

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable William H. Seals, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GERALD LEWIS,

APPELLANT

APPELLATE CASE NO 2016-002166

RECORD ON APPEAL

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2 COUNTY OF GEORGETOWN) CASE NO.: 2016-GS-22-00856
3 2016-GS-22-00446
4 **VOLUME I of III**

5 -----
6 September 19, 2016

7 **BEFORE:** The Honorable William H. Seals

8 -----
9 STATE OF SOUTH CAROLINA,
10 Plaintiff,
11 vs.
12 GERALD LEWIS,
13 Defendant.
14 -----

15 APPEARANCES:

16
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18 Attorneys for the State.

19 John Hilliard, Esq.
20 Attorneys for the Defendant.

21
22 Official Court Reporter
23 Natalie Dahl, RPR
24
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25

JURY SELECTION

P-R-O-C-E-E-D-I-N-G-S

1
2 THE COURT: Thank you. You may be seated. Okay.
3 Ladies and gentlemen, I have determined that you are
4 qualified to serve as jurors this week, now I need to
5 ask another series of questions to see if you can be
6 qualified to serve on a particular case. I need for
7 you to remember you're under oath, and if any of them
8 apply, I need you to respond.

9 In this particular case, the State of South
10 Carolina alleges that Gerald Lewis did in Georgetown
11 County, on or about February 21, 2015, did drive a
12 motor vehicle while under the influence and caused a
13 wreck which led to the death of Donald Sumter;
14 therefore, Mr. Lewis is charged with felony driving
15 under the influence with death, as well as leaving the
16 scene of the accident.

17 In that regard, has any member of the jury panel
18 heard anything about this case, read anything about
19 this case, talked to anyone about this case? If you
20 know anything about this case, no matter how
21 insignificant you think it is, please stand.

22 No one stood.

23 MR. HILLIARD: We have one, Judge.

24 THE COURT: If you would, come on up here.

25 (Whereupon, the following was had at the bench

JURY SELECTION

1 out of the hearing for the prospective jury panel.)

2 THE COURT: Name and number.

3 JUROR: My name is Moore, 109. The guy that got
4 killed was my first cousin, and we all live in the
5 same neighborhood.

6 THE COURT: He's your first cousin?

7 JUROR: The guy that got killed, and I know --
8 grew up Gerald; I know him personally.

9 THE COURT: I'll excuse you for this case. You
10 don't need to respond to any other questions.

11 (Whereupon, the following is had in the hearing
12 of the prospective jury panel.)

13 THE COURT: The defendant, Mr. Gerald Lewis,
14 stand and face the jury panel.

15 (Mr. Lewis stands and faces the jury panel.)

16 THE COURT: You may have a seat. Any member of
17 the jury panel related by blood or marriage or have a
18 close, personal or social relationship with the
19 defendant, Mr. Gerald Lewis, in this case; if so,
20 please stand?

21 THE COURT: No one stood.

22 Solicitor stand and introduce yourself and any
23 members of your staff and office.

24 MR. THOMAS: I'm Austin Thomas with the
25 Solicitor's office here in Georgetown County. The

JURY SELECTION

1 solicitor here is the solicitor for the
2 15th circuit, that is Jimmy Richardson. He mostly
3 stays in Horry County.

4 THE COURT: Thank you. Any member of the jury
5 panel related by blood or marriage or have a close or
6 personal relationship with this solicitor or any
7 member of his office; if so, please stand?

8 All right. No one stood.

9 Mr. Hilliard, stand and introduce yourself.

10 MR. HILLIARD: Thank you, Your Honor. Good
11 morning, ladies and gentlemen. My name is John
12 Hilliard. I'm a lawyer here in Georgetown, and I have
13 Sarah Brinson here who is a brand new lawyer working
14 for me today in this case. Jonathan Ottero is our
15 paralegal. Investigator Myers, he works with us as a
16 jury consultant and helps investigate some of the
17 aspects of the case.

18 THE COURT: Any member of the jury panel related
19 by blood or marriage or have a close, personal or
20 social relationship with defense counsel or any member
21 of his office, or have been represented by that firm
22 at any point in time; if so, please stand?

23 Your name and number?

24 JUROR: Jennifer Powers, 123.

25 THE COURT: How does that apply to you?

JURY SELECTION

1 JUROR: Mr. Hilliard represented me and my family
2 in a situation.

3 THE COURT: Taking that into account, if you were
4 selected to serve on a jury in this case, could you be
5 fair and impartial, not only to the defense, but the
6 State as well?

7 JUROR: Yes, sir.

8 THE COURT: Would you be fair and impartial to
9 both sides?

10 JUROR: Yes, sir.

11 THE COURT: Thank you. I think someone else
12 stood. Your name and number.

13 JUROR: Megan Skodras, 143, social relationship
14 with John here.

15 THE COURT: Taking that into account, if you were
16 selected to serve as a juror, could you be fair and
17 impartial, not only to the defense, but to the State
18 as well?

19 JUROR: Yes.

20 THE COURT: Would you be fair and impartial on
21 both sides?

22 JUROR: Yes.

23 THE COURT: Your name and number?

24 JUROR: Lauren Joseph, No. 81. Mr. Hilliard
25 represented my stepson in a problem he had a couple

JURY SELECTION

1 years ago.

2 THE COURT: Taking that into account, if you were
3 selected to serve on a jury in this case, could you be
4 fair and impartial, not only to the defense, but to
5 the State as well.

6 JUROR: Yes.

7 THE COURT: Would you be fair and impartial to
8 both sides?

9 JUROR: Yes, sir.

10 THE COURT: Anyone else?

11 The witnesses on behalf of the State of South
12 Carolina will be Deborah Johnson, Timothy Jacobs with
13 the South Carolina Department of Public Safety, Elijah
14 Metherd with the same department, Sergeant J.T. Leach
15 with MAIT Team -- that is with the Highway Patrol?

16 MR. THOMAS: Correct, Your Honor.

17 THE COURT: Corporal G.D. Payne; Corporal T.J.
18 Luther with the MAIT team; W.C. Epps with the MAIT
19 team; Sergeant J.L. Booker with MAIT; Corporal M.A.
20 Ligocki; Corporal D.A. Skipper; M.W. Turner with MAIT;
21 Corporal J.A. Alban; Corporal J.R. Shull with the MAIT
22 Team; Sergeant S.R. Gardner, South Carolina Department
23 of Public Safety; L.M. Donkle; Dr. Edward Proctor;
24 Kevin Selinsky with SLED; Kimberly Brown with
25 Georgetown Memorial Hospital; Susan Crookham; Doris

JURY SELECTION

1 Yarbrough with SLED, D.K. Fouty with South Carolina
2 Department of Public Safety; Chadwick Miller.

3 In that regard, is any member of the jury panel
4 related by blood or marriage or have a close, personal
5 or social relationship with any of the State's
6 witnesses; if so, please stand?

7 JUROR: Lauren Joseph, Juror 81.

8 THE COURT: Who do you know?

9 JUROR: Susan Crookham.

10 THE COURT: If you were selected to serve as a
11 juror on this case, could you be fair and impartial,
12 not only to the State, but the defense as well?

13 JUROR: Yes.

14 THE COURT: Fair and impartial to both sides?

15 JUROR: Yes, sir.

16 THE COURT: Anyone else in?

17 Any witness on behalf of the defendant will be
18 Jodie Anklin, Willie Sumter, Mack Walker, Deborah
19 Hicks, Wallace Washington and Rashad Noose. In that
20 regard, is any member of the jury panel related by
21 blood or marriage or has a close, personal or social
22 relationship with any of the defense witnesses; if so,
23 please stand?

24 No one stood.

25 Any member of the jury panel related by blood or

JURY SELECTION

1 marriage to any law enforcement officer; if so, please
2 stand.

3 Name and number?

4 JUROR: 41, Whitney Deshawn. My father is a
5 police officer for 18 years.

6 THE COURT: Taking that into account, if you were
7 selected to serve on a jury in this case, could you be
8 fair and impartial to the State and the defense?

9 JUROR: Yes, sir.

10 MR. HILLIARD: Can we inquire where he is a
11 police officer?

12 JUROR: With Horry County for 11 years, and
13 before that he was with Georgetown County for seven.

14 THE COURT: Thank you. His name is?

15 JUROR: Doug Deshawn.

16 JUROR: Megan Skodras, 143. My father has been a
17 police officer for Chesterfield County, Virginia for
18 31 years.

19 THE COURT: Taking that into account, if you were
20 selected to serve as a juror in this case, could you
21 be fair and impartial to the State and defense?

22 JUROR: Yes.

23 THE COURT: The lady in the back.

24 JUROR: Mysti Coker, 26. My father is deceased,
25 but he served with the police his whole life, and

JURY SELECTION

1 ended up being a constable and volunteering.

2 THE COURT: Where was that?

3 JUROR: Horry County.

4 THE COURT: Taking that into account, if you were
5 selected to serve as a juror in this case, could you
6 be fair and impartial to the State and defense as
7 well?

8 JUROR: Yes, sir.

9 THE COURT: Thank you. Lady in the front.

10 JUROR: 141, Julie Sharp. My son-in-law works
11 for Georgetown County Sheriff's Department, John
12 Pavat.

13 THE COURT: Taking that into account, if you were
14 selected to serve on a jury in this case, could you be
15 fair and impartial to the defense and the State?

16 JUROR: Yes, sir.

17 THE COURT: Your name and number?

18 JUROR: 136, August Savello. My father was a
19 retired police officer from Nassau County, New York.

20 THE COURT: If you were selected to serve on the
21 jury in this case, could you be fair and impartial to
22 the State and the defense?

23 JUROR: Yes.

24 THE COURT: Thank you. Gentleman in the back.

25 JUROR: Mason Hicks, Juror 72. As a previous

JURY SELECTION

1 police officer, I'm concerned that my previous
2 accident investigations may bias me towards the
3 prosecution.

4 THE COURT: I'll ask you this question anyway.
5 If you were selected to serve as a juror in this case,
6 could you be fair and impartial to the defense and the
7 State?

8 JUROR: I do not believe so, sir.

9 THE COURT: I'll excuse you for purposes of this
10 trial only.

11 Anyone else?

12 Any member of the jury panel aware of any biases
13 or prejudices, for or against the State of South
14 Carolina; if so, please stand?

15 No one stood.

16 Any member of the jury panel formed an opinion as
17 to the guilt or innocence of the defendant, Mr. Gerald
18 Lewis, in this case; if so, please stand?

19 No one stood.

20 Any member of the jury panel who knows of any
21 reason, whatsoever, why they couldn't give the parties
22 in this case a fair and impartial trial; if so, please
23 stand?

24 No one stood.

25 Any member of the jury panel or any member of

JURY SELECTION

1 your family ever been prosecuted by this Solicitor, or
2 any member of the Solicitor's staff, regardless of
3 whether the case was dismissed or not; if so, please
4 stand?

5 Your name and number again?

6 JUROR: Lauren Joseph, No. 81. My stepson had a
7 little problem with the law.

8 THE COURT: Taking that into account, if you were
9 selected to serve on a jury in this case, could you be
10 fair and impartial, not only to the defense, but to
11 the State as well?

12 JUROR: Yes.

13 THE COURT: Your name and number?

14 JUROR: Anthony Bernathy, Juror 19. Both my dad
15 and my brother have had trouble with the law, and
16 because of that, I don't really feel that I could be
17 effective.

18 THE COURT: Where? In Horry County?

19 JUROR: Murrells Inlet, right on the state line.

20 THE COURT: Here in the 15th Circuit,
21 Horry/Georgetown?

22 JUROR: Yes, Georgetown County.

23 THE COURT: I'll excuse you for the purpose of
24 this trial only.

25 Anyone else?

JURY SELECTION

1 Anything further from the State?

2 MR. THOMAS: No, Your Honor.

3 THE COURT: Defense?

4 MR. HILLIARD: Would you inquire whether any
5 members of panel or members of their family have been
6 victims of any form of driving under the influence or
7 violent crime?

8 THE COURT: Has any member of the jury panel or
9 any member of your immediate family ever been involved
10 in a crime of personal violence, this could be
11 including, but not limited to, criminal sexual
12 conduct, assault and battery of a high aggravated
13 nature, murder, manslaughter, kidnapping, armed
14 robbery, et cetera? If you or any member of your
15 immediate family have ever been a victim or a
16 defendant in a crime such as these, or a
17 driving-under-the-influence action, please stand.

18 Let's form a line and have them come forward, if
19 you would.

20 (Whereupon, the following jurors came to the
21 bench for bench conference with the judge and
22 attorneys.)

23 THE BAILIFF: 116.

24 JUROR: My son was assaulted when he was a senior
25 in high school. My son was assaulted.

JURY SELECTION

1 THE COURT: Where did it happen?

2 JUROR: Pawley's Island, Georgetown.

3 THE COURT: If you were selected to serve on the
4 jury in this case, could you be fair and impartial in
5 this case?

6 JUROR: I think so.

7 MR. HILLIARD: What was the --

8 THE COURT: Her son --

9 MR. HILLIARD: What was the number?

10 JUROR: 168.

11 THE COURT: Thank you.

12 JUROR: It didn't have anything to do with a DUI,
13 but he was assaulted.

14 THE COURT: I appreciate that.

15 THE BAILIFF: 41.

16 JUROR: My parents were hit by a drunk driver
17 four years ago.

18 THE COURT: Were they injured?

19 JUROR: Yes.

20 THE COURT: Taking that into account, if you were
21 selected on a jury in this case, could you be fair and
22 impartial to the State and the defense?

23 JUROR: Yes.

24 THE COURT: Would you be fair and impartial to
25 both sides?

JURY SELECTION

1 JUROR: Yes.

2 THE BAILIFF: 32.

3 JUROR: My boss got a DUI, killed a 15-year-old
4 and fled the scene and was in prison for a couple of
5 years.

6 THE COURT: Who did?

7 JUROR: My boss, Rachel Easterly. She works at
8 St. Francis Animal Center.

9 THE COURT: If you were selected to be a juror in
10 this case, could you be fair and impartial to the
11 State and defense?

12 JUROR: Uh-huh, yes.

13 THE COURT: You would be fair and impartial to
14 both sides?

15 JUROR: Yes.

16 MR. HILLIARD: Number?

17 JUROR: 32.

18 MR. HILLIARD: Before you call up the next
19 person, I wanted to mention about Ms. Deshawn, No. 41.
20 She didn't say anything about it, but I --

21 THE COURT: Let's get through it real quick.

22 MR. HILLIARD: Oh, yes, sir. Yes, sir.

23 THE BAILIFF: 128.

24 JUROR: 10 years ago I got a DUI in Vermont.

25 THE COURT: Taking that into account, if you were

JURY SELECTION

1 selected to serve as a juror in this case, could you
2 be fair and impartial to the State and defense?

3 JUROR: Yes, sir.

4 THE COURT: Fair and impartial to both sides?

5 JUROR: I would.

6 THE COURT: Is it warmer down here and than
7 Vermont?

8 JUROR: Yes (laughing).

9 THE BAILIFF: 19.

10 JUROR: My dad got two DUIs.

11 THE COURT: You are excused anyway.

12 THE BAILIFF: 143.

13 JUROR: Years ago I had a DUI in the State of
14 Virginia, and then my husband was in Georgetown County
15 and had a DUI back in 2000.

16 THE COURT: Taking that into account, if you were
17 selected to serve on a jury in this case, could you be
18 fair and impartial to the State and the defense?

19 JUROR: Yes.

20 THE COURT: Would you be fair and impartial to
21 both sides?

22 JUROR: Yes, sir.

23 THE COURT: Good. Thank you, I appreciate it.

24 THE BAILIFF: 118.

25 THE COURT: How does that question apply to you?

JURY SELECTION

1 JUROR: I have a step brother who was killed in a
2 car wreck with a drunk driver. And my nephew -- I
3 don't think I can do this. My nephew was hit by --
4 pedestrian hit-and-run by a girl who had been drinking
5 and doing drugs, and he's permanently disabled.

6 THE COURT: Taking that into account, if I were
7 to select you as a juror in this case, could you be
8 fair and impartial to the State and the defense?

9 JUROR: Since this incident occurred, I have gone
10 into recovery. I've had a lot of rehabilitation and
11 out-patient treatment, and I can understand now the
12 people who cause injuries to my family, so I can see
13 it from both sides. I don't know really how impartial
14 I could be, but my heart goes out for this man, if
15 he's guilty.

16 THE COURT: It's up to you. If you can sit back
17 and hear the evidence of the case and the laws as I
18 give it to you and make a decision based on what you
19 hear, I'll be glad to have you, but if you have any
20 reservation or don't think you can be fair and
21 impartial.

22 JUROR: I think it is my duty to do this.

23 THE COURT: You think you can be fair and
24 impartial?

25 JUROR: Yes.

JURY SELECTION

1 THE COURT: You will be?

2 JUROR: Yes, I will.

3 (Juror returns to her seat and the following is a
4 bench conference with the judge and attorneys.)

5 MR. HILLIARD: Judge, she was crying.

6 THE COURT: She's taking her duty seriously. She
7 answered all the questions I asked straight up. I
8 mean, she said she would be fair and impartial. Do
9 you have a problem?

10 MR. THOMAS: No, sir.

11 THE COURT: I don't have a problem. I think
12 she's a serious juror and she'll take the job
13 seriously. But, I mean, she said she could be very
14 impartial.

15 MR. HILLIARD: All right, sir. Let me see how
16 the strikes work out.

17 THE COURT: She may be favorable to you, I
18 couldn't tell. She said she could be fair and
19 impartial. I gave her the opportunity to get out.

20 MR. HILLIARD: Yes. Thank you.

21 THE BAILIFF: 91.

22 THE COURT: Juror 91, how does that apply to you?

23 JUROR: It was last year, my step-father -- I was
24 molested by my step-father when I was eight and nine
25 and raped at 18 and beaten and raped by my boyfriend

JURY SELECTION

1 when I was 19.

2 THE COURT: Taking that into account, if you were
3 selected to serve on a jury in this case, could you be
4 fair and impartial to the State and defense?

5 JUROR: Certainly.

6 THE COURT: You would be fair and impartial to
7 both sides?

8 JUROR: Absolutely.

9 THE BAILIFF: 106.

10 JUROR: My name is Elizabeth Mobley, and my
11 daughter and grandson were hit head-on by a drunk
12 driver, and he is serving time.

13 THE COURT: Taking that into account, if you were
14 selected to serve on a jury in this case, could you be
15 fair and impartial to this State and defense?

16 JUROR: I could.

17 THE COURT: Thank you very much.

18 THE BAILIFF: 80.

19 JUROR: My husband was arrested for DUI in North
20 Carolina.

21 THE COURT: Considering that, if you were
22 selected to serve on a jury in this case, could you be
23 fair and impartial to the State and defense?

24 JUROR: Yes.

25 THE COURT: You would be?

JURY SELECTION

1 JUROR: Yes, sir.

2 THE COURT: Thank you.

3 THE BAILIFF: 123.

4 JUROR: There was a situation last October in
5 front of my house with a close family friend where it
6 was a hit-and-run, woman passed away. I don't know
7 that I can -- I feel like justice wasn't served in
8 that case, and I don't know if it would affect my
9 decision. It was a good, close family friend.

10 THE COURT: Taking that into account, if you were
11 to listen to this case, and as long as I give the law
12 to you, can you be fair and impartial to the State and
13 the defense?

14 JUROR: I would hope that I would, but I don't
15 know if I can answer. I'll say no.

16 THE COURT: I'll excuse you for this trial only.
17 Have a seat. That was 123.

18 THE BAILIFF: 38.

19 JUROR: Good morning, Your Honor. I had a DUI
20 back in 1995.

21 THE COURT: Taking that into account, if you were
22 selected to serve on a jury in this case, could you be
23 fair and impartial to the defense and the State?

24 JUROR: I don't think so, because I feel....

25 THE COURT: You don't think you can sit back and

JURY SELECTION

1 hear the evidence and be impartial?

2 JUROR: No, sir.

3 THE COURT: I'll excuse you for this trial only.

4 If you will have a seat. That was 38.

5 THE BAILIFF: 33.

6 JUROR: My son, he does have a felony record out
7 of Florence County, but he also had a DUI in Horry
8 County maybe two years ago, I'm not sure. But I don't
9 know if that would be something to be concerned about.

10 THE COURT: Taking that into account, if you were
11 selected to serve on a jury in this case, could you be
12 fair and impartial, not only to the defense, but the
13 State as well?

14 JUROR: Yes, I could.

15 THE COURT: Would you be fair and impartial to
16 both sides?

17 JUROR: Yes, sir.

18 THE COURT: Good. Thank you. You can be seated.

19 (Whereupon, the following is had at a bench
20 conference with the judge and attorneys.)

21 THE COURT: What was it you were telling me?

22 MR. HILLIARD: Deshawn, No. 41. She said her
23 father was Doug Deshawn and worked in the Sheriff's
24 Office. I don't know if she knows this or doesn't
25 know it, but I sued him for wrongful death in

JURY SELECTION

1 connection with his activities as deputy sheriff, and
2 I represented the plaintiff. I don't know if she
3 doesn't know it. I don't want to necessarily say
4 that, but I don't want her to figure it out right in
5 the middle of the trial.

6 THE COURT: Do you have a problem excusing her?

7 MR. THOMAS: She said she didn't recognize your
8 name, right?

9 THE COURT: But if she goes home and talks to
10 Daddy and he said, That turkey sued me, and then, you
11 know....

12 MR. THOMAS: All right.

13 THE COURT: Hopefully -- I would tell them not to
14 talk about the case, but you know how it is, people go
15 and talk. What number?

16 MR. HILLIARD: 41, Judge.

17 THE COURT: Let's excuse 41 for this trial.

18 MR. HILLIARD: Thank you, Judge.

19 (Whereupon, the following is had in open court.)

20 THE COURT: Anything further from the State?

21 MR. THOMAS: No, Your Honor.

22 THE COURT: From the defense?

23 MR. HILLIARD: No, sir, Your Honor.

24 THE COURT: Clerk, give us a jury of 12 and two
25 alternates.

JURY SELECTION

1 THE CLERK: When I call your name, come and stand
2 here where I am, look at the door and I'll tell you
3 whether you should take a seat in the jury box or
4 return to your seat.

5 80, Robin Jones. What says the State?

6 MR. THOMAS: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. HILLIARD: Please excuse Ms. Jones from this
9 case.

10 THE CLERK: You may return to your seat.

11 Juror 91, Monica Lewis. What say the State?

12 MR. THOMAS: Present the juror.

13 THE CLERK: Defense?

14 MR. HILLIARD: Please excuse Ms. Lewis from this
15 particular case.

16 THE CLERK: Juror 31, Robert Cooper. What say
17 the State?

18 MR. THOMAS: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. HILLIARD: Please seat Mr. Cooper.

21 THE CLERK: Please take a seat in the jury box.

22 66, Jarrell Grier. What says the State?

23 MR. THOMAS: Please excuse this juror.

24 THE CLERK: You may return to your seat.

25 169, Deborah White. What says the State?

JURY SELECTION

1 MR. THOMAS: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. HILLIARD: Please excuse Ms. White from this
4 particular case.

5 THE CLERK: Juror 55, Renee Gentry. What says
6 the State?

7 MR. THOMAS: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. HILLIARD: Excuse me a second, Judge, I'm
10 sorry. Please seat Ms. Gentry.

11 THE CLERK: Juror 42, Evelyn Divenere. What says
12 the State?

13 MR. THOMAS: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. HILLIARD: Please seat Ms. Divenere.

16 THE CLERK: Take a seat in the jury box.

17 Jury 46, Baylis Elliott. What says the State?

18 MR. THOMAS: Please present the juror.

19 THE CLERK: What says the defense.

20 MR. HILLIARD: Please excuse Mr. Elliott for this
21 case.

22 THE CLERK: Juror 138, Dana Schalk. What says
23 the State?

24 MR. THOMAS: Please present the juror.

25 THE CLERK: What says the defense?

JURY SELECTION

1 MR. HILLIARD: Please seat Ms. Schalk.

2 THE CLERK: Please take a seat in the jury box.

3 Juror 122, Jeremiah Polston. What says the
4 State?

5 MR. THOMAS: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. HILLIARD: Please excuse Mr. Polston from
8 this case.

9 THE CLERK: You may return to your seat.

10 Juror 81, Lauren Joseph. What says the State?

11 MR. THOMAS: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. HILLIARD: Please excuse Ms. Joseph from this
14 case.

15 THE CLERK: Juror 79, Daniel Jones. What says
16 the State?

17 MR. THOMAS: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. HILLIARD: Please seat Mr. Jones.

20 THE CLERK: Juror 32, Heather Crawford. What
21 says the State?

22 MR. THOMAS: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. HILLIARD: Excuse me one second, Judge.

25 (A pause in the proceedings.)

JURY SELECTION

1 MR. HILLIARD: Ms. Lee?

2 JUROR: That's my new last name.

3 MR. HILLIARD: Please seat Ms. Lee.

4 THE CLERK: Juror 74, Rose Holmes. What says the
5 State?

6 MR. THOMAS: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. HILLIARD: Please seat Ms. Holmes.

9 THE CLERK: Juror 33, Martha Culler.

10 MR. THOMAS: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. HILLIARD: Please seat Ms. Culler.

13 THE CLERK: Take a seat in the jury box.

14 167, Bonny West. What says the State?

15 MR. THOMAS: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. HILLIARD: Please seat Ms. West.

18 THE CLERK: Juror No. 12, Pamela Bierman. What
19 says the State?

20 MR. THOMAS: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. HILLIARD: Please excuse Ms. Bierman.

23 THE CLERK: Juror No. 9, Cecil Baxley, Junior.

24 What says the State?

25 MR. THOMAS: Please present the juror.

JURY SELECTION

1 THE CLERK: What says the defense?

2 MR. HILLIARD: Please excuse Mr. Baxley from this
3 case.

4 THE CLERK: Juror 106, Elizabeth Mobley. What
5 says the State?

6 MR. THOMAS: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. HILLIARD: Please excuse Ms. Mobley from this
9 particular case.

10 THE CLERK: Juror 110, Catherine Morris. What
11 says the State?

12 MR. THOMAS: Please present the juror.

13 THE CLERK: What says the defense.

14 MR. HILLIARD: Please seat Ms. Morris.

15 THE CLERK: Juror 52, Lee Ford. What says the
16 State?

17 MR. THOMAS: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. HILLIARD: Please seat Mr. Ford.

20 THE CLERK: 144, Richard Smith. What says the
21 state?

22 MR. THOMAS: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. HILLIARD: Give me one second. Excuse me one
25 second, Judge, I apologize.

JURY SELECTION

1 (A brief pause in the proceedings.)

2 MR. HILLIARD: May we approach?

3 THE COURT: You may.

4 (Whereupon, the following is had at a bench
5 conference.)

6 MR. HILLIARD: The lady that I was just talking
7 to is the sister of the defendant, and she was in
8 court today. She said she overheard this fellow say
9 something about all he wanted to do was make sure
10 everyone got justice today.

11 MR. THOMPSON: That's what I want, too.

12 THE COURT: Maybe in your favor.

13 MR. HILLIARD: Yes, sir, maybe. But I guess the
14 point of it is, I don't really know what that is
15 about. I'm not -- I don't know how to address it.
16 I'm seeking advice.

17 THE COURT: He hadn't answered any of my
18 questions inappropriately, and justice is what we all
19 want. I mean, you know what he does for a living.

20 MR. HILLIARD: Yes, sir, I do. Thank you, Judge.

21 (Whereupon, the following is had in open court.)

22 MR. HILLIARD: Please excuse the juror for this
23 particular case.

24 THE CLERK: Juror 76, Emily Johnson. What says
25 the State?

JURY SELECTION

1 MR. THOMAS: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. HILLIARD: Please seat Ms. Johnson.

4 THE CLERK: Juror 26, Mysti Coker. What says the
5 State?

6 MR. THOMAS: What was the number again?

7 THE CLERK: 26.

8 MR. THOMAS: Your Honor, we are on alternates
9 now?

10 THE COURT: We are. We'll have two alternates.

11 MR. THOMAS: Please present the juror.

12 MR. HILLIARD: Please seat the juror.

13 THE CLERK: Juror 163, Thomas Washington. What
14 says the State?

15 MR. THOMAS: Please present the juror.

16 THE CLERK: Defense?

17 MR. HILLIARD: Please seat Mr. Washington.

18 THE CLERK: Take a seat in the jury box.

19 THE COURT: Any objections to the jury process
20 which they were drawn? What says the State?

21 MR. THOMAS: No, Your Honor.

22 THE COURT: What says the defense?

23 MR. HILLIARD: No, sir, Your Honor.

24 THE COURT: All right. If the jury would stay
25 seated. The rest of you are excused for the day. If

JURY SELECTION

1 you would, call back in after 6:00 to see if there is
2 any further instruction for you. You may go.

3 (Whereupon, the prospective jury panel exits at
4 11:55 a.m.)

5 THE COURT: Members of the jury, we're going to
6 start this trial at 9:45 in the morning. This
7 afternoon we're going to stay here and take up
8 pretrial matters, try to get it ironed out and
9 smoothed out so the case can proceed in a sufficient
10 way.

11 You do know a little bit about the case based on
12 the jury selection process. You know the name of the
13 defendant and the name of the lawyers and a little bit
14 about the case. In that regard, when you leave this
15 courtroom, you are ordered not to discuss this case
16 with anyone. You cannot get on the computer. You
17 cannot look up anyone's name, Google or research in
18 any form or fashion. When you leave this afternoon, I
19 need you to put it out of your mind. Go about in your
20 daily life and be back at 9:45. You'll have
21 everything you need to make your decision in this case
22 in this courtroom. So I'll see you at 9:45 in the
23 morning.

24 (The jury exits at 11:57 a.m., and the
25 following is heard out of the presence of the jury.)

PRETRIAL MOTIONS

1 THE COURT: You want to reconvene at 1:30 and
2 take up pretrial?

3 MR. THOMAS: That is fine.

4 MR. HILLIARD: Sounds good to me.

5 (A lunch recess was had.)

6 (The following is had out of the presence of the
7 jury.)

8 THE COURT: How many pretrial issues do we have?

9 MR. HILLIARD: My goodness, Judge.

10 THE COURT: None?

11 MR. HILLIARD: There is some. Motions in limine,
12 I suppose is the clearest one in my mind. Maybe that
13 is a good place to start. My client was arrested for
14 driving -- my client was arrested for this offense,
15 and he was let to bond, and after that he was arrested
16 for driving under the influence while out on bond.
17 Bond was revoked, put back in jail. There is two
18 parts. One is making a motion in limine not to talk
19 about the fact he got arrested, and then there is also
20 a statement that I think the prosecution wants to
21 include that in his case that at some point, and we
22 ask that that statement be excluded as to -- what I
23 understand is that the police officer, in conversation
24 my client's --

25 THE COURT: Is this the second DUI?

PRETRIAL MOTIONS

1 MR. HILLIARD: Yes, sir, I'm sorry. In the
2 second DUI, the law enforcement officer in connection
3 with the investigation of that event, my client is
4 alleged to have said to the law enforcement officer, I
5 had to rent the truck that I'm driving now because the
6 truck I had before, I hit a deer. The reason that's
7 important is that as the facts will allow in the case,
8 and without conceding it, but for the purpose of this
9 discussion, I believe that the State will be able to
10 prove without much trouble that my client's truck was
11 the truck that struck the individual and did not
12 strike a deer, so that is something that is
13 prejudicial to us and not probative in any particular
14 -- because it was after the fact, and it has nothing
15 to do with the case.

16 THE COURT: I'll hear from the State.

17 MR. THOMAS: Your Honor, on the first part of
18 that motion, State would agree there has to be some
19 sort of limiting as far as circumstances in which the
20 defendant and law enforcement officer spoke in that
21 April video. As far as the second part, defendant
22 makes a statement -- it's captured on the roadside
23 video -- that he was fishing earlier in the evening of
24 this accident.

25 THE COURT: It is the second DUI?

PRETRIAL MOTIONS

1 MR. THOMAS: On the first DUI, Your Honor, I
2 apologize, in the first of February. And that he hit
3 a rut, and that was the reason for the damage on the
4 front of the vehicle. That is inconsistent with the
5 prior statement that he gave on the night of the
6 incident when he was arrested two nights later on the
7 DUI. He tells that officer that he hit a deer and
8 that is the purpose for which the State is seeking to
9 have that statement in, to show inconsistencies.

10 THE COURT: How could you get it in without
11 bringing up the second DUI?

12 MR. THOMAS: Your Honor, I think we have to limit
13 what we can say about that situation. I think just
14 that officer's testimony would have to be very
15 limited, that on April such-and-such I came into
16 contact with this defendant and he told me that he was
17 driving a rental car or rental vehicle because he hit
18 a deer with his other vehicle. Now, defense counsel,
19 if they open the door, that is a different situation,
20 but as far as direct, that is where I would limit
21 myself.

22 THE COURT: How do you feel about that,
23 Mr. Hilliard? I agree we're not bringing up the
24 second DUI, that is not coming up, but just the
25 statement about what his vehicle hit.

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1 MR. HILLIARD: Well, is it not --

2 THE COURT: How would you need that to prove your
3 case, or how?

4 MR. THOMAS: Prove that he was, in fact, driving
5 a vehicle. And, Your Honor, I anticipate a defense
6 that he was not the driver of the vehicle. It is
7 pretty clear in this case that his vehicle hit the
8 deceased. The defense is going to have to be -- only
9 thing it can be -- is the fact he wasn't driving the
10 vehicle at the time of the collision. He stated to
11 police that he wasn't -- he got that damage by hitting
12 a rut. We're going to show that the damage is
13 inconsistent with that, Your Honor. Then, two months
14 later --

15 THE COURT: He's saying he got the damage not
16 from hitting the decedent's car, he got it from
17 hitting a rut?

18 MR. THOMAS: Earlier that night, he said he was
19 fishing and he hit a rut and his brother or someone
20 had to pull him out and that is how he got the damage
21 to his vehicle, and then two months later he's telling
22 a different story, that he hit a deer.

23 THE COURT: Anything else about it? I think it
24 is probative in that it goes to how the damage
25 happened to his vehicle and whether or not he's

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1 telling the truth on the night of the initial DUI, the
2 one we're trying today. I think if he brought it up,
3 like he's talking about, where they met or had some
4 contact in April and he made this statement, and we
5 didn't bring up any subsequent defenses or DUIs or
6 anything of that nature, then I think it would be
7 relevant.

8 MR. HILLIARD: Well, there are two parts of that,
9 Judge. One part is that there is not -- without going
10 into it too much, and maybe we will see this as the
11 case progresses, but at the point in time that the
12 police officer asks him the question of how did the
13 damage happen to your car or to your truck, in the
14 initial case --

15 THE COURT: Is your guy going to testify, to
16 start with, as far as you know?

17 MR. HILLIARD: I don't really know the answer. I
18 can't answer that until we're further down the path.

19 THE COURT: Because if he doesn't testify, I
20 don't think they can get it in.

21 MR. HILLIARD: Well, okay.

22 THE COURT: Wouldn't it be hearsay?

23 MR. HILLIARD: Yes, sir -- well, at this point
24 what I'm trying to prevent is them introducing it in
25 their case in chief. So if you are saying they can't

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1 introduce it in their case in chief, then we'll talk
2 about it later.

3 THE COURT: How could you introduce it without
4 being hearsay?

5 MR. THOMAS: Statement by party opponent. We're
6 going to have the officer testify about it, I heard
7 him say it.

8 THE COURT: You are saying it is an admission by
9 party opponent?

10 MR. THOMAS: Yes, sir.

11 THE COURT: But what is he admitting to?

12 MR. THOMAS: Driving the vehicle that night.

13 That is one of the elements is driving the vehicle.

14 THE COURT: All right.

15 MR. HILLIARD: Well, he's not admitting to
16 driving -- I mean they are making a leap, that was
17 part two of what I was saying. They are making a leap
18 from the conversation of the police officer in the
19 second event, the conversation that my client has with
20 the police officer about why he's driving the rented
21 car or the rented truck. There is nothing to say that
22 he didn't have some other truck in the meantime that
23 he ran into a deer with. I mean, they are making a
24 leap as to whether he was driving this truck on this
25 night and had this damage, and that is what he was

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1 talking about on the second event. There is nothing
2 to show that he was talking about this truck on this
3 night when he was talking at the second event.

4 THE COURT: Let's do this. Whenever it comes up,
5 if it comes up, you object and let me know and I'll
6 hear the testimony outside of the jury's presence, and
7 we'll go from there so I'll have a better feeling.

8 MR. THOMAS: That sounds good to me. I have the
9 officer present in the court today if you wanted to
10 hear his testimony.

11 THE COURT: We'll do it at the appropriate time,
12 and that way I'll know a whole lot more about the
13 case.

14 MR. HILLIARD: That would be good. Yes, sir, so
15 the prosecution will let us know before he brings it
16 up and we can talk about it at that point, in case in
17 chief?

18 THE COURT: I'm sure you'll have a good idea when
19 he'll ask him, unless you are willing to let him know
20 when it will come up?

21 MR. THOMAS: It will come up when we call Trooper
22 Metherd.

23 MR. HILL: That's the only thing he knows about
24 the case, I guess.

25 MR. THOMAS: That is our purpose for calling him,

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1 it would be limited that he had contact and then the
2 statement.

3 THE COURT: His last name is what?

4 MR. THOMAS: Metherd, but the "T" is silent.
5 M-E-T-H-E-R-D.

6 MR. HILL: Also, Judge, we've been provided two
7 disks, which are from the arresting highway patrolman
8 trooper. In the two disks, the field sobriety tests
9 and conversations with my client -- as a threshold
10 matter, when I was reviewing the disks, the first disk
11 stops at No. 4508, on the disk. The second disk
12 commences with 4579 -- 4579. The reason that is
13 significant to me is that it's at the conclusion of
14 4508, there is just no conversation of any particular
15 note, nothing going on. My client is in the patrol
16 car, and I can't remember whether they are headed to
17 the jail at that point or hospital, but they are
18 headed somewhere, something is going on, just riding
19 down the road. Then, at 4579, that commences with my
20 client saying, I know I couldn't have done that. I
21 know I didn't do that. I never hurt anybody in my
22 life. I can't tell from that what created that
23 response from my client. There is nothing -- there is
24 nothing on the first disk to generate that comment,
25 and the comment, it's clear to me, and I know they

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1 have it here and the ability for you to see it, that
2 comment is clear to me that there is something that
3 caused that to get said. I would like to know what it
4 was as a discovery issue, to know what that is that is
5 in that part of it.

6 THE COURT: All right. What does the State say?

7 MR. THOMAS: Your Honor, we have that officer
8 here whose roadside video it was. There is two
9 videos, one is from the scene where he's placed under
10 arrest and goes through the field sobriety test. The
11 transport from that scene with the sobriety tests and
12 all of that roadside, and then the transport from that
13 scene to the hospital. The second disk is the
14 transfer from the hospital to the jail. That is much
15 shorter. As far as anything he was told or prompted,
16 the statement by him, I don't know, Your Honor. We
17 have that trooper here in court today.

18 THE COURT: For discovery, ask him. You can pass
19 it onto the defense.

20 (A pause in the proceedings.)

21 MR. THOMAS: The trooper doesn't remember and
22 there is no -- the State isn't seeking to introduce
23 the second disk, just the first disk.

24 MR. HILLIARD: I'm curious about what is in the
25 -- I don't know that those disks break -- and maybe my

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1 copies are different than what the disks are. If we
2 could pull up on the disk to 4579 and just -- you can
3 see what I'm talking about. I think that you guys
4 have the ability to do that.

5 MR. TODD: We can try.

6 (A brief pause in the proceedings.)

7 MR. HILLIARD: It is the very beginning of the
8 second disk that I have. DOT.

9 (Video is played.)

10 MR. HILLIARD: We're at -- the numbers I'm
11 alluding to are above the date, and there is just
12 tracking numbers on the video. We're at 4580, which
13 is essentially 4579, and my client's -- do you have a
14 video, Judge.

15 THE COURT: I see, but the State isn't going to
16 introduce it anyway, so why is it an issue?

17 MR. HILLIARD: I want to know -- well, for -- so
18 that we can be clear where I am with this. This is
19 the second CD that I had. So if we'll look for a
20 second, Judge, at my client saying that I didn't do
21 that, watch that for just a second here.

22 (Published to the jury.)

23 MR. HILLIARD: If we can look at the other video,
24 the very end of the other video you can see what we're
25 talking about. He's in the car.

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1 (A brief pause in the proceedings.)

2 MR. HILLIARD: This is 4508 coming up.

3 (Video is played.)

4 MR. HILLIARD: My question connected to that
5 is -- because of the numbers, and maybe it is a
6 technical question that I don't know the answer, but
7 it stopped at 4508 on the first disk and starts at
8 4579. My thought is that there is a contiguous group
9 of numbers, and so 4508 to 4579 is somehow not here,
10 and that is what I'm looking for.

11 MR. THOMAS: Your Honor, I've spoken with the
12 trooper, and I, myself, don't know of the numbers --
13 what the numbers in the left-hand corner mean, but the
14 number on the right side is the time. There is a big
15 time lapse from the time he was in the hospital
16 waiting on search warrants for the blood and blood was
17 taken, and then they got back in the vehicle and went
18 from the hospital to the jail.

19 THE COURT: I don't see where it is an issue
20 since you are not introducing the second CD. You have
21 all the field sobriety stuff on the first one and the
22 arrest and everything on the first one.

