveling at a high rate of speed,  
10 enters into a critical speed scuff, comes back across the  
11 highway and strikes several trees.

12 Q Okay.

13 MR. FERNANDEZ: Beg the Court's indulgence?

14 For the Court, I'm going to mark this as State's  
15 27, and to place it into evidence at this point.

16 MR. PLEXICO: Your Honor, I don't believe that the  
17 proper foundation about the reliability of it. I would  
18 like to cross-examine the witness and maybe --

19 THE COURT: All right. Go ahead.

20 MR. FERNANDEZ: I'll ask you a few questions about  
21 your report. Obviously, however, counsel will have a  
22 chance to ask you a few questions also afterwards.

23 CROSS EXAMINATION

24 BY MR. PLEXICO:

25 Q Thank you for being here, sir.

## MARK TURNER - Cross by Plexico

1 MR. PLEXICO: Oh, I'm sorry.

2 MR. FERNANDEZ: No, go ahead, I think that's fine.

3 BY MR. PLEXICO:

4 Q All right. Now, you got a report with data  
5 printouts and sat in your office and analyzed what this  
6 meant; is that correct?

7 A Yes, sir.

8 Q All right. Now, so you did no quality control  
9 checks on the actual module itself; is that correct?

10 A Yes.

11 Q All right. Did you get any reports that the  
12 quality -- that the module from which the data was  
13 downloaded was functioning properly at the time of the  
14 wreck?

15 A That's kind of self-explanatory in the module.  
16 There would be parameters within the CDR report that would  
17 kind of indicate that something was amiss if the module  
18 wasn't functioning correctly.

19 Q Okay. But you don't design computer chips, right,  
20 that record this data; is that correct?

21 A Yes.

22 Q So you don't know how a computer chip is designed,  
23 or when it can function or malfunction, correct?

24 A Yes.

25 Q Yet you rely on the data downloaded from that

MARK TURNER -- Redirect by Fernandez

1 chip, that you do not know was reliable, in order to make  
2 that report; that's also correct, isn't it?

3 A No, sir. That's not true.

4 Q That's not a matter of string of logic that makes  
5 sense?

6 A I'm sorry?

7 MR. PLEXICO: I withdraw the question.

8 THE COURT: Is there some deficits to the report?

9 MR. PLEXICO: I don't believe he's laid a  
10 foundation it's reliable information upon which he made  
11 the report, would be my objection.

12 THE COURT: All right. The report comes in. You  
13 can argue that at a later point, that he didn't check  
14 it. And it could have been flawed, but you can  
15 understand it.

16 MR. FERNANDEZ: Okay. Thank you.

17 *(Whereupon, State's Exhibit No(s). 27 marked for*  
18 *identification and received in evidence.)*

19 WITNESS: Your Honor, if I may on that particular  
20 topic --

21 REDIRECT EXAMINATION

22 BY MR. FERNANDEZ:

23 Q Do you have anything to add about your report?

24 A Yes. The airbag control module, I guess, to lay  
25 a, I guess, a foundation on accuracy. Again, as I told you

MARK TURNER -- Redirect by Fernandez

1 guys to start with, it has to be accurate. It makes a  
2 millisecond decision on whether to deploy airbags for your  
3 safety. Not only that, it's been mandated, in 2013, the  
4 Federal government has mandated it with a Federal mandate,  
5 2013 vehicles. It's Part 563 Rule, 2013 and on, all  
6 vehicles must record this data, must be equipped with an  
7 airbag control module, and must record certain data points.  
8 So, if it is accurate enough to make a millisecond, a  
9 thousand milliseconds in one second. So if it's accurate  
10 enough to make a millisecond decision to deploy airbags or  
11 not, and the Federal government mandates that this must be  
12 present, I think that it's fairly safe that it's accurate.

13 MR. FERNANDEZ: Thank you. I don't have anything  
14 further.

15 MR. PLEXICO: No follow-up on that, Your Honor.

16 THE COURT: One of my daughters says the subject  
17 is always going to be those speed bumps. Those signs  
18 that says it's there. Every time I go, I hit one of  
19 those things. It wouldn't deploy, but it would note  
20 that I hit it, right?

21 THE WITNESS: What it does, Your Honor, is it  
22 checks the logbook. It takes two consecutive readings.  
23 But there has to be a point to the machine, change of  
24 velocity over two-second cycles, to cause what's called  
25 algorithm, for the airbag control module to wake up.

MARK TURNER -- Redirect by Fernandez

1       So if you hit it with enough force to register  
2       two-second cycles -- two machines change of velocity of  
3       you slowing down, yes, it could register a  
4       non-deployment, certainly.

5               THE COURT: All right. Permission to step down?

6               MR. FERNANDEZ: Permission to excuse also?

7               THE COURT: Granted.

8               MS. BURCHSTEAD: The State calls Thomas Moore,  
9       First Sergeant Thomas Moore.

10   **Thereupon,**

11                       THOMAS EDWARD MOORE

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

14                       DIRECT EXAMINATION

15   BY MS. BURCHSTEAD:

16       Q     Good morning.

17       A     Good morning.

18       Q     Can you tell us your full name?

19       A     Thomas Edward Moore.

20       Q     All right. And with whom are you employed?

21       A     South Carolina Highway Patrol.

22       Q     And what's your current title?

23       A     First sergeant.

24       Q     First sergeant. And back in 2008 were you  
25   employed with the Highway Patrol?



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1 A Yes, ma'am.

2 Q What was your rank or title then?

3 A Sergeant.

4 Q All right. And how long have you been with the  
5 highway patrol?

6 A Seventeen years.

7 Q Okay. And prior to that, what kind of the  
8 training did you have?

9 A Same as every other trooper. Went through the  
10 academy. So -- also had additional training as supervisor.  
11 And also I was an evidence technician. Collect and preserve  
12 data and evidence, in the event it needs to be transferred  
13 somewhere else.

14 Q Okay. And back in 2008, I'm sorry, your title  
15 again, in 2008, what was that?

16 A Sergeant.

17 Q Sergeant. Okay. And as sergeant in 2008, what  
18 were your duties?

19 A I was essentially an enforcement sergeant, which  
20 means I made up the -- the plans for enforcement for each  
21 county.

22 Q Uh-huh. (Indicating affirmatively.)

23 A I also worked the road with the troopers, just as  
24 they would normally work. But I had what you would call  
25 administrative duties, as far as checking reports, checking

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1 general paperwork. So, approximately half of my time was  
2 spent in the office, the other half would be on the road.

3 Q Okay. So, as part of your duties did you log in  
4 evidence and transport evidence?

5 A Yes, ma'am.

6 Q Okay.

7 MS. BURCHSTEAD: Beg the Court's indulgence?

8 MR. PLEXICO: Okay. While she's marking it, if I  
9 may approach, Judge?

10 THE COURT: Okay.

11 (Pause.).

12 BY MS. BURCHSTEAD:

13 Q Okay. I'm showing you State's 19. What is that?

14 A That's an evidence log from the South Carolina  
15 Department of Public Safety used to document evidence that  
16 is logged into our storage facility.

17 Q Okay. And -- but you said it's a standard form?

18 A Yes, ma'am.

19 Q All right. Is your signature anywhere on there,  
20 or your name?

21 A My initials are on here several times.

22 Q Okay. And is there anything on there that would  
23 relate to this case?

24 A Yes, ma'am. Case number 08-03-HP-7-010. Trooper  
25 Gates submitted a blood and urine kit that was taken from,

MARK TURNER -- Redirect by Fernandez

1 according to this, McKenvie Davis.

2 Q All right. So would you have completed that  
3 portion of the form?

4 A Yes, ma'am. This form itself is filled out by  
5 either a sergeant -- first sergeants usually have an  
6 evidence technician and also a back-up technician, in case  
7 something happens to the technician himself.

8 Q All right. So, based on this form what happened  
9 to the blood that Trooper Gates -- the blood and urine?

10 A The blood was logged in officially into evidence,  
11 into the evidence log on November 2nd. I took it to SLED,  
12 according to this, on November the 4th, two days after it  
13 was logged in.

14 Q All right.

15 MS. BURCHSTEAD: And at this time the State moves  
16 Exhibit No. 19 into evidence, Your Honor.

17 MR. PLEXICO: Without objection.

18 THE COURT: All right.

19 *(Whereupon, State's Exhibit No(s). 19 received in*  
20 *evidence.)*

21 MS. BURCHSTEAD: Permission to publish?

22 BY MS. BURCHSTEAD:

23 Q Okay. So, I think you just said that you took it  
24 to SLED; is that right? The blood and urine?

25 A That's correct.

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1 Q Okay. So, when you took it to SLED did you have  
2 it in your custody and control the whole time?

3 A That's correct.

4 Q Did you do anything to alter it, tamper with it,  
5 change it in any way?

6 A No, ma'am.

7 MS. BURCHSTEAD: Beg the Court's indulgence?

8 BY MS. BURCHSTEAD:

9 Q I'm showing you State's 28. Can you tell us what  
10 that is?

11 A Again, that's the uniform -- form of the Highway  
12 Patrol from the Department of Public Safety. It is an  
13 on-grounds storage area log, which is a log that you  
14 essentially fill out for record keeping to show when you log  
15 something in and when you log it out.

16 Q All right. And is there anything specific to this  
17 case on there?

18 A Yes, ma'am. On November the 2nd, Case Number  
19 08-03 HP 7-010 was logged in on the 2nd by myself at 12:20.  
20 I signed myself back out at 12:25.

21 Q All right. And what evidence did this relate to,  
22 again?

23 A This is the blood and urine kit submitted by  
24 Trooper Gates.

25 Q All right. Is it fair to say that this is an

MARK TURNER -- Redirect by Fernandez

1 additional form than the one we just talked about a minute  
2 ago?

3 A Right. There's several forms as an evidence  
4 technician you're required to fill out for CALEA Standards,  
5 National Accreditation, which the patrol has. These forms  
6 are actually inspected at least once a year, but most often,  
7 three times a year.

8 MS. BURCHSTEAD: All right. At this time State  
9 would move 28 into evidence, Your Honor.

10 MR. PLEXICO: Without objection, Your Honor.

11 MS. BURCHSTEAD: And permission to publish?

12 *(Whereupon, State's Exhibit No(s). 28 marked for*  
13 *identification and received in evidence.)*

14 BY MS. BURCHSTEAD:

15 Q I'm starting out showing you State's 29. Do you  
16 recognize what that is?

17 A Yes, ma'am. This is a standard South Carolina  
18 State chain of custody and evidence instruction form, which  
19 is a standard form that we use for any evidence that is  
20 taken.

21 Q Is your name anywhere on this form?

22 A It is. It has here that I took into evidence,  
23 from the evidence refrigerator and logged it in on November  
24 the 2nd. And also took it to SLED on November the 4th.

25 Q Okay. And what evidence are we talking about?

MARK TURNER -- Redirect by Fernandez

1       A     The blood and urine kit, containing two vials of  
2 blood and one bottle of urine.

3       Q     This is the same blood and urine you were talking  
4 about a minute ago that you took to SLED?

5       A     That's correct.

6       Q     So, is this just another form for that?

7       A     That's correct.

8           MS. BURCHSTEAD: And move State's 29 into  
9 evidence.

10       MR. PLEXICO: Without objection.

11       MS. BURCHSTEAD: Permission to publish?

12       THE COURT: Granted.

13           *(Whereupon, State's Exhibit No(s). 29 marked for*  
14 *identification and received in evidence.)*

15       MS. BURCHSTEAD: Beg the Court's indulgence.

16           Beg the Court's indulgence. Your Honor, I don't  
17 believe we have any further questions. Thank you.

18       MR. PLEXICO: I have no questions of the officer.

19       THE COURT: All right. Officer, you can step  
20 down. But since you are under oath I want you to  
21 ensure the jurors that you don't have a quota, that  
22 they have to stop so many people; do they?

23       THE WITNESS: No, sir. There is no quota. They  
24 can write as many as they want.

25       MS. BURCHSTEAD: May he be excused, Your Honor?

MARK TURNER -- Redirect by Fernandez

1 THE COURT: He's free to go.

2 MS. BURCHSTEAD: Thank you, sir.

3 THE COURT: We better take a break, though.

4 MS. BURCHSTEAD: I'm sorry, sir?

5 THE COURT: It's spelled B-R-E-A-K.

6 MS. BURCHSTEAD: Sounds like a good idea to me.

7 THE COURT: Don't talk about the case.

8 (Brief recess.)

9 THE COURT: All right. You have two witnesses  
10 this morning?

11 MS. BURCHSTEAD: Actually, Judge, we can do three  
12 this morning. I believe that they will all be pretty  
13 quick.

14 THE COURT: And then this afternoon you have?

15 MS. BURCHSTEAD: One maybe two.

16 THE COURT: Can you finish this afternoon?

17 MS. BURCHSTEAD: Depending on what time we start  
18 back, three.

19 THE COURT: I want to make you look good in front  
20 of the jury, that is all.

21 MS. BURCHSTEAD: Okay, I like it.

22 (Jury enters at 11:19.)

23 THE COURT: Okay, this is how things are  
24 developing, as far as witnesses, they've moved quicker  
25 than they anticipated today. All right? The State has

MARK TURNER -- Redirect by Fernandez

1 approximately three more they're going to try to do  
2 this morning. It won't be lengthy. They only have, I  
3 think, one this afternoon?

4 MS. BURCHSTEAD: That's right, Judge.

5 THE COURT: So, we're going to finish about 3:00.  
6 We have been trying to get a bunch of SLED agents, I  
7 think, from Columbia, who are all coming together, who  
8 were told to be here in the morning, here this  
9 afternoon, but we can't get all of them. So they might  
10 -- they want to ride together, save the State money.  
11 We're going to finish pretty early today, 3:00 to 3:30.

12 Now, one of the jurors has a situation with having  
13 to pick up children tomorrow. We think we will have the  
14 case to the jury for deliberations tomorrow  
15 mid-afternoon anyway?

16 MS. BURCHSTEAD: Yes, sir.

17 THE COURT: Is that fair, Mr. Plexico?

18 MR. PLEXICO: Yes, Your Honor.

19 THE COURT: We promised that juror that we'd go  
20 home at 4:30. But if you can make other arrangements,  
21 that will be fine, but usually deliberations usually  
22 don't take just two minutes. Otherwise, everybody has  
23 to come back on Friday. So, we will get the case to  
24 the jury tomorrow, even though we're going to get out  
25 of here somewhat early today. It's beyond anybody's



Minor [REDACTED] - Direct by Burchstead

1 control, I've had to explain. We have witnesses we got to  
2 put up. And they have a life outside of here. And you tell  
3 them to come today and they get all tied up today and they  
4 can't come today. All right.

5 MS. BURCHSTEAD: Thank you, Your Honor. The State  
6 calls Minor [REDACTED].

7 Thereupon,

8 Minor [REDACTED]

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

11 DIRECT EXAMINATION

12 BY MS. BURCHSTEAD:

13 Q Good morning.

14 A Good morning.

15 Q Can you tell us your name?

16 A Minor [REDACTED]

17 Q How old are you Minor [REDACTED]

18 A I'm 17.

19 Q Okay. Back in November of 2008, how old were you?

20 A Twelve.

21 Q And do you live in Allendale County?

22 A Martin.

23 Q You live in Martin? Did you -- are you from the  
24 area?

25 A Yes, ma'am.

- [REDACTED] - Direct by Burchstead

1 Q Okay. And are you in school?

2 A Yes, ma'am.

3 Q Where do you go to school?

4 A Allendale Fairfax High School.

5 Q Do you have any brothers or sisters?

6 A Yes, ma'am. I have got a brother and like five  
7 sisters.

8 Q All right. Is Valandrea Bing one of your sisters?

9 A Yes, sir -- yes, ma'am.

10 Q All right. Okay. We're going to go back to  
11 November of 2008, okay? Were you involved in a wreck on  
12 November 1st, 2008?

13 A Yes, ma'am.

14 Q Okay. Do you remember much about it?

15 A Yes, ma'am.

16 Q All right. Why don't you tell us a little bit  
17 about that day before the wreck. Tell us what you remember.  
18 What were you doing that morning?

19 A I was at the house. I was in there playing games,  
20 you know. That's when I heard a car, I heard some music.  
21 So I looked out the window and I saw my uncle, McKenvie.  
22 And so I told my sister, Uncle McKenvie's outside. And I  
23 went outside and I was talking to him for a little --

24 Q I need to ask you to clarify. It was your uncle;  
25 is that what you said?

Minor - Direct by Burchstead

1 A Yes, ma'am.

2 Q All right. So you heard him come, you heard some  
3 music?

4 A Yes, ma'am.

5 Q All right. Then what?

6 A I went outside. We had a conversation for a  
7 while. And he asked my sister and them to come do some  
8 cleaning. And I said, Man, you're going to let me ride?  
9 And he said, You can go ride.

10 Q So you could go riding?

11 A Yes, ma'am.

12 Q Okay.

13 A So we left. We went to drop off his cousin, Uncle  
14 somebody.

15 Q Who all was in the car when you left?

16 A My sister, Sha Sha, Val, my uncle and Dion.

17 Q All right. And who was driving at that point?

18 A My uncle.

19 Q What were you riding in?

20 A A Cadillac truck.

21 Q Okay. All right. So you leave out, and did you  
22 say you dropped somebody off; is that right?

23 A Yes, ma'am.

24 Q All right. Then what?

25 A We went to El Cheapo. My uncle bought us some

Minor - Direct by Burchstead

1 stuff from the store.

2 Q All right. Do you remember what he bought?

3 A He brought us some candy and he picked himself  
4 something.

5 Q All right. Do you know what he had for himself?

6 A It was in a brown paper bag.

7 Q Do you remember anything else about that?

8 A No, ma'am.

9 Q Then what happened?

10 A Then we went to the Pinewood Apartments.

11 Q Okay.

12 A And we went out there, and he had a conversation  
13 with a couple of people.

14 Q Let me stop you there and ask you this: After you  
15 dropped off the other person, where was everybody in the  
16 car? Where were you seated?

17 A I was sitting behind my Uncle Kenzie. He was  
18 driving. My sister was in the passenger side, Cieara.

19 Q Do you call her Cieara?

20 A Yes, ma'am.

21 Q So you stopped at the Pinewood Apartments; is that  
22 right?

23 A Yes, ma'am.

24 Q All right. Tell us about how long were you all  
25 there?

Video - Direct by Burchstead

1           A     It was about 10, 15 minutes. He was just out  
2     there talking to some of his friends. Then we left to go to  
3     his house.

4           Q     So Mr. Davis talked to some of his friends at  
5     Pinewood Apartments?

6           A     Yes, ma'am.

7           Q     All right. How long were there then?

8           A     Probably about 10, 15 minutes.

9           Q     All right. Not too long?

10          A     Not too long.

11          Q     All right. Was he driving when y'all left  
12     Pinewood Apartments?

13          A     Yes, ma'am.

14          Q     Tell us what happened after that. Where did y'all  
15     go? What happened?

16          A     That's -- when we left Pinewood Apartments, I  
17     think we left on Oswald Road there.

18          Q     Okay.

19          A     And that's when everything happened.

20          Q     What do you mean "everything happened?" Will you  
21     tell us about that part?

22          A     He lost control of the vehicle and we got in a car  
23     wreck.

24          Q     Do you remember anything about the losing control  
25     of the vehicle?

Minor - Direct by Burchstead

1 A No, ma'am.

2 Q How fast were you all going, any idea?

3 A I know we was driving, but, you know, me being  
4 young, and we riding along.

5 Q Yes..

6 A We just chilling.

7 Q Okay.

8 A So I didn't pay no attention.

9 Q All right. Okay, so, you lost control?

10 A Uh-huh. (Indicating affirmatively.)

11 Q And then do you remember anything after that about  
12 the wreck?

13 A No.. It seemed like everything -- it kind of just  
14 blacked out a little bit -- I just blacked out then. I  
15 didn't know what was going on until after the fact, until  
16 afterwards.

17 Q Okay. So you say that you didn't know much until  
18 afterwards?

19 A Uh-huh. (Indicating affirmatively.)

20 Q Okay. What do you remember afterwards? What is  
21 the first thing you can remember.

22 A Mr. Oswald came to the truck, I think.

23 Q Okay.

24 A And I think he was calling the police or  
25 something. He was talking to me.

Minor [REDACTED] - Direct by Burchstead

1 Q Okay. Do you remember where you were at that  
2 point?

3 A I was in the back seat, behind the driver.

4 Q All right. Where was Mr. Davis?

5 A I think he was outside of the vehicle. He be  
6 probably checking on my sister, just trying to see what was  
7 going on, I guess.

8 Q All right. And where was Cieara or Sha?

9 A She was right beside me.

10 Q So, did the police come?

11 A I think it was Officer Gates.

12 Q Okay. You remember seeing Mr. Gates -- Trooper  
13 Gates there?

14 A Yes, ma'am.

15 Q All right. And did you talk to him there?

16 A I don't think I talked to him there.

17 Q All right. Did you lose your memory?

18 A Yes, ma'am.

19 Q All right. What else do you remember after the  
20 wreck, while y'all were still in the vehicle? Did EMS come?  
21 Did anybody come and give you medical treatment?

22 A Oh, yes, ma'am. And the fire people came and  
23 helped me -- got me out of the truck.

24 Q Yes. Okay. Did somebody get you out of the car?

25 A I think it was the EMS or the fire people, they

Minor [REDACTED] - Direct by Burchstead

1 had to get me out of the car.

2 Q All right. Did you go to the hospital after that?

3 A Yes, ma'am.

4 Q Do you remember much about that?

5 A At the hospital?

6 Q Uh-huh. (Indicating affirmatively.)

7 A Officer Gates came and asked me who was driving.

8 Asked me what my name was, and who was driving. And I told

9 him it was my uncle.

10 Q All right. And what else do you remember at the  
11 hospital? Were you at the Allendale Hospital?

12 A Yes, ma'am.

13 Q All right. Did you get medical treatment at the  
14 Allendale Hospital?

15 A They did some things to me I didn't like.

16 Q Did you go anywhere else for medical treatment?

17 A To Columbia.

18 Q They took you to Columbia?

19 A Yes, ma'am.

20 Q How did you get there? Were you in a car or an  
21 ambulance, or what?

22 A Helicopter flew me.

23 Q You were helicoptered to Columbia for medical  
24 treatment?

25 A Yes, ma'am.



Minor - Direct by Burchstead

1 Q How were -- do you remember how you were feeling  
2 or what your injuries may have been at that time?

3 A I had some -- a punctured liver, internal lung,  
4 and I had a bad shoulder. Still kind of do.

5 Q Bad shoulder and that's -- I'm sorry, what else  
6 about your shoulder?

7 A I got a bad shoulder.

8 Q Okay. How was your breathing? Were you breathing  
9 okay?

10 A Not for a while, yes, ma'am.

11 Q All right. Now, you were in Ridge County  
12 Hospital. Was it the Childrens' Hospital, do you know?

13 A I think so, but I don't know.

14 Q Somewhere in Columbia. Okay. All right. How  
15 long were you there for treatment?

16 A I think about two or three days probably.

17 Q Okay. And do you remember, without necessarily  
18 telling us what you said, do you remember talking to Trooper  
19 Gates while you were in the hospital?

20 A About like who was driving?

21 Q Yes.

22 A And just like that. Like who was driving? He  
23 asked me who was driving.

24 Q All right. Do you remember if that was written  
25 down?

Minor [REDACTED] - Direct by Burchstead

1 A I think it was.

2 Q All right. Okay. So, after you got out of the  
3 hospital, how were you feeling physically? Did you have any  
4 lingering injuries, anything that kept bothering you?

5 A After I left the hospital?

6 Q Yeah.

7 A Yes, ma'am. Like my shoulder and like my  
8 internal, like my lungs and stuff.

9 Q Say that again?

10 A I can feel it like when it rains and stuff like  
11 that.

12 Q Your shoulder?

13 A Yes, ma'am.

14 Q It still bothers you?

15 A Yes, ma'am.

16 Q Okay. Hold on a second.. Okay.

17 MS. BURCHSTEAD: I beg the Court's indulgence.

18 (Pause.)

19 BY MS. BURCHSTEAD:

20 Q Okay. So your shoulder was still bothering you  
21 when you left the hospital, right?

22 A Yes, ma'am.

23 Q And it still bothers you some now?

24 A Yes, ma'am.

25 Q Okay. So, after the accident did you return to

MIRO -- Cross by Plexico

1 normal or not?

2 A Not really.

3 Q Okay. And for the treatment of your shoulder did  
4 they put it in a cast or a sling, or did you get any sort of  
5 treatment on your shoulder?

6 A I wore a sling for a while.

7 Q You wore a sling for a while? Okay.

8 MS. BURCHSTEAD: That's all the State's questions  
9 at this time, Judge.

10 CROSS-EXAMINATION

11 BY MR. PLEXICO:

12 Q Okay. Mr. Bing, now this was six years ago,  
13 right?

14 A Yes, sir.

15 Q Okay. All right. Did you review your statement  
16 that you gave?

17 A I'm a bright student. Is that what you said?

18 Q Okay. All right. You have an indication in here  
19 where y'all were talking about your sister driving, correct?

20 A Who?

21 Q Did y'all discuss at any time --

22 MS. BURCHSTEAD: Could he show -- I would object.  
23 I ask if he could show the witness the statement that  
24 he's referring to?

25 THE COURT: You can show it to him.

Minor [REDACTED] -- Cross by Plexico

1 MS. BURCHSTEAD: Thank you.

2 BY MR. PLEXICO:

3 Q All right. Did your sister discuss driving the  
4 vehicle?

5 A Did my sister discuss?

6 Q Ever driving the vehicle?

7 A No, sir.

8 Q Okay. All right. Now, you love your sister,  
9 correct?

10 A Uh-huh. (Indicating affirmatively.)

11 Q You gave this statement on the 3rd; is that right,  
12 to Trooper Gates?

13 A Let me see.

14 Q Do you remember giving this statement to Trooper  
15 Gates?

16 A I don't remember. But I didn't write anything. I  
17 told him what happened.

18 Q Okay. All right. Is that on the 3rd? Is it?

19 A Yes, sir.

20 Q Okay. All right. Now, you love your sister,  
21 right?

22 A Uh-huh. (Indicating affirmatively.)

23 Q You wouldn't want to see your sister on trial  
24 today for anything, would you?

25 A What do you mean?

Minor -- Cross by Plexico

1 Q You would -- would you want to see your sister on  
2 trial today in this courtroom?

3 A No.

4 Q Okay. All right. Now, you talked about all of  
5 this with your family. You were sent there Monday. You saw  
6 -- your sister was discharged. She came and saw you. Your  
7 mother was there. Your family was there with you at the  
8 hospital, right?

9 A Not my sister. She was at another hospital.

10 Q Okay. But she was discharged the same day from  
11 her hospital?

12 A Oh, okay.

13 Q Now, so you saw your mama, you all talked about  
14 everything; is that correct?

15 A We didn't talk about it until Trooper Gates got  
16 there.

17 Q So you're in a serious accident, your mother is  
18 there, and y'all didn't talk anything about the accident;  
19 correct?

20 A Yes, sir, that's correct.

21 Q Did you have -- did your mother talk to your  
22 sister?

23 A I don't know what they talked about.

24 Q Okay. You don't know what they talked about,  
25 right?

Minor -- Cross by Plexico

1 A Yes, sir.

2 Q Okay. All right. You didn't have any broken  
3 bones or anything? You had a slight fracture; isn't that  
4 what the doctor told you?

5 A My shoulder?

6 Q Yes.

7 A I don't think it was fractured. It fell. It  
8 fell. My shoulder fell.

9 Q Okay. All right. So, the sling helped hold it  
10 back in place until it healed, correct?

11 A Yes, I guess, yes, sir.

12 Q All right. You had a laceration to the liver; is  
13 that correct?

14 A Uh-huh. (Indicating affirmatively.)

15 Q Which they fixed?

16 A I didn't hear you.

17 Q They fixed -- you had a laceration to the liver.  
18 Was it -- didn't they fix that?

19 A A puncture to my liver and my lungs.

20 Q And they fixed that while you were there?

21 A They didn't fix it.

22 Q They didn't fix it?

23 A They gave me medication. They couldn't fix that.

24 Q Okay. So that healed on its own?

25 A Uh-huh. (Indicating affirmatively.)

Minor -- Cross by Plexico

1 Q All right. So it didn't break through the skin,  
2 you're saying?

3 A No, it didn't break my skin.

4 Q All right. So it's not really a puncture?

5 A Sir?

6 MR. PLEXICO: I'll withdraw that.

7 The Court's indulgence.

8 (Pause.)

