

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Letitia H. Verdin, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TIMOTHY ADAM HESTER, SR.,

APPELLANT

APPELLATE CASE NO 2017-000201

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF PICKENS	)	Case No(s) : 2015GS3900611,
	)	2015GS3900612,
State of South Carolina,	)	2016GS3902635
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Timothy Hester, Sr.,	)	Volume 1 of 4
	)	
Defendant.	)	
	)	

January 23-26, 2017
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

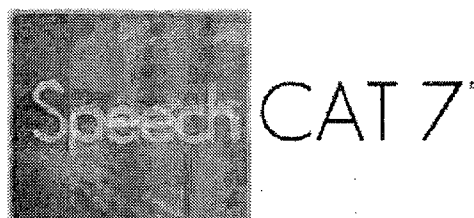
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P R O C E E D I N G S

(WHEREUPON, proceedings begin on the 23rd day of January, 2017 at approximately 2:26 p.m.)

(WHEREUPON, State's Exhibits 1 through 44 are marked for identification purposes.)

THE COURT: I want to apologize to you about the delay and having to bring you back this afternoon. I want to explain to you a little bit about it. My name is Letitia Verdin. I'm a circuit judge here in this circuit, but my office is in Greenville. The judge who was presiding this morning, Judge Gravely, realized that he knew someone involved in this case -- I don't even know who it was -- but realized he knew someone involved in this case, and he followed the rules to the letter of the law and informed everyone about it and let the administrative judge know that he needed a replacement.

So I was in Greenville, and it did take me a little bit of time to get over here and -- finish up what I was doing and get over here. So that delay is entirely my fault. It does not in any way reflect anything about these attorneys or anyone else. But I want to just

1 assure you that Judge Gravely did exactly what
2 he needed to do when faced with that situation
3 that does arise from time to time. A lot of
4 times, we don't know anything about it until we
5 get into the case, so I apologize very much.

6 Earlier, this morning, Judge Gravely
7 determined that you are all qualified to serve
8 here in Pickens County this week in General
9 Sessions Court as jurors. I need to go through
10 some questions with you to find out if you are
11 particularly qualified to serve on the trial of
12 this case. I'm going to go through questions.
13 They are mainly related to whether or not you
14 know anyone involved in this case. And if so,
15 how you know that person. So I'm going to ask
16 you, if you need to respond to any of my
17 questions, to please stand. I'll ask you to
18 give me your name and juror number, and then
19 we'll talk about it.

20 There are some names on this list that are
21 pretty common names, especially in this area.
22 So if you even think you know someone involved
23 in this case, if you would, please stand and
24 let's just figure it out. All right. That's the
25 better thing to do in the beginning.

1 I do have a couple of questions. I will
2 have a couple of questions related to the
3 nature of this case. So if anyone needs to
4 respond to anything and you just don't want to
5 talk about it out loud, even how you know
6 somebody, if you don't want to talk about it
7 out loud, just tell me that you want to
8 approach the bench. The attorneys will come up
9 here and we'll have a talk about it at the
10 bench. All right.

11 I'm going to first begin by telling you the
12 name of this case, and then we're going to move
13 on to introducing the attorneys and the folks
14 involved in this case. This case is the State
15 of South Carolina versus Timothy Adam Hester,
16 Sr. Mr. Hester is charged with Driving Under
17 Suspension, Felony DUI Resulting in Death and
18 Habitual Traffic Offender causing Death. If any
19 -- so I'm going to now ask the attorneys
20 involved in this case to introduce themselves
21 and the folks at their table.

22 All right. Yes, sir.

23 **MR. CLEVELAND:** Thank you, Your Honor.

24 Good afternoon. My name is Baker Cleveland.
25 I'm an Assistant Solicitor here in Pickens

1 County.

2 **MR. BUCKNER:** Good afternoon. My name is
3 Graham Buckner, and I'm also an Assistant
4 Solicitor here in Pickens County.

5 **MR. DEJONG:** Thank you, Your Honor. May it
6 please the Court. I'm John DeJong. I practice
7 law here in Pickens County. I have the pleasure
8 of representing Mr. Timothy Adam Hester today.
9 Also seated at counsel table with me is Daniel
10 King. He is another attorney in my office.

11 **THE COURT:** All right. Thank you.

12 Ladies and Gentlemen of the jury, I'm first
13 going to start with whether or not any of you
14 know Mr. Cleveland in this case or if anyone
15 knows Mr. Buckner, the prosecutors in this
16 case. If so, please stand.

17 (No audible response.)

18 Any member of the jury panel related by
19 blood or marriage or otherwise acquainted with,
20 in any way, anyone who is employed at the
21 Pickens County Solicitor's Office? And just for
22 your information, the Solicitor is what, in
23 some states, is called the district attorney or
24 the prosecutor. Any member of the jury panel
25 believe he or she knows anyone, has any

1 relationship with anyone at the Pickens County
2 Solicitor's Office? And if so, please stand.

3 (No audible response.)

4 And none are standing.

5 Any member of the jury panel related by
6 blood or marriage or otherwise acquainted with,
7 in any way, ever been represented by, ever been
8 in a case against Mr. John DeJong? If so,
9 please stand.

10 (No audible response.)

11 And none are standing.

12 Any member of the jury panel believe you
13 know anyone employed in Mr. DeJong's office,
14 including, of course, Mr. King here? And if so,
15 please stand.

16 (No audible response.)

17 Any member of the jury panel related by
18 blood or marriage or otherwise acquainted with,
19 in any way, Mr. Timothy Adam Hester, Sr, whom
20 you just met? If so, please stand.

21 Yes, sir. Tell me your name and jury number
22 -- juror number.

23 **THE JUROR:** Juror number 32.

24 **THE COURT:** Yes, sir.

25 **THE JUROR:** Me and Adam, we've done our

1 fair share of running around together.

2 **THE COURT:** I gotcha. I gotcha. All right.
3 How -- how often do you think you -- do you see
4 him nowadays or no?

5 **THE JUROR:** I stop by his house every
6 once in a while.

7 **THE COURT:** All right. Okay. All right.
8 Thank you, sir. I appreciate it.

9 I'm sorry. Tell me your juror number again.

10 **THE JUROR:** 32.

11 **THE COURT:** 32.

12 If y'all will just bear with me, I'm sort
13 of shifting gears here this afternoon.

14 **THE COURT:** All right. Thank you. And
15 that's exactly the kind of information I need.
16 Anybody else think you have any relationship to
17 Mr. Hester? And if so, please stand.

18 (No audible response.)

19 All right. And no further are standing.

20 Ladies and Gentlemen, I -- I need to go
21 through potential witnesses in this case with
22 you. I will tell you that the attorneys on each
23 side of this case are outstanding lawyers. They
24 have listed every possible witness who could
25 testify in this case, so I've got a fairly

1 lengthy list just to go through. We just want
2 to be absolutely sure there is no one that we
3 might -- that you might know that might need to
4 testify.

5 If any member of the jury panel is related
6 by blood or marriage or otherwise acquainted
7 with, in any way, anyone listed, if you would,
8 please stand. And if you would, since I've got
9 such a long list, just hold your answer to the
10 end and stand when -- stand when I finish
11 reading out the list.

12 All right. As I said, some of these names
13 are very common, so please stand if you know
14 anyone or think you know anyone. All right.
15 John Miller of Pickens County EMS; Rodney
16 Crenshaw of Pickens County EMS; Neal Nimmons of
17 the South Carolina Highway Patrol; Farris W.
18 Marlow of the South Carolina Highway Patrol;
19 Stephen McDowell of the South Carolina Highway
20 Patrol; Marie Waring, South Carolina Department
21 of Motor Vehicles; Brian Mayfield of the South
22 Carolina Highway Patrol; Benji Ross of the
23 South Carolina Highway Patrol; Mike Pelfrey of
24 the South Carolina Highway Patrol; Rodney A.
25 Frick of the South Carolina Highway Patrol;

1 Aaron L. Duncan of the South Carolina Highway
2 Patrol; John L. Craig of the South Carolina
3 Highway Patrol; David C. Andis of the South
4 Carolina Highway Patrol; Jared Duncan of South
5 Carolina Highway Patrol; Catherine Lie -- is it
6 Leisy?

7 **MR. CLEVELAND:** Leisy.

8 **THE COURT:** Leisy, that's what I thought
9 -- of SLED, South Carolina Law Enforcement
10 Division; Tracey McKinnon of South Carolina Law
11 Enforcement Division; Becky Howe; Dr. James
12 Fulcher, Medical -- Greenville County Medical
13 Examiner; Tiffany Forshee; James N -- excuse me
14 -- James M. Monroe --

15 **MR. CLEVELAND:** Moore.

16 **THE COURT:** Oh, I'm sorry -- Moore, James
17 M. Moore -- I need to put on my glasses is what
18 I need to do -- and Tiffany Mauldin; or Tammy
19 Sweet. Any member of the jury panel have any --
20 acquainted with any of these folks, have any
21 relationship with any of these folks, either
22 related by blood or marriage or have just any
23 acquaintance with them at all?

24 All right. Yes, ma'am. Let's start with
25 you. Tell me your name and juror number.

1 **THE JUROR:** Danyalle Wilson, number 4.

2 **THE COURT:** Yes.

3 **THE JUROR:** I went to school with Tiffany
4 Mauldin. We had a few run-ins together that
5 weren't very pleasant.

6 **THE COURT:** Tiffany Mauldin?

7 **THE JUROR:** Yes, ma'am.

8 **THE COURT:** All right. Tell me this, if
9 Ms. Mauldin were to testify in the trial of
10 this case, do you believe you could still be a
11 fair and impartial juror?

12 **THE JUROR:** Yes, ma'am.

13 **THE COURT:** All right. Thank you so much.
14 I don't know what her connection is at this
15 point. All right. Thank you.

16 Yes, sir.

17 **THE JUROR:** Trooper Nimmons, we've gone
18 to church together. Before, I think I kept his
19 kids in the nursery, but that shouldn't be a
20 problem.

21 **THE COURT:** Okay. Tell me your name and
22 juror number, if you don't mind.

23 **THE JUROR:** Joseph Anderson, Juror
24 number 5.

25 **THE COURT:** Yes, sir. Tell me this, do you

1 think knowing that you know Neal Nimmons, do
2 you think you could still be a fair and
3 impartial juror in the trial of this case if he
4 were to testify?

5 **THE JUROR:** Yes, ma'am.

6 **THE COURT:** All right. Thank you.

7 **THE JUROR:** I apologize. When you were
8 asking about attorneys, I heard you ask for
9 Mr. Buckner, but I didn't hear you ask for
10 Mr. Cleveland. I did attend Clemson with
11 Mr. Cleveland. Acquaintances in the past, but I
12 don't think that's going to be an issue.

13 **THE COURT:** Knowing that he's -- how long
14 do you think it's been since you've seen him?

15 **THE JUROR:** I think we've seen each other
16 once, maybe twice since we graduated college.

17 **THE COURT:** Okay. And when you've seen
18 each other, was it y'all's plan to get together
19 or was it you just ran into him?

20 **THE JUROR:** One time, we got together and
21 we didn't know each other was going to be
22 there. We were seeing mutual friends.

23 **THE COURT:** Okay. I gotcha. I gotcha.
24 Knowing that Mr. Cleveland is the prosecutor in
25 this case, do you still think you could be a

1 fair and impartial juror in the trial of this
2 case?

3 **THE JUROR:** I believe so.

4 **THE COURT:** Okay. All right. Thank you,
5 sir. I appreciate it.

6 Anyone else related to or acquainted with
7 any of these potential witnesses in this case?
8 And exactly what this man did, you know, he
9 didn't hear me call out the attorney's name in
10 this case, but if you remember that you know
11 anybody involved in this case, I really want to
12 stress, please don't be shy. Now's the time to
13 talk to me about it. All right.

14 (No audible response.)

15 Thank you. All right. Is any member of the
16 jury panel or their immediate family associated
17 with or related by blood or marriage to anyone
18 who is employed by the Pickens County Sheriff's
19 Office, South Carolina Highway Patrol or State
20 Law Enforcement Division or other law
21 enforcement agency? If so, please stand.

22 Yes, ma'am. Tell me your name and juror
23 number.

24 **THE JUROR:** Donna Mansell. My number is
25 124.

1 **THE COURT:** Yes, ma'am.

2 **THE JUROR:** My sister is an officer in
3 Pickens County.

4 **THE COURT:** Pickens County? Let me ask you
5 this, do you think you know anything about this
6 particular case?

7 **THE JUROR:** No, ma'am.

8 **THE COURT:** Do you think the fact that she
9 is in law enforcement, do you think you could
10 still be a fair and impartial juror in the
11 trial of this case?

12 **THE JUROR:** Yes, ma'am.

13 **THE COURT:** Thank you so much. I
14 appreciate it. That's exactly the information
15 I'm looking for.

16 Yes, sir.

17 **THE JUROR:** Mike Preusz, 171.

18 **THE COURT:** Yes, sir.

19 **THE JUROR:** I'm friends with a Pickens
20 County officer.

21 **THE COURT:** Okay. And which officer?

22 **THE JUROR:** Officer Anthony.

23 **THE COURT:** All right. And do you believe
24 you could be a fair and impartial juror in the
25 trial of this case?

1 **THE JUROR:** Yes.

2 **THE COURT:** All right. Thank you so much.

3 Yes, sir. Tell me your name and juror
4 number.

5 **THE JUROR:** I am Billy Elrod, Juror
6 number 64.

7 **THE COURT:** Yes, sir.

8 **THE JUROR:** And my niece is married to a
9 highway patrolman.

10 **THE COURT:** Okay.

11 **THE JUROR:** Chris something.

12 **THE COURT:** Okay. We won't tell that you
13 can't remember his last name. Okay. Do you
14 think you could be a fair and impartial juror
15 in the trial of this case?

16 **THE JUROR:** Yes, ma'am.

17 **THE COURT:** Okay. Thank you. I appreciate
18 you telling me that. That's information we need
19 to know. Yes, sir. Tell me your name and juror
20 number.

21 **THE JUROR:** 67. My wife's cousin is a
22 highway patrolman.

23 **THE COURT:** All right. Thank you. Do you
24 think, based on that, you could be a fair and
25 impartial juror in the trial of this case?

1 **THE JUROR:** Yes, ma'am.

2 **THE COURT:** Thank you so much. I
3 appreciate it.

4 All right. Ladies and Gentlemen, if you
5 serve as jurors in the trial of this case, you
6 will hear a lot about what an indictment is and
7 what an indictment is not. I want to tell you
8 and stress to you at this point, and you will
9 hear me say this in the trial of the case
10 several times, an indictment is not in any
11 sense evidence of anyone's guilt. It is just
12 simply the document by which the state writes
13 down the allegation against somebody and brings
14 them into court. That's it.

15 Do y'all want to approach?

16 **(WHEREUPON, a bench conference is held off the**
17 **record.)**

18 **THE COURT:** All right. Ladies and
19 Gentlemen, as I said, if you serve in the trial
20 of this case -- if you serve on the trial of
21 this case, you're going to hear that an
22 indictment is not, in any sense, evidence of
23 anyone's guilt. But I need to read you the body
24 of the indictments in this case just to find
25 out if you know anything about this particular

1 incident. All right. These are merely the
2 allegations that the State has to prove against
3 the defendant, nothing more. All right.

4 The first -- the first indictment is for
5 Felony Driving under the Influence Resulting in
6 Death. And it alleges that Timothy Adam Hester
7 did, in Pickens County, on or about the 30th
8 day of January, 2015, drive a motor vehicle
9 while under the influence of alcohol, drugs or
10 a combination of both, and did an act forbidden
11 by law or neglected a duty imposed by law, to
12 wit: the defendant drove recklessly and/or
13 disregarded a stop sign which acts and/or
14 neglect proximately caused the death of Alanah
15 E. Holcombe.

16 The next indictment in this case is for
17 Driving under Suspension. It alleges that
18 Timothy Adam Hester, Sr, did, in Pickens
19 County, on or about the 30th day of January,
20 drive a motor vehicle on a public highway of
21 this state when his license to drive was
22 suspended.

23 The final indictment alleges -- is for
24 Habitual Traffic Offender causing Death. It
25 alleges that Timothy Adam Hester, Sr, did, in

1 Pickens County, on or about the 30th day of
2 January, 2015, drive a motor vehicle on a
3 public highway of this state while his license
4 was cancelled, suspended or revoked, and after
5 having been determined to be a habitual traffic
6 offender and did an act forbidden by law or
7 neglected a duty imposed by law, to wit: the
8 defendant drove under the influence of alcohol
9 and/or disregarded stop sign, which resulted in
10 a motor vehicle collision, which act and/or
11 neglect proximately caused the death of Alanah
12 Holcombe.

13 Any member of the jury panel believe he or
14 she knows anything about the allegations the
15 state is making in this case? If so, please
16 stand.

17 Okay. Yes, sir. I'll tell you what, I've
18 excused you from this particular jury, so
19 that's fine. Thank you so much. I appreciate
20 it. No, you don't -- stay here with us. We're
21 going to get some more instruction. If we can't
22 use you on this jury, we've got another one for
23 you.

24 **THE JUROR:** All right.

25 **THE COURT:** All right. Yes, ma'am. Tell me

1 your name and juror number.

2 **THE JUROR:** 129. My mom and the victim's
3 grandfather are double first cousins.

4 **THE COURT:** Gotcha.

5 **THE JUROR:** I don't know her.

6 **THE COURT:** All right. Tell me this,
7 knowing that relationship, do you think you
8 could be a fair and impartial juror in the
9 trial of this case? I want you to be very
10 honest.

11 **THE JUROR:** (Shakes head.)

12 **THE COURT:** Thank you. Tell me your juror
13 number again.

14 **THE JUROR:** 129.

15 **THE COURT:** 129.

16 All right. All right. Is there any member
17 of the jury panel who is a member of or a
18 contributor to any group or organization which
19 promotes alleged victims' rights or law
20 enforcement, such as Mothers Against Drunk
21 Driving or SADD or any other advocacy group
22 which promotes the interest of law enforcement
23 or victims' rights? If so, please stand.

24 (No audible response.)

25 And none are standing.

1 Has any member of the jury panel read any
2 newspaper article, anything on online news,
3 anything like that, any radio broadcast, read
4 anything on Facebook, anything on Twitter,
5 anything on any blog regarding this incident
6 and the allegations in this case? If so, please
7 stand.

8 (No audible response.)

9 None are standing.

10 Is there any member of the jury panel who
11 is a member of a political, religious, social,
12 industrial, fraternal, law enforcement or any
13 other organization whose beliefs or teachings
14 would prejudice him or her against either party
15 in this case? If so, please stand.

16 (No audible response.)

17 And none are standing.

18 Has any member of the jury panel or any
19 member of their immediate family ever been the
20 victim of or a complaining witness in any
21 incident in which alcohol was allegedly
22 involved? If so, please stand.

23 All right. Yes, sir. Tell me your name and
24 juror number.

25 **THE JUROR:** Scott Davis, 48.

1 **THE COURT:** Yes, sir.

2 **THE JUROR:** My brother was hit by a drunk
3 driver. It's been many, many years ago.

4 **THE COURT:** Okay. I'm very sorry to hear
5 that. Tell me this, knowing the allegations in
6 this particular case, do you believe you could
7 still be a fair and impartial juror in the
8 trial of this case?

9 **THE JUROR:** I'm not sure.

10 **THE COURT:** Okay. No, I understand. Tell
11 me your juror number one more time.

12 **THE JUROR:** 48.

13 **THE COURT:** Thank you. I appreciate it.
14 Yes, ma'am. Tell me your name and juror
15 number.

16 **THE JUROR:** Margaret Devine, 52.

17 **THE COURT:** Okay. Yes, ma'am.

18 **THE JUROR:** My mom and brother both
19 probably had some alcohol, actually, and drug
20 charges against them.

21 **THE COURT:** Okay. Tell me this, do you
22 think knowing the allegations in this case, you
23 could be a fair and impartial juror in the
24 trial of this case?

25 **THE JUROR:** Absolutely.

1 **THE COURT:** All right. Thank you. Thank
2 you very much. I appreciate it. Anybody else
3 need to respond to that question whatsoever?

4 (No audible response.)

5 All right. And I'm going to ask that same
6 question, but from another -- from another
7 perspective. Any member of the jury or member
8 of your immediate family -- and by that, I
9 mean, brother, sister, spouse, child, parent --
10 ever -- has any member of the jury panel or a
11 member of their immediate family been charged
12 with an alcohol-related traffic violation? If
13 so, please stand.

14 And ma'am, you've already spoken. Anything
15 else you need to add? You feel like you could
16 be fair and impartial?

17 **THE JUROR:** Yeah.

18 **THE COURT:** Thank you so much. I
19 appreciate it. I'll start here. Yes, sir. Tell
20 me your name and juror number again just for
21 the record.

22 **THE JUROR:** Billy Elrod, Juror number 64.

23 **THE COURT:** Yes, sir.

24 **THE JUROR:** I think my sister had a DUI.

25 **THE COURT:** Okay. All right. Could you be

1 a fair and impartial juror in this trial?

2 THE JUROR: Yes, ma'am.

3 THE COURT: Thank you so much.

4 Yes, ma'am.

5 THE JUROR: Danielle Reeves, 176.

6 THE COURT: Yes, ma'am.

7 THE JUROR: (Indiscernible.)

8 THE COURT: Okay. Tell me this, do you
9 think you could be a fair and impartial juror
10 in the trial of this case knowing what the
11 allegations are?

12 THE JUROR: Yes.

13 THE COURT: Okay. And your juror number
14 one more time? I'm sorry.

15 THE JUROR: 176.

16 THE COURT: 176. All right. Thank you,
17 ma'am.

18 Yes, ma'am. On the front row here.

19 THE JUROR: I have a younger brother who
20 has some substance abuse issues and was charged
21 with some vehicular things.

22 THE COURT: Okay. Could I get your name
23 and juror number?

24 THE JUROR: My name is Ashley Perry. I'm
25 165.

1 **THE COURT:** 165. And do you think, knowing
2 the allegations in this case, you could be a
3 fair and impartial juror in the trial of this
4 case?

5 **THE JUROR:** Yes, ma'am.

6 **THE COURT:** Thank you so much. I
7 appreciate it.

8 Yes, ma'am.

9 **THE JUROR:** Crystal Landreth, 114.

10 **THE COURT:** Yes, ma'am.

11 **THE JUROR:** My father has a DUI.

12 **THE COURT:** Okay. Do you -- knowing the
13 allegations in this case, do you believe you
14 could be a fair and impartial juror in the
15 trial of this case?

16 **THE JUROR:** Yes.

17 **THE COURT:** Thank you so much. Anybody
18 else need to respond to that question about you
19 or an immediate member of your family?

20 Yes, sir. Tell me --

21 **THE JUROR:** 162, my stepson had been
22 convicted of drug charges.

23 **THE COURT:** Okay. And do you think you
24 could be a fair and impartial juror in the
25 trial of this case?

1 **THE JUROR:** Yes, ma'am.

2 **THE COURT:** All right. Thank you so much.

3 All right. Yes, sir. Tell me --

4 **THE JUROR:** 179. My father has had DUIs.

5 **THE COURT:** Okay. And tell me this, could
6 you be a fair and impartial juror in the trial
7 of this case knowing the allegations?

8 **THE JUROR:** Yes.

9 **THE COURT:** Thank you.

10 Any other member of the jury panel need to
11 respond to my question for any reason
12 whatsoever? And if so, please stand.

13 Yes, ma'am. Tell me your name and juror
14 number.

15 **THE JUROR:** Tanya Curren, 43.

16 **THE COURT:** Yes, ma'am.

17 **THE JUROR:** I'm not sure if this is
18 relevant or not because we don't give to a
19 victims' advocacy group, but we film a
20 television series and we feature law
21 enforcement, so we are very pro law
22 enforcement.

23 **THE COURT:** I gotcha.

24 **THE JUROR:** And we dedicated our first
25 episode for Season 4 to Law Enforcer Allen

1 Jacobs who was killed in the line of duty.

2 **THE COURT:** I understand.

3 **THE JUROR:** So I'm not sure if that --

4 **THE COURT:** No.

5 **THE JUROR:** We filmed the Pickens County
6 Sheriff's Department for Season 3.

7 **THE COURT:** Okay. Do you mind my asking
8 what TV show it is?

9 **THE JUROR:** Yeah, it's called Scaly:
10 Adventures.

11 **THE COURT:** Okay.

12 **THE JUROR:** So it's an educational,
13 action-adventure show that features all kinds
14 of things. We do film law enforcement that airs
15 in every state in the U.S. and overseas.

16 **THE COURT:** Tell me this -- that's
17 interesting. Tell me this, do you think you
18 could be a fair and impartial juror in the
19 trial of this case knowing that law enforcement
20 would likely testify?

21 **THE JUROR:** Definitely.

22 **THE COURT:** Okay. Thank you so much. I
23 appreciate it. Anyone else need to respond to
24 my question in any way or any previous question
25 of mine?

1 (No audible response.)

2 All right. Ladies and Gentlemen, we've gone
3 through the potential witnesses in this case.
4 You've met the attorneys. You've met the
5 defendant. You've heard about the allegations
6 in this case against the defendant. You know
7 the nature of those charges. Is there any
8 member of the jury panel for any reason
9 whatsoever, other than the folks who have
10 already told me, that you could not be a fair
11 and impartial juror -- and I appreciate the
12 information -- other than the folks who have
13 already told me that, is there any juror for
14 any reason whatsoever that believes he or she
15 could not be a fair and impartial juror in the
16 trial of this case?

17 And by that, I mean, have an open mind, not
18 make your mind up about any fact whatsoever and
19 not decide until the end whether or not you
20 believe the State has met its burden of proof
21 in this case, giving a fair trial to both the
22 State and the defense? Any member of the jury
23 panel believe he or she could not be a fair and
24 impartial juror for any reason whatsoever? If
25 so, please stand, unless you've already told

1 me. Anyone else?

2 (No audible response.)

3 And no further are standing.

4 Will the attorneys approach?

5 (WHEREUPON, a bench conference is held off the
6 record.)

7 THE COURT: Ladies and Gentlemen, I know
8 things have kind of moved slowly today, but I
9 promise this is where it all starts to speed
10 up. We are now going to turn to jury selection
11 in this case. Let me tell you how it's going to
12 proceed. If you hear your name called, if you
13 will, come forward. We will show you exactly
14 where to stand. I always feel sorry for the
15 very first one, but I promise we will walk you
16 through.

17 You just turn, face your fellow jurors,
18 don't face me, and you will hear the State say
19 something like, "Please present the juror" or
20 "Please excuse the juror." And then, you will
21 hear the defense say something like, "Please
22 seat the juror," "Swear the juror," or "Please
23 excuse the juror." If you are chosen for this
24 jury, we will tell you. And you just go over
25 here and sit in the jury box. If you are not --

1 if you are excused, then we will tell you to
2 return to your seat.

3 A couple of things, first of all, bring all
4 your belongings with you when you come up here
5 because if you are chosen, you won't be
6 returning to that seat. You will go straight to
7 your jury box. And the second thing is, jurors
8 are struck for a multitude of reasons, I
9 promise you. So -- don't think it hurt
10 anybody's feelings too badly, but please don't
11 take it personally because it is -- I assure
12 you it is nothing personal in any way.

13 All right. With all that being said, we're
14 ready to proceed?

15 **MR. CLEVELAND:** The State's ready, Your
16 Honor.

17 **THE COURT:** All right.

18 **MR. DEJONG:** Ready for the defense, Your
19 Honor.

20 **THE COURT:** All right.

21 **THE CLERK:** Ready?

22 **THE COURT:** Yes, sir.

23 **THE CLERK:** Juror number 52, Margaret
24 Devine. Come forward please.

25 What says the State?

1 **MR. CLEVELAND:** Please present Ms. Devine.

2 **THE COURT:** And the defense?

3 **MR. DEJONG:** Please excuse this juror from
4 the trial of this case.

5 **THE CLERK:** If you would, return to your
6 seat please, ma'am.

7 Juror number 26, Richard N. Bush.

8 What says the State?

9 **MR. CLEVELAND:** Please present Mr. Bush.

10 **THE CLERK:** And the defense?

11 **MR. DEJONG:** Please swear the juror.

12 **THE CLERK:** If you would, have a seat in
13 the jury box, sir.

14 Juror number 65, Corey J. Eskew.

15 What says the State?

16 **MR. CLEVELAND:** Please present Mr. Eskew.

17 **THE CLERK:** And the defense?

18 **MR. DEJONG:** Please swear the juror.

19 **THE CLERK:** If you would, have a seat in
20 the jury box, sir.

21 Juror number 27, Ryan T. Byrum.

22 What says the State?

23 **MR. CLEVELAND:** Please present Mr. Byrum.

24 **THE CLERK:** And the defense?

25 **MR. DEJONG:** Please swear the juror.

1 **THE CLERK:** If you would, have a seat in
2 the jury box, sir.

3 Juror number 128, Earl W. Mawhinney.
4 What says the State?

5 **MR. CLEVELAND:** Please present
6 Mr. Mawhinney.

7 **THE COURT:** And the defense?

8 **MR. DEJONG:** Please excuse this juror
9 from the trial of this case.

10 **THE CLERK:** If you would, return to your
11 seat please, sir.

12 Juror number 201, Quantarius G. Still.
13 What says the State?

14 **MR. CLEVELAND:** Please present Mr. Still.

15 **THE CLERK:** And the defense?

16 **MR. DEJONG:** Please swear the juror.

17 **THE CLERK:** If you would, have a seat in
18 the jury box, sir.

19 Juror number 88, Patricia M. Henderson.
20 What says the State?

21 **MR. CLEVELAND:** Please present
22 Ms. Henderson.

23 **THE CLERK:** And the defense?

24 **MR. DEJONG:** Please swear the juror.

25 **THE CLERK:** If you would, have a seat in

1 the jury box.

2 Juror number 174, April L. Reese.

3 What says the State?

4 **MR. CLEVELAND:** Please present Ms. Reese.

5 **THE CLERK:** And the defense?

6 **MR. DEJONG:** Please swear the juror.

7 **THE CLERK:** If you would, have a seat in
8 the jury box please, ma'am.

9 Juror number 186, Kimberly A. Roper.

10 What says the State?

11 **MR. CLEVELAND:** Please present Ms. Roper.

12 **THE CLERK:** And the defense?

13 **MR. DEJONG:** Please swear the juror.

14 **THE CLERK:** If you would, have a seat in
15 the jury box please.

16 Juror number 116, Henry Lefort.

17 What says the State?

18 **MR. CLEVELAND:** Please present Mr. Lefort.

19 **THE CLERK:** And the defense?

20 **MR. DEJONG:** Please swear the juror.

21 **THE CLERK:** If you would, have a seat in
22 the jury box, sir.

23 Juror number 114, Crystal Landreth.

24 What says the State?

25 **MR. CLEVELAND:** Please present

1 Ms. Landreth.

2 **THE CLERK:** And the defense?

3 **MR. DEJONG:** Please swear the juror.

4 **THE CLERK:** If you would, have a seat in
5 the jury box.

6 Juror number 59, April W. Durham.

7 What says the State?

8 **MR. CLEVELAND:** Please present Ms. Durham.

9 **THE CLERK:** And the defense?

10 **MR. DEJONG:** Please swear the juror.

11 **THE CLERK:** If you would, have a seat in
12 the jury box.

13 Juror number 43, Tanya Curren.

14 What says the State?

15 **MR. CLEVELAND:** Please present Ms. Curren.

16 **THE COURT:** And the defense?

17 **MR. DEJONG:** Please excuse this juror
18 from the trial of this case.

19 **THE CLERK:** If you would, return to your
20 seat please, ma'am.

21 Juror number 135, Zachary Merrifield.

22 What says the State?

23 **MR. CLEVELAND:** Please excuse

24 Mr. Merrifield from this case.

25 **THE CLERK:** If you would, return to your

1 seat please, sir.

2 Juror number 212, Heather J. Trent.

3 What says the State?

4 **MR. CLEVELAND:** Please present Ms. Trent.

5 **THE CLERK:** And the defense?

6 **MR. DEJONG:** Please swear the juror.

7 **THE CLERK:** If you would, have a seat in
8 the jury box please.

9 Juror number 206, Carolyn Taylor.

10 What says the State?

11 **MR. CLEVELAND:** Please present Ms. Taylor.

12 **THE CLERK:** And the defense?

13 **MR. DEJONG:** Please swear the juror.

14 **THE CLERK:** If you would, have a seat in
15 the jury box.

16 This will be for our first alternate.

17 Juror number 121, Kathleen Lum.

18 What says the State?

19 **MR. CLEVELAND:** Please present Ms. Lum.

20 **THE COURT:** And the defense?

21 **MR. DEJONG:** Is it number 121, Mr. Clerk?

22 **THE CLERK:** That is correct.

23 **MR. DEJONG:** Thank you, sir. Please
24 excuse this juror from the trial of this case.

25 **THE CLERK:** If you would, return to your

1 seat please, ma'am.

2 Juror number 165, Ashley W. Perry.

3 What says the State?

4 **MR. CLEVELAND:** Please present Ms. Perry.

5 **THE CLERK:** And the defense?

6 **MR. DEJONG:** Please excuse this juror
7 from the trial of this case.

8 **THE CLERK:** If you would, return to your
9 seat please, ma'am.

10 Juror number 53, Deborah Dillon-Wood.

11 What says the State?

12 **MR. CLEVELAND:** Please present Ms. Dillon-
13 Wood.

14 **THE CLERK:** And the defense?

15 **MR. DEJONG:** Please swear the juror.

16 **THE CLERK:** If you would, have a seat in
17 the jury box please.

18 This will be for the second alternate.

19 Juror number 180, Paula A. Rivers.

20 What says the State?

21 **MR. CLEVELAND:** Please present Ms. Rivers.

22 **THE CLERK:** And the defense?

23 **MR. DEJONG:** Please swear the juror.

24 **THE CLERK:** If you would, have a seat in
25 the jury box.

1 **THE COURT:** All right. To the remaining
2 jurors who were not selected for this
3 particular jury, you are to report tomorrow
4 morning at 9:30. So report tomorrow morning at
5 9:30. You are excused for the rest of the
6 afternoon. But you will be there with Judge
7 Gravely tomorrow morning. You will report in
8 the main courtroom downstairs where you
9 reported this morning. All right. Thank you so
10 much. I appreciate your service.

11 **(WHEREUPON, the jury panel exits at approximately**
12 3:16 p.m.)

13 **THE COURT:** Will you swear the jury
14 please.

15 **THE CLERK:** If you would, please stand.
16 After the oath is administered, please answer
17 by saying "I will." Raise your right hand. You
18 shall well and truly try the issue joined in
19 this case of the State versus Timothy Adam
20 Hester, Sr, and a true verdict render according
21 to law and evidence, so help you God?

22 **(WHEREUPON, each juror responds.)**

23 **THE CLERK:** Thank you. If you agree with
24 that, please have a seat.

25 **(WHEREUPON, each juror responds.)**

1 **THE COURT:** Thank you, Ladies and
2 Gentlemen. What I'm going to say now is not
3 intended to be a charge on the law applicable
4 of this case. At the end of this trial, I will
5 charge you. After the attorneys have argued, I
6 will charge you on the law. Right now, what I
7 want to give you are some instructions on just
8 how things -- the procedures we'll use and how
9 things will kind of flow throughout the trial.

10 The defendant is charged with indictments
11 that I have explained to you -- and I'll talk
12 to you about a little bit more -- of Felony DUI
13 Resulting in Death, Driving Under Suspension
14 and Habitual Traffic Offender causing Death,
15 the elements of which I will explain to you
16 later. The indictment, as I told you, is simply
17 the document by which someone is charged and
18 brought into court and is not in any sense, and
19 should not be considered by you in any way as
20 evidence in this case.

21 The defendant in this case has pled not
22 guilty to those indictments. Therefore, the
23 State has the burden of proving each of the
24 elements of those indictments to your
25 satisfaction beyond a reasonable doubt. It will

1 be your duty, Ladies and Gentlemen, to
2 determine whether or not the State has met that
3 burden.

4 You are the sole judge of the facts. You
5 are to determine the facts based solely upon
6 the testimony and evidence presented throughout
7 this trial. It will be up to you to determine
8 the inferences you feel may be properly drawn
9 from that evidence. If, at any time, I make any
10 comment on the evidence in this case, you are
11 to disregard it. A trial judge in our state can
12 not have an opinion on the facts of a case, and
13 I do not. So if I say anything at any time that
14 makes you believe that I have an opinion about
15 the facts, disregard it because I do not.

16 On the same -- on the other hand, the same
17 law that makes you the judge of the facts makes
18 me the judge of the law. And therefore, the law
19 as I give it to you is what you must accept.
20 You might have a different idea as to what the
21 law is or even what the law ought to be. If
22 what I tell you does -- does not mesh with
23 that, you are to disregard your thoughts and
24 take only the law as I give it to you, apply
25 the facts, and from that you are to determine

1 whether or not the State has met their burden
2 of proof in this case.

3 Until I advise you to begin your
4 deliberations, you must not discuss this case
5 with anyone. The attorneys in this case, as I
6 told you, are excellent attorneys all around.
7 They are pretty good at estimating how long the
8 trial would go. It's not exact science. But we
9 are pretty sure this trial will go through
10 Wednesday. That means you're going to go home
11 for two nights and your family's going to say,
12 are you on the jury. Naturally, they would ask
13 you that.

14 If you even tell them the kind of jury that
15 you're on, that might elicit comments.
16 Certainly, if you were to tell them the
17 defendant's name in this case or the alleged
18 victim's name in this case, that could elicit
19 comments. So under your oath, I am telling you
20 to just -- if friends and family ask you if
21 you're on the jury, just say, yes, I am, and
22 that's all I can say, and leave it at that. I
23 want you to go home this evening and be able to
24 forget you are a juror on this case.

25 Do not do any kind of independent research.

1 I do not know if there's been any media
2 attention about this case in any way. If there
3 is -- if there is or there has been, I'm
4 instructing you under your oath not to read it.
5 I'm also instructing you not to discuss this
6 case with anyone. By that, I also mean -- of
7 course, I don't 100 percent understand social
8 media, but you may not discuss this case in any
9 way on social media or do any kind of research
10 about that, read anything on a blog, anything
11 like that.

12 Also, by that same token, I couldn't dream
13 that anyone in this -- involved in this case
14 whatsoever would speak with you about this
15 case. But if someone does, you must identify
16 yourself as a juror to them. If they do not
17 immediately quit talking to you about this, if
18 you will instruct the bailiff and let the
19 bailiff know, I promise you I will take care of
20 that situation immediately.

21 I'm going to ask you to keep an open mind
22 and not decide any issue in the -- in this case
23 until all of the evidence has been presented,
24 the parties have made their closing arguments
25 and I've given you my instruction on the law. I

1 want you just to listen openly and listen to
2 all the evidence and testimony in this case and
3 listen to my charge on the law. From that, you
4 will determine whether or not the State has met
5 its burden.

6 In just a moment, you're going to hear the
7 Solicitor make what is called an opening
8 statement. He's going to tell you what he
9 believes the issues in this case are. He is --
10 what he believes the issues are is not evidence
11 in this case, but it's merely his contention as
12 to what the issues are. Same thing for the
13 defense, although the defense is not required
14 to make an opening statement. But if he chooses
15 to do so, then it is not evidence, but merely a
16 contention as to what they believe the issues
17 are.

18 From time to time, you may hear the
19 attorneys say something like they need to
20 approach on a matter of law or they need to
21 take up a matter outside your presence. I want
22 to explain that to you. Just so you know, we're
23 not hiding the ball from you in any way. If we
24 need to do that, it's because sometimes in
25 ruling on a matter of law, I have to talk about

1 the facts. And you heard me tell you a few
2 minutes ago that I can't have an opinion on the
3 facts.

4 So as not to influence you in any way, if
5 it's something quick, we will take it up up
6 here. If it is something that's going to be a
7 little bit lengthy, then I'll ask you to step
8 to your jury deliberation room. But I promise
9 you if you are in your jury deliberation room
10 waiting on us, we are in here working because I
11 want to trespass on your time as very little as
12 possible.

13 And as I -- I talked to you a little bit
14 about discussing this case on social media and
15 with anyone outside of the courthouse and
16 inside the courthouse, but I want to stress to
17 you you may not discuss the case with one
18 another either. The reason is, we don't want
19 you to make your mind up about anything.

20 That's sort of confusing sometimes to folks
21 because that's not how it looks on TV. Juries
22 are talking about a case all throughout a trial
23 in movies and TV. But for our purposes here
24 today and under your oath, you may not discuss
25 it with anyone until you've made up -- until,

1 excuse me -- and not make your mind up about
2 any fact until you've heard the final closing
3 arguments from the attorneys and my charge on
4 the law.

5 In -- necessarily in determining whether
6 the State has met its burden in this case, you
7 are going to have to determine the
8 believability or credibility of witnesses. You
9 will do that just as you do every day when you
10 deal with somebody. You will look at how that
11 person acts, see if what they are telling you
12 matches up with the physical evidence in the
13 case. You think about whether anyone has any
14 bias or interest in the outcome of this case.
15 You can use anything in the record that will
16 help you to determine who you believe in this
17 case or what witness, if any, you believe in
18 this case.

19 All right. Mr. Byrum? You're Mr. Byrum?
20 That's you? Sir, I'm going to appoint you
21 foreperson of this jury. Your verdict must be a
22 unanimous one. That means nobody's opinion is
23 any more important than another's opinion. It's
24 just that I have to pick someone who can lead
25 the deliberations in the jury deliberation room

1 and who will sign the verdict forms at the end
2 of this trial. If you'd be willing to do so,
3 I'd appreciate it. You're fine right where you
4 are right now, but if you will switch seats
5 with this man in front of you sitting here at
6 the edge when y'all take a break and come back
7 in, I would appreciate it. And then remain in
8 that seat throughout. Thank you very much.

9 Ms. Dillon-Wood and Ms. Rivers, you are our
10 alternates in this case. You probably know what
11 that means, but just so I've explained it to
12 you, you will stay with us through the balance
13 of the trial, listen to all the testimony and
14 evidence. If I have to remove a juror for some
15 reason or if I had to relieve a juror for an
16 emergency or something like that, then one of
17 you could step in as one of the -- just as if
18 you'd been one of the 12 jurors all along. If
19 we get to the end and this case is submitted to
20 the jury, I've given my final charge on the law
21 and your services are not needed, then I'll
22 excuse you before deliberations. I appreciate
23 your service in this case as I do all of you.

24 I appreciate your service so much. I am
25 very aware of what an inconvenience it is for a

1 juror to take time out of your lives to be here
2 today. I want to tell you I want to thank you,
3 because I was not with you this morning to take
4 some time to thank you. I want to thank you for
5 your service. Our judicial system simply could
6 not function without you. I appreciate your
7 service so much.

8 This is an important case to both sides. I
9 will tell you a couple of things. As we're
10 changing up witnesses throughout the trial of
11 this case, if anybody needs to stand and
12 stretch or do anything like that, feel free to
13 do so. We'll take a break about every hour and
14 a half or so. We'll take a good break at lunch.
15 Probably not quite as long as you had today,
16 but we'll take a good break at lunch. Let you
17 get out and get some lunch somewhere.

18 I will tell you, if anyone needs a break at
19 any time, you simply signal to this man right
20 here or you signal to me and we'll take a break
21 immediately because I want you to be
22 comfortable and I want you to be able to focus
23 your attention and thoughts on what's going on
24 in the courtroom. And we can't do that unless
25 you're comfortable.

1 All right. Any objection to my initial
2 charge from the State?

3 MR. CLEVELAND: None from the State, Your
4 Honor.

5 THE COURT: Any from the defense?

6 MR. DEJONG: None on behalf of Mr. Hester,
7 Your Honor.

8 THE COURT: All right then. Ladies and
9 Gentlemen, we probably -- you've been sitting a
10 little while. How about we do this, let's take
11 about a 10-minute break or so. I'll ask
12 everyone in the courtroom to remain seated
13 while the jury is leaving, but this will give
14 you a chance to take a look at your jury
15 deliberation room and see where you'll gather
16 in the mornings and after lunch. And I'll sound
17 like a broken record throughout this case, and
18 I'm sorry, but I have to do it. Just to remind
19 you, please do not discuss this case with
20 anyone.

21 THE CLERK: I'm just going to remind you,
22 please watch your step down.

23 THE COURT: Yeah, please do. Watch your
24 step over here. All right. Cause it is a step
25 down. All right. So we'll take about a 10-

1 minute break. Thank you.

2 (WHEREUPON, the jury exits at approximately
3 3:30 p.m.)

4 THE COURT: All right. Any matters we need
5 to take up before we break?

6 MR. CLEVELAND: No, Your Honor. I kind of
7 thought about a plan of attack for this
8 afternoon. If it's okay with Mr. DeJong, the
9 State has two witnesses we think we can do
10 without requiring any pretrial hearings. That
11 will be our nurse who came from out of state
12 and the EMS worker that arrived first. If
13 Mr. DeJong does not have any objection to
14 either one of those witnesses, I thought we
15 could do opening statements, do those two and
16 then we can resume tomorrow.

17 MR. DEJONG: I assume he's asking if I
18 have an objection about calling them out of
19 order, Your Honor. I do not have an objection.

20 THE COURT: Okay.

21 MR. CLEVELAND: In all candor, the
22 defendant did make remarks to the EMS employee
23 that I think is totally admissible. I didn't
24 know if he had an issue with it. The State
25 would seek to get into that.

1 **MR. DEJONG:** I'm sorry. I didn't hear.
2 I've got a fan back here, Mr. Cleveland. I
3 didn't hear what you said.

4 **MR. CLEVELAND:** The EMS worker, the
5 defendant did make remarks to him. The State
6 would intend to go into that. I just want to
7 make sure he didn't have an issue before that.

8 **MR. DEJONG:** I'm not sure what those
9 remarks are, so I don't know if I've got an
10 issue with them or not.

11 **THE COURT:** Do y'all want to talk about it
12 maybe over the break?

13 **MR. CLEVELAND:** It's -- all the remarks
14 are provided in the discovery we gave him.
15 That's the extent of it.

16 **MR. DEJONG:** That's all I want to make
17 sure, but we'll talk about it over the balance
18 of the break.

19 **THE COURT:** All right. Well, let's be in
20 recess for 10 minutes.

21 **MR. CLEVELAND:** Thank you, Your Honor.

22 **THE COURT:** Thank you.

23 (WHEREUPON, the Court goes off the record at
24 approximately 3:32 p.m.)

25 (WHEREUPON, the Court goes on the record at

1 approximately 3:50 p.m.)

2 **THE COURT:** We ready to bring the jury
3 back in?

4 **MR. CLEVELAND:** The State --

5 **THE COURT:** Anything we need to take up?

6 **MR. CLEVELAND:** -- the State's ready,
7 Your Honor.

8 **THE COURT:** Okay.

9 **MR. DEJONG:** Ready for the defense,
10 Your Honor.

11 **THE COURT:** Okay. All right.

12 **(WHEREUPON, the jury enters at approximately**
13 **3:50 p.m.)**

14 **THE BAILIFF:** All present, Your Honor.

15 **THE COURT:** Thank you, sir.

16 All right. Ladies and Gentlemen, we are now
17 ready to begin with opening statements.

18 Yes, sir.

19 **MR. CLEVELAND:** Thank you, Your Honor. May
20 it please the Court.

21 **THE COURT:** Yes.

22 **MR. CLEVELAND:** Mr. Foreman, Ladies and
23 Gentlemen of the jury, first off, I want to
24 thank y'all. It is now almost four o'clock in
25 the afternoon, and we're just getting started,

1 so I want to thank y'all so much for your
2 patience.

3 Justice is not perfect, but we try to be as
4 perfect about it as we can. While it might seem
5 like we've been mulling around, wasting a lot
6 of time, I assure you that if you were seated
7 over here in this defense chair, that you would
8 make sure -- want to make sure that every
9 single detail, every single care is taken to
10 ensure that there is a fair trial for the State
11 and for the defense. So while it seems like
12 we're just sitting around here twiddling our
13 thumbs, I promise you that we've been working,
14 trying to get this thing off the ground and I
15 really appreciate y'all's patience.