23 MR. THOMAS: That's correct.

24 MR. HILLIARD: All right, sir. Thank you, Your
25 Honor.

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1 Judge, we also would move to exclude the first
2 video in its entirety based on, in part, the trooper
3 was engaged in -- what is in effect -- a custodial
4 interrogation of my client. At the point in time that
5 he arrives at the scene, my client is under
6 investigation for a felony DUI at that point. You can
7 see if we play the video here, you can see how that
8 there is no Miranda warning. There are questions
9 about where he's been and what he's doing that are
10 directly related to the felony DUI aspect of this
11 case.

12 THE COURT: All right.

13 MR. THOMAS: Your Honor, they are all part of the
14 general DUI investigation in this case. It was a call
15 from a driver of a vehicle that called in a suspected
16 drunk driver. That caller actually pulled off on 701
17 in the county, pulled off at the Dollar General, which
18 is about the only store out there at 701. At this
19 point, she passed the defendant's vehicle, and he
20 actually pulled in behind her. So she's on the phone
21 with 911 -- we have her call 911 -- during this entire
22 time. 911 calls the trooper, trooper gets out there,
23 and then at that point it goes forward with the DUI
24 investigation. You can hear through the radio
25 throughout time that they are trying to put it

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1 together to see if this person might be involved in
2 anything else going on in the county, but they are
3 asking where he came from, typical questions that I'm
4 sure the trooper will testify are questions he'll ask
5 anybody, especially in a case where he doesn't pull
6 them over himself. In this case, it is really unique
7 because he's pulled over and stopped already when the
8 trooper comes upon him, but it is still a case where a
9 caller called in a suspected drunk driver, and the
10 trooper does follow-up whether he was driving or not,
11 where he was coming from and stuff of that nature.

12 THE COURT: Which led to the arrest at a later
13 time?

14 MR. THOMAS: Correct. And that led -- after he
15 told the trooper that he had been driving that
16 evening, the officer obviously noticed alcohol, asked
17 if he had anything to drink, he said he had, and that
18 is when the field sobriety tests occurred, and he
19 placed him under arrest and gave him Miranda and all
20 of that.

21 THE COURT: I'll deny that motion.

22 MR. HILLIARD: Thank you, Your Honor. There is
23 an animation, Judge, that we would object to. I don't
24 know if you want to hear that now. Do you have the
25 witness?

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1 MR. THOMAS: Uh-huh.

2 MR. HILLIARD: Do you want to hear the witness
3 about the animation?

4 THE COURT: Sure. Tell me about it first.

5 MR. HILLIARD: All right, sir. Well, it is an
6 animation. So they've got a picture of a guy
7 riding -- or a cartoon of a guy riding a scooter, and
8 the scooter is riding along with headlights on and the
9 big roll truck comes behind him and squishes the
10 scooter. The man rides on down the road. In the
11 absence of any kind of foundation to connect with
12 that, there are things in the animation, one of the
13 things, and I'm a little premature in this perhaps,
14 but I don't know that there is any information to the
15 effect that the scooter had any headlights on it. I
16 don't know that is -- maybe this is stuff that would
17 be the subject of cross-examination to see whether it
18 comes in or not. I don't know how it was prepared
19 other than the MAIT team prepared it, and it is
20 prejudicial in the sense that it purports to be what
21 happened, and there is nothing to show that, in fact,
22 is what happened.

23 MR. THOMAS: Your Honor, this would be something,
24 if the State decides to use it -- we have everyone
25 'from MAIT to testify. What it is is essentially a

PRETRIAL MOTIONS

1 demonstrative of MAIT's findings. Everyone in MAIT
2 has gone through classes for accident reconstruction
3 and has continuing education on those sorts of things.
4 One person will calculate speed based on evidence on
5 scene and based on the type of vehicle and what it
6 hit. There is all kinds of information that the
7 vehicle can tell them that I can't get into, Your
8 Honor, because I don't know about it, but another
9 person will examine the vehicle, both vehicles
10 involved in the accident. They examine the lights of
11 both vehicles, tires. They do a very thorough job.
12 What that video is, and what I would anticipate our
13 MAIT expert testifying to, is that that video is based
14 on their findings that they made throughout the course
15 of this investigation, that shows what their findings
16 showed them.

17 THE COURT: Why don't we wait and see if a proper
18 foundation has been laid, and we'll cross that when we
19 get to it.

20 MR. HILLIARD: Thank you, Your Honor. I ask at
21 this time if there is any other statements that they
22 anticipate will be produced connected to my client?

23 MR. THOMAS: I could anticipate possibly three
24 statements. One being from the witness who called 911
25 about the suspected drunk driver back to a February

PRETRIAL MOTIONS

1 incident that we're here to try. She actually has
2 contact and communication with the defendant, and she
3 points out damage to the front of his vehicle, and he
4 tells her he's not sure how that happened, I'm
5 paraphrasing, but that is what I'm anticipating that
6 witness to say.

7 Next witness would be the trooper who arrives on
8 scene shortly thereafter and eventually places the
9 defendant under arrest. Before he does that, when
10 he's questioning the defendant where he's been that
11 night, the defendant tells him that he was out fishing
12 and that he received damage on the front of the
13 vehicle because his car went into a rut and he needed
14 to be pulled out of the rut, that is the second
15 statement.

16 Third statement is the one we discussed later
17 when the defendant got a DUI in April of 2015, and he
18 told that trooper -- of course we would limit this at
19 trial, and I know an objection will come at the
20 appropriate time -- that his car was in the shop
21 because he hit a deer. Those are the three statements
22 I think, obviously, from discovery, and then are all
23 in discovery that was provided to the defendant.

24 THE COURT: Anything else?

25 MR. HILLIARD: No, sir.

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1 THE COURT: Anything from the state?

2 MR. THOMAS: Your Honor, just on the indictment.

3 We do need to fix the body of that to substitute Horry
4 County for Georgetown County on that.

5 MR. HILLIARD: No objection.

6 THE COURT: Sounds good. How many witnesses do
7 you plan on calling? All 22, or do you have ones
8 that --

9 MR. THOMAS: I'm hoping I can get down to about
10 12 or 13.

11 THE COURT: How long do you think it will take to
12 get your 12 or 13 in?

13 MR. THOMAS: The State would rest sometime
14 Wednesday, probably Wednesday afternoon.

15 THE COURT: All right. I'll see you at 9:45 in
16 the morning.

17 (Whereupon, the proceedings for SEPTEMBER 19,
18 2016 concluded.)

19 (SEPTEMBER 20, 2016 was taken by the reporter
20 Krystal Smith.)
21
22
23
24
25

1
2 CERTIFICATE OF REPORTER3
4 State of South Carolina)5 County of Georgetown)
6

7 I, Natalie Dahl, Official Court Reporter for the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the matter of the captioned case,
12 relative to appeal, in the Court of General Sessions
13 for Georgetown County, South Carolina, on the 19th day
14 of September, 2016.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 February 16, 2017

19  RPR
20 S/ Natalie Dahl, RPR

21 Court Reporter
22
23
24
25

State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Georgetown	)	Case No. 2016-GS-22-00856
	)	Case No. 2015-GS-22-00446

State of South Carolina,
Plaintiff,

-VS-

Transcript of Record
(DAY 2 ONLY)

Gerald Lewis,

Defendant.

September 20, 2016
Georgetown, South Carolina

B E F O R E:

The Honorable William H. Seals, Judge; and a jury

A P P E A R A N C E S:

Austin Thomas, Esquire
Attorney for the State

John Hilliard, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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	<u>STATE'S EXHIBITS</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-1	9-1-1 Call on Disk	18	28
4	S-2	Photograph		26
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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	D-1	Photograph		20
4	D-2	Photograph		20
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7				
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1 SEPTEMBER 20, 2016

2 (WHEREUPON, the proceedings began at 9:56 a.m.)

3 THE COURT: All right. Go ahead and bring them out.

4 (WHEREUPON, the jury entered the courtroom at 9:57 a.m.)

5 THE COURT: All right. Good morning.

6 THE JURY: Good morning.

7 THE COURT: And, Ms. Divenere, am I pronouncing that
8 right? I'm going to put you in that first seat and make you
9 the forelady of the jury. If you would, just switch with this
10 lady right here. Thank you.

11 And, Ms. Clerk, if you'll go ahead and swear the jury.

12 THE CLERK: Please stand and raise your right hand. Do
13 you solemnly swear or affirm that you will respond truthfully
14 to the questions posed by the Court, so help you God? If so,
15 please say I do.

16 THE JURY: I do.

17 THE COURT: All right. Ladies and gentlemen of the jury,
18 you may have a seat. We're getting ready to start this trial,
19 but before we do, I just want to go over a few things with you
20 to give you a little bit of working knowledge that you can
21 have as we progress through this trial.

22 The first thing I want to tell you is that the State of
23 South Carolina has the burden of proof. They have to prove
24 the defendant guilty beyond a reasonable doubt.

25 Furthermore, I want to explain to you what your role is

1 and what my role is and how they differ. You all are the
2 judge of the facts. In that regard, you determine what the
3 facts of this case are.

4 You ask yourselves, well, how do we do that? You do that
5 simply by looking at the evidence in the case. Evidence is
6 made up of the witnesses that come over here, they're sworn in
7 and they testify, and it's made up of any documents admitted
8 into the record as evidence such as photographs, reports,
9 medical bills, what have you. That is the evidence and that
10 is where you and you alone determine what the facts of this
11 case are.

12 I, in turn, am the judge of the law. I am here to give
13 the lawyers and the parties a fair trial. Furthermore, at the
14 end of this trial in great detail I will read the law to you
15 and in that regard you have to accept the law as I give it to
16 you. If you have any preconceived ideas as to what you think
17 the law is or what it ought to be and it doesn't agree with
18 what I tell you the law is, you have to abandon those
19 preconceptions and accept the law as I give it to you.

20 And then only when I tell you to begin your deliberations
21 will you take your findings of fact, the law as I give it to
22 you, put the two together, and make a decision therefrom.
23 There's a lot of common sense in that process.

24 Furthermore, I want to explain to you that at no point in
25 time during this trial process, if we take a break or if you

1 go home for lunch or if you go home tonight and have to come
2 back tomorrow, at no point in time do you need to start
3 discussing this case. That would be beginning your
4 deliberations and that would be improper until you've heard
5 from everything the State has to say, everything the defense
6 has to say, if they want to testify and put up evidence, and
7 the law as I give it to you. And only when you have
8 everything you need will I tell you to begin your
9 deliberations.

10 So up until that point in time, you can talk about the
11 weather, you can introduce yourselves, talk about sports,
12 whatever you want to talk about, but not this case.

13 At any point in time if anybody is uncomfortable and you
14 need any attention such as food or water or break or bathroom
15 break or what have you, if you'll just kind of let me know,
16 I'll make sure that I take a break and give you what you need
17 to be comfortable.

18 Right now, I want you just to relax. I want you to sit
19 back and I'm going to recognize the State for your opening
20 statement.

21 OPENING STATEMENT ON BEHALF OF THE STATE

22 MR. THOMAS: If I could describe this case in one word,
23 that word would be tragedy because that's what this case is.
24 It's a tragedy.

25 Back in February of 2015, Donald Sumter was driving down

1 the road not more than a mile and a half from his residence.
2 He was on his moped driving down the road going to the store
3 to get something and the next thing you know, the next minute,
4 he's lying in the middle of the road, left for dead. And
5 that's sort of the nature of these cases and that's when this
6 case or this story begins. That's where it begins.

7 Now, there's a residence near where this collision
8 occurred and that resident heard this. They looked out there.
9 They didn't necessarily see anything, but about 10 minutes
10 later she hears a horn beeping because someone came upon Mr.
11 Sumter dead in the middle of the road.

12 While all this is going on, 9-1-1 is called. They
13 dispatch Highway Patrol, Georgetown County, EMT, all out
14 there, and as coincidence would have it, Miss Deborah Johnson,
15 who is an EMT that was actually on her way to the scene of the
16 collision, gets called off. They tell her we got someone
17 here. Don't worry about it. She's on 701 at this point right
18 out here.

19 This happened in the Pee Dee area. It happened on Hicks
20 Drive. That's sort of not a very busy road, residents --
21 residents kind of on each side of the road.

22 Well, she gets the call on 701 and she decides to turn
23 around and go back home. And lo and behold, she turns around
24 and is trying to get back on the road and she sees a white
25 pickup truck driving down that road with one headlight, the

1 person going about 25 -- 30 miles an hour.

2 This is 701; so it's 55 most places, 45 in a few places,
3 and traffic is backed up about six motor vehicles at this
4 point. She thinks something of that. She gets behind all
5 those six or seven cars and sees that white truck kind of
6 weaving. Cars are trying to pass him and they are passing
7 him, but he's going into the other lane, going off the road a
8 little bit.

9 Eventually, she's right behind him. She calls 9-1-1.
10 You'll hear that tape. She calls 9-1-1. She knows something
11 is going on. She eventually -- he pulls off the road and she
12 keeps on going. There's a Dollar General up on 701. It's
13 about -- there's not a whole lot when you get to that part of
14 701; so that was about the best place for her to pull over and
15 she did that, on the phone with 9-1-1 at this point. And the
16 defendant, Mr. Lewis, pulls in behind her with his white truck
17 and she has a conversation with the guy while she's on 9-1-1.

18 She's kind of put things together this point. She sees
19 the front of his truck. She knew about what happened down the
20 road and this is about 15 to 18 miles away from where the
21 actual -- the actual collision occurred. So she's putting it
22 together. It kind of takes maybe the 9-1-1 operator and law
23 enforcement a little longer to put together, but they put it
24 together as well.

25 A trooper comes on scene and he asks the typical

1 questions a trooper asks. Have you been drinking tonight?
2 Where are you coming from? And you'll see a roadside video of
3 all of this kind of stuff because the trooper who is asking
4 him recorded all of this.

5 So you'll hear Mr. Lewis's answers to the questions and
6 where he tells him he's been. That he admits to driving. He
7 admits to having some beer. I think he says about four over
8 the course of the afternoon. You can be the judge of that.

9 These cases are tough cases I think for everybody.
10 They're tough because of the result, the consequences. At the
11 end of the day, there is a dead man that does not need to be
12 dead. I mean that's the ultimate price for any person. But
13 you also have on the other end of the spectrum someone that
14 didn't go out and intentionally kill somebody. They made bad
15 decisions.

16 In this case, it was a bad decision to get behind the
17 wheel when he was extremely impaired, and the other bad
18 decision was leaving the scene and not rendering aid once he
19 did hit Mr. Sumter. There's about 10 minutes that go by from
20 when that crash happened to when the first witness comes on
21 scene and sees Mr. Sumter dead in the middle of the road.

22 And as tough as those cases can be when there's passion
23 on each side of that -- because as humans you can feel
24 something for people that make some really stupid decisions
25 that get themselves into a mess, but you sure as heck feel for

1 the family of someone who is killed innocently as well.

2 I'm asking you today to try to set those aside. As the
3 judge says, y'all are the factfinders in this case and y'all
4 are going to hear a lot of evidence over these next couple
5 days. I ask you to just think of this as y'all are the
6 detective and y'all are here to find out what happened. When
7 you do that, this case is actually very simple. Legally
8 speaking, it's a very straightforward case.

9 Thank y'all for y'all's service. Again, all I ask is
10 that you pay close attention to the evidence. Some of it is
11 going to be more interesting maybe than others, but it's all
12 very important. I think that roadside video, the trooper's
13 video, is very important -- very important. Listen closely to
14 what Mr. Lewis says.

15 Thank you for your service and I look forward to being
16 able to talk to you again at the close of this trial once
17 we've seen all the evidence. Thank you.

18 THE COURT: All right. The defense is recognized.

19 MR. HILLIARD: Thank you, Your Honor. Good morning.

20 THE JURY: Good morning.

21 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

22 MR. HILLIARD: Whenever I have the opportunity to stand
23 up and talk to jurors, I like to -- I like to say thank you.
24 Thank you for your service and thank you for being here with
25 us today.

1 I feel a little disingenuous when I say that because I
2 know nobody had a choice. If you hadn't come, then the
3 sheriff would have come and got you and you'd have been here.
4 So we're grateful. We also acknowledge and recognize that you
5 didn't really have any choice about being here today or not
6 being here today. So we're still grateful.

7 We're going to be here for a bit of time as we go through
8 this process that is a criminal jury trial. One of the things
9 that is -- is really important that you think about is this is
10 a -- this is a very concrete process.

11 The way this happens and the way this goes forward,
12 you'll see and you'll hear from the judge. As the judge said,
13 he's here to make sure that everybody gets a fair trial. And
14 the judge said that he will charge you the law at the end of
15 the case and there are a couple things that I -- that I'd like
16 to talk about with you now.

17 Of course, at this point in time, you haven't heard any
18 facts and the judge indicated that the State has the burden of
19 proof. That is they are the ones who have the obligation of
20 going forward in this situation and they have to prove the
21 defendant, Mr. Lewis -- this is my client. And they have --
22 the State has said to you that they can prove him guilty
23 beyond a reasonable doubt of the crimes that they have
24 charged. That is driving under the influence involving death
25 and also leaving the scene of an accident.

1 At this point in time -- oh -- and this is one of the
2 things that the judge will charge you at the end of the case,
3 but at the beginning of the case right now at this minute, who
4 believes that Mr. Lewis is innocent? If you believe that Mr.
5 Lewis is innocent, raise your hand.

6 MR. THOMAS: Your Honor, I object.

7 THE COURT: I agree. Sustained.

8 MR. HILLIARD: Very well. The reason that I say that is
9 that there is a presumption of innocence. The presumption of
10 innocence means exactly what it says. That is where he sits
11 today right now, not having any evidence before you at all, he
12 is presumed innocent. That's what the law says. That's what
13 the Constitution says about this process that we go through.

14 This is not one of the things -- and I will disagree with
15 the prosecutor. You are not detectives. You are not here
16 today to figure out what happened. You are here today to
17 judge. You're not here today to judge Mr. Lewis. You're here
18 today to judge the evidence.

19 You're not here today to figure out what's going on.
20 You're here today to judge the evidence as presented to you by
21 the State. They have said we can prove him guilty. We can
22 overcome the presumption of innocence. He's presumed to be
23 innocent. We can overcome that with proof to all twelve of
24 you beyond a reasonable doubt that he is, in fact, guilty.

25 Ladies and gentlemen, that is a substantial burden on the

1 State. It is a substantial obligation on you, and one of the
2 most important things I would submit to you about where you
3 are today and about what we're doing today is to view it from
4 that perspective. That is, as you go through this process,
5 challenge the State to prove it beyond a reasonable doubt.
6 Challenge the State to overcome the presumption of innocence.

7 Look at the information that's presented to you in a
8 critical light until you get to the conclusion of the case. I
9 will agree with the prosecutor that I look forward to the
10 opportunity to be with you at the conclusion of the case and
11 say some other things and, as the judge said, he's here to
12 make sure that there is a fair trial.

13 He will rule on -- he will rule on objections, as he's
14 already done in this case, and I will submit to you that I
15 won't do anything to try to trick you. I'll be as honest and
16 as straightforward as I can, and sometimes the judge will rule
17 against me and that's -- that's to be expected I suppose.

18 I'll do the best I can. I have a pretty strong
19 obligation for Mr. Lewis also. So once again, we're grateful.
20 Thank you very much.

21 THE COURT: All right. The clerk has informed me that
22 she gave you the wrong oath. So now I'm going to have her
23 give you the correct oath before we receive evidence.

24 THE CLERK: Raise your right hands. Do you solemnly
25 swear or affirm that you will truly try the issues joined in

PENELOPE CHESTNUT VERNER - DIRECT BY MR. THOMAS

1 this case and a true verdict render according to the law and
2 evidence, so help you God? If so, please say I do.

3 THE JURY: I do.

4 THE CLERK: Thank you. Please be seated.

5 THE COURT: All right. If the State will, call your
6 first witness.

7 MR. THOMAS: Your Honor, the State would call Penelope
8 Chestnut.

9 THE CLERK: Do you solemnly swear or affirm that the
10 testimony you are about to give will be the truth, the whole
11 truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please be seated and state your name for the
14 record.

15 THE WITNESS: Penelope Chestnut, but I'm married; so my
16 name is Penelope Verner.

17 MR. THOMAS: Thank you, Mrs. Verner.

18 PENELOPE CHESTNUT VERNER, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. THOMAS:

22 Q: Ms. Verner, do you know why you're asked to be here
23 today?

24 A: Yes, sir.

25 Q: Tell me about what happened back on February 21st, 2015?

PENELOPE CHESTNUT VERNER - DIRECT BY MR. THOMAS

1 A: I was home. I was sitting on my couch watching TV and I
2 heard a loud crash and I jumped because it scared me. I went
3 to look out the window. I really didn't see anything because
4 I looked out my bedroom window. So from that view, I couldn't
5 see the accident that happened. I came back and sit down and
6 I waited. About 10 minutes later, I heard a horn blowing and
7 somebody kind of yelling, saying call 9-1-1, help, help. So I
8 went to the front door and the guy that was out there asked me
9 to call 9-1-1, that somebody had been hit.

10 Q: Where -- where do you live? Where did this occur?

11 A: 703 Hicks Drive.

12 Q: And what county is that in?

13 A: Georgetown County.

14 Q: And what would you call that area?

15 A: Country. Pee Dee area.

16 Q: All right. So you got to the point where you called
17 9-1-1?

18 A: Yes.

19 Q: What happened? What happened with that?

20 A: When I called them, I told them someone had been hit on a
21 motorcycle, and the lady was asking was he alive. I said I
22 didn't know. She said was he breathing. I said I wasn't
23 sure. So I kind of yelled at the guy that was out there and
24 said was he breathing. He said he didn't think so and we just
25 kind of kept talking and eventually I just gave my cell phone

PENELOPE CHESTNUT VERNER - DIRECT BY MR. THOMAS

1 to him.

2 Q: Is that during the 9-1-1 call?

3 A: Yes.

4 Q: I'm going to show you what has been marked for
5 identification as State's Exhibit Number 1. Please take a
6 look at that and tell me if you recognize it.

7 A: Yes.

8 Q: And what is that?

9 A: The 9-1-1 CD.

10 Q: And have you had a chance to review it?

11 A: Yes.

12 Q: Is it a true and accurate representation of your 9-1-1
13 call as you -- as you made on February 21st, 2015?

14 A: Yes.

15 Q: Any alterations or any changes made to it?

16 A: No, sir.

17 Q: Ms. Vernon, what else happened that day? What happened
18 after you called 9-1-1?

19 A: After I called 9-1-1 and told them what was going on and
20 gave the phone to the guy, he had -- I assume it was his son
21 in the vehicle. So he asked if I would bring him in the house
22 and I said, yes, and the little guy didn't want to stay in
23 there by himself; so I stayed in there with him and I didn't
24 go back out.

25 Q: And did you know that man or his presumed to be son?

PENELOPE CHESTNUT VERNER - DIRECT BY MR. THOMAS

1 A: I just knew him from seeing him in the community. I
2 didn't know his name or anything.

3 Q: Did you ever walk over to the body that was in the road?

4 A: I did not.

5 Q: Where was the man when you brought the son into your
6 house to be with him?

7 A: We was --

8 A: The man that initially was honking his horn and startled
9 you enough where you ran out there?

10 A: Oh, he actually brought his son up to the door.

11 Q: Did he come inside as well?

12 A: Yes. Because his little boy didn't know me; so I assume
13 he was scared. So he brought him in.

14 Q: Did he stay inside with you after that?

15 A: He did not.

16 Q: Where did he go?

17 A: He went back out.

18 Q: Okay.

19 MR. THOMAS: Thank you, Ms. Vernon.

20 THE WITNESS: Okay.

21 MR. THOMAS: Please answer any questions.

22 THE WITNESS: Okay.

23 CROSS-EXAMINATION

24 BY MR. HILLIARD:

25 Q: Good morning.

PENELOPE CHESTNUT VERNER - CROSS BY MR. HILLIARD

1 A: Good morning.

2 Q: I'd like to show you two photographs, please, ma'am.

3 A: Okay.

4 Q: And ask you to take a look at them and see if you can

5 identify what those are photographs of?

6 A: This is where I live.

7 Q: Okay. That's -- for the purpose of the record, that's

8 Defendant's Exhibit Number 2 is where you live? That's your

9 home?

10 A: Uh-huh.

11 Q: All right. And then if you'd look at the other one?

12 A: This is the field beside me.

13 Q: The field beside your home?

14 A: Yes.

15 MR. HILLIARD: And that's Defendant's Number 1 for

16 identification. We'd ask that these be introduced into

17 evidence, Your Honor.

18 THE COURT: Any objections?

19 MR. THOMAS: Your Honor, I haven't seen them. I'd ask to

20 take a look at them.

21 THE COURT: All right.

22 MR. THOMOAS: No objection, Your Honor.

23 THE COURT: All right. Defendant's number 1 and 2 into

24 evidence without objection.

25 (WHEREUPON, Defendant's Exhibit Number 1, a photograph,

PENELOPE CHESTNUT VERNER - CROSS BY MR. HILLIARD

1 and Defendant's Exhibit Number 2, a photograph, were
2 admitted into evidence.)

3 MR. HILLIARD: Thank you, Your Honor.

4 BY MR. HILLIARD:

5 Q: Ma'am, do you know Rashad Mews?

6 A: I do not.

7 Q: You don't know Mr. Mews?

8 A: No, sir.

9 Q: Do you know Joby Atkins?

10 A: Yes, sir.

11 Q: And Joby Atkins -- do you know where he lives in relation
12 do you?

13 A: Yes, sir.

14 Q: And where does he live in relation to you, please, ma'am?

15 A: On the old Pee Dee Highway before you get to my house.

16 I'm not quite sure how many miles he lives away.

17 Q: In the same community; is that correct?

18 A: Yes, sir.

19 Q: Very well. And if this isn't fair, let me know. Some
20 people are more able to orient than others and I will confess
21 to being one of the less able. But I'm going to show you --

22 MR. HILLIARD: Let's mark this as 3, please, ma'am.

23 (WHEREUPON, the map of the neighborhood on a posterboard
24 was marked as Defendant's Exhibit Number 3 for
25 identification.)

PENELOPE CHESTNUT VERNER - CROSS BY MR. HILLIARD

1 BY MR. HILLIARD:

2 Q: This is Defendant's 3 for the purpose of identification,
3 and see if you can orient yourself and kind of identify -- if
4 you can't identify it, that's fine. Some people are good with
5 maps and some aren't.

6 A: No, I cannot.

7 Q: You can't? Okay.

8 A: I'm sorry.

9 Q: Good enough. Good enough. Yes, ma'am. Thank you.

10 MR. HILLIARD: I guess I should leave this over here by
11 the court reporter now that it's been marked. All right.
12 Thank you, ma'am. We appreciate you coming.

13 THE COURT: Any redirect?

14 MR. THOMAS: No, sir, Your Honor.

15 THE COURT: All right. You may step down.

16 THE WITNESS: Okay.

17 THE COURT: Thank you. Call your next witness.

18 MR. THOMAS: Your Honor, the State would call Chadwick
19 Miller. Your Honor, may Ms. Verner be released from her
20 subpoena?

21 THE COURT: Any objection?

22 MR. HILLIARD: Without objection.

23 THE COURT: All right.

24 THE CLERK: Do you solemnly swear or affirm that the
25 testimony you are about to give will be the truth, the whole

CHADWICK MILLER - DIRECT BY MR. THOMAS

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

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and state your name for the
4 record.

5 THE WITNESS: My name is Chadwick Miller.

6 CHADWICK MILLER, being first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. THOMAS:

10 Q: Mr. Miller, do you know why you were asked to be here
11 today?

12 A: Yes, I do.

13 Q: Tell me about what you saw on February 21st, 2015?

14 A: Me and my son decided to go to the store. Well, my
15 stepson. We decided to go to the store. So instead of taking
16 -- the usual route we take is, from my house, you go straight
17 and then make another right turn. We were going to go the
18 other way so we could ride a little bit longer because we had
19 his mother's truck.

20 So as we're coming down the road -- I've already been in
21 a motorcycle accident before. I've been in a car accident
22 before. My mother is an EMT; so I've been to accidents
23 before.

24 So as I'm going down the road, I'm seeing little specks
25 of glass in the road, little plastic, and then I see a

CHADWICK MILLER - DIRECT BY MR. THOMAS

1 reflector and then, when you go further up, you see an object
2 in the road on this side and see another object in the road on
3 this side. As you get closer, you see it's a person.

4 So I turned around and put my lights on it. As I was
5 getting out the car, I'm thinking it was a younger guy because
6 he rides a scooter around the neighborhood with no lights. So
7 I'm like, man, I told this guy. I told this guy you need
8 lights on a scooter. You need to wear reflectors, all that
9 stuff. So when I'm getting closer to the person, I recognized
10 that it was my cousin's uncle or her cousin.

11 Q: Who did you recognize him as being? Do you know his
12 name?

13 A: I call -- I call him Dom. I called him Dom. But
14 actually before I got out the car, I beeped the horn. I told
15 my son to sit down because he knew him. He's like, who was
16 that, who was that? Sit down. You don't need to see that.
17 Sit down. He's okay. I'm going to go see if he's okay.

18 So I get out the car. I go over there. I see where it's
19 Dom. I call his name, call his name. Dom, wake up. Wake up,
20 Dom. Don't go nowhere. Help on the way. Help on the way.

21 Ms. -- I forgot her -- Ms. Penny -- she came out. She
22 called the police. I got on the phone. I told them what was
23 going on and it was just a whole bunch of commotion. By then,
24 people was pulling up. I was telling them don't touch the
25 body. Don't get close. Leave him alone. Da da da da da.

CHADWICK MILLER - DIRECT BY MR. THOMAS

1 The ambulance is coming. So that's about -- that's pretty
2 much about it.

3 Q: Was the man you saw in the middle of the road -- was he
4 breathing?

5 A: It had looked like he was breathing, but it could've been
6 his -- you know, the muscles in his body contracting. It had
7 looked like he was breathing, but when we got closer, he
8 wasn't moving. Blood was coming out the side of his face and
9 all that.

10 Q: And where was this?

11 A: In Pee Dee, Hicks Drive I think. I'm not too familiar.

12 Q: Do you know what the speed limit was on the road?

13 A: Say that again?

14 Q: Do you know what the speed limit is out on Hicks Drive?

15 A: I think it's 25, if I'm not mistaken.

16 Q: I'm going to show you what has been marked as State's
17 Exhibit --

18 MR. HILLIARD: We're going to object to that.

19 Q: -- 2 and 3.

20 THE COURT: Hold on one second. Excuse me?

21 MR. HILLIARD: We're going to object to the question and
22 answer and ask that it be struck. He says he doesn't know
23 what it is. He thought it was 25.

24 THE COURT: He just took a guess and I think everybody
25 knows it's a guess.

CHADWICK MILLER - DIRECT BY MR. THOMAS

1 MR. HILLIARD: It's a guess?

2 THE COURT: Yes.

3 MR. HILLIARD: All right. Thank you, Judge.

4 THE COURT: You can cross-examine him.

5 BY MR. THOMAS:

6 Q: I'm going to show you what's been marked as State's
7 Exhibit 2 and State's Exhibit 3. Will you please take a look
8 at both of those and tell me if you recognize them?

9 A: Yes, I do.

10 Q: And what are they?

11 A: It's -- that was the person that was hit laying in the
12 road.

13 Q: And do they accurately depict what he looked like as you
14 came up on him?

15 A: That's how he was when I came up on him. The sheet
16 wasn't there until the police put it over him.

17 Q: Okay.

18 MR. THOMAS: Your Honor, first, I'd move to enter State's
19 2 and State's 3 into evidence.

20 THE COURT: Any objections?

21 MR. HILLIARD: No, sir. Judge, we've had the opportunity
22 to review these and we don't have any objection. We don't
23 have any objection to these.

24 THE COURT: All right. State's 2 and 3 into evidence
25 without objection.

CHADWICK MILLER - DIRECT BY MR. THOMAS

1 (WHEREUPON, State's Exhibit Number 2, a photograph, and
2 State's Exhibit Number 3, a photograph, were admitted
3 into evidence.)

4 MR. THOMAS: Your Honor, permission to publish?

5 THE COURT: You may.

6 MR. THOMAS: If we could first put up State's 2?

7 BY MR. THOMAS:

8 Q: Mr. Miller, could you please describe what -- what we're
9 looking at on State's Exhibit 2 on the monitor next to you?

10 A: This is the man who got hit in the road. This is after
11 the police came because the sheet wasn't there until the
12 police came.

13 Q: Who placed that sheet on his foot?

14 A: It was the Georgetown County Sheriff's Office.

15 Q: Okay. Did you touch the body or move the body in any
16 way?

17 A: I did not.

18 Q: Or did anyone else touch or move the body before the
19 police or anybody got there?

20 A: No. I made sure they didn't.

21 Q: Was -- was there traffic going by?

22 A: Not at the time because I had my -- the truck blocked off
23 the road.

24 MR. THOMAS: Can we go to State's Exhibit 3?

25 Q: And what are we looking at there?

CHADWICK MILLER - DIRECT BY MR. THOMAS

1 A: The same scene.

2 Q: Now, is that before or after the police got there?

3 A: That's before.

4 Q: And --

5 A: Well, that was before they put the sheet on him.

6 Q: Okay. Thank you. Mr. Miller, I'm going to show you what

7 has been marked for identification as State's Exhibit Number

8 1. Do you recognize what that is?

9 A: Yes, I do.

10 Q: And what do you recognize that as being?

11 A: That's my police call and my initials on it.

12 Q: Did you have a chance to review this?

13 A: Yes, I have.

14 Q: And is it a true and accurate representation of your call
15 to 9-1-1 that night?

16 A: Yes, it is.

17 MR. THOMAS: Your Honor, the State moves to enter State's
18 Exhibit 1 and also publish State's 1.

19 THE COURT: Any objections?

20 MR. HILLIARD: That's the 9-1-1 call for the -- no, I
21 don't have any objection to that, Your Honor.

22 THE COURT: All right. State's Number 1 into evidence
23 without objection.

24 (WHEREUPON, State's Exhibit Number 1, disk containing
25 9-1-1 call, was admitted into evidence and was then

CHADWICK MILLER - DIRECT BY MR. THOMAS

1 played in open court. Not transcribed herein. When the
2 tape ended, the proceedings resumed as follows.)

3 BY MR. THOMAS:

4 Q: Mr. Miller, the man you saw in the road that you knew as
5 Dom -- do you know where he lived?

6 A: Right up the street from where I used to stay at.

7 Q: About how far away was it from where you saw him?

8 A: Not even 30 feet from where I used to stay at.

9 Q: From where he stayed or you?

10 A: From -- from where I stay at. From where he used to stay
11 at?

12 Q: Uh-huh.

13 A: Not even 30 feet.

14 MR. THOMAS: No further questions.

15 THE COURT: All right. Cross?

16 MR. HILLIARD: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. HILLIARD:

19 Q: I didn't -- I didn't really understand the last thing
20 that you were saying. You said 30 feet from where? What --

21 A: Yes, me. He asked me where did I stay at from the
22 victim. It's no more than 30 feet from his house to my house.
23 Well, from where I used to stay at.

24 Q: Yes, sir. And that's -- I really couldn't understand
25 what you're saying. What did you call him?

CHADWICK MILLER - CROSS BY MR. HILLIARD

1 A: Dom. D-o-m. Dom.

2 Q: Dom?

3 A: Yeah, Dom.

4 Q: And certainly, he's your -- that was a sad time for you.

5 That's your friend?

6 A: It was a friend of the family and I knew him. Yeah.

7 Q: Yes, sir.

8 Q: It's not human. Like, why would you hit somebody, leave,

9 and let them die in the road? That's not right. That's not

10 what you're supposed to do. It don't matter if you knew them

11 or not.

12 Q: Yes, sir. No question that's a bad thing. Is that kind

13 of what you're saying?

14 A: Yeah.

15 Q: All right, sir. And I'm going to ask you -- this is

16 Defendant's Number 3 for identification. And I'll say the

17 same thing. Some people are better at maps than others. I

18 don't know how you are at it, but can you identify this at

19 all?

20 A: Can you straighten it? Yes, sir. You got the landmark

21 right here. This is 701.

22 Q: 701?

23 A: Yeah.

24 Q: All right, sir. And do you see the spot where the --

25 where this accident happened? Do you --

CHADWICK MILLER - CROSS BY MR. HILLIARD

1 A: It's not listed. It don't look like it's listed.

2 Q: All right, sir. Well --

3 A: I'm not too sure.

4 Q: Not too sure? All right, sir. Thank you. Do you see

5 where you live on this?

6 A: Where I live now or where I was at at the time? I live

7 right here in Plantersville.

8 Q: You live in Plantersville?

9 A: Yes.

10 Q: All right, sir. And do you -- do you see -- you were

11 going to a store; is that right?

12 A: Yes. It was a store right up the street from the road --

13 the same road that he got hit on, there's a store right in

14 front of it. That's the store we were going to. It's not --

15 I don't see no markings for the store. I don't see any street

16 signs or nothing. I can't really tell you.

17 Q: All right, sir. And then the direction of travel -- as I

18 understand what you're saying -- and please correct me if I'm

19 wrong, but you were -- you and your son were going towards the

20 store that's kind of at the head of the road?

21 A: Yes, it is. It's directly at the head of the road.

22 Q: And that's Hicks Road?

23 A: Yes.

24 Q: So you were going to the store at the head of Hicks Road?

25 A: Uh-huh.

CHADWICK MILLER - CROSS BY MR. HILLIARD

1 Q: And you were going in the same direction as what your
2 friend was going when he got hit? Is that the best you could
3 tell?

4 A: That's how it looked. It looked like he got hit on the
5 opposite side of the road because the scooter was on one side
6 and his body was on the other side. And from my experience,
7 if you get hit from the back on a bike, you and the bike are
8 going to be on the same side of the road. You understand?

9 Q: Yes, sir.

10 A: Yeah. So yes.

11 Q: So you think he was going the other way?

12 A: I think he was coming back the other way. I'm not too
13 sure. I'm not an officer. I can't -- you know. I'm not too
14 sure.

15 Q: And from that spot where the accident occurred to the
16 place where you lived at the point in time when you lived 30
17 feet from your friend, how far was that?

18 A: It was all the way on the other side because I was -- I
19 lived on Cohen drive and that's Hicks Drive.

20 Q: Yes, sir.

21 A: Yeah.

22 Q: Miles?

23 A: No, not -- I can't -- I don't know.

24 Q: All right, sir. Fair enough. Fair enough. Thank you,
25 sir.

DEBORAH JOHNSON - DIRECT BY MR. THOMAS

1 MR. HILLIARD: All right. That's all the questions I
2 have and I have no objection to him being excused, Your Honor.

3 THE COURT: Any redirect?

4 MR. THOMAS: No, Your Honor.

5 THE COURT: All right.

6 MR. THOMAS: And we ask that he be excused.

7 THE COURT: All right. You have a good day, if you'd
8 like to go.

9 THE WITNESS: Thank you.

10 THE COURT: Go ahead and call your next witness.

11 MR. THOMAS: The State calls Deborah Johnson.

12 THE CLERK: Do you solemnly swear or affirm that the
13 testimony you are about to give will be the truth, the whole
14 truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. Please be seated and state your
17 name for the record.

18 THE WITNESS: My name is Deborah Johnson.

19 DEBORAH JOHNSON, being first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. THOMAS:

23 Q: Good morning, Ms. Johnson.

24 A: Good morning.

25 Q: What you do for a living?

DEBORAH JOHNSON - DIRECT BY MR. THOMAS

1 A: I'm battalion chief with Georgetown County Fire and EMS.
2 I'm a shift supervisor on B shift. My duties are -- I
3 supervise for the shift for the day. I respond to all major
4 calls, fires, accidents or anything, any kind of hazard,
5 hazardous incidents and things like that.

6 Q: Were you working or were you on call back on February
7 21st, 2015?

8 A: Yes, sir.

9 Q: Anything of note happened on that evening?

10 A: Yes, sir. Just prior to the accident on Hicks, we had a
11 cardiac arrest. So I was in the Santee community on that call
12 when the tone for 703 Hicks Drive came out. So I had to
13 travel from Santee, which is the south end of the county, to
14 practically the north end of the county.

15 While responding, some of our crews, the medic unit, fire
16 truck was on scene prior to me. When they arrived on scene,
17 they asked for C-1, which is the coroner, saying that the
18 victim was -- was deceased. So at that time, they canceled
19 all units that was responding; so that included me. I got
20 cancelled at that point.

21 When I got canceled, I was on North Fraser Street,
22 Highway 701. The closest intersection was South Exodus. So
23 there's a small convenience store/grocery store there, elder
24 store, so I pulled in the parking lot to turn -- turn around
25 there.

DEBORAH JOHNSON - DIRECT BY MR. THOMAS

1 As I was waiting to turn around, there was several cars
2 coming my way; so I had to wait. They were traveling south
3 heading towards Georgetown. I pulled in behind them.

4 There was five or six cars. The first car was driving
5 extremely slow. It was a truck, a white pickup truck, a Ford
6 F-150, four-door truck, and there was five cars behind it. I
7 think I made the sixth car when I pulled in. He was probably
8 driving 25 -- 30 miles an hour and cars were getting
9 impatient. They were trying to pass him, but he was swerving
10 on the road back and forth and he even ran two cars that were
11 passing in the opposite direction -- he ran them off the road
12 as they passed him. So at that point, I called dispatch and I
13 said I think we have a possible DUI. Could you go ahead and
14 send law enforcement my way?

15 At that time, I was probably 2 to 3 miles of following
16 him. The cars that were between me and him gradually passed
17 him and gradually I became directly behind him. The whole
18 time we never got faster than 30 miles an hour and constantly,
19 he was swerving -- swerving -- excuse me -- back and forth on
20 the road, and he gradually turned his blinker on and he pulled
21 off to the side of the road.