9 BY MR. PLEXICO:

10 Q Now, you testified you don't remember the  
11 accident; is that correct? You remember after the accident,  
12 but you don't remember the accident?

13 A I don't recall that.

14 Q You don't recall the accident?

15 A I don't recall me saying that. I recall some of  
16 the parts, leaving my house and during the accident. Where  
17 we went and how did it happen.

18 Q All right. Now, so you say you talked to Trooper  
19 Gates at the hospital. And your memory, as good as that is,  
20 it is of -- from everything else you've testified to; is  
21 that right?

22 A Yes, sir.

23 Q Okay. And you stand by that statement?

24 A Yes, sir.

25 Q Did Trooper Gates have a tape recorder there with

Minor -- Cross by Plexico

1 you?

2 A Yes, sir, he recorded me at my house when he came  
3 to my house.

4 Q Did he have a recording device at the hospital?  
5 At the hospital, did he have a recording device?

6 A I don't recall that.

7 Q All right. But as clear as your testimony is on  
8 anything else, you talked to Trooper Gates at the hospital,  
9 right?

10 A Yes, sir.

11 Q All right. So you first saw Trooper Gates at the  
12 scene of the accident, right?

13 A Uh-huh. (Indicating affirmatively.)

14 Q And you're sure you saw him at the scene of the  
15 accident?

16 A Uh-huh. (Indicating affirmatively.)

17 Q Then you saw him later at the hospital?

18 A Uh-huh. (Indicating affirmatively.)

19 MR. PLEXICO: I don't have anything further.

20 MS. BURCHSTEAD: Briefly, Your Honor?

21 REDIRECT EXAMINATION

22 BY MS. BURCHSTEAD:

23 Q All right. Minor, when was the first time you  
24 talked about who was driving the car?

25 A The first time?



Minor - Redirect by Burchstead

1 Q Uh-huh. The very first time you talked about who  
2 was driving?

3 A I think Officer Gates asked me at the hospital.

4 Q All right. What did you tell him?

5 A I told him my uncle was driving.

6 Q All right. Did you ever tell him anything  
7 different?

8 A No, ma'am.

9 Q And when you were at the hospital, did you and  
10 your sister go and talk about what you were going to tell  
11 Officer Gates?

12 A No, ma'am. We didn't talk until after I left the  
13 hospital. Then -- because, you know, my cousin had died.

14 Q Yeah. Okay.

15 MS. BURCHSTEAD: Nothing further, Judge.

16 THE COURT: All right. You can step down.

17 MS. BURCHSTEAD: And may he be excused?

18 MR. PLEXICO: I have no further use for this  
19 witness, Your Honor.

20 THE COURT: You're free to go, sir.

21 MS. BURCHSTEAD: Beg the Court's indulgence? I  
22 apologize, Judge.

23 MR. FERNANDEZ: Your Honor, State would call  
24 Duncan Keith Smith.

25 Thereupon,

Minor [REDACTED] - Redirect by Burchstead

1 DUNCAN KEITH SMITH

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

4 DIRECT EXAMINATION

5 BY MR. FERNANDEZ:

6 Q All right. Sir, your full name for the record,  
7 please?

8 A Duncan Keith Smith.

9 Q Do you go by Keith Smith?

10 A Yes, sir.

11 Q Thank you. Mr. Smith, what is it that you  
12 currently do?

13 A Sir?

14 Q What do you currently do for a living?

15 A I own and operate Keith Smith Funeral Services.

16 Q Okay. Are you also -- are you also a deputy  
17 coroner?

18 A I was a deputy coroner.

19 Q And what time range were you a deputy coroner?

20 A Let's see. It was -- I left four years prior --  
21 let's see. It must have been two years back -- from around  
22 2008 to 2012.

23 Q Okay. And is that for Allendale County?

24 A Yes.

25 Q And what are the typical responsibilities of a

## DUNCAN KEITH SMITH - Direct by Fernandez

1 deputy coroner? What kind of things?

2 A Okay. A deputy coroner serves when the coroner is  
3 not available. And, of course, they do death investigation.

4 Q Okay. And you were -- you were a deputy coroner,  
5 I guess, and you also were recently elected; is that  
6 correct?

7 A Recently elected as a probate judge.

8 Q All right. Congratulations.

9 A Yeah.

10 Q At the time -- I'm going to take you back to  
11 November of 2008 when -- you were a deputy coroner then,  
12 correct?

13 A That's correct.

14 Q Okay. Do you recall investigating the death of a  
15 Cieara LaShea Brooker?

16 A Yes, sir.

17 Q Okay. Did you actually respond to the scene of  
18 the accident on Oswald Drive?

19 A Yes, sir.

20 Q Okay. I'm handing you a document there. Are you  
21 familiar with what that document is?

22 A Yes, sir.

23 Q Okay. Can you tell the jury what --

24 MR. PLEXICO: Let me mark it real quick.

25 Apologies.

## DUNCAN KEITH SMITH - Direct by Fernandez

1                   *(Whereupon, State's Exhibit No(s). 31 marked for*  
2                   *identification.)*

3 BY MR. FERNANDEZ:

4           Q     The document is now marked as State's 31. You  
5     said you're familiar with it. Could you tell the jury what  
6     that document is?

7           A     This document is the death certificate on Cieara  
8     LaShea Brooker.

9           Q     Okay. When is it dated?

10          A     Do what?

11          Q     When is the death certificate dated?

12          A     It's dated -- it was -- the actual time of death  
13     was November the 1st, 2008. And it was certified on the  
14     10th.

15          Q     Okay.

16          A     11-10-2008

17          Q     Okay. And is that your signature that's on the  
18     actual certificate?

19          A     Yes, sir.

20          Q     Okay. You said you responded to the scene on  
21     Oswald Drive, the scene of the accident. Tell us what you  
22     remember on arrival?

23          A     Of course, we arrived at the scene. And once we  
24     arrived at the scene there was a -- I think it was a  
25     Cadillac S -- some Cadillac type pick-up that had been

## DUNCAN KEITH SMITH - Direct by Fernandez

1 involved in a roll over and had hit a tree. And when we  
2 arrived -- the EMS had already transported the passengers  
3 when I arrived. And it was just a vehicle there, and Cieara  
4 Brooker was in the vehicle when I arrived.

5 Q Okay. I'm handing you a few pictures. These are  
6 marked State's Exhibits No. 5, 6, and 10. Just take a look  
7 at those, if you would. Is that what you recall seeing when  
8 you arrived at the scene?

9 A Yes, sir.

10 Q Okay. When you examined the --

11 A The only difference in these, these -- when I  
12 arrived at the scene Cieara had not been removed from the  
13 vehicle.

14 Q Okay. I'm showing you two photos, one which is  
15 marked as State's Exhibit 7 and State's Exhibit 8. I  
16 believe you can peer into the door there?

17 A That's correct.

18 Q And does that reflect --

19 A That's when I arrived.

20 Q Okay. And is that what -- that's the rough  
21 positioning of the body that you said you saw upon arrival?

22 A Yes, sir.

23 Q Okay. Now --

24 MR. FERNANDEZ: Permission to publish, Your Honor?

25

## DUNCAN KEITH SMITH - Direct by Fernandez

1 BY MR. FERNANDEZ:

2 Q Now, tell us -- walk us through what you would do  
3 typically in your investigation of a death scene?

4 A Of course, when we arrive at the scene and then I  
5 always get with the EMS, the EMT personnel. And we examine  
6 the body. And we examine the body and we found massive  
7 temporal and forehead trauma to the skull. We ran -- they  
8 always run a EKG. Of course we check for life. And on the  
9 EKG there was no life. And the injuries were so severe,  
10 that they couldn't sustain life.

11 Q Okay. When you say massive trauma, is that -- I  
12 mean, could you describe what part it would have been on?

13 A Yes. It was the right temple and the forehead.

14 Q Okay. You prepared that death certificate after  
15 conducting your full investigation; is that correct?

16 A Yes, sir.

17 MR. FERNANDEZ: At this point I'll move to place  
18 the death certificate into evidence as State  
19 Exhibit 31?

20 MR. PLEXICO: Without objection.

21 THE COURT: Okay. Death certificate comes in.

22 *(Whereupon, State's Exhibit No(s). 31 received in*  
23 *evidence.)*

24 MR. FERNANDEZ: Permission to publish also, Your  
25 Honor?

## DUNCAN KEITH SMITH - Direct by Fernandez

1 THE COURT: Granted.

2 BY MR. FERNANDEZ:

3 Q I'm handing you two photos, one's marked State  
4 Exhibit No. 12, the other is marked State's Exhibit No. 15.  
5 State's Exhibit 12, as you can see, is roughly similar to  
6 the other photos you were looking at prior. Could you  
7 describe what you see on State Exhibit No. 15 now?

8 A For 15, it looks like a mark on the tree -- on a  
9 tree.

10 Q Okay. And did you see that mark when you were in  
11 person -- when you were on scene?

12 A Yes, sir.

13 Q Would that mark on the tree be consistent with the  
14 head trauma to the deceased, Ms. Brooker?

15 A Yes, sir.

16 Q And do you see anything else in that photo --  
17 photograph that would suggest that someone's head may have  
18 struck the tree?

19 A Yes, you can see tissue marks and even some hair.

20 Q Permission to publish?

21 THE COURT: All right.

22 MR. PLEXICO: I would object to that from my  
23 previous objection.

24 THE COURT: I understand. You already have.

25 MR. FERNANDEZ: Beg the Court's indulgence.

## DUNCAN KEITH SMITH - Direct by Fernandez

1 BY MR. FERNANDEZ:

2 Q What would the -- in your opinion -- or what would  
3 the cause of death have been caused by? What object would  
4 it have been caused by?

5 A From the way the head injuries were, and the way  
6 she was in the car, it was the impact of the vehicle hitting  
7 the tree.

8 Q Okay. And then her head struck what object?

9 A Probably the window and the trees, all at the same  
10 time, is the way it looked.

11 Q Okay.

12 MR. FERNANDEZ: Nothing further.

13 CROSS-EXAMINATION

14 BY MR. PLEXICO:

15 Q When you got the body out, was there glass in the  
16 seat?

17 A What now?

18 Q When the body was taken out, was there glass in  
19 the seat?

20 A I can look at some of my notes and tell you.

21 Q Would you?

22 A Okay. I can't tell from my notes.

23 Q From your memory, do you remember if there was  
24 some glass in the seat?

25 A No idea.



## DUNCAN KEITH SMITH - Cross by Plexico

1 Q Well, is it common in your investigations, that  
2 there's glass?

3 A In -- if a vehicle rolls before it hits a tree,  
4 sometimes glass won't be there. It is scattered everywhere  
5 else, just not in the vehicle. If the vehicle had hit the  
6 tree or rolled into it, turned it over there maybe sometimes  
7 some glass sitting in there.

8 Q But you just don't know?

9 A I mean, it can vary.

10 Q But you don't -- can't say?

11 A I can't remember.

12 MR. PLEXICO: All right. Nothing further.

13 MR. FERNANDEZ: Nothing further Your Honor.

14 THE COURT: You may step down.

15 MR. FERNANDEZ: And permission to excuse?

16 MR. PLEXICO: No objection.

17 THE COURT: You may go.

18 (Off-the-record discussion.)

19 MS. BURCHSTEAD: The State calls Edwina Bing.

20 Thereupon,

21 EDWINA BING

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

24 DIRECT EXAMINATION

25 BY MS. BURCHSTEAD:

EDWINA BING - Direct by Burchstead

1 Q Thanks for being here this morning.

2 A You're welcome.

3 Q Could you just tell us your full name?

4 A Yes, Edwina Lavette Bing.

5 Q Ms. Bing, how old are you?

6 A I'm 42 years old.

7 Q And do you work anywhere?

8 A Yes, I do. I am employed at Allendale County  
9 Detention Center and at Allendale County Communications  
10 Center.

11 Q Do you have children?

12 A Yes, I have five.

13 Q And we've heard from Minor and Velandria this  
14 morning; is that right?

15 A Yes, ma'am.

16 Q Those are your kids?

17 A Yes, ma'am.

18 Q So, I imagine you remember if they were involved  
19 in that wreck back in November of 2008?

20 A Yes. I live that every day.

21 Q Okay. Let's talk a little bit about what you  
22 remember about November 1st, 2008. Tell us what you  
23 remember that day?

24 A Okay. I was leaving from Acton, which is in the  
25 country. And as I was turning my vehicle on at 1:25 I

## EDWINA BING - Direct by Burchstead

1 received a call from the Allendale County Hospital. And  
2 there was a young lady that called me. She said that -- she  
3 asked me who do I have -- do I know of a Minor and  
4 Valandrea Bing? And I said, yes, I said those are my  
5 children. She said, well, they are here at the hospital and  
6 they are waiting for you to come and pick them up. So, I'm  
7 thinking, why am I receiving a call from people at the  
8 hospital? So, I went there. Because my intention was going  
9 home. But I had to go to the hospital.

10 And as I arrived there, I went -- I talked to  
11 a lady that was at the desk, and I said, I'm here to pick up  
12 my son, Minor and Valandrea Bing. And she buzzed me  
13 to come in the back. And I said, well, why do I have to be,  
14 you know, buzzed to come in the back. So, that was kind of  
15 puzzling to me.

16 So, when I got back there there was a nurse,  
17 but he was a gentleman. And he told me that -- that it was  
18 a bad accident and that it was a guy that did not make it.  
19 So I started getting nervous. So, I said I'm here for  
20 Minor and Valandrea Bing. So he took me to the room  
21 where my son was. And when I got in there, Minor he was  
22 covered with blood. And I was thinking in my mind, you  
23 know, that's his blood but it wasn't. It was my cousin,  
24 Cieara, but we call her Sha Sha. And I was in there, I was  
25 talking to him, you know, to see them, to see whether or

EDWINA BING - Direct by Burchstead

1 not -- how it was or, you know, what was going on.

2 But at that time he couldn't tell me  
3 anything. I think he was still in shock. So, I left out of  
4 there and I felt better, because I saw him. So, I went to  
5 the other room and Valandrea was in that room. And she was  
6 covered with dirt and glass. She still had glass in her  
7 face. And I started, you know, crying and stuff, because I  
8 didn't know what was going on.

9 So, when I saw those two my reaction was,  
10 well, let me get on the phone and call Sha Sha, because I  
11 didn't know that Sha Sha was gone. I'm calling her phone  
12 and I said, Sha Shea's not answering her phone. I've got to  
13 know where Sha Sha was. So, as I was approaching there, I  
14 saw McKenvie Davis. And I saw -- and I said, where's Sha?  
15 He never said anything. And I asked again.

16 And so, when I asked him again, he never said  
17 anything, he just hugged me. And I was like, don't tell me  
18 that that was Sha Sha that was in that car that did not make  
19 it. And I cried for, I know it was for about 30 minutes to  
20 45 minutes. I cried. Because my thing was, how can I tell  
21 my auntie that her daughter didn't make it?

22 Q Right.

23 A And my kids, I felt guilty because my kids still  
24 are here, but she wasn't there. So...

25 Q All right. Let me just stop you right there.

## EDWINA BING - Direct by Burchstead

1 A Okay.

2 Q All right. So, you're at the hospital -- and you  
3 know that your kids made it?

4 A Yes.

5 Q Your babies are there?

6 A Yes.

7 Q All right. Did you tell either one of them to lie  
8 about --

9 MR. PLEXICO: I object to the leading, Your Honor.

10 THE COURT: Well, that is just a specific  
11 question, it's not leading.

12 BY MS. BURCHSTEAD:

13 Q Did you tell them anything specific to say to  
14 Trooper Gates?

15 A No. What happened when I left -- I was getting  
16 ready to leave from that room with Valandrea and I spoke  
17 with Mr. Gates. And he was like, well, she's saying that  
18 she was driving. In my mind, I'm thinking, Valandrea  
19 driving? And I said, no. I told him, no. I said, I know  
20 for a fact she wasn't driving. That's what I said. She was  
21 scared. Val, she wouldn't get in a vehicle and drive like  
22 that though, because she give me problem. But even if I go  
23 across 55, that's Valandrea's, no.

24 So, I went back in there, after I spoke with  
25 Trooper Gates, and that's when I told Valandrea. Because at

## EDWINA BING - Direct by Burchstead

1 that time she didn't know. And if she did she didn't -- I  
2 didn't feel like she knew. So, I went --

3 Q When you say she knew, knew what?

4 A That Sha Sha had passed, that she did not survive.

5 Q Okay.

6 A So, when I went back in there and I told  
7 Valandrea, I said, Valandrea I'm hearing things and I don't  
8 like what I'm hearing. I'm hearing that you want to say  
9 that you was driving. I need for you to tell Officer Gates  
10 the truth, but I said, because let me tell you, Sha Sha did  
11 not survive the accident. And when I told her that she  
12 broke down. And I said, we need to make this right, tell  
13 the truth. And that was the last thing that I told  
14 Valandrea when I left that room.

15 Because I was back and forth from her room to  
16 my son's room. I didn't tell him anything, this was  
17 Minor because I didn't want him to go really into  
18 shock because of the extensive injuries that he had. So I  
19 needed a couple of days before I even told him that Sha Sha  
20 did not make it. And I told him when he was in the  
21 Childrens' Hospital in Columbia.

22 Q All right. So did you -- so, you said you saw him  
23 that day and you saw his injuries?

24 A Yes, I saw his injuries.

25 Q All right. How did he appear to you?

## EDWINA BING - Direct by Burchstead

1           A     I know he mentioned to me that he was in pain.  
2     And he was shivering so, because he said he was cold. And I  
3     didn't know if it was because of the blood and stuff that  
4     was on his body, because he didn't have any clothes on. He  
5     was covered with a sheet. And when I looked at his clothes,  
6     I said, well, we can't salvage these, because when I say it  
7     was saturated in blood, it was saturated. I just can't tell  
8     you how I felt at that time, because I was going into shock  
9     myself, because I was like, how did this happen? And when I  
10    asked that question, and I talked to McKenvie, and he was  
11    holding me, consoling me, I asked him, what happened? His  
12    answer was to me was, the vehicle came --

13           MR. PLEXICO: Your Honor --

14           THE COURT: We sustained all of that. In fact,  
15    she didn't know anything about it.

16           MS. BURCHSTEAD: Yes.

17           THE COURT: So, I don't think that you need to  
18    push it.

19           MS. BURCHSTEAD: Yes, sir.

20    BY MS. BURCHSTEAD:

21           Q     Okay. Just, let's go back to just talking about  
22    your son, how he appeared. And can you tell me anything  
23    more about his injuries and how he went to Columbia?

24           A     Yes. The nurse and the doctor was telling me that  
25    he had a punctured lung, and shoulder was dislocated. So he

EDWINA BING - Direct by Burchstead

1     couldn't do anything with that shoulder. And he had a cut  
2     above his eyebrow. And when we got to the hospital -- well,  
3     when I got to the hospital in Columbia, because I was the  
4     last, I didn't know whether I needed to stay there with  
5     Valandrea or go with him. But her auntie stayed with her,  
6     with Valandrea, and I went to the Columbia with my son. And  
7     at that time there was a doctor, he was stitching him up,  
8     stitching up the cuts and stuff. And he told me that the  
9     shoulder, that's going to have to mend on its own. And the  
10    punctured lung or whatever, that would have to heal on its  
11    own too.

12                   But he couldn't do no strenuous work or  
13    anything. He just had to, you know, just lie there and  
14    don't do anything. So, that was basically his injuries.

15           Q     All right.

16                   MS. BURCHSTEAD: Beg the Court's indulgence?

17   BY MS. BURCHSTEAD:

18           Q     Do you remember anything about his breathing at  
19    all when you first saw Minor in the hospital?

20           A     His breathing, he was having problems with his  
21    breathing, and he has asthma. So, with that trauma, you  
22    know, that he had sustained, that had something to do with  
23    his breathing as well.

24           Q     Okay. And after you left the hospital in Richland  
25    County, did he get any more -- what was the treatment for



## EDWINA BING - Direct by Burchstead

1 when he left?

2 A The treatment that he left, I had to take him to a  
3 specialist for his -- his dislocated shoulder. And he got  
4 treated for that. And what the doctor basically told me  
5 too, is that it was going to have to heal on its own. And  
6 for me to come back in just to, you know, I guess to check  
7 it and do x-rays to see if it's healing right. And for his  
8 breathing, they just told me if I have like -- like if he  
9 had problems with his breathing, just to let me know, just  
10 to bring him back, because it wouldn't be normal for him to  
11 still have that problem going on over a short period of  
12 time.

13 Q Do you know if the shoulder still bothers him or  
14 not?

15 A He still lets me know. Because like he be wanting  
16 to go and play football. And there's just certain things  
17 that he does, he just can't use that shoulder how he wants  
18 to use it, like catch the ball and stuff like that. So, he  
19 still have problems with his shoulder.

20 MS. BURCHSTEAD: That's all the State's questions,  
21 Your Honor.

22 CROSS-EXAMINATION

23 BY MR. PLEXICO:

24 Q Mrs. Bing?

25 A Yes.

## EDWINA BING - Cross by Plexico

1 Q You saw Trooper Gates down there; is that correct?

2 A Yes. Yes.

3 Q And he was doing a death investigation?

4 A I don't know if he was actually doing the  
5 investigation. But he was the one that asked the questions.

6 Q Okay.

7 A And he was the only officer that I seen at the  
8 hospital.

9 Q All right. Your daughter is in a wreck?

10 A Yes.

11 Q She said she was driving. You know she has no  
12 license; is that correct?

13 A Yes, sir.

14 Q And somebody's dead?

15 A Yes, sir.

16 Q She's in a world of hurt and trouble, isn't she?  
17 If she's the driver.

18 A If she was the driver, she would have been in  
19 trouble.

20 Q All right. You love your child? You love --

21 A I love all of my kids. I don't have -- I don't  
22 have, you know, a certain one. I love all of them.

23 Q And you thought of -- that affected you -- that  
24 causing a death is a serious, serious matter, isn't it?

25 A Yes, for anyone.

## EDWINA BING - Cross by Plexico

1 Q Okay. You didn't want that to have happened to  
2 your child?

3 A No.

4 Q To precious Val, correct?

5 A No. I didn't want that to happen to my cousin,  
6 but it happened. He's not here.

7 Q And your daughter is not on trial, correct?

8 A Exactly.

9 MR. PLEXICO: I don't have anything further.

10 MS. BURCHSTEAD: Just one question, Judge.

11 If I may approach?

12 REDIRECT EXAMINATION

13 BY MS. BURCHSTEAD:

14 Q I'm showing you State's 24. Is that Sha Sha?

15 A Yes. This is Cieara LaShea Brooker, but we call  
16 her Sha Sha.

17 Q Okay. Is that who passed away that day?

18 A Yes, ma'am.

19 MS. BURCHSTEAD: Nothing further, Judge.

20 THE COURT: You're free to step down.

21 MS. BURCHSTEAD: And may she be excused?

22 THE COURT: You're free to go.

23 MS. BURCHSTEAD: That's all we have before lunch,  
24 Your Honor.

25 THE COURT: All right. Jurors, 1:15.

EDWINA BING - Redirect by Ms. Burchstead

1 (Jury exits the courtroom.)

2 (Lunch recess taken.)

3 MS. BURCHSTEAD: All right. May it please the  
4 Court, Judge. At this time we just wanted to put on  
5 the record the plea negotiations so we're clear what  
6 the State has offered, and that the Defendant has  
7 actually rejected the State's offer.

8 Prior to calling the case for trial the State had  
9 put on the table a cap of 15 years. But we did ask that  
10 he plead to felony DUI with death.

11 After we arrived this week in Allendale, and with  
12 discussions with counsel, the State did put on the  
13 table a potential plea offer. And where it currently  
14 stands now is a reckless homicide, DUI and DUS, as well  
15 as child endangerment. Straight up. No -- no mention  
16 on an actual sentence, Judge. Just straight up. Of  
17 course, asking for incarceration.

18 And to my understanding, after discussions with  
19 Mr. Plexico, Mr. Davis has declined the State's offer.

20 MR. PLEXICO: Your Honor, I believe those will be  
21 concurrent, is that --

22 MS. BURCHSTEAD: Take no position on that, Your  
23 Honor.

24 THE COURT: All right. So as I understand it, the  
25 felony DUI with death is 85 percent 30 years.

EDWINA BING - Redirect by Ms. Burchstead

1 MR. PLEXICO: Twenty-five years, Judge. That is  
2 an 85 percent offense.

3 THE COURT: Yes. I have 85 percent for violent.

4 MR. PLEXICO: Yes, sir. I've put all of this in  
5 the file. I have talked to him extensively about this.

6 THE COURT: What they're offering is maximum ten  
7 years.

8 MS. BURCHSTEAD: As I understand what reckless  
9 homicide carries, yes, sir.

10 MR. PLEXICO: Ten years. It does carry ten years.

11 THE COURT: It's about 85 percent. He's at a  
12 pretty young age. He'll be out in no time.

13 MR. PLEXICO: That could stack them, Judge. He'll  
14 serve seven and a half to ten. Driving while  
15 restricted is only 30 days. DUI would be a second.  
16 That would be a year. So, technically, looking at 18  
17 and a half. But it would be very unusual for a Judge,  
18 in most, not to run the sentences about the same thing,  
19 concurrent. And I've told him that. So he's had --  
20 I've talked to him repeatedly about this.

21 Is that your decision on the plea agreement?

22 THE DEFENDANT: I'm not going to enter a plea.

23 THE COURT: Well, of course I can't tell you  
24 anything. I'm just a Judge. I can't predict my  
25 sentencing. I can give you 25 plus a good bit. Five

EDWINA BING - Redirect by Ms. Burchstead

1       years for child endangerment, tack everything on that I  
2       wanted to.

3               And you're going to have to make a decision  
4       sometime tomorrow. You don't have to do it today.

5               But just while you're here standing, you have the  
6       right, of course, to testify. If you elect not to  
7       testify, that's an important decision. I would tell the  
8       jury they couldn't consider that in whether you  
9       committed the crime, try to keep them from considering  
10      it. That's something that I'll tell them. It is a good  
11      reason to testify, good reason to not. Some people make  
12      good witnesses, some don't.

13              I don't know anything about your prior record other  
14      than I know you have a DUI because I saw that. You take  
15      the stand, it might come out, while it's not coming out  
16      now. They won't bring it up, but you might open the  
17      door for it. The lawyers will be talking about it. The  
18      lawyers have been around a long time, and this is a  
19      pretty good decision you have to make. And you've got  
20      family members testifying against you, and you have  
21      Oswald calling you a rabid dog. No pressure on you.  
22      There's a lot of pressure, that's a big decision. You  
23      need to think about it. You don't have to do it now.  
24      They would carry that over to the morning, if you want  
25      them to.

EDWINA BING - Redirect by Ms. Burchstead

1           When it goes to the jury the deal is gone.

2           MS. BURCHSTEAD: Yes, sir.

3           THE COURT: That's the bottom line.

4           THE DEFENDANT: Yes, sir. I understand.

5           THE COURT: So, you're going to have to think a  
6 lot to decide whether to sit and talk, whether to  
7 testify. Both important decisions.

8           All right. We're down to at least a quarter of 2  
9 when the jury is back

10          MS. BURCHSTEAD: Yes, sir. Thank you, Judge.

11          (Brief recess.)

12          MR. FERNANDEZ: The State would call Dr. James  
13 Glasser.

14   Thereupon,

15                       DR. JAMES GLASSER

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

18                       DIRECT EXAMINATION

19 BY MR. FERNANDEZ:

20       Q     Good morning, Dr. Glasser. Thanks for coming in  
21 today. Could you please state your name for the record?

22       A     James Glasser.

23       Q     Okay. And Dr. Glasser, could you please tell us a  
24 little bit about your education and background?

25       A     Yes. I graduated from Princeton University. And

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1 I went to the University of Medicine and Dentistry in New  
2 Jersey. I did a general surgical residency. I'm board  
3 certified in general surgery. And I did a pediatric surgery  
4 fellowship. I'm board certified in pediatric surgery.

