

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARMINE JAMES MIRANDA, III,

APPELLANT

APPELLATE CASE NO 2016-001786

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENWOOD

STATE OF SOUTH CAROLINA,)

CASE NO.: 2016-GS-24-00108

PLAINTIFF,)

-VS-)

TRANSCRIPT OF RECORD

CARMINE JAMES MIRANDA,)

III,)

DEFENDANT.)

AUGUST 1, 2, 3, 2016
GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE

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

ATTORNEY FOR PLAINTIFF:

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WILL MAXEY, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

PATRICIA BOLEN, ESQUIRE
ELIZABETH ABLE, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

1 problem with that as long as obviously the Defense
2 witnesses, I know there's at least one in here, are also
3 sequestered.

4 THE COURT: Right.

5 MS. BOLEN: And, Your Honor, yeah, there is Ms. Hendrix
6 I put on our witness list. Out of an abundance of caution,
7 I do not -- we will not be calling her. So she's a support
8 person for Mr. Miranda. Helps him get around in the
9 wheelchair.

10 THE COURT: All right. Well, I'll just leave it up to
11 the lawyers just when the case starts to make sure that the
12 ones who need to be sequestered are. Very good.

13 MS. BOLEN: Your Honor, the two main -- I'm going to
14 kind of outline what our motions are going to be, Your
15 Honor. I've got two main evidentiary motions and then a
16 couple of much smaller motions in limine just sort of
17 anticipating some issues that might come up from the State's
18 case.

19 The main issues, Your Honor, that we're going to handle
20 pretrial are a constitutional objection under the Fourth
21 Amendment to the blood draw that was done in this case, and
22 a statutory objection to the videotape procedures under --
23 and I believe the statute section is 5293, but let me just
24 get that so I can make sure before -- sorry, Your Honor. I
25 just had it and seem -- I believe I've misplaced it, but I

1 believe I've got it. It's right there, Your Honor. Sorry.

2 Yeah, Your Honor, and our second main motion is under
3 the videotape statute for DUI, which is 56-5-5953. I think
4 I may have said 5553. It's actually 5953. And I guess it's
5 probably easier to take that one first, Your Honor. The
6 statute requires that the Defendant's conduct be videotaped
7 in DUI cases upon arrival at the scene. In this case, Your
8 Honor, we were given one videotape from Officer Stevenson's
9 car. That was given to us, I want to -- probably about two
10 months ago. On Friday we were given videotapes from the
11 State for the in car cameras of Trooper Lusk and Trooper
12 Heaton. Our pretrial motion, Your Honor, is based on all
13 three of those videos. From how I watched them there's
14 already a car on scene for all three of them. So with
15 Trooper -- I believe it's Trooper Lusk's - and that's the
16 shortest of the three. It's about seven minutes. And he
17 pulls in directly behind another police car. And the other
18 two pull up and you can see flashing lights already there.
19 Under our reading of the statute, Your Honor, it's our
20 position that we are entitled to the in car video of the
21 first police officer who was on scene and I don't believe we
22 have that. I know there are exceptions under the statute,
23 Your Honor, but the statute also does allow for judicial
24 dismissal based on noncompliance with the videotaping
25 requirements.

1 THE COURT: So let me make sure I understand what you
2 got here. We have three -- three highway patrolmen involved
3 in some fashion, and the first highway patrolman that
4 arrives at the scene, if -- if there's a video from his
5 video camera you say you don't have it. Is that right?

6 MS. BOLEN: I don't believe so. Because on every video
7 I see there's another car already there.

8 THE COURT: All right. But the other two who came up
9 sometime after the first one, you've gotten those videos?

10 MS. BOLEN: Yes, sir. I've gotten three. And I think
11 they were -- there was Highway Patrol as well as Greenwood
12 County Sheriff's Office deputies there. So I believe I've
13 gotten two Highway Patrol and one Greenwood County Sheriff's
14 Office.

15 THE COURT: All right. Well, let me -- Solicitor White
16 or Maxey, whoever's going to address this point, is there a
17 video from the first trooper?

18 MS. WHITE: Your Honor, it's my understanding that the
19 first person -- and I want to be careful because I'm not 100
20 percent certain on this. The first person on scene may have
21 been Greenwood County. It was a very confused kind of
22 everybody arriving at once, along with fire department, EMS.
23 We do not -- I do not know who the county officer was or --
24 and I don't have a video from that county officer, assuming
25 that's who it was. We do have the three videos from the

1 Highway Patrol. And, Your Honor, for the purposes of the
2 statute, I think that the three videos we have meet the
3 requirements of 56-5-2953. I don't think there's a
4 requirement -- it just says it has to be video recorded. It
5 doesn't say that every single car that responds has to video
6 record. And really, all the videos begin before the
7 activation of the blue lights. There were no field sobriety
8 tests administered because of Mr. Miranda's condition. He
9 had a broken leg, fractured pelvis, collapsed lung, numerous
10 injuries. He basically crawled out of the car and was
11 laying on the ground with EMS attending to him. And the
12 arrest didn't take place at the scene. The arrest was much
13 later in the hospital several hours, I believe, after the
14 initial response. So the three videos that we've provided
15 do meet the requirements of that statute. And I think that
16 -- to have to get a fourth video essentially showing the
17 exact same thing, I don't think that's what the statute
18 contemplates in this case, Your Honor, that every single car
19 arriving on scene be recorded.

20 THE COURT: Let me just pull it up, even though I
21 should have this statute memorized because I dealt with it
22 quite a bit in the case in Newberry.

23 MS. WHITE: And, Your Honor, just a further point. I
24 think it's analogous to a case where the first officer on
25 scene maybe doesn't have a functioning camera in his car, so

1 another officer is called in and then that officer performs
2 all of the tests on his video. It's not from the very first
3 moment of law enforcement contact, but all the tests are on
4 video.

5 THE COURT: Do you all have a copy of this statute?
6 For some reason my computer is not wanting to cooperate.
7 Does somebody have a copy of that?

8 MS. BOLEN: I believe I do. Yes, sir.

9 THE COURT: Would you mind handing it to me, please.
10 I've got it now. Thank you. And I'm going to assume,
11 Solicitor, that this first -- the county officer was not the
12 arresting officer, right?

13 MS. WHITE: No, sir. That's actually the point I was
14 getting ready to make. Trooper Stevenson was the arresting
15 officer, and that's the video that was produced two months
16 ago..

17 THE COURT: Okay. So, Ms. Bolen, to make sure that I
18 properly understand your objection, since the county officer
19 who happened to be the first apparently law enforcement
20 person on scene was not the arresting officer. Therefore,
21 even if he had a video, which we don't know if he did or
22 not, are you objecting to that? Maybe I don't have a good
23 handle on what your objection is.

24 MS. BOLEN: Well, Your Honor, we would still object
25 that the purpose of the statute is to capture the conduct of

1 the Defendant, and in the videos that we've been provided
2 the conduct of Mr. Miranda is not -- is not evident at all.
3 But it is evident that there are other cars closer to the
4 scene that if their videos were on could have captured some
5 of the conduct of the Defendant, which is, again, what the
6 statute was enacted, I believe, to promote.

7 THE COURT: Well, I think the video -- what is -- there
8 were no field sobriety tests done because of the physical
9 condition of the Defendant, and requires the videotaping of
10 the arrest and any Miranda given. And I think that's all
11 the video has to show, correct?

12 MS. BOLEN: I believe so, Your Honor. But there is
13 language in the statute that says that the video is to start
14 as soon as practicable after arrival on the scene. So it's
15 that -- it's that section that we are --

16 THE COURT: Right.

17 MS. BOLEN: -- objecting to and asking for a dismissal
18 under the statute. And that's under subsection (b) where it
19 says, "As soon as video recording is practicable video
20 recording must begin."

21 THE COURT: Right.

22 MS. BOLEN: And I believe all of the -- I may be
23 misspeaking, but I believe all of the sheriff's cars are now
24 outfitted with an in car camera.

25 THE COURT: I mean, I would not know that.

1 MS. WHITE: Your Honor, I'm looking at *State vs. Landis*
2 which is a 362 S.C. 97. There's a discussion about whether
3 -- and it looks like a state transport officer first
4 responded to a scene and then a trooper later came along.
5 There was some discussion over who was the arresting
6 officer. The Court found that the arresting officer was the
7 trooper who arrived later and that his video was the one
8 that this statute would apply to.

9 THE COURT: Right. I think what the statute
10 contemplates is if there's -- if there's no video then that
11 becomes an issue, but only if no video from the arresting
12 officer. And I am familiar with the *Landis* case. And so,
13 that kind of follows within what I perceive this case to be
14 about. And, of course, there are in some situations
15 accidents. And since there was an accident involved then I
16 think one could argue that as soon as it was practicable,
17 vis-a-vis the three highway patrolman who came on the scene,
18 they started the video recording. I think the statute has
19 been complied with and I'm going to deny your motion on that
20 ground.

21 MS. BOLEN: My next motion actually ties in but is a
22 slightly separate issue, Your Honor. The statute also
23 requires a videotaping of the reading of the implied consent
24 and Miranda. According to the case file that we were given
25 by the State, in a timely fashion, the handwritten notes of

1 the officer indicate that implied consent and Miranda rights
2 were read to Carmine at the hospital itself and that they
3 were recorded by Officer Murdock. I think it was either
4 last week or the week before I asked Ms. White for any copy
5 of that recording. At that time she didn't have it. But
6 then she sent me mid last week essentially a destruction of
7 evidence form that she had been given by the Highway Patrol
8 indicating that the video had been destroyed. That audio
9 recording actually resurfaced this morning. So we now have
10 the recording of the implied consent rights and Miranda
11 warnings given at the hospital to Mr. Miranda. However, I'm
12 given that we've -- and again, I'm not faulting the
13 Solicitors at all. I know they gave the videos to me as
14 soon as they had them on Friday. But I got two videos on
15 Friday. You know, the last business day before trial. I
16 then got a -- prior to that I got a statement saying that
17 something in this case was destroyed, and I'm now wondering
18 what that was. I don't know what that was in reference to,
19 but I don't know if that was another -- another in car
20 camera. And, Your Honor, under the State statute 29-53,
21 section © specifically says the video recording must not be
22 disposed of in any manner until the results of any legal
23 proceeding in which may be involved or finally determined.
24 So if I -- I'm just asking for some, I guess, clarification
25 from the State about what was destroyed, because we made

1 another motion depending on what that was.

2 THE COURT: Okay. Can you address that, Solicitor?

3 MS. WHITE: I believe that 2953, as we've just stated,
4 is referring to the arresting officer's video. The State
5 actually went above and beyond in providing all of the
6 tapes. The video that was destroyed was Trooper Murdock.
7 He left the Highway Patrol and when he left they had -- it's
8 my understanding they had essentially a bunch of videos from
9 his car. They reviewed what was on them and then destroyed
10 the ones that weren't -- didn't have cases still pending.
11 So it's my understanding that this would be his in car video
12 from that night.

13 The reason we had been asking for it was because of the
14 audio recording at the hospital. The note that said it had
15 been recorded on audio. Come to find out, that was not
16 actually what he recorded that on. It was -- he recorded it
17 on his cell phone, which is what we found this morning.
18 Because we thought we were looking for an in car video when,
19 in fact, it was a cell phone recording.

20 THE COURT: So what was destroyed was another trooper's
21 in car video, maybe at some point in time thinking it was
22 the hospital video that had been destroyed and then you
23 learned -- so is that -- is that a satisfactory explanation?

24 MS. BOLEN: It is, Your Honor. I mean, I think just to
25 protect the record I need to make a motion given that the

1 statute specifically says -- it doesn't say the arresting
2 officer's video recording. It says, "A video recording must
3 not be disposed of in any manner." It sounds like it was
4 disposed of. Under the line of cases that deal with
5 destruction of evidence, I know there's a two-pronged task.
6 There's -- the evidence must have some kind of exculpatory
7 value, either it must be bad faith. But I think here we're
8 in a different situation where this evidence that is
9 statutorily required. And furthermore, the statute provides
10 that it cannot be disposed of.

11 So we make another motion to dismiss, Your Honor, based
12 on noncompliance with 29-53. And having not seen that
13 video, I don't know if anything was exculpatory on it. We
14 haven't had that chance. And I think in addition to a
15 motion to dismiss based on statutory noncompliance, we'd
16 also make a motion to dismiss based on violation of my
17 client's due process rights that there apparently was this
18 evidence collected and it was destroyed and that's a
19 statutory violation as well as a constitutional one under
20 due process.

21 THE COURT: Yes, Solicitor.

22 MS. WHITE: Your Honor, again, I think we've been over
23 2953. Going to the potential *Brady* violation or dismissal
24 for some sort of bad faith, we've provided three different
25 views of essentially the same thing. The videos all are

1 different officers, what they did on the scene. Trooper
2 Murdock from the case file, it's not even apparent that he
3 was at the scene. So I don't know that there's even any
4 suggestion that anything he did at the scene would be
5 exculpatory or probative in any way. The only thing in my
6 review of the case file that it appears that he did was go
7 with Trooper Stevenson to the hospital and was present when
8 Trooper Stevenson read those rights, which we do have
9 preserved. There's no sort of bad faith. There's no sort
10 of prejudice to Mr. Miranda, given that, again, we have
11 already three different recordings essentially of the exact
12 same thing --

13 THE COURT: Right.

14 MS. WHITE: -- which is from the point the troopers get
15 there to the point Mr. Miranda is loaded into the ambulance.
16 And even after that when they're still cutting the victim
17 out of his car.

18 THE COURT: So, but was it thought at one time -- I
19 mean, Ms. Bolen, you think that Murdock's video was at the
20 scene. Solicitor White is saying no, his video was not at
21 the scene.

22 MS. WHITE: He was there, Your Honor.

23 THE COURT: I mean, he was at the scene, but he was not
24 -- he did not have an instant site video. That's what I'm
25 hearing.

1 MS. BOLEN: Well, I think he had one but was destroyed
2 in that -

3 MS. WHITE: Yes.

4 MS. BOLEN: -- what Ms. White provided me last week.
5 The documentation that any video was destroyed. At the time
6 she gave it to me we thought it was the hospital video
7 recording, but it turns out it was the in car. So I'm just
8 --

9 THE COURT: So Murdock did have an in car video?

10 MS. WHITE: He did. Yes, sir.

11 THE COURT: But is it the State's position that it
12 would show nothing different than the three that you have?

13 MS. WHITE: Yes.

14 THE COURT: That's where you're coming from?

15 MS. BOLEN: And, Your Honor, just to protect the
16 record, you know, we can't know what it would show seeing as
17 none of us saw it.

18 THE COURT: Right. As far as timing when Murdock
19 arrived, was he there in relationship to the other troopers
20 who we have a video? Did he arrive at the same time?

21 MS. WHITE: Your Honor, it's my understanding all of
22 the troopers were at the Spinx when the call came in, so
23 they all left pretty much the same location for the wreck
24 site at the same time. So all getting there pretty much at
25 the same time.

1 THE COURT: Ms. Bolen, does that -- I mean, Solicitor
2 White is telling us based upon what her trooper is saying,
3 that Murdock would have arrived at the same time as the
4 other troopers, therefore the videos would be comparable.
5 Is that --

6 MS. BOLEN: Again, Your Honor, I mean, I -- without
7 having seen them I feel like I can't say that they would
8 show the same thing. And I'm just citing back to the
9 statute section that says that, "A video recording must not
10 be disposed of."

11 THE COURT: Right. But I think, too, even though
12 subsection © does not say arresting officer's video
13 recording, I realize that, I think it contemplates that,
14 because it all deals with the arresting officer producing or
15 failure -- or failing to produce a video recording. So even
16 though -- I think subsection © implies the arresting
17 officer's video recording.

18 So based upon statements made by the Solicitor, and
19 based upon my interpretation of subsection ©, I'm going to
20 deny your motion on that.

21 MS. BOLEN: Yes, sir. Thank you. And I think maybe
22 just to kind of clarify on the record. Especially with
23 respect to the two videos that were provided to us Friday,
24 and again they were provided to the Solicitor's on Friday,
25 it's my understanding that they're not intending to

1 introduce those.

2 MS. WHITE: No, sir.

3 THE COURT: Very good. Now, Ms. Bolen, did you did say
4 -- you did mention a Fourth Amendment issue related to the
5 blood draw. Do you want to get into that?

6 MS. BOLEN: Yes, sir. If I could just put one more
7 thing on the record with respect to the --

8 THE COURT: Okay, sure.

9 MS. BOLEN: The recording of Mr. Miranda's implied
10 consent and Miranda rights, as I said, was recovered this
11 morning. We are not objecting to the introduction of that.
12 I think the statute actually requires that to be recorded,
13 and it was. We're not asking for a *Jackson v. Denno*, but we
14 are -- for the record, we're not objecting to that.

15 THE COURT: Okay. Very good.

16 MS. BOLEN: Yes, Your Honor. With respect to the blood
17 draw there is a search warrant in this case. The search
18 warrant was gotten by Trooper Heaton. It's dated October
19 24th. And, Your Honor, we are moving to suppress the search
20 warrant and anything obtained as a result of it as the
21 search warrant was improperly granted on the basis that
22 there was not probable cause for the search warrant.
23 Specifically, Your Honor, and I can -- if the State doesn't
24 object, I can just read the affidavit portion of the search
25 warrant, which is really what we're objecting to. The sworn

1 testimony that would be in support of Trooper Heaton's
2 requesting the search warrant. And again, the incident date
3 is October 16th, and this is -- the search warrant is dated
4 October 24th. And in the affidavit portion of the search
5 warrant the trooper states that they spoke with a relative
6 of Mr. Miranda. There's a woman in the case, Leslie Ashley.
7 I think she was improperly identified as a relative of Mr.
8 Miranda. In her statement it sounds like she knows him, but
9 I don't think either one of them claims any kind of relation
10 -- family relationship. That's not what we're objecting to,
11 Your Honor. We're objecting to the next portion which is
12 that officers made a video recording of their interview and
13 the relative told officers that Mr. Miranda admitted that he
14 had consumed alcohol just before the collision. Mr. Miranda
15 also told her that he was returning from a bar.

16 We've been provided with two audio recordings of
17 trooper interviews with Ms. Ashley and she actually said the
18 exact opposite. And I've actually had those interviews
19 transcribed, primarily for the purposes of this hearing,
20 which she says that she didn't smell any alcohol on him.
21 She doesn't say anything about him saying that he had been
22 drinking. And she said that he said he was going to a bar,
23 not coming from a bar. And this information is presented to
24 the Magistrate, Your Honor, as in support of probable cause
25 for a search warrant for Mr. Miranda's medical records. And

1 this information is simply false. It's not what the witness
2 said. The witness said the opposite of what is in the
3 affidavit.

4 Your Honor, the --

5 THE COURT: And the medical records would -- I assume,
6 would have blood test results?

7 MS. BOLEN: Yes, sir. And it's one of those motions
8 that it kind of piles onto itself, Your Honor. We've got an
9 objection -- Fourth Amendment objection to the search
10 warrant itself, and then we've got a Fourth Amendment
11 objection to the State introducing the results of the blood
12 draw as a violation of our client's Fourth Amendment rights,
13 Your Honor.

14 The warrant states, "Despite reasonable efforts, they
15 were unable to secure a search warrant for a sample of Mr.
16 Miranda's blood." There's nothing in the discovery
17 provided, Your Honor, that has any indication that they made
18 any efforts to get a search warrant. And I think the case
19 law is clear both in South Carolina as well as recent
20 decisions by the United States Supreme Court, that although
21 a Breathalyzer does not present a Fourth Amendment issue and
22 law enforcement can get a Breathalyzer without a search
23 warrant, South Carolina, as well as the United States
24 Supreme Court, Your Honor, require law enforcement to get a
25 search warrant or a blood draw. And the most recent cases

1 out of the Supreme Court, Your Honor, there's one *Birchfield*
2 vs. *North Dakota*. That was decided just June 23rd, Your
3 Honor, 2016. I believe it's a consolidation case of three
4 different cases before the Supreme Court, but --

5 THE COURT: What's that case again?

6 MS. BOLEN: I'm sorry. *Birchfield vs. North Dakota*.

7 THE COURT: *Birchfield*?

8 MS. BOLEN: Yes, sir.

9 THE COURT: Do you have a copy of it?

10 MS. BOLEN: I do.

11 MS. WHITE: Do you have a cite?

12 MS. BOLEN: I don't have a cite. Because it was so
13 new, I don't --

14 MR. MAXEY: Probably hasn't been --

15 MS. BOLEN: Uh-huh. I can pass it up, Your Honor.

16 THE COURT: All right. The *Birchfield* case stands for
17 the proposition of what now?

18 MS. BOLEN: That law enforcement needs a search warrant
19 for a blood draw. They say that the Fourth Amendment --

20 THE COURT: To require a blood draw or to get the
21 results of a blood draw?

22 MS. BOLEN: Well, Your Honor, what is says is the
23 Fourth Amendment permits warrantless breath searches but not
24 warrantless blood tests. So they would need a search
25 warrant to get a sample of Mr. Miranda's blood.

1 THE COURT: Right.

2 MS. BOLEN: I know that the case law in South Carolina
3 does allow for admission of blood draws done for medical
4 purposes. However, just looking at what we've been provided
5 and what's in the Officer's affidavit, it doesn't look like
6 they even tried to get a search warrant for his blood. And
7 that's what we're objecting to. That they're using the
8 medical diagnosis exception to get around a search warrant
9 requirement, Your Honor. Particularly when the affidavit
10 for the search warrant has misstatements of facts that are
11 from their own witnesses.

12 THE COURT: All right. Is it the State's intent -- the
13 only evidence as far as alcohol content in the blood is from
14 the hospital records as far as their standard treatment of
15 the Defendant?

16 MR. MAXEY: Yes, Your Honor.

17 THE COURT: Well, why then is -- why then is the search
18 warrant even an issue when it's not needed? I mean, why are
19 we getting into the affidavit being possibly faulty in
20 support of the issuance of the search warrant? If the
21 search warrant is not needed, you could subpoena the
22 hospital records, hospital personnel to come in as a
23 business records, and it comes in. So I'm --

24 MS. BOLEN: Yes, Your Honor.

25 THE COURT: -- I'm a little confused of where you're

1 actually coming from on that, Ms. Bolen.

2 MS. BOLEN: Well, Your Honor, our position is that he's
3 not formally arrested until November 14th, and that the
4 records they get from the search warrant form the basis for
5 arrest. And without a pending case they can't issue a
6 subpoena. So it's not something they could have subpoenaed.
7 But that the search warrant gives them the probable cause
8 for arrest -- or the results of the search warrant.

9 MR. MAXEY: And just for the record, Your Honor, that's
10 not correct. Trooper Stevenson actually placed Mr. Miranda
11 under arrest in the early morning hours of October 16th,
12 which is where that recording from Trooper Murdock comes
13 from. It's from him reading his implied consent rights.
14 And they didn't take him into custody because they had to
15 send him up to Greenville because of his condition.

16 THE COURT: Right. I'm just confused why we're arguing
17 about a search warrant.

18 MS. BOLEN: Your Honor, we're just -- it's our position
19 that the search warrant was improperly granted and that the
20 results of what was found from the search warrant should be
21 suppressed. They got -- they got the hospital results from
22 a search warrant that was not based on probable cause, and
23 therefore those hospital results should be excluded.

24 THE COURT: All right. But do you have -- does the
25 State have a hospital person to come in with the records

1 under subpoena?

2 MR. MAXEY: Yes, Your Honor.

3 THE COURT: All right. If he had already been arrested
4 for felony DUI and then, for the sake of argument, the
5 search warrant is faulty, they get the records with the
6 faulty search warrant but he's already arrested. They've
7 issued a subpoena -- I just don't -- I don't see where the
8 issue is.

9 MR. MAXEY: Additionally, Your Honor, you may not even
10 want to get into this, but it's our position that the search
11 warrant is not faulty and there's black letter law on our
12 side on that as well.

13 THE COURT: Well, I'm going to need -- if I need to
14 rule on the search warrant I'm going to need to see the
15 search warrant. I'm going to need to see the affidavit.
16 Why do you -- does the State say that the search warrant is
17 good?

18 MR. MAXEY: Your Honor, the test for whether
19 misstatements in an affidavit invalidate a search warrant is
20 a two-prong test. The Defense has to allege falsehood or
21 reckless disregard for the truth, which I believe Ms. Bolen
22 has. And secondly, if the Court can set aside the
23 misstatement in the affidavit, and the rest -- the remaining
24 part of the affidavit support probable cause, then the
25 search warrant remains valid. And the other statements in

1 the affidavit include multiple officers smelling, you know,
2 the powerful odor of alcohol on Mr. Miranda, as well as the
3 fact that he's just, you know, been involved in -- our
4 position, caused a massive motor vehicle accident.

5 THE COURT: Do this, Ms. Bolen.

6 MR. MAXEY: And additionally just putting on the
7 record, Your Honor -- I didn't mean to cut you off. He had
8 no reason to doubt that veracity of that statement. He
9 relied on it in good faith.

10 THE COURT: Give me the affidavit and highlight the
11 portion that you're complaining about.

12 MS. BOLEN: Yes, sir.

13 MS. WHITE: Your Honor, we've got a certified copy, if
14 you want us to put that in.

15 MS. BOLEN: And, Your Honor, just for the record, I
16 agree with Mr. Maxey that, you know, case law says search
17 warrants are severable. So even if the -- the part about
18 statements made by Ms. Ashley are admitted, it would be our
19 position that the remainder simply gives rise to reasonable
20 suspicion rather than probable cause.

21 THE COURT: All right. Ms. Bolen, again, on the
22 affidavit what portion are you complaining about because it
23 is inconsistent with some interviews from that same witness?

24 MS. BOLEN: The second paragraph down, Your Honor. It
25 says, "When officers of the Highway Patrol arrived," and

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1 they reference an interview that they had. I've got -- like
2 I said, I've got both of those interviews transcribed, and
3 what they're saying she said is not what she actually said
4 in the interviews.

5 THE COURT: Let me just look at one thing very briefly.
6 Solicitor, is Trooper Heaton here? Just so the record is
7 protected, and you've already argued that, you know to find
8 that the affidavit does not properly support probable cause,
9 there's got to be some showing by the Defense that there was
10 a knowingly intentional making of a false statement or
11 reckless disregard for the truth. And I say that even
12 though other portions of the affidavit would support
13 probable cause. But since the Defense is arguing that that
14 second paragraph conflicts with some later determined
15 evidence through some interviews -- and again, I'm not so
16 certain we need to even be concerned with the search
17 warrant. But since it's been raised, let's just take some
18 brief in-camera testimony from Trooper Heaton. So wherever
19 Trooper Heaton may be. Concerning the -- concerning the
20 affidavit and that second paragraph.

21 OFFICER JEREMY HEATON, having first
22 been duly sworn, testified as follows:

23 THE COURT: You may proceed, Solicitor.

24 MR. MAXEY: Thank you, Your Honor.

25

IN-CAMERA

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1 DIRECT EXAMINATION

2 BY MR. MAXEY:

3 Q Please state your name for the record.

4 A Jeremy Heaton.

5 Q And where are you employed, Mr. Heaton?

6 A I'm here with the Highway Patrol in Greenwood County.

7 Q How long have you been employed there?

8 A I've been a police officer for 17 years.

9 Q You've been employed continuously?

10 A Yes, sir.

11 Q So you were working in October of 2014?

12 A Yes, sir.

13 Q Now, are you involved in the State's case against the
14 Defendant, Mr. Miranda?

15 A I was there. Yes, sir.

16 Q And did you obtain a search warrant in this case?

17 A I did.

18 Q And did you provide an affidavit in this search
19 warrant?

20 A I did. Yes, sir.

21 Q And circling back around a little bit. Did you attempt
22 to get a search warrant the night of October 16th?

23 A I did. Once Mr. Miranda was placed under arrest at the
24 hospital, and talking with Trooper Stevenson and Trooper
25 Murdock, his refusal, we tried to obtain a search warrant to

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1 legally draw his blood that night. I contacted the jail by
2 my phone. I was still at the scene. I called the jail to
3 find out who the on-call magistrate was. They provided me
4 with a name and a phone number of the on-call magistrate,
5 which was Judge Martin. Tried to call him several times
6 from the scene to try to obtain a search warrant to legally
7 get Mr. Miranda's blood.

8 Q Were you able to get a search warrant?

9 A I was able to make contact with him. Yes, sir.

10 Q On October 24th, you asked the magistrate for a search
11 warrant?

12 A I did.

13 MR. MAXEY: I think, Judge, I think it's actually on
14 the bench. Do you mind handing that to Trooper Heaton?

15 THE COURT: Sure.

16 THE WITNESS: Thank you, sir.

17 Q Judge Hocker is handing you what's been marked as a
18 Court's exhibit. What is that document, Trooper Heaton?

19 A This is the affidavit stating what -- basically what
20 happened and the reason why we were wanting to secure the
21 medical records from the hospital.

22 Q And how all did you talk to in obtaining the
23 information contained in your affidavit?

24 A As far as officers, would have been the troopers who
25 were there on the scene, Trooper Stevenson and Trooper

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1 Murdock. They were giving me information of what they knew.

2 Q Did you have any reason to doubt the accuracy of what
3 they told you?

4 A I did not.

5 Q Did you review the incident report in this case?

6 A I'm sure I did. I don't recall looking at an incident
7 report, but I'm sure we did.

8 Q Right. And is that your signature on that search
9 warrant, Trooper Heaton?

10 A It is. Yes, sir.

11 Q Had you talked to Highway Patrol's MAIT team at all
12 before asking for the search warrant as to any interviews
13 they had done?

14 A I don't recall talking to MAIT. They were there. I
15 waited on them at the scene to arrive. I believe they come
16 from Greenville to kind of help us with the scene. I don't
17 remember speaking exactly with some -- you know, who they
18 had talked to. I don't recall asking them questions like
19 that.

20 Q When you provided that incident and search warrant were
21 you -- and you signed that, were you affirming that, you
22 know, everything in there to your knowledge was correct?

23 A Absolutely. I still believe.

24 MR. MAXEY: I don't have any further questions for you,
25 Trooper Heaton. Please answer any questions --

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1 THE COURT: Ms. Bolen, any examination of this trooper
2 on the limited issue of his affidavit?

3 MS. BOLEN: Just very, very briefly if I could, Your
4 Honor.

5 THE COURT: Sure.

6 CROSS-EXAMINATION

7 BY MS. BOLEN:

8 Q Trooper Heaton, after the 16th did you make any other
9 attempts to try to get a search warrant for the blood?

10 A Just the one time is all I remember.

11 Q And you said you talked to some people on the MAT team,
12 right?

13 A Just the supervisor who arrived from MAT, which would
14 have been Sergeant Brock.

15 Q Did you talk at all to Lance Corporal Kelly Anderson?

16 A ..I don't recall talking to Anderson.

17 Q Were you aware that he had done an interview with this
18 witness on the 16th -- on October 16th at about 11:30 in the
19 morning?

20 A If I was on night shift I probably would have been in
21 the bed at that time, so...

22 Q And did you say you reviewed the incident report by
23 Officer Stevenson?

24 A Yes, ma'am. I believe so. I mean, I think I said I
25 don't recall, but I'm sure I did look at it.

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1 Q And there's no mention in the incident report of any
2 witness saying that Carmine told them that he had been
3 drinking, right?

4 A I believe that's what's in there. I don't have a copy
5 of it in front of me, but...

6 Q And the statement that you put in your affidavit about
7 --

8 MS. BOLEN: I'm sorry, Your Honor. I've got too much
9 paper up here.

10 Q That officers of Highway Patrol arrived and they spoke
11 with a relative of Mr. Miranda. Which officers were those?

12 A It would have been either Stevenson or Murdock who were
13 already there. I arrived later.

14 Q And did you watch the video recording of their
15 interview?

16 A No, ma'am. I don't recall. I don't believe so.

17 MS. BOLEN: That's all I have, Your Honor.

18 THE COURT: Anything in follow-up on this limited
19 issue?

20 MR. MAXEY: Your Honor, I mean, there is -- we could
21 call Trooper Stevenson to ask him about his incident report.
22 And that line about him traveling from the bar is in Trooper
23 Stevenson's incident report. If you'd like. But I don't
24 know that --

25 THE COURT: Let's make sure --

1 MS. BOLEN: I agree that that's in the incident report
2 that he says -

3 MR. MAXEY: Right.

4 MS. BOLEN: -- that she said that he said that she --
5 I'm at more of issue with an interview that was done with
6 her on October 16th. It was done with this Corporal
7 Anderson --

8 MR. MAXEY: When she's testified that --

9 MS. BOLEN: With --

10 MR. MAXEY: -- when he applied for the search warrant.

11 THE COURT: Right. Right. Thank you, sir. You can
12 step down.

13 (Whereupon, the witness stepped down from the witness
14 stand.)

15 THE COURT: All right. I'm going to find that the
16 affidavit does allow for probable cause. I do not find that
17 Trooper Heaton intentionally or knowingly provided false
18 information. That was the information that was given to him
19 at the time. And the affidavit, even if you take that out,
20 there is still information in the affidavit about a odor of
21 alcohol coming from Mr. Miranda. So I feel like the
22 affidavit does properly give probable cause.

23 Now, with all that said, again, I'm not so certain that
24 we really need to be arguing too much about the search
25 warrant in light of the fact that the State intends to offer

1 this evidence at trial pursuant to a subpoena of hospital
2 personnel. So anyways, motion denied.

3 MS. BOLEN: Thank you, Your Honor. Just to, again,
4 follow up on that. And again, I'm trying to get this out
5 now rather than have lot of breaks in trial.

6 THE COURT: Sure.

7 MS. BOLEN: Knowing Your Honor's ruling on the blood
8 draw. The case on South Carolina is clear that even if
9 blood comes in through being tested for a medical diagnoses
10 rather than through a search warrant the State still has to
11 prove a chain of custody. I don't know if you want us to
12 argue that now or just -- I just want to let Your Honor be
13 aware that --

14 THE COURT: Sure.

15 MS. BOLEN: -- I can put that on the record now or I
16 can argue that at the appropriate time when they try to
17 introduce it. But I don't know that they can establish a
18 chain.

19 THE COURT: Right. And I don't know exactly how they
20 intend to set up chain of custody. I guess probably maybe
21 the better time to do it is wait. See what witness or
22 witnesses they put up on the issue of chain of custody prior
23 to the admission into evidence of the results. It may turn
24 out you may be fine with it.

25 MS. BOLEN: Right.

1 THE COURT: Then again, you might not be.

2 MS. BOLEN: Ms. White has told me what she's got for
3 chain witnesses and I just wanted to let Your Honor know
4 that --

5 THE COURT: Sure.

6 MS BOLEN: -- we'll most likely be making a motion at
7 that time. But if I can just consult with Ms. White and Mr.
8 Maxey. I may have one or two really quick things or I may
9 not, depending on what --

10 THE COURT: Sure, yeah. Yeah, go ahead.

11 MS. BOLEN: Thank you.

12 (Whereupon, there was a brief pause in the
13 proceedings.)

14 MS. BOLEN: Thank you, Your Honor. I think after
15 consulting with them there's one thing that we're in
16 agreement on and two very, very quick issues really
17 concerning just testimony I expect to come out that we'd be
18 objecting to.

19 The thing that we're in agreement with, one of the lay
20 witnesses makes reference to knowing my client from the bar
21 and talks about how much money he would spend, and I think
22 the State is not intending to elicit that testimony. I just
23 wanted to put on the record that we would have objected
24 under 404 as character evidence.

25 Your Honor, the two statements that we're sort of

1 making a preemptive objection to. One of the lay witnesses,
2 -- again, the same one, Ms. Ashley, makes a statement that
3 when she arrived on scene the victim, Mr. Miller, was
4 yelling to get him out of the car and that he wanted his
5 mom. Your Honor, we're going to object to any solicitation
6 of the "I want my mom" statement as a hearsay statement. It
7 doesn't fall under the dying declaration, Your Honor. It's
8 not about the cause of death. I don't believe it falls
9 under any hearsay exception, and we argue that under 403
10 it's more prejudicial than probative.

11 And the last one, Your Honor, the same witness, Ms.
12 Ashley again, makes a statement that my client, when she
13 talks to him at the hospital that she winks at him.

14 THE COURT: That she does what?

15 MS. BOLEN: I'm sorry. That he winks at her.

16 THE COURT: The Defendant winks at Ms. Ashley?

17 MS. BOLEN: Yes, sir. Your Honor, we're objecting to
18 the State eliciting testimony about that as well. Again,
19 under hearsay grounds. There's a case in South Carolina,
20 *State vs. Townsend*. Your Honor, the cite on that is 321
21 S.C. 55. It's from 1996, which does recognize that gestures
22 can be seen as hearsay. In this case, Your Honor, I don't
23 -- I think under 403 analysis it would be unduly prejudicial
24 without being probative of anything. There's not any
25 indication that he meant or had any intent behind the wink.

1 Additionally, Your Honor, he's in the hospital undergoing a
2 lot of medical procedures and I don't know that there's
3 going to be enough testimony to support that it was a
4 voluntary wink. So we would object, just sort of
5 preemptively, to both of those statements coming in under
6 hearsay and 403, prejudicial versus probative, Your Honor.

7 THE COURT: Okay. All right.

8 MS. WHITE: Your Honor, taking those backwards. My
9 understanding of the testimony is that Ms. Ashley is going
10 to testify that she asked Mr. Miranda if he had been
11 drinking and that he winked at her, and then I think asked
12 her to get him some ice, or something to that effect. She
13 took it, I think, as an admission that he had been drinking.
14 I think that that would certainly fall within the hearsay
15 rule as being an admission of a party opponent. Also an
16 admission against interest, Your Honor. So it would not be
17 excluded under the hearsay rule.

18 As to the victim in this case and what he was saying in
19 the car. The testimony -- it's my understanding there's Ms.
20 Ashley, and I think another witness, and I can't remember
21 off the top of my head which one it is, who would testify
22 that the victim -- he's pinned in his car and they're trying
23 to ask him what happened. You know, trying to get something
24 out of him about the wreck, and all he's saying is get me
25 out of here and I want my mom. And to me that goes to, you

1 know, we have to prove causation, have to prove -- it goes
2 to his state of mind with the wreck. That he was just kind
3 of shocked at what had happened. I don't think that it,
4 under the hearsay rule, it's excited utterance. He's
5 clearly -- he's still pinned in the car. And that's the
6 State's position on that.

7 THE COURT: Okay. Probably what I will do is let's
8 wait when Ms. Ashley is called to testify and we'll take --
9 or this portion of her testimony in-camera so I'll know
10 exactly what she plans to say. I can just tell you now I'm
11 kind of inclined to -- as to I want my mommy, to not allow
12 that in, but allow in the winking to the question if he had
13 been drinking. That's my inclination. But let me wait for
14 sure until after we hear Ms. Ashley's testimony to know
15 exactly what she says.

16 Anything else?

17 MS. BOLEN: Your Honor, I believe I've covered
18 everything I intended to.

19 THE COURT: All right. Very good.

20 MS. BOLEN: Is there any way we could have just five
21 minutes to kind of go through my file and --

22 THE COURT: Yeah. But I think the State has --

23 MS. BOLEN: I'm sorry.

24 MS. WHITE: I have two matters.

25 THE COURT: Right.

1 MS. WHITE: The first, Your Honor, relates to Mr.
2 Miranda's statement to law enforcement. He tells law
3 enforcement that he was not driving and then doesn't give
4 any other statements. He then tells Ms. Ashley in various
5 statements -- I think first he tries to say he wasn't
6 driving, and then he says that Petey, the victim, came into
7 his lane. Your Honor, the State's moving in limine to keep
8 all of those statements out as self-serving hearsay. The
9 State does not intend to elicit any of that. Under *State*
10 *vs. Atchison* and *State vs. Sweet*, and those are 235 S.E.2nd
11 294 and 270 S.C. 97. A Defendant's statements in his own
12 interests are not admissible under those cases, Your Honor,
13 as hearsay. Now, if he wanted to get on the stand and
14 testify to that, obviously that would be admissible. But
15 the direct quote from *Atchison* --

16 THE COURT: What is that cite again, Solicitor?

17 MS. WHITE: It's 235 S.E.2nd 294. The rule is that a
18 Defendant cannot introduce in his defense his own statements
19 made to others. So these definitely would be statements
20 made to others. They're would be offered to prove the truth
21 of the matter asserted both that he was not driving and that
22 he did not cause the wreck. And as such, they're
23 self-serving hearsay and should be excluded, Your Honor.

24 THE COURT: Ms. Bolen?

25 MS. BOLEN: Well, Your Honor --

1 THE COURT: I guess what the Solicitor is asking is for
2 me to prevent you or Ms. Able from cross-examining the
3 particular trooper or trooper's involved as to, you know,
4 the existence of these statements.