22 So I went on around him and that was approximately where
23 the recycle center is. I think it's about the 8000 block of
24 North Fraser and there was a Dollar General close to the
25 intersection of Choppee and North Fraser. So I pulled in that

DEBORAH JOHNSON - DIRECT BY MR. THOMAS

1 parking lot because I was trying to give the dispatcher a
2 better direction of which way he was going to travel.

3 So when I pulled up in the parking lot, I had to sit
4 there a few minutes, and he pulled in the parking lot behind
5 me. And he pulled up right beside me and he said, "Why are
6 you following me?"

7 I rolled my window down about halfway and I said, "How
8 are you doing, sir? Can I help you?"

9 He says, "Why are you following me?"

10 I said, "Sir, I was sitting in the parking lot and you
11 just pulled up behind me. I'm not following you."

12 He says, "Why are you following me? You were following
13 me down the road."

14 I says, "No, sir. You came in the parking lot behind
15 me."

16 And I knew that I had Highway Patrol and I knew I had
17 Sheriff Department en route to me and, at the time, I had laid
18 my phone on the dash so the whole time central dispatch was
19 recording and could hear my conversation. And they had told
20 me that they were in the Ringel Heights area, that they would
21 be to me in just a few minutes. So I was trying to make
22 conversation to keep him in the parking lot so he didn't get
23 back on the roadway driving like he was.

24 So I asked him -- I says, "What happened to your truck?"
25 I says, "Your bumper is bent. Your headlight is busted." I

DEBORAH JOHNSON - DIRECT BY MR. THOMAS

1 said, "The front of your truck has got mud all over it. What
2 happened?"

3 And the whole time he was in the truck and at that point
4 he starts getting out the truck. He had to hold on to the
5 door and hold onto the side of the truck to walk. He could
6 not even walk straight. He was slurring his speech. And he
7 gradually made it to the front of the truck and he says,
8 "Crap. How did that happen?"

9 He didn't have a clue that the truck was damaged. I
10 says, "Where you been?" I says, "You got mud all over the
11 front of your truck."

12 He said, "I come from the Pee Dee area."

13 I said, "Yeah."

14 And at that point, the fear or the thoughts in my mind
15 was he is the person that hit -- hit the moped, the accident
16 that I got canceled to.

17 So at that point, pretty much Highway Patrol and
18 Sheriff's Department came in and they came up to him. He had
19 gradually made his way back to the truck before HP got there;
20 so he was -- he was sitting in the truck when they got there,
21 and pretty much they took over and started talking to him and
22 at that point HP said I could leave.

23 Q: Did you see anybody else get out of that truck or anybody
24 else in that truck?

25 A: No, sir. There was no one else in the vehicle.

DEBORAH JOHNSON - DIRECT BY MR. THOMAS

1 Q: I'm going to show you what has been marked for
2 identification as State's Exhibit Number 6. Would you please
3 take a look at that and tell me if you recognize it?

4 A: Yes, sir.

5 Q: And what do you recognize that as being?

6 A: That is the recording tape of when I was talking with
7 dispatch on that day.

8 Q: Have you had a chance to listen to it?

9 A: Yes, sir.

10 Q: Is it a true and accurate representation or a copy of
11 your recording?

12 A: Yes, sir.

13 MR. THOMAS: Your Honor, the State would move to enter
14 State's 6 into evidence and to publish.

15 MR. HILLIARD: No objection.

16 THE COURT: State's Number 6 into evidence without
17 objection. You may publish.

18 (WHEREUPON, State's Exhibit Number 6, 9-1-1 call on tape,
19 was admitted into evidence and then played in open court.
20 Not transcribed herein. When the tape ended, the
21 proceedings continued as follows.)

22 BY MR. THOMAS:

23 Q: Ms. Johnson, is the man that you saw get out of that
24 white F-150 Ford pickup truck in court today?

25 A: Yes, sir.

DEBORAH JOHNSON - DIRECT BY MR. THOMAS

1 Q: And where is he?

2 A: He's sitting over in the white shirt.

3 Q: Okay. Do you know where the area was that you were
4 originally being called out to go tend to was?

5 A: Yes, sir. It's in the Carvers Bay/Pee Dee area.

6 Q: About -- about how far away is that from where you
7 initially called 9-1-1 and see the white Ford driving down
8 701?

9 A: I would say that's probably 15 to 18 miles, somewhere in
10 that area.

11 Q: Also, you mentioned that there was mud all over the white
12 truck. Can you please describe that a little bit to us and
13 describe that for us. Where was it?

14 Q: It was thrown up all over the hood, some on the
15 windshield, on both sides of the truck. The bumper was bent
16 and damaged and it also looked like the mud was smeared as if
17 somebody had placed their hands on the hood and maybe drug
18 them down it or something?

19 Q: What do you mean by that as opposed to the mud being
20 what?

21 A: Just caked up or, like -- like when you're mud dogging or
22 something, it throws up. It's big chunks of mud. This looked
23 like something had drug across the hood.

24 MR. THOMAS: Thank you, Ms. Johnson.

25 THE COURT: All right. Cross-examination?

DEBORAH JOHNSON - CROSS BY MR. HILLIARD

1 MR. HILLIARD: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. HILLIARD:

4 Q: When -- when you were saying to the prosecutor that it
5 was 15 to 18 miles --

6 A: Yes, sir.

7 Q: That distance that you're describing is from where to
8 where?

9 A: From the scene of the accident, 701 Hicks, to where I
10 actually fell in behind him, which was North Fraser and South
11 Exodus at that intersection.

12 Q: And when you fell in behind him, he was driving?

13 A: Between 25 and 30.

14 Q: Between 25 and 30 miles an hour?

15 A: Yes, sir.

16 Q: Did he maintain that speed the whole time?

17 A: Pretty much. Yes, sir.

18 Q: And he was running over the sides of the road; is that
19 right?

20 A: Yes, sir. He was crossing over into the incoming lane.
21 Probably between the time I fell in behind him to the time he
22 pulled over on the side of the road, he probably did it eight
23 or ten times.

24 Q: And how far did you follow him?

25 A: Let's see. The address at the store is 11628 N. Fraser

DEBORAH JOHNSON - CROSS BY MR. HILLIARD

1 and the recycle center is 8741, so that would be approximately
2 three miles, a little less than three miles.

3 Q: So you followed him for about three miles and he drove as
4 you described?

5 A: Yes, sir.

6 Q: When you were speaking with him, it was clear to you that
7 he was very much intoxicated; isn't that true?

8 A: He was slurring his voice and he was not -- he was
9 talking very slow. He was not talking a normal pace that most
10 people do.

11 Q: Right.

12 A: And he acted like he had a hard time focusing just to
13 talk at all.

14 Q: And I can't remember if you said this, but at some point
15 in time it seems I remember that you indicated that when he
16 got out of the truck, he had to hold on to the truck to get
17 out; is that right?

18 A: Yes, sir. He held on to the door as he got out and, as
19 he walked down the side to the front of the truck, he held on
20 to the truck at all times.

21 Q: And then when he got to the front of the truck and you
22 asked him about the damage, he said he didn't have a clue?

23 A: Yes, sir. He acted real surprised that the truck was
24 damaged. He even said how did that happen.

25 Q: Yes, ma'am.

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 MR. HILLIARD: That's all I have. Thank you, ma'am.

2 THE COURT: Any redirect?

3 MR. THOMAS: No, sir. Your Honor, may this witness be
4 excused from her subpoena?

5 THE COURT: Any objection?

6 MR. HILLIARD: No objection.

7 THE COURT: You have a good day.

8 THE WITNESS: Thank you.

9 THE COURT: Does the jury need a quick bathroom break or
10 do you want to take up one more witness? It doesn't matter to
11 me.

12 THE FOREPERSON: We're good.

13 THE COURT: You're good? All right. Call your next
14 witness.

15 MR. THOMAS: Your Honor, the State would call Timothy
16 Jacobs.

17 THE CLERK: Do you solemnly swear or affirm that the
18 testimony you are about to give will be the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 THE WITNESS: I do.

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

23 THE WITNESS: Timothy Jacobs.

24 TIMOTHY JACOBS, being first duly
25 sworn, testified as follows:

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

DIRECT EXAMINATION

1
2 BY MR. THOMAS:

3 Q: Please tell us where you work?

4 A: I'm with the South Carolina Highway Patrol. At the time
5 of the incident, I worked here in Georgetown County.

6 Q: And what were your duties with Highway Patrol?

7 A: I worked traffic collision investigation and worked
8 traffic along the highways.

9 Q: And what kind of things does that entail?

10 A: Just normal traffic violations. Well, all traffic
11 violations, but I was mainly focused on DUI, speeding, and one
12 of our main job duties is collision investigation.

13 Q: How were you involved with this case we're here for
14 today?

15 A: I was on duty the night this incident occurred and I was
16 the closest trooper to the scene, and I answered up for the
17 collision when it come out over our radio.

18 Q: And do you remember about when that was?

19 A: Yes. It was later in the evening. I think it was the
20 21st and I was in the Pawleys Island area of Georgetown County.

21 Q: So when you got the call, you were in the Pawleys Island
22 area?

23 A: Correct.

24 Q: So what did you do after you got the call?

25 A: As I got the call, I started heading that way. I believe

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 I heard it -- actually, I scan the Georgetown County Sheriff's
2 Department radio because normally they get calls before we do.
3 So I go ahead and scan their radios so I can get that
4 information quicker and be on the way. So once I heard the
5 call over the radio and then it confirmed over our Highway
6 Patrol radio, I started heading that way from Pawleys Island,
7 and I traveled 17 into Georgetown and then traveled 701
8 northbound.

9 Q: And where did you go on 701?

10 A: 701 -- once I started hearing a call of a possible
11 impaired driver that might've been involved, I was kind of in
12 the Plantersville area. I think it was around Exodus or
13 Bromell Drive and, at that point, I turned around. I believe
14 it was approximately about 5 or 6 miles from the Dollar
15 General on -- at Choppee Road and 701.

16 Q: What did you do once you arrived at the Dollar General?

17 A: Once I arrived at the Dollar General, I observed the
18 white Ford pickup truck and I approached the pickup truck and
19 noticed that there was mud all over the vehicle. When I
20 walked around to the front of the vehicle and could see that
21 it was a -- it looked like fresh damage to the front right of
22 the truck, and I spoke with the driver and was just
23 conversating with him, asking him, you know, where he was
24 coming from, what he was doing, and how the damage got on the
25 truck because it did look fresh.

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 Q: Now, who -- who was the driver? Is the driver here in
2 this courtroom today?

3 A: Yes.

4 Q: And where is that?

5 A: He's sitting right here in the white shirt.

6 Q: Anybody else in the vehicle?

7 A: No. Nobody was in the vehicle and I identified the
8 driver by asking for his driver's license and he told me his
9 name.

10 Q: Now, do you document your encounters on the roadside with
11 people as you come across them?

12 A: I do. Everything is video recorded unless there's a
13 malfunction. Everything is video recorded from the in-car
14 camera.

15 Q: And did you video record this incident?

16 A: I did.

17 Q: I'm going to show you what's been marked as State's
18 Exhibit 131?

19 A: Yes. That's my --

20 Q: Do you recognize that?

21 A: Yes.

22 Q: What do you recognize it as being?

23 A: It's the video from inside my vehicle that I copied.
24 Well, the vehicle camera copied it and I produced that.

25 Q: Have you had a chance to review State's 131?

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 A: I did.

2 Q: Is it a true and accurate copy of the videotape you
3 provided documenting this situation?

4 A: It is.

5 MR. THOMAS: Your Honor, the State would move to enter
6 131 into evidence and to publish to the jury.

7 THE COURT: Any objections?

8 MR. HILLIARD: Yes, sir. Judge, as to this one, we have
9 expressed our objection. I recognize Your Honor's rule.

10 THE COURT: All right.

11 MR. HILLIARD: But we do object to it.

12 THE COURT: All right. Overruled.

13 MR. HILLIARD: Thank you, Your Honor.

14 THE COURT: State's 131 into evidence and you may
15 publish.

16 (WHEREUPON, State's Exhibit Number 131, the in-car video
17 on DVD, was admitted into evidence and then played in
18 open court. Not transcribed herein.)

19 (WHEREUPON, the video was stopped.)

20 MR. HILLIARD: May we approach, Your Honor?

21 THE COURT: Yes.

22 (WHEREUPON, a bench conference was held in the presence
23 of the jury but out of the hearing of the jury off the
24 record, after which the proceedings resumed as follows.)

25 MR. HILLIARD: And, Judge, just for the purpose of the

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 record, we --

2 ~~THE COURT:~~ THE COURT: Is that on the record?

3 MR. HILLIARD: -- propose an objection.

4 THE COURT: Ms. Court Reporter, did you get that on the
5 record? What we talked about?

6 (WHEREUPON, the Court and court reporter conferred off
7 the record.)

8 THE COURT: All right.

9 MR. HILLIARD: Thank you, Your Honor.

10 THE COURT: She said maybe not. You want to send the
11 jury --

12 MR. HILLIARD: I'm sorry.

13 THE COURT: You want to send the jury out and go ahead
14 and put it on the record?

15 MR. HILLIARD: Well, I just want to say that we objected
16 to the balance of the -- of the recording regarding its
17 admissibility. And I understand Your Honor has ruled it
18 admissible.

19 THE COURT: And that was based on relevance?

20 MR. HILLIARD: Yes, sir. Based on relevance and
21 probative versus prejudicial.

22 THE COURT: All right. What says the State?

23 MR. THOMAS: Your Honor, I propose that we just continue
24 on with the exhibit and then we can put it more fully on the
25 record when we break.

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 THE COURT: I'll tell you what. Let's go ahead and send
2 the jury out just for a second and then we'll come back and
3 resume.

4 (WHEREUPON, the jury exited the courtroom at 11:32 a.m.)

5 THE COURT: All right. If the defense will go ahead and
6 put your motion on the record -- your objection.

7 MR. HILLIARD: Thank you, Your Honor. Thank you very
8 much.

9 We object to the balance of the video, Judge. It is --
10 as I've had the opportunity to review it, and the balance of
11 the video is in-car video between the location where he's
12 arrested and the hospital. And in that regard, one of the
13 things that happens there is my client urinates on himself and
14 there's a great deal of conversation back and forth about
15 that. We would submit to the Court that it is not relevant to
16 what we're doing here today and is more prejudicial than it is
17 probative.

18 THE COURT: All right. Let me hear from the State.

19 MR. THOMAS: Your Honor, the State would argue that it's
20 very relevant for the purposes -- one of the things that the
21 State has to prove is the level of impairment due to alcohol
22 or drugs or a mixture thereof, the extent that his ability to
23 drive a motor vehicle is materially and appreciably impaired.

24 This latter part of this video has the camera focused on
25 the defendant during this entire time. It has him muttering

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 some things to himself and then, on the way to the hospital to
2 get blood drawn, he does urinate on himself. All these
3 things, Your Honor, go to his conduct and what the jury can
4 see of his conduct as evidence to what his impairment level
5 was.

6 THE COURT: All right. I think it is relevant and I'm
7 going to overrule the objection and find that its probative
8 value substantially outweighs his prejudicial effect. Does
9 anybody need a restroom break before we continue or are you
10 ready to roll?

11 MR. THOMAS: Let's do it.

12 THE COURT: You okay?

13 MR. HILLIARD: Yes, sir. I'm good, Judge. Thank you.

14 THE COURT: Are you okay?

15 MR. THOMAS: Yes, sir, Your Honor.

16 THE COURT: All right. Go ahead and bring them back in.

17 (WHEREUPON, the jury entered the courtroom at 11:36 a.m.)

18 THE COURT: All right. You may continue.

19 (WHEREUPON, State's Exhibit Number 131, in-car video,
20 resumed playing.)

21 BY MR. THOMAS:

22 Q: Trooper Jacobs, where are y'all right now at this point?

23 A: Right now, we're at Georgetown Memorial Hospital.

24 Q: Does this video show anything else?

25 A: No, it does not. I believe it cuts off in the next

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 couple minutes.

2 (WHEREUPON, the video ended and the proceedings resumed

3 as follows.)

4 BY MR. THOMAS:

5 Q: Trooper Jacobs, in that video I just published to the

6 jury, there's all sorts of writing up at the top of that

7 video?

8 A: Yes.

9 Q: And what is on that right side up top?

10 A: On the right side up top I believe -- I believe it's the

11 date and my call number.

12 Q: Do you put -- is there documentation of the time anywhere

13 on that video?

14 A: Yes. The time is on there also.

15 Q: And how is that documented?

16 A: It's in military time.

17 Q: So can you explain that to us real quick?

18 A: Yes. I believe on -- when the video first started

19 playing, I think it was around 2000 hours, which is 10:00 --

20 correction, 8:00.

21 Q: Did you have a chance at all to look inside of the white

22 F-150 --

23 A: Yes.

24 Q: -- at the Dollar General?

25 A: Yes.

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 Q: What, if anything, did you notice inside the vehicle?

2 A: Inside the vehicle, there was an open container.

3 MR. HILLIARD: Objection Your Honor.

4 THE COURT: What grounds?

5 MR. HILLIARD: May we approach?

6 THE COURT: Sure.

7 (WHEREUPON, a bench conference was held in the presence
8 of the jury but out of the hearing of the jury as follows.)

9 MR. HILLIARD: This was a search and he's not said
10 anything about a search warrant. Anything else in the vehicle
11 there, there's no foundation for any search. So we object to
12 any search.

13 THE COURT: Why don't you lay the foundation for it and
14 we'll go from there?

15 MR. THOMAS: Okay.

16 (WHEREUPON, the bench conference ended and the
17 proceedings resumed as follows.)

18 BY MR. THOMAS:

19 Q: Trooper Jacobs, when you initially approached Mr. Lewis
20 when he was -- where was he, first off, when you initially
21 approached him at Dollar General?

22 A: He was sitting inside the vehicle and the truck windows
23 were down.

24 Q: Inside of his vehicle? Anybody else in the vehicle?

25 A: Nobody else was in the vehicle.

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 Q: What, if anything, did you notice about Mr. Lewis as you
2 approached him?

3 A: Once I approached him, like I said, the windows were
4 down. He was sitting in the driver's seat. I could
5 immediately smell an odor of alcohol coming out of the
6 vehicle. And as I was speaking with him and asking him, you
7 know, where he's coming from, the damage to his vehicle and
8 stuff like that, I could immediately tell that his speech was
9 very slurred.

10 Q: Now, after you placed Mr. Lewis under arrest and put him
11 in your patrol car, what did you do next?

12 A: After that, I put him in my patrol car and then we did a
13 -- we had to tow the vehicle and we had to do an inventory for
14 the tow company just to make sure.

15 Q: And explain that to us. What's an inventory?

16 A: Just to make sure that any valuables that are in the
17 vehicle we list it on a tow sheet. That way, you know, it
18 protects us and the tow company to make sure that stuff is
19 still in the vehicle, you know, cell phone, iPod, money, and
20 stuff like that.

21 Q: Now, is that something you do any time that you tow a
22 vehicle --

23 A: We do it --

24 Q: -- or have a vehicle towed?

25 A: -- every time. If we're having it towed, we do it every

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 time.

2 Q: Did you participate in the inventory search of the F-150?

3 A: Yes.

4 Q: What, if anything, did you see inside that vehicle?

5 A: Inside the vehicle, there was an open container in plain
6 view.

7 Q: Open container of what?

8 A: Of beer. And it was just, like, other items, like
9 clothing and other various items. There was a prescription
10 bottle with hydrocodone.

11 Q: Who was that prescription for?

12 A: Mr. Gerald Lewis.

13 Q: Okay. That video ends, as you've testified, at
14 Georgetown Memorial Hospital or what is it called now? The
15 Tidelands?

16 A: I think it's Tidelands now.

17 Q: What -- what happened after that? Tell us what you did
18 next?

19 A: At that point, we went into the hospital and I had to --
20 well, we proceeded into a room and we awaited for a warrant to
21 be retrieved and brought to us so we could get a legal blood
22 draw.

23 Q: And did you get that warrant?

24 A: We did.

25 Q: Do you remember who brought it to you?

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 A: I believe it was Sgt. Stephen Gardner.

2 Q: So after you got that warrant, what did you do?

3 A: After we got that warrant, a licensed medical personnel
4 -- well, we filled out the paperwork for it.

5 Q: What -- what -- well, let me show you what I'll mark as
6 State's Exhibit 132 and 133.

7 MR. HILLIARD: We've been provided these in discovery,
8 Your Honor, and we have no objection to them.

9 THE COURT: Thank you.

10 BY MR. THOMAS:

11 Q: Please take a look first at State's Exhibit 132. Please
12 tell me if you recognize that?

13 A: Yes. This is --

14 Q: What is that?

15 A: This is the defendant's implied consent rights, which I
16 filled out myself and read him in its entirety for a blood
17 draw, and he's also signed it, and that was all done in front
18 of me.

19 MR. THOMAS: Your Honor, the State would move to have 132
20 entered into evidence.

21 THE COURT: Any objections?

22 MR. HILLIARD: No objection.

23 THE COURT: All right. 132 is into evidence without
24 objection.

25 (WHEREUPON, State's Exhibit Number 132, implied consent

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 rights form, was admitted into evidence.)

2 BY MR. THOMAS:

3 Q: What kind of information does State's Evidence 132
4 contain?

5 A: It's -- like I said, it's implied consent rights. It
6 just advises him that he's under arrest for a felony driving
7 under the influence and it just tells him kind of, like, the
8 procedures that -- that follow along with the blood draw.

9 Q: Did you write anything on that?

10 A: No. All I -- well, what I wrote was his information,
11 which includes his driver's license, name, date of birth, and
12 what state his license is in, and the time and date.

13 Q: And what was the time and date of that?

14 A: The time that we filled this out and signed it was at
15 2250, which is 10:50 in the evening, and that was on February
16 21st, 2015.

17 Q: I'm going to show you now what's been marked for
18 identification as State's 133. Will you please take a look at
19 that and tell us if you recognize it?

20 A: Yes. This is the urine/blood collection report. It has
21 all of his information, along with the date and time and the
22 name of the licensed medical personnel that withdrew the blood
23 from him.

24 Q: And is that the report from that night?

25 A: Yes. This is the report from that night and it's signed

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 by me and dated, and it was done at the location.

2 MR. THOMAS: Your Honor, the State would move to have 133
3 entered into evidence?

4 THE COURT: Any objections?

5 MR. HILLIARD: No objection.

6 THE COURT: 133 is into evidence without objection.

7 (WHEREUPON, State's Exhibit Number 133, urine/blood
8 collection report, was admitted into evidence.)

9 BY MR. THOMAS:

10 Q: Now, what kind of information did you put on State's
11 Evidence 133?

12 A: On this, it has the time of arrest and the time of test,
13 which is pretty significant.

14 Q: What time was the test in this case?

15 A: The time of test was 2252, which is 10:52 in the evening.

16 Q: So what was the test? What -- tell us what the test was?

17 A: It was a blood test, withdraw blood from his body and
18 test it for alcohol and --

19 Q: Now, did you physically draw the blood from Mr. Lewis'
20 body?

21 A: No, I did not.

22 Q: How is that done?

23 A: It was done under my supervision. I watched the entire
24 thing and it was done, like I said, by a licensed medical
25 personnel. They are the only ones that can do it.

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 Q: And who was that person?

2 A: It was Ms. Kimberly Brown. She wrote her name, printed
3 her name here and also signed it, and I watched her do that
4 also.

5 Q: What happened after Ms. Kimberly Brown withdrew blood
6 from Mr. Lewis? What's the next step?

7 A: Once she withdraws the blood -- all this is under my
8 supervision -- she puts a seal on it and signs it and I
9 believe they date it also and then it's put into a box and
10 that box is sealed and then it's sent -- and then we take it
11 to our office and put it in storage.

12 Q: And do you know what happened with this particular
13 sample, where it went after the blood was drawn by the nurse?
14 Did it go back into your custody or whose custody did it go?

15 A: It went back into my custody.

16 Q: And then what did you do with that?

17 A: I take it to our office, which is -- we lock it in a
18 evidence locker by itself with no other items, and only one
19 person has that key and that's the evidence custodian, which
20 at the time was Sgt. Gardner, and at that point he gets it,
21 he'll unlock it and put it into a refrigerator and store it in
22 that refrigerator, which is locked included by itself.

23 Q: Where's that refrigerator?

24 A: It's in a locked evidence closet in our patrol office,
25 which is located in Georgetown.

TIMOTHY JACOBS - DIRECT BY MR. THOMAS

1 Q: Now, is this all part of your normal procedure anytime
2 you do a blood draw?
3 A: It is.
4 Q: What -- what precautions do you go through to make sure
5 that it isn't going to be tampered with, that the blood isn't
6 going to be tampered with?
7 A: Like I said, the vial itself has the information of the
8 defendant on it labelled, all his information so it isn't
9 mistaken for anything else, and then it is sealed into a box
10 in itself and, like I said, once I've -- it never leaves my
11 custody and I put it into an evidence locker and it's
12 padlocked and only one person has that key and he's the only
13 one that can open it and move it. And this is all logged.

14 MR. THOMAS: Thank you, Trooper Jacobs.

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. Cross-examination?

17 MR. HILLIARD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. HILLIARD:

20 Q: Trooper, you indicated that the charge listed on the
21 blood draw on the implied consent form were for felony DUI; is
22 that correct?

23 A: Yes, sir.

24 Q: And at what point in time did you make a -- when you
25 initially -- let me ask a better question. I'm sorry. When

TIMOTHY JACOBS - CROSS BY MR. HILLIARD

1 you initially arrested Mr. Lewis, you told him he was under
2 arrest for driving under the influence; is that correct?

3 A: Correct.

4 Q: And at that point, you had arrested him for driving under
5 the influence?

6 A: Correct.

7 Q: Which is different than felony DUI?

8 A: Correct.

9 Q: At what point in time did you make the transition from
10 driving under the influence to felony DUI?

11 A: Well, I couldn't determine on scene at that point
12 without, you know, going to the scene of the accident. And my
13 sergeant and another supervisor that was out -- they were on
14 scene and gathered the evidence there and then confirmed it
15 from there when they were on scene. I wasn't there so I
16 couldn't confirm it in the initial dealings with Mr. Lewis.

17 Q: Yes, sir. So they provided you with that information at
18 the hospital; is that right?

19 A: Correct. Yes, sir. Additional information at the
20 hospital.

21 Q: When you left -- when you left the store where Mr. Lewis
22 was, you were on the way to the hospital at that point in
23 time?

24 A: From the Dollar General?

25 Q: Yes, sir.

TIMOTHY JACOBS - CROSS BY MR. HILLIARD

- 1 A: Yes. Correct.
- 2 Q: And the reason you were going to the Dollar General is
- 3 you were going to a blood draw?
- 4 A: Correct.
- 5 Q: And you only do a blood draw on a felony DUI?
- 6 A: Correct.
- 7 Q: So you had made a decision at that point that you were
- 8 going to take him for a blood draw and it was going to be a
- 9 felony DUI?
- 10 A: Well, being that he was involved in an accident --
- 11 Q: Yes, sir.
- 12 A: The first step is you have to take him to the hospital
- 13 also. The jail will not allow you to, you know, bring
- 14 somebody in for -- if they have any injuries, they won't allow
- 15 you to bring them in without going to a hospital.
- 16 Q: Did you think he was injured in any form or fashion?
- 17 A: I can't tell. I'm not a doctor.
- 18 Q: Yes, sir. Did you have any reason to believe that he
- 19 might've been injured?
- 20 A: There was -- like I said, the damage on the front of his
- 21 vehicle appeared to be fresh. So to me, it was apparent that
- 22 he had been in an accident very recent and, to protect myself,
- 23 you have to go through those proper procedures.
- 24 Q: All right, sir. When you say that -- when you say that
- 25 he'd been in an accident, what you're saying is it was clear

TIMOTHY JACOBS - CROSS BY MR. HILLIARD

1 that the truck had been damaged in an accident?

2 A: Correct.

3 Q: There was no damage to Mr. Lewis that you could tell?

4 A: That I could tell from his outer appearance, not really,
5 but internally I mean I don't know.

6 Q: Right. But he looked drunk to you?

7 A: He was impaired.

8 Q: Okay. Fair enough. In the inventory search that you did
9 of his truck, what -- did you find any valuables?

10 A: I'm not sure exactly all the valuables that were listed.
11 That would have been logged, but I can -- like I said, the
12 things that I can remember right off were -- I spoke of
13 earlier.

14 Q: Right. Who did the inventory with you?

15 A: Me, initially, because I was the arresting officer.

16 Q: Is that --

17 A: It's included with me. There were other officers there,
18 but me -- I'm alone, the only one allowed to do it.

19 Q: Is it fair to say that by the time you read the Miranda
20 warnings to Mr. Lewis that you had already asked him all the
21 questions you wanted to know the answers to?

22 A: No, sir. There was other questions that were asked
23 later.

24 Q: There were?

25 A: Yes, sir. He was read Miranda twice.

TIMOTHY JACOBS - CROSS BY MR. HILLIARD

1 Q: He was read Miranda twice?

2 A: Yes.

3 Q: On the -- on the tape?

4 A: No. Just once on the tape and once in the hospital.

5 Q: All right, sir. And is that in the report somewhere?

6 A: I don't believe it is. Most everything that went on at

7 the hospital is not in the report except for the blood draw.

8 No conversations or anything like that.

9 Q: So there was a Miranda -- I'm sorry. There was a Miranda

10 that you read him at the hospital. Was that a form?

11 A: No. Just a verbal Miranda.

12 Q: And there are no notes about what it is that he may have

13 said at that point?

14 A: No.

15 Q: All right, sir. At the time that you started asking him

16 questions -- let me ask you a better question. On the -- on

17 the way to the scene where Mr. Lewis was when you were on your

18 way there, you were aware that a felony DUI had occurred or

19 that an individual had been killed at an accident; is that

20 correct?

21 A: I was aware that an accident had occurred.

22 Q: Yes, sir. And you were aware that Mr. Lewis was a

23 potential suspect in that accident?

24 A: I wasn't aware he was a potential suspect of the

25 accident. The initial call was that it was just a reckless

TIMOTHY JACOBS - CROSS BY MR. HILLIARD

1 driver in that -- on 701 in that area.

2 Q: All right, sir. You had been on the way to the accident
3 when you got the call about the reckless driver?

4 A: Correct.

5 Q: And the call that you got about the reckless driver was
6 generated by Deborah's information; is that right?

7 A: Correct.

8 Q: And you knew what she had said about the situation; is
9 that right?

10 A: Knew what?

11 Q: That, in fact, this individual was under the influence
12 from her point of view?

13 A: She believed he was.

14 Q: All right, sir. And that there was damage to the
15 vehicle?

16 A: Correct.

17 Q: And that potentially he could be the one who was involved
18 in the accident?

19 A: You could say that.

20 Q: All right, sir.

21 MR. HILLIARD: Judge, at this point, preserving our
22 objection to the video that's already been played, I have
23 video part two and I recognize we've objected to it, but at
24 this point I'd like to -- to remove my objection and ask it to
25 be identified by the witness.

TIMOTHY JACOBS - CROSS BY MR. HILLIARD

1 THE COURT: All right. Go ahead and ask it.

2 MR. HILLIARD: Thank you, sir.

3 BY MR. HILLIARD:

4 Q: This is part two of the car video; is that right?

5 A: That's what's written on there, but that's not my

6 handwriting. I mean that's what it says.

7 Q: All right, sir. Is -- are there two parts to the car

8 video?

9 A: Correct.

10 Q: And the two parts to the car video are -- one part is on

11 the way to the hospital?

12 A: Correct.

13 Q: And one part is on the way from the hospital?

14 A: Correct.

15 Q: And if this video -- if we turn it on and it's you and

16 him going from the hospital, then that's what the video is?

17 A: I would -- I would believe so, but I haven't reviewed

18 that specific disk. So I don't know what's on there.

19 Q: Fair enough. Well, you've -- did you review a disk that

20 is part two of the -- part two of the two disks that you have

21 in this case?

22 A: Correct. There's two disks and part two, the one that I

23 wrote, is the one from the hospital to the jail.

24 Q: All right, sir. Let me try again. Let me show you this

25 disk.

TIMOTHY JACOBS - CROSS BY MR. HILLIARD

1 A: Yes, sir.

2 Q: That's the one you reviewed?

3 A: Correct.

4 Q: And that's got your initials on it?

5 A: Correct.

6 Q: Thank you, sir.

7 MR. HILLIARD: We offer this video, Judge, subject to our
8 previous objection and, again as a consequence of Your Honor's
9 previous rulings, we'd offer this in evidence.

10 THE COURT: Is that Video Number 2?

11 MR. HILLIARD: Video Number 2.

12 THE COURT: So you're withdrawing your objection;
13 correct?

14 MR. HILLIARD: Yes, sir.

15 THE COURT: All right. Any objections?

16 MR. THOMAS: No, sir.

17 THE COURT: All right. Video Number 2 is into evidence
18 and that will be what? Number 3?

19 THE COURT REPORTER: 4.

20 THE COURT: 4.

21 (WHEREUPON, Defendant's Exhibit Number 4, part two of in-
22 car video, was admitted into evidence.)

23 MR. HILLIARD: And if we could call the prosecutor's
24 greater skill at --

25 (WHEREUPON, Defendant's Exhibit Number 4, part two of in-

TIMOTHY JACOBS - CROSS BY MR. HILLIARD

1 car video, was played in open court. Not transcribed
2 herein.)

3 (WHEREUPON, the video ended and the proceedings resumed
4 as follows.)

5 MR. HILLIARD: Your Honor, that's the portion that I was
6 interested in. Thank you, Trooper. That's all I have.

7 THE COURT: All right. Any redirect?

8 MR. THOMAS: No, sir, Your Honor.

9 THE COURT: All right. Let's take a lunch break until
10 1:45. Be back at 1:45 and we'll continue. Do not discuss the
11 case.

12 (WHEREUPON, the jury exited the courtroom at 12:29 p.m.)

13 THE COURT: All right. We'll see you at 1:45.

14 MS. HILLIARD: Thank you, Judge.

15 THE COURT: Thank you.

16 (WHEREUPON, there was a break in the proceedings from
17 12:30 p.m. until 1:45 p.m., after which the proceedings
18 resumed as follows.)

19 THE COURT: Go ahead and bring them out.

20 THE BAILIFF: Yes, sir.

21 (WHEREUPON, the jury entered the courtroom at 1:46 p.m.)

22 THE COURT: All right. Go ahead and call your next
23 witness.

24 MR. THOMAS: The State calls Sgt. Leach.

25 THE CLERK: Do you solemnly swear or affirm that the

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1 testimony you are about to give will be the truth, the whole
2 truth, and nothing but the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you. Please be seated and state your
5 name for the record.

6 THE WITNESS: My name is Sgt. Jeremy T. Leach with the
7 South Carolina Highway Patrol.

8 J.T. LEACH, being first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. THOMAS:

12 Q: Sgt. Leach, can you tell us what you do for a living?

13 A: I am assigned to the -- what they call MAIT of the South
14 Carolina Highway Patrol. We're the multidisciplinary accident
15 investigation team. We investigate in this area. We
16 investigate all fatal collisions that occur in 8 counties in
17 the northeast region of the state.

18 Q: So what kind of things does MAIT do? What kind of things
19 do you do as an ordinary course of your job?

20 A: We -- we're -- every day, unfortunately, we're picking up
21 new investigations. We deal with everything from who was
22 driving a particular vehicle to how collisions occurred,
23 reconstructing the collisions themselves, how fast people were
24 going in the collisions, any of the issues that may be present
25 or questions that come up in a collision investigation. The

J.T. LEACH - DIRECT BY MR. THOMAS

1 team was -- originally, it was designed to deal with the more
2 severe, very difficult collisions where an ordinary road
3 trooper wouldn't have the time to spend going over all of the
4 details.

5 Q: And what sort of educational background do you have in,
6 the way of dealing with collisions?

7 A: I am accredited through what's called ACTAR. It's a
8 national accreditation for traffic accident reconstruction.
9 There is an exam that you have to take. It's an 8-hour exam.
10 We're required to have 80 hours of continuing education in
11 order to remain -- in order to maintain that certification.

12 We have -- I have probably over 1,000 hours of collision
13 reconstruction courses, physics types courses, how to
14 determine speed, DNA, all different kinds of -- everything
15 that encompasses what we do. We get numerous hours of
16 training and then, like I said, in order to maintain that
17 certification, we have to have that continuing education every
18 five years as well.

19 Q: Have you kept up with that education and continuing
20 education?

21 A: I have, yes.

22 Q: And what sort of stuff do you learn? I mean you said
23 about 1,000 hours as far as accident collision reconstruction.
24 What sort of stuff do you learn when you learn about that
25 stuff?

J.T. LEACH - DIRECT BY MR. THOMAS

1 A: We learn -- it covers a wide array of things. We deal
2 with vehicle versus pedestrian collisions. We deal with
3 vehicle versus vehicle collisions, vehicles versus
4 motorcycles, mopeds, commercial vehicles. There's a --
5 there's a whole lot of different stuff that gets involved in
6 that.

7 So depending on the type of class that we're taking,
8 everything is usually dedicated towards one of those specific
9 disciplines. We deal with the computer aspect of it, the
10 airbag control modules that are in vehicles, computer
11 reenactments or animations of collisions, CADs, forensic
12 mappings of the collisions, seeing the documents and all the
13 evidence and everything that's out there. There's a -- it's
14 an enormous amount of detail in these training classes that we
15 go through.

16 Q: Have you ever been qualified as an expert in criminal
17 court before?

18 A: In magistrate-level court, yes.

19 Q: In what were you qualified as an expert?

20 A: Accident investigation.

21 MR. THOMAS: Your Honor, the State would move to have
22 Sgt. Leach being qualified to testify as an expert in accident
23 investigation.

24 THE COURT: All right. Any objections?

25 MR. HILLIARD: We don't have any objection to him being

J.T. LEACH - DIRECT BY MR. THOMAS

1 qualified as an expert in accident investigation. I'm
2 uncertain -- at this point, I'm uncertain where his testimony
3 is going, but we could object at that point. But we don't
4 have any objection to him being qualified as an accident
5 investigator.

6 THE COURT: All right. And you offered him as an
7 accident investigator?

8 MR. THOMAS: As an expert in accident investigation.

9 THE COURT: Got it. All right. Thank you.

10 MR. HILLIARD: Yes, sir. Thank you, Judge.

11 BY MR. THOMAS:

12 Q: You know the case you're here for today?

13 A: Yes.

14 Q: And what was your involvement with this case?

15 A: I was called on the night of the collision. The road
16 trooper -- normally, if they have something like this, they'll
17 call their supervisor. It goes through the chain of command.
18 And then the trooper will notify MAIT and ask for our
19 assistance. So that phone call goes through me where they --
20 they give me a rundown of what they have and then we determine
21 what type of assistance we can provide.

22 Q: And once you make that determination, what's the next
23 step?

24 A: In this particular case, we were notified that they had a
25 moped operator that was struck and killed, that the vehicle

J.T. LEACH - DIRECT BY MR. THOMAS

1 that struck him left the scene of the collision. So we were
2 called to help assist with a leaving the scene with death
3 case. That's something that we come out for right away. So
4 I, in this particular case, notified the personnel that we had
5 on call that night and dispatched them or sent them to the
6 scene of the collision.

7 Q: All right. Once everybody gets to the scene of the
8 collision, what do you do? Do you actually go out there?

9 A: I did on this night, yes. I went to this particular
10 collision.

11 Q: Who else was out there?

12 A: Cpl. Luther, Lance Cpl. Shull and Lance Cpl. Ligocki
13 responded the night of the collision.

14 Q: And what did y'all do?

15 A: This one was a little bit unique in that while we were
16 responding to the collision scene, I got another phone call
17 that basically said that there was a 9-1-1 caller behind what
18 appeared to be an intoxicated driver. They got that vehicle
19 stopped and there's a chance that that vehicle is the vehicle
20 that relates to the collision that I was headed to. They
21 believed that it might be the vehicle that was involved with
22 the hit-and-run.

23 So I sort of split personnel at that point. Shull and
24 Luther continued on to the scene itself, and myself and
25 Ligocki went to where this vehicle was on 701.

J.T. LEACH - DIRECT BY MR. THOMAS

1 Q: And just give us -- well, what happened after that?

2 A: We looked at the vehicle. We were able to determine
3 through phone calls there was some distinct -- there was,
4 like, a honeycomb-shaped grill on the pickup truck.

5 MR. HILLIARD: Your Honor, can we approach the bench at
6 this time?

7 THE COURT: You may.

8 (WHEREUPON, a bench conference was held in the presence
9 of the jury panel but out of the hearing of the jury
10 panel as follows.)

11 MR. HILLIARD: This is starting to sound like a search.
12 Is that --

13 THE COURT: He was just describing the hood of the car,
14 wasn't he?

15 MR. THOMAS: He's describing what grill that he found in
16 the middle of the road.

17 MR. HILLIARD: I thought he was talking about the car.
18 Maybe I misunderstood.

19 MR. THOMAS: He's talking about the exterior of the car
20 and then I think what he's going to get to is it matches the
21 grill that was found in the road.

22 MR. HILLIARD: All right.

23 (WHEREUPON, the bench conference ended and the
24 proceedings resumed as follows.)

25 MR. HILLIARD: Thank you, Your Honor.

J.T. LEACH - DIRECT BY MR. THOMAS

1 THE COURT: All right.

2 BY MR. THOMAS:

3 Q: You can continue on with what you were talking about.

4 A: The -- through phone call conversations, we were able to
5 determine what evidence was left at the scene of the
6 collision. The -- the vehicle that was stopped at the Dollar
7 General had a very specific and unique type of grill. It was
8 a honeycombed-shaped grill at the front of the vehicle.