16 We have a dispute here. This is a criminal
17 matter and it dates back to January the 30th,
18 2015, almost two years ago. It's the reason why
19 we have jurors. For two years, there has been a
20 disagreement in this case. For two years,
21 there's been facts that the State contends and
22 facts that the defense disagrees with. We're at
23 the point now to where the way we resolve these
24 very important issues is by putting it in front
25 of the jury and letting y'all determine the

1 facts of what happened in this case beyond a
2 reasonable doubt.

3 We couldn't -- wouldn't need a courthouse,
4 wouldn't need any of this stuff if it wasn't
5 for qualified jurors like y'all, because either
6 people agree on the facts or when they
7 disagree, there would be no way to resolve it.
8 So for over 200 years in this country and going
9 back long before that, across the ocean,
10 juries, like y'all, have been the only way when
11 you have a legitimate dispute of the facts to
12 affirmatively resolve the matters that come
13 before the Court.

14 There's not a judge, there's not a lawyer,
15 not a prosecutor, not a police officer that can
16 say definitively and legally what happened in
17 the case, what the facts are. Juries are the
18 only way to do it. So while y'all -- I'm sure
19 everybody has somewhere else you'd rather be
20 right now, it's a very important day for the
21 State of South Carolina -- I know it's a very
22 important day for the defense -- to resolve
23 this matter that's continued now for close two
24 years.

25 So why are we here? Alanah Holcombe was 23

1 years old when she was killed in a motor
2 vehicle accident on January 30th here in
3 Pickens County over on Allgood Bridge Road at
4 the intersection of Praters Creek Road. There
5 were two people in the car when that wreck
6 happened: Alanah Holcombe; who is no longer
7 with us, who died out there that day, and
8 Timothy Adam Hester, Sr; who is seated at the
9 defense table. As a result of the investigation
10 and of what the Highway Patrol found and
11 everything, he was charged and brought in front
12 of you today.

13 He's charged with three offenses. Each of
14 them are you for you to determine individually.
15 But concisely, they are: Driving Under
16 Suspension, he was behind the wheel of an
17 automobile while his license was suspended,
18 driving on the road; Felony DUI Resulting in
19 Death, which means he's alleged to be under the
20 influence of drugs and alcohol, and while he
21 was under the influence, he drove the vehicle
22 and did something against the law or neglected
23 a duty imposed by law while under the influence
24 and that neglect or that act that he did
25 resulted in the death of another or was the

1 proximate cause of the death of another, not
2 necessarily the direct result, but for the
3 defendant doing or neglecting that duty or
4 breaking the law while he was intoxicated, then
5 the victim in the case would still be alive.

6 Lastly, he's charged with Habitual Traffic
7 Offender Involving Death. Habitual Traffic
8 Offender is a status assigned by the DMV of
9 South Carolina, and the law that he's accused
10 of breaking today is he was declared a habitual
11 offender and he got behind the wheel and the
12 elements are the same as Felony DUI. He either
13 broke the law, or he neglected to act,
14 neglected a duty imposed by the law and the
15 proximate cause of what he did resulted in the
16 death.

17 Now, the State is seated close to y'all.
18 And you probably don't think it means anything.
19 One party has to be close to the jury and the
20 other one has to be across the courtroom. But
21 it's actually very significant. We have the
22 burden of proof in this case. The defense has
23 no burden. They don't have to say a word. It is
24 solely on our shoulders, me and Mr. Buckner's,
25 here to prove this case to you beyond a

1 reasonable doubt. Now, we have to prove each of
2 those offenses or the defendant is acquitted. I
3 will tell you that me and Mr. Buckner firmly
4 accept that responsibility and that's what we
5 intend to do as this trial progresses on.

6 I want to hit real briefly on what is
7 beyond a reasonable doubt. As jurors, you are
8 not required and we are not required to prove
9 the facts beyond any shadow of a doubt. The law
10 does not require that. The law just requires
11 you to be firmly convinced of what conduct we
12 alleged happened, actually happened in this
13 case. The reason the law allows you a little
14 leeway in that, not beyond any doubt, but just
15 beyond a reasonable doubt, is because the law
16 actually imparts you, they want you to use your
17 God-given common sense that you use in your
18 everyday lives.

19 It would be impossible to prove just about
20 anything beyond any shadow of a doubt. We're
21 not required to do that. But you fill that gap.
22 You use your common sense. And at the end of
23 the day, if you say, yep, I'm firmly convinced
24 that what they say happened happened, then that
25 is sufficient for a verdict of guilt.

1 Again, it's been a long day. I don't want
2 to belabor the point up here, but I just want
3 to talk a little bit about this case and how it
4 all came and what I think the simple issue of
5 this case is going to be. On January 30th,
6 2015, a 2005 Chevrolet Monte Carlo was
7 traveling at an excessive rate of speed, went
8 through the intersection of Praters Creek Road.
9 It's a T-intersection that goes into Allgood
10 Bridge Road. It's an elevated intersection.

11 That car went through that intersection
12 into the yard on the other side of the road
13 where there's no road, down a driveway, struck
14 a tree and landed up against the storage shed
15 at the back. We'll present evidence and will
16 show y'all what the first responders found at
17 the scene. But essentially, the Monte Carlo was
18 laying on its side with the tires up against
19 this building. Again, Alanah Holcombe was
20 killed on the scene. Mr. Hester was out of the
21 car. He was transferred to the hospital and
22 then the investigation ensued.

23 What's going to be the crux of this case --
24 in addition -- we have to prove all the
25 elements and I'm not going to diminish that

1 fact, but what's the crux of this case is going
2 to be who was driving that day. You're going to
3 hear evidence from the State that Mr. Hester
4 was the driver of that vehicle. You're going to
5 hear evidence otherwise provided by Mr. Hester
6 that he was not the driver. That was the
7 central issue of what you'll hear in this case.
8 And to that end, what y'all have to do is when
9 presented with two conflicting types of
10 evidence, two conflicting stories, you have to
11 use your common sense to determine the
12 credibility of all of that evidence and render
13 your decision based upon the credible evidence
14 in the case.

15 Now, to that end, you have the ability to
16 disregard any evidence you hear. You have the
17 ability to fully grasp on to any other evidence
18 you hear. You can believe one witness over
19 three or four other witnesses. It is completely
20 up to you to decide what evidence to believe in
21 this case and what evidence to throw aside, if
22 any, you decide to throw aside. But obviously,
23 there is a disagreement about the facts of this
24 case. That's what y'all are here for today.

25 Again, I want to thank y'all again so much

1 for bearing with us. It's a trial. We're going
2 to go as fast as we can, but a young lady lost
3 her life and the State owes it to its citizens
4 and owes it to the victims to a full
5 prosecution in this case. So I don't want y'all
6 to be left wondering. I don't want to leave any
7 significant facts off. We're going to present
8 the case as it was investigated to you fully
9 with the hopes that that evidence is credible
10 evidence. And based on that credible evidence,
11 when I come back and talk to you again after
12 y'all deliberate, that y'all return a verdict
13 of guilty in this case. Thank you.

14 **THE COURT:** Thank you, sir.
15 Mr. DeJong?

16 **MR. DEJONG:** Thank you, Your Honor. May it
17 please the Court.

18 **THE COURT:** Yes, sir.

19 **MR. DEJONG:** Mr. Buckner.

20 Her Honor has read the indictments in this
21 case and shared with you that those indictments
22 are no proof in this case. The allegations in
23 this case are -- I can't imagine that there
24 would be anything worse than being charged with
25 the offenses that Mr. Hester has been charged

1 with, other than one. What would be worse than
2 being charged with these offenses and being
3 accused and you were not the driver of the
4 vehicle? That, Ladies and Gentlemen, I submit
5 to you would be worse.

6 Her Honor has shared with you again that
7 the indictments are not proof. Let's back up
8 one step before that. The fact that Mr. Hester
9 was arrested and/or charged by a Highway Patrol
10 of Pickens County, whoever it was, the fact
11 that those arrests and those charges are being
12 made, again, is not proof against Mr. Hester.
13 At this point in time, Ladies and Gentlemen,
14 you have heard absolutely no proof in this
15 case.

16 Indeed and in fact, this trial basically
17 has not even started. You say, oh, boy, we've
18 been here all day and the trial hasn't started.
19 No, technically, it has not. You have listened
20 to Mr. Buckner -- excuse me -- Mr. Cleveland
21 and now myself, but again, as Her Honor shared
22 with you, what we say at this stage of the
23 proceeding is not proof of any kind.

24 I want to touch on something Mr. Cleveland
25 said in his opening statement. He was talking

1 about burden of proof if you are firmly
2 convinced. There is a flip side to that, Ladies
3 and Gentlemen. That flip side is this: if,
4 after having heard this case, you believe there
5 is a real possibility that the defendant is not
6 guilty, then you must, under the law, give the
7 defendant, Mr. Hester in this case, the benefit
8 of that doubt and find him not guilty. Now, we
9 can come back to that again after you have
10 heard all the evidence in this case and it's
11 time for y'all to have to listen to us again.
12 We'll touch on that again.

13 One thing I want to share with you that
14 obviously you have been told, that the burden
15 of proof on the State -- in this case, as in
16 any criminal case, is on the State. Indeed, it
17 is. That is the law of this great country.
18 There is another legal principle, legal right,
19 if you will, that every person in this country
20 who is charged with a criminal offense has a
21 real and significant right. And that right,
22 Ladies and Gentlemen, is known as the right of
23 presumption of innocence. That kind of goes
24 hand-in-hand with the burden of proof.

25 But sometimes, that right of presumption of

1 innocence is likened to a cloak of
2 righteousness draped about the shoulders of a
3 defendant. Oftentimes, I would say, look at
4 Mr. Hester. He's wearing a green shirt and he's
5 got on blue jeans. But look a little closer and
6 you see something else. What you would see is
7 almost like Mr. Hester is wrapped in Saran
8 Wrap, from the very soles of his feet to the
9 very crown of his head. That Saran Wrap is not
10 plastic or whatever Saran Wrap is made of, but
11 it's known as its presumption of innocence.
12 Mr. Hester has nothing to come here to prove to
13 you today. Because why? He is presumed, under
14 the law, to be innocent. And until or unless
15 the State can remove that Saran Wrap that's
16 holding Mr. Hester at this point in time, that
17 presumption of innocence remains with him and
18 he would have to be found not guilty.

19 That presumption of innocence, Ladies and
20 Gentlemen, doesn't end in a moment when I sit
21 down. It doesn't end when you have heard the
22 first witness or second witness or however many
23 witnesses will be called in this case. That
24 presumption of innocence does not go away after
25 you have heard the last witness in this case.

1 It does not go away after you have heard
2 closing arguments from the attorneys. Indeed,
3 it does not go away, with all due respect to
4 Her Honor, after she charges you on the law.
5 That presumption of innocence, Ladies and
6 Gentlemen, follows Mr. Hester back into the
7 jury room when you start your deliberations.
8 And that is such a fantastic, important right
9 of every citizen of this country.

10 It's been a long day. Y'all have been very
11 patient. There are two things me and
12 Mr. Cleveland would agree on is how
13 fundamentally important your jury service is. I
14 believe it was the late, great Winston
15 Churchill who said it. There are those who
16 disagree with me, but I'm going to attribute it
17 to him. It said that he one time said, jury
18 service is the greatest service that you can
19 provide to your community in peacetime. Maybe
20 he was a little off. He was not off. Maybe
21 using that right now is a little off because it
22 certainly isn't peacetime. But perhaps we could
23 say -- paraphrase Winston Churchill a little
24 bit, that jury service is the highest service
25 you can provide your community and your country

1 (Indiscernible.) Indeed, it does. You are the
2 very cornerstone of our entire judicial system,
3 but certainly this part of our judicial system,
4 which deals with those who have been charged
5 with and accused of a crime, cause you are the
6 fact finders.

7 Again, as Her Honor shared with you, at the
8 end of this case, it will be your job to
9 determine whether or not the State has met its
10 burden of proof. I want to thank you for being
11 so attentive this late in the afternoon,
12 listening to me. I would ask you to remain
13 attentive throughout this trial. On behalf of
14 Mr. Hester, I thank you for being here. Again,
15 I believe, Ladies and Gentlemen, when you have
16 heard all the witnesses and the testimony in
17 this case, you can go back to that jury room
18 and say, State, you haven't met your burden of
19 proof and find Mr. Hester not guilty. Thank you
20 so much.

21 **THE COURT:** Thank you, sir.

22 Is the State ready to call your first
23 witness?

24 **MR. CLEVELAND:** The State is ready, Your
25 Honor. We'll call John Miller of Pickens County

1 EMS.

2 THE CLERK: Place your left hand on the
3 Bible and raise your right.

4 JOHN MILLER

5 having first been duly sworn, testifies as follows:

6 THE CLERK: Thank you, sir. If you would,
7 have a seat and state your name for the record
8 please.

9 THE WITNESS: All right. My name is John
10 Miller, paramedic with Pickens County.

11 BY MR. CLEVELAND:

12 Q Good afternoon, Mr. Miller. How long have
13 you been a paramedic with Pickens County?

14 A 32 years.

15 Q What training did you receive to become a
16 paramedic some time ago?

17 A I trained at Spartanburg hospital for about
18 a year and my other certifications that I have to get
19 yearly.

20 Q But as a paramedic, do you essentially
21 drive an ambulance or man an ambulance?

22 A I don't drive the ambulance much. I work in
23 the back most of the time.

24 Q Very good. Did you respond to a motor
25 vehicle accident on January the 30th of 2015?

1 **A** I did.

2 **Q** Where was that accident located?

3 **A** I believe it was on Allgood Bridge Road.

4 **Q** And can you describe to this jury initially
5 when you arrived what you observed on that scene?
6 What time was it, first off?

7 **A** Well, it was about 9:00 -- probably 9:30,
8 something like that.

9 **Q** In the evening or the morning?

10 **A** That was in the evening.

11 **Q** Okay. Can you describe to the jury what you
12 encountered when you initially arrived on the scene?

13 **A** Well, I encountered Rodney Crenshaw
14 initially. They were up with the defendant.

15 **Q** All right. Who is Rodney Crenshaw?

16 **A** Rodney Crenshaw was one of our paramedics.
17 He was off duty. He was with him. They were holding
18 him down initially.

19 **Q** All right. And you're talking about
20 Mr. Hester?

21 **A** I am.

22 **Q** Okay. All right. Continue. And he told me
23 that --

24 **MR. DEJONG:** Objection to what he said,
25 Your Honor.

1 **THE COURT:** Sustained.

2 **BY MR. CLEVELAND:**

3 **Q** Don't tell me what Rodney said. Just tell
4 me what you observed.

5 **A** Okay. Well, I have to tell what he told me
6 cause he told me to go down to the patient down at
7 the car, that he was taking care of him initially.

8 **Q** Okay.

9 **THE COURT:** All right.

10 **MR. DEJONG:** I still object to it, Your
11 Honor.

12 **THE COURT:** Well, no, I'll allow that.

13 **BY MR. CLEVELAND:**

14 **Q** So what condition was the defendant in when
15 you observed him with Mr. Crenshaw?

16 **A** He was fairly confused and combative. They
17 were having to hold him down.

18 **Q** But he was awake and conscious?

19 **A** He was awake and conscious.

20 **Q** Did he have any obvious injuries that you
21 could tell out there?

22 **A** Not real obvious. Just scrapes and bruises.

23 **Q** All right. After you left the defendant in
24 the care of Mr. Crenshaw, what did you do next?

25 **A** I went down to the car where the car was up

1 against the building. I -- initially, I just put
2 electrodes on her back.

3 Q All right. Well, hold on. Let me just slow
4 you down a little bit.

5 A Okay.

6 Q You said there was a car against the
7 building. Can you describe how that car was sitting
8 against that building?

9 A It was sitting with the passenger side down
10 and I believe the tires were up against the building.

11 Q Okay. So the car was sitting on its side?

12 A It was.

13 Q Was there anybody inside that vehicle?

14 A The young lady was inside the vehicle.

15 Q Where was she located inside the vehicle?

16 A She was located with her feet down in the
17 passenger side and with her head out of the window
18 with the car on top of her head.

19 Q Okay. You say her head was outside the
20 window?

21 A Well, it was between the window and the
22 door and the ground.

23 Q Okay. Was her head entrapped by the car
24 like that?

25 A It was.

1 Q Was the weight of the car bearing down on
2 her?

3 A The car was on her head.

4 Q You said earlier you referenced her back,
5 tell me what the first line of treatment you did was?

6 A I went and put electrodes on her, just on
7 her back where I could reach to see if I had any
8 electrical activity of her heart, and I did not. She
9 was asystole.

10 Q All right. Asystole, what -- could you
11 describe for the jury in layman's terms what that
12 means?

13 A It means she didn't have a heartbeat.

14 Q All right. Was she making any sounds or
15 moving in any way at that time?

16 A She was not.

17 Q How did you -- if the car was on its back,
18 on its side, and she was partially inside of the car,
19 how did you get to her back?

20 A I reached in through the window. The window
21 was broke.

22 Q Okay. All right. Were -- did y'all ever get
23 her out of the car?

24 A We did. The rescue had airbags and blocks
25 that they put -- they jacked the car up and we put a

1 backboard down and we removed her from the vehicle.

2 Q All right. As you testified earlier, you
3 said her head was under the window of the car. Were
4 you able to remove her from the vehicle as the
5 vehicle sat when you found it?

6 A With the blocks.

7 Q Yeah, I know. Could you do it as you did,
8 or did you have to manipulate her to get her out?

9 A We had to manipulate her out onto the
10 backboard.

11 Q Could you tell if she had been wearing a
12 seatbelt or not?

13 A I could not. I mean, she wasn't wearing it
14 at the time -- one when I checked her.

15 Q Okay. So describe this process of using
16 blocks and airbags to lift the car. Tell the jury
17 what that means please.

18 A Well, the airbags are real flat. They slip
19 it under parts of the car that they could get it
20 under and then inflated them. That raised it enough
21 up that they put blocks under it and then raised it
22 some more with the airbags until we were able to get
23 her out.

24 Q Okay. And how did you get her out of the
25 car once it was jacked up?

1 **A** We just pulled her by her shoulders out
2 onto the board. Once I got her out of there, I went
3 ahead and I opened her airway to make sure that it
4 wasn't just her airway that was blocked. She wasn't
5 breathing. I went to check her heart sounds and lung
6 sounds and didn't get anything. And then I did put
7 the electrodes on her front and rechecked it and was
8 still asystole. At that point, we called for the
9 coroner.

10 **Q** All right. Could you describe what injuries
11 to the victim you observed once she was out of the
12 car?

13 **A** A lot of head injury. That was the main
14 thing was the head injury from where the car was down
15 on her.

16 **Q** Was it right side, left side? Do you
17 remember?

18 **A** I can't remember. I don't believe I have it
19 in my report.

20 **Q** I'm going to show you what's been marked as
21 State's Exhibit 35. It's A and B. There are two
22 photos here. Would you take a moment to look at those
23 photos?

24 **A** Okay.

25 **Q** Are each of those photos a clear and

1 accurate depiction of the scene as it was that
2 evening?

3 **A** They are.

4 **MR. CLEVELAND:** At this time, Your Honor,
5 the State would seek to admit State's Exhibit 35A
6 and B, two photographs.

7 **MR. DEJONG:** And I object to them, Your
8 Honor.

9 **THE COURT:** All right. Will y'all approach?
10 **(WHEREUPON, a bench conference is held off the**
11 **record.)**

12 **THE COURT:** All right. State's Exhibit A
13 and B is admitted.

14 **MR. CLEVELAND:** All right. Thank you.

15 **THE COURT:** State's Exhibit 35A and B. I'm
16 sorry.

17 **(WHEREUPON, State's Exhibits 35A and 35B are**
18 **admitted into the record.)**

19 **BY MR. CLEVELAND:**

20 **Q** Now, before I show this picture to the
21 jury, Mr. Miller, I want to clarify something. Were
22 there any children of any age involved in this
23 automobile accident?

24 **A** I never saw any children.

25 **Q** Okay. This is State's Exhibit 35A. Could

1 you please -- I believe there's a laser pointer up
2 there on your right. There should be a red button on
3 there that says laser. First off, is this the car in
4 the position as you found it when you arrived on the
5 scene?

6 A It is.

7 Q I see what looks like some wood down front.
8 Are those blocks that y'all put in place or is that
9 something else?

10 A Those blocks you're talking about right
11 there?

12 Q Yes. Yes, sir.

13 A Yes, that's what rescue put in there.

14 Q All right. Is there any photograph of the
15 airbag here? Was that airbag removed prior to this
16 photo?

17 A I don't see it.

18 Q All right.

19 A But they probably removed those. Those are
20 fairly expensive.

21 Q All right. All right. Could you point with
22 your laser pointer and show us the seat where
23 Ms. Holcombe was positioned?

24 A Right in there.

25 Q And where were her feet?

1 **A** They were down in the floorboard under the
2 dash.

3 **Q** Okay. In the respective location where the
4 passenger in the car feet would have been?

5 **A** Yes.

6 **Q** And where was the young lady's head?

7 **A** Right down in that area.

8 **Q** And --

9 **A** It's -- it's -- it's hard to see, but it
10 was underneath the door.

11 **Q** All right. And you testified the weight of
12 the car?

13 **A** Well, I guess that was the top of the door.
14 It was the -- it was more of the top of the door. You
15 see the -- when -- when it was down without being
16 blocked up ---

17 **Q** Yeah.

18 **A** --- you know, that was -- the top of it was
19 down on her.

20 **Q** Okay. Is it a fair assessment to say she
21 was at least partially ejected from the vehicle? She
22 was hanging out?

23 **A** Yes.

24 **Q** And just -- just to it show again. You
25 testified there were no children involved, so these

1 car seats are immaterial. Those wooden blocks you
2 see, is that blocks that y'all put in place?

3 A That's what rescue -- that's what rescue
4 put in place, yes.

5 Q Okay. Are those blocks, currently in this
6 photograph, holding the weight of the car?

7 A I would imagine they would be, yes.

8 MR. DEJONG: Your Honor, I'm going to
9 object to what he's imagining to.

10 THE COURT: Sustained.

11 BY MR. CLEVELAND:

12 Q All right. Mr. Miller, did that conclude
13 your treatment of Ms. Holcombe in this case?

14 A It did.

15 Q All right. Did you have any more
16 involvement with the defendant, Mr. Hester, in this
17 case?

18 A I went back up to him after I finished
19 examining her, and I took over care of -- of
20 Mr. Hester.

21 Q All right. And what did that care consist
22 of?

23 A We immobilized him on a spine board,
24 collar, head blocks and straps and all and oxygen. We
25 started two IV's on him. We did a BGL, which was --

1 showed 90, which is normal.

2 Q What is BGL?

3 A I'm sorry. I shouldn't have used that.
4 Blood sugar level.

5 Q Okay.

6 A Which is normal. And we transported him
7 emergent to Greenville and put him in a trauma bed
8 there.

9 Q Was he still conscious while you were
10 transporting him?

11 A He was.

12 Q All right. Did you have any conversations
13 with him?

14 A After we were en route, he calmed down
15 some. He became a lot more coherent. We did talk
16 some.

17 Q Did he tell you what happened that evening?

18 A He claimed that they had been drinking
19 pretty heavily all evening. He said that, uh, -- if I
20 could refer to my paperwork for just a minute.

21 Q You may refer to -- well, I'll ask you, did
22 you compile your paperwork to memorialize this event?

23 A I did.

24 Q Okay. All right. Yes. If you need to
25 refresh your memory, you may.

1 **A** Okay. After refreshing my memory, he did
2 say that she was driving. He said he wasn't driving.
3 They were going at a high rate of speed, about 90,
4 that they went through a stop sign and then started
5 rolling.

6 **Q** Did he say anything about how he got out of
7 the vehicle?

8 **A** He said he was ejected.

9 **Q** Did he say anything about involving
10 Ms. Holcombe in this case as far as did he do
11 anything with her after wreck?

12 **A** He said he went and checked on her and
13 couldn't get any response out of her.

14 **Q** Did he indicate whether he was wearing a
15 seat belt or not?

16 **A** He did not.

17 **Q** Did not as in he did not wear a seatbelt?

18 **A** He didn't specify.

19 **Q** He remained conscious and aware throughout
20 the entire transport?

21 **A** He did. The longer we went into the
22 transport, the more alert he was. By the time we got
23 there, he was fully alert.

24 **Q** Did he ever indicate whether he thinks he
25 lost consciousness or passed out or anything during

1 this event?

2 **A** He didn't lose consciousness, he said.

3 **Q** Was he coherent? Did he understand the
4 questions you asked him as you were talking to him in
5 the ambulance?

6 **A** He did. When I said he was confused and
7 combative, you know, he was alert to most everything
8 but just slightly confused.

9 **Q** Okay.

10 **A** Like a light head injury.

11 **Q** Did he complain of any injuries to you?

12 **A** Just abrasions and scratches. His head was
13 hurting. That's about the extent of it.

14 **Q** That's all the questions I have this
15 afternoon, Mr. Miller. Please answer any questions
16 the defense may have.

17 **A** Okay.

18 **THE COURT:** Mr. DeJong?

19 **MR. DEJONG:** Thank you, Your Honor. May it
20 please the Court?

21 **CROSS-EXAMINATION**

22 **BY MR. DEJONG:**

23 **Q** So, Mr. Miller, this conversation you say
24 you had with Mr. Hester, was that question or answer,
25 or did he just volunteer this information?

1 **A** It's questions that we ask all patients
2 that are involved in any kind of accident,
3 particularly since he was confused and there was a
4 strong odor coming from him.

5 **Q** All right. You would agree with me he had
6 just been through a very traumatic experience, would
7 you not?

8 **A** Sure.

9 **Q** And obviously, he did have some injuries?

10 **A** Yes, he had injuries.

11 **Q** And the confusion, at that point in time,
12 certainly could have been from the traumatic
13 experience he just came through, right?

14 **A** Sure.

15 **Q** Now, you indicated he said that he had been
16 drinking. Did he say how much he had to drink?

17 **A** He just said they'd been drinking heavy.

18 **Q** And that was his words?

19 **A** That was his words.

20 **Q** And he said, if I understood you correctly,
21 he said they had been drinking heavily?

22 **A** He didn't specify who. I assumed it was
23 her.

24 **Q** All right. So where was he transported to?

25 **A** Greenville Memorial.

1 Q And you say as he -- the trip went on, he
2 calmed down. Did y'all give him any medication at
3 that point in time?

4 A No, we didn't give him any medication.

5 Q Okay. Just treat --

6 A It's just fluids and oxygen.

7 Q Now, just so I'm sure, he said, at that
8 point in time, after he had calmed down and, as I
9 understand the confusion had cleared up some ---

10 A Uh-huh.

11 Q --- he was not the driver of that vehicle?

12 A He said he wasn't.

13 Q Pardon me?

14 A He said he was not.

15 Q Yes, sir. And on those pictures that we
16 were looking at, what led up to that, you don't know,
17 do you, Mr. Miller?

18 A I have no idea.

19 Q All right. Now, as far as getting to
20 Ms. Holcombe, you actually went into the vehicle?

21 A No, I did it from outside the vehicle.

22 Q All right. But it appeared that that
23 vehicle was pretty much jammed up against that little
24 outbuilding, was ---

25 A It was.

1 Q --- it not? So was the vehicle moved before
2 you were able to treat her?

3 A Before I could get her out of the vehicle,
4 we had to lift it up.

5 Q Okay. I apologize if I misunderstood you.
6 But my understanding is you put something on her back
7 or something?

8 A It's electrodes. I just reached in and put
9 it on her back.

10 Q Okay. Which side did you reach in from?

11 A I reached in -- there was enough that I
12 could reach in through the window. It was up enough
13 inside there that I could reach in. The outside of
14 the -- the top and the door and everything was on her
15 head. But I was able to reach in through the window
16 there and put the electrodes on her back.

17 Q Mr. Hester told you he had been ejected
18 from the vehicle?

19 A He said he was ejected.

20 Q All right. And -- strike that.
21 Additionally, the driver of the vehicle was driving
22 at a high rate of speed?

23 A Yes.

24 Q Again, was this after he had calmed down?

25 A After he had calmed down.

1 **Q** And the state of confusion --

2 **A** His state of confusion had lifted.

3 **Q** All right. High rate of speed. He had asked
4 her to slow down.

5 **A** That's what he said.

6 **Q** All right. And then the rest of the story,
7 they went through the stop sign, hit the tree and the
8 car flipped over.

9 **MR. DEJONG:** One moment, please, Your
10 Honor.

11 **THE COURT:** Certainly.

12 **MR. DEJONG:** Thank you, Mr. Miller.

13 **THE COURT:** Any follow-up questions?

14 **MR. CLEVELAND:** Nothing on follow-up, Your
15 Honor.

16 **THE COURT:** Sir, you can step down.

17 **MR. CLEVELAND:** Can the witness be excused?

18 **MR. DEJONG:** No objection, Your Honor.

19 **THE COURT:** Thank you, sir, for being
20 here.

21 Yes, sir.

22 **MR. BUCKNER:** The State would call Becky
23 Howe to the stand, Your Honor.

24 **THE CLERK:** If you would, place your left
25 hand on the Bible and raise your right.

BECKY HOWE

having first been duly sworn, testifies as follows:

THE CLERK: If you would, have a seat and state your name for the record please.

THE WITNESS: I'm Becky Howe.

DIRECT EXAMINATION

BY MR. BUCKNER:

Q Becky, how are you doing today?

A I'm good.

Q Good. I'm going to cut right to the chase.

Will you tell the jury a little bit about your educational background and what you do for a living?

A I went to East Tennessee State University. Graduated there in '08 and then moved to Greenville, South Carolina. I've been an emergency room nurse for the last six years. During this time, I was the nursing supervisor in the emergency room there.

Q At Greenville Memorial?

A At Greenville.

Q So you were a nurse in that capacity on the night of January 30th, 2015?

A Yes, sir.

Q And just tell us a little bit about your specific role at the hospital at that point in time? What were you doing exactly?

1 **A** I was the nursing supervisor on night
2 shift, I believe. I should have been. In that role, I
3 supervised 20 RNs, 15 additional support staff. I
4 attended any critical situation as far as any trauma
5 that came in. Most of the time, if there wasn't
6 enough staff available, I'd be the trauma nurse that
7 would document each trauma.

8 **Q** And -- I'm sorry. I didn't mean to
9 interrupt.

10 **A** No, go ahead.

11 **Q** Did you perform blood draws as part of your
12 role at that point in time?

13 **A** Yes, anytime anyone came in that they
14 needed a legal sample, I would draw that.

15 **Q** Let's talk about that. What is the
16 procedure that is put in place for legal blood draws?

17 **A** A trooper officer would come to me saying
18 that we need a sample. And I would have the paperwork
19 and go and verify the patient, who they were, obtain
20 the sample, and then keep it in my possession until I
21 finish the paperwork and then passed over the chain
22 of custody and the sample to the trooper.

23 **Q** Is that procedure provided by the hospital?
24 Where does that procedure come from?

25 **A** It's through the hospital.

1 Q Okay.

2 A One form is the chain of custody form.

3 Q And on this night in particular, on January
4 30th, 2015, do you remember encountering the
5 defendant, Mr. Hester, in this case?

6 A It's hard to remember each patient I come
7 in contact with and I take care of, at that time,
8 hundreds of trauma patients. The name sounds
9 familiar.

10 Q On that specific night, do you recall going
11 through that procedure with the defendant in this
12 case?

13 A Yes, I can testify that every blood draw
14 that I do in this situation that I verify that
15 patient and listen to rights.

16 Q So you would listen to the officer read the
17 defendant rights before the blood was taken?

18 A Yes. Yes.

19 Q And other than witnessing him read the
20 rights, you said something about ID'ing the patient.
21 Is that correct?

22 A Right. If the patient is coherent, I will
23 ask them to give me their name and date of birth. If
24 not, I'll use a form of ID that we have.

25 Q Okay. And as far as taking the blood, what

1 exactly do you do? I know it sounds kind of basic.

2 Just kind of walk us through the procedure.

3 **A** So clean the site with non-ethanol prep. In
4 this situation, I would obtain the blood and then
5 verify name and date of birth again. Label the sample
6 and then secure it.

7 **Q** Okay. And once -- when you say secure it,
8 what does that mean exactly?

9 **A** It goes in one of our specimen collection
10 bags and sealed.

11 **Q** Okay. And would you have taken the blood in
12 this case if the defendant had not consented? Is that
13 part of procedure? Do you take -- do you draw blood
14 if the defendant doesn't consent?

15 **MR. DEJONG:** Your Honor, I'm going to
16 object to that. I don't know that she can answer
17 that question.

18 **THE COURT:** Well, if she knows the answer,
19 I'm going to allow her to answer it.

20 **THE WITNESS:** It's complicated at that
21 point. Some situations, we'll have to get a
22 warrant. And depending on if this was a felony
23 case, we do draw blood.

24 **MR. BUCKNER:** And I'm going to show you --
25 Bear with me just a moment, Your Honor.

1 **THE COURT:** Certainly.

2 (WHEREUPON, there is a pause.)

3 **BY MR. BUCKNER:**

4 **Q** I'm going to show you two documents. You
5 said you were working that evening but don't remember
6 specifically this patient because you have so many.
7 Can you -- do you remember, from looking at those,
8 who the patient was that you treated that night, went
9 through the procedure with?

10 **A** It's not giving me -- if I were to have
11 been able to read the chart, it would probably. I
12 mean, yeah, I labeled the bloods -- or I labeled the
13 paperwork. So I would have verified his identity.

14 **Q** And who was that patient?

15 **A** Timothy Hester.

16 **Q** Okay. And once you gathered the sample that
17 night and secured it ---

18 **A** Uh-huh.

19 **Q** --- and you said you put it into a bag, did
20 you see it altered or tampered with in any way while
21 you were there?

22 **A** No.

23 **Q** And once it was sealed in the bag, who
24 would you have given that?

25 **A** It goes directly to the trooper.

1 Q That would be Trooper McDowell in this
2 case?

3 A Yes.

4 Q Additionally, just to wrap things up, are
5 there any requirements put in place, not hospital
6 procedure but SLED requirements, of what you do with
7 the blood once you collect it from the hospital?

8 A Specifically for --

9 Q I mean, it would be considered hospital
10 procedure too, I would imagine.

11 A Right.

12 Q But like, as far as sealing it with the
13 green tie or anything like that?

14 A No, not in the hospital setting. Sometimes
15 they'll bring in their kits, but we seal it in one of
16 our specimen bags.

17 Q And once you gave that blood to Officer
18 McDowell on that night, did you see it be altered or
19 tampered with in any way until you left?

20 A No. No, it stays in my possession until I
21 complete paperwork and I hand it all over to the
22 trooper at that point.

23 Q And was there a urine sample taken as well
24 in this case?

25 A There appeared to be so.

1 **Q** And that would have been from the defendant
2 as well?

3 **A** Uh-huh.

4 **Q** And were you in his presence when that
5 sample was taken?

6 **A** Yes.

7 **Q** And do you recall also giving that sample
8 to Trooper McDowell?

9 **A** Yes.

10 **Q** Is that sealed in the same manner as the
11 blood?

12 **A** It is sealed, yes, in a bag.

13 **Q** And was that altered or tampered with in
14 any way?

15 **A** No, it came directly from him and sealed
16 and given to the officer.

17 **MR. BUCKNER:** Judge, I have no further
18 questions at this time.

19 **THE COURT:** All right. Mr. DeJong, any
20 questions for this witness?

21 **MR. DEJONG:** Just a couple, Your Honor.
22 You finished?

23 **MR. BUCKNER:** Yes.

24 **MR. DEJONG:** Oh. I didn't realize you were
25 finished, Mr. Buckner. Excuse me.

CROSS-EXAMINATION

BY MR. DEJONG:

Q So Ms. Howe, you were a supervisor at this point in time?

A Yes, sir.

Q Now, are you the only person at the hospital that could draw blood in these cases?

A They just request -- the nursing supervisor does so that most of our nursing staff is not out in court.

Q Well, when you say "they", who are they?

A Administration.

Q Okay. How about Highway Patrol? Do they request that?

A No, we're the experts.

Q Now, I think Mr. Buckner showed this to you Ms. Howe. I'm going to show it to you again. Up at the very top of that form, there is some information as to a person's name and all that. Did you fill that in?

A No, this -- the first part here is filled out by the officer.

Q Okay. And so what time did you take this blood draw?

A I would need to look at --

1 Q I'm sorry?

2 A I would need to look at the other paper.

3 Q Oh, I'm sorry.

4 A I write the time down on that.

5 Q Sure.

6 A Looks like it was taken at 12:40 in the
7 morning.

8 Q So that would have actually been on January
9 the 31st.

10 A Right.

11 Q 40 minutes past midnight.

12 A That's right.

13 Q That gets very confusing. More for me than
14 for you, I'm sure. Do you know what time Mr. Hester
15 arrived at the hospital?

16 A I would have to look at the trauma
17 documentation to determine that.

18 Q Okay. Obviously, before 12:40?

19 A Right. We do everything to stabilize the
20 patient before we do this.

21 Q Yes. Now, when you did the blood draw, what
22 was Mr. Hester's condition?

23 A It's hard to say without reviewing that
24 paperwork, the trauma documentation.

25 Q Do you have any independent recollection at

1 all?

2 **A** No. Only because I've seen so many and they
3 all go together.

4 **Q** And without looking at that, I guess,
5 trauma notes -- am I saying the right thing?

6 **A** Yes.

7 **Q** Okay. Without looking at that, you wouldn't
8 know if he had been administered any medication or
9 anything else prior to your --

10 **A** No, and typically we don't in a trauma just
11 because we want to make sure that the patient is
12 still in the same mental state.

13 **Q** Okay. Typically.

14 **A** Uh-huh.

15 **Q** But you don't remember this case in --

16 **A** Not in this partic -- no, but I can
17 remember a handful of times that I actually did.

18 **Q** Okay. Well, were you present when the
19 trooper in this case actually went over Mr. Hester's
20 rights with him?

21 **A** Yes.

22 **Q** And where was that done?

23 **A** It was in the same room that he was in.

24 **Q** The same room that --

25 **A** His trauma room. We did it at the bedside.

1 Q All right. So you went down to a trauma
2 room, right?

3 A Yes.

4 Q All right. But again, how long he had been
5 at -- when we say trauma room, I guess we're talking
6 emergency room, is what we would call it.

7 A Yes.

8 Q I guess you have little separate rooms?

9 A We do, yes.

10 Q Okay. But basically, the emergency room for
11 a lay person like me.

12 A Uh-huh.

13 Q All right. And how -- when he arrived at
14 the hospital, you don't know?

15 A No, I mean, it's hard to say without my
16 documentation in front of me.

17 Q Yes, ma'am. Well, how many vials of blood
18 did you take?

19 A We draw two vials of blood.

20 Q Okay. And, if memory serves me correctly, a
21 lot of these vials have different colored stoppers on
22 them. Is that correct?

23 A Yes. Yes.

24 Q What were the color of the stoppers that
25 you took?

1 **A** It would be two gray tops.

2 **Q** Pardon me?

3 **A** Gray top tubes.

4 **Q** Gray top?

5 **A** Uh-huh.

6 **Q** Both of them?

7 **A** Uh-huh.

8 **Q** All right. Now, also, I believe you stated
9 in your report, uncontaminated. Is that correct?

10 **A** Yes.

11 **Q** And how do you arrive at that conclusion?

12 **A** That they haven't been used prior to
13 drawing blood on this patient.

14 **Q** But there's other ways things can be
15 contaminated other than having been used previously;
16 are they not?

17 **A** It would have had to have had substance in
18 it.

19 **Q** All right. And also did not those
20 particular vials, test tubes, whatever you want to
21 call them, don't they have a use-by date on them?
22 Have an expiration date on them?

23 **A** They do.

24 **Q** What was the expiration date on the vials
25 you used?

1 **A** It doesn't say here on the paperwork.

2 **Q** Okay. But we would agree that if a vial had
3 expired, for want of a better term, that that could
4 be contamination as well, could it not?

5 **A** Right. And we do look through our trauma
6 bay tubes frequently to make sure nothing's expired.

7 **Q** Okay. So once you -- which did you do
8 first? Did you do the urine sample first or did you
9 do the blood draw first?

10 **A** It's hard to remember in that order
11 exactly.

12 **Q** Pardon?

13 **A** It's hard to remember in that order.

14 **Q** Okay.

15 **A** I should have had two separate pieces of
16 paper. I can see what the date and time were there.

17 **Q** Okay. So the Solicitor just threw something
18 at me, so I'll let you take a look at that. Is that
19 the piece of paper -- other piece of paper you're
20 talking about?

21 **A** Yes.

22 **Q** All right.

23 **A** It looks like I did the blood collection at
24 12:40 and the urine collection at 12:50.

25 **Q** All right. And we know you used vials, test

1 tubes, whatever for the blood draw. What do you use
2 for the urine specimen?

3 A It's a urine specimen cup that's sealed.

4 Q All right. And where does the urine
5 specimen cup come from?

6 A We keep it in all of our trauma bays.

7 Q All right. And how is -- how is that
8 transported, change of hands to -- in your case, to
9 you to the trooper?

10 A The same way I would do the blood. I would
11 seal it in our lab bag that's glued and then hand it
12 to the trooper.

13 Q When you say sealed, is the lid sealed on
14 it or do you put the specimen cup in a bag?

15 A Yeah, put the specimen cup into a specimen
16 bag and seal it.

17 Q All right. Did you see Mr. Hester sign
18 anything that particular day?

19 A I don't recall.

20 Q You did, I think, refer to -- if I heard
21 you correctly -- I've got this fan roaring back here
22 and I'm a little hard of hearing, so sometimes I have
23 difficulty. Did you say something about a legal blood
24 draw?

25 A That's what we call it.

1 **Q** Okay. So what are the differences between a
2 legal blood draw and just a normal run-of-the-mill
3 blood draw?

4 **A** A normal blood draw, you don't necessarily
5 use an ethanol prep. So legal blood draw, we don't
6 want to contaminate the specimen. So we use a non-
7 ethanol.

8 **Q** So that's the only difference?

9 **A** Basically.

10 **Q** Thank you, Ms. Howe.

11 **A** Thank you.

12 **MR. BUCKNER:** Judge, I have no further
13 questions.

14 **THE COURT:** Ma'am, you can step down.

15 **THE WITNESS:** Thanks.

16 **MR. BUCKNER:** May the witness be excused,
17 Your Honor?

18 **THE COURT:** Any --

19 **MR. DEJONG:** No objection, Your Honor.

20 **THE COURT:** Thank you for being here.

21 **MR. CLEVELAND:** Judge, we may want to
22 approach.

23 **THE COURT:** Okay. All right.

24 **(WHEREUPON, a bench conference is held off the**
25 **record.)**

1 **THE COURT:** All right. Ladies and
2 Gentlemen, we've probably come to a good place
3 to stop for the evening. If you will, be back in
4 your jury deliberation room tomorrow morning at
5 9:45. We have a couple of other matters we need
6 to take up in the morning. So if you will, be
7 back at 9:45 and we will start promptly -- very
8 promptly thereafter, and anticipate a full day
9 of testimony ending about this same time
10 tomorrow. Probably take lunch -- it's never an
11 exact science, but probably we'll break for
12 lunch about 12:30 and probably take a break
13 until 2:00, if that helps any of you for
14 planning purposes. All right.

15 Thank you so much for your service in this
16 case. I ask you to please don't discuss this
17 case, do any independent research. Just go home
18 and forget you are a juror on this case tonight.
19 I'll ask everyone in the courtroom to remain
20 seated while the jury leaves. Thank you.

21 **(WHEREUPON, the jury exits at approximately**
22 4:52 p.m.)

23 **THE COURT:** All right. Any matters we need
24 to take up before we break?

25 **MR. DEJONG:** I think there is probably --

1 I've got one related matter and one unrelated
2 matter, Your Honor.

3 **THE COURT:** Great.

4 **MR. DEJONG:** On the related matter, I
5 realize the jury has been sworn. I'm going to
6 ask you not to take Mr. Hester in custody. He is
7 currently on GPS. To my knowledge, he has
8 reported to court every time he was supposed to
9 report for court. There have been no violations
10 of his GPS that I'm aware of. I would simply ask
11 you not to take him into custody.

12 **THE COURT:** The State has any strong
13 objection? And I'm going to have to set some
14 sort of a trial bond.

15 **MR. CLEVELAND:** You know, I don't feel
16 exceptionally strong. But, at the end of the
17 day, it is the rule that the bond is expired
18 since the jury is sworn. This is an
19 exceptionally serious case. I agree with
20 Mr. DeJong that he's always appeared for court
21 when necessary -- when summoned. But at the end
22 of the day, we're in the 11th hour of this
23 thing. It's very, very serious. My gut feeling
24 is to suggest that the Court follow the letter
25 of the law and take him into custody.

1 **THE COURT:** I appreciate your argument in
2 that regard. The fact that he is on GPS
3 monitoring, I'll set a personal recognizance
4 bond of \$50,000 and just let him remain out with
5 the same conditions of your GPS monitoring from
6 before. Certainly, I hope you understand that if
7 you were to tamper with that GPS in any way, do
8 anything like that, I would be under the belief
9 that you would immediately find a number of
10 deputies and Highway Patrolmen at your home or
11 at whatever location you were. So I'll set a PR
12 bond for -- you know, a trial bond while he's
13 out during the course of trial. Any other
14 matters?

15 **MR. DEJONG:** Not with regards to State
16 versus Hester, Your Honor.

17 **THE COURT:** Okay. Yes, sir.

18 (WHEREUPON, the recesses for the day at
19 approximately 4:56 p.m.)
20
21
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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF PICKENS	)	Case No(s) .: 2015GS3900611,
	)	2015GS3900612,
State of South Carolina, .	)	2016GS3902635
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Timothy Hester, Sr.,	)	Volume 2 of 4
	)	
Defendant.	)	
	)	

January 23-26, 2017
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

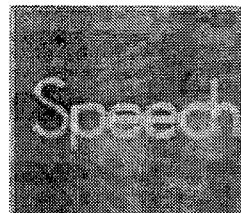
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P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 24th day of January, 2017 at approximately 9:25 a.m.)

THE COURT: All right. Yes, sir.

MR. CLEVELAND: Thank you, Your Honor. May it please the Court. In the matter of a hearing pursuant to Jackson v. Denno, the State would call Trooper McDowell to the stand.

STEPHEN McDOWELL

having first been duly sworn, testifies as follows:

THE CLERK: If you will, have a seat and state your name for the record. I'm going to go turn the mic on.

THE CLERK: Stephen McDowell with the South Carolina Highway Patrol.

DIRECT EXAMINATION

BY MR. CLEVELAND:

Q Trooper McDowell, did you encounter the defendant, Timothy Adam Hester, Sr, on the night of January 30th, 2015?

A Yes, sir.

Q And what was the purpose of your contact with the defendant?

A We received the wreck that same evening in Pickens County. I believe the wreck was dispatched to

1 me. Trooper Marlow said he was closer. I later got a
2 call on the radio to proceed to the hospital to check
3 on a subject that had been transported from that
4 collision.

5 Q All right. Were you going to -- were you
6 going to do a blood draw, if the situation merited,
7 on the defendant?

8 A Yes, sir. If it needed to be done, yes,
9 sir.

10 Q All right. And in this case, did you
11 determine or was it determined that it needed to be
12 done?

13 A Once I got to the hospital and came into
14 contact with Mr. Hester, I relayed the information
15 back to my supervisor at the time and told him what I
16 had, what I believed. And it was determined that a
17 blood draw was needed.

18 Q All right. As part of that blood draw
19 procedure, did you advise the defendant of his
20 Miranda rights?

21 A Yes, sir. I did.

22 Q All right. And what are those -- what
23 rights did you advise him of for the record's
24 purpose?

25 A I read him his Miranda rights. You want me

1 to read them now?