5 MS. WHITE: Yes, sir.

6 THE COURT: So what's your position on this?

7 MS. BOLEN: Thank you, Your Honor. With respect to the
8 statement made -- and I believe the one Ms. White is
9 referring to is the recording we've been talking about at
10 the hospital bedside. That's the implied consent and
11 Miranda warnings which we were given today. When I listened
12 to it twice, and he does say twice he wasn't driving. We
13 would object to that not being something that we can bring
14 out. Because, Your Honor, under the rule of completeness
15 what he said is -- they say will you give blood sample, and
16 she says no, I wasn't driving. That's part of his answer.
17 And I'm assuming that the State is intending to introduce
18 his refusal as evidence against him. And if they are, then
19 the I wasn't driving is part of his refusal. It's a no,
20 comma, I wasn't driving. So we would object to not being
21 able to cross the officer on the completeness of what he
22 said during that statement. I suppose if the State is not
23 going to introduce any evidence of refusal we might have a
24 slightly different position. But again, I'm assuming that
25 they're intending to introduce that.

1 With respect to Ms. Ashley's statement, Your Honor, I'm
2 a little confused about what the State would be trying to
3 elicit. It seems by piecemealing your statement that they
4 really can't get any of it in. And if that's -- I mean, I
5 don't -- I don't know -- and I'd have to look at this case a
6 little more thoroughly, and I was looking at it before --
7 during lunch, Your Honor. But I don't think the State can
8 pick and choose which parts of the statement they want to
9 come in. If they want to have anything that Mr. Miranda
10 allegedly says to actually come in, I think they need to
11 have all of it come in. It's not a very long conversation,
12 by what she says. And the way she says it happened, he does
13 say at first I wasn't driving, and then she tells him no,
14 you were, and then he gives this other statement. And I --
15 I don't know what exactly they're intending to use then and
16 what she's saying he said. If they're not going to
17 introduce anything that she's saying he said to her, then I
18 don't know that we really have an issue. But given that
19 they're intending to bring up the wink, I'm assuming that
20 they're going to elicit from testimony from her about what
21 he said.

22 THE COURT: So basically we've got -- all right. At
23 the hospital, do you agree, Solicitor, that I was not
24 driving was in connection with no, I'm not going to give a
25 blood test because I was not driving?

1 MS. WHITE: I did not hear that. And to be fair, I
2 only listened to it once this morning. So I can go back and
3 listen to it again. He was kind of moaning and talking over
4 the officer some, so I couldn't make it out.

5 THE COURT: Well, let's do this then. How about taking
6 a look at it again. It may be a situation I'm going to have
7 to review it to make that determination. So how about you
8 listen to it and then see what your position is. And then
9 at the hospital he makes a statement to his Ms. Ashley that
10 the victim was in his lane of travel.

11 MS. WHITE: Yes, sir.

12 THE COURT: Okay. Well, let me -- let me look at that
13 case that you cited, and you look at the -- listen to the
14 hospital tape and then we'll get back on this.

15 MS. WHITE: Yes, sir. And the only other issue I have,
16 and I kind of hesitate to bring it up, but I feel like I
17 have to. If we could minimize the rolling Mr. Miranda in
18 and out of the courtroom in front of the jury. There's some
19 evidence in the case file in the DMH report that he was
20 malingering. I've personally seen him looking much better
21 in the courtroom -- in the courthouse this morning. I'm not
22 disputing that he is disabled. I'm not disputing that he is
23 in pain. But I feel like some of this is being feigned to
24 gain sympathy. And so, if the Defense could just maybe
25 already have him in place when the jury comes in and out and

1 try to minimize -- the same way the State would have to.
2 Try to minimize the impact on the jury, I would appreciate
3 it.

4 THE COURT: I think, Ms. Bolen, Ms. Able, y'all can
5 accomplish that.

6 MS. BOLEN: Yes, sir.

7 THE COURT: Have him in place before the jury comes
8 out.

9 MS. BOLEN: Yes, sir. And just to make sure we're
10 clear. We're going to come back on the record on the two
11 statement issues?

12 THE COURT: Right. We're going to -- we're going to --
13 on the I want my mommy, wink at the hospital, I was not
14 driving to the cops, and telling Ms. Ashley victim in my
15 lane, those four statements, issues, we'll deal with those.

16 MS. BOLEN: Okay.

17 THE COURT: Anything further?

18 MS. WHITE: No, sir.

19 MS. BOLEN: Don't believe so.

20 THE COURT: All right. Let's just -- let's do this.
21 Let's just leave the jury where they are. We're going to
22 take a 10 minute break. And then when we -- after the
23 break, then you can get them to go into the jury room and
24 then -- but just leave them where they are right now.

25 THE BAILIFF: All right, sir.

1 THE COURT: All right. We'll take a 10 minute break.

2 (Whereupon, a recess was held until 3:23 p.m.)

3 THE COURT: Let's get the jury in the jury room,
4 please.

5 (Whereupon, there was a brief pause in the
6 proceedings.)

7 THE COURT: Anything further we need to put on the
8 record before we bring the jury out and get started, from
9 the State?

10 MS. WHITE: Your Honor, on further reflection, I just
11 informed Ms. Bolen, we're going to withdraw our objection to
12 the self-serving hearsay. I think it's going to cut both
13 ways, so we're withdrawing that.

14 THE COURT: Okay. So they would be entitled to, if
15 they so choose, to elicit from law enforcement the
16 Defendant's alleged statement something to the effect that I
17 was not driving? There's no objection to that. And then as
18 far as what he may have told Ms. Ashley concerning the
19 victim allegedly being in his lane. Those two objections
20 are withdrawn?

21 MS. WHITE: Yes, sir.

22 THE COURT: Very good. Thank you. Anything from the
23 Defense before we bring the jury out?

24 MS. BOLEN: No, sir.

25 THE COURT: Thank you very much. Mr. Willingham, if

1 you'll bring the jury out, please.

2 (Whereupon, the jury entered the courtroom at 3:23
3 p.m.)

4 THE COURT: Ladies and gentlemen, I hope you had a good
5 lunch and ready to get to work this afternoon. We have two
6 things we need to do. First thing is we will need to have
7 you sworn in as the trial jury. So, Madam Clerk, would you
8 take care of that please.

9 (Whereupon, the jury was sworn at 3:24 p.m.)

10 THE COURT: Thank you. You can have a seat.

11 Secondly, ladies and gentlemen, I need to appoint a
12 foreperson of this jury. Now, if it is a male, it's
13 foreman. If it is a female, it's forelady. And the
14 foreperson of the jury will wear several hats throughout
15 this trial. One is that I need a person to serve as
16 spokesperson for the jury when the Court needs to be made
17 aware of a concern or an issue, or when you start
18 deliberating and the jury has questions. So I need -- I
19 need a spokesperson of the jury. Secondly, I need someone I
20 need someone to make sure that every member of the jury is
21 complying with the instructions that I give. For example,
22 don't start any discussion about this case until I tell you
23 to start your deliberations. And thirdly, when I do tell
24 you to start your deliberations then I need someone to
25 organize your deliberations and kind of get the process

1 started and manage your deliberations in order for you to
2 eventually reach a verdict in the case. Now, I'm confident
3 that all 14 of you would make excellent forepersons.
4 However, I can only have just one foreperson, and I'm
5 appointing Mr. Walker. You are the foreman of this jury.
6 Now, when you come out after the next break, and for the
7 entire trial, you will always maintain this front seat right
8 here. Okay? Now, the alternates, Mr. Wright and Ms. King,
9 you are in the right seats. You will maintain those seats
10 throughout this trial. The rest of you can sit wherever you
11 like. Now, it looks like to me probably that you already
12 started sitting in the same seats. That's fine. If you
13 want to do that, that's perfectly fine. You don't have to.
14 But if that's what you want to do -- you know, it's kind of
15 like sitting in the same pew at church. You know, you sit
16 in the same pew every Sunday. And so, that's totally left
17 up to you folks.

18 And let me explain to the two alternates, your services
19 here are vitally important. It's not unusual where a member
20 of the 12 has an emergency at home, becomes ill or something
21 of that nature, and we need someone to step into their
22 shoes, someone who has been here to have seen the same
23 evidence and heard the same testimony and that sort of thing
24 a that juror who's been excused. So your role here is very,
25 very important. I'm certainly not hoping someone has to be

1 excused. But if they are, then one of you would step into
2 their place.

3 What I'm going to do now for just the next few minutes
4 before the lawyers give you their opening arguments, I'm
5 going to kind of tell you a little bit about what to expect
6 about this case. This is not an instruction on the law
7 involved in this case. I will instruct you on the law
8 that's applicable at the end of this case before you retire
9 to consider your verdict. This is just merely an
10 explanation, a very general explanation of the procedure
11 that we will follow in the trial of this case so that you
12 may better understand a little bit of what is happening.

13 Now, the first thing I'm going to tell you is that you
14 are not permitted to take any notes. And that therefore
15 requires that you be very attentive to everything that goes
16 on because you will need to rely on your memory when you
17 start your deliberations as far as what the facts and the
18 evidence has been in this trial. I have found that when
19 jurors are permitted -- and some circuit court judges
20 routinely allow juries to take notes. I've found that
21 sometimes you're more interested or more concentrated in the
22 note taking and you kind of sometimes don't listen as
23 closely as you need to be. So that's why I don't allow note
24 taking by juries.

25 Now, as I told the whole panel before you were selected

1 that the Defendant has been indicated in this case and
2 charged with the offense of felony DUI, or felony driving
3 under the influence. Now the elements of that particular
4 offense I will explain to you later on in this case when I
5 instruct you on the law. And as I told you, the indictment
6 is simply the charge by which this case is brought into
7 Court, and it is not in any sense evidence of any of the
8 allegations it contains. The Defendant has exercised his
9 constitutional right has pled not guilty to this indictment.
10 The State therefore has the burden of proving each and every
11 element of this offense beyond a reasonable doubt standard.
12 And it will be your duty as members of this jury, ladies and
13 gentlemen, to decide whether the State has met that burden
14 of proof. Your purpose as jurors is to find and determine
15 the facts. You are the sole judge of the facts in this
16 case. If at any time I make any comment regarding the
17 facts, you must disregard that comment. You are to
18 determine the facts from the testimony you hear and any
19 other evidence introduced in court. It is up to you
20 determine the inferences which you feel may properly be
21 drawn from the evidence. It's especially important that you
22 perform your duty of determining the facts diligently and
23 conscientiously, because, ordinarily there's no way to
24 correct an erroneous determination of the facts by a trial
25 jury. Now, on the other hand, and with equal emphasis, the

1 same law that makes you the judges of the facts makes me the
2 sole judge of the law. The law as given by the Court is the
3 only law that you may consider. You must accept and follow
4 it even though you may disagree with it. I can't tell you
5 what the facts are. And you can't tell me what the law is.
6 Your job is to take the law as I give it to you at the
7 conclusion of this case and apply it to facts as you find
8 them from the testimony of the witnesses and any other
9 evidence that is introduced. After doing that you will be
10 able to render your verdict. A verdict under the solemn
11 oath that you just took a jurors.

12 As I've already told you, before I tell you to start
13 your discussions, to start your deliberations, you may not
14 discuss this case with anyone, including your fellow jurors,
15 friends, family members, anyone involved in this case.

16 During your deliberations at the end of this case you
17 may only discuss this case in the jury room with your fellow
18 jurors because they have seen and heard the same evidence
19 you have. You must decide this case based solely on the
20 evidence presented here in this courtroom. This means --
21 and listen to this very, very carefully to this, please.
22 This means that during this trial you cannot conduct any
23 independent research into anything related about this case.
24 The facts of this case, the evidence presented in this case
25 or the individuals involved. Please do not try to find out

1 information from any source outside of this courtroom,
2 because your verdict has to be based 100 percent on what is
3 presented in this courtroom. You know, we have readily
4 access to wealth of information, and it may be tempting
5 during a break or when you go home in the evening to get on
6 the Internet, try to come up with information that has
7 anything to do with this case, or go on social networking or
8 anything of that nature. You're totally prevented from doing
9 that. You cannot do that. And if the Court finds -- and
10 I'm just being honest with you. If the Court finds that you
11 have disregarded that instruction there are serious
12 repercussions to that. So again, base your decision in this
13 case, whatever that decision turns out to be, base it solely
14 100 percent on what is provided you in this courtroom. And
15 I don't know if there's going to be any media coverage or
16 accounts of this case, whether it be newspaper, radio or TV.
17 But if there is you cannot consider that either. It's so
18 important, ladies and gentlemen, that you keep an open mind
19 and not decide any issue in this case until all of the
20 evidence has been presented, the lawyers have made their
21 closing arguments and I have instructed you on the law in
22 this case. It is your solemn responsibility to determine
23 the guilt or innocence of the Defendant, and your verdict
24 must be based solely on the evidence as it is presented to
25 you.

1 Now, there may be times when one of the lawyers may
2 say, Judge, I have an objection, or Judge, I have a matter
3 of law that I need to take up with the Court and it may
4 require me to excuse you to the jury room. We'll try to
5 deal with some of those issues without having to do that.
6 Discuss it over to the side or to come up front and have
7 what we call a sidebar conference. But if I have to excuse
8 you it's because I may have to -- in ruling on the
9 particular legal issue I may have to discuss the facts with
10 the lawyers, and I certainly don't want to discuss the facts
11 in your present because, again, you are the sole judge of
12 the facts in this case.

13 In determining what the true facts are in this case you
14 must decide whether or not the testimony of a witness is
15 believable. It will be my responsibility to rule as a
16 matter of law as whether certain testimony is admissible at
17 all or not. But once the testimony is admitted, whether or
18 not you believe it is solely for you to determine. In
19 deciding whether to believe a witness you have the right to
20 consider the interest of any witness, the bias of any
21 witness, the prejudice of any witness, the opportunity for
22 the witness to have seen the matters and things about which
23 the witness may testify to, and the way the witness acts on
24 the witness stand. You have the right to consider anything
25 that is in the record that will help you evaluate the

1 testimony of the witnesses. So again, it means that it is
2 your duty to pay close attention to the witnesses, to
3 observe the witnesses, to listen to the witnesses, and pay
4 close attention to the attorneys and to the Court. Don't
5 let your thoughts wonder, but give strict attention to
6 everything that goes on in this case. And also, get a good
7 nights rest. Get some good sleep before you come into Court
8 the next day.

9 I'll ask the State first. Any objections to the
10 Court's preliminary charge?

11 MR. MAXEY: None, Your Honor.

12 THE COURT: And from the Defense?

13 MS. BOLEN: No, sir.

14 THE COURT: Thank you very much. Is the State ready to
15 make its opening?

16 MR. MAXEY: Yes, Your Honor.

17 THE COURT: You may proceed, Solicitor.

18 MR. MAXEY: May it please the Court.

19 THE COURT: Yes, sir.

20 OPENING STATEMENT

21 BY MR. MAXEY: On October 16th of 2014 Petey Miller was
22 on his way home. He was headed east on Highway 34 in
23 Greenwood County headed towards 96. The 96 Highway. Petey
24 was almost home. But tragically what's brought us here
25 today is that Petey Miller never made it home, because

1 something tragic happened right before he made it back to
2 his driveway. A head-on collision. He was in his white
3 Honda Accord in the eastbound lane, and the car that crashed
4 into him was a Mercedes, fire engine red. Still with the
5 paper tag on it. And the evidence in this case is going to
6 show you all that it's proud new owner behind the wheel is
7 that man right there. The Defendant, Carmine Miranda. But
8 you all aren't going to have to take my word for it. We're
9 going to bring you all evidence. Folks sitting right up
10 here at the witness stand. We're going to bring you lay
11 witnesses that came to the scene right after this collision
12 happened and saw Mr. Miranda. Most importantly, who smelled
13 Mr. Miranda and helped him get out of his car at the
14 roadside. We're also going to introduce testimony from
15 Highway Patrolmen, both the responding officers, and Highway
16 Patrolmen require something called the MAIT team who will
17 show you how the positioning vehicles, the gouge marks in
18 the roadway, the damage to the -- the resultant damage to
19 the cars. How all of that points to Mr. Miranda as the
20 driver. Additionally, Mr. Miranda was drunk while all of
21 this was happening. That's what the evidence in this case
22 is going to show you all. We'll bring you people who
23 interacted with him immediately after the wreck. We'll
24 bring you testimony from the medical professionals who
25 treated Mr. Miranda. His demeanor and his -- the evaluation

1 of his condition by medical professionals. Doctors, nurses.
2 The reason all this is important is because Mr. Miranda is
3 charged with driving under the influence. Driving under the
4 influence resulting in death. Now, all that means is we've
5 got to prove to you all that Mr. Miranda was driving,
6 driving in Greenwood County, and that he made a moving
7 violation. And in this case the evidence will show that
8 moving violation was going across the center line on 34 and
9 into the front of Petey Miller's car leaving him pinned
10 inside his car. The steering wheel was actually pushed into
11 his chest so far that later -- he didn't die immediately,
12 but he later succumbed to those injuries, and that those
13 injuries resulted in death were the proximate cause -- or
14 Mr. Miranda's crossing the center line was the proximate
15 cause of his death. And again, we've got -- we bear the
16 burden of proof in this case, which you'll hear a lot over
17 the next couple of days. We've got to leave you convinced
18 of Mr. Miranda's guilt beyond a reasonable doubt. And that
19 sounds like a high burden, and it is one. But it's one that
20 we welcome. One that we welcome, because you'll see the
21 evidence in this case is on our side. Proving Mr. Miranda
22 guilty beyond a reasonable doubt really means that we have
23 to leave you firmly convinced of his guilt. And we don't
24 have to prove him guilty beyond all doubt. Beyond any
25 conceivable doubt, beyond any, you know, reason that you can

1. conjure up or conceive of, but any reasonable doubt based in
2. the evidence or lack of evidence. We've just got to leave
3. you firmly convinced. Simplest way I can put it. And I
4. suspect you may hear those same words from Judge Hocker.
5. And you've all got a serious responsibility here today, but
6. you're also fortunate in that you get to participate in this
7. process. You all may roll your eyes and disagree with me.
8. But you all really won the lottery. It's not the other
9. folks who didn't get picked. It's not the other folks who
10. aren't here. It's you all. Because you get to participate,
11. for all of its faults or all of its quirks, the greatest
12. justice system the world has ever seen in the great county,
13. the United States of America. So keeping that
14. responsibility in mind, and I know you all will, be
15. conscientious. Pay attention to the evidence. Listen to
16. the testimony and remember it and take it back there with
17. you into the jury room, because you all are going to be
18. asked to render a verdict. And that's a term of art and one
19. that -- you know, I didn't study the classics in South
20. Carolina public high school. But I'm told by older lawyers
21. that it comes from the Latin verus dictum. And that means
22. to speak the truth. And it's our firm belief, as lawyers
23. from the State of South Carolina, that for you all to be
24. able to speak the truth in this case, the only way that you
25. can rule in this case is to find Mr. Miranda guilty of

1 felony DUI resulting in death.

2 THE COURT: Thank you, Solicitor.

3 MS. ABLE: Thank you, Your Honor.

4 THE COURT: Ms. Able.

5 OPENING STATEMENT

6 BY MS. ABLE: Good afternoon, ladies and gentlemen.

7 This case is not about whether Mr. Miller lost his life on
8 the night of October 16th, 2014, because he did. I agree
9 with the State that that was a tragedy. This case is not
10 about whether there was a car accident on that night,
11 because there was. And lastly, this case is not about
12 whether or not my client was on the scene that night. He
13 also was. But what this case is about is who caused his
14 death and who caused this wreck.

15 Now, Mr. Maxey has told you you're going to hear a lots
16 of evidence come from this witness stand. And there are
17 several pieces of evidence that I'd like for you to pay
18 attention to. First you're going to hear testimony that
19 there was blood in Mr. Miranda's car. That blood was found
20 only on the passenger side of that red Mercedes. Secondly,
21 I want you to pay attention to the fact that the driver's
22 side door was still functioning on that red Mercedes. It
23 would open and close just like our car doors do today. And
24 lastly, I want you to pay attention to the fact that both
25 air bags in this red Mercedes were deployed on this night in

1 October of 2014.

2 Now, Mr. Maxey also told you the elements of the felony
3 DUI charge that Mr. Miranda is charged with. He's told you
4 that the State has to meet their burden of proof beyond a
5 reasonable doubt. That means that the State has to prove to
6 you each one of those elements and leave you all firmly
7 convinced of that element. The State has to prove that
8 there was someone under the influence of drugs or alcohol.
9 That someone was driving a vehicle. That someone neglected
10 a duty or broke a law. And because of that neglect of duty,
11 or the action of breaking a law, the proximate cause was
12 someone's death. I submit to you, ladies and gentlemen,
13 that that State will not be able to prove beyond a
14 reasonable doubt that Mr. Miranda was driving the car on
15 that night. I will agree with the State wholeheartedly in
16 that this was a tragedy. Mr. Miller lost his life and no
17 one deserves that. But ladies and gentlemen, we're here
18 today because we're all born in the United States of
19 America. With that birthright we have a right to a trial by
20 jury. I ask that you please respect my client's decision to
21 have a trial by a jury. I ask that you please listen to all
22 the evidence presented to you, and I ask that you please
23 find Mr. Miranda not guilty.

24 THE COURT: Okay. Thank you, Ms. Able. Is the State
25 ready to call its first witness?

TODD STEVENSON: DIRECT EXAMINATION

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1 MR. MAXEY: Yes, Your Honor. The State calls Todd
2 Stevenson to the stand.

3 TODD STEVENSON, having first been
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MAXEY:

7 Q Please state your name for the record.

8 A Todd Stevenson.

9 Q Where are you employed, Mr. Stevenson?

10 A South Carolina Highway Patrol here in Greenwood County.

11 Q How long have you been employed with the Highway
12 Patrol?

13 A It will be nine years in January.

14 Q Have you been employed with the Highway Patrol
15 continuously since then?

16 A Yes, sir.

17 Q Now, were you working on the -- in the early morning
18 hours of October 16th, 2014?

19 A Yes, sir. I was.

20 Q Did you respond to an accident on Highway 34 East?

21 A Yes, sir. I did.

22 Q Now, when you arrived on the scene what did you see?

23 A When I arrived on scene the -- I believe EMS was
24 already on scene. There was a white -- it was Honda four
25 door stationed in the middle of the road with extensive

TODD STEVENSON: DIRECT EXAMINATION

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1 massive front end damage and there was a red in color two
2 door coupe, it was a Mercedes, off on the -- onto the
3 eastbound shoulder of the roadway. And located near --
4 adjacent to that vehicle -- there was an occupant still in
5 the -- the driver was still in the Honda. The Mercedes
6 there, the subject was located outside the Mercedes lying on
7 the ground receiving medical treatment.

8 Q And is that subject present in the courtroom today?

9 A Yes, he is.

10 Q Would you please identify him?

11 A It's the gentleman in the black shirt, Carmine Miranda.

12 Q What was your observation of the Defendant when you
13 saw him?

14 A He was -- he was lying on the ground outside his
15 vehicle. He was -- again, he was receiving medical
16 treatment. So many things going on at that time. We were
17 checking on -- we were checking on the other occupant in the
18 vehicle, Mr. Miller, but he was bleeding and he had -- he
19 had some obvious injuries. But at that --

20 Q Did you smell anything observing Mr. Miranda?

21 A When they got him into the ambulance -- when they got
22 him into the ambulance I was able -- that's really the first
23 time I spoke with Mr. Miranda was in the ambulance, just
24 trying to find out what happened, and I could smell the odor
25 of alcohol coming from him at that time.

TODD STEVENSON: DIRECT EXAMINATION

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1 Q And you mentioned the other occupant. Did you mean of
2 the other vehicle?

3 A Yes, sir. There was -- from what I saw there was only
4 two people involved. Two vehicles involved, and each of
5 them appeared to be occupied one time. The occupant of the
6 Honda was still in the Honda at the time I arrived, and the
7 occupant -- or the driver -- and the driver of the Mercedes
8 was still on scene as well. He was --

9 Q Was the occupant of the Honda -- what was his name?

10 A I know him as Petey Miller. I think it was Peter
11 Miller.

12 Q Now, was Mr. Miller able to exit the Honda?

13 A No, he was not. He was not able to free himself from
14 the vehicle.

15 Q How long was he stuck in the vehicle?

16 A It's hard to say. I would guess at least 30 minutes.

17 Q And going back to Mr. Miranda's vehicle, asking about
18 the doors, was the driver's side door open?

19 A When I arrived I don't -- the driver's side door was
20 not open when I arrived. I don't -- I don't believe so.

21 Q How about the passenger's door?

22 A Yes, sir. It was.

23 MR. MAXEY: I'm showing Defense counsel what's been
24 premarked for identification as State's Exhibit 1 through 7.

25 May I approach the witness, Your Honor?

TODD STEVENSON: DIRECT EXAMINATION

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1 THE COURT: Sure can.

2 Q Take a moment to look at those pictures. Do you
3 recognize these pictures, Trooper Stevenson?

4 A Yes, sir. I do.

5 Q Are those pictures fair and accurate depictions of the
6 scene as you saw it on October 16th?

7 A Absolutely.

8 Q Have those pictures been altered in any way?

9 A Not that I can tell.

10 MR. MAXEY: At this time, Your Honor, the State would
11 introduce Exhibits 1 through 7 into evidence.

12 THE COURT: What says the Defense?

13 MR. BOLEN: Without objection, Your Honor.

14 THE COURT: All right. Without objection Exhibits 1
15 through 7 are into evidence on behalf of the State.

16 (Whereupon, State's Exhibit Nos. 1 through 7 were
17 admitted into evidence.)

18 MR. MAXEY: And may I publish them to the jury on the
19 projector?

20 THE COURT: You sure can.

21 Q Trooper Stevenson, if you want to, you can step down
22 from the witness stand and get a little closer to see if you
23 can point some stuff out for the jury.

24 THE COURT: Be sure to speak up loud since you're away
25 from the microphone, Trooper.

TODD STEVENSON: DIRECT EXAMINATION

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1 THE WITNESS: Yes, sir.

2 THE COURT: Thank you.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 Q Now, I'm showing you what's State's Exhibit No. 1.

6 Could you explain to us what we see here, Trooper Stevenson?

7 A Yes, sir. What you're looking at here, this is Highway
8 34. Many of you are familiar with Avery's restaurant on
9 Highway 34. This is directly in front of that restaurant.
10 Again, this is Highway 34. This is the white vehicle I was
11 -- this is the white vehicle I spoke about. My vehicle, and
12 the other responding officers, at the time we got this call
13 we were actually all at the same location a few minutes
14 away. We approached from Greenwood -- the Greenwood side,
15 so all our vehicles are back here. You see there's a --
16 that's a deputy's vehicle. All our vehicles are back here
17 behind this ambulance and other emergency personnel. This
18 is the white Honda. When I arrived on scene I walked in
19 this direction and first observed this because the fire
20 department and them were trying to attend to the driver. He
21 was seated right here obviously. This looks like it's after
22 they extricated. This is the red two door. I believe it's,
23 like I said, a Mercedes. And obviously Mr. Miranda was
24 lying over here at this time. When I arrived he was lying
25 over here receiving treatment from EMS. This is -- of

TODD STEVENSON: DIRECT EXAMINATION

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1 course, this mangle right here is just all the debris. This
2 is where it happened, when the impact occurred. The debris
3 dumped right there. Mr. Miranda's vehicle was then careened
4 off to the shoulder of the road, and Mr. Miller's vehicle
5 was rotated around a little bit. There's even -- it's hard
6 to tell in this picture. There's some -- there's some marks
7 in the road showing where the impact occurred as well and
8 leading off underneath -- up to and underneath the Mercedes.

9 Q Trooper Stevenson, under the white part of the Honda's
10 bumper? That little white mark right there?

11 A I'm sorry. What are you talking about?

12 Q Just below and to the right. No, further down. Bottom
13 of the picture.

14 A Right here.

15 Q Yeah - no, to your left.

16 A Can I look at that picture?

17 Q Yeah. Come here.

18 A It's not clear with the glare.

19 Q See what I'm talking about?

20 A Yeah. If you'll look right here. I don't know if this
21 is going to -- right there. There's a white mark right
22 there which appears to be a gouge mark.

23 Q Just explain to the jury what that means. What is a
24 gouge mark?

25 A At the time of impact the gouge mark is made where the

TODD STEVENSON: DIRECT EXAMINATION

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1 vehicles actually came together and pushed down into the
2 roadway, and that's what leaves those marks. And gouge
3 marks are oftentimes the first marks you're going to see
4 after the collision occurred. And again, it looks like
5 we've got some more right here and right here going -- going
6 in this direction.

7 MR. MAXEY: Thank you, Trooper Stevenson. Now, you can
8 sit back on the witness stand, if you like.

9 (Whereupon, the witness returned to the witness stand.)

10 Q Now, this lane that we're talking about, which lane is
11 this?

12 A This lane, the one where all the debris and everything,
13 the one that's mainly identified in the photograph, is going
14 to be the eastbound lane which is traveling towards the town
15 of Ninety Six.

16 Q I'm showing you what's State's Exhibit No. 4. There's
17 a different angle there. Those orange marks, those were not
18 present before the accident?

19 A No, sir. No, sir. That is during our investigation.
20 We were marking the placement of the vehicles at final rest.

21 Q Now, where did you go after you left the incident
22 location?

23 A I went to Self Regional Hospital to the ER.

24 Q And did you encounter the Defendant there as well?

25 A Yes, sir. I did.

TODD STEVENSON: DIRECT EXAMINATION

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1 Q What did you do once you arrived at the hospital?

2 A After arriving at the hospital and beginning to speak
3 and try to follow-up on what happened at the scene. I spoke
4 to Mr. Miranda again and could still smell the strong odor
5 of alcohol about him. At this time I had determined that he
6 was going to be a contributor to the collision based on the
7 evidence that we -- that I saw on the scene showing that --
8 we established his direction of travel and we established
9 that he was, in deed, in the wrong lane at the time of the
10 collision. Based on that, and the facts that the other
11 evidence we had, I went ahead and advised him that I was
12 placing him under arrest for felony DUI.

13 Q And after you placed him under arrest did you advice
14 Mr. Miranda of his Miranda rights?

15 A Yes, sir. I did. I read him his Miranda rights, as
16 well as the implied consent.

17 (Whereupon, State's Exhibit No. 26 was marked for
18 identification.)

19 MR. MAXEY: I'm showing Defense counsel what's been
20 marked as State's Exhibit No. 26.

21 THE COURT: What number is that, Solicitor?

22 MR. MAXEY: 26, Your Honor. May I approach?

23 THE COURT: Sure.

24 Q Do you recognize that document, Trooper Stevenson?

25 A Yes, sir. I do.

TODD STEVENSON: DIRECT EXAMINATION

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1 Q What is that document?

2 A This is the advisement of implied consent rights for a
3 felony driving under the influence.

4 Q What are some of those implied consent rights?

5 A Would you like me to read the form?

6 Q You don't have to read the whole thing. Just hit the
7 high points.

8 A Well, it advises him that he is under arrest for felony
9 DUI. That I am asking him -- at this time I'm asking him
10 for a blood sample, and the reason is because due to his
11 injuries the staff at Self Regional will not release him to
12 take a breath test. He was -- there was no way I was going
13 to be able to get him. He was bleeding from the head. He
14 had -- there was no way they were going to release him to go
15 with -- for me to put him in the patrol car and take him to
16 the jail to do a breath test. So I was asking him at this
17 time to submit to a blood draw.

18 Q And how did he respond to that request?

19 A He -- when he was advised he stated he was refusing the
20 blood draw.

21 Q Did he indicate that he understood him implied consent
22 rights?

23 A Yes, sir. I believe so.

24 Q Was he able to sign the form?

25 A No, sir. He was not.

TODD STEVENSON: DIRECT EXAMINATION

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1 Q Why not?

2 A Just due to his being strapped down. To the best I --
3 to the best I recall, being strapped down and not -- I don't
4 now if he just didn't have full use of his hands.

5 Q And did one of the medical professional initial on
6 there that he was unable to sign?

7 A That's my signature. That's mine.

8 Q Oh, that's you. My apologies. After you advised Mr.
9 Miranda of his Miranda rights did he make any statements to
10 you?

11 A He did. He made -- he made a statement that -- I
12 advised him of his Miranda rights. He said he was not going
13 to answer any questions -- or he indicated he was not going
14 to answer any questions or make any statements without his
15 lawyer present, and he -- after then reading the implied
16 consent to him he stated he was not going to give a blood
17 sample, and then he stated that he was not driving.

18 Q And circling back around, just to clean up a couple of
19 things. Going back to the incident location. Did you --
20 did you interview anyone when you were there?

21 A I spoke with -- I spoke with someone, a young female
22 who stated she was the first on the scene. I remember
23 speaking with her.

24 Q And inside the red Mercedes did you find anything
25 inside the driver's compartment that would be consistent

1 with the smell of alcohol?

2 A No, sir. I didn't -- I didn't locate any open liquor
3 bottles. I did not locate any open containers of beer,
4 busted containers of beer, anything like that, or any hand
5 sanitizer or anything else.

6 Q Along those same lines did you find any open containers
7 or anything of that nature in the white Honda?

8 A No, sir. No, sir. I didn't any.

9 Q And were there any other people standing around the red
10 Mercedes other than the Defendant who appeared to have
11 suffered any injuries consistent with such a collision?

12 A No, sir. No, sir.

13 MR. MAXEY: I don't have any further questions for you,
14 Trooper Stevenson. Please answer any questions --

15 THE COURT: Cross-examination from the Defense?

16 MS. BOLEN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. BOLEN:

19 Q Trooper Stevenson, you said you were -- you were the
20 first law enforcement officer to arrive on scene from
21 Highway Patrol or --

22 A We -- to the best I can remember, we arrived
23 simultaneous. Like I said, we were together. We were
24 together when we got the call. So we immediately, all of us
25 headed -- we got there like that. But yeah, I was -- I

TODD STEVENSON-CROSS EXAMINATION

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1 remember -- I mean, I was the investigating officer. And
2 that's usually how it goes. Usually the investigating
3 officer is generally the first one there.

4 Q And when you arrived EMS and the ambulances were
5 already on scene, correct?

6 A Yes, ma'am.

7 Q And you just said that at least one lay witness that
8 you spoke with was on scene, correct?

9 A Yes, ma'am.

10 Q And without going into what you and she talked about,
11 you did speak with one lay witness, correct?

12 A Yes, ma'am.

13 Q And there were other lay witnesses there as well,
14 correct?

15 A Can you define witness for me? She was on scene. I
16 don't think anyone saw the collision.

17 Q Correct. But a woman named Leslie Ashley was the one
18 you spoke with, right?

19 A I believe so.

20 Q And there were some other individuals there as well who
21 were --

22 A I thought they were with her actually.

23 Q With her. Yes, sir. And you didn't speak to any of
24 them, correct?

25 A I mean, I'm sure -- I'm sure that I asked them did you

TODD STEVENSON-CROSS EXAMINATION

95

1 see anything, did you talk to anybody, stuff like that. If
2 they give me -- if I didn't think they had anything to offer
3 at that time, I didn't pursue it anymore at that time.

4 Q And as the investigating officer you responded that
5 night and you went to the hospital, correct, as you've
6 already said?

7 A Yes, ma'am.

8 Q And did you work anymore on the case after that, after
9 leaving the hospital? Were you part of the investigation
10 after that?

11 A The -- well, I responded back to the scene. But as far
12 as the in-depth investigation, no. I'm not part of that
13 team.

14 Q And the pictures that Mr. Maxey showed you, did you
15 actually take those pictures, do you recall?

16 A I don't believe I was the one actually taking the
17 pictures.

18 Q But when you arrived on scene you saw the white Honda
19 and you saw the red Mercedes, correct?

20 A Yes, ma'am.

21 Q And you said there was extensive front end damage to
22 both cars, right?

23 A Yes, ma'am.

24 Q And with the red Mercedes you said the passenger door
25 was open when you arrived?

TODD STEVENSON-CROSS EXAMINATION

96

1 A Yes, ma'am.

2 Q And Carmine was lying on the ground, correct?

3 A Yes, ma'am.

4 Q Did you go over to where he was lying on the ground?

5 A To the best of my knowledge, I walked over to him to
6 kind of survey what was going on with him because it was
7 kind of a -- it's a cluster at that point.

8 Q And I think you said you spoke to him a little bit when
9 he was on the ground, and then you spoke to him again when
10 he was in the ambulance, right?

11 A I remember speaking to him in the ambulance. He was
12 receiving medical treatment at the time, so I don't -- I
13 don't -- I don't recall how much I spoke with him when he
14 was lying on the ground.

15 Q But you were at the red -- you were at the scene of the
16 red Mercedes, correct? So you saw that car?

17 A Yes, ma'am.

18 Q And you saw that there was blood on the ground by the
19 passenger side door from the car?

20 A I've seen -- to be honest, I don't really recall. I've
21 seen pictures that show the blood and everything. Where it
22 was. But I can't remember exactly where the blood was on
23 the ground as such. But I've seen pictures of blood in the
24 car.

25 Q You've seen pictures of blood in the car, correct?

TODD STEVENSON-CROSS EXAMINATION

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1 A Yes, ma'am.

2 Q And that was all on the passenger side, right? The
3 passenger side air bag?

4 A It appeared to be.

5 Q And Mr. Miranda was on the passenger side of the car?

6 A Yes, ma'am. He was laying outside the car on the
7 passenger side. Yes, ma'am.

8 Q And you recall seeing that the passenger side air bag
9 was deployed? Was activated?

10 A Yes, ma'am. I believe both air bags were deployed.

11 Q And you arrived obviously after the accident happened,
12 correct? You didn't actually witness it?

13 A That's correct.

14 Q And you said you couldn't smell any alcohol on Mr.
15 Miranda when you were talking to him on the ground, right?

16 A Like I said, I don't -- I don't really think at that
17 time when he was receiving treatment I wasn't trying to
18 really get -- get in their way. So I didn't really get up
19 and close and personal with him at that point.

20 Q And you responded -- you went to the hospital, right?
21 You didn't ride in the ambulance? You just went to the
22 hospital on your own?

23 A No, ma'am. I did not ride in -- I drove my car to the
24 hospital.

25 Q And you met there with Carmine, correct?

TODD STEVENSON-CROSS EXAMINATION

98

1 A I spoke with him again. Yes, ma'am.

2 Q And I think you've already mentioned he was bleeding.

3 He was injured. He was getting medical treatment, correct?

4 A Yes, ma'am.

5 Q But he was able to speak with you a little bit?

6 A Yes, ma'am.

7 Q And that's where you read him his rights, correct?

8 A Yes, I read him his rights.

9 Q And he immediately stated he was not driving, correct?

10 A He stated -- when I advised him his Miranda rights he
11 stated that he was not going to speak to me without an
12 attorney present -- or he wasn't going to answer any further
13 questions that we asked. And then as I read him the imply
14 consent and asked him for his blood -- for him to submit a
15 blood sample, he stated he was not, and then he stated that
16 he was not -- he was not driving.

17 Q And at that time your conversation ended?

18 A Yes, ma'am.

19 MS. BOLEN: That's all I have. Thank you, Trooper
20 Stevenson.

21 THE COURT: Any redirect?

22 MR. MAXEY: No, Your Honor. But I laid a foundation to
23 admit State's 26 on direct and I'd like to move it into
24 evidence at this time.

25 THE COURT: Okay. What says the Defense?

JEREMY HEATON-DIRECT EXAMINATION

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1 MS. BOLEN: That's without objection, Your Honor.

2 THE COURT: Okay. Without objection, 26 into evidence
3 for the State.

4 (Whereupon, State's Exhibit No. 26 was admitted into
5 evidence.)

6 THE COURT: You can step down, sir. Thank you for your
7 testimony.

8 THE WITNESS: Yes, sir. Thank you.

9 (Whereupon, the witness stepped down from the witness
10 stand.)

11 THE COURT: Got another witness?

12 MR. MAXEY: Yes, Your Honor. Investigator Smith is
13 going to get him.

14 THE COURT: Got you.

15 MR. MAXEY: It's Trooper Jeremy Heaton.

16 JEREMY HEATON, having first been
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MAXEY:

20 Q Please state your name for the record.

21 A Jeremy Heaton.

22 Q And where are you employed, Mr. Heaton?

23 A South Carolina Highway Patrol.

24 Q How long have you been employed there?

25 A Well, total in law enforcement has been 17 years.

JEREMY HEATON-DIRECT EXAMINATION

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1 Q And were you employed with the Highway Patrol in 2014?