9 Pieces of that were also found at the scene of the collision.

10 Pieces of a passenger front headlight were missing from
11 this particular vehicle. Well, they were also at the scene of
12 the collision. So some of those different elements -- the
13 damage to the vehicle was consistent with striking a moped or
14 a motorcycle-type vehicle. So we were able to say that, yes,
15 this was likely the vehicle that was involved in that
16 collision. So the trooper continued with their -- their
17 charges from that point.

18 Q: Now, did MAIT stop their investigation there?

19 A: No, we did not.

20 Q: What did you do then?

21 A: We examined and photographed the vehicle there that
22 night, had it secured with a tow truck company, and then
23 myself and Ligocki went to the scene of the collision as well.

24 At the scene of the collision, we ensured that everything
25 was photographed, everything was documented. All of the

J.T. LEACH - DIRECT BY MR. THOMAS

1 vehicle pieces that I was talking about -- all of those were
2 collected as evidence, which we were later able to bring and
3 compare to the vehicle itself to show that these parts
4 definitely came from this particular vehicle, that this was
5 the vehicle that struck the moped.

6 We photographed. We took a video of the same. We just
7 do that in order to document everything that's out there that
8 night the way it looks when we get there and what we see when
9 we're there. We then do a forensic mapping of the collision
10 scene. We use survey equipment essentially to create a
11 forensic diagram of everything that was out there and the way
12 we found it that night.

13 Q: And was that done in this case?

14 A: It was, yes.

15 Q: All right. So after you've done the diagramming, you've
16 I guess at this point documented the vehicle, secured it, have
17 it towed away. Is your investigation over at that point?

18 A: No, it is not. We -- we have follow-up that involves
19 taking -- we return to the scene in the daytime because this
20 was at night. It was dark. So we return to the scene in the
21 daytime and we take additional photographs in the daylight
22 conditions that allow you to see things a little better.

23 We also look additionally at the parts themselves and
24 compare them -- hold them up to and compare them to the
25 vehicle. It's sort of like putting a jigsaw puzzle together.

J.T. LEACH - DIRECT BY MR. THOMAS

1 You've got a piece that's got a certain shape. Well, it
2 breaks off of the vehicle that hits the moped. It breaks off
3 in a very distinct manner. So we're able to basically put
4 those two pieces of the puzzle back together to show
5 definitively that this is the vehicle that left these evidence
6 pieces at the scene of the collision. We did that.

7 We also had a mechanical examination. We have a mechanic
8 on our team out of Charleston. I called him and asked him to
9 come up and take a look at the vehicle to see if there was
10 anything mechanically wrong that would have contributed to
11 this collision. So we had that done as well.

12 We then take our mapping that we do out there at the
13 scene and we create a full CAD depicting the sequence of
14 events of the collision. We show where the vehicle was in the
15 roadway. We show how the vehicle was struck. We show where
16 the vehicle and the body ends up after the collision.

17 We lay all that out in something that you can print out
18 from a computer to see this is where the moped was. This is
19 where the truck hit the moped. This is where the body ends
20 up. This is where the moped ends up.

21 Q: And what kind of information do you use to put that
22 together?

23 A: We use our forensic mapping equipment that we map out
24 there that night. We use all of the data that we put into the
25 computer that night. In the computer, there's a computer

J.T. LEACH - DIRECT BY MR. THOMAS

1 program that we have where we sit down and actually convert
2 all of those individual points that are mapped into this scale
3 drawing of the collision scene.

4 Q: Did y'all do any investigation of the speeds or anything
5 of the vehicles involved?

6 A: We did. We looked at the speed of the vehicle that
7 struck the moped. We looked at how far the moped was knocked
8 once it was hit, how far the moped operator was knocked once
9 it was hit, and we were able to use that to calculate a speed,
10 sort of a minimum speed for the particular vehicle that struck
11 the moped.

12 Q: And what about the moped? Did you look into the moped at
13 all?

14 A: We looked at the -- we tried to look at the lights of the
15 moped so we could say whether or not the bulbs were on,
16 whether or not the moped actually had lights on while it was
17 driving.

18 Q: Did you do that in this case?

19 A: We did. The rear bulbs of the moped were mostly
20 destroyed because of the impact between the pickup truck and
21 the moped, but we were able to look at the headlights of the
22 moped as well and determined that they were, in fact, on at
23 the time of the collision.

24 Q: And after you've done all this investigation, is there
25 anything else you do?

J.T. LEACH - DIRECT BY MR. THOMAS

1 A: Once we get an accumulation of everything that we've
2 looked at with the bulbs, the speed, the location of the units
3 in the roadway, we create an animation that reflects the
4 findings of the entire investigation. It basically shows how
5 we believe the collision occurred.

6 Q: I'm going to show you what's been marked for
7 identification as State's Exhibit 134. Can you please take
8 your time and look through that and tell me if you recognize
9 what that is?

10 A: This is a copy of our final MAIT report that we published
11 that identifies the findings of what we did. It's got
12 pictures of it that include the fragmentation analysis that I
13 was talking about where we actually hold the pieces of the
14 vehicle that we found out at the scene up to the vehicle that
15 we believe was involved to show that those pieces fit
16 perfectly back into the vehicle. It's got pictures that
17 reflect that.

18 It's got pictures of the honeycomb grill as well that I
19 was talking about. And then it's got a list of the findings
20 or the different parts of the report that we actually did
21 showing that we did a mapping, we did a mechanical, pictures,
22 video, and an animation and that sort of thing.

23 Q: So this type of report is something you did unique for
24 this case or do you do it for all of your investigations?

25 A: The report itself we do for every investigation. The

J.T. LEACH - DIRECT BY MR. THOMAS

1 elements of what's involved depend on the particular case that
2 we're investigating. We don't necessarily do a mechanical on
3 every fatal that we investigate.

4 Q: That particular report -- who reviews that report before
5 it goes out?

6 A: We have an internal review committee. I'm responsible
7 for preparing the report and then there are three other
8 sergeants or four other sergeants throughout the state that
9 review it, as well as two lieutenants and a captain, and then
10 as a committee we come together and all of us are, again,
11 ACTAR accredited. Everybody reviews the reports. They review
12 the findings and the elements of those findings and then we
13 sign off on the report as a unit, as MAIT itself.

14 Q: And was that done on 134 -- State's ID 134?

15 A: Yes.

16 MR. THOMAS: Your Honor, the State would move to have 134
17 entered into evidence.

18 THE COURT: Any objections?

19 MR. HILLIARD: Yes, Your Honor. This document contains
20 hearsay connected to a number of elements that the officer has
21 talked about and it also contains things that he's not
22 testified about. It's a -- the report itself is an
23 independent report and there's a great deal in here that he's
24 not talked about. So we object to the report as a whole.

25 THE COURT: Y'all come on up here.

J.T. LEACH - DIRECT BY MR. THOMAS

1 MR. HILLIARD: Yes, sir.

2 (WHEREUPON, a bench conference was held in the presence
3 of the jury panel but out of the hearing of the jury
4 panel as follows.)

5 THE COURT: First of all, he doesn't have to read the
6 whole report.

7 MR. HILLIARD: That's fair.

8 THE COURT: He said he prepared the report and everybody
9 reviewed it and they signed off on it. So that's okay.

10 Hearsay? What kind of hearsay are you talking about?
11 Because experts can rely on other experts if it's not hearsay,
12 but what are you talking about?de

13 MR. HILLIARD: Well, there was information which is
14 connected to the incident report of the car wreck. I would
15 object --

16 THE COURT: And it's reported?

17 MR. HILLIARD: Yes, sir.

18 THE COURT: That's whose report? I mean he's an expert;
19 so he can give opinions.

20 MR. HILLIARD: Jacobs. This is Jacobs.

21 MR. THOMAS: That's the report they relied upon in their
22 -- in this investigation and turned their MAIT investigation.
23 He signed off on it. He's reviewed it and signed off on it.

24 THE COURT: But Jacobs is not an expert. He was not
25 introduced as an expert, was he?

J.T. LEACH - DIRECT BY MR. THOMAS

1 MR. THOMAS: There's no opinion or anything on there.

2 THE COURT: No opinions are there. He didn't contribute
3 to or not.

4 MR. THOMAS: That just contains the information of the
5 driver.

6 THE COURT: Can we see what Jacobs had?

7 MR. THOMAS: Sir?

8 THE COURT: Let's see what he had. He does have an
9 opinion as to contributing.

10 MR. THOMAS: Okay.

11 THE COURT: I mean he can give an opinion unless that's
12 what you're objecting to.

13 MR. THOMAS: What I might do --

14 THE COURT: Why don't you just redact that?

15 MR. THOMAS: Okay. I can redact that.

16 MR. HILLIARD: I don't have any problem taking that out.
17 There are other things in here.

18 MR. THOMAS: What else do you have?

19 MR. HILLIARD: Okay.

20 THE COURT: All right. Find out what else you got.

21 MR. THOMAS: We can take that sheet out.

22 THE COURT: Why don't you just redact it and take out the
23 opinion? Just tear it out.

24 MR. THOMAS: Okay. Does that agree with y'all?

25 MR. HILLIARD: And this is the animation that we were

J.T. LEACH - DIRECT BY MR. THOMAS

1 talking about. These were -- these were pictures -- stills
2 from the animation.

3 THE COURT: What's wrong with that?

4 MR. HILLIARD: This is what they've done. They've not
5 said how the animation came about.

6 THE COURT: He said he prepared the animation. He just
7 testified that he prepared that.

8 MR. HILLIARD: The animation?

9 THE COURT: He did.

10 MR. THOMAS: He testified as to what information was used
11 to create it.

12 THE COURT: Right.

13 MR. HILLIARD: Maybe I misunderstood.

14 THE COURT: And of course, that's just his opinion.

15 Certainly, he can testify. You can cross-examine him in that
16 regard.

17 MR. HILLIARD: Other than the animation, that's what we
18 have.

19 THE COURT: All right.

20 (WHEREUPON, the bench conference ended and the
21 proceedings resumed as follows.)

22 MR. HILLIARD: Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. THOMAS: Your Honor, the State moves to have 134
25 entered into evidence at this point.

J.T. LEACH - DIRECT BY MR. THOMAS

1 THE COURT: Any objections?

2 MR. HILLIARD: Other than as to the animation portion,
3 Your Honor.

4 THE COURT: All right.

5 MR. HILLIARD: Thank you.

6 THE COURT: State's 134 into evidence.

7 (WHEREUPON, State's Exhibit Number 134, MAIT report, was
8 admitted into evidence.)

9 MR. THOMAS: Permission to publish, Your Honor?

10 THE COURT: Sure.

11 BY MR. THOMAS:

12 Q: Trooper -- Sgt. Leath, after you produced or you signed
13 off on the final report that's now in evidence, what else do
14 you do in this case?

15 A: We then publish everything and then we provide the
16 Solicitor's Office with copies of our findings, all results,
17 copies of the CAD itself, the animation itself. We also
18 notify the arresting officer. They get a copy of that report
19 as well identifying what we found in our case.

20 Q: Do you provide that report to any other agencies?

21 A: No. Not normally, no.

22 MR. THOMAS: No further questions.

23 THE COURT: All right. Cross-examination?

24 MR. HILLIARD: Thank you, Your Honor.

25 CROSS-EXAMINATION

J.T. LEACH - CROSS BY MR. HILLIARD

1 BY MR. HILLIARD:

2 Q: When you were testifying earlier about the kind of
3 investigation that you do and that sort of thing connected to
4 felony DUI cases and accident reconstruction, you said that
5 one of the things that you do is you try to determine who was
6 driving; is that true?

7 A: Yes.

8 Q: And in this particular case, you individually didn't do
9 anything to try to determine who was driving?

10 A: Not me specifically, no.

11 Q: All right, sir. And you indicated that as to the moped,
12 the taillight of the moped was too damaged to determine
13 whether or not the taillight was operational or not
14 operational. You just don't have any way to talk about that?

15 A: Correct.

16 Q: You indicated that you did have the opportunity to
17 examine the headlight of the moped? Did I mistake that?

18 A: No. Yes.

19 Q: You said you did examine the headlight of the moped?

20 A: I did not, but yes, the team did.

21 Q: Somebody connected to your team examined the headlight of
22 the moped?

23 A: That's correct.

24 Q: There's no way to tell whether that headlight was on or
25 off; isn't that true?

J.T. LEACH - CROSS BY MR. HILLIARD

- 1 A: That is not true.
- 2 Q: That is not true? But you didn't examine the headlight?
- 3 A: I examined the results of the examination itself. When
- 4 they -- when they look at the bulb, they photograph and show
- 5 the specific elements of what they're seeing and then it's
- 6 shown to me and explained to me and reviewed as well.
- 7 Q: You didn't do that yourself? When I say you didn't do
- 8 that yourself, somebody looked at the headlight, relayed their
- 9 information to you, and you created an opinion based on
- 10 information that was delivered to you?
- 11 A: No. I look at it. I look at it as well and I look at
- 12 the photographs of it and I look at their -- they create a
- 13 report themselves. They photograph what they're looking at in
- 14 the bulb. I don't actually write a specific -- maybe I'm
- 15 getting confusing there. I don't actually write the specific
- 16 bulb analysis report --
- 17 Q: Right.
- 18 A: -- myself.
- 19 Q: Right.
- 20 A: But I look at everything that's involved with that and
- 21 then one of the investigators is looking at it. That's the
- 22 one that's actually doing the report itself for the bulb
- 23 analysis.
- 24 Q: Is that part of the MAIT report?
- 25 A: It's in -- yes.

J.T. LEACH - CROSS BY MR. HILLIARD

1 Q: The report that we just had put into evidence?

2 A: Not the -- not the results. It's in the -- there's a
3 case notes document that's got the bulb exam forms in it as
4 well.

5 Q: All right, sir.

6 MR. HILLIARD: Excuse me a second.

7 BY MR. HILLIARD:

8 Q: So as I understand what you're saying, you have the
9 ability based on some scientific test to determine whether or
10 not a light was turned on or not turned on at the time of
11 impact?

12 A: That's correct.

13 Q: And how does that work?

14 A: It works off of -- basically, your lightbulb has --
15 everybody's kind of looked in a lightbulb. There's that
16 little wire that runs across. When there's a severe impact to
17 a vehicle, especially in the area of a particular bulb, that
18 bulb is very hot. It will deform that bulb. There's
19 different kinds of breaks. There's what they call a cold
20 break where if you -- if you kind of just smack the bulb on to
21 something, give it a very significant shock, it will break
22 that filament and it just -- it just snaps it and you can see
23 the two clear pieces in there in the bulb itself.

24 When there's -- in these cases of a collision, when that
25 -- when that bulb is on, it won't just snap and break itself.

J.T. LEACH - CROSS BY MR. HILLIARD

1 It will actually bend before it breaks and sometimes they'll
2 twist and get tangled up in one another. It will also leave
3 some different kind of -- you can see the color of the
4 filaments are different because of the chemicals that are
5 involved in it as well.

6 So there's a -- there's a twisting that goes on inside.
7 You can look at the bulb and very clearly see that this is the
8 one that was on when it was broken or if it was off when it
9 was broken.

10 Q: And that was done in this case?

11 A: Yes.

12 Q: By someone other than you?

13 A: Correct.

14 Q: But you looked at the pictures?

15 A: And the bulbs.

16 Q: And the bulbs?

17 A: Yes.

18 Q: And you made that determination?

19 A: Yes.

20 Q: And with what degree of certainty can you say that?

21 A: We say it with -- it's either it is or it isn't, and if
22 it is, it was on.

23 Q: That's a hundred percent degree of certainty?

24 A: Yes.

25 Q: Thank you, sir.

J.T. LEACH - CROSS BY MR. HILLIARD

1 MR. HILLIARD: Give me just a second.

2 BY MR. HILLIARD:

3 Q: And what's the name of the person that did the analysis?

4 A: Luther.

5 Q: In connection with the -- let me ask you this question.

6 When you examined the filament, how do you examine the
7 filament?

8 A: Under a microscope and by naked eye and also the
9 photographs.

10 Q: Did you do the speed analysis in this case?

11 A: No.

12 Q: That was done by somebody else connected to it?

13 A: Yes.

14 Q: This is a portion of the report. I'm going to ask you if
15 you can identify that?

16 A: This is an analysis report for one of the bulbs that was
17 taken from the moped.

18 Q: All right, sir. And this says that the bulb might not
19 show signs of hot shock?

20 A: For that particular bulb, yes.

21 MR. HILLIARD: That's all I have. Well, let me ask one
22 more question. I'm sorry.

23 BY MR. HILLIARD:

24 Q: How many bulbs were on this moped?

25 A: I don't know specifically. Like I said, the rear was

J.T. LEACH - CROSS BY MR. HILLIARD

1 pretty well destroyed; so I can't really say prior to the
2 collision how many bulbs were on a particular moped.

3 Q: I asked a poor question. I'm sorry. How many bulbs were
4 on the front of the moped?

5 A: It was three maybe. I'm not really sure altogether how
6 many were taken. I'd have to look back through the case
7 notes.

8 Q: All right.

9 MR. HILLIARD: Thank you, sir.

10 THE COURT: All right.

11 MR. HILLIARD: That's all I have.

12 THE COURT: Redirect?

13 MR. THOMAS: No, Your Honor.

14 THE COURT: You may step down. Call your next witness.

15 MR. THOMAS: The State calls Cpl. Luther of the MAIT
16 team.

17 THE CLERK: Do you solemnly swear or affirm that the
18 testimony you are about to give will be the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 THE WITNESS: I do.

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

23 THE WITNESS: Cpl. Tyler Jennings Luther. South Carolina
24 Highway Patrol MAIT Team.

25 T.J. LUTHER, being first

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1 duly sworn, testified as follows:

2 ~~WITNESS~~ DIRECT EXAMINATION

3 BY MR. THOMAS:

4 Q: Cpl. Luther, what do you do over at MAIT?

5 A: I'm a corporal supervisor, but I'm also --

6 Q: Where are your duties over there?

7 Q: What are my duties? I'm also an investigator as well.

8 On a daily basis, I supervise a team of three people. I also
9 check reports, compile reports. When this actual collision
10 occurred, I was the investigator on the scene.

11 Q: What sort of training do you have to be part of MAIT?

12 A: Personally, I have over 900 hours of collision
13 reconstruction training. Like Sgt. Leach said, it varies from
14 the three phases that you get at the Criminal Justice Academy.
15 We travel all over the country taking training. I'm an airbag
16 control module analyst.

17 Also, since he got into the bulbs, we all have bulb
18 training through -- I think it was IPTM when Tony Becker
19 taught the class. The training varies. Like I said, we have
20 forensic mapping training. We have interview training. We
21 have CAD training. Pretty much, if you can imagine it, we've
22 pretty much had it.

23 I've been on MAIT now -- I've been on the Highway Patrol
24 for going on 16 years. I've been on the MAIT team for over
25 five years. So in the five years, like I said, between --

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1 somewhere around 900 hours of training. As far as collision
2 that we've investigated on the MAIT team, probably close to
3 1,000 collisions that we've investigated as a team.

4 MR. THOMAS: Your Honor, the State would move to have
5 this witness qualified as an expert or deemed an expert in
6 accident reconstruction.

7 THE WITNESS: Yes, sir.

8 THE COURT: Any objections?

9 MR. HILLIARD: No, sir. Your Honor.

10 THE COURT: All right.

11 MR. THOMAS: All right.

12 BY MR. THOMAS:

13 Q: Corporal Luther, how did you become involved in this
14 case?

15 A: I was called. It was February 21st. I was called by Sgt.
16 Leach and told that we had a hit and run with death in
17 Georgetown County. And I live in Hartsville; so we drove to
18 the scene. Before I arrived on the scene, he did call and say
19 they thought they had a vehicle of interest that -- that had
20 been stopped prior to my arrival and he then told me to go on
21 to the scene and start processing the scene. So that's what I
22 did. It was on Hicks Drive -- Hicks Road in the Hemingway
23 area.

24 Q: You said you started processing the scene. What does
25 that mean? What did you do?

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1 A: Generally, when I get on a scene, I'll generally walk
2 through the scene, look at the evidence, try to figure out the
3 direction of travel from the vehicles, what occurred at the
4 scene. When I pulled up, it was a -- it was a really dark
5 road. I think it was around 11:00 at night by the time I got
6 down there.

7 So we just walked through the scene, looked at the
8 evidence that was in the road. There were pieces and parts of
9 the moped. I mean they were scattered throughout the roadway.
10 Just did a couple of walk-throughs trying to figure out where
11 everything was at. There was a lot of gouging on the -- the
12 road runs kind of northwest. The vehicles were traveling in
13 the northbound lane from what we could tell. There was a lot
14 of gouging from --

15 Q: What's gouging?

16 A: Basically, if -- let's just say when two cars hit each
17 other or a car hits a moped or a motorcycle or whatever,
18 generally with that force something is going to go down to the
19 asphalt. It leaves scratches. It leaves -- basically,
20 gouging is just like if you take something and scratch the
21 asphalt. We consider that a gouge.

22 Most of the gouges -- the first set of gouges that we
23 could see on this scene were in the middle of the northbound
24 lane. If you walk further through the scene, like I said,
25 there were parts and pieces. It was -- it was a -- it was

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1 quite an interesting scene in the fact that there was stuff
2 everywhere from that gouge forward. There was a moped further
3 down towards the end of the scene on the left side of the
4 roadway. I can't remember if --

5 Q: Did you do anything to document the scene?

6 A: Yes, sir.

7 Q: What did you do?

8 A: After I did my walk-through, we decided who was going to
9 do what at the scene. Lance Cpl. Shull was out there with me.
10 I said I would go ahead and do the pictures of the scene to
11 document the evidence that was in the scene to make sure
12 nothing got moved before we could process it and get it up.

13 So I set up my camera. I started doing my walk-through,
14 taking pictures of the roadway as it was out there that night.

15 Q: I'm going to show you a series of photographs that have
16 been marked for identification purposes as State's 7 all the
17 way through State's 32. If you would, just take your time.
18 Go through each one of these photographs and tell me if you
19 recognize them. And go through them all at once and then tell
20 me whether you recognize them all.

21 MR. HILLIARD: Judge, it might make sense for me to stand
22 over there while he's looking at them.

23 THE COURT: That would be fine.

24 MR. HILLIARD: That way I don't have to -- I'll come
25 right there.

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1 THE COURT: That would be fine.

2 BY MR. THOMAS:

3 A: Yes, sir. I do recognize the photos. These are photos I

4 --

5 Q: What do you recognize them as being?

6 A: These were scene pictures that I took the night of the
7 collision.

8 MR. THOMAS: Your Honor, the State would move to have
9 Exhibit 7 through 32 entered into evidence.

10 THE COURT: Any objections?

11 MR. HILLIARD: No, sir. Judge, we've been provided those
12 previously and we have no objection.

13 THE COURT: 7 through 32 are into evidence without
14 objection.

15 (WHEREUPON, State's Exhibit Number 7 through State's
16 Exhibit Number 32, photographs, were admitted into
17 evidence.)

18 MR. THOMAS: Your Honor, permission to publish?

19 THE COURT: You may.

20 BY MR. THOMAS:

21 Q: And what we're going to do is publish the pictures on the
22 screen so everybody has it in front of them and you're going
23 to have a witness -- there's a screen right there for you. So
24 if you could just describe to the jury what we're looking at
25 as we go through them?

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- 1 A: Okay.
- 2 Q: And if you could -- I have to do it too. Just before you
- 3 talk about that particular photograph, just put on the record
- 4 what exhibit number we're talking about. What's that first
- 5 exhibit on the screen? What number is it first of all?
- 6 A: Number 1.
- 7 Q: The -- please read off the red tags.
- 8 A: Number 7. I'm assuming it's 7.
- 9 Q: Okay. And what is that?
- 10 A: This is a photo card that before we start doing a scene
- 11 we always shoot a photo card so we'll know the road it
- 12 happened on, the county it happened in, the date and the time
- 13 the pictures started being made, and our case number for that
- 14 collision.
- 15 Q: And this is I guess how we proceed. When you're ready to
- 16 go to the next one, just tell us and we'll do it for you and
- 17 then you just name the number of the next red --
- 18 A: Okay.
- 19 Q: On the red tag, what's the number of the next one?
- 20 A: State's Exhibit Number 8. This is, like I was saying
- 21 earlier, the northbound lane of Hicks Road and if you can see
- 22 the -- there's a white -- I don't know if you can see it on
- 23 the screen. The picture is actually better. There's a white
- 24 gouge, scraping, you can notice in the middle of the lane
- 25 there. That's where we would say the impact occurred based on

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1 the gouging in the roadway.

2 State's Exhibit Number 9 is just another shot of that,
3 moving a little bit further down the road. The way we do our
4 pictures -- we'll start at one end of the scene and work our
5 way through the scene taking photos. Although these are not
6 all the photos that were taken out there, these have been
7 pulled out just for reference, but you'll notice that you can
8 see the gouges a little bit. It's kind of whited out, but you
9 can see the gouges there.

10 State's Exhibit Number 10. Like I said earlier, there
11 were parts and pieces all over this scene. What you're seeing
12 here is up at the top left corner the pile -- it looks like
13 rubble, but it's actually a moped up there on the left side of
14 the picture. There you can see a lot of debris scattered
15 throughout the lane.

16 State's Exhibit 11. This is just a little bit closer.
17 I'm moving towards the moped now with my pictures. You can
18 see a little bit clearer the moped in the picture, and also
19 still have some debris in the roadway.

20 THE WITNESS: Your Honor, I don't -- the pictures they're
21 looking at, do they look like this? Because mine is blurry.
22 I can barely see the pictures on the screen. So if they're
23 looking at the pictures I am, it's not -- I don't know if you
24 can see this or not. See how blurry? I hope they're not
25 looking at it like that.

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1 MR. THOMAS: Theirs looks better. Yours is blurry.

2 THE WITNESS: Okay. I'm good. I can read these. I just
3 want to make sure they're not looking at that.

4 BY MR. THOMAS:

5 A: State's Exhibit 12 is another shot of the -- another
6 picture of the moped itself as I get closer to it.

7 State's Exhibit 13 is another shot of the moped itself.

8 State's Exhibit 14 is another shot of the moped, just
9 from a different angle.

10 State's Exhibit 15 is going to be blood in the roadway
11 from the final rest of the rider of the moped.

12 State's Exhibit 16 are pieces of evidence that were
13 documented at the scene. They appear to come from the moped
14 given the --

15 Q: What are those numbers by it?

16 A: When we're picking up evidence at this kind of collision,
17 we'll put a reference number to it so we can keep up with that
18 evidence. As we pick it up and bag it, we'll have a reference
19 number to go on our bags. That's number one and two for
20 evidence that we marked out there at the scene.

21 State's Exhibit 17 and State's Exhibit 18 are just close-
22 ups of the -- those shots.

23 State's Exhibit 19 is another piece of evidence from the
24 scene and, like I said, it was number three on the evidence.

25 A lot of times when we're out at the scene, we -- you don't

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1 know what vehicle you're looking for. So that's why some of
2 this evidence is from the moped, but we still documented it
3 because we didn't know exactly what we were looking for until
4 later.

5 State's Exhibit 21. You'll see here a picture of a lens
6 that's documented. We had it documented as number four in
7 evidence.

8 State's Exhibit 22 is actually a close-up of that lens.

9 State's Exhibit 23 is the actual housing that was
10 documented at the scene that night. By housing, I mean it
11 appears to be a turn signal housing from a vehicle of some
12 sort.

13 And State's Exhibit 24 is a close-up of that.

14 State's Exhibit 26. This is the honeycomb that Sgt.
15 Leach spoke about earlier. It was documented at the scene and
16 we labeled it number six.

17 And State's Exhibit 25 is another picture of that.

18 State's Exhibit 27. The photo is a little hard to see.
19 That's actually a piece of white plastic that's been circled.
20 We labeled it number seven.

21 State's Exhibit 28 is a close-up of that piece of
22 plastic.

23 State's Exhibit 29 is another piece of clear plastic
24 that's labeled number eight on our evidence.

25 And State's Exhibit 30 is a close-up of that.

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1 State's Exhibit 31 is another piece of white plastic that
2 was at the scene that we documented as number nine.

3 And State's Exhibit 32 is a close-up of that piece of
4 plastic.

5 Q: Thank you, Corporal. All right. So we've gone through
6 some of the photographs you took at the scene?

7 A: Yes, sir.

8 Q: I believe you testified you took more?

9 A: Yes, sir.

10 Q: What else -- or how else were you involved in the
11 investigation of this case?

12 A: I was also involved in what we call fragmentation
13 analysis that we spoke about earlier. That's when you take
14 the pieces of plastic that we picked up from the scene and you
15 match them to a vehicle that you suspect was at the scene as
16 well when the collision occurred. I actually took the pieces
17 that we had in evidence and I think it was done February 23rd;
18 so it was two days after the collision.

19 The vehicle was towed to Rex's Towing. So I secured the
20 evidence from our office, went to the garage where the vehicle
21 was being kept. Did a general vehicle exam of the vehicle and
22 by general vehicle exam, we check tire pressure, tread depth,
23 seeing if there's anything mechanically that we can find wrong
24 with it.

25 Like Sgt. Leach testified earlier, Sgt. Booker is the

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1 mechanic for the Highway Patrol MAIT team and he does a more
2 in-depth mechanical examination than what we do. We just look
3 for anything and document the stuff that we see wrong with the
4 vehicle. And photographs are taken and then we take the parts
5 that we picked up from the scene and try to find where they
6 came from on the vehicle and match it up and photograph it to
7 prove that it came from this vehicle.

8 Q: I'm going to show you what's been marked for
9 identification as State's 135. If you would, take a look at
10 that and tell us if you recognize it?

11 A: Yes. This is the General Vehicle Examination Form that
12 -- that I did on the 23rd on the 2003 Ford F-150.

13 MR. THOMAS: Your Honor, the State would move to have 135
14 entered into evidence.

15 THE COURT: Any objections?

16 MR. HILLIARD: No objection, Your Honor.

17 THE COURT: 135 is into evidence without objection.

18 (WHEREUPON, State's Exhibit Number 135, General Vehicle
19 Examination Form, was admitted into evidence.)

20 BY MR. THOMAS:

21 Q: Anything of note in your examination of the vehicle? And
22 again, what vehicle was this?

23 A: This is the 2003 Ford F-150, the one that was towed the
24 night of the collision to Rex's Towing. It was white in
25 color. It is documented here white over tan. Also documented

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1 damage to the grill, passenger headlight was missing, damage
2 to passenger front bumper, dent on the hood at the windshield
3 base, the radio antenna was bent towards the rear, and it had
4 an antenna on the -- you don't see it much anymore, but the
5 radio antenna was on the quarter panel in the front of the
6 truck on the passenger side and it was actually bent towards
7 the rear as if something hit it.

8 Q: And would you please take a look at State's Exhibit 33 --
9 or Exhibits 33 through 107 and, just like last time, will you
10 just take the time to look through them and then tell me if
11 you recognize them?

12 MR. HILLIARD: I've already looked at those. Thank you.

13 BY MR. THOMAS:

14 A: Yes, sir.

15 Q: Do you recognize those photographs?

16 A: Yes, sir, I do.

17 Q: What are they?

18 A: They are pictures that were taken at Rex's Towing of the
19 general vehicle exam and pictures of the fragmentation
20 analysis.

21 Q: Who took them?

22 A: I started taking them up until the point with the
23 fragmentation analysis and then you'll notice I'm putting the
24 parts on the truck and my camera was handed off to Lance Cpl.
25 Skipper at that time. He went with me to just assist.

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1 Q: When were the photographs taken?

2 A: They were taken on February 23rd.

3 Q: Okay..

4 MR. HOMAS: Your Honor, the State would move to have
5 Exhibits 33 through 107 entered into evidence.

6 THE COURT: Any objections?

7 MR. HILLIARD: None, Your Honor.

8 THE COURT: All right.

9 MR. HILLIARD: No objection.

10 THE COURT: 33 through 107 into evidence without
11 objection.

12 (WHEREUPON, State's Exhibit Number 33 through State's
13 Exhibit Number 107, photographs, were admitted into
14 evidence.)

15 MR. THOMAS: And much like last time, Your Honor,
16 permission to publish?

17 THE COURT: You may.

18 MR. THOMAS: We'll publish and, if you could, just give a
19 brief explanation. If one you think is more important than
20 the other, you can spend more time on it. If it's something
21 that we can breeze past --

22 THE WITNESS: Do you want to go through every one on the
23 screen or just --

24 MR. THOMAS: Yeah. Even if it's just mentioning what it
25 is and we'll go through it. Okay?

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1 THE WITNESS: All right.

2 BY MR. THOMAS:

3 A: The way we do pictures -- I'll try to explain this to you
4 a little bit. State's Exhibit 33 is the photo card again.
5 You'll see it on the screen. The date, the time. Like I
6 said, again the case number, the county it occurred in, and
7 the tow company.

8 You'll notice that State's Exhibit 34 is the rear of the
9 truck. Whenever we photograph a vehicle, we photograph it the
10 same way every time. So we'll see eight photos of the truck,
11 the rear, the quarter panel, the corner, the side, the other
12 corner, the front. We just work our way around the vehicle so
13 you get an overall perspective of the damage. So State's 34.

14 The next one, State's 35, is a side picture of the truck.
15 And you can notice in this photo the front passenger side
16 corner, the way the bumper is hanging down. Also, you can
17 kind of tell here -- you'll get a close-up of it in a minute,
18 but the headlight is missing from this vehicle.

19 State's Exhibit 36 is the corner shot of the vehicle and
20 you can really notice here that the headlight is missing. You
21 can notice the way the antennae is leaning towards the rear of
22 the vehicle and kind of outward. Some of the white plastic
23 that is missing also in the grill area -- you can notice the
24 honeycomb that we talked about a little while ago is missing
25 as well.

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1 State's Exhibit 37 is a front shot of this vehicle.
2 There again, you can notice how the headlight is missing. The
3 turn signal -- you have -- the front is deformed. You can
4 also notice, if it is clear enough on the screen there, the
5 damage to the front bumper, the way it's in line straight up
6 and down. Like I said, the honeycomb is missing there. You
7 have some black marks on the -- on the lower portion of the
8 bumper underneath the metal part. You'll notice that.
9 There's also some black paint transfer or tire transfer, black
10 rubber transfer, on the driver's side front of the vehicle
11 down on the bottom lower part of the bumper.

12 State's Exhibit 38 is just a corner shot of the driver's
13 side.

14 State's Exhibit 39 is the driver's side of the vehicle.

15 State's Exhibit 40 is the rear driver's side corner. We
16 photograph the tires along with -- like I said, when we do our
17 general vehicle exam, we photograph tires, the tire tread, all
18 of that. So the next few pictures are going to be that.

19 State's Exhibit 41 is the driver's side front tire.

20 State's Exhibit 42 is the tread, a picture of the tread
21 on that tire.

22 State's Exhibit 43 is the driver's side rear tire.

23 State's Exhibit 44 is that tread.

24 State's Exhibit 45 is going to be the passenger rear
25 tire, passenger side.

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1 State's Exhibit 46 is going to be that tread.

2 State's Exhibit 47 is going to be your passenger side
3 front tire. Like I said, you can notice in this picture as
4 well the broken plastic and the bent antenna as well.

5 State's Exhibit 48 is going to be your tread on that
6 tire.

7 State's Exhibit 49 is another front shot of the vehicle.

8 State's Exhibit 50 is a closer shot of the -- some of the
9 damage area on the passenger side of this vehicle. Once
10 again, you can notice at the top the antenna, the way it's
11 kind of bent outward.

12 State's Exhibit 51. In this picture, if you'll notice,
13 the top of the hood has a crease in it, a dent in the top
14 there.

15 In State's Exhibit 52, you can see the dent in the hood
16 and also you can tell the way the antenna is bent outward.

17 State's Exhibit 53 is another picture of the lower part
18 of that antenna.

19 State's Exhibit 54 is actually the grill that's right
20 against your windshield on your car. There's a bulb laying
21 there. I'm not sure exactly where the bulb came from, but I
22 did photograph it.

23 State's Exhibit 55 also shows a picture of that bulb.

24 State's Exhibit 56 is a shot of the interior on the
25 driver's side.

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1 State's Exhibit 57 is a picture of the VIN plate on the
2 door of this vehicle.

3 State's Exhibit 58 is just a shot of the steering wheel
4 and the telemetry on the dash.

5 State's Exhibit 59 is another shot of the telemetry.

6 State's Exhibit 60 is a shot of a cell phone and a
7 wallet, evidence stuff that was just left on the center
8 console.

9 State's Exhibit 61 is another shot of the interior of the
10 vehicle.

11 State's Exhibit 62, another shot of the interior of the
12 vehicle.

13 State's Exhibit 63 is a can that was left in the cup
14 holder, a Busch Light can.

15 State's Exhibit 64 is half of a -- what appears to be a
16 case of Busch Light box that was cut in half that was sitting
17 in the backseat.

18 State's Exhibit 65 is showing the box is empty.

19 State's Exhibit 66 appears to be some type of computer
20 bag.

21 State's Exhibit 67 is a passenger-side shot of the
22 vehicle's interior.

23 State's Exhibit 68 is a passenger-side shot of the
24 interior.

25 State's Exhibit 69. We're back at the front of the

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1 vehicle. If you can notice the way the honeycomb is broken
2 and also the way the white plastic is broken where the
3 headlight should be. Also, if you'll notice, there's a dent
4 in the metal part of the bumper there.

5 State's Exhibit 70 is -- the piece in my hand there is
6 the piece that was picked up at the scene. Let me see if
7 there was another picture of it. This is a piece of honeycomb
8 that was photographed earlier laying in the roadway at the
9 scene and you'll see the way I'm holding it up. Some of it
10 was missing in-between the two portions of the honeycomb.

11 MR. HILLIARD: I'm sorry, Judge. Is he describing what
12 we're seeing on the --

13 THE COURT: I don't think so. I could be wrong, but I
14 don't think so.

15 THE WITNESS: Yes, sir. It's here.

16 THE COURT: Go ahead.

17 THE WITNESS: The piece of the honeycomb in my hand you
18 said?

19 MR. HILLIARD: I just didn't see his hand. Is he --

20 THE WITNESS: I've got black gloves on. I've got a black
21 glove on.

22 BY MR. THOMAS:

23 Q: And why do you have a black glove on?

24 A: Because you don't want to touch the evidence with your --
25 with your bare hands.

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1 MR. HILLIARD: Thank you.

2 THE WITNESS: Are you good?

3 BY MR. THOMAS:

4 A: As you can see in the picture, there's some that's
5 missing in-between what was on the truck and what we picked up
6 at the scene, but you can see where it would have fit in if
7 the other parts were available.

8 State's Exhibit 71 is a picture of the evidence bag,
9 Number 5, that we picked up.

10 State's Exhibit 72 is the picture of the evidence removed
11 from evidence bag Number 5.

12 State's Exhibit 73 is a picture of the broken portion of
13 the evidence that was removed from the bag.

14 State's Exhibit 74 shows -- I'm pointing to where the
15 part should fit in on the vehicle itself.

16 State's Exhibit 75 is I'm pointing to the broken part on
17 the piece of evidence that we picked up at the scene.

18 State's Exhibit 76 is I'm moving the piece that we picked
19 up into position just showing you where it would -- where it's
20 going to fit at.

21 State's Exhibit 77 is the actual part in position.

22 State's Exhibit 78 is evidence bag Number 7 that we
23 picked up from the scene.

24 State's Exhibit 79 is the piece that we removed from the
25 bag.

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1 State's Exhibit 80. I'm showing you where that piece
2 fits into position on this vehicle. And you have to realize
3 that in the picture some of the plastic is pushed back from
4 impact. So it matches at the top; it's a little off on the
5 bottom simply because of the impact.

6 State's Exhibit 81 is bag Number 9.

7 State's Exhibit 82 is the plastic evidence that was
8 removed from bag Number 9.

9 State's Exhibit 83. That's me holding the piece of
10 plastic into position on the vehicle.

11 State's Exhibit 84 is just where we hooked the connection
12 when we were trying to get the information from the airbag
13 control module, commonly known -- most people know it as a
14 black box on a vehicle. This being an older vehicle, there
15 was not much data on this vehicle.

16 State's Exhibit 85 is where -- is where the connections
17 are.

18 State's Exhibit 86 is the actual computer that we used.

19 87 is the computer.

20 State's Exhibit 88 is just the passes. It has to go
21 through three passes before we read.

22 State's Exhibit 89 is the moped itself. At the wrecker
23 yard, it was photographed.

24 State's Exhibit 90 is the handlebars of the moped.

25 State's Exhibit 91 is the front tire.

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1 State's Exhibit 92 is the tread on the front tire.

2 State's Exhibit 93 is the rear tire. If you notice the
3 way the rim is bent, the tire was not deflated and removed
4 partially from the rim itself. Also, if you notice the silver
5 cylinder on top of the tire, that's actually the muffler of
6 the moped that had been bent forward.

7 State's Exhibit 94 is the tread on the rear tire.

8 State's Exhibit 95 is the headlight assembly on the front
9 of the moped. This particular moped had three different
10 lights on the front of the moped.

11 State's Exhibit 96 is the headlights after we removed it.

12 State's Exhibit 97 is going to be the center bulb removed
13 from that headlight.

14 State's Exhibit 98 is the -- we're back to the front
15 bumper area of the truck and you can see the damage there.

16 State's Exhibit 99 is another shot of this damage.

17 State's Exhibit 100 is the moped in front of the truck.

18 State's Exhibit 101 is another shot of the moped being in
19 front of the truck.

20 State's Exhibit 102 is a closer shot of where the tire
21 impacted the front of the truck.

22 State's Exhibit 103 is a closer shot of that tire and
23 where it impacted the front bumper of the truck.

24 State's Exhibit 104. We actually pushed the moped into
25 position and on here you notice the way the seat assembly has

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1 been pushed forward. That's all a metal frame there. So it
2 actually bent the metal frame, but if you notice the shape of
3 the frame and you look at the front bumper itself, you can see
4 a resemblance between the bend in the moped frame and the
5 front bumper of this vehicle.