5 Q Okay.

6 MR. PLEXICO: I would stipulate to his  
7 qualifications as a medical --

8 MR. FERNANDEZ: In emergency and pediatric  
9 medicine.

10 THE COURT: Okay. Emergency and pediatrics.

11 BY MR. FERNANDEZ:

12 Q Dr. Glasser, I'm going to -- where are you  
13 currently employed?

14 A Palmetto Health, Richland.

15 Q In Columbia?

16 A Excuse me, Palmetto Health Children's Hospital.

17 Q Okay. And that's in Columbia?

18 A Yes.

19 Q And were you employed -- how long have you been  
20 employed there?

21 A Almost 26 years.

22 Q Okay. And by that I -- you were also employed  
23 there back in November of 2008, correct?

24 A That is correct.

25 Q You had a patient come in to your care -- under



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1 your care, back in 2008, November 1st, 2008, named Minor  
2 Bing. Do you have any independent recollection of that  
3 individual?

4 A My only recollection is through the medical  
5 record.

6 Q Okay. And when you treated him, is it a matter of  
7 course to take notes for when you treat a patient? Would  
8 you generally take notes of that treatment?

9 A Working with a client, yes.

10 Q Okay. And did you take notes in this particular  
11 case?

12 A Yes, I did.

13 Q Okay. And have you had a chance to review your  
14 notes prior to coming here today?

15 A Yes, sir.

16 Q Okay. What -- after reviewing your notes what  
17 were you able to determine happened to Mr. -- to the  
18 12-year-old Minor And what was your treatment of  
19 him?

20 A Minor was involved in a motor vehicle accident.  
21 One of the notes, the orthopedic note, says that he was  
22 ejected from the vehicle. There was a questionable loss of  
23 consciousness. He was initially treated in Allendale and  
24 then transferred to Palmetto Health Children's Hospital.  
25 His -- as a trauma case his workup was widespread. We

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1 evaluated the head, the neck, the chest and the abdomen. He  
2 had CT scans of all those regions.

3 CT scans of the head and the neck were  
4 normal. He had a small laceration of the right forehead,  
5 that was repaired in the emergency room. He had a fracture  
6 of a portion of the shoulder called the coracoid process.  
7 It's actually a projection from the scapula, which is the  
8 posterior part of the shoulder. But where the clavicle  
9 joins the coracoid process of the scapula, that area was  
10 injured. He had dislocation of the clavicle from the  
11 scapula, and a fracture of the coracoid process of the  
12 scapula.

13 So, a laceration to the forehead, an injury to  
14 the shoulder. He had extensive contusions which had  
15 hemorrhaged into the lung tissue on the right side. And he  
16 had a small laceration of the liver.

17 His vital signs were stable. He was admitted  
18 to our service. Our service admits all trauma, primarily to  
19 assess whether his pulmonary injury would progress or  
20 resolve, and also to make -- to assess bleeding from the  
21 liver laceration. An orthopedic consultation was obtained  
22 for treatment of the shoulder injury.

23 Q Okay. Now, what kind of -- what would cause the  
24 laceration of the liver? What could have caused that?

25 A Solid organs crack. And the blunt impact -- it

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1 seems to me that the shoulder received the brunt of the  
2 impact. His head also was involved. And the blunt force  
3 was applied to the right chest as well.

4 Q Okay.

5 A The liver is actually underneath the rib cage.  
6 Normally one cannot feel the liver by palpating the abdomen.  
7 So a force applied to the chest makes that -- actually it's  
8 the posterior part of the lung that was contused. And also  
9 the posterior part of the liver, I believe, was cracked.

10 Q And the same for the -- you mentioned the  
11 contusions to the lung. What could have possibly caused  
12 that, too?

13 A The blunt impact or the blunt force.

14 Q Okay. The -- your review or your assessment of  
15 his condition, what kind of energy or what kind of force  
16 would it have taken to accomplish these kind of injuries?

17 A I think a very significant force.

18 Q Okay. Now, ultimately **Minor** did not require  
19 surgery; is that correct?

20 A Again, we were -- no, yes, that is correct. He  
21 did not require surgery.

22 Q Okay. Well -- and feel free to -- whatever you  
23 were going to say, feel free to offer it.

24 A Occasionally with a pulmonary contusion there can  
25 be what we call a -- there can be a leakage of blood or air

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1 from the lung. In which case we might have to put a chest  
2 tube in to evacuate the blood and air from the chest cavity.  
3 In addition, whenever the liver is lacerated we worry about  
4 hemorrhage, blood loss.

5 Q Okay. I am going to show you two documents.  
6 One -- I'm going to mark them both.

7 *(Whereupon, State's Exhibit No(s). 30 marked for*  
8 *identification.)*

9 *(Whereupon, State's Exhibit No(s). 32 marked for*  
10 *identification.)*

11 BY MR. FERNANDEZ:

12 Q I'm going to show you a collection of documents  
13 marked State's Exhibit No. 30. And if you would just thumb  
14 through those real quick, and tell me if you recognize those  
15 documents?

16 A Yes, I do.

17 Q Would those be your notes that you took --

18 A Yes, sir.

19 Q -- from the treatment? Okay. And you actually  
20 have your own copy of those with you today?

21 A Yes, sir.

22 Q All right. Thank you. Okay. And then the second  
23 picture I'm handing you, could you tell me what that is?

24 A This is called a CT scan.

25 Q Without showing -- don't yet show it to the jury.

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1 A Okay.

2 Q Just tell me what it is.

3 A It's a CT scan. It is what I referred to before.  
4 It is used to evaluate -- it's an excellent tool. It  
5 evaluates -- it is a computerized x-ray that actually allows  
6 us to see three dimensionally into the body cavity. So, we  
7 can see hemorrhage into the brain. It's is an excellent  
8 tool to determine cervical, that is neck, fractures. It's  
9 an excellent tool to determine heart injury or lung injury,  
10 liver injury, spleen injury. It's not so good for  
11 intestinal injury. But the technology has become so rapid.  
12 That these images can be generated very, very quickly, and  
13 they're very helpful in evaluating a multiply injured  
14 person.

15 The hardest thing, when a person comes in as  
16 a victim of an automobile accident, is to assess exactly  
17 what the nature of the injury is. And many times there's a  
18 multiplicity of injuries and the CT scan is a very rapid way  
19 to evaluate trauma.

20 Q And in this case, you did order a CT scan of  
21 Minor correct?

22 A Yes, correct.

23 Q And is that photograph an actual image rendered  
24 from Minor CT scan?

25 A Yes, it is.

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1 Q Okay.

2 MR. FERNANDEZ: I'm going to move to place this  
3 into evidence at this point. Have him talk a little  
4 bit more about what it is.

5 MR. PLEXICO: Your Honor, I'm not sure if that's  
6 relevant under the rules at this point, since he hasn't  
7 discussed what it shows is relevant to what he's using  
8 it for.

9 THE COURT: You can ask him what it shows and so  
10 forth, and then you can put it in, if it helps him  
11 answer correctly.

12 MR. FERNANDEZ: Thank you.

13 BY MR. FERNANDEZ:

14 Q All right. So to continue, there's -- I see  
15 there's two block images. Could you tell me what the top  
16 one and then the bottom one show, and what you use that for  
17 in order to diagnose Mr. Bing?

18 A Yes. The computer can -- if you think of an  
19 onion, the body is an onion. What the CT scan is, it can  
20 slice us like this, like you're slicing an onion, very thin  
21 -- very thin slices and giving us pictures. And that can  
22 slice this way, it can slice this way, (showing with hands.)  
23 And -- so we can get a very nice view of what is going on  
24 inside. And I selected slices that I thought demonstrated  
25 Minor injuries.

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1 Q Okay. And so the top image, which slice is that?  
2 What is that an image of?

3 A The top images show the fracture of the coracoid  
4 process of the scapula. The scapula is back here. And it's  
5 the part of the shoulder that you can feel, the bony part  
6 right up here.

7 Q Okay. And how does it -- when I'm looking at this  
8 image, what am I looking at in the top image in order to see  
9 that there is an injury? What are you seeing there?

10 A This white diamond shaped thing is cracked in  
11 half. That crack's a little fracture.

12 Q Okay. And in the lower image, what is that an  
13 image of?

14 A That's one of the chest slices, thin slices. And  
15 in an x-ray, what is dense is white. So the bone is most  
16 dense in the body, that's white. Whatever is most light is  
17 air. So, in the chest, the lungs should be filled with air,  
18 and on the picture that's black. The -- we have put dye  
19 into the blood to make it dense. So the most dense  
20 structure is bone. The next most dense structure is blood,  
21 because it has dye in it to make it dense. So, normally the  
22 lungs should be black, should be filled with air. And this  
23 just shows that half of the lung is white. Which means that  
24 there's blood in half of it. It means that the lung had  
25 been bruised.

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1 MR. FERNANDEZ: Move now to place into evidence.

2 MR. PLEXICO: (Nods in the negative.)

3 THE COURT: All right. Put it in.

4 MR. FERNANDEZ: Permission to publish, Your Honor?

5

6 THE COURT: Okay.

7 BY MR. FERNANDEZ:

8 Q So, just so we're clear before I hand these to the  
9 jury. On the top image, the portion on the left side would  
10 be --

11 A Right here.

12 Q If you want to put a circle. Just point it out  
13 real quick, see where you're seeing the fracture?

14 A This right here.

15 Q Okay. And on the bottom, the lung that filled  
16 with blood would be the white? Thank you.

17 *(Whereupon, State's Exhibit No(s). 30 received in*  
18 *evidence.)*

19 *(Whereupon, State's Exhibit No(s). 32 received in*  
20 *evidence.)*

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

22 BY MR. FERNANDEZ:

23 Q Given the amount of energy that Minor absorbed  
24 as a result of this accident, what could have possibly  
25 happened, given the amount of force that you saw his body



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1 absorb? What could have happened? What are the positioning  
2 of the injuries suggesting to you?

3 MR. PLEXICO: Your Honor, that's not -- I object  
4 to the relevance, because that's not what happened.

5 THE COURT: He can explain how he was. What the  
6 consequences could have been from what he observed.

7 MR. PLEXICO: Well --

8 THE COURT: The jury understands. He could have  
9 been killed in the wreck if his head had hit something.  
10 But we're not getting into that. Just what he did, and  
11 what are the consequences of what he observed.

12 MR. FERNANDEZ: Okay.

13 A I think that ~~Minor~~ was fortunate that the  
14 major -- that the focus of the impact was to his shoulder  
15 and not either higher up, his neck or head, or lower down,  
16 through his rib cage, which it really could have smashed  
17 much more badly, much more severely, his liver. He was very  
18 fortunate.

19 BY MR. FERNANDEZ:

20 Q Is that because his shoulder was able to absorb  
21 the energy more than his other parts?

22 A Yes. The bone, of course, being the strongest  
23 structure, is the hardest to injure. In order to cause a  
24 fracture and partial dislocation of the shoulder takes a  
25 significant impact. And I think it's fortunate that it

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1 occurred -- that the bone absorbed most of the impact, that  
2 the impact didn't go to the head. Another part of the body  
3 would be more vulnerable.

4 MR. FERNANDEZ: One moment, Your Honor.

5 Nothing further, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. PLEXICO:

8 Q All right. Thank you for coming today, Doctor. I  
9 know you have a busy schedule helping people.

10 What I'm concerned about is not what could  
11 have happened, but what, in fact, did happen.

12 MR. PLEXICO: May I approach please?

13 THE COURT: Sure.

14 BY MR. PLEXICO:

15 Q Would you examine that, Doctor?

16 MR. FERNANDEZ: Judge, I would just like to see  
17 what he's showing him before he --

18 MR. PLEXICO: Oh, I'm sorry. This is a discharge  
19 summary.

20 MR. FERNANDEZ: Okay.

21 MR. PLEXICO: Do you have that?

22 MR. FERNANDEZ: Uh-huh. (Indicating  
23 affirmatively.)

24 BY MR. PLEXICO:

25 Q If you could explain, sir, to that, please.

## DR. JAMES GLASSER - Cross by Plexico

1 A Yes, sir.

2 Q Okay. All right. Could I have that back, because  
3 I'll ask you a few questions about it. Thank you so much,  
4 Doctor.

5 A Yes, sir.

6 Q All right. I just want to make sure. At no time  
7 is this -- this is not a breakage of the shoulder. This is  
8 a fracture, correct, of that little part back there; is that  
9 right?

10 A It's the part that you can feel, yeah.

11 Q Okay.

12 A Now, if I could -- I am not an orthopedic surgeon,  
13 and I'm not an expert in shoulder injuries, or bone or joint  
14 injuries.

15 Q All right. We're not going to ask you detailed  
16 questions. Okay. The remedy for that was to put his arm in  
17 a sling, correct?

18 A That was my understanding. Again, he had an  
19 orthopedic consultation.

20 Q All right.

21 A My understanding was that that was a temporary  
22 measure. Now, what the definitive care of that injury is, I  
23 do not know. And I'm not qualified to --

24 Q Okay. But you have -- would have no reason to  
25 believe there's a substantial risk of death that would come

## DR. JAMES GLASSER - Cross by Plexico

1 from -- ever come from that, correct?

2 A From the shoulder?

3 Q Correct.

4 A From the shoulder injury?

5 Q Yes, sir. No?

6 A Is that the question?

7 Q Yes, sir.

8 A No.

9 Q Okay. All right. Now, I'm not talking about all  
10 liver lacerations. Now, this one you treated; is this  
11 correct?

12 A Yes, sir.

13 Q All right. And your treatment was to check him in  
14 the hospital and observe him and make sure that he healed  
15 normally; is that correct?

16 A Yes, to make sure that the bleeding stopped.

17 Q Right. Okay. And in fact the bleeding stopped on  
18 its own without your intervention; is that correct?

19 A Yes, sir, that's correct.

20 Q Okay. So -- and I know you all have to be very  
21 careful with our precious children. And you have to take  
22 good care of them. But he could have went home and taken it  
23 easy and it would have healed pretty much the same way,  
24 pretty much, correct? As opposed to being in the hospital.  
25 Except he wouldn't have been under your observation, right?

## DR. JAMES GLASSER - Cross by Plexico

1 The healing was up to his body?

2 A May I review my notes a little bit more?

3 THE COURT: You may.

4 (Pause.)

5 BY MR. PLEXICO:

6 Q Well --

7 A May I answer it now?

8 Q Sure.

9 A Well, what I am -- again, I have no recollection  
10 of the event. I'm going by my orders, you understand?

11 To answer your question, if he could have  
12 been managed as well at home as in the hospital, I'm going  
13 to see what we actually did for him.

14 Q I'll withdraw that question. I'll withdraw that  
15 question.

16 Okay. But at no time was he under a  
17 substantial risk of death for that laceration? It healed on  
18 its own, therefore it wasn't that serious?

19 A That's only retrospectively.

20 Q Excuse me?

21 A Yes, retrospectively.

22 Q Yes. That's what I'm asking. Retrospectively he  
23 was not -- and you didn't know that at the time. You do an  
24 excellent job. And we need to protect our little children.  
25 We invest so much in them. But there was no substantial

## DR. JAMES GLASSER - Cross by Plexico

1 risk of death from that, in retrospect? Now that everything  
2 worked out fine? And that's all we're talking about, is  
3 what actually happened. Not what could have happened.

4 All right. Then, that leaves the lung  
5 bruise. For that, you did no surgery either? The lung  
6 contusion?

7 A Yes, sir.

8 Q You did no surgery for that, correct?

9 A That is correct. But we treated him medically.

10 Q Okay. And y'all have breathers for that?

11 A I'm sorry?

12 Q Y'all have breathers for that?

13 A Breathers?

14 Q Well, how -- you treated him medically? Well,  
15 I'll withdraw that question.

16 Let me put it this way. That healed on its  
17 own without any surgical intervention, correct?

18 A There are lots --

19 Q In retrospect?

20 A There are lots of things that heal without  
21 surgical intervention.

22 Q Yes, sir. I'm just asking if the lung contusion  
23 --

24 A And I've tried to effectively refer to what we did  
25 provide him -- provide for him, which was quite significant.

## DR. JAMES GLASSER - Cross by Plexico

1 It wasn't surgery, but we provided care for him.

2 Q Oh, I understand that. I'm not --

3 A Without which he may have developed pneumonia.

4 There are consequences of a pulmonary contusion, that  
5 potentially are life threatening, yes, sir.

6 Q Okay. But in the usual case, you would not --

7 A There are no usual cases, sir. They're all  
8 different. They're individuals.

9 Q Yes. All right. All right. The fact is that you  
10 did no surgery, correct?

11 A Correct.

12 Q All right. He got better with antibiotics?

13 A No.

14 Q What drugs did you give him?

15 A Well, we gave him Morphine.

16 Q You gave him Morphine?

17 A Morphine is important. Can I explain why?

18 Q Yes, sir.

19 A When there's pain, there's splinting. That means  
20 you don't breathe well. If you don't breathe well, you're  
21 set up for pneumonia. And an injured lung is a tremendous  
22 set up for pneumonia. It's very important to provide pain  
23 relief.

24 Q And so y'all provide -- after providing --

25 A We also provided -- excuse me, intravenous fluids.

## DR. JAMES GLASSER - Cross by Plexico

1 Which also cannot be discounted.

2 Q He, in fact, did not develop pneumonia; is that  
3 not a true statement?

4 A He received excellent -- yes, because he received  
5 appropriate medical care.

6 Q Okay.

7 MR. PLEXICO: The Court's indulgence.

8 (Pause.)

9 MR. PLEXICO: I don't have anything further,  
10 Judge.

11 MR. FERNANDEZ: Nothing, Your Honor.

12 THE COURT: You may step down.

13 MR. FERNANDEZ: And permission to excuse Dr.  
14 Glasser?

15 THE COURT: Y'all can go back by Edisto Gardens.

16 MR. FERNANDEZ: Thank you, Doctor.

17 MS. BURCHSTEAD: That's all we have for today,  
18 Judge.

19 THE COURT: All right. Jurors, y'all see how it  
20 gets out of control. Generally we don't have this  
21 problem in civil cases, because a doctor in Columbia  
22 normally wouldn't try to come up just to take a  
23 deposition, you know. But in criminal court we have --  
24 we like to confront people, look at them and talk to  
25 them. They don't allow depositions, so you have a



DR. JAMES GLASSER - Cross by Plexico

1 doctor that works, not anything about this gentleman,  
2 his office is in Columbia, but when somebody comes in  
3 bleeding he's got to take care of that before he comes  
4 down here.

5 Have a good night. We'll start in the morning at  
6 7:00 -- no, about 9:30. Okay. 9:30. And we should get  
7 it to you tomorrow.

8 Mr. Davis, since we got a long break until in the  
9 morning, you got very important things to think about.  
10 As I mentioned to you briefly when we broke for lunch,  
11 when the State finishes putting up all of their  
12 witnesses you have the right to put up a defense.

13 You can call witnesses to testify, you personally  
14 can testify or not, which is an important decision. And  
15 I won't go into, because you might think I'm pressuring  
16 you one thing or another. I don't know you or how you  
17 would perform on the witness stand, your background or  
18 anything.

19 But anyway, when the State rests, at that point I  
20 can't give you hours to think about it. I'm going to  
21 start -- ask Mr. Plexico, are y'all ready to proceed at  
22 that point. So, you need to think about it tonight.  
23 And in the morning be prepared to tell me how do you  
24 want to proceed with the case.

25 THE DEFENDANT: Yes, sir.

DR. JAMES GLASSER - Cross by Plexico

1           THE COURT: But you've got plenty of time. If  
2           you've got family members you need to talk to about it,  
3           you need to talk with them about it tonight. Because  
4           it's all going to be over tomorrow, chances -- one way  
5           or another.

6           Have a good night. See y'all in the morning at  
7           9:30.

8           MS. BURCHSTEAD: Thank you, Judge.

9           MR. FERNANDEZ: Thank you, Your Honor.

10          (Off-the-record discussion held.)

11          (Court adjourned.)

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DR. JAMES GLASSER - Cross by Plexico

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2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF ALLENDALE:

6 I, MONA L. MANLEY, Court Reporter, certify that I was  
7 authorized to and did stenographically report the foregoing  
8 proceedings and that the transcript is a true and complete  
9 record of my stenographic notes.

8

DATED this 10th day of October, 2014.

9

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MONA L. MANLEY  
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1                   In the Court of Common Pleas for the  
2                   State of South Carolina, County of Allendale

3

4                                           Case No.: 2009-GS-03-00072+

5   State of South Carolina,

6                   Plaintiff(s),

7   vs.                                           Transcript of Record

8   McKenvie Levar Davis,

9                   Defendant(s).

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15                                           July 10, 2014

16                                           Allendale, South Carolina

17

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20

21   BEFORE:

22                   The Honorable Judge Kinard

23

24

25

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## INDEX

1 PROCEEDING

2 THE COURT: Okay. You may proceed.

3 Thereupon,

4 SELENA KINARD

5 was called as a witness, having been first duly sworn,

6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FERNANDEZ:

9 Q All right. And your name for the record, please?

10 A Selena Kinard.

11 Q Okay. And Selena, what was -- well, I guess,  
12 where are you currently employed?

13 A Currently I'm employed in Newberry, South  
14 Carolina; at Kiswire Incorporated.

15 Q Okay. And what do you do there?

16 A I am a human resources assistant.

17 Q Okay. And where were you previously employed at?

18 A I was at SLED from 2007 until 2012.

19 Q Okay. What did you do for SLED?

20 A I was a forensic technician in the evidence  
21 control department.

22 Q All right. And what were your day-to-day  
23 responsibilities as an evidence technician?

24 A Each day we would greet the agencies that would  
25 come in and bring in evidence for criminal cases. We would

## SELENA KINARD - Direct by Fernandez

1 log that evidence in, store it within our locked evidence  
2 room. Scan evidence to other departments when it was ready  
3 to be worked on.

4 Q Okay. Now, I'm going to take you back to November  
5 2008. I think you already said the date range, but you were  
6 employed with SLED in November of 2008; is that correct?

7 A Yes, that's correct.

8 Q All right. I'm going to show you an exhibit I am  
9 marking as a State's Exhibit No. 33. Are you familiar with  
10 this type -- with what this type of document is?

11 A Yes, I am. This is the electronic chain of  
12 custody from SLED.

13 Q Okay. And during your -- during the years you  
14 were employed with SLED as an evidence technician, would you  
15 have been familiar with this type of document?

16 A Yes. We would have this with each case that would  
17 come in to SLED.

18 Q Okay. Would you tell the jury a little bit about  
19 what that document is and what it shows? Just in general.  
20 Not that particular one, but just in general what that would  
21 show.

22 A Sure. Once we get a case in, or get the evidence  
23 in, we would log it into the computer system. The Agency or  
24 the person representing that Agency would sign. And once we  
25 saved their signature, this document or electronic chain of



## SELENA KINARD - Direct by Fernandez

1 custody would be generated within the computer system. So,  
2 each case is unique and would have its own chain of custody.

3 Q Okay. And what is -- for this particular document  
4 what is the case number, the SLED assigned case number?

5 A It is L08-16243.

6 Q Okay. Now, in this particular case -- you don't  
7 have any specific or independent recollection of this  
8 particular case, do you?

9 A No, I don't.

10 Q Okay. I am going to show you a section on the  
11 chain. Does your name appear on any section in that chain  
12 of custody?

13 A Yes, it does.

14 Q Okay. Could you tell us where it appears and what  
15 it suggests that you would have done?

16 A Okay. On November 4th of 2008 at 14:13 I received  
17 item three, which is listed as a heat-sealed pouch  
18 containing blood, described as -- or labeled McKenvie Levar  
19 Davis. And I received that from Thomas E. Moore of the  
20 South Carolina Highway Patrol.

21 Q Okay. What does tell you? In your day-to-day  
22 experience, what does that tell you what you would have  
23 done?

24 A On that -- the particular day and that time,  
25 Trooper Moore would have come in to SLED. He would have

## SELENA KINARD - Direct by Fernandez

1 given me typically a box, which we called our blood urine  
2 specimen kits. And that would contain blood and urine, or  
3 one or either of those two pieces of evidence. And I would  
4 log that into the system. And he signed it. And when I  
5 saved it it created the -- it started the chain of custody  
6 for that particular item.

7 Q And when you -- would you have made a note or  
8 anything of that nature, if the item you received wasn't  
9 sealed properly?

10 A At that time, I have to think back, because we  
11 did -- we did change probably about a year before I left.

12 Q Okay.

13 A I do -- I do remember when those boxes -- boxes  
14 would come in that they would give us we would write on  
15 there the date that it was received.

16 Q Okay.

17 A And like our initials. So, in this case I would  
18 have wrote 11/4/08 and SK for my initials. To say for sure  
19 that it was sealed, I cannot say.

20 Q If it was sealed would you have -- would you, in  
21 your general practice, have opened the container for any  
22 reason?

23 A No, I would not have.

24 Q Okay. And when you said you -- what -- after  
25 receiving the evidence or the blood and/or urine, what would

## SELENA KINARD - Direct by Fernandez

1 you have then done with it? Where would you have put it?

2 A What I would have done with that particular box  
3 would have been put it into an additional -- a heat-sealed  
4 pouch that has SLED on it. And the officer would have signed  
5 and dated on the front of the heat-sealed pouch, as well as  
6 when I heat-sealed the top he would initial and date the  
7 seal to show that he was the one there present in front of  
8 me when I sealed it.

9 Q Okay. And after sealing the pouch, where would  
10 you have placed it -- physically placed it?

11 A It would have been placed in our evidence room in  
12 a refrigerator designated for toxicology evidence.

13 Q Okay. Let me see that. Just for clarification  
14 purposes, Selena, your name -- it does appear twice on this  
15 form. I just want to be clear that the first page, it  
16 indicates -- what was the item that you received?

17 A It was item 3, blood for toxicology, labeled as  
18 McKenvie Levar Davis.

19 Q And then the following page has another item, what  
20 was that -- what item was that that you received?

21 A That was item 4. And it's listed as heat-sealed  
22 pouch, containing urine, described as labeled McKenvie Levar  
23 Davis.

24 Q Okay. And as far as you were aware, there was no  
25 deviation from your standard operating procedure for

## SELENA KINARD - Direct by Fernandez

1 receiving evidence and placing it into the evidence room;  
2 would that be correct?

3 A That's correct.

4 MR. FERNANDEZ: Judge, I don't think we have any  
5 further questions. Thank you.

6 MR. PLEXICO: I think I -- I don't have any  
7 questions on this particular one.

8 THE COURT: You can step down.

9 MR. FERNANDEZ: And permission to excuse her,  
10 also?

11 THE COURT: Okay. You've testified before. We  
12 have the same last name, but we have no relationship?

13 WITNESS: Yes, sir.

14 THE COURT: We're all kind of somewhat connected  
15 back in the 1600s but . . . .

16 WITNESS: Yes. Thank you.

17 MR. FERNANDEZ: Your Honor, State would call  
18 Sherry Brown.

19 THE COURT: All right.

20 Thereupon,

21 SHERRY BROWN

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

24 DIRECT EXAMINATION

25 BY MR. FERNANDEZ:

SHERRY BROWN - Direct by Fernandez.

1 Q Sherry, good morning. Your name for the record,  
2 please?

3 A Sherry Brown.

4 Q All right. And, Sherry, where do you currently  
5 work?

6 A South Carolina Law Enforcement Division, also  
7 known as SLED.

8 Q Okay. And what do you do for SLED?

9 A I'm a technician assigned to the DNA department.

10 Q Okay. What does that involve? What do your  
11 day-to-day responsibilities include?

12 A During this time, when this case came in, I was a  
13 forensic DNA technician to retrieve evidence from evidence  
14 control, that's been -- that came into -- got a DNA case  
15 request.

16 Q Okay. And how long have you been employed with  
17 SLED?

18 A Twenty years now.

19 Q Okay. And is it safe to say that you were  
20 employed back in November of 2008 also?

21 A Yes.

22 Q Okay. And would your responsibilities have been  
23 what you've just described, about handling the evidence?

24 A Yes.

25 Q Okay. I'm going to show you a document that's

SHERRY BROWN - Direct by Fernandez

1    been marked as State Exhibit No. 33. Are you familiar with  
2    this type of document?