2 A Yes, sir.

3 Q Did you have any involvement with the State's case
4 against Mr. Miranda?

5 A Yes, sir.

6 Q Did you have occasion to go out to the scene on October
7 16th of 2014?

8 A I did.

9 Q And what was your role in the investigation of this
10 incident?

11 A I was the supervisor for the Highway Patrol that night.

12 Q And as supervisor what were some of your duties at the
13 incident site?

14 A When we get there we just make sure that the scene is
15 secure. If the troopers were already on the scene, if they
16 needed anything, we can provide that for them. Also, my job
17 is to pass up the information that I am receiving on up our
18 chain of command. So I have to make phone calls, too, just
19 to let people know what's going on.

20 Q While you were at the incident location did you take
21 any pictures?

22 A Yes, sir.

23 MR. MAXEY: I'm showing the witness what has been
24 marked as State's Exhibits 8 thought 25. May I approach,
25 Your Honor?

JEREMY HEATON-DIRECT EXAMINATION

101

1 THE COURT: You sure can. Eight to 25?

2 MR. MAXEY: Yes, Your Honor.

3 Q If you could just take a couple moments to look through
4 those pictures.

5 A Okay.

6 Q Have you had a chance to look at all of them?

7 A Yes, sir.

8 Q Do you recognize those photos?

9 A I do.

10 Q Did you take those pictures?

11 A Yes, sir.

12 Q Are there a fair and accurate representation of the
13 incident site?

14 A Yes, sir.

15 Q Have they been altered or changed in any way since you
16 took them?

17 A No, sir.

18 MR. MAXEY: At this time the State would like to enter
19 Exhibits 8 through 25 into evidence.

20 THE COURT: And what says the Defense?

21 MS. BOLEN: Without objection, Your Honor.

22 THE COURT: Without objection, 8 through 25 are into
23 evidence on behalf of the State.

24 (Whereupon, State's Exhibit Nos. 8 through 25 were
25 admitted into evidence.)

JEREMY HEATON-DIRECT EXAMINATION

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1 MR. MAXEY: I would like to retrieve the exhibits from
2 the witness.

3 THE COURT: Okay.

4 MR. MAXEY: And publish.

5 THE COURT: Okay.

6 Q I'm showing you and I'm showing the jury what's been
7 marked as State's Exhibit No. 8. What are we looking at
8 here, Trooper Heaton?

9 A This is our -- the victim in this case, where he's
10 still sitting in his seat. The helmet there is EMS. What
11 they're trying to do is cut that door away so they can get
12 him out. He's trapped in the car.

13 Q And about how long was the victim in this position?

14 A When I arrived on the scene this is what where I found
15 him. So probably another 10, 15 minutes maybe, guessing,
16 before they could cut that door off.

17 Q I'm going to show you all -- some of these pictures are
18 difficult to look at. This one is State's Exhibit No. 10.
19 What is this right here?

20 A I believe that's still a shot of inside the car --

21 Q When was this taken?

22 A This was after the paramedics and fire department got
23 the victim out.

24 Q I'm going to show you -- show you another picture.
25 What is this right here?

JEREMY HEATON-DIRECT EXAMINATION

103

1 A This is -- I'm actually taking a photo of the license
2 plate, or what would be a license plate in this instance.

3 It's just a paper tag.

4 Q Whose vehicle was that?

5 A This is Mr. Miranda's vehicle.

6 Q This is State's 17. What are we looking at here?

7 A This is also inside of the red Mercedes. These are the
8 two air bags that had been deployed. That's what I was
9 trying to get a photo of.

10 Q Now, you mentioned earlier that you -- part of your job
11 as a supervisor was to contact your higher ups. Did you
12 also contact the MAIT team in this instance?

13 A Well, that actually -- that call doesn't come from me.
14 It's got to be somebody of higher rank than me. But when I
15 made that phone call to our on-call lieutenant, or was
16 making contact with our on-call lieutenant, he makes that
17 decision that we need to call MAIT to the scene.

18 Q And who was your on-call lieutenant?

19 A It would have been Lieutenant Kelly.

20 Q That evening did you attempt to obtain a search
21 warrant?

22 A I did.

23 Q And what was that search warrant for?

24 A We were going to try to get Mr. Miranda's blood at the
25 hospital.

JEREMY HEATON-DIRECT EXAMINATION

104

1 Q Were you able to obtain his blood at the hospital?

2 A I was not able to get a search warrant at that time.

3 Q Why not?

4 A Simply I couldn't get in touch with the on-call
5 magistrate that night. That time of the night. I was
6 trying to make phone calls to the magistrate at home to wake
7 him up that we needed a search warrant.

8 Q How many attempts did you make to contact him?

9 A I don't recall off the top of my head. Five, six
10 maybe. I mean, it was several -- several attempts.

11 Q Did you request another search warrant in this case
12 later?

13 A I did later. Yes, sir.

14 Q What was that search warrant for?

15 MS. BOLEN: Your Honor, I would just renew our prior
16 motion on that matter.

17 THE COURT: So noted.

18 A The other search warrant was for to obtain the hospital
19 records.

20 Q And what -- just to make it clear to the jury. They
21 probably know. But what hospital was that?

22 A That's Greenwood Self Regional.

23 Q And just to be abundantly clear. All of this -- this
24 incident site, where is that located?

25 A This is on Highway 34. If you're familiar with the

JEREMY HEATON-CROSS EXAMINATION

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1 Bypass that goes across Highway 34, if you go to get on
2 Highway 34 and travel toward Newberry, that's where this
3 happened. Near the First Assembly.

4 Q But this is in Greenwood County?

5 A In Greenwood County. Yes, sir.

6 Q So your search warrant for Self what did that -- what
7 did that return? What did that yield?

8 A It was --

9 Q Just generally. Not -- just --

10 A Yeah. It was all --

11 Q -- what type of materials were they?

12 A Yeah. It was all of the testing and things that the
13 hospital did on Mr. Miranda. It was his personal file.

14 MR. MAXEY: I don't have any further questions for you,
15 Trooper Heaton. Please answer any questions Defense counsel
16 has.

17 THE COURT: Cross-examination?

18 MS. BOLEN: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. BOLEN:

21 Q Trooper Heaton, you respond to the scene -- about what
22 time did you get there? Do you remember?

23 A I don't recall. I'm probably one of the last ones.

24 Q When you got there -- I'm sorry, what?

25 A I'm probably one of the last ones to get there of the

JEREMY HEATON-CROSS EXAMINATION

106

1 troopers.

2 Q So when you got there, there were a number of other law
3 enforcement officers there, correct?

4 A Correct.

5 Q State Highway troopers as well as some Greenwood law
6 enforcement?

7 A Yes, ma'am.

8 Q And you were the one to take these pictures, correct?

9 A Yes, ma'am.

10 Q When you arrived Mr. Miranda was no longer on scene,
11 correct?

12 A They may have been putting him in the ambulance. I'm
13 not 100 percent sure.

14 Q But you don't remember seeing him lying on the ground
15 or anything?

16 A I don't recall. No, I don't remember seeing anything.

17 Q And you went -- you said your job as supervisor is to
18 come in and make sure the scene is secured, correct?

19 A Correct.

20 Q When you arrived were any lay witnesses there on scene?

21 A There were several people standing around. Whether
22 they got there after the fact or, you know, I don't know.

23 Q And you obviously had an opportunity to look at both
24 vehicles involved, correct?

25 A Yes, ma'am.

JEREMY HEATON-CROSS EXAMINATION

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1 Q And you looked at the red Mercedes that --

2 A Yes, ma'am.

3 Q And you've actually sat inside that car, correct?

4 A I did.

5 Q And you did that that evening?

6 A Yes, ma'am.

7 Q And when you went to sit in the Mercedes you opened the
8 driver's side door, correct?

9 A I'm not sure if I opened it or if it was already open.

10 Q But the driver's side door worked?

11 A It was opened. I sat in it.

12 Q And there was nothing wrong with the driver's side
13 door, to your knowledge?

14 A To my knowledge. I don't remember.

15 Q And this is a two door fairly small Mercedes, correct?

16 A Yes, ma'am.

17 Q And you sat in the driver's seat, correct?

18 A I did.

19 Q And you moved the seat back to sit and kind of put your
20 feet on the pedals?

21 A I didn't move anything. I just sat in it the way it
22 was.

23 Q And when you went to the Mercedes you saw that both air
24 bags were deployed, correct?

25 A Yes, ma'am.

JEREMY HEATON-CROSS EXAMINATION

108

1 Q And you actually took a number of pictures of those air
2 bags which have already been admitted by the State, correct?

3 You also took some pictures of the driver's seat, correct?

4 A Yes, ma'am. I believe that's what that is.

5 MS. BOLEN: If I could just have a moment, Your Honor.

6 THE COURT: Sure.

7 Q And this is one of the pictures you took, correct? Is
8 that right?

9 A Yes, ma'am.

10 Q And this is the inside of the Mercedes, correct?

11 A Correct. Correct.

12 Q And there's no blood on the driver's side seat,
13 correct?

14 A No, ma'am. Doesn't appear to be.

15 Q And in that picture the air bags aren't quite as clear
16 as in some others, but there's no visible blood on the
17 driver's side air bag, correct?

18 A Yeah, I don't believe so.

19 Q But you do see blood there on the passenger side,
20 correct?

21 A Yes, ma'am.

22 Q And you see a little bit of blood over here on the
23 passenger side door?

24 A Correct.

25 Q Another similar picture. But again showing no blood on

JEREMY HEATON-CROSS EXAMINATION

109

1 the driver's side air bag, but there is blood on the
2 passenger side, correct?

3 A Yes, ma'am.

4 Q And this one is taken from the angle from the passenger
5 side door, correct?

6 A Yeah.

7 Q So looking across the passenger side of the car?

8 A Yes, ma'am.

9 Q And again, the blood you see is on the passenger side,
10 correct?

11 A Yes.

12 Q And there's a little bit of blood on the seat right
13 there?

14 A Yes, ma'am.

15 Q It's kind of faint, but we can zoom in a little bit.
16 And there's blood on the air bag in the passenger side,
17 right?

18 A Correct.

19 Q And then this is the Mercedes, right?

20 A Yes, ma'am.

21 Q And the driver's side door is clearly open, right?

22 A Yes.

23 Q It was able to be opened?

24 A Yes.

25 Q Front view of the Mercedes, correct?

JEREMY HEATON-CROSS EXAMINATION

110

1 A Yes.

2 Q And a good amount of damage to the passenger side of
3 the car?

4 A Yes.

5 Q And this is a picture kind of from the back passenger
6 side of the Mercedes, correct?

7 A Right.

8 Q And it shows some blood on the door, correct?

9 A Yes.

10 Q Some blood over here on the -- I guess it's the foot
11 step, correct?

12 A Right.

13 Q Another picture from the passenger side angle. You see
14 blood on the passenger side air bag, correct?

15 A That's correct.

16 Q And again, blood on the door, but not any blood over on
17 the driver's side air bag, correct?

18 A Yes, ma'am.

19 Q Trooper Heaton, when you responded that night you took
20 the pictures, you sat in Mr. Miranda's car, correct?

21 A Correct.

22 Q And what was the purpose of sitting in the car?

23 A Through talking with the other troopers, you know, what
24 they had been hearing or what they had spoken to other
25 people about --

JEREMY HEATON-REDIRECT EXAMINATION

111

1 Q Without mentioning what anybody said.

2 A Yeah. But the reason I was sitting there was to
3 dispute that there was probably a female that was driving.
4 With me being a smaller trooper, I sat in the seat to see if
5 my feet would reach the pedals.

6 Q And your feet did, right? You could put your feet on
7 the pedals?

8 A I think I could touch them, but I wouldn't be able to
9 push them down.

10 MS. BOLEN: If I could just have a moment, Your Honor.

11 THE COURT: Sure. Take your time.

12 Q And Trooper Heaton, you took the pictures. You didn't
13 do any other sort of collection of evidence. You didn't try
14 to get any DNA or any swabs off of the Mercedes --

15 A No, ma'am.

16 Q -- in any way? You didn't try to get anything off the
17 steering wheel?

18 A No, ma'am.

19 Q Fingerprints or DNA?

20 A Once we had MAIT coming, you know, I leave everything
21 the way it is.

22 MS. BOLEN: Nothing further. Thank you, Your Honor.

23 THE COURT: Anything on redirect from the State?

24 REDIRECT EXAMINATION

25 BY MR. MAXEY:

JEREMY HEATON-REDIRECT EXAMINATION

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1 Q Trooper Heaton, just very briefly. Did you observe any
2 other of the people on scene to have similar injuries,
3 obvious injuries like Mr. Miranda?

4 A Just the victim.

5 MR. MAXEY: I'm going to have the Court mark this for
6 identification. I'm sorry. The court reporter. I'm
7 scatter brained.

8 (Whereupon, State's Exhibit No. 27 was marked for
9 identification.)

10 MR. MAXEY: Your Honor, I'm approaching the witness
11 with what's been marked for identification as State's 27.

12 THE COURT: Okay.

13 Q Do you recognize that picture?

14 A I do.

15 Q What is that picture?

16 A This is a picture of me sitting in the driver's seat of
17 the Mercedes.

18 Q Has it been altered in any way?

19 A No, sir.

20 Q Is that a fair and accurate depiction of you sitting in
21 the driver's seat?

22 A Yes, sir.

23 MR. MAXEY: At this time the State would move No. 27
24 into evidence.

25 MS. BOLEN: That's without objection, Your Honor.

JEREMY HEATON-REDIRECT EXAMINATION

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1 THE COURT: Without objection, 27 into evidence on
2 behalf of the State.

3 (Whereupon, State's Exhibit No. 27 was admitted into
4 evidence.)

5 MR. MAXEY: I'll publish this one as well.

6 Q What are you trying to do here, Trooper Heaton?

7 A Like I said, there was some mention of -- that he was
8 -- that there was a female that was driving this vehicle.
9 With me being a smaller trooper, you know, barely five-
10 seven, I figured I would sit in the driver's seat just to
11 see if I could reach the pedal. If there was a female
12 driving, I should be able to drive the vehicle like a female
13 would be able to drive the female.

14 Q Did you see any other females walking -- were there any
15 on scene there?

16 A Well, known with injuries or claiming to be a part of
17 the wreck. I mean, there were people standing around.

18 Q Any tall woman walking around there?

19 A I don't recall.

20 MR. MAXEY: I don't have anything further for you,
21 Trooper.

22 THE COURT: Recross?

23 MS. BOLEN: No, sir.

24 THE COURT: You can step down, sir. Thank you for your
25 testimony.

1 (Whereupon, the witness stepped down from the witness
2 stand.)

3 MS. BOLEN: May we approach, Your Honor?

4 THE COURT: Sure.

5 (Whereupon, a sidebar was held.)

6 THE COURT: Ladies and gentlemen, it looks like this is
7 going to be a good time to go ahead and break for this
8 afternoon. I'm going to start back a little later. I've
9 got a doctor's appointment in Greenville, so we won't start
10 back until 11:00. Hopefully I'll be back by then. So you
11 don't have to be here until 11:00 in the morning. I remind
12 you when you get home this evening, or wherever you go, do
13 not discuss anything about this case with anybody that you
14 come into contact with. You may have some family members
15 that will try to grill you about what's going on today but
16 you just tell them the Judge has said I can have no
17 discussion whatsoever. So please follow that instruction.
18 Get you a good night's rest, have a good evening, and we'll
19 see you back here at 11:00 in the morning.

20 (Whereupon, the jury was released at 4:29 p.m.)

21 THE COURT: We will be in recess until 11:00 in the
22 morning. Have a good evening everybody.

23 TRIAL DAY 2

24 THE COURT: Let's bring out -- what's her name, Ms.
25 Hughes?

1 THE BAILIFF: Ms. Hughes.

2 (Whereupon, juror enters the courtroom.)

3 THE COURT: Come around. You can just stand right
4 there, Ms. Hughes. I understand yesterday you gave some
5 indication to Mr. Willingham that you wanted to be excused
6 because you did not believe that -- let me have you sworn in
7 before I get any responses. Madam Clerk, would you swear
8 her in, please.

9 SHAMERIA HUGHES, having first been
10 duly sworn, testified as follows:

11 THE COURT: You didn't want to continue serving because
12 you did not realize this -- I think using your words, this
13 case was as intense as it turned out to be. Is that
14 correct?

15 MS. HUGHES: Right.

16 THE COURT: I mean, what did you expect the case to be
17 when I indicated to the jury panel that this was a felony
18 DUI involving a death? What did you think the case was
19 about?

20 MS. HUGHES: The only thing that I was kind of --

21 THE COURT: You need to speak up so everybody can hear.

22 MS. HUGHES: The only thing I was kind of like not
23 comfortable with was like the pictures, and then I didn't
24 know that like the family would be here. I saw some family
25 members kind of upset and I was just like I'm just not

1 comfortable with that environment.

2 THE COURT: Well, I think I mentioned to the jury panel
3 that serving on a jury is tough. It's tough work.

4 MS. HUGHES: Right.

5 THE COURT: But then I understand today you informed
6 Ms. Fryer that you want to be excused because your employer
7 is not going to make up the difference of the wages that
8 you'll be losing by serving. Okay?

9 MS. HUGHES: Yeah, that was yesterday when I figured
10 that out. I called yesterday, but I guess they're just now
11 receiving it today. But that was before I said something to
12 him.

13 THE COURT: Well, I'm going to be quite honest with
14 you, ma'am. I think you're just trying to get out of
15 serving. I really do. But, you know, if you have that
16 attitude about this case and you just don't want to serve, I
17 don't think you'll make a very effective juror. I've had
18 conversations with the attorneys involved in this case and
19 they're all are in agreement to have you not serve on this
20 -- on this jury.

21 Now, with that said, where do you go to school?

22 MS. HUGHES: College of Charleston.

23 THE COURT: College of Charleston. What year are you?

24 MS. HUGHES: Sophomore.

25 THE COURT: Well, I'm going to go ahead and excuse you

ANTHONY ABBOTT: DIRECT EXAMINATION

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1 from this jury, but I want -- I want you to stay in the
2 courtroom. I need to figure out how we're going to best
3 handle this. So you just have a seat back out in the
4 gallery and I'll talk with you after a while.

5 MS. HUGHES: Okay, not a problem.

6 THE COURT: Is the State ready to call its next
7 witness?

8 MS. WHITE: Yes, sir.

9 THE COURT: If you'll bring the jury out, please.

10 (Whereupon, the jury entered the courtroom at 11:32
11 a.m.)

12 THE COURT: Let the record reflect the jury is back
13 out. Good morning. It is still morning time. Good morning
14 everybody. Appreciate your understanding and patience with
15 us. I hurried back as fast as I could get here and was
16 hopeful that I could get here at 11:00, but that didn't work
17 out. But we're ready to start back.

18 So, Solicitor, do you want to call your next witness?

19 MS. WHITE: Yes, sir. The State calls Anthony Abbott.

20 ANTHONY ABBOTT, having first been
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. WHITE:

24 Q Good morning, Mr. Abbott.

25 A Good morning.

ANTHONY ABBOTT: DIRECT EXAMINATION

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1 Q If you could introduce yourself to the jury?

2 A My name is Anthony Abbott.

3 Q And where do you live now, Mr. Abbott?

4 A I live in Toombsboro, Georgia, about three hours from
5 here.

6 Q Where did you live back in October of 2014?

7 A Approximately a mile towards Ninety-Six from the
8 incident.

9 Q When you say the incident, are you talking about a
10 wreck that happened on Highway 34?

11 A Yes, ma'am.

12 Q What had you been doing that night, those early morning
13 hours?

14 A A friend of mine needed help with a car. It was broke
15 down. So I got my son in the car and we were headed out to
16 go meet her to get her car back to her house. And that's
17 when I -- I heard something faint. I don't know if it was
18 related to the accident or not. And I saw -- it looked
19 almost like a very faint mushroom cloud coming up. And
20 that's when I realized, you know, that I was pulling up on a
21 wreck. And I pulled up the side of the road and got out.
22 At first I didn't recognize who was in the white car. I
23 tried to see if they were conscious and see if they would
24 respond. There was no response at first. So I went to the
25 next car, and I looked in there and the person that was in,

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1 the car was leaning towards the passenger side barely
2 moving. And I went back up to the first car to see if there
3 was any response, and that's when he was coming to, so to
4 speak.. I asked him what his name was, where he was from.
5 It took me a minute to realize who he was.

6 Q Let me stop you right there and back up just a little
7 bit. You said you came up on the wreck. Which direction
8 were you traveling?

9 A I was coming from Ninety-Six.

10 Q Do you remember about what time this was?

11 A It was around 11:00, I believe.

12 Q So you're coming from Ninety-Six towards Greenwood?

13 A Yes, ma'am.

14 Q When you pulled up on the scene do you remember where
15 the white car was?

16 A The white car was facing towards Ninety-Six slightly
17 towards the left of the road. The red car was also facing
18 towards Ninety-Six but pointing towards the road and kind of
19 hanging off the side of the road.

20 Q And when you pulled up was there anyone else -- was
21 there anyone already there or were you the first one there?

22 A I was the first one there.

23 Q Did you notice anyone running from the scene or
24 standing around the vehicles?

25 A There was nobody in site.

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1 Q And you said -- I think I cut you off when you had come
2 back to the white car. What, if anything, did you do from
3 there?

4 A I just kept trying to get Petey to respond. Once I
5 realized who he was I said his name. Only thing he would
6 say was let me out of here. I have to be, I have to be. And
7 he just kept repeating those two over and over. I went back
8 over -- that's when my cousin pulled up, and she came
9 -- well, she had pulled up right before I started talking --
10 I'm sorry. I went to the red car. When I came back to the
11 white car to check on Petey, that's when my cousin showed
12 up. And that's about the time I realized who he was. I
13 asked him a few questions and then I went to the red car.
14 And that's when I saw him attempting to crawl through the
15 passenger side. And on the way around I could tell it was
16 leaking oil and gas. So me and one of the other people I
17 don't know that showed up with my cousin, Lesley, we decided
18 to pull him from the car and place something under his head
19 on the grass away from the car just in case it caught fire.
20 And then we --

21 Q Let me stop you right there again. I'm sorry.

22 A That's fine.

23 Q I just want to make sure I've got it all straight. You
24 said that you pulled him out of the passenger side.

25 A Yes, ma'am.

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1 Q Where was his body in the vehicle when you first saw
2 him?

3 A He was -- his feet were still under the steering wheel.
4 He was leaning from the driver's side towards the passenger
5 side trying to crawl through. When I first got there, since
6 I saw the passenger door open, I looked around and I didn't
7 see much blood on the seat, so I decided not to try to look
8 and see if there was anybody thrown from the vehicle.
9 Because I've been thrown from a vehicle. And it seemed like
10 he was the only one in the car.

11 Q And so, you all made the decision to pull him out the
12 passenger side --

13 A Yes, ma'am.

14 Q -- of the car. Was he able to -- from what you could
15 see, able to move around a lot?

16 A No, ma'am. The only thing he looked like he was able
17 to do was like move his arms a little bit, and it was very
18 small movements he was doing. He was moaning. He was in a
19 lot of pain. But he wasn't doing much movement at all. I
20 could just tell he wanted from the car and I felt it was the
21 safer of the two options.

22 Q Was he bleeding at all, did you notice?

23 A Yes, ma'am. There was a lot of blood. He had a jacket
24 on and pants on, so it was hard to tell where it was coming
25 from. There was blood in his hair, on his clothes. It was

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1 still fairly dark. So all I know was just to get him out,
2 because the smell of gas was strong and I could see it
3 literally leaking from one of the hoses, and I could also
4 see the oil.

5 Q Could you smell anything else other than the smell of
6 gas?

7 A That's all I smelled.

8 Q You said you knew Petey Miller. How did you know him?

9 A We were old friends. His mother used to work with my
10 mother at the gas station. I just --

11 Q Did you know Mr. Miranda at all?

12 A No, ma'am.

13 Q Can you identify the person that you pulled out of the
14 car that night today in the courtroom?

15 A Yes, ma'am. It's the guy right there.

16 (Whereupon, witness identifies the Defendant.)

17 Q You're talking about the gentleman in the white shirt?

18 A I do believe so. It was -- he looks familiar to me. I
19 can't positively identify him. But he looks like the guy.

20 THE COURT: Let the record reflect that he has
21 identified the Defendant.

22 Q Did Petey seem coherent at all to you?

23 A No, ma'am.

24 Q Did you smell anything around his car?

25 A The smell of gas was pretty strong coming from the

ANTHONY ABBOTT-CROSS EXAMINATION

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1 other car.

2 Q How long after it happened would you say you arrived on
3 the scene?

4 A From the looks of it, it was within seconds, because
5 the first thing I noticed that made me slam on brakes was
6 all -- when something explodes it looks like a mushroom. I
7 could see the mushroom probably about 15 feet up, and it was
8 just starting to dissipate. So I'm guessing within seconds.

9 MS. WHITE: Please answer any questions Ms. Bolen has
10 for you.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Cross-examination, Ms. Able.

13 MS. ABLE: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. ABLE:

16 Q Good morning, Mr. Abbott.

17 A Good morning.

18 Q You've testified you were the first to arrive on the
19 scene.

20 A Yes, ma'am.

21 Q And that was after the accident had occurred?

22 A Yes, ma'am.

23 Q You did not see the accident occur?

24 A No, ma'am.

25 Q Do you recall giving a statement to law enforcement on

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1 October 29th, 2014?

2 A I don't remember the date, but I remember giving
3 statements to the cops.

4 Q And do you remember what you said in that statement?

5 A I just described to the best of my memory to what
6 happened. As far as I remember is what I -- pretty much
7 what I testified today.

8 Q Do you remember if you told law enforcement about this
9 cloud of smoke that you saw?

10 A I'm not sure if I did or not.

11 Q If you were to review your statement, would that help
12 you remember?

13 A Yes, ma'am.

14 Q Mr. Abbott, this is your transcribed statement that you
15 gave law enforcement on October 29th, 2014. Can you just
16 take a second and review that for me?

17 A Yes, ma'am. I didn't tell them about the mushroom
18 cloud.

19 Q You'll agree with me you did not mention that?

20 A Yes, ma'am.

21 Q And will you agree with me that was October 29th of
22 2014?

23 A I'm bad with dates, so I couldn't guarantee it. But
24 it's about the right time.

25 Q But you'll agree with me that was closer in time to the

ANTHONY ABBOTT-CROSS EXAMINATION

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1 incident than today?

2 A Yes.

3 Q So it would have been fresh in your memory?

4 A Yes, ma'am.

5 Q Mr. Abbott, I'm going to direct your attention to page
6 six. You've testified Mr. Miranda was -- his bottom half of
7 his body was still on the driver's side; is that correct?

8 A Yes, ma'am.

9 Q And on October 29th, 2014, if you'll go down to page
10 14, what was your response then about where Mr. Miranda was
11 located?

12 A It appeared that he was sitting on th passenger side.
13 His feet were close to the driver's side and he was laying
14 across with his torso on the passenger side.

15 Q But not -- in October of 2014 you didn't say he was
16 still sitting in the driver's seat?

17 A That was when I went to check back on him. Because I
18 checked -- I went to check on him twice. First I went to
19 check on him. I saw movement. And that's when he was
20 closer to the driver's side. I went to check on Petey. And
21 then I came back and that's when we moved him. We moved
22 him. He had made a little bit of movement, but not much at
23 all. Maybe --

24 Q You removed him from the passenger seat --

25 A Yes, ma'am. Well, he was still -- his waist was right

ANTHONY ABBOTT-CROSS EXAMINATION

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1 over the middle towards the driver's side. And from his
2 waist up his torso was laying on the passenger seat with his
3 hands stretched out towards the passenger side.

4 Q Were you aware the driver's side door was still
5 functioning, still working?

6 A I didn't check that door. The side that I would be
7 able to get to him was the side his torso was on. So that's
8 where we decided to move it from.

9 Q And you said you came up on the accident. You don't
10 know exactly how long it was --

11 A No, ma'am.

12 Q -- until you arrived? It was dark outside?

13 A Fairly. There was a lamp post pretty close. So
14 visibility wasn't really a problem. I believe it was in the
15 parking lot of the driveway that his car was in.

16 Q And there could have been someone else on scene that
17 night?

18 A On scene? No.

19 Q No? Well, you just testified --

20 A Well, not --

21 Q -- you don't know how long it was.

22 A -- when I got there. When I got --

23 THE COURT: Wait a minute, Mr. Witness. Let Ms. Able
24 finish the question before you answer. And, Ms. Able, just
25 be careful.

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1 MS. ABLE: Thank you, Your Honor.

2 THE COURT: Let him finish his answer before your
3 question.

4 Q Is it possible someone else could have been there that
5 night?

6 A Yes, it's possible.

7 Q And you've testified Mr. Miranda had on long sleeves
8 and pants?

9 A I do believe so. Yes, sir.

10 Q Do you recall if there was any blood on his pants?

11 A I just -- I didn't remember when I got here today about
12 where the blood was. The only thing I remember now is from
13 reading my statement was he was bleeding from his head. I
14 just know there was blood all over him. But he had, I
15 believe, dark clothing on. And the main concern was getting
16 him away from the car that was leaking gas and oil, and
17 checking on Petey.

18 Q So he had blood all over him?

19 A Yes, ma'am. He did.

20 MS. ABLE: Thank you, Your Honor. No more questions.

21 THE COURT: Solicitor, any redirect?

22 REDIRECT EXAMINATION

23 BY MS. WHITE:

24 Q Mr. Abbott, do you remember if Mr. Miranda had on a
25 seatbelt that night?

1 A At the time that I came to him he didn't.

2 Q And was that driver's door open or closed?

3 A It was closed.

4 MS. WHITE: Thank you, Mr. Abbott.

5 THE COURT: Any recross?

6 MS. ABLE: No, Your Honor.

7 THE COURT: All right. Thank you for your testimony,
8 sir. You can step down.

9 THE WITNESS: Thank you.

10 (Whereupon, the witness stepped down from the witness
11 stand.)

12 THE COURT: Any objections to Mr. Abbott leaving the
13 courthouse?

14 MS. WHITE: No, sir.

15 MS. BOLEN: No, sir.

16 THE COURT: Mr. Abbott, you are certainly welcome to
17 remain with us, but you're free to leave. Either way.

18 THE WITNESS: Thank you.

19 THE COURT: I understand we have -- need to have a
20 discussion concerning the next matter. So, ladies and
21 gentlemen of the jury, I'm going to ask that you go back to
22 the jury room. We have a legal issue that I need to take up
23 with the lawyers. Get you back out soon. No discussion
24 started, please.

25 (Whereupon, the jury exited the courtroom at 11:52

1 a.m.)

2 THE COURT: As I understand it, the next witness for
3 the State is a Ms. Ashley; is that correct?

4 MR. MAXEY: Yes, Your Honor.

5 THE COURT: And I think the Defense raised yesterday an
6 objection to two pieces of proposed testimony from Ms.
7 Ashley.

8 MS. BOLEN: Yes, sir, Your Honor. I did.

9 THE COURT: One is the victim stating something to the
10 effect that he wanted -- I want my mommy?

11 MS. BOLEN: Yes, sir.

12 THE COURT: And the other is where Ms. Ashley was at
13 the hospital, asked the Defendant if he had been drinking
14 and she indicates that he winked.

15 MS. BOLEN: Yes, Your Honor. She asked him either do
16 you remember what happened or were you drinking and she says
17 he winked and then he proceeds to talk to her, and we were
18 just objecting to the wink as hearsay and not clear on what
19 it was indicating.

20 THE COURT: Well, let's do this. Let's take some
21 in-camera testimony just related to these two issues, hear
22 exactly what she'll testify to, and then I can make a ruling
23 on what to allow or not allow.

24 MS. BOLEN: Yes, sir.

25 MR. MAXEY: Yes, Your Honor. The State calls Lesley

LESLEY ASHLEY: DIRECT EXAMINATION (IN-CAMERA)

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1 Ashley, for that purpose.

2 LESLEY ASHLEY, having first been
3 duly sworn, testified as follows:

4 IN-CAMERA

5 DIRECT EXAMINATION

6 BY MR. MAXEY:

7 Q Please state your name for the record.

8 A Lesley Ashley.

9 Q Ms. Ashley, on October 16th of 2014 did you -- did you
10 come upon the incident involved in this case?

11 A Yes.

12 Q A motor vehicle accident?

13 A Yes.

14 THE COURT: You need to speak up, ma'am.

15 A Yes.

16 Q When you arrived there did you see the Defendant in
17 this case?

18 A Yes.

19 Q Did you have any conversations with Mr. Miranda?

20 A Yes.

21 Q And what did you ask Mr. Miranda?

22 A I asked him where he was coming from.

23 Q What was his response?

24 A He was -- he was headed to the bar.

25 Q What else did he tell you, if anything?

LESLEY ASHLEY: DIRECT EXAMINATION (IN-CAMERA)

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1 A At the car wreck scene there was not a lot of
2 conversation.

3 Q Did you have any subsequent conversation with Mr.
4 Miranda?

5 A At the hospital.

6 Q And in that conversation what did you ask him?

7 A I asked him did he recall what happened, and all he
8 said was by the time he seen the lights it was too late.
9 That he -- the car come over and he swerved to keep from
10 hitting the car.

11 Q Did he tell you anything else?

12 A Not really.

13 Q Did Mr. Miranda ever deny driving his car?

14 A No, not once.

15 Q Do you remember giving a statement in this case?

16 A I think so, yeah.

17 Q Where you were interviewed by the troopers of the
18 Highway Patrol?

19 A Yes.

20 Q Would listening to that or seeing a transcript of those
21 interviews refresh your recollection?

22 A Yes.

23 THE COURT: Solicitor, since we're in-camera I don't
24 mind you leading just a little bit. You may go to the
25 two issues that we're trying to deal with --

LESLEY ASHLEY: DIRECT EXAMINATION (IN-CAMERA)

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1 MR. MAXEY: Sure.

2 THE COURT: -- you can ask her did she --

3 MR. MAXEY: I'm trying to avoid leading.

4 THE COURT: We're in-camera. I'll let you lead a
5 little bit.

6 Q Did Mr. Miranda ever say, "I wasn't driving" at the
7 hospital?

8 A That he wasn't driving?

9 Q Yes.

10 A I don't recall.

11 Q Do you recall Mr. Miranda making any non-verbal
12 responses to you such as a smile or a wink when talking to
13 you?

14 A Yes.

15 Q And what did he do that in response to?

16 A When I asked him about the drinking. Had he been
17 drinking.

18 Q He winked to you in response to that?

19 A Yes.

20 Q Did he say anything else after that?

21 A No. We were just like in the hospital room and he was
22 just wanting a piece of ice the nurses said he couldn't
23 have, and he just went on and on and on about wanting the
24 ice. And then that's when we got into the conversation
25 about like what had happened or -- and that was about it.

LESLEY ASHLEY: DIRECT EXAMINATION (IN-CAMERA)

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1 Q Now, going back to the incident location. Did you see
2 the victim in this case, Mr. Miller?

3 A Yes.

4 Q And where was he located?

5 A Inside his car.

6 Q And what was -- what was he doing inside of his car?

7 A He was screaming.

8 MR. MAXEY: I'm not planning on getting into what he
9 was screaming, the content of that, because of our earlier
10 conversation.

11 THE COURT: Well, I haven't ruled. I think what Ms.
12 Bolen had preemptively objected to was any statements about
13 who he wanted.

14 MR. MAXEY: Right.

15 THE COURT: So, I mean, you can ask her about that and
16 then I can make a ruling.

17 Q What was he screaming?

18 A That he wanted to go home.

19 Q Did he scream anything else?

20 A He wanted his mom.

21 MR. MAXEY: And I don't have any further questions for
22 this purpose.

23 THE COURT: Ms. Bolen, Ms. Able, any cross-examination
24 on these just two limited issues?

25 MS. BOLEN: Just for the very limited purposes of this

LESLEY ASHLEY: CROSS EXAMINATION (IN CAMERA)

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1 motion, Your Honor. Nothing with respect to what she just
2 testified about.

3 CROSS-EXAMINATION

4 BY MS. BOLEN:

5 Q Ms. Ashley, when you were talking in the hospital you
6 said he winked at you? And this was when he was in a
7 hospital bed --

8 A Uh-huh.

9 Q -- get medical treatment?

10 A Yes.

11 Q And he then talked to you after that?

12 A Yes.

13 Q But this is while there were doctors and nurses around
14 giving him treatment?

15 A When we were actually in conversation it was just me
16 and him in there. The doctors had already left because he
17 was showing out over a piece of ice he could not have.

18 Q So you're saying that the wink happened prior to him
19 talking about all to you?

20 A Yes.

21 Q And there were no winks on scene or anything like that,
22 right?

23 A No.

24 MS. BOLEN: Thank you, Your Honor.

25 THE COURT: All right. I'm going to, insofar as the

1 question had he been drinking and he gave a wink, I find
2 that the probative value outweighs any prejudicial effect to
3 the Defendant because certainly alcohol consumption is an
4 element of this -- of this offense. However, on the victim
5 screaming what his mommy, wanting to go home, I find there
6 is more prejudicial effect to that than probative value. So
7 I'm not going to allow that. So I'm going to allow one and
8 not the other. Okay?

9 MS. BOLEN: Yes, Your Honor.

10 THE COURT: Ms. Ashley, you will be called, as I
11 anticipate, as a witness when the jury comes back out. But
12 I've got another matter, so you can just have a seat out in
13 the gallery.

14 MS. WHITE: Your Honor, there's one more issue
15 regarding her testimony. In her statements to law
16 enforcement there's some comments about the victim texting
17 and driving, and we would object and ask that Ms. Bolen not
18 be allowed to get into those questions about the victim's
19 character or his habits as they're not -- it's more
20 prejudicial than probative in this case.

21 THE COURT: And, Your Honor, I was -- she does say that
22 in her statement, and she actually says it several times. I
23 was not going to get into that for purposes of going into
24 character or anything, but rather to go into the
25 thoroughness of the investigation, because to my knowledge

1 she tells them that on October 16th and there's no attempt
2 to get phone records or anything like that. So I wasn't
3 going to use it to try to show any sort character habit, but
4 rather to show some deficit in the investigation.

5 MS. WHITE: And, Your Honor, I think she can ask the
6 question of law enforcement, did you get phone records, to
7 see if he was texting, without asking was it his habit to
8 text and drive. And I think that accomplishes what she
9 wants without getting it planted, the prejudice in the
10 jury's head that he does that.

11 THE COURT: Right.

12 MS. BOLEN: I think the difference there, Your Honor,
13 is there -- you know, obviously this is something they're
14 investigating that night and all into at least a week after,
15 and they get information that very night and don't follow-up
16 on it.

17 THE COURT: All right. I think what we might do is go
18 ahead and take a lunch break now. Send the jury home. I
19 can do the bond hearing. I can take a look at that issue.

20 MS. BOLEN: Yes, sir.

21 THE COURT: Basically -- so make sure I understand
22 correctly. In some previous statements to law enforcement
23 this witness stated that it was the victim's habit of
24 texting and driving. Is that-what she allegedly said?

25 MS. BOLEN: Yes, sir. She says -- yeah.

1 THE COURT: All right. And the State's willing for you
2 to ask law enforcement did they get any phone records to see
3 if there was any texting being done. You feel like you
4 would be permitted to ask this witness if that was his
5 habit.

6 MS. BOLEN: I think -- yeah, again, I think just
7 because she says it so early on in the investigation that --
8 if no one had reported that there was any known texting
9 there wouldn't be any reason to get records. But here when
10 there is a report -- I mean, I think her statement is given
11 at 11:30 that morning.

12 THE COURT: Right.

13 MS. BOLEN: It was within less than 12 hours.

14 THE COURT: All right. I'll take a look at that. But
15 let's -- let me go ahead and bring -- ma'am, you can just
16 have a seat back out there.

17 (Whereupon, the witness stepped down from the witness
18 stand.)

19 THE COURT: I'm going to bring the jury out and we're
20 going to break for lunch until 1:00.

21 Mr. Willingham, if you'll bring the jury out.

22 (Whereupon, the jury entered the courtroom at 12:05
23 p.m.)

24 THE COURT: Let the record reflect the jury is back
25 out. Ladies and gentlemen, we're going to go ahead and take

1 a lunch break now. We've got several things we need to do
2 and I just felt I'd go ahead and let you go to lunch. Be
3 back here at 1:00. So it's not going to be a real long
4 lunch break, but hopefully you can get a bite to eat or do
5 whatever you have to do and be back here at 1:00. Again, no
6 discussion with anybody that you come into contact with,
7 including among yourselves. Wear your button if you're out
8 in public and we'll see you back at 1:00. Have a good
9 lunch.

10 (Whereupon, the jury exited the courtroom at 12:05
11 p.m.)