6 State's Exhibit 105. We pushed it a little bit further
7 in to get it into position.

8 State's Exhibit 106 is another shot of the moped in
9 position.

10 And State's Exhibit 107 is another shot showing the way
11 the muffler creased on impact.

12 Q: All right, Cpl. Luther. Thank you. So after you were
13 out at Rex's Towing on the 23rd of February, you took all those
14 photographs and some of those photographs that are in evidence
15 were taken of the bulbs of the moped?

16 A: Yes, sir.

17 Q: Did you do any further examination on those bulbs?

18 A: Yes, sir. I actually did the bulb analysis on them.

19 Q: And explain to us what that is?

20 A: Basically, we take the bulbs back to our office. We take
21 them and put them under a microscope and look at them to see
22 if we can tell if they were on or off at the time of the
23 collision. Like Sgt. Leach explained earlier, when a bulb
24 pops hot -- and by pops hot, I mean it breaks hot, the little
25 winding that you see in a bulb, the coil, when it heats up, it

T.J. LUTHER - DIRECT BY MR. THOMAS

1 becomes flimsy obviously. Anytime you put heat through a wire
2 or any kind of metal, you heat it up with a torch or whatever,
3 it's going to become a little bit flimsy.

4 On a heavy impact, it can pop that coil. Well, because
5 that coil is so hot and it's wound so tight, it just kind of
6 -- it's like a spring. It just explodes and it does all kind
7 of crazy stuff in there. When it pops cold, it just -- it'll
8 just break. There'll be no -- there'll be no discoloration to
9 it. It'll pretty much stay in position. It'll just fall
10 down.

11 In this case, depending on which bulb we looked at --

12 Q: Well, let me ask you this. Did you do any sort of
13 reports or write down your analysis --

14 A: I did.

15 Q: -- as far as the bulbs?

16 A: I examined the bulbs that we had in evidence and did an
17 analysis on each one.

18 Q: I'm going to show you what's been marked for
19 identification as State's 136. Please take a look at this.
20 It's several pages stapled together.

21 A: Okay.

22 Q: Just take a look at that and tell us if you recognize it?

23 A: Yes.

24 Q: And what is it?

25 A: This is the lamp examination forms that I did on each

T.J. LUTHER - DIRECT BY MR. THOMAS

1 bulb.

2 Q: Who prepared it?

3 A: I did.

4 Q: And when did you prepare that?

5 A: It's dated March 4th, 2015.

6 Q: Is that the same time you did the examination?

7 A: Yes, sir.

8 MR. THOMAS: Your Honor, the State would move to have 136
9 entered into evidence.

10 THE COURT: Any --

11 MR. HILLIARD: No objection.

12 THE COURT: -- objections? Any objections?

13 MR. HILLIARD: No, sir, Your Honor.

14 THE COURT: All right. 136 into evidence without
15 objection.

16 (WHEREUPON, State's Exhibit Number 136, bulb analysis
17 report, was admitted into evidence.)

18 BY MR. THOMAS:

19 Q: Using 136 if you need to, tell us what your analysis
20 found about the bulbs on the moped?

21 A: State's Exhibit 136 is labeled as the center bulb in the
22 headlight assembly. I did put down on this one that it was
23 indeterminate whether it was on or off during the collision,
24 and my reasoning for doing that is the bulb is undamaged and
25 you could see the picture where I held that bulb up earlier.

T.J. LUTHER - DIRECT BY MR. THOMAS

1 I put due to impact on the rear of the moped and the
2 travel of the moped post impact, the bulb might not show signs
3 of hot shock. And by hot shock, I mean the bulb is actually
4 incandescent when it pops. So it would be lit when the bulb
5 breaks. Sometimes they show hot shock on a -- on a rear
6 impact; sometimes they don't. On this particular bulb, it did
7 not show signs of being on or being off. So that's why I put
8 indeterminate on this bulb.

9 On the next bulb, the right bulb on the headlight
10 assembly, it was described as a clear bulb. I do have this
11 one incandescent and hot from impact shock and determined that
12 it, in my opinion, to be on and it is photographed. I did do
13 photos of the bulbs as I do the analysis to show what I'm
14 looking at. We do those -- we look at the bulbs under a
15 microscope, but we also have a macro lens on our cameras where
16 we can zoom down on it to try to get the best photo as
17 possible.

18 Q: And I'll show you what's been marked as State's 108
19 through 130. If you could, breeze through those and tell us
20 if you recognize it?

21 A: Yes, sir. These are photos that I took the day I did the
22 examination of the bulbs.

23 MR. THOMAS: Your Honor, the State would move to have 108
24 through 130 entered into evidence.

25 THE COURT: Any objections?

T.J. LUTHER - DIRECT BY MR. THOMAS

1 MR. HILLIARD: No objection, Your Honor.

2 THE COURT: 108 through 130 into evidence.

3 (WHEREUPON, State's Exhibit Number 108 through State's
4 Exhibit Number 130, photographs, were admitted into
5 evidence.)

6 MR. THOMAS: Permission to publish, Your Honor?

7 THE COURT: You may.

8 BY MR. THOMAS:

9 Q: We'll publish those photographs on here. If you want to
10 just briefly describe it or you can refer to your report,
11 whatever helps you explain to us how you -- how you did this
12 analysis. Just let us know what you're looking at. If you're
13 looking at the report, indicate that to us. If you're looking
14 at a particular photograph, just indicate the number.

15 A: State's Exhibit 108 is once again the photo card before
16 we do any pictures.

17 State's Exhibit 109 is the actual headlight assembly that
18 I removed from the moped at the wrecker yard.

19 State's Exhibit 111 is the bulb that has been removed
20 from the center of the headlight assembly.

21 State's Exhibit 112 is another picture of that.

22 State's Exhibit 113 is another picture of the center
23 bulb.

24 State's Exhibit 114 is somewhat of a closer shot of that
25 bulb.

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1 State's Exhibit -- I don't believe it's on here, but
2 State's Exhibit 115 is a picture of that coil, and that coil
3 is undamaged. As you can see, it's still connected on the
4 ends and it's still in the position it should be in-between
5 the coils. All the coils themselves are the same distance.
6 There's no discoloration.

7 Q: And what bulb was that one again?

8 A: This is the center headlight.

9 Q: Is that the one that came back indeterminate?

10 A: That is the one I put indeterminate on.

11 Q: Okay.

12 A: Yes, sir. State's Exhibit 118. You want me to go
13 through all of them or just hit the ones that --

14 Q: Well, to pull them up on here, if you can give us both
15 the --

16 A: Okay.

17 Q: -- State's exhibit number --

18 A: State's Exhibit --

19 Q: -- and the number that's written on the back of it? That
20 way we can skip around.

21 A: State's Exhibit 116.

22 Q: What's the number actually handwritten?

23 A: 112.

24 Q: That's what it's got on there?

25 A: 112. That's just going to be a shot of the -- one of the

T.J. LUTHER - DIRECT BY MR. THOMAS

1 other sides of the bulb itself.

2 State's Exhibit 117 is that bulb removed from the
3 headlight assembly.

4 State's Exhibit 118 is that bulb completely removed from
5 the headlight assembly from the wiring glass.

6 State's Exhibit 119. If you'll notice, you can see the
7 discoloration in the glass and globe itself. And also, if you
8 notice that winding, the coil, how the coil is just kind of
9 all over the place. It's not connected on one end.

10 Q: So what does that indicate?

11 A: The way the winding is just kind of spun everywhere, that
12 would indicate that that bulb was hot when it felt shock and
13 when it -- when that actual coil popped that it was
14 incandescent, meaning it was burning.

15 State's Exhibit 120 is a better shot of that.

16 State's Exhibit 121 is a closer shot of that. Like I
17 said, once again, if you notice the windings, they're not --
18 they're not straight. They're not symmetrical anymore. It's
19 just wound everywhere, which would mean that --

20 Q: Is that what you mean?

21 A: That would mean that this bulb -- that happens from it
22 being hot when it feels shock.

23 Q: Okay.

24 A: That would mean the bulb would be on.

25 Q: And in the interest of time, let's go back to your

T.J. LUTHER - DIRECT BY MR. THOMAS

1 report. You just tell us what you found as far as each bulb
2 --

3 A: Okay

4 Q: -- that you examined.

5 A: The one -- the right bulb on the headlight assembly -- I
6 found it to be -- the filament supports were bent. The glass
7 was darkened, like I spoke about a few moments ago. The
8 filament was stretched out, elongated. And I did find my
9 opinion to be incandescent, hot from impact shock, and that
10 this bulb was on when it felt shock.

11 The left bulb on the headlight assembly -- I have that
12 the filament supports were bent. The glass was darkened. It
13 was -- the filament was stretched out, elongated. I had some
14 fusing of the glass, and what I mean by the fusing of the
15 glass, the core gets so hot that sometimes when it pops the
16 glass, the metal will actually melt to the side of the glass,
17 and that's what that means, the fused glass. My opinion on
18 this one was it was incandescent. It was hot and felt impact
19 shock. My opinion was that it was on when it popped.

20 The left front marker light. This was an amber bulb.
21 This bulb was off. I didn't see any abnormality in this bulb
22 at all.

23 Q: What bulbs in your analysis were on at the time of the
24 collision?

25 A: The front two -- like I said, this assembly had three

T.J. LUTHER - DIRECT BY MR. THOMAS

1 bulbs in it. It had two smaller bulbs and a big bulb in the
2 middle. The two outer bulbs on the assembly were on when this
3 collision occurred. The center bulb -- it was indeterminate.
4 I wasn't able to determine whether it was on or off. That's
5 why I'm indeterminate on it. I think that was all that was
6 on. Yes, that was. And the rear bulbs were destroyed to a
7 point where we couldn't analyze those.

8 Q: All right. Thank you, Cpl. Luther. No further
9 questions.

10 THE COURT: All right. Cross?

11 MR. HILLIARD: Give me just one second. Thank you, Cpl.
12 Luther. I don't have any questions.

13 THE COURT: All right. Have a good day. Call your next
14 witness.

15 MR. THOMAS: Sgt. Booker.

16 THE CLERK: Do you solemnly swear or affirm that the
17 testimony you are about to give will be the truth, the whole
18 truth, and nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Please be seated and state your
21 name for the record.

22 THE WITNESS: I'm Sgt. James Laverne Booker with the
23 Highway Patrol. Nice to meet you.

24 J.L. BOOKER, being first
25 duly sworn, testified as follows:

J.L. BOOKER - DIRECT BY MR. THOMAS

DIRECT EXAMINATION

1
2 BY MR. THOMAS:

3 Q: Sgt. Booker, what do you do over at MAIT?

4 A: I am like Sgt. Leach. He is the team leader of the Pee
5 Dee region up in this area. I am the team leader of the
6 coastal main region, which is the southeast. I cover 13
7 counties. I run that unit down there.

8 Q: What's your educational background?

9 A: I am -- excuse me. I am international certification with
10 ACTAR, like we spoke about before. I'm also certified through
11 ASE, Automotive Service Excellence, as a mechanic in
12 suspension and steering. And I hold the title of the state
13 mechanic for the South Carolina Highway Patrol. I, like
14 everybody before, have at least around 1,000 hours of --
15 excuse me -- of reconstruction training, collision
16 reconstruction training.

17 Q: And what about continuing education hours?

18 A: The same situation. We have to keep the ACTAR
19 accreditation every five years, take a certain amount of
20 continuing education classes, but we're -- we're always
21 continuing education with various advanced training and
22 conferences of that nature.

23 Q: So you are a certified mechanic?

24 A: I am.

25 Q: In what?

J.L. BOOKER - DIRECT BY MR. THOMAS

1 A: I'm certified through ASE with suspension and steering,
2 and that's what I used to do before I got into law
3 enforcement.

4 Q: What's ASE?

5 A: Automotive Service Excellence.

6 Q: And how does one become certified?

7 A: You have to have a minimum amount of either -- it's
8 either a certain amount of actual work experience that you
9 have to do and then you can apply to take a test to become
10 certified or you can have -- I believe they changed it now to
11 where also you can have -- when I did it, you had to have a
12 minimum of two years related work experience to even become
13 it. If not, then you couldn't even apply, which I already
14 had. Now I believe they are also offering -- I believe it's a
15 year of some kind of prior work experience in that field and
16 then you can go through some advanced training to get your
17 certifications as well.

18 MR. THOMAS: Your Honor, at this time, the State would
19 ask that this witness be deemed an expert in auto mechanics.

20 THE COURT: Any objections?

21 MR. HILLIARD: We agree, Judge. Yes, sir.

22 THE COURT: All right. Granted.

23 BY MR. THOMAS:

24 Q: Sgt. Booker, how did you become involved in this
25 particular case we're here for?

J.L. BOOKER - DIRECT BY MR. THOMAS

1 A: Like Sgt. Leach -- he spoke of earlier, he contacted me
2 as a -- to do a specific examination, mechanical examination,
3 that he alluded to earlier on this vehicle. It's not
4 uncommon.

5 You know, he calls me on a fairly regular basis. We do
6 have two other regional mechanics, but I tend to cover the
7 eastern part of the state, which would include Sgt. Leach's
8 area. I was contacted by him to come and examine the vehicle.

9 Q: I'm going to show you what's been marked for
10 identification as State's 137. Please look at that and tell
11 us if you recognize it?

12 A: I do.

13 Q: What is it?

14 A: It is a printout of my mechanical examination.

15 Q: Did you prepare that document?

16 A: I did.

17 MR. THOMAS: Your Honor, the State would move to have 137
18 entered into evidence.

19 THE COURT: Any objections?

20 MR. HILLIARD: No objection.

21 THE COURT: 137 is into evidence without objection.

22 (WHEREUPON, State's Exhibit Number 137, vehicle
23 mechanical examination report, was admitted into
24 evidence.)

25 BY MR. THOMAS:

J.L. BOOKER - DIRECT BY MR. THOMAS

1 Q: What vehicle did you examine?

2 A: I examined the 2003 -- I believe it was -- the Ford F-150
3 that we were speaking of earlier.

4 Q: And what did you find in the course of the examination?
5 What were your findings?

6 A: My findings were that there were no immediate mechanical
7 failures or really any mechanical failures of that nature
8 prior to this collision.

9 Q: And what all did you do to make those findings?

10 A: Well, I start out just like any other examination that I
11 do. I -- I am not familiar with everything that's been
12 presented at first. When I get called, the collision has
13 already happened. They've already got the vehicle. I get
14 called to go to a tow yard and look at the vehicle.

15 So I try to familiarize -- excuse me -- familiarize
16 myself with the case to some extent. I'll talk to the
17 investigators that are on scene, make sure that there's no
18 issues that I need to know about as far as does anything lead
19 to a mechanical failure, is there any evidence to a mechanical
20 failure or, like in this case, what ended up being I was just
21 called in as a precautionary nature to look at the vehicle to
22 eliminate any kind of mechanical failure.

23 I came in. In this situation, before I came and looked
24 at the vehicle, I pull up any recalls. I look at the scene
25 photographs and pictures of the vehicle that they already

J.L. BOOKER - DIRECT BY MR. THOMAS

1 have.

2 And then I will go. In this case, I went to Rex's Towing
3 in Georgetown. I met up with Lance Cpl. Ligocki, who was
4 involved with this case as well, and examined the vehicle.

5 I started out just by doing a cursory examination and
6 then I started removing wheels, wheel assemblies, to examine,
7 just do an overall cursory examination to see what I see. If
8 anything at any time leads to anything further or I see any
9 issues that I need to address, then I might go deeper
10 depending on the case or the situation.

11 In this case, I was able to do that and examine. And
12 then in this case, I was actually lucky enough to be able to
13 operate the vehicle afterwards, actually drive it, do a
14 physical test drive of the vehicle and make sure that
15 everything that I'm seeing is matching up also with what I'm
16 feeling when I'm driving it.

17 Q: And tell us about your experience driving this vehicle?

18 A: The vehicle drove like a normal vehicle. You know, this
19 is -- I wouldn't say rare, but usually the vehicles that we
20 look are inoperable and not able to be driven. This vehicle
21 was able to be driven. I really saw no issues as far as the
22 drivability of this vehicle. I mean it drove fine.

23 MR. THOMAS: No further questions.

24 THE COURT: Cross?

25

CROSS-EXAMINATION

J.L. BOOKER - CROSS BY MR. HILLIARD

1 BY MR. HILLIARD:

2 Q: And you had the opportunity and went out to review it and
3 look over it is I think what you told the prosecutor. But you
4 had the opportunity to drive it around some; is that correct?

5 A: Correct.

6 Q: And you didn't see any trouble with it or it drove fine I
7 think was your words?

8 A: Correct.

9 MR. HILLIARD: Thank you, sir. That's all I have.

10 THE COURT: All right. You may step down. Call your
11 next witness.

12 MR. THOMAS: Cpl. Alban.

13 THE CLERK: Do you solemnly swear or affirm that the
14 testimony you are about to give will be the truth, the whole
15 truth, and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Please be seated and state your
18 name for the record.

19 THE WITNESS: Joseph Alban. I'm also with the Highway
20 Patrol MAIT team in the Pee Dee region.

21 J.A. ALBAN, being first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. THOMAS:

25 Q: Corporal Alban, if you would, just give me your -- what

J.R. ALBAN - DIRECT BY MR. THOMAS

1 you do at MAIT, your educational background, and go through
2 that whole spiel, please?

3 A: I'm also a supervisor for what consists of a team of
4 three investigators and myself. I work out of the Florence
5 office. I'm the opposite team of Cpl. Luther. We receive the
6 daily duties of the team and we also go out on calls.

7 Q: And give us a little bit about your educational
8 background?

9 A: Okay. I also have over 1,000 hours of reconstruction
10 training. As it pertains to this case, I've had basic
11 pedestrian and bicycle training and advanced pedestrian and
12 bicycle training, and I've also had motorcycle training, which
13 consists of reconstructing collisions that involve those three
14 aspects.

15 MR. THOMAS: Your Honor, the State would ask that this
16 witness be deemed an expert in the field of accident
17 reconstruction.

18 THE COURT: Any objections?

19 MR. HILLIARD: No, sir. Judge, I think we're talking
20 about the same thing.

21 THE COURT: All right.

22 MR. HILLIARD: I don't have any objections.

23 MR. THOMAS: Okay.

24 BY MR. THOMAS:

25 Q: What was your involvement in this case?

J.R. ALBAN - DIRECT BY MR. THOMAS

1 A: My only involvement in this case was to oversee the speed
2 that was done by Investigator Ligocki, which is Lance Cpl.
3 Ligocki, which is also a member of our team.

4 Q: And when you say speed, what speed?

5 A: It would have been the speed of the vehicle at the time
6 of the collision.

7 Q: What vehicle?

8 A: Being the Ford F-150.

9 Q: I'm going to show you what's been marked for
10 identification as State's 138. There's several pages paper --
11 stapled together. Please take a look at that and tell me if
12 you recognize what it is?

13 A: I do.

14 Q: What is it?

15 A: This is the calculations portion of our case notes. The
16 first page here is where Lance Cpl. Ligocki would have done
17 her hand calculations and notes. The second page is where I
18 added some notes as well based on the slide to stop speed we
19 did on the moped itself. And the following page is the
20 portion where we use a computer program and input these
21 distances, road values, friction values and stuff, and check
22 our work that we did with our hand calculations. It's just a
23 way of checking both of these.

24 MR. THOMAS: Your Honor, the State would move to have 138
25 entered into evidence?

J.R. ALBAN - DIRECT BY MR. THOMAS

1 THE COURT: Any objections?

2 MR. HILLIARD: No objection Your Honor.

3 THE COURT: 138 is into evidence without objection.

4 (WHEREUPON, State's Exhibit Number 138, speed report, was
5 admitted into evidence.)

6 BY MR. THOMAS:

7 Q: Tell us a little bit about the calculations you did and
8 what they showed?

9 A: These calculations show a minimum speed for the Ford F-
10 150 at 46 miles an hour approximately and a maximum speed of
11 around 56 miles an hour.

12 Q: And what does that mean, a minimum and a maximum speed?

13 A: This formula we use is what's known as a Searle formula.
14 John Searle came up with this formula. He is an engineer
15 that's came up with this formula years ago. He revamped this
16 formula in 1993 and simplified it a little bit.

17 Basically, we take the friction value of the roadway or
18 in this case a known number, which is a .70 for friction
19 value, the distance that the pedestrian traveled, and put it
20 into a formula which gives us a minimum and a maximum speed.

21 Q: In other words, would that be a range?

22 A: It is.

23 Q: And how do you check those calculations?

24 A: We got our distances from the CAD drawing. The distance
25 would have been from the initial point of impact, as Cpl.

J.R. ALBAN - DIRECT BY MR. THOMAS

1 Luther stated in the pictures would have been those gouging or
2 scratches in the roadway, and we -- we measure that from that
3 distance to the final rest of the pedestrian and as well as
4 from there to the final rest of the moped. That gives us a
5 total distance in which we can also input into these formulas,
6 along with the friction values, which in turn gives us a
7 minimum and maximum speed.

8 MR. THOMAS: Thank you. No further questions.

9 THE COURT: All right. Cross?

10 CROSS-EXAMINATION

11 BY MR. HILLIARD:

12 Q: Notes in the report show that you calculated in two ways;
13 is that --

14 A: That's correct. We -- as well as the pedestrian throw,
15 which is the Searle formula, we also did a slide to stop on
16 the moped itself. That would have been from the point of
17 impact to the final rest of the moped as it is sliding along
18 the roadway. That gave us a speed of approximately 55 miles
19 an hour, which is consistent with the pedestrian throw as
20 well.

21 Q: Yes, sir. So you did it two different ways and one was
22 40 --

23 A: Six.

24 Q: -- to 56 and the other one was 55?

25 A: Correct.

J.R. ALBAN - CROSS BY MR. HILLIARD

1 Q: Within the same range there?

2 A: That's correct.

3 MR. HILLIARD: Thank you, sir.

4 THE COURT: All right. Any redirect?

5 MR. THOMAS: No, sir, Your Honor.

6 THE COURT: All right. You can step down. Does the jury
7 need a break? All right. Let's take a 15-minute break and
8 we'll come back and resume. Do not discuss the case.

9 MR. HILLIARD: Thank you, Your Honor.

10 MR. THOMAS: Thank you, Your Honor.

11 (WHEREUPON, the jury exited the courtroom at 3:21 p.m.)

12 THE COURT: All right, 15 minutes.

13 MR. HILLIARD: Thank you, Judge.

14 (WHEREUPON, there was a break in the proceedings from
15 3:21 p.m. until 3:47 p.m., after which the proceedings
16 resumed as follows.)

17 THE COURT: All right. How many were witnesses do we
18 have today?

19 MR. THOMAS: If we can get through two more witnesses
20 today --

21 THE COURT: All right.

22 MR. THOMAS: It should be relatively short witnesses. We
23 were going to have Dr. Proctor testify this afternoon, but he
24 had an emergency and would like to come here and be the first
25 to testify tomorrow.

J.R. SHULL - DIRECT BY MR. THOMAS

1 THE COURT: All right. Sounds good. Go ahead and bring
2 out the jury.

3 (WHEREUPON, the jury entered the courtroom at 3:47 p.m.)

4 THE COURT: All right. Call your next witness.

5 MR. THOMAS: Your Honor, the State would call Lance Cpl.
6 Shull to the stand.

7 THE CLERK: Do you solemnly swear or affirm that the
8 testimony you are about to give will be the truth, the whole
9 truth, and nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you. Please be seated and state your
12 name for the record.

13 THE WITNESS: I'm Lance Cpl. Jerry Ray Shull Jr. of the
14 South Carolina Highway Patrol MAIT team.

15 MR. THOMAS: Okay.

16 J.R. SHULL, being first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. THOMAS:

20 Q: Lance Cpl. Shull, just tell us what you do at MAIT and
21 your educational background?

22 A: I'm an investigator with MAIT. I've been with MAIT for
23 the last nine years. I have 19 years overall as a South
24 Carolina state trooper. I have a similar educational
25 background, training background, to my colleagues there in the

J.R. SHULL - DIRECT BY MR. THOMAS

1 back. I have over 1,000 hours of training in reconstruction.
2 I'm also ACTAR accredited, as are my colleagues. My education
3 ranges from anywhere from interview and interrogations, basic
4 collision reconstruction, ped/bike reconstructions, commercial
5 motor vehicle reconstructions, motorcycle reconstructions,
6 photography, evidence collection.

7 MR. THOMAS: Your Honor, at this time, the State would
8 seek to have this witness qualified as an expert in accident
9 reconstruction.

10 THE COURT: All right.

11 MR. HILLIARD: No objection.

12 THE COURT: All right.

13 BY MR. THOMAS:

14 Q: Lance Cpl. Shull, what -- how were you involved in this
15 case?

16 A: I was notified of the collision again very similar to the
17 rest of my team. I arrived on scene approximately at the same
18 time as Cpl. Luther on February 21st of 2015. I arrived on
19 scene. Cpl. Luther and myself did a walk-through of the scene
20 to get a general idea of what we were looking at. I assisted
21 Cpl. Luther with his photographs and it was dark. He had to
22 have additional lighting. I took visual video of the scene
23 while we were there. I also assisted in completing the
24 forensic mapping of the scene.

25 And then once we left the scene and made it back to the

J.R. SHULL - DIRECT BY MR. THOMAS

1 office, I used the forensic mapping to create a CAD, computer-
2 aided diagram, of the scene. And then once that was completed
3 and the rest of the investigation was completed, I used the
4 other findings to help put together a computer animation.

5 Q: I'm going to show you what's been marked for
6 identification as State's Exhibit 139. Please take a look at
7 that and tell me if you recognize what it is?

8 A: Yes, sir. That's the -- it's a disk that contains the
9 MAIT video that I took that night.

10 Q: And when was that taken?

11 A: The night of -- the night of the collision, February 21st,
12 2015.

13 Q: Have you had an opportunity to review it?

14 A: Yes, sir, I have.

15 Q: Is it a true and accurate representation of the video you
16 took?

17 A: Yes, sir.

18 MR. THOMAS: Your Honor, the State would move to have 139
19 entered into evidence.

20 THE COURT: Any --

21 MR. THOMAS: And also to publish it.

22 THE COURT: Any objections?

23 MR. HILLIARD: That's the animation?

24 MR. THOMAS: The video.

25 MR. HILLIARD: No objection to the video, Your Honor.

J.R. SHULL - DIRECT BY MR. THOMAS

1 THE COURT: All right. 139 is into evidence and you may
2 publish it.

3 (WHEREUPON, State's Exhibit Number 130, scene video, was
4 admitted into evidence.)

5 (WHEREUPON, State's Exhibit Number 130 was published in
6 open court.)

7 BY MR. THOMAS:

8 Q: And while this is being published, if you could, just let
9 us know what's going on and what you're taking video of.

10 A: Yes, sir. What we do whenever we arrive on the scene is
11 very similar to the photographs that Cpl. Luther took. We
12 will start at the area of impact, actually just prior to the
13 area of impact. We will walk through the scene following the
14 path of the vehicles or pedestrians involved in the scene.

15 We return along that same path and then we go back
16 through a second time to try to document the evidence on the
17 scene. The video is primarily supposed to be a backup to the
18 photographs if the photographs are lost. We do have some
19 limitations with the darkness. It's a little blurry right
20 now. It should clear up momentarily. Again, with the
21 darkness out there and the flashing lights, we do have some
22 limitations on what we can do with regular digital video.

23 And this is as we just walk through the scene following
24 the path that the collision would have taken place.

25 You can look down at the bottom of the screen. You'll

J.R. SHULL - DIRECT BY MR. THOMAS

1 see some white markings. Those are some of the gouges. And
2 again, you can see towards the bottom of the screen and over
3 to the right side of the roadway some of the plastic, the
4 debris.

5 And again, as it clears up, you'll see the orange mark
6 that we just went past where a piece of the evidence was
7 circled. Again, over to the right, you'll see some more --
8 some more of the black plastic. It will clear up a little bit
9 now. And here we continue the path of travel of the moped to
10 the final rest position of the moped.

11 Q: All right.

12 A: And again, as I said, we begin by starting at the area of
13 impact, just a little bit before that, so we can try to catch
14 the evidence with it, follow the path of the moped. We'll
15 circle the moped and we'll go back along the same path.

16 And with the light to our back now, we're trying to light
17 up the area with some -- some emergency lighting so we can see
18 better. It's a little bit easier to see. You've got the
19 debris field as I walk my way back towards the area of impact.

20 There are some gouges in the roadway. And again, where
21 you can see the beam of the light shining, you'll see the
22 heavier gouging in the roadway, almost like an arrow pointing
23 back to an area of impact where the truck collected the moped.

24 And again, we circle around to kind of get a general idea
25 of where we are in this neighborhood and we begin our second

J.R. SHULL - DIRECT BY MR. THOMAS

1 pass to try to get a better look at the evidence. The camera
2 will dark down some to try to show the evidence better and not
3 just the path of travel.

4 Q: So this was the same stuff that was documented through
5 photographs essentially?

6 A: That is correct.

7 (WHEREUPON, the video ended.)

8 BY MR. THOMAS:

9 Q: And you testified earlier that you also participated in
10 putting together an animation of that for a reconstruction
11 animation of the accident itself?

12 A: Yes, sir.

13 Q: What -- if you could, go into as much detail as you can
14 remember, what all went into you putting that together? What
15 information did you use to put it together? What system did
16 you use to put it together? Just how did you go about doing
17 that?

18 A: We use a computer program called Edgex, and our
19 computer-aided diagram and the animation we use the same
20 program for. Whenever we are on the scene, we complete a
21 forensic mapping. We want to be able to make a scale diagram
22 of everything we have on the scene and put it in a way that we
23 can look at it back at the office.

24 The best way I can equate to us mapping the scene -- most
25 of you are familiar with a surveyor's transit. It's very

J.R. SHULL - DIRECT BY MR. THOMAS

1 similar. It's just a bit more sensitive than that. We -- in
2 effect, we survey the scene.

3 As we are surveying that scene, as we are mapping the
4 scene, it's actually drawing it in the handheld computer that
5 we're collecting the data in. But when we bring that back to
6 our office and I input it into my computer, it's just a series
7 of black lines. In this case, you've got a straight roadway.
8 You'll have the black line showing the roadway, black line
9 showing the shoulders of the roadway, and you'll have evidence
10 points that have been numbered showing the evidence in the
11 roadway. We'll show -- we'll map out the gouges or the
12 scratches and tire marks in the road. It will all just come
13 in with lines and they've got markers on them -- code markers
14 on them.

15 And what we'll do is, once I get back, I will take that
16 drawing and make it a little bit easier for us to be able to
17 see, make it look more like the roadway instead of just a line
18 drawing with a bunch of codes to it.

19 Eventually, we'll come up with a CAD and it is a scale
20 accurate -- an accurate scale representation of the crime
21 scene. And from that, we are able to scale the vehicles that
22 were involved. In this case, the F-150 and the moped or the
23 scooter. We scale those in and, based on the evidence on the
24 scene and the evidence on the vehicles, place those vehicles
25 back together at the area of impact and have them go through a

J.R. SHULL - DIRECT BY MR. THOMAS

1 sequence of events, the most likely path that they would have
2 taken based on the evidence that's on the scene itself.

3 Once we get this still diagram this way, I'm able to take
4 things -- again, go back to pictures that were taken on the
5 scene, pictures that were taken of the vehicles, the speeds
6 that were done by Lance Cpl. Ligocki and Lance Cpl. Alban and
7 they will use all of the information that we gathered and
8 based on the evidence come up with -- with the animation. All
9 of it's based on the overall evidence we found on the scene.

10 Q: I'm going to show you what's been marked as State's
11 Exhibit 140. Take a look at that and tell us if you recognize
12 what that is?

13 A: This is a disk that contains the animation that I did.

14 Q: Okay. Did you prepare that yourself?

15 A: The disk or the animation on it?

16 Q: The animation?

17 A: Yes, sir. I prepared the animation.

18 Q: Did you have a chance to view that disk? Is that the
19 animation that you prepared in this case?

20 A: It is.

21 Q: Using all the evidence in this case?

22 A: Yes, sir.

23 MR. THOMAS: Your Honor, the State would move to have 140
24 entered into evidence and to publish.

25 THE COURT: Any objections?

J.R. SHULL - DIRECT BY MR. THOMAS

1 MR. HILLIARD: I'd like to ask him a couple questions
2 about the animation itself before I decide about the
3 objection. Can I just ask a couple of questions about that?

4 THE COURT: Do you want to do that outside the jury's
5 presence or --

6 MR. HILLIARD: No, sir. That's fine. We can do it.

7 THE COURT: Go ahead.

8 VOIR DIRE

9 BY MR. HILLIARD:

10 Q: And I'm trying to understand what you're talking about --

11 A: Sure.

12 Q: -- so I can have it fixed in my head. The -- when you're
13 talking about scaling the vehicles involved, is that something
14 that you do like choose one and it puts a vehicle in itself or
15 you put the size of it? How does that work?

16 A: We have -- you've got vehicles that you can pick. The
17 computer program does have certain specific vehicles.

18 Sometimes it does not have the specific vehicle that we
19 need. We'll find one that is as close as we can possibly get
20 to the make, model, and size, and once we put that vehicle in,
21 we also have another computer program that's called Expert
22 Auto Stats, and it has a listing of wheelbase, wheel track,
23 width, length, weights of just about any vehicle that you can
24 think of. We use that and we are able to make that vehicle to
25 the proper scale based on the Expert Auto Stats.

J.R. SHULL - DIRECT BY MR. THOMAS

1 We place that back into the CAD diagram and, using the
2 evidence that we had already mapped on the scene, everything
3 is drawn on the scene, we're able to put the vehicle into the
4 evidence, again comparing the evidence on the two vehicles
5 with the evidence on the scene itself.

6 Q: So you put the data into the computer. You put the data
7 from the scene into the program and the program draws the car
8 and the person and the moped? Is that --

9 A: Somewhat. The -- when we're mapping the scene, the
10 actual scene itself and all of the evidence, it is drawn in
11 the computer -- in our handheld computer as we do it. It's
12 done in real time as we map it and it's done to scale, the
13 scale of that roadway itself. When we come back, we don't
14 have the vehicles in there. We may have the final rest of a
15 generic vehicle in that drawing, but then when we get back to
16 the office, we have in our full computer program vehicles that
17 we can choose from and we try to find the closest vehicle we
18 possibly can and then we make that vehicle to the scale of the
19 vehicle that's actually involved with our -- with our
20 collision.

21 Q: And you're talking about scaling and that this animation
22 is to scale. What about the speed? Is the speed in it to
23 scale as well? And is that a --

24 A: Yes, sir. The speed -- we're able to put in the speed of
25 the -- what they refer to it as actors. We're able to put in

J.R. SHULL - DIRECT BY MR. THOMAS

1 the speed of the actors involved, and that was based on the
2 speed calculations done by Lance Cpl. Ligocki and Lance Cpl.
3 Alban.

4 Q: The ones we've heard from where it between 46 and 56 and
5 the other way it was at 55 with the --

6 A: That's correct.

7 Q: So you use that information as well to make this?

8 A: That's correct.

9 MR. HILLIARD: We don't have any objections to it, Judge.

10 THE COURT: All right. 140 is into evidence without
11 objection.

12 (WHEREUPON, State's Exhibit Number 140, accident
13 animation, was admitted into evidence.)

14 MR. THOMAS: Permission to publish, Your Honor?

15 THE COURT: Sure.

16 (WHEREUPON, State's Exhibit Number 140 was published on
17 screen in open court.)

18 CONTINUED DIRECT EXAMINATION

19 BY MR. THOMAS:

20 Q: And if you could, just tell us what we're looking at as
21 it is being published -- as 140 is being published?

22 A: Okay. Whenever we do the animations, the first view that
23 we get is a top-down, two-dimensional view. The blue markings
24 you'll see in the roadway -- those are the gouge marks. We
25 color our gouge marks blue so they'll stand out against the

J.R. SHULL - DIRECT BY MR. THOMAS

1 gray roadway. If there were any tire marks to be involved,
2 they would be colored in red, again to stand out better
3 against the gray roadway.

4 The -- all of these are based on the same animation. We
5 are able to set up different camera angles so we can see the
6 same thing over and over again from multiple angles, but every
7 one of these is the exact same, just a different viewpoint.

8 The impact of the truck against the back of the moped.
9 Again, that's based on evidence. We saw pictures from Cpl.
10 Luther where the two vehicles were able to be put together.
11 Using those where the vehicles can be put together, as well as
12 the beginning of the gouge marks and I believe there's one
13 tire mark that was on the scene, we were able to get to an
14 area of impact and fairly accurately follow the post-impact
15 collision.

16 (WHEREUPON, the animation ended and the proceedings
17 resumed as follows.)

18 MR. THOMAS: Thank you, Lance Cpl. Shull. No further
19 questions.

20 THE COURT: All right. Cross?

21 MR. HILLIARD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. HILLIARD:

24 Q: The -- do you know the street address of the accident?

25 A: Not off the top of my head, no, sir.

J.R. SHULL - DIRECT BY MR. THOMAS

1 Q: And if I show you the MAIT report, could you tell me what
2 it was?

3 A: I know that it was on Hicks Drive. Aside from that, I
4 don't know off the top of my head. No, sir.

5 Q: All right, sir. Let me show you Defendant's Number 3 for
6 identification and see if this is detailed enough for you to
7 put a pushpin at the site of the accident. Is that detailed
8 enough for you to do that or not?

9 A: No, sir. Not really. Again, I'm not from the general
10 area. I don't know exactly where off the top of my head.

11 Q: All right, sir. Good enough.

12 MR. HILLIARD: That's all the questions I have. Thank
13 you, sir.

14 THE COURT: All right. You may step down.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you. Call your next witness.

17 MR. THOMAS: Your Honor, the State would call Trooper
18 Metherd.

19 THE CLERK: Do you solemnly swear or affirm that the
20 testimony you are about to give will be the truth, the whole
21 truth, and nothing but the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you. Please be seated and state your
24 name for the record.

25 THE WITNESS: My name is Trooper First Class Elijah A.

ELIJAH METHERD - DIRECT BY MR. THOMAS

1 Metherd, state trooper with the Highway Patrol.

2 ELIJAH METHERD, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. THOMAS:

6 Q: Trooper Metherd, what your duties there at Highway
7 Patrol?

8 A: General daily duties include traffic law enforcement,
9 collision investigation, responding to public needs, what may
10 be anywhere from an assist motorist on the side of the road or
11 we get calls for, like, abandoned vehicles on the side of the
12 road.. We respond to those types of calls.

13 Q: And were you working with Highway Patrol back in April of
14 2015?

15 A: I was.

16 Q: Do you recognize the defendant in this case, Mr. Lewis?

17 A: I do.

18 Q: When did you have or did you have an opportunity to talk
19 with him back in April of 2015?

20 A: I did. I spoke with him on April 16th, 2015.

21 Q: Do you recall what kind of --

22 MR. HILLIARD: Excuse me. Your Honor?

23 THE COURT: Yes.

24 MR. HILLIARD: This may be a matter that we have to take
25 up outside the presence of the jury.

ELIJAH METHERD - DIRECT BY MR. THOMAS

1 THE COURT: I'll tell you what. Come on up here real
2 quick.

3 MR. HILLIARD: Yes, sir.

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

7 THE COURT: Is this to ask him about him hitting a deer
8 at a later date? You know, I thought about it a little bit.
9 I don't feel as if we need it after we've been here all day
10 long. And if he does screw up and starts talking about
11 something he shouldn't, it's going to be a mistrial or
12 something. I'm just wondering if it's worth it.

13 MR. THOMAS: Well -- and this is why we --

14 THE COURT: Obviously, I understand.

15 MR. THOMAS: This is why I want to get into it because
16 the defense is going to be that he was not driving the car.
17 He's got one story right now that he went into a rut and now
18 he's telling a completely different story. Just two months
19 later, he's going to come with a different story. There's
20 going to be a different case they're going to try.

21 THE COURT: Right. He was in the car, drunk that night
22 shortly after the accident. Parts of his truck were at the
23 scene of the accident. They matched up with his truck. The
24 guy is dead and he's drunk as a skunk. Do you really need it
25 or is it worth it?

ELIJAH METHERD - DIRECT BY MR. THOMAS

1 MR. THOMAS: Well, Your Honor --

2 THE COURT: I'm just asking you.

3 MR. THOMAS: Your Honor, I'm fine with not using it right
4 now, but if the defense starts calling up witnesses --

5 THE COURT: Saying without the truck?

6 MR. THOMAS: And they have a different story as far as
7 what happened to the truck or that other people were driving
8 it or some other thing happened, then at that point I would
9 want to call him back.

10 THE COURT: I'll do that. If you need him, you can
11 recall him.

12 MR. THOMAS: Okay.

13 THE COURT: And I'll cross that bridge at that time, but
14 it's mighty dangerous right now.

15 MR. THOMAS: Okay.

16 THE COURT: We have two full days.

17 MR. THOMAS: Okay. It's my last witness. So I'll --

18 THE COURT: Unless you just want to go forward with it?

19 MR. HILLIARD: No, sir.

20 THE COURT: Why don't we do that? If you need to call
21 him to rebut, let's do that.

22 MR. THOMAS: Okay.

23 THE COURT: That would make sense.

24 MR. THOMAS: All right. That sounds good.

25 THE COURT: Why don't you just ask a couple of wrap-up

ELIJAH METHERD - DIRECT BY MR. THOMAS

1 questions just so you can be done with it?