2 Q Please.

3 A I always keep a card in my pocket. I read
4 the subject, Mr. Hester, his Miranda rights as
5 stated, you have the right to remain silent. Anything
6 you say can and will be used against you in a court
7 of law. You have the right to have a -- you have the
8 right to talk to a lawyer and have him present with
9 you while you're being questioned. If you can not
10 afford to hire a lawyer, one will be appointed to
11 represent you before any questioning, if you wish.
12 You can decide at any time to exercise these rights
13 and not answer any questions or make any statements.
14 Do you understand each of these rights as I explain
15 to you? Having these rights in mind, do you wish to
16 talk to us now?

17 Q All right. How did Mr. Hester respond to
18 those rights?

19 A He stated he understood.

20 Q What condition was Mr. Hester in that
21 night?

22 A It was obvious he had been in an accident.
23 I first noticed he had some cuts and scrapes
24 particularly on the left side of his head. He had a
25 mark on his chest, a couple of marks going across his

1 chest near his abdomen.

2 Q Specifically, as far as his consciousness
3 and demeanor?

4 A He was conscious. He was able to talk. A
5 little slow and a little sluggish and slurred in his
6 speech a little bit. His eyes looked a little lazy.
7 You could smell a strong odor of alcohol coming from
8 his person, his breath.

9 Q At any point in time, did he give you any
10 indication that he did not understand what was being
11 read to him or advised to him?

12 A No, sir. Not that I recall.

13 Q Did you threaten or coerce him in any way
14 to agree with those rights?

15 A No, sir. I did not.

16 Q Did he appear to understand everything,
17 every question you asked him, and did he respond
18 appropriately?

19 A Yes, sir.

20 Q Did you go through other advisements of
21 rights with him?

22 A Once it was determined to keep on going, I
23 did read him his implied consent rights.

24 Q All right. Did he seem to understand those
25 rights?

1 **A** Yes, sir. He did.

2 **Q** Did he sign the form indicating that he was
3 given those rights and understood them?

4 **A** Yes, sir. He did.

5 **Q** And did you -- did Trooper Marlow ever join
6 you at the hospital?

7 **A** Yes, sir. He did arrive after I had had all
8 the paperwork signed and the evidence secured.

9 **Q** All right. Did you advise Trooper Marlow
10 that you had read Miranda to the defendant?

11 **A** Yes, sir. I did.

12 **MR. CLEVELAND:** That's all the questions I
13 have for this witness.

14 Please answer anything Mr. DeJong has.

15 **MR. DEJONG:** Your Honor, may it please the
16 Court?

17 **CROSS-EXAMINATION**

18 **BY MR. DEJONG:**

19 **Q** Mr. McDowell, so Mr. Hester was in the
20 hospital?

21 **A** Yes, sir.

22 **Q** In a hospital bed?

23 **A** Correct.

24 **Q** Have wires all on him?

25 **A** Yes, sir. He did.

1 Q I believe he had an IV in his arm, didn't
2 he?

3 A I believe that's correct as well.

4 Q You know what the hospital was pumping in
5 him?

6 A No, sir.

7 Q Pardon me?

8 A No, sir. I do not.

9 Q Okay. So you have a person who is in the
10 hospital bed. I believe, by your testimony, he had
11 some injury to his forehead?

12 A Uh, yeah. He had some scratches.

13 Q Right. And obvious -- well, he'd been
14 through -- from what knowledge you had, he had been
15 through a traumatic experience, right?

16 A Appeared so.

17 Q And the extent of injury to his head, you
18 do not know?

19 A I don't know myself, no, sir.

20 Q Okay. You indicated that his -- I believe
21 if I heard you correctly, his speech was a little
22 slurred. Now, you don't know if that was from alcohol
23 or medication or what it was, do you?

24 A I don't know what kind of medicine he had
25 been given at the hospital, but alcohol does have an

1 affect.

2 Q I'm sorry?

3 A I said I don't know what kind of medicine
4 he had been given to the hospital, but alcohol has
5 that affect.

6 Q Yes, sir. Certain medicines do as well,
7 don't they?

8 A I suppose.

9 Q So his eyes rolled, am I right?

10 A Yes, sir.

11 Q And he did talk with you?

12 A Correct.

13 Q Okay. Did you get -- you say you advised
14 him of his rights off of that card. Did you get him
15 to sign a written waiver of rights?

16 A No, sir. The only thing that was signed was
17 the implied consent.

18 Q Okay. And the implied consent, that was
19 signed prior to -- let me ask you, when you were in
20 there advising him of his rights, was that at the
21 same time the blood draw was being done?

22 A I read him his Miranda rights first and
23 then proceeded to the implied consent rights.

24 Q The question is, was the nurse that was
25 doing the blood draw in there when you were doing all

1 that?

2 **A** Yes, sir. She was present.

3 **Q** Okay. Along with the signatures?

4 **A** Correct.

5 **Q** All right. Do you -- do you know, Mr.
6 McDowell, when Mr. Hester arrived at the hospital?

7 **A** I'm not sure of the exact time.

8 **Q** Now I've asked you about what, if any,
9 medications he was on. You indicated you didn't know.
10 Do you know of any of the other treatments he may
11 have received once he got to the hospital?

12 **A** EMS testified yesterday, I believe, that
13 they didn't give him any medicines, just IV fluids.
14 That's all I'm aware of. As far as the hospital, I
15 can't say.

16 **Q** So the answer is you don't know what, if
17 any, treatment he got at the hospital when he got
18 there?

19 **A** No, sir.

20 **Q** You're not a doctor, are you?

21 **A** No, sir.

22 **Q** Not a nurse?

23 **A** No, sir.

24 **MR. DEJONG:** All right. One moment please,
25 Your Honor. (Pause.)

1 **BY MR. DEJONG:**

2 **Q** I think Mr. Cleveland asked you who was
3 present when you read him his rights.

4 **A** You're asking me that question?

5 **Q** Pardon me?

6 **A** You're asking me that question?

7 **Q** Yes, sir. I'm asking that.

8 **A** Yes, sir. The nurse, the charge nurse -- I
9 believe maybe her name was Becky.

10 **Q** So Becky, you, Mr. Hester, and that was it?

11 **A** It was a few other people in there, but
12 they really wasn't --

13 **Q** Were there any other troopers present at
14 that point in time?

15 **A** At that time, no, sir.

16 **Q** All right. Thank you, Mr. McDowell.

17 **THE COURT:** Anything else?

18 **MR. CLEVELAND:** Nothing further from this
19 witness, Your Honor.

20 **THE COURT:** Sir, you can step down.

21 **THE WITNESS:** Thank you.

22 **MR. CLEVELAND:** The State would call
23 Trooper Marlow.

24 **FARRIS MARLOW**

25 having first been duly sworn, testifies as follows:

1 **THE CLERK:** Thank you, sir. If you would,
2 have a seat and state your name for the record
3 please, sir.

4 **THE WITNESS:** Trooper Farris W. Marlow.

5 **DIRECT EXAMINATION**

6 **BY MR. CLEVELAND:**

7 **Q** Trooper Marlow, did you take a statement or
8 have a conversation with the defendant regarding this
9 case on January 30th of 2015?

10 **A** I did.

11 **Q** And where did that conversation take place?

12 **A** Took place at Greenville Memorial ER ---

13 **Q** All right.

14 **A** --- in the trauma bay.

15 **Q** All right. And when you arrived, was the
16 defendant already there?

17 **A** He was.

18 **Q** Was anybody else from Highway Patrol there?

19 **A** Trooper McDowell was on the scene.

20 **Q** All right. Prior to your discussion with
21 Mr. Hester, did you advise him of his Miranda rights?

22 **A** I was in the presence of Mr. -- Trooper
23 McDowell. I asked Mr. Hester did he understand his
24 Miranda rights that was given to him by Mr. McDowell
25 and he stated yes.

1 Q Okay. How long after -- or what time did
2 you arrive at the hospital? Do you recall?

3 A I do not recall.

4 Q Was it a long time after Trooper McDowell
5 had been there or a short time?

6 A It was a short time.

7 Q Okay. What, I guess, level of consciousness
8 or mental condition did you find Mr. Hester in?

9 A He was coherent. He was speaking and
10 talking when I arrived at the hospital.

11 Q All right. How long did you talk with him
12 about the incident?

13 A Probably for about 30 minutes.

14 Q All right. At any point in time during that
15 discussion, did he invoke his right to remain silent
16 or his right to an attorney?

17 A No, he did not.

18 Q At any point in time during that
19 conversation, did he seem to not understand the
20 questions you were asking him?

21 A No, he did not.

22 Q Did he lose conscious or give you any other
23 indication that he didn't understand what was going
24 on during that conversation?

25 A No, sir. He did not.

1 Q Did his responses appear willful and
2 voluntary?

3 A Yes, sir. Slow, but willful and voluntary.

4 Q Did you coerce or threaten him in any
5 manner to get him to continue speaking with you, or
6 to speak with you?

7 A No, I did not, sir.

8 Q Did he ever ask for any comfort items or
9 complain of anything that you denied him during this
10 conversation?

11 A No, sir.

12 Q Did you memorialize this conversation or
13 sum it up in any manner?

14 A In his statement, he did, yes, sir.

15 Q Is it in your report? Did he give a written
16 statement?

17 A It was in a report.

18 Q Okay. That's all the questions I have.
19 Please answer any questions Mr. DeJong has.

20 MR. DEJONG: Thank you, Your Honor. May it
21 please the Court.

22 THE COURT: Yes.

23 CROSS-EXAMINATION

24 BY MR. DEJONG:

25 Q So you were not in the room when

1 Mr. McDowell gave Mr. Hester his rights, correct?

2 A No, sir. I was not.

3 Q Either his Miranda or the implied consent?

4 A No, sir. That was prior to me arriving.

5 Q Okay. Well, I noticed on the implied
6 consent, it appears that you signed that as well. Was
7 there a reason for that?

8 A Because I'm the primary officer, sir.

9 Q Because what?

10 A Because I'm the primary officer.

11 Q Okay.

12 A And I asked him was he given his rights and
13 he said yes. Therefore, I signed the paper.

14 Q So you don't know how long after
15 Mr. McDowell said he read Mr. Hester his rights, how
16 long it was before you got there?

17 A No, sir.

18 Q All right. So what exactly did you ask
19 Mr. Hester about his rights?

20 A About his rights? I asked Mr. Hester did he
21 understand his rights still exist. He stated yes. I
22 asked him was he given his rights. He stated yes.

23 Q But you never reiterated what rights we
24 were talking about; did you?

25 A No, sir.

1 Q Because they were two different rights,
2 correct?

3 A His Miranda rights and implied consent.

4 Q Yes, sir. And certainly the implied consent
5 is totally different from Miranda, isn't it?

6 A Yes, sir.

7 Q And Mr. Hester did consent to a blood draw,
8 did he not?

9 A Yes, sir.

10 Q All right. Now, when you got to the
11 hospital, I believe you said Mr. Hester was in the
12 emergency room?

13 A He was in the trauma bay in the emergency
14 room.

15 Q Do you know what time he got there?

16 A No, sir. Prior to arriving at the hospital,
17 when I pulled up on the scene, the ambulance just had
18 pulled off.

19 Q All right. Once he got to the hospital, do
20 you know what kind of treatment, if any, he got?

21 A No, sir. I do not.

22 Q And while you were talking to him in that
23 trauma bay, did you notice he was hooked up to an IV?

24 A No, sir.

25 Q Do you know what they were pumping in him?

1 **A** No, sir.

2 **Q** Well, how was his speech when you talked to
3 him?

4 **A** Slow and sluggish, but he was still making
5 -- you could understand what he was saying.

6 **Q** And certainly, that slurred speech could
7 indicate that he was having a problem of some sort,
8 could it not?

9 **A** Yes, sir. I'm not a medical professional.

10 **Q** And the slow part could indicate he was
11 having a problem understanding, couldn't it?

12 **A** Understanding? It could, but he plainly,
13 clearly stated he understood what we asked him.

14 **Q** Okay. And throughout the 30 minutes you
15 were with him, did his speech and slowness of
16 response stay the whole time?

17 **A** It seemed to be the entire time I was
18 there.

19 **Q** Pardon me?

20 **A** It seemed to be there the entire time I
21 talked to him.

22 **Q** All right. All right. You're not a doctor,
23 are you, Mr. Marlow?

24 **A** No, sir.

25 **Q** And you're not a nurse, are you?

1 **A** No, sir.

2 **Q** Thank you, sir.

3 **MR. CLEVELAND:** Nothing further, Your
4 Honor. But at this time, the State would move
5 that the statement given to Trooper Marlow be
6 freely and voluntarily made, also after --
7 despite whether it was -- the State concedes
8 that it was custodial at this time because he
9 had been advised of his implied consent rights.
10 We think that the giving of Miranda by Trooper
11 McDowell satisfies the requirements given by
12 Jackson v. Denno and ask that the statement be
13 allowed to be admitted. Certainly, the ultimate
14 determination of voluntariness is up to the
15 jury. But I think it should go to the jury.

16 **THE COURT:** Yes, sir?

17 **MR. DEJONG:** Well, I disagree with Mr.
18 Cleveland, Your Honor.

19 **THE COURT:** You can step down. I
20 apologize.

21 Yes, sir.

22 **MR. DEJONG:** According to what we have
23 heard so far, that Mr. Hester had been involved
24 in an accident, a fairly traumatic accident; did
25 have a head injury; he was obviously on an IV;

1 his speech was slurred; his responses, according
2 to Mr. Marlow, were very slow; there was no
3 indication that they ever tried to determine
4 what medication, if any, he was on, I would
5 simply suggest, at this point in time, without
6 that, and I think the burden is on the State,
7 Your Honor, that there can not be a showing with
8 those conditions that, number 1, he knowingly
9 and intelligently waived the Miranda rights.

10 Now, when Mr. Marlow comes in, he said, did
11 you understand the rights. Well, Mr. Hester did
12 consent to a blood draw. So which rights are we
13 talking about? Are we talking about the implied
14 consent rights? Are we talking about the Miranda
15 rights? Or are we talking about both or neither
16 one? I don't think that was really clear.

17 So granted, he had been Mirandized, but
18 going back to the very beginning of the
19 Mirandizing, again, we don't know the medication
20 and we don't know the extent of his injuries.

21 Again, I think Mr. McDowell his -- I don't
22 know that he said his responses were slow, but
23 he said that his speech was slurred, which I
24 think they want to attribute that to alcohol.
25 But I'm not sure that can be done at this stage

1 of the proceeding.

2 Slurred speak could be of any number of reasons
3 including the head injury that he might have
4 had.

5 So I would move the Court not to let the
6 statement in based on two things. Number 1, the
7 fact that he did have an IV. Nobody knows what
8 was being pumped into that, into his body
9 through those IVs. His waiver was not knowingly
10 and intelligently made, number 1. And number 2,
11 based on that same argument that his statement
12 could not have been voluntarily made at that
13 point in time, Your Honor.

14 **THE COURT:** Would you like to say anything
15 in response to that?

16 **MR. CLEVELAND:** Your Honor, I think that
17 the defense is wanting the Court to reach out
18 very far, I mean, the officer is not a doctor
19 and they are not supposed to make a
20 determination based on medical facts. They are
21 supposed to make it based on the totality of the
22 circumstances. In each instance, from the first
23 contact with the first officer until the
24 conclusion of the interview some 30 minutes
25 later by the second officer, the defendant

1 appeared coherent and responded appropriately to
2 the questions and seemed to understand what was
3 going on. The duration of the Miranda waiver,
4 once it's made and given, it continues until he
5 invokes those rights. Which in this case, never
6 happened.

7 Certainly, after the Miranda waiver was
8 given, the implied consent waivers were given,
9 he physically signed the form, was able to do
10 that and then continued to discuss with this
11 officer for 30 minutes, I think, indicates a
12 voluntariness. The State has showed that it was
13 a voluntary confession or discussion with the
14 officer and it should be admitted. Again, like I
15 said, all arguments are to the jury for them to
16 consider because they are the ultimate finder
17 that the statement was voluntarily made. But at
18 this point, I think the State has met its burden
19 to have it put into evidence.

20 **THE COURT:** All right. Well, I find, based
21 on the testimony, that the State has
22 established, at least by the preponderance of
23 the evidence that, first of all, the officers
24 complied with the requirements of Miranda as you
25 all have conceded that he was -- it was a

1 custodial situation -- that he's complied --
2 that the officer complied with Miranda and
3 furthermore, that the defendant in this case
4 knowingly and intelligently waived his Miranda
5 rights and his implied consent rights.

6 I also find that the State has established
7 by the preponderance of the evidence that the
8 statement was voluntary. That's based on the
9 testimony of the officers that say that
10 throughout, he seemed to remain somewhat the
11 same with slurred speech, but he -- somewhat
12 slurred speech but he seemed coherent, answered
13 their questions and appeared to them to
14 understand what was going on. They had no
15 questions about that. I find that by
16 preponderance of the evidence the statement was
17 voluntarily given. Of course, I'll submit it to
18 the jury to determine voluntariness beyond a
19 reasonable doubt.

20 All right. This is probably right about --
21 is everybody here? Everybody -- all of our
22 jurors are here.

23 Yes, sir.

24 **MR. DEJONG:** Just one note on that, Your
25 Honor. Since -- I never know how Court of

1 Appeals works so I always have to be careful on
2 that. So if the State does attempt to introduce
3 that, obviously, I'm going to object on that.

4 **THE COURT:** Certainly.

5 **MR. DEJONG:** I don't want the jury to be
6 taken out. I will just say based on my prior
7 argument.

8 **THE COURT:** I appreciate it. I appreciate
9 it.

10 **MR. DEJONG:** That way we know what's going
11 on and I'm protected on the record, Your Honor.

12 **THE COURT:** I certainly encourage you to
13 and encourage that if it becomes necessary for
14 the Court of Appeals or Supreme Court to look at
15 it, I encourage them to have every opportunity
16 to do it.

17 **MR. CLEVELAND:** It's up to Your Honor. The
18 next one we can do is a statement also taken in
19 the hospital about five hours later. It's much
20 of the same circumstances by a different
21 officer. It's a one officer hearing. We can
22 speed through it if you would like or we can
23 take it up at a break or at a later time. It's
24 up to Your Honor.

25 **THE COURT:** Well, the jury's here. I'd

1 probably rather go ahead and get going, unless
2 you think we could do that very quickly.

3 **MR. CLEVELAND:** I mean, it's going to be
4 about the same. We can take it up later. I think
5 my part will probably be about five minutes.

6 **THE COURT:** Okay. Let's go ahead and bring
7 the jury in, unless that's what --

8 **MR. CLEVELAND:** It's not.

9 **THE COURT:** Okay. Okay. You ready to bring
10 the jury back in? Are they here?

11 **THE BAILIFF:** Yes, ma'am. You have to give
12 me a hand signal.

13 **THE COURT:** I will.

14 **MR. CLEVELAND:** Would it be the Court's
15 desire to mark this stipulation and publish it?

16 **THE COURT:** Yes, very much so. We'll mark
17 that as Court -- mark it as Court's Exhibit
18 Number 1.

19 **MR. CLEVELAND:** Would you like me to
20 publish it or would you like to publish?

21 **THE COURT:** You are welcome to publish it
22 if you'd like to. That's your preference.

23 **MR. CLEVELAND:** I will.

24 **(WHEREUPON, Court's Exhibit 1 is marked for**
25 **identification purposes.)**

1 **(WHEREUPON,** the jury enters at approximately
2 9:49 a.m.)

3 **THE COURT:** Good morning, Ladies and
4 Gentlemen. I want to thank you so much for being
5 here so promptly this morning. I appreciate it.
6 I'm sure that the bailiffs have explained to you
7 that they are working on the heat in this
8 building. Your Clerk of Court had a brand-new
9 boiler installed that they thought we would be
10 nice and toasty all week long. Of course,
11 sometimes when you get something new, it doesn't
12 always -- you know, there's a few kinks. So they
13 are working on that this morning. I thought
14 maybe the upside is we'd all be kind of
15 refreshed. All right. We'll go with that.

16 Mr. Cleveland, you're ready to proceed?

17 **MR. CLEVELAND:** Yes, Your Honor. The
18 State's ready. The first matter of business,
19 Your Honor, the State would seek to admit
20 Court's Exhibit Number 1, a stipulation
21 agreement between the parties, and publish to
22 the jury.

23 **MR. DEJONG:** Without objection.

24 **THE COURT:** All right then. It's so
25 admitted as Court's Exhibit -- is it Court's 1

1 or State's?

2 **MR. CLEVELAND:** Court's exhibit.

3 **THE COURT:** Court's exhibit. I'm sorry. I
4 had forgotten. Please -- please put --

5 **MR. CLEVELAND:** Thank you, Your Honor.

6 **THE COURT:** Please proceed.

7 **MR. CLEVELAND:** May it please the Court.
8 Ladies and Gentlemen of the jury, this is --
9 this stipulation agreement states that the
10 parties stipulate, which means agree, that
11 Timothy Adam Hester, Sr, has been declared a
12 habitual offender by the South Carolina
13 Department of Motor Vehicles and was still under
14 that status on January 30th, 2015. The defendant
15 had been provided notice of this status as a
16 habitual offender. The parties stipulate that
17 Timothy Adam Hester, Sr's, driver's license was
18 under suspension on January 30th, 2015 and he
19 had been provided notice of this suspension.

20 **THE COURT:** All right. Ladies and
21 Gentlemen, let me explain a little bit about
22 that to you, this stipulation. You heard that is
23 an agreement by the parties. In other words, let
24 me just put it in some different language for
25 you. Those are facts you don't have to decide.

1 All right. They are decided for you. So you need
2 to consider whether or not those facts are true.
3 They are taken as true for purposes of your
4 deliberations and your consideration. All right.
5 All right.

6 You ready to proceed?

7 **MR. CLEVELAND:** Yes, ma'am.

8 **MR. BUCKNER:** Yes, Your Honor. The State
9 would call Neal Nimmons to the stand.

10 **THE COURT:** Okay.

11 **NEAL NIMMONS**

12 having first been duly sworn, testifies as follows:

13 **THE CLERK:** Thank you, sir. If you would,
14 have a seat and state your name for the jury.

15 **THE WITNESS:** I am Neal Nimmons from South
16 Carolina Highway Patrol.

17 **DIRECT EXAMINATION**

18 **BY MR. BUCKNER:**

19 **Q** Neal, how are you doing today?

20 **A** I'm doing well.

21 **Q** Good. Will you tell the jury a little bit
22 about your experience with law enforcement, how long
23 you've been doing it and that kind of thing?

24 **A** Yes, sir. I started my career with the
25 Highway Patrol in January of 2000, so 17 years with

1 the Highway Patrol. The Highway Patrol has afforded
2 me opportunities. For four years, I served on the
3 MAIT team, it's the collision reconstructive team for
4 the South Carolina Highway Patrol. I received
5 numerous training hours for that as well. Currently,
6 I'm assigned to Oconee/Pickens County. I'm a road
7 trooper here in Oconee and Pickens County. 17 years.
8 I don't remember how many hours of advanced
9 reconstruction I've had right off, but I have had
10 some.

11 Q And what is your current position with the
12 Highway Patrol?

13 A A road trooper here in Oconee/Pickens.

14 Q And what was your position with Highway
15 Patrol on January 30th?

16 A I was a road trooper working that night.

17 Q All right. On that night on January 30th of
18 2015, do you remember this accident on Allgood Bridge
19 Road?

20 A I do.

21 Q Tell us what your role was when you went
22 out and responded to that accident?

23 A Well, when the call came in, it came in
24 kind of as a severe crash. Given the condition and
25 the manner in which the crash was and being as

1 severe, since I have some experience in
2 reconstruction, at the time, the supervisor, Corporal
3 Mayfield, he asked -- he called -- he called me and
4 asked me if I would respond to the scene, too, to
5 assist with the scene documentation.

6 Q Okay. And when you say scene documentation,
7 what exactly does that mean?

8 A Marked the scene with -- we used orange
9 paint. That's the color that we use. But marked the
10 scene with paint. When I say mark the scene, what
11 we're doing is marking any evidence of the scene,
12 whether it be tire marks, anything that would have
13 any kind of -- that we would believe at that time to
14 have any evidentiary value to the case or anything
15 like that. We'll take pictures to document the scene
16 as well just so that we can have a clear and accurate
17 representation -- of course, it being several years
18 ago, you're not going to be able to see that today --
19 but so you can see what that scene looked like when
20 we were there and when we were investigating it.

21 Q And tell me what did you specifically do
22 that night regarding your scene documentation?

23 A That night, I marked the scene and took
24 pictures for it. I also did a couple of other things.
25 But the primary -- primarily -- the primary thing

1 that I did that night was to mark and photograph the
2 scene.

3 Q Okay. And who all was on the scene when you
4 arrived?

5 A When I arrived, Corporal Mayfield was
6 there. Also, Trooper Marlow was there. There were
7 several other firemen there as well.

8 Q Was the defendant, Timothy Hester, there
9 when you --

10 A No, sir.

11 Q And -- okay. So let's get back to the
12 photos that you were talking about. You said you
13 took photos of the scene?

14 A I did.

15 Q Okay. And when you're taking these
16 photographs, what exactly are you trying to capture?
17 Just to give the jury a little --

18 A You're trying to capture the evidence you
19 are wanting to see. The photos are used to go back
20 with us to go back and look at those. There may be a
21 question on whether or not that tire mark went with
22 that vehicle. We're looking at tread patterns in
23 those situations, looking at any kind of evidence
24 that was there as far as so you can show how the
25 vehicle traveled throughout the collision scene and

1 what it did. Take pictures of the vehicle as well and
2 show the damage that we can go back.

3 You can see where there may be blood on the
4 car. There may be -- steering wheel may be deformed
5 in some kind of way. We're also looking at -- that
6 tells you what the dynamics of the car -- what it was
7 doing during the collision. With that, sometimes
8 there may be an issue of the driver, who was sitting
9 where. You get into occupant kinematics with that
10 kind of stuff. Take pictures mainly just to preserve
11 what we're investigating. It takes a -- takes a long
12 time to investigate a collision like this.

13 Q Bear with me just a second. I'm going to
14 show you these photos. Also, back to the scene. When
15 you arrived, what do you first remember? You said you
16 took a lot of photos. But let's talk about exactly
17 what you remember seeing when you arrived there as
18 far as where people were in the actual collision
19 itself, the car, the occupants.

20 A Well, when I first got there, I pulled up
21 and parked there at the scene. I could see the car.
22 The fire department had a truck down there in the
23 yard and had the lights lit up, so you could see
24 where the car was, the final rest of the car. That's
25 where I went first to kind of look at that and see.

1 The victim was still on the scene when I
2 got there. I saw her. I saw the car and the manner in
3 which it was at its final rest and where it stopped.
4 After that, we kind of -- we talked to the supervisor
5 to get a game plan of what we were going to do, how
6 we were going to go about investigating this. That's
7 when I found out -- I said, well, I've got pictures
8 and marking the scene and that kind of stuff. So
9 then I started doing that.

10 I started walking the scene back. I go back
11 and try to figure out where this all started, where
12 the evidence started being put on the pavement.
13 That's when I saw where the skid marks started but
14 leading up to the final rest of the car. Marked all
15 of that. Started marking that. Start at the back and
16 work all the way to the end, or start at the
17 beginning, I guess you would say, and back up to
18 actually where it started. Start at the beginning and
19 work your way in.

20 Sometimes there's a lot of tire marks out
21 there to look at. So you will start with one and take
22 that one through, that way you don't miss anything.
23 In this case here, after looking at the car and going
24 down there to final rest and getting a picture of
25 what it was, I started walking the scene backwards

1 back to the beginning.

2 Q And describe exactly where the car was and
3 where the victim was.

4 A Okay. The car had gone down a driveway.
5 After it left the road, it basically went down a
6 driveway and struck a tree and it came to final rest
7 up against a building. It was kind of like a storage
8 building there in the yard of the house that it was
9 in. It was up on its side. It was on its right side
10 and leaned up against the building.

11 Q And where was the victim in this case?

12 A She was -- she was laying right beside the
13 vehicle. She wasn't in the vehicle when I was there.
14 The vehicle had been blocked up. They had blocks that
15 they use after they jack the car up. So the car was
16 raised up a little bit and she was laying there
17 beside the vehicle.

18 Q So she had been removed from underneath?

19 A Correct.

20 Q Okay. I am going to show you what has been
21 marked State's Exhibit 1 through 20. Have you had a
22 chance to review these photos?

23 A I had.

24 Q And are those photos a clear and accurate
25 representation of what the scene looked like that

1 night when you documented it?

2 **A** Yes, sir.

3 **Q** And take your time if you need to look
4 through it.

5 **MR. BUCKNER:** Your Honor, at this time, I
6 would move State's Exhibits 1 through 20 into
7 evidence.

8 **THE COURT:** Any objection, Mr. DeJong?

9 **MR. DEJONG:** On 8 and 9, Your Honor.

10 **THE COURT:** All right. If y'all want to
11 approach.

12 **(WHEREUPON, a bench conference is held off the**
13 **record.)**

14 **THE COURT:** All right. The State's
15 exhibits -- remind me of all the numbers again
16 please.

17 **MR. BUCKNER:** It's 1 through 20.

18 **THE COURT:** State's 1 through 20 are
19 admitted into evidence.

20 **MR. BUCKNER:** Thank you, Judge.

21 **MR. DEJONG:** I'm sure it has been, Your
22 Honor, but my objection is noted as to Exhibits
23 8 and 9?

24 **THE COURT:** Yes.

25 **MR. DEJONG:** Thank you, Your Honor.

1 **(WHEREUPON,** State's Exhibits 1 through 20 are
2 admitted into the record.)

3 **THE COURT:** Thank you for -- and I just
4 want to tell the jury, you know, certain things
5 attorneys -- I don't ever want you to take any
6 kind of negative inference from anything. There
7 are certain things, legally, that attorneys have
8 to do. That's what we're -- that's what some of
9 this talking is about. All right.

10 Yes, sir..

11 **MR. BUCKNER:** Thank you, Judge.

12 **BY MR. BUCKNER:**

13 **Q** Neal, I'm going to kind of go through some
14 of these photos.

15 Your Honor, I'd like permission to publish
16 State's Exhibit 2 for the jury. (Pause.)

17 Neal, if you will sort of describe what
18 you're doing with this photo while it was taken in
19 your investigation, just for the jury, briefly.

20 **A** Okay. When I walked back from the final
21 rest of the vehicle, coming back, I was able to
22 identify that those tire marks went with this
23 collision. So what you see is the tire marks -- the
24 pre-skid marks, the tire marks that were left by the
25 vehicle during the collision.

1 Q Okay.

2 A We marked the scene. When we marked these
3 tire marks -- at the beginning where we established
4 the beginning of the tire mark where we normally mark
5 that with a U, circling the start of the skid mark.
6 And then the orange dots that you see is the orange
7 paint that I talked about earlier. The orange paint
8 is just showing as the tire mark goes on. The orange
9 paint will last longer than the tire mark usually,
10 sometimes. So it's there if we need to go back and
11 look at it at a later time.

12 Q All right. And State's Exhibit 4. Describe
13 what's shown in this picture in your investigation.

14 A That's final rest to the vehicle, the
15 vehicle that was involved in this collision.

16 Q And what are those blocks down there at the
17 bottom?

18 A Those blocks -- that's what the fire
19 department uses when they lift the vehicle up. They
20 use the blocks underneath there to secure the
21 vehicle, make it safe.

22 Q I'm going to show -- publish for the jury
23 State's Exhibit 6. Neal, describe the photo that you
24 took in your investigation.

25 A Well, that's a tree that was -- that the

1 vehicle struck before it came to final rest against
2 the building. The building is off to your left there.
3 That's a tree that was in the yard there that the
4 vehicle struck prior to coming to final rest.

5 Q This is a tree at the end of the driveway?

6 A Correct.

7 Q That it struck before hitting the shed or
8 building?

9 A Shed or building, yes. And there at the
10 bottom are parts of the vehicle, as well, that came
11 off during the contact with the tree, evidently.

12 Q All right. I'm going to publish for the
13 jury State's Exhibit 7.

14 A I took this picture mainly just to show
15 that -- the impact from the vehicle with the
16 building. It was enough of an impact to knock that
17 building off of those pier blocks.

18 Q So that's --

19 A That's what that's showing. And the purpose
20 of that picture is mainly just to show the shift to
21 the vehicle when it got struck by the vehicle, or the
22 building when it got struck by the vehicle.

23 Q State's Exhibit 9, Neal, if you could,
24 describe this photo of why it was taken in your
25 investigation please.

1 **A** Well, along with evidence, blood is
2 evidence. I took that picture there because of the
3 blood that was there. It looked like that was
4 possibly a point of contact that one of the victims,
5 or whatever, would struck right there. I assumed that
6 it was hers. I had been told that she had been pulled
7 out from underneath the vehicle right there.

8 **MR. DEJONG:** Objection, Your Honor. He's
9 testifying to hearsay. I object to all that and
10 move that it be stricken.

11 **MR. BUCKNER:** Your Honor, that's in the
12 course of his investigation. That's not offered
13 for the truth. That's just showing what he did
14 next.

15 **THE WITNESS:** I thought that --

16 **THE COURT:** Excuse me.

17 **THE WITNESS:** Sorry.

18 **THE COURT:** I'm going to sustain the
19 objection. Surely, we'll get into that later on.

20 **MR. BUCKNER:** Thank you, Judge.

21 **BY MR. BUCKNER:**

22 **Q** Now, is that a female shoe that's laying in
23 that ---

24 **A** It is.

25 **Q** --- photo. And that -- that's the passenger

1 side of the vehicle that's laying on the ground?

2 A Correct.

3 Q I assume that's the victim's --

4 A That is the victim's foot.

5 Q All right. I publish for the jury State's
6 Exhibit Number 10. Will you describe what's going on
7 in this photo and what it was used for in your
8 investigation.

9 A That's more evidence as far as a shoe.
10 That's a different shoe than which -- that's a male
11 shoe. That's not a female shoe -- that's outside the
12 -- that's outside the vehicle right there as well in
13 the same area in which the previous picture was. In
14 addition to that, that's an airbag.

15 Q All right. Publish for the jury State's
16 Exhibit 15. Describe why this photo was taken and
17 what's going on in this one.

18 A Okay. In the previous photos that we saw
19 where there was blood on the ground, the blood on
20 that car, I took that picture after the car had been
21 rolled back over onto its wheels to show that the
22 blood on the ground matches or lines up with the
23 blood that is on the outside of the car on the top
24 there.

25 Q And that was the pool of blood that was

1 lying beside the female's shoe in the previous one?

2 **A** Correct. It goes along with trying to put
3 positions of people in the car.

4 **Q** Okay. Just one more, I promise. I'm going
5 to publish for the jury State's Exhibit 16. It's a
6 photo of the steering wheel. Describe the
7 significance of that and what you found in your
8 investigation here.

9 **A** Okay. Looking at -- lining up injuries and
10 stuff like that along with damages in the car. The
11 reason why I took that picture there is because it
12 shows the steering wheel. The steering wheel is bent,
13 the deformation of the steering wheel on the top side
14 of it.

15 **Q** I think there's a pointer up there
16 somewhere.

17 **A** You have to excuse me. I shake a little
18 bit.

19 **Q** Can you show the -- highlight that for the
20 jury.

21 **A** As you can see, the steering wheel is round
22 and it should be round all the way around. It,
23 protruding out this way, shows that the steering
24 wheel was bent. Usually -- in the course of a
25 collision, you have three collisions in a collision.

1 Okay. One of those collisions are the occupants
2 within the -- you have vehicles going down the road.

3 It leaves the road and will strike a tree
4 or an object. Once that vehicle strikes that,
5 everything in that vehicle is moving at the same
6 speed of what the vehicle is. However, when the
7 vehicle strikes the tree, it slows down. But the
8 occupants in the car would not be slowing down at
9 that point until they strike something. So then you
10 have your second collision, being the occupants
11 traveling, if either they hit the seatbelt, if they
12 are wearing their seatbelt, or they may hit something
13 inside the vehicle, for example, the steering wheel.

14 Then, once they hit that, then the third
15 collision, of course, is your organs striking inside
16 your body. The steering wheel being bent, that's why
17 I took that picture.

18 Q And that picture shows the -- the steering
19 wheel is bent back towards the dash?

20 A It would be bent forward.

21 Q Forward is what I meant.

22 A Forward toward the dash. Correct.

23 Q Okay. All right. Let's get back to your
24 other -- the other parts of your investigation.
25 Outside of taking photos -- outside of taking photos,

1 what else did you do while you were on the scene?

2 **A** Okay. After taking photos and marking the
3 scene and that kind of stuff, I did take a swab from
4 the victim, Ms. Holcombe.

5 **Q** Okay. And can you describe for the jury
6 what that procedure is like when you take a swab and
7 why you do it.

8 **A** The reason why I took a swab is to get a
9 standard from her for anything -- for anything that
10 may be tested forward, any blood evidence, DNA, that
11 kind of stuff. You want a standard so that you have
12 that. I took it then because at that time, MAIT had
13 not arrived at the scene. I knew that was something
14 they were going to need and want. So I went ahead and
15 took that standard for them. When MAIT arrived at the
16 scene, that evidence was then handed over to them, of
17 course, for their stuff.

18 **Q** When you say standard, what do you mean by
19 that?

20 **A** Just her standard DNA. They test -- they
21 take her DNA and check Ms. Holcombe's DNA. They know
22 that that DNA came from that person. That's her DNA.

23 **Q** And once that is gathered, that is used for
24 further investigation?

25 **A** Further testing.

1 Q And when you say you take a swab, what does
2 that process entail, just briefly?

3 A Okay. You use -- it depends on the -- it
4 depends on the blood that you're going to be trying
5 to swab. If the blood is dry, we'll dampen the swab
6 so that we can gather the blood from wherever we're
7 trying to get it from. In this case here, it was not
8 dry blood. Just take a cotton swab, swab the blood
9 and then secure that in a box. Sometimes we use a box
10 or an envelope to put that in, seal it and then it
11 will be sent to SLED for testing.

12 Q Okay.

13 A You don't want to seal it completely shut
14 because it's goes to dry so it doesn't disturb the --
15 make the evidence not valid, not any good.

16 Q Then that's taken to a facility later?

17 A To a facility, right.

18 Q Outside of examining where the car came to
19 rest after the collision and where the victim was and
20 taking all those photos, did you walk any other parts
21 of the scene in your investigation and try to contact
22 maybe some witnesses who had seen what had happened?

23 A I did. It happened in a yard there. So I
24 walked up on the porch, contacted the people inside
25 the house, asked if they had seen what happened. Did

1 not get a statement from them. They said they did not
2 see the crash happen. They heard it, come out and
3 said that there was a gentleman that came up on the
4 porch. And outside of that, that's all.

5 Q So they -- they offered nothing by way
6 of --

7 A They offered nothing. Also while we were
8 there, later on, there were two witnesses that did
9 come up. We took -- I took a statement, a video
10 statement, with them.

11 Q Do you remember who those witnesses were?

12 A I don't have the notes with me. I don't
13 remember their names right off.

14 Q Male?

15 A It was one male, one female.

16 Q Okay. But they were not on the scene
17 that --

18 A No, they were there when we first arrived
19 there. They got there pretty much as we were coming
20 to an end of our investigation.

21 Q Okay. And did you walk up to the house in
22 order to talk to these folks whose property it was?

23 A I did. Yes. Yes.

24 Q Did you notice anything when you went up on
25 their porch as far as --

1 **A** In talking with them, I noticed some blood
2 on the porch. They confirmed it. They said that there
3 was some blood -- there was some blood on the door,
4 on the door handle and then a couple of spots here
5 and there on the porch as well. Just blood droplets
6 and some smears.

7 **Q** And did -- in the off chance, did they
8 happen to have any sort of camera or anything like
9 that on them?

10 **A** While we were standing there, I did notice
11 that there was a camera, like a surveillance camera,
12 home security camera up in -- up on the front of the
13 house there pointed down into the area of the
14 driveway. When I asked them about the camera, they
15 said that it was -- it was a dummy camera. It wasn't
16 hooked up to anything. It didn't record or anything
17 like that.

18 **MR. BUCKNER:** Okay. Bear with me just a
19 second, Your Honor.

20 **THE COURT:** Certainly.

21 **MR. BUCKNER:** Judge, I have no further
22 questions at this time.

23 **THE COURT:** All right.

24 **MR. BUCKNER:** Please answer any questions
25 Mr. DeJong has.

1 **THE COURT:** Mr. DeJong?

2 **MR. DEJONG:** Thank you, Your Honor. May it
3 please the Court?

4 **CROSS-EXAMINATION**

5 **BY MR. DEJONG:**

6 **Q** So on January 30th of 2015, you were a road
7 trooper and you responded to this scene?

8 **A** I did.

9 **Q** Now, when you got there, what we will call
10 the crash scene --

11 **A** Okay.

12 **Q** -- it wasn't the same as when the crash was
13 immediately over, was it?

14 **A** Don't understand the question.

15 **Q** Okay. Fire department had been through
16 there.

17 **A** Right.

18 **Q** Car was not in the same position.

19 **A** Okay. Yes, the vehicle had been moved by
20 the fire department. Those blockings underneath the
21 car had been moved from that.

22 **Q** Right. So the crash scene was not in --
23 intact, if you will, when you got there?

24 **A** Say that again now.

25 **Q** It wasn't intact. It hadn't been secured at

1 that point in time?

2 **A** In the way of there was fire department
3 there ---

4 **Q** Fire department.

5 **A** --- and they had moved the car a little
6 bit, that is correct.

7 **Q** Right. Fire department was there. EMS had
8 been there. Who else had been there?

9 **A** Well, within the realm of -- it was secured
10 in the aspect that -- for emergency personnel. While
11 we were there, I know that there wasn't -- there
12 wasn't anyone else there other than emergency
13 personnel.

14 **Q** And certainly, while all of that's going
15 on, things can get moved, can't they?

16 **A** They can.

17 **Q** And certainly, the person of Ms. Holcombe
18 had been moved before you ever got there?

19 **A** She had been.

20 **Q** So basically, your whole thing was
21 documentation, correct?

22 **A** Yes, sir.

23 **Q** And you didn't -- did you do any
24 measurements?

25 **A** No, sir.

1 Q And to collect evidence, right?

2 A I did collect some evidence, yes.

3 Q Okay. Now, other than the documentation at
4 this crash scene, did you have any further
5 involvement?

6 A No, sir.

7 Q Do you know if a mechanical inspection was
8 ever done of the vehicle involved in the crash scene?

9 A I do not know that, no.

10 Q You took pictures of what purports to be
11 skid marks. If you need to see them, I'll throw them
12 back up there. Where did the skid marks stop? Where
13 did they stop?

14 A At the T-intersection there, as they were
15 coming up the road, there's a little bit of a rise
16 that continued on just a little bit onto the
17 crossroad. That's where they stopped.

18 Q So did they stop on the road?

19 A Yes.

20 Q Okay.

21 A And from that point from where they
22 stopped, there was nothing until we found where there
23 was some gouge marks -- some gouge marks. And that
24 process there, that vehicle was in the air. It wasn't
25 touching the ground. It was leaving no marks at all.

1 You could see where the skid marks stopped and then
2 there's nothing and then the evidence starts again
3 with gouge marks leading up to the tree.

4 Q Was there another car in the yard?

5 A Yes.

6 Q Had that car been struck?

7 A I don't believe so, no.

8 Q Okay. On, I believe it was, Exhibit
9 Number 7, you said you had took a picture. Again, if
10 we need to put it up, we will, but that was kind of
11 the picture of a building where you said you show the
12 condition of the building. Do you recall that?

13 A The one with the blocks in it, the concrete
14 blocks?

15 Q I think so. Let's just put it back up to
16 make sure we're both talking about the same thing.
17 (Pause.)

18 If I can figure out how to use this thing.
19 (Pause.)

20 Okay. We have now State's Exhibit Number 7
21 on the screen. Do you know what condition that
22 building was in prior to this crash?

23 A I do not.

24 Q Okay. So not knowing that, you can't really
25 say that that was done as a result of the crash?

1 **A** Well, right here, you've got dirt on the
2 concrete block. And they are falling that way. I
3 moved a building in my yard. And when I moved the
4 building, the concrete block where they were sitting
5 in the ground had dirt. That's fresh dirt right
6 there. That's why I took that picture. It appeared
7 that, yes, that that shiftment in the collision is
8 what caused that building to then shift off of there.

9 **Q** That's a broken concrete block; is it not?

10 **A** Yes, sir.

11 **Q** In the curvature of that concrete block,
12 there was certain staining, isn't there?

13 **A** I'm talking about the staining of this
14 right here. The fresh stuff. Now, this up here, you
15 can tell that's dry and old.

16 **Q** Yes, sir.

17 **A** That down there is a lot darker and is wet.

18 **Q** When either happened, you can't say. Now,
19 just so I'm sure on one thing, I'm referring to
20 State's Exhibit 15. Nope. Wrong one. Bear with me.
21 Look at my notes again. (Pause.)

22 I can't lay my hands on it. You recall the
23 one where you said the steering wheel was bent?

24 **A** Yes, sir.

25 **Q** Do you recall there being a key ring in the

1 ignition?

2 **A** There was a key in the ignition.

3 **Q** Were there a lot of keys on that ignition
4 -- on that key ring?

5 **A** I think there were a couple of keys. I
6 don't remember how many keys or whatever, but I do
7 remember a key being in the ignition.

8 **Q** All right. Whatever the picture shows,
9 that's what was there, right?

10 **A** Yes.

11 **Q** Whether it was 2 or 20?

12 **A** Right.

13 **Q** Now, --

14 **A** Well, I mean -- let me see the picture.
15 That way, I can be clear on how many keys were in
16 there because I really didn't count the keys. I don't
17 know how many were there. A lot could be two to you
18 and one to me.

19 **Q** The force is with me. I went right to it.
20 I'll just put it up here. Okay. Actually, this is
21 Exhibit -- State's Exhibit 17. What I'm talking about
22 is --

23 **A** Right there.

24 **Q** Right there.

25 **A** Yeah, that does appear to be a lot of keys.

1 Q Right. Okay. And was the key in the
2 ignition?

3 A Yes.

4 Q It would appear to be, right?

5 A It's sitting there hanging.

6 Q Right.

7 A The keys are hanging.

8 Q All right. Now, you say that there was what
9 appeared to be blood out there, right?

10 A Yes, there was blood out there.

11 Q Okay. And you took samples?

12 A Not of the blood. I didn't take samples of
13 the blood. I took a standard off of Ms. Holcombe.

14 Q So you didn't take any samples of the
15 blood?

16 A I did not take any samples of blood.

17 Q Okay. So you didn't do blood swabs on any
18 of that?

19 A Not of the blood, no.

20 Q Okay. Well, while we're at it, did you do
21 blood swabs of what you say was on the front porch of
22 the house or the door handle?

23 A The only blood swab I took was the standard
24 from Ms. Holcombe.

25 Q Okay. Well, that was from her person, I

1 guess?

2 **A** Correct. For her standard.

3 **Q** But as far as any other blood, you didn't
4 take any?

5 **A** I did not.

6 **Q** So to your knowledge, was any DNA performed
7 on any of that blood?

8 **A** To my knowledge, no. I did not do anything.

9 **Q** Okay. Then it can not be said whose blood
10 that was?

11 **A** No, sir. I didn't say whose it was.

12 **Q** Again, the vehicle had been moved?

13 **A** Correct.

14 **Q** Okay. The one where you -- the State --
15 it's been marked State's Exhibit Number 9, you said
16 you took that because of the shoe, right?

17 **A** The shoes there, correct, and the blood
18 that's there.

19 **Q** But again, you don't know that that's where
20 the shoe was initially, do you?

21 **A** No, sir.

22 **Q** Ms. Holcombe had already been moved?

23 **A** Correct.

24 **Q** As far as you know, the shoe had been moved
25 too?

1 **A** Could have been.