12 THE COURT: We'll be in recess on the Miranda case
13 until 1:00. And let me go ahead and do this bond hearing.

14 (Whereupon, a lunch recess was held between 12:05 p.m.
15 to 1:18 p.m.)

16 THE COURT: We are back on the record. Any side want
17 to make any comment concerning the issue of being able to
18 ask Ms. Ashley questions concerning some habit of the victim
19 and texting? During the break I asked you all to look at
20 404 and 406 of the evidence rules. Solicitor White?

21 MS. WHITE: Yes, sir. Just under 404(b). This doesn't
22 fall within any of the Lyle exceptions to character
23 evidence. They're stated purpose of attacking the
24 investigation of law enforcement. It doesn't go to motive,
25 identify, absence of mistake.

1 Also, going back in the vault to law school and habit
2 evidence, my recollection of that -- and we had a case, I
3 think, is that it has to be something that you do every
4 single time. Say, if I always come in and get a cup of
5 coffee every single morning, then that would be admissible.
6 But I don't think that they can lay the foundation that he
7 texted every single time he drove. And the case that we're
8 looking at is --

9 THE COURT: Yeah, I tried to find a case in a short
10 period of time. But I'm glad you came up with one. Let me
11 see.

12 MS. WHITE: It's State vs. Brown, 344 S.C. 70, and
13 it's, "Habit has been described as conduct that is situation
14 specific or specific particularized conduct capable of
15 almost identical repetition." So I don't think that being
16 known to sometimes text and drive rises to that level of
17 habit evidence, Your Honor.

18 THE COURT: All right. Ms. Bolen?

19 MS. BOLEN: Thank you, Your Honor. Again, I've looked
20 at 404 and 406. We're not trying to introduce that
21 statement from Ms. Ashley to show that he was indeed
22 texting, but just to show that information was given to law
23 enforcement that could have gone to the investigation and
24 was not ever investigated. So it's to show that there were
25 information or leads provided to law enforcement that were

1 not followed up on that could have gone directly to some of
2 the issues in the case without causation and that sort of
3 thing. I don't -- you know, we certainly don't have any
4 evidence to say he was texting, but that's because --

5 THE COURT: Right.

6 MS. BOLEN: -- those records were never requested, to
7 my knowledge. So we're not -- we're not using it to show
8 any sort of habit in conformity because we don't have
9 anything to say he was texting that night, but just to show
10 that information was given that was not followed up on.

11 THE COURT: Well, Ms. Bolen, in light of that, could
12 you still not ask law enforcement something to the effect
13 were you provided any information in your investigation
14 related to possible texting by the victim, and, of course,
15 if it's denied then you've got Ms. Ashley's statement. If
16 they say yes, well, what follow-up did you do. Can't you
17 kind of accomplish the same purpose short of asking Ms.
18 Ashley that that is what she told?

19 MS. BOLEN: I think we could, Your Honor. I guess my
20 only concern would be sort of the order of witnesses. I
21 believe she's coming in as the next witness. Let me just
22 look at who she gave her statement to. I guess my concern
23 with that, Your Honor, is she's the one with the
24 information.

25 THE COURT: Right.

1 MS. BOLEN: She gave it to two troopers who I don't
2 believe are going to be testifying. It just seems like it
3 would be cleaner to be able to ask her about it. You know,
4 did you tell the trooper this. And I would leave it at
5 that. I would not go into any sort of, you know, you saw
6 him do it all the time. But, you know, did you tell the
7 trooper that you knew Petey sometimes texted, and I would
8 leave it at that.

9 THE COURT: But is there -- is there another trooper
10 who has not testified that will be testifying?

11 MS. WHITE: There are two people --

12 THE COURT: I know that there's two out in
13 sequestration.

14 MS. WHITE: Yes, sir. But those are the only two who
15 are going to testify.

16 THE COURT: Would one of those two troopers who are in
17 the hallway, is that who she allegedly told?

18 MS. WHITE: No, sir.

19 MS. BOLEN: No, sir.

20 THE COURT: All right. Well then, how -- then getting
21 into the area of law enforcement not following up, then how
22 are you going to get to that, Ms. Bolen?

23 MS. BOLEN: My understanding is that one of the two --
24 well, the two remaining troopers are MAIT investigators.
25 One of them is the supervisor, and they were really the ones

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1 sort of working the whole investigation. There's some
2 initial information gathered on the 16th. But I was just
3 going to ask them if either one of them of them --

4 THE COURT: I'm not going to allow you to ask Ms.
5 Ashley what she said or did not say. But I think you could
6 probably -- subject to whatever objection, if any, from the
7 State at the time. But I think you can ask the remaining
8 troopers have they received any information related to
9 texting and, if so, what follow-up did you perform. So I'm
10 not going to allow this from Ms. Ashley, but would allow it
11 more than likely from the trooper in that fashion.

12 MS. BOLEN: Yes, sir.

13 THE COURT: Anything further before I bring the jury
14 out?

15 MS. BOLEN: No, sir.

16 THE COURT: All right. Mr. Willingham, if you'll bring
17 the jury out, please.

18 (Whereupon, the jury entered the courtroom at 1:25
19 p.m.)

20 THE COURT: Let the record reflect the jury is back
21 out. Solicitor, do you want to call your next witness?

22 MR. MAXEY: Yes, Your Honor. The State calls to the
23 stand Lesley Ashley.

24 LESLEY ASHLEY, having first been
25 duly sworn, testified as follows:

LESLEY ASHLEY: DIRECT EXAMINATION

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1 DIRECT EXAMINATION

2 BY MR. MAXEY:

3 Q State your name for the record.

4 A Lesley Ashley.

5 Q And where do you live, Ms. Ashley?

6 A I live in Charleston.

7 Q Where did you live in October of 2014?

8 A Trotters 8 in Harris Landing.

9 Q And is that in Greenwood County?

10 A Yes.

11 Q On -- in the early morning hours of October 16th of
12 2014 did you -- did you drive down Highway 34?

13 A Yes.

14 Q Did you see a car accident there?

15 A Yes.

16 Q How many cars were involved in that accident?

17 A Two.

18 Q What did those cars look like?

19 A Two door red Mercedes and a Honda Civic, I believe.

20 Q What color were those two cars?

21 A Red and white.

22 Q Was the Mercedes the red one?

23 A Yes.

24 Q And the Honda the white one?

25 A Yes.

LESLEY ASHLEY: DIRECT EXAMINATION

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1 Q How many occupants were there in each car? How many
2 people were in each car?

3 A One.

4 Q Who was in the red Mercedes?

5 A Carmine Miranda.

6 Q And is he present in the courtroom today?

7 A Yes.

8 Q Could you point him out to us?

9 (Whereupon, the witness points to the Defendant.)

10 Q Verbally. You can't just point at him.

11 A The white shirt.

12 Q Where -- how was Mr. Miranda positioned in the car?

13 A From the waist down just kind of over the middle
14 underneath the steering wheel, and from the waist up was
15 over the passenger side coming out.

16 Q So to clarify, were his legs and feet on the driver's
17 side?

18 A Yes.

19 Q And his head and his torso were on the passenger side?

20 A Yes.

21 Q Did Mr. Miranda have any obvious injuries?

22 A Yes.

23 Q Was Mr. Miranda bleeding?

24 A Yes.

25 Q Where was he bleeding from?

LESLEY ASHLEY: DIRECT EXAMINATION

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1 A From his head.

2 Q Did you help him -- or you or someone you were with
3 help him out of the car?

4 A Yes.

5 Q And who was that?

6 A My cousin, Tony Abbott.

7 Q And when you all pulled him out of the car which side
8 did you pull him out of?

9 A Passenger.

10 Q So did you have to open the passenger door?

11 A I honestly can't remember if we opened it or not.

12 Q But you didn't pull him out of the driver's side?

13 A No.

14 Q And was he bleeding externally, that was the blood
15 getting all over the car and the ground?

16 A Yes.

17 Q And why did you all pull him out of the passenger side?

18 A He was coming out regardless. And that's where most of
19 his body was was in the passenger side. It was just easier
20 just to go ahead and pull him out.

21 Q So was Mr. Miranda trying to get out of the passenger
22 side?

23 A Yeah, he was moving his feet like trying to push
24 himself out.

25 Q How soon after the wreck -- I know you don't know to

LESLEY ASHLEY: DIRECT EXAMINATION

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1 the hour and minute, but how soon after the accident did you
2 all get there?

3 A You mean like --

4 Q Did it look like the accident had happened recently?

5 A Oh, yeah. It looked like it had just happened. There
6 was still smoke going everywhere, air bags everywhere.

7 Q Were either of the vehicles on fire?

8 A Not at that present moment.

9 Q Did you speak to Mr. Miranda --

10 A Yes.

11 Q -- at the incident site?

12 A Yes.

13 Q What did he say to you?

14 A I just asked him had he been drinking.

15 Q And how did he respond?

16 A To be honest, he just -- you could smell it. He didn't
17 have to respond. He didn't.

18 Q Did you have any other conversations with the
19 Defendant?

20 A Not at the scene, no.

21 Q Other than the scene. Did you have a later
22 conversation with the Defendant?

23 A At the hospital.

24 Q And what hospital was that?

25 A Self Regional.

LESLEY ASHLEY: DIRECT EXAMINATION

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1 Q Okay. Why did you go to speak to him at the hospital?

2 A I actually went after I went and got the parents of Mr.
3 Miller and went and woke them up. And my intentions were to
4 follow them up there.

5 Q How close was the Miller household from the accident
6 scene?

7 A If my calculations are right, it's three doors down on
8 the right from where the scene was, four at the most.

9 Q So you were able to walk there?

10 A Oh, I ran there.

11 Q Did you know the victim in this case?

12 A Mr. Miller?

13 Q Yes.

14 A Yes.

15 Q Did you know the Defendant in this case?

16 A Yes.

17 Q Would you have considered yourself a friend of the
18 Defendant at the time?

19 A Mr. Miller?

20 Q Of the Defendant, Mr. Miranda.

21 A Not really.

22 Q But you all were acquainted? You had met before?

23 A Yeah, we've met before.

24 Q Now, when you were talking to Mr. Miranda at the
25 hospital what did you ask him?

LESLEY ASHLEY: DIRECT EXAMINATION

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- 1 A I just asked him what happened. Did he remember
2 anything that happened.
- 3 Q What did he say?
- 4 A He just said that before -- when he seen the lights it
5 was too late.
- 6 Q Whose lights was he referring to?
- 7 A He had to swerve from hitting Mr. Miller.
- 8 Q So Mr. Miranda indicated to you that he had been
9 driving?
- 10 A Yes.
- 11 Q What else did you ask Mr. Miranda?
- 12 A I asked him had he been drinking.
- 13 Q What did Mr. Miranda say in response to that?
- 14 A That's when he looked at me and he winked his eye. And
15 then that's when he said, well, you know, yeah. And like I
16 say, you could smell it.
- 17 Q Did you notice anything unusual about the way Mr.
18 Miranda was speaking when he spoke to you?
- 19 A He was slurred.
- 20 Q And did Mr. Miranda indicate to you where he was going
21 when he was driving down Highway 34?
- 22 A From what he had said at the hospital he was going to
23 that bar.
- 24 Q Now, when you all first got there, you and the other
25 people in your car -- just to clarify. Other than the two

LESLEY ASHLEY: CROSS EXAMINATION

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1 people in the cars, Mr. Miranda and Mr. Miller, was there
2 anyone else at the scene there?

3 A No.

4 Q And were there any other people with obvious injuries
5 like Mr. Miranda's?

6 A No.

7 MR. MAXEY: I have no further questions for you. Ms.
8 Ashley, please answer any questions Ms. Bolen has for you.

9 THE COURT: All right. Cross-examination?

10 MS. BOLEN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. BOLEN:

13 Q Good afternoon, Ms. Ashley. You testified you arrived
14 up on the scene -- you got there before any law enforcement,
15 correct?

16 A Yes.

17 Q And you were not alone in your car, correct?

18 A No.

19 Q You had four other people?

20 A Yeah.

21 Q And one of them was your boyfriend, Donny Merritt?

22 A Yes.

23 Q And Donny helped you getting Mr. Miranda out of the
24 car, correct?

25 A Yes.

LESLEY ASHLEY: CROSS EXAMINATION

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1 Q And he wrapped a --

2 A Yes.

3 Q -- towel around his head, correct?

4 A A blue tee shirt.

5 Q A tee shirt. That's right. And you stayed there at
6 the scene, correct?

7 A Uh-huh.

8 Q And when you got there your cousin Tony was there?

9 A Uh-huh.

10 Q But you didn't see the accident happening, correct?

11 A No.

12 Q And you remember -- or you gave a statement, actually
13 two statements to law enforcement previously in this case,
14 right?

15 A Yes.

16 Q Do you remember talking to them on October 16th at
17 about 11:30 in the morning?

18 A Vaguely, yes.

19 Q A phone call. And then again October 27th or so,
20 another statement to law enforcement?

21 A Yes.

22 Q And October 16th at 11:30, that would have been less
23 than 12 hours after the incident, correct?

24 A Yes.

25 Q So your memory then would be good, right?

LESLEY ASHLEY: CROSS EXAMINATION

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1 A Yes.

2 Q Do you remember telling the trooper you spoke with that
3 you did not smell alcohol on Carmine?

4 A No. I said I did not smell alcohol on Miller.

5 Q But you don't remember saying that to -- that you
6 didn't smell any on Mr. Miranda either?

7 A No.

8 Q Do you remember telling them that you honestly couldn't
9 tell if either one of them had been drinking?

10 A It is hard to tell. I mean, you've got the smell of
11 gas and air bags and alcohol. It's going to be hard to
12 point each one out.

13 Q Do you remember telling the troopers that you could
14 smell a sort of sweet smell that you thought was coming from
15 an air bag?

16 A Yes.

17 Q Do you remember also telling them that you couldn't
18 smell any alcohol?

19 A Like I said, I do not recall.

20 Q Would it help refresh your memory if you were to look
21 at the statement -- a transcription of the statement you
22 gave back on October 16th of 2014?

23 A Sure.

24 MS. BOLEN: Your Honor, permission to approach the
25 witness?

LESLEY ASHLEY: CROSS EXAMINATION

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1 THE COURT: Sure.

2 Q Ms. Ashley, I'm just asking you for the very limited
3 question of whether you said back then you could smell
4 anything. Okay? And I hand you your transcript. I'm
5 looking there at the bottom of page 16. There's a question
6 there. Did you smell, and then the trooper says any alcohol
7 on either one of them. And what was your answer?

8 A No.

9 THE COURT: What was the answer? I couldn't hear.

10 THE WITNESS: No.

11 Q And then they ask you again on page 17, you didn't
12 smell anything yourself. And what was your answer there?

13 A No.

14 THE COURT: Your answer was what?

15 THE WITNESS: No.

16 Q You also testified a little bit about that you talked
17 to Carmine twice, correct?

18 A Uh-huh.

19 Q You talked to him on scene, right?

20 A Yeah. There really wasn't much conversation on scene.

21 Q And then you talked to him at the hospital, right?

22 A Yes.

23 Q Back track a little bit to when you got there on the
24 scene. When you arrived there Tony was there but no law
25 enforcement or ambulances, right?

LESLEY ASHLEY: CROSS EXAMINATION

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1 A Yes.

2 Q And when you got there Carmine was in the red Mercedes,
3 correct?

4 A Uh-huh.

5 Q And he was coming out of the passenger side door?

6 A Uh-huh.

7 Q And I think you testified that his --

8 THE COURT: You need to verbally give an answer yes or
9 no --

10 THE WITNESS: Yes.

11 THE COURT: -- instead of just nodding the head.

12 Q His hands were hanging over the door?

13 A Yes.

14 Q And you, as well as some of the four folks you were
15 there with, helped --

16 A Yes.

17 Q -- pull him out? So with his hands hanging out the
18 door, it's safe to say the passenger side door was open?

19 A I'd like to say yes, but honestly I cannot remember if
20 it was open or if we opened it.

21 Q And his head was over the passenger side door as well?

22 A It was over the seat.

23 Q Over the seat.

24 A Yeah.

25 Q And he was bleeding from his head, right?

LESLEY ASHLEY: CROSS EXAMINATION

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1 A From his head.

2 Q And did you -- you noticed him bleeding from any other
3 parts of his body?

4 A Honestly I didn't look. I just seen the one on the
5 head.

6 Q And you helped him out onto the passenger -- out of the
7 passenger side door, right?

8 A Yes, ma'am.

9 Q And you got him on the ground, right?

10 A Yes.

11 Q And then, I think, you have said in a previous
12 statement that you saw some blood coming out of his mouth?

13 A Yes. That's when we had to have help pushing him over
14 to allow him to spit it out instead of swallowing it back.

15 Q And then you went to the hospital, correct?

16 A Yes.

17 Q And you spoke with Carmine at the hospital?

18 A Yes.

19 Q And do you recall him telling you at the hospital that
20 he was not driving?

21 A That he was not driving?

22 Q Correct.

23 A Yes.

24 Q You remember him saying he wasn't driving?

25 A I remember him saying he was not driving, because

LESLEY ASHLEY: CROSS EXAMINATION

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1 that's when I asked, you were the only one in that car. How
2 could you not have been.

3 Q But he actually said it to you three times, right --

4 A Yes.

5 Q -- I wasn't driving?

6 A Because I was questioning about a second person in that
7 car. But there was only one when we were there.

8 Q And again, you arrived after the accident happened,
9 right, so you didn't see any -- see the accident as it
10 happened?

11 A I didn't see it actually collide, no.

12 Q Now, you also -- when you were talking to Carmine you
13 either got his wallet or billfold out or you asked him to
14 get it out, correct?

15 A No. When we pulled him out of the car is when we asked
16 him where's your ID and insurance card. They're going to
17 ask for that. And we need to get it out if it's in his car
18 before the car blows, if it's going to. And that's when he
19 said in my back pocket.

20 Q And it was like a billfold, you said?

21 A It looked like a little leather cardholder looking
22 thing. Just kind of opened up.

23 Q And you found his ID, correct?

24 A Yeah, we went -- well, I handed it to my cousin and
25 then he handed it back to me. And that's when I got his ID

BRUCE BROCK: DIRECT EXAMINATION

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1 out and I said where's your insurance card.

2 Q Okay. And you also noted that you found a debit card
3 with a woman's name on it, right?

4 A Yes.

5 Q Elisa Clark?

6 A Yes.

7 MS. BOLEN: If I could just have a moment, Your Honor.

8 THE COURT: Sure.

9 MS. BOLEN: I don't have any other questions. Thank
10 you, Ms. Ashley.

11 THE COURT: Solicitor, redirect?

12 MR. MAXEY: No redirect, Your Honor.

13 THE COURT: Okay. Thank you, ma'am, for your
14 testimony.

15 THE WITNESS: Thank you.

16 THE COURT: You can step down.

17 (Whereupon, the witness stepped down from the witness
18 stand.)

19 THE COURT: If there's no objection, ma'am, you can --
20 you're free to stay with us or you're free to leave.

21 Next witness.

22 MS. WHITE: State calls Bruce Brock to the stand, Your
23 Honor.

24 BRUCE BROCK, having first been duly
25 sworn, testified as follows:

BRUCE BROCK: DIRECT EXAMINATION

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1 MS. WHITE: Begging the Court's indulgence for just a
2 second.

3 THE COURT: Sure, take your time.

4 DIRECT EXAMINATION

5 BY MS. WHITE:

6 Q If you could introduce yourself to the jury.

7 A Yes, ma'am. My name is Bruce Stanley Brock. I'm a
8 Lieutenant with the South Carolina Highway Patrol.

9 Q And what is your current assignment with the Highway
10 Patrol?

11 A Currently I am a Lieutenant with what is known as the
12 MAIT Team. It's the reconstruction unit for the Highway
13 Patrol. I cover field lieutenant. So I cover the four
14 teams that we have in this state. I visit with those and
15 help them where needed. We have a team in Greenville, a
16 team in Columbia, a team in Florence and a team in
17 Charleston. We have two subteams in Rock Hill and one here
18 in Greenwood.

19 Q And what does the MAIT team do?

20 A MAIT team stands for Multidisciplinary Accident
21 Investigation Team. And what it is, is we look at the
22 different aspects of collision investigation. Could be
23 motor vehicles, vehicles, pedestrians, bicyclists,
24 motorcycles. We've done boat crashes, plane crashes. Just
25 a little bit of everything.

BRUCE BROCK: DIRECT EXAMINATION

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1 Q Now, are you all called in for, you know, every
2 fender-bender, or what -- when exactly would you all be
3 called in?

4 A Basically we're called in for high court cases such as
5 this where it's a felony DUI with great bodily injury or
6 death, leaving the scene with death. In some cases leaving
7 the scene with serious injuries. Police officer involved
8 collisions with death. Police pursuits with death. In high
9 profile type cases.

10 Q Do you have any special training to be involved with
11 MAIT?

12 A Yes, ma'am.

13 Q Can you kind of go through your training for us?

14 A Yes, ma'am. To start with my training began with the
15 Highway Patrol back in 1991 at patrol school which -- a 12
16 week period. Of those 12 weeks, two weeks were dealt with
17 collision investigation. In 1996 -- which, like I say, was
18 in '91. In 1996 I took 120 advance accident investigation
19 and reconstruction class. In 2000 at scene -- 80 hours of
20 at scene technical collision investigation. 2000 -- March
21 2000, advanced collision investigation, 80 hours. May of
22 2000, collision reconstruction, 80 hours. June of 2000,
23 computerized collision diagraming, 40 hours. June of 2000,
24 forensic mapping technology, 40 hours. In 2001 I went to
25 the SCARS conference, which is a reconstruction conference

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1 that's put on by the Highway Patrol here in South Carolina.
2 I've had a fingerprint class. Forty hour fingerprint class.
3 Crime scene techniques for investigators, 40 hours. In '02,
4 law enforcement photography, 80 hours. In '02, special
5 problems in traffic crash reconstruction, which is put on at
6 IPTM, which is another reconstruction conference, in 2002.
7 Fingerprint processing, 40 hours in 2002. Kinematics class,
8 24 hours in 2002. Pedestrian/bike crash investigation, 40
9 hours in 2003. Forensic mapping with electronic total
10 station and map scenes, 40 hours in 2003. Detective level
11 one, 40 hours in 2004. I became a basic instructor, 80
12 hours in 2004, to assist in some of this teaching. I was a
13 guest instructor for lethal weapons DUI at the NAC in 2005.
14 SCARS conference again in 2005. Another guest instructor
15 for lethal weapons DUI homicide at the NAC in 2006.
16 Inspection investigation commercial motor vehicles, 40 hours
17 in 2006. Digital photography and imaging for law
18 enforcement, 36 hours in 2006. Motorcycle crash
19 investigation, 40 hours in 2006. Guest instructor at the at
20 scene class, 2007. CDR systems technician, eight hours in
21 2007. Guest instructor for advanced collision investigation
22 in 2007. Another guest instructor for lethal weapons DUI
23 homicide at the NAC in 2007. Guest instructor at scene in
24 2008. Guest instructor of advanced collision investigation,
25 2008. Pennsylvania State Police collision reconstruction

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1 seminar in 2008. CDR systems technicians, eight hours in
2 2009. Traffic crash reconstruction at traffic signals in
3 2009. Grade crossing collision investigation class in 2010.
4 Human factors for traffic crash reconstruction in 2011. I
5 became MAIT accredited in 2011. Vehicle nomenclature tire
6 exam in 2011. SCARS conference in 2011. CDR tech level one
7 in 2011, and CDR tech level two in 2011. SCARS conference
8 in 2012. CDR tech level two in 2012. Interview
9 interrogations and CDR update hit and run investigations in
10 2013. MFX mapping and MFX animation class in 2013. SCARS
11 reconstruction conference in 2013. Pennsylvania State
12 Police collision reconstruction seminar, 2013. SCARS
13 conference in 2014. The Pennsylvania State Police Collision
14 reconstruction seminar, 2014. Tire technology clinic, eight
15 hours in 2015.

16 Q And from listening to you read that off it sounds like
17 you've both taught seminars and been a student at seminars;
18 is that correct?

19 A Yes, ma'am.

20 Q You said SCARS. What does that stand for?

21 A I knew you were going to ask that. It's Southeastern
22 -- no.

23 Q Or what is it? If you could just kind of summarize
24 what it is.

25 A I forget. Basically it's just -- it's a reconstruction

BRUCE BROCK: DIRECT EXAMINATION

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1 group that was started here in South Carolina with the
2 Highway Patrol and it just kind of started as getting a
3 conference here in the state.

4 Q And have you ever been qualified as an expert in
5 accident reconstruction in the courts of this state?

6 A Yes, ma'am.

7 Q Approximately how many times have you done that?

8 A Six times.

9 MS. WHITE: Your Honor, the State offers Trooper Brock
10 as an expert in accident reconstruction.

11 THE COURT: Okay. Does the Defense have any
12 examination of this trooper related to qualifications?

13 MS. BOLEN: No, sir.

14 THE COURT: Do you have any objection to him being
15 found to be an expert in the area of accident
16 reconstruction?

17 MS. BOLEN: No, sir.

18 THE COURT: All right. Without objection Trooper Brock
19 is deemed to be an expert in the area of accident
20 reconstruction. Mr. Foreman, and ladies and gentlemen of
21 the jury, normally a person cannot give opinion testimony.
22 Normally when a person testifies they must testify as to
23 what they either saw, heard or sensed by smell or something
24 of that nature. However, there is an exception when someone
25 is qualified because of education or experience. They are

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1 permitted to give their opinion in certain areas if the
2 court qualifies them that way. This witness, Trooper Brock,
3 has been qualified in the area of accident reconstruction
4 and is allowed to give opinion testimony in that area. That
5 does not mean that you must accept his opinion. But it's
6 evidence for you to use in any way that you see fit and give
7 it the weight and credibility that you believe is
8 appropriate.

9 You may proceed, Solicitor.

10 MS. WHITE: Thank you, Your Honor.

11 Q Were you working on the -- well, the early morning
12 hours of October 16th, 2014?

13 A Kind of. I was actually at home in bed when I received
14 the call about this collision.

15 Q And where's home?

16 A Home is in Oconee County, up near the Clemson area.

17 Q And you said you received a phone call. Do you
18 remember who that was from?

19 A Yes, ma'am. If you'll bear with me just a second.

20 Q Uh-huh.

21 A I actually received a call from my boss at the time,
22 Lieutenant Dangerfield. And I received that call at 1:28
23 the morning of October the 16th.

24 Q And what did you do in response to that call?

25 A Basically he advised me of this collision and that they

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1 were requesting our assistance. At the time it did not rise
2 to the level of a callout. Like I said, at this particular
3 time I was a sergeant over the Greenville team and the
4 Greenwood team. So my appointments for that day had already
5 been laid out. We had to come down here to visit the scene
6 down here. So at the time there was nobody deceased in the
7 crash. But they needed us to come down -- asked if we would
8 come down. So instead of calling the team out I said, well,
9 I'm going to go, so I would just get up and go myself. So
10 from that point I talked to -- I spoke to Corporal Heaton at
11 1:32. Also Lieutenant Kelley Troop 2. At 1:39 I called my
12 boss back, Lieutenant Dangerfield, and advised him that I
13 was going to go ahead and respond and not get a full team
14 callout, just to kind of look over it and make sure it was
15 marked right and try to offer some assistance there. Like I
16 said, my note says it was at Greenwood County SC 34 below
17 Troop 2 headquarters. It was a head-on collision. At the
18 time, in speaking to Corporal Heaton and Lieutenant Kelley,
19 I was not sure who was left of center. Both vehicles were
20 occupied by drivers only. Both were transported to the
21 hospital. When I arrived on the scene I removed both air
22 bags from the Mercedes. Times in route was at 2:05, and I
23 arrived on the scene at 3:28. And I cleared the scene at
24 5:46 that morning. Later that morning received a call from
25 the coroner, Coroner Cox, at 8:56 advising that there was a

BRUCE BROCK: DIRECT EXAMINATION

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1 fatal involved in the crash.

2 Q So you responded to the scene that night?

3 A Yes, ma'am.

4 Q I'm going to hand you a series of pictures that are
5 already in evidence. Let me get these in order. I'll just
6 hand them all to you.

7 MS. WHITE: May I approach the witness, Your Honor?

8 THE COURT: You sure can.

9 Q I just ask you to flip through those and see if you
10 recognize those.

11 A These appear to be pictures that were taken by the
12 investigating officer at the collision scene. At the
13 collision scene the way I found it when I arrived.

14 Q Now, when you arrived on the scene that night, were you
15 able to determine from when you got there essentially which
16 vehicle had been left of center and how the collision
17 occurred?

18 A Yes, ma'am, somewhat. A preliminary finding that based
19 on obviously where the debris, and there was a few gouge
20 marks out there, I was able to determine which lane it
21 occurred in. So from that point we just had to look at the
22 damage. In this case, if you look at the damaged pieces --
23 the damaged vehicles, it was literally like putting a puzzle
24 back together. If you look at how they came together and
25 what should happen, it would -- it was clear that the red

BRUCE BROCK: DIRECT EXAMINATION

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1 vehicle, I believe it was, was left of center, and the white
2 car actually got stopped and pushed back somewhat. And they
3 kind of both rotated somewhat clockwise and separated.

4 Q I'm going to show you what's been previously entered as
5 State's Exhibit No. 1. Can you see the screen from where
6 you're sitting?

7 A Yes, ma'am.

8 Q Is there anything about this picture, that you can see
9 in this picture, that was significant for determining from
10 your opinion on what happened that night?

11 A Well, actually right off the bat you can see the pile
12 of debris. There was a couple of scratches and gouges back
13 down toward the bottom of the picture, but it was clear
14 where the collision occurred at. So at that point just
15 looking at the damage to the vehicles and just kind of using
16 pieces of paper literally and just line up, okay, this is
17 damaged deeper this way, and this way, and this should have
18 happened. Was able to give a preliminary finding that night
19 that the white car was on the proper side of the road
20 traveling toward me, or you all, and the red car actually
21 went left of center. And once they hit, the red car
22 actually pushed the white car back. As they rotated they
23 separated and all the debris fell there.

24 Q What -- the liquid that we see in the roadway there,
25 what would all that mean?

BRUCE BROCK: DIRECT EXAMINATION

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1 A That's fluid from both vehicles. It could be gas,
2 antifreeze, oil, power steering fluid. Any kind of fluids
3 inside the vehicles. The motor compartment.

4 Q Are the gouges visible on this picture? Can you tell?

5 A I can't tell if that's maybe one of them down toward
6 the bottom just under the edge of the white piece of maybe
7 bumper.

8 Q And what causes the gouges in the road when a wreck
9 occurs?

10 A When the vehicles come together or strike, the forces
11 push -- in this case push down. So the bottom parts of the
12 motors in the cars actually scratch the asphalt in this
13 case.

14 Q I'm showing you what's been marked as State's 25. Is
15 that what the inside of the Mercedes looked like when you
16 got there?

17 A Yes, ma'am.

18 Q And you said you collected both air bags?

19 A We cut both air bags out. Yes, ma'am.

20 Q It looks like there's blood on the passenger side air
21 bag.

22 A That's correct. Blood on the left side of the
23 passenger air bag.

24 Q So that would be on the -- if you're looking at the
25 passenger air bag on the driver's side?

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1 A Yes, ma'am. If I'm the passenger sitting in it, it
2 would be over to my left side.

3 Q Was there any effort made to swab the inside of this
4 car for DNA?

5 A No, ma'am. We did not. As a general rule, in my
6 experience, since 2001 we haven't had much luck getting
7 touch DNA from inside a vehicle because it is kind of a
8 closer area. So obviously anybody that drives a car it
9 could be there. If you sneezed from the passenger side your
10 DNA could be there. Plus we had SLED come talk to us a
11 couple years ago and they said that pretty much --

12 MS. BOLEN: Your Honor, just objection as to hearsay.

13 MS. WHITE: Moving on from there.

14 THE COURT: Okay. Very good.

15 Q Does DNA -- I mean, to your knowledge, would DNA tell
16 you when someone was sitting in that chair?

17 A No, ma'am.

18 Q After going out to the -- well, let me ask one more
19 question. State's Exhibit No. 4 we see some orange markings
20 by the tire. What is that for?

21 A That's basically the marking of the left front tire.

22 Q Why would you spray paint all of that on the highway?

23 A Because in this case it was not an immediate response.
24 Most times when we come out in immediate response we would
25 set up and do our pictures and our video and our forensic

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1 mapping there, which we still go ahead and mark in case we
2 miss something to come back, or somebody needs to come from
3 another department or something else the evidence is there
4 as we found it -- or the trooper found it in this case. So
5 it's just the final rest positions of the vehicle.

6 Sometimes tire marks, gouges, all that stuff is marked.

7 Q I guess because obviously you can't just leave the cars
8 sitting there until you can come back?

9 A That's right.

10 Q Other than coming out that night did you have any other
11 involvement with this case?

12 A Well, the other involvement would be to type the actual
13 MAIT report with our findings which, like I said, in this
14 case was a -- we were asked to look at the scene doc -- the
15 scene documentation, take pictures, audio, take some
16 recordings, video, to do a mechanical examination of the
17 vehicle -- one of the vehicles, and to try to determine lane
18 location. So other than typing the report and reviewing
19 this case and presenting this case at our committee, where
20 we go every three weeks now, and I -- then I would present
21 this case to the other team members and bosses and we would
22 all review it and we would all sign off that the
23 investigation was done completely.

24 Q So you reviewed the work of the people under you; is
25 that correct?

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1 A That's correct.

2 Q And then other team leaders review, I guess, your
3 team's work --

4 A That's correct.

5 Q -- after that? And was there any concern on your part
6 that any -- from what you reviewed on the report, did you
7 have any questions about any of the results?

8 A No, ma'am.

9 Q Based on your review of the file and the measurements,
10 the mapping, everything that your team did, do you have an
11 opinion to a reasonable degree of scientific certainty as to
12 what happened that night?

13 A Yes, ma'am.

14 Q And what is that opinion?

15 A That the Mercedes went left of center and struck the
16 white car.

17 Q What happens -- if I'm the driver of a car involved in
18 a collision like this, unrestrained, what would happen to my
19 body? Which direction would you expect it to go?

20 A You should travel toward the direction of force and
21 where the force is coming from. So in this case the way the
22 vehicles actually made contact, you should go to the -- to
23 the right, toward the passenger side. Middle of the car,
24 passenger side. And the other driver should -- about the
25 same way. Maybe a little toward the front, from the way the

BRUCE BROCK: DIRECT EXAMINATION

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1 vehicle came in.

2 Q Do you think speed was a factor in this collision at
3 all?

4 A No, ma'am. Speed was never really an issue that was
5 brought out.

6 Q Let me ask you this. We can see from the pictures that
7 the red car kind of spun around and the white car almost
8 bounced over a little bit into the center of the roadway.
9 Can you explain why that would happen if the white car was
10 in its lane?

11 A Basically the Mercedes was just traveling a little
12 faster and weighed a little more. Just like when you watch
13 football. When you have the big linemen pulls and goes
14 after the little quarterback. You kind of have those --
15 those same kind of impacts. Obviously the bigger guy is
16 going to win out, you know. So he would actually push that
17 person. And I could say that everything revolves off of
18 center mass. So the center mass would want to keep going
19 forward. But as they hit each other it's got to rotate one
20 of the other ways. If there's angles, it would cause the
21 white car to go backwards because the red car coming in a
22 little fast. Not a lot faster, a little faster. And a
23 little more weight. So it would push him back, but it would
24 also cause him to rotate, which is why he's kind of in the
25 angle that he is, and the red car the same way. Because it

BRUCE BROCK: DIRECT EXAMINATION

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1 had more energy, it's going to come in and rotate a little
2 more when it rotates off onto the shoulder.

3 Q Do you know, or did you or any of your team make any
4 effort to pull Mr. Miller's phone records?

5 A No, ma'am.

6 Q And why not.

7 A Shoot, everybody involved in a crash now has got a
8 phone. So it would just be something that we would
9 constantly do, and it's -- we've discussed this matter in
10 several cases, especially now, like I said. But just
11 because you've got a phone in your possession don't
12 necessarily mean the phone did something to cause the crash.
13 I mean, this crash happened after midnight. Everybody was
14 sleeping. Of course, everybody thinks texting or something
15 like that. Was on the phone. Talking on the phone or
16 texting on the phone. And if you're in the process of
17 typing a text, which takes your eye off the road, and you
18 went left of center and was involved in the crash, it was
19 never sent and there'd be no record of it. Short of us
20 being able to get the phone before anybody does anything
21 with it and actually get a warrant to look in the phone and
22 see what's there. So we just -- it's just something that if
23 we -- we do do it in some cases, but in the majority of case
24 we do not.

25 Q So there was no effort to get Mr. Miranda's or Mr.

BRUCE BROCK: CROSS EXAMINATION

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1 Miller's, correct?

2 A No, ma'am. Either phone.

3 Q And was there any indication Mr. Miller did anything to
4 contribute to the accident? That would be the white --

5 A Okay. No, ma'am. I'm sorry. No, ma'am.

6 MS. WHITE: Please answer any questions Ms. Bolen has
7 for you.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Cross-examination.

10 MS. BOLEN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. BOLEN:

13 Q Good afternoon, Sergeant Brock.

14 A Good morning -- afternoon.

15 Q I was confused for a minute. So you were the
16 supervisor essentially, correct --

17 A Yes, ma'am.

18 Q -- of the MAIT team. And there were a good number of
19 individuals on the MAIT team that were working this crash?

20 A Yes, ma'am.

21 Q And your job and duties would have been to collect any
22 information from them that they might report to you, right?

23 A Yes.

24 Q And you supervised the investigation essentially,
25 correct?

BRUCE BROCK: CROSS EXAMINATION

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1 A That's correct.

2 Q And you responded that morning, right?

3 A That is correct.

4 Q October 16th, sometime in the early hours of the
5 morning, right?

6 A Yes, ma'am.

7 Q And you cleared, I think you said, somewhere between
8 5:00 and 6:00 in the morning, right?

9 A Yes, ma'am.

10 Q And you had gotten a call from your boss notifying you
11 of the incident, right?

12 A That is correct. Yes, ma'am.

13 Q And at that time you said your notes said that it was a
14 head-on collision? That's in your notes, right?

15 A Yes, ma'am.

16 Q And not sure who was left of center, right?

17 A That's correct.

18 Q And you said that that morning when you responded you
19 did I think what you called a preliminary finding, correct?

20 A Just for my purposes in being able to try and help them
21 understand what happened out there. Yes, ma'am.

22 Q Was that -- was that your only time at the scene, or
23 did you go back later?

24 A No, that was my only time at the scene.

25 Q And you said that you collected the air bags from the

BRUCE BROCK: CROSS EXAMINATION

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- 1 Mercedes, correct?
- 2 A We did.
- 3 Q And both of them were deployed, correct?
- 4 A Yes, ma'am.
- 5 Q And you -- when you say you collected them, that means
- 6 you put them in safe keeping for evidentiary purposes,
- 7 right?
- 8 A That's correct. I took a knife and cut them out and
- 9 put them in a paper bag.
- 10 Q They're in a paper bag so they can't be tampered with
- 11 or anything like that, right?
- 12 A That's correct.
- 13 Q And they're held in, I think, your Columbia --
- 14 A Central Evidence. Should be. Yes, ma'am.
- 15 Q And that's in an evidence room, right?
- 16 A Yes.
- 17 Q But you didn't do anything and no one in your shift did
- 18 anything to have those air bags analyzed in any way,
- 19 correct?
- 20 A That's right.
- 21 Q They were not tested for DNA or fingerprints or
- 22 anything like that, correct?
- 23 A No, ma'am. There was no indication for me to from our
- 24 investigation.
- 25 Q And when you responded to the scene and saw the red

BRUCE BROCK: CROSS EXAMINATION

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1 Mercedes you didn't -- you've already said you didn't do any
2 sort of DNA testing, correct?

3 A That's correct. We did not.

4 Q And you also didn't do any attempt to lift any kind of
5 fingerprints off the steering wheel or anything like that,
6 right?

7 A That's useless. It ain't going to happen.

8 Q And you said you were explaining though with DNA, you
9 know, it can't tell you when someone was in a car, correct?

10 A That is correct.

11 Q But the presence of DNA could tell you that someone was
12 in a car, correct?

13 A Potentially yes. Yes.

14 Q But none of that was collected, right?

15 A No, ma'am. We -- like I said, and stop me if I need
16 to. But like I was trying to stay a while ago, we've been
17 told not to do that anymore.

18 Q Going back to when you actually responded to the scene.
19 And, Sergeant Brock, I'm going to just put up here what's
20 already been entered into evidence as State's 22. Do you
21 recognize that as the red Mercedes we've been talking about?