2 MR. THOMAS: I don't even -- there's nothing I can ask to
3 wrap up.

4 THE COURT: Just thank you for being here.

5 (WHEREUPON, the bench conference ended and the
6 proceedings continued as follows.)

7 MR. HILLIARD: Thank you, Your Honor.

8 BY MR. THOMAS:

9 Q: Trooper, do you still work in the area?

10 A: I do.

11 Q: Are you going to be around the area tomorrow?

12 A: I will.

13 Q: Well, thank you for coming in today and maybe we'll call
14 you back tomorrow.

15 THE COURT: All right. Anything from the defense?

16 MR. HILLIARD: No, sir, Judge.

17 THE COURT: All right. You have a good day. Thank you
18 very much for coming. Any other witnesses for the day?

19 MR. THOMAS: Not for the day, Your Honor.

20 THE COURT: All right. 9:45 in the morning?

21 MR. THOMAS: Sounds good.

22 THE COURT: All right. Members of the jury, if you'll be
23 back at 9:45, we'll resume with this case.

24 As I've told you before, do not discuss the case among
25 yourselves or with your family, and do not investigate the

1 case. You'll get everything you need right here.

2 Have a good afternoon. See you ~~in~~ the morning.

3 (WHEREUPON, the jury exited the courtroom at 4:11 p.m.)

4 THE COURT: How many more witnesses do you have in full?

5 MR. THOMAS: Your Honor, tomorrow we have the

6 pathologist, Dr. Proctor, we have several chain witnesses, and

7 we have the witness from SLED who did the examination of the

8 blood, and that's it. So there are going to be a bunch a

9 quick ones.

10 THE COURT: All right. Sounds good. I'll see you back
11 at 9:45 in the morning.

12 MR. HILLIARD: Thank you very much, Your Honor.

13 THE COURT: Thank you.

14 (WHEREUPON, the proceedings adjourned for the day at 4:12
15 p.m.)

16

17 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

COUNTY OF GEORGETOWN)

CASE NO.: 2016-GS-22-00856

2016-GS-22-00446

VOLUME III of III

September 21, 2016

BEFORE: The Honorable William H. Seals

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

GERALD LEWIS,

Defendant.

APPEARANCES:

Austin Thomas, Esq.

Attorneys for the State.

John Hilliard, Esq.

Attorneys for the Defendant.

Official Court Reporter
Natalie Dahl, RPR

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: I have been informed that Juror 52,
3 Lee Ford, finally remembers that he knows the
4 defendant real well. After two days of trial, he
5 figured it out. What do you want to do? Bring him
6 out and talk to him?

7 MR. THOMAS: Yes, sir, Your Honor.

8 THE COURT: What says the defendant? You okay
9 with that?

10 MR. HILLIARD: Let me see, Judge. What is his
11 name? Lee Ford?

12 THE COURT: Lee Ford, Juror 52.

13 MR. HILLIARD: Yes, sir.

14 THE COURT: Bring out Juror 52.

15 (The following is had in the presence of Juror
16 52 and attorneys.)

17 THE COURT: What is it that you told the bailiff
18 this morning?

19 JUROR: Probably will have a problem just knowing
20 -- I know Mr. Lewis, and at first I didn't recognize
21 him. It's been 30 some years. It is becoming
22 difficult for me to be at home and not at least tell
23 you about it, but I do know him pretty well.

24 THE COURT: You said you haven't seen him in 30
25 something years?

1 JUROR: We graduated in 1980.

2 THE COURT: You haven't seen him since then?

3 JUROR: I haven't seen him at all.

4 THE COURT: Since you graduated in 1980?

5 JUROR: I think it was '82. I saw him in '82.

6 We were in the same college in Orangeburg, South
7 Carolina. But I think that -- I think '82 was the
8 last year.

9 THE COURT: Were you roommates or suite-mates in
10 college?

11 JUROR: No, just friends.

12 THE COURT: Friends in college?

13 JUROR: Right.

14 THE COURT: And you haven't seen him since?

15 JUROR: Right.

16 THE COURT: Taking that into account, if you were
17 to remain on this jury, could you be fair and
18 impartial to both sides, or would that relationship
19 make you uncomfortable?

20 JUROR: Really uncomfortable, because I was just
21 thinking if I can really make a good decision because
22 just knowing him would be a problem.

23 THE COURT: If you would step behind that door
24 and wait for me, I'll be back with you.

25 (Whereupon, Juror 52 exits, and the following is

1 had out with the attorneys.)

2 THE COURT: What do you think we ought to do?
3 I'll hear from the defense.

4 (A brief pause in the proceedings.)

5 MR. HILLIARD: We would be glad to keep him,
6 Judge.

7 THE COURT: And the State?

8 MR. THOMAS: State requests that he be replaced
9 with an alternate.

10 THE COURT: I'm going to replace him with an
11 alternate. He's having trouble, obviously; that is
12 why he came forward. If the clerk will -- I think we
13 just place two names in the hat, whoever you pull will
14 be the alternate. Tell 52 that he's free to go.

15 THE BAILIFF: Okay. I'll exit him around.

16 THE COURT: Pick a name. Who do you have?

17 THE CLERK: Thomas Washington, No. 163.

18 THE COURT: Thomas Washington will be Juror No.
19 12. Bring out the jury.

20 (The jury enters at 10:01 a.m., and the
21 following is heard in the presence of the jury.)

22 MR. THOMAS: State calls Edward Proctor.

23 MR. HILLIARD: Excuse me, Judge. May we approach
24 the bench?

25 THE COURT: You may.

1 (Whereupon, a bench conference was had.)

2 MR. HILLIARD: This is just a thought, but we
3 didn't say anything to the alternate about him being a
4 juror.

5 (The following is had in the presence of the jury
6 and open court.)

7 THE COURT: He's a juror. I'll tell you what --
8 Mr. Washington, I'll make you a member of the jury, if
9 you will slide over one chair. Thank you.

10 (EDWARD PROCTOR, having been duly sworn,
11 testified as follows:)

12 THE CLERK: Please be seated and state your name
13 for the record.

14 THE WITNESS: Edward Proctor, Junior.

15 DIRECT-EXAMINATION

16 BY MR. THOMAS:

17 Q What do you do for a living?

18 A Physician engaged in the practice of pathology.

19 Q What is pathology?

20 MR. HILLIARD: We'll stipulate as to his
21 expertise. Dr. Proctor has been doing this for a long
22 time, he and I are acquaintances.

23 MR. THOMAS: State asks that he is admitted as an
24 expert in the field of pathology.

25 THE COURT: Without objection.

1 Q (MR. THOMAS) In what capacity are you before us
2 today, Dr. Proctor?

3 A I perform forensic autopsies for coroners for
4 Horry, Georgetown and Dillon Counties, and had the
5 opportunity to perform a case for the deputy coroner
6 for Georgetown County.

7 Q Call you tell us about when that was?

8 A Yes, sir. This case was performed on the 22nd of
9 February 2015.

10 (State's Exhibit 141 marked.)

11 Q (MR. THOMAS) What, if any, information did you
12 have about the case before you did the examination?

13 A The information I had was the deceased was struck
14 by a vehicle while riding on his Moped. I was told by
15 the deputy coroner, Mr. Ridgeway, that the vehicle left
16 the scene.

17 Q Where was this examination conducted?

18 A In the morgue at Grand Strand Hospital in Myrtle
19 Beach.

20 Q How did the patient get to be there?

21 A The patient was brought to the morgue at Grand
22 Strand by transport service. I don't have the name,
23 but usually it is Grind Staff Transport.

24 Q I'll show you what is marked for identification
25 as State's 141. Please tell me if you recognize that?

1 A Yes, sir. This is a copy of my autopsy report
2 that I have.

3 Q This was prepared by yourself?

4 A That is correct.

5 MR. THOMAS: State moves to have 141 in evidence.

6 MR. HILLIARD: No objection.

7 THE COURT: 141 in evidence without objection.

8 (State's Exhibit 141 admitted.)

9 Q (MR. THOMAS) Can you tell us your findings or
10 what you examined? Walk us through the process of
11 doing an autopsy.

12 A I did an external examination noting injuries and
13 whatnot, and then an internal examination where we look
14 inside the body to see the extent of injuries. We take
15 fluids and tissues as we deem necessary to complete the
16 examination to include cause and manner of death. In
17 this case, this gentleman suffered significant injury,
18 most significant being a fractured disc location of the
19 odontoid process, which is the bone at the upper end of
20 the vertebral column, and this was basically dislocated
21 and pushed up through the base of the skull through the
22 man's brain.

23 The other significant findings was a laceration
24 to the posterior surface of the liver on the right
25 side. There was a fracture of the ulna, which is one

1 of the bones in the arm on the right side, and there
2 were extensive contusions and abrasions from where the
3 man hit the ground after being struck.

4 Q What was the official cause of death?

5 A The official cause of death was extensive trauma
6 sustained when struck by a motor vehicle while riding
7 his Moped.

8 Q Any other things that are tested in relation to
9 performing these autopsies?

10 A We do a toxicological evaluation on all of our
11 forensic cases.

12 Q Any alcohol or drugs found in this person's
13 system?

14 A This evaluation was performed by National Medical
15 Services, which is a certified forensic laboratory, and
16 there was a negative blood ethanol and negative blood
17 drug screen.

18 MR. THOMAS: Thank you. Nothing further.

19 MR. HILLIARD: No questions, and I don't have any
20 objection to Dr. Proctor being excused.

21 THE COURT: Call your next witness.

22 MR. THOMAS: Kimberly Brown.

23 (KIMBERLY BROWN, having been duly sworn,
24 testified as follows:)

25 THE CLERK: Please be seated and state your name

1 for the record.

2 THE WITNESS: My name is Kimberly Brown.

3 DIRECT-EXAMINATION

4 BY MR. THOMAS:

5 Q Good morning, Ms. Brown. Can you tell us what
6 your occupation was back in February of 2015?

7 A Phlebotomist.

8 Q What is that?

9 A I collect blood samples.

10 Q What sort of training or knowledge do you have to
11 know to be able to do that.

12 MR. HILLIARD: We'll stipulate she's an expert in
13 the area of blood draw.

14 MR. THOMAS: Okay.

15 Q (MR. THOMAS) Do you know why you are here today?

16 A Yes, sir.

17 Q I'm going to show you what is already entered
18 into evidence as State's 133. Will you tell me if you
19 recognize that?

20 A Yes, sir.

21 Q What is that?

22 A That is my signature that goes along with the
23 blood collection that is sent to SLED.

24 Q Whose blood did you collect back on February 21,
25 2016?

1 A Mr. Gerald Lewis.

2 Q Is he present in the courtroom today?

3 A Yes, sir.

4 Q Would you point him out to us, please?

5 A (Indicates.)

6 Q Where was this collection performed?

7 A In the emergency room in Georgetown Hospital.

8 Q Will you walk us through the procedure that you
9 go through when you take a blood sample from someone?

10 A When I'm called down to the emergency room to get
11 blood drawn from someone that comes in with a state
12 trooper, it is a specific process we have to use. I
13 have to clean the site with a Betadine prep. We
14 collect the blood into tubes supplied by the State
15 trooper. I put them in the box, and the trooper and I
16 seal them together, and they go with the officer.

17 Q So is there a state trooper present for the
18 entire process?

19 A Yes, sir.

20 Q And it was sealed, and then you gave custody to
21 the trooper that was present with you?

22 A Yes, sir.

23 Q Do you use any sort of alcohol or any sort of
24 swab that could contribute to a positive ethanol sample
25 in the blood test?

1 A No, sir.

2 MR. THOMAS: Thank you. Nothing further.

3 MR. HILLIARD: No questions. No objection to her
4 being excused.

5 THE COURT: You have a good day.

6 MR. THOMAS: Sergeant Gardener.

7 (STEVEN R. GARDNER, having been duly sworn,
8 testified as follows:)

9 THE CLERK: State your name for the record.

10 THE WITNESS: Steven R. Gardner.

11 DIRECT-EXAMINATION

12 BY MR. THOMAS:

13 Q It is Sheriff Gardener now, isn't it?

14 A Yes, sir.

15 Q Congratulations. Where did you work back in
16 February of 2015?

17 A For the South Carolina Highway Patrol, duty
18 station was Georgetown and Williamsburg.

19 Q What were your duties?

20 A I was a sergeant at the time of this incident.

21 Q What does a sergeant with Highway Patrol do?

22 A I handled a lot of the administrative duties,
23 handled the evidence, respond to incident scenes and
24 make sure everything is done.

25 Q Do you know what case we're here for?

1 A Correct.

2 Q How were you involved in this case?

3 A I went and got a search warrant to obtain a blood
4 sample from Gerald Lewis.

5 (State's Exhibit 142 marked.)

6 Q (MR. THOMAS) I'll show you 142. Would you take
7 a look and tell us if you recognize it?

8 A (Witness examines document.) Yes, sir.

9 Q What is it?

10 A That is a search warrant that was filled out and
11 completed by myself so that I could get a blood sample
12 from Gerald.

13 Q This is a search warrant that you filled out and
14 got signed for this particular case to get the blood?

15 A That's correct.

16 MR. THOMAS: State moves 142 into evidence.

17 MR. HILLIARD: No objection.

18 THE COURT: 142 is in.

19 (State's Exhibit 142 admitted.)

20 Q (MR. THOMAS) What did you do after you got the
21 search warrant?

22 A Got that signed. Once I did that, I went to the
23 Georgetown Emergency Room where Trooper Jacobs and
24 Corporal Danny Payne were located. Corporal Danny
25 Payne executed the search warrant, and that was the

1 summation of my job.

2 Q Once that sample was collected, did you have any
3 other interaction with that sample?

4 A No, sir, not at that point. It went with the
5 trooper.

6 Q I'll show you what we'll mark for identification
7 as 143.

8 (State's Exhibit 143 marked.)

9 Q (MR. THOMAS) Take a look and see if you
10 recognize what that is.

11 A This is a chain of custody for the blood.

12 Q Okay.

13 A Of Gerald.

14 Q Are those filled out in the ordinary course of
15 business at the Highway Patrol?

16 A That is correct.

17 Q And, again, that is the chain of custody for this
18 blood sample in this case here today?

19 A That's correct.

20 MR. THOMAS: State moves to have 143 entered into
21 evidence.

22 MR. HILLIARD: No objection.

23 THE COURT: 143 in without objection.

24 (State's Exhibit 143 admitted.)

25 Q (MR. THOMAS) Looking at 143, what, if any -- did

1 you ever see that blood sample again after you got the
2 search warrant for it to be collected?

3 A Yes, sir. Trooper Jacobs took it from the
4 hospital to the Georgetown patrol office, and at that
5 point he draws it. At that point, I retrieved it from
6 the refrigerator, I completed the reports required for
7 the chain of custody showing it went from the
8 refrigerator to myself so I could log it into the
9 system as evidence. Once I completed that, I tagged
10 the evidence with a label and returned back to the
11 refrigerator to wait to go to SLED.

12 Q Where is that?

13 A The refrigerator is located at the Georgetown
14 patrol office inside a secured room that only evidence
15 custodians have access to.

16 Q Thank you.

17 MR. THOMAS: Nothing further.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. HILLIARD:

21 Q Where are you a sheriff?

22 A Williamsburg County.

23 MR. HILLIARD: Congratulations. No other
24 questions.

25 MR. THOMAS: William Shawn Owens.

1 (WILLIAM SHAWN OWENS, having been duly sworn,
2 testified as follows:)

3 THE CLERK: Please be seated and state your name
4 for the record.

5 THE WITNESS: William Shawn Owens.

6 DIRECT EXAMINATION

7 BY MR. THOMAS:

8 Q What is your title over at Highway Patrol?

9 A Currently, sergeant in Troop 5, Post C,
10 Georgetown and Williamsburg.

11 Q Sergeant Owens, what are your duties there?

12 A Basically the same that Mr. Gardner just stated a
13 few minutes ago. I handle the administrative duties
14 within our post, as well as handle day-to-day
15 activities on the road. Basically take care of all of
16 the administrative stuff to include evidence.

17 Q And as part of your duties -- I'll show you what
18 is in evidence as State's 143. As part of your duties,
19 did you have any contact with the blood sample taken in
20 the case of Mr. Gerald Lewis?

21 A Yes, sir, I did.

22 Q And what was that?

23 A On February the 24th, 2015, at the time First
24 Sergeant J.A. Love removed the blood from the evidence
25 at the post level, they were given to me and I

1 transported them from Georgetown to the CEO up in
2 Columbia.

3 Q So take us through, if you would, the time --
4 from the time the blood is taken at the hospital, what
5 happens to the blood after that?

6 A Well, from when it makes it to where Sergeant
7 Gardner stated earlier, he has it there at the post
8 level, he takes it from the refrigerator after the
9 trooper initially turns it in, keeps it within the post
10 level, we then transport it to the CEF. It is not
11 going to be necessarily Trooper Gardner or Jacobs, but
12 I just happened to be the trooper that they had to
13 utilize that day to transport from Georgetown to
14 Columbia.

15 Q What is CEF?

16 A Central Evidence Facility.

17 Q Did you have any other involvement with this
18 case?

19 A No, sir.

20 Q Thank you.

21 MR. THOMAS: No further questions.

22 THE COURT: Cross?

23 MR. HILLIARD: No questions. Thank you.

24 MR. THOMAS: We call Lance Corporal Donkle.

25 (LEEANNA M. DONKLE, having been duly sworn,

1 testified as follows:)

2 THE CLERK: Please be seated and state your name
3 for the record.

4 THE WITNESS: Leeanna Middleton Donkle.

5 DIRECT-EXAMINATION

6 BY MR. THOMAS:

7 Q Corporal Donkle, where do you work?

8 A Central Evidence with South Carolina Highway
9 Patrol.

10 Q What do you do there?

11 A There we get evidence in from -- throughout the
12 State of South Carolina and we secure it until it is
13 transported to SLED. When it comes to us, it is
14 sealed. Whenever we get it, it is already sealed and
15 secured in our facility.

16 Q And where is your facility?

17 A It is in Columbia, South Carolina.

18 Q Do you know what case you are here for today?

19 A I do.

20 Q How were you involved in this case, if you were?

21 A I was the officer that received it from Owens
22 that brought it to Central Evidence on February 24th.

23 Q When you say "it," what are you referring to?

24 A Sir?

25 Q When you are saying you receive "it" --

1 A I received a sealed, what we call, a DUI kit,
2 biological kit from SLED that has the blood or urine
3 sealed within it.

4 Q Whose sample was that?

5 A That was on a Gerald Lewis.

6 Q What did you do once you received that sample?

7 A Once we received it there, I took it and signed
8 for it. I gave the officer a copy of the chain, and
9 then I entered it into what they call an I-lab for
10 SLED, which is just a pre-log system, so that way it is
11 already in their system when we get it to SLED.

12 Q What do you do with the physical sample itself?

13 A It is secured in our warehouse in a safe, which
14 the only people that have access to it is the officers
15 that work at Central Evidence.

16 MR. THOMAS: Thank you. Nothing further.

17 MR. HILLIARD: Thank you, ma'am. No questions.

18 THE COURT: Have a good day.

19 MR. THOMAS: David Fouty.

20 (DAVID FOUTY, having been duly sworn,
21 testified as follows:)

22 THE CLERK: Please be seated and state your
23 name.

24 THE WITNESS: David Fouty.

25 DIRECT-EXAMINATION

1 BY MR. THOMAS:

2 Q Where do you work?

3 A Assigned to the South Carolina Department of
4 Public Safety assigned to the federal task force, drug
5 enforcement administration.

6 Q Where did you work back in 2015?

7 A Central Evidence Facility in Columbia.

8 Q What was your title then?

9 A Lance corporal.

10 Q You know why you are called to be here today?

11 A I do.

12 Q And what involvement, if any, did you have with
13 this case?

14 A There was a sample of blood brought into our
15 facility, and on the day in question, my job was to
16 transport all of the samples we had collected over a
17 certain amount of time. We take one to two trips a
18 week to SLED to take all of the evidence that we had
19 taken into SLED to be analyzed.

20 Q Where is SLED?

21 A Broad River Road in Columbia.

22 Q So take us through the process of actually
23 retrieving those items that you take to SLED, and then
24 actually dropping them off at SLED.

25 A We have a central holding room where all the

1 evidence is taken into. Lance Corporal Donkle received
2 the evidence on the 24th, and over a three-, four-day
3 period, depends how heavy it is or how much evidence we
4 take in, we decide to take a trip to SLED to drop off
5 evidence. On the 26th of February, 2015, I obtained
6 all of the evidence that was stored and locked up in
7 our holding facility, the refrigerator or drug
8 evidence. I took it out of the storage area, did the
9 appropriate paperwork to be transported to SLED, made
10 sure the paperwork was correct, evidence was correct,
11 sample was sealed and correct so that SLED would take
12 it in. I then transported to SLED on the 26th and
13 logged it in with Ms. Yarbrough at SLED.

14 Q Do you physically hand over those items to
15 Ms. Yarbrough at SLED?

16 A I do, and we do it one at a time. Each evidence
17 is taken in and handed over one piece at a time.
18 Ms. Yarbrough makes sure that our paperwork and
19 evidence is correct before she'll take it, and then
20 once she deems it to be correct, she'll sign for it and
21 take that piece of evidence.

22 MR. THOMAS: Thank you. No further questions.

23 MR. HILLIARD: No questions. Thank you, sir.

24 (JOHN LOVE, having been duly sworn, testified
25 as follows:)

1 THE CLERK: Please be seated and state your name
2 for the record.

3 THE CLERK: John Anthony Love.

4 DIRECT-EXAMINATION

5 BY MR. THOMAS:

6 Q Where do you work?

7 A Retired from the Highway Patrol. I'm currently
8 Georgetown magistrate.

9 Q Where were you working back in February of 2015?

10 A I was the first sergeant for Troop 5, Post C in
11 Georgetown Williamsburg County.

12 Q Do you have any involvement with the case we're
13 here for today?

14 A Yes, sir.

15 Q And what was that?

16 A I was the evidence custodian along with now
17 Sheriff Gardner, and maintained the evidence and signed
18 over the evidence to Sergeant Owens to be transported
19 to Columbia.

20 Q Okay. I'll show you what is in evidence as
21 State's 143. Tell me if you recognize that?

22 A Yes, sir. That is the chain of evidence and also
23 the log of anyone that had any contact with the
24 evidence.

25 Q Where did you receive the blood sample of Gerald

1 Lewis?

2 A I received the evidence from the Post C office,
3 which is off of Ridge Street, which is off of High \
4 Market Street here in Georgetown County, which was our
5 main office for the assigned post. I obtained the
6 blood from the refrigerator, the evidence refrigerator,
7 and transferred it to Sergeant Owens to be transported
8 to central evidence.

9 Q When was that done?

10 A The day was on February 24, 2015.

11 Q Any other involvement with this case?

12 A No, sir.

13 MR. THOMAS: Thank you. No further questions.

14 MR. HILLIARD: No questions. Thank you, sir.

15 (DORIS YARBROUGH, having been duly sworn,
16 testified as follows:)

17 THE CLERK: State your name and spell your last
18 name.

19 THE WITNESS: Doris Yarbrough, Y-A-R-B-R-O-U-G-H.

20 DIRECT-EXAMINATION

21 BY MR. THOMAS:

22 Q Where do you work?

23 A I work for the South Carolina Law Enforcement
24 Division, also known as SLED.

25 Q What do you do there?

1 A Forensic technician in the Evidence Control
2 Department.

3 Q So what kind of duties do you have as a forensic
4 technician?

5 A My job is to receive packages and transfer
6 evidence to other people within the lab.

7 Q As part of your duties, did you receive any
8 packages related to a Gerald Lewis?

9 A I did.

10 Q What did you receive?

11 A I received what we call a biological specimen
12 kit, or DUI kit, that had his label with his name on
13 it.

14 Q And when did you receive that?

15 A February 26 of 2015.

16 Q Who did you receive it from?

17 A From D.K. Fouty of the Highway Patrol.

18 Q Where was that? Where did you receive that
19 evidence?

20 A He brought it into our office to be submitted for
21 forensic analysis.

22 Q To your Columbia office?

23 A Correct.

24 Q Walk us through the process of receiving samples.
25 What did you do in this case when you received the

1 sample?

2 A They bring the kits, and the paperwork is
3 generally wrapped around the package that goes with it.
4 I check the label on the package that has the name of
5 the suspect and the paperwork that goes with it. I
6 take that box, acknowledge that it has been sealed or
7 was sealed, I write on the back of the box and I take
8 that box and I put it into what we call a heat sealed
9 pouch, a plastic bag, and I put a heat seal on it. The
10 officer who is submitting it initials and dates it, and
11 also signs it and dates it in the space below.

12 Q What is the purpose of doing that?

13 A To make sure that it is secure. We enter one
14 case at a time.

15 Q And what happens to that sample after you receive
16 it; what do you do with it?

17 A Submit it electronically through our computer
18 system. It receives an unique bar code label that we
19 refer to as a lab number. That label is placed onto
20 the package, and that package is transferred to our
21 toxicology evidence intake storage, which is in a
22 secured evidence room within our office.

23 Q I'll show you what was marked for identification
24 as State's 144; do you recognize that?

25 (State's Exhibit 144 marked.)

1 A I do. That is a forensic laboratory services
2 request, and this is the receipt that is generated once
3 that evidence has been submitted.

4 Q And --

5 MR. THOMPSON: The State moves to have 144
6 entered.

7 MR. HILLIARD: No objection.

8 (State's Exhibit 144 admitted.)

9 Q (MR. THOMAS) Whose signature is on the second
10 page?

11 A Submitting officer, D.K. Fouty, as well as mine,
12 and the date and time of the submit.

13 Q That is in the ordinary course of business, you
14 do that with each submission?

15 A That is correct.

16 Q And you might have already explained it, but tell
17 us one more time what did you do with this particular
18 sample of Gerald Lewis in this case?

19 A We have a different section for each item of
20 evidence depending on what kind of analysis it needs.
21 There is a refrigerated item. It is placed into our
22 toxicology evidence intake storage, which is a
23 refrigerator in our secured evidence room.

24 Q That is what you did for the sample in this case?

25 A That is correct.

1 MR. THOMAS: Thank you. No further questions.

2 MR. HILLIARD: No questions. Thank you, ma'am.

3 MR. THOMAS: State calls Kevin Selinsky.

4 THE CLERK: Please be seated and state your name
5 and spell your last for the record.

6 THE WITNESS: Kevin Selinsky, S-E-L-I-N-S-K-Y.

7 (KEVIN SELINSKY, having been duly sworn,
8 testified as follows:)

9 DIRECT-EXAMINATION

10 BY MR. THOMAS:

11 Q Mr. Selinsky, where do you work?

12 A South Carolina Law Enforcement Division.

13 Q What do you do there?

14 A Forensic toxicologist.

15 Q What does a forensic toxicologist do?

16 A The three --

17 MR. HILLIARD: We'll stipulate as to his
18 expertise as a forensic toxicologist.

19 THE COURT: Thank you.

20 Q (MR. THOMAS) If you could, answer the question.

21 A The three main things that come into our lab are
22 we run analysis on blood and urine and occasionally
23 body tissues for DUI death cases and criminal sexual
24 assaults.

25 Q Did you perform any analysis as it relates to a

1 case against Gerald Lewis or a sample of Gerald Lewis?

2 A Yes.

3 Q Would you walk us through the process of getting
4 the sample before you test it?

5 A Yes. We usually -- what happens is one of our
6 forensic technicians on a rotating basis goes down to
7 evidence receiving and picks up the evidence that came
8 in on that given day. Sometimes it is a handful;
9 sometimes it's 60, 70. They'll take that upstairs,
10 organize it and go through each one, one by one,
11 cutting open the bag one at a time, taking pictures of
12 it, making sure everything is properly labeled into our
13 system according to how stuff is labeled. The pictures
14 are then moved over to the computer for each case
15 sample. That bag is then sealed, initialed by the
16 person taking the pictures and whatnot, and then that
17 bag is ultimately placed into a secured refrigerator
18 until analysis is done.

19 Q And did you perform any analysis on a blood
20 sample taken from Gerald Lewis?

21 A Yes.

22 Q What sort of analysis did you perform?

23 A What we do is run a blood alcohol analysis. We
24 run enough samples that come in -- it is to determine
25 whether or not there was alcohol -- or more

1 importantly, ethanol -- in the blood sample evidence
2 submitted to us.

3 Q Without going into too much detail, how do you
4 perform that test? What methods are you using?

5 A You run it on a gas chromatography head space
6 flame ionization detector. So, essentially, the sample
7 is -- into a vial and then it is sealed. Essentially,
8 the sample is heated, and according to Henry's Law,
9 which is the scientific law, the amount of alcohol when
10 it is heated in the blood sample is in the head space.
11 You are not directly putting the blood onto the
12 instrument, you are putting the head space as if you
13 were to put the blood on it. You would have to clean
14 it constantly. Then the computer is generating the
15 blood alcohol content number based on historical curves
16 of standards that are run.

17 Q I'll show you what is marked for identification
18 as State's 145.

19 (State's Exhibit 145 marked.)

20 Q (MR. THOMAS) Do you recognize that?

21 A I do.

22 Q What is it?

23 A The initial SLED report for this specific case.

24 Q Who generated that report?

25 A That was generated by myself.

1 MR.. THOMAS: State moves 145 into evidence.

2 MR. HILLIARD: No objection.

3 (State's Exhibit 145 admitted.)

4 MR.. THOMAS: Permission to publish 145?

5 (State's Exhibit 145 published to the jury.)

6 Q (MR. THOMAS) What information is contained on
7 145?

8 A Usually it says if ethanol was present, how much.
9 It may or may not be -- our case number is listed, the
10 suspect's name -- suspect or victim, depending what
11 case we are doing. It will say the lab number. My
12 signature is on it. If we look for drugs, it will say
13 if there was any drugs present or not.

14 Q Any ethanol present in the blood sample you
15 tested on Gerald Lewis?

16 A Yes.

17 Q And what was that amount?

18 A Can I look at it? It was a .235.

19 Q What is the legal limit in South Carolina; do you
20 know?

21 A .08.

22 Q Did you test for anything else?

23 A We ran what we call a drug screen where we look
24 for 11 of the -- what we consider to be the most
25 commonly abused drugs.

1 Q So did you find anything in that screen?

2 A We did not.

3 Q So just the alcohol?

4 A Yes.

5 Q Now, can you tell me in your expert opinion the
6 result in this case, the ethanol result, is that
7 consistent with a man of about 220 pounds consuming
8 four beers and then quitting drinking six hours prior
9 to providing that sample?

10 A No. No..

11 Q Even close?

12 A No.

13 MR. THOMAS: No further questions.

14 CROSS-EXAMINATION

15 BY MR. HILLIARD:

16 Q The drug test you did, had there been hydrocodone
17 or oxycodone in his system, that would have shown up on
18 the drug test you did; is that correct?

19 A Correct.

20 Q And those are all negative? I'm sorry, here is
21 an extra copy.

22 A Oh, I have it.

23 Q All right. Good.

24 A Yes. It is under "opiates," that is where it
25 would come up, and it was screened as a negative.

1 Q So the testimony that you have for us today,
2 based on everything you said, is there is a .235 blood
3 alcohol?

4 A Correct.

5 Q And no other drugs?

6 A Correct.

7 MR. HILLIARD: Thank you, sir.

8 THE COURT: Redirect?

9 MR. THOMAS: No, sir, Your Honor.

10 MR. HILLIARD: No objection to this witness being
11 excused.

12 THE COURT: Have a good day.

13 MR. THOMAS: At this point, the State rests.

14 THE COURT: If you would, step into the jury
15 room. We have to take motions, and we'll back with
16 you.

17 (The jury exits at 10:38 a.m., and the
18 following is heard out of the presence of the jury.)

19 THE COURT: Any motions from defense?

20 MR. HILLIARD: At this time, Your Honor, we move
21 for a directed verdict of not guilty. The State has
22 -- we will concede that the State has clearly proved
23 that my client's truck struck the decedent. They
24 proved that my client was under the influence at the
25 time he was arrested. There is no evidence in the

1 record to the effect that my client was driving the
2 truck at the time that it struck the decedent. In
3 fact, the evidence that you have before you is that
4 the accident happened some -- I think the testimony
5 was -- and pardon me if I'm not exactly correct --
6 some 18, 20, 23 miles away from where my client was
7 arrested and happened some period of time prior to my
8 client being arrested. I recognize that the facts and
9 circumstances in this case are strongly suspicious,
10 and at the same time, there is no direct evidence that
11 he was driving at the time the event occurred. There
12 is really no evidence about what happened prior to the
13 time that he got arrested other than the fact that he
14 -- the decedent became deceased by the use of my
15 client's truck. At this time, we ask you to direct a
16 verdict of not guilty.

17 THE COURT: I'll hear from the State.

18 MR. THOMAS: Your Honor, disregarding all of the
19 circumstantial evidence of the driving, there is
20 direct evidence, and by the defendant's own statements
21 and evidence that has gone before the jury -- on the
22 roadside video he admits to driving that vehicle. He
23 admits to driving it earlier that same day, doesn't
24 mention anyone else driving that vehicle, dropping
25 people off at a residence, driving that vehicle to

1 where it was parked at Dollar General.

2 THE COURT: That motion is denied. Anything
3 else?

4 MR. HILLIARD: Can we take a few minutes? I
5 don't know what time it is, but can we take a few
6 minutes to kind of -- I wanted to talk to my client
7 about his ultimate decision and also wanted to take a
8 look at where we are and make some strategic
9 decisions.

10 THE COURT: I'll give you 10, 15 minutes.

11 MR. HILLIARD: Thank you, Your Honor.

12 (A recess was taken.)

13 THE COURT: Do you want me to go over his rights?

14 MR. HILLIARD: Yes, sir.

15 THE COURT: If you would stand up, Mr. Lewis, and
16 raise your right hand.

17 (GERALD LEWIS, having been duly sworn testified
18 as follows:

19 EXAMINATION

20 BY THE COURT

21 Q Mr. Lewis, I would like you to understand that if
22 you would like, you can come over here, be sworn in and
23 testify. You can testify any way that you and your
24 lawyer see fit. You can tell your side of the story.
25 however, it is important to understand that if you do

1 testify, and if you have a criminal record that
2 involves crimes of dishonesty or false statement, or a
3 criminal record for crimes that carry punishment more
4 than one year, and the Court determines that the
5 probative value of admitting the same into the record
6 outweighs the prejudicial effect, then your criminal
7 record will be introduced to attack your credibility;
8 do you understand that?

9 A Yes, sir.

10 Q Furthermore, if you testify, you may be
11 cross-examined on any and all relevant issues in
12 connection with your case; you understand that as well?

13 A Yes, sir.

14 Q You understand, however, that you do not have to
15 testify because you have a Constitutional right to
16 remain silent, and if you choose to exercise that right
17 and not take the stand and testify, I want you to
18 understand that I'll tell that jury they cannot use
19 that against you in any way. I will tell the jury that
20 the fact you do not testify, they are to have
21 absolutely no prejudice against you. I would even go
22 so far as telling the jury they cannot talk about that
23 fact in the jury room. Do you understand your right to
24 remain silent?

25 A Yes, sir.

1 Q And have you discussed with your lawyer whether
2 or not you wish to testify?

3 A Yes.

4 Q And do you wish to testify or not?

5 A No, sir.

6 Q Do you not want to testify; is that correct?

7 A Yes, sir.

8 THE COURT: Thank you. I appreciate that. I'll
9 make a finding that he did so freely, voluntarily and
10 with the advice of competent counsel. Do you intend
11 on calling witnesses?

12 MR. HILLIARD: Yes, sir. And I'll talk to Gerald
13 before we get to the end of the case, but that is our
14 decision at this point in time.

15 THE COURT: How many witnesses do you have?

16 MR. HILLIARD: I anticipate four, Your Honor.
17 Part of the thing we did, so the record will show,
18 part of the thing we did during our break is I
19 provided the prosecution -- you can sit down --
20 provided the prosecution with the Social Security
21 numbers and the dates of birth for my witnesses, so
22 that is part of what we were doing during the break.

23 THE COURT: All right. Bring out the jury.

24 (The jury enters at 11:03 a.m., and the
25 following is heard in the presence of the jury.)

1 THE COURT: Call your first witness.

2 MR. HILLIARD: We call Eddie Lewis, Junior.

3 (EDDIE LEWIS, JUNIOR, having been duly sworn,
4 testified as follows:)

5 THE CLERK: Please be seated and state your name
6 for the record.

7 THE WITNESS: Eddie Lewis, Junior.

8 DIRECT-EXAMINATION

9 BY MR. HILLIARD:

10 Q What age person are you? How old are you?

11 A I'm 60.

12 Q And how long have you lived in Georgetown County?

13 A Pretty much all of my life. All of my life.

14 Q Are you related to the defendant in this case,
15 Gerald Lewis?

16 A Yes, he's my brother.

17 Q On the occasion that we've been talking about
18 here for the last several days, you recollect that day?

19 A Yes, sir, I do.

20 Q And what contact did you have with your brother,
21 if any, on the day that we've been talking about?

22 A He called me around 3:30, 4 o'clock, told me he
23 was stuck in a hole on the canal.

24 Q Stuck in a hole on a canal?

25 A Yes, sir.

1 Q And what was the purpose of his phone call to
2 you?

3 A For me to come and pull him out.

4 Q What kind of vehicle did you have at that time?

5 A GMC -- sorry -- yeah, four wheel drive GMC truck.

6 Q That is about the same thing, GMC and Chevrolet?

7 A Same.

8 Q What color was it?

9 A Black.

10 Q Did you, in fact, go to pull him out?

11 A Yes, I did.

12 Q Where was he when you went to pull him out?

13 A He was stuck in a hole between Carver's Bay and
14 Georgetown.

15 Q Was he alone or with others?

16 A He had a few friends fishing.

17 Q Who were the friends fishing?

18 A He had Jobie Aklin, Rashad, I don't know his last
19 name.

20 Q Rashad?

21 A Timmy Bryant.

22 Q All right, sir. And what was the condition of
23 the truck in terms of did it have mud on it or not, or
24 what was the situation?

25 A It was stuck in a real bad hole free-wheeling. I

1 mean the wheel wasn't touching, it was free wheeling.

2 Q Did you manage to pull him out?

3 A Yes, sir, I pulled him out.

4 Q What did you do after that?

5 A We left there, and he followed me to the service
6 station, Carver's Bay Grocery, and I got some gas. I
7 felt under the weather, so I went on in the house.

8 MR. HILLIARD: Answer any questions the
9 prosecution has.

10 CROSS-EXAMINATION

11 BY MR. THOMAS:

12 Q Did you notice any damage to your brother's
13 vehicle at that point when you pulled him out?

14 A I really didn't hardly get out of the truck. I
15 know -- one thing I watched him do is he had to get
16 down in the mud to go up under the truck to hook the
17 chain, and I watched him do that.

18 Q Did any of the other people he was with get down
19 in the mud as well?

20 A No. They sort of backed up when they see he had
21 to get back in there and get down there, I'm not
22 getting down there, I'm not getting down there.

23 Q Did you see your brother any other time that
24 evening or afternoon?

25 A Well, I seen him, like I said, at the service

1 station. We all stopped at the service station.

2 Q About what time was that?

3 A I would say 3:30, 4 o'clock that he called me, so
4 and I pulled him out a little after that. It didn't
5 take long to pull him out.

6 MR. THOMAS: Nothing further.

7 MR. HILLIARD: Nothing further. Thank you. I
8 call Willie Sumter.

9 (WILLIE SUMTER, having been duly sworn,
10 testified as follows:)

11 THE CLERK: Please be seated and state your name.

12 THE WITNESS: Willie Sumter, Junior.

13 DIRECT-EXAMINATION

14 BY MR. HILLIARD:

15 Q What age individual are you?

16 A 53.

17 Q How long have you lived in Georgetown County?

18 A All of my life.

19 Q What is your address?

20 A 62 Minnie Way, Hemingway, South Carolina.

21 (Defendant's 5 and 6 marked.)

22 Q Let me show you what is marked as 5 and 6 for
23 identification, which are -- one is a photograph from
24 Google, and the other one is a map from Google. They
25 both were marked with 62 Minnie Way. Can you look at

1 these and see if these, as best as you can tell, is
2 Minnie Way? Can you see if this is your house?

3 A Right here.

4 Q And on that side as well?

5 A Yeah, 62 Minnie.

6 Q All right. Sir, do you know Gerald Lewis?

7 A Yeah, I know him.

8 Q How long have you known Gerald?

9 A It's been some years. Ever since high school.

10 Q Since high school?

11 A Uh-huh.

12 Q On the day that we've been talking about here for
13 the last several days, did you see Gerald Lewis that
14 day?

15 A Yes. After he got out of the bog, he came by.

16 Q After they got out of the bog?

17 A Yeah.

18 Q When you say they came by, who was with Mr. Lewis
19 when he came?

20 A Rashad and Jobie Aklin.

21 Q And how were Jobie and Rashad connected?

22 A They went fishing with him.

23 Q How are they connected to each other?

24 A I guess through family friends. I mean, I think
25 he goes with the mother or something.

1 Q When you say he goes with the mother, who is the
2 "he"?

3 A Jobie goes with Rashad's mother, I think.

4 Q Jobie goes with Rashad's mother? Okay, sir. Did
5 Gerald and those other two fellows show up at your
6 house?

7 A Yeah.

8 Q What was happening at your house?

9 A We had a few drinks, you know, talking,
10 basically, because I usually cook something.

11 Q All right, sir. And tell the folks on the jury
12 so they can get an understanding, do you have a spot at
13 your house that sort of is a gathering place for people
14 in the community?

15 A No, I just really be around my barn sometimes.
16 They show up because I do a lot of hunting and stuff,
17 so I'm always cooking.