2 **Q** So other than the pictures I have, I guess
3 the known standard of Ms. Holcombe, you didn't take
4 anything into evidence?

5 **A** No, sir. I did not.

6 **MR. DEJONG:** One moment please, Your
7 Honor.

8 **THE COURT:** Certainly.

9 **MR. DEJONG:** Thank you, sir.

10 **THE COURT:** All right. Any other
11 questions, Mr. Buckner?

12 **MR. BUCKNER:** No further questions from the
13 State, Your Honor.

14 **THE COURT:** Sir, you can step down.

15 **THE WITNESS:** Thank you, ma'am.

16 **MR. BUCKNER:** The State would call
17 Farris Marlow to the stand, Your Honor.

18 **MR. DEJONG:** May we approach before you do
19 that?

20 **THE COURT:** Oh, certainly.

21 **MR. DEJONG:** Please, Your Honor.

22 **(WHEREUPON, a bench conference is held off the**
23 **record.)**

24 **THE COURT:** Ladies and Gentlemen, it's
25 probably time for us to take a little break. If

1 you would, step to your jury deliberation room
2 for just a moment, about 10 minutes. We'll start
3 back up right after that.

4 Ladies and Gentlemen in the audience, I
5 would ask you to stay seated until the jury
6 exits. Thank you.

7 **(WHEREUPON, the jury exits at approximately**
8 10:29 a.m.)

9 **THE COURT:** All right. Anything we need to
10 take up before we break?

11 **MR. BUCKNER:** Nothing from the State, Your
12 Honor.

13 **THE COURT:** Okay.

14 **MR. DEJONG:** Nothing on behalf of
15 Mr. Hester, Your Honor.

16 **THE COURT:** Sounds good. Let's break for
17 10 minutes.

18 **MR. BUCKNER:** Thank you, Your Honor.

19 **(WHEREUPON, the Court goes off the record at**
20 approximately 10:29 a.m.)

21 **(WHEREUPON, the Court goes on the record at**
22 approximately 10:42 a.m.)

23 **THE COURT:** Please be seated. All right.
24 Are we ready -- let's place that on the record
25 before --

1 **MR. DEJONG:** Yes, Your Honor.

2 **THE COURT:** Very smart. Yes, sir.

3 **MR. DEJONG:** Otherwise, I will forget.

4 **THE COURT:** And I will for sure.

5 **MR. DEJONG:** May it please the Court, Your
6 Honor. During the course of the testimony of the
7 last witness with -- when the State offered
8 some -- I think it was Exhibits 2 through 20, if
9 memory serves me correctly, I objected to 8 and
10 9. One was a picture that purported to have
11 Ms. Holcombe's body covered in a sheet.

12 The other was a picture of the shoe, which
13 I didn't object to the shoe, but also a picture
14 of Ms. Holcombe's foot. I objected to that, Your
15 Honor, on the basis that it was prejud -- highly
16 prejudicial. I don't believe it adds any
17 probative value and doesn't have any probative
18 value whatsoever. The probative value did not
19 outweigh the prejudicial nature of the photos
20 themselves, Your Honor.

21 **THE COURT:** All right. All right. Your
22 objection to those photos is noted for the
23 record. As I stated, I admitted them over your
24 objection based upon the fact that I did find
25 that their probative value, being that it

1 appears that the defense in this case is who the
2 driver of the vehicle was was probative or could
3 be probative of positioning in the car and
4 positioning after the accident and that the shoe
5 had some probative value with regard to that as
6 well. Also, the prejudicial effect or any
7 shocking nature of the photograph was minimized
8 by the fact that only a portion of the body was
9 shown but also that she was covered with the
10 shoe. Therefore, as I said, I admitted them over
11 your objection. All right. Anything else we need
12 to take up?

13 **MR. BUCKNER:** Nothing from the State,
14 Your Honor.

15 **THE COURT:** All right.

16 **MR. DEJONG:** Nothing from Mr. Hester,
17 Your Honor.

18 **(WHEREUPON, the jury enters at approximately**
19 10:45 a.m.)

20 **THE COURT:** Are we ready to proceed?

21 **MR. BUCKNER:** Yes, Your Honor.

22 **MR. DEJONG:** Ready for the defense,
23 Your Honor.

24 **THE COURT:** Thank y'all.

25 **MR. BUCKNER:** The State would call

1 Farris Marlow to the stand, Your Honor.

2 **FARRIS MARLOW**

3 having first been duly sworn, testifies as follows:

4 **THE CLERK:** Sir, if you would, have a seat
5 and state your name for the record please.

6 **THE WITNESS:** Farris W. Marlow with South
7 Carolina Highway Patrol.

8 **DIRECT EXAMINATION**

9 **BY MR. BUCKNER:**

10 **Q** All right. Trooper Marlow, just an
11 introduction. Will you tell the jury how long you've
12 been with the Highway Patrol and how long you been
13 with law enforcement in general?

14 **A** Prior to coming to work for the Highway
15 Patrol, I worked for Greenville County for five
16 years. I've been with the Highway Patrol for 10 and a
17 half. I do have schooling and education when it comes
18 to collisions and investigations.

19 **MR. DEJONG:** Your Honor, Mr. Buckner, can
20 we pull that microphone down a little bit so
21 that --

22 **THE COURT:** Is that microphone on?

23 **MR. BUCKNER:** It is on, Your Honor.

24 **THE COURT:** I think that's better. Just
25 try to speak into the microphone if you don't

1 mind, sir.

2 **THE WITNESS:** Yes, Your Honor.

3 **THE COURT:** Thank you.

4 **BY MR. BUCKNER:**

5 **Q** Trooper Marlow, how -- were you working
6 with the Highway Patrol here in Pickens County on
7 January 30th, 2015?

8 **A** I was.

9 **Q** And do you recall working a wreck that
10 we've been discussing on Allgood Bridge Road?

11 **A** I do. Originally, they gave it to Lance
12 Corporal McDowell. I was closer than he was to the
13 collision.

14 **Q** And is that incident location located
15 within Pickens County?

16 **A** It is. It's located on Allgood Road.

17 **Q** All right. Let's talk about what you did
18 when you arrived at the scene. Kind of just lay it
19 out for the jury. Describe what happened that night
20 when you first got there.

21 **A** When I first pulled up on the scene, I did
22 not know that it was a fatal. I was just
23 investigating a collision. When I first arrived on
24 scene, I had one EMS that passed me right as I pulled
25 up. There was another EMS on the scene along with

1 fire trucks and emergency workers.

2 Q I know you kind of told us already. But do
3 you remember exactly what individuals were on the
4 scene including the defendant and victim in this
5 case?

6 A I do.

7 Q Tell the jury who all was here.

8 A Ms. Holcombe who was later identified as
9 the subject -- or the victim, Ms. Holcombe. She was
10 on the scene along with EMS. Mr. Hester later was
11 identified as the one that was leaving in the
12 ambulance as I pulled up.

13 Q Okay. And what do you remember seeing, in
14 particular, as far as where the vehicle was and where
15 the defendant and victim were when you arrived.

16 A When I was walking, the area in which the
17 collision happened, the ground there was sort of like
18 a terrace. It was just sort of like steps down ---

19 Q Okay.

20 A --- from the roadside. So as I was walking
21 down, I could see where the vehicle was up against
22 the building. Fire and EMS was standing around the
23 vehicle as I approached.

24 Q And what were fire and EMS doing?

25 A They were attempting to remove Ms. Holcombe

1 from the vehicle.

2 **Q** And describe for the jury what exactly you
3 saw. You said they were attempting to move
4 Ms. Holcombe. Where was she in relation to the
5 vehicle?

6 **A** Ms. Holcombe was still -- the vehicle was
7 on its side, on the passenger side. Ms. Holcombe's
8 head was protruding from the vehicle. The top part of
9 her head was sticking past the door or past the roof
10 on the ground.

11 **Q** I'm going to show you what's already been
12 put into evidence. It may help you kind of show the
13 jury exactly what you're referring to. This is
14 State's Exhibit 8. Where was she? There's a pointer
15 up there, too, if you'd like to use that. Just show
16 the jury with the pointer exactly where she was lying
17 and where they were trying to remove her from the
18 car. There's a button on there. There you go.

19 **A** If you're looking at the vehicle prior,
20 this is after they removed -- moved it. They put
21 these logs under it so they could actually remove her
22 from the vehicle. Upon my arrival, her head was in
23 this area here with her body up against this area.
24 And her feet was straight down underneath the dash
25 here.

1 **Q** So her feet were underneath the dash?

2 **A** Underneath the dash.

3 **Q** And just to be clear, that's on the
4 passenger side?

5 **A** That is the passenger side of the vehicle.

6 **Q** Okay. Let's talk about what you did outside
7 of what you first saw when you got there. What did
8 you do in your role with Highway Patrol when you got
9 on the scene as far as securing it and that kind of
10 thing?

11 **A** When I first got on the scene, medical
12 takes precedence at the scene. Once we get there,
13 then we try to secure as much of the evidence as we
14 can to keep it from being moved or keep it from being
15 messed with. Again, medical takes precedence over us.

16 **Q** Okay. So what -- when you say that, what
17 does that mean?

18 **A** What that means is if you're injured in a
19 collision, we have to step back and let EMS and fire
20 go in and try to get you help prior to us.

21 **Q** Okay. So once they did that, what did you
22 do as far as --

23 **A** Once I did that -- while they were in the
24 process of doing that, I made contact with Corporal
25 Mayfield and told him at that time that we did have

1 one confirmed victim on the scene. There was a strong
2 odor of alcohol coming from inside the vehicle. Told
3 Mr. -- told Corporal Mayfield at that time that it
4 possibly could be a felony DUI and we had one being
5 transported to Greenville Memorial Hospital.

6 Q And did you identify the victim prior to
7 her being transported?

8 A Prior to -- while they were attempting to
9 remove her from the vehicle, we did not know who was
10 in the vehicle.

11 Q Did you mark the scene at all?

12 A I did not mark any of the scene.

13 Q Did you take any photos yourself?

14 A Of the scene? No, sir. I did not.

15 Q Did you -- when you -- we talked about
16 securing the scene earlier. Did you tape the scene
17 off so that nothing could be tampered with once you
18 determined where the scene stopped?

19 A We did start taping the scene off.

20 Q Did anybody, while you were there, enter
21 the scene that was not authorized to do so that could
22 have contaminated the investigation at any point?

23 A No, sir. Nobody entered the scene.

24 Q Okay. You said that you saw the EMS
25 personnel actually remove the victim from the car.

1 What efforts did they have to make to get her out?

2 **A** When EMS -- when FD put fire bags
3 underneath the vehicle to raise the vehicle up and
4 then they put the blocks under so that they could
5 remove Ms. Holcombe from the vehicle, Ms. Holcombe
6 was up against the passenger side door of the vehicle
7 with her head outside the window. Her legs were down
8 at like a 45-degree angle. Like if someone would push
9 back from the seat and kind of lift themselves up in
10 the passenger seat. When they lifted the vehicle up,
11 they had to twist her body so that they could slide
12 it. Her legs were actually caught underneath the
13 dash. The dash started going back into the vehicle.

14 **Q** Okay. Let's talk about what you did once
15 your investigation on the scene -- first, did you
16 interview anyone on the scene?

17 **A** Not on the -- not on the scene.

18 **Q** What did you do once you left the scene or
19 once your investigation concluded on the scene?

20 **A** When that part -- when I was on the scene
21 the first time, Lance Corporal Neal Nimmons and
22 Corporal Mayfield showed up. Corporal Mayfield
23 instructed me, at that time, to leave the scene and
24 go to GMH where the other party of the collision was
25 located.

1 **Q** That's the hospital?

2 **A** Yes, sir. It's the hospital, ER.

3 **Q** And what did you do once you left for the
4 hospital?

5 **A** Once I left for the hospital, while I was
6 en route, I made contact with Lance Corporal
7 McDowell. Lance Corporal McDowell at that time
8 advised me that the subject was not going to give
9 blood.

10 **MR. DEJONG:** I object to that, Your Honor.
11 It's hearsay. He's testifying to what Corporal
12 McDowell told him.

13 **MR. BUCKNER:** Judge, it's not hearsay. It's
14 not being offered for the truth of the matter.
15 It's being offered to show what he did next in
16 his investigation. It's not hearsay by
17 definition. It doesn't have to have an
18 exception.

19 **THE COURT:** I'll allow it. I'll allow it.

20 **THE WITNESS:** In the process of that being
21 said, by law, we have to get a warrant to
22 retrieve his blood or urine. So I was proceeding
23 to Greenville County LEC where the on duty
24 magistrate is to gather the warrant so that we
25 can get the blood and urine. While traveling,

1 Lance Corporal McDowell called me back and said
2 that Mr. Hester had consented to give the blood
3 and urine. So therefore, the warrant was no
4 longer necessary.

5 **BY MR. BUCKNER:**

6 **Q** Okay. So then where did you go at that
7 point?

8 **A** At that point, I was already en route. I
9 just continued straight to the hospital where I met
10 Lance Corporal McDowell and Mr. Hester.

11 **Q** Okay. And when you arrived at the hospital,
12 tell the jury where you went in the hospital and who
13 was there.

14 **A** When I first arrived at the hospital, I
15 went in through the main entrance or the emergency
16 entrance. They will key you in to get back to the ER.
17 Once I walked back toward the ER, you have two bays.
18 Right beside the bay is a little hallway. You stand
19 there and you can start to see in the bay where
20 Mr. Hester was located.

21 Lance Corporal McDowell was standing right
22 outside the bay doors of the trauma bays. At that
23 time, he handed me the blood and the urine that he
24 had collected. At that time, I placed -- when he
25 handed them to me, they were in sealed bio -- the

1 sealed bags from the hospital, the green bio bags. I
2 took each one of the bags and placed it in an
3 evidence bag, sealed it, marked it with Timothy
4 Hester's name, the date, the time and --

5 Q That's both the blood and the urine?

6 A Both blood and urine. They were put in
7 separate bags.

8 Q Both of those were sealed when you received
9 them from Trooper McDowell?

10 A Yes, sir. They were.

11 Q Were they changed, tampered with or altered
12 in any way once you received them from McDowell and
13 had them in your possession?

14 A No, sir. They were not.

15 Q It's already in one bag. You put it in an
16 additional bag and sealed that bag?

17 A Yes, sir. We have -- we have evidence bags.
18 They are plastic bags that self-seal when you remove
19 the tape off of them.

20 Q Okay. Once -- let's talk about what you did
21 to further your investigation once you arrived at the
22 hospital, outside of the blood and urine that you
23 received from Trooper McDowell. Did you speak with
24 the defendant in this case?

25 A Yes, sir. At that time, I went in -- I went

1 into the room where Mr. Hester was at. I introduced
2 myself and spoke to Mr. Hester and asked him -- asked
3 him his name to make sure that I was talking to the
4 right person. At that time, Mr. Hester told me his
5 name. I asked him did he understand his rights and he
6 said yes.

7 Q And when you said his rights, you're
8 talking about Miranda rights?

9 A Yes, sir. Talking about Miranda rights.

10 Q And he told you he did understand those
11 rights?

12 A Yes, sir.

13 Q Did he seem coherent at this point in time?

14 A He was coherent, a little bit sluggish, a
15 little bit slow.

16 Q Okay. All right. Tell us about the
17 conversation you had with Mr. Hester.

18 A While talking with Mr. Hester, I noticed he
19 had a strong smell of alcohol coming from his person.
20 I asked Mr. Hester at that time if he was willing to
21 talk to me. He stated yes. I told him, at that time,
22 I was the primary investigating officer of the
23 collision, could he tell me what had happened. Could
24 he give me some information about the collision. At
25 that time, Mr. Hester stated that they were traveling

1 down, I think it was Praters Creek Road to Allgood
2 Road. Mr. Hester --

3 Q Let me stop you just for a second. When you
4 -- I hate to interrupt you. I'm sorry.

5 A You're okay.

6 Q When you are in your investigation, did you
7 memorialize your notes and findings in any kind of
8 document?

9 A I did, sir.

10 Q All right. Continue. I didn't mean to
11 interrupt you.

12 A If I can refer back to my notes.

13 Q That will be fine.

14 A Mr. Hester stated they were traveling down
15 Praters Creek Road at a high rate of speed. He said
16 that Mr. -- Ms. Holcombe was driving the vehicle. He
17 instructed her several times to slow down. He said
18 they were attempting to make a left-hand turn from
19 Praters Creek onto Allgood when the accident
20 occurred.

21 At that time, I asked Mr. Hester who owned
22 the vehicle. Mr. Hester stated it was his girlfriend
23 that owned the vehicle. Mr. Hester stated at that
24 time also that he was not driving the vehicle.
25 Ms. Holcombe was driving the vehicle. Mr. Hester also

1 made the statement that when the wreck occurred -- I
2 asked him if he remembered anything else about the
3 vehicle -- about the collision. He stated that he had
4 to lift Ms. Holcombe off him so he could get outside
5 the vehicle.

6 Q When you say lift off of him --

7 A He stated that he was in the passenger seat
8 and Ms. Holcombe was operating the vehicle. When they
9 come to rest on the side, he stated he had to pick
10 her up so he could get out from under her.

11 Q She was on top of him?

12 A She was on top of him is what he was
13 stating.

14 Q And you said he also informed you that this
15 was his girlfriend's car?

16 A Yes, he did.

17 Q How did -- did Mr. Hester tell you how he
18 got out of the car?

19 A Said he crawled out of the vehicle.

20 Q He crawled out of the vehicle?

21 A That's what he stated.

22 Q Did he say which part of the vehicle he
23 crawled out of?

24 A I do not remember.

25 Q Did Mr. Hester, when you were speaking with

1 him at the hospital, tell you where they were heading
2 that night?

3 **A** He stated that they were headed to
4 Ms. Holcombe's house to take her home.

5 **Q** All right. Did he tell you anything else?

6 **A** That is the only -- I asked him at that
7 time, I said were you planning on staying at her
8 house. He state -- at that time, he refused to answer
9 any more questions.

10 **Q** Did that end your conversation with him?

11 **A** That ended my conversation with him.

12 **Q** All right. Let's talk about what you
13 observed as far as Mr. Hester goes when you were
14 talking with him in the hospital. I'm going to show
15 you what's been marked as State's Exhibit 21 and 22.

16 **MR. DEJONG:** Your Honor, I'd hate to
17 interrupt but I would like to be heard outside
18 the presence of the jury on these two offered
19 exhibits.

20 **THE COURT:** All right. Ladies and
21 Gentlemen, if you would, please step to your
22 jury deliberation room. Thank you.

23 **(WHEREUPON, the jury exits at approximately**
24 **11:04 a.m.)**

25 **THE COURT:** Yes, sir.

1 **MR. DEJONG:** My objection is I don't know
2 -- I know where the alleged -- what's been
3 marked State's Exhibit 21 and 22 were taken. I'm
4 not sure under what circumstances they were
5 taken. By that, I mean, I don't know if there's
6 a potential search argument here. I don't know
7 what the condition of and the posture of
8 Mr. Hester's body was when the pictures were
9 taken. I would submit if they had to manipulate
10 covers or covering, we're involved in a search.
11 And I don't know that at this point in time. I
12 don't know if he was uncovered. Maybe Your Honor
13 needs to see the pictures.

14 **THE COURT:** That would probably be
15 helpful. Thank you.

16 **MR. DEJONG:** But that's the part I don't
17 know. I don't know if he was uncovered when
18 Mr. Marlow walked in the room. I don't know if
19 those pictures were taken at the time frame that
20 Mr. Marlow was talking about. I'm not sure of
21 any of that at this point. That's kind of -- I
22 realize it's a bit of a nebulous objection but I
23 just don't know -- I don't know the
24 circumstances.

25 **MR. BUCKNER:** Judge, I would say it's very

1 obvious from that photo that he's in the midst
2 of treatment and they've taken his shirt off
3 because he's got leaves all over him. There was
4 nothing to cover up. I mean, we can act all day
5 like this is a search just by speculating as to
6 maybe he had a robe on or not, but there's no
7 evidence of that.

8 **MR. DEJONG:** I don't know if he was
9 covered by a blanket, a sheet or whatever.

10 **THE COURT:** All right. Well, --

11 **MR. BUCKNER:** Judge, I would -- I'm sorry,
12 Your Honor. I would argue, too, that the
13 injuries themselves are nontestimonial in
14 nature. There's no -- I mean, it's just how he
15 was when he entered the hospital. This is not a
16 search. It's nothing that he had to consent to.

17 **THE COURT:** I'm a little bit confused,
18 Mr. DeJong. I understand you just want to know
19 what the conditions were. However, I don't think
20 that this is such an evasive search. It's
21 similar to a physical characteristic, which is
22 fine for the jury to -- the defendant to be
23 compelled to show. I know those are two
24 different issues. But I don't know even if they
25 did have to move a cover back that this would,

1 that this would rise to the level of a true
2 search issue. But I understand your objection. I
3 don't know anything that would prevent it on
4 that basis from being admitted and from these
5 photographs being admissible. I mean, I
6 certainly allow you to cross-examine them and
7 for them to know that -- the jury to know
8 that --

9 **MR. DEJONG:** I understand.

10 **THE COURT:** -- that he doesn't know what
11 conditions these were taken under. I'm happy for
12 you to do that.

13 **MR. DEJONG:** Thank you, Your Honor.

14 **THE COURT:** Thank you.

15 **MR. BUCKNER:** Thank you, Judge.

16 **THE COURT:** Thank you. Y'all ready to
17 bring the jury back in? Anything else we need to
18 take up?

19 **MR. BUCKNER:** I'm ready, Your Honor.

20 **MR. DEJONG:** I don't think so, Your Honor.

21 **THE COURT:** Thank you.

22 **(WHEREUPON, the jury enters at approximately**
23 11:09 a.m.)

24 **THE COURT:** All right. You ready to
25 proceed?

1 **MR. BUCKNER:** Yes, Your Honor.

2 **BY MR. BUCKNER:**

3 **Q** Trooper Marlow, I'm going to get back to
4 where we were. I'm going to show you State's
5 Exhibit 21 and 22. Do you recognize those photos?

6 **A** I do.

7 **Q** Are those a fair and accurate
8 representation of how Mr. Hester looked on that night
9 in the hospital?

10 **A** They do.

11 **MR. BUCKNER:** Your Honor, at this time, the
12 State would move exhibits -- State's Exhibits 21
13 and 22 into evidence.

14 **THE COURT:** Mr. DeJong?

15 **MR. DEJONG:** Over my objection,
16 Your Honor.

17 **THE COURT:** All right. They'll be admitted
18 then as --

19 **MR. BUCKNER:** Thank you, Judge. Judge, may
20 I publish 21 at this time?

21 **(WHEREUPON, State's Exhibits 21 and 22 are**
22 **admitted into the record.)**

23 **BY MR. BUCKNER:**

24 **Q** Trooper Marlow, before we kind of start
25 talking about the photo, when you were in the

1 hospital, you never -- was there any coercion as far
2 as getting this defendant to allow you to take the
3 photo? Did you tell him you had to?

4 **A** No, sir.

5 **Q** Or when you were in there, was he ever
6 forced to do anything?

7 **A** No, sir. Those photographs were actually
8 taken by Lance Corporal McDowell.

9 **Q** Did you notice, while you were in there,
10 the defendant at any time tell officers that he would
11 not speak with you, not participate in any kind of
12 discussion with them?

13 **A** No, sir.

14 **Q** Let's talk about this photo in particular.
15 Where does the injuries on the defendant appear to be
16 to you when you saw him in the hospital?

17 **A** The injuries are on his left side, other
18 than the chest and lower abdomen.

19 **Q** All right. I'm going to publish for the
20 jury State's Exhibit 22. You're talking about --

21 **A** That one right there.

22 **Q** This is the only other injury you remember
23 seeing in there?

24 **A** That one and the ones that are on the left
25 side of his head.

1 Q Okay. And you saw that with your own eyes.
2 Was that very clear and visible when you were there?

3 A It was clear.

4 Q Let's talk about -- did you do anything
5 else while at the hospital with the defendant in this
6 case?

7 A At the hospital, no, sir.

8 Q As far -- after speaking with him,
9 observing him, talking with him for a little while,
10 what did you do next after you received the blood and
11 urine in this case?

12 A After I received the blood and the urine,
13 then I left the hospital and proceeded back out to
14 the scene of the collision.

15 Q Did you give the blood and urine to any
16 other Highway Patrol trooper?

17 A At that time, I gave the blood to Corporal
18 Mayfield.

19 Q And was -- did it remain secure and sealed
20 in that bag the entire time you had it in your
21 possession?

22 A It did.

23 Q And this was both the blood and the urine?

24 A Yes, sir.

25 Q Were those in separate bags?

1 **A** They were separate bags.

2 **Q** And you gave them directly to --

3 **A** I gave them directly to Corporal Mayfield.

4 **Q** And did you see him unseal the bag or do
5 anything like that with either one of those items?

6 **A** No, sir. I did not.

7 **Q** They were not altered or tampered with in
8 any way to the best of your recollection?

9 **A** No, sir.

10 **Q** When you went back out to the scene, what
11 did you do?

12 **A** I went back out to the scene so that I
13 could get a better -- because I am the primary
14 officer, it's my duty to fill out the wreck report. I
15 did not completely fill out the wreck report when I
16 was there the first time.

17 **Q** What is the wreck report?

18 **A** Wreck report is the report issued for
19 insurance purposes.

20 **Q** And did you take any statements from any
21 individuals when you went back out there?

22 **A** When I went back -- prior to -- when I went
23 back out, I spoke with the EMT. I think his name was
24 -- I wasn't sure what his name is.

25 **Q** Did you speak with any other individuals in

1 furtherance of your investigation?

2 **A** I spoke with Tiffany -- can I look at my
3 notes?

4 **Q** Yeah.

5 **A** This part of it. (Pause.)

6 Mr. Moore and Ms. -- I think her name is
7 Forshee. I think that's how you say her name.

8 **Q** When did -- when were those --

9 **A** They came onto the scene. When I had
10 returned back to the scene, they came out onto the
11 scene.

12 **Q** And in talking with them, did you determine
13 whether or not they were present when the actual
14 wreck occurred?

15 **A** While talking with Ms. Forshee and
16 Mr. Moore, they --

17 **Q** Just say yes or no.

18 **A** No.

19 **Q** Did you determine that they were not
20 present?

21 **A** No, they were not present when the accident
22 happened.

23 **MR. BUCKNER:** Judge, I have no further
24 questions at this time. Please answer any
25 questions Mr. DeJong may have.

1 **THE COURT:** Mr. DeJong.

2 **MR. DEJONG:** Thank you, Your Honor. May it
3 please the Court.

4 **THE COURT:** Yes, sir.

5 **CROSS-EXAMINATION**

6 **BY MR. DEJONG:**

7 **Q** Let's kind of start in the middle here,
8 Mr. Marlow. When you got to the hospital, did you
9 give Mr. Hester his rights?

10 **A** Did I? No, sir.,

11 **Q** Do you know who may have?

12 **A** Lance Corporal McDowell.

13 **Q** Was more than one right, set of rights
14 given to Mr. Hester?

15 **A** From what I know, there was the Miranda
16 rights and the implied consent rights.

17 **Q** All right. So those are two different sets
18 of rights. Would you agree to that?

19 **A** Yes, sir.

20 **Q** So when you asked Mr. Hester if he
21 understood his rights, you don't know which one he
22 was talking about or both or neither when he said
23 yes?

24 **A** He just --

25 **Q** Pardon?

1 A Sir, can you repeat the question?

2 Q Sure. You asked him if he understood his
3 rights, correct?

4 A Correct.

5 Q Which rights? The implied consent or
6 Miranda?

7 A Miranda rights.

8 Q But you didn't ask him that?

9 A No, sir.

10 Q You asked him if he understood his rights,
11 correct?

12 A Correct.

13 Q Let's back up on that just a little bit.
14 Initially, while you were en route to the hospital,
15 you were told that Mr. Hester was not going to give
16 blood and urine, correct?

17 A That is what I was informed.

18 Q Yes, sir. And then as you proceed, you get
19 another message that says Mr. Hester is going to give
20 blood and urine, correct?

21 A Correct.

22 Q All right.

23 A That he had given it.

24 Q So when you asked him if he understood his
25 rights, you don't know if he was talking about the --

1 well, let's back up a little bit. Implied consent is
2 about giving specimens when there is alleged DUI,
3 correct?

4 **A** That is correct.

5 **Q** All right. So when you asked him if he
6 understood his rights, you don't know if he was
7 talking about his Miranda or his implied consent, do
8 you?

9 **A** He was talking, -- I asked him did he
10 understand his rights, the Miranda and the --

11 **Q** You assumed that. That was not your
12 question.

13 **A** Yes, sir.

14 **Q** Right?

15 **A** Correct.

16 **Q** All right. Now, when you got there, the
17 blood and urine had already been taken, correct?

18 **A** That's correct. They were in sealed bags
19 when I got there.

20 **Q** Yeah. But when you got the bags, they
21 weren't marked, were they?

22 **A** They were in green bags or bio bags. They
23 are never marked.

24 **Q** So something was done before you got there
25 and then you marked the bags.

1 **A** Something was done with what bags?

2 **Q** Well, I gather urine and blood was drawn
3 from somebody. But you marked the bags, right?

4 **A** Yes, sir. I got the bags from Lance
5 Corporal McDowell.

6 **Q** But he didn't mark the bags. He's the one
7 that first came into possession of them, wasn't he?

8 **A** He had those bags, yes, sir.

9 **Q** All right. Now, you say that you -- well,
10 let's talk a little bit about these pictures. If you
11 need to see the pictures, I'll show them. Do you know
12 what time Mr. Hester arrived at the hospital?

13 **A** No, sir. I do not.

14 **Q** Prior to your talking with Mr. Hester, do
15 you know what treatment he had -- if any, he had
16 received?

17 **A** No, sir. I do not.

18 **Q** Prior to your talking to him, do you know
19 what, if any, medications had been administered to
20 him?

21 **A** No, sir. I do not.

22 **Q** In the picture, it appears that he has, I
23 guess what we would call a shunt, IV, whatever you
24 want to call it. And if you need to see the picture,
25 I'll show it to you. Well, let me just show it to you

1 anyway. I'll show you both of them. State's Exhibit
2 21 and 22. Would you agree with me, Mr. Marlow, that
3 there is apparently something being pumped in to
4 Mr. Hester's body?

5 **A** I see there's an IV there. I don't know if
6 there's any liquid going through it or not.

7 **Q** Can't say there wasn't either, can you?

8 **A** No, sir. I can not.

9 **Q** Can't say there wasn't medication being
10 pumped in?

11 **A** No, sir. I can not.

12 **Q** When you talked to him -- well, let me ask
13 you this, who took these pictures?

14 **A** Lance Corporal McDowell.

15 **Q** Is that when you were questioning him?

16 **A** No, sir.

17 **Q** Pardon?

18 **A** When I was questioning him?

19 **Q** Yes, sir.

20 **A** Yes, sir. When I walked into the room, he
21 was taking them.

22 **Q** Same time?

23 **A** Yes, sir.

24 **Q** Tell me about his eyes in these pictures.

25 **A** He closed his eyes in the pictures.

1 Q Well, we only have eyes in one, but the
2 eyes were closed, right?

3 A In that picture, yes, sir.

4 Q Right. And you say he was slow to respond,
5 right?

6 A Yes, sir.

7 Q Okay. Now, he had just been involved in an
8 automobile crash, correct?

9 A Yes, sir.

10 Q Looking at these pictures, it would appear
11 that he had some injury to his head?

12 A Left side of his head, yes, sir.

13 Q You're not a doctor.

14 A That's correct, sir.

15 Q And I'm not trying to be offensive, but you
16 are not a nurse?

17 A Correct, sir.

18 Q So the extent of that head injury, you did
19 not know even though it was visible when you were
20 questioning him?

21 A Yes, sir. I do not know the extent of it.

22 Q All right. He did answer your question
23 slowly, right?

24 A Yes, sir.

25 Q But the condition, his mental condition,

1 you really don't know because he had a head injury?

2 **A** I don't know if he had a head injury or
3 not, sir.

4 **Q** There's certainly something on his head up
5 there, isn't there?

6 **A** There's scratches, cuts and bruises. But
7 again, head injury or not, I'm not medical. I don't
8 know.

9 **Q** All right. Now, you talked with Mr. Hester
10 for, I believe you said, roughly 30 minutes?

11 **A** Around that time frame, yes, sir.

12 **Q** Okay. And finally, Mr. Hester said I'm not
13 talking to you, right?

14 **A** Yes, sir.

15 **Q** All right. What he did talk to you about is
16 that he was not the driver of that vehicle.

17 **A** That's what he stated, sir.

18 **Q** Right. Did he ever change that?

19 **A** No, sir.

20 **Q** Who did he say was the driver of that
21 vehicle?

22 **A** The victim, Ms. Holcombe.

23 **Q** Right. You refer to her as a victim, I
24 presume, because she is deceased?

25 **A** Yes, sir.

1 Q Not because she is a victim of Mr. Hester.

2 A Just because she's deceased.

3 Q Okay. I just wanted to clarify that. Were
4 there airbags in the vehicle?

5 A Yes, sir, there was.

6 Q Let me ask you this. Either when you were
7 out there the first time or the second time, did you
8 take anything, any evidence into your possession? Any
9 physical evidence?

10 A No, sir. I did not.

11 Q Okay. No blood samples. You didn't take any
12 of those?

13 A No, sir. I did not.

14 Q Did not take the airbags in?

15 A No, sir. I did not.

16 Q Okay. So you were there for a short period
17 of time, initially. Then you go to the hospital. Then
18 you go back to the scene.

19 A Yes, sir.

20 Q Basically, all you did when you got back to
21 the scene, as I understand it, you spoke to some
22 individuals by the name of Forshee and Moore?

23 A Yes, sir.

24 Q And I'm not asking you what they said but
25 they were not witnesses to the crash?

1 **A** No, sir. They were not witnesses.

2 **Q** And just so I'm clear, throughout the
3 investigation or at least throughout your
4 investigation, there were no witnesses to this crash?

5 **A** To my understanding, there were no
6 witnesses.

7 **Q** All right. Well, let's back up -- go back
8 here a little bit to the beginning. When you got
9 there, EMS is already on the scene?

10 **A** Yes, sir.

11 **Q** And the fire department is already on the
12 scene?

13 **A** Yes, sir.

14 **Q** Okay. How many EMS personnel?

15 **A** That were on scene?

16 **Q** Yes, sir.

17 **A** I do not remember an exact number, sir.

18 **Q** How many fire personnel were on the scene?

19 **A** The exact numbers, I do not remember, sir.

20 **Q** Would it be safe to say there were several
21 people there?

22 **A** Yes, sir. Several people. More than
23 several.

24 **Q** More than several?

25 **A** Yes, sir.

1 Q Okay. Now, as I understand it, when you got
2 out on the scene, all of those people were standing
3 around the vehicle?

4 A They were standing around working on the
5 vehicle, yes, sir.

6 Q All right. So by the time you got there,
7 the scene had not been secured?

8 A Prior to me arriving, you are correct, sir.

9 Q All right. Let me ask you this, did you
10 ever talk to the people that lived in the house?

11 A At that time, I did not, sir.

12 Q Do you know whether or not they ever went
13 down to this alleged crash scene?

14 A I never spoke with them. Lance Corporal
15 Neal did or Neal Nimmons.

16 Q Well, the point of that is neither EMS, the
17 Emergency Medical Services, or fire personnel are law
18 enforcement, are they?

19 A That's correct.

20 Q So the point of that is when you got to the
21 scene, it was already contaminated.

22 A If you mean with EMS and with fire, yes,
23 sir.

24 Q Pardon me?

25 A If you mean with EMS and fire, yes.

1 Q Yes, sir. That's exactly what I mean. So
2 when you got there, you can not say the conditions
3 were such as what they were immediately after the
4 crash?

5 A True.

6 Q Pardon me?

7 A True, sir.

8 Q Now, sometime after the fact, then you
9 started taping off the scene?

10 A Yes, sir.

11 MR. DEJONG: Thank you, sir.

12 THE COURT: Mr. Buckner?

13 MR. BUCKNER: Just briefly ---

14 THE COURT: Certainly.

15 MR. BUCKNER: --- on redirect, Your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. BUCKNER:**

18 Q When you asked the defendant in this case
19 whether he understood his rights, did he tell you he
20 did?

21 A He said, yes, he did.

22 Q And at any point during your questioning
23 with him or when you were speaking with him, did he
24 say he did not understand what was going on?

25 A No, sir. He did not.

1 **Q** Also, when you were on the scene and fire
2 and EMS were also there, did you witness any of those
3 personnel do anything to contaminate the scene or do
4 anything that would have hindered your investigation?

5 **A** No, sir. They did not.

6 **MR. BUCKNER:** Judge, I have no further
7 questions.

8 **THE COURT:** Anything else?

9 **MR. DEJONG:** One on recross, Your Honor.

10 **RECROSS EXAMINATION**

11 **BY MR. DEJONG:**

12 **Q** You don't know what they did before you got
13 there, do you?

14 **A** No, sir. I do not.

15 **MR. DEJONG:** Thank you. Nothing further.

16 **THE COURT:** Anything else?

17 **MR. BUCKNER:** Nothing further from the
18 State, Your Honor.

19 **THE COURT:** Sir, you can step down.

20 **MR. BUCKNER:** The State would call
21 Stephen McDowell, Your Honor.

22 **STEPHEN MCDOWELL**

23 having first been duly sworn, testifies as follows:

24 **THE CLERK:** Thank you, sir. If you would,
25 have a seat and state your name for the record.

1 **THE WITNESS:** Trooper McDowell with the
2 South Carolina Highway Patrol.

3 **DIRECT EXAMINATION**

4 **BY MR. BUCKNER:**

5 **Q** Trooper McDowell, how are you doing today?

6 **A** All right.

7 **Q** Will you tell the jury how long you've been
8 with the Highway Patrol?

9 **A** Yes, sir. Started with the Highway Patrol
10 in 2007. No prior experience before then.

11 **Q** All right. And were you working -- what
12 exactly is your position with Highway Patrol?

13 **A** Lance Corporal. Just a road trooper. My
14 main objective is to prevent collisions, fatalities.
15 Through that process is radar enforcement, seat belt
16 enforcement and, of course, DUI enforcement.

17 **Q** And were you working as a trooper on
18 January 30th, 2015?

19 **A** Yes, sir. I was.

20 **Q** Do you remember coming into contact with
21 the defendant, Mr. Hester, in this case?

22 **A** Yes, sir, I do.

23 **Q** Just explain for the jury what your -- when
24 you came into contact with him, what were the
25 circumstances and what was going on.

1 **A** How it all led up -- they originally give
2 me the collision. As stated earlier, Trooper Marlow
3 was closer to the scene. He answered up for it. At
4 that time, we didn't know it was a fatality. Once he
5 got on scene, he figured out it was a fatality. I
6 believe I was notified by my superior officer.
7 Corporal Mayfield, he advised me to go to the
8 hospital and see what was going on with the subject
9 that was transported there and get back with him.
10 Once I found out who was transported, the extent of
11 his injuries and any other thing that I may have
12 obtained.

13 **Q** And when you arrived at the hospital, who
14 all did you encounter?

15 **A** There was only one subject there that was
16 transported from the collision scene that happened in
17 Pickens County, and it was Mr. Hester. There were
18 emergency workers, nurses and doctors in the
19 emergency room at the same time.

20 **Q** And what did you do as far as your
21 investigation at that point in time?

22 **A** I come in contact with Mr. Hester. I told
23 him who I was, Trooper McDowell of the South Carolina
24 Highway Patrol. He stated that he had been involved
25 in a collision.

1 Q Did you read him his Miranda rights?

2 A Yes, sir, I did.

3 Q Okay. And do you -- when you read him his
4 Miranda rights, do you do that from a card?

5 A Yes, sir. I did.

6 Q Do you have that card with you here today?

7 A Yes, sir. I keep it in my pocket.

8 Q What is -- will you just read -- what are
9 the Miranda rights? Will you tell the jury what those
10 are?

11 A I'll read it from the same card.

12 Q If you don't mind doing that real quick.

13 A It's just easier this way. I advised the
14 subject of his Miranda rights. They state -- read, as
15 follows: You have the right to remain silent.
16 Anything you say can be used against you in a court
17 of law. You have the right to take -- talk to a
18 lawyer and have him present with you while you are
19 being questioned. If you can not afford to hire a
20 lawyer, one will be appointed to represent you before
21 any questioning if you wish. You can decide at any
22 time to exercise these rights, not answer any
23 questions or make any statements. Do you understand
24 each of these rights as I've explained? Having these
25 rights in mind, do you wish to talk to us now?

1 Q And what was his response after you read
2 those rights?

3 A He understood -- he stated he understood.
4 He didn't have any objections not to speak with me.

5 Q Okay. And what happened from that point
6 forward?

7 A As I was observing him, I noticed there was
8 a strong odor of alcohol coming off his person and
9 his breath as well. I noticed some injuries that he
10 had sustained that appeared to be related to a
11 collision.

12 Q Can you kind of elaborate on those injuries
13 a little bit?

14 A Yes, sir. I noticed some cuts on the left
15 side of the victim's head. I noticed he had a mark
16 across his abdomen and he also had some marks on his
17 chest.

18 Q And I'm just going to show you State's
19 Exhibit 22. Is this what you're referring to?

20 A Yes, sir.

21 Q Okay. So after you observed those things,
22 what did you do next in furtherance of your
23 investigation?

24 A At that time, I made contact with Corporal
25 Mayfield and advised him what I had observed, what I

1 seen at the hospital. Then he advised me to proceed.

2 **Q** Okay. When you say proceed, what did you
3 do?

4 **A** At that time, I looked at what I had seen,
5 what they had on the collision. I went on and advised
6 Mr. Hester of his implied consent rights. I read that
7 to him as well.

8 **Q** All right. Bear with me. (Pause.)

9 Judge, bear with me just a second. I'm just
10 going to staple these together since it's marked as
11 one exhibit.

12 Trooper McDowell, I'm going to show you
13 what's been marked as State's Exhibit 44. There are
14 two documents there. Familiarize yourself with those.
15 Do you recognize those documents?

16 **A** (Reviewing.)

17 Yes, sir. I do.

18 **Q** And how do you recognize those? Are those
19 -- is that your signature anywhere on there?

20 **A** Yes, sir. That's my handwriting.

21 **Q** On both of those?

22 **A** Correct.

23 **Q** Okay. And what are those documents?

24 **A** These are your implied consent rights
25 stating the process that go through to obtain blood

1 and urine collection.

2 Q Okay. And is there a different form for
3 both the blood and the urine?

4 A The implied consent is one page. At the
5 top, it does have a section in parentheses. It states
6 blood, comma, urine, comma, and breath. So it's one
7 document but it could be for blood or urine and
8 breath as well.

9 Q You went through both of those with the
10 defendant, Mr. Hester, in this case?

11 A I read it to him twice just because we were
12 obtaining two samples, blood and urine.

13 Q Can you read for the jury the portion
14 that --

15 MR. BUCKNER: Judge, at -- first, I'd like
16 to enter this into evidence at this time.

17 MR. DEJONG: Without objection, Your
18 Honor.

19 MR. BUCKNER: State's Exhibit 44.

20 THE COURT: All right. It's so admitted.

21 (WHEREUPON, State's Exhibit 44 is admitted into
22 the record.)

23 MR. BUCKNER: And Judge, with your
24 permission, I would have Trooper McDowell read
25 the relevant portion for the jury at this time.

1 **THE WITNESS:** Okay. I'll read it. It's a
2 little lengthy, so just bear with us.

3 **BY MR. BUCKNER:**

4 **Q** Just the top portion.

5 **A** Okay. It states, provide the subject with a
6 written copy of the following advisements and read
7 the advisements to the subject, which I did. It
8 reads, as stated, Your Honor, as for driving under
9 the influence, DUI, Section 56-5-2930, the South
10 Carolina Code of Law, 1976, as amended, the arresting
11 officer has directed samples be taken for alcohol
12 and/or drug testing. Samples will be taken and tested
13 in accordance with Section 56-5-2950 of the SLED
14 policies. You do not have to take this test or give
15 samples. But if you refuse to submit to the test,
16 your privilege to drive in South Carolina must be
17 suspended or denied for at least six months with the
18 option of ending the suspension.

19 If you enroll in a Ignition Interlock
20 Device program, then your refusal may be used against
21 you in court. If you take the testimony and give
22 samples and have an alcohol concentration of
23 8/100ths, one percent or more, you may instead be
24 charged with driving with an unlawful alcohol
25 concentration DUAC, Section 56-5-2933. If you have an

1 alcohol concentration of 15 -- .15 percent or more,
2 your privilege to drive in South Carolina must be
3 suspended for at least one month with the option of
4 any suspension if you enroll in an Ignition Interlock
5 Device program.

6 You have the right to have a qualified
7 person of your own choosing to conduct an independent
8 test at your expense. An officer upon request shall
9 provide you further assistance. You have the right to
10 request a contested case within 30 days of the
11 issuance of no suspension. Lastly, if you do not
12 request a contested case hearing or your suspension
13 is upheld in a contested case hearing, you shall
14 enroll in an alcohol and drug safety action program.

15 Now, I read him that twice because we were
16 obtaining two samples of blood and urine. At the
17 bottom of the page, the subject signed it.

18 Q He signed both of those forms?

19 A Correct.

20 Q And the same content is contained on both
21 forms despite it being both a blood and urine?

22 A That's correct.

23 Q And when he signed these forms, did he show
24 any signs of not understanding what you had read to
25 him?

1 **A** No, sir.

2 **Q** He signed it freely and voluntarily?

3 **A** Yes, sir. He did.

4 **Q** Did he -- did you tell him he had to sign
5 it? Did you coerce him in any way?

6 **A** No, sir. I did not.

7 **Q** Once he did sign these implied consent
8 forms, what happened from that point forward?

9 **A** Yes, sir. At that time, I then asked the
10 subject, Mr. Hester, was he willing to give a blood
11 and urine sample, in which he stated, no, at that
12 time. I proceeded to tell him that's fine. That's his
13 legal right. I told him, just so you know what's
14 going on, the next process will be we'll have to go
15 to a magistrate and see about obtaining a warrant to
16 get the samples, the blood and the urine samples.
17 Then at that time, he stated y'all going to get it
18 anyway, so y'all might as well get it. I said, are
19 you sure that's what you want to do. Then I talked to
20 the -- found out who the charge nurse was at the time
21 and told them I needed a legal blood and urine.

22 **Q** Okay. And --

23 **A** And I also, at that time, called Trooper
24 Marlow who was already en route to obtain the warrant
25 and notified him that Mr. Hester give it willfully

1 and on his own.

2 Q All right. And did you tell him at any
3 point in time that he had to give that blood and
4 urine sample?

5 A No, sir. I did not.

6 Q At any point in time after that point, did
7 he hesitate to give it or say he did not want to?

8 A Just what I advised the first time. Once I
9 told him that he wouldn't have to, is he sure that's
10 what he wants to do, we proceeded forward. He never
11 made another statement.

12 Q All right. And let's talk about how the
13 sample was taken and who was present.

14 A Yes, sir. The nurse that was here
15 yesterday, she was in the room while I actually read
16 him his rights and his implied consent. She was there
17 all the time.

18 Q So she witnessed that whole thing?

19 A Yes, sir. She did. Then I told her that I
20 needed to obtain a legal urine and blood sample. At
21 that time, she come back with, I believe it was two
22 vials and one cup. I visually looked at them. They
23 didn't looked contaminated to me. I didn't see
24 anything that was in them. So she proceeded.

25 Q Okay. You witnessed her draw both the blood

1 and take the urine test?

2 **A** I was in the emergency room at that time.

3 **Q** What did she do? Did she -- once she took
4 both of those, did she seal them and then give them
5 to you?

6 **A** Correct. She took both of them. They have a
7 little plastic bag that they put them in. It's got
8 the sticky thing on the top. You pull that off, close
9 it up and seal it tight. While she did that, she
10 filled out the hospital's chain of custody. And she
11 directly give me the urine sample along with chain of
12 custody.