22 A Yes, ma'am.

23 Q And this would be the passenger side, right?

24 A Yes, ma'am.

25 Q This is the driver's side, right?

BRUCE BROCK: CROSS EXAMINATION

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1 A Yes, ma'am.

2 Q And there's a good amount of damage on the driver's
3 side, right?

4 A That is probably more damage on the passenger side, but
5 there's a good amount of damage all the way across the
6 front.

7 Q It's a damaged car, right?

8 A Yeah.

9 Q It's not that there's limited damage to only the
10 passenger side. There's extensive damage to the driver's
11 side as well, correct?

12 A That's correct.

13 Q And your team, the MAIT team you supervised, did go
14 back to this scene, correct?

15 A That is correct.

16 Q And you weren't with them, right?

17 A That is right.

18 Q And that wasn't done until October 22nd?

19 A It's in here somewhere. Photographs were taken of the
20 scene on 10/22. The vehicles on 10/22. And a forensic
21 mapping was completed, I believe, on -- also the 22nd.

22 Q And that essentially ended the MAIT investigation,
23 correct?

24 A That completed the field work of the MAIT
25 investigation. But no, ma'am. We have -- like in this

BRUCE BROCK: CROSS EXAMINATION

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1 case, 45 days to complete the investigation.

2 Q I see. And again, you were the supervisor of that
3 investigation, correct?

4 A Yes, ma'am.

5 Q And part of what happened on the 22nd were a mechanical
6 examination of the Mercedes, correct?

7 A Yes, ma'am.

8 Q But no mechanical examination of the Honda?

9 A No, ma'am.

10 Q And again, that was done October 22nd, right?

11 A Yes, ma'am.

12 Q And the Solicitor asked you on direct whether you had
13 collected any phone records and you said you had not,
14 correct?

15 A That is correct. We did not.

16 Q And again, is your -- as your job as supervisor you're
17 getting information from the people on your team underneath
18 you, correct?

19 A Yes, ma'am.

20 Q And you had gotten some information from some of the
21 other troopers working this case that Mr. Miller had been
22 known to text and drive, correct?

23 A Yeah, there was notes from the interview that one of
24 the witnesses that he was known to do that. But I'm
25 satisfied about everybody's going to do it.

T.J. BROOKS: DIRECT EXAMINATION

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1 Q But no effort was made to get phone records, correct?

2 A No, ma'am.

3 MS. BOLEN: I don't have anything further, Your Honor.

4 THE COURT: Okay. Redirect?

5 MS. WHITE: No, sir.

6 THE COURT: You can step down.

7 THE WITNESS: Thank you, sir.

8 MS. WHITE: And he can be excused.

9 THE COURT: Sergeant Brock, you're welcome to remain
10 with us or you're free to go.

11 THE WITNESS: Yes, sir.

12 (Whereupon, the witness stepped down from the witness
13 stand.)

14 MS. WHITE: The State calls T.J. Brooks, Your Honor.

15 T.J. BROOKS, having first been duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. WHITE:

19 Q Good afternoon.

20 A Good afternoon.

21 Q If you could introduce yourself to the jury.

22 A My name is Corporal Tommy Brooks with the South
23 Carolina Highway Patrol.

24 Q And what's your current assignment, Corporal Brooks?

25 A I'm currently assigned to the Piedmont MAIT team, which

T.J. BROOKS: DIRECT EXAMINATION

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1 is the reconstruction team for the Highway Patrol.

2 Q And have you had any specialized training to have that
3 assignment?

4 A I did. And I actually started my training in 2001. We
5 have -- the MAIT team at that time had an associate program
6 where you've got your basic core courses and you're able to
7 assist the MAIT team as an associate member on these crashes
8 until which time you can get on the team. And once I got on
9 the team we continued to train, and we train about every
10 year. So I've got well over 1,000 hours of advanced
11 training in collision reconstruction.

12 Q Have you ever been qualified as an expert in accident
13 reconstruction in South Carolina?

14 A I have, five times.

15 MS. WHITE: The State offers Corporal Brooks as an
16 expert in accident reconstruction.

17 THE COURT: What says the Defense?

18 MS. BOLEN: That's without objection, Your Honor.

19 THE COURT: Okay, with objection Trooper Brooks is
20 deemed an expert in the area of accident reconstruction.

21 Q When -- are you familiar with the case we're on today,
22 a collision on South Carolina 34 back on October 16th, 2014?

23 A I am.

24 Q And how did you come to be involved in investigating
25 that case?

T.J. BROOKS: DIRECT EXAMINATION

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1 A Well, at the time Lieutenant Brook was actually my
2 sergeant at the time and he actually went to the active
3 collision scene on the 16th. And it wasn't until the 22nd,
4 I believe, until myself and Corporal Duncan actually went
5 down and did the forensic mapping of the scene.

6 Q And when you say forensic mapping, can you tell the
7 jury what you're doing there?

8 A Basically what we're doing is we're trying to create a
9 scale diagram of the collision scene so that we can place
10 the vehicles back where they were at first touch and at
11 their final rest to try to determine what happened during
12 the collision. The dynamics.

13 Q And you said you went out there with, I believe you
14 said, Al Duncan?

15 A That is correct.

16 Q And after mapping the scene what, if anything, did you
17 do from there?

18 A Once we completed the mapping of the scene we traveled
19 to the wrecker service. I believe it was Godfrey's had --
20 both the vehicles were there at the same wrecker service.
21 Al Duncan actually obtained a search warrant to do a
22 mechanical exam on the Mercedes. And I've been trained as a
23 mechanic for the Highway Patrol. There's one of three. And
24 I completed a mechanical examination of the car, to make
25 sure that it was functioning properly and there was no

T.J. BROOKS: DIRECT EXAMINATION

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1 defects present that I could determine that would have
2 caused anything to happen with the car.

3 Q And why would you only do an examination on the
4 Mercedes?

5 A Typically as the MAIT team is concerned, the F cases,
6 which is -- it comes in as a felony DUIs where death is
7 involved. When someone who is not in the same car as the
8 person being charged we automatically go out and we do those
9 mechanical exams. So even if a question doesn't come up
10 about, well, I had a mechanical problem with my car and did
11 X, Y or Z, we go ahead and do that and we answer all the
12 questions that we can going into it. So that's why we did
13 that.

14 Q Was there anything mechanically wrong with the
15 Mercedes?

16 A I could not find anything mechanically wrong. No,
17 ma'am.

18 Q And you said that you're a certified mechanic. I guess
19 with the Highway Patrol?

20 A Well, I had a mechanical course through the Highway
21 Patrol. My family's owned a tire business in Oconee County
22 since 1966, and I currently own it now, and we do mechanic
23 work there also. And I've done it my whole life. So they
24 sort of pegged me with the job.

25 Q There's been -- I think we've seen some pictures that

T.J. BROOKS: DIRECT EXAMINATION

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1 there was a passenger side air bag in this Mercedes. Was
2 that -- do you recall if that was standard on cars in 1994?

3 A Some of the cars did have those. Your higher end
4 vehicles certainly had those air bags present.

5 Q Now, what about -- my car has a feature where if
6 there's a small child or no one in the passenger seat the
7 air bag will cut off. Would a 1994 Mercedes have had that
8 feature?

9 A I'm not sure about the Mercedes. Most of the older
10 cars did not. All the newer cars do. Because they have
11 sensors and rail position sensors in the seats, weight
12 position sensors where you see it. But I'm not sure about
13 the Mercedes.

14 Q But is it your experience that typically older model
15 cars do not have that feature?

16 A No. Typically the older model cars will just --
17 they'll blow everything that they have.

18 Q So a front impact collision, all the air bags are going
19 off?

20 A Correct.

21 Q Is that regardless of whether someone's in the
22 passenger seat or not?

23 A Yes, ma'am.

24 Q What do you do -- once you've done the forensic mapping
25 what do you do with those numbers and --

T.J. BROOKS: DIRECT EXAMINATION

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1 A Well, the mapping is -- when you map a scene it's
2 almost like what a surveyor does. You know, we're taking a
3 -- we'll telling a -- putting the station at a certain point
4 and we're measuring distances from that station, and
5 distance length-wise and height-wise to different points..
6 The only difference between a surveyor and what we have is
7 we have a forensic data collector which we tell it, you
8 know, once we go out there that we're going to make this
9 particular point a fog line, or a double yellow line. Now,
10 once we get all that data, once we leave the scene, we go
11 back to the office and we put that into our CAD program,
12 which would be Edge Effects, and we're actually able to go
13 back in and draw the scene to scale. And I think in this
14 case it may have been -- I'm not sure. I'd have to look
15 back in the drawing to tell you what scale it was. But we
16 go back and we map everything that we can identify on the
17 road which includes if there's any tire mark spreads, we map
18 those. We try to map ditches and driveways and gouge marks.
19 Anything that's left by those cars during the collision
20 event.

21 MS. WHITE: May I approach the witness, Your Honor?

22 THE COURT: Sure can.

23 Q I'm going to hand you what's been marked as State's
24 Exhibit 28 and ask if you're familiar with that.

25 A It's noted as a .PDF CAD. And typically what we do,

T.J. BROOKS: DIRECT EXAMINATION

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1 once we -- we produce a report we include a .PDF version of
2 the CAD drawings. They'll be raw files also in there. But
3 this is something that you can open up and look at yourself.
4 In those CAD plates that we have in there, we have a
5 roadway, which is just the road itself. We have an impact
6 layer, which is where we can determine the closest first
7 touch of the cars. Just the area of impact. Then you're
8 going to have an evidence and a final rest there which is
9 the two cars. Once they -- in this particular collision,
10 once they came to their final rest and the evidence that was
11 there with the car. And then the last CAD would be a
12 sequence of events of how we determine, or how we think that
13 the collision occurred.

14 Q Have you reviewed what's on this particular CD today?

15 A I have.

16 Q And are these the CAD drawings that were prepared in
17 this case?

18 A Yes, ma'am.

19 MS. WHITE: State offers Exhibit 28 into evidence, Your
20 Honor.

21 THE COURT: What says the Defense?

22 MS. BOLEN: Without objection.

23 THE COURT: All right. Without objection, 28 will be
24 into evidence on behalf of the State.

25 (Whereupon, State's Exhibit No. 28 was admitted into

T.J. BROOKS: DIRECT EXAMINATION

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1 evidence.)

2 MS. WHITE: Permission to publish?

3 THE COURT: Sure.

4 MS. WHITE: And, Your Honor, could I have the witness
5 step down so he can --

6 THE COURT: Sure. Just remember to speak up loud
7 enough because you're away from the microphone. Okay?

8 THE WITNESS: All right, sir.

9 (Whereupon, the witness stepped down from the witness
10 stand.)

11 Q With this first slide, and I'm going to -- if you need
12 to manipulate this --

13 A Okay.

14 Q -- just push me out of the way. What are we looking at
15 here?

16 A This is actually the roadway CAD plate and it, like I
17 said, it just shows the road. It has a north arrow on
18 there. The highway, of course, which was Highway 34. All
19 the various driveways that were present at the collision
20 scene. And I see now that the scale was a one to seventy.

21 Q The second plate we're looking at.

22 A The second plate that we're looking at is actually what
23 we call an impact layer. When we try to determine the first
24 touch of the cars you can't get -- the point of impact is
25 virtually impossible to get to, but you can get close to the

T.J. BROOKS: DIRECT EXAMINATION

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1 first touch. So we do that, and we actually put a blow up
2 box to make it a little bit bigger so that you can see the
3 orientation of the cars where we determine that they first
4 touched.

5 Q And so, you got the red Mercedes angled off where if
6 the white car had not been there the red Mercedes would have
7 kept going?

8 A Yes, ma'am. It would have -- on it's current path, it
9 would have continued off the roadway.

10 Q And this next drawing what do we see here?

11 A This is what we call our evidence and final rest layer.
12 In this particular case we map the crushed profiles of the
13 cars, you know, when we went to the wrecker yard. So we're
14 able to put those back and we crush them at their rest. You
15 can see basically what the damage profile looks like. In
16 this case you see the red cars off the southbound side of
17 the roadway. The white car is kind of straddling that
18 center line. The little -- it looks like a pink color, but
19 it's actually magenta marks in the middle of that lane are
20 actually gouge marks.

21 Q Are you talking about this right here?

22 A Yes, ma'am. Those are the gouge marks that were made
23 by the cars, and as the cars began to separate and push back
24 out of the way.

25 Q And the last?

T.J. BROOKS: DIRECT EXAMINATION

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1 A The last one is just what we call a sequence of events.
2 We have the car pre-impact coming in at first touch, and
3 then evidence on final rest later. Everything is turned on
4 at the same time. So you can see the whole scene is on one
5 CAD plate.

6 Q Now, let me ask you. How is it with the red car and
7 the white car, how they're hitting head on? How is it that
8 they both spin around to be pointing in the same direction?

9 A Well, basically what you had is the Mercedes car was
10 slightly heavier. In this case when we looked at it we
11 determined just by the post-impact travel of the two cars
12 there's not a great deal of speed involved. Maybe a little
13 bit more on the red car than there was on the smaller car.
14 But when we lined up the damage profiles on the car, the way
15 that they hit, once they hit they first touch and came to
16 their maximum engagement, they started -- the centers of
17 mass started working on each other. So it started rotating
18 the cars around. And since the red car was a little bit
19 heavier and moving just a little bit quicker, it was able to
20 stop the smaller car and actually physically push it back.
21 And as the two centers of mass rotate around themselves,
22 once they separated he just rotated back off and the red car
23 went off the side of the roadway and came to rest. That's
24 about 25 feet, give or take, and it's about 16 feet or so on
25 the smaller car.

T.J. BROOKS: CROSS EXAMINATION

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1 MS. WHITE: You can have a seat back up there.

2 (Whereupon, the witness returned to the witness stand.)

3 Q In your opinion, Corporal Brooks, was speed a factor at
4 all in this collision?

5 A No. Like I said, if the -- the red car may be going
6 slight faster than the smaller car. But their speed wasn't
7 really a factor in this collision.

8 MS. WHITE: Please answer any questions Ms. Bolen has
9 for you.

10 THE WITNESS: Yes, ma'am.

11 CROSS-EXAMINATION

12 BY MS. BOLEN:

13 Q Good afternoon, Sergeant Brooks.

14 A Corporal Brooks.

15 Q Corporal Brooks. I'm sorry.

16 A I appreciate the promotion, but --

17 Q Sorry. I just want to go right back, if I could, to
18 the drawing we were you just looking at.

19 A Yes, ma'am.

20 MS. BOLEN: Let me just make sure I can actually scroll
21 through to what I want. Okay? I'm sorry. My apologies,
22 Your Honor.

23 Q This was the CAD drawing that you were just going over
24 with Ms. White, correct.

25 A Yes, ma'am, that's correct.

T.J. BROOKS: CROSS EXAMINATION

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1 Q And this is showing the actual impact, correct?

2 A Correct.

3 Q And on this the point of impact between the white car
4 and the red car, the red car is at an angle with the impact
5 being on the right side of that car, correct?

6 A Correct.

7 Q As seen in the drawing?

8 A Yes, ma'am. About center from of the hood to the
9 right-hand side. Yes, ma'am.

10 Q So basically sort of like coming in at an angle -- at
11 an angle, it's on the right side, correct?

12 A Yes, ma'am.

13 Q And, Corporal Brooks, you were one of the two troopers,
14 Highway Patrol, to go out and do all of the MAIT testing,
15 correct?

16 A Yes, ma'am.

17 Q Yourself and, I think, Corporal Duncan?

18 A That's correct.

19 Q And you did that testing on October 22nd, right?

20 A Correct.

21 Q So you weren't there on the 16th?

22 A No, ma'am.

23 Q You went out on the 22nd, and this -- just to be clear,
24 the incident was on Highway 34, correct?

25 A Yes, ma'am.

T.J. BROOKS: CROSS EXAMINATION

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- 1 Q In between Greenwood and Ninety-Six?
- 2 A Yes, ma'am. Basically right at that little Avery's
- 3 Restaurant. Yes, ma'am.
- 4 Q So closer to Greenwood than Ninety-Six, right?
- 5 A Yes, ma'am.
- 6 Q And Highway 34 is a two lane highway, correct?
- 7 A Yes, ma'am. It is.
- 8 Q And you have a double yellow line, right?
- 9 A Yes, ma'am. It's divided.
- 10 Q A good number of cars travel on 34 every day, right?
- 11 A They do. Yes, ma'am.
- 12 Q It's not a country highway, it's not a dirt road or
- 13 anything like that, right?
- 14 A No, ma'am.
- 15 Q So it's traveled every day. In between the 16th and
- 16 22nd there could have been weather or things like that,
- 17 right? There could have been rain?
- 18 A Yes, ma'am.
- 19 Q And, in fact, when you went to the scene on the 22nd
- 20 you mention in your report that when you got there some
- 21 individuals had done some spray painting of the scene,
- 22 correct?
- 23 A Yes, ma'am. That's correct.
- 24 Q So there wasn't much to see in terms of gouging and
- 25 things like that?

T.J. BROOKS: CROSS EXAMINATION

191

1 A Well, the only thing with the gouge marks is the gouge
2 marks are actually scratches and groves in the pavement. So
3 they would still remain on the scene, but you would -- you
4 would have pain over the top of them.

5 Q And you gave some sort of -- for lack of a better
6 words, some dictation. You basically dictated your notes on
7 the 22nd, right?

8 A Yes, ma'am.

9 Q And you remember saying then that you noted that the
10 scene had been spray painted, but you were still able to see
11 gouge marks and scratches, but that -- other than that there
12 was nothing out there?

13 A That's correct. And in that I mean there was no
14 pre-impact braking. And when cars like this collide, you
15 know, you have all kind of weight shift that goes on with
16 these things. And typically sometimes when you have a
17 collision that occurs in a roadway and the vehicles rotate
18 off and spin, they'll leave marks, you know, from the area
19 where they're starting to separate. In this case it looks
20 like that the smaller car was just -- it was stopped and
21 pushed backwards, and the red car actually just rotated back
22 off the side of the roadway. So there wasn't really any
23 tire marks themselves. All we had was the gouge marks.

24 Q But again, this was six days later?

25 A That's correct.

T.J. BROOKS: CROSS EXAMINATION

192

1 Q And there was -- when I saw spray painting, there was a
2 good amount of spray painting across the entire road,
3 correct?

4 A Yes, ma'am. There was a large amount.

5 Q You also were the one to do the mechanical exam on the
6 Mercedes, correct?

7 A That is correct.

8 Q And I think you noted that you didn't do an exam on the
9 right front?

10 A That's correct. It was pinned. Due to the damage of
11 the cars.

12 Q And there would have been a way to release that if you
13 -- you could have used -- you could have either cut it out
14 or something like that, right?

15 A If we had cutting torches we could. Basically what I
16 have is tools I can carry in the back of my truck, and I
17 couldn't -- there was no way for me, with what I had, to
18 take that thing apart.

19 Q But there would have been a way to get a cutting torch
20 or something like that to complete that exam, correct?

21 A Not for the Highway Patrol. We don't -- we don't do
22 that. We just use what tools we have in the back of the
23 truck. And it's just hand tools. It's not really anything
24 big.

25 Q And you did not do a mechanical on the Honda, right?

T.J. BROOKS: CROSS EXAMINATION

193

1 A No, ma'am.

2 Q And you were talking about the air bags on the Mercedes
3 and you said in direct exam that it's a, you know, 1994
4 Mercedes, right?

5 A Yes, ma'am.

6 Q And you said that with older cars the air bag sensors,
7 everything could have gone off, correct?

8 A That's correct. And again, I said I'm not sure about
9 the Mercedes. But, you know, my -- it's my experience with
10 older cars that the air bag control module would tell
11 everything to blow.

12 Q And when you went out on the 22nd you looked at both
13 cars, right?

14 A Yes, ma'am.

15 Q And the Honda was actually 1993, correct?

16 A Yes, ma'am. It was an older car. Yes.

17 Q And in the Honda only the driver's side air bag had
18 gone off, correct?

19 A I'm not sure. I'd have to look back at the photograph
20 and see.

21 Q If I were to show you a photograph would that help?

22 A Yes, it would.

23 MS. BOLEN: I think actually instead of showing it on
24 the overhead, if I could approach the witness, Your Honor
25 and just -- and this is what's already been entered as

T.J. BROOKS: REDIRECT EXAMINATION

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1 State's 10.

2 Q Is that the inside of the Honda?

3 A It is.

4 Q And you just see one air bag, right?

5 A I could see one in that photo. Yes, ma'am.

6 Q And the work you did on the 22nd, that was essentially
7 your involvement in this case, correct? You didn't respond
8 on scene?

9 A I did not respond to the active collision scene. No,
10 ma'am.

11 MS. BOLEN: I don't have anything further. Thank you,
12 Your Honor.

13 THE COURT: Any redirect?

14 MS. WHITE: Very briefly.

15 REDIRECT EXAMINATION

16 BY MS. WHITE:

17 Q Do you know if a 1994 Honda sedan was even equipped
18 with a passenger side air bag?

19 A I'm not sure.

20 Q From your experience with working with automobiles, do
21 higher end cars tend to get features before, I guess,
22 midrange or lower end cars, expensive versus inexpensive
23 cars?

24 A They do.

25 MS. WHITE: No further questions.

1 THE COURT: Okay. You can step down, sir.

2 THE WITNESS: Thank you, sir.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 THE COURT: All right. Mr. Foreman, ladies and
6 gentlemen of the jury, we're going to take about a 10, 15
7 afternoon break. And again, remind you, as I have been
8 doing, not to begin any discussion among yourselves about
9 this case. And we'll get you back out shortly.

10 (Whereupon, the jury exited the courtroom at 2:48 p.m.)

11 THE COURT: Okay. We'll be at recess for about 15
12 minutes.

13 (Whereupon, a recess was held from 2:48 p.m. to 2:58
14 p.m.)

15 THE COURT: We're back on the record. And since I had
16 excused the one juror, a Ms. Hughes, I need to go ahead and
17 appoint one of the alternates. I'm going to do it in
18 lottery fashion. So, Madam Clerk, would you pull one of the
19 names out. They're folded so you can't see it.

20 MADAM CLERK: King.

21 THE COURT: King. Is that the lady or the man?

22 MADAM CLERK: Lady.

23 THE COURT: Lady. Ms. King will now be one of the 12.
24 Would you bring the jury out, Mr. Willingham.

25 (Whereupon, the jury entered the courtroom at 2:58

RODERICK STOLL: DIRECT EXAMINATION

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1 p.m.)

2 THE COURT: Let the record reflect the jury is back in.
3 Mr. Foreman, ladies and gentlemen of the jury, you'll notice
4 when you came back from lunch you were short a juror. Ms.
5 Hughes had some issue to where felt like possibly she could
6 not be completely fair and impartial, so I did -- well, I
7 excused her, but actually transferred her to another term.
8 So in appointing one of the two alternates we did it by
9 lottery method. The name in a cup and pulled the name out.
10 The names were folded so we couldn't see. The Clerk did it.
11 And, Ms. King, your name was pulled out. So now you are one
12 of the -- one of the 12. Okay? You can -- you certainly
13 can keep that seat if you like, but you are now one of the
14 12. Okay? Solicitor?

15 MS. WHITE: State calls Roderick Stoll.

16 Roderick Stoll, having first been
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. WHITE:

20 Q If you could introduce yourself to the jury for us.

21 A Full name, legal name is Roderick Stoll.

22 Q And I see you're wearing an EMS shirt. How long have
23 you been with EMS?

24 A Greenwood County about four and a half years.

25 Q Did you work for anybody else before that?

RODERICK STOLL: DIRECT EXAMINATION

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1 A Yes. Abbeville County, McCormick County, a number of
2 other places.

3 Q Were you working, I guess, overnight into the early
4 morning hours of October 16th, 2014?

5 A Yes, ma'am.

6 Q And what was your job capacity that night?

7 A I was a paramedic assigned to Medic 10, which was
8 stationed out of the courthouse here.

9 Q Did you respond to a wreck on Highway 34 at Avery's
10 Restaurant?

11 A Yes, ma'am.

12 Q When you responded were you the first truck on scene or
13 were there other units already there?

14 A I was the second truck in.

15 Q And what did you do when you got on scene?

16 A I was directed by the incident commander prior to
17 arrival that our patient was the patient laying beside a red
18 car in the ditch. He had done his assessment. Normal
19 triage assessment. We got there, went directly to my
20 patient and began to package that patient. There was an EMT
21 there already providing care.

22 Q What did you -- what, if anything, did you note about
23 your patient's condition?

24 A The patient had been in a -- obviously a high speed
25 impact of some form. His altered mental status. During

RODERICK STOLL: DIRECT EXAMINATION

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1 assessment noted a strong odor of -- consistent with an
2 alcoholic beverage.

3 Q Did you happen to check his pupils or --

4 A Yes, ma'am.

5 Q And what was the response?

6 A I would have to refer to the report.

7 Q Yes, sir.

8 A Both pupils were dilated, it looks like, around about a
9 seven millimeter.

10 Q Did he have any injuries to his head?

11 A A small laceration to the -- it would have been -- I
12 believe it was on the left side occipital area. Also there
13 was one a little bit to the back of the head, and then also
14 one over the top of one of his eyes.

15 Q Which eye was that over?

16 A Let me pull that up before I say that. I apologize. I
17 know I had my eyes on it just a second ago.

18 Q It's on my page four, if that helps any.

19 A Yes, that helps a lot. Thank you. It was over the
20 right eye. And a minor laceration to the occipital area,
21 which is the back of the head, and then over the right eye
22 also.

23 Q And if I could get you to speak up just a little bit.

24 A I'm sorry. Yes, ma'am.

25 Q Did you notice anything about his speech?

RODERICK STOLL: DIRECT EXAMINATION

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1 A Yes, ma'am. He had some slurred speech. He was
2 confused. Didn't make a lot of sense.

3 Q And what -- you know, your assessment on the scene, did
4 you note any obvious fractures or anything like that?

5 A Yes, ma'am. We suspected a pelvic fracture and a right
6 -- it was a leg fracture. Right leg was obviously shortened
7 and rotated. It was short, and the foot would have been
8 laid out, rotated out, or to the right. And also the pelvis
9 on palpation, or movement of it was unstable and he
10 responded painfully.

11 Q Now, after -- after you began treating him did you
12 insert any IVs, anything like that with him?

13 A Yes, ma'am. We put an 18 gauge IV in the left forearm
14 with a normal saline.

15 Q And you said that's just a saline solution?

16 A Yes, ma'am.

17 Q Does that contain any alcohol whatsoever?

18 A No, ma'am.

19 Q Is there anything that you would have given him on the
20 scene or in the truck that contained alcohol?

21 A No, ma'am. The only alcohol used would have been an
22 alcohol wipe which is a one inch square piece of cotton, a
23 very small amount of rubbing alcohol that's wiped on the
24 skin. It's required to wait a minute for it to evaporate,
25 otherwise it doesn't actually create an aseptic field, or a

RODERICK STOLL: CROSS EXAMINATION

200

1 semi-sterile field.

2 MS. WHITE: Please answer any questions the Defense has
3 for you.

4 CROSS-EXAMINATION

5 BY MS. ABLE:

6 Q Good afternoon, Mr. Stoll. Very briefly. You arrived
7 after this incident occurred, correct?

8 A Correct.

9 Q And as you stated, Mr. Miranda was already outside of
10 the vehicle lying on the passenger side of the ground?

11 A I wouldn't remember which side it was, ma'am.

12 Q Okay. And your notes reflect that Mr. Miranda was
13 bleeding from his rectum. Do you recall that?

14 A Yes, ma'am. There was some blood around the buttocks
15 on removal of his clothing.

16 Q So you noticed that before removing the clothing?

17 A No, ma'am. When we -- with him being laying -- if I
18 can demonstrate. With him being laying on the ground, his
19 body being my arm, to place him on a long spine board to
20 protect the spine he would have been rolled up onto his
21 side. Clothing would have been removed at that point to
22 expose the back to look for any injuries.

23 MS. ABLE: Beg the Court's indulgence.

24 THE COURT: Sure.

25 MS. ABLE: No other questions.

JESSICA BELL: DIRECT EXAMINATION

201

1 THE COURT: Anything in redirect?

2 MS. WHITE: No, sir.

3 THE COURT: Thank you, sir. Step down.

4 (Whereupon, the witness stepped down from the witness
5 stand.)

6 THE COURT: Without objection you're free to leave or
7 you're welcome to remain with us.

8 THE WITNESS: Thank you, sir.

9 MS. WHITE: The State calls Jessica Bell.

10 JESSICA BELL, having first been
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. WHITE:

14 Q Can you tell us your name?

15 A Jessica Bell.

16 Q Back in October of 2016 how were you -- excuse me,
17 2014, how were you employed, Ms. Bell?

18 A I was an EMT basic, Greenwood County EMS.

19 Q And were you working on October 16th, 2014?

20 A Yes.

21 Q What were you doing that night?

22 A We were dispatched to assist Medic 30 for backup. They
23 had two patients. And we responded. We were working on
24 Medical 10. Me and my partner, Rod. We responded to the
25 wreck.

JESSICA BELL: DIRECT EXAMINATION

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1 Q And the patient you were working on that night, what
2 was his name?

3 A Mr. Miranda.

4 Q What, if anything, when you arrived on scene did you
5 note about Mr. Miranda's condition?

6 A When I got there he was already being -- he had already
7 been taken out of the car and assessed by the other EMTs on
8 scene. He was already being put on a long spine board. And
9 I went to get the stretcher while they finished assessing
10 him.

11 Q Could you smell anything on Mr. Miranda?

12 A It did smell consistent to alcohol.

13 Q Did you notice anything about his speech or his
14 demeanor?

15 A He was -- he seemed confused at first, and he was
16 combative when I got him in the back of the ambulance.

17 Q Was he saying anything in the back of the ambulance,
18 that you recall?

19 A I tried -- I tried to put oxygen on his face and he
20 told me that he'd wish I'd let him die.

21 Q And did you notice anything about his speech? Was it
22 normal speech --

23 A No.

24 Q -- when he was speaking with you?

25 A His speech wasn't normal, but he was confused and in

JESSICA BELL: CROSS EXAMINATION

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1 and out of it.

2 MS. WHITE: Thank you, Ms. Bell. Please answer any
3 questions the Defense has.

4 THE COURT: Cross-examination?

5 MS. BOLEN: Thank you, Your Honor. Just very, very
6 briefly.

7 CROSS-EXAMINATION

8 BY MS. BOLEN:

9 Q Ms. Bell, while you stated his speech was confused,
10 when you arrived he had substantial injuries, correct?

11 A To my knowledge, yes. I don't know what was going on
12 internally, but it looked bad.

13 Q You took him by ambulance to the hospital, correct?

14 A Right.

15 Q And you were training with EMS at the time?

16 A No.

17 Q You were working for them?

18 A Uh-huh.

19 Q How long had you been working for them?

20 A I started in October of 2013, I'm pretty sure.

21 MS. BOLEN: Nothing further. Thank you, Your Honor.

22 THE COURT: Thank you, ma'am. You can step down.

23 You're free to leave or you're welcome to remain with us.

24 (Whereupon, the witness stepped down from the witness
25 stand.)

CHRISTIAN LOMAX: DIRECT EXAMINATION

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1 MR. MAXEY: The State calls Christian Lomas to the
2 stand.

3 CHRISTIAN LOMAX, having been first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MAXEY:

7 Q Please state your name for the record.

8 A Christian Lomax.

9 Q Ms. Lomax, were you employed with Self Regional Medical
10 Center in October of 2014?

11 A I was.

12 Q Were you working on October 16th, 2014?

13 A I was.

14 Q Were you on shift when Mr. Miranda came into the
15 hospital?

16 A I was.

17 Q And what department of Self were you working in that
18 night?

19 A I was in the lab. I was receiving.

20 Q And as part of that job do you receive -- did you
21 receive blood samples?

22 A I did.

23 Q Were you the only person --

24 MS. BOLEN: Your Honor, at this time, just for the
25 record, I just need to renew our pretrial objection.

CHRISTIAN LOMAX: DIRECT EXAMINATION

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1 THE COURT: Certainly. So noted for the record.

2 Q As part of your job receiving in the lab -- were you
3 the only person receiving in the lab that night?

4 A I was.

5 Q So any blood sample taken and sent to the lab would
6 have been received by you?

7 A Correct.

8 Q And you received Mr. Miranda's blood sample?

9 A Yes, sir.

10 Q / And once you received his blood sample what standard --
11 procedure-wise what do you do with it?

12 A Once it's received I scan it in the computer. Well,
13 the tube has his information on it and what department it
14 needs to go to. If it goes to chemistry, that's where I
15 delivered it to, or hematology, I would have delivered it
16 there.

17 Q And was this tube with his blood sealed in any way?

18 A Yes. It's a vacuum tube.

19 Q Does that tube require a good deal of force to open?

20 A It does.

21 Q Additionally how do you receive the tube?

22 A It comes up from the ER in a cylinder. It's kind of
23 like what they have at the banks. You just pop it open and
24 it kind of folds open. And the blood is in a bag.

25 Q If the tube had been opened, would it be obvious to

CHRISTIAN LOMAX: CROSS EXAMINATION

206

1 you?

2 A Yes. It would have been all over the bag.

3 Q Had Mr. Miranda's tube been opened?

4 A It had not.

5 Q And once you scanned in Mr. Miranda's sample what would
6 you have -- what did you do with it next?

7 A I would have walked it to the department. If -- like I
8 said, if it's hematology, I would have walked it there, or
9 chemistry. And we normally -- at night we will spin it.
10 Put it in a centrifuge and spin the blood for the tech. And
11 at that point the tech would take over to actually run the
12 test.

13 Q You delivered it to the centrifuge?

14 A Correct.

15 Q And you spun the tube?

16 A That's correct.

17 MR. MAXEY: Beg the Court's indulgence just briefly.

18 THE COURT: Sure, take your time.

19 MR. MAXEY: No further questions for you, Ms. Lomax.

20 Please answer any questions the Defense has.

21 THE COURT: Cross-examination?

22 MS. BOLEN: Yes, sir.

23 CROSS-EXAMINATION

24 BY MS. BOLEN:

25 Q Ms. Lomax, how long have you worked Self?

CHRISTIAN LOMAX: CROSS EXAMINATION

207

1 A I worked at Self for a year and a half.

2 Q A year and a half. And your job was to take blood
3 samples and other -- other samples as well, correct?

4 A Correct.

5 Q And you would work an eight hour shift or 12 hours?

6 A Twelve.

7 Q Twelve hour shifts, okay. And in addition to blood
8 samples you might take other fluid samples or other sorts of
9 tissue samples, correct?

10 A Correct.

11 Q So you're processing in your job as lab tech a good
12 number of samples during the course of a 12 hour shift,
13 correct?

14 A Correct.

15 Q Could you estimate how many you might handle during the
16 course of a 12 hour shift?

17 A I would say maybe around 1,500.

18 Q Fifteen hundred?

19 A Yeah.

20 Q In one day -- in shift?

21 A Right.

22 Q So 1,500 samples in one shift, correct? And it's -- so
23 it's fair to say that you don't have an actual memory of
24 handling Mr. Miranda's blood tube, correct?

25 A I do not.

CHRISTIAN LOMAX: CROSS EXAMINATION

208

1 Q And you said after you had scanned -- and this is just
2 your general procedure. But after you had scanned a sample
3 that you received in, you would then walk it to whatever
4 department it was supposed to go to, correct?

5 A Correct.

6 Q And you said it would be something like hematology or
7 chemistry, correct?

8 A Yeah. It just depends on which department.

9 Q But you don't know which department you walked Mr.
10 Miranda's sample to, correct?

11 A I do not.

12 MS. BOLEN: That's all I have. Thank you, Your Honor.

13 THE COURT: Anything on redirect?

14 MR. MAXEY: Nothing, Your Honor.

15 THE COURT: Thank you, ma'am. You can step down.

16 (Whereupon, the witness stepped down from the witness
17 stand.)

18 MS. WHITE: Your Honor, if we could have just a brief
19 break to see if our next witness is --

20 THE COURT: Okay. Ms. Lomax, you're free to leave or
21 you're welcome to remain with us.

22 THE WITNESS: Thank you.

23 THE COURT: Mr. Foreman, ladies and gentlemen of the
24 jury, the State needs a few minutes before the next witness
25 is called. So if you'll go back and take a short break.

1 Again, I remind you no discussion about anything related to
2 this case.

3 (Whereupon, the jury exited the courtroom at 3:19 p.m.)

4 (Whereupon, a recess was held from 3:19 p.m. to 3:29
5 p.m.)

6 THE COURT: Ms. Bolen, I understand you need to put
7 something on the record.

8 MS. BOLEN: Just really briefly just to kind of make
9 the part in front of the jury go a little smoother. We are
10 now getting into the realm of medical records and I just
11 wanted to put a few things on the record about that.

12 Number one, we had -- Ms. White and I had actually
13 previously discussed a stipulation that the wreck caused the
14 death of Mr. Miller. We were willing to stipulate to that.
15 I think we're now approaching it by entering his medical
16 records. I know the case law says that medical records
17 would come in under business exception, but that opinions
18 contained therein would not. Since we were of the position
19 that we'd stipulate to cause of death, I'm not asking them
20 to parse through and get rid of any kind of opinion, because
21 the ultimate opinion is one that we would have stipulated
22 to, that the car accident was the cause of death. So I just
23 wanted to put that on the record.

24 THE COURT: Okay, so you're not objecting to the
25 records coming in?

1 MS. BOLEN: No, sir.

2 THE COURT: You just wanted to have it noted for the
3 record that you had offered a stipulation --

4 MS. BOLEN: Right.

5 THE COURT: -- as to the wreck causing the death of Mr.
6 Miller?

7 MS. BOLEN: Uh-huh. And I think we -- yeah, we had
8 both talked about --

9 THE COURT: That stipulation is no longer -- it's off
10 the table; is that right?

11 MS. WHITE: Well, I had asked, I think it was a week, a
12 couple of weeks ago, and I think the first answer was no.
13 So I began jumping through all the hoops to prove it and
14 sort of --

15 MS. WHITE: And we had laid out our case and then --

16 MS. BOLEN: We did -- and that's true. At first I said
17 I don't think I can. But then when I did some more
18 investigation into it we were of the position that we could
19 stipulate to it. So just wanted to kind of put on the
20 record the reasons why we're not objecting to those being
21 entered.

22 THE COURT: So do we put on the record that, in fact,
23 there is a stipulation of counsel that Mr. Miller's death
24 was caused by this accident? Do we have a stipulation?

25 MS. WHITE: I'm fine with that.

1 MS. BOLEN: Yeah, I think in terms of proximate cause,
2 yes. We're not going to --

3 THE COURT: We've got a stipulation agreement as to the
4 element of proximate cause.

5 MS. BOLEN: Yes, sir. Not going into obviously who
6 caused the wreck, but just that the accident itself --

7 THE COURT: Right. I understand.

8 MS. BOLEN: The other thing, Your Honor, and I know
9 we've already been through pretrial, that, you know, we had
10 made the Fourth Amendment objection to the blood draw.
11 Again, just to kind of streamline it in front of the jury.
12 We -- as I had already let Your Honor know, we will be
13 making an objection based on chain, and then the case law
14 would require the State to prove that the blood drawn was
15 necessary for medical diagnosis. And depending on how the
16 testimony plays out, I may need to make a further objection
17 to admission based on that test of medical diagnosis.

18 THE COURT: Okay. So we'll just kind of wait and see
19 what develops.

20 MS. BOLEN: Yes, sir.

21 MS. WHITE: And, Your Honor, Ms. Bolen and I just
22 discussed this. My intention with the records custodian is
23 to mark the entirety of Mr. Miranda's medical record as
24 State's next. However, I know that there's a number --
25 there's objections to the opinions contained in the medical

1 records. So rather than actually enter -- I'm going to lay
2 the foundation to get it marked. Not enter anything, pull
3 out the blood analysis, and then enter that through a later
4 witness once our chain has been established. So that would
5 be, I guess, 28-A, or whatever.

6 MS. BOLEN: That's correct, Your Honor. And I think
7 there are opinions in there that we would object to under --
8 that they would come in under business exception. And I
9 think that way just that one page, if it's admitted, that
10 one page exhibit.

11 THE COURT: For the purposes of getting the whole
12 packet verified that it is records, and then we can handle
13 whatever is actually going to go to the jury and what's not.

14 MS. WHITE: Yes, sir.

15 THE COURT: Okay. Very good. Anything else before the
16 jury is brought out? We're good? All right, Mr.
17 Willingham.

18 I will note that stipulation once they come out that it
19 has been stipulated -- or you can state the stipulation,
20 either one of you, but we need to get it into the record
21 before the jury.