18 Q Around your barn?

19 A Yeah.

20 Q And is that out behind your house?

21 A Yeah. Right.

22 Q On this particular occasion, there were folks out
23 there; is that correct?

24 A Right.

25 Q Tell the folks on the jury -- tell us, do you

1 remember how long Gerald and Jobie and Rashad were
2 there?

3 A Could have been close to an hour.

4 Q And when they left your house, who was driving?

5 A Rashad.

6 Q And what was Rashad driving?

7 A Ford truck of his.

8 Q When you say "his," who do you mean?

9 A Gerald.

10 Q And why was Rashad, as you know, why was Rashad
11 driving Gerald's truck when they left?

12 A He wasn't in any condition to drive.

13 Q Tell us, the folks on the jury, what Gerald's
14 condition was and what, if anything, you saw about him
15 getting in the truck?

16 A He had to get help into the truck because he
17 couldn't hardly walk.

18 Q When you say "he"?

19 A Gerald.

20 Q Wouldn't hardly walk and had to have help getting
21 in the truck?

22 A Right, on the passenger's side.

23 Q Who drove away from there?

24 A Rashad.

25 Q Do you believe -- did you later become familiar

1 with this -- where this accident happened?

2 A I heard later or that night.

3 Q Do you know where the location of where the
4 accident happened?

5 A Oh, yeah, I know the location.

6 Q About how far is that from your home?

7 A Probably 2 miles in.

8 MR. HILLIARD: Thank you. Answer any questions
9 the State may have.

10 CROSS-EXAMINATION

11 BY MR. THOMAS:

12 Q How do you know the defendant again, Mr. Sumter?

13 A Ever since way back in high school.

14 Q And this Rashad fellow you speak of, what is his
15 full name?

16 A I don't know his last name.

17 Q No one knows his last name?

18 A What is it -- I think Gerald might know it.

19 Q He might know it?

20 A Yeah.

21 Q How long have you had this information that, as
22 you testified, Rashad was driving Gerald's truck away;
23 how long have you known that?

24 A I know the same day that it happened.

25 Q Did you ever tell anyone about that?

1 A No. I mean, it wasn't nothing really said. I
2 know Gerald didn't leave driving the truck.

3 Q And what time was this again?

4 A I would say between 5:00 and 6:00.

5 Q Now, did you hear about Gerald getting arrested
6 for hitting someone on a Moped?

7 A I heard later on he got arrested.

8 Q Did you ever think that it maybe law enforcement
9 would want to know the information you had?

10 A No one came and talked to me about anything.

11 Q But you didn't take it upon yourself to let
12 anyone know?

13 A No. I mean, like, I didn't have anything to do
14 with it. When I found out, it was later that night, so
15 I guessed that everyone already knew what was going on.

16 Q Is Rashad in the courtroom today?

17 A No, I don't see him.

18 Q And you don't know his full name?

19 A No.

20 MR. THOMAS: Nothing further.

21 THE COURT: Redirect?

22 MR. HILLIARD: One second.

23 REDIRECT-EXAMINATION

24 BY MR. HILLIARD:

25 Q Is Jobie in the courtroom today?

1 A Yeah.

2 Q You see Jobie back there?

3 A Yes.

4 Q That is the same fellow that was with him; is
5 that correct?

6 A Right.

7 Q And the police never came and talked to you?

8 A No.

9 MR. HILLIARD: Thank you.

10 MR. THOMAS: Nothing further.

11 MR. HILLIARD: Can we approach the bench?

12 THE COURT: Yes.

13 (Whereupon, a bench conference was had.)

14 MR. HILLIARD: I would like to recall Eddie Lewis
15 based on the questioning of this witness. I'd like to
16 ask if the police ever talked to him, so I would like
17 to recall him.

18 THE COURT: Is that the first guy?

19 MR. HILLIARD: Yes, sir.

20 THE COURT: Okay.

21 MR. HILLIARD: I would like to recall Eddie
22 Lewis, Junior.

23 THE COURT: You are still under oath.
24
25

1 DIRECT-EXAMINATION

2 BY MR. HILLIARD:

3 Q Mr. Lewis, did the police or any member of law
4 enforcement ever contact you or talk to you about these
5 events?

6 A Not at all.

7 Q The individual, Jobie, is he in the courtroom
8 today?

9 A Yes. Yes, sir.

10 MR. HILLIARD: That is all I have.

11 THE COURT: State.

12 CROSS-EXAMINATION

13 BY MR. THOMAS:

14 Q Do you have any idea where your brother was the
15 rest of the night -- what time was that again, the last
16 time you saw your brother on the night --

17 A When I pulled him out of the bog.

18 Q About what time was that?

19 A 3:30 and 4 o'clock.

20 Q Did you see him any other time the rest of that
21 night?

22 A Well, that afternoon I saw him at the service
23 station, and then he followed me home and I went in the
24 house. I didn't talk to him.

25 Q When is the last time you saw him the evening or

1 the afternoon of the 21st?

2 A When he pulled in my yard.

3 Q Give us an approximate time.

4 A I didn't talk to him. I was feeling kind of
5 under the weather and went on inside.

6 Q About what time was that?

7 A Let's see, I would say about 4:30, around 4:30
8 5:00, between there. Figure the time from the canal,
9 to the service station, to my house, which is -- whole
10 thing approximately 5 miles, at the most.

11 MR. THOMAS: Thank you.

12 THE COURT: All right. You may step down.

13 MR. HILLIARD: Matt Walker.

14 (MATT WALKER, having been duly sworn,
15 testified as follows:)

16 THE CLERK: Please be seated and state your name
17 for the record.

18 THE WITNESS: Matt Walker.

19 Q (MR. THOMAS) Mr. Walker, I won't ask you how old
20 you are, but how long have you lived in Georgetown
21 County?

22 A About 28 years.

23 Q And do you know the individuals that we've been
24 talking about?

25 A Yes, I do.

1 Q On the day that we've been talking about that
2 these events occurred, were you over at -- did you go
3 over to Willie Sumter's house?

4 A Yes, I ride (sic) over there.

5 Q And tell the jury, if you will please, sir, what
6 you know about this.

7 A Well, the only thing I know is I got there, I
8 would say, about 5:00, something like that. They were
9 there --

10 Q When you say "they," whose house did you go to?

11 A To Willie Sumter.

12 Q And when you say "they" were there, who was there
13 that you saw?

14 A I saw Willie Sumter and Jobie was there, and then
15 his son, which I didn't know -- which I asked Willie
16 who he was and he told me.

17 Q When you say his son, talking about who?

18 A Jobie.

19 Q Is that Rashad?

20 A That is the guy I had to ask Willie about and he
21 told me who he was.

22 Q All right, sir. And then did you see Gerald
23 there as well?

24 A Yes, I did.

25 Q And when you -- how long did you stay at

1 Mr. Sumter's, do you think?

2 A I^{if} was there, I would say, about 30 minutes and I
3 left.

4 Q When you left, were those individuals still
5 there?

6 A They were all still there.

7 MR. HILLIARD: Thanks. Answer any questions the
8 prosecutor has for you.

9 MR. THOMAS: No cross.

10 THE COURT: You may step down.

11 MR. HILLIARD: Karen Sumter.

12 (KAREN SUMTER, having been duly sworn,
13 testified as follows:)

14 THE CLERK: State your name for the record.

15 THE WITNESS: Karen Sumter.

16 DIRECT-EXAMINATION

17 BY MR. HILLIARD:

18 Q I won't ask how old you are either, but how long
19 have you lived in Georgetown County?

20 A All my life.

21 Q Are you married to one of the witnesses who
22 testified here?

23 A Yes, Willie Sumter.

24 Q How long have you been married?

25 A 30 years.

1 Q You've heard the testimony. Do you know about
2 the day we're talking about?

3 A Yes.

4 Q And were you at your home on the day that this
5 occurred?

6 A Yes.

7 Q Did you see or tell the folks on the jury, if you
8 will, please, did you see Gerald and Jobie and Rashad
9 on that day?

10 A Yes.

11 Q And did you see when they left your house?

12 A Yes.

13 Q And what could you tell the folks on the jury
14 about who was driving and what was getting driven when
15 they left?

16 A When I was outside cleaning my car and the white
17 Ford pickup truck came, it had mud all over it. And
18 when it went back and parked to the barn, Jobie, Gerald
19 Lewis and Rashad got out. Gerald was driving at that
20 time.

21 Q Yes, ma'am.

22 A And they went inside in the barn, been in there
23 maybe a good 45 minutes or more, and whenever they
24 left, when they get ready to leave, I was still out
25 there, and Rashad and -- I mean Rashad and Jobie had to

1 help Gerald out of the barn because he was really
2 drunk. They put him on the passenger's side in the
3 front. Jobie got on the passenger's side in the back,
4 and Rashad got into the driver's wheel, and they left.

5 MR. HILLIARD: Thank you. Answer any questions
6 the prosecutor has.

7 CROSS-EXAMINATION

8 BY MR. THOMAS:

9 Q Ms. Sumter, did you notice anything about the
10 appearance of any of those three gentlemen that you
11 just described? Were they disheveled, dirty?

12 A They were. There was mud on Gerald, and that is
13 the only thing I noticed, that mud on him.

14 Q He was the only one that was muddy?

15 A Yes.

16 Q But you said he was muddy at the time?

17 A The truck.

18 Q And then Gerald was muddy, too?

19 A Yes.

20 Q But they put him in the passenger's side seat?

21 A After they was leaving. When they were getting
22 ready to leave.

23 MR. THOMAS: Okay. Thank you.

24 THE COURT: Anything further?

25 MR. HILLIARD: No other questions. Thank you,

1 ma'am.

2 THE COURT: Call your next witness.

3 MR. HILLIARD: Jonathan Autuori.

4 (JONATHAN AUTUORI, having been duly sworn,
5 testified as follows:)

6 THE WITNESS: My name is Jonathan Autuori.

7 DIRECT-EXAMINATION

8 BY MR. HILLIARD:

9 Q Who do you work for?

10 A John Hilliard, also known as you.

11 Q Thank you. In connection with that, have you --
12 let me show you Defendant's Exhibit 3 for purposes of
13 identification, which is -- looks like a Google map.

14 It has -- can you identify that?

15 A Yes, sir.

16 Q Did you prepare this at my request?

17 A Yes, sir.

18 Q It shows the Dollar General?

19 A Yes, sir.

20 Q And then 703 County Line Road, is that where the
21 incident occurred?

22 A Yes, sir.

23 MR. HILLIARD: We offer this into evidence, Your
24 Honor.

25 MR. THOMAS: No objection.

1 THE COURT: Defendant's 3 into evidence.

2 (Defendant's Exhibit 3 admitted.)

3 Q (MR. HILLIARD) Let me show you 6 and 5 for
4 identification, and these are -- one is a Google map,
5 and one is a Google something else?

6 A Satellite image.

7 Q What is that?

8 A Satellite image.

9 Q Thank you, Google satellite image. Can you
10 identify these as the area where these things happened;
11 is that correct?

12 A Yes, sir.

13 Q And on No. 6 there is a red pushpin for 62 Minnie
14 Way?

15 A Yes, sir.

16 Q And then are you familiar with where the incident
17 occurred.

18 A Yes, sir.

19 Q Is there a clear pushpin to that?

20 A Yes, sir.

21 Q And then also on Defendant's Exhibit No. 5, which
22 is a Google map, there is a pushpin on 62 Minnie way?

23 A Yes, sir.

24 Q And then on County Line Road that there is a blue
25 pushpin, is that approximately where the incident

1 curbed?

2 A Yes, sir.

3 MR. HILLIARD: We offer those Defendant's 5 and
4 6.

5 (Defendant's Exhibits 5 and 6 admitted.)

6 THE COURT: Without objection.

7 MR. THOMAS: No cross.

8 THE COURT: You may step down. Call your next
9 witness.

10 MR. HILLIARD: Is that it?

11 THE COURT: We will have the jury step into the
12 jury room. We have to take up matters, and we'll be
13 back with you and hopefully conclude this trial.

14 (Whereupon, the jury exits at 11:29 a.m., and the
15 following is had out of the presence of the jury.)

16 THE COURT: Motions.

17 MR. HILLIARD: We move for a directed verdict of
18 not guilty. We have established who was driving the
19 vehicle at this point in time when -- shortly before
20 the accident happened and when the individuals left
21 Mr. Sumter's house, that is the only testimony in the
22 record about who was driving the vehicle shortly
23 before the event happened. We have who was driving
24 the vehicle after it happened, but before we have this
25 testimony, and we would -- or do ask Your Honor to

1 direct a verdict of not guilty at this point.

2 THE COURT: State would like to respond?

3 MR. THOMAS: Your Honor, just that, again,
4 defendant was caught driving shortly after the
5 incident. He admitted to driving, didn't mention
6 anything about anybody else driving. Your Honor, the
7 State does plan to put two rebuttal witnesses on the
8 stand, but, still, there is sufficient evidence for
9 the jury to decide this case.

10 THE COURT: I'll deny those motions. Before we
11 call the rebuttal, take a look at the charge and
12 verdict form so we can cruise after that. Look over
13 each other's shoulder.

14 MR. HILLIARD: Do you have circumstantial
15 evidence?

16 MR. THOMAS: What is your opinion on part of the
17 elements of felony DUI as there is an issue of traffic
18 violation or duties that are not following -- imposed
19 by law that are not properly followed. Would Your
20 Honor charge the law on several traffic violations
21 that is supported by evidence in this case?

22 THE COURT: Do you have a charge for me?

23 MR. THOMAS: I have the statutes, Your Honor.

24 THE COURT: Let me see the statute so I can tell
25 my clerk what to look up.

1 MR. THOMAS: Also a charge on voluntary
2 intoxication, but that is reckless driving there. I
3 have following too closely and speeding too fast for
4 conditions as well, but.

5 THE COURT: Why would you need that?

6 MR. THOMAS: Well, just because the statute, the
7 way it is written, is somewhat confusing because it
8 talks about -- I don't have the exact language of the
9 statute.

10 THE COURT: The statute on felony DUI.

11 MR. THOMAS: Yes. It talks about the proximate
12 cause being from -- breaking some traffic law or duty
13 imposed by law or not following imposed by law, is the
14 language I believe. I mean, if you think it is going
15 to muddy things up.

16 THE COURT: I think it will muddy it up. I don't
17 think it is needed. It is plain and simple. Either
18 they will believe him, or don't. I'll have them
19 asleep in about 10 minutes.

20 MR. THOMAS: And the intoxication charge.

21 THE COURT: This here? This one -- where is it?

22 MR. THOMAS: I'll have to pull it.

23 THE COURT: Look at my charge and see if I have
24 everything first. I may have everything you need.
25 Starting to sound like civil lawyers the way you are

1 arguing about the charge.

2 MR. THOMAS: Everything looks good to me.

3 THE COURT: I think it is pretty straight
4 forward.

5 MR. THOMAS: It is.

6 THE COURT: Everything good for charge?

7 MR. HILLIARD: Yes, sir, charge and verdict form.

8 THE COURT: You are going to call Trooper
9 Metherd -- which one will talk about the deer?

10 MR. HILLIARD: Which trooper?

11 MR. THOMAS: Metherd.

12 MR. HILLIARD: I would like to be heard.

13 THE COURT: We are on the record.

14 MR. HILLIARD: You are calling him to testify as
15 to --

16 MR. THOMAS: This is what I'll have him testify
17 to, that he came into contact with him on April 16,
18 2015. He was driving a Dodge Ram, rented vehicle at
19 that point, and he was informed by the defendant that
20 he was driving that vehicle because he hit a deer with
21 his F150.

22 MR. HILLIARD: Did he say 150?

23 MR. THOMAS: He says F150, it is in the report.

24 MR. HILLIARD: I don't see how that has anything
25 to do with this case.

1 THE COURT: It is an admission by party opponent
2 for sure, but we won't talk about why he was pulled or
3 anything like that. I think it is relevant and very
4 probative. If you are limited, like we talked about,
5 it might outweigh any beneficial effect, if any, other
6 than by admission by party opponent.

7 MR. HILLIARD: It is not necessarily connected to
8 him.

9 THE COURT: The vehicle damage is your client
10 said he ran into a mud hole, where all the damage came
11 from, and he has someone else that says something
12 different, and your client said something else. If
13 they believe it is truthful, it is very relevant. If
14 he brings up that DUI or anything, we'll be here doing
15 it again.

16 MR. THOMAS: He knows.

17 THE COURT: Just make sure he shuts up if he has
18 any doubt at all, he is to clam up.

19 MR. THOMAS: I told him that.

20 THE COURT: Even if he baits him.

21 MR. THOMAS: Well, if he baits him --

22 THE COURT: He doesn't need to bring it up. It
23 will be mistried.

24 MR. THOMAS: If he asks why were you going to be
25 in contact with this defendant --

1 MR. HILLIARD: . No. No. You can hit me with a
2 rock if I do.

3 THE COURT: I will. I will. I'll send you
4 through that door right there.

5 MR. HILLIARD: Yes, sir. That is like hitting me
6 with a rock. You note our objection?

7 THE COURT: Everything is on the record, yes.
8 they are overruled.

9 (The following is had in the presence of open
10 court.)

11 MR. HILLIARD: We had been provided previously
12 with the criminal histories of the non-law enforcement
13 witnesses that the State is calling, and I understand
14 they are going to call -- not Metherd -- Jobie, do you
15 have a criminal history for him?

16 MR. THOMAS: No, we don't have his information.

17 MR. HILLIARD: Could you get that to me?

18 MR. THOMAS: If he'll give us the information,
19 we'll get it for you right now. Trooper Metherd is on
20 the way. He's on 701 heading this way, he's just not
21 in the building yet.

22 THE COURT: Talk to him ahead of time.

23 MR. THOMAS: I will, Your Honor.

24 THE COURT: When in doubt, say nothing.

25 (A discussion was had off the record.)

1 THE COURT: Do you want to call the other
2 witness?

3 MR. THOMAS: We don't have the NCIC that defense
4 counsel has asked for. It is being done right now.

5 THE COURT: All right.

6 (A recess was taken.)

7 MR. HILLIARD: While we're waiting on those
8 folks, can I talk a little bit about what my position
9 is -- I have an incident report, and I've had it, I
10 just wanted to remember what it said. What the
11 incident report said about this witness that is going
12 to testify is --

13 THE COURT: Talking about the trooper?

14 MR. HILLIARD: Yes, sir, the trooper. It says
15 Mr. Lewis also stated that his truck was in the shop
16 because he hit a deer.

17 THE COURT: You can cross-examine. I won't slow
18 you down or limit you.

19 MR. HILLIARD: Well, but I understand, Judge, it
20 is just that my client is not going to testify.

21 THE COURT: It's his choice.

22 MR. HILLIARD: Absolutely. And so this is --
23 there is nothing in this report that connects the
24 truck that the trooper is talking about, or the truck
25 that my client is talking about at the time he's

1 talking to the trooper, to this event. He could have
2 had ten trucks. He could have hit five deer.

3 THE COURT: That sounds like a really good
4 cross-examination. And the report is not on the
5 stand, the trooper is on the stand. I don't know what
6 he'll say. I know what he is not going to say, but.

7 MR. HILLIARD: Yes, sir.

8 MR. THOMAS: We have our witnesses. Let me speak
9 with him for a brief minute and we'll be ready.

10 (A recess was taken.)

11 MR. THOMAS: State is ready to proceed.

12 THE COURT: All right. Bring out the jury.

13 (The jury enters at 11:49 a.m., and the
14 following is heard in the presence of the jury.)

15 THE COURT: Rebuttal witnesses from the State?

16 MR. THOMAS: Yes, sir. We call Jobie Aklin to
17 the stand.

18 (JOBIE AKLIN, having been duly sworn,
19 testified as follows:)

20 THE CLERK: Please be seated. State and spell
21 your first and last name for the record.

22 THE WITNESS: Jobie Aklin, J-O-B-I-E, A-K-L-I-N.

23 DIRECT-EXAMINATION

24 BY MR. THOMAS:

25 Q Mr. Aklin, where do you live?

1 A In Pee Dee, Yauhanna.

2 Q Do you know the defendant in this case, Gerald
3 Lewis?

4 A Yes, sir.

5 Q How long have you known him?

6 A Pretty much all of my life.

7 Q You all friends?

8 A Uh-huh.

9 THE COURT: Yes or no?

10 A Yes.

11 Q (MR. THOMAS) Now, the day in question that we're
12 here for today, February 21, 2015, were you with Mr.
13 Lewis that day at all?

14 A Not all day, but the majority of the day.

15 Q Walk us through what you did with Mr. Lewis.

16 A Went fishing.

17 Q Where?

18 A In the canal.

19 Q Who all went fishing?

20 A Me, Gerald, Timmy and Rashad.

21 Q What time were you all fishing?

22 A I would say around -- about 8:00 that morning.

23 Q How long did you go for?

24 A About 4:00.

25 Q And at any point did you get stuck in a rut?

1 A Yeah.

2 Q And Mr. Lewis' brother came and pulled you out of
3 that?

4 A Yes, sir.

5 Q Where did you go after that?

6 A Willie Sumter's house.

7 Q What time?

8 A I would say around 4:30, 5:00, in that area.

9 Q How long did you stay there?

10 A About 45 minutes, if that long.

11 Q What did you do after that?

12 A Went home.

13 Q Who did you leave Mr. Sumter's house with?

14 A Gerald and Rashad.

15 Q Who was driving Mr. Lewis' vehicle when you left
16 the house?

17 A Rashad.

18 Q And where did you all -- what time was this?

19 A I would say around 5:00, 5:30, somewhere in that
20 area.

21 Q About 5:30 you leave Mr. Sumter's house. Where
22 do you go next?

23 THE COURT: Say yes or no, and not uh-huh.

24 THE WITNESS: Okay. I'm sorry.

25 A Went home.

1 Q (MR. THOMAS) Where is that?
2 A Pee Dee, Yauhanna.
3 Q You all went home together?
4 A Sir.
5 Q You went home together?
6 A No, because I actually -- actually, he didn't
7 take us all the way home.
8 Q Where did he take you?
9 A Forest Trinity Church.
10 Q Who took you that there?
11 A Gerald's son's wife, we met her, so we all got in
12 the car with her, and she took us on home.
13 Q Who got out of Mr. Lewis' F150 when you met this
14 woman at the Trinity Church?
15 A Me and Rashad.
16 Q Who was left in Mr. Lewis' vehicle?
17 A Gerald.
18 Q What did he do?
19 A Drove off.
20 Q Was anyone else in the vehicle?
21 A No, sir.
22 Q And about what time was this?
23 A I would say around -- about 6:00, roughly.
24 MR. THOMAS: Thank you. Nothing further.
25 THE COURT: Cross-examination?

CROSS-EXAMINATION

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BY MR. HILLIARD:

Q Has law enforcement talked to you about this case at all?

A No, sir.

Q How about a representative of the prosecutor's office?

A Other than yesterday.

Q Yesterday?

A Yes, sir.

Q All right. And you and I met on Sunday up at that country store; is that right?

A I thought it was at a church.

Q At church?

A I thought it was. Could have been the store, I don't remember.

Q Okay.

A Could have been the store. I remember meeting you.

Q All right, sir. And that was this past Sunday?

A Uh-huh.

Q But you don't remember where it was?

A I thought it was at church.

Q All right, sir. You are here because I sent you a subpoena; isn't that true?

1 A Yes, sir.

2 Q So you had been here for the trial because I
3 asked you to come?

4 A Yes, sir.

5 Q And when you and I talked, you remember telling
6 me that -- let me ask you this question first. Your
7 testimony for the prosecutor is that when you left Mr.
8 Sumter's house, that Rashad was driving?

9 A Yes.

10 Q Is that what you said in court today?

11 A Yes, sir.

12 Q And when you talked to me, you said that Gerald
13 was driving when you all left; is that right?

14 A No.

15 Q That is not true?

16 A That's not true.

17 Q All right, sir. When you talked to the
18 investigator for the Solicitor's Office, this is the
19 fellow you talked to right here (indicates)?

20 A Yes. Yes, sir.

21 Q When you talked to him, did you say that when
22 Lewis and you left Sumter's house in Lewis' truck, that
23 Lewis was going to drive him home?

24 A He was, but like I said, I ran into my
25 girlfriend's friend.

1 Q Right.

2 A And he didn't have to take us home, we got in the
3 car with her.

4 Q Right. When you said he didn't have to take us
5 on home, you are talking about Gerald?

6 A Rashad.

7 Q Rashad?

8 A Uh-huh. Because he didn't have to take us all
9 the way home.

10 Q How are you connected with Rashad?

11 A That is my girlfriend's son.

12 Q So when you talked to the Solicitor's
13 investigator yesterday, you told him about Rashad; is
14 that right?

15 A Yes.

16 Q And Rashad lives in the same community that you
17 do?

18 A I think he still do. I haven't seen him for
19 awhile.

20 Q You haven't seen him in awhile?

21 A Huh-huh.

22 THE COURT: Yes or no?

23 A I'm sorry. No, sir, I haven't seen him in
24 awhile.

25 Q (MR. HILLIARD) It is true that you and Rashad

1 and Gerald were fishing out at the canal?

2 A Yes, sir.

3 Q It is true that out at the canal, you all got
4 stuck in a mud hole of some description?

5 A Yes, sir.

6 Q It is true that Gerald's brother came and pulled
7 you all out of the mud hole?

8 A Yes, sir.

9 Q It is true you all went to Willie Sumter's house?

10 A Yes, sir.

11 Q It is true that at Willie Sumter's house, Mr.
12 Lewis was too drunk to drive?

13 A Yes, sir. Yes, sir.

14 Q He was too drunk to drive, right?

15 A Yes, sir.

16 Q And at that point, Rashad was driving?

17 A Yes, sir.

18 Q And the only thing that is not true, is that
19 Rashad was the one who ran over this fellow?

20 A I don't know, because we all left and that was
21 the -- I'll tell the truth. Rashad was living with me
22 at the time, and we were all home when I heard it
23 happened. That was pretty much the next morning, and I
24 heard it happened.

25 Q So everything is true -- let me ask you this

1 question. At the time that -- what is your
2 girlfriend's -- whose girlfriend was it?

3 A Rashad's.

4 Q Rashad's girlfriend, Rita Cochran?

5 A Right.

6 Q And where is Rita Cochran?

7 A Might be at work -- no, she probably home because
8 she just had a kid.

9 Q Your testimony is that you and Rashad decided to
10 just jump out of the car and leave Gerald in the car;
11 is that right?

12 A Yes, sir, that is what happened.

13 Q You never talked to Mr. Lewis about this
14 accident?

15 A No, sir.

16 Q And you are his good, good friend?

17 A Uh-huh. Yes, sir.

18 Q But you are more connected to Rashad than you are
19 to Mr. Lewis?

20 A During the time, he was living in Georgetown,
21 Gerald was, and we didn't have too much contact.

22 Q All right, sir. And you deny that you told me
23 that Gerald was the one that drove away from Mr.
24 Sumter's house?

25 A No. No. He drove to the church where he met

1 Rita and he was the only one left in the truck.

2 MR. HILLIARD: Excuse me one second, Judge. That
3 is all I have.

4 THE COURT: Redirect?

5 MR. THOMAS: No.

6 THE COURT: You may step down. Call your next
7 witness.

8 MR. THOMAS: We call Trooper Metherd.

9 (ELIJAH METHERD, having been duly sworn,
10 testified as follows:)

11 THE CLERK: Please be seated. State your name
12 for the record.

13 THE WITNESS: Good afternoon. My name is Trooper
14 First Class Elijah A. Metherd.

15 DIRECT-EXAMINATION

16 BY MR. THOMAS:

17 Q Where do you work?

18 A South Carolina Highway Patrol assigned to Troop
19 5, Post C, Williamsburg and Georgetown counties.

20 Q How long have you worked there?

21 A Since 2013.

22 Q What are your duties?

23 A Responsible for investigating collisions that
24 occur on the roadway, enforcing the State's traffic
25 laws and criminal laws, and assisting motorists on the

1 side of the road.

2 Q Do you know the case we're here for today? Do
3 you have any involvement in that case, whatsoever?

4 A This case, no.

5 Q Do you know Mr. Gerald Lewis? Have you ever been
6 met him before?

7 A I have.

8 Q About when was that?

9 A I met him on April 16, 2015.

10 Q And where did you meet him?

11 A We were on the intersection of Carvers E-bay Road
12 and Old Pee Dee in the Pee Dee section of Georgetown
13 County.

14 Q Do you recall what kind of vehicle Mr. Lewis was
15 driving at that time?

16 A It was a 2015 Dodge pickup truck.

17 Q And can you tell us anything about that vehicle?

18 A When I --

19 MR. HILLIARD: Objection, relevance.

20 (Whereupon, the following was had at a bench
21 conference.)

22 THE COURT: What is the relevance?

23 MR. THOMAS: I'll ask him if -- I will strike
24 that question and just ask.

25 THE COURT: Just get right to the point.

1 MR. THOMAS: Yeah.

2 THE COURT: All right.

3 MR. HILLIARD: Thank you.

4 Q (MR. THOMAS) What kind of vehicle was Mr. Lewis
5 driving?

6 A 2015 Dodge pickup truck.

7 Q Was that his vehicle?

8 A It was a rental. I believe it was owned by EAN
9 Holdings, which is Enterprise's.

10 Q What, if anything, did he tell you about why he
11 was driving that vehicle?

12 A He told me that he was driving that vehicle
13 because the vehicle he owned was in the shop for
14 repairs due to striking a deer.

15 Q What kind of vehicle did he normally drive?

16 A He --

17 MR. HILLIARD: Objection.

18 THE COURT: What grounds?

19 MR. HILLIARD: If I heard the question correctly,
20 it is what kind of vehicle does he normally drive?

21 MR. THOMAS: I'll rephrase.

22 MR. HILLIARD: Thank you.

23 Q (MR. THOMAS) What kind of vehicle did he tell
24 you he normally drives?

25 A He told me he normally drove a F150.

1 Q Why did he say he was driving a rental car?

2 A His Ford was in the shop being repaired due to
3 striking a deer.

4 Q What was the date you had contact with him?

5 A April 16, 2015.

6 MR. THOMAS: Thank you. Nothing further.

7 MR. HILLIARD: No questions. Thank you.

8 THE COURT: Any other witnesses?

9 MR. THOMAS: No, sir.

10 THE COURT: Members of the jury, we have to take
11 up motions one more time, and we'll bring you back out
12 and conclude the case at that time.

13 (The jury exits at 12:06 p.m., and the
14 following is heard out of the presence of the jury.)

15 THE COURT: Renew your motions?

16 MR. HILLIARD: Yes, sir. And it occurred after
17 the jury was half way gone that I should have said
18 that before, but I'm going to call Steve Brown as -- I
19 guess at this point he would be rebuttal.

20 THE COURT: Mr.?

21 MR. HILLIARD: The reason is he took a statement
22 from Jobie yesterday, and they were kind enough to
23 provide it. There was an inconsistency I would like
24 to explore briefly.

25 THE COURT: What does the State say, any

1 objections?

2 MR. THOMAS: No, sir, Your Honor.

3 THE COURT: All right. I'll deny your motions
4 and allow you to call the rebuttal witness. There is
5 no need to send them out again, so you can renew them
6 now.

7 MR. HILLIARD: Yes, sir. My motions are the
8 same, and I understand Your Honor's ruling, and as
9 long as I'm protected for the purpose of some
10 subsequent appeal.

11 THE COURT: You are protected. So we'll come
12 back and call this one witness and proceed with the
13 defense closing, state closing, charge and give it to
14 the jury. Do you need a break before we come back?

15 MR. HILLIARD: Let's do that, if you don't mind.

16 THE COURT: Let's take a break now.

17 (Whereupon, a recess was taken.)

18 THE COURT: We will call the jury, you'll call
19 rebuttal witnesses, you'll cross-examine and then
20 we'll close.

21 MR. HILLIARD: Yes, sir.

22 (The jury enters at 12:32 p.m., and the
23 following is heard in the presence of the jury.)

24 THE COURT: Any witnesses?

25 MR. HILLIARD: We call Steve Brown.

1 (STEVE BROWN, having been duly sworn,
2 testified as follows:)

3 DIRECT-EXAMINATION

4 BY MR. HILLIARD:

5 Q You are an investigator for the Solicitor's
6 Office; is that correct?

7 A Yes, sir.

8 Q You spoke yesterday with Jobie Aklin, who
9 testified awhile ago; is that correct?

10 A Yes, that's correct.

11 Q In connection with Mr. Aklin, did you believe
12 from your conversation with him on yesterday that his
13 -- that what happened or who was driving when they left
14 --let me ask this question. He gave you yesterday the
15 details about who was at Mr. Sumter's house consistent
16 with what he said today; is that correct?

17 A Yes..

18 Q And when I said -- when you were asking him about
19 when they left Sumter's house, you had the impression
20 that he was telling you that Mr. Lewis was driving; is
21 that correct?

22 A That's correct.

23 Q Which is inconsistent with what he said today?

24 A That's correct.

25 MR. HILLIARD: Thank you, sir.

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. THOMAS:

4 Q Mr. Brown, have you seen Mr. Jobie Aklin in the
5 courtroom?

6 A Yes. I saw him yesterday, saw him this morning
7 and obviously he's still here now.

8 Q So yesterday when you spoke with him after
9 speaking with him, you were under the impression that
10 he was telling you that Gerald Lewis drove from
11 Mr. Sumter's; is that correct?

12 A Yes.

13 Q And now, today, he testified after hearing from
14 two of the defenses witnesses, I guess, Mr. Sumter
15 being one of them, that Rashad -- we don't know the
16 last name -- that he was driving to the house, and he
17 went along with that today on the stand; is that what
18 he said on the stand today?

19 A I believe he said today that he saw Rashad drive
20 from Sumter's house until they flagged down Rita
21 Cochran at the church.

22 Q So overnight and hearing two defenses witnesses,
23 he changed his story?

24 A Yes, changed his story.

25 MR. THOMAS: Nothing further.

1 THE COURT: Redirect?

2 MR. HILLIARD: One, Judge.

3 REDIRECT-EXAMINATION

4 BY MR. HILLIARD:

5 Q We do know that based on information that you had
6 yesterday, that Rashad's last name is Muse (phonetic),
7 Rashad Muse?

8 A Yes, sir.

9 THE COURT: You may step down.

10 MR. HILLIARD: That's it, sir.

11 THE COURT: You are recognized for your closing
12 statement.

13 MR. HILLIARD: Good afternoon. This is the
14 conclusion of the testimony, and it is the point where
15 you bring to bear the things that the judge said at
16 the beginning of the case. What is going to happen
17 from this point forward -- what is going to happen
18 from this point forward is I'm going to talk for a
19 little bit. The prosecutor is going to talk for a
20 little bit. The judge is going to charge you on the
21 law, and then you are going to go back into the jury
22 room and talk about it, think about it and discharge
23 your duty and responsibility as jurors in this case.

24 In the beginning, the prosecutor said that you
25 are detectives, or your job is to be as detectives,

1 and I would respectively disagree with that. The
2 judge will tell you that for you to make a
3 determination whether or not the State of South
4 Carolina has removed the presumption of innocence that
5 all of this has, and in particular Gerald; he is
6 presumed innocent as we said at the beginning. The
7 question you will talk about when you get to the jury
8 room is whether or not the State has removed that
9 presumption or overcome that presumption by proof
10 beyond a reasonable doubt.

11 That is really -- this whole case is going to
12 turn on that, reasonable doubt. Two words. In many
13 ways, they mean what you think they mean. The judge
14 is doing -- I say the judge, but the law does its best
15 to describe that for juries, and the judge will tell
16 you what the law is. He will say, I think, that
17 reasonable doubt is if you are firmly convinced of the
18 guilt of the defendant in this case, then you decide
19 if he's guilty, and that is the end of it. If you are
20 not firmly convinced based on the evidence or lack of
21 evidence, then you decide he's not guilty. Those are
22 four words, reasonable doubt, firmly convinced. Those
23 are not defined for you. Those words live in your
24 head and heart, and they are what is going to be the
25 decision that you make. It is a difficult and

1 important decision.

2 I'm going to talk with you now and go through the
3 facts. I won't spend a whole lot of time on that
4 part. There is a whole lot of evidence, and there's
5 not really any doubt that Gerald's truck was the truck
6 involved in this event. You heard from witness after
7 witness after witness that the truck was the truck
8 that -- and let me say this before I go further, that
9 one of the things that the prosecutor said in the very
10 beginning is it is a tragedy, and that is true. This
11 is an absolute truth; it is a tragedy. There is no
12 reason on earth for this man to be dead. It is a bad,
13 bad thing. No one is debating that. Everyone will
14 agree that that is a bad thing, but it is not really a
15 question for you, if Gerald's truck was the cause of
16 the man's death. There is no debate, really, about
17 that. Whoever was driving the truck at that point
18 left the scene of the accident, no real debate about
19 that. Gerald was drunk that night, there is no debate
20 about that. That is straightforward, and just truth.
21 There is a lot of evidence, his blood alcohol was -- I
22 can't remember, 23, 27, but certainly there is no
23 question that chain of custody is there, blood alcohol
24 is there, the expert testified, so there is no --
25 those are not things that we're here for you to

1 decide. It is not whether Gerald was drunk that night
2 or whether Gerald's truck was the one which caused the
3 death of the gentleman in this case; that is not
4 really the debate.

5 The debate is if the State has proved to your
6 satisfaction that Gerald was the one driving the truck
7 at the time that the gentleman was struck and killed.
8 Nobody saw the accident. No one can say with
9 certainty what happened. All of the evidence you have
10 before you will be -- you've heard it already. You
11 have to make a decision based on what you know or what
12 you don't know. The judge will tell you that you can
13 make a decision regarding whether the State carried
14 its burden on the absence of evidence.

15 We know the State spent a great of time and
16 energy in proving that the truck was involved and
17 Gerald was under the influence. I submit to you that
18 they have not really spent any time trying to
19 determine who was driving the truck. We know, in
20 part, that the information about Gerald's brother
21 pulling him out of the bog was available to the
22 police, to the law enforcement, at the time of this
23 event occurred, that is what Gerald said. No one ever
24 talked to him. Certainly, if they talked to him at
25 the very beginning of the case, they would have known

1 about Rashad and Mr. Aklin. They could have known
2 those things and investigated those things and worked
3 through those things, but that wasn't done in this
4 case.

5 Before I forget to say this, if I have done
6 anything to offend you in any form or fashion, and
7 sometimes, you know, as cases go forward and people --
8 lawyers work through the case, they do things. I
9 might do something that you think is not good or that
10 guy is being tricky, whatever it is, but, you know, if
11 I have done something to offend you, hold that against
12 me; don't hold it against Gerald. I certainly pledge
13 to you that I've done the best job I can to represent
14 him. He's sort of stuck with me, and he doesn't have
15 a lot of control over what it is that I do. So if you
16 will, please, just kind -- if I've done something bad,
17 put that aside. Don't hold it against Gerald.
18 Sometimes I forget to say that, but I always try to
19 remember.

20 In any event, as you look through the evidence
21 that you do have in this case, and you think about it,
22 what makes sense to you? What do you know that --
23 what can you piece together from the evidence about
24 the driver of the vehicle that was in the accident?
25 We've established it is Gerald's truck, but who was

1 driving? What do you know about the person that was
2 driving that truck? Well, there is a video or
3 animation of it, and there was a great deal of effort
4 and work done from the MAIT Team, who did an excellent
5 job, there is no question about it. They did an
6 excellent job of determining what happened at the
7 accident, and they are saying the person was driving
8 between, by one measure, 45, or thereabouts, and 56,
9 and by another measure he was going 55 miles an hour.
10 If you look at the animation again, you'll see that I
11 ask them about the speed relative to the scale, and he
12 said the speed was scaled. The truck on that
13 animation just comes straight down the road at -- give
14 or take -- 55, 56 miles an hour and runs directly over
15 and goes straight down the highway. The driver of the
16 truck at that time was going 50, 55 miles an hour,
17 give or take, ran straight over that fellow and went
18 on down the road, went on straight down the road.
19 That is the driver of the truck at the time that
20 accident occurred. What do you know about Gerald?
21 That at the time she was behind him, he was going 25
22 or 30 miles an hour, thereabouts -- one other thing.
23 There is 12 of you and one of me, so if I say
24 something inconsistent with what you remember about
25 the facts in this case, use your judgment. I will

1 pledge, again, that I'm not trying to mislead you, I'm
2 just recollecting as best as I can. If your
3 recollection is different than mine, certainly use
4 yours.

5 In any event, Deborah, the lady behind him, who
6 called the 911 call, says that there were four, five
7 cars stacked up behind him, he's doing 25, 30 miles an
8 hour. You might think, Well, the truck has been in a
9 wreck. However, what did the expert trooper mechanic
10 said -- the word he used was the truck was fine. He
11 drove the truck, the truck was fine. Driving down the
12 road, Gerald, 25, 30 miles an hour, running all over
13 the road, and Deborah says car are stacked up behind
14 him. She got behind him. He pulled over, and then
15 she passes him, goes down and waits. You know, here
16 is something you might think about, and that is if he
17 had run over the victim and ran way from the scene of
18 the accident, why in the world would he pull in at the
19 store there to somebody that he recognized as an
20 official person. Does that make any sense? What is
21 the thing -- the guilty flee when no man pursueth, but
22 the innocent stands bold as a lion. He pulled over to
23 the side when she is behind him. He stops at the
24 store, at the Dollar General, and says, Why are you
25 following me?

1 Now, I submit to you that that is consistent with
2 an individual who is drunk, but it is not consistent
3 with an individual who has been going 50, 55 miles an
4 hour and runs over somebody. There is nothing wrong
5 with the truck, the policeman says there is nothing
6 wrong with the truck, and then all of a sudden he goes
7 so slow. That is not what is consistent with what
8 happened at the wreck. It is inconsistent with what
9 happened at the wreck.