3           A     Yes, I am.

4           Q     Okay. Is it safe to say that is the chain of  
5    custody for evidence that was collected?

6           A     Yes. It is an electronic chain of custody.

7           Q     Okay. And tell us a little bit about what that  
8    document tells you, in just the abstract sense. What does  
9    that say?

10          A     Each case gets a unique number, a SLED lab number.  
11   And within that lab number it's broken down into individual  
12   numbers.

13          Q     Okay. The items that were retrieved in this  
14   particular case, are they listed in that form? For some of  
15   the items, at least.

16          A     Yes.

17          Q     Okay. And I think I had it turned to the second  
18   page of the document, but do you see anywhere on there where  
19   your name appears?

20          A     Yes, I do. On --

21          Q     Okay. Tell me which item it appears on and what  
22   your role would have been.

23          A     I'm on the chain of custody of item 2.1 and 2.2.

24          Q     Okay. And what items are those?

25          A     Two point one is a heat-sealed pouch containing

SHERRY BROWN - Direct by Fernandez

1 swabs from air bag.

2 Q Okay.

3 A And item 2.2 is a heat-sealed pouch containing a  
4 swab described from air bag.

5 Q Okay. Where did in the list do you appear?

6 A On 2.1 and 2.2 I retrieved them out of a storage  
7 bin, DNA storage drawer 5E. I physically and electronically  
8 took custody of it and put it into another bin within the  
9 DNA department, of DNA F10.

10 Q Okay. And for 2.2?

11 A Yes.

12 Q Okay. And for 2.1 also?

13 A Yes.

14 Q Okay. What's the standard procedure for when you  
15 receive an item? What state should the item be in? Would  
16 it be open? Would it be sealed?

17 A It should be sealed. Before I take custody of any  
18 item I check the heat-sealed pouch to make sure it's been  
19 heat-sealed, signed and dated by the person that sealed it.  
20 And then I can take it in my custody.

21 Q Okay. What happens if an item isn't heat-sealed  
22 or is somehow opened when you go to retrieve it?

23 A It would be noted within the chain of custody  
24 note, just like, you know, it was open or not open -- you  
25 know, open and then what steps was taken to correct it.

SHERRY BROWN - Direct by Fernandez

1 Q Okay. And did you make any notation to that  
2 effect in this case?

3 A None.

4 Q Okay. So, what does that tell you? Well, since  
5 you didn't make a note about whether it was opened or not,  
6 what would that suggest to you?

7 A It would be un -- it would be in an unopened bag  
8 that I took into my custody.

9 Q Okay.

10 MR. FERNANDEZ: Beg the Court's indulgence? Could  
11 I have that form back?

12 (Pause.)

13 BY MR. FERNANDEZ:

14 Q All right. Sherry, I'm going to show you another  
15 page involving item 5. Could you tell us what item 5 is?

16 A It is described as one sealed envelope containing  
17 Buccal swab described as a Buccal swab collected from  
18 Valandrea Bing.

19 Q All right. One second. I think we'll go through  
20 that in a second too. And then 5 and 6. So 5 and 6, okay?

21 A One is heat-sealed pouch containing Buccal swab  
22 described as a Buccal swab collected from McKenvie Levar.

23 Q McKenvie, is that what it says?

24 A Levar, yeah.

25 Q Levar. And then there's a last name?



SHERRY BROWN - Direct by Fernandez

1 A Yes.

2 Q Is there another last name there?

3 A I did not hear you.

4 Q Oh, it's dark.

5 A Yeah.

6 Q Are you able to read the -- there's a last name  
7 there under the dark patch.

8 A Davis.

9 Q Okay. Thank you. For items 5 and 6, could you  
10 tell us what you did for those -- for both of those items?

11 A In this particular case, items 5 and 6 I retrieved  
12 evidence that was given into the DNA intake. And I took it  
13 from -- electronically and personally from Patricia Crux  
14 (phonetic) that worked in the evidence control.

15 Q Okay. And then what did you do with it after  
16 retrieving it from Ms. Crux?

17 A It was in my custody. And then Lillie Gollman,  
18 DNA analyst Lillie Gollman, took it into her custody.

19 Q Okay. Now, when you retrieved both items, I know  
20 you don't independently remember, but are there any  
21 notations to suggest that they were not heat-sealed?

22 A There are no notations on my chain that says it.  
23 So, it was sealed and signed properly. And when I got it it  
24 was intact.

25 Q Okay. And when you gave it to Ms. Gollman for

SHERRY BROWN - Direct by Fernandez

1 testing both of the items --

2 A Yes.

3 Q -- you would have followed proper procedure in  
4 this case as well?

5 A Yes.

6 MR. FERNANDEZ: Beg the Court's indulgence?

7 (Pause.)

8 MR. FERNANDEZ: No further questions, Your Honor.

9 MR. PLEXICO: Your Honor, may I approach the  
10 witness?

11 THE COURT: Sure.

12 CROSS EXAMINATION

13 BY MR. PLEXICO:

14 Q Did you just testify about the swab relating to  
15 Valandrea Bing?

16 A Yes. But this is a lot different than what he  
17 had, this copy.

18 Q Okay. Do you see that?

19 MR. FERNANDEZ: Can I see the -- I would just like  
20 to see whatever.

21 MR. PLEXICO: It is what you provided to me.

22 BY MR. PLEXICO:

23 Q Now, did you pick this up at 13:31, Valandrea  
24 Bing?

25 A Yes, on October the 3rd, 2009.

## SHERRY BROWN - Cross by Plexico

1 Q And that form says that you got it from DNA third;  
2 is that correct?

3 A Correct.

4 Q All right. What is DNA third?

5 A It is a holding location during that time where  
6 evidence was stored.

7 Q So, you didn't get it from a person, correct?  
8 Correct?

9 A Do the comparison of both paper chains, they  
10 are -- I did not.

11 Q So the paper chain is different from the official  
12 chain that you put in the computer?

13 A I would like to see both of them compared side by  
14 side.

15 Q Could you just answer the question and not ask a  
16 question? The question was: The computer chain is  
17 different from that you just testified to under direct; is  
18 that not correct?

19 A Correct.

20 Q All right. Did y'all change your procedures some  
21 years back in the handling of this?

22 A Sir, I did not hear you.

23 Q Did y'all change your procedures in the handling  
24 of evidence some years back?

25 A Not to my knowledge.

SHERRY BROWN - Cross by Plexico

1 Q Okay.

2 MR. PLEXICO: I don't have anything further.

3 MR. FERNANDEZ: Permission to excuse also?

4 THE COURT: Okay.

5 MR. PLEXICO: Nothing further. Witness excused.

6

7 Thereupon,

8 BETTY BUTLER

9 was called as a witness, having been first duly sworn,

10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FERNANDEZ:

13 Q All right. Ms. Butler, your name for the record,  
14 please?

15 A Betty Butler.

16 Q All right. And with whom are you currently  
17 employed?

18 A I'm employed with the South Carolina Law  
19 Enforcement Division also known as SLED.

20 Q Okay. And what do you do for SLED?

21 A I am a forensic technician in the DNA department.

22 Q Okay. What does that generally involve, your  
23 day-to-day duties?

24 A As a forensic technician in the DNA department I  
25 do a presumptive test of blood and semen. I look for body

BETTY BUTLER - Direct by Fernandez

1 fluid.

2 MR. PLEXICO: Your Honor, I would object to this  
3 under my previous objections and motions that I made  
4 earlier.

5 THE COURT: She can go ahead.

6 Q Please.

7 A I look for body fluids, I look for hair, fibers,  
8 or skin cells, or anything that could be of value to a  
9 particular case.

10 Q Okay. Back in 2008 -- how long have you been  
11 employed with SLED?

12 A Nearly 18 years.

13 Q Okay. And it's safe to say that you were employed  
14 with them back in 2008; is that correct?

15 A Yes, I was.

16 Q Okay. I'm going to show you a document entitled  
17 State's Exhibit No. 33. And the relevant portion that I  
18 would like you to take a look at, at the bottom of the first  
19 page, there is an item marked two; would you tell us what  
20 that item is?

21 A One sealed box containing items described as air  
22 bag.

23 Q Okay. So, you received an air bag. And is your  
24 name on that list there for the air bag?

25 A Yes, it is.

## BETTY BUTLER - Direct by Fernandez

1           Q     Okay. And are you -- what point in the process  
2 are you in receiving that air bag?

3           A     I received the air bag from the evidence control  
4 department and technician Patricia Crux.

5           Q     Okay. All right. Now, the item two, there's also  
6 two following items labeled 2.1 and 2.2 on the following  
7 pages; could you tell me what those items are?

8           A     SLED item 2.1, one sealed, heat-sealed pouch  
9 containing swabs described as from air bag.

10          Q     Okay. Same as 2.2, correct; are they both labeled  
11 the same?

12          A     2.2 says, One sealed, heat-sealed pouch containing  
13 swabs described as from air bag.

14          Q     Okay. Now, item 2 is the air bag itself. What  
15 would you have done with the actual air bag? Where does  
16 your name appear -- I guess first, where does your name  
17 appear on the 2.1 and 2.2 swabs?

18          A     My name appears on the 2.1 and 2.2 at the very  
19 beginning because I created those items.

20          Q     Great, that is where I was leading to. Upon  
21 receiving the air bag, what would you have done to create  
22 items 2.1 and 2.2; could you describe the process?

23          A     When I took the SLED number 2.0, which is the air  
24 bag, into my custody I examined the items. The request was  
25 for blood touch. What I looked for first was the

## BETTY BUTLER - Direct by Fernandez

1 presumptive test for blood and it was negative so what I  
2 did, I did some swabs looking for possibility of who touched  
3 the particular air bag. And I swabbed the air bag twice,  
4 which is item number 2.1 and 2.2.

5 2.1 was the center of the air bag. And 2.2  
6 was the outside of the air bag. And I created those items.  
7 Once I created those items I let it dry and I put it into a  
8 heat-sealed pouch for the testing.

9 Q Okay. And that is -- can I have that piece of  
10 paper back? Betty, why don't you tell me a little bit about  
11 your training and expertise in order to be able to pull the  
12 swabs and lift the evidence that we see?

13 A We are trained by two qualified forensic  
14 technicians, plus a lieutenant, a DNA analyst. We are  
15 trained on hundreds of items before we are able to go on  
16 line and actually test a particular item. We have to do a  
17 competency test. We have to pass that. And every year we  
18 do a proficiency test to make sure that we still know what  
19 we are doing.

20 Q In 2008 had you accomplished all of the requisite  
21 hours and proficiency training?

22 A Yes, I did.

23 Q Okay.

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

25 MR. PLEXICO: I have no questions about her

BETTY BUTLER - Direct by Fernandez

1 competence and ability to do her job.

2 THE COURT: All right.

3 MS. BURCHSTEAD: Beg the Court's indulgence just a  
4 second.

5 (Pause.)

6 MR. FERNANDEZ: Your Honor, I don't have any  
7 further questions for Ms. Butler.

8 CROSS EXAMINATION

9 BY MR. PLEXICO:

10 Q You appear to have a fascinating job, don't you?

11 You are one of these CSI people that we meet.

12 A No.

13 Q Okay. All right. I think that you are modest,  
14 but withdraw the comment. But anyway, so it's this touch  
15 DNA we hear about that you are testing for? Is essentially  
16 what that is is, you know, we watch CSI on television and  
17 you touch a gun or you have a -- you touch the decedent and  
18 they are over there trying to figure out who did it. And  
19 they pick up some touch DNA and y'all -- they bring it to  
20 somebody like you and you put it together to make sure that  
21 it all works? Is that kind of your role?

22 A My -- I don't know how you compare it to CSI, but  
23 someone touches an item and we swab to try and get skin  
24 cells, because you don't really see the skin cells you are  
25 just swabbing in the blind to see who touches it, the



## BETTY BUTLER - Cross by Plexico

1 particular item.

2 Q Okay. Thank you, ma'am. I don't have anything  
3 further.

4 MR. FERNANDEZ: Nothing Your Honor.

5 THE COURT: She just collected it, she didn't  
6 analyze it; is that the position?

7 MR. PLEXICO: I understand, Judge.

8 MS. BURCHSTEAD: She took the swabs off of the air  
9 bag that would be used for the analysis.

10 THE COURT: She didn't analyze them?

11 MS. BURCHSTEAD: No. No.

12 THE COURT: She's free to go.

13 MS. BURCHSTEAD: Judge, may I approach for just a  
14 minute?

15 THE COURT: All right.

16 (Off-the-record discussion held.)

17 THE COURT: Jurors out of my control. I have two  
18 witnesses who were supposed to be here who are  
19 allegedly on the way. They have got to connect all of  
20 the dots and they have got somebody here that they can  
21 put up but they can't put that person up until they put  
22 up two other people. So, just be at ease. You might  
23 even have time to go down and do your Christmas  
24 shopping, I don't know.

25 (laughter.)

BETTY BUTLER - Cross by Plexico

1 (Jury exits the courtroom at 10:10 a.m.)

2 MS. BURCHSTEAD: My apologies, Judge. I can't  
3 physically get people here. If I may suggest, perhaps  
4 we could discuss the charges now or discuss other  
5 business. I do have a matter of law that I would like  
6 to revisit before the toxicologist takes the stand. I  
7 know that your ruling the other day was not to go into  
8 the marijuana. In an the effort to start the other day  
9 I know that I didn't make the most articulate argument  
10 for the State. But I would like to know --

11 THE COURT: You can revisit it. All you have got  
12 to do is show that there was some evidence of marijuana  
13 in the car or have some person testify as to when he  
14 ingested it and it comes in. Marijuana stays in your  
15 system 28 years -- I mean, listen, I have been doing  
16 this 26 years. Marijuana stays in your system 28  
17 years -- I mean 28 days. It doesn't have anything to  
18 do with after about a couple of hours with your ability  
19 to function, it is just there.

20 MS. BURCHSTEAD: Yes, sir, I agree and understand  
21 that it stays in your system for days. The issue that  
22 we have is that our chemist is going to say that you  
23 can't rule it out. He will say, You can't say when it  
24 was ingested. It does stay in the system. But that it  
25 could have been a factor.

## BETTY BUTLER - Cross by Plexico

1 THE COURT: I understand all of that. According  
2 to Mr. Plexico, it is unduly prejudicial to his client.  
3 If he can tie it into a degree of intoxication he can  
4 testify. I don't know what he's going to say.

5 MS. BURCHSTEAD: Correct, I want to be clear, the  
6 State's position -- the law says under the influence of  
7 alcohol or drugs.

8 THE COURT: It does, or a combination of them.  
9 You have got to prove on alcohol. You have got to  
10 prove the ingestion. There was in fact alcohol which  
11 you have got in this case.

12 MS. BURCHSTEAD: Yes, sir, I understand the point.  
13 I guess the State's position is just that the  
14 chemist --

15 THE COURT: The State is about to lose so I'm not  
16 going to listen anymore.

17 MS. BURCHSTEAD: Yes, sir.

18 THE COURT: The Judge is so irritated with y'all  
19 for not getting your witness here. I have been doing  
20 this 26 years and this is the worst that I have ever  
21 been jerked around on getting people here.

22 MS. BURCHSTEAD: Yes, sir.

23 THE COURT: The Attorney General has to take some  
24 responsibility for that, you know.

25 MS. BURCHSTEAD: I agree, Judge.

BETTY BUTLER - Cross by Plexico

1 THE COURT: And then you want to argue something  
2 that is not even going to impact how the jury decides.

3 MS. BURCHSTEAD: Very well. Your Honor. I did  
4 want to re-visit that. I didn't think that I was very  
5 articulate the other day. I do sincerely apologize to  
6 the Court and everyone in the court that we are waiting  
7 on witnesses yet again. All I can say again is that we  
8 have tried and I'm doing my best to get them here now.  
9 I can understand that it is a big problem, a  
10 frustration, and it is an embarrassment to this office  
11 and I apologize.

12 THE COURT: All right.

13 (Lunch recess taken from 12:35 p.m. until 1:03  
14 p.m.)

15 THE COURT: All right. The State ready?

16 MS. BURCHSTEAD: Yes, Your Honor.

17 MR. PLEXICO: Yes, Your Honor.

18 THE COURT: The jurors weren't quite ready, but  
19 are they ready now?

20 THE BAILIFF: Yes, sir.

21 THE COURT: Bring them in.

22 (Jury enters the courtroom at 10:15 a.m.)

23 THE COURT: All right. Jurors, I understand that  
24 they are now ready to proceed.

25 MR. FERNANDEZ: Thank you, Your Honor. The State

## BETTY BUTLER - Cross by Plexico

1 will call Nikki Perry Hughes.

2 Thereupon,

3 NIKKI PERRY HUGHES

4 was called as a witness, having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FERNANDEZ:

8 Q Good afternoon. Could you state your name for the  
9 Court?

10 A My name is Nikki Perry Hughes. H-U-G-H-E-S.

11 Q Thank you. And with whom -- where are you  
12 currently employed?

13 A I am currently employed with the South Carolina  
14 Department of Labor, Licensing and Regulation as an  
15 investigator for the Board of Nursing.

16 Q Okay. And where were you employed previously?

17 A I was formerly employed with South Carolina Law  
18 Enforcement Division, commonly known as SLED.

19 Q Okay. And what did you do for SLED?

20 A Forensic technician in the evidence control  
21 department. We would log in packages and transfer evidence  
22 admitted to the laboratory for forensic analysis.

23 Q Okay. And how long did you work for SLED?

24 A I worked there approximately eight years.

25 Q Okay. Taking you back to November 2008, were you

NIKKI PERRY HUGHES - Direct by Fernandez

1 employed with SLED at that time?

2 A Yes, sir.

3 Q And from the name on the forms, what was your name  
4 at that time? Your last name was Perry at that time?

5 A It was Perry, yes, sir.

6 Q Okay, thank you. Now, as part of being a forensic  
7 technician, what would you typically do upon receiving  
8 evidence from various sources; what is the typical, standard  
9 thing that you would do?

10 A In a standard procedure when officers would come  
11 in to submit evidence they would provide us with a SLED  
12 forensic services request form. And on that form it would  
13 detail case information like subject or victim. Also it  
14 would detail the evidence that they were bringing in for the  
15 laboratory and what analysis they were requesting, I would  
16 accept that evidence sealed. I would then type into the  
17 computer the information. Our computer would then generate  
18 a unique lab number for that case and an item number for  
19 each item of evidence that is submitted.

20 I would then package the evidence and have  
21 that particular officer in my presence initial and date the  
22 seals on the evidence. After that process was complete I  
23 would then place it into our secured evidence room.

24 Q Thank you. I'm going to show you a form that is  
25 marked State's Exhibit No. 33. The items that I would like

NIKKI PERRY HUGHES - Direct by Fernandez

1 you to take a look at are Items 2 and 6. I have got it  
2 turned so 2 is on the front page and 6 is on that page.

3 Are you familiar with that document, that type of  
4 document that I just handed you?

5 A Yes, sir, this is the South Carolina Law  
6 Enforcement Division electronic chain of custody form.

7 Q Okay. And items 2 and 6, do you appear -- does  
8 your name appear on any of those chains of custody?

9 A Yes, sir, they do.

10 Q Okay. And where in the process is -- did you  
11 handle those two pieces of evidence?

12 A I accepted item 2, which is described as an air  
13 bag from Lance Corporal R.S. Ash of the South Carolina  
14 Highway Patrol MAIT team. I also accepted Item No. 6, which  
15 is described as a Buccal swab from McKenvie Davis. I also  
16 received that from R.S. Ash of the Florida Highway Patrol  
17 MAIT team.

18 Q Okay. Upon receiving those items, what would you  
19 have done with them?

20 A As I stated earlier I would have logged in the  
21 information into the computer. The evidence would have been  
22 packaged. It does come in sealed but we would then place it  
23 in a SLED package usually, according to type of evidence  
24 that it is. If it was a box we may place SLED seal tape  
25 over the seals and I would have the officer initial and date

NIKKI PERRY HUGHES - Direct by Fernandez

1 all seals.

2 Q Okay, I'm handing you another document marked  
3 State Exhibit No. 35. Are you familiar with this document?

4 A Yes, sir, that is a SLED laboratory forensic  
5 services request receipt for evidence.

6 Q Okay. And is your name on that document?

7 A Yes, sir, my signature is.

8 Q Okay. Your signature. And what did you sign for  
9 receiving?

10 A I signed for receiving a black shirt and an air  
11 bag.

12 Q Okay. And does it say who you received the item  
13 from?

14 A I received it from R.S. Ash of the MAIT team.

15 Q Okay. This has already been marked as State's  
16 Exhibit 35. But I move to place it in evidence.

17 MR. PLEXICO: I have no objections to that, Your  
18 Honor.

19 THE COURT: Okay.

20 *(Whereupon, State's Exhibit No(s). 35 marked for*  
21 *identification and received in evidence.)*

22 MR. FERNANDEZ: Beg the Court's indulgence.

23 (Pause.)

24 BY MR. FERNANDEZ:

25 Q Upon receiving the air bag and swab from



NIKKI PERRY HUGHES - Direct by Fernandez

1 Mr. McKenvie Davis, what would you have done with those  
2 items, the next step in the procedure after you received it?

3 A After receiving and packaging those items they  
4 would have been placed in our secure evidence room and that  
5 is where they would sit awaiting analysis for someone to  
6 come pick them up in analysis.

7 Q I think that you mentioned upon receipt it would  
8 have been sealed, but you would have the officer initial it  
9 anyways; is that correct?

10 A Right, the standard procedure usually, for  
11 instance, for an air bag, without seeing it, I'm just going  
12 by majority comes in a box that is already sealed. I do not  
13 inventory or see the evidence. I'll place SLED seal tape  
14 over the seals and have the officer initial and date them.  
15 In evidence control we work on a "said to contain" basis, so  
16 whatever it said on the form is -- in evidence control that  
17 is what we go by.

18 Q That is your standard operating procedures for any  
19 intake?

20 A Yes, sir.

21 MR. FERNANDEZ: No further questions, Your Honor.

22 CROSS EXAMINATION

23 BY MR. PLEXICO:

24 Q Do you still have the chain of custody in front of  
25 you?

## NIKKI PERRY HUGHES - Cross by Plexico

1           A     Yes, sir, I do.

2           Q     Okay. You received this at 12:27. Is that right  
3 after lunch?

4           A     Which item are you speaking of? I received more  
5 than one item.

6           Q     Correct, both of them. Aren't they both 12:27?

7           A     No, sir.

8           Q     What is the first one? The black, the black  
9 shirt.

10          A     The black shirt I did receive at 12:27, yes, sir.

11          Q     Okay. All right. And you took that to the  
12 evidence room at 4:14 in the afternoon?

13          A     Yes, sir.

14          Q     Okay. When did you receive the next item?

15          A     Item number 2, I received at -- the air bag at  
16 12:27.

17          Q     Okay.

18          A     And I placed it in the intake shelf at 16:14.

19          Q     Okay. So --

20          A     They were in the same package.

21          Q     Okay. So, that took several hours?

22          A     Yes, it stays in my custody and care and control  
23 during those times.

24          Q     Okay. So, you just leave it on your desk until  
25 you get a bunch of them and then you take them over there?

NIKKI PERRY HUGHES - Cross by Plexico.

1           A    Not all of the time, no, sir. Sometimes people  
2   may bring in more than one case, I might have it at my desk.  
3   It's not on my desk, but in my care and control right beside  
4   me in a bin. And I may take all of the evidence at that  
5   time and place it in the appropriate areas within the  
6   evidence room.

7           MR. PLEXICO: Okay, thank you. I don't have  
8   anything further.

9           THE COURT: You are free to go.

10          WITNESS: Thank you.

11          MR. FERNANDEZ: The State calls Quintus Young.

12   Thereupon,

13                                   QUINTUS YOUNG

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

16           MR. PLEXICO: Your Honor, I think that this would  
17   be an appropriate time for me -- I need a bench  
18   conference, perhaps, to renew all of my prior motions  
19   on this matter.

20           THE COURT: All right. We will note that.

21           MR. PLEXICO: Thank you, Judge.

22           THE COURT: All right.

23                                   DIRECT EXAMINATION

24   BY MR. FERNANDEZ:

25           Q    Mr. Young, please state your name for the record,

## QUINTUS YOUNG - Direct by Fernandez

1 and if you could spell your first name for us?

2 A Quintus, Q-U-I-N-T-U-S, Young, II.

3 Q All right. Quintus, who do you work with?

4 A I'm employed at SLED, South Carolina Law  
5 Enforcement Division.

6 Q How long have you been with SLED?

7 A I have been there a little over seven years.

8 Q Okay. And what is your title at SLED?

9 A I am a forensic toxicologist.

10 Q Okay. And could you please tell us a little bit  
11 about what a forensic toxicologist does?

12 A As a forensic toxicologist we are responsible for  
13 the analysis of the biological specimens, such as blood,  
14 urine, in some cases brain or liver tissue. We analyze  
15 those to detect the absence or presence of alcohol, drug, or  
16 poison. And we interpret those findings for Courts of Law,  
17 pathologists and coroners.

18 Q What are your day-to-day duties at SLED?

19 A They vary. But primarily drug confirmation,  
20 quantification of drugs. We are all assigned cases.  
21 There's just typical casework.

22 Q Okay. Tell us a little bit about your educational  
23 background and training.

24 A I have a bachelors degree from University of South  
25 Carolina in chemistry. Once I got on at SLED we go through

## QUINTUS YOUNG - Direct by Fernandez

1 in-house training. The first training you receive is blood  
2 alcohol. You go through a series of lectures, written and  
3 oral exams, and you also have to analyze 500  
4 previously-analyzed samples to see if you get pretty much  
5 the same result that was reported out before you are able  
6 to -- before you are actually signed off on casework.

7 After that you will begin your drug, drug  
8 training, which all in all it takes about a year.

9 Q Okay. And you have completed all of those  
10 trainings?

11 A Yes. Yes.

12 Q How long have you been with SLED? Sorry, I don't  
13 know if you said that.

14 A A little over seven years.

15 Q Seven years. How often or how many times have you  
16 testified in court as an expert?

17 A About 12.

18 Q In what fields were you declared an expert?

19 A Forensic toxicology.

20 MR. FERNANDEZ: At this time, Your Honor, we move  
21 him as an expert in forensic toxicology.

22 THE COURT: Okay.

23 MR. PLEXICO: No objections.

24 THE COURT: Okay, so qualified.

25 MR. FERNANDEZ: Thank you.

## QUINTUS YOUNG - Direct by Fernandez

1 BY MR. FERNANDEZ:

2 Q First things first, Mr. Young. I'm handing you a  
3 document that's marked State's Exhibit No. 33. And I am  
4 going to direct your attention to items labeled numbers  
5 three and four on subsequent pages. Tell us what item three  
6 and then what item four is.

7 A Item three is one heat -- one sealed heat pouch  
8 containing blood described as labeled McKenvie Levar Davis.  
9 And item four reads, sealed heat pouch containing urine  
10 described as McKenvie Levar Davis.

11 Q Okay. Does your name appear on those specimens?

12 A It does.

13 Q Okay. Now, what -- and does that chain indicate  
14 that those are the specimens that was received by SLED?

15 A Correct.

16 Q Okay. And does it -- do the records indicate who  
17 delivered the specimen to your hands or who was the person  
18 prior to you?

19 A Yes, that would have been Kimberly Davis.

20 Q And before that?

21 A Patricia Crux.

22 Q Okay, upon intake what is the proper method of  
23 handling of the specimens at SLED?

24 A After -- at what point?

25 Q At intake.

## QUINTUS YOUNG - Direct by Fernandez

1           A     At intake once evidence is received and logged in,  
2     as you just heard, from various places it's placed in a  
3     secured refrigerator for one of our technicians, which will  
4     be Kimberly in this case, would go down and retrieve the  
5     evidence for the department. From there she will bring the  
6     evidence up to our department and store it in our secured  
7     refrigerator, walk-in refrigerator where we maintain all of  
8     our evidence until we are ready to analyze it.

9                     From there I would have gone in the  
10    refrigerator, retrieved my evidence and placed it in my  
11    custody. And from there I would inventory it to make sure  
12    what is said to be in the container is actually in there.  
13    Once I do that I begin my analysis.