22 MS. BOLEN: Yes, sir.

23 THE COURT: So I'll let you all decide who's going to
24 actually state the stipulation.

25 (Whereupon, the jury entered the courtroom at 3:29

SHERYL HAUPFEAR: DIRECT EXAMINATION

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1 p.m.)

2 THE COURT: Let the record reflect the jury is back in.
3 Solicitor, Ms. Bolen, there has been a stipulation or
4 agreement between counsel. Who wants to put that on the
5 record in the presence of the jury?

6 MS. WHITE: Yes, sir. The Defense and the State have
7 stipulated that Peter Miller, II's, death was a proximate
8 result of the car accident. That the accident was the
9 proximate cause of his death. And that's the stipulation.

10 THE COURT: Is that a correct statement of the
11 stipulation, Ms. Bolen?

12 MS. BOLEN: Yes, sir.

13 THE COURT: All right. Thank you very much. Are you
14 ready for your next witness?

15 MS. WHITE: Yes, sir. The State calls Sheryl Haupfear.

16 SHERYL HAUPFEAR, having first been
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. WHITE:

20 Q Can you tell us your name for the record?

21 A Sheryl Haupfear.

22 Q And how are you employed, Ms. Haupfear?

23 A I work in health information management at Self
24 Regional Healthcare.

25 Q As part of your duties are you responsible for

SHERYL HAUPFEAR: DIRECT EXAMINATION

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1 maintaining medical records?

2 A Yes.

3 Q Are those records that are kept in the ordinary course
4 of business at Self Regional Healthcare?

5 A Yes.

6 Q And did you provide two different sets of medical
7 records in response to a subpoena in the case we're here on
8 today?

9 A Yes.

10 MS. WHITE: May I approach the witness, Your Honor?

11 THE COURT: You sure can.

12 (Whereupon, State's Exhibit No. 29 was marked for
13 identification.)

14 Q I'm going to hand you what's been marked for
15 identification as State's Exhibit 29. Can you identify that
16 for me?

17 A They're the medical records on Carmine Miranda.

18 Q And does that appear to contain the entirety of the
19 medical record?

20 A Yes.

21 Q And again, you said that was kept in the ordinary
22 course of business at the hospital?

23 A Yes.

24 Q And has this record, to your knowledge, been -- let me
25 hand it back to you. I'm sorry. Other than some

SHANNON ROGERS: DIRECT EXAMINATION

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1 highlighting, has that been changed or altered in any way?

2 A No.

3 MS. WHITE: Thank you, Ms. Hauptfear. Please answer any
4 questions the Defense may have for you.

5 THE COURT: Ms. Bolen?

6 MS. BOLEN: No cross-exam, Your Honor.

7 THE COURT: Thank you, ma'am. You can step down.

8 You're free to leave.

9 (Whereupon, the witness stepped down from the witness
10 stand.)

11 MR. MAXEY: The State calls Shannon Rogers.

12 SHANNON ROGERS, having been duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. MAXEY:

16 Q Could you state your name for the record, please?

17 A Shannon Rogers.

18 Q Where are you employed, Ms. Rogers?

19 A I'm employed with Self Regional Healthcare in the
20 emergency care center.

21 Q How long have you been employed at Self?

22 A Twenty-two years.

23 Q And what's your role at Self?

24 A I am right now currently the ECC supervisor on night
25 shift.

SHANNON ROGERS: DIRECT EXAMINATION

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1 Q Are you a registered nurse?

2 A I am.

3 Q Were you working on, I guess, the early morning hours
4 of October 16th, 2014?

5 A I was.

6 Q Did you treat the Defendant in this case --

7 A I did.

8 Q -- Carmine Miranda?

9 A Yes.

10 Q What were your observations of the patient when he
11 first came to you?

12 A When he arrived into the ECC the first thing we noticed
13 that he had a smell similar and consistent with alcohol. He
14 was screaming. He had an altered mental status. You could
15 tell he had some obvious injuries, as far as his legs and
16 chest.

17 Q You mentioned that he smelled of alcohol. How quickly
18 upon seeing him did you notice that smell?

19 A On arrival.

20 Q And how strong would you describe that smell?

21 A It was very strong.

22 Q Did you -- as part of your treatment of Mr. Miranda did
23 you take a sample of his blood?

24 A I did.

25 MS. BOLEN: And, Your Honor, just renew our previous

SHANNON ROGERS: DIRECT EXAMINATION

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1 motion.

2 THE COURT: So noted for the record.

3 Q And was that blood taken for purposes of medical
4 treatment?

5 A It was.

6 Q When you -- are you personally the one who drew his
7 blood?

8 A According to the chart, I drew his blood.

9 Q And what did you do with his blood once you drew it?

10 A I drew his blood -- prepared the site on his left hand
11 with a Betadine swab, drew the blood, labeled it with Mr.
12 Miranda's information. That's his name, date of birth and
13 his bar code. We labeled the blood, put it in a red
14 biohazard bag and put it into our Translogic system which
15 shoots the blood straight to the lab.

16 Q And you mentioned you used a Betadine swab. Why did
17 you use that particular one?

18 A In this case -- our standard practice is to wipe with
19 alcohol. But in this case I didn't want the alcohol pad to
20 interfere with anything that might have showed up in the
21 blood alcohol specimen, so we prepared the site with a
22 Betadine swab.

23 Q In your treatment of Mr. Miranda, did you give him any
24 substances that would have contained alcohol?

25 A No.

SHANNON ROGERS: DIRECT EXAMINATION

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1 Q And you mentioned the Translogic system. Could you
2 describe that system to the jury?

3 A The Translogic system is like the bank system, when you
4 go put a check or a deposit into the system at the bank and
5 you shoot it to the teller and she shoots you your receipt
6 or whatever back to you. That's what we had at the
7 hospital, which we put our specimens in that Translogic
8 system and we enter in a number specific for the lab and it
9 shoots it straight to the lab.

10 Q Did you use a new clean specimen tube for Mr. Miranda's
11 blood?

12 A I did.

13 Q And once you labeled it with his personal information
14 and put it into the Translogic tube where did you send it?

15 A To the lab.

16 Q I want to ask you a couple questions about the actual
17 tube the blood is in. Did you seal it when you -- when you
18 put the specimen inside of it?

19 A Okay. So the lab tubes come with a stopper on the top.
20 You can open them before you put blood in them. Once the
21 blood is in the tube you can't -- if you open that tube the
22 blood specimen goes everywhere. So we did not -- we used a
23 clean tube with a seal on it. The seal was not breached.
24 The blood was inserted into a clean tube, and the tube was
25 labeled and sent to the lab.

SHANNON ROGERS: CROSS EXAMINATION

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1 Q Do you specifically remember treating Mr. Miranda?

2 A I do.

3 MR. MAXEY: No further questions for you, Ms. Rogers.

4 Please answer any questions the Defense has for you.

5 THE COURT: Cross-examination?

6 MS. BOLEN: Yes, sir.

7 CROSS-EXAMINATION

8 BY MS. BOLEN:

9 Q Ms. Rogers, you just said you did specifically remember
10 treating Mr. Miranda, correct?

11 A Yes.

12 Q But a minute ago you said, when asked about drawing the
13 blood, you said according to the chart, correct? You said
14 -- when asked if you were the one to draw the blood you said
15 according to the chart I drew the blood, correct?

16 A Yes. But I am present in all traumas because I'm the
17 ECC supervisor. On this particular night we had two
18 critical patients. I was back and forth between each
19 patient. But I drew his blood, and I remember drawing his
20 blood.

21 Q Okay. You said upon arrival he was screaming and had
22 obvious injuries, correct?

23 A Correct.

24 Q And you said some of those obvious injuries were to his
25 legs?

SHANNON ROGERS: CROSS EXAMINATION

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- 1 A Correct.
- 2 Q And to his chest?
- 3 A Correct.
- 4 Q And he also had some head injuries as well, right?
- 5 A Correct.
- 6 Q And you said that your typical practice would be to
- 7 swab with an alcohol swab, correct?
- 8 A That's correct.
- 9 Q But you deviated from that typical practice in this
- 10 case, right? You used a Beta -- was it Beta --
- 11 A Betadine.
- 12 Q -- Betadine?
- 13 A Uh-huh.
- 14 Q So you did something different in this case, correct?
- 15 A I did.
- 16 MS. BOLEN: Thank you. Nothing further, Your Honor.
- 17 THE COURT: Anything on redirect?
- 18 MR. MAXEY: No, sir, Your Honor.
- 19 THE COURT: Thank you, ma'am. You may step down.
- 20 You're free to leave.
- 21 (Whereupon, the witness stepped down from the witness
- 22 stand.)
- 23 MR. MAXEY: Can we approach, Your Honor?
- 24 THE COURT: You sure can.
- 25 (Whereupon, a sidebar was held.)

1 THE COURT: Okay. Mr. Foreman and ladies and gentlemen
2 of the jury, it's my understanding from the State that they
3 have a couple more witnesses but those witnesses will not be
4 here until in the morning. So we're going to go ahead and
5 break for the day. We'll start back at 9:30 in the morning.
6 And I caution you again not to discuss this case among
7 yourselves or with anyone that you come into contact with.
8 No research -- independent research is to be done by you.
9 And have a good evening, get a good night's rest, and we'll
10 see you in the morning at 9:30.

11 (Whereupon, the jury was released at 3:44 p.m.)

12 THE COURT: Okay. We'll be in recess until 9:30 in the
13 morning.

14 MS. WHITE: Thank you, Your Honor.

15 MS. BOLEN: Thank you.

16 TRIAL DAY 3-08/03/2016

17 THE COURT: Are we ready to bring the jury out?
18 Anything we need to put on the record?

19 MR. MAXIE: Yes, Your Honor.

20 THE COURT: The Defense ready?

21 MS. BOLEN: I'm sorry.

22 THE COURT: Is the Defense ready?

23 MS. BOLEN: Yes, Your Honor.

24 THE COURT: Very good. Would you bring the jury out,
25 please.

CHRIS ALLSEP: DIRECT EXAMINATION

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1 (Whereupon, the jury entered the courtroom at 9:48
2 a.m.)

3 THE COURT:/ Let the record reflect the jury is back in.
4 Good morning, ladies and gentlemen. Hope you had a good
5 restful evening and ready to get back to work. Solicitor?

6 MR. MAXEY: Yes, Your Honor. The State calls Chris
7 Allsep to the stand.

8 CHRIS ALLSEP, having first been
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MAXEY:

12 Q Please state your name for the record.

13 A My name is Chris Allsep.

14 Q And where are you employed, Mr. Allsep?

15 A At Self Regional Healthcare.

16 Q And what department are you employed with?

17 A The laboratory.

18 Q Were you employed with the laboratory in 2014?

19 A Yes, I was.

20 Q Were you employed with the laboratory in 2014?

21 A Yes, I was.

22 Q Were you employed in the chemistry division in the lab?

23 A Yes.

24 Q Were you on shift on October 16th, 2014?

25 A I was.

CHRIS ALLSEP: DIRECT EXAMINATION

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1 Q What other lab techs were on shift with you?

2 A Christy Lazzo was with me..

3 Q Were there any other lab techs on shift in that
4 department that night?

5 A No.

6 Q Were the two of you responsible for all blood alcohol
7 testing that night?

8 A Yes.

9 Q Would you have tested a blood alcohol sample received
10 to the lab if it had been tampered with?

11 A No.

12 MS.. BOLEN: Your Honor, I just renew our previous
13 objections.

14 THE COURT: So noted.

15 Q And how could you tell if the tube had been tampered
16 with?

17 A There's a good vacuum on the tube and if the top had
18 been popped it would have been real loose.

19 Q And you wouldn't put a tube with a top that had been
20 popped into the testing machine?

21 A Correct.

22 Q So was the tube -- all tubes received, were they
23 labeled with patients' personal information?

24 A They are. They have a bar code label on them.

25 Q And each time -- and what do you do with the bar code

CHRIS ALLSEP: DIRECT EXAMINATION

224

1 each time you test the sample?

2 A When we put it in the -- on the instrument, the
3 instrument reads the bar code.

4 Q And what instrument are you referring to?

5 A The Vista 1500, which is our chemistry instrument.

6 Q And do you, as part of your job as a lab tech, retrieve
7 all the samples from the Centrifuge and put them in the
8 machine?

9 A Yes, I do.

10 Q Now, how does the instrument that you're referring to
11 ensure reliability?

12 A We run a quality control every eight hours.

13 Q And how does that quality control work?

14 A We have reagents, QC agents that we put on the machine.
15 And the machine asks for it and we put it on and it runs the
16 test and we make sure we get accurate results.

17 Q Was the instrument working properly that evening?

18 A Yes, it was.

19 Q How long have you worked in your role at Self Regional
20 as a lab technician?

21 A Twenty-five years.

22 Q So if you had to estimate -- I know you can't put a
23 hard number on it. But since October 16th, 2014 how many
24 lab tests have you performed of blood samples?

25 A Thousands.

CHRIS ALLSEP: DIRECT EXAMINATION

225

1 MR. MAXEY: Beg the Court's indulgence for just a
2 minute.

3 THE COURT: Sure.

4 MR. MAXEY: I'm showing Defense counsel what's been
5 premarked for identification as State's Exhibit 29A as it's
6 part of State's 29. May I approach the witness?

7 THE COURT: You sure can.

8 Q What is that document, Mr. Allsep?

9 A It's the printout for the blood alcohol.

10 Q And can you explain what that 199 is on the ---

11 A That's the instrument code. And the results comes from
12 the instrument into the computer. If it's a normal result
13 that doesn't need any human intervention it will
14 automatically result, and that puts the instrument code on
15 it when that happens.

16 Q So just to clarify. Neither you, nor Ms. Lazzo would
17 have performed any additional analysis? The machine did all
18 of it?

19 A Correct.

20 Q And the machine passed all the quality control
21 parameters you were talking about?

22 A Yes, it did.

23 MR. MAXEY: At this time the State would move 29A into
24 evidence.

25 MS. BOLEN: Your Honor, at this time we have a matter

1 of law to take up.

2 THE COURT: All right. Mr. Foreman, ladies and
3 gentlemen of the jury, we have a legal issue that I need to
4 discuss with the lawyers outside of your presence. So if
5 you will go back to the jury room. Again, no discussion
6 about this case. We'll get you back out shortly.

7 (Whereupon, the jury exited the courtroom at 9:55 a.m.)

8 THE COURT: Ms. Bolen, I'll be glad to hear from you.

9 MS. BOLEN: Thank you, Your Honor. First of all, I'm
10 just reviewing our pretrial motion under the Fourth
11 Amendment.

12 THE COURT: Right.

13 MS. BOLEN: Moving on from that, Your Honor. We are
14 objecting to the introduction of the lab test results. It's
15 actually on two grounds, Your Honor. First the case law
16 requires that if law enforcement does not get a warrant and
17 the State seeks to introduce blood that was drawn without a
18 warrant, that the State can only do that when that blood was
19 taken for the purposes of medical diagnosis, Your Honor.
20 And some of the cases on that, Your Honor, is -- the primary
21 one is State vs. Hunter. The cite on that, Your Honor, is
22 305 S.C. 560 which discusses that a test could be admissible
23 if it's conducted for the purpose of medical diagnosis and
24 treatment.

25 Your Honor, it's our position that this test was

1 actually done for evidentiary reasons. The two pieces of
2 evidence we'd want to draw Your Honor's attention to,
3 yesterday Nurse -- I believe it's Nurse Rogers, Shannon
4 Rogers, she testified that when she -- she was the one to
5 draw the blood, and she testified that when she drew the
6 blood she did not follow her normal procedures. Normally
7 she would have used an alcohol swab and that she, in this
8 case, used a Betadine swab. So she deviated from her normal
9 procedures which, I think, goes to the fact that she knew,
10 and the hospital staff knew that this was being taken for
11 evidentiary reasons. In addition, Your Honor, Mr. Allsep -
12 I hope I'm pronouncing that right, referred to this not as
13 any sort of medical blood draw, but he kept calling it a
14 blood alcohol sample. That he received the blood alcohol
15 sample. He tested the blood alcohol sample. I think it's
16 clear that this blood draw was being used for evidentiary
17 reasons and not for medical diagnosis or treatment. There's
18 actually not been any testimony presented by the State that
19 there was any need for a medical diagnosis for treatment for
20 this blood draw. Here where there's not a warrant by law
21 enforcement, the law requires that in order to be admissible
22 the blood draw has to be done for medical diagnosis and
23 treatment. I think the testimony here shows the opposite.
24 I think it shows that the blood was taken for evidentiary
25 reasons.

1 My second objection, Your Honor -- and again, still
2 renewing our pretrial motions. But my second objection is
3 based on chain of custody. That even in situations where
4 our higher courts have allowed warrantless blood draws to
5 come in when they are -- when they are taken for medical
6 diagnosis, our higher courts require that there be a chain
7 of custody established. The principal case on this -- and
8 actually, Your Honor, there's a couple of cases on chain of
9 custody with medical blood draws and DUIs. There's two of
10 them that are under *State v. Williams*, but the one I would
11 want to draw Your Honor's attention to is *State v. Michael*
12 *Wayne Williams*. The cite on that is 301 S.C. 369, in which
13 the court found that there were cumulative breakdowns in
14 chain of custody such that the blood was not admissible.
15 Here, Your Honor, what we've had for a chain is the nurse
16 who first testified that her records indicated she drew the
17 blood. Then we have a lab tech who testified yesterday who
18 couldn't say whether she -- she didn't remember anything
19 about Mr. Miranda's case. She said she had 1,500 samples in
20 one shift. I believe Mr. Allsep, who also cannot say that
21 he was the one to analyze it. It was down to him or one
22 other person. And I think that simply doesn't meet the
23 requirements under *State v. Michael Wayne Williams*. In that
24 case, Your Honor -- and again, in that case the admission of
25 the blood was found to be error because they couldn't

1 establish the chain of custody. And they -- some of the
2 language from the court, Your Honor, is no one could
3 identify the person who sealed and labeled the blood.
4 Although the blood sample was received in the lab, neither
5 ER nor laboratory personnel could recall by whom it was
6 transported. And apparently in that case the record was
7 also mislabeled initially. It's our position that this
8 blood should be suppressed, number one, on the basis that it
9 was taken for evidentiary reasons rather than for medical
10 diagnosis. And number two, that the State cannot prove the
11 necessary chain of custody to make the results trustworthy,
12 Your Honor.

13 THE COURT: My notes, I specifically wrote down -- and
14 I recognize and I remember Shannon Rogers, the RN, saying
15 that she -- and I'm not going to state this correctly. But
16 she did it a little different as far as leading up to the
17 actual drawing of the blood. I don't think she gave a
18 reason why. But she did specifically say that she took the
19 sample of blood for medical treatment purposes. And I've
20 written that in my notes. So if I wrote it, then I have to
21 assume that's what she testified to.

22 But let me take a look at those two cases that you've
23 just cited.

24 MS. BOLEN: Yes, sir.

25 THE COURT: And then I'll be glad to hear from you,

1 Solicitor Maxey. I just want to take a look at this first.

2 (Whereupon, there was a pause in the proceedings.)

3 The *State vs. Hunter* case I'm not really certain that
4 that even is applicable to our case. But be that as it may,
5 the nurse did specifically testify that she took it for
6 medical treatment purposes. And so, based upon that, I'm
7 going to deny your motion to suppress on the first ground.

8 The second ground, what we have -- all right. We've
9 got Shannon Rogers, the ER nurse, who is the one who
10 actually drew the blood. Now, the fact that none of these
11 people can specifically remember Carmine Miranda's blood
12 test, that in and of itself I don't think makes the chain of
13 custody fatally defective. But we've got Shannon Rogers who
14 said yes, based upon the records she was the one to draw the
15 blood. And she puts it in the chute like a bank. She and
16 Lomax both referred to it as a bank chute at a drive-in
17 window.

18 MS. BOLEN: Yes, sir.

19 THE COURT: And next to Christina Lomax who then codes
20 it into the computer and does whatever, and then puts it in
21 the Centrifuge. And then this witness here picks it up from
22 the Centrifuge. So I think the chain of custody is pretty
23 -- pretty tight, notwithstanding the fact that none of the
24 three witnesses can say, oh yes, I remember Carmine Miranda,
25 even though the nurse did say I remember treating him. So

1 there was some recognition there.

2 In the Williams case it says no one present in the
3 emergency room could identify the person who sealed and
4 labeled the blood with Williams' patient number, which is
5 not the case here. Additionally, although the blood sample
6 received in the laboratory, neither ER nor laboratory
7 personnel could recall by whom it was transported. Again,
8 that's not the case here. It says moreover Williams' ER
9 record was initially mislabeled, and that's not the case
10 here. So -- and I'm not trying to argue for the State, and
11 certainly, Solicitor Maxey, if you want to add anything on
12 the record. But I believe I'm going to deny your motion to
13 suppress and allow it in.

14 MS. BOLEN: Your Honor -- I understand, Your Honor.
15 Can I just put -- just to kind of protect the record.

16 THE COURT: Oh, sure. Put whatever you need to.

17 MS. BOLEN: Thank you, Your Honor. The reason I cited
18 the *Hunter* case was simply to establish the standard of
19 medical diagnosis. I know it's a different sort of ruling
20 and slightly different set of facts.

21 THE COURT: Right.

22 MS. BOLEN: But just to establish that that is the
23 legal standard required. And just to put one more case on
24 the record, Your Honor, for our -- the chain of custody.
25 We'd cite *State v. Cribb* which is at 310 S.C. 518. And I

1 meant to include this in my initial motion, Your Honor, and
2 I did not.

3 THE COURT: Give me that case again.

4 MS. BOLEN: 310 S.C. 518.

5 THE COURT: What's the defendant's name?

6 MS. BOLEN: *State v. Cribb*, C-r-I-b-b.

7 THE COURT: Let me look at that. Because if you felt
8 like it's important to put it on the record, I need to look
9 at it.

10 (Whereupon, there was a pause in the proceedings.)

11 Yeah, and *Cribb* even says the identity of the persons
12 handling the blood was required to establish chain of
13 custody. That's exactly what we've got. We've got the
14 three individuals that have been identified who handle the
15 blood. There's a recent case that came out, *State vs. Pope*.
16 I want to take a look at that real quickly to see if that
17 helps in any way.

18 And I'll let you continue, Ms. Bolen, in just a second.

19 MS. BOLEN: Thank you, Your Honor. Just to put one
20 more thing on.

21 THE COURT: Sure. Just wait just a second.

22 MS. BOLEN: Yes, sir.

23 THE COURT: What else would you like to put on the
24 record, Ms. Bolen?

25 MS. BOLEN: Your Honor, again, just to make sure. Just

1 to make sure the record is complete. I think one of the
2 distinguishing things with this case in Cribb, Cribb
3 requires that the individuals be able to be identified in
4 here. I think the State can't establish that it was Mr.
5 Allsep versus Ms. Lazzo who would have handled the blood.

6 MR. MAXEY: It had to have been one -- they were the
7 only two people working the lab that night. They're not the
8 ones who would have actually performed any additional
9 analysis. They simply would have put the tube in the
10 machine, and that it's sealed. I mean, uncontroverted
11 testimony in the record is that it was sealed. Mr. Allsep
12 said so. Every witness in the chain said it was.

13 THE COURT: Right.

14 MR. MAXEY: Additionally, I mean involved in the case
15 as far as fungible evidence, as I'm sure Your Honor is
16 aware, is *State vs. Hatcher* which simply requires us to
17 prove the chain of custody as far as is practicable, and
18 it's our position the State has done that in this case. The
19 facts of this case are easily distinguishable from *Williams*,
20 as Your Honor pointed out, and *Cribb* where we do know who
21 the nurse who drew the blood was, who testified that she
22 specifically remembered drawing his blood. And then, of
23 course, she also reviewed the records. But it's our
24 contention that chain of custody has been proven here. And
25 any defects would go to weight, not admissibility.

1 THE COURT: Other than the -- just for my information.
2 Other than the test result page that you've handed to this
3 witness, is there any other documents generated out of the
4 chemistry lab department or office other than just that one?

5 MS. WHITE: There are labs. There's other labs.

6 THE COURT: I mean, you can ask him.

7 MR. MAXEY: I mean, there are other documents from the
8 lab in that stack of -- giant stack of paper he has.

9 MS. WHITE: Yes, sir. There's a CVC that I believe
10 would have been run at a blood bank, which is in the lab,
11 and there's other -- other tests. They basically -- and the
12 next witness will clear this up. They ran a complete workup
13 on him. Blood type, complete blood count, blood analysis,
14 urine drug screen. So there were a lot of tests run in the
15 lab that night.

16 THE COURT: What document reflects the fact that it was
17 Chris Allsep and Christy Lazzo who was in the lab that
18 night? Is it on this ---

19 MR. MAXEY: It's not on that form. No, sir.

20 THE COURT: How are you able to determine that?

21 MR. MAXEY: Payroll records of who was working in the
22 lab that night.

23 THE COURT: So how does he know that either he or Lazzo
24 were the two lab techs that actually did the analysis, or
25 put the thing in the Vista machine to do the analysis?

1 MR. MAXEY: They were the only two on shift that night.

2 THE COURT: Well, that's what you're telling me. How
3 does he know that?

4 Q How do you know that?

5 THE COURT: That he was working on the October 16th of
6 2014.

7 THE WITNESS: My payroll records show that I was
8 working that night, and I was in chemistry.

9 THE COURT: You've looked at those records to --

10 THE WITNESS: Yes.

11 THE COURT: -- confirm that you were working, and that
12 Lazzo as working?

13 THE WITNESS: Correct.

14 THE COURT: Okay. I'm going to go ahead and still deny
15 the motion to suppress --

16 MS. BOLEN: Yes, sir.

17 THE COURT: -- and allow the results to come in.

18 MS. WHITE: Your Honor, can we have just a really quick
19 sidebar --

20 THE COURT: Sure.

21 MS. WHITE: -- just while the jury's out.

22 THE COURT: Okay. Mr. Willingham, if you'll bring the
23 jury back out.

24 (Whereupon, the jury entered the courtroom at 10:15
25 a.m.)

CHRIS ALLSEP: DIRECT EXAMINATION

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1 THE COURT: Let the record reflect the jury's back in.

2 Solicitor Maxey, you want to proceed with this witness?

3 MR. MAXEY: Yes, Your Honor.

4 Q What is that document?

5 A It's the blood alcohol level.

6 Q And is that a fair and accurate copy of --

7 A Yes, it is.

8 MR. MAXEY: At this time the State will move State's
9 29A into evidence.

10 THE COURT: Okay. And --

11 MS. BOLEN: Just on our -

12 THE COURT: Your objection is so noted for the record.
13 And it will come into evidence on behalf of the State as
14 Exhibit No. 29A.

15 (Whereupon, State's Exhibit No. 29A was admitted into
16 evidence.)

17 Q Mr. Allsep, could you read off of that printout what
18 Mr. Miranda's blood alcohol level was?

19 A It's 208.

20 Q Now, is that -- is it a .208 as it would normally be
21 represented?

22 A For our purposes it's 208, but it would correlate to .2
23 percent.

24 MR. MAXEY: The State has no further questions for this
25 witness. Please answer any questions the Defense has.

SCOTT JONES, M.D.: DIRECT EXAMINATION

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1 MS. BOLEN: I don't have any cross, Your Honor.

2 THE COURT: Okay. So just let me make sure that I
3 understood you correctly. You use it 208, but as the
4 Solicitor said that equates to a .208; is that correct?

5 THE WITNESS: Correct.

6 THE COURT: Thank you, sir. You can step down. If
7 there's no objection, Mr. Allsep, you are free to leave or
8 you're welcome to remain with us.

9 THE WITNESS: Thank you.

10 (Whereupon, the witness stepped down from the witness
11 stand.)

12 MS. WHITE: The State calls Dr. Scott Jones.

13 DR. SCOTT JONES, having first been
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. WHITE:

17 Q Good morning.

18 A Good morning.

19 Q If you can tell us your name for the record.

20 A Scott Heath Jones.

21 Q And how are you employed, Mr. Jones?

22 A I'm employed through Self Medical Group at the
23 hospital.

24 Q What's your position with Self Medical Group?

25 A I'm an ER physician.

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1 Q And what sort of educational background do you have?

2 A I went to Irmo High School in Columbia. I went to
3 Wofford for undergrad. Went to the USC School of Medicine
4 in Columbia. And then my residency at Richland Memorial in
5 Columbia as well.

6 Q How long have you been an ER physician?

7 A This is going into my twelfth year.

8 MS. WHITE: Your Honor, the State offers Dr. Jones as
9 an expert in emergency medicine.

10 MS. BOLEN: That's without objection, Your Honor.

11 THE COURT: Without objection, Dr. Jones is deemed to
12 be an expert in the field of emergency medicine.

13 Q Approximately how many patients do you see on a daily
14 basis?

15 A We see anywhere from, on a low day, probably 20. A
16 busy day it could be over 40. I do 15 shifts a month.

17 Q So do you have any independent recollection of treating
18 Mr. Miranda?

19 A Vaguely. You know, you see a lot of people on a
20 day-to-day basis. Usually the bigger things, the major
21 traumas, people with severe illness, you tend to remember a
22 little bit more. It's just, I think, a natural human --

23 Q Would it help you testify here today if I gave you a
24 copy of the chart?

25 A Yes, ma'am.

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1 MS. WHITE: May I approach the witness, Your Honor?

2 THE COURT: Sure.

3 Q I'm going to hand you what we've just marked for
4 identification as State's 29A. Excuse me, 29. And also 29A
5 which is in evidence.

6 A Thank you.

7 Q Were you working on October the 16th, 2014?

8 A Yes, ma'am.

9 Q Were you treating physician for Carmine Miranda?

10 A Yes, ma'am.

11 Q When Mr. Miranda -- how did Mr. Miranda come into the
12 emergency room that night?

13 A I believe, looking at the chart, he came in by
14 ambulance, EMS.

15 Q And what was his condition when he arrived?

16 A Let me review the chart here. I think that when,
17 looking through the chart, he was obviously injured. I
18 think he had an injury to his right leg with obvious
19 deformity, which usually points to a fracture. Had a scalp
20 laceration. Looking at the chart it looks like he was
21 confused and disoriented. So, I mean, a pretty big trauma,
22 just on initial evaluation.

23 Q What tests did you order on Mr. Miranda when he came
24 in?

25 A Anybody that's a trauma patient we have a -- what we

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1 call bundles, and what that means is that you -- on a
2 computerized system you can click one button and it orders a
3 whole host of tests, so that way you don't forget anything.
4 We have one for cardiac, if somebody is having a heart
5 attack, or a psychiatric patient on trauma. I believe the
6 trauma panel includes a CBC, which is a complete blood
7 count, electrolytes and some BMP, coags, which is --
8 sometimes people are on a blood thinner like Coumadin or
9 Plavix or something like that can make them bleed more
10 readily, so we have to be aware of that. I'm trying to
11 think what else. A urine drug screen, a urinalysis and
12 alcohol level. And then x-rays and CT scans.

13 Q And are all of those lab tests you just mentioned, are
14 they all ordered as part of his medical diagnosis and
15 medical treatment?

16 A Correct. Yes, ma'am.

17 Q Do you know from looking at your chart about what time
18 you ordered those?

19 A I can. Give me just a second. It's going to take a
20 minute. So it looks like it was around -- that's the
21 medication. Let me look at the labs. About 1:16 it
22 appears.

23 Q And you said that you also ordered some x-rays. Did
24 the x-rays reveal any fractures to his legs?

25 A Yes, I believe. Let me look here again. Give me just

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1 a second. I'm sorry. It looks like he got a femur fracture
2 midshaft, and it was displaced in comminuted, which means it
3 was in a couple different pieces. And I believe he had some
4 fractures of his ribs and fractures in his vertebral bodies.
5 The transverse processes. Let me see if I can look back
6 here.

7 Q Let me stop you right there for just a second.

8 A Sure.

9 Q You said it was his right leg, right femur that was
10 fractured?

11 A Let me check and make sure. Yes, it was his right
12 femur.

13 Q How many drivers of motor vehicles that have been
14 involved in collisions would you say you treat at any given
15 year?

16 A I mean, if you're talking about all motor vehicle
17 collisions, I'd say, I mean, hundreds. Obviously the major
18 traumas are not as frequent.

19 Q Are leg injuries to the right leg consistent with what
20 you would see of the driver of a motor vehicle?

21 MS. BOLEN: Your Honor, I'd have to object just because
22 there's not been any foundation laid with -- accidents can
23 happen in all sorts of different ways, Your Honor, during
24 the impact.

25 THE COURT: Solicitor, I'm going to sustain the

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1 objection at this time. But if you could provide a little
2 bit more foundation and then we'll see how you want to go
3 about it.

4 Q Have you treated individuals who have been the driver's
5 of cars involved in a head on collision?

6 A Yes, ma'am.

7 Q And have you treated individuals who have been the
8 driver with a head on collision where the passenger
9 compartment collapses in, for lack of a better word?

10 A Yes, ma'am.

11 Q And in those cases were the individuals verified to
12 have been the driver of those vehicles?

13 A Yes, ma'am.

14 Q And is a fracture of the leg consistent with the driver
15 of a vehicle involved in a head on collision?

16 A It came be. Usually what you see a lot of times is
17 when people involved in an impact they'll extend their legs
18 to slam on the brakes, and that force will be transmitted up
19 to the ankle or to the femur bone and result in a fracture.

20 Q Now, turning to the blood alcohol test you ordered. Do
21 you have the results up there?

22 A Yes, ma'am.

23 Q And what were the results of that blood alcohol test?

24 A It was 208.

25 MS. BOLEN: And, Your Honor, just renewing our

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1 objection.

2 THE COURT: So noted.

3 Q What does a 208 mean in the average person?

4 A The alcohol level, it helps to guide us as far as if
5 somebody comes in and they're in a trauma, it gives us a
6 reason for them to be altered in the lack of other findings.
7 Obviously you look for everything, but you can't find
8 anything if the alcohol level is elevated, and that makes --
9 points towards alcohol intoxication. The 208 is obviously
10 above the legal limit.

11 MS. BOLEN: Objection to that. It's outside the realm
12 of this.

13 THE COURT: Sustained.

14 A The level of 208 in most people would result in some
15 impairment, and depending on how much he drank on a
16 day-to-day basis. A heavy drinker, that could be, you know,
17 minor impaired. Somebody that's a novice drinker could be
18 almost comatose. We can't wake them up.

19 Q And turning to Mr. Miranda specifically, was there --
20 did he have altered mental status that night?

21 A Looking at the chart, it looks like -- I know that he
22 was confused and disoriented, and on some of the things we
23 asked, like a review of systems, social history, he was
24 unable to answer those questions. So yes, ma'am.

25 Q Were there any findings on the CT scans that would have

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1 indicated any sort of head injury?

2 A Let me look through here. We look at the CT scan as
3 well as the radiologist. They give us the final report. So
4 the way -- when we order trauma CT scans we will look at
5 them initially when they come back and kind of get an idea.
6 But then it's actually -- through telemedicine we have
7 somebody remotely that views them and sends back a final
8 report. And looking on the chart, the radiologist did not
9 note any obvious findings. There was no -- we looked for
10 any types of bleeding or skull fractures or anything like
11 that and there wasn't anything on there.

12 MS. WHITE: Thank you, Dr. Jones. Please answer any
13 questions Ms. Bolen may have for you.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Cross-examination?

16 MS. BOLEN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. BOLEN:

19 Q Dr. Jones, you said that when Carmine came in the
20 emergency room he had just been through what I think you
21 called a pretty big trauma?

22 A Yes, ma'am. Major trauma is what we call those.

23 Q Major trauma, correct?

24 A Yes, ma'am.

25 Q And this was, you said, around 1:00 in the morning?

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1 A Yes, ma'am. It looks like he arrived at 1:13. That's
2 usually a little bit behind, because when the patient comes
3 in we start evaluating and then register them a couple
4 minutes later. So about 1:00 in the morning. Yes, ma'am.

5 Q And, in fact, Carmine didn't stay at Self, correct?

6 A No. He was transported to Greenville.

7 Q He was actually airlifted to Greenville?

8 A Yes, ma'am.

9 Q Because his injuries were so severe?

10 A Yes, ma'am.

11 Q He stayed there for a few weeks, correct?

12 A I'm not sure how long he stayed there afterwards.

13 Q And you said that his -- it was his right femur that
14 was broken, correct?

15 A Yes, ma'am. Looking at the chart that's what it
16 appears to be. Yes, ma'am.

17 MS. BOLEN: That's all I have. Thank you, Your Honor.

18 MS. WHITE: No redirect, Your Honor.

19 THE COURT: All right. You can step down, Doctor.

20 THE WITNESS: Thank you.

21 THE COURT: And you are free to leave.

22 THE WITNESS: Thank you, sir.

23 (Whereupon, the witness stepped down from the witness
24 stand.)

25 THE COURT: Solicitor?

1 MS. WHITE: The State rests, Your Honor.

2 THE COURT: All right. Mr. Foreman, ladies and
3 gentlemen of the jury, we're going to take a morning break
4 and we'll get you back out shortly. Again, no discussion
5 about this case among yourselves.

6 (Whereupon, the jury exited the courtroom at 10:30
7 a.m.)

8 THE COURT: Does the Defense have any motions they want
9 to put on the record?

10 MS. BOLEN: Yes, sir. At this time we renew all of our
11 pretrial as well as trial motions and objections.

12 Particularly we renew our pretrial motion of the Fourth
13 Amendment regarding the blood draw, pretrial motion on the
14 videotape statute issue and the pretrial motions in limine
15 regarding certain pieces of testimony. We also renew any
16 motions and objections made during trial, particularly the
17 motion on the blood draw, both under Fourth Amendment and
18 under the medical diagnosis and chain of custody grounds.

19 Your Honor, we also make at this time a motion for a
20 directed verdict on the basis that the State has not
21 provided to the jury evidence that Mr. Miranda was the
22 driver, and since that is an essential element of the
23 State's case we move for a directed verdict on the basis
24 that substantial evidence on that has not been given in the
25 case.

1 THE COURT: Thank you very much. Viewing the evidence
2 in light most favorable to the State in determining the
3 existence of any evidence and not considering its weight, I
4 will respectfully deny your motion --

5 MS. BOLEN: Yes, sir.

6 THE COURT: -- and your pretrial motions are still
7 denied.

8 MS. BOLEN: Yes, sir.

9 THE COURT: Thank you very much. Let's take a short
10 little break. Let me talk to the lawyers back in chambers
11 for just a moment.

12 (Whereupon, a recess was held until 10:58 a.m.)

13 THE COURT: We are back on the record. Before we
14 discuss charges I want to go ahead and, Ms. Bolen or Ms.
15 Able, have you explained to Mr. Miranda about the Court
16 advising him as to his rights to testify or not testify?

17 MS. BOLEN: Yes, sir. Well, I haven't told Your Honor,
18 advised him, but I have spoken with him about this at
19 length.

20 THE COURT: Okay. Madam Clerk, would you swear Mr.
21 Miranda in, please. Can you raise your right hand, sir?

22 CARMINE MIRANDA, having first been
23 duly sworn, testified as follows:

24 THE COURT: Mr. Miranda, at this time I'm going to
25 explain to you certain of your rights. If you do not

1 understand anything that I say, let me know that. If you
2 want me to explain anything in more detail, please let me
3 know that as well. Do you understand, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: We have now reached the stage of the trial
6 where you may present your defense. You have the right to
7 claim the protections given to you by the Fifth Amendment to
8 the Constitution of the United States, and this amendment
9 states in part, "No person shall be compelled in any
10 criminal case to be a witness against himself." This means
11 that you cannot be required to testify in this case. You
12 have the right to testify on your own behalf, however no one
13 can make you testify. This is a personal right and no one
14 can waive this right except you, sir. If you decide to
15 testify you'll be subject to the same rules that govern
16 other witnesses and you may be examined and cross-examined
17 on any relevant issue in this case. In addition, if you
18 have any convictions involving dishonesty or false
19 statement, or for crimes punishable by imprisonment for more
20 than one year and this Court determined that the probative
21 value of admitting this evidence outweighs its prejudicial
22 effect to you, the Solicitor would be able to introduce your
23 record to attack your credibility. If you decide to
24 testify, this decision on your part must be freely,
25 voluntarily and intelligently made with knowledge of the

1 protections given to you by the Fifth Amendment and the
2 consequences of your decision to testify. If you decide not
3 to testify, I will instruct the jurors that they cannot give
4 the fact that you did not testify any consideration
5 whatsoever and that there is to be absolutely no prejudice
6 to you because you did not testify. It is left entirely up
7 to you whether or not you testify. You certainly have the
8 right, which you already have, as I understand it, discussed
9 this issue with your attorneys, but the final decision will
10 be left entirely up to you.

11 Have you understood everything I've explained to you,
12 sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions about what I have
15 explained to you?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Okay. Have you made a decision of whether
18 or not you're going to testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And what is that decision?