13 **Q** Did you sign for that when you received
14 that from her?

15 **A** Uh --

16 **Q** Or is that just the hospital?

17 **A** That's just the hospital form.

18 **Q** Okay. And once you receive the blood and
19 urine from her, was it altered, tampered or changed
20 in any way?

21 **A** No, sir. It was not.

22 **Q** And was it sealed completely to where no
23 one could have tampered, altered or changed it in any
24 way?

25 **A** Correct. Plus I was there during the whole

1 process.

2 Q Once you received it from her, what did you
3 do?

4 A I obtained it in my possession. Trooper
5 Marlow come to the hospital. He was the primary
6 investigating officer. I give it to him.

7 Q Did you inform Trooper Marlow when he
8 arrived that the defendant had gone through his
9 implied consent rights and his Miranda rights?

10 A I did. I told Trooper Marlow everything
11 that had happened at that time. I read his Miranda
12 rights. I'd also given Trooper Marlow the forms for
13 the implied consent rights where he had already
14 signed them so Trooper Marlow was aware.

15 Q Did you also provide Trooper Marlow with
16 the blood and urine samples?

17 A I did. It exchanged my hands to Trooper
18 Marlow's. Once I come into contact with the evidence,
19 nobody else touched it until I give them all up.

20 Q Was it changed or altered in any way when
21 you handed it over -- by the time -- in between when
22 you had it in your possession and handed it over to
23 Trooper Marlow?

24 A No, sir.

25 MR. BUCKNER: Judge, I have no further

1 questions at this time. Please answer anything
2 Mr. DeJong may have.

3 **THE COURT:** Mr. DeJong?

4 **MR. DEJONG:** May it please the Court, Your
5 Honor.

6 **CROSS-EXAMINATION**

7 **BY MR. DEJONG:**

8 **Q** So were you the first law enforcement to
9 arrive at the hospital?

10 **A** Yes, sir, as far as Highway Patrol.

11 **Q** Okay. So the call initially came to you.
12 Marlow was closer so then you were directed to go
13 straight to the hospital?

14 **A** That's correct.

15 **Q** How long after Mr. Hester got to the
16 hospital did you get there?

17 **A** I don't remember a time frame. I think the
18 accident happened around 9:30. If I had to suppose,
19 maybe I got to the hospital between 10:30 and 11:00.

20 **Q** All right. Well, since it's up there, I
21 can't read -- well, I'll read it here. State's
22 Exhibit Number 22, is that how you saw Mr. Hester?

23 **A** That is correct. Yes, sir. That's how I
24 initially saw him.

25 **Q** And on the right arm, there appears to be

1 an IV, right?

2 A That's what it appears to me, yes.

3 Q Do you know what was going through that IV?

4 A The only thing I know that he was given is
5 what he said yesterday, he was given fluids.

6 Q I'm sorry. I can't hear you.

7 A The only thing I know is what the EMS
8 worker said yesterday, that he was just given fluids
9 and no medications. That's all I know.

10 Q I understand that, but EMS dropped him off
11 at the hospital. They were done with him, weren't
12 they?

13 A As I said, that's all I know.

14 Q Right. So what happened at the hospital,
15 you don't have a clue, do you?

16 A No, sir. I sure don't.

17 Q Okay. And just so I'm clear, throughout
18 this whole investigation, for want of a better term,
19 did you ever gather any evidence other than taking
20 these two pictures?

21 A I gathered the blood and urine collection.

22 Q Okay. Why didn't you mark those?

23 A They was already -- I filled out the
24 paperwork. Once they give us the bags, there's no
25 requirement for me to mark anything. I gave them to

1 Trooper Marlow. Now, we do have a procedure where we
2 send it off to SLED, which I didn't do, but I have
3 done it before. We have our own evidence bags at the
4 office. You mark the subject's name. But there was no
5 reason to because I know whose it was at the time. It
6 went straight from the nurse to me.

7 Q You said there was a strong odor of alcohol
8 coming from Mr. Hester's person. Alcohol doesn't have
9 a smell.

10 A I just smelled an odor of alcohol coming
11 from his person.

12 Q You can smell an alcoholic beverage,
13 though, right?

14 A Absolutely correct.

15 Q Not alcohol.

16 A Alcoholic beverage. I'm sorry.

17 Q Now, so you're at the hospital. You don't
18 -- well, let me back up. Once he got to the hospital,
19 speaking of Mr. Hester, do you know what, if any,
20 kind of treatment he received?

21 A No, sir. I don't know what they were doing.

22 Q So these pictures that you took, did you
23 notice that his eyes were closed in those pictures?

24 A Well, if you place it back up here.

25 Q Well, I'll just show it to you. I'll show

1 you State's Exhibit Number 21.

2 **A** Yes, sir. In State's Exhibit Number 21, the
3 subject's eyes were closed.

4 **Q** So now, you're still the only law
5 enforcement person with Mr. Hester, right?

6 **A** Correct.

7 **Q** And when -- before Mr. Marlow gets there,
8 that's when you say you gave Mr. Hester his Miranda,
9 right?

10 **A** I did read Mr. Hester his Miranda before
11 Trooper Marlow arrived at the hospital.

12 **Q** And actually, you gave him two more rights,
13 correct?

14 **A** I read him his Miranda rights and his
15 implied consent rights.

16 **Q** And you read that twice, I think?

17 **A** Correct. It's the same thing. Just twice.

18 **Q** I understand. You say you read him his
19 Miranda, you gave -- read him his implied consent and
20 you read him his implied consent again?

21 **A** Yes, sir.

22 **Q** All right. And then initially, Mr. Hester
23 says, no, I'm not going to give blood or urine. And
24 then you talked with him some more and he said, yeah,
25 I will give you blood or urine.

1 **A** Initially, he stated no. As I said earlier,
2 I just said, Mr. Hester, just so you know, the next
3 process -- I mean, I like to inform people of what's
4 going on -- I told him that's your right, no hard
5 feelings, but the next process will be we will have
6 to go to the magistrate's office and try to obtain a
7 warrant for your blood and urine. At that time, he
8 stated, well, y'all going to have to get it anyway,
9 so you might as well get it. I said, you sure that's
10 what you want to do. And we proceeded from there.

11 **Q** In your talking with Mr. Hester, were his
12 responses somewhat slow?

13 **A** Yes, sir. At the time that I was talking to
14 him, yes, sir. His responses were slow. Kind of a
15 little sluggish.

16 **Q** Right. And obviously, he had just been
17 involved in a car accident.

18 **A** That's correct. He stated he had been in an
19 accident.

20 **Q** And obviously -- well, if you need to see
21 it, State's Exhibit 21, he had some injury to his
22 head, did he not?

23 **A** I see some. Yes, sir. It looks like he had
24 some small cuts and scratches on his face and his
25 forehead.

1 Q And you are not a doctor?

2 A No, sir.

3 Q Not a nurse?

4 A No, sir.

5 Q So the extent of what head injury might
6 have happened, you don't know?

7 A As far as that goes, no. Just through my
8 training and experience, alcohol does cause sluggish
9 and slurred speech and stuff. I do know that.

10 Q That's not the only thing that can cause
11 slow speech and slurred speech, is it, Mr. McDowell?

12 A I would say no.

13 Q Medication can do the same thing, can't it?

14 A (No audible response.)

15 Q Medication can do the same thing, can't it?

16 A Some sorts of medication, sure.

17 Q And once you left the hospital, I guess now
18 we're into January the 31st. Did you leave before
19 midnight or after midnight?

20 A I think it's after midnight.

21 Q Okay. So this kind of bled over from
22 January the 30th into the 31st?

23 A It went from the 30th to the 31st.

24 Q Okay. After you left the hospital on the
25 late night hours of January the 30th or early January

1 the 31st, did you have anything else to do with this
2 case?

3 A No, sir. That was the end of it for me.

4 MR. DEJONG: Thank you, sir.

5 MR. BUCKNER: No further questions, Your
6 Honor.

7 THE COURT: Sir, you can step down.

8 THE WITNESS: Thanks, Your Honor.

9 THE COURT: Any objection to
10 Trooper McDowell being excused?

11 MR. DEJONG: Oh, no objection, Your Honor.

12 THE COURT: All right then. Thank you.

13 MR. BUCKNER: The State would call
14 Brian Mayfield.

15 THE COURT: All right.

16 **BRIAN MAYFIELD**

17 having first been duly sworn, testifies as follows:

18 THE CLERK: Thank you. If you would, have
19 a seat and state your name for the record.
20 please.

21 THE WITNESS: Brian Mayfield.

22 **DIRECT EXAMINATION**

23 **BY MR. BUCKNER:**

24 Q Brian, will you try and speak into that
25 mic. I think we turned it down just a tad because we

1 were getting some static earlier. Will you tell the
2 jury -- I know -- when you worked your previous law
3 enforcement experience with the Highway Patrol, in
4 particular?

5 **A** I was -- I'm retired from the Highway
6 Patrol. I joined the Highway Patrol in April of 1991
7 and I retired in April of 2016.

8 **Q** And what was your current -- or your
9 position with the Highway Patrol while you were
10 there?

11 **A** I retired as Sergeant in Greenville County.
12 Prior to making Sergeant in Greenville County, I was
13 a Corporal in Pickens/Oconee for four years.

14 **Q** And were you in that position on January
15 30th of 2015?

16 **A** Yes, sir.

17 **Q** All right. Will you explain to the jury
18 what you did in that position in regards to this
19 collision that took place?

20 **A** On the night of January 30th, I was a road
21 supervisor in Pickens/Oconee. I received a call that
22 night from Trooper Marlow that he responded to a
23 serious collision with one fatality.

24 **Q** And once you were notified of it, did you
25 go to the scene?

1 **A** Yes, sir.

2 **Q** And what did you do once you arrived on the
3 scene?

4 **A** I coordinated with Trooper McDowell and
5 Trooper Marlow. Also got on the phone with Trooper
6 Nimmons by radio or phone and notified him I needed
7 his assistance there at the scene because he had some
8 MAIT -- he had been with MAIT for four years prior to
9 coming back on the road. And his expertise in this
10 area was -- is invaluable when it comes to
11 investigating such collisions. So I called him to the
12 scene. Trooper Marlow was on the scene when I
13 arrived. I started trying to figure out what had
14 occurred. I had to notify my supervisor also of what
15 I had on the scene.

16 **Q** And since you were the scene supervisor, so
17 to speak, was that -- was your role at the scene
18 simply just coordinating with various Highway Patrol
19 employees and kind of giving them -- delegating jobs
20 for them to do?

21 **A** Yes, I notified Trooper Marlow to secure
22 the scene and I would get there as soon as I could. I
23 had to notify my supervisor, which would typically be
24 a lieutenant on call, what I had -- once I arrived on
25 the scene and figured out what I had. Once I did get

1 on the scene, I saw I had a fatality. Trooper Marlow
2 told me it was possibly a felony DUI. I had to notify
3 the lieutenant on call of what I -- what I had --
4 possible call out to MAIT for further action from
5 MAIT.

6 Q Once doing all that, while still on the
7 scene, you didn't take any statements or evidence
8 from the scene yourself, did you?

9 A No, other than once I got blood from
10 Trooper Marlow, I did not.

11 Q How long did you remain on the scene? Just
12 to give everybody a job to do or did you stay there
13 for a while?

14 A Well, I stayed on scene kind of
15 coordinating everything with the lieutenant, as well
16 as with MAIT. I spoke with MAIT about what I had.
17 Once they were notified, I stayed on the scene to
18 make sure that pictures were taken and the scene was
19 measured and so on and so forth. I coordinated with
20 Trooper McDowell, who I had to go ahead and go to the
21 hospital, once I discovered that we may have a felony
22 DUI. I wanted him to go to the hospital and check
23 with the subject that had been transported and
24 coordinated with Trooper Marlow on scene. Once I did
25 have -- I believe I had Nimmons there, after a while,

1 I told Marlow to go ahead and go to the hospital and
2 do what he had to do.

3 Q Okay. And did that conclude your on-scene
4 investigation once all these -- you delegated all
5 these different duties with people in the agency?

6 A Well, I stayed on scene with -- also I was
7 out there with MAIT for significant -- I believe a
8 significant period of time. And I was speaking back
9 and forth with Trooper McDowell as well as -- Trooper
10 Marlow and McDowell was letting me know what was
11 going on with Mr. Hester at the hospital. I was also
12 coordinating with Trooper Marlow about steps that
13 needed to be taken.

14 Q All right. And then did you leave the scene
15 and go to the hospital at that point in time to
16 coordinate with them or did they come back to you?

17 A Trooper Marlow, I believe, came back to me.
18 I think I stayed at the scene pretty much the entire
19 time.

20 Q And did you receive any evidence from
21 Trooper Marlow?

22 A I did. I received two, I believe, vials of
23 blood and one container of urine.

24 Q And when you received those items, were
25 they sealed?

1 A Yes.

2 Q Had they been altered or tampered in any
3 way best you could tell?

4 A No, sir.

5 Q And what did you do with those items once
6 you received them from Trooper Marlow?

7 A After receiving those from Trooper Marlow,
8 I took them to the Post B office, which was, at the
9 time, in Central, and I secured those items in the
10 refrigerator at the Central office, which is in a
11 locked evidence room that only the supervisors had
12 access to at the time.

13 Q And did you log those items in?

14 A Yes, sir.

15 Q Within the office?

16 A Yes, I did.

17 Q And no one is able to access that office
18 without any kind of special privilege?

19 A Only supervisors at that time were allowed
20 to get to put evidence in and take evidence out.

21 Q And were either of those items tampered,
22 changed or altered in any way before you secured them
23 within the facility?

24 A No, sir.

25 Q And did you complete any documentation

1 within your agency there once those items were taken
2 in?

3 **A** I completed my name and so forth on the
4 chain of custody. I notated that I received the items
5 from Lance Corporal Marlow in Pickens. They were
6 transported where they were put in the refrigerator
7 at the Post B office in Central. At that point in
8 time, my contribution to it ended once they were
9 secured at the office.

10 **MR. BUCKNER:** Judge, I have no further
11 questions. Please answer any questions
12 Mr. DeJong may have.

13 **THE COURT:** Mr. DeJong?

14 **MR. DEJONG:** Your Honor, may it please the
15 Court.

16 **CROSS-EXAMINATION**

17 **BY MR. DEJONG:**

18 **Q** So you arrived on the crash scene somewhat
19 later than everybody else, I gather?

20 **A** After Trooper Marlow, yes, sir.

21 **Q** All right. When you got there, how many
22 people were there?

23 **A** I'm sorry?

24 **Q** When you got there, how many people were
25 there?

1 **A** There were several. I can't recall how many
2 exactly. I think some fire, EMS and Trooper Marlow.

3 **Q** Did you ever talk to the people -- I'm not
4 asking if you did, what they said. But did you ever
5 talk to the people in the house?

6 **A** That were -- that supposedly had the dummy
7 camera or whatever at the residence?

8 **Q** Yeah.

9 **A** No, I didn't talk to them.

10 **Q** You didn't talk to them at all?

11 **A** No, I don't recall talking to those people.

12 **Q** Okay. Now, you never went to the hospital?

13 **A** No, sir.

14 **Q** And you, personally, didn't gather any
15 evidence in this case?

16 **A** No, sir. No, sir.

17 **Q** Other than the urine and the blood, was any
18 other evidence that was obtained from this crash
19 scene turned over to you?

20 **A** No, sir. No, sir. Not that I recall.

21 **Q** And you said the blood and the urine were
22 put in the evidence refrigerator at Highway Patrol --
23 I don't want to say headquarter, but whatever the
24 office in Central, right?

25 **A** Yes, sir.

1 Q How long did it stay there? Do you know?

2 A According to the chain of custody, it
3 stayed there from January 31st until, I believe, it
4 was taken out and labeled by Sergeant Pelfrey,
5 replaced back in the evidence refrigerator on January
6 31st and it was transported -- it was taken out by
7 Corporal Ross. At the time, Corporal Ross was a
8 supervisor in Pickens/Oconee. And he had it
9 transported to CEF on February 2nd. It was apparently
10 handed off to Trooper M.B. Luss on that date.

11 Q Now, I'm confused. Who took it out and
12 labeled it?

13 A Well, it was labeled by Sergeant
14 M.L. Pelfrey.

15 Q Okay. And that was done when?

16 A January 31st.

17 Q How many supervisors have access to that
18 evidence refrigerator?

19 A All Post B supervisors have access to the
20 evidence refrigerator.

21 Q How many were there?

22 A At the time, there would have been First
23 Sergeant, Sergeant and four corporals, I believe, at
24 that time.

25 Q My math -- you gave it to me pretty quick,

1 but if my math is correct, that would be six people.

2 A Yes.

3 Q Is that right?

4 A Yes, that would have access to that room.

5 Q So at some point in time while you're at
6 the scene, you made the decision, I gather, to charge
7 Mr. Hester with DUI?

8 A Given the evidence that we had, I believe
9 we had probable cause at that time to have Trooper
10 McDowell draw the blood.

11 Q You had the odor of alcohol?

12 A Yes, sir. I had -- you asking for any
13 further evidence?

14 Q Yeah.

15 A Well, he had an impression of what appeared
16 to be a steering column on his chest.

17 Q Okay.

18 A A steering wheel.

19 Q Okay. What else?

20 A He obviously made the statement he wasn't
21 driving, but those are two factors that I recall.

22 Q Did that car have airbags?

23 A I believe so. I believe it did.

24 Q To your knowledge, did the airbags deploy?

25 A I believe they did. Yes, sir.

1 Q Both sides?

2 A (No audible response.)

3 Q Both sides?

4 A I believe so. I believe so. Yes, sir.

5 Q Thank you, Mr. Mayfield.

6 THE COURT: Anything else?

7 MR. BUCKNER: Briefly, Your Honor.

8 THE COURT: Certainly.

9 REDIRECT EXAMINATION

10 BY MR. BUCKNER:

11 Q As far as the questions about labeling the
12 evidence, the evidence that you received was already
13 labeled for identification purposes?

14 A Yes, for identification purposes, it was
15 already labeled with the defendant's name. But what
16 we have to do at DPS is before it goes to CEF, which
17 is our Central Evidence Facility, you have to label
18 it with a label and it has to correspond with the
19 case number.

20 Q And that's for your own agency's purposes?

21 A Yes, that's interoffice -- for interoffice
22 or interagency identification.

23 Q And those other individuals you listed,
24 those are individuals who had contact with the
25 evidence after you did. This is just your form that

1 shows that?

2 **A** Yes, sir. Yes, sir. Sergeant Pelfrey at the
3 time. Now, Sergeant Ross and, I believe, Lance
4 Corporal Luss.

5 **Q** And I wasn't going to go into this earlier,
6 but since Mr. DeJong did. Outside of what you
7 describe as the steering wheel and the odor of
8 alcohol, did the victim's location right there in the
9 passenger seat also contribute to making the charge
10 of felony DUI?

11 **A** Well, she looked like she was lodged
12 partially out of the passenger side window and
13 partially inside of the passenger side of the car
14 with her head, I believe, partially outside of the
15 passenger side window of the vehicle.

16 **MR. BUCKNER:** Judge, I have no further
17 questions.

18 **THE COURT:** Mr. DeJong?

19 **MR. DEJONG:** Just one, Your Honor.

20 **RECROSS EXAMINATION**

21 **BY MR. DEJONG:**

22 **Q** Had the vehicle already been moved and
23 Ms. Holcombe already been moved when you got there?

24 **A** When I got there, I don't -- I can't tell
25 you that EMS or fire didn't try to check her. I can

1 not tell you that. I don't know exactly what they
2 did. But she looked like it was pretty much in the
3 same position as possibly after the collision. But I
4 don't know what they did prior to me arriving.

5 Q She could have been moved?

6 A She could have -- I'm certain that EMS and
7 fire checked her. Yes, sir.

8 Q Thank you, sir. Nothing further.

9 MR. BUCKNER: No further questions from the
10 State, Your Honor.

11 THE COURT: All right. Sir, you can step
12 down.

13 MR. BUCKNER: May the witness be excused?

14 MR. DEJONG: No objection, Your Honor.

15 THE COURT: All right. Thank you, sir, for
16 being here.

17 THE WITNESS: Yes, ma'am.

18 MR. BUCKNER: The State would call Mike
19 Pelfrey, Your Honor.

20 THE COURT: All right.

21 MIKE PELFREY

22 having first been duly sworn, testifies as follows:

23 THE CLERK: Thank you, sir. If you would,
24 have a seat and state your name for the record.

25 THE WITNESS: My name is Michael Pelfrey.

DIRECT EXAMINATION

BY MR. BUCKNER:

Q Sergeant Pelfrey, will you please explain for the court how long you've been with Highway Patrol and what your position is with them?

A I've been with Highway Patrol for 26 years, a little over 26 years. Right now, I'm a sergeant with the patrol, which is one of the supervisors within the post for Pickens and Oconee County.

Q And what position did you hold with Highway Patrol on January 30th and 31st of 2015?

A I was a sergeant then also.

Q Okay. And what was your role in this case? I know it's a limited one.

A Right.

Q Would you just explain for the court what you did as far as the blood and urine evidence goes?

A Okay. What happens, there's two evidence custodians which actually go in and label the evidence. I'm the primary evidence custodian. So normally, if there's evidence that's been put in the refrigerator in the evidence room, they'll email me and then I'll know it's there and whenever I come in to work, I'll go in and label it.

Q So you label this once you receive that

1 notice?

2 **A** I do, yes.

3 **Q** And that would have occurred sometime on
4 January 31st?

5 **A** Right. They are supposed to email me
6 immediately when they put it into the refrigerator so
7 I know it's there. We're limited on time to label it
8 and have it sent into Columbia.

9 **Q** And you are one of the individuals that has
10 access to this secured evidence room where the
11 refrigerator is located?

12 **A** That's correct. Yes, sir.

13 **Q** And you went in there and took out this
14 blood and urine evidence?

15 **A** Uh-huh. I did.

16 **Q** And had it been tampered or altered in any
17 way as best you could tell? Was it still sealed?

18 **A** It was still -- it was still sealed in an
19 evidence bag.

20 **Q** And did either of those -- did they remain
21 that way even though -- where did you put the label
22 on it, specifically?

23 **A** I put the label on the back of the evidence
24 bags.

25 **Q** Okay.

1 **A** I mean, I just always put it there.

2 **Q** You did that with each of these?

3 **A** I did. Yes, sir.

4 **Q** Did you alter, tamper, unseal it, do
5 anything to those evidence -- pieces of evidence?

6 **A** I did not.

7 **Q** You locked it back within that refrigerator
8 in the secured facility?

9 **A** I did.

10 **MR. BUCKNER:** Judge, I have no further
11 questions at this time.

12 **THE COURT:** Mr. DeJong?

13 **MR. DEJONG:** Thank you, Your Honor. I
14 don't believe I have any questions for this
15 witness.

16 **THE COURT:** All right.

17 **THE WITNESS:** Thank you.

18 **THE COURT:** Sir, you can step down.

19 **MR. BUCKNER:** May the witness be excused?

20 **MR. DEJONG:** No objection, Your Honor.

21 **THE COURT:** Thank you.

22 **MR. BUCKNER:** Your Honor, the State would
23 call Benji Ross to the stand.

24 **BENJI ROSS**

25 having first been duly sworn, testifies as follows:

1 **THE CLERK:** Have a seat and state your
2 name for the record please.

3 **THE WITNESS:** Benjamin Johnson Ross.

4 **DIRECT EXAMINATION**

5 **BY MR. BUCKNER:**

6 **Q** Benji, what's your current position with
7 Highway Patrol?

8 **A** I'm a Sergeant with the Highway Patrol
9 assigned to Anderson County.

10 **Q** What position did you hold on January 31st
11 of --

12 **A** I was a corporal in Pickens and Oconee
13 Counties.

14 **Q** Okay. And like Sergeant Pelfrey, I know you
15 had kind of a limited role. Just explain for the jury
16 very quickly what exactly you did with the evidence
17 in this case?

18 **A** Basically, it would have been the first
19 available date we had to take that evidence, the
20 blood and urine that they talked about, to take it to
21 our Central Evidence Facility in Columbia. I went
22 into that secured evidence room. I retrieved that
23 evidence and handed it to my trooper that was going
24 to transport it to Columbia.

25 **Q** And that trooper would have been at the

1 Central --

2 **A** He was at the office with me. Yes, sir. He
3 stays outside the room. I go in, retrieve it and come
4 back and give it to him.

5 **Q** And who would that trooper have been?

6 **A** It was Brian Luss.

7 **Q** And is that a common practice with all
8 evidence when it's taken?

9 **A** Yes, sir. Our evidence that goes to our
10 Central Evidence Facility is retrieved by a
11 supervisor and given to the trooper whoever is going
12 and then its transported by that trooper to Columbia.

13 **Q** And when you took that evidence out of the
14 refrigerator that had already been labeled by
15 Sergeant Pelfrey, had it been unsealed, tampered with
16 or altered in any way?

17 **A** No, sir. It's still in the evidence bag
18 with the chain of custody attached to it.

19 **Q** And it remained in that condition when you
20 transported it to the Central Evidence Facility and
21 then handed it over to --

22 **A** It would have been, yes, sir.

23 **Q** It was not tampered with?

24 **A** No, sir. Not at all.

25 **MR. BUCKNER:** Judge, I have no further

1 questions.

2 **THE COURT:** Any questions?

3 **MR. DEJONG:** A couple please, Your Honor.

4 May it please the Court.

5 **CROSS-EXAMINATION**

6 **BY MR. DEJONG:**

7 **Q** So this blood and urine went from Mayfield
8 to the evidence refrigerator. Pelfrey handled it. You
9 handled it. But then your handling it didn't go
10 straight to SLED. It went to Highway Patrol
11 headquarters in Columbia?

12 **A** No, it went to the Central Evidence
13 Facility in Columbia. Yes, sir.

14 **Q** Which is y'all --

15 **A** Yes, sir. Which is our temporary holding
16 facility in Columbia.

17 **Q** Right. That had nothing to do with SLED?

18 **A** No, sir. Not at that time. No, sir.

19 **Q** All right. Thank you. No further questions.
20 Thank you, sir.

21 **MR. BUCKNER:** No further questions from the
22 State, Your Honor. May the witness be excused?

23 **MR. DEJONG:** No objection, Your Honor.

24 **MR. CLEVELAND:** The State would call
25 Sergeant Rodney Frick to the stand.

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RODNEY FRICK

having first been duly sworn, testifies as follows:

THE CLERK: Thank you, sir. If you would, have a seat and state your name for the record please.

THE WITNESS: Rodney Frick.

DIRECT EXAMINATION

BY MR. CLEVELAND:

Q Sergeant Frick, where is your current assignment within the Highway Patrol?

A My current assignment is at our centralized evidence facility in Columbia.

Q All right. And was that your assignment around the end of January of 2015?

A Yes, sir. I've been here for the past eight years.

Q All right. Describe briefly for the jury what the Central Evidence Facility in Columbia is.

A The centralized evidence facility in Columbia, we house all the evidence for the South Carolina Highway Patrol, except for small amounts of marijuana, which can be stored at the post level. Anything over five pounds or any hard drugs have to come to our facility. We're a secured facility. We have three levels of security. That's why we house

1 all the evidence for patrol, actually all the
2 evidence for the Department of Public Safety,
3 including State Transport Police, Bureau of
4 Protective Services.

5 Q You handle three levels of security. What
6 are those levels of security and why are they in
7 place?

8 A They are in place for the integrity of the
9 evidence. At the present time, we have three
10 employees. I'm a supervisor there. We have another
11 supervisor, Lieutenant Rivers and Lance Corporal
12 Odom. We are the only three individuals that can get
13 into our -- what we call our evidence room. You have
14 to have a key pass to get into there. That's our
15 first level of security.

16 The next level of security is a secured
17 gate. You have to have a key pass and a key to get in
18 there. Within the secured gate, there's another
19 evidence room which requires a key pass.

20 Q Is all the evidence stored behind that
21 secure lock and key system?

22 A Different levels. All evidence is secured
23 behind the original key pass.

24 Q What about blood evidence?

25 A That's secured behind the original key pass

1 in the refrigerator.

2 Q Okay. Did you handle any evidence in this
3 case that we are here in court on today?

4 A Let me refer to my notes.

5 Q You may refer to your notes.

6 A Yes, sir. I did.

7 Q All right. First off, tell us when this
8 evidence arrived at central evidence facility.

9 A This evidence was delivered by Officer Luss
10 with the Highway Patrol on February the 2nd of 2015
11 and turned over to Lance Corporal P.M. Odom, an
12 evidence technician at our evidence facility.

13 Q What is required of evidence to be
14 submitted to the central evidence facility?

15 A The evidence --

16 Q Seal and documentation, anything like that.

17 A Right. We require the evidence to be
18 sealed. When it comes in, we inspect the integrity of
19 that seal to see if it's been tampered with or
20 appears to be tampered with. If it appears to be
21 tampered with or if it was not sealed at all, we do
22 not take it. We send it back. At that point, it's
23 also required to be documented on the chain of
24 custody. It's also required to be labeled. That's the
25 label I was speaking of earlier.

1 Q All right. Is any evidence ever taken that
2 does not follow that protocol?

3 A No, sir. It does not.

4 Q What is done with blood evidence once it's
5 accepted into central evidence?

6 A Once the blood evidence is accepted into
7 central evidence, we document on chain that we
8 accepted it. We also go into SLED I-lab system and we
9 enter it into their I-lab system prior to storing it
10 into our refrigerator.

11 Q Okay. And in this particular case, what
12 items of evidence were taken in?

13 A According to this, it was two tubes of
14 blood and one bottle of urine.

15 Q You mentioned that you create -- you enter
16 it into the SLED system. What do you do that for?

17 A That's required by SLED before they'll
18 accept the evidence.

19 Q All right. And why do you take this
20 evidence to SLED?

21 A Sir?

22 Q Why do you take this evidence to SLED?

23 A To be analyzed.

24 Q In this case, did you personally deliver
25 this evidence to SLED?

1 **A** Yes, sir. I did. I removed it from our
2 refrigerator on February 3rd and delivered to SLED on
3 that same day.

4 **Q** All right. Is SLED's facility located in
5 Columbia as well?

6 **A** Yes, sir. It is.

7 **Q** What requirements -- in addition to the I-
8 lab submission, what requirements does SLED have for
9 them to accept evidence?

10 **A** They won't accept any evidence that's not
11 sealed. Once they do accept the evidence, they place
12 it again into another plastic bag, seal it in our
13 presence and we are required to initial across the
14 seal that we witness it be sealed.

15 **Q** And did you do that in this case?

16 **A** Yes, sir. I did.

17 **Q** During your entire dealing with this
18 evidence, does it ever appear to be unsealed or
19 tampered with?

20 **A** No, sir. It did not.

21 **Q** Did it ever appear to be inconsistent with
22 what the documentation said it was?

23 **A** No, sir. It did not.

24 **Q** And did SLED accept the evidence from your
25 person?

1 **A** Yes, sir. They did.

2 **Q** Do you know who at SLED accepted the
3 evidence?

4 **A** Jennifer Acock, who is an evidence
5 technician at SLED.

6 **Q** But you would have personally handed this
7 item off to her?

8 **A** Yes, sir. I did.

9 **Q** I don't have any other questions, Sergeant
10 Frick. Please answer any questions the defense has.

11 **THE COURT:** Mr. DeJong?

12 **MR. DEJONG:** Thank you, Your Honor. May it
13 please the Court.

14 **CROSS-EXAMINATION**

15 **BY MR. DEJONG:**

16 **Q** When the blood and urine came from Central,
17 were you the person that accepted it when it got to
18 Columbia?

19 **A** No, sir. That was accepted by Lance
20 Corporal P.M. Odom.

21 **Q** I'm sorry?

22 **A** It was accepted by Lance Corporal P.M. Odom
23 who was an evidence technician.

24 **Q** Okay.

25 **A** I'm his immediate supervisor.

1 **Q** So you're -- you did not receive the urine
2 and the blood. You're basically talking about
3 procedures within the Highway Patrol, right?

4 **A** Can you repeat the question please, sir?

5 **Q** You didn't actually receive the blood and
6 the urine when it came to Columbia?

7 **A** No, sir. I did not initially receive it.

8 **Q** Okay. Somebody else did?

9 **A** Yes, sir.

10 **Q** Did you take it to SLED?

11 **A** Yes, sir. I did.

12 **Q** Okay. So you didn't get it. So between it
13 coming to Columbia and you taking it to SLED, that
14 testimony is basically based on what you say is your
15 procedure, right?

16 **A** Correct.

17 **Q** All right. Just so I'm clear, the only
18 thing that came into the central -- what do we call
19 it? The central evidence room? Whatever we call it --
20 that was the only evidence in this case that came to
21 that central evidence room?

22 **A** I don't recall. I'm familiar with the blood
23 and the urine.

24 **Q** All you are aware of is blood and urine?

25 **A** Yes, sir.

1 Q Thank you, sir. Nothing further.

2 THE COURT: Any other questions for this
3 witness?

4 MR. CLEVELAND: Nothing further, Your
5 Honor, but can we approach for just one minute?

6 THE COURT: Certainly.

7 (WHEREUPON, a bench conference is held off the
8 record.)

9 THE COURT: All right. Ladies and
10 Gentlemen, thank you for bearing with us as we
11 were discussing our schedule for the rest of the
12 afternoon. Here's what we're going to do. We've
13 got a couple of legal matters that we need to
14 take up. And I don't want to hold you up from
15 here. Maybe you can go and do some things over
16 the lunch break. So we're going to have a little
17 longer lunch break at this time. I'm going to
18 ask you to be back in your jury deliberation
19 room at two o'clock. So if you will, take a
20 lunch break. It will be about an hour and 45
21 minutes. Be back by two o'clock. We'll start
22 promptly then.

23 I know I promised you I'd sound like a
24 broken record and I will. Please don't discuss
25 this case with anyone or do any kind of

1 independent research. Other than that, I hope
2 you have a good lunch.

3 (WHEREUPON, the jury exits at approximately
4 12:18 p.m.)

5 THE COURT: All right. Anything we need
6 to take up with this witness or can he be
7 excused?

8 MR. CLEVELAND: He can be excused.

9 THE COURT: You got caught in the middle,
10 didn't you?

11 THE WITNESS: Yes, ma'am.

12 MR. CLEVELAND: The State is concluded with
13 Sergeant Frick and ask that he be excused.

14 THE COURT: Okay. Thank you.

15 THE WITNESS: Thank you.

16 MR. DEJONG: No objection to him being
17 excused if he wishes to be excused, Your Honor.

18 THE COURT: He seems like he does. All
19 right.

20 MR. CLEVELAND: Your Honor, at this time,
21 the State would like to move forward in one of
22 two Jackson v. Denno hearings the State would
23 have. The first one would be conducted by
24 Aaron Duncan.

25 THE COURT: All right. And unless one is

1 necessary on the other, let's do these together.
2 So do the testimony and cross -- the testimony
3 and the cross-examination of the witness. We'll
4 just save our arguments for the very end on both
5 if that's alright.

6 **MR. CLEVELAND:** Sure.

7 **AARON DUNCAN**

8 having first been duly sworn, testifies as follows:

9 **THE CLERK:** Sir, if you will, have a seat
10 and state your name for the record please.

11 **THE WITNESS:** Aaron Duncan.

12 **DIRECT EXAMINATION**

13 **BY MR. CLEVELAND:**

14 **Q** Sergeant Duncan, did you conduct an
15 interview of Timothy Hester at any point during your
16 investigation in this case?

17 **A** I did. On January the 31st, I went to the
18 hospital and met with him in the hospital room and
19 did an interview with him there.

20 **Q** Approximately what time on January 31st did
21 you conduct that interview?

22 **A** Somewhere in the neighborhood, if I'm not
23 mistaken, around five o'clock.

24 **Q** All right. And at -- tell me what condition
25 you found the defendant in when you arrived at the

1 hospital.

2 **A** When I arrived at the hospital room, he was
3 alert, conscious, talking, sitting up in the bed. Did
4 not have a shirt on. I can't recall if he had the
5 blanket across his lap or if he had pants on or what
6 he had on there. But he was up and sitting there in
7 the room. I think he still had some stickers upon his
8 chest, but no IVs or anything that I recall being
9 tied into him at the time.

10 **Q** All right. And describe how you introduced
11 yourself and what you did to start that interview.

12 **A** Walked into the room. I first asked if he
13 was who I was looking for and called him by name. He
14 answered and replied that he was. I introduced myself
15 as, at that point in time, Corporal Aaron Duncan with
16 the Highway Patrol and told him what unit I worked
17 for and what I was there for. I then went on to
18 explain to him his Miranda rights and made sure he
19 understood his rights, asked him if he did and then
20 began to ask him questions when he implied that he
21 did understand his rights.

22 **Q** Did he seem to understand those rights when
23 you explained them to him?

24 **A** Yes, he did.

25 **Q** Did he verbalize or indicate a response?

1 **A** He did.

2 **Q** At any point in time, did you threaten or
3 coerce him to make any statements?

4 **A** No, sir. I did not. In fact, I asked him
5 just stuff about himself. I asked him if he would
6 like to talk to me about the collision. He went on to
7 tell me about what went on and happened, in his view.

8 **Q** All right. Did he appear to be under the
9 influence of any drugs or medication that may have
10 clouded his judgement in your opinion?

11 **A** At that point in time that morning, no,
12 sir. I didn't see any evidence of any kind of drugs
13 or anything on him.

14 **Q** All right. Is there any indications you
15 have that the statement and the conversation was not
16 voluntary?

17 **A** No, sir. No indication at all.

18 **Q** How long did this interview last?

19 **A** I want to say 30 or 45 minutes, give or
20 take.

21 **Q** All right. And throughout the course of
22 that 30 or 45 minutes, did Mr. Hester's condition or
23 demeanor change in any way?

24 **A** You talking about his coherency as far
25 as --

1 Q Yes, sir.

2 A No, sir. Nothing at all.

3 Q All right. And at any point in time during
4 that interview, did he induce his right to remain
5 silent or not answer any more questions or to have an
6 attorney present?

7 A No, sir. At no point in time.

8 Q Did he ever request any comfort items or
9 any medical treatment that was denied of him during
10 that interview?

11 A No, sir. We actually had a -- I believe it
12 was a nurse or one of the hospital staff come into
13 the room. We paused the conversation while she came
14 in and checked whatever she was going to do and
15 turned around and left. But no, sir, at no point in
16 time, did he ask for anything.

17 Q All right. Was this interview recorded?

18 A It was.

19 Q And was that recording put in your MAIT
20 packet?

21 A Yes, sir. It is.

22 Q Thank you. I don't have any further
23 questions. Please answer any questions Mr. DeJong
24 has.

25 **CROSS-EXAMINATION**

1 **BY MR. DEJONG:**

2 **Q** Was he still in the trauma bay?

3 **A** No, sir. As I recall it, he was in a
4 regular room. We were not in the trauma bay when we
5 had this conversation.

6 **Q** Did he have an IV?

7 **A** No, sir. Not that I recall. I remember him
8 moving his arms freely while we were conversing.

9 **Q** So this was, you said, about five o'clock
10 on the evening of the 31st?

11 **A** The morning of the 31st. Five o'clock a.m.

12 **Q** Okay. So six or seven hours after -- maybe
13 a little more, after Marlow had talked to him?

14 **A** Yes, sir. I'm not sure exactly what time
15 Marlow spoke with him, but ---

16 **Q** Yes, sir. I under --

17 **A** --- sometime after the collision, yes, sir.

18 **Q** Okay. Thank you, sir. No further questions.

19 **THE COURT:** Any other questions?

20 **MR. CLEVELAND:** No, Your Honor. The State
21 would hold its motion and call the next witness
22 or the next interviewer.

23 **THE COURT:** All right. We'll go ahead and
24 call the next witness.

25 **MR. CLEVELAND:** The State would call

1 Jared Duncan to the stand.

2 **JARED DUNCAN**

3 having first been duly sworn, testifies as follows:

4 **THE CLERK:** If you would, have a seat and
5 state your name for the record please.

6 **THE WITNESS:** My name is Jared Duncan,
7 South Carolina Highway Patrol.

8 **DIRECT EXAMINATION**

9 **BY MR. CLEVELAND:**

10 **Q** And what's your current rank and assignment
11 at the Highway Patrol, Trooper Duncan?

12 **A** I'm a Lance Corporal with the Highway
13 Patrol.

14 **Q** All right. And on January 30th and 31st,
15 the time surrounding that, what was your assignment
16 with the Highway Patrol?

17 **A** I was working with the MAIT team, accident
18 reconstruction unit.

19 **Q** All right. And as part of your job duty at
20 that time, did you conduct an interview with the
21 defendant Timothy Adam Hester, Sr?

22 **A** I did.

23 **Q** And where was that interview conducted and
24 at what time?

25 **A** It was conducted at the Pickens County Law

1 Enforcement Center. I have to look at my notes. It
2 was -- occurred in, actually, the breathalyzer room
3 at the Pickens County Detention Center around 9:40 in
4 the morning on February the 6th, 2015.

5 Q All right. Mr. Hester appeared to be in
6 okay medical condition when you conducted this
7 interview?

8 A Yes, sir. He walked in on his own free
9 will. He didn't have to have any help getting there.
10 He walked in. Sat down. I had general conversation
11 with him, nothing about the collision, walking into
12 there. The staff at the jail actually went and
13 retrieved him and brought him to me out there. He was
14 unrestrained when I took him to the breathalyzer
15 room, which is adjoining the jail.

16 Q Okay. Did he appear to be under the
17 influence of any drugs or medication?

18 A No. No, sir. He had been in the detention
19 center for approximately five days. He'd been there.
20 I wouldn't assume he'd have any way of getting his
21 hands on any kind of drugs or --

22 Q Well, just in your observations?

23 A No, no.

24 Q Did you advise him of his Miranda rights?

25 A I did. I would refer to a sheet, which I

1 don't have with me, and advise him of his Miranda
2 rights. It was also being audio recorded, and all of
3 that is on that audio recording.

4 Q Did he seem to understand those rights?

5 A He did.

6 Q Did he, after hearing those rights, agree
7 to speak with you?

8 A He did.

9 Q How long did you speak with him?

10 A Approximately 30 minutes.

11 Q All right. At any point in time during that
12 30 minutes, did he invoke any of those rights or
13 decline to speak with you any more?

14 A No, sir.

15 Q Did you make any threats or coercion or
16 promises to him to get him to talk to you about this
17 incident?

18 A I did not.

19 Q Did he request any comfort items or did you
20 deny him anything he requested during the course of
21 this interview?

22 A He never requested anything from me.

23 Q All right. Was the interview audio
24 recorded?

25 A Yes, sir. It was.

1 Q And did you submit that audio recording in
2 with the complete package in this case?

3 A Yes, sir.

4 Q I don't have any other questions.

5 A Yes, sir.

6 Q Please answer any questions Mr. DeJong has.

7 **THE COURT:** Mr. DeJong?

8 **MR. DEJONG:** Just one point of
9 clarification. Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. DEJONG:**

12 Q You had him in the BA room. That wasn't for
13 a BA, was it?

14 A No, sir. It was just a secure spot where
15 just me and him can be and I would have him kind of
16 in open view so everybody could see us. So he felt at
17 ease, I just took him there. It would be a good spot.

18 Q At the Pickens County LEC?

19 A Yes, sir.

20 Q I'm quite familiar with the problem down
21 there, but I understand.

22 A Yes, sir.

23 Q All right. Thank you, sir. No further
24 questions.

25 **THE COURT:** Any other questions?

1 **MR. CLEVELAND:** Nothing from the State,
2 Your Honor.

3 **THE COURT:** Sir, you can step down.

4 **THE WITNESS:** Yes, ma'am.

5 **MR. DEJONG:** Your Honor, we have no
6 argument, Your Honor.

7 **THE COURT:** All right then. Then, I
8 certainly submit both of those statements to the
9 jury for their consideration as to whether or
10 not -- I find -- whether or not beyond a
11 reasonable doubt they were voluntary, I
12 certainly find.

13 **MR. CLEVELAND:** Thank you, Your Honor.

14 **THE COURT:** All right. Anything else we
15 need to take up before we break?

16 **MR. CLEVELAND:** Nothing from the State at
17 this time.

18 **THE COURT:** Anything from the defense?

19 **MR. DEJONG:** I'm trying to think, Your
20 Honor, but I can't think of anything. I think
21 we've got everything on the record.

22 **THE COURT:** Sounds good. How are we, time-
23 wise?

24 **MR. CLEVELAND:** Your Honor, we are moving
25 along quite comfortably.

1 **MR. BUCKNER:** That's a real vague
2 statement.

3 **MR. CLEVELAND:** I guess that means it's not
4 going too fast, but it's also not going too
5 slow.

6 **THE COURT:** Great.

7 **MR. BUCKNER:** We've got eight witnesses
8 left, Judge.

9 **THE COURT:** Eight witnesses?

10 **MR. BUCKNER:** Some are lengthy and some
11 aren't.

12 **MR. CLEVELAND:** What we've determined is we
13 have the medical examiner and two witnesses from
14 SLED that should be here at 1:30. They would be
15 amongst the first to go. All that remains after
16 that is lay witnesses and the MAIT team. Some of
17 the MAIT witnesses are going to be longer than
18 others. I presume that the MAIT and maybe the
19 lay testimony may spill into tomorrow morning,
20 but I think we can get through with all but two
21 or three of our witnesses today.

22 **THE COURT:** Okay. All right. All right. So
23 that sounds still like, overall, we should get
24 the case to the jury sometime tomorrow.

25 **MR. DEJONG:** Be my thinking, Your Honor.

1 **MR. CLEVELAND:** That would be correct.

2 **THE COURT:** Just to let y'all know, we'll
3 probably have a copy of the charge and the
4 verdict forms that I can email to you sometime
5 this afternoon. We're sort of still crafting it
6 a little bit. I think, of course, some things
7 might change based on the trial. But what we
8 know so far and what we anticipate so far, I
9 think we've got something together for you to be
10 able to look at.

11 One thing that I just ask y'all to be
12 thinking about, and Mr. DeJong, especially to
13 talk to your client about is, I have in the past
14 sent my written charge back with the jury after
15 I give it to them. It's been fairly successful
16 in cutting down the numbers of questions, but I
17 only do it -- you've heard this a million times
18 -- I only do it if both sides consent. I say
19 that to all of you just to be considering that.
20 There's no need to make that decision, of
21 course, now.

22 I do, as a reminder, give them a charge on
23 how to handle the written instructions when they
24 are back there. But y'all can talk about that
25 and think ab out that. We can talk about

1 that later on, maybe today or tomorrow. All
2 right.

3 **MR. DEJONG:** Thank you, Your Honor.

4 **THE COURT:** Yes, sir.

5 **MR. CLEVELAND:** Thank you, Judge.

6 **(WHEREUPON, the bailiff approaches the bench.)**

7 **THE COURT:** When we come back from lunch
8 too, it appears we're going to need to bring a
9 juror in. A juror has brought it to our
10 attention that she knows a lady in the gallery
11 with a black and white shirt on. And there's a
12 lot of ladies with a black and white shirt on.
13 Strangely enough, there's been up to four is
14 what we've just decided. And we're not sure who
15 it is that she knows or how well she knows or
16 anything like that. But just to let you know,
17 it's Ms. Reese. I think she's been sitting on
18 the front row. So we'll question her about that.
19 But she did do the right thing and bring it to
20 the bailiff's attention immediately. All right.

21 **MR. BUCKNER:** Thank you, Judge.

22 **THE COURT:** We'll be in recess until two
23 o'clock.

24 **MR. CLEVELAND:** Thank you, Your Honor.

25 **(WHEREUPON, the Court goes off the record at**

1 approximately 12:33 p.m.)

2 (WHEREUPON, the Court goes on the record at
3 approximately 2:06 p.m.)

4 THE COURT: We've got our juror,
5 Ms. Reese, in the Grand Jury room. We've
6 separated her from the rest of the crowd. So I'm
7 going to begin by bringing her in and just
8 asking her some questions on the record and
9 seeing if we need to seat an alternate or not.