14                    And any time a person goes into a heat-sealed  
15    pouch they have to seal it back and initial and date it.  
16    And I was the first to do that in this case.

17           Q     Okay. But what does that tell you? If you were  
18    the first person and there were no other people before you,  
19    you were the first person to have un-sealed it and initialed  
20    it; what does that tell you?

21           A     It tells me that the specimen is intact as  
22    received from the agency that delivered it.

23           Q     All right. Now we are going to get the procedure  
24    for SLED and this procedure is always followed?

25           A     Correct. And in the event that that was not the

QUINTUS YOUNG - Direct by Fernandez

1 case it would have been notated.

2 Q Okay. Thank you. And the two specimens, the  
3 urine and blood, did you in fact perform an analysis on  
4 these specimens?

5 A I did.

6 Q Okay. What analysis did you perform on them?

7 A The first was a blood alcohol concentration and  
8 the second would have been a drug screen.

9 Q Okay. I'm going to hand you a document that's not  
10 yet been marked. I will mark it.

11 *(Whereupon, State's Exhibit No(s) 36 marked for*  
12 *identification.)*

13 BY MR. FERNANDEZ:

14 Q I'm handing you a document right here. Are you  
15 familiar with what that document would be?

16 A This is a copy of the report I submitted.

17 Q Okay. And how do you know that it's a copy of the  
18 report that you submitted; what tells you that?

19 A It has the lab number as well as my signature on  
20 the last page.

21 Q Okay. Who would it have said the original sample  
22 would have been dropped off at SLED by?

23 A Lieutenant Corporal Ash.

24 Q Thank you. All right. As far as the -- what did  
25 the screens that you performed on the samples, what did they



## QUINTUS YOUNG - Direct by Fernandez

1 reveal?

2 A In this case --

3 THE COURT: Why don't you hold it just a minute.

4 If you go somewhere where that question will lead you

5 I'm throwing the whole case out. You need to confer

6 with co-counsel over there. If you don't have enough

7 legal background to figure it out I'll send the jury

8 out.

9 (Pause.)

10 BY MR. FERNANDEZ:

11 Q Concerning the alcohol test which is what we

12 talking about, what did the screen reveal?

13 A That it was a 0.106 blood alcohol concentration.

14 Q Okay. Now, what does that -- tell us what that

15 means. Tell us what that means, as far as the human body is

16 concerned.

17 A Okay, well, ethanol is a --

18 MR. PLEXICO: Your Honor, I object, he's not

19 qualified as an expert to what the effect of alcohol is

20 on the human body.

21 THE COURT: Well, he's not, but under his findings

22 he had a reading of 1.0, I'll explain the law to them

23 on what that signifies at the conclusion of the trial.

24 MR. FERNANDEZ: Okay.

25 MS. BURCHSTEAD: Beg the Court's indulgence.

## QUINTUS YOUNG - Direct by Fernandez

1 (Pause.)

2 BY MR. FERNANDEZ:

3 Q Do you have additional training as far as the  
4 alcohol interpretation and blood alcohol effects on the  
5 body?

6 A Yes, that is part of the training that I explained  
7 previously.

8 Q All right. And have you ever testified to that  
9 effect before?

10 A Yes, we give a -- we don't give a definite  
11 description of what this person was going or experiencing,  
12 but we give a general idea.

13 Q Okay.

14 MR. PLEXICO: Your Honor, he's still not  
15 qualified.

16 THE COURT: He can testify to that. Lord knows, I  
17 mean, how many of these trials that I have set through.  
18 He's got the training, you know.

19 MR. FERNANDEZ: Yes, Your Honor. Thank you.

20 THE COURT: As long as he says different people  
21 handle it different ways and so forth and it depends on  
22 how long you have been drinking, how old you are, how  
23 much you weigh, all of that kind of stuff. There's  
24 nothing arbitrary about the 1.0 thing other than the  
25 law.

## QUINTUS YOUNG - Direct by Fernandez

1 BY MR. FERNANDEZ:

2 Q In the general sense, you can't speak specifically  
3 to the Defendant -- you didn't have any interaction  
4 specifically with him -- but tell us in a general sense what  
5 .10 percent of alcohol can do to the human body?

6 A Okay. Well, ethanol is a central nervous system  
7 depressant at a .106 you may be dealing with somebody who is  
8 experiencing euphoria, sedation --

9 MR. PLEXICO: I object.

10 THE COURT: That is right. He is going beyond it.  
11 Y'all should have coached him a little better on this.  
12 Lord knows.

13 MR. FERNANDEZ: Your Honor, can we approach?

14 THE COURT: No, you cannot approach. You are an  
15 attorney, you know how to handle it. All he's  
16 qualified to do is tell you his results at this point,  
17 which he did. Now he's getting into appearances and  
18 his conclusions and what he thinks and so forth. He  
19 can't do that.

20 MS. BURCHSTEAD: Beg the Court's indulgence.

21 (Pause.)

22 MR. PLEXICO: Your Honor, I would move to strike  
23 that and ask for curative instruction.

24 THE COURT: He didn't answer.

25 BY MR. FERNANDEZ:

## QUINTUS YOUNG - Direct by Fernandez

1           Q     Mr. Young, to be clear, the test that you  
2 performed, could you please tell us exactly what the number  
3 is again?

4           A     A 0.106.

5           MR. FERNANDEZ: All right. Beg the Court's  
6 indulgence.

7           (Pause.)

8           MR. FERNANDEZ: Nothing further, Your Honor.

9           THE COURT: Okay.

10          MR. PLEXICO: May it please the Court.

11                           CROSS EXAMINATION

12   BY MR. PLEXICO:

13          Q     All right. Let me ask -- alcohol, ethyl alcohol,  
14 that is the active ingredient in alcohol, correct?

15          A     Correct.

16          Q     That is what is found in beer, wine, whatever?

17          A     Correct.

18          Q     All right. Now, that is actually a clear  
19 orderless liquid, isn't it?

20          A     Yes.

21          Q     All right. So, there's no such thing as a slight  
22 smell of alcohol or a strong smell of alcohol because you  
23 can't smell ethyl alcohol; isn't that true?

24          A     It has a scent, but mostly what you smell in beers  
25 and other mixed drinks are what we consider congruents or

## QUINTUS YOUNG - Cross by Plexico

1 everything that is added to a drink to give it its flavor or  
2 what have you.

3 Q When you tested this blood, how much did you test?  
4 What is the measurement of the amount of blood that you  
5 actually tested?

6 A 200 microliter.

7 Q Okay. Can you tell the difference with the naked  
8 eye between 150 microliters and 200 microliters?

9 A It is a small difference but you can see it.

10 Q You think that you can see it?

11 A Depending on what you are putting it into.

12 Q All right. What is a microliter?

13 A A very -- it is about equivalent to a drop.

14 Q Okay. All right. So, you are talking about a  
15 drop out of all of the blood that was in that sample,  
16 correct?

17 A Correct.

18 Q All right. Where do you get the drop from, the  
19 top, the middle, the bottom?

20 A We get it from the sample. The sample is vortexed  
21 and then analyzed.

22 Q Explain exactly. So, you go pick up the box, you  
23 open up the box, you take out the sample. And then how do  
24 you -- how do you transfer it to the -- to whatever the  
25 little module or whatever that you test it with?

## QUINTUS YOUNG - Cross by Plexico

1           A     The instruments in the lab we use a pipette to  
2     draw out the sample.

3           Q     Okay. All right. So, you stick it down in there,  
4     put your hand over it and get some down in there so to  
5     speak?

6           A     It is an instrument that you transfer the tube to  
7     another vial and then place it on the instrument.

8           Q     Okay. Is it true that it would only take a minute  
9     amount of alcohol to drastically alter the test results?

10          A     In what sense?

11          Q     With such a small drop if you had contamination of  
12     even a minute amount of alcohol that could drastically alter  
13     the test results, could it not?

14          A     Where would the contamination come from?

15          Q     That is what I'm asking, if there was  
16     contamination could it -- that is all that I'm asking you --  
17     could it, would it drastically alter it?

18          A     You would have to directly add alcohol to the  
19     sample to alter what is already there.

20          Q     Okay. And you could also -- SLED has control and  
21     custody for when it touches your hand? You have personal  
22     control for when it touches your hands?

23          A     Correct.

24          Q     But you have no idea what happened to that box  
25     before it hit your hands, aside from trusting your other

## QUINTUS YOUNG - Cross by Plexico

1 employees, aside from anybody else all the way back to the  
2 day or minute that it hit SLED's door, y'all have no idea at  
3 SLED what happened to that?

4 A We don't. The only thing that I know, it comes in  
5 a sealed box, logged in, and I take it from there.

6 Q All right now. All right. Now, was there any  
7 coagulant powder that was used on the blood?

8 A Any anticoagulant?

9 Q Yes, that you used.

10 A No, we don't use anything. There is an  
11 anticoagulant in the gray-top tubes that the blood is  
12 actually taken in.

13 Q Okay. What is the chemical properties of that?  
14 Does it have any effect on alcohol?

15 A It does not.

16 Q Do you know which anti-coagulant was used?

17 A Potassium oxalate or sodium -- potassium oxalate  
18 and sodium chloride are used. One is an anticoagulant and  
19 one is an antimicrobial.

20 Q You were not present when it was collected so you  
21 don't know what was used, correct?

22 A No, I was not. All I know is that it should have  
23 been in a vial when it was taken.

24 Q If a trained person had done it. If you had done  
25 it that is what would have been in there, but you don't know

## QUINTUS YOUNG - Cross by Plexico

1     what someone else did?

2           A     I don't know anything about the sample prior to it  
3     coming to SLED.

4           Q     And this sample was 45 days old, I think, wasn't  
5     it?

6           A     Yes. Well, I don't know when it came in.

7     (Pause.) Yes.

8           Q     Okay. Did you do any kind of test for yeast to  
9     see if yeast was present or some contamination before it was  
10    sealed?

11          A     If the sample were cloudy or there was anything  
12    found to be out of the ordinary it would have been notated.  
13    And if the sample was actually cloudy we would have  
14    accounted for that by doing another calculation and the  
15    result I would have would have been slightly different.

16          Q     Okay. Well, yeast does attack the carbohydrates  
17    in the blood and breaks them down to the ethanol, doesn't  
18    it?

19          A     It can, but there are only certain yeast that does  
20    that.

21          Q     But there was no test done to see if that yeast  
22    was present even in a small amount?

23          A     Correct. However, but given that it was placed in  
24    the gray-capped tube and it was not cloudy, the sample was  
25    intact. Because it would have been otherwise notated.



## QUINTUS YOUNG - Cross by Plexico

1 Q But you are a successful man, you are not under  
2 any pressure, you are not trying -- you are doing your job,  
3 you are a professional, you are well trained and you are  
4 well educated?

5 A Right.

6 Q And you are not out there on the street trying to  
7 win a case?

8 A Correct.

9 Q You are doing your job in your role, correct?

10 A Correct.

11 Q Okay.

12 MR. PLEXICO: Just a moment, Your Honor. Let me  
13 make sure that I have everything.

14 (Pause.)

15 MR. PLEXICO: I don't think that I have anything  
16 else. Thank you for your testimony, sir.

17 MR. FERNANDEZ: A few questions, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. FERNANDEZ:

20 Q Quintus, does the age of a sample, assuming that  
21 it was properly refrigerated, make a difference on the  
22 analysis?

23 A No, it would not.

24 Q The report that you have there, would that be a  
25 true and accurate copy of the analysis that you performed

## QUINTUS YOUNG - Redirect by Fernandez

1     that day?

2           A     Yes.

3           Q     Okay.  Let me see it.

4                   MR. FERNANDEZ:  I am moving it into evidence.

5                   MR. PLEXICO:  I renew my prior objections, Your  
6     Honor.

7                   THE COURT:  It comes in.

8     BY MR. FERNANDEZ:

9           Q     And on the 0.106 reading on the blood alcohol  
10    level, would it be possible for someone who has had two  
11    beers -- would it be possible to achieve that level with two  
12    beers?

13          A     No.

14                  MR. PLEXICO:  Your Honor, I object, no proper  
15    foundation for that.

16                  THE COURT:  That is all right.  He is in the  
17    business, he knows that.

18                  MR. FERNANDEZ:  Nothing further, Your Honor.

19                  THE COURT:  Before he steps down, you all step  
20    over.

21                         (Off-the-record discussion held.)

22                  THE COURT:  Without getting into any specific, I'm  
23    not trying to try the case for anybody.  If anybody  
24    ingests sufficient amount of alcohol to alter their  
25    mental capacity it affects their ability to do things

## QUINTUS YOUNG - Redirect by Fernandez

1 as they normally do; is that right? Is that true?

2 THE WITNESS: Correct.

3 THE COURT: And that varies from individual?

4 THE WITNESS: It varies on how they display it,  
5 but the concentration --

6 THE COURT: That is it. Just shortening all of  
7 that up, not cutting the lawyer off.

8 THE WITNESS: Okay.

9 THE COURT: I didn't want to listen to that about,  
10 you know, you might dance on the ceiling if you have so  
11 much and so forth.

12 You are free to go.

13 *(Whereupon, State's Exhibit No(s). 36 received in*  
14 *evidence.)*

15 MS. BURCHSTEAD: Your Honor, the State calls  
16 Lillie Gollman.

17 Thereupon,

18 LILLIE SMALLS GOLLMAN

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

21 DIRECT EXAMINATION

22 BY MS. BURCHSTEAD:

23 Q Good afternoon. Thank you for coming. Could you  
24 give us your full name?

25 A Lillie Smalls Gollman.

LILLIE SMALLS GOLLMAN - Direct by Burchstead

1 Q All right. And where are you employed,

2 Ms. Gallmon?

3 A I am employed with the South Carolina Law

4 Enforcement Division.

5 Q How long have you been with SLED?

6 A Twenty-four years.

7 Q Okay. What is your current job duties?

8 A I'm employed as forensic scientist in the area of

9 DNA.

10 Q Okay. And prior to SLED, could you give us a

11 little more of your background in terms of education and

12 training?

13 A I have a degree in biology from the University of

14 South Carolina. Once I received my degree I continued

15 working there in the area of molecular genetics, cloning and

16 sequencing of DNA. And then I began working with SLED.

17 First I attended the FBI DNA training school. And at SLED I

18 was trained in the area of serology to be able to identify

19 body fluids. I've also taken advanced genetic courses and I

20 have also attended the South Carolina Law Enforcement to be

21 certified as a law enforcement agent.

22 Q Okay. And have you ever testified as an expert?

23 A Yes, I have.

24 Q About how many times?

25 A Approximately 60.

LILLIE SMALLS GOLLMAN - Direct by Burchstead

1 Q Okay. And is that in South Carolina?

2 A Yes.

3 Q General sessions court?

4 A General sessions and Federal.

5 Q And Federal, okay. What were certified as an  
6 expert in?

7 A In the area of DNA analysis.

8 MS. BURCHSTEAD: Your Honor, at this time the  
9 State moves to have her qualified or certified as an  
10 expert in that area.

11 MR. PLEXICO: I have no objections at all to her  
12 qualification, Your Honor.

13 THE COURT: Thank you.

14 BY MS. BURCHSTEAD:

15 Q Okay. You used the term DNA, could you please  
16 tell the jury -- when we are talking about DNA, as in simple  
17 terms as you can give us, tell us what DNA is?

18 A DNA stands for Deoxyribose Nucleic Acid. It is  
19 considered to be the blueprint of the body. And since that  
20 is the case we are able to compare evidence to standards to  
21 see if they match or do not match. The only people that  
22 have the exact -- the same DNA would be identical twins.

23 Q Okay. You say to compare to a match; what does  
24 that mean, or to get a match?

25 A Well, we receive evidence from crime scenes. It

LILLIE SMALLS GOLLMAN - Direct by Burchstead

1    could be any body fluid or even they use cells, skin cells  
2    or whatever, and we develop a DNA profile from that  
3    evidence. And then we also receive standards from an  
4    individual. And that would mean a Buccal swab from inside a  
5    person's mouth or their blood. We prefer to Buccal swab the  
6    mouth. And we compare the DNA profile from the standards  
7    and then compare them to the evidence.

8           Q     What does the DNA profile mean?

9           A     You are looking at -- we look at 16 different  
10    areas on the DNA chromosome. They are not genes, they are  
11    just areas on a chromosome that are there. We have got  
12    different areas that just don't code for anything. And you  
13    won't develop a DNA profile from that. Because you are  
14    getting part of your DNA from your mother and part from your  
15    father and that generates your DNA profile.

16          Q     Okay. Let's talk about SLED a little bit. When  
17    you get the standards and the items that you are testing, is  
18    there -- is there a protocol for when you receive the items  
19    for testing for when they come to you?

20          A     Yes, I receive evidence in different ways  
21    sometimes. Sometimes they are transferred from one person  
22    to me. Or from a storage area, I would transfer it to  
23    myself. The first thing that I do when I receive the  
24    evidence I'm getting ready to do the analysis on the case.  
25    I would check to see if the evidence is sealed properly.

## LILLIE SMALLS GOLLMAN - Direct by Burchstead

1 And if it's not then I start to backtrack it as to who had  
2 it last, and you know exactly where it came from. And I  
3 could proceed with the analysis, but it has to be noted that  
4 this evidence was not sealed properly.

5 Q Okay. If I may approach, Your Honor. I'm showing  
6 you State's 33. Do you recognize this form?

7 A Yes, this is a chain -- a copy of your chain of  
8 custody of this particular case.

9 Q So, if I could direct your attention to item 2.1.  
10 Is your name associated with item 2.1?

11 A Yes.

12 Q What does that mean that your name is on there?

13 A That the evidence was transferred into my custody  
14 and I did the analysis on it.

15 Q Okay. What is item 2.1?

16 A Item 2.1 is a swab from air bag.

17 Q Okay. Could you tell us about item 2.2; Is your  
18 name associated with that?

19 A Yes, it is.

20 Q And what is item 2.2?

21 A It is -- two swabs were taken in this particular  
22 case and they are swabs from the air bag also.

23 Q Okay. So you also received item 2.2?

24 A Yes, I did.

25 Q All right. So, item 2.1 and 2.2, those are both

## LILLIE SMALLS GOLLMAN - Direct by Burchstead

1 swabs from the air bag; is that correct?

2 A That's correct.

3 Q And where did they come from before they got to  
4 you; who created those?

5 A Betty Butler created those. She transferred them  
6 to our DNA storage area. And once the case was assigned to  
7 me Sherry Brown moved them to the DNA refrigerated area and  
8 then I put them in my custody to do the analysis.

9 Q Okay. And looking at the same State's Exhibit, I  
10 believe that it was 33, can you refer to Item 6?

11 A Okay. Item 6 is heat-sealed pouch containing a  
12 Buccal swab described as a Buccal swab collected from  
13 McKenvie Levar Davis.

14 Q All right. Is your name associated with that?

15 A Yes. When the case was assigned to me I received  
16 evidence and the standards to compare the evidence.

17 Q Okay. So, you received the swabs from the air bag  
18 and the Buccal swab that originated from the Defendant, or  
19 from Mr. Davis; correct?

20 A Yes.

21 Q Okay. And were you asked to perform any sort of  
22 analysis on those items?

23 A Yes, I -- when the case is assigned to you, your  
24 job as a DNA analyst, my job, as I stated is to develop a  
25 DNA profile from the evidence and the standard, dual



LILLIE SMALLS GOLLMAN - Direct by Burchstead

1 comparison as to whether they match or do not match and then  
2 generate those results and then a report.

3 Q Okay. And do you recall generating a report in  
4 this particular case?

5 A Yes, I do.

6 Q Okay. If I could just beg the Court's indulgence.

7 *(Whereupon, State's Exhibit No(s). 37 marked for*  
8 *identification.)*

9 BY MS. BURCHSTEAD:

10 Q If I may approach, Your Honor, and show you 37.

11 A This is a report that I generated once I completed  
12 the analysis.

13 Q Okay. It does have your signature on it?

14 A Yes, it does.

15 Q Is it a fair, accurate and complete  
16 representation -- is it fair and complete; is that your  
17 report in full?

18 A Yes, it is.

19 Q Okay.

20 MS. BURCHSTEAD: And at this time the States moves  
21 37 into evidence, Your Honor.

22 THE COURT: All right.

23 MR. PLEXICO: Your Honor, I would move -- I have  
24 made my prior objections already and I would renew  
25 those in regard to that.

LILLIE SMALLS GOLLMAN - Direct by Burchstead

1 THE COURT: Okay, it comes in.

2 *(Whereupon, State's Exhibit No(s). 37 received in*  
3 *evidence.)*

4 MS. BURCHSTEAD: And permission to publish, Your  
5 Honor.

6 BY MS. BURCHSTEAD:

7 Q And you have a copy?

8 A Yes.

9 Q Okay. Let's go back to item 2.1 and 2.2 in Item  
10 6, you did in fact perform an analysis for -- looking for a  
11 match of the DNA; is that right?

12 A Yes, I generated a DNA profile from 2.1, 2.2 and  
13 also from the standards submitted as being from Mr. Davis.

14 Q All right. And I believe that you stated a few  
15 minutes ago if there was something unusual or if it had been  
16 unsealed you would have not performed the results, or what  
17 would you have done if the evidence was not intact when you  
18 received it?

19 A I would check -- it could be a simple problem.  
20 Evidence is placed in a heat-sealed pouch. You put it in a  
21 sealer. A portion of it might not have sealed completely.  
22 You backtrack to find out what was going on with this  
23 particular evidence. It is possible to proceed with it, but  
24 this has to be noted and everyone has to -- and who is  
25 involved would be alerted as to what was going on.

## LILLIE SMALLS GOLLMAN - Direct by Burchstead

1 Q Okay. And in your analysis in this case, was  
2 there any sort of irregularity that would require a notation  
3 such as that?

4 A No, there was not.

5 Q Okay. And you did actually find results in this  
6 case?

7 A Yes, I did.

8 Q All right. Could you tell the jury your results  
9 please?

10 A I will be reading from my report.

11 Q Okay. And as a matter of fact, I'll pass a copy  
12 of the report to the jury as you read.

13 A When you look at the first page of the report  
14 there's -- the standards that were submitted and the  
15 evidence that was compared to the standards. On the second  
16 page of the report you will find my results. For the item  
17 number 2.1, which is -- was one swab taken from the air bag,  
18 it says, partial DNA profile developed from item 2.1 is  
19 insufficient for reliable interpretation. That means that I  
20 have a partial DNA profile but there's not enough  
21 information there for me to include or exclude anyone from  
22 that particular sample.

23 Q Okay.

24 A Okay. The second item, item 2.2, the DNA profile  
25 developed from item 2.2 matches the DNA profile of McKenvie

## LILLIE SMALLS GOLLMAN - Direct by Burchstead

1 Davis. And then we are -- once you establish that you have  
2 a match between evidence and the standard we are required to  
3 generate a frequency of that particular event, how often you  
4 would see that DNA profile.

5 So, the next sentence states that the  
6 probability of randomly selecting an unrelated individual  
7 having a DNA professional matching this item, item 2.1, is  
8 approximately 1 in 110 quadrillion.

9 Q All right. Thank you.

10 MS. BURCHSTEAD: And I beg the Court's indulgence  
11 just one minute.

12 (Pause.)

13 BY MS. BURCHSTEAD:

14 Q Okay. Ms. Gollman, did you receive any other  
15 swabs in this case to analyze?

16 A I did. I received a swab from Ms. Bing.

17 Q Okay.

18 A To compare to the samples and she did not match.

19 Q Okay.

20 MS. BURCHSTEAD: Nothing further, Your Honor.

21 CROSS EXAMINATION

22 BY MR. PLEXICO:

23 Q Thank you so much for coming today. I know that  
24 you are a long way from home for you. If you go to my  
25 office would it be unusual to find my DNA there?

## LILLIE SMALLS GOLLMAN - Cross by Plexico

1 A No.

2 Q If you go to my home, in any place in that home,  
3 would it be unusual to find my DNA there?

4 A No.

5 Q Would it be unusual to find my wife's DNA there?

6 A No.

7 Q If you go inside my car and take DNA samples from  
8 inside my car, would it be unusual to find my DNA inside my  
9 car?

10 A No it would not be unusual.

11 Q Okay. All right. So if somebody had driven,  
12 depending on what the air bag had touched in the car, and  
13 they had sat in the driver's seat it would not be unusual to  
14 pick up their DNA?

15 A They would have to be in that area in order for me  
16 to be able to pick up their DNA.

17 Q Which is the driver's seat, the air bag comes out,  
18 driver's air bag comes out and around the area --

19 MS. BURCHSTEAD: I object. She's not an expert in  
20 air bags.

21 THE COURT: You can continue.

22 A If the air bag that deployed at the driver's seat,  
23 then -- and you are in that seat, then your DNA would get on  
24 the air bag.

25 Q It is going to scrap up everything around the seat

## LILLIE SMALLS GOLLMAN - Cross by Plexico

1 too. If I had driven five years and someone had driven five  
2 minutes, when it comes out, blows up real big, it's going to  
3 get everything from that seat; there is a chance of that?

4 A I have had an air bag deploy and what it hits is  
5 the person sitting there. So I don't know if it'll pick up  
6 anything else, but mainly whoever is right there is what it  
7 hits.

8 Q Okay. And then the person gets out or they are  
9 taken out and then the air bag deflates, correct? And then  
10 it drops down and touches everything around that driver's  
11 seat; common sense, right?

12 A If you say so, yes.

13 Q No.

14 A Well, I can't -- I can't go along. I don't know.

15 Q So you think an air bag can blow up in an area, in  
16 a small area like the driver's seat, and not pick up the  
17 normal driver's DNA? Is that fair to say that?

18 A It could. Anything is possible.

19 Q Okay.

20 MR. PLEXICO: The Court's indulgence.

21 (Pause.)

22 MR. PLEXICO: May I approach the witness?

23 THE COURT: Sure.

24 BY MR. PLEXICO:

25 Q Referring to State Exhibit 13, could you examine

## LILLIE SMALLS GOLLMAN - Cross by Plexico

1     that please?

2           A     Okay.

3           Q     Does that appear to be a deflated air bag?

4           A     It appears to be. As you know, air bags are  
5     designed to save the lives of the person that is sitting  
6     right there.

7           Q     That is an air bag?

8           A     Yes.

9           Q     Okay, Thank you. May I have it back?

10          A     Uh-huh.

11          Q     So, it is attached to a steering wheel, correct?

12          A     Yes, it is.

13          Q     It is a driver -- unquestionably a driver's side  
14     air bag, correct?

15          A     Yes.

16          Q     Okay.

17                 MR. PLEXICO: I don't have anything further.

18                 MS. BURCHSTEAD: Nothing further. May she be  
19     excused?

20                 THE COURT: You are free to go.

21                 MS. BURCHSTEAD: Beg the Court's indulgence for  
22     just a minute, Judge.

23                 (Pause.)

24                 MS. BURCHSTEAD: The State rests.

25                 THE COURT: Hold on just a minute. Just for a

LILLIE SMALLS GOLLMAN - Cross by Plexico

1 practical point, I'll send the jury out. There are a  
2 lot of exhibits and a lot of statements, some were  
3 introduced, some weren't. We need to check and make  
4 sure that everything is in before you rest, that is  
5 all.

6 MS. BURCHSTEAD: That sounds good, Judge.

7 THE COURT: So, jurors take a little break.

8 (Jury exits the courtroom at 1:51 p.m.)

9 (Brief recess.)

10 THE COURT: Okay. Ms. Burchstead, the first  
11 thing, has all of your evidence been introduced?

12 MS. BURCHSTEAD: We have done that, yes, sir.

13 THE COURT: You rest, right?

14 MS. BURCHSTEAD: We rest.

15 THE COURT: The State rested.

16 MR. PLEXICO: Yes, Your Honor, I move for directed  
17 verdict on the indictment felony driving under the  
18 influence, great bodily injury, listed indictment  
19 2009GS0300074. I believe that they have failed to  
20 create more than a suspicion that great bodily injury,  
21 which is defined in the statute, Your Honor, in regards  
22 to ~~Minor~~ felony driving under the influence  
23 with great bodily injury results. As I recall the  
24 testimony none of the injuries independently or  
25 together were life threatening.