21 THE DEFENDANT: I'm not going to testify.

22 THE COURT: Okay. Is that decision made by you freely
23 voluntarily and intelligently?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Thank you very much, sir.

1 THE DEFENDANT: Thank you.

2 THE COURT: All right. Before we discuss the charges,
3 when we bring the jury out I'll just say is the Defense
4 ready and then you can state on the record in the presence
5 of the jury that the Defense rests.

6 MS. BOLEN: And, Your Honor, since we are -- I'm going
7 to put on the record that I'm resting, I would just want to
8 -- since this is effectively the close of our case, just
9 renew our pretrial motions and objections and our trial
10 motions and objections.

11 THE COURT: Certainly. So noted for the record. Have
12 both sides had an opportunity to review the proposed charge?

13 MS. BOLEN: Yes, sir.

14 THE COURT: I'll ask the State. Any requested changes,
15 additions?

16 MR. MAXEY: No, sir. I'm just kind of confused as to
17 the order.

18 MS. WHITE: We might be missing one page, Your Honor.

19 MR. MAXEY: Yeah.

20 MS. WHITE: I think 171 might be missing.

21 THE COURT: Now, the --

22 MR. MAXEY: And there are two 170s.

23 THE COURT: Disregard page numbers. Let's just look at
24 content and make sure that content-wise that it does go in a
25 logical order.

1 MS. WHITE: Sorry, Your Honor. I think we're just
2 trying to -

3 THE COURT: Yeah, disregard page numbers.

4 MS. WHITE: I think my content is matching up. I just
5 think I may be looking at this --

6 THE COURT: Well, let's do this.

7 MS. WHITE: I understand, Your Honor. The pages were
8 in the -- I think I can --

9 THE COURT: Are you good now?

10 MS. WHITE: I believe so.

11 THE COURT: All right. Solicitor, other than being a
12 little confused by the --

13 MR. MAXEY: Just generally, yes, Your Honor. I mean,
14 it looks good.

15 THE COURT: All right. Now, Ms. Bolen, other than what
16 we discussed in chambers, which you can put on the record,
17 anything -

18 MS. BOLEN: Well, yes. I would want to put our
19 chambers discussion on the record, Your Honor.

20 THE COURT: Right.

21 MS. BOLEN: And also -- and again, I know we're not
22 using page numbers. But there's a couple of changes I would
23 as for, Your Honor. The handwritten -- I'm showing it's
24 page 172, but I believe it's the only page where Your Honor
25 has handwritten --

1 THE COURT: Up to the top?

2 MS. BOLEN: I see from the parenthetical there that
3 you're referring to the act forbidden. We would just ask
4 that it says "crossed the center line" rather than the
5 amount of detail given there.

6 THE COURT: All right. You want -- I've written,
7 "State alleges the Defendant crossed the center line of
8 travel into the oncoming lane of travel that Mr. Miller was
9 in," and you want me to change that to what?

10 MS. BOLEN: To just "crossed the center line". I think
11 that was --

12 THE COURT: Crossed the center line?

13 MS. BOLEN: Yes, sir.

14 THE COURT: I've got lane -- crossed the center line,
15 period?

16 MS. BOLEN: Yes, sir.

17 THE COURT: Does the State have any objections to that?

18 MR. MAXEY: I like the original one, Your Honor. But,
19 you know, I'm not going to quibble with her over that.

20 THE COURT: I'll do that. I'll stop it after center
21 line.

22 MS. BOLEN: Yes, sir.

23 THE COURT: Change lane to line and stop it there.

24 MS. BOLEN: Thank you, Your Honor.

25 THE COURT: Let me just -- let me ask this, too. I

1 probably need to remind the jury that there was a
2 stipulation -

3 MS. BOLEN: Yes, sir.

4 THE COURT: -- not that the Defendant caused the
5 accident, but that the -- that the accident was the
6 proximate cause of the death of Mr. Miller.

7 MS. BOLEN: Yes, sir. That was going to be my next
8 thing is I think Your Honor does have instructions there on
9 proximate cause and all of that. I think because of our
10 stipulation some of that can be taken out.

11 THE COURT: Yeah. I'm almost -- because I had
12 forgotten that, as I had told you in chambers. It's almost
13 -- I could almost take out the entire proximate cause charge
14 and just replace it with reminding the jury that the
15 parties, the State and the Defense, stipulated and agreed
16 that the accident in question was the proximate cause of Mr.
17 Miller's death, therefore satisfying that the last element
18 of the offense, period, and not even charge anything
19 further.

20 MS. BOLEN: Yes, sir.

21 THE COURT: Everybody good with that?

22 MR. MAXEY: Yes, Your Honor.

23 THE COURT: Let me just pen in then. Okay.

24 MS. BOLEN: Your Honor, I think -- I might just be
25 missing it, but I feel like we're missing -- right before

1 your handwritten language, Your Honor, I think -- and again,
2 I may just not be seeing it, but I don't feel like the
3 elements that the State has to prove that the Defendant had
4 a legal duty which was broken --

5 THE COURT: Let's just look here. You've got the page
6 which starts "Felony driving under the influence" as the
7 heading?

8 MS. BOLEN: Yes, sir.

9 THE COURT: And then the next page would be -- at the
10 very bottom it's 171 and has *State vs. Graves*. Do you have
11 that page?

12 MS. BOLEN: I do. That's -- yeah.

13 THE COURT: And then it would end as far as the felony
14 DUI with the page with my notes up top.

15 MS. BOLEN: Yes, sir. And I guess it's under the --
16 right above the *State vs. Graves* cite. I feel like in there
17 -- I guess the element that the State has to prove the
18 Defendant neglected or violated some duty of law.

19 THE COURT: Right. This copy -- that these pages were
20 copied out of an actual charge book, and I've noticed that
21 sometimes there's some things left out. So let's look to
22 see if I've got all of the elements.

23 Well, that paragraph, it says, "The Defendant did an
24 act forbidden by law, or neglected a duty imposed by law."

25 MS. BOLEN: Okay. I guess I don't have that. That

1 language is not in my copy. But that's the language I was
2 looking for.

3 THE COURT: Right. Just come up here and let me see
4 the page -- why you have a page -

5 (Whereupon, a sidebar was held.)

6 THE COURT: Ms. Bolen, I think you wanted -- we cleared
7 up the --

8 MS. BOLEN: Cleared up that one. Yes, sir.

9 THE COURT: Right.

10 MS. BOLEN: We already discussed this in chambers. I
11 understand Your Honor's ruling, but I just want to put on
12 the record. The Defense was requesting that the inference
13 levels associated with different Bas be excluded. Your
14 Honor, our rationale for that is the inference levels are
15 part of the implied consent statute which is 56-5-2950. The
16 blood in this case was not taken pursuant to implied
17 consent. It was taken pursuant to a medical diagnosis. It
18 was not -- it was not taken either voluntarily by Mr.
19 Miranda or by search warrant, and it's our position that
20 since it wasn't taken pursuant to implied consent, the
21 entire implied consent statute should not be applicable in
22 this situation. And that includes the BA levels. Your
23 Honor, the only case I could find that appears to be
24 somewhat on point is *State vs. Cribb*, which I've referenced
25 before, Your Honor. But that just states -- and *Cribb* is a

1 case where they took blood before someone was arrested, and
2 in that case the court held that implied consent statute
3 does not apply to a blood sample obtained before the
4 motorist's arrest. I think that can be read to say that
5 when blood is taken outside of the implied consent statute,
6 the entire statute is not applicable. So we would just ask
7 that the inference level, the .08, be removed from the
8 instructions.

9 THE COURT: All right. Does the State want to put
10 anything on the record related to that?

11 MS. WHITE: Your Honor, the .08 is part of the DUI law
12 and we believe it should be charged to the jury. It's the
13 law of the State of South Carolina. As far as the implied
14 consent, I think that -- to say that you only have to -- you
15 can only charge that if you go under this specific implied
16 consent statute, I don't think that's what the legislature
17 intended.

18 THE COURT: Right. Your request is noted for the
19 record but denied.

20 MS. BOLEN: Thank you, Your Honor.

21 THE COURT: Let's take a very short five minute break
22 and then we'll get the jury out.

23 (Whereupon, a short recess was held.)

24 THE COURT: Everybody ready?

25 MS. WHITE: Yes, sir.

1 MS. BOLEN: Yes, sir.

2 THE COURT: Bring the jury out, please.

3 (Whereupon, the jury entered the courtroom at 11:18
4 a.m.)

5 THE COURT: Let the record reflect the jury is back
6 out. Is the Defense ready?

7 MS. BOLEN: I believe the State would go first, Your
8 Honor.

9 THE COURT: Is the Defense going to put up a case?

10 MS. BOLEN: Sorry. The Defense rests in this matter.
11 We renew our pretrial and trial motions and objections.

12 THE COURT: So noted for the record. Is the State
13 going to open up on the law?

14 MS. WHITE: The State intends to close in full.

15 THE COURT: All right. The Defense will go last --

16 MS. BOLEN: Yes.

17 THE COURT: -- because no case, so the State will go --
18 ladies and gentlemen of the jury, that concludes the
19 evidentiary part of this case. The record is now closed.
20 What we have left to do is the lawyers will make their
21 closing arguments to you. And depending upon how long they
22 go we'll either take a break or we'll go straight into the
23 Court's charge on the law before you begin any
24 deliberations.

25 So what I want you to do is to give these lawyers your

1 undivided attention, which you have been doing throughout
2 this trial and the Court appreciates that very much.

3 So Solicitor, are you ready?

4 MS. WHITE: Yes, sir. May it please the Court.

5 THE COURT: Yes, ma'am.

6 CLOSING ARGUMENT

7 BY MS. WHITE: Y'all have heard why we're here. We're
8 here because Petey Miller was about three doors from his
9 driveway, a football field away, when the intentional,
10 irresponsible decision of that man right here cost him his
11 life. A hundred yards, give or take. That's how far he was
12 from home. Close enough that Lesley Ashley could run to his
13 momma's house and wake her up.

14 Now, to prove that Mr. Miranda was guilty of felony
15 driving under the influence there's a number of elements we
16 have to show you. We have to prove that he was driving, we
17 have to prove that he did something that he shouldn't have
18 done while he was driving, or that he didn't do something he
19 should have done. But in this case, that he did something
20 he shouldn't have done which was crossing that center line
21 going all the way over into Petey Miller's lane, and that
22 because of his actions Mr. Miller died. The Defense
23 stipulated that Mr. Miller died as a result of the wreck.
24 There's no doubt about that. He lived for about seven
25 hours. Died in surgery at Self. No doubt whatsoever. So

1 what's for you all to determine is was he driving and did he
2 cause the wreck.

3 And, you know, I have to talk first, and that's hard to
4 do because I don't get to respond to anything Ms. Bolen
5 says. And she's an excellent lawyer. We've sat beside each
6 and tried cases and we've tried cases against each other.
7 So I'm sure she's going to think of something that I don't
8 say. And in response to that, I'm just going to say the
9 most important thing that you all are going to take in that
10 room is your own common sense and your own life experiences.
11 So anything that she says, test it against that, and test it
12 against what you've heard from this witness stand. Because
13 the only evidence in this case is what came from right here,
14 and what was admitted into evidence right up here.

15 But near as I can tell, there's probably roughly four
16 different theories. Number one, Carmine wasn't driving.
17 Well, to believe that you have to believe that a wreck that
18 caused this and left Mr. Miranda in this condition, that
19 someone else was able to get out of the driver's seat -- and
20 now, a wreck that was this violent, too. That they
21 immediately, you know, bam, wrecked, come to a stop.
22 Immediately. Not being dazed, not being confused, jump out
23 of the car, have the presence of mind to shut the door back
24 and run off into the night before Tony Abbott gets there
25 pretty much immediately, and that they're not injured. No

1 injuries on this person. They are able to run away. And
2 Tony Abbott gets there and he doesn't see them, and Lesley
3 Ashley gets there and he doesn't see them, and none of the
4 EMS, none of the responding officers, nobody sees this
5 mystery driver who has vanished into the night. Ladies and
6 gentlemen, that's not reasonable. That's -- that makes no
7 sense whatsoever. If you test that against your common
8 sense, you look at these pictures, that didn't happen.

9 And there was some talk about, you know, oh, well,
10 maybe there was a woman. You know, he had a woman's debit
11 card. Well, there's all kinds of reasons you can have
12 somebody else's debit card in his wallet. I've got my
13 momma's debit card right now. She's in bad health. I pick
14 stuff up for her at the store. I carry an extra copy.

15 You also have to believe -- and going back to Mr.
16 Miranda was driving. When you take where Tony Abbott and
17 Lesley Ashley talk about finding him, which is lower part of
18 the body in the driver's seat, resting across the passenger
19 seat -- which if you remember, I believe it was Bruce Brock
20 said that his body, because of the way the car rotated,
21 would have been thrown across the passenger seat. So he's
22 resting across the passenger seat with his lower body still
23 underneath the steering column. So you have to believe, to
24 believe that he wasn't driving, that the mystery person
25 vanishes, he swings his broken legs -- or broken leg, broken

1 pelvis over into the driver's seat and starts kicking trying
2 to get out that passenger side. It's not believable.

3 And finally, he admitted to Lesley Ashley that he'd
4 been driving. And he admitted that to her in the hospital.
5 He denied it to Trooper Stevenson because, of course, he's
6 not going to say he was driving. But he admits it to Lesley
7 Ashley. And that brings us to theory number two. He didn't
8 cause the wreck. Petey caused the wreck.

9 Well, ladies and gentlemen, we went through -- we went
10 through these drawings with MAIT, and they show you -- and
11 this is all uncontested. They testified that based on their
12 training and experience -- Bruce Brock over 20 years, and
13 you all heard all of those classes he's taken, that he's
14 taught over 20 years. And this worked five minutes ago.
15 There we go. Exactly what happened. We've got the white
16 car coming in the center of his lane, exactly where he's
17 supposed to be. We've got the red car coming down. Mr.
18 Miranda crosses over that center line, hits Petey head on,
19 and then where the final resting place of the cars are.
20 Based on the science, based on going out, taking the
21 measurements, looking at the gouge marks, inspecting the
22 vehicles, that's what happened that night. Petey Miller did
23 absolutely nothing to cause this accident. And there was a
24 question about some text messages. Who cares. Go pull the
25 phone records. It doesn't matter. He's exactly where he's

1 supposed to be. There is no doubt he's in his lane. I
2 don't care if his phone was ringing. I don't care if the --
3 if he was watching a movie in his lane. He was doing what
4 he was supposed to do. The person who wasn't doing what
5 they were supposed to do is Carmine Miranda in that little
6 red Mercedes. Coming over and ending his life. It doesn't
7 matter what Petey Miller was doing.

8 Even Todd Stevenson. He's not with MAIT. He was the
9 first witness you all heard from. He came over with the
10 pointer. Even he said, you could see it that night. They
11 didn't have to go back and do all of this. They saw it that
12 night. They knew what happened that night. The reason they
13 went back and did all of this was so they could be sure. So
14 they could double check. It's the reason they checked the
15 Mercedes to make sure. All right, could a tire have blown
16 out. Could brakes have gone out. Anything -- did anything
17 happen other than him being drunk and crossing that center
18 line. They ruled it out.

19 There was some talk about, oh, well you didn't -- going
20 back to the driver issue. You didn't swab the inside of the
21 car for DNA. How many people have sat in a 1994 Mercedes in
22 the past 20 years? How many people have sneezed in it. How
23 many people have sweated in it. How many people have
24 coughed in it. How many people have touched it. How many
25 peoples' hair has come out in it. DNA, the officer told

1 you, is useless except to prove someone was there. It
2 doesn't tell you when they were there. I would expect to
3 find other peoples' DNA in that car. You go test my car
4 right now. It's got mine, my kids', my momma's, my
5 boyfriend's, everybody. It doesn't tell you when they were
6 there. It just tells you they were there. So DNA in this
7 case is 100 percent useless.

8 The blood on the air bags. Now, think about it. His
9 right eye is lacerated and he falls across into the
10 passenger seat. Blood, if you're facing the passenger seat
11 is on the left side of the air bag. Exactly where you would
12 expect it to be. Why do we need to test that blood? We
13 know who was laying there. Leslie Ashley and Tony Abbott
14 said he was laying there. There's no reason unless -- and
15 he's in the ditch when law enforcement gets there, bleeding.
16 Unless you want to believe that he's walking down the road
17 and a roving band of gypsies beats him up, and then there
18 just so happened to be a horrific car crash right beside
19 where he's laying, we know he was in the car.

20 So then we go to maybe he wasn't drunk. Come on.
21 Everybody who came across him that night -- except for Tony
22 Abbott, because Tony Abbott said all he could smell was gas
23 and the fluids from the cars. Everybody else, he reeked of
24 alcohol. Todd Stevenson in the ambulance. The EMTs in the
25 ambulance. Reeked of alcohol, slurred speech, dilated

1 pupils. Shannon Rogers. Out of all the people she treats
2 at the hospital -- I mean, think about that. How many
3 people go in and out of that ER up at Self. You all live in
4 Greenwood. You all have been up there. How many people are
5 in and out of there every single day. She remembered him.
6 She said I remember treating him. Why do you all think she
7 remembered him? Do you all think it could have been because
8 of the way he was acting? Do you all think it could have
9 been because of the way he smelled? People described him as
10 being combative. And fair enough, he'd been in a horrific
11 car crash. But that doesn't make him smell of alcohol.
12 That doesn't make him have slurred speech. And that doesn't
13 give him a blood alcohol of .208. And, you know,
14 everybody's different. You know, you have somebody who's
15 never had a drink before, the doctor told you, they'd be in
16 here comatose probably. So everybody's different. But a
17 .208 -- the Judge will tell you, on South Carolina there's a
18 legal inference that if you are over a .08 you're too drunk
19 to drive. A 208. That's over twice that limit. And that
20 was his blood that tested for that.

21 So we've got all that and, oh well, I mean, if -- maybe
22 the police messed up. Maybe the police didn't do everything
23 they were supposed to do. We've been through all that
24 already. You know, were there other people on scene? Sure.
25 You all have come across car wrecks. We all know that

1 people stop. They get out. Some people are nosey. Some
2 people want to help. That's just how it is. And Trooper
3 Stevenson said he talked to everybody around. The people
4 who seem to have information, they took it down and passed
5 it on. And those are the people you've heard from this
6 week. We've already talked about the DNA. We've already
7 talked fingerprints. Again, the same thing as DNA. How
8 many fingerprints are going to be in that car? And it's a
9 used car, too. So we don't know who the prior owner was.
10 It still had the paper tag on it. But literally hundreds of
11 people would have been in that car.

12 The air bags. I don't know what the exact air bag
13 sensors are on a 1994 Mercedes. Nobody who testified did.
14 But again, it's an older model car. And you all know as
15 well as I do, and the officers testified -- I think it was
16 maybe T.J. Brooks testified that as technologies come out
17 the higher end cars get them first. But in '94 it probably
18 wouldn't have been that kind of a sensor on that passenger
19 air bag. Probably a case that when you hit all the air bags
20 go off regardless of whether somebody's sitting there or
21 not. And again, I go back to they found him in the seat.
22 His legs under the steering column. Also, the doctor, Dr.
23 Jones, testified his right femur is the one that's broken.
24 Well, if you're the driver and you look up and see
25 headlights and your foot -- and you tense up, that's the

1 leg. When the floorboard comes in on you with the crash,
2 that's the leg that's going to get broken, and that's the
3 leg that was broken.

4 And, you know, Carmine also told Lesley Ashley that he
5 looked up and saw headlights and it was too late to do
6 anything. And that -- I don't know if that's trying to say
7 that Petey came into his lane, but that's probably what
8 happened. I'll submit to you all: He was probably driving,
9 kind of drifting off, pulling the wheel to the left. Came
10 to and there he was. There was Petey. But Petey wasn't in
11 his lane. In Carmine's lane. Carmine was in Petey's lane.

12 This is important for a lot of reasons. The main
13 reason, obviously, is somebody lost his life. There's a
14 family that's missing a father, and a brother, and a son.
15 There's a community that's missing a member. And it's very,
16 very tragic and very sad. But when you go in the jury room
17 you took an oath to decide the case on the law and the facts
18 and to leave emotion out here. And I want you all to set
19 that emotion aside for Mr. Miller's family. I also want you
20 to set it aside for Mr. Miranda, because it's easy to have
21 empathy for him sitting here. It's easy to feel sorry for
22 him. But don't judge him based on how he looks today,
23 because he didn't look like that on October 16th, 2014. He
24 didn't look like when he got drunk. He didn't look like
25 that when he climbed behind the wheel of that shiny red

1 Mercedes, and he didn't look like that when he killed Petey
2 Miller. Judge him on his actions that night, because that's
3 what your oath as jurors is to do.

4 The Judge is going to tell you that we have to prove
5 our case beyond a reasonable doubt, and what that means is
6 you have to be firmly convinced. It doesn't mean all doubt,
7 just like Mr. Maxey told you all at the beginning, because I
8 could never convince you all of anything beyond all doubt.
9 You know the saying, anything is possible. And it is. It
10 is possible that any number of things could happen. But
11 what is reasonable. That's the question. Are you firmly
12 convinced that Carmine Miranda climbed in that car too drunk
13 to drive, that he crossed that center line and that he
14 killed Petey Miller. I submit, ladies and gentlemen, there
15 is no other conclusion looking at the facts and the evidence
16 we've brought you, and we're asking you all to find him
17 guilty. Thank you.

18 THE COURT: Thank you, Solicitor. Ms. Bolen, are you
19 ready?

20 MS. BOLEN: Yes, Your Honor. May it please the Court.

21 THE COURT: Certainly.

22 CLOSING ARGUMENT

23 BY MS. BOLEN: Ladies and gentlemen, there's a lot
24 about this case that is undisputed. Just as Ms. Able told
25 you in opening, we are not disputing that there was an

1 accident that night on Highway 34. We're not disputing
2 that. We're not disputing that Petey Miller lost his life
3 as a result of that accident. We stipulated to that. I'm
4 standing here telling you, we're not disputing that. We're
5 also not disputing that Carmine Miranda was on scene at that
6 accident. But as the State has told you, and as the Judge
7 will instruct you, the State has to prove every element of
8 its case beyond a reasonable doubt. And the element that
9 they just can't prove to you, the element where they're not
10 only missing evidence but the evidence actually disproves
11 the element, is the element that Carmine was driving,
12 because they just don't have the evidence to give to you
13 beyond a reasonable doubt that Carmine was driving that car.
14 Again, we're not disputing that he was there. We're not
15 disputing that the accident happened, and we're not
16 disputing that Petey Miller died as a result of that
17 accident.

18 I want to take a little bit of a look first at the
19 investigation in this case. And you heard from a number of
20 law enforcement. You heard from some State Troopers. You
21 heard from these MAIT specialists. And remember with -- I
22 believe it was Corporal Brock. He spent a good couple
23 minutes explaining to you all of his training, all of his
24 expertise, all of the classes he's been to. His years and
25 years of experience. Why is that important? He's been

1 trained to do a thorough investigation. He's been trained
2 to do an investigation that's going to give the jury
3 answers. And I submit that just didn't happen in this
4 case. And let's look at the investigation that did happen.
5 Several troopers arrived on scene; Trooper Stevenson,
6 Trooper Heaton. When they got there there was already some
7 lay-witnesses there. And you heard from Trooper Stevenson.
8 He talked to some of them, but he didn't get statements from
9 everyone. But who they got statements from were here in
10 this witness stand; Leslie Ashley, Anthony Abbott. And what
11 did Lesley tell you? She said that her boyfriend got a
12 shirt and wrapped it around Carmine's head. There were
13 other people there on scene up close. You didn't hear from
14 any of them. Law enforcement didn't get statements from
15 them. Moving on to Corporal Brock and he said that he
16 responded that night. He was there until about 5:00 a.m.
17 and he said he did a preliminary finding of what happened
18 with the accident. He actually gave a little bit of a
19 demonstration. That he used two pieces of paper to figure
20 out what happened. Two pieces of paper. All his training,
21 years of experience, and that's how he makes his preliminary
22 finding. And then they do do a full analysis, correct, but
23 they do it six days later. They go out there, October 22nd,
24 after there's been countless cars, weather, someone come and
25 spray painted all over the road. And you heard Sergeant --

1 Sergeant Brooks saying there wasn't much out there. There
2 were some gouge marks, but there wasn't much out there.
3 Right, six days later. Why didn't they just do it that
4 morning when they were there? And that's a question you've
5 got to ask yourselves given that the State wants you to find
6 that this is a thorough and complete investigation. They
7 were already on scene at 5:00 a.m. Why not just do it then.
8 Why wait until six days later.

9 You also need to look at the investigation. There's
10 obviously blood. We've seen the pictures. You'll have them
11 back there in the jury room. There is blood. They don't do
12 any swabbing. They don't do any swabbing for DNA, they
13 don't do any swabbing for fingerprints. And I know the
14 explanation give to you initially was, oh, well, there's
15 lots of people in the car. And so, it doesn't tell you when
16 someone was in the car. But remember, Corporal Brooks said
17 it would tell you if someone was in the car. And wouldn't
18 that be a useful piece of information for you to know?
19 Particular in a car where there's temporary tags. So you
20 know that Carmine was a newer owner of that car. But what's
21 the other reason Corporal Brock gave you about why they
22 didn't collect for DNA, why they didn't swab for
23 fingerprints? Because he'd been trained not to. He had
24 been told not to collect evidence. Is that what you do when
25 you're doing a thorough investigation, not collect

1 something?

2 Now, they did collect the air bags in this case from
3 Carmine's car. And for the past almost two years those air
4 bags have been sitting down in Columbia. No testing,
5 nothing done on them. Another thing they didn't collect or
6 even try to get was any sort of texting. And again, we're
7 not -- we're not trying to say that Petey caused an
8 accident. However, they testified -- law enforcement
9 testified that they had been given information that Petey
10 might have been texting. Did they make any attempts to try
11 to find out if that was true? No. No attempt at all.

12 And the last thing you all want to look at with the
13 investigation is when they -- when they go out six days
14 later and they go to the scene and they do all their
15 analysis and give you this diagrams and all that, they do
16 what they're calling a mechanical exam on Carmine's car.
17 They don't do it on Petey's car. They do it on Carmine's
18 car. I believe it was Sergeant Brooks who did the exam on
19 Carmine's car. And remember he tells you that he can't do a
20 complete mechanical exam. He can't do the right front of
21 the car. Right front of the car right there. He says it's
22 too damaged. It would have required a blow torch or
23 something like that to take it off. And that's going to
24 become important. All right? That right front is something
25 he can't do a full exam on. He does an exam on the rest of

1 the car.

2 Now, the two big pieces of evidence that the State has
3 presented you with are the scene, Carmine's statements. And
4 I'm going to go through why both of those, why the evidence
5 presented to you about the scene and about his statements,
6 why both of those give you reasonable doubt that Carmine was
7 not driving that car. Let's look first at the scene. And
8 you heard from Anthony Abbott. And his testimony is
9 interesting. He says he arrived up -- he was driving -- I
10 think he was driving to help a friend whose car had broken
11 down and he came up on the wreck. He was the first person
12 there. And he tells you from the stand that he heard a
13 noise and he saw a mushroom cloud. Remember he said he saw
14 a mushroom cloud 15 feet in the air. That's pretty
15 dramatic. Very dramatic. But when confronted with the
16 statement he gave law enforcement a couple of days after the
17 incident, the statement that took him five minutes to read
18 through because it was so thorough, there's no mention of a
19 mushroom cloud. No mention of a mushroom cloud of gas
20 that's 15 feet above the air. And why is that important?
21 Well, his memory then is better. Right? It sounds more
22 dramatic, sounds more interesting to say that there's this
23 mushroom cloud of gas. And one of the problems the State
24 has is it can't -- it can't tell you exactly when this
25 accident happened. The State wants you to think it happened

1 seconds before Anthony got there. But there's no way to say
2 that it did. No one saw the accident. There's no
3 eyewitnesses, and neither Anthony nor Lesley can say how
4 long had gone before the accident happened and when they
5 arrived. They can't. They can't give you that amount of
6 time. So we don't know if that window is five minutes, we
7 don't know if it's 10 minutes. It could be longer. It's
8 late at night. We just don't know.

9 We have Anthony and Lesley arriving on scene. They
10 call law enforcement. They help Carmine get out of the car.
11 And another piece of undisputed testimony is that they
12 helped Carmine get out of the car and he was hanging over
13 the passenger side of that car. I think it was Anthony who
14 said his hands were hanging over. Lesley wasn't quite sure.
15 But undisputed that he was hanging over the passenger side
16 of the car.

17 I'm going to pull up a couple of pictures that we went
18 over already. These are all in evidence. You'll be able to
19 take them back with you. And you can see the pictures.
20 You've got blood, passenger side air bag, blood passenger
21 side car, car door. No blood on the driver's side door. No
22 blood on the driver's side seat. No blood on the driver's
23 side air bag. You've also got in this picture, and this is
24 State's 24, there's a little smudge blood directly on the
25 seat in the passenger side. All the blood in this case is

1 on the passenger side. It's on the door. It's on the seat.
2 It's on the air bag. And that's another piece of evidence
3 that shows you that Carmine was in the passenger seat, not
4 the driver's seat. And the State has brought up with
5 Corporal Brock as well as with their doctor -- they asked
6 Corporal Brock, well, if someone was driving unrestrained
7 which direction would their body go in in a head on crash,
8 and he said, oh, you'd go over to the side. Well, ladies
9 and gentlemen, this isn't a head on crash, and the State's
10 witnesses testified to that and you can see that in this
11 diagram. Corporal Brooks and, I believe, Sergeant Brock
12 both testified, you know, with this diagram that they went
13 through the analysis and recreated. The red car, the impact
14 is at the right front. It's not a head on crash. So that
15 testimony doesn't really help you. It doesn't help you
16 figure out any pertinent fact, because the impact was at the
17 right front. And you know it's at the right front by
18 looking at these pictures where you can clearly see more
19 damage to the right passenger side. To the passenger side
20 rather than the driver's side. And you know when Corporal
21 Brooks went to do the mechanical exam that we were just
22 talking about, what did he say? He said I couldn't -- I
23 couldn't do the full exam on the right front. It was too
24 damaged. He could do it on the driver's side. He couldn't
25 do it on the passenger side. This was a passenger side

1 impact. So the testimony about if he was driving and
2 unrestrained he'd get thrown over, that's with a head on.
3 Not a head on collision. Same with the doctor's testimony.
4 He testified that -- and he said, you know, it could be. It
5 could be someone would maybe break their leg trying to brake
6 if they were driving. But another interpretation of that
7 one is just as reasonable, is that in the passenger side
8 seat, and there's a passenger side impact crash, yeah, your
9 right leg is going to get broken. That's where the impact
10 was. You can see it from the State's own diagrams and from
11 the pictures. That's where the crash happened.

12 I want you to look a little bit when you -- and again,
13 you'll have all these pictures here back with you. And I
14 know we've talked a lot about the blood and where it is.
15 But it's really important to look carefully at these. Okay?
16 You heard from the EMT worker that Mr. Miranda was bleeding
17 from rectum. He's bleeding from his head and he said he had
18 a cut over his right eye, in the back of his head, some
19 obvious deformities to his right leg. And he said he's
20 bleeding from his rectum. The place on any seat that we see
21 blood is on the passenger side. There's not on the driver's
22 side. And there's been testimony that he was bleeding from
23 the back of his head as well as the front of his head.
24 Well, you've seen pictures and you've heard from Corporal
25 Heaton - Corporal Heaton sat in the driver's side. Would he

1 have sat there if there was blood? He's a well trained law
2 enforcement official. If there had been blood on the back
3 of that headrest or in the chair or anything like that would
4 he have sat there? No. Because there's no blood there. If
5 someone's a driver of a car and they get an impact that
6 blood in the back of the head, blood in the front of the
7 head, there'd be blood somewhere in the driver's seat, and
8 there just isn't. It's all in the passenger seat. And all
9 that evidence shows you is that creates reasonable doubt.
10 Shows you that Carmine was not the driver.

11 You can also look at Carmine's statements. Now
12 remember, and you've heard this from law enforcement
13 officers, the lay-witnesses, as well as Dr. Jones. He was
14 -- Carmine was confused, disoriented. He was airlifted to
15 Greenville. He went to Self but then he was airlifted to
16 Greenville. And he had what Dr. Jones called a major
17 trauma. So what does he say? The first statement we hear
18 from Trooper Stevenson is at the hospital and he says I
19 wasn't driving. The first thing he says that we've gotten
20 testimony about. The Leslie Ashley says that she talked to
21 him at the hospital as well. She said he's told her I
22 wasn't driving. And when I asked her, he said that three
23 times, right, and she said yeah. He said three times he
24 wasn't driving. Corporal Heaton talked to you a little bit
25 about why he sat in that driver's side. He said there are

1 already people on scene saying someone else was driving.
2 That's an important piece of evidence for you to look at,
3 because that's another piece that gives you reasonable
4 doubt. Because where was Carmine? He wasn't walking around
5 talking to people. The statement you heard from him, from
6 Trooper Stevenson and from Lesley Ashley were given at the
7 hospital. He was being transported. I think the evidence
8 is clear, he was taken out of the car, he was put in an
9 ambulance, he was taken to the hospital and then he was
10 taken to another hospital. But there's other people on
11 scene.

12 MS. WHITE: Objection to misstating testimony, Your
13 Honor.

14 THE COURT: Well, I think the jury can remember exactly
15 what the evidence and testimony was. And certainly if you
16 remember testimony and evidence that differs from what
17 either lawyer has said, then you go with what your memory
18 is. You may proceed.

19 MS. BOLEN: Thank you, Your Honor.

20 Another thing I want you to look at is the air bags.
21 And there wasn't a witness who could tell you exactly what
22 sensors were on a '93 Honda and a '94 Mercedes. But look at
23 the fact that these are both old cars. With the Mercedes
24 both air bags deployed. With the Honda, just the driver's
25 side did. And that's another piece of evidence that again

1 gives you reasonable doubt that Carmine was not the driver.

2 So what are the pieces of evidence that give you doubt

3 in this case? Number one, you've got no eyewitnesses. You

4 don't have anyone who said I saw Carmine driving that night.

5 I saw Carmine driving on Highway 34. No one from earlier

6 that night. No one puts him behind the wheel of that

7 Mercedes. You've got some lay-witnesses who arrive on the

8 scene that can't -- no way for them to know when in relation

9 to the accident they arrived on the scene. One of them

10 tells you he saw a mushroom cloud, but that's nowhere in his

11 first statement. Another thing that gives you doubt, Lesley

12 Ashley told you that she was trying to get Carmine's ID and

13 she say someone else's debit card in his wallet. That

14 should give you some doubt. The pictures, the evidence, the

15 blood all over the passenger side of this car. Not a single

16 drop on the driver's side. The impact pictures showing that

17 the impact was to the passenger side, as well as the

18 Trooper's diagram showing the impact is to the passenger

19 side. And the Trooper's testimony that he couldn't remove

20 the passenger side front. It was too damaged. That's where

21 the impact was. The fact that Carmine in his -- after

22 experiencing major trauma tells the Trooper, and tells

23 Lesley Ashley, I wasn't driving. He tells the Trooper that

24 at the hospital. Tells Lesley Ashley that at the hospital.

25 That should give you some doubt. The lack of any kind of

1 forensic testing that might clear some of this up wasn't
2 done. That should give you some doubt. And the absolutely
3 undisputed testimony that Carmine was coming out of that
4 passenger side door. You can see from the pictures that's
5 where the blood is on the side of the door. That's what the
6 witnesses testified to. He's hanging out the passenger side
7 door. The driver's side door worked. That should give you
8 some doubt as well.

9 Ladies and gentlemen, we're going to ask that you
10 review all the evidence you heard in this case. Look at the
11 evidence that's been submitted to you. Consider that there
12 is a good amount in this case that's not disputed. But the
13 big issue that's in dispute and that the State simply cannot
14 prove to you, that Carmine was driving.

15 We submit to you that the State cannot prove to you
16 beyond a reasonable doubt that Carmine was driving that car,
17 and because they cannot prove that beyond a reasonable
18 doubt, I ask you to find him not guilty. Thank you.

19 CHARGE TO THE JURY

20 THE COURT: Thank you, Ms. Bolen. Mr. Foreman, and
21 ladies and gentlemen -- Mr. Foreman, ladies and gentlemen of
22 the jury, I will now charge you on the law applicable to
23 this case and you must consider my charge as a whole and not
24 focus on some portions to the exclusion of other portions.

25 The indictment charges the Defendant with felony DUI.

1 I remind you the fact that the Defendant was arrested,
2 charged and indicted in this case is not evidence in this
3 case and cannot be considered by you as evidence of guilt in
4 this case, nor does it create any presumption or inference
5 of guilt. This document is simply the formal written
6 instrument which contains the charge made against this
7 Defendant. It is the formal document by which this case is
8 brought into this Court.

9 I also remind you that during this trial you and I have
10 had certain duties to perform. As a trial judge it has been
11 my responsibility to preside over the trial of this case,
12 and I also have had the duty to rule on the admissibility of
13 the evidence offered during this trial. You are to consider
14 only the competent evidence before you. If there was any
15 testimony stricken from the record in this case during this
16 trial -- I don't recall that there was. But if there was,
17 you must disregard that testimony. You are to consider only
18 the testimony which has been presented from this witness
19 stand, any exhibits which have been made a part of the
20 record in this case and any stipulations of counsel. I
21 have the additional duty to charge you the law applicable to
22 this case. As the presiding judge I am the sole judge of
23 the law of this case and it is your duty as jurors to accept
24 and apply the law as I now state it to you. As I told you
25 on Monday, if you already have any ideas of what the law is,

1 or what the law ought to be and it does not agree with what
2 I now tell you what the law is, you must abandon your idea
3 because you are sworn to accept the law and apply and apply
4 the law exactly as I state it to you.

5 In every case tried in this Court before a jury, the
6 jury becomes the sole and exclusive judge of the facts in
7 the case. A trial judge cannot intimate, state, comment on
8 or make any statement to a trial jury about the facts in the
9 case. Since you the jury are the sole judge of the facts in
10 this case you are not to infer from what I have said during
11 the progress of this trial in ruling upon the admissibility
12 of evidence or otherwise, or anything that I now say to you
13 during the course of this instruction to you that I had any
14 opinion about the facts in this case. I do not have an
15 opinion about the facts in this case. The law does not
16 allow me to have an opinion about the facts in this case.
17 This is a matter solely for you, the jury, to determine. As
18 jurors it is your duty to determine the affect, value,
19 weight and truth of the evidence presented during this
20 trial.

21 Now, the Defendant has pled not guilty to this
22 indictment, and that plea puts the burden on the State to
23 prove the Defendant guilty. A person charged with
24 committing a criminal offense in South Carolina is never
25 required to prove himself or herself innocent. I charge you

1 that it is an important rule of the law that the Defendant
2 in a criminal trial, no matter what the seriousness of the
3 charge may be will always be presumed innocent of the crime
4 for which the indictment was issued unless guilt has been
5 proven by evidence satisfying you of that guilt beyond a
6 reasonable doubt. This presumption of innocence does not
7 end when you begin your deliberations but it accompanies the
8 Defendant throughout the trial unless you reach a verdict of
9 guilt based on evidence satisfying you of that guilt beyond
10 a reasonable doubt.

11 Now, this presumption of innocence is like a robe of
12 righteousness placed about the shoulders of the Defendant
13 which remains with the Defendant unless it has been stripped
14 from the Defendant by evidence satisfying you of the
15 Defendant's guilt beyond a reasonable doubt. This
16 presumption of innocence is not mere legal theory. It is
17 not just a legal phrase that we use. It is a substantial
18 right to every -- to which ever Defendant is entitled unless
19 you, the jury, are satisfied from the evidence of the
20 Defendant's guilt beyond a reasonable doubt.

21 Now, concerning reasonable doubt, some of you may have
22 served in the past as jurors in civil cases where you were
23 told by a judge that it is only necessary to prove that a
24 fact is more likely true than not true such as by the
25 greater weight or the preponderance of the evidence. In

1 criminal cases, however, the State's proof must be more
2 powerful than that. It must be beyond a reasonable doubt.
3 Proof beyond a reasonable doubt is proof that leaves you
4 firmly convinced of the Defendant's guilt. And, Mr.
5 Foreman, ladies and gentlemen of the jury, there are very
6 few things in this world that we know with absolute
7 certainty, and in criminal cases the law does not require
8 proof that overcomes every possible doubt. If based on your
9 consideration of the evidence you are firmly convinced that
10 the Defendant is guilty of the crime charged, you must find
11 the Defendant guilty. If, on the other hand, you think
12 there's a reasonable possibility that the Defendant is not
13 guilty, you must give the Defendant the benefit of the doubt
14 and find him not guilty.