10 Oh, not the jury. I'm just waiting on that
11 juror.

12 THE BAILIFF: Yes, ma'am.

13 THE COURT: Yes, thank you.

14 (WHEREUPON, Juror number 174, April L. Reese,
15 enters the courtroom at approximately 2:07 p.m.)

16 THE COURT: Hi, Ms. Reese. How are you
17 doing?

18 THE JUROR: I'm doing okay.

19 THE COURT: Okay. Listen, you're not in
20 any trouble at all. Okay. What you did was the
21 right thing which was to say that you felt like
22 you recognized someone. Tell me who it is that
23 you recognize from the courtroom.

24 THE JUROR: The lady in the white shirt.

25 THE COURT: Okay. And how do you know her?

1 **THE JUROR:** I want to say she used to
2 come and work out.

3 **THE COURT:** She used to come and work out?

4 **THE JUROR:** Uh-huh.

5 **THE COURT:** Okay. And tell me this, do you
6 still see her?

7 **THE JUROR:** No.

8 **THE COURT:** The fact that you know this
9 lady -- and I don't know what her relationship
10 is to the defendant in this case, but the fact
11 that you know this lady, do you think you could
12 still be a fair and impartial juror in the trial
13 of this case?

14 **THE JUROR:** Yes, ma'am.

15 **THE COURT:** You do? Okay.

16 Mr. DeJong, do you know what this lady's
17 relationship is, if any, with the defendant?

18 **MR. DEJONG:** Yes, ma'am. Number 1, I think
19 she's under -- under subpoena of the State, but
20 she is also the wife of the defendant in this
21 case.

22 **THE COURT:** Okay. All right. Does that --
23 is the fact now that you know what the
24 relationship is, does that change your opinion?

25 **THE JUROR:** Yes.

1 **THE COURT:** Okay. Okay.

2 Anybody got any other questions to ask this
3 potential juror?

4 **MR. CLEVELAND:** The State does not,
5 Your Honor.

6 **MR. DEJONG:** I don't have any, Your Honor.

7 **THE COURT:** Ms. Reese, you did the right
8 thing. Okay. And I appreciate you doing it. Our
9 whole legal system depends on jurors like you
10 just being up front about things like that, so I
11 commend you for doing that. Thank you for it.
12 I'm going to have to excuse you as a juror in
13 this case, okay? But that's why we've got
14 alternates. Hey, they wouldn't have anything to
15 do if it weren't for that, right? Okay. All
16 right. Okay. Good luck to you.

17 **(WHEREUPON,** the juror exits the courtroom at
18 approximately 2:09 p.m.)

19 **THE COURT:** All right. It's my
20 understanding that we then draw -- I didn't put
21 the names on it. I just put numbers. Does
22 anybody have any objection if I just -- I don't
23 even know the numbers I've written down.

24 **MR. DEJONG:** None on behalf of Mr. Hester.

25 **THE COURT:** Okay. Then I'm just going to

1 let our Clerk of Court draw a name from here. I
2 mean, excuse me, a number. (Pause.)

3 So our alternate to be seated is Paula
4 Rivers, Juror number 180.

5 **THE CLERK:** Do you want to make this a
6 Court Exhibit?

7 **THE COURT:** Yes, we'll make that a Court
8 Exhibit. All right.

9 Ms. Rivers, if you would, just have her sit
10 with the remaining jurors now. And she's Juror
11 number 180.

12 All right. Y'all ready to bring the jury
13 back in? All right.

14 **(WHEREUPON, Court's Exhibit 2 is marked for**
15 **identification purposes.)**

16 **(WHEREUPON, State's Exhibit 45 is marked for**
17 **identification purposes.)**

18 **(WHEREUPON, the jury enters at approximately**
19 **2:11 p.m.)**

20 **THE COURT:** Ms. Rivers? All right.

21 I -- I have -- needed to remove a juror in
22 this case. Just to let everybody know, she
23 didn't do anything wrong. She just felt like she
24 knew someone involved in the case and,
25 therefore, did the right thing in letting me

1 know. I've had to remove her as a juror.

2 Therefore, Ms. Rivers, I'm going to seat
3 you as a juror. Just to let you know, we do that
4 the way we used to do it 100 years ago in our
5 state. And that is, we draw a name from a hat,
6 so to speak. And your name was drawn. So you'll
7 just step in and be one of our 12 jurors, if you
8 don't mind.

9 **THE JUROR:** Yes.

10 **THE COURT:** Thank you.

11 All right. Ready to proceed?

12 **MR. CLEVELAND:** The State's ready,
13 Your Honor.

14 **THE COURT:** Yes.

15 **MR. CLEVELAND:** The State would call Tracy
16 McKinnon from the South Carolina Law Enforcement
17 Division.

18 **TRACY MCKINNON**

19 having first been duly sworn, testifies as follows:

20 **THE CLERK:** Thank you, sir. If you would,
21 have a seat and state your name for the record
22 please.

23 **THE WITNESS:** Tracy Allen McKinnon,
24 M-C-K-I-N-N-O-N.

25 **DIRECT EXAMINATION**

1 BY MR. CLEVELAND:

2 Q Good afternoon, Mr. McKinnon. Who do you
3 work for?

4 A I work for the South Carolina Law
5 Enforcement Division. It's more commonly referred to
6 as SLED.

7 Q And in what capacity are you employed with
8 SLED?

9 A I'm a forensic toxicologist.

10 Q All right. Tell us about how long you've
11 worked for SLED and what education and training you
12 have that qualifies you for that position?

13 A I've worked at SLED almost 11 years. It
14 will be 11 years in April. I've got a bachelor of
15 science degree with a chemistry major from the
16 University of North Carolina at Charlotte. I've got a
17 masters of science degree with a forensic science
18 concentration, and specifically forensic toxicology,
19 from Arcadia University. I am a member of the Society
20 of Forensic Toxicologists. I'm a board certified
21 toxicologist with the American Board of Forensic
22 Toxicologists. I attend continuing education
23 throughout the year in various capacities.

24 Q Have you ever testified as an expert in the
25 field of forensic toxicology with the courts of South

1 Carolina?

2 A Yes, I have, 31 times previously.

3 MR. CLEVELAND: Your Honor, at this time,
4 the State would like to offer Tracy McKinnon as
5 an expert in the field of forensic toxicology.

6 MR. DEJONG: I have no voir dire, Your
7 Honor.

8 THE COURT: Ladies and Gentlemen, the
9 rules of evidence usually don't permit witnesses
10 to testify as to their opinions or conclusions.
11 An exception to this rule is for a witness we
12 call an expert witness, a witness who, by
13 education or experience, become an expert in
14 some field and has been qualified as an expert
15 here in court may give his or her opinion and
16 the reasons for his or her opinion. This witness
17 has been qualified by the Court to give his
18 opinion in the areas of forensic toxicology. Is
19 that correct? You may give that opinion the
20 weight you decide it deserves and you can use it
21 in any way you see fit.

22 MR. CLEVELAND: Thank you, Your Honor.

23 BY MR. CLEVELAND:

24 Q Now, Mr. McKinnon, before I talk about your
25 involvement in this case, I want to talk generally

1 about SLED and forensic evidence. When it comes to
2 blood and urine evidence, who can submit that type of
3 evidence to SLED for testing?

4 **A** Generally, the evidence submissions are
5 made through a law enforcement agency or through one
6 of the agencies throughout the State.

7 **Q** All right. And what safeguards are in place
8 among SLED to ensure that evidence is quality
9 evidence or not tampered with?

10 **A** Generally, whenever a piece of evidence is
11 submitted, it adheres to what we refer to as a chain
12 of custody. That chain of custody basically tells
13 whoever's handling the evidence or, in this case,
14 when a court -- when a case comes to court, it tells
15 me who's handled it, when they handled it and allows
16 basically a time frame of what's happened with that
17 evidence.

18 **Q** All right. Initially, though, before it
19 even comes in the door with SLED, are there -- do
20 y'all inspect the evidence or check it in any way to
21 deem it okay for testing?

22 **A** Yes, whenever evidence is received at SLED,
23 we check it to make sure all integrity seals are
24 intact and that essentially it hasn't been tampered
25 with up until the point of arrival at SLED.

1 **Q** All right. And once it arrives at SLED, who
2 has access to that evidence?

3 **A** Initially, the evidence is entered into our
4 evidence log-in department. There, any of the
5 evidence log-in technicians have access to that -- to
6 that evidence. In most cases, the only case being
7 that if the sample is actually sent in through the
8 U.S. Postal Service, most cases, those samples are
9 sent in and sealed in the presence of one of our
10 evidence log-in technicians.

11 **Q** All right. And prior to conducting any
12 tests, do y'all inspect the evidence for evidence of
13 tampering or anything of that nature?

14 **A** Yes, as I said before, we look to make sure
15 all the integrity seals are still intact as they come
16 in.

17 **Q** Talk briefly about the procedure that the
18 evidence goes through for forensic testing,
19 toxicology testing at SLED.

20 **A** Once the piece of evidence has been
21 maintained in our department and analysis begins,
22 there are several initial steps, which the first of
23 those is actual inventory of the evidence where the
24 forensic technicians in the toxicology department
25 will actually take pictures and describe the evidence

1 into our information system. Once that initial
2 inventory is completed, then the actual analysis of
3 the evidence begins.

4 Q All right. In the case of blood evidence,
5 what type of initial analysis was that?

6 A Depending on the type of case -- well,
7 essentially all cases get an initial blood volatiles
8 analysis, which looks for volatile compounds, such as
9 ethanol or methanol. That is the first test completed
10 in the lab.

11 Q All right. And specifically, the case of a
12 felony DUI investigation, are there any more further
13 tests that are taken?

14 A Yes, depending on the blood alcohol level
15 that is determined through the testing, there are
16 drugs of abuse screens that are completed. One, being
17 a very generic-type screen looking for certain
18 classes of drugs and then another being a very
19 specific screen looking for a very wide variety of
20 specific types of drugs.

21 Q All right. In this case that you were
22 subpoenaed to testify on today, did SLED receive a
23 sample of blood and urine for testing?

24 A Yes, we did.

25 Q And to your knowledge and understanding,

1 was that evidence sealed and of good integrity when
2 it was brought to SLED?

3 **A** Yes, if there was any question with the
4 integrity, then we would notate it somewhere during
5 the inventory process.

6 **Q** All right. Was there any notations?

7 **A** There were no notations for this case.

8 **Q** All right. What about when the samples, for
9 lack of better term, was opened up for testing? Was
10 the integrity of the evidence maintained, best of
11 your knowledge, at that point?

12 **A** Yes, we have standard operating procedures
13 that we adhere to to make sure that the sample is the
14 only sample open at a specific time, at any given
15 time and then also specific procedures in place to
16 make sure that there's no contamination.

17 **Q** Was this sample tested for blood volatiles?

18 **A** Yes, sir, it was.

19 **Q** And what was the result of the testing for
20 blood volatiles?

21 **A** If I may look at a copy of my report.

22 **Q** You may. Actually, I've got one pre-marked
23 as State's Exhibit 45. I'll hand that up to you.

24 **A** The results for this particular sample
25 labeled Hester, Timothy were a 0.122 percent ethanol.

1 Q All right. And ethanol, in layman's terms,
2 what is that?

3 A Ethanol is essentially drinking alcohol.
4 It's the compound that you're going to find in
5 alcoholic beverages.

6 Q All right. Would those results -- would you
7 double check anything of that nature?

8 A Yes, each test that occurs in the lab goes
9 through a very stringent series of checks and
10 balances, not only with the persons actually
11 conducting the analyses but also our quality control
12 liaison and also the supervisor in the lab also
13 checks all the quality control to make sure that
14 everything has been done according to procedures.

15 Q And in this case, were all the quality
16 control procedures done correctly?

17 A Yes, it was.

18 Q Would you have issued a report in this case
19 if there was any problem with the quality control?

20 A No, a report would not have been issued had
21 there been any questions about the quality of the
22 work.

23 Q All right. Moving on to the second test,
24 you talked about drugs of abuse. Was -- when you talk
25 about drugs of abuse, could you give the jury some

1 examples of those and what you're looking for?

2 **A** Certain drugs, such as cocaine,
3 methamphetamine, marijuana, drugs that you're going
4 to find commonly -- commonly available, basically on
5 the street or through other means, whether they are
6 legal or illegal-type drugs.

7 **Q** All right. And was this sample tested for
8 drugs of abuse?

9 **A** Yes, it was.

10 **Q** And was there a final result of any drugs
11 of abuse reported?

12 **A** There was an indication that there was a
13 marijuana compound present but that yielded a final
14 negative conformation. So the initial drugs of abuse
15 screen was technically a complete negative panel.

16 **Q** All right. And what about this
17 comprehensive drug test? Why is that tested?

18 **A** So the -- our initial drug screen looks, as
19 I said before, for classes of compounds, such as, in
20 one class, your opiate class, for example, would have
21 drugs such as hydrocodone or oxycodone or morphine.
22 We're looking for drugs that have the same type of
23 similar structure that can elicit some kind of
24 response on our instrument. The general comprehensive
25 screen looks for essentially anything, any kind of

1 drug that you can ingest given the capabilities of
2 our laboratory.

3 Q Does that include over-the-counter drugs as
4 well as prescription medication?

5 A Over-the-counter drugs, prescription meds
6 and also illegal compounds.

7 Q All right. Does that include medicines of
8 the type of intravenous pain medicine or other type
9 of intravenous medicine that may be given as part of
10 medical care?

11 A Yes, it does.

12 Q All right. Is there -- based on the
13 comprehensive drug screen, was there any
14 intoxicating, or otherwise, drugs found in the sample
15 for Mr. Hester?

16 A No. Based on the comprehensive screen,
17 there were no other additional findings of any
18 significance. The only -- the only compound that's
19 listed on this report actually is the ethanol
20 finding.

21 Q And just to ask you specifically, if
22 someone had been administered drugs intravenously or
23 otherwise as part of medical treatment and the blood
24 drawn after that, is there a good chance that that
25 will show up in this comprehensive drug test?

1 **A** There's a really good chance that those
2 drugs would be detected by our comprehensive drug
3 screen.

4 **Q** All right. And there are no other drugs
5 other than alcohol found?

6 **A** That's correct.

7 **Q** Was there a urine sample submitted to SLED
8 as well?

9 **A** Yes, there was a urine sample submitted
10 also.

11 **Q** And was any testing done on that urine
12 sample?

13 **A** No testing was completed on the urine
14 sample.

15 **Q** Why is that?

16 **A** Typically, the differences between blood
17 and urine -- blood is going to give you an indication
18 of exactly what's going on and circulating in the
19 body at the time that the blood is actually drawn,
20 where as the urine basically just provides a history
21 or a timeline of the drugs that had been ingested.
22 Also, per state statute, in a felony DUI-type case,
23 which this was logged into at SLED, we're required to
24 actually test the blood.

25 **Q** Is it fair to say that the blood test is a

1 more accurate reflection of what's going on with the
2 body?

3 **A** Exactly, yes.

4 **Q** Do you recall or have documentation -- and
5 I'm kind of stepping back a little bit into the
6 quality control -- into what type of containers the
7 blood was received in?

8 **A** I don't recall. Most likely, the blood
9 would have been received in a gray top.

10 **Q** All right. And are you familiar with the
11 gray top tubes and the type of containers that blood
12 is typically submitted in?

13 **A** Yes, I am.

14 **Q** Do those devices or those containers ever
15 expire?

16 **A** The tubes themselves don't expire but they
17 are given expiration dates. Those expiration dates
18 are listed for the guarantee of the vacuum that the
19 tube was going to have. If you've ever had your blood
20 drawn, you are aware that when a nurse sticks a
21 needle in your vein, the blood just kind of sucks out
22 on its own. That's essentially what that expiration
23 date is for. It's for the guarantee of that vacuum.

24 **Q** Okay. Is there anything in the tube that
25 can contaminate the evidence after the expiration

1 date other than the fact that it may just not vacuum
2 out like it's supposed to?

3 **A** No. There's nothing in there. There's two
4 compounds in the gray top tube and they are used
5 specifically for preserving the sample.

6 **Q** And those preservative samples have any
7 impact on the testing whatsoever?

8 **A** None whatsoever. We can't even detect those
9 -- those two compounds on our general testing.

10 **Q** Are those gray top tubes and those
11 compounds in there approved by SLED procedures and
12 drug testing?

13 **A** Yes, they are.

14 **Q** And if a -- let's say hypothetically, if an
15 expired tube was used, is there anything that would
16 degrade or compromise the blood inside that tube?

17 **A** No, there's not. There's nothing in that
18 tube. That's why the preservatives are there is to
19 ensure the integrity of that sample.

20 **Q** As part of your training and experience, do
21 you have any knowledge or training as to the effects
22 of ethanol on the body?

23 **A** Yeah. Yes. That's actually the first thing
24 that we learned as we go through training.

25 **Q** All right. As briefly as you can, what are

1 the effects of ethanol on the body?

2 **A** Ethanol is a central nervous system
3 depressant, meaning that as you ingest it, then it's
4 going to basically slow the body down, all the body
5 functions. It's going to depress all those functions.

6 **Q** Okay. And how does the body process
7 ethanol? Does it expel it over time? Does it stay
8 with the body for a long period of time? What can you
9 say on that?

10 **A** Yes, over time, the body tends -- the body
11 will get rid of any foreign substance that's
12 ingested. No matter how it's ingested, the body wants
13 to get rid of that. So over time, especially with
14 ethanol, there is an elimination process. That
15 happens until all the ethanol has been eliminated
16 from the body.

17 **Q** Is that process hours or a process of days
18 or how long does that typically take?

19 **A** It depends on the amount of ethanol that
20 was ingested. There's an average elimination rate
21 that we, in the toxicology field, pretty much adhere
22 to. So given the amount of alcohol, it could take an
23 hour; it could take several hours to get rid of any
24 given amount of ethanol.

25 **Q** All right. Just again, hypothetically, say

1 a sample is withdrawn from someone, say, three hours
2 after their last consumption of ethanol, is it -- do
3 you have an opinion as to whether that test would
4 yield the same as it was three hours before, lower or
5 higher than it was three hours ago?

6 A Most likely, three hours after the last
7 drink was ingested that level would be lower.

8 Q Do ingesting other substances or being
9 injected with other substances have an effect on the
10 alcohol concentration of the body? I'm specifically
11 referring to intravenous fluids like the type of in a
12 medical setting.

13 A The only effect that that could potentially
14 have would be to actually dilute the ethanol that's
15 in the blood. So say you've got a certain level, a
16 certain true level at some time that you are admitted
17 and then other medications or other transfusions
18 actually take place, that can actually dilute the
19 amount of the ethanol that's actually there.

20 Q And of the amount of ethanol concluded in
21 your test, a .122, what is the significance of that
22 particular quantity of ethanol?

23 A The State of South Carolina has deemed that
24 an ethanol concentration of 0.08 percent by volume is
25 technically illegal. You are deemed to be illegal --

1 illegally containing that amount of ethanol in your
2 blood to operate a --

3 **MR. DEJONG:** Your Honor, I'm going to
4 object to this just a little bit here.

5 **THE COURT:** Yes, sir.

6 **MR. DEJONG:** He's testifying as to the
7 law, number 1. Number 2, I think what he is
8 testifying to could certainly lead the jury
9 astray at this point in time. You are the giver
10 of the law. I think he is now becoming the giver
11 of the law and I would object to that, Your
12 Honor.

13 **THE COURT:** I'm going to sustain that
14 objection unless you've got any response to
15 that.

16 **MR. CLEVELAND:** It's okay, Your Honor.

17 **THE COURT:** All right.

18 **MR. CLEVELAND:** I will rely on your charge.
19 Thank you.

20 **THE COURT:** Sustained.

21 **MR. CLEVELAND:** At this time, Your Honor,
22 the State would seek to move State's Exhibit
23 Number 45, the toxicology report of Tracy
24 McKinnon into evidence.

25 **MR. DEJONG:** Without objection,

1 Your Honor.

2 **THE COURT:** Then it's so admitted as --
3 I'm sorry. State's what?

4 **MR. CLEVELAND:** Number 45, Your Honor.

5 **THE COURT:** State's 45.

6 (WHEREUPON, State's Exhibit 45 is admitted into
7 the record.)

8 **BY MR. CLEVELAND:**

9 Q And last question, Mr. McKinnon. There is a
10 plus or minus 0.01 underneath the reported ethanol
11 that's .122. What does that mean?

12 A That is our -- our error reporting that
13 we've instituted in the last couple of years. With
14 any measurement that you take, there's going to be
15 some uncertainty to that value given the sampling
16 issues, instrumental restraints, constraints. So we
17 have instituted essentially a measurement of
18 uncertainty in our ethanol reporting to reflect that,
19 that value that is reported is valid plus or minus a
20 very small percentage of the actual value.

21 Q So correct me if my math is wrong. That's
22 essentially stating you reported it as .122, but it
23 could be as high as .132 or as low as .112?

24 A It's plus or minus .01 --

25 Q .01.

1 **A** Yes, that is correct.

2 **Q** I don't have any further questions. Please
3 answer any questions Mr. DeJong has.

4 **MR. DEJONG:** Thank you, Your Honor. May it
5 please the Court.

6 **THE COURT:** Yes.

7 **CROSS-EXAMINATION**

8 **BY MR. DEJONG:**

9 **Q** So when a case comes to you, Mr. McKinnon,
10 you know what kind of case you are looking at before
11 you ever look at it?

12 **A** Yes, sir. That is correct.

13 **Q** All right. And so I am clear -- and I
14 believe you've testified, but just so we're clear,
15 State Law Enforcement Division, SLED, is an arm of
16 law enforcement in the state of South Carolina?

17 **A** It is a law enforcement division. Yes, you
18 are correct.

19 **Q** Right. And you work for law enforcement?

20 **A** I do work for law enforcement, yes.

21 **Q** Okay. Now, in this case, what kind of blood
22 did you actually test?

23 **A** Meaning where in the body it came from?

24 **Q** Whole blood serum, plasma, what did you
25 test?

1 **A** If I could look at my notes -- if I can
2 refer to my notes, I can tell you exactly.

3 (Reviewing.)

4 Whole blood would have been analyzed here,
5 sir.

6 **Q** Now, some of your testimony, it would
7 appear to me that you were speaking in generalities.
8 I believe Mr. Cleveland asked you if medication had
9 been put in the body, would that show up. Your
10 response was, a really good chance it would show up;
11 is that correct?

12 **A** Yes, that is correct.

13 **Q** But you can't say for sure that it would
14 have shown up?

15 **A** Not for sure, no.

16 **Q** No. So that becomes a possibility for
17 error, if you would, in the testing, right?

18 **A** Correct. Depending on -- yeah, depending on
19 the amount of drug that was actually given and if it
20 was below our detection limits.

21 **Q** All right. When asked how the blood arrived
22 to you, if I understood correctly, your response was
23 most likely in a tube. That indicates to me you don't
24 recall?

25 **A** I don't have that information with me.

1 Q So again, that's a basic generality that
2 you're talking.

3 A Yes.

4 Q Now, blood, does that need to be
5 refrigerated?

6 A Yes, it does.

7 Q Does it need to be refrigerated at a
8 particular temperature?

9 A It's recommended that it is, yes.

10 Q All right. So that -- what the blood --
11 well, let's back up here. When did you actually get
12 the blood?

13 A Meaning, when I actually took custody of
14 the blood or when it was brought into the department?

15 Q Are those two different times? You took
16 custody of it one time and tested it a later time? Is
17 that what you're saying?

18 A Yes, the sample actually came into our
19 department, according to my chain of custody,
20 February 3rd of 2015. I actually took custody of that
21 sample February 11th of 2015.

22 Q So it came into your department when?

23 A February 3rd.

24 Q So it came into your department -- the
25 blood was allegedly drawn on January the 30th. It

1 came into your department five -- four or five days
2 later?

3 A Yes, that sounds correct. Yes.

4 Q And then you didn't test the blood until
5 another eight days later?

6 A I didn't personally conduct the test for
7 the volatiles analysis. There were other analysts
8 that actually did those analyses.

9 Q Before you did your test?

10 A Yes, sir.

11 Q So then if I understand you correctly --
12 well, I'm not sure what this volatile test is. What
13 is the volatile test? What does it test for?

14 A The volatile test is when we look for
15 ethanol.

16 Q Okay. You didn't do that test?

17 A No, sir. I did not.

18 Q Who did that test?

19 A That test would have been conducted by
20 Stacy Matthew who is another toxicologist in the lab.

21 Q I'm sorry. Maybe I'm being dense here. So
22 the result of 0.122, ethanol, right?

23 A Yes, sir.

24 Q That's what your report shows?

25 A Yes, sir. That's correct.

1 Q That was not a test that was done by you?

2 A That is correct. In our laboratory, because
3 of efficiency issues, we batch out our samples,
4 whereas each analyst in the lab actually has
5 responsibility for certain analyses. In this case,
6 blood volatiles analyses is not one of my -- my
7 responsibilities in the lab on any given daily basis.

8 Q So you signed the report showing 0.122 plus
9 or minus?

10 A Yes.

11 Q But you did not do the test?

12 A That's correct. As the analyst who was
13 assigned this particular case, it's my responsibility
14 to actually take all the data that has been run for
15 whatever test has been run, review the quality
16 control that is associated with each analysis and
17 then put everything together and issue the final
18 report.

19 Q So do you stand over that other person's
20 shoulder while they are doing the test?

21 A No, sir. But there are very rigorous
22 operating procedures that we must adhere to.

23 Q But not standing over that person's
24 shoulder, you can't say whether that was followed or
25 not, can you? It would be assumed that these

1 procedures are followed?

2 **A** Yes, sir. And any discrepancies would be
3 essentially notated in the quality control packs that
4 are actually issued for further review.

5 **Q** That is exactly what you said. That is an
6 assumption.

7 **A** It is an assumption, yes.

8 **Q** Which we can not necessarily call a fact.
9 Correct?

10 **A** That is correct. However, every analyst
11 that performs these analyses has had the exact same
12 training that I have had. So we've all been trained
13 to do every test the exact same way each time.

14 **Q** All right. So let's leave that for the
15 moment. Now, what did you actually test for?

16 **A** I would have performed the comprehensive
17 analysis in this case.

18 **Q** Looking for drugs?

19 **A** Looking for all the drugs. Yes, sir.

20 **Q** All right. And that's in your report.

21 Amphetamine, negative. I'm going to hand you State's
22 Exhibit here and we'll go off of that. I'll hand you
23 what's been marked as State's Exhibit 45. Is that ---

24 **A** Thank you.

25 **Q** --- a copy of the report you signed?

- 1 **A** Yes, sir. It is.
- 2 **Q** All right. Ampethamine, negative?
- 3 **A** Correct.
- 4 **Q** Benzodiazepines, negative?
- 5 **A** Correct.
- 6 **Q** The next one, I can't pronounce, but it's
- 7 negative?
- 8 **A** Carisopradol, correct.
- 9 **Q** Okay. Cocaine metabolites, negative?
- 10 **A** Correct.
- 11 **Q** Methadone, negative?
- 12 **A** Correct.
- 13 **Q** Methamphetamine, negative?
- 14 **A** Correct.
- 15 **Q** Opiates, negative?
- 16 **A** Correct.
- 17 **Q** Oxycodone, negative?
- 18 **A** Correct.
- 19 **Q** The next one, I can't pronounce.
- 20 **A** Tramadol. Pain reliever.
- 21 **Q** Negative?
- 22 **A** Correct.
- 23 **Q** And the next one, I can't pronounce either.
- 24 **A** Zolpidem. Ambien is the trade name.
- 25 **Q** Okay. Sleeping medication ---

1 **A** Yes.

2 **Q** --- is what we're talking about?

3 **A** Yes.

4 **Q** It was negative?

5 **A** Correct.

6 **Q** And so was marijuana?

7 **A** Yes, sir. Correct.

8 **Q** THC. So what you can say, as a fact, was
9 there were no drugs in his system?

10 **A** Unless that drug is a drug that requires
11 specific attention, then it would have been outside
12 the scope of our testing. I detected no other
13 compounds besides the ethanol.

14 **Q** This is what you basically test for which
15 are drugs that can be purchased at the street level.
16 Illegal drugs, right?

17 **A** Illegal, prescription, over-the-counter
18 medications, yes.

19 **Q** Right. Okay. Now, the blood came to SLED
20 three or four days after it was drawn, correct?

21 **A** Uh --

22 **Q** Looking at your --

23 **A** I don't have any record in front of me of
24 when the sample was actually drawn.

25 **Q** So it came to you department, when? On the

1 third?

2 **A** Yes, sir. That is correct.

3 **Q** And do you know what condition that blood
4 had been kept in? Well, let's back up. Do you know
5 where the blood came from?

6 **A** Once again, meaning what part of the body?

7 **Q** No, no, no, no. What geographic location it
8 was generated in, where it came from?

9 **A** I would assume in this general area. I'm
10 not exactly sure.

11 **Q** Well, the whole point of that is you don't
12 know what condition that blood was kept in until it
13 came to SLED, do you?

14 **A** Correct. I'm not -- I'm really not
15 concerned with what the condition of it was before it
16 got here.

17 **Q** His confidence level --

18 **MR. DEJONG:** Your Honor, I apologize. If I
19 can I have one moment, I just had a hearing aid
20 battery go out. It will just take me a second.

21 **THE COURT:** That's certainly fine. I think
22 we're having some technical issues anyway. Give
23 us just a moment.

24 **(WHEREUPON, there is a pause.)**

25 **MR. DEJONG:** Thank you so much.

1 **THE COURT:** Thank you. It gave us a moment
2 to work on our static issue. Is that better?
3 Okay. Good. All right.

4 **MR. DEJONG:** Thank you, Your Honor.

5 **BY MR. DEJONG:**

6 **Q** So this confidence level, who determines
7 that confidence level?

8 **A** It's a scientifically determined level
9 that's determined -- that we, over the course of
10 several months worth of work, determined within our
11 laboratory.

12 **Q** It that computer-generated?

13 **A** Essentially, yes, it is.

14 **Q** Pardon me?

15 **A** Essentially, yes, it is.

16 **Q** It's what?

17 **A** Essentially, yes, it is computer-generated.

18 **Q** Okay. So the results of the ethanol test,
19 is that computer-generated?

20 **A** Yes.

21 **Q** Okay. So in one sense, there's nothing
22 really scientific about it?

23 **A** I beg to differ, sir.

24 **Q** Pardon me?

25 **A** I beg to differ.

1 Q All right.

2 A It's a very scientific determination.

3 Q But done by a computer?

4 A Done by a computer based on scientific
5 principles.

6 Q Well, the confidence level, is that the
7 confidence level of the operator or the computer or
8 both or neither one?

9 A The confidence level is the uncertainty
10 level, as I said before. That goes into essential
11 uncertainty of -- as I said before, the sampling of
12 the sample, the instrument variability, constraints,
13 restraints. So there are a lot of factors that
14 actually go into determining that confidence level.

15 Q Many, many variables.

16 A Yes, and to have such a small confidence --
17 actually great confidence but small variability is
18 very telling of the quality in the lab.

19 Q But again, we're dealing with --

20 A Instruments.

21 Q Okay. Instruments. Okay. They still are
22 fallible, right?

23 A Yes. But that is heavily reliant on the
24 human input. Machine -- machines, such as computers,
25 are only going to spit out what they are told to spit

1 out. I think we all would agree on that.

2 Q Garbage in, garbage out?

3 A That's exactly right.

4 Q But sometimes you get good stuff in and you
5 still get garbage out, don't you? Computer glitches?

6 A Sure, yes.

7 Q All right. Thank you, Mr. McKinnon.

8 THE COURT: Redirect?

9 MR. CLEVELAND: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. CLEVELAND:

12 Q Mr. McKinnon, you were asked if you
13 actually did that test. You said it was another
14 toxicologist that did it. What exactly is involved in
15 doing the volatiles test? What's the physical -- what
16 does the human have to do?

17 A Step by step, the toxicologist who would be
18 responsible for actually performing this test would
19 actually get one bag of evidence. In this case, it
20 would take this particular case sample, cut into that
21 bag indicating that they actually were aliquoting the
22 sample at that time. They would then aliquot this
23 sample, re-adhere or would fix any tops or whatever
24 that were on the tube and then actually analyze the
25 sample.

1 Q When you say analyze the sample, is it an
2 instrument that analyzes the sample?

3 A Yes, it is.

4 Q And does that instrument test samples one
5 at a time or does it test a whole batch of samples?

6 A It tests a whole batch of samples.

7 Q And involved with that batch of samples,
8 are there control samples or known samples put in the
9 mix?

10 A Yes, sir. There are control samples and
11 quality samples that are run every 10 samples, as a
12 matter of fact, in our lab for volatiles.

13 Q So if there is a computer glitch or an
14 instrument error, in that case, you know what's going
15 in so there's an indication that there's an error
16 when the sample comes -- control comes out?

17 A That's exactly right. And to add onto that,
18 our samples are run in replicate. So after this was
19 run the first time and the data analyzed and make
20 sure all the quality control is sufficient, it would
21 actually be re-analyzed by the same process and the
22 numbers would actually have to agree within the
23 certain percentage for that number to be considered
24 valid.

25 Q All right. And in part of your review in

1 the forensic toxicology of this sample, did both of
2 those samples, for lack of a better term, come out
3 the same?

4 **A** Yes, they did.

5 **Q** And did the control samples or the known
6 samples, on each of those tests run, did they all
7 come out as perfect as well?

8 **A** All controls were within the acceptable
9 range for a quality run in our laboratory.

10 **Q** Based upon your review of the data, is
11 there any indication that there was any type of
12 glitch or error?

13 **A** Not only based on my review, but based on
14 the analyst who put the quality control pack
15 together, as well as the quality control analyst in
16 the lab and the supervisor in the lab, there were no
17 glitches that were detected for either of the runs
18 for which this value would have been recorded.

19 **Q** When you load up on these batches, is there
20 a way to make the computer or make the instrument lie
21 or report incorrectly?

22 **A** Not that I'm aware of, no, sir.

23 **Q** And is the -- is this process that you
24 followed or that was followed, is that a commonly
25 accepted process in the field of forensic toxicology?

1 **A** Yes, it is.

2 **Q** Is there any protocol in place for the
3 actual testing technician -- the person who ran the
4 batch through the instrument, if something looks
5 amiss, what do they do in that case?

6 **A** If something -- if a control sample doesn't
7 pass or they see any type of contamination or
8 anything just per our training or experience just
9 doesn't look right for lack of a better term, then
10 the analysis would be redone. Then that would have
11 been brought up to our quality control analyst also
12 to let him in on the fact that there's something
13 either instrument-wise or control-wise or sample-wise
14 that we need to look into further.

15 **Q** Were there any indications that there was
16 any quality control problems?

17 **A** As far as -- as far as I'm aware, there
18 were not. No.

19 **Q** Based on your review of the entire
20 toxicology process that went into this, did you feel
21 comfortable assigning your signature to that report
22 as a result?

23 **A** Yes, sir. I did.

24 **Q** In your expert opinions, based on your
25 training and the protocols in place in SLED, is that

1 an accurate report?

2 **A** Yes, it is.

3 **Q** Thank you. I don't have any other
4 questions.

5 **THE COURT:** Mr. DeJong?

6 **MR. DEJONG:** Thank you, Your Honor. May it
7 please the Court.

8 **RECROSS EXAMINATION**

9 **BY MR. DEJONG:**

10 **Q** Protocols are kind of like rules, right?

11 **A** Yes. Protocols are rules.

12 **Q** Meant to be broken.

13 **MR. CLEVELAND:** Objection, Your Honor.

14 **MR. DEJONG:** Withdrawn.

15 **THE COURT:** Sustained.

16 **MR. DEJONG:** That's all.

17 **THE COURT:** All right. Anything else for
18 this witness?

19 **MR. CLEVELAND:** Nothing for this witness,
20 Your Honor.

21 **THE COURT:** All right. Sir, you may step
22 down.

23 **THE WITNESS:** Thank you.

24 **MR. DEJONG:** No objection to him being
25 excused.

1 **THE COURT:** All right. Do y'all want this
2 witness to be --

3 **MR. CLEVELAND:** If this witness can be
4 excused, that would be great.

5 **THE COURT:** All right. Thank you for being
6 here.

7 **MR. CLEVELAND:** At this time, Your Honor,
8 the State would call Dr. James Fulcher to the
9 stand.

10 **THE COURT:** Okay.

11 **JAMES FULCHER**

12 having first been duly sworn, testifies as follows:

13 **THE CLERK:** Thank you, sir. If you would,
14 have a seat and state your name for the record
15 please.

16 **THE WITNESS:** Dr. James William Fulcher.

17 **DIRECT EXAMINATION**

18 **BY MR. CLEVELAND:**

19 **Q** Thank you, Dr. Fulcher. What is your
20 current job title?

21 **A** I'm the Medical Examiner for Greenville,
22 Pickens, and Laurens County. I do autopsies.

23 **Q** All right. Tell us a little bit about your
24 educational background and training that qualifies
25 you for that position.

1 **A** I'm from Virginia, so I went to college at
2 the University of Virginia, medical school at the
3 Medical College of Virginia. I did a residency in
4 anatomic and clinical pathology at the Medical
5 College of Virginia in Richmond, Virginia, and I did
6 my forensics fellowship with the Chief Medical
7 Examiners office in Virginia, in Richmond, Virginia.

8 **Q** And how long have you worked as a medical
9 examiner in Greenville and Pickens counties?

10 **A** Eight and a half years.

11 **Q** And how many -- if you had to estimate, how
12 many autopsies have you completed during that tenure?

13 **A** Approximately 2000.

14 **Q** Have you ever testified as an expert in the
15 courts of South Carolina?

16 **A** Approximately 35 times.

17 **Q** In what field did you testify as an expert?

18 **A** Forensic pathology.

19 **MR. CLEVELAND:** Your Honor, at this time,
20 the State would like to offer Dr. James Fulcher
21 as an expert in the field of forensic pathology.

22 **MR. DEJONG:** No voir dire, Your Honor.

23 **THE COURT:** Okay. Then Ladies and
24 Gentlemen, I have already explained an expert
25 witness --

1 I'm sorry. Tell me again the area that you
2 want to --

3 **MR. CLEVELAND:** Forensic pathology, yes,
4 Your Honor.

5 **THE COURT:** That's what I thought.

6 Ladies and Gentlemen, I've already
7 explained an expert witness to you and that an
8 expert witness is able to give their opinions
9 and the facts upon which those opinions are
10 based or their reasoning upon which it was
11 based. This expert is qualified in the area to
12 give his opinion in forensic pathology. You can
13 use that information in any way you see fit.

14 **MR. CLEVELAND:** Thank you, Your Honor.

15 **BY MR. CLEVELAND:**

16 **Q** Dr. Fulcher, did you conduct an autopsy of
17 a young lady by the name of Alanah Elizabeth
18 Holcombe?

19 **A** I conducted an external examination of that
20 decedent's body, yes, sir.

21 **Q** And under the circumstances, was an
22 external examination all you needed to do to render
23 an opinion as to her cause of death in this manner?

24 **A** Yes, our protocol is if the decedent has
25 obvious trauma, we do not do a full autopsy. We just

1 document injuries on the external portions of the
2 body.

3 Q Initially, could you describe Ms. Holcombe
4 for the jury please.

5 A Sure.

6 Q Her size, her height and weight.

7 A She is a 23-year-old Caucasian female that
8 weighs 270 pounds and is 65 inches in length. That
9 would be 5 foot 5. She appears to be 23. Did I say
10 23? 23 years of age. Not 32, 23. 23 years of age.

11 Q All right. And describe for the jury just
12 what you do in an external examination, briefly.

13 A Sure. External examination is photography
14 and examination of the body documenting all external
15 trauma, particularly focusing on trauma that might
16 have killed the person. In this case, trauma was
17 found both at the neck -- actually, the head and
18 torso and pelvis that fully explained demise.
19 Therefore, we did not do an autopsy.

20 Q All right. Going through your findings,
21 describe her injuries and what the -- I guess, the
22 findings you made based on them.

23 A Sure. On the report, diagnosis number 1
24 dictates blunt force trauma to the torso. There are
25 two main findings here that are of interest to you.

1 Number 1 is -- and I will stand. When I palpate a
2 decedent's pelvis for pubic synthesis -- you can feel
3 it on yourself, the split apart. She has a book
4 fracture, we call it. And it is exactly that, a book,
5 as if the pages are open. Large split here at the
6 bone with bilateral sacroiliac joints, which are the
7 joints between the ilia, the large bones of your
8 pelvis and the sacra. So we have fractures both
9 anteriorly and posterior. When that happens, those
10 bony protuberances push through and lacerate the
11 large vessels going to your legs.

12 The other thing I did in this case was take
13 a needle, a fairly large needle and put it just
14 slightly into the chest between approximately the
15 eighth and ninth ribs posteriorly just a little bit
16 in the ribs. In you and I, there would be nothing but
17 air there. With her, large quantities of blood came
18 out. That blood is indicative in these cases of
19 trauma, of severe trauma to the aorta and the heart.

20 Oftentimes, what we have is the heart
21 hanging like a pendulum from the great vessels. As
22 the impact occurs, the heart transiently swings
23 forward lacerating the aorta, which is a large vessel
24 in your chest that feeds blood to the rest of the
25 body, about the size of a garden hose. You can

1 imagine how significantly that bleeds. It comes
2 directly off of the heart. Those were the findings in
3 the torso.

4 **Q** All right. And in the torso, would each one
5 of those findings result in the death of an
6 individual?

7 **A** Absolutely.

8 **Q** And are those injuries consistent with the
9 type of injuries that occur in a motor vehicle
10 accident?

11 **A** Yes, these are probably our number 1 and 2
12 causes of death in automobile accidents, which is why
13 wearing seatbelts is so important.

14 **Q** What other anatomical diagnoses did you
15 make?

16 **A** The other thing we noticed is there was
17 blood protruding from her ears. Generally speaking in
18 these cases, that is from a basilar skull fracture or
19 a fracture of the bony skull, and blood is leaking
20 from the inside out. That implies a brain trauma as
21 well.

22 **Q** Describe the external injuries that you
23 noted.

24 **A** The body shows a large avulsion pocket.
25 Well, not large. One by two inch avulsion pocket on

1 the right forehead. Basically, you could take your
2 fingers and put it between the scalp and the skull.
3 There was a large pocket there obviously filled with
4 blood. By palpation, the blood of the cranium is
5 intact. I believe the fracture in this case was
6 probably in the base of the skull, meaning the part
7 of the skull you can't feel that sits below the
8 brain.

9 She did have a midline fracture of the
10 maxilla, which is the top portion of the mouth. So
11 there is a fracture of the maxilla going upwards.
12 That also speaks to the presence of a basilar skull
13 fracture.

14 Upper extremities, there are abrasions on
15 the elbows. Lower extremities, the left leg is two
16 inches shorter. In fact, there is a femoral neck
17 fracture by palpations. You can take her left leg and
18 kind of spend it around, the big bone at the top was
19 fractured.

20 Torso and abdomen, we have an abrasion on
21 the right hip and, of course, the fractures in the
22 hemothoraces, which is the blood in the chest I
23 mentioned previously. Outside of that, those are all
24 the injuries.

25 Q All right. Just to review. On the right

1 side of her head, there was a two by one inch
2 significant injury?

3 **A** An avulsion pocket, which means the scalp
4 is removed from the skull.

5 **Q** All right. Elbows. You said there was
6 essentially scrapes and cuts on her elbow. Is that
7 her right elbow or left elbow?

8 **A** Bilateral. Both.

9 **Q** And on her right hip, you testified there
10 was --

11 **A** Yeah, there was an abrasion on the right
12 hip, the lateral aspect of that. The actual bone
13 underlying that does not appear to be fractured. The
14 fracture is more medial at that sacroiliac joint,
15 that midline area where your spine comes into your
16 pelvis. It's split into multiple pieces.

17 **Q** All right. Any of these injuries abnormal
18 or not consistent with what you typically see?

19 **A** They are all actually very common.

20 **Q** So in your professional opinion, what was
21 the cause of death in her case?

22 **A** In this case, I favor the needle stick just
23 because of the quantity of blood and book fracture.
24 So you can combine the two and say that blunt force
25 trauma of the torso, which, to me, would imply both

1 the pelvic book fracture has some culpability as does
2 the presumed severe thoracic trauma and internal
3 bleeding there.

4 Q Would any degree of medical intervention
5 even done immediately been able to save
6 Ms. Holcombe's life after these injuries?

7 A Unfortunately not. The aortic transection
8 results in nearly all of your blood being pumped out
9 within seconds.

10 Q Thank you, Dr. Fulcher. Please answer any
11 questions Mr. DeJong may have.

12 THE COURT: Mr. DeJong?

13 MR. DEJONG: Thank you. May it please the
14 Court.

15 CROSS-EXAMINATION

16 BY MR. DEJONG:

17 Q I'm obviously not a doctor. I see in one
18 place in the report where you talk about blunt force
19 trauma of the head.

20 A Yes.

21 Q And I think that's under Roman Numeral two.

22 A That's correct, sir.

23 Q You talk about scant blood. Is that the
24 amount of blood or --

25 A It is. It's a small amount. A small amount.

1 Q I'm sorry, sir. I didn't mean to interrupt
2 you.

3 A That's okay.

4 Q Then we come to head and neck.

5 A Uh-huh.

6 Q And you say there was prominent blood.

7 A There is. That's basically a misprint. I
8 have to look at my pictures. I'm not sure it was.
9 There's definitely some discrepancy there. Scant and
10 prominent shouldn't appear at the same place there.
11 So those two places, they are -- I guess you have to
12 argue the definition of that. What I would say is
13 there is blood in the ear canal. I can not be clear
14 as to how much there is based on my description here.

15 Q Okay. But basically, what we're saying --
16 did you do the report?

17 A Absolutely.

18 Q So basically, that was an error, right?

19 A Yes, that's correct, sir.

20 Q Blunt force trauma to the torso?

21 A Yes, sir.

22 Q Blunt force trauma. That would indicate
23 hitting something with force? Would you agree with
24 that?

25 A Yes, sir.

1 Q Okay. And the -- to sustain these injuries,
2 would you say there had to be movement?

3 A Generally speaking.

4 Q Am I making myself clear?

5 A Yeah. Sure. Velocity, movement,
6 absolutely. All those things could cause these
7 injuries.

8 Q Okay. When I'm speaking of movement, I'm
9 speaking of movement within the vehicle.

10 A Oh, sure. There certainly can be movement
11 in the vehicle.

12 Q Okay. And as far as, shall we say, how the
13 accident happened or who was responsible for the
14 action, you have no knowledge?

15 A I have no knowledge nor opinion of that.

16 Q All right. Thank you so much.

17 A You're very welcome, sir. Thank you.

18 THE COURT: Any follow-up?

19 MR. CLEVELAND: No follow-up, Your Honor.

20 THE COURT: Thank you.

21 THE WITNESS: Thank you. I appreciate it.

22 MR. DEJONG: No objection to him being
23 excused, Your Honor ---

24 THE COURT: Thank you, Doctor.

25 MR. DEJONG: --- if he wishes to be

1 excused.

2 **THE WITNESS:** Thank you very much. I
3 appreciate it. Thank you, sir.

4 **THE COURT:** Anybody need a break? Don't be
5 shy. If you need a break, let me know.

6 **MR. CLEVELAND:** The State, at this time,
7 would call Catherine Leisy to the stand.

8 **CATHERINE LEISY**
9 having first been duly sworn, testifies as follows:

10 **THE CLERK:** If you would, have a seat and
11 state your name for the record please.

12 **THE WITNESS:** Catherine Leisy, L-E-I-S-Y.

13 **DIRECT EXAMINATION**

14 **BY MR. CLEVELAND:**

15 **Q** Thank you, Ms. Leisy. Who do you work with?

16 **A** I work for the South Carolina Law
17 Enforcement Division, more commonly referred to as
18 SLED.