LILLIE SMALLS GOLLMAN - Cross by Plexico

1           There were -- there was a small cut on the eye.  
2           There was a damage to the liver, which was, you know,  
3           self healed. There was a problem with the lung, which  
4           is essentially self healed with Morphine. And I don't  
5           think that there's anything -- and the clavicle, no one  
6           does something that -- you have to put a sprain on the  
7           shoulder. This happens to boys playing football every  
8           day, Judge, in sports, or girls too, or females, Your  
9           Honor. I just don't see where they have raised more  
10          than a suspicion that great bodily injury happened to  
11          Minor [REDACTED]. And I would move for a directed verdict  
12          in regards to that, Your Honor. On indictment ending  
13          in 74.

14           THE COURT: And you agree with that don't you?

15           MS. BURCHSTEAD: Sorry, Judge. I agree yeah --  
16           no. No, I was actually looking for my notes from the  
17           doctors. Well, first of all we are looking for great  
18           bodily injury. He doesn't have to actually -- I  
19           understand that it could, it needed to possibly have  
20           been able to lead to death. And I believe that the  
21           doctor did testify he had to stay in the hospital, he  
22           had to be on --

23           THE COURT: He can argue that to the jury, but  
24           there's enough. It says, Protractive loss or  
25           impairment of the function of any bodily organ. And

LILLIE SMALLS GOLLMAN - Cross by Plexico

1       there were two organs that were damaged. And the  
2       doctor testified that they healed because they gave him  
3       Morphine and so forth and so forth. So you can argue  
4       that it was not. But the light is in favor to the  
5       State that it was.

6               MS. BURCHSTEAD: We would agree, Your Honor, and  
7       we are looking at existence of evidence at this point  
8       and I'll quit.

9               MR. PLEXICO: Your Honor, I would also move for  
10      directed verdict of not guilty on 2009GS0300075. This  
11      is one that we stipulated, he was in fact under  
12      suspension. All of these include, I believe that the  
13      time frame is at the time of the accident. Obviously  
14      they have shown that he's driving at the time of the  
15      accident. They have created suspicion. But I believe  
16      that there's no reasonable way with all of this  
17      evidence that goes left and right, Judge, pro and con,  
18      that there's a reasonable more than a suspicion that he  
19      was in fact driving. And I'll base my Motion to  
20      Dismiss also the felony driving under the influence  
21      with death results ending in 72. And the child  
22      endangerment, Your Honor, ending in 76. Because I  
23      don't believe that they have shown enough that he was  
24      driving at time of the accident. Not sometime before.  
25      But these involve the time of the accident and they are

LILLIE SMALLS GOLLMAN - Cross by Plexico

1 collectively and numerically successive indictments.  
2 Your Honor, they are not talking about a different  
3 event.

4 THE COURT: Yeah, well unfortunately the two  
5 passengers who were also injured testified that he was  
6 driving at the time of the accident, so that is for the  
7 jury to accept or reject. In addition, some guy named  
8 Oswald who was about the only person that doesn't have  
9 an interest in it said that your client was the only  
10 one not in the vehicle when he got there. That might  
11 not be true, but that is the evidence in the case.

12 And then we have the DNA, which you can argue, but  
13 it shows passenger (SIC) air bag deployed and at the  
14 time of impact and his DNA was on it. As I followed  
15 the testimony. All of this goes to the jury. I'm not  
16 saying that he was driving. All right.

17 MR. PLEXICO: Yes, Your Honor, I would -- well --

18 THE COURT: All right. He's elected not to  
19 testify?

20 MR. PLEXICO: Yes, Your Honor, you have asked him  
21 previously. I believe that's on the record.

22 THE COURT: Several times.

23 MR. PLEXICO: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. PLEXICO: He has elected not to testify. And

LILLIE SMALLS GOLLMAN - Cross by Plexico

1 we will rest when the jurors come back. I'll renew my  
2 motions on the sufficiency of the evidence.

3 THE COURT: Well, you are doing that now, you  
4 don't have to -- but we will note them at that point.

5 MR. PLEXICO: But they are on the sufficiency of  
6 the evidence.

7 THE COURT: If he elects not to testify I'm  
8 prepared to instruct the jury that they can't consider  
9 it. Some attorneys don't want me to do that, I usually  
10 do it.

11 MR. PLEXICO: I do.

12 THE COURT: Okay. That's fine.

13 MR. PLEXICO: Yes, Your Honor, I would like to  
14 note -- I would ask that you instruct them as to what  
15 time period the driving under suspension involves. I  
16 think it creates so much confusion that if they thought  
17 that they could convict my client for driving hours  
18 earlier on driving under suspension then we move to  
19 driving --

20 THE COURT: We are talking about on that day.  
21 That is all that the indictment says. It doesn't have  
22 an hour on there, it was that day. If he was driving  
23 that day.

24 MS. BURCHSTEAD: Correct.

25 THE COURT: Driving under suspension the jury

LILLIE SMALLS GOLLMAN - Cross by Plexico

1 could find it.

2 MR. PLEXICO: Okay, but I believe that that would  
3 cause so much confusion because he had to be driving at  
4 the time of the accident, otherwise --

5 THE COURT: I understand. I understand that that  
6 may be some concern, but that's tough luck. I'm only  
7 going to tell them on that date. I am not going to say  
8 that he has to be driving under suspension limited to  
9 the time that he hit the tree, if he was driving when  
10 the tree was hit.

11 Now, I have one question. There was no testimony  
12 as to the posted speed limit out there, was there?

13 MS. BURCHSTEAD: Judge, we got from two folks that  
14 it's not posted. And Trooper Gates says that you defer  
15 to 55 in that case.

16 THE COURT: That is fine.

17 MR. PLEXICO: That is how I recall the testimony.

18 THE COURT: Okay. I'm just making sure, I'm just  
19 going to say, if there's no posted speed limit on a  
20 country road it is presumed to be 55.

21 MR. PLEXICO: Yes, Your Honor.

22 THE COURT: That suits everybody?

23 MS. BURCHSTEAD: Yes, sir.

24 MR. PLEXICO: That is the law.

25 THE COURT: That is the statute, and that is a

LILLIE SMALLS GOLLMAN - Cross by Plexico

1 violation of the statute.

2 MS. BURCHSTEAD: We are in agreement.

3 THE COURT: That is the law. I want to make sure  
4 that somebody wasn't going to say that it was 45.

5 MS. BURCHSTEAD: I thought that it was 35 as of  
6 now, but the testimony is consistent, if it's not  
7 posted it's 55, that is what we have got.

8 THE COURT: Not posted, 55?

9 MS. BURCHSTEAD: Yes, sir.

10 THE COURT: Okay. Now, what about verdict forms  
11 that y'all were going to laboriously prepare? Nobody  
12 handed those up.

13 MS. BURCHSTEAD: I didn't prepare an actual  
14 verdict form, Judge.

15 MR. PLEXICO: I believe that you are going to  
16 charge DUI as a lesser included offense?

17 THE COURT: I am charging -- I mean, that is why I  
18 told you to prepare the verdict forms. You only had 15  
19 hours to do it.

20 MS. BURCHSTEAD: We certainly did. I think that I  
21 was misunderstanding that, Judge, I apologize.

22 THE COURT: Well, we agree that on felony DUI, as  
23 far as the death is concerned --

24 MS. BURCHSTEAD: Yes, sir.

25 THE COURT: That is a lesser included of reckless

LILLIE SMALLS GOLLMAN - Cross by Plexico

1 driving and --

2 MS. BURCHSTEAD: Reckless driving or reckless  
3 homicide?

4 THE COURT: Whatever you want to call it.  
5 Reckless homicide is what it is called.

6 MS. BURCHSTEAD: Actually I think that the case  
7 law says that it's not lesser included, but however I'm  
8 not going to object if you want to strike that.

9 THE COURT: Well if you don't want me to charge  
10 it. Unless you want me to charge it. There are  
11 certain statutory offenses where it matters.

12 MS. BURCHSTEAD: Right. My recollection is that  
13 it's not actually lesser included, but I'll defer to  
14 Your Honor. We are fine with how you want to do it.

15 THE COURT: Okay. Having done rapid research  
16 there is a case called State versus Crib (phonetic)  
17 that says reckless homicide is not a lesser included  
18 offense of felony DUI. So I can't charge it unless the  
19 State agrees, and they don't, they just defer. And if  
20 they defer I have to follow the law.

21 MS. BURCHSTEAD: Correct. I mean, I would like it  
22 but I think that we better not.

23 MR. PLEXICO: You said no?

24 MS. BURCHSTEAD: I can't in good faith. I cannot.

25 MR. PLEXICO: So, we have felony DUI, DUI, and

LILLIE SMALLS GOLLMAN - Cross by Plexico

1           this --

2           THE COURT: No, we don't have DUI.

3           MR. PLEXICO: Well, if they find that there's no  
4           proximate cause they may find that he's driving --

5           THE COURT: Yes, they could do that if they find  
6           that, so just DUI?

7           MR. PLEXICO: Yes, Your Honor.

8           THE COURT: And we have got child endangerment,  
9           but they have got to find him driving under the  
10          influence to charge that.

11          MR. PLEXICO: Yes, sir.

12          THE COURT: Only three things that constitute  
13          child endangerment. One is DUI, felony DUI, and  
14          failing to stop for a blue light.

15          MS. BURCHSTEAD: Yes.

16          MR. PLEXICO: Yes, Your Honor, I think that's  
17          correct. I don't have anything further.

18          THE COURT: I take it that you are going to  
19          waive -- are you going to exercise your right to close?

20          MR. PLEXICO: Absolutely.

21          THE COURT: Shucks. All right. Are y'all ready  
22          to roll?

23          MS. BURCHSTEAD: I have two of my colleagues  
24          trying to get you a verdict form prepared, Judge.

25          THE COURT: I don't need it. It's just guilty or



LILLIE SMALLS GOLLMAN - Cross by Plexico

1 not guilty.

2 MS. BURCHSTEAD: I agree. I didn't understand  
3 that you needed us to prepare them.

4 THE COURT: We can do it while they are  
5 deliberating.

6 MS. BURCHSTEAD: Let me just get my people and  
7 tell them that we are ready.

8 THE COURT: I'll tell them that they are being  
9 prepared.

10 When you do DUI indictment verdict form put both  
11 of them on there, and/or numbers because they could  
12 find him on the second one -- on the second one that  
13 there was no bodily injury.

14 MS. BURCHSTEAD: We want to do those while they  
15 are deliberating.

16 THE COURT: Yes, but we don't want to send back  
17 two lesser inclusions on each of those because you can  
18 only be found guilty of driving under the influence  
19 once.

20 MS. BURCHSTEAD: Understood.

21 THE COURT: But you could be under both or one,  
22 you know.

23 MS. BURCHSTEAD: I understand, Judge.

24 THE COURT: Do you follow that?

25 MR. PLEXICO: Yes, sir.

LILLIE SMALLS GOLLMAN - Cross by Plexico

1 THE COURT: Okay. Is the State ready?

2 MS. BURCHSTEAD: I believe so, yes.

3 THE COURT: How about the unpaid public defender?

4 MR. PLEXICO: Yes, Your Honor.

5 THE COURT: All right. Bring the jury in.

6 (Jury enters the courtroom at 2:22 p.m.)

7 THE COURT: Okay. The State has checked all of  
8 its evidence?

9 MS. BURCHSTEAD: Yes, sir.

10 THE COURT: So now I guess you move -- the State  
11 rests, right?

12 MS. BURCHSTEAD: The State rests, Your Honor.

13 THE COURT: All right. The State rests. What  
14 about the Defense?

15 MR. PLEXICO: The Defense rests, Your Honor. And  
16 we already have some motions on the record.

17 THE COURT: Okay. All right. Jurors, we are  
18 coming to the final phase of the trial, which would  
19 have happened earlier if the witnesses had been here.  
20 Y'all understand that. But don't hold that against  
21 anybody. You can't control the witness. They have  
22 lives outside of here and everything else.

23 You notice that the Defendant did not testify. He  
24 has the Constitutional right not to testify, and he has  
25 no burden to prove he's not guilty or to obtain a

LILLIE SMALLS GOLLMAN - Cross by Plexico

1 conviction under any of the indictments. The State has  
2 got to convince you 12 jurors unanimously beyond a  
3 reasonable doubt that he committed a crime embraced  
4 within one or more of these indictments. The fact that  
5 he didn't testify creates no inference of guilt against  
6 him at all. Don't even discuss that when you start  
7 deliberating. Okay.

8 MS. BURCHSTEAD: Thank you, Judge.

9 STATE'S CLOSING ARGUMENT

10 MS. BURCHSTEAD: Good afternoon.

11 THE JURORS: Good afternoon.

12 MS. BURCHSTEAD: Thank you for your service this  
13 week and for your attention, and for your patience in  
14 particular. In opening statement Mr. Plexico told you  
15 this is about the power of the government. That's not  
16 what this case is about. This is about justice,  
17 responsibility, and the truth. And you are here to  
18 determine the truth. And I submit to you, you're here  
19 to hold McKenvie Davis responsible because we have  
20 proven him guilty. His actions on November 1st, 2008  
21 caused the death of Cieara NaSha Brooker, and the  
22 injuries to Minor [REDACTED]

23 November 1st, 2008, he was driving with a  
24 suspended license. He's not just driving to get  
25 somewhere like work, he's out driving with a young

## STATE'S CLOSING ARGUMENT

1 child in the car and two 18-year-old girls, stopping at  
2 the El Cheapo, picking up beer. He's driving at .1  
3 intoxication impairment. He's driving drunk and he's  
4 hauling tail down a country road. He's going 107.  
5 That's reckless. Even without impairment it's  
6 reckless. And I submit to you 107 is an indication of  
7 impairment.

8 Because of his decision that day and his actions,  
9 Sha Sha is dead. And he's guilty of all of the charges  
10 before you. And I'm going to talk to you a little bit  
11 now about the actual charges you have to consider.  
12 Your job at this point is to determine the truth, to  
13 look at everything that's been presented to you and  
14 determine his guilt.

15 And let's talk about those charges. I've got some  
16 boards that are going to help us get through that. All  
17 right. First of all, driving under suspension. His  
18 license was suspended. That's not a question. All  
19 right. So, we're going to talk a few minutes about  
20 whether he's driving. But that's simple. Driving  
21 under suspension and driving without a license, okay.

22 Next charge is the child endangerment, 56-5-2947.  
23 And let me say before I go into all this, Judge Kinder  
24 is going to instruct you on the law, very much in  
25 detail before you get to go back and talk about

## STATE'S CLOSING ARGUMENT

1 everything. And he's going to tell you what you need  
2 to follow. If there's something I say that's not  
3 consistent to what he says to you, please follow  
4 whatever the Judge instructs. He is -- he will  
5 instruct you on the law. This is just to help you a  
6 little bit as you listen to me and you listen to  
7 Mr. Plexico, to give you a little context about what  
8 the State does have to prove, okay?

9 So child endangerment, you have a person 18 years  
10 of age or old or over who's guilty of child  
11 endangerment when a person is in violation of  
12 56-5-2945. Basically, what he's charged with is DUI  
13 resulting in death or injury. So, if he does that with  
14 a child in the car, that's child endangerment. Okay?

15 So, let's talk about what's called felony DUI with  
16 great bodily injury or death. Here's the language for  
17 the statute. Okay. So, under code 56-5-2945, felony  
18 driving under the influence great bodily injury or  
19 death. A person drives a vehicle while under the  
20 influence of alcohol or drugs or a combination. And in  
21 this case we're looking at alcohol. Does an act  
22 forbidden by law or neglects a duty imposed by law, and  
23 that act approximately causes the injury of the harm or  
24 death.

25 So, we're looking at driving, breaking the law

## STATE'S CLOSING ARGUMENT

1 while you're doing it, while you're impaired, and you  
2 kill or injure someone to a point of great bodily harm.  
3 And that's what we're looking at in terms of Sha Sha  
4 and Minor [REDACTED] okay?

5 So, I want to talk to you now about the first  
6 thing -- well, let me just back up and say, we do have  
7 reasonable doubt as our burden of proof. And we, as  
8 the State, accept that and respect that. And juries  
9 all over the country everyday find people guilty beyond  
10 a reasonable doubt. And it is a doubt that causes a  
11 reasonable person to hesitate to act. That's the  
12 burden of proof, okay?

13 So, let's talk here about whether we've met those  
14 elements, and I believe that we have. The first thing  
15 we need to talk about is whether he was driving. A lot  
16 of this case has hinged on who was actually behind that  
17 wheel. And I submit to you, there's really no  
18 question. No question who was driving that Escalade.

19 So let's take a look here. Is the Defendant a  
20 driver? In this column I've got reasons why. In this  
21 column I've got the reasons not. So, let's talk a  
22 little about it. Valandrea and Minor [REDACTED] the occupants  
23 of the car. First of all, they both told you here from  
24 the witness stand that McKenvie Davis, the Defendant,  
25 was driving that vehicle.

## STATE'S CLOSING ARGUMENT

1           Now, I know Valandrea goes back and forth on her  
2 statements a little bit. But let's take a harder look  
3 at that. First of all, she came in and swore to tell  
4 the truth. But beyond that, the first thing she said  
5 on the stand was, and she still told you this too, I  
6 told you to slow down. I told you to slow down.

7           Right after then, before she had time to think  
8 about anything, she's standing there telling you,  
9 Valandrea said, I told you to slow down. First thing  
10 she ever tells Trooper Gates: I was a passenger,  
11 McKenvie was driving. She later tells you that she  
12 changed her story, said she was driving, because her  
13 uncle asked her to. He asked her to. He asked her to.  
14 He told her he was suspended and he asked her to. She  
15 didn't know that Sha Sha was dead at that point. She  
16 didn't know.

17           She knew that her uncle was in some trouble and  
18 she was trying to help him out. Then she learns what's  
19 really going on and she corrects it, and she tells the  
20 truth, what she told in the first place. So Minor  
21 her brother, did not collude with her and have some big  
22 pow-wow about who was driving. He has been straight  
23 from the get-go. From the minute someone asked him  
24 about this, what did he say? McKenvie is driving.  
25 McKenvie is driving. Chief Stanley, he didn't just say

## STATE'S CLOSING ARGUMENT

1        what he heard Valandrea say. He said they were  
2        arguing. I submit to you McKenvie Davis was setting it  
3        up from that point.

4                And he talked about the glass on Valandrea. He's  
5        not the only one who talked about it. You heard  
6        consistently she had glass all over her face because  
7        she was ejected from the passenger window. The  
8        passenger window was shattered. You heard testimony  
9        from the Troopers, from the Chief, from numerous folks  
10       that the passenger window, she came out of that, I  
11       submit to you, and that if there was glass on her face  
12       it is because she came out of it. And there wasn't  
13       glass on the Defendant's face. He didn't have glass.  
14       You know what he had? He had an air bag protecting  
15       him. He had that driver's side air bag because he was  
16       in that driver's seat, not her. Her mama came in and  
17       told you she wasn't driving, no way.

18               Mr. Oswald, he didn't have a bone in this. I  
19       mean, yeah, his trees got smashed up. Yeah. That  
20       Cadillac came down that road at 107 and wrapped around  
21       his trees. They are still marked up. But he came and  
22       he told you the truth. He told you the Defendant was  
23       acting like a rabid dog. I submit because he knew he'd  
24       really screwed up and was driving and he was impaired.  
25       And he believed -- he believed that the Defendant was



## STATE'S CLOSING ARGUMENT

1 the driver. He was one of the first on the scene. The  
2 chief was one of the first on the scene. The Defendant  
3 was the driver.

4 Let's talk about Trooper Gates. We know Valandrea  
5 goes back and forth on him. We've already talked about  
6 that. And I think it's a perfectly -- or I submit to  
7 you, it's a perfectly acceptable explanation. And  
8 that's for your consideration. But we don't just have  
9 Valandrea, we have all of the other things we're  
10 talking about here, including McKenvie at some point  
11 did tell Trooper Gates he was the driver. Remember at  
12 the hospital? That's not what he wrote down. But he  
13 didn't write anything until he goes and talks to his  
14 two buddies.

15 Valandrea goes out for some treatment and he tells  
16 the trooper, yeah, 'I was driving. That's not a direct  
17 quote, but at some point he did claim to be the driver.

18 We've already talked about the glass, let's talk  
19 about DNA. You heard Ms. Gollman just a little while  
20 ago tell you, we've got a driver's side air bag that  
21 does not have Valandrea's DNA on it, it has the  
22 Defendant's DNA on it. And I can't remember the exact  
23 number she said, but it was a huge number, one in so  
24 many that it could have been somebody else. He was  
25 driving that car. Beyond a reasonable doubt he was

## STATE'S CLOSING ARGUMENT

1 driving that Cadillac that wrapped around those trees.

2 Now, in another column we have the statements. He  
3 and Valandrea are going back and forth. That's it.  
4 That's it. All of these people are not lying. That's  
5 for you to judge. But I submit to you, they came in  
6 and told you these things and that puts the Defendant  
7 in the driver's seat. And it's just that simple. He  
8 chose to drive that day. And he chose to drive  
9 impaired.

10 Now, we've already talked about driving without a  
11 license. I'm not going to belabor that point. I'm  
12 just going to point out again, it wasn't just driving  
13 without a license. It was so much more than that. So  
14 much more. It was flat-out reckless and without regard  
15 for others. Not just Sha Sha could have died that day,  
16 it could have been anybody else.

17 And while he's doing that we've got Minor a  
18 12-year-old, in the back seat. That's how reckless.  
19 But I'm going to continue to focus on felony DUI with  
20 injury and death. And let's talk about the DUI aspect  
21 of it. Let's talk about being under the influence.

22 First of all we've got Trooper Gates telling you  
23 that we have the odor of alcohol. He's got glassy  
24 eyes. And the Defendant told him he had two beers.  
25 Now, we heard from Mr. Young talking about intoxication

## STATE'S CLOSING ARGUMENT

1       said .1, it ain't just two beers. While he's driving  
2       around or making stops, stopping at the El Cheapo to get  
3       a brown bag with a beer, it's the middle of the  
4       afternoon. He's already at a .1 and drinking more beer  
5       from the El Cheapo, going 107. When you're impaired  
6       like that you do things like go 107. Being impaired  
7       makes you go 107.

8               Let's talk about impairment. The Judge is going  
9       to instruct you -- I thought I had a board here. I  
10      apologize. Here we go. The Judge is going to instruct  
11      you about impairment, okay? You heard from Quintus  
12      Young. He told you he had the blood and the urine and  
13      he tested it and he found that he had ethanol .1 in the  
14      blood, all right, and the urine. By law, okay,  
15      56-5-2950, if the alcohol concentration was at the time  
16      eight one-hundredths of a percent or point 08.

17             THE COURT: Well, hold on. We're talking about 1  
18      percent, not 06.

19             MS. BURCHSTEAD: I will defer to Your Honor. In  
20      any event, we are talking about .1. That was not my  
21      understanding, but my apologies, Judge. We will stick  
22      with that, regardless. But we have .1. So let's just  
23      say at .1 or more it is inferred that the person is  
24      under the influence of alcohol, okay? So, the .1 you  
25      have to infer he's under the influence of alcohol.

## STATE'S CLOSING ARGUMENT

1 THE COURT: No, you don't -- don't state that.  
2 It's permissible to infer.

3 MS. BURCHSTEAD: Okay, Judge. Again, my  
4 apologies. My understanding must be different than  
5 Your Honor. Again, please defer to the Judge. My  
6 point in this instance is that the Judge is going to  
7 instruct you on .1 and that is for you to consider.  
8 You heard that from Quintus. Quintus told you we have  
9 .1, which goes to whether this Defendant was  
10 intoxicated while driving. And we submit to you that  
11 it is significant evidence since he's intoxicated while  
12 driving. He is going 107, .1, he had beer in the car.  
13 That's intoxicated while driving. In the middle of the  
14 afternoon.

15 Now, he's not just driving, but he causes the  
16 death and an injury to others. And we have to show  
17 probable cause. The probable cause is the direct  
18 cause, the immediate cause, the efficient cause. There  
19 are a lot of words here. But there must be a chain of  
20 causation from the time the injury is inflicted by the  
21 Defendant until the victim's death, okay. So,  
22 basically we have to say the wreck actually caused the  
23 death. The wreck actually caused the injury.

24 We are clear in this case the Cadillac Escalade  
25 was driven down Oswald Road at highly excessive speeds.

## STATE'S CLOSING ARGUMENT

1        Highly excessive speed, 107. McKenvie loses control  
2        of the vehicle, over corrects, runs up into the land of  
3        Mr. Oswald's farm, hits the tree, bounces on the tree,  
4        wraps that Cadillac around the tree. Minor  
5        sustained injuries. Sha Sha is killed.

6        Now, as far as Minor injuries are concerned,  
7        it's got to be great bodily injury. And you heard from  
8        Dr. Glassen. Dr. Glassen came up here and he told you  
9        he had a shoulder dislocation, he had a fracture of the  
10       shoulder, pulmonary contusion, and a lacerated liver.  
11       So, we're talking about major body organs, liver and  
12       lungs. He said, it is fortunate the focus of the  
13       impact was to his shoulder. There was significant  
14       force. And there are consequences of pulmonary  
15       contusion if left untreated. Minor had to stay in  
16       the hospital for medication to aid his breathing and to  
17       have treatment to those organs. And I suggest to you  
18       that that is great bodily injury. And you'll have the  
19       pictures in the jury room. You can take a look at the  
20       picture of the lung again and you can take a look at  
21       that.

22       Now, let's talk about death. Remember, we've got  
23       Sha Sha. This wreck caused Sha Sha's death. She was  
24       in college. She had her life before her. And we're  
25       never going to know what she could have done with

## STATE'S CLOSING ARGUMENT

1       herself because of the actions of the Defendant. He  
2       decided to drive impaired and so recklessly that he  
3       smashed into a tree. And you're going to have all of  
4       these pictures. I'm not going to show them all to you  
5       now. But just remember State's 8, Sha Sha is sitting  
6       in the back of that, sitting in the back of the  
7       Cadillac.

8               State's 15. You heard Trooper Lee tell you he  
9       took this picture of the tree because she hit it. This  
10      will kill her. Cadillac wrapped around the tree. He  
11      hit it. Her face hit that tree and she died. The  
12      Coroner told you, the cause of death is blunt force.  
13      Her face smashed the tree. Quote, her injuries were so  
14      severe as not to sustain life.

15             This is not just an accident. This is not just  
16      driving without your license and, you know, hitting  
17      somebody's bumper or something. This is driving in the  
18      middle of the afternoon impaired, going 107 so  
19      recklessly. And we know the truth. We know the truth.  
20      We know McKenvie was driving. And it's time for  
21      justice. It's time for responsibility. To be held  
22      accountable for the injuries to Minor [REDACTED] for driving  
23      like that with Minor [REDACTED] in the car and for the death of  
24      Cieara NaSha Brooker. We know the truth. And we know  
25      this jury is going to do the right thing and find him

## STATE'S CLOSING ARGUMENT

1 guilty on all counts.

2 Thank you so much for your attention and your  
3 service. Do the job you're here to do.

4 MR. PLEXICO: May it please the Court?

5 THE COURT: Sure.

6 DEFENSE'S CLOSING ARGUMENT

7 MR. PLEXICO: Attorney General, Ms. Burchstead,  
8 Attorney General, Mr. Fernandez. Well, we're finally  
9 at the end of this trial. I have so much to say to  
10 you. I hope I don't keep you here too long. I want to  
11 begin with this: On that day we had a bunch of kids  
12 out in a car driving down a country road, one of our  
13 country roads made out of small pebbles. It's not in  
14 evidence because they didn't choose to put that into  
15 evidence, but there's been testimony there were four or  
16 five ruts in the road. And no matter who was driving,  
17 it doesn't matter who was driving, they went along that  
18 road that turns and -- goes up a hill and turns, they  
19 hit those ruts -- I don't know from farm equipment  
20 or -- think about it -- four or five ruts in a row.  
21 Farm equipment coming down the road, or some kind of  
22 logging equipment damaged the road. It could have  
23 happened to anybody.