10 What else does Deborah say? Deborah says that
11 when she asks him about the damage to the front of his
12 truck, he didn't have a clue, said, Crap, how did that
13 happen. He seemed surprised there was damage to his
14 truck. There was mud all over his truck. What he's
15 telling the police, what he's telling Deborah is, in
16 fact, true, that is he was stuck in the mud, his
17 brother did pull him out and there is mud all over his
18 truck. It makes sense that, in fact, if someone else
19 was driving his truck, and someone else ran over the
20 victim, that he wouldn't know that that had taken
21 place. Makes sense, right? You don't know -- you
22 don't know who was driving the truck, right?

23 One of the things -- and let me talk about that,
24 because this is going to be an important part of it
25 and one of -- when you look around and you see -- you

1 have a court reporter and bailiffs. This is a very
2 special place. This is a place where there are
3 requirements on how you think, and that is tough, hard
4 on people. The Court and the law believes they can
5 say to you something about how to think, and they can
6 make that be true. There is debates about that, but
7 one of the things the judge will tell you in this case
8 about how you have to think is Gerald has not
9 testified. Commonsense might say to you if he didn't
10 do it, why didn't he tell us? That would be maybe
11 some commonsense, that if you were buying a house or
12 something like that, that you would use your
13 commonsense to try to figure out how to make a
14 decision.

15 The judge is going to tell you that the law
16 requires that you not consider that, you can't think
17 about it. You can't talk about it. He is presumed
18 innocent, as it is said in the law, and also -- and as
19 jurors you can't hold it against him. That's like
20 saying, Don't look at the pink elephant because that
21 makes everyone think about the pink elephant. But
22 that is a requirement, and that is part of the
23 structure of the law that includes the presumption of
24 innocence, and the reasonable doubt that we talked
25 about before. One of the things that you heard -- and

1 the question, again, he doesn't have to prove
2 anything, Gerald doesn't, we don't, our side. If we
3 call witnesses, the witnesses that we call told you
4 that Gerald was too drunk to drive. In fact, he had
5 to get help into the truck. As a consequence of him
6 being too drunk to drive, Rashad was the driver of the
7 truck. That information was available step by step to
8 the police at the point in time that this took place.

9 In any event, when Rashad left, he was put in the
10 car. He had been put in the car, and Rashad was
11 driving. When Jobie Aklin talked to the investigator,
12 Jobie Aklin said that Lewis was driving, Gerald was
13 driving. Now, he heard the testimony, as the
14 prosecutor said. He heard the testimony today and he
15 knew that that story wasn't going to cut it. He had
16 this nice lady who came and testified, and I submit is
17 a believable witness, and said that Rashad was
18 driving. Rashad is connected to Jobie, and then so he
19 changes his story, right. He changes his story to fit
20 what the other witnesses say. What does that tell
21 you? That tells you, ladies and gentlemen, I submit
22 that he's not being truthful. He's not being
23 truthful. Why would -- why would he not be truthful?
24 It makes sense that he would not be truthful because
25 he's trying to protect someone, trying to protect

1 Rashad.

2 Is there a possibility that Rashad was the one
3 that was driving the vehicle at the point in time that
4 this accident occurred? You heard testimony about how
5 far the accident was from Mr. Sumter's house; not very
6 far. Rashad leaves Mr. Sumter's house in the car.
7 Not very far. You have the videotape of Gerald's
8 conference in the automobile with the trooper, and all
9 through the part -- a lot of the first videotape is
10 Gerald drunk. Yeah, he's drunk; that is true. He's
11 drunk. But the very first part of the second video,
12 the in-car video, he found out that he's accused of
13 running over somebody. Judge his reaction. Judge his
14 reaction. I would submit to you, ladies and
15 gentlemen, when he learns of that, he's surprised. He
16 doesn't know that that occurred. His behavior, two
17 things. The driver of the truck when the accident was
18 caused is driving differently than when Gerald was
19 pulled -- when Gerald was driving. The other thing is
20 that the reaction of the behavior of Gerald is
21 different than someone who had been involved in this
22 kind of automobile accident. His behavior is
23 different.

24 I go back to the very beginning of what I said to
25 you. This case lives and dies with what you decide in

1 your head and heart. There is a reasonable doubt.
2 You don't know who was driving. There is no proof who
3 was driving. One thing about this case is that if
4 you, in fact, find Gerald guilty of this crime, never,
5 ever going to know whether or not you convicted an
6 innocent man. He is presumed innocent. I'm grateful
7 for your time. Thank you.

8 THE COURT: State is recognized.

9 MR. THOMAS: Thank you, Your Honor. I told you
10 at the beginning, it is a pretty straightforward case,
11 and that there would be substantial evidence presented
12 in this case, and there was. I think that is evident
13 in the fact that defense is not even contesting, like,
14 five out of six elements in this case. They are left
15 contesting the only thing they possibly could, the
16 driving, so I'll focus on the driving issue. All of
17 the evidence in this case points to Mr. Lewis being
18 the driver. He was driving the car earlier in the
19 day. He was driving the car when he pulled over at
20 Dollar General. I think possibly the biggest piece of
21 evidence in this case is the roadside video. Listen
22 carefully to what he says in that roadside video, and
23 I'm talking immediately when he's out of his car and
24 talking with the highway patrol that is there. He
25 talked about going fishing that day, talks about the

1 friends he was with, talks about getting stuck in the
2 rut and getting pulled out by his brother. He talks
3 about dropping people off. He talks about dropping
4 his friends off, that he dropped them off.

5 Now, you heard in court today from -- I'll call
6 the Sumters, husband and wife, that both knew the
7 defendant very well, along with a Jobie Aklin, who
8 also knew the defendant real well, all friends of the
9 defendant. Now, yesterday Mr. Aklin, when he was
10 interviewed by our investigator, stated that Mr. Lewis
11 drove the car from the Sumter house, the barn where
12 everyone was hanging out. He has been in this
13 courtroom the entire time, and he just heard his two
14 friends get up on the stand and say it was this Rashad
15 fellow. At no point did anyone go to law enforcement
16 and tell anyone this stuff, not to our office or
17 police office or anyone. This is after Mr. Lewis is
18 charged for this crime. It's all been brought up
19 today. The evidence of this case shows that Mr. Lewis
20 was the only person driving the vehicle. I submit to
21 you that an important part of the evidence is the
22 inside of the defendant's vehicle, and that was
23 photographed at Rex' Towing by members of MAIT. You
24 heard from the Sumters a fellow named Rashad drove
25 away from there. You also heard from Ms. Sumter that

1 this Rashad, along with the other guy that defendant
2 was with that evening, they weren't muddy, but the
3 defendant was very muddy. I'll submit to you that
4 these pictures show mud caked all inside the driver's
5 side of this vehicle. This is 56. Look at all of
6 that mud in the driver's side of the vehicle. That
7 came from the defendant.

8 I think you heard his brother testify he was
9 getting under the car when it got bogged down. Take a
10 look. Look at the door. Look now at the passenger's
11 side (Published to the jury.) This is where the
12 defendant was apparently sitting. It doesn't match
13 the physical evidence in this case. The best evidence
14 comes from the defendant's mouth himself. He dropped
15 his friends off. He never at one point mentioned
16 anyone else. He dropped his friends off.

17 Now, one of the things defense counsel talked to
18 you about is why would this guy pull over on the side
19 of the road to talk to Deborah Johnson, who you all
20 heard from? I think it is very clear that he was
21 trying to figure out what she was doing behind him.
22 Is this someone following him? Did they know what
23 happened? He pulls over and strikes a conversation,
24 and she talks back with him. He was fishing. It is a
25 guilty conscious time and time again; that is where it

1 starts. He's drunk and wants to know what that person
2 knows. That guilty conscious shows itself again when
3 he gets in the cop car after he was arrested, and I
4 just wrote things down. This is on the roadside
5 video, first video. I didn't do anything wrong. /
6 Apparently you think I did something wrong, but I
7 didn't. Whatever you think I did, I didn't. I was
8 having fun. Trying to make like I did something
9 wrong. In Part 2 he says, Look at the truck, as if
10 that would show that he was somehow not guilty in this
11 case. He says, I didn't do anything wrong, or
12 something to the effect of, I don't know what you
13 think I did, but I didn't do it about six or seven
14 times in that car, if not more. Again, that is his
15 guilty conscious.

16 Let's talk about the timeline. Testimony in
17 this case, the 911 call came in at 7:02, you can
18 verify that. The testimony from the first witness you
19 heard is she heard a big crash in front of her house
20 and said it could have been about 10 minutes before.
21 So we know this accident occurred about 6:52 p.m. and
22 7:02 p.m. If Deborah calls 911 at 7:30 -- and she's
23 on 701 at this point. This took place on Hicks Drive.
24 She calls, and at this point we're about 15 miles away
25 from the accident and a little over -- or right at

1 about 30 minutes from the accident. He's driving 25
2 to 30 in Deborah's estimate at this time. There isn't
3 enough time to do anything. The timeline is perfect.
4 There is not enough time to somehow go pick up drunk
5 Gerald, throw him in the driver's seat and then let
6 him take off.)

7 Another thing, when Mr. Lewis was pulled over,
8 or Deborah was, he didn't know that she was a public
9 official. She was in an unmarked vehicle. The
10 trooper asked, Why did you pull over? Why did you
11 pull over? He said he saw someone with a light on,
12 and he asked something to the effect of the woman in
13 the patrol vehicle over there. No, the woman in that
14 car over there, that woman. He has no idea what she's
15 with that -- he thinks someone is following him, and
16 he wants to know everything she knows.

17 I ask you all to think about that roadside
18 video in this case. Think about what the defendant
19 says. Think about things he doesn't say. Think about
20 his opportunity to speak. Think about the story he
21 gave, how it matched with other witnesses' story, the
22 story of going mudding, fishing. He says all of that,
23 and you heard all of that. The only difference that
24 you heard today, and it has come only today, no other
25 time, is that there was this other guy that got into

1 the driver's seat when they left the house. The
2 defendant doesn't say anything about that. He says he
3 dropped them off. He dropped them off. Thank you.

4 THE COURT: Jury, it is now my duty to instruct
5 the law applicable to this case, and it is your duty
6 as jurors to accept and apply the law as I now state
7 it to you. Furthermore, it is your exclusive duty to
8 decide all the issues of fact in this case and to
9 determine the effect, value, weight and truth of the
10 evidence presented. Both the State and the defendant
11 have the right to expect that you will carefully
12 consider and evaluate the evidence and apply the law
13 in this case to it, so that in the end, both the State
14 and this defendant will have received a fair and
15 impartial trial.

16 I want you to understand that when I use the word
17 "defendant," I refer to Mr. Gerald Lewis. In this
18 case the State of South Carolina charges the defendant
19 with the offenses known as felony driving under the
20 influence death and leaving the scene of the accident.
21 To these charges, the defendant has entered a plea of
22 not guilty. This plea of not guilty places the burden
23 of proof on the State to prove the guilt of the
24 defendant to you beyond a reasonable doubt.

25 It is vital to understand that the defendant is

1 presumed under the law to be innocent of the charges.
2 It is a fundamental rule of our law the defendant,
3 regardless of the seriousness of the charges against
4 him, is always presumed innocent of the crimes for
5 which he is charged unless and until his guilt has
6 been proved by evidence that satisfies you beyond a
7 reasonable doubt.

8 The presumption of innocence is not a mere legal
9 theory or legal phrase. The presumption of innocence
10 is very important, and you need to understand that
11 this presumption accompanies the defendant from the
12 time of his arrest and appearance in this court, and
13 continues with the defendant even after you retire to
14 the jury room to deliberate. In other words, the
15 defendant receives the benefit of the presumption of
16 innocence until the very end of this trial when you,
17 the jury, will deliberate upon the evidence and decide
18 whether the State has proved his guilt on each charge
19 beyond a reasonable doubt.

20 During this trial you and I have separate duties
21 to perform. As trial judge, it is my responsibility
22 to preside over this trial; therefore, I have the duty
23 to rule upon the admissibility of evidence offered
24 during the trial. In that regard, you are to consider
25 only the evidence before you. You are to consider

1 only the testimony which has been presented from this
2 witness stand together with any exhibits admitted into
3 the record of this case. Furthermore, I have the
4 additional duty to charge you on the law applicable to
5 this case, and in that regard, it is your duty to
6 accept and apply the law as I now state it to you.

7 If you have any preconceived ideas as to what you
8 think the law is or what the law ought to be and it
9 does not agree with what I tell you the law is, then
10 you are obligated under your oath to abandon these
11 preconceptions and accept the law as I now state it to
12 you.

13 In this trial, you are the sole and exclusive
14 judge of the facts, and I am the judge of the law. Do
15 not infer that I have any opinion about the facts in
16 this case from anything that I have said during the
17 course of this trial. In this regard, the law simply
18 does not permit me to have an opinion about the facts.
19 As jurors, it is your duty alone to determine the
20 effect, value, weight and truth of the evidence
21 presented during the course of this trial.
22 Furthermore, it is your job as jurors to determine the
23 creditability and believability of the witnesses who
24 have testified in this case. You must evaluate the
25 evidence and determine which evidence convinces you of

1 its truth. In determining the believability of
2 witnesses who have testified in this trial, you may
3 believe one witness over many, or many over one. You
4 may believe a part of the testimony of a witness and
5 reject the remaining part. You may believe the
6 testimony of a witness in its entirety, or reject it
7 in full. You may consider whether the witness has an
8 interest in the result of the trial, whether the
9 witness is prejudiced towards either party, the
10 opportunity for the witness to have seen the matters
11 and things about which the witness may testify and the
12 way the witness acts on the witness stand.

13 Evidence may be direct or circumstantial. Direct
14 evidence is testimony by a witness about what the
15 witness personally saw or heard or did.
16 Circumstantial evidence is indirect evidence. That
17 is, it is proof of one or more facts in which one can
18 find another fact. You are to consider both direct
19 and circumstantial evidence. The law permits you to
20 give equal weight to both, but it is up to you to
21 decide how much weight to give to any evidence. Proof
22 beyond a reasonable doubt is proof that leaves you
23 firmly convinced of the defendant's guilt. There are
24 few things in this world that we know with absolutely
25 certainty, so even in criminal cases, the law does not

1 require proof that overcomes every possible doubt.
2 However, based on your consideration²⁴⁻⁷ of the evidence,
3 you are firmly convinced that the defendant is guilty
4 of the crimes charged, you must find him guilty. If,
5 on the other hand, you think there is a real
6 possibility that he is not guilty, you must give him
7 the benefit of the doubt and find him not guilty.

8 Please understand that reasonable doubt may arise
9 from the evidence which has been presented in the
10 case, or from the lack of evidence in the case. It is
11 your responsibility to determine whether or not
12 reasonable doubt exists as to the guilt of this
13 defendant on each charge. I charge you that the
14 defendant is entitled to every reasonable doubt
15 arising in the whole case. If upon any issue of fact
16 essential to conviction for a verdict of guilty, you
17 have a reasonable doubt as to how that issue should be
18 resolved, it would be your duty to resolve that
19 reasonable doubt in favor of the defendant. It is
20 important to understand that the defendant is not
21 required to prove his innocence. Instead, the State
22 is required, by law, to prove every essential element
23 of the charges against the defendant by evidence which
24 satisfies you of his guilt beyond a reasonable doubt.
25 Only then can you convict the defendant and find him

1 guilty.

2 I further instruct you the fact that the
3 defendant in this trial did not testify on his own
4 behalf is not a factor to be considered by you in any
5 way in your deliberations and in your consideration on
6 a question of guilt or innocence. In this regard, a
7 defendant has the Constitutional right to remain
8 silent. Any exercise of this right must not be
9 considered by you in your deliberations. The fact
10 that a defendant did not testify should not even be
11 discussed in the jury room.

12 The burden of proof as I have stated to you is on
13 the State. The defendant has no obligation to prove
14 his innocence. The burden of proof remains with the
15 State to prove the defendant's guilt beyond a
16 reasonable doubt, and the fact that a defendant did
17 not testify is not a factor to be considered by you in
18 deciding any guilt or innocence of the defendant.

19 Furthermore, the rules of evidence ordinarily do
20 not permit witnesses to give their opinions or
21 conclusions. An exception to this rule exists for
22 witnesses we call expert witnesses. A witness who by
23 education or experience has become an expert in some
24 art, science, profession or calling may state an
25 opinion as to the relevant material matter in which

1 the witness claims to be an expert and may also state
2 the reasons for the opinion. You should consider any
3 expert opinion received in evidence in this case, and
4 like any other evidence, give it the weight you think
5 it deserves. If you decide that the opinion of the
6 expert witness is not based on sufficient education or
7 experience, or if you conclude that the reasons given
8 in support of the opinion are not sound, or that the
9 opinion is outweighed by other evidence, you may
10 disregard the expert's opinion entirely. An expert
11 witness' testimony is to be given no greater weight
12 than that of any other witness simply because the
13 witness is an expert. Furthermore, you are not
14 required to accept an expert's opinion even though it
15 is uncontradicted.

16 The defendant in this case is charged with felony
17 driving under the influence. The State must first
18 prove beyond a reasonable doubt that the defendant
19 drove the vehicle while under the influence of alcohol
20 and/or drugs. Driving a motor vehicle means that the
21 vehicle was in motion. This may be proved by direct
22 or circumstantial evidence. A movement of a vehicle
23 might occur without any affirmative act by the driver
24 or, in fact, by any person. If a vehicle is moved by
25 some power beyond the control of the defendant or by

1 accident, this would not be driving.

2 The State must prove beyond a reasonable doubt
3 that the defendant was sufficiently under the
4 influence to impair his ability to drive with
5 reasonable care with due regard for others and
6 himself, or as a reasonably prudent person would
7 drive. It is not necessary to show that the defendant
8 was in a helpless condition, passed out or even
9 intoxicated. On the other hand, the fact that the
10 defendant at some point prior to this incident drank
11 an alcoholic beverage or took a drug does not prove
12 that the defendant was driving under the influence.

13 Next, the State must prove beyond a reasonable
14 doubt that while driving, the defendant did an act
15 forbidden by law or neglected a duty imposed by law.
16 Finally, the State must prove beyond a reasonable
17 doubt that the act or neglect of the defendant
18 proximately caused great bodily injury or death to
19 another person. Proximate cause is the direct cause.
20 It is the immediate cause. It is the efficient cause.
21 It is that cause without which the death of the victim
22 would not have resulted. There must be a chain of
23 causation from the time the injury inflicted by the
24 defendant, until the time of the victim's death.
25 Proximate cause does not necessarily mean that it

1 occurred immediately prior to the death. There may be
2 more than one proximate cause. The defendant's act
3 need not be the sole cause of the death, but must be a
4 proximate cause contributing to the death of the
5 victim.

6 The amount of alcohol in the defendant's blood at
7 the time of the alleged violation as shown by chemical
8 analysis by defendant's breath or bodily fluids may be
9 considered by you in deciding whether the defendant
10 was under the influence. If the alcohol concentration
11 was .08 or more, it may be inferred that the defendant
12 was under the influence. This inference is simply an
13 evidentiary fact to be considered by you along with
14 the other evidence in the case, and you may give it
15 the weight you think it should deserve.

16 If you find that the defendant's -- if you find
17 the defendant not guilty of felony driving under the
18 influence, you may consider the driving the defendant
19 guilty of driving under the influence. The State must
20 prove beyond a reasonable doubt that the defendant was
21 driving a motor vehicle in this state while under the
22 influence of alcohol and/or drugs, or other substances
23 to the extent that the defendant's faculties to drive
24 are materially and appreciably impaired.

25 Driving a motor vehicle means that the vehicle

1 was in motion. This may be proof by direct or
2 circumstantial evidence. The State must prove beyond
3 a reasonable doubt that the defendant was sufficiently
4 under the influence to impair his ability to drive
5 with reasonable care with due regard for others and
6 himself, or as a reasonably prudent person would
7 drive. It is not necessary to show that the defendant
8 was in a helpless condition, passed out or even
9 intoxicated. On the other hand, the fact that the
10 defendant at some point prior to the incident drank an
11 alcoholic beverage or took a drug does not prove that
12 the defendant was driving under the influence.

13 The defendant is also charged with leaving the
14 scene of the accident causing death to another person.
15 The State must prove beyond a reasonable doubt that
16 the defendant was driving a vehicle. The vehicle was
17 involved in an accident. The accident caused death to
18 another person. The defendant did not stop or failed
19 to return and remain at the scene. The defendant
20 failed to give his name, address and vehicle
21 registration number, and if asked, failed to show his
22 driver's license, and the defendant failed to give
23 reasonable assistance to the injured person.

24 Reasonable assistance includes taking the person
25 to the doctor or hospital or making arrangements to

1 have the person taken if it is apparent that treatment
2 is needed or if the injured person asks for treatment.
3 The State must also prove beyond a reasonable doubt
4 that the defendant knew or should have known that an
5 accident happened. This may be shown by evidence of
6 circumstances and conditions which would cause an
7 ordinary reasonable person to believe that the vehicle
8 had been involved in an accident resulting in death to
9 another person.

10 Ladies and gentlemen, I'm now drawing near the
11 end of my charge, and I want you to clearly understand
12 that you're not partisans or advocates for the State
13 of South Carolina or this defendant. You do not serve
14 as jurors to reward your friends or punish your
15 enemies. In this regard, you have been selected by
16 both the State and this defendant to be fair and
17 impartial jurors. It is your duty by your joint
18 deliberations to determine the truth in this case,
19 giving to this defendant the benefit of every
20 reasonable doubt on each and every issue. Then to the
21 facts which you determine to be true, you should take
22 and apply the law that has been given to you by this
23 Court and thus arrive at a verdict which speaks the
24 truth in this case. In fact, the word "verdict" has a
25 Latin derivative that means a true saying. Thus, when

1 you have accomplished these responsibilities, you will
2 have satisfied your oath as jurors and you will have
3 discharged your duty to this Court.

4 Now, Mr. Bailiff, if you will hand that to the
5 forelady. I have handed you the verdict form. When
6 you arrive at a verdict in this case, you will write
7 the verdict on the form. For the charges, if the
8 State has proved the guilt of this defendant beyond a
9 reasonable doubt, your verdict will be two words, not
10 guilty. However, should the State have proved their
11 case against the defendant beyond a reasonable doubt,
12 then your verdict will be one word, guilty.

13 Ms. Foreperson, once the decision has been made,
14 check whichever choice is your verdict and sign the
15 verdict form. Also, please understand that the
16 verdict you render in this case must be the verdict of
17 each and every juror. It must be your unanimous
18 verdict. All 12 jurors must agree on the verdict
19 which you authorize the forelady to write for to the
20 jury. Ms. Forelady and members of the jury, I want
21 you to further understand that the order in which the
22 choices of verdict appear on the verdict form are not
23 suggestive of any verdict on the part of this Court.
24 The verdict in this case is to be determined by you,
25 and not the Court. Furthermore, ladies and gentlemen,

1 please understand that even though I gave the form to
2 the forelady, it is not her verdict alone. Again, the
3 verdict must be unanimous.

4 Now you will retire to the jury room, however, I
5 would ask that you do not begin your deliberations at
6 this time. The law requires that I consult with the
7 attorneys first. After I have done so, the bailiff
8 will bring in the items of evidence and instruct you
9 to begin your deliberations at that time. Also,
10 should you have any questions during your
11 deliberations, you must put them in writing and send
12 them to me by way of the bailiff. The court bailiff
13 will be placed immediately outside of the jury room
14 door to provide security and assistance to you during
15 your deliberations. Once you have reached your
16 verdict, please knock on the jury room door and ask
17 the bailiff to advise the Court that you have reached
18 a verdict. We will return you to the courtroom as
19 promptly as possible thereafter.

20 At this time, please retire to the jury room, but
21 do not begin your deliberations until you are told to
22 do so.

23 (Whereupon, the jury exits at 1:24 p.m., and the
24 following is had out of the presence of they jury.)

25 THE COURT: Any objection to the charges?

1 MR. THOMAS: None, Your Honor.

2 MR. HILLIARD: None, Your Honor.

3 THE COURT: Take a look at the items in evidence
4 and make sure they are in order; if they are, let me
5 know on the record and we'll send them back and tell
6 them to begin and bring out the alternate.

7 (A brief pause in the proceedings while the court
8 reporter and attorneys go through the evidence that
9 was admitted.)

10 THE COURT: Everything okay from the defense?

11 MR. HILLIARD: Yes, sir, it is all there.

12 THE COURT: From the State?

13 MR. THOMAS: Yes, sir.

14 THE COURT: Okay. Go ahead and send it back.

15 (Whereupon, the jury starts deliberations at 1:37
16 p.m.)

17 (The following is had with the Court and attorneys and
18 the alternate juror, but out of the presence of the
19 jury panel.)

20 THE COURT: You have completed your job and
21 duties. You can eat, but in a separate room.

22 JUROR: Okay. Do I do anything for the rest of
23 the week?

24 THE COURT: No. You're good. You have a good
25 day. Thank you.

1 (Whereupon, the alternate juror was excused.
2 Court stands in recess as jury deliberates. The
3 following is had at 2:00 p.m.)

4 THE COURT: We have a question. The jury would
5 like to see the first video where Mr. Lewis is put in
6 the police car. The jury would also like to see the
7 beginning of the second video. If you want to get it
8 ready.

9 MR. THOMAS: Do they not have a TV back there; do
10 you know?

11 THE BAILIFF: No.

12 THE COURT: Okay. What number is that? 131? We
13 can have them send the CDs back.

14 MR. HILLIARD: That makes sense, Judge.

15 THE COURT: All right. Mr. Bailiff, tell them to
16 hand you the CDs.

17 THE BAILIFF: All of them?

18 THE COURT: If you would.

19 (A pause in the proceedings.)

20 THE COURT: Take a look and see which one it is
21 and get it lined up to play it. Let me know when you
22 have it ready.

23 MR. THOMPSON: The first video is ready.

24 THE COURT: Let's bring out the jury.

25 (The jury enters at 2:03 p.m., and the

1 following is heard in the presence of the jury.)

2 THE COURT: If the State will play that portion
3 of the video where Mr. Lewis is put in the car.

4 (Published to the jury.)

5 MR. HILLIARD: I apologize for the interruption,
6 can we approach one second?

7 (The following is had at a bench conference.)

8 MR. HILLIARD: What I heard you say was play the
9 portion of the first one from where he gets into the
10 patrol car, and what they've done is started it at the
11 very beginning.

12 THE COURT: Just play that portion where he is
13 put in the police car.

14 MR. THOMAS: That is the part they specifically
15 asked for? Is there any way we can send a computer
16 that doesn't have anything on it where they can view
17 all of this?

18 THE COURT: Can you just play that portion?

19 MR. HILLIARD: That is all they've asked for.

20 THE COURT: That was a portion.

21 (The following is had in open court.)

22 FORELADY: Excuse me. I do have a juror that
23 does want to see this part.

24 THE COURT: The whole part?

25 FORELADY: She does.

1 THE COURT: Play the whole part. Thank you.

2 (Published to the jury.)

3 FORELADY: Excuse me. We don't want to see
4 the sobriety test, we want to see where he enters the
5 vehicle.

6 THE COURT: Okay. That is all they want to see?

7 FORELADY: They want to see the beginning of the
8 second tape.

9 THE COURT: Oh, all right.

10 (Published to the jury.)

11 FORELADY: We're done.

12 THE COURT: Okay. You can head back to the jury
13 room.

14 (The jury exits at 2:25 p.m., and the
15 following is heard out of the presence of the jury.)

16 THE COURT: Do we need to send it back?

17 MR. HILLIARD: Looks like it to me, Judge.

18 MR. THOMAS: Yep, me too.

19 THE COURT: Okay. Send them on back.

20 (Court stands in recess while jury deliberates.)

21 THE COURT: The jury has another question. It is
22 as follows: The jury would like to know the address
23 of the following individuals: Jobie Alkin, Rashad
24 Muse, Timmy mentioned on the first video.

25 What does the defense say?

1 MR. HILLIARD: I was daydreaming. I thought you
2 pointed at the prosecutor.

3 THE COURT: I think what I need to do is write a
4 note and say you have all the evidence before you,
5 please continue your deliberations. Is that okay with
6 you? I don't remember if they were in evidence or
7 not. I don't know if anyone read their addresses into
8 evidence or not.

9 MR. HILLIARD: I don't think they did.

10 THE COURT: I don't think they did.

11 MR. THOMAS: I don't either, Your Honor.

12 THE COURT: Any problems?

13 MR. HILLIARD: I'm thinking about the phrasing.

14 THE COURT: I think it is perfectly fine. They
15 have everything in front of them they have to continue
16 to deliberate.

17 MR. HILLIARD: All right, sir. Yes, sir.

18 THE COURT: Anything you want to add or take out?

19 MR. HILLIARD: The only thing I was thinking is
20 you received all the information that you will in this
21 case, but maybe it is just a different way --

22 THE COURT: How about you have received all of
23 the evidence in this case?

24 MR. HILLIARD: Which will be presented.

25 THE COURT: Any problem with that?

1 MR. THOMAS: No, Your Honor.

2 MR. HILLIARD: Thank you, Judge.

3 THE COURT: I have written, You have received all
4 of the evidence in the case that will be presented.
5 Please continue deliberations.

6 MR. HILLIARD: Thank you, Your Honor.

7 (Court is in recess while jury deliberates.)

8 (The following was had at 3:29 p.m., and is out of the
9 presence of the jury.)

10 THE COURT: It appears we have a verdict, so if
11 you will get everyone in the courtroom.

12 MR. HILLIARD: Yes, sir. He was smoking a
13 cigarette, Judge.

14 (A discussion was had off the record.)

15 THE COURT: Bring in the jury.

16 (The jury enters at 3:35 p.m., and the
17 following is heard in the presence of the jury.)

18 THE COURT: Ms. Forelady, has the jury reached a
19 verdict?

20 FOREPERSON: We have.

21 THE COURT: If you would be so kind and hand it
22 to the bailiff. Thank you.

23 (A brief pause in the proceedings.)

24 THE COURT: I find the jury verdict form in
25 order, if the clerk will publish.

1 THE CLERK: State of South Carolina, County of
2 Georgetown, State of South Carolina versus Gerald
3 Lewis. As to the charge of felony driving under the
4 influence, we the jury unanimously find the defendant,
5 Gerald Lewis, guilty.

6 As to the charge of leaving the scene of an
7 accident causing death, we the jury unanimously find
8 the defendant, Gerald Lewis, guilty.

9 THE COURT: If this is your verdict, raise your
10 right hand.

11 Need for further polling from the defense?

12 MR. HILLIARD: No, sir, Your Honor.

13 THE COURT: All right. Members of the jury, I
14 thank you for all you have done. You have worked well
15 and hard and served the Court well. You have
16 completed your duties for the week. I hope you have a
17 good week, and you are excused.

18 (The jury exits at 3:36 p.m., and the
19 following is heard out of the presence of the jury.)

20 THE COURT: Any motions from the defense?

21 MR. HILLIARD: Yes, sir, Your Honor. We renew
22 our motions for a directed verdict of not guilty, and
23 a verdict -- a judgment notwithstanding the verdict,
24 as it were, to set aside the jury's verdict on the
25 basis that there is no reasonable way that the jury

1 could have reached the conclusion that they reached.

2 THE COURT: All right. And that motion is
3 denied. Ready for sentencing whenever the State is.

4 MR. THOMAS: Your Honor, you heard all of the
5 facts of this case. As far as a prior record goes,
6 the defendant has -- looks like three driving under
7 suspensions from 1989 to 1990; a petite larceny from
8 1998; 2002, CDV and breach of peace; 2003, breach of
9 peace and disorderly conduct; 2012, assault and
10 battery third degree. Of course he was also convicted
11 of DUI after this incident when he was out on bond in
12 April of 2015. It was a one-vehicle accident where he
13 went off the road in his rented car, Your Honor.

14 THE COURT: You have the sentencing sheets with
15 you?

16 MR. THOMAS: I do, Your Honor.

17 THE COURT: I'll hear from you or the victims.
18 Give me your name.

19 MS. MILLER: Patricia Miller.

20 THE COURT: I'll hear from you at this time.

21 MS. MILLER: Although this has been a rough time
22 for us, and we personally do know Gerald, Mr. Lewis, I
23 don't know what his sentence is going to be, but I
24 just want you -- we want justice, but as lenient as
25 possible because of other things we know for sure.

1 I'm sad to say that the people that are supposed to be
2 his friends did not come up, you know, to help him
3 out, and it is really hurting us. It really is
4 hurting me. I mean, it is just sad. I mean, as
5 lenient as you can be with him, you know, as far as
6 the death of our uncle.

7 THE COURT: Thank you very much.

8 MS. MILLER: I'm sorry, Gerald.

9 THE COURT: Anyone else?

10 MS. CARR: Denise Carr. I'm sorry, Gerald. We
11 still support you no matter what the outcome will be.
12 We've always been on your side from day one, and we'll
13 be on your side until the end. Stay strong.

14 THE COURT: All right. Anything else from the
15 State?

16 MR. THOMAS: No, sir.

17 THE COURT: Highway patrol?

18 MR. THOMAS: No, Your Honor.

19 THE COURT: And the defense.

20 MR. HILLIARD: Thank you, Your Honor. Judge,
21 Gerald, as I've said in the past, is a four-year
22 veteran and he is disabled. He has prostate cancer.
23 He also has a condition which requires insulin on a
24 regular basis. One of the things that I learned from
25 a personal point of view, when I was out in the

1 community working on the case talking to people in the
2 community and things like that, there is not a single
3 person in the community that had anything but good
4 things to say about Gerald. He is loved in the
5 community. It is unusual, to say the least, in my
6 experience, to have the victim's family come after a
7 trial and to say that they are asking the Court to be
8 lenient. They are asking you to be as lenient as
9 possible, and for Gerald to stay strong. I
10 acknowledge and recognize, certainly, that the State
11 of South Carolina has an interest in the case. At the
12 same time, we had -- I would submit to the Court we
13 had a good reason to try it in the way that it came
14 about.

15 His sister is here, and I think she might want to
16 address the Court about her brother. I don't take
17 issue and won't take issue in front of the Court with
18 the verdict in the case. At the same time,
19 recognizing that even in the face of a conviction, a
20 sentence for Gerald of what is, in effect, the
21 maximum, I would ask you not to give him that, Judge.
22 Being that the victim has asked for lenience, and that
23 he does have these physical conditions.

24 Again, he's a veteran. He's not a bad guy. He's
25 had some driving -- and I certainly recognize and

1 acknowledge that he had the other DUI, but he's been
2 sober since then. He's been in jail. And since he's
3 been out of jail, he's been wearing a monitor. We ask
4 you to give him credit for time he served in jail, and
5 I don't remember exactly how many days that is, but
6 whatever it is, plus the time he's been on the
7 monitor.

8 MS. LEWIS: My name is Cathy Lewis. I'm Gerald's
9 sister. Actually, I'm the baby of the family. And,
10 actually, Gerald, like Attorney Hilliard was saying,
11 everyone in the community gives my brother a good
12 name. My brother would not hurt anyone. I know it
13 has been a tragedy for the family. I mean, back in
14 1988 we lost a sister, and we still couldn't get heads
15 or tails what happened to my sister. So I know what
16 they are going through, but my brother -- I know in my
17 heart, and I know -- first of all, God knows that my
18 brother didn't do it. But, you know, whoever the
19 person that is responsible -- well, my brother, like I
20 say, he's a great person, has a great heart and he
21 wouldn't -- ain't no doubt in my mind my brother would
22 hurt nobody, you know. That's all I have to say. I
23 want to tell him that I love him, you know, no matter
24 what the outcome is today. It is a guilty verdict,
25 but no matter what the outcome is, I will always be in

1 his corner and always support him.

2 THE COURT: All right. Anything else?

3 MR. GERALD LEWIS: Your Honor, I just like to
4 say, first of all to the Sumter family, I know it is
5 very hard for you. It's been hard on me and my family
6 also. But I feel what you are going through, but I
7 didn't do this -- excuse me. I would just like to
8 say, Your Honor, I would like to say -- ask the Court
9 to have mercy on me.

10 THE COURT: All right. Anything else?

11 MR. HILLIARD: That is all.

12 THE COURT: In reference to the felony DUI, the
13 sentence is 15 years. I'll give him credit for any
14 time he served. In reference to leaving the scene of
15 the accident, sentence of the court is two years, run
16 that consecutive. He'll get credit for any time he
17 served. This concludes this case. Thank you.

18 (Whereupon, the trial proceedings concluded.)
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CERTIFICATE OF REPORTER

State of South Carolina)

County of Georgetown)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the matter of the captioned case, relative to appeal, in the Court of General Sessions for Georgetown County, South Carolina, on the 21ST day of September, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 16, 2016

Natalie Dahl, RPR
S/ *Natalie Dahl, RPR*

Court Reporter

WITNESSES

South Carolina Dept of Public Safety

DOCKET NO. 2015-GS22-00446

The State of South Carolina

County of Georgetown

Erin Bailey

15G00158

COURT OF GENERAL SESSIONS

MAY, 2015 TERM

ARREST WARRANT NUMBER

2015A2210800034

CDR: 2463 §56-05-1210(A)(3)

DOI: 2/21/2015

THE STATE

vs.

GERALD LEWIS

GEORGETOWN, SC 29440-4525

DOB: [REDACTED]

SSN: [REDACTED]

B / M

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Wyn Bessent

Indictment for

**LEAVING THE SCENE OF AN
ACCIDENT**

Jimmy A. Richardson, II, Solicitor

Ganet Langley
Foreperson of Grand Jury
Date: 5-27-15

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on May 27, 2015, the Grand Jurors of Georgetown County present upon their oath:

LEAVING SCENE OF ACCIDENT

CDR: 2463 56-05-1210(A)(3)

That Gerald Lewis did in Georgetown County on or about February 21, 2015, while operating a motor vehicle become involved in an accident which resulted in the death of Donald Sumpter (Deceased), and did leave the scene of the accident without first rendering aid and/or information, in violation of Section 56-05-1210(A)(3), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

South Carolina Dept of Public Safety

DOCKET NO. 2016-GS22-00856 ✓**The State of South Carolina****County of Georgetown**J. Austin Thomas15G00158**COURT OF GENERAL SESSIONS****AUGUST, 2016 TERM****REST WARRANT NUMBER**2015A2210800033CDR: 0395 §56-05-2945(A)(2)DOI: 2/21/2015**ACTION OF GRAND JURY****TRUE BILL***Frederick Hilliard*
eperson of Grand Jury
Date: 8-31-16**VERDICT**Foreperson of Petit Jury
Date:**THE STATE****vs.****GERALD LEWIS****GEORGETOWN, SC 29440-4525****DOB:****B / M****ATTORNEY: John M. Hilliard, III****Indictment for****FELONY DRIVING UNDER THE
FLUENCE WITH DEATH****Jimmy A. Richardson, II, Solicitor**

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on August 31, 2016, the Grand Jurors of Georgetown County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE - DEATH

CDR: 0395 56-05-2945(A)(2)

That Gerald Lewis did in Horry County on or about February 21, 2015 drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused the death of Donald Sumpter, to wit: excessive speeding and/or failure to keep a proper lookout and/or following too closely in violation of Section 56-05-2945(A)(2), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

STATE OF SOUTH CAROLINA

PLAINTIFF.

VS.

GERALD LEWIS

DEFENDANT.

) IN THE COURT OF GENERAL SESSIONS

) Indictment: 2016GS2200856

) Case: 15G00158

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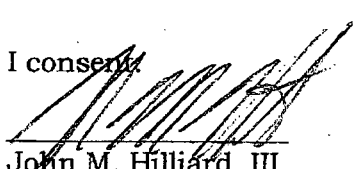
ORDER AMENDING INDICTMENT

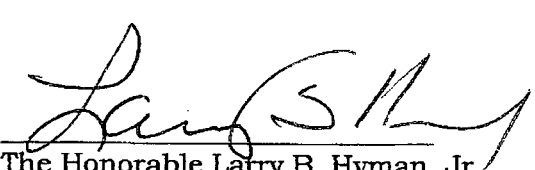
FILED
 GEORGETOWN COUNTY, S.C.
 2016 SEP 14 PM 12:03
 ALMA Y. WHITE
 CLERK OF COURT

J. Austin Thomas, attorney for the State in the above matter, indicates to this Court that on August 31, 2016 indictment 2016GS2200856 was presented to the Grand Jury in Georgetown County and was true-billed. Indictment 2016GS2200856 was presented to ensure compliance with *State v. Grampas*, 288 S.C. 395 (1986), which holds that felony driving under the influence indictments "must state with particularity the act forbidden by law or duty imposed by law which will be relied on by the State to support the felony DUI charge." The Georgetown County Grand Jury had previously true-billed indictment 2015GS2200445, which sets forth the same basic facts and offense as 2016GS2200856. The only difference is that 2016GS2200856 contains additional facts pertaining to the act forbidden by law or duty imposed by law which the State will rely on to support the charge. It has come to my attention that 2016GS2200856 contains the following scrivener's error: the body of the indictment states that the offense occurred in Horry County and it should state that the offense occurred in Georgetown County. John M. Hilliard, III, attorney for Defendant, agrees that "Horry County" should be changed to "Georgetown County" and consents to this Court ordering the change to fix the scrivener's error.

THEREFORE IT IS ORDERED, indictment 2016GS2200856 is to be amended to state that the offense occurred in Georgetown County.

I consent


 John M. Hilliard, III
 Attorney for Defendant


 The Honorable Larry B. Hyman, Jr.
 Chief Administrative Judge of General
 Sessions, Fifteenth Judicial Circuit

September 13 2016

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John H. Strom", is written over a horizontal line.

John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of September, 2017.