19 **Q** And what is your job title at SLED?

20 **A** I am a forensic scientist assigned to the
21 DNA and Serology Unit.

22 **Q** DNA and Serology. What is your basic job
23 description as far as inside that unit?

24 **A** Essentially, my responsibility is to
25 process forensic cases, generate reports based on the

1 results and conclusions drawn and testify to those
2 results, if necessary. I'm also partly responsible
3 for quality control duties within the laboratory and
4 I assist in the training of newly hired analysts.

5 Q And what is your educational background and
6 your training that equipped you to do this job with
7 SLED?

8 A I have a bachelor of science degree in
9 genetic engineering from Cedar Crest College in
10 Allentown, Pennsylvania. I've worked at SLED for
11 approximately 11 years and I was trained in-house by
12 other court-qualified analysts in all the different
13 types of tests and analyses that we perform. I also
14 spent approximately four years working as a forensic
15 DNA analyst at a private testing facility known as
16 (Indiscernible) which was located in Maryland. I ran
17 the same types of tests and analyses there that I do
18 at SLED.

19 Q All right.

20 MR. DEJONG: Excuse me, Your Honor. Can we
21 get her just a little closer to the microphone?

22 THE COURT: If you don't mind.

23 THE WITNESS: Sorry.

24 BY MR. CLEVELAND:

25 Q Ms. Leisy, do you test blood, bodily

1 fluids, skin, I guess, evidence or the transfer of
2 those items onto evidence for DNA identification?

3 **A** We do. Typically, what we're looking for
4 would be blood, semen or saliva. We also perform what
5 we refer to as touch DNA testing, which would
6 indicate transfer of skin cells and DNA from an
7 individual's skin through contact to an object or to
8 another individual.

9 **Q** All right. And do you have specific
10 training regarding touch DNA and the analysis
11 thereof?

12 **A** There's no specific training to it. It's
13 just part of the normal process and testing that we
14 perform. Touch DNA refers more to the type of
15 material that we're looking for and not necessarily
16 how we handle it or process it.

17 **Q** Very good. Have you ever testified as an
18 expert in the courts of South Carolina?

19 **A** I have on over 50 occasions.

20 **MR. CLEVELAND:** At this time, Your Honor, I
21 would like to offer Ms. Catherine Leisy as an
22 expert in the field of forensic DNA
23 identification testing.

24 **MR. DEJONG:** No voir dire, Your Honor.

25 **THE COURT:** Ladies and Gentlemen, I've

1 explained to you previously, of course, about an
2 expert witness. This witness is going to be
3 qualified and is qualified by the Court to give
4 her opinion in the area of forensic DNA
5 identification and testing and her reasons for
6 forming that opinion. You may use that opinion
7 in any way you see fit.

8 Yes, sir.

9 MR. CLEVELAND: Thank you, Your Honor.

10 BY MR. CLEVELAND:

11 Q Now, Ms. Leisy, what -- specific to this
12 case, which I believe assigned Lab Number L-151480,
13 what items were submitted to SLED for DNA testing?

14 A There were two airbags submitted. One was
15 identified as a passenger side airbag and one
16 identified as a driver's side airbag. There were also
17 two sets of swabs submitted to be used as known
18 standards for individuals. One set was identified as
19 belonging to Alanah Holcombe. The other set belonging
20 to a Timothy Hester.

21 Q All right. Initially, what was the first
22 level of processing that the airbags or swabs went
23 through?

24 A The airbags went through our evidence
25 processing department. There, an analyst ran --

1 excuse me -- technician ran preliminary tests for
2 blood. Those tests were negative. She then proceeded
3 to take a scraping of the airbags to try and collect
4 any cells that may be present. In doing that, what we
5 use is a sterile plastic spatula. We scrape the
6 airbag in an attempt to collect any cells that may be
7 present. Then we swab that scraper to collect those
8 cells. That swab was transferred on to me for DNA
9 testing. I attempted to develop profiles from those
10 swabs. I then developed profiles from the sets of the
11 known individuals that were sent.

12 **Q** All right. And when you say you developed a
13 profile, what exactly does that mean?

14 **A** It means that we test at 15 different
15 locations in our DNA. It's the overall collection of
16 results of those 15 locations that develop what we
17 call a DNA profile. If we're able to develop a DNA
18 profile from an item of evidence, we can compare that
19 profile to the profile of a known individual to try
20 and determine if that individual is the contributor
21 to the evidence we tested.

22 **Q** All right. In this particular case, were
23 you able to develop a profile of the known swabs?

24 **A** Yes, I was.

25 **Q** What about the swabs from the airbag

1 scrapings?

2 **A** The swabs that were sent to me from our
3 evidence processing department yielded partial DNA
4 profiles that I determined to be insufficient for
5 interpretation.

6 **Q** All right. So in layman's terms, does that
7 mean you aren't able to identify that DNA as even
8 Mr. Hester's or Ms. Holcombe's?

9 **A** That's correct. It essentially means
10 there's just not enough DNA present for me to feel
11 competent in making a formal comparison between those
12 partial profiles and any known individual.

13 **Q** Now, it's my understanding of your
14 testimony that there was no blood or bodily fluids
15 recovered from the airbags; is that correct?

16 **A** That's according to the documentation by
17 the evidence processing technician. That's correct.

18 **Q** So essentially, what was tested for on the
19 airbags was just what? What material was tested from
20 the airbags?

21 **A** You could be collecting skin cells that
22 could have been transferred in contact between the
23 airbag and an individual's skin. And it's possible
24 there could have been the levels of saliva or sweat.
25 But there was no bodily fluid identified. We were

1 basically just looking to see if there's anything
2 present on the bag that would develop a profile.

3 Q Understanding the source of those swabs or
4 those scrapings, is this an uncommon result in your
5 field that you weren't able to develop a profile?

6 A It's not uncommon. When we're testing for
7 touch DNA, we typically expect to see very low levels
8 of DNA present and to develop a partial insufficient
9 profile is not unusual.

10 Q Is it possible in the same vein for a
11 person to actually make contact with an object and
12 not transfer touch DNA to that object?

13 A If an individual's skin comes in direct
14 contact with that object, we would expect there to be
15 some level of transfer. The question just becomes is
16 there enough levels, is there enough transfer for us
17 to detect.

18 Q All right. And is there other -- talking
19 about airbags specifically, are there other
20 intervening factors that you are familiar with in
21 your field that could cause a lack of DNA being
22 transferred?

23 A There are. Again, the transfer would occur
24 either through bodily fluids being administered or
25 left on the item, as well as physical contact. So if

1 the individual were struck, say, in the chest, as
2 opposed to in the face, we would expect there to be
3 less transfer because there was less physical contact
4 between the skin and the item. It's also possible
5 that some chemicals that may be present on the airbag
6 can interfere with processing, which would limit,
7 potentially, our ability to develop a profile.

8 Q Just so I understand, you talked about
9 chemicals in the airbag. Could the chemicals that are
10 used in the airbag cause the skin or whatever to
11 degrade before it's able to be tested?

12 A It may degradation is caused or the
13 breakdown of DNA. With chemicals, we're usually more
14 concerned with are they interfering with the process
15 in the laboratory and is it interfering with our
16 ability to develop a profile. It could be either one.

17 Q So in your professional opinion, can you
18 say whether each of these airbags contacted
19 Ms. Holcombe or Mr. Hester at all?

20 A I can't tell based on the limited amount of
21 information that I was able to develop.

22 Q Okay. You can't even give a slight
23 indication as to which one -- which one of them
24 touched it or not, correct?

25 A That's correct. Again, it's just too

1 limited an amount of information to make a
2 comparison.

3 Q Thank you. I don't have any other
4 questions. Please answer any questions Mr. DeJong
5 has.

6 A Yes, sir.

7 MR. DEJONG: Thank you, Your Honor.

8 THE COURT: Mr. DeJong.

9 MR. DEJONG: May it please the Court?

10 CROSS-EXAMINATION

11 BY MR. DEJONG:

12 Q I never learned how to pronounce your name.

13 A Leisy, sir. Leisy.

14 Q Leisy?

15 A Yes, sir.

16 Q I'll forget it in 30 seconds. Ms. Leisy,
17 how -- well, you are part of the State Law
18 Enforcement Division, SLED, right?

19 A Correct.

20 Q So you are -- within the overall scheme of
21 things, you are law enforcement?

22 A Yes, sir.

23 Q Okay. And so basically, at this point in
24 your life, you do DNA testing for law enforcement?

25 A That's correct. I do testing on items

1 submitted by law enforcement agencies across the
2 state.

3 Q And how does -- well, in this case,
4 airbags, do you know where -- who delivered these
5 particular airbags?

6 A The airbags were submitted, I believe, by
7 the South Carolina Highway Patrol.

8 Q All right. Ma'am, do you know the date of
9 this alleged crash?

10 A According to the documentation I received,
11 it was January the 30th of 2015.

12 Q And when did the airbags come to your lab?

13 A I would have to check my chain of custody
14 for a specific date. I believe most of the items were
15 brought in October of 2016.

16 Q Okay. On your report, and maybe I didn't
17 ask the question quite correctly. On your report, it
18 would appear that you did the -- your analysis, if
19 you will, on November the 18th of 2016?

20 A That was the date that my report was
21 finalized and issued. Yes, sir.

22 Q Okay. So you would have done the analysis
23 right around there somewhere?

24 A It would have been early November of last
25 year.

1 **Q** Okay. Almost a year after the fact?

2 **A** Over a year, yes, sir.

3 **Q** And to your knowledge, these airbags
4 weren't laying around at SLED someplace, are they?

5 **A** No, again, they were submitted, I believe,
6 August of 2016.

7 **Q** Okay.

8 **A** So at that point, they would have been
9 maintained in our evidence control department until
10 such time they were ready for processing.

11 **Q** I'm sorry. I'm a little hard of hearing.
12 August of --

13 **A** I'm sorry. October of 2016. My apologies.

14 **Q** October of 2016?

15 **A** Yes, sir.

16 **Q** Okay. So in one sense, all of this analysis
17 that you did in this case was an exercise in
18 futility?

19 **MR. CLEVELAND:** Objection, Your Honor.

20 **THE COURT:** I'm sorry. The basis for your
21 objection?

22 **MR. CLEVELAND:** The basis for the objection
23 is he's essentially testifying. He's saying her
24 own analysis was futile.

25 **THE COURT:** All right. I'll allow her to

1 answer the question.

2 **BY MR. DEJONG:**

3 **Q** I'm not throwing brick bats at you, but
4 bottom line, there was nothing there.

5 **A** At the end of the result, again, I had no
6 information that was suitable for comparison. That's
7 correct.

8 **Q** So you can't say one airbag had Mr. Hester
9 or his known sample or Ms. Holcombe's, either way,
10 anywhere in the car?

11 **A** That's correct.

12 **Q** Thank you so much.

13 **A** Yes, sir.

14 **THE COURT:** Any follow-up?

15 **MR. DEJONG:** Ms. Leisy?

16 **THE COURT:** You got it. That's it.

17 **MR. DEJONG:** No objection to her being
18 excused.

19 **MR. CLEVELAND:** No redirect, Your Honor.

20 **MR. DEJONG:** Unless he has some redirect.
21 Sorry.

22 **THE COURT:** Okay. Thank you, ma'am, for
23 being here.

24 **MR. CLEVELAND:** Judge, may I approach?

25 **THE COURT:** Certainly.

1 **(WHEREUPON,** a bench conference is held off the
2 record.)

3 **THE COURT:** Ladies and Gentlemen, we've
4 come to a good point for our afternoon break. If
5 you would, step to your jury deliberation room
6 for about 10 minutes. We'll bring you back in
7 here shortly.

8 **(WHEREUPON,** the jury exits at approximately
9 3:23 p.m.)

10 **THE COURT:** Anything we need to take up
11 before breaking?

12 **MR. CLEVELAND:** Nothing from the State,
13 Your Honor.

14 **MR. DEJONG:** Nothing from the defense,
15 Your Honor.

16 **THE COURT:** All right then. We'll be in
17 recess for 10 minutes.

18 **MR. DEJONG:** Thank you, Your Honor.

19 **(WHEREUPON,** the Court goes off the record at
20 approximately 3:24 p.m.)

21 **(WHEREUPON,** the Court goes on the record at
22 approximately 3:46 p.m.)

23 **THE COURT:** All right. Y'all ready to
24 bring the jury back in?

25 **MR. DEJONG:** Ready for the defense,

1 Your Honor.

2 MR. CLEVELAND: The State's ready,
3 Your Honor.

4 THE COURT: All right.

5 (WHEREUPON, the jury enters at approximately
6 3:50 p.m.)

7 THE COURT: All right, Ladies and
8 Gentlemen. Thank you for bearing with us. We
9 needed to work on a scheduling matter. It had
10 nothing to do with these attorneys. All right.
11 We're ready to proceed?

12 MR. CLEVELAND: Yes, Your Honor. The
13 State's ready. We call John Craig to the stand.

14 JOHN CRAIG
15 having first been duly sworn, testifies as follows:

16 THE CLERK: Thank you. If you would, have
17 a seat and state your name for the record
18 please. That's not yours?

19 THE WITNESS: Yes, sir. It is.

20 THE CLERK: Okay.

21 THE WITNESS: My name's Jonathan Craig.

22 DIRECT EXAMINATION

23 BY MR. CLEVELAND:

24 Q Mr. Craig, what is your current assignment
25 within the South Carolina Highway Patrol?

1 **A** I'm assigned to the South Carolina Highway
2 Patrol MAIT Unit.

3 **Q** All right. And how long have you been with
4 the MAIT Unit?

5 **A** I went over on a temporary basis on
6 September the 21st of 2009 and was assigned
7 permanently to the MAIT Unit in February of 2010.

8 **Q** All right. Tell the jury please what MAIT
9 stands for and what the purpose of that unit is.

10 **A** MAIT stands for the Multi-disciplinary
11 Accident Investigation Team. And basically, what our
12 unit does is we -- my particular unit, we're divided
13 into four quadrants statewide. I'm on the Piedmont
14 Unit of the MAIT Unit. We cover 12 counties of the
15 Upstate. And our primary purpose is to investigate
16 and reconstruct fatal collisions and serious
17 collisions.

18 **Q** Very good. So on a day-to-day basis, are
19 you out patrolling highways and writing tickets and
20 those kind of things?

21 **A** No, sir.

22 **Q** Are y'all dispatched whenever there is a
23 serious collision or a matter that needs
24 investigating?

25 **A** Yes, sir.

1 **Q** What training and experience do you have,
2 or just succinctly some of the examples that
3 qualifies you being part of the MAIT team?

4 **A** Well, throughout the course of my career, I
5 had the same training that the other troopers
6 received. In my career, I've been in the Highway
7 Patrol almost 24 years. Once I was permanently
8 assigned over to MAIT, I began going through some
9 additional advanced training and collision
10 reconstruction, forensic mapping of scenes. I've had
11 over 1000 hours of additional advanced training.

12 **Q** Very good. Were you -- was the MAIT team
13 called out to the collision on Allgood Bridge Road,
14 Pickens County on or about January 30th, 2015?

15 **A** Yes, sir. We were.

16 **Q** All right. And were you part of the team
17 that was called out that night?

18 **A** Yes, sir.

19 **Q** All right. Describe about what time you got
20 out on the scene, who you were with and what y'all
21 did.

22 **A** When I arrived on the scene, I met with
23 Lance Corporal J.K. Duncan who was also part of our
24 MAIT Unit. He had arrived on the scene prior to me
25 arriving there. I met with him. A short time later,

1 Sergeant Duncan, who was a corporal at the time,
2 A.L. Duncan of the MAIT Unit, arrived on scene.

3 Q All right. And what was your first
4 involvement with -- your first actions in
5 investigating this crash?

6 A When I arrived on the scene, I made contact
7 with Lance Corporal Jared Duncan and he had advised
8 me what we were dealing with -- it was a single-
9 vehicle collision. There was a parked vehicle in the
10 driveway that we had been advised had been struck
11 during the collision also, but it was primarily just
12 one vehicle -- and basically just told me what he had
13 discovered from his conversations with some of the
14 primary investigating troopers that were up there on
15 the scene.

16 Q All right. What did you observe on the
17 scene just in your initial investigation?

18 A Well, there was a vehicle passenger-side
19 down, was on its side, in or around the area of a
20 utility building that it had struck. There was also a
21 fairly large tree that was there in the area of the
22 final rest of the vehicle. There were skid marks
23 leading up to -- I think it was Pairs Bridge Road,
24 the road that crosses there, the T-intersection where
25 the vehicle crossed over and entered the private

1 driveway leading down to where its final rest was at.

2 Q Is that -- do you mean Allgood Bridge Road?

3 I don't mean to correct you.

4 A The T-intersection there -- I think Allgood
5 Bridge there is the main road, but the skid marks
6 were coming up the other road that T-intersects with
7 it.

8 Q Okay. Let's talk about your -- the efforts
9 you made to investigate this site. What was the --
10 what was one of the first things you did on the
11 scene?

12 A The first thing I did after kind of just
13 walking through and surveying the scene, I then got
14 my video camera out. I went back in the area that I
15 believed the vehicle to be coming from. I always try
16 to start in that area. I'm going through the path as
17 the vehicle traveled through the collision scene. I
18 recorded the scene and evidence there that I could
19 locate with video documentation.

20 Q All right. About what time did you note
21 that you get on the scene and take that video?

22 A I'm not sure. I don't have the scene case
23 notes in front of me now to tell you what time that
24 video was taken.

25 Q Daytime, nighttime?

1 **A** Nighttime, yes, sir.

2 **Q** Was the vehicle -- and I guess it's going
3 to be evident in the video -- was the vehicle still
4 on its side as you described when you took the video?

5 **A** Yes, sir, it was, initially. Then, later
6 when the vehicle was laid over, you know, back onto
7 all four tires, I took some additional video at that
8 time so I can document all the way around the video.

9 **Q** Let me show you what I've marked as State's
10 Exhibit 44. Do you recognize this disk?

11 **A** Yes, sir.

12 **Q** And what does that disk contain?

13 **A** That disk contains video, the video that I
14 took that I was just referring to from that night
15 when I arrived on the scene. I think later in the
16 video, there was also some daytime video of the scene
17 that was recorded later by Lance Corporal
18 J.K. Duncan.

19 **Q** Is this video a true and accurate
20 representation of the video that you shot that night?

21 **A** Yes, sir. It is.

22 **Q** Does the video contain any sound?

23 **A** No, sir. It doesn't.

24 **Q** Is that because -- did you edit that out or
25 is that the way your camera works?

1 **A** No, I edited it out.

2 **Q** Other than the removal of the sound from
3 the video, has there been any other omissions,
4 deletions or altering of that tape?

5 **A** No, sir. The only thing that I did was
6 combine Lance Corporal J.K. Duncan's video with mine
7 so they would all be contained within that one video.

8 **MR. CLEVELAND:** All right. At this time,
9 Your Honor, the State would seek to admit
10 State's Exhibit 44 into evidence.

11 **THE COURT:** Any objection?

12 **MR. DEJONG:** I'm not clear. What video is
13 on there?

14 **THE WITNESS:** Yes, sir.

15 **MR. CLEVELAND:** I will say, Your Honor, for
16 the Court's record, the video that Trooper Craig
17 shot is blended in with the second video. At
18 this time, I guess, just to be clear, the State
19 would enter the first 15 minutes and 25 seconds
20 of video.

21 **MR. DEJONG:** That's what I was trying to
22 clarify, Your Honor. With regard to that, no
23 objection.

24 **THE COURT:** All right then. It's so
25 admitted.

1 **MR. CLEVELAND:** Your Honor, for
2 clarification, I'm sorry. We've got our numbers
3 crossed. We've got too many. This would be
4 State's Exhibit Number 46, the same exhibit the
5 witness observed, just the number.

6 **MR. DEJONG:** May I have moment with
7 Mr. Cleveland?

8 **THE COURT:** Certainly.

9 **(WHEREUPON, Mr. DeJong confers with**
10 **Mr. Cleveland.)**

11 **MR. DEJONG:** Thank you so much,
12 Your Honor.

13 **THE COURT:** Yes, sir.

14 **(WHEREUPON, State's Exhibit 46 is marked for**
15 **identification and admitted into the record.)**

16 **BY MR. CLEVELAND:**

17 **Q** We'll go back to that video in just a
18 moment. I want to talk about a few other things.
19 After you shot the video, what else did you do on the
20 scene?

21 **A** After shooting the video, I assisted Lance
22 Corporal J.K. Duncan as he was going through with
23 some pictures, just basically kind of helped watch
24 traffic and watch his back. After doing that, we --
25 then I set up the total station, which is our

1 forensic mapping equipment. I set it up to begin the
2 forensic mapping. Myself and Lance Corporal Duncan
3 conducted a forensic mapping of the collision scene.

4 Q What is forensic mapping of the collision
5 scene?

6 A Basically, it's just all the measurements
7 from the scene that we would take, but it's done with
8 surveying equipment so everything is done accurately.
9 Our equipment is accurate up to one-eighth of an inch
10 of a two-mile range. So all of our measurements will
11 be exact, I wait until it is put in and the
12 calculations are conducted and everything is
13 accurate.

14 Q How much of this scene did you actually map
15 out?

16 A A great deal of it. The actual road that
17 the vehicle was traveling up was actually Praters
18 Creek. I said the name wrong earlier. It's Praters
19 Creek Road. So we took in that area because there
20 were skid marks from the vehicle on that road. Also,
21 the area there of the T-intersection and all the way
22 down to the area of the final rest of the vehicle.

23 Q What other items or places of interest did
24 you note in addition to just the roadways?

25 A The skid marks, any gouge marks that we

1 observed there. When the vehicle came down there in
2 the private driveway, this is more of a dirt and
3 gravel-top driveway. So there was some area there
4 that was indicated -- some areas already had been
5 marked by, I'm assuming, the primary investigating
6 officer there with orange paint where there were
7 areas of gouging and tire marks where the vehicle
8 landed in that driveway. Then you can follow those
9 all the way to the final rest of the vehicle. We also
10 -- I did a forensic mapping noting the location of
11 the vehicle at final rest, the building that it
12 struck, the tree that it struck, anything we felt was
13 relevant to the investigation.

14 Q All right. What is the purpose of all this
15 forensic mapping?

16 A All of that is done, as I said earlier, so
17 everything is accurate. That way, when one of our
18 team members conducts the drawing of the scene, it is
19 a drawing that is to scale, he can also take
20 measurements from that forensic mapping to put into
21 his calculations. That way, we'll know those were
22 actually accurate in measurements.

23 Q All right.

24 A They are basically taking out of play a lot
25 of the human error you would have if you were out

1 there just trying to pull a measuring tape for all
2 those measurements that you're taking.

3 Q Just to reiterate, this total station, this
4 survey equipment, do you have proper training to use
5 that equipment as it is so it renders the accuracy
6 that it's supposed to?

7 A Yes, sir. I do.

8 Q After -- what did you do after the forensic
9 mapping was conducted?

10 A I think before we actually did the forensic
11 mapping, after I shot the vehicle, I actually went
12 down and removed the airbags from the vehicle, the
13 passenger and driver's side airbag from the vehicle
14 and collected those into evidence. The forensic
15 mapping of a scene this size generally takes a fairly
16 long time to conduct, so I believe I went ahead and
17 took the airbags prior to that time before we started
18 the mapping.

19 Q What's the purpose of taking the airbags
20 from the vehicle?

21 A In case there was any DNA present on either
22 of the airbags.

23 Q All right. And by what method did you take
24 those airbags from the vehicle?

25 A I put on a pair of rubber gloves, of

1 course, that had never been used. I then use a razor
2 knife. I cut the airbag from one side, place that in
3 a paper bag. Generally, I always turn that bag inside
4 out. That way, it's helping give it some added
5 protection within the paper bag that it's in. Remove
6 that pair of rubber gloves. Leave it in the airbag
7 that I just removed. Put on another set of rubber
8 gloves and then remove the second airbag.

9 Q All right. I'm going to show you what's
10 been marked as State's Exhibit 39A and B. Do you
11 recognize those two photographs?

12 A Yes, sir. I do.

13 Q And what do those photographs depict?

14 A Those are photographs that were taken by
15 Lance Corporal J.K. Duncan showing me holding the
16 paper bag that I had labeled with what I was going to
17 be putting in those holding it by the airbags. That's
18 actually my hand with the rubber gloves on each of
19 the photos holding the bag near the airbags that I
20 was going to be removing.

21 Q I apologize. All right. So we're looking
22 now at State's Exhibit A. Is that bag labeled
23 passenger-side airbag with your name on it? Is that
24 what the passenger airbag went in as it was submitted
25 for testing?

1 **A** Yes, sir. It is.

2 **Q** And State's Exhibit 39B. Likewise, is this
3 bag labeled driver's side airbag? Is that what that
4 bag -- that airbag was submitted for testing in?

5 **A** Yes, sir. And based on the numbers there,
6 the times that those were taken, I would have taken
7 the passenger side airbag first at approximately
8 01:45 hours and then the driver's side airbag there
9 that's in that photograph at 1:50 a.m.

10 **Q** Very good. Were those airbags submitted to
11 the -- submitted to an evidence locker where they
12 were held securely until testing, to your knowledge?

13 **A** Yes, sir. They were.

14 **Q** Were you involved in the operating or use
15 of a drag sled on the scene?

16 **A** Yes, sir. I was. I pulled the drag sled on
17 this particular case.

18 **Q** All right. Tell the jury what a drag sled
19 is and what the purpose of it is.

20 **A** Drag sled is basically a piece of equipment
21 that we use. And basically, what it is a half of a
22 tire that we fill up partially with concrete. Then we
23 put a bolt through the center mass of that drag sled.
24 Then, when we're pulling the drag sled, we try to
25 pull it parallel to the ground. We try to pull it in

1 the direction of the tire marks or skid marks if
2 they're present there, whether it be on concrete,
3 asphalt, grass. We pull those, and what it does is
4 help us determine what the friction value of that
5 road is.

6 Q Okay. So essentially, is that -- are you
7 mimicking a tire skidding across the road? Is that
8 what you're attempting to do?

9 A Yes, sir. That's the reason we try to go in
10 the area of the skid marks that we observed and
11 actually go in the same direction. That way, it's
12 accounting for the grade of the roadway in which
13 we're taking those measurements from.

14 Q All right. What instrument do you use to
15 take measurements from the drag sled?

16 A We have a scale that we use. Basically,
17 what we do is we do 10 pulls of the drag sled along
18 the area that we're attempting to get that rating
19 from. Then we get an average of those 10 pulls. We
20 divide that number by the weight of the drag sled.
21 That's what gives us the friction value for the road.

22 Q All right. And what does that friction
23 value of the road help the MAIT team determine?

24 A It just helps with, again, going back to
25 the individual on our team that would be doing the

1 calculations of the speed of the vehicle and the
2 reconstruction. It gives them an idea of what that
3 friction value of the road is so they can account for
4 that with the speed lost of the vehicle, how much
5 speed would be lost during those skid marks.

6 Q Different roads have different friction
7 values across the state of South Carolina?

8 A Yes, sir. They do.

9 Q Did you record the results of that drag
10 sled?

11 A The way we do that, one officer pulls the
12 drag sled, because this particular drag sled weighs
13 around 51 or 52 pounds that we were using. So myself,
14 in this case, I would pull that. I would pull it with
15 two hands because you're trying to keep it smooth and
16 steady with that scale. Another officer, in this
17 particular case, Sergeant A.L. Duncan recorded the
18 findings.

19 Q Very good. Is there anything else you did
20 on the scene to contribute to this investigation?

21 A No, sir. Not that I can think of.

22 Q All right. Going back to the video --

23 MR. CLEVELAND: At this time, Your Honor,
24 the State would seek to publish approximately
25 the first 15 minutes of State's Exhibit 46.

1 **THE COURT:** All right. Very well.

2 **MR. CLEVELAND:** Now... (Pause.)

3 I beg the Court's indulgence.

4 **THE COURT:** Certainly.

5 (WHEREUPON, there is a pause.)

6 (WHEREUPON, State's Exhibit 46 is played.)

7 **BY MR. CLEVELAND:**

8 **Q** All right. At this portion of the video,
9 what are you filming or videoing?

10 **A** Here, I'm just at my starting point of the
11 video. I'm basically doing a 360-degree turn and, of
12 course, a very dark area there, especially on this
13 side of the roadway because there's no fire engines
14 or anything on that side illuminating it. I'm
15 basically just doing a 360-degree turn to show what,
16 if anything, there is off the shoulders of the
17 roadway, any homes, basically just showing what kind
18 of area this video was starting in.

19 **Q** All right. And --

20 **A** This is on Prater -- I'm sorry. This is on
21 Praters Creek Road, this area.

22 **Q** All right. Are there any street lights in
23 the immediate vicinity of the accident location?

24 **A** No, sir.

25 **Q** All right. That yellow box and the skid

1 mark, what is that?

2 **A** One of the troopers that arrived prior to
3 us had marked that. Typically, when they put the
4 little box there on the end, they are indicating that
5 to be in the area, the beginning of the skid mark.
6 Then, they place orange dots, you know, as you go
7 along the skid mark there. That way, at the scene, if
8 we're unable to do a forensic mapping that night at
9 the scene, we can go back later. If those skid marks
10 have diminished any, we would still be able to see
11 where they were at.

12 **Q** All right. There's some skid marks on the
13 right. It looks like they started after the skid
14 marks on the left. Are those part and parcel to the
15 crash based on your investigation?

16 **A** Yes, sir. And the reason it would be
17 shorter would be just because that tire locked up at
18 a later point than what the left-side tire did.

19 **Q** Is that uncommon to find unequal skid marks
20 in investigation?

21 **A** It is not uncommon. (Pause.)

22 As you can see there, the skid marks -- the
23 right-side skid mark is actually there pretty much on
24 top of the yellow line. The vehicle is also on the
25 wrong side of the roadway as it's approaching the

1 intersection. There, as I was doing another 360 turn,
2 it was just to show the area of the roadway in both
3 directions on Allgood Bridge Road.

4 Q What's that piece of equipment you're
5 talking about right there?

6 A That's just a tripod for a 35 millimeter
7 camera that had been set up. That may have been
8 something that Lance Corporal Duncan possibly had
9 already put in place to be ready to start his
10 pictures.

11 This, I'm just walking down the driveway.
12 The vehicle landed in the driveway. Just went
13 straight across at the intersection. It went airborne
14 across the intersection. Came back down in the
15 driveway. Basically, all I'm doing at this point is
16 walking the path that the vehicle traveled.

17 Q All right. The scene is well-illuminated.
18 What's the source of that light?

19 A I believe there were fire engines and
20 things that were there. Typically speaking, they
21 always set up some type of light apparatus so they
22 can work in the area of the vehicle. (Pause.)

23 The vehicle here that I'm documenting here
24 now, the white Corolla, is the vehicle that was
25 parked in the driveway. We were advised by the owners

1 that that vehicle, that scuff mark that I have
2 illuminated there now on the rear of the vehicle,
3 that that scuff mark was not there prior to this
4 collision. They just wanted to make note of that that
5 their vehicle was struck. So what I'm doing now is
6 just going around to see if there was any other
7 damage that we needed to make note of of the vehicle.

8 Q And for the record, what type of vehicle is
9 that?

10 A It was a Toyota Corolla. And here with the
11 camera at this angle, you probably could just see
12 that little bit of the fire engine back behind the
13 Corolla with the lights back down toward the final
14 rest of the 2005 Chevrolet that was involved in the
15 collision. (Pause.)

16 What I'm looking at there with the light
17 with the video camera there, the reason I was shining
18 it down at the tires, I was just trying to verify. I
19 could tell by the small amount of damage to the rear
20 of that vehicle that it hadn't been struck hard, but
21 wanted to make sure it didn't appear that it had been
22 moved any in the dirt.

23 Q All right. There at 5:35 in the tape, there
24 was some yellow markings. What did that signify?

25 A Those were just more tire marks that had

1 been marked by the primary investigating officer or
2 one of the other officers assisting him before we
3 arrived. Again, just making note of the tire marks
4 there in the driveway leading to final rest in case
5 the forensic mapping was done at a later time, when
6 it rained or anything like that and those weren't as
7 visible to us. (Pause.)

8 As you can see, there's orange paint on
9 that tree. That was the tree that I was referring to
10 earlier that we observed that had also been struck by
11 the vehicle. Then there's miscellaneous debris laying
12 around the scene from the vehicle.

13 Q Now, we're at 06:21 on the tape. Is this
14 the vehicle in the same condition it was when you
15 arrived on the scene -- the same position?

16 A Yes, sir.

17 (WHEREUPON, there is a pause as video continues
18 to play.)

19 BY MR. CLEVELAND:

20 Q We're now at 07:49. What is the purpose of
21 this shot?

22 A What I'm doing here, I always -- any
23 collision that I respond to, when I'm shooting the
24 video, I attempt to document everything that I can.
25 Sometimes the dynamics of a collision change, you

1 know, as the investigation goes forward. Other
2 information comes to light later. So I try to
3 document everything I can within the vehicle.

4 Q Okay. At 08:13 right there, what is that?

5 A That appeared to me to be a patch of hair
6 that was stuck there to the wreckage of the vehicle.
7 I zoomed in and tried to illuminate it so that it
8 would show up well on my video.

9 Q That a shoe?

10 A Yes, sir.

11 Q All right.

12 A And then, here, I'm zooming in. This video
13 is on its side. I'm having to kind of shoot through
14 some glass at different points. But I'm trying to
15 illuminate there that is another shoe, tennis shoe
16 that is on the driver's side of the vehicle
17 underneath the steering wheel. It appears to be kind
18 of wedged in under the edge of the seat. (Pause.)

19 We always try to document the vehicle
20 identification number on the vehicle in case when we
21 run the DMV records on it on the report, sometimes
22 those numbers get transposed or different things
23 happen with that. We try to always get a good close-
24 up picture and video of the VIN plates on the
25 vehicle, either on the door or in the dash.

1 Q What is that item you just shined?

2 A Just the windshield of the vehicle where it
3 had been knocked free of the vehicle. It was laid out
4 that distance away from the front.

5 Q Had that windshield been moved, to your
6 knowledge?

7 A No, sir. What I'm doing at this point is
8 now going back through the area in which the vehicle
9 traveled. Sometimes there are things you can see from
10 one direction but you can't see from another, and
11 vice versa. So I always try to walk back through the
12 scene that I take just so that it may pick up
13 something that I missed on the initial walk-through.

14 Q What is the grade of this driveway?

15 A I'm not sure. That measurement would have
16 been taken from the -- that would have shown up on
17 our forensic mapping and would have been used by
18 Lance Corporal Andis who did the calculations. He
19 would have taken that from the cab measurement.

20 Q In general terms, was it steep, sloping
21 down?

22 A Yes, sir. In my opinion, it is a fairly
23 steep drop. It wouldn't be a problem walking. It's
24 not steep to that extent. But it is a fairly steep
25 grade.

1 Q What about the approach of Praters Creek
2 Road to Allgood Bridge Road?

3 A I would say it's similar to the driveway. I
4 would say Allgood Bridge Road would be like -- if you
5 can imagine, the peak of the hill. And it's probably
6 about the same grade on both sides. (Pause.)

7 And this is just basically looking back --
8 that direction back down Praters Creek Road again
9 back to where the skid marks started. This is after
10 the vehicle has been turned back over onto all four
11 tires. I'm again going to walk around the vehicle and
12 document it just because I can get around the vehicle
13 a little better now.

14 Q Who turned the vehicle over?

15 A The wrecker service. When they would have
16 arrived, we would have them do that and then move
17 their vehicle back out of the way so that we could
18 finish up with our investigation there. Then they
19 would move back in to tow it.

20 Q Were you present when they turned the
21 vehicle over?

22 A Yes, sir. I was. We actually at that point
23 have to tell them once they turn it over, not to go
24 ahead and continue with the load-up of the vehicle,
25 but to unhook from it and move clear of the vehicle.

1 Q Was there any significant damage done to
2 the vehicle in rolling it over on all four tires?

3 A No, sir.

4 Q This side was down on the ground; is that
5 correct?

6 A Yes, sir. Of course, you can see the
7 rollback back behind it now where he had moved up and
8 he was just waiting for our instructions to let him
9 know when he can load it up.

10 Q Which side of the car suffered the most
11 significant damage, in your observation?

12 A By far, the passenger side. I think that's
13 very clear and the video shows that. The damage is
14 much more extensive on the passenger's side.

15 Q The video is sparkling, it appears. Is that
16 because it was cold out there that night?

17 A Yes, sir. I believe the temperature was in
18 the teens, maybe even low teens. It's probably
19 another reason for some of the video appearing kind
20 of shaky the way it was because I'm trying to walk
21 through because of the cold temperature.

22 Q What's the purpose of documenting the tire
23 size?

24 A We do that because this vehicle was
25 imaggable from the airbag control module. As part of

1 doing that, when you conduct that download, you have
2 to put in the proper tire size for the vehicle and
3 also include in that the actual size tires that are
4 on the vehicle. That way, when it's analyzed, you'll
5 know if it was the same size tires or not.

6 Q All right.

7 A Of course, you can see at this point, after
8 the initial video when the vehicle was on its side,
9 the video stops. That's at the point that I remove
10 the airbags. As you can see there, the airbags had
11 been removed at that point. And I would have done
12 that while the vehicle is still on its side before a
13 wrecker driver or anyone would have been getting in
14 there messing around inside the vehicle. (Pause.)

15 Again, there you can see the patch of hair
16 on the passenger side in the area of the passenger-
17 side door.

18 Q Did that conclude your video of the scene?

19 A Yes, sir. At that point, that was a placard
20 that was filled out by Lance Corporal J.K. Duncan
21 before the start of the daytime video of the scene.

22 Q You noted it was a 2005 Chevy Monte Carlo.
23 Where did you get that information?

24 A Just from the vehicle, through the report
25 when we ran it. I may have even been advised about

1 that by one of the troopers there at the scene when
2 we first arrived.

3 Q In addition to the forensic mapping, is the
4 make and model of the vehicle involved important?

5 A Yes, sir. Those vehicles in our drawing and
6 in our calculations, the exact measurements of that
7 vehicle have to be used in those calculations.

8 Q Very good. Is there anything else regarding
9 your investigation of the scene that you did in this
10 case?

11 A No, sir. I don't believe so.

12 Q I don't have any further questions. Please
13 answer any questions Mr. DeJong may have.

14 A Yes, sir.

15 THE COURT: Mr. DeJong.

16 MR. DEJONG: Your Honor, may it please the
17 Court?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. DEJONG:

21 Q So I guess working maybe backwards, towards
22 the end of what we were watching, you were talking
23 about tire size.

24 A Yes, sir.

25 Q The plate on the vehicle would have the

1 manufacturer's tire size, for want of a better term?

2 **A** Yes, sir.

3 **Q** Is that the size tires that were on the
4 vehicle?

5 **A** That information would have been put in
6 during the imaging of the airbag control module,
7 which would have been put in by Lance Corporal
8 Duncan.

9 **Q** Okay. So you don't know the answer to that?

10 **A** No, sir. I didn't perform the general
11 vehicle exam.

12 **Q** Okay. Fair enough. Fair enough. So the skid
13 marks, you said one stopped before the other. Is that
14 a defect in the brakes where one tire locks up and
15 the other one doesn't?

16 **A** No, sir. We were talking about that one
17 started prior to the other. But no, sir, I wouldn't
18 say that's a defect. That's fairly common of what we
19 see at collisions. The one tire would lock up a
20 little sooner than the other.

21 **Q** Nonetheless, one tire did lock up before
22 the other?

23 **A** Yes, sir. Based on what the skid marks
24 showed.

25 **Q** I believe it's the right side that locked

1 up first?

2 **A** No, left side.

3 **Q** Left side? I'm sorry.

4 **A** That's okay.

5 **Q** My lefts and rights get mixed up some time.

6 As you were moving around, you videoed some shoes.

7 **A** Yes, sir.

8 **Q** You know who those shoes belonged to?

9 **A** No, sir. I don't.

10 **Q** Basically random shoes at that point in
11 time, right?

12 **A** Right.

13 **Q** Shoes that were, for want of a better term,
14 debris, right?

15 **A** Yes, sir.

16 **Q** That patch of hair. You mentioned it a
17 couple of times. Did you take that into evidence?

18 **A** No, sir. I didn't.

19 **Q** To your knowledge, did anybody else take
20 that into evidence?

21 **A** It was my understanding when I arrived that
22 some blood swabs and other evidence had been taken
23 from the scene by one of the primary investigating
24 troopers that had arrived. It was my belief that they
25 had taken some of the hair and took some blood swabs

1 from there. I didn't have an opportunity to speak
2 with that trooper at the scene, but that's what I had
3 been advised.

4 Q All right. Well, based on that, do you know
5 if it was indeed done, was any of that ever sent off
6 for analysis?

7 A I couldn't answer that question because I'm
8 not sure if it was taken or not.

9 Q Okay. So you think maybe it was taken, but
10 you're not sure?

11 A Yes, sir. That's right.

12 Q Okay. That's fair enough. Now, the airbags,
13 you did take the airbags, right?

14 A Yes, sir.

15 Q And once you took the airbags, this was on
16 -- I think the date you had on the brown bag was
17 January the 31st, I believe.

18 A Yes, sir.

19 Q So it was sometime after midnight, shortly
20 after midnight. And what did you do with those
21 airbags?

22 A I put each one of them individually into a
23 separate bag, brown paper bag, like the old-type
24 grocery sacks that you saw there on the video and the
25 picture earlier. Then I put those in my patrol

1 vehicle. My patrol vehicle is an F-250 four-wheel
2 drive pickup truck. So it has a slide-out bed and it
3 has a locking toolbox in the back. So I would have
4 put them in that toolbox to secure them until I was
5 able to transfer them to the evidence locker.

6 Q What was your focus of taking the airbags?

7 A So that it could be sent to SLED to be
8 analyzed to see if there was any DNA on either or
9 both of the airbags.

10 Q All right. And now we got up to the point
11 in the back of your pickup. Where do they go from
12 there?

13 A I have a steel tool box that locks. I put
14 them in there and lock them. I would keep them in my
15 possession in my vehicle until I have a chance to
16 transfer them to the Troop 3. Our office is located
17 in Greenville is where our main office is at. And we
18 would put it into the evidence locker there in
19 Greenville.

20 Q And in this case, those airbags that you
21 got out of that Monte Carlo stayed in, I guess, the
22 evidence locker from January the 31st until October
23 of 2016?

24 A Yes, sir. At whatever point, someone took
25 it from there to get it to SLED for analysis.

1 Q So you don't -- you just put them in
2 evidence and somebody else does something with it?

3 A Sometimes, it will be me. Typically, we'll
4 take evidence. When we've got a larger quantity of
5 evidence, maybe make a run to Columbia, to SLED in
6 Columbia and take several pieces of evidence at that
7 time. Or if it -- if we become aware that we need to
8 send it off for DNA analysis. We don't always end up
9 needing that.

10 Q Okay. So again, I ask, you don't know when
11 apparently it was sent off?

12 A No, sir. I don't. It would be on a chain of
13 custody form.

14 Q Right. Okay. So you took the video that we
15 just saw and you collected the airbags?

16 A Yes, sir.

17 Q Did you collect any other evidence?

18 A No, sir.

19 Q Okay. While you were out there -- I know
20 you can't say what happened before you got there, but
21 while you were out there, did you see anybody else
22 taking any evidence?

23 A No, sir.

24 Q Okay. You said you did this drag sled or
25 whatever?

1 **A** (Nods head.)

2 **Q** I'm sorry, sir. You've got to respond. The
3 Court Reporter is --

4 **A** Yes, sir.

5 **Q** I'm not trying to be ugly. She's just --

6 **A** Yes, sir. No, I understand.

7 **Q** -- got to get your responses. Okay. You did
8 this drag sled. When did you do the drag sled?

9 **A** We done that after completing the forensic
10 mapping of the scene.

11 **Q** Okay. Well, this forensic mapping, what
12 kind of equipment do you use for that?

13 **A** I'm sorry. I didn't --

14 **Q** What kind of equipment do you use?

15 **A** It's just basically surveying equipment. It
16 just has different software inside of it that's
17 relevant to collision reconstruction.

18 **Q** So the software -- we're back into
19 computers again. So the software records all of that?

20 **A** Yes, sir. We have a data collector is what
21 we call it. And we input that information. It takes
22 shots from -- one person architects the scene, is
23 what we call it. That person is actually standing at
24 those different spots -- shots that need to be taken.
25 The other person is at that piece of survey

1 equipment, citing it in, and taking the shot,
2 entering it into the data collector.

3 Q So I gather then the -- what you're saying
4 is the measurements are not taken manually?

5 A Yes, sir. That's correct.

6 Q Okay. And this equipment, does that belong
7 to South Carolina Highway Patrol?

8 A Yes, sir.

9 Q Okay. So, in essence, in this equipment,
10 there is a computer program?

11 A Yes, sir.

12 Q Okay. And then somewhere -- do you know
13 anything about the computer program?

14 A No, sir. I don't.

15 Q Okay. Not how it operates or anything like
16 that?

17 A No, sir. We know how to use it, but I'm not
18 sure what the internal components of it are.

19 Q Okay. Somebody would have to program it, I
20 would assume?

21 A Yes, sir.

22 Q And you know nothing about the program?

23 A No, sir.

24 Q I'm getting confused on the Duncans. Are
25 they related at all, do you know?

1 **A** They're not. No, sir. It gets confusing for
2 us sometimes, too, when we're looking at the
3 paperwork coming through.

4 **Q** I can well imagine.

5 **A** They are not related though.

6 **Q** Okay. So the vehicle was still up on its
7 side when you got there. Now, there had been some
8 movement of the vehicle, had there not?

9 **A** I'm not sure, sir. It was on its side. As
10 the video showed, that's what I observed when I
11 arrived.

12 **MR. DEJONG:** All right. Strike that. One
13 moment, Your Honor.

14 **THE COURT:** Certainly.

15 **MR. DEJONG:** Thank you, Mr. Craig.

16 **THE COURT:** All right. Any redirect for
17 this witness?

18 **MR. CLEVELAND:** Nothing on redirect,
19 Your Honor.

20 **THE COURT:** All right. Sir, you can step
21 down.

22 **MR. DEJONG:** No objection to him being
23 excused, Your Honor.

24 **MR. CLEVELAND:** None from the State.

25 **THE COURT:** All right then. Sir, thank you

1 for being here.

2 **MR. CLEVELAND:** The State would call --

3 **THE COURT:** How long do you expect this
4 next witness to be? As long as this one?

5 **MR. CLEVELAND:** Not, Your Honor.

6 **THE COURT:** Very well.

7 Everybody all right? We're going to plan to
8 try to end right about 5:00.

9 **MR. CLEVELAND:** Yes, ma'am. The State would
10 call David Andis to the stand. David Andis.
11 Andis.

12 **DAVID ANDIS**

13 having first been duly sworn, testifies as follows:

14 **THE CLERK:** Thank you, sir. If you
15 would, have a seat and state your name for the
16 record.

17 **THE WITNESS:** David Andis.

18 **DIRECT EXAMINATION**

19 **BY MR. CLEVELAND:**

20 **Q** Trooper Andis, what's your current rank and
21 assignment with the Highway Patrol?

22 **A** Lance Corporal, South Carolina Highway
23 Patrol MAIT Unit.

24 **Q** All right. How long have you been employed
25 with the MAIT Unit?

1 **A** I've been on the MAIT Unit since 2010.

2 **Q** All right. And --

3 **MR. DEJONG:** Excuse me, Your Honor. Again,
4 I want him to be comfortable, but if he would
5 get a little closer to the mic.

6 **THE WITNESS:** I apologize.

7 **THE COURT:** No, no. That's fine.
8 Thank you.

9 **THE WITNESS:** Since 2010.

10 **BY MR. CLEVELAND:**

11 **Q** All right. Regarding the field of collision
12 reconstruction, what education and training do you
13 have that qualifies you for the MAIT team?

14 **A** I have well over 1000 hours of collision
15 investigation related training.