24 You've got a vehicle that never should have been  
25 titled to have been on the road that had prior

## DEFENSE'S CLOSING STATEMENT

1 structural damage. That's a 2003 that had been  
2 rebuilt. Nobody knows what kind of parts -- nobody  
3 investigated what type of parts were on that thing. It  
4 had a bad brake seal, but there was no evidence that it  
5 was ever fixed that came out of the factory. That's a  
6 GM case, a General Motors case, a Cadillac case.

7 These young kids, unsuspecting, hit a defect in  
8 the road that could have happened to anybody. Lost  
9 control of the vehicle. They said they over corrected.  
10 And it was an accident. There is nobody to blame. No  
11 matter who was driving the car. And you have all of  
12 this panic.

13 Think about what happened. Not what's being  
14 covered up, what's not being obfuscated, that which  
15 should be clear made cloudy. It was just a tragic  
16 accident. There's nobody to blame. It was just a sad  
17 accident. And once you look through what is going  
18 on -- and I'll talk to you for a while. I think that  
19 when you just look at everything, it could have -- it  
20 didn't matter who was driving. Accidents happen. And  
21 it's very sad that a life was lost. Very sad. But  
22 there's nobody to blame.

23 This is not an inquisition about vengeance. Think  
24 about it. You're here today and now you're pretty soon  
25 going to be at the moment to where this is zero percent



## DEFENSE'S CLOSING STATEMENT

1       guilt. The question is: Has the State taken away the  
2       cloak of innocence that each citizen has? Have they  
3       proved the Defendant guilty from zero to beyond a  
4       reasonable doubt? That's a far road to go down. A far  
5       road.

6               And what you do today -- this is about a death.  
7       This is a death case. It has serious consequences.  
8       What you do today, remember what I said initially,  
9       cannot be undone. You have more power today as an  
10      individual than you will ever have again. You have the  
11      power to decide, because this verdict is unanimous.  
12      You have the power to decide what happens here. You  
13      have sworn an oath, stick to your convictions. Some  
14      things are just so obvious here.

15             The State, indeed, does have the burden of proof.  
16      We have nothing to prove. And this needs to be over.  
17      This should have been over, not today, it should have  
18      been over six years ago. They should have seen it for  
19      what it was instead of all of this panic that created  
20      this. The State started their case by saying he was  
21      drunk, and there's scant evidence of any alcohol  
22      intoxication.

23             What you've got is they said they saw him at 11  
24      o'clock, they never said he drank a drink. This  
25      happened at 2:30. They never said that my client drank

## DEFENSE'S CLOSING STATEMENT

1 a single drink. They said that he bought a beer. They  
2 never said he opened it and drank any. Where's the  
3 evidence of intoxication?

4 Think about Trooper Gates, that would be  
5 Trooper -- I have nicknamed him Mr. Bad Memory. Okay?  
6 Now, Trooper Gates three months after the incident --  
7 well, first of all, makes notes. He doesn't say  
8 anything about any evidence of field sobriety test,  
9 anything about glassy eyes, or your typical drunk,  
10 couldn't stand up, had glassy eyes, had a strong smell  
11 of alcohol, unsteady on their feet, fail the eye follow  
12 the pen, oh, your eyes are jumping too much. Okay?  
13 None of that. Nobody to say he was drinking.

14 Nobody to say that he acted intoxicated. Nobody  
15 to say that his thought process was not decent, human  
16 and emotional after some tragic accident. Does that  
17 sound like a mean, belligerent drunk that they are  
18 trying to paint him out to be?

19 And I left this up here for a purpose.  
20 (Pointing.) Sick, just sick, sick of all of this. I  
21 don't want to see it. Just awful.

22 Now, how do we go from -- and it's in here in this  
23 pile of nothing -- from a slight odor of alcohol to  
24 stick out your arm I'm going to get some blood. Come  
25 here. Let's go. Let me get some blood. And they read

## DEFENSE'S CLOSING STATEMENT

1 him his implied consent rights are: You are forced to  
2 do this. This is America today. This is South  
3 Carolina today. This is Allendale today. We are here  
4 today.

5 MS. BURCHSTEAD: Your Honor, I would object. He's  
6 commenting on the law, implied consent.

7 MR. PLEXICO: I'm just saying the facts of what  
8 happened.

9 THE COURT: All right.

10 MR. PLEXICO: Now, all right. That's what they  
11 have. And there's an inference, permissible inference  
12 that you are permitted, if you so choose, combined with  
13 other evidence of what could possibly lead to find my  
14 client, if you found the driver, to be intoxicated.  
15 What else is there? Nothing. He's just decent.  
16 You've seen his demeanor. Look at his demeanor. You  
17 know, we live in a small community; you are who you  
18 are. No rabid dogs in -- over here.

19 Now, Trooper Gates goes up, he looks and you can  
20 see it in these pictures, he goes to the -- to the  
21 scene to investigate. What does he see? He sees a  
22 purse in the driver's seat that's open. Okay. All  
23 right. He doesn't see any of the -- any of the victims  
24 there. He goes to the hospital. All right. Val  
25 denies driving. Talks to my client. I was the driver.

## DEFENSE'S CLOSING STATEMENT

1 All right.

2 Now, talks to my client. He smells alcohol. What  
3 happens when you've got an alcohol-related death?

4 Well, you get the big boys to come in. You get  
5 recognition. You are important. Okay? They make you  
6 the team leader. All right. The MAIT team comes down.  
7 All of the big guys get involved. You have a big case.

8 Now, instead of a tragic accident on a winding  
9 road in a bad car that never should have been there,  
10 never should have been titled here, okay, on a curve.  
11 Now, what does he do? He gets a statement. Gets them  
12 together. Somebody's dead. Something is going to  
13 happen. There's a big emotional upheaval he says.

14 And when are people truthful? When they're sad  
15 and when they cry. She knows her friend is dead. This  
16 is the time that she's truthful. She said, I was  
17 driving. He's emotional. He's sad. He says, You  
18 know, I wasn't. They write out their statements. They  
19 charge him. Why? You smell like Alcohol. They could  
20 get a big case. They took nothing and mismanaged it to  
21 where they have a big case. This was six years ago.  
22 This needs to stop. This is just awful.

23 Now, is the smell of alcohol enough for anything?  
24 Certainly not for a DUI. And I don't know about all of  
25 the back and forth. When you fill out a form, when

## DEFENSE'S CLOSING STATEMENT

1        your memory is fresh, you ought to fill it out a little  
2        bit better. He said, Yes, I had something to drink.  
3        And then he comes up later on, two beers. It sounds  
4        like every DUI arrest. He said he only had two beers.  
5        What was that all about? They don't remember. How  
6        could you, in good conscious, even consider convicting  
7        somebody when nobody really remembers until they have a  
8        vested interest because unfortunately they are afraid  
9        something is going to happen to them, okay, if he's not  
10       convicted. You've got to look at people's vested  
11       interest, sadly, their vested interest, okay, in him  
12       being convicted.

13       Now, just think about everything. My client, all  
14       along, is cooperative. What is a drunk, as they say,  
15       uncooperative. My client is polite, coherent, made  
16       sense versus belligerent, angry if you are drunk. All  
17       right? No slurred speech. No leaning on walls. No  
18       nothing. Didn't fail the alcohol follow-my-pen test.  
19       Wasn't even offered a chance. Because he made up his  
20       mind, he was going to have a big case.

21       Now -- so, he changes his mind and says, oh, I'm  
22       going to -- she's not driving. And then her mom, she  
23       works at the jail, all right, she does not want her  
24       children over at the jail while she's at work. Nor  
25       does she want her in prison. I can only imagine the

## DEFENSE'S CLOSING STATEMENT

1       fear that's running through a mother's mind about one  
2       of their children. Well, what happens? Trooper Gates  
3       comes out. He's already told Valandrea that Sha is  
4       dead. Excuse me, that Cieara is dead. She already  
5       knows that. This is a serious matter.

6               The first thing a loving mama does was, My baby  
7       wasn't driving that car. Takes off to go talk to her.  
8       First time she was silent. She didn't tell them what  
9       she had done, what she had said and the results of what  
10      she had done. She was too ashamed. And you might say,  
11      My child will never do that, but you know, children  
12      will surprise you every day if you are a parent.  
13      They're smarter than you think. They do bad things  
14      that you don't think they would ever.

15             They just do, or don't. Okay? You know, that is  
16      why they need us. How would they survive otherwise?  
17      Okay? We're out here to teach them and forgive them  
18      and bring them and let them go make mistakes and you  
19      snap them back in and go, Well, that's okay, I am glad  
20      it was all right and, you know, go try again. Come cry  
21      on my shoulder if that doesn't work. I love you and I  
22      will always support you whether you succeed or fail.  
23      Okay? This time a daughter didn't come back. And it's  
24      a sad, human time. But there's nothing criminal here,  
25      and that's what's important.

## DEFENSE'S CLOSING STATEMENT

1 I want to know how many people at the Allendale  
2 County jail, how many people in prison throughout -- or  
3 in any jail or any prison throughout this state can  
4 have their mamas come in there and say, My baby changed  
5 his story, throw out his confession. They would laugh?  
6 Well, Edwina got it done. I admire her. I admire her  
7 in an odd sense. Okay? Because you know that's never  
8 going to happen. But what happened here? You have a  
9 poor little gal, all right, lost her friend. She can  
10 only get charged with, what, too fast for conditions or  
11 something, but, boy, we can get a felony DUI. And she  
12 might, if she had a lawyer, wouldn't get convicted of  
13 that probably.

14 In other words, there are no consequences. There  
15 are no consequences. All of these things that run  
16 through -- oh, I'm going to get charged with all this,  
17 that doesn't mean that it is going to happen. Okay?  
18 Once you get stuck on that idea then it comes to, Say  
19 it's the other guy. It is the other guy. It's  
20 somebody else. And that's not the way it should be.  
21 See, they misread the whole case to start with. That's  
22 what happened. But anyway, that's when he came after.  
23 But he took that, he let her change her story. That's  
24 why we're here today. But he has no evidence to back  
25 up anything about being -- my client being under the

## DEFENSE'S CLOSING STATEMENT

1 influence.

2 Now, I don't have much to say about Mr. Oswald.  
3 What a nasty person who obviously didn't tell you the  
4 truth when I was questioning him. And you'll remember  
5 that guy. So I am just going to leave that alone. I  
6 don't think he has any credence. If what he is saying  
7 is true, well, then that's further evidence that  
8 Valandrea, okay, was not telling you the truth because  
9 she was in the car and not thrown out. Okay? Or was  
10 it they were both outside the car? Who knows? Her  
11 purse is in the front seat, they took the picture. And  
12 that is there, you can't deny it.

13 Now, imagine you are down there with Ms. Edwina  
14 and she's worried about her child, you are upset about  
15 Cieara passing away, would you say something stupid out  
16 of decency? The fellow is caught, you know, standing  
17 up for a woman or whatever. Okay? Especially, you  
18 know, somebody that you're close to. You know, who  
19 hit -- who did that? Oh, I did. My wife didn't do it,  
20 I did it. Noble, very noble. Dumb but noble.

21 Remember, the State has to prove my client guilty  
22 beyond a reasonable doubt. Look at the evidence. Who  
23 had the -- who had the motive to create all of this?  
24 And remember Minor testimony. He didn't say  
25 anything bad about him. What he said -- you don't



## DEFENSE'S CLOSING STATEMENT

1 think Minor didn't know his mama was upset? So  
2 upset that they were calling the police over so she  
3 could give a -- his sister could give another statement  
4 that she wasn't driving. And don't you think Edwina,  
5 as strong of a person as that is, when Edwina tells one  
6 of her children what to do I would bet that they do it.  
7 I can hear Edwina now, Your sister was not driving that  
8 car. No question. Edwina could not believe that  
9 something maybe bad was going to happen to her child.

10 Just think about it. A mother. So, what's the  
11 brother going to say? But you know what's telling,  
12 when I read those parts of her statement when she  
13 said -- she talked about lying in the second statement  
14 because she was scared and frustrated. And I looked  
15 through that and you could see a glimmer of the truth  
16 even in the second statement. And she was scared and  
17 she was frustrated, but she needn't have any fear  
18 because an accident is an accident. It is not a  
19 criminal offense. This should have been over a long  
20 time ago.

21 Now, to find my client guilty you have to find  
22 that he was driving. Now, if he's driving that's  
23 driving under suspension. If he's driving at the time  
24 of the accident and he fails in a duty that he owes, he  
25 breaks some duty and that is the proximate cause. Not

## DEFENSE'S CLOSING STATEMENT

1 a horrible vehicle that shouldn't have been on the  
2 road, not bad brakes that they didn't know anything  
3 about, that she couldn't have known about, or whoever  
4 the driver was. That proximate cause has to be the  
5 driver's responsibility, and that has to cause the  
6 death.

7 And that is at the time. That doesn't mean that  
8 he was driving at 11 o'clock or 10 o'clock or 9:30.  
9 That means he is driving then, then. And you have  
10 others that say I was -- another that says, I was  
11 driving. And was too ashamed to tell her mother, who  
12 was too ashamed to tell her mother that her friend was  
13 dead, her cousin was dead. Because she was talking.  
14 **Minor** was not talking when his mother got to the  
15 hospital. She couldn't bear to tell her mother that,  
16 say I disappointed you, I done that. Look deep into  
17 it. Think about what has happened.

18 Now, when you have a car like this, let's talk  
19 about -- there's two separate events. Make that clear.  
20 Driving under suspension that my client is charged  
21 with, that's entirely separate from these other  
22 charges. Driving under suspension could be any time,  
23 any day, they would have to put to you their proof  
24 beyond a reasonable doubt, whether it was 10 or 11  
25 o'clock that day, okay, that he was driving. So, you

## DEFENSE'S CLOSING STATEMENT

1       could be driving at 10:00 or 11 o'clock that morning  
2       and not driving at the time of the accident, when Ms.  
3       Valendrea says she is.

4               Now, you have to be under the influence. They  
5       failed on that. He has to be what? Driving at that  
6       time. Well, Val creates reasonable doubt for that.  
7       That's a doubt that just makes you hesitate. If you  
8       hesitate for a second that is enough. Who am I  
9       convicting here? What evidence is there?

10              Now, you have Minor [REDACTED] [REDACTED] saw Trooper  
11       Gates at the scene. Trooper Gates didn't see him at  
12       the scene because he wasn't at the scene. He just  
13       wants to fit in. He loves his sister. He just wants  
14       to fit in. Then he talked to Trooper Gates at the  
15       hospital. Minor [REDACTED] didn't even talk to his mother,  
16       much less Trooper Gates. Trooper Gates said, I  
17       couldn't -- he didn't talk to me. Okay? So that's  
18       all -- that's just made up to fit into the script that  
19       is going to keep their family safe and not charged and  
20       not sitting over in that chair. Which never would have  
21       happened anyway, because it was an accident. This  
22       needs to be over with. It should have been over a long  
23       time ago.

24              Now, you have reasonable doubt about who's  
25       driving. You have to have a driver for felony driving

## DEFENSE'S CLOSING STATEMENT

1       under the influence. All right. He has to be under  
2       the influence. Scant evidence. Let's see, scant means  
3       very little evidence. Alcohol effects everybody  
4       differently. The inexperienced drinker. Experienced  
5       drinkers can handle it better than an inexperienced  
6       drinker. Larger people can handle alcohol better than  
7       smaller people. Use your common sense. Your Common  
8       sense. You've got some age on you, that's why you're  
9       jurors. We don't let kids be jurors because they don't  
10      know anything. You have human experience, the  
11      greatest -- and common sense, are the greatest tool  
12      that jurors have.

13             Now, if you don't -- if you have a reasonable  
14      doubt about him being a driver, you have a reasonable  
15      doubt about whether or not if my client was the driver  
16      he's under the influence of alcohol.

17             And that vehicle, God forbid, whoever has it in  
18      Florida now under another title, God protect them. And  
19      that vehicle on a road with ruts, which the State  
20      wouldn't put that picture into evidence. But I sure  
21      asked about it and they admitted that it was there.  
22      Ruts bounce you around. And going 55 up a hill that  
23      way and you slide out -- hit the ruts and slide out  
24      that way. Think about it. Just one, two, three, easy.

25             Proximate cause of the accident. Okay? That shoe

## DEFENSE'S CLOSING STATEMENT

1        was also dropped. Well, it resulted in death. But you  
2        have got a reasonable doubt about everything else.  
3        They're arguing no dispute.

4                Would you trust -- would an average person trust,  
5        knowing the history of that car, would they buy a part  
6        off that car and put it on their car and expect it to  
7        run correctly? Would they call that common sense?  
8        Computer chips, they get flawed all of the time. Think  
9        about it. Devices get -- that's why you have got to  
10       throw them away and get you another one. They're  
11       (inaudible). Structural damage means a bad impact.  
12       This is a 2003 that was wrecked right from the get-go,  
13       boom. Gets a salvaged title. What does that do to the  
14       wiring and all the fine parts of the car, all of these  
15       technical issues? Who says that when the car was fixed  
16       it's not just putting something that fits in the hole,  
17       it's putting the correct computer chip in that car to  
18       actually record accurately the data that it's  
19       receiving? Garbage in, garbage out. I'm sure most  
20       people -- most common people have heard that about  
21       computers, garbage in, garbage out. Okay.

22               So, they didn't go and check the chip to see if it  
23       was the right one in the car, to see if the data was  
24       okay. They didn't inspect the chip for any kind of  
25       damage. All they did was download something. They

## DEFENSE'S CLOSING STATEMENT

1 don't have any idea about the reliability of it. But  
2 then they want to come in here and sell that to you six  
3 years after the event, that is the gospel. You know  
4 that is just not fair and it's just not the truth, it  
5 is not reliable. Evidence to be taken and used needs  
6 to be found by jurors, independent jurors that it is  
7 reliable evidence. Reliable evidence. And if you  
8 can't trust that data, even if you believed every word  
9 they said. They said, Oh, he was going fast. But they  
10 didn't say that he was breaking the speed limit. They  
11 didn't put it into evidence. They didn't put it into  
12 evidence. So once you -- do you have a reasonable  
13 doubt about it? Do you trust that from that  
14 broken-down, broken-up car that was glued back  
15 together? If you don't trust that you can't find him  
16 guilty.

17 If you believe Val was driving that car or just  
18 maybe you have got a reasonable doubt, maybe she was,  
19 you can't find him guilty.

20 If you have got a reasonable doubt about the  
21 driver, if you have a reasonable doubt about whether  
22 they are under the influence of alcohol, if she's the  
23 driver, just forget it. That's over. That charge is  
24 over. Because you have to be under the influence of  
25 alcohol and nobody said she was. That's over. So that

## DEFENSE'S CLOSING STATEMENT

1 case is gone.

2 But to find him guilty you have got to find he was  
3 the driver beyond a reasonable doubt. You have got to  
4 find each element of the charge beyond a reasonable  
5 doubt. If he was under the influence beyond a  
6 reasonable doubt you have got to have a reasonable  
7 doubt about that. That is two.

8 You got to find he failed in doing something  
9 through reliable evidence that you yourself believed  
10 honestly and that you trust beyond a reasonable doubt  
11 that what -- he did something wrong. There's a doubt  
12 there. You have got to believe that after all -- you  
13 get through all of that, that's the proximate cause of  
14 the accident that led to the death. Or was it the  
15 vehicle? Goodness only knows. They didn't inspect the  
16 vehicle. They didn't bother inspecting the vehicle and  
17 acted like they didn't know anything about the history  
18 of it. That's sad. After six years of acting like you  
19 didn't know. That was just sad. That's not a  
20 reasonable doubt?

21 I mean, how many do I have to make? I stayed up  
22 late last night and I fell asleep and I woke up and I  
23 realized that I had done so much yet I wasn't finish  
24 with all of the flaws that I saw so I worked a little  
25 more.

## DEFENSE'S CLOSING STATEMENT

1           You know what the kicker was? There's not going  
2           to be any charges I will convince you, because this was  
3           an accident. But you know what I said was, I said,  
4           Would you want to be responsible for Cieara's death?  
5           And she said, No. And then I asked her, and you can  
6           ask the court reporter, and I said, And you almost  
7           killed your little -- your precious little brother too?  
8           And she said, Yes. That meant she was the driver. It  
9           slipped out. I lied because, just like the statement,  
10          I lied because I was upset. See, it slipped out. And  
11          you almost killed your little brother too? Yes.

12          It was just a tragic accident. She is not to  
13          blame. You are not here for vengeance. There is no  
14          way that doesn't give you reasonable doubt about who  
15          the driver was. Remember you need to have a clean  
16          conscious walking out of here today. You know the  
17          right way to go in this case.

18          Now, we've heard a lot about DNA. Now, y'all saw  
19          Ms. Butler up here, right? She's the one that went out  
20          to analyze this air bag, okay? And here's a picture of  
21          it.

22          The Court's indulgence?

23          THE COURT: Yes, sir.

24          (Pause.)

25          MR. PLEXICO: Thirteen, 13, all right. Now, that



## DEFENSE'S CLOSING STATEMENT

1 pops out, that's a big bag. Okay? All right. That's  
2 a big bag, 13. I'm sitting in my car, of course  
3 there's evidence that I've been in my car, it's my car.  
4 There would be evidence that my wife would be sitting  
5 in there. It's my car. If I was only in my friend's  
6 car in the driver's seat briefly there would be scant  
7 evidence that I was there. But you couldn't overcome.  
8 It's like your DNA in your house, it's on your rug,  
9 it's on your bed, it's on your carpet, it's on your  
10 toothbrush. It's -- you know, it's on your dog. Your  
11 DNA is everywhere. It's yours. It's supposed to be,  
12 because it's yours.

13 Remember your common sense science classes. We  
14 have made millions of little cells and they slough off  
15 and they grow new ones. This is what we learn in  
16 school in science class, all right? It should be  
17 there. It's supposed to be there. They take that  
18 which is innocent, that I found your DNA in your car,  
19 and make it criminal. They've taken an accident and  
20 made it criminal. Something else that they are doing.  
21 That's just wrong. So, how meaningful to anything  
22 about deciding who the driver is that they found the  
23 driver -- they found the guy who usually drives the  
24 car's DNA where it's supposed to be. Boy, that is some  
25 evidence isn't it? That's just silly. That makes no

## DEFENSE'S CLOSING STATEMENT

1 sense.

2 They're just out to make a big case. And now they  
3 got stuck after they made it. And remember the sleight  
4 of hand that goes on here. Okay? You are under  
5 arrest. Well, go on home. That's not an arrest that  
6 I've ever heard of. I have a lot of clients being a  
7 public defender that would like to have that kind of  
8 arrest, I'll tell you that right now. Something is  
9 wrong there. Something is very wrong. And then doing  
10 sleight of hand. The warrant gets signed in 2009.  
11 2008 he's got the warrant number the next day. He's  
12 got a warrant number for all of these charges the next  
13 day yet he's telling people, We don't know who the  
14 driver is. It doesn't take much to get a warrant, does  
15 it? But that's duplicative, two-faced, a double-headed  
16 eagle, old symbol, one of the oldest known to mankind,  
17 civilized man. Originally it was all seen, not  
18 anymore, not now.

19 Okay. Now they talk about these samples, but if  
20 they're doing all of this and all of this sleight of  
21 hand okay, remember, a deed to succeed whether it's  
22 popular, whether it's rich, or whether it's important,  
23 leads to a corruption of the spirit. It leads people  
24 to do things that they shouldn't do. We see it in the  
25 news everyday. How hard would it have been to corrupt

## DEFENSE'S CLOSING STATEMENT

1 some of those samples? Not hard at all. Not hard at  
2 all.

3 How much pressure were they under after they went  
4 to all of that trouble? That would be a lot of egg on  
5 somebody's face. And remember what Mr. Quintus --  
6 Quintus was his first name -- he said, take the 45, 48  
7 days, if it had been properly kept, okay, properly  
8 refrigerated once it got to my door it would have been  
9 fine. But you don't know what happened to it before  
10 then or what the conditions was which affects the  
11 outcome of the results which are barely there, barely,  
12 barely even considerable. And remember, all right,  
13 it's permissible to consider. Permissible to consider,  
14 combined with other evidence, which is zero. Zero.

15 And an inference is nil, even if you decide that  
16 what do you combine it with to find guilt beyond a  
17 reasonable doubt. If you've done something like that  
18 you have just ruined the American judicial system from  
19 beyond a reasonable doubt way over here like a  
20 (inaudible), 49 or 51 or something like that, or even  
21 less. Shame. Shame if that ever happened in America.

22 Why do we have this high standard? We have this  
23 high standard because of the founding fathers wanted  
24 fairness and their freedom was paramount, paramount.  
25 They had their time frame problems in setting things

## DEFENSE'S CLOSING STATEMENT

1 up, no question about that. And we have straightened  
2 out a lot of it and we're still working to keep this  
3 our system. But it takes jurors who are thinking, who  
4 are concerned, who are aware of the system, and willing  
5 to take the time and follow their responsibilities.

6 It's guilty beyond a reasonable doubt because a  
7 person's freedom is a precious thing that should never  
8 be taken away if there's a reasonable doubt about it.  
9 Now -- you know, and the lady that, Ms. Kinard who  
10 received those samples, couldn't say whether they were  
11 open or closed, whether or not they had been tampered  
12 with. He knew they hadn't because they get it and seal  
13 it and put their little stuff on it and they are good.  
14 SLED's good for what it could do.

15 Now, were there many confirmatory tests done as  
16 far as once he takes that little sample? Did he go  
17 over and shake it up? Did he get some out of the  
18 bottom? Did he get some out of the top? Did he, did  
19 he use the very bottom? Things settle down. Where you  
20 get it at, just like when you cook chicken and you put  
21 it in -- you cook a stew, you don't throw in the  
22 meat -- you have a Dutch pot of stew, you have the fat  
23 on top and then you have the juice. Okay? All right.  
24 Think about it. That is how things settle down. It is  
25 just normal. Put sand in water it settles to the

## DEFENSE'S CLOSING STATEMENT

1 bottom. Okay? Heavier particles go down to the bottom  
2 and lighter particles come up. Depending on where you  
3 take that from, they didn't say where the standard was.  
4 Okay? Do you take it from where all of the alcohol is,  
5 do you do a confirmatory test? No. What does science  
6 usually commend? You have a hypothesis, you do a test  
7 and then you do a confirmatory test. Good science.  
8 Did they show you that? I don't think so. No.

9 My client today will never get another chance in a  
10 courtroom. Judge Kinard decides the facts -- excuse  
11 me, decides the law. He will charge you the law. No  
12 one else is going to decide the facts. What you have  
13 and what you decide is going to have a huge impact here  
14 today.

15 How long is his hair? There's no glass on you if  
16 you shake your hair off. Think about the pieces of  
17 glass, normal car wreck, you drive by and you see the  
18 big ol' chunks and they break up like that called  
19 safety glass. Just what your normal, every-day, what  
20 you see. Use your, again, juror's common sense. They  
21 are big pieces. They don't stay in short hair. Okay?  
22 They stick to a woman's hair. Okay? Think about it.  
23 You wouldn't have any glass on you, especially if you  
24 took your -- took your shirt off.

25 Now, you go back in there, into that car, if

## DEFENSE'S CLOSING STATEMENT

1       you're trying to help Minor which would fit his  
2       demeanor. Think about it okay? You're going to go in  
3       the front seat. You're going to brush against the time  
4       frame air bag. It is, once again, your car. There's  
5       just not really a whole lot there.

6               Beg the Court's indulgence while I look over my  
7       notes.

8               (Pause.)

9               MR. PLEXICO: Both of the kids said this, Minor  
10       and Valandrea -- Valandrea. And my client was, what,  
11       very young at the time too. They both said that she  
12       talked about driving. How far do you go from talking  
13       about it? You put everything else together. I've got  
14       page after page after page of things I could talk to  
15       you about. I hope I've said enough. And I hope that  
16       I've picked out the ones that are most important.  
17       What's most important though is that you follow your  
18       oath.

19               Every trial does not come down to anything except  
20       jurors who are honestly trying to put the State to  
21       their burden. Which their burden is to prove the  
22       Defendant guilty beyond a -- beyond a reasonable doubt.  
23       And when you have a reasonable doubt there's just no  
24       way you can find him guilty. You have to overcome  
25       that. Stand by your convictions. Stand up for your

## DEFENSE'S CLOSING STATEMENT

1 convictions. You are important. You matter.