15 Now, Mr. Foreman, ladies and gentlemen of the jury,
16 there are two types of evidence which are generally
17 presented during a trial. That being direct evidence and
18 circumstantial evidence. Direct evidence directly proves
19 the existence of a fact and does not require deduction.
20 Circumstantial evidence is proof of a chain of facts and
21 circumstances indicating the existence of a fact. Crimes may
22 be proven by circumstantial evidence. The law makes no
23 distinction between the weight or value to be given to
24 either direct or circumstantial evidence. However, to the
25 extent the State relies on circumstantial evidence all of

1 the circumstances must be consistent with each other, and
2 when taken together point conclusively to the guilt of the
3 accused beyond a reasonable doubt. If these circumstances
4 merely portray the Defendant's behavior as suspicious, the
5 proof has failed. The State, once again, has the burden of
6 proving the Defendant guilty beyond a reasonable doubt.
7 This burden rests with the State regardless of whether the
8 State relies on direct evidence, circumstantial evidence, or
9 a combination of the two.

10 Necessarily, Mr. Foreman and ladies and gentlemen of
11 this jury, you must determine that credibility of witnesses
12 who have testified in this case. Credibility simply means
13 believability. It becomes your duty as jurors to analyze
14 and to evaluate the evidence and determine which evidence
15 convinces you of its truth. In determining the
16 believability of witnesses who have testified in this case,
17 you may believe one witness over several witnesses, or
18 several witnesses over one witness. You may believe a part
19 of the testimony of a witness and reject the remaining part
20 of the testimony of that same witness. You may believe the
21 testimony of a witness in its entirety or reject the
22 testimony of a witness in its entirety. You may consider
23 whether any witness has exhibited to you any interest, bias,
24 prejudice, or other motive in this case. You may also
25 consider the appearance and manner of a witness while on the

1 witness stand.

2 Now, as I told you previously, the rules of evidence
3 ordinarily do not permit witnesses to testify to opinions or
4 conclusions. An exception to this rule exists for witnesses
5 we call expert witnesses. A witness who by education and
6 experience has become an expert in some art, science,
7 profession or calling may state an opinion as to relevant
8 and material matter in which the witness claims to be an
9 expert, and may also state the reasons for the opinion. You
10 should consider any expert opinion received in evidence in
11 this case, and like any other evidence, give it the weight
12 you think it deserves. If you decide that the opinion of an
13 expert witness is not based on sufficient education and
14 experience, or if you conclude that the reasons given in
15 support of the opinion are not sound, or that the opinion is
16 outweighed by other evidence, you may disregard the opinion
17 entirely. An expert witness' testimony is to be given no
18 greater weight than that of other witnesses simply because
19 the witness is an expert. Further, you're not required to
20 accept an expert's opinion even though it is not
21 contradicted.

22 Now, once again, the Defendant has been charged with
23 felony driving under the influence. The State must prove
24 beyond a reasonable doubt that the Defendant drove a
25 vehicles while under the influence of alcohol and/or drugs.

1 Driving a motor vehicle means that the vehicle was in
2 motion, and this may be proven by direct or circumstantial
3 evidence. A movement of the vehicle might occur without any
4 affirmative act by a driver or, in fact, by any person. If
5 a vehicle is moved by some power beyond the control of the
6 Defendant or by accident, this would not be driving. The
7 State must prove beyond a reasonable doubt that the
8 Defendant was sufficient under the influence to impair his
9 ability to drive with reasonable care with due regard for
10 others and himself, or as a reasonably prudent person would
11 drive. It's not necessary to show that the Defendant was in
12 a helpless condition, passed out or even intoxicated. On
13 the other hand, the fact that the Defendant at some time
14 prior to the incident may have consumed an alcoholic
15 beverage or took a drug does not prove that the Defendant
16 was driving under the influence. Next, the State must prove
17 beyond a reasonable doubt that while driving the Defendant
18 did an act forbidden by law or neglected a duty imposed by
19 law. The State alleges that the Defendant crossed the
20 center line. Finally, the State must prove beyond a
21 reasonable doubt that the act or neglect of the Defendant
22 proximately caused great bodily injury or death to another
23 person. You'll remember, the attorneys stipulated that the
24 accident was the proximate cause of Mr. Miller's death. It
25 is up to you to determine whether or not it was the

1 Defendant who caused this accident.

2 Now, I will charge you, Mr. Foreman, ladies and
3 gentlemen of the jury, that a Defendant has the right -- or
4 the Defendant has the right to refuse to take a blood
5 alcohol concentration test. Inferences of the amount of
6 alcohol in the Defendant's blood at the time of the alleged
7 violation is shown by chemical analysis of the Defendant's
8 breath or other bodily fluids may be considered by you in
9 deciding whether the Defendant was under the influence. If
10 the alcohol concentration was 8/100ths of one percent,
11 commonly known as .08, or more, it may be inferred that the
12 Defendant was under the influence. This inference is simply
13 an evidentiary fact to be considered by you along with the
14 other evidence in this case and you may give it the weight
15 you decide it should receive.

16 Now, Mr. Foreman and ladies and gentlemen of the jury,
17 I instruct you and emphasize that the fact the Defendant did
18 not testify is not a factor to be considered by you in any
19 way in your deliberations and in your consideration on the
20 question of the guilt or innocence of the Defendant. It
21 must not be considered by you in any manner whatsoever. A
22 Defendant has the constitutional right to remain silent and
23 the assertion of this right must not be considered by you in
24 your deliberations. I repeat. Under your oath, you are to
25 draw no conclusion whatsoever from the fact that the

1 Defendant in this case did not testify. The fact that this
2 Defendant did not testify should not even be discussed in
3 the jury room. The burden of proof, as I have stated to
4 you, is on the State. The Defendant is not required to
5 prove his innocence. The burden of proof remains on the
6 State to prove guilt beyond a reasonable doubt.

7 Now, Mr. Foreman, ladies and gentlemen of the jury,
8 there are only two possible verdicts in this case. That
9 being not guilty or guilty. Your verdict must be unanimous
10 among the 12 of you. And when you have reached a verdict in
11 this case you will knock on the door and so notify the
12 bailiff that you have reached a verdict. Now, we have a
13 verdict form, and I'm going to come down -- it's very simple
14 to understand, but it will need to be completed by you, Mr.
15 Foreman. The verdict form just contains the name of the
16 case and the indictment number and has verdict, and it says,
17 "We, the jury in the above-captioned case on the charge of
18 felony driving under the influence unanimously find Carmine
19 James Miranda, III" either not guilty or guilty. And
20 whichever one your verdict is you'll put your initials, sign
21 it. It's already been dated for you.

22 Now, what I'm going to do is I'm going to instruct you
23 to -- all 13 of you, to go back into the jury room. I need
24 to discuss with the lawyers to make sure that my charge that
25 I just gave you was correct and that there needs to be no

1 further changes or additions to the charge. If there does,
2 if I have to charge you further, I'll bring you back out.
3 If I don't do that and the Bailiff brings to you all of the
4 exhibits in the case and the verdict form, that will be your
5 cue for two things to happen. One, the alternate will need
6 to leave the jury room, because you will not participate in
7 the deliberations, and I'll give you your further
8 instructions, and second --

9 JUROR: Mr. Wright.

10 THE COURT: You're the alternate?

11 JUROR: Yes, sir.

12 THE COURT: Okay. I thought you'd been sitting at the
13 back. But you'll come out and I'll give you further
14 instructions. Okay? And the second thing will be you can
15 begin your deliberations then, when the exhibits and the
16 verdict form are brought back to you. Okay?

17 So go back to the jury room. All 13 of you. Don't
18 start any discussions yet. And hopefully we'll be able to
19 give this to you in just a few minutes.

20 (Whereupon, the jury exited the courtroom.)

21 THE COURT: Does the State have any objections,
22 exceptions or additions to the Court's charge?

23 MS. WHITE: No, sir.

24 THE COURT : From the Defense?

25 MS. BOLEN: Just renewing our prior, Your Honor.

1 THE COURT: All right. Very good. We're off the
2 record.

3 (Whereupon, the jury began deliberations at 12:13 p.m.)

4 (Whereupon, a recess was held from 12:13 to 12:54 p.m.)

5 THE COURT: We're back on the record. I understand
6 that the jury has a verdict. Anything we need to put on the
7 record before we bring the jury out?

8 MS. WHITE: No, sir.

9 MS. BOLEN: No, sir.

10 THE COURT: All right. Bring the jury out, please.

11 (Whereupon, the jury enters the courtroom at 12:55
12 p.m.)

13 THE COURT: Let the record reflect the jury's back in.
14 Mr. Foreman, I understand that you have reached a verdict;
15 is that correct?

16 MR. FOREMAN: Yes, sir.

17 THE COURT: Without telling me what the verdict is, was
18 the verdict unanimous?

19 MR. FOREMAN: Yes, sir. It was.

20 THE COURT: If you would hand the verdict form to Mr.
21 Willingham, please. Madam Clerk, would you publish the
22 verdict, please.

23 MADAM CLERK: The State of South Carolina, County of
24 Greenwood, in the Court of General Sessions, case number
25 2016-GS-24-108, the State of South Carolina versus Carmine

1 James Miranda, III. We, the jury in the above-captioned
2 case on the charges of felony driving under the influence,
3 unanimously find Carmine James Miranda, III, guilty. Signed
4 by Michael Walker, August 3rd, 2016, Greenwood, South
5 Carolina.

6 THE COURT: Would either side request polling of the
7 jury?

8 MR. MAXEY: No, Your Honor.

9 MS. BOLEN: No, sir.

10 THE COURT: All right. Mr. Foreman, ladies and
11 gentlemen of the jury, I want to thank you for your jury
12 service. The verdict that you reach in this case means
13 nothing to me. What I want, and what means something to me,
14 is that you perform your duties in accordance with the oath
15 that you took, that you were conscientious, that you were
16 diligent, that you paid attention, and that you took this
17 responsibility of serving on this jury very seriously. And
18 I believe all of that has been accomplished by you. So
19 that's what I'm thanking you for is for performing very
20 efficient jury service.

21 Now, I'm not exactly sure what we have on our plate for
22 the remainder of the week. I may need to have you come back.
23 But right now I don't know that. So there's a call in
24 number that you were provided on Monday. After 6:00 this
25 evening it will instruct you on whether to come back or to

1 call back in or that you're excused for the remainder of the
2 week. Right now we just don't know that. So be sure, all
3 of you, to call in. If we do have you brought back, you may
4 have an opportunity to be selected again and sit on another
5 jury.

6 I hope this has been rewarding for you. It's a tough,
7 tough task to take on serving on a jury, especially in case
8 that has the significance and the importance that this case
9 has. But I hope you found this to be somewhat educational
10 and a good learning experience for you and something that
11 maybe you would like to do sometime in the future, whether
12 it's a criminal case or a civil case.

13 But again, thank you very much. I like to shake the
14 hands of my jurors. So I'm going to come down and do that.
15 Mr. Foreman, you have to sign the indictment. And so, if
16 you'll just kind of hang around for just a moment.

17 So again, call in after 6:00 this evening.

18 (Whereupon, the jury was released at 12:59 p.m.)

19 THE COURT: We'll take a very short recess before we
20 proceed into the sentencing proceeding.

21 (Whereupon, a recess was held from 12:59 p.m. to 1:05
22 p.m.)

23 SENTENCING

24 THE COURT: This is the -- we're in the sentencing
25 phase of this case. I'll hear from the State first and then

1 from the Defense. So, Solicitor White?

2 MS. WHITE: Thank you, Your Honor. There are two
3 members of Mr. Miller's family who wish to address the
4 Court. I was going to address the Court first with the
5 record and --

6 THE COURT: Okay.

7 MS. WHITE: First of all, Your Honor, I'm going to hand
8 up a picture of Mr. Miller, because, you know, what's in the
9 record you can't really see who he was. He did have five
10 children. And I'm told that his death has impacted those
11 children severely, as you can imagine that it might.

12 Mr. Miranda's record, I think, speaks volumes in this
13 case. This was, by my count, his fourth DUI. He has on his
14 record that's documented in 2001 he pled to a DUI 2nd. So
15 there's an unknown DUI before that. Also was convicted of
16 no driver's license, no seatbelt, no vehicle license in
17 2007. He had a driving under suspension, along with a
18 public disorderly conduct. In 2008 another driving under
19 suspension. January of 2008 he was involved in a DUI that
20 was a third offense DUI on his record. That was actually a
21 wreck, Your Honor. He hit a telephone pole, if I remember
22 correctly. Left the scene, walked away and was found a
23 short distance away. His blood alcohol on that case was a
24 .19. So he topped that with this one, Your Honor.
25 September of '08 a possession of crack conviction. 2009 a

1 driving under suspension. He lost his license in 2009
2 because he was found to be a habitual traffic offender. He
3 got that license back February of 2014. And then obviously
4 this wreck happened just eight months later in October of
5 2014. I think his conduct throughout the course of these
6 charges being pending indicates a lack of remorse. It took
7 over a year for him to get an attorney. I believe I had to
8 have him admonished. Could not get him to get
9 representation. He -- there was an evaluation process you
10 heard about where the evaluators found him to be malingering
11 symptoms. Also, Your Honor, the State believes, and have
12 had several people, Shannon Rogers yesterday, the victim's
13 sister, who have seen Mr. Miranda walking in the community.
14 The State believes that Mr. Miranda could have walked in and
15 out of this courtroom. He could have been sitting there.
16 The wheelchair and the neck brace were an attempt to garner
17 sympathy and are still an attempt to garner sympathy. I'm
18 not disputing that he was injured. I'm not disputing that
19 he's disabled and that it may be painful for him, but he has
20 been seen. Shannon Rogers told us yesterday -- she was
21 actually angry when she left the courtroom because she said
22 I've seen him walking into the ER since then. So the State
23 feels that he is malingering.

24 Also, we had pictures of the residence that we believed
25 he lived at, which was his bonded -- the address he was to

1 be bonded for, which is on Greer Street, that show no ramps
2 in the house. I can hand those up. I'm told that he
3 actually does not live at that address, which is a violation
4 of his bond. And I would have moved to address that had I
5 known it sooner. So he was not even living at the address
6 he was supposed to be living at while this was pending, Your
7 Honor. And with all of that being said, I'll let the
8 members of the victim's family address the Court.

9 THE COURT: All right. Thank you very much. Whoever
10 wants to address the Court, I'll need to have you sworn in.
11 So if you'll come around. And you can just stand in the
12 front.

13 GRADY PORTERFIELD AND JENNIFER
14 LAWSON, having first been duly sworn, testified as follows:

15 THE COURT: Who wants to go first?

16 MR. PORTERFIELD: I could try to go.

17 THE COURT: That's fine. You can stand right there
18 will be fine.

19 MR. PORTERFIELD: I just got a letter --

20 THE COURT: I just need your name.

21 MR. PORTERFIELD: My name is Grady Porterfield. I'm
22 the oldest brother of three, of Petey and my sister. This
23 is a letter I put together in a short few moments. But from
24 the moment that I got the phone call on October 16th, 2014
25 our whole family's live was changed, of course. We didn't

1 just lose someone. We lost a son, a brother, a father, a
2 brother-in-law and a cousin. My family has gone through
3 some very tough times since Petey's passing. My mother has
4 good days and has bad days, but her life now is like a giant
5 roller coaster. Always changing directions and going up and
6 down at any given moment. My father is a lot like her.
7 He's always been strong and the tough man that I've always
8 known, but he's not bulletproof. I've seen him cry and I've
9 seen him have his weak moments through this. I'm not trying
10 to embarrass him, but I also cry myself. But no matter how
11 strong you are -- I'm sorry.

12 THE COURT: It's okay. Take your time.

13 MR. PORTERFIELD: No matter how strong you are, nothing
14 can compare you for the loss of a child. Even though I
15 don't want to know that. I have three of my own. My sister
16 has a lot of problems, as my parents do. Her life is like a
17 roller coaster of emotions. Her son, Skyler, which is my --
18 which is Petey's nephew, he had grown very close to Petey
19 before he was killed and he was very traumatized in the loss
20 of his uncle. He has problems that used to not be there,
21 and now he has to go see a therapist and a psychiatrist to
22 cope with his behavior. Petey's children have had to go
23 through losing their father. They were always asking, when
24 is he going to wake up. When is daddy coming home. When
25 can I see him. Now all they have is a picture and a grave

1 site to visit. They have to deal with being picked on in
2 school and told by other children saying your daddy's dead
3 and then laughing at him for the loss of his daddy. One
4 thing that really hit me hard was watching them sit there in
5 the funeral screaming daddy wake up. Daddy wake up. Please
6 wake up. I want my daddy. And they've also -- they've also
7 had a lot of problems, too. Like one of his daughters just
8 walked out in front of traffic wanting -- telling her mother
9 that she wanted to die to go see her father. And as for me,
10 it's changed me forever, as you can see. My brother who I
11 once picked on and cut up with is no longer here anymore.
12 My brother who once looked up to me and asked for advice is
13 gone. It has affected my life such because I hold
14 everything in when I lost it. It takes a toll on my
15 marriage. Before as a child, and still today, I am known as
16 Petey's brother, and always will be, because he was a
17 wonderful guy who looked up to me and called me his brother.
18 Petey's passing did not only affect this family, it affected
19 thousands. People in other states would also release videos
20 of setting off balloons in memory of my brother and shared
21 them with us. He touched so many lives, was in so many
22 hearts that you cannot believe how big a tragedy it was to
23 lose him. I want you to know I think you for your terrible
24 and irresponsible choice to drink and drive because you
25 stole a precious member of our family and caused us many

1 more so much pain every day.

2 THE COURT: Thank you, sir. Yes, ma'am. State your
3 name, please.

4 MS. LAWSON: My name is Jennifer Lawson. I am one of
5 Petey's cousins. I grew up with these three as siblings.
6 My aunt has been a mom to me for many years. I want to
7 basically reiterate a lot of what Grady said. That just
8 before 1:00 a.m. on Thursday, October 16, 2014 our lives
9 were changed forever. In around 100 yards from his driveway
10 Petey started a fight for his life. Unfortunately the Lord
11 called Petey home around 7:00 a.m. the same morning of
12 October 16th, 2014. I refuse to blame this on alcohol,
13 because we 150 percent have to take blame for our own -- an
14 account for our own actions. Hear me now when I say that
15 this is your fault because you chose to drink and drive.
16 Your actions have caused a ripple affect and affected so
17 many lives. Because of your actions, so many hearts that
18 have been broken are still broken today. Petey could make a
19 friend with anyone anywhere he went. He loved and was given
20 love 100 percent. He had a heart of gold. He was treasured
21 by his family, his children. Left behind to mourn, as
22 you've already heard, is a mother, father, siblings, nieces,
23 nephews, cousins and so on. But most of all I want to point
24 out those five beautiful children that's been left behind.
25 I can still hear the screams of his oldest daughter, Ava, at

1 the funeral begging daddy wake up, because I don't
2 understand. You have continued to live your life. You have
3 continued to drink. You have continued to show no remorse.
4 Our family -- excuse me. Your family will still be able to
5 visit you, and we are left with past memories and a
6 headstone. When a parent dies you can feel loss of your
7 past, but when a child dies you have lost your future. Not
8 a day goes by that tears that shed for life that Petey led
9 on this earth. It feels like life has given us a thousand
10 reasons to quit, but God has given us a thousand reasons to
11 continue on, especially through the eyes of those children.
12 Another child -- you know, these children, they tell their
13 mom, like you heard, Your Honor, I want to die. I want to
14 go see daddy. They don't understand that they can't come
15 back to the ones that are left here behind. You know,
16 sometimes a family member lies awake, you know, when the
17 world is sleeping, and at night when the world is sleeping
18 we sit here in our tears and all we have is our memories to
19 try to comfort us. Remembering can cause pain, but I want
20 to see a smile when looking at Petey's pictures. The
21 grieving from his parents and his siblings have been
22 heartbreaking to see. They just take it one step at a time
23 to pass through life. I don't know the years that are going
24 to be placed before him to be spending in prison, but I do
25 hope that you give him the maximum sentence given to the

1 law. I know hatred cannot enter into the gates of heaven,
2 so we refuse to allow hatred to have control over our lives
3 to keep us from our Lord and from Petey. As for
4 forgiveness, that's between you and God. Your apology to us
5 falls void on all our ears. After today you will be
6 forgotten about, your name will have no reverence in our
7 homes, because you do not deserve to share in the memory of
8 such a sweet soul.

9 THE COURT: Thank you very much, ma'am. Anything
10 further from the State?

11 MS. WHITE: No, sir.

12 THE COURT: Let me just express to all of Petey's
13 family members how sorry the Court is for your very terrible
14 and tragic loss.

15 Ms. Bolen, Ms. Able, will be glad to hear from you and
16 anybody on the Defendant's behalf. The Defendant himself if
17 he would like to address the Court.

18 MS. BOLEN: Your Honor, I'm first going to make a copy
19 of the evaluation. I don't think it was in the Court file.
20 So just to have that. I'm just going to pass this up, Your
21 Honor, so it's part of the file, and I also might make just
22 a little bit of reference to it.

23 THE COURT: All right. Thank you.

24 MS. BOLEN: Your Honor, these sorts of cases are
25 obviously very, very difficult. There's really no winners

1 on either side when there's a deceased young person who has
2 a lot of life and a lot of family that loved him and misses
3 him very much. And I don't want anything that I may say to
4 be interpreted as trying to minimize any of that loss,
5 because that is a tremendous irreparable tragic loss, Your
6 Honor.

7 Just to kind of walk you through my representation of
8 Carmine and what I've gotten to know about him over the last
9 year or so that I've represented him. I believe he was
10 initially represented by a private attorney here in town.
11 That representation fell through and he -- he applied for
12 our services, I believe, about a year ago. Maybe May or
13 June. So I've been representing him for about the last 14
14 months, Your Honor. To just kind of clear up one of the
15 things with the bond and the pictures of his house. In the
16 time I've known him he has actually lived at a house in
17 Bradley with one of his caretakers. He has Ms. Hendricks
18 here and then Ms. Clark who was here yesterday. Is not here
19 today. My investigator has been to that house and there are
20 ramps on it. He doesn't actually live at the Greer Street
21 address. So he does require -- what he's told me is that he
22 can walk. It's very, very painful for him. He can
23 physically walk, but he tends to use the wheelchair, Your
24 Honor. And I passed up a note from one of his doctors about
25 some of the physical ailments he has.

1 Your Honor, just to tell you a little bit about
2 Carmine. He is 51-years-old. And again, none of this is to
3 minimize the tragedy that happened, and none of it is to
4 excuse me, excuse his conduct in any way, but to explain how
5 he got to this point, Your Honor. He is 51. He had a very
6 traumatic upbringing, which is referenced in the evaluation
7 report that I just handed up. He was a victim of some
8 pretty severe abuse physically, sexually, emotionally.
9 Because of that he does not have close family relationships
10 with any actual blood relatives. He's kind of been in and
11 out of jobs, in and out of hospitals. He does have some
12 mental health illness. I think probably the most accurate
13 diagnosis is what's in the report of borderline personality
14 disorder. That is something that he does have, and he does
15 have some physical ailments as well, Your Honor. But I
16 think this is a case of -- just it shows the absolute
17 devastating toll that addiction can take, Your Honor. I
18 don't think Carmine had any malicious intent or anything
19 like that. I think he became addicted to alcohol and some
20 other substances as a way of coping with some pain that had
21 been inflicted upon him as a child. And again, it's not to
22 excuse his behavior, but just to explain how he got to this
23 point in his life.

24 We are asking you to consider showing some mercy on
25 him. As I said, he's 51. He does have the prior DUIs, but

1 I don't believe he's ever been in general sessions before.
2 He does have -- this is Elaine Hendricks that he sees as
3 sort of a mother figure, and then Ms. Clark who was here
4 yesterday. Those are the two main people in his life, Your
5 Honor. And the time that I've been representing him, those
6 are the two people who will come with him to appointments.
7 You know, every time I've had him come to our office he has
8 been in a wheelchair. And again, he has told me he can
9 walk. It's just very, very painful for him.

10 Your Honor, we are asking you just to consider showing
11 some mercy. He has been on -- so the original bond was
12 granted. He only did about a day or two in the local
13 detention center. His private attorney got him a bond right
14 away. But a condition of that was house arrest. And I
15 understand it looks like the address on the house arrest
16 form is different from where he was residing. And again,
17 that may be my fault for not checking when I got the case
18 six months later. But we are asking -- I know that the
19 statute makes it discretionary with the Judge whether any
20 time is spent pretrial on house arrested is counted. He
21 would ask you to consider to count that time, Your Honor.
22 But we're asking you to take into consideration his lack of
23 a general sessions record, his mental health condition, his
24 physical health condition. And to kind of address -- and I
25 understand -- I mean, I can't fully understand because I

1 haven't been through this, but the family's frustration of
2 his lack of taking responsibility. I think it's more that
3 he can't remember what happened, and that's -- I think we
4 had alluded to that we had had a previous hearing in this
5 case about a month ago that fell through and it was because
6 of that. That there was not any memory. So we're asking
7 you to take all that into consideration, and the difficult
8 upbringing that he's had and that this is really a case of
9 addiction gone horribly, horribly wrong. Not any sort of
10 malicious intent. And again, not to minimize the awful and
11 tremendous pain the family is going through, but just ask
12 for some mercy on him, Your Honor. And I don't know if -- I
13 need to have a moment.

14 Your Honor, I believe my client would like to address,
15 Your Honor. Do you want me to --

16 THE COURT: He can stay right there. I will need to
17 have him sworn in. So, ma'am, if you could just move over
18 just a little bit. There you go. Madam Clerk, would you
19 swear Mr. Miranda in, please.

20 CARMINE JAMES MIRANDA, III, having
21 been first duly sworn, testified as follows:

22 THE COURT: Mr. Miranda, I'll just need for you to
23 speak as loud as you possibly can so my court reporter can
24 hear you and so I can hear you as well. Okay?

25 THE DEFENDANT: Okay. Do I talk to you first and then

1 I'd like to --

2 THE COURT: You say whatever you would like to say to
3 whomever.

4 THE DEFENDANT: I know there was some things that -- I
5 wasn't looking for empathy being in this thing, but it would
6 have looked a lot worse if I had come in here on two canes
7 trying to walk then in this wheelchair. That's why I've got
8 the electric one, because it would look corny with Mama
9 trying to push me in the other one. I didn't want sympathy.
10 I tried to do this guilty thing a little while back because,
11 see, I don't have any memories of the accident. I just know
12 what my lawyer told me and I took Petey's life. And I don't
13 remember it. And I'd like to ask that family if I could
14 have them sad letters so I can keep them, so when I'm in
15 jail I can read and see what I done, because I don't have
16 any remembrance of this, and they've got to deal with this
17 every single day of their life. And I know she said an
18 apology is like nothing, but I truly am sorry. I didn't
19 know Petey, but he had a lot of people that loved him. One
20 thing I heard is he got saved a couple days before that.
21 And I know that don't make it right by what happened, but
22 I'm just grateful for that. And I do ask for them letters
23 in all sincerity, because they're beautiful letters, and
24 they'll let me know what I did, what I took away, because I
25 don't remember driving the car or being in it. But

1 obviously I was seen as guilty, so I was in it and I was
2 driving it and I accept my responsibility. And I'm truly
3 sorry to the Miller family. To all of them. And maybe some
4 day, they'll forgive me. I ask you to know that, you know,
5 my MS is getting worse and stuff. I take all my stuff that
6 I'm supposed to. It really doesn't bother me that you're
7 sending me away, because it's hard for me to even think what
8 I -- what would I have done. The closest pain I can get is
9 I got a puppy and had him for five days and he caught that
10 dog sickness and I spent four days giving him shots trying
11 to keep him alive, and he cried and cried, and then he died
12 in my arms. And that was the first I saw how they felt and
13 how hurt his momma had to be. That's all I've had to go on.
14 And I need them letters. I need them letters so that I can
15 feel their pain and know why I'm in prison, and that's all,
16 Your Honor. That's all.

17 THE COURT: Thank you, sir.

18 MS. BOLEN: Your Honor, one thing I did neglect to
19 mention is that he does have a number of medications he
20 takes. I handed up the list at the prior hearing a month
21 ago, but we would -- and I know -- I don't think there's any
22 control in this courtroom, but we'd ask that he be allowed
23 to take his medications in prison.

24 THE COURT: And you referred to something from a doctor
25 that you handed you? Was that handed to me? Something.

1 MS. BOLEN: Yes, sir. I think on Monday. It was just
2 a -- it was about the breaks. But it just gave to the
3 physical ailments he has. It's a Court's exhibit. I'm
4 sorry. I forgot that.

5 THE COURT: Okay. I don't know if I ever actually saw
6 it, or read it. Oh, I remember now.

7 MS. BOLEN: It's fairly short.

8 THE COURT: Anything further? Does this lady wish to
9 address the Court?

10 MS. BOLEN: I believe she does, Your Honor.

11 THE COURT: All right. You need to be sworn in, ma'am.

12 ELAINE HENDRICKS, having first been
13 duly sworn, testified as follows:

14 THE COURT: Would you state your name, please, ma'am.

15 MS. HENDRICKS: Elaine Hendricks.

16 THE COURT: Yes, ma'am, Ms. Hendricks. I'll be glad to
17 hear from you.

18 MS. HENDRICKS: I am the person who has for the last 20
19 years been --

20 THE COURT: Take your time.

21 MS. HENDRICKS: -- a mother figure to Carmine. Carmine
22 was abandoned by his family when he was about 10-years-old,
23 and he lived on the streets for a long time, and he got into
24 the juvenile system and got into one home after another, so
25 -- and in those homes he suffered sexual abuse most of the

1 time. And I've known him for 20 years, and I have tried to
2 show Carmine a Christian way of life. He's been at Faith
3 Home two or three times before I met him. And he learned
4 the tools of what he needed to do out there. But Carmine
5 has a mental disability and he has bad judgment, and that's
6 what his life has been a result of all these years. But the
7 past two years since this wreck happened approximately,
8 Carmine has been spending most of his time, because of his
9 disabilities and everything, he has studied the word of God
10 and he has become a very sound Christian. And he knows he's
11 done wrong. There's no doubt about it. He said to me on
12 the way here this morning, I'm ready to go take the
13 punishment if I am guilty of it. But he doesn't remember
14 anything that happened in this accident. He has no memory.
15 And he probably won't ever the doctor said. He said many
16 don't when they have a collision like this. But Carmine is
17 a better person today because of his last 15, 20 years.
18 Before this wreck happened he had been sober and not on any
19 kind of alcohol or anything for two or three years. And he
20 had a manic episode mentally, and that was what drove him to
21 go drinking and do the things he did in this accident. And
22 he made a bad judgment and he admits he did. He knows he
23 did. So it's not like he doesn't have any remorse. It's
24 just that Carmine's not been shown the love that a lot of us
25 have by our parents during his childhood and he doesn't have

1 a lot of emotional feelings sometimes. He doesn't feel the
2 things we feel. That has been my experience with him on
3 expressing love and affection for other people. It's hard
4 for him because he hasn't been brought up that way. And I
5 pray -- I have been praying for months about this. I've
6 been knowing it was going to come to a end and something
7 would be decided. So I've just been praying about it. And
8 I've been praying for the Lord's will to be done in this,
9 and that's all we can say. And he is resigned to the fact
10 that he's probably going to have to pay some penalty for
11 this that he did. But he did not do it willfully. There
12 were other deciding factors that caused him to do this. And
13 he was not living with me when this happened. So I didn't
14 even know he was having difficulties mentally until I was
15 called and -- a few days before this wreck happened, and I
16 couldn't get in touch with him because of the fact he wasn't
17 living with me. So I'm, like Ms. Bolen said, just asking
18 for the Court's understanding before a sentence is rendered
19 about this. And I've been praying for the Lord's mercy.
20 That's all I can do.

21 THE COURT: Thank you, ma'am. Very much. Ms. Bolen,
22 anything further?

23 MS. BOLEN: No, sir.

24 THE COURT: Give me a few moments to read the
25 evaluation report. Everybody be at ease.

1 (Whereupon, there was brief pause in the proceedings.)

2 THE COURT: Before I pronounce sentencing, Ms. Bolen, do
3 you want any time to make any post-trial motions? I'll give
4 you 10 days if you need any time. Because we didn't really
5 address that once we received the verdict from -- I'll
6 certainly be glad --

7 MS. BOLEN: I guess I'd like the 10 days. I don't know
8 that I'll be making any, but --

9 THE COURT: I'll give you 10 days, and you just let me
10 know -- you know, you'll either make them or you'll let me
11 know you're not going to make them.

12 MS. BOLEN: Yes, sir.

13 THE COURT: All right. Well, I think it's already been
14 recognized, and it certainly goes without saying, that these
15 cases, as well as so many cases that we see in this
16 courtroom are just -- are just tragic all the way around.
17 And it would be nice if the Lord would have given me some
18 magical powers where I could bring this young fellow back,
19 but of course he has not elected to do that.

20 I find some things to be very, I think, significant,
21 Mr. Miranda. In your evaluation report it was stated
22 several times that you're cognitive impairment was
23 suspicious. I've read a lot of evaluation reports and I
24 don't know if I've ever seen that before. And then I think
25 as Solicitor White alluded to, the evaluator also found that

1 you may very well be malingering. I think that's important.
2 Your prior record certainly does not help you at all. And
3 especially in light of the fact that even though it was
4 eight months, we could just very well say just as soon as
5 you got your license back you were back drinking and driving
6 again, even though it was an eight month period of time. I
7 think that's important. But I'm certainly not blind -- and,
8 Patricia, could you move over a little bit? You're okay.
9 It's all right. I'm not blind to the fact that you do have
10 some physical ailments. You do have a very tragic, using
11 that word again, upbringing and background. So I'm
12 certainly taking that into consideration as well.

13 Before I announce sentencing, I want to commend the --
14 all four lawyers for an excellent job in this case
15 representing your respective clients. While incarcerated I
16 want you to be evaluated and screened in the ATU program and
17 enrollment in the Ignition Inter-Lock Device program upon
18 your release from incarceration. I've also considered the
19 possibility of giving you credit for the time you've been on
20 house arrest. I'm denying that. And the reason why I am is
21 because -- and certainly no fault of your attorney, but you
22 were in violation of the bond as far as your residency
23 requirement goes.

24 Taking everything into consideration. Mr. Miranda,
25 you'll be committed to the State Department of Corrections

1 for a period of 16 years, and pay a fine of \$10,100. That's
2 the sentence of the Court. Good luck to you, sir.

3 (END OF REQUESTED TRANSCRIPT OF RECORD.)

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(SELF REGIONAL HEALTHCARE
JOHN M SUNDERMANN, MD, LABORATORY MEDICAL DIRECTOR
1325 SPRING STREET, GREENWOOD, SOUTH CAROLINA 29646

NAME : MIRANDA, CARMINE J AGE : 49Y SEX : M
MR# : 000360310 LOC: ECD
HIST#: 1421500046 DR : MISCELLANEOUS, MISC DOB : 0 CODE: 199

===== CHEMISTRY PANEL =====
TEST: EGFR EGFR EGFR
 NON AFR AMER AFRICAN AMER NOTES
UNITS: ML/MIN/1.73M^2 ML/MIN/1.73M^2
REF. RANGE: >60 >60

10/16/14
+ 0118 >60 >60 EGFR2
 STAT STAT EGFR3
 STAT

***** CHEMISTRY MISCELLANEOUS *****
TEST: SERUM
 ALCOHOL
 MEDICAL
UNITS: MG/DL
REF. RANGE: 0

10/16/14
+ 0118 208 *
 NCC
 MED
 STAT

***** MEDICAL URINE DRUG OF ABUSE SCREEN *****
TEST: AMPHETAMINES BARBITURATES BENZO-
 DIAZEPINE COCAINE OPIATES PCP THC NOTE
UNITS:
REF. RANGE: NEG NEG NEG NEG NEG NEG NEG

10/16/14
+ 0115 NEGATIVE NEGATIVE NEGATIVE NEGATIVE NEGATIVE NEGATIVE NEGATIVE (a)
 STAT STAT STAT STAT STAT STAT STAT (b)
 (c)

---FOOTNOTES---

- EGFR2 Estimated GFRs are not intended for use in renal dosing of medication or radiocontrast dye. EGFRs have not been validated for use in patients under 18 or over 70 years of age, or in pregnant women.
- EGFR3 EGFRs are not validated for use in patients with serious co morbid conditions, or in patients with extremes of body size or nutritional status. For additional information and for stratification of Kidney Disease, see the NKDEP website.
- MED RESULT MUST NOT BE USED FOR NON MEDICAL PURPOSES (EMPLOYMENT OR LEGAL TESTING)
- NCC NO CHAIN OF CUSTODY
- (a) NO CHAIN OF CUSTODY
- (b) RESULT MUST NOT BE USED FOR NON MEDICAL PURPOSES (EMPLOYMENT OR LEGAL TESTING)
- (c) Certain drugs and their metabolites may cause cross-reactivity. Confirmation testing is recommended for presumptive positive immunoassay results, if clinically indicated. STAT

CONTINUED

CARMINE J MIRANDA
OP/OS NEW ACTIVITY ONLY

MR#: 000360310
LOC: ECD

10/17/2014

01:00
PAGE: 2

PRINTED BY: C92198

WITNESSES

Todd A. Stevenson
S C Highway Patrol

WARRANT NUMBER

2014A2410201371

True Bill

George Thi

Foreman of the Grand Jury

Date: 1-11-16

VERDICT

True Bill

Guilty
Michael R. Walker 8/3/16
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

January Term, 2016

Indictment # 16GS24- *108*

THE STATE

vs.

Carmin James Miranda III

INDICTMENT FOR

FELONY DRIVING UNDER THE INFLUENCE
§ 56-05-2945

CDR: 0395

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF GREENWOOD

FELONY DRIVING UNDER THE INFLUENCE
§ 56-05-2945

At a Court of General Sessions, convened on the 11th day of January, 2016, the Grand Jurors of Greenwood County present upon their oath:

That Carmine James Miranda III, on or about October 16, 2014, in Greenwood County, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did drive a vehicle and when driving the said vehicle did an act forbidden by law or neglect any duty imposed by law, to wit: that the said defendant drove with reckless disregard for the safety of others; and/or failed to change the course of travel to avoid causing the accident; and/or failed to slow down to avoid causing the accident; and/or failed to keep a proper lookout and/or failed to maintain his vehicle under proper control, which act and/or acts of neglect proximately caused the death of one Peter Burton Miller in violation of Section 56-5-2945 of the South Carolina Code of Laws, 1976, as amended.

(Signature)

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

(Signature)
Assistant Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenwood
 STATE VS.
Carmine James Miranda III

AKA:

Race: CAUCASIAN Sex: M Age: 51DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Greenwood, SCDL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: DUI / Felony driving under the influence, death results (1-25 yrs)INDICTMENT/CASE#: 16GS24-0108A/W#: 2014A2410201371Date of Offense: 10/16/2014S.C. Code § : 56-05-2945CDR Code #: 0395

SENTENCE SHEET

in violation of § 56-05-2945of the S.C. Code of Laws, bearing CDR Code # 0395
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]

White, Elizabeth

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 16 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 10,100.00; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. Credit for House Arrest Det.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-155.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-25 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: 10,100.00\$ 10,100.00

§ 14-1-206 (Assessments 107.5 %)

\$ 10857.50

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$ 100.00

§ 56-5-2995 (DUI Assessment)

\$12

\$ 12.00

§ 56-1-286 (DUI Breath Test)

\$25

\$ _____

Proviso 61.6 (Public Def/Probation)

\$500

\$ _____

§ 14-1-212 (Law Enforce. Funding)

\$25

\$ _____

§ 14-1-213 (Drug Court Surcharge)

\$150

\$ _____

§ 50-21-114(BUI Breath Test Fee)

\$50

\$ _____

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ _____

3% to County (if paid in installments)

\$ 629.07

TOTAL

\$ 21,598.59

Clerk of Court/ Deputy Clerk

Court Reporter: Tara Scott

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2167Sentence Date: 8/3/16

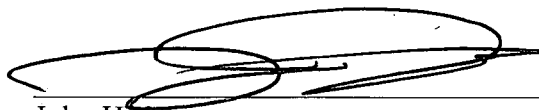
FILED GENERAL SESSIONS
 2016 AUG - 30
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 11/11/16

Other: (1) ATU Evaluation and
 Screening (2) Enrollment in
 the Ignition Interlock Device
 Program upon Release from
 incarceration.
☐ Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

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,



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 28th day of September, 2017.

RECEIVED

SEP 28 2017

SC Court of Appeals