2 You can't undo what you do. This was an accident.  
3 A bunch of kids got in a car, four or five ruts in a  
4 car that shouldn't have been on the road. They lost  
5 control. We lost somebody. It's a tragedy. It's not  
6 a criminal offense. Come back with the only just  
7 verdict. Because the State has failed in their burden  
8 to prove my client guilty beyond a reasonable doubt.  
9 Come back with a verdict of not guilty. Thank you.

10 THE COURT: Okay, jurors. While some of y'all  
11 might be in good enough shape for me to instruct you in  
12 the law, it takes a while because there's four separate  
13 charges and I have got to go over all of the elements  
14 of them and so on and so forth. So, take a short  
15 break. Just knock on the door when you all get ready.

16 (Jury exits the courtroom at 3:27 p.m..)

17 (A brief recess taken.)

## 18 JURY INSTRUCTIONS

19 THE COURT: Okay, jurors, the final phase of the  
20 trial. I'm going to instruct you on the law. I'm  
21 going to try to keep it as short as I can, but as you  
22 understand we've got serious charges and I can't not  
23 cover all the law. I can amplify: You know, when I  
24 conclude these instructions I will confer with the  
25 attorneys and I might bring you back out because I

## JURY INSTRUCTIONS

1        might have to charge you more on a particular point or  
2        could have misspoken on a point, you know, it happens  
3        from time to time.

4                Now, you all understand this is an old case. I'm  
5        just really a road warrior passing through. I didn't  
6        know anything about the case until Monday, but it  
7        happened instant, we brought these four indictments  
8        forward. It happened way back in '08. I think you  
9        understand that.

10               The fact that it's an old case, though, has no  
11        bearing on whether the State's met its burden of proof  
12        beyond a reasonable doubt. The fact that we've had all  
13        kind of delays shouldn't be considered by you on  
14        deciding whether the State's met its burden of proof.  
15        I hope you understand that.

16               Now, alternate jurors, you need to still pay  
17        attention. But when I conclude these instructions we  
18        are going to request that the jury steps out. When the  
19        jury steps out I need for you two to stay in the  
20        courtroom, assuming that the 12 of us are still with us  
21        and not passing out with heat exhaustion or something,  
22        all right?

23               Now, Mr. Foreman, I explained to you earlier that  
24        you didn't get paid any more than anybody. There will  
25        be one jury verdict form that comes back. There are



## JURY INSTRUCTIONS

1 various forms. In here, it's either on certain -- on  
2 all the charges, guilty or not guilty, you know. The  
3 order in which I said that has no bearing. There are  
4 only two ways to say it. If the Defense prepares it  
5 now they put not guilty first. If the State prepares  
6 it they put guilty first. You know, the State prepared  
7 this one. You know, every prosecutor in my lifetime  
8 has always put guilty first. It has no bearing. I  
9 think you understand that.

10 Now, Mr. Foreman, you do preside over  
11 deliberations, and you act as spokesperson for the  
12 jury. If questions arise during deliberations, it's  
13 been a pretty long trial, we've had a good many  
14 witnesses, we've had lots of exhibits. Just to  
15 forestall a couple of questions that might come up, I  
16 can't send anything back to you, any document, unless  
17 it was officially introduced into evidence. Okay? If  
18 it was officially introduced into evidence, the  
19 attorneys are going to get with the court reporter and  
20 we are going to send back everything that was  
21 introduced into evidence and you can give it such  
22 weight as you feel it's entitled.

23 If you saw something during the trial, and there  
24 was a good many things where witnesses would allude to  
25 notes or I made this statement and those things didn't

## JURY INSTRUCTIONS

1       come in, you can consider -- there's no objection to  
2       knocking it out, anything that you heard, but I can't  
3       later -- I can't now send that back to you if it wasn't  
4       officially introduced into evidence. The same holds  
5       true if a photograph was shown to somebody and it was  
6       not officially introduced into evidence, I can't send  
7       that photograph back or anything like it.

8               In addition, y'all watch a lot of TV. A lot of  
9       crime dramas on there, CSI and all of the run-offs.  
10      Questions might have occurred to you that you would  
11      like to have asked of a particular witness. I'm sorry.  
12      You have to decide the case based on the admitted  
13      testimony and other -- all admitted evidence in the  
14      case, to which an objection was not sustained or  
15      something was stricken. Or if something was stricken  
16      or an objection was sustained you can't speculate as to  
17      what the answer was to those.

18             Bottom line, I can't ask anybody another question,  
19      you know. Even though you might like an answer to a  
20      question from a particular witness, that's not  
21      something that we can do.

22             Now, the indictments. Just most serious cases  
23      first. As you understand the indictments, of course,  
24      are not evidence, or create no inference of guilt  
25      against McKenvie Levar Davis. He's presumed innocent.

## JURY INSTRUCTIONS

1 At the start of the trial he had no obligation to prove  
2 he was not guilty. That's still the case. He has to  
3 be found not guilty unless the State convinces you 12  
4 jurors, unanimously, beyond a reasonable doubt, that  
5 he's guilty of some charge embraced within these four  
6 indictments.

7 Now, before I run over them, and of course again  
8 they're just allegations, they set forth the charges  
9 against Mr. Davis. You recognize that he did not  
10 testify. I explained to you he had a Constitutional  
11 right not to testify. And under no circumstances  
12 should you take into consideration or discuss while  
13 you're deliberating his failure to testify. There's  
14 good reasons for testifying, and good reasons for not.  
15 Some people make terrible witnesses even though they're  
16 telling the truth. So, there's a tactical advantage if  
17 you don't introduce any evidence, the Defense gets to  
18 argue last, for instance, just things like that. But  
19 don't even speculate about that.

20 The State has the burden of proof beyond a  
21 reasonable doubt. It must convince 12 jurors that each  
22 element that constitutes a crime. And each of the  
23 crimes alleged in these indictments have elements that  
24 I'll go over in some detail with you in a little bit.

25 The most serious charge is everything alleged to

## JURY INSTRUCTIONS

1 have happened on November the 1st, 2008. It alleges  
2 that Mr. Davis, in Allendale County, did drive  
3 recklessly at speeds in excess of the posted speed  
4 limit, or violate an act or acts forbidden by law or  
5 neglected to comply with a duty imposed by law for  
6 driving a vehicle and that such action on his part  
7 proximately caused the death of Cleara Brooker on or  
8 about November the 1st, 2008. And there's a specific  
9 statute on that, Section 56-5-2945 of the Code of Laws  
10 of South Carolina. Again, the fact that an indictment  
11 is issued creates no inference of guilt against  
12 Mr. Davis.

13 The second indictment alleges that on that same  
14 day he was driving he didn't comply with the law, he  
15 violated a statute or a rule of the road or something  
16 and he was driving recklessly and so forth. But that  
17 such action on his part negligently and proximately  
18 caused great bodily injury to Minor That  
19 is -- the charge is encompassed within the statute,  
20 felony driving under the influence, a statute as I'll  
21 read it to you in a little bit. It says either cause  
22 of death or great bodily injury. It's the same charge,  
23 just one, great bodily injury has to be proved by the  
24 State, as I'll explain to you in a little bit. And the  
25 other has to prove a death occurred.

## JURY INSTRUCTIONS

1       The third indictment alleges that on that date  
2       Mr. Davis was driving a vehicle while in violation of  
3       one or more statutes. One, felony DUI statute, or just  
4       the driving under the influence statute and at that  
5       time there was a person in the car who was under the  
6       age of 16 years of age. That's a statutory offense.  
7       Also I'll go over that.

8       The final indictment alleges that on November the  
9       1st, 2008, the Defendant operated a vehicle on the  
10      public highways of this State while his license to  
11      drive was canceled, suspended or revoked. All right.

12      The Defense stipulated that his license was  
13      revoked at that time. So, what the State normally has  
14      to prove is that he was driving in Allendale County on  
15      public roads while his license was suspended. They  
16      only have to prove that he was driving. He admits his  
17      license was suspended on November the 1st -- prior to  
18      November the 1st of 2008. And we've brushed these  
19      over. It does say first offense. So you won't send  
20      back a question. Not that you would, but it happens  
21      all of the time. How many times has it been, you know.  
22      He's charged with the first offense. We're not sending  
23      the indictments back to you in any event.

24      Now, how are you going to decide this? I have  
25      explained to you that the State has the burden of proof

## JURY INSTRUCTIONS

1       beyond a reasonable doubt. Reasonable doubt, jurors,  
2       is the kind of doubt that causes an ordinary person to  
3       hesitate to act in conducting their daily affairs or  
4       confronted with any situation. It is not incumbent on  
5       the State to prove its case to an absolute certainty.  
6       If somebody has been on civil juries before, the burden  
7       of proof generally in civil court is something called  
8       the preponderance or greater weight of evidence, which  
9       is just more than 50 percent. Beyond a reasonable  
10      doubt is the highest standard that we have. And the  
11      State must convince all 12 of you in order to obtain a  
12      conviction on any of these indictments. They must  
13      convince you beyond a reasonable doubt as to each  
14      element that constitutes a crime embraced within an  
15      indictment before you can find him -- the Defendant  
16      guilty under a charge embraced within the indictment,  
17      as I will explain to you in a little bit.

18             Now, jurors, evidence consist of a couple of  
19      types. Some say direct and circumstantial, but bottom  
20      line, direct evidence is where somebody testifies to  
21      something he or she has observed through the senses.  
22      Circumstantial evidence is where evidence is presented,  
23      and from the facts, the facts that are proven, you can  
24      infer the existence of other facts. The law makes no  
25      distinction between direct evidence and circumstantial

## JURY INSTRUCTIONS

1 evidence. They both stand on the same footing. The  
2 case can rise and fall on direct evidence or  
3 circumstantial evidence.

4 Specifically we really can't see out, but if  
5 somebody came in and said, It's raining outside, that's  
6 direct evidence. They might not be telling us the  
7 truth, all right? But that's direct evidence. If  
8 somebody came walking in the door, took a raincoat off,  
9 and shook it and had an umbrella and laid it down and  
10 didn't say a word, you know, we can infer that it was  
11 raining outside. Circumstantial evidence. It might  
12 not be raining outside they just might be a prankster  
13 that stepped in the shower or something. But anyway,  
14 circumstantial evidence, direct evidence stand on the  
15 same footing. And, of course, any inferences that you  
16 draw from the evidence has to be reasonable. You can't  
17 make illogical inferences. You have to point to a  
18 logical conclusion when you're in the area of  
19 circumstantial evidence.

20 Now, attorneys alluded to the fact that you  
21 jurors, and you alone, are the fact finders. Don't try  
22 to speculate as to what the Judge thinks about the  
23 case, you know. The Judge might have been irritated by  
24 the delays and so forth, you know. That doesn't have  
25 any bearing on your decision. So don't even try to

## JURY INSTRUCTIONS

1 think what does the Judge think. If they wanted the  
2 Judge to think they could have waived the jury trial.  
3 So, I'm just giving you the law in the abstract. I'm  
4 not really fact-specific with it. I think you all  
5 understand that I have to tell you who's charged, but  
6 beyond that the law is going to be the same in every  
7 felony DUI case, more or less, with certain factual  
8 variations. But the law itself is going to be the same  
9 right there.

10 So, you jurors pass upon the credibility of all  
11 the witnesses who testified. Just use your common  
12 sense when you are evaluating testimony, jurors. I'm  
13 not directing these comments to any person that  
14 testified. They go to all of them. And one thing you  
15 take into account is the appearance or the demeanor of  
16 the witness. Certainly you would consider whether the  
17 witness' testimony is consistent or inconsistent. You  
18 would consider the opportunity that the witness had to  
19 see, hear or observe what the witness testified to.  
20 You would consider any interest or bias that the  
21 witness has for giving testimony. Whether the  
22 testimony given by a particular witness becomes  
23 stronger, or your opinion is made weaker by other  
24 evidence or testimony in the case is entirely up to  
25 you.



## JURY INSTRUCTIONS

1 Jurors, in litigation we don't count witnesses.  
2 In other words, the people that put up the most  
3 witnesses always win, you know. You have the right to  
4 believe one versus many and the other way around.  
5 You're not bound, jurors, to accept in its entirety  
6 testimony from any particular witness. You have the  
7 absolute right to pick and choose which testimony is  
8 believable, and then after you've done that the weight  
9 that you attribute the believable testimony is entirely  
10 up to the jurors.

11 During the trial various individuals were  
12 qualified as experts. I explained to you that by doing  
13 that I was not vouching for their testimony. They have  
14 the same basic criteria as anybody else who testifies,  
15 which can basically be brought down to, Would I buy a  
16 car from this person based on what they're telling me.  
17 To make it simple. But in litigation, criminal or  
18 civil, people that are not experts are only entitled to  
19 give opinions within limited areas. That's something  
20 that everybody knows, like that car was going too fast,  
21 which is just a guess. But we call it an opinion.  
22 Anybody can testify to something like that.

23 But when you get to an area where special  
24 knowledge or expertise is required individuals are  
25 qualified as experts and they are, after being

## JURY INSTRUCTIONS

1 qualified, entitled to give opinions within that field  
2 of expertise. You're not bound to accept any opinions  
3 given by experts. And certainly I'm not suggesting you  
4 reject them. That's up to you. Any opinion, whether  
5 expert or not, you know, depends upon the underlying  
6 facts assumed in giving the opinion. And, of course,  
7 before a person can be qualified as an expert they must  
8 demonstrate that through education, experience, or a  
9 combination of those factors they have acquired more  
10 knowledge in a particular field than you or I have.

11 Before you can accept any opinion given by an  
12 expert that opinion must be given to a reasonable  
13 degree of certainty within the field that an expert was  
14 qualified in. Now, the expert does not have to say,  
15 every time he says something, That's my opinion to a  
16 reasonable degree of certainty. You know, you see what  
17 they are testifying to. And if they ever say, "I  
18 think, could be, I guess," then that's certainly not to  
19 a reasonable degree of certainty.

20 Now, in addition to testimony, jurors, various  
21 things have been introduced into evidence. There's  
22 hard evidence. Photographs, various reports, some  
23 statements, things like that. Anything that has been  
24 formally introduced into evidence, as I mentioned to  
25 you, you will have with you while you're back there and

## JURY INSTRUCTIONS

1     you can consider that along with any other evidence  
2     that you heard during the trial, any documents and so  
3     forth, that there was not an objection to. You weigh  
4     it all in deciding whether the State has met its burden  
5     of proof on the issues that the State has the burden of  
6     proof on, which is all issues regarding whether the  
7     Defendant is guilty of the crime embraced within these  
8     indictments.

9             Now, opening statements by counsel are not  
10     evidence. I think you understand that. Closing  
11     statements by counsel, summations: Not evidence. You  
12     should certainly consider what the attorneys said.  
13     They had a long time to work on the case, but in  
14     fairness to these attorneys now, the case is about six  
15     years old. But they haven't been involved in it that  
16     long. They are relatively new to it. Why they are new  
17     to it is not something to send me a question about, I  
18     don't know either. It's just, you know, normally the  
19     cases here are prosecuted by the Solicitor and not the  
20     Attorney General's Office. And normally the Public  
21     Defender is here, he would have been appointed a long  
22     time ago, and that did not happen. Not getting into  
23     how long he had, it hadn't been that long. And the  
24     Attorney General hadn't been in it that long, you know.  
25     Or they say the case would have been tried a long time

## JURY INSTRUCTIONS

1       ago. That's neither here nor there. Okay? So, you  
2       don't speculate about that.

3       Now, any time a young person is killed, jurors,  
4       you know, that is just a sad situation, you know. It  
5       causes great grief. Causes great grief, you know, even  
6       if an older person dies. But the younger the person,  
7       it causes great sympathy. You don't decide this case  
8       based upon sympathy, compassion, or anything like that,  
9       you know. Before you can find the Defendant guilty,  
10      and again I'm not suggesting that you do, you've got to  
11      find beyond a reasonable doubt that the State convinced  
12      you of each of the elements that constitute one or more  
13      of these crimes. And you don't factor in sympathy,  
14      compassion and things like that.

15      In addition, the fact that an accident happened  
16      and somebody was killed does not necessarily mean that  
17      you should infer that the person charged with the crime  
18      committed a criminal offense. Accidents happen  
19      everyday. People get killed everyday. Oftentimes  
20      people are killed and nobody is charged with anything.  
21      Okay?

22      Now, I'm not suggesting that this individual  
23      should not have been charged, I'm only saying that the  
24      fact that the accident happened, somebody died and  
25      somebody got hurt standing alone does not prove that

## JURY INSTRUCTIONS

1 anybody is guilty. It's up to the State to prove he  
2 violated one of these statutes that I am going to read  
3 to you in just a little bit.

4 The same holds true for when it's talking about  
5 witnesses, when investigating officers investigate, the  
6 fact that they investigate an accident does not mean  
7 that they must charge somebody. The fact that an  
8 accident happened, standing alone, doesn't mean that  
9 they should charge somebody. They have to specify why  
10 they charged somebody with committing -- violating some  
11 statute that resulted in a particular action.

12 Now, jurors, I'm going to run over the elements  
13 that the State has to prove in each of these various  
14 charges. Any time I run over elements the State has to  
15 prove each of them beyond a reasonable doubt before you  
16 can return a verdict of guilty on that charge. Now, as  
17 you understand, most serious offense was called felony  
18 DUI. And under that statute, which is found in Section  
19 56-5-2945 of the Code of Laws of South Carolina, it  
20 makes it unlawful for any person to drive a vehicle  
21 while under the influence of alcohol, drugs, or a  
22 combination of such. And while driving do any act  
23 forbidden by law or to neglect to do any act imposed by  
24 law, which act or neglect proximately causes great  
25 bodily injury or death to any person other than

## JURY INSTRUCTIONS

1       himself. That's the basic charge.

2           And there are six elements that have to be proven.  
3       Before I get into that though, I think the simplest  
4       thing is for me to explain to you Section 56-5-2930 of  
5       the Code of Law, which is the law governing driving  
6       under the influence.

7           The first thing the State has to prove is that he  
8       was driving under the influence. We have a separate  
9       statute on that. And that statute makes it unlawful  
10      for any person to drive a motor vehicle while under the  
11      influence of alcohol, drugs, or both, to such an extent  
12      that his ability to drive a vehicle has been materially  
13      or appreciably impaired.

14          The State must prove two elements beyond a  
15      reasonable doubt in order to obtain a conviction under  
16      just this driving under the influence statute. Of  
17      course they've got to prove -- I said two, but it's  
18      really -- they have got to prove driving a car, they  
19      have got to prove driving a car in Allendale County,  
20      you know. They have got to prove he was driving a car  
21      in Allendale County on the date alleged in the  
22      indictment. And then they've got to prove that his  
23      ability to operate the vehicle was materially and  
24      appreciably impaired by reason of consumption, in this  
25      case, of alcohol.

## JURY INSTRUCTIONS

1           The State must show, and when I say "must show,"  
2           I'm talking about convincing you 12 jurors beyond a  
3           reasonable doubt that the Defendant was sufficiently  
4           under the influence to impair his ability to drive the  
5           vehicle in the same manner that a person of his ability  
6           as a driver who had not partaken of alcohol could have  
7           driven it under the same circumstances.

8           A person is under the influence within the meaning  
9           of this statute only when the driver has ingested  
10          sufficient quantities of alcohol or drugs to impair the  
11          normal control of his bodily or mental faculties. Mere  
12          proof that a Defendant had at some time previous to the  
13          arrest ingested alcohol is not sufficient in and of  
14          itself to establish a violation.

15          Now there is a separate statute, jurors, that  
16          basically, under certain circumstances, authorizes the  
17          State where a person's accused of violating a DUI  
18          statute in any of its various forms, that either bodily  
19          fluids or breathalyzer test can be administered. If a  
20          breathalyzer test or blood test or urinalysis is done,  
21          Section 56-5-2950 provides certain inferences that I  
22          corrected the Solicitor -- Attorney General when she  
23          was arguing, she said it was point 08. I'm looking at  
24          the statute, and as I go through it it is going to be  
25          point 08 at this point, as she said. What I was

## JURY INSTRUCTIONS

1       looking at said it was amended as of February the 10th,  
2       2009 to cover that. But that was -- it was amended  
3       then but we researched it later and it was changed from  
4       point 10 to point 08. Point 08 was in existence as of  
5       the time that this alleged accident happened.

6               These are the inferences by statute that the jury  
7       can draw, but they don't have to.

8               In any criminal prosecution for violation of  
9       felony DUI statute, or just the driving under the  
10      influence statute, whether the alcohol concentration at  
11      the time of the test is shown by chemical analysis of  
12      the person's said breath, we're talking about bodily  
13      fluids -- or bodily fluids, gives rise to the following  
14      inferences: If alcohol concentration was at that time,  
15      they are talking about the time that they tested it,  
16      five one-hundredths of 1 percent or less, it's  
17      conclusively presumed that the person was not under the  
18      influence of alcohol.

19              If the alcohol concentration at that time was in  
20      excess of five one-hundredths of 1 percent, but less  
21      than eight one-hundredths of 1 percent, that fact does  
22      not give rise to any inference one way or another. If  
23      the alcohol concentration was at the time eight  
24      one-hundredths of 1 percent or more, it may be inferred  
25      that the person was under the influence of alcohol. It



## JURY INSTRUCTIONS

1 doesn't say that he was, it's just evidence in the  
2 case. And it's for you to consider along with any  
3 other evidence presented on the issue of whether he  
4 was -- his ability to operate a vehicle was materially  
5 or appreciably impaired.

6 And, of course, if you find he wasn't driving that  
7 car, you don't even get into that. I think that that  
8 goes without saying. The State has got to prove that  
9 he was driving the car at the time that the accident  
10 happened and so forth.

11 So, back to the felony DUI situation. Six  
12 elements: First, the Defendant was driving the  
13 vehicle. Second, that the Defendant was under the  
14 influence of alcohol. To prove that it must be shown  
15 that Defendant was sufficiently under the influence to  
16 impair his ability to operate the vehicle in the same  
17 manner that a person of his ability as a driver who had  
18 not partaken of alcohol could have operated it under  
19 the same circumstances. Third, while driving in this  
20 impaired condition the Defendant did an act forbidden  
21 by law or neglected a duty imposed by law.

22 Jurors, the State alleges that at the time of the  
23 accident the statute governing speed limits was  
24 violated, as just a general statute. It basically says  
25 if there's no posted speed limit on country roads, I'm

## JURY INSTRUCTIONS

1 not going to read it to you, the speed limit is  
2 55 miles an hour. It can be greater or less, but if  
3 you don't see anything you better not go more than 55  
4 or you're violating the law. The State has to prove  
5 beyond a reasonable doubt under the statutory violation  
6 that he was exceeding 55 miles an hour. They can do  
7 that by direct evidence or circumstantial evidence.

8 The other part of that, when I said, And the  
9 statute says neglect any duty imposed by law in driving  
10 a vehicle. This connection I charge you the law  
11 imposes a duty upon every driver of a vehicle on the  
12 roads of this State to operate that vehicle in due care  
13 for the safety of himself and others. In other words,  
14 not to operate your vehicle in a negligent manner.  
15 Negligence is basically another word for carelessness.  
16 It's a failure to be operating your vehicle at the time  
17 of an accident in a state that an ordinary, reasonable,  
18 prudent driver would be operating their vehicle at the  
19 time that the situation arises.

20 Negligence can arise from action or inaction,  
21 commission or omission. It may be negligence because a  
22 driver does something that a driver of ordinary,  
23 reasonable, prudence would not have done under similar  
24 circumstances, or it would be neglect if the driver  
25 failed to do something that a driver of ordinary,

## JURY INSTRUCTIONS

1 reasonable and prudence would have done under the same  
2 or similar circumstances.

3 The fourth element the State must prove beyond a  
4 reasonable doubt is an act of neglect must be the  
5 proximate cause of the death of an individual or of  
6 great bodily injury. Proximate cause, jurors, is a  
7 legal cause. It means a real or efficient cause. It's  
8 a cause but for which injury or death would not have  
9 occurred. Proximate cause does not mean that  
10 negligence on the part of the Defendant had to be the  
11 sole cause. There can be other causes, but it has to  
12 be a cause but for which the accident would not have  
13 happened. So the State must prove that the alleged  
14 conduct on the part of the Defendant was the proximate  
15 cause of the injury or death as alleged in the  
16 indictment.

17 Fifth, a victim must have died or suffered great  
18 bodily injury. One indictment alleges a death  
19 occurred, as you understand, and second alleges that a  
20 great bodily injury occurred. Great bodily injury is  
21 defined as bodily injury that creates a substantial  
22 risk of death or which causes serious, permanent  
23 disfigurement or protracted loss or impairment of the  
24 function of any bodily member or organ. And finally  
25 the State must prove it happened at the time and place

## JURY INSTRUCTIONS

1 in Allendale County as alleged in the indictment.

2 That's the six things that the State must prove.

3 If the State fails in proving any of those elements the  
4 verdict on that count must be not guilty. On the first  
5 two indictments. They've got to prove on death charge,  
6 felony DUI resulted in death, that the Defendant was  
7 driving, he was under the influence, that he violated  
8 one of the driving situations that I mentioned to you,  
9 and that that action was a direct cause of the death.  
10 You can find that he was driving, he was under the  
11 influence, but that his action was not the direct cause  
12 of death or was not a contributing cause and you find  
13 him not guilty.

14 And while it's not specifically covered there,  
15 jurors, on the issue of negligence in South Carolina  
16 the law says that if you violate a statute that  
17 constitutes negligence. So, if you're exceeding a  
18 speed statute you're negligent. That doesn't mean that  
19 that was the proximate cause of the injury, for  
20 instance, under the strictest interpretation. If  
21 you're driving down the road and you're going 56 miles  
22 an hour and the speed limit is 55, the law says that  
23 you're negligent. You come around a curve and there's  
24 an 18-wheeler right in front of you blocking the road  
25 and you smash into it nobody would have had time to

## JURY INSTRUCTIONS

1 stop, you know. The fact that he was going 56 was not  
2 the direct cause of that collision. The cause of that  
3 collision was no warning that there was an 18-wheeler  
4 across the road that you don't know until you round the  
5 curve. All right?

6 But the violation of the statute is negligence,  
7 but the State must connect it up and show that that  
8 violation was a proximate cause. And again, they don't  
9 have to prove it's the sole cause, but the proximate  
10 cause of death or great bodily injury. If you don't  
11 find proximate cause, along with driving while under  
12 the influence, violating the statutes, or violating the  
13 rules of the road, so to speak and you're still going  
14 to find proximate cause you will find him not guilty.

15 On this bodily injury you could find that he did  
16 everything, drove under the influence -- I'm not  
17 suggesting that he did, but I'm just saying the State  
18 proves that he's driving the car, he's under the  
19 influence, driving negligently, violating statutes and  
20 so forth, proximately caused the wreck. If they don't  
21 prove the proximate cause, you'd find him not guilty.  
22 But they further have to prove that great bodily injury  
23 occurred. If they don't prove that, you could prove  
24 all five of the -- four of the elements and they would  
25 have missed the fifth one, which is proving that great

## JURY INSTRUCTIONS

1       bodily injury occurred.

2               Again, I'm not suggesting that great bodily injury  
3       did. And I'm not intending any emphasis on this, it's  
4       just hard to keep this, when there's that much going  
5       and y'all haven't heard any of this before. Again,  
6       great bodily injury is defined as bodily injury that  
7       creates a substantial risk of death or which causes  
8       serious permanent disfigurement or protracted loss of  
9       impairment of the function of any bodily member or  
10      organ.

11             Now, there is a third indictment. It's is called  
12      child endangerment. It's a pretty simple statute. A  
13      person 18 years of age or older is guilty of child  
14      endangerment when the person is in violation of three  
15      specific code sections: One, failure to stop for a  
16      blue light. That's Section 56-5-750. Y'all don't care  
17      about that. But that's what it is. If you've got  
18      somebody in your car that's under the age of 16 and  
19      you're speeding and don't stop for, you know, don't  
20      stop for a blue light. That's child endangerment. And  
21      it's a violation and the State has to prove that you've  
22      got a child under the age of 16 in the car, that you've  
23      violated one of these three statutes. Obviously,  
24      failure to stop for a blue light is not on here.

25             But the other two statutes, called driving under