16 **Q** I saw a big stack of papers you brought up
17 on the stand. What is that?

18 **THE COURT:** Hold on just one second before
19 we go any further. Do you think you could move
20 that mic towards you just a bit?

21 **THE WITNESS:** I apologize.

22 **THE COURT:** Okay. I know it's
23 uncomfortable. I apologize.

24 **THE WITNESS:** These are copies of my
25 certifications that I received through training.

1 **BY MR. CLEVELAND:**

2 **Q** Do you have specific classes on collision
3 reconstruction?

4 **A** Yes.

5 **Q** Do you have specific classes on CAD design,
6 computer-aided drafting?

7 **A** I do.

8 **Q** Do you have any specific classes on
9 mathematics and the physics associated with
10 automobile accidents and reconstruction?

11 **A** I do.

12 **Q** Have you ever testified as an expert in the
13 courts of South Carolina?

14 **A** I have.

15 **Q** How many times?

16 **A** Three times.

17 **Q** All right. What field did you testify in?

18 **A** Collision reconstruction.

19 **MR. CLEVELAND:** Your Honor, at this time,
20 the State would like to offer Lance Corporal
21 David Andis as an expert in the field of
22 collision reconstruction.

23 **THE COURT:** Mr. DeJong, any voir dire or
24 other objection?

25 **MR. DEJONG:** Thank you, Your Honor.

1 VOIR DIRE

2 BY MR. DEJONG:

3 Q I've heard you say you have testified three
4 times as an expert?

5 A Yes, sir.

6 Q I wasn't really clear on your educational
7 background. What kind of educational background did
8 you have for collision reconstruction?

9 A Specifically for collision reconstruction?

10 Q I'm sorry, sir. I can't hear you.

11 A Specifically for collision reconstruction?

12 Q One hour, two hours, three hours? How many
13 hours was that course?

14 A Training ---

15 Q Yeah.

16 A --- or college education?

17 Q Pardon me?

18 A Training or college education?

19 Q Training.

20 A Training, well over 1000 hours ---

21 Q Okay.

22 A --- specifically to collision
23 investigation.

24 Q Where did you get that training?

25 A Everywhere from the Criminal Justice

1 Academy to IPTM.

2 Q Okay.

3 A You'd have to look at the --

4 MR. DEJONG: No further voir dire.

5 THE WITNESS: I can go through each
6 certification and let you know.

7 MR. DEJONG: I understand.

8 THE COURT: All right. Ladies and
9 Gentlemen, I told you about an expert witness.
10 This witness will be qualified to give his
11 expert opinion or his opinion in the area of
12 collision reconstruction. You may take that
13 opinion, use it as you see fit and give it the
14 weight you believe it deserves.

15 Yes, sir.

16 MR. CLEVELAND: Thank you, Your Honor.

17 DIRECT EXAMINATION (CON'T)

18 BY MR. CLEVELAND:

19 Q Now, Lance Corporal Andis, were you on
20 scene at the wreck in question in this trial today?

21 A No, I never responded to the scene.

22 Q What was your involvement in the
23 investigation of this crash?

24 A I was tasked with completing the computer-
25 animated drawing, the animation. And also completed

1 the calculations.

2 Q Okay. Let's talk about what that means.
3 You said the calculations. What specific calculations
4 are you talking about?

5 A I was tasked to determine the speed of the
6 Chevrolet Monte Carlo.

7 Q All right. At what point were you tasked to
8 determine that speed? Where in this crash?

9 A Rephrase that?

10 Q At what point in this crash did you
11 determine the speed of the Chevrolet Monte Carlo?

12 A I'm not understanding.

13 Q Was it at the beginning of the crash? Was
14 it when it hit the building? What point was it?

15 A It was the -- before the sequence of events
16 started.

17 Q Okay. What information did you rely upon to
18 make that determination?

19 A I used the forensic mapping that Lance
20 Corporal Craig and Lance Corporal Duncan completed on
21 the scene as well as their pictures, video, the
22 trooper's pictures. I also used auto stats, which is
23 commonly used for vehicle specifications.

24 Q All right. Auto stats. Is that essentially
25 factory specifications for a Monte Carlo?

1 **A** Correct. That has all different makes and
2 models, but it does have the Monte Carlo.

3 **Q** And is that type of data what is typically
4 relied upon as an expert in the field of collision
5 reconstruction?

6 **A** Yes, it gives basic information.

7 **Q** And does all that factor into your
8 analysis?

9 **A** It does.

10 **Q** What about the findings from the drag sled?
11 Did you utilize those findings?

12 **A** Also used those. It's essential in
13 calculating the minimum speed and other equations.

14 **Q** What about the length of the skid marks?
15 Did you use that in your determination?

16 **A** I did use the CAD.

17 **Q** All right. How long were those skid marks?

18 **A** I don't have the exact numbers in front of
19 me.

20 **Q** If I showed you a copy of the MAIT team's
21 report, would that help refresh your memory or do you
22 need it for purposes of your testimony today?

23 **A** I don't have the exact number for the
24 distance for the skid marks.

25 **Q** Can you testify to your findings today? Are

1 you comfortable testifying about your findings that
2 you found today?

3 **A** Yes. Yes.

4 **Q** All right. Tell the jury just sort of in a
5 narrative fashion where were your findings about the
6 speed of this Monte Carlo in this incident.

7 **A** The vehicle was traveling on Praters Creek
8 toward Allgood Bridge. That leaves two parallel tire
9 marks that, based on the track width or the width of
10 those tire marks, was measured and determined to be
11 the front of the vehicle, coming from the front
12 brakes. Again, those are parallel indicating that
13 both front wheels are working and they weren't
14 parallel. They were turning and may be an indication
15 that the right front or left front wasn't completely
16 braking.

17 In this case, it was two parallel marks
18 going up an upgrade or, like, a ramp, which was
19 measured in CAD a little over five degrees takeoff.
20 The vehicle goes airborne a distance, comes down
21 approximately eight feet lower, leaving more tire
22 marks so there is no evidence. We have evidence that
23 it is airborne. The vehicle travels through the yard
24 and strikes a tree and overturns. So I calculated the
25 speed lost equivalent for the tire marks because it

1 didn't stop. It went airborne after that. Then I
2 calculated the airborne, the vault speed, when it
3 took off to when it landed and came up with 81 miles
4 an hour.

5 Q 80 -- how -- where was the car going 80
6 miles an hour?

7 A At the start of the tire marks.

8 Q How fast was the car going when it vaulted?

9 A It was going -- I don't have that number.
10 70-something miles an hour.

11 Q All right.

12 A It would be on my report. I don't have that
13 in front of me.

14 Q If you need to refer to it, would it help
15 to look at your report to refresh your memory?

16 A I didn't bring my notes up here.

17 MR. DEJONG: The only question I have,
18 Your Honor, is that his report? Is that your
19 report?

20 THE WITNESS: I'd have to look at it.

21 THE COURT: Obviously, you'd have to look
22 it. But look at it. Is that your report or a
23 report somebody else prepared?

24 MR. CLEVELAND: Your Honor, is this an
25 objection or a question?

1 **MR. DEJONG:** Well, I don't know.

2 **THE COURT:** I think it's just a
3 clarification.

4 **MR. DEJONG:** I'm trying to figure out if
5 it's his report.

6 **THE WITNESS:** Yes, these are my
7 handwritten -- my typed notes, my handwritten
8 notes.

9 **MR. DEJONG:** I have no objection if it's
10 his report and his notes that he personally
11 prepared, Your Honor.

12 **THE COURT:** Sounds like he did, so we're
13 good. All right.

14 **THE WITNESS:** Okay.

15 **BY MR. CLEVELAND:**

16 **Q** Take your time and review your report.

17 **A** Okay. So the airborne speed of the
18 Chevrolet Monte Carlo was determined to be 73.93
19 miles per hour.

20 **Q** All right. So I understand this correctly,
21 is your testimony that the car was going 81 miles an
22 hour before it hit the brakes and then 73 miles an
23 hour when it left the road?

24 **A** When it went airborne, correct.

25 **Q** And how far did it travel, based on your

1 findings, airborne before it came back in contact
2 with the ground?

3 **A** 117 feet.

4 **Q** Is that longways?

5 **A** That's horizontal.

6 **Q** Okay. I'm going to show you what's been
7 marked as State's Exhibit 43.

8 **A** (Reviewing.)

9 **Q** State's Exhibit 43 is a six-page document,
10 the titles of which are all at the bottom. Would you
11 take a moment and review each page of that exhibit
12 and let me know if you recognize it please.

13 **A** (Reviewing.)

14 Yes, these are the CAD plates that I
15 created.

16 **Q** What did you say they are? I'm sorry.

17 **A** Those are the CAD plates that I created.

18 **Q** The CAD plates. Are these drawings of the
19 scene?

20 **A** They are.

21 **Q** Do they -- are they reliant upon all the
22 measurements that are gathered by Lance Corporal
23 Duncan -- I mean, Craig and Duncan and the
24 measurements of the vehicle and the other information
25 you considered?

1 **A** That's correct.

2 **Q** In the field of collision reconstruction,
3 is this a -- I guess, a common practice to compile
4 that data into drawings such as these?

5 **A** Yes, sir.

6 **Q** Do these drawings represent your
7 understanding of the scene and your opinion of how
8 the crash essentially panned out?

9 **A** Yes, sir.

10 **MR. CLEVELAND:** At this time, the State
11 would seek Exhibit, State's Exhibit 43, --

12 **MR. DEJONG:** Without objection, Your
13 Honor.

14 **THE COURT:** All right. So admitted.

15 **(WHEREUPON, State's Exhibit 43 is admitted into**
16 **the record.)**

17 **BY MR. CLEVELAND:**

18 **Q** Before we talk about these again real
19 quick, I just want to touch on that 81-mile-per-hour
20 number. Is that number a conservative calculation or
21 do you take a little liberty?

22 **A** It is conservative somewhat, just based on
23 I didn't give the vehicle 100 percent braking prior
24 to going airborne.

25 **Q** All right. Why didn't you give the vehicle

1 100 percent braking?

2 **A** Just for the simple fact there was only two
3 -- two parallel tire marks. I couldn't definitively
4 say that there was rear braking, although the length
5 of the tire marks would indicate that it was a good
6 possibility that all four brakes were braking, just
7 not leaving tire marks.

8 **Q** Okay. So is that 70 percent number a -- is
9 it a common figure in your field as to what brakes
10 contribute to a skid?

11 **A** Correct. Front brakes, 70 percent.

12 **Q** Could the rear brakes have been working and
13 not left any skid marks?

14 **A** Yes.

15 **Q** So is it possible that the car could have
16 been going faster than 81 miles an hour when it
17 started braking?

18 **A** Definitely.

19 **Q** Any other conservative calculations taken
20 into account involving --

21 **A** Always take a conservative approach to
22 horizontal distance and the height at which the
23 vehicle goes up or down, which would benefit the
24 violator in this case.

25 **Q** How would they benefit?

1 **A** It would just lower the speed.

2 **Q** Did you make any other determinations
3 regarding speed as far as at different points in this
4 accident or was that the basis of the final part of
5 your calculation?

6 **A** No, my calculation was just to determine
7 the speed of the vehicle.

8 **Q** All right. Let's go through the pages. All
9 right. This is page 1 of State's Exhibit 43. It's
10 titled "Roadway" at the bottom. Based on the
11 information you received, is that an accurate map of
12 the crash site?

13 **A** Yes, sir.

14 **Q** The second page of 43 is titled "Impact."
15 Briefly, what does that depict?

16 **A** That's the first impact where it barely
17 makes contact with the white Toyota Corolla.

18 **Q** The next page is also titled "Impact." What
19 does that depict?

20 **A** That's the Chevrolet Monte Carlo impacting
21 the tree. Also have the blown-up box so you can
22 actually see it.

23 **Q** Okay. Let's talk about that blown-up box
24 real quick. Is this a general finding that the Monte
25 Carlo hit the tree or is it specific to how the Monte

1 Carlo hit the tree?

2 A Based on all the evidence, that's how the
3 vehicle struck the tree.

4 Q Yeah, I mean, is it just generally that it
5 struck the tree or is it precise as far as where it
6 struck the tree on the car?

7 A That's precise.

8 Q Which side of the car, based on your
9 findings, did it strike the tree?

10 A Front passenger side.

11 Q There's a third page also titled "Impact."
12 What does that depict?

13 A Showing the vehicle where it overturns onto
14 the building.

15 Q The next page is titled "Evidence and Final
16 Rest." Is this the same or different than the
17 previous page showing the Chevrolet against the tree?
18 I mean, against the building.

19 A Repeat your question.

20 Q Is it the same or different -- the final
21 rest, is it the same or different than the last page
22 that shows impact of the car against the building?

23 A It would be the same.

24 Q So the car --

25 A The final rest on the building.

1 Q The car came to rest at the final place it
2 impacted.

3 A Uh-huh.

4 Q In this last one that's called "Sequence of
5 Events," it looks like it's several cars. What does
6 this --

7 A It's just showing the travel path of the
8 vehicle during the sequence of events.

9 Q There are black lines drawn on the road.
10 What are those?

11 A Those are the tire marks that were mapped.

12 Q Are those -- these drawings accurate based
13 upon the measurements taken at the scene?

14 A Yes.

15 Q How about up here in the center of the
16 photo? There are some marks there. What are those
17 representative of?

18 A Those are additional tire marks.

19 Q And these last two positions the car is in,
20 what does that show?

21 A Impact. And then, impact slash final rest.

22 Q Did that conclude your involvement with the
23 crash reconstruction?

24 A No, I also obtained a standard from the
25 defendant.

1 Q Okay. Yeah, I was getting there. But as far
2 as calculating what happened on the day of the wreck.
3 Does that conclude your --

4 A Yes.

5 Q Did you do anything else to contribute to
6 this investigation?

7 A Just obtain the standard from the
8 defendant.

9 Q Okay. Did you properly package that and
10 submit it for DNA testing?

11 A Yes, it was obtained, secured with chain of
12 custody and transported to SLED.

13 Q Okay. Thank you. No further questions.
14 Please answer any questions Mr. DeJong has.

15 THE COURT: Mr. DeJong?

16 MR. DEJONG: Thank you, Your Honor. May it
17 please the Court?

18 THE COURT: Certainly.

19 CROSS-EXAMINATION

20 BY MR. DEJONG:

21 Q Andis, is that the way it --

22 A Yes, sir.

23 Q I want to make sure I'm doing it correctly.
24 So you never went out to the scene, right?

25 A No, sir.

1 Q Certain information, for want of a better
2 term, was fed to you, given to you. Forensic mapping,
3 videos, pictures, all that thing, right?

4 A Yes, sir.

5 Q Now, these, I guess, animations that we
6 just saw, did you hand draw those?

7 A No, those are CAD plates.

8 Q Okay. You lost me on all of that. Is that
9 generated by a computer program?

10 A It is.

11 Q All right.

12 A Basically, what happens, a forensic mapping
13 collects all the points, edge of pavement, fog line,
14 double yellow line, edge of pavement. Moves up. Does
15 the same thing again. All those points are then
16 entered into the computer. I create the lines to
17 connect them as the edge of pavement to make it one,
18 one fog line, one double yellow line, or one tire
19 mark. And that's how the drawing is -- comes to the
20 finished product.

21 Q You manually put these into the computer --
22 into the computer program?

23 A The points?

24 Q Yeah.

25 A Whoever was operating the station trim

1 board would have done that.

2 Q Okay. Now we're back to forensic mapping,
3 right?

4 A Uh-huh.

5 Q Now, you get something -- I don't know,
6 like a video or a disk or --

7 A Yes, it's a -- Edge FX is the software.
8 It's downloaded into an Edge FX CAD program which
9 enables me to go in there and connect lines or
10 connect points.

11 Q I get back to my question. You get the
12 forensic mapping disk, whatever it is. Now, does that
13 just automatically download into this program or do
14 you have to punch in distances and all --

15 A No, automatically downloads in there.

16 Q Okay. All right. So the forensic mapping,
17 is that part of this computer program you're talking
18 about?

19 A Correct.

20 Q All made by the same company?

21 A No.

22 Q Okay. So what was the program that you
23 used?

24 A The CAD program?

25 Q Yes.

1 A Edge FX.

2 Q Is that a program owned by the South
3 Carolina Highway Patrol?

4 A No.

5 Q It's a program developed for law
6 enforcement?

7 A It could be used for a wide range of CAD
8 users.

9 Q Now, the drag sled,° you said, if I
10 understood you correctly, that you used part of that
11 in this analysis, right?

12 A Correct.

13 Q Was the drag sled part of the forensic
14 mapping?

15 A No, sir.

16 Q So there was some data that you did have to
17 have, right?

18 A I used the scene case notes.

19 Q By the way, let me ask you this. Did you
20 know if anyone on the MAIT team ever requested or did
21 a mechanical analysis evaluation of the Monte Carlo?

22 A I don't know. I wasn't -- I wasn't tasked
23 with that, so I don't know.

24 Q All right. Would that normally be one
25 person's job?

1 **A** No. It could be. It doesn't have to be.

2 **Q** I guess I'm saying, would the same person
3 -- assuming the team stays static, if you will, would
4 the same person on that team always do -- if there
5 was a mechanical evaluation, do that mechanical
6 evaluation?

7 **A** We do them on certain cases. We don't do
8 them on every case.

9 **Q** Okay. On this one, you're telling me you
10 don't know if one was done or not.

11 **A** I don't know if one was done.

12 **Q** All right. Now, if I understand you
13 correctly, you said the vehicle was traveling, at one
14 point in time, 85 miles per hour.

15 **A** Yes, at the start of the skid marks.

16 **Q** Then the skid marks disappeared?

17 **A** Correct.

18 **Q** Now, from the edge of the -- let's do it
19 this way, where the skid marks end, how far was it to
20 where the Toyota Corolla was?

21 **A** I would have to have the Edge.

22 **Q** Pardon me?

23 **A** I would have to have the Edge program up to
24 get that exact distance.

25 **Q** Okay. So let me ask you this. You didn't

1 program the Edge program, right? I mean, you weren't
2 the ---

3 A No.

4 Q --- software programmer. Do you know what,
5 if any, assumptions this program uses when all this
6 stuff downloads into it?

7 A No, sir.

8 Q For example, does it make an assumption
9 that it has manufacturer-size tires on it?

10 A For the download?

11 Q Yeah.

12 A It wouldn't have vehicle -- it would just
13 have four points for the vehicle. It wouldn't have
14 the actual vehicle.

15 Q And in going about all this, did you put
16 any vehicle information in to come up with these
17 drawings?

18 A Yes, I put the vehicle in there and scaled
19 to what auto stats told me it was.

20 Q I'm talking about this particular vehicle,
21 2005 Monte Carlo. Did you put information somewhere
22 in all of this about that 2005 Monte Carlo?

23 A I don't understand what -- put it where?

24 Q Let me ask you this, we saw on a video a
25 moment ago about tire sizes, right?

1 **A** Uh-huh.

2 **Q** So I ask you, did this 2005 Monte Carlo
3 have on it the manufacturer suggested whatever tire
4 size?

5 **A** That wouldn't be relevant to the
6 calculations that I was doing.

7 **Q** I can't put my finger right on the report.
8 It may not have been your report, but somewhere it
9 was reported that this was not the tire size design
10 for this vehicle. You know anything about that?

11 **A** It very well may be. I'd have to look at
12 the vehicle exam.

13 **Q** Okay. Somewhere in that report, it says
14 that the tire size could have affected the estimated
15 speed. You recall that?

16 **A** Yeah, it could affect the ACM download.

17 **Q** And the --

18 **A** They were different.

19 **Q** That's what I'm trying to get at. Does this
20 program assume that it has the right tire size on it,
21 for want of a better term?

22 **A** It doesn't have anything to do with tire
23 size.

24 **Q** Well, speed does, according to that report.

25 **A** That's two different things.

1 Q How is it two different things?

2 A That's the airbag control module.

3 Q Okay.

4 A Which is not a -- that's based on an
5 algorithm to determine whether the airbag needs to
6 deploy.

7 Q All right. So you say when the car went
8 airborne, it went 117 feet, right?

9 A Horizontally, yes, sir.

10 Q From the time it went airborne to when it
11 ended up against the building?

12 A No, sir. From when it first struck the
13 ground.

14 Q Okay. 117 from where it went airborne to
15 where it struck the ground.

16 A Correct.

17 Q Did it strike the ground on the Allgood --
18 was it Allgood Bridge Road?

19 A It struck the ground in the driveway.

20 Q Okay. Before it got to the Toyota?

21 A Correct.

22 Q How fast was it when it got to the Toyota?

23 A I didn't need that.

24 Q Pardon me?

25 A I didn't need that information. The

1 airborne speed is an absolute speed. If it's going 73
2 miles per hour at airborne, it's not going more later
3 on. I know that.

4 Q If anything, it would have been slower,
5 right?

6 A Right.

7 Q Slower when it hit the Toyota?

8 A Correct.

9 Q But you didn't go to the scene. You never
10 looked at the Toyota, right?

11 A Other than the pictures, no, sir.

12 Q All right. Thank you, Mr. Andis.

13 MR. CLEVELAND: I just want to clear
14 something up very ---

15 THE COURT: Certainly.

16 MR. CLEVELAND: --- briefly, Your Honor.

17 **REDIRECT EXAMINATION**

18 **BY MR. CLEVELAND:**

19 Q I apologize if I got ahead of myself. Did
20 your calculations involve pure physics and
21 observations from the scene, not any type of computer
22 input or recording from the car?

23 A That's correct.

24 Q So you didn't rely on any information
25 downloaded from the car. This is purely on

1 observations and mathematical calculations?

2 **A** Correct.

3 **Q** And did you do those calculations by hand
4 or by computer?

5 **A** By hand and by computer to check my hand
6 calculations.

7 **Q** And what was -- did they compare, come out
8 the same?

9 **A** Same thing.

10 **Q** 81 miles an hour; is that correct?

11 **A** Yes, sir.

12 **Q** All right. Thank you. That's all the
13 questions I have. I appreciate it.

14 **THE COURT:** Yes, sir.

15 **RECROSS EXAMINATION**

16 **BY MR. DEJONG:**

17 **Q** Which came first, the computer or the hand?

18 **A** Hand calculations.

19 **Q** Thank you, sir.

20 **MR. CLEVELAND:** Nothing further.

21 **THE COURT:** Sir, you can step down.

22 **MR. DEJONG:** No objection to him being
23 excused, Your Honor.

24 **MR. CLEVELAND:** None from the State.

25 **THE COURT:** All right then. Thank you for

1 being here. Thank you.

2 All right, Ladies and Gentlemen. These guys
3 are pretty good. We said five o'clock and it's
4 5:02, so that's pretty close. We're going to
5 break for the evening. I do want to explain one
6 thing to you. If you've seen me sitting here
7 talking to this gentleman next to me, I don't
8 want you to think we're talking about something
9 else. He'd rather be talking about basketball, I
10 assure you. But he is my law clerk and he's
11 helping me prepare the charge on the law that
12 I'm going to give you most probably tomorrow.
13 And that has necessitated us talking some and I
14 hope in no way that's been a distraction to you
15 all. But I do want to assure you that we were --
16 we were working.

17 We're going to start tomorrow morning at
18 9:30. So, if you will be in your jury
19 deliberation room at 9:30, we'll start very
20 quickly thereafter. Once again, I'll just remind
21 you, don't do any independent research or
22 discuss this case with anyone. Just go home and
23 forget you are a juror. I hope you have a good
24 evening. See you back tomorrow morning. Thank
25 you.

1 **(WHEREUPON, the jury exits at approximately**
2 5:04 p.m.)

3 **THE COURT:** All right.

4 **MR. DEJONG:** Your Honor, you had asked us,
5 I think, around the lunch break to start
6 thinking about certain things and maybe have an
7 answer this afternoon. I have not had a chance
8 to talk to him.

9 **THE COURT:** That's fine.

10 **MR. DEJONG:** I'll talk about it with him
11 this evening. I'll give you an answer in the
12 morning.

13 **THE COURT:** That sounds fine. Ian's got
14 the charge to a good point to where we're ready
15 to send it out to you, I think. Just
16 preliminarily want you to look over it. I think
17 I've got y'all's email addresses. It's at
18 Greenvillecounty.org, right?

19 **MR. CLEVELAND:** Yes.

20 **MR. DEJONG:** Yes.

21 **THE COURT:** Strange part of it.

22 **MR. DEJONG:** Mine is -- I'm teasing --
23 JD@co.pickens.sc.us.

24 **THE COURT:** All right. Perfect. All right.
25 We'll send it to you. I think it does include a

1 section on copy of the jury charge in the jury
2 room, copy of the charge in the room. It
3 includes it but, of course, if that's not
4 something y'all consent to, then we can -- we
5 can easily take that out.

6 Mr. Hester, I just want to mention to you
7 -- I mean, you've got an outstanding attorney. I
8 know he's been talking to you about this all
9 throughout your preparations. But tomorrow
10 sometime, we're going to get to the point in the
11 trial where you're going to have to decide
12 whether or not you were going to testify in the
13 trial of this case. I know Mr. DeJong has talked
14 to you about it, but I just wanted to say, on
15 the record, so it's not a surprise when we get
16 to that point tomorrow, all right, for you all
17 to continue your conversations towards your
18 decision about it.

19 **MR. DEJONG:** Just so you know, Your Honor,
20 Mr. Hester and all my clients, I share with them
21 that we don't make that final decision until the
22 State rests. I shared with him that you will
23 probably have some questions. I shared with him
24 that I'll ask for a very brief recess.

25 **THE COURT:** Absolutely. I certainly will

1 allow you all the time you need. That decision
2 needs to be your decision and your decision
3 alone. It will be -- of course, you will want to
4 listen to your lawyer's advice about it, but
5 ultimately, that must be your decision. I will
6 give you all a break if you need to. I think
7 that's wise counsel to wait until the State has
8 rested and determine what you want to do.

9 Anything we need to take up before we break
10 for the evening?

11 **MR. CLEVELAND:** None from the State, Your
12 Honor.

13 **THE COURT:** All right. Then we'll start
14 back tomorrow morning. Let's meet up about 9:15
15 again just to talk about the charge and see if
16 there's anything that we need to include or take
17 out or whatever. All right. Thank you. And if
18 anybody has any proposed charges you want to
19 send over the evening, Ian is just
20 Lverdinsc@sccourts.org. All right.

21 **MR. CLEVELAND:** Thank you.

22 **THE COURT:** Thank you all.

23 **(WHEREUPON, the Court recesses for the day at**
24 **approximately 5:08 p.m.)**

25

CERTIFICATE

393

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record, Volume 2 of 4, of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 19th day of July, 2017.

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

Teresa B. Johnson

Certified Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF PICKENS	)	Case No(s) : 2015GS3900611,
	)	2015GS3900612,
State of South Carolina,	)	2016GS3902635
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Timothy Hester, Sr.,	)	Volume 3 of 4
	)	
Defendant.	)	
	)	

January 23-26, 2017
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

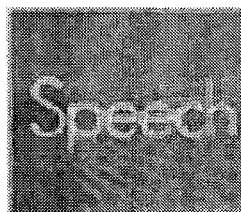
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(WHEREUPON, the Court resumes on the 25th day of January, 2017 at approximately 9:43 a.m.)

(WHEREUPON, State's Exhibit 47 is marked for identification purposes.)

THE COURT: All right. I'm sorry, y'all. We had a little incident at our house this morning. The joys of living out in the country, but anyway. And, uh, so -- I mean, we had a skunk attack. I had to have somebody come pick us up -- me up this morning. I had to have Ian come pick me up because our cars can not be driven as a result of this. Anyway, long story short, I'm sorry I'm late. Is there anything we need to go over about the charge?

MR. CLEVELAND: Your Honor, I submitted to your clerk just a request on the charge to add the language from the implied consent statute.

THE COURT: Okay.

MR. CLEVELAND: Essentially, that would be the State's only request at this time.

THE COURT: Okay. All right. Anything from the defense?

MR. DEJONG: The only thing I would ask,

1 Your Honor -- well, I have a bit of a problem
2 with the 08 inference. I realize that is the
3 law so you are kind of between a rock and a
4 hard spot. To me, that's also perilously close
5 to commenting on the facts, in my opinion.

6 **THE COURT:** I'm going to read it over.
7 That was -- you know, I want to read it over
8 and take a look at it.

9 **MR. DEJONG:** The only other thing that
10 came to mind when I looked over it early this
11 morning was under the jury verdict, which is on
12 page 21.

13 **THE COURT:** Does it say indictments? Did
14 we leave that in there?

15 **MR. DEJONG:** Beg your pardon, Your Honor?

16 **THE COURT:** Does it say indictments?

17 **MR. DEJONG:** No, it wasn't so much that. I
18 would ask the Court the charge be that they
19 must consider each indictment separately.

20 **THE COURT:** Oh, sure. Yes. I'm sorry. That
21 should have had that in there.

22 **MR. DEJONG:** And their verdict on each
23 indictment.

24 **THE COURT:** I just forgot that. Thank you.

25 **MR. DEJONG:** That's all I have.

1 **THE COURT:** Thank you. All right. If
2 there's nothing else --

3 **MR. CLEVELAND:** One more little thing.

4 **THE COURT:** Yes.

5 **MR. CLEVELAND:** I apologize. In the --

6 **THE COURT:** That's fine.

7 **MR. CLEVELAND:** -- in the charge, it also
8 says that the indictments will be back in the
9 jury room.

10 **THE COURT:** Yeah, we need to take that
11 out. Yeah. We've got a -- I don't know.
12 Did you send that to them? The verdict
13 form?

14 Okay. We've got a verdict form. It
15 considers each one. It has each one, of course,
16 separate. We'll send it to you.

17 **MR. DEJONG:** Not directly related to the
18 charge, but coming back to yesterday, Your
19 Honor asked us to consider whether or not to
20 send a written copy of the instructions. With
21 all due respect, Your Honor, I would
22 respectfully ask that you not send a copy of
23 the verdict back -- excuse me. Not send a copy
24 of the charge back.

25 **THE COURT:** All right. All right. Then we

1 will not -- we won't do it. As I said, I only
2 do it if both sides consent. So no problem with
3 that whatsoever.

4 Yes, sir.

5 **MR. DEJONG:** A couple of more things, Your
6 Honor. One thing -- I hesitate to do this, but
7 I feel compelled to because I had several
8 people yesterday evening after we left bring to
9 my attention that one of the jurors were sound
10 asleep. We're not talking about nodding off. I
11 talked to Mr. Grant this morning about it.

12 **THE COURT:** Well, I did not even see it.
13 I'm sorry.

14 **MR. DEJONG:** Actually, it was brought, I
15 think, to Mr. Grant's attention by Ms. Mauldin
16 that he was asleep. And what was reported to
17 me, it wasn't, again, as though he was nodding
18 off. He was asleep for some period of time. I
19 do not know the gentleman's name. I hate to
20 identify him this way, but he is the young
21 African American male that is on the jury.
22 Again, I did not observe personally. I want the
23 Court to be aware of that. But several people
24 brought it to my attention. I just wanted to
25 put that on the record.

1 **THE COURT:** I didn't observe it.

2 **THE CLERK:** His name is Quantarius Still.

3 **THE COURT:** All right. Yes, sir.

4 **MR. BUCKNER:** Judge, I observed him maybe
5 nod off momentarily. I won't say I saw him
6 sleeping for any significant period of time.

7 **THE COURT:** I'm surprised to hear the
8 characterization that he was asleep for a long
9 period of time because I -- I just never -- I
10 -- I looked over there -- I look over there a
11 good bit and I did not see him. But now, if I'm
12 wrong about that -- I mean -- yes, sir.

13 **UNIDENTIFIED SPEAKER:** I did observe him
14 near the end of the deputy's testimony. It was
15 less than a minute. My observation was that he
16 was sound asleep. There was a little bit of
17 noise made, but he never flinched.

18 **THE COURT:** Okay. So you noticed it for
19 about a minute?

20 **UNIDENTIFIED SPEAKER:** It was less than a
21 minute, but he was sound asleep.

22 **THE COURT:** Okay. All right. Since we
23 don't know anything more than he was asleep for
24 about a minute, I think that's probably
25 acceptable. I certainly didn't see him sleeping

1 the whole time. In fact, I remember several
2 times during the day making some eye contact
3 with him. So I'll just let everybody -- I'll
4 just speak to everybody.

5 MR. DEJONG: Final thing that I have, Your
6 Honor, is -- and this may not be the time to do
7 it, but I want the Court and prosecution to be
8 aware. I'm not 100 percent what Sergeant Aaron
9 Duncan will be testifying to. I know they are
10 going to try to qualify him as an expert. I
11 would request a hearing, Your Honor.

12 THE COURT: All right. All right. Is that
13 what you all were planning on doing?

14 MR. CLEVELAND: Yes, Your Honor.

15 THE COURT: All right. What is -- can we
16 talk about the basis of what he's going to be
17 testifying to?

18 MR. CLEVELAND: Yes, Your Honor. The State
19 would seek to introduce him as an expert in the
20 fields of accident investigation and collision
21 reconstruction.

22 THE COURT: Okay.

23 MR. CLEVELAND: He will be giving an
24 opinion as to who was the driver of the vehicle
25 based upon his total investigation of the scene

1 and his training and experience, in addition to
2 many other things. He's going to testify he had
3 tremendous involvement in this case. But the
4 State would seek to elicit that he has
5 developed that opinion.

6 **THE COURT:** Okay. And what is the tests
7 that he's going to be testifying to, in other
8 words, that he ran?

9 **MR. CLEVELAND:** He -- regarding the driver
10 issue, there is no test. It was just ob -- just
11 his training and his observation based upon
12 everything else. He's taken classes in what is
13 called occupant kinematics of how bodies move
14 around in cars during wrecks. That's a 40-hour
15 class in addition to significant training in
16 accident reconstruction. He's going to talk
17 about how individuals that are not buckled in
18 move inside a vehicle during certain collisions
19 and how that --

20 **THE COURT:** Is he going to be your next
21 witness?

22 **MR. CLEVELAND:** No, he's going to be the
23 State's second witness we call.

24 **THE COURT:** How -- how many more witnesses
25 do you have today?

1 **MR. CLEVELAND:** We have three to five. I'm
2 kind of favoring the low end of that, Your
3 Honor, just in the interest of time to get this
4 thing to the jury, but we have five on our
5 list. I really want to see how it pans out.

6 **THE COURT:** All right. And you're still --
7 I don't want you to tip your hand, but you
8 could be thinking of up to two?

9 **MR. DEJONG:** I'm sorry, Your Honor.

10 **THE COURT:** You could be thinking of up to
11 two witnesses, potentially?

12 **MR. DEJONG:** Quite candidly, Your Honor,
13 one.

14 **THE COURT:** One. Okay. All right. I was
15 just thinking, you know, if we really did think
16 we would get the case to the jury today or not.
17 All right. Well, I'll tell you what, we could
18 -- is your second witness here?

19 **MR. CLEVELAND:** Yes, Your Honor.

20 **THE COURT:** You want to go ahead and put
21 him on the stand? We can go over some of the
22 tests that he ran. I can't remember the phrase
23 you used, but this 40-hour training that he did
24 about how bodies move around inside a vehicle
25 and see if that satisfies our situation here.

1 **MR. CLEVELAND:** Yes, Your Honor.

2 **THE COURT:** All right. Will you please
3 tell the jury that we've had to take up a legal
4 matter and if they will just maybe -- do y'all
5 have some snacks or something?

6 **MR. CLEVELAND:** Yes.

7 **THE COURT:** Okay. Perfect. If you don't
8 mind, if you just maybe give them a snack or
9 two or something and just tell them to please
10 be patient with us.

11 **THE BAILIFF:** Just let them do push-ups.

12 **THE COURT:** That's a good idea. Thank you.

13 **MR. CLEVELAND:** The State would call Aaron
14 Duncan to the stand.

15 **AARON DUNCAN**

16 having first been duly sworn, testifies as follows:

17 **THE CLERK:** Thank you, sir. If you would,
18 have a seat and state your name for the record
19 please.

20 **MR. DEJONG:** Your Honor, not to interrupt
21 and maybe we can save a little bit of time, the
22 thrust of my Daubert hearing is to what
23 Mr. Cleveland said he would be asking him to
24 testify to, the movement of the bodies,
25 identifying the driver, in his opinion. As far

1 as speeds and braking and all that, I don't
2 care about that.

3 **THE COURT:** All right.

4 **MR. CLEVELAND:** Sure.

5 **THE COURT:** And of course, you understand
6 we are pushing towards accepted science, so to
7 speak.

8 **MR. CLEVELAND:** Yes, Your Honor.

9 **THE COURT:** All right. All right. Go
10 ahead.

11 **THE WITNESS:** Aaron Duncan.

12 **DIRECT EXAMINATION**

13 **BY MR. CLEVELAND:**

14 **Q** Sergeant Duncan, could you please outline
15 your college education for the judge please.

16 **A** Yes, I have a four-year degree from Lander
17 University, bachelor of science in political science.
18 I originally started out in an engineering program
19 and changed my mind about halfway through.

20 **Q** All right. And what's your current post and
21 assignment with the Highway Patrol?

22 **A** I'm a Sergeant with the South Carolina
23 Highway Patrol Multi-disciplinary Accident
24 Investigation Unit. That is the MAIT team, the
25 collision reconstruction team. I am the supervisor

1 over the 12 county -- the team that covers the 12
2 counties and what's considered the Upstate Troop 2
3 and Troop 3. I supervise the six gentlemen -- ladies
4 and gentlemen that help me to reconstruct crashes in
5 that region.

6 Q All right. And how long have you been part
7 of the MAIT team?

8 A I have been actually on the MAIT team since
9 2008, March of 2008. Prior to that, since 2001, I was
10 what was called a MAIT associate. I had some of the
11 MAIT training and a good bit of the basic skills for
12 the roadway use. Whenever they had assistance, if
13 they needed, I would step in and assist them with
14 collisions before I joined the team.

15 Q All right. And how many total hours of
16 training would you estimate you have in the fields of
17 collision reconstruction and accident investigation?

18 A I tried to estimate it up yesterday sitting
19 in the back of the courtroom. Somewhere between 13
20 and 1500 hours.

21 Q All right. Is continuing education part of
22 your training to stay on the MAIT team?

23 A It is. I also have a national accreditation
24 as a collision reconstructionist. The field of
25 reconstruction derived a test to where they test you

1 to see how you rate as far as your standings with
2 collision reconstruction. I was able to get that in,
3 I believe it was 2009. To do that and to maintain
4 that, I also have to have continuing education
5 credits, which requires me to go to conferences, go
6 to training and to maintain a certain amount of hours
7 every three to five years to get that
8 recertification.

9 Q And I want to talk about the specific
10 training courses. You have on your CD, which has been
11 provided to the defense, accident -- advanced
12 accident investigation and reconstruction, as well
13 as, in 1998, this 120 hours; is that true?

14 A That's correct.

15 Q As well as traffic collision investigation
16 in 2002, 80 hours?

17 A Yes, sir.

18 Q Advanced collision investigation, 2002, 80
19 hours?

20 A Yes.

21 Q Practical collision reconstruction, 80
22 hours, in 2002?

23 A Yes, sir.

24 Q Moving forward, describe for me, in
25 particular, this 2011 40-hour class on occupant

1 kinematics with a traffic crash reconstructionist.

2 **A** That also stems off a class of collision
3 forensic investigative techniques from 2002. Again,
4 looking at what's going on inside the car, not just
5 considering what people are telling, but looking at
6 what the physical evidence shows, interior
7 compartment damage from the nomenclature of the car,
8 what positions are as far as what's available.

9 As mentioned earlier in testifying, there's
10 three impacts in a collision. The tree, for example,
11 and the car coming together; the body inside coming
12 against the steering wheel or the dashboard; and then
13 the internal organs coming against the inside of the
14 body. So learning how to place all of these things to
15 understand what takes place between the crash
16 starting and everything inside the car and throughout
17 the whole dynamics of the collision. Looking at how
18 people -- because of simple laws of physics, how
19 people react in crashes to what goes on in the crash
20 itself.

21 **Q** All right. Was -- who taught that
22 particular class on occupant kinematics?

23 **A** Occupant kinematics came to us -- it was an
24 ITPM course. I have the certificate. I'll be more
25 than happy to, if you give me a second, retrieve the

1 book so I can look at that to find out who exactly
2 taught it. But I've had so much training in the past
3 that it's hard to differentiate who taught what
4 sometimes.

5 Q I understand. Was it an accredited body
6 that gave that class?

7 A It was. Highway Patrol will actually --
8 instead of sending us to training, because we have
9 about 35 to 40 investigators on the MAIT Unit, they
10 will actually pay someone to come in and instruct us.
11 It's cheaper to get one hotel room and to pay that
12 guy to come in. For example, Greg Russell just taught
13 us a class on principle direction and force, change
14 in velocity and momentum. They brought him in from
15 Ohio. He taught the course to us for three days. It
16 saves a lot of money for the State. It gives
17 everybody the same training and you are getting it
18 from somebody who is recognized as an expert within
19 the field and within the reconstruction community.

20 Q All right. Would you consider occupant
21 kinematics and those studies outside of the normal
22 expertise of the average person or juror?

23 A Outside of the --

24 Q I mean, is the conclusions taught to you by
25 that class, the science involved, something that's

1 outside the scope of observation of a normal person?

2 **A** The conclusions that I'm going to come to
3 from it from my investigation? No, sir. I mean, I
4 think it's really simple, but that's also what I do
5 for a living. To say that it's something that's
6 outside of the scope, I don't believe --

7 **Q** I'm not asking about the conclusions
8 specifically. I'm asking about the methods used to
9 study and observe. Is that something of a
10 particularly scientific nature?

11 **A** It is.

12 **Q** Do you think, as an expert, you can provide
13 insight, or does that class allow you to provide
14 insight into a given situation, that is a traffic
15 collision and how people move inside the car?

16 **A** I feel certain that it does.

17 **Q** That -- you mentioned it was an accredited
18 body that taught that class. Is the physics and
19 science associated with occupant kinematics widely
20 accepted within the field of collision reconstruction
21 and accident investigation?

22 **A** Absolutely. As I mentioned earlier, we go
23 to conferences. I am actually the secretary of the
24 South Carolina Association Reconstruction
25 Specialists. We hold conferences on an annual basis

1 in July. During that, we also set up essentially
2 controlled atmospheres, staged collisions where we
3 crash unoccupied cars. We may put dummies -- excuse
4 me -- dummies is the only way I can think to put it
5 right now. But we put dummies in the car to see how
6 it reacts.

7 We set the car up with cameras. We set the
8 car up with accelerometers. We set cameras around so
9 that not only do we see the crash taking place, but
10 we also take that data that we obtained and applied
11 the theories that we're taught to turn around and
12 show that the practices that we're doing actually
13 work and come up with results. We know what the cars
14 are coming together like. We know the speeds of
15 coming together. We have everything, again, in a
16 controlled environment. Then we apply all of the
17 stuff that we have to show that what we are doing
18 actually makes sense and comes up with logical and
19 actual answers.

20 Q Did you apply those scientific principles
21 to your investigation in this case regarding occupant
22 kinematics?

23 A Yes, I did.

24 Q Based upon the examination -- this is just
25 briefly -- what factors did you consider in this

1 particular crash on the totality of the investigation
2 to make any determination as to where the occupants
3 of the car were at the time of the collision?

4 **A** When we get to the collision, we're
5 actually looking at it backwards. We have to start
6 from where everything is, where we find it at. In
7 speaking with people that were on the scene prior to
8 me, finding out where the victim or the deceased was
9 at at final rest, where people found her at and where
10 people started to try to do -- attempt to aid her in
11 her injuries. Knowing where that is, seeing the final
12 rest of the car, it's position and then kind of
13 backing up and seeing what all, as far as what we
14 consider the crash dynamics, how the vehicle reacted
15 to what was going on.

16 Understanding physics and looking at that,
17 speaking with people that were -- that were involved
18 in the crash or people that observed stuff prior to
19 the crash, and just understanding simple physics and
20 how things are going to work with what's going on
21 within time the car starts going leaving the evidence
22 that we have to the time the car finishes its
23 movement.

24 **Q** All right. And in this particular case,
25 briefly describe how this accident occurred.

1 **A** This is a crash that started on a grade
2 going upward. I believe Lance Corporal Craig
3 mentioned it's on a slope coming at what is a T-
4 intersection. I consider the approaching being the
5 base of that T. That is on a grade. When it comes up
6 to Allgood Bridge Road, it actually flattens out and
7 has that elevation for that part of the roadway. But
8 then it goes downgrade into the driveway of the
9 private residence where the white Toyota that was
10 mentioned being struck, the driveway where they talk
11 about the vehicle coming back down. Lance Corporal
12 Andis talked about the over 100 feet worth of
13 distance horizontally that was traveled.

14 When it comes up the roadway, the way that
15 the roadway crests, at the speed that the vehicle was
16 traveling, it actually launches over and goes
17 airborne and does what we call a vault. As it goes
18 into that vault, it goes for that 100-and-some-odd
19 feet distance. I'm not specific without having the
20 notes in front of me. Then it comes back down. That's
21 the first sign we get of any more physical evidence
22 left by the vehicle on the roadway.

23 Once it comes back down, it goes again in a
24 straight line striking a tree and then rotating in a
25 position that it comes to rest propped up on a

1 building, a utility building. The building shows
2 evidence of impact and contact from the vehicle. The
3 tree shows evidence of impact and contact from the
4 vehicle. The driveway shows that evidence that I was
5 speaking about and the skid marks, tire marks left by
6 the vehicle prior to it vaulting over gives us
7 physical evidence. So we look at that to determine
8 that the vehicle is rising. And then, obviously, what
9 goes up must come down again. So it's going to drop.

10 When it drops, things in the car are going
11 to drop and do that motion. When it impacts with the
12 ground again, things in the car -- again, Newton's
13 basic law is objects in motion stay in motion;
14 objects at rest stay at rest. So the things in the
15 car that are moving are trying to go in that same
16 direction until they are acted on by Newton's third
17 law of equal and opposite force. It's going to cause
18 them to do something different.

19 Once that happens, they are going to go
20 into a different motion or something's going to
21 happen different. For example, as the vehicle comes
22 nose down into the driveway, bodies are going to
23 continue to want to go forward until something stops
24 them. Ideally, it would be a seatbelt. At this point,
25 it may be something like a steering wheel or a

1 dashboard.

2 Q Well, and in this case, we will go into the
3 detail for the jury, but let's just cut straight to
4 the chase. Did you find that the occupants were
5 buckled up in the car?

6 A I did not. No, sir.

7 Q All right. What happens to someone when a
8 car bones and they are not buckled up?

9 A They are going to strike something within
10 the vehicle.

11 Q All right. Do they -- the initial vault,
12 does that typically cause an occupant within the
13 vehicle to move around inside the vehicle?

14 A The initial vault?

15 Q Yes.

16 A The launching itself? I wouldn't think the
17 launching would. No, sir. The impact of coming down
18 would cause the occupants to move around within the
19 vehicle.

20 Q All right. Again, just cutting right to the
21 chase, was this vehicle equipped with airbags?

22 A It was.

23 Q And an airbag, I guess, data recording
24 module?

25 A Airbag control module. The module that

1 determines whether or not the airbag will deploy or
2 not deploy.

3 Q All right. And did that airbag control
4 module have record of how many times an incident
5 occurred that would have deployed the airbags?

6 A It did.

7 Q How many was that?

8 A It recorded two events, one deployment
9 event and one -- an event that essentially would have
10 been a deployment, however, the airbags had already
11 deployed. Therefore, it was noting that this would
12 have happened but we didn't have anything to deploy
13 at this point in time. So...

14 Q So the point being is does that indicate
15 that there were two serious decelerations or
16 collisions within the same accident?

17 A That would be correct.

18 Q Based on your investigation, what are those
19 two events?

20 A The impact with the ground coming back down
21 from the vault and then the impact with the tree
22 would be what I would consider the second event to be
23 recorded.

24 Q All right. Tell me about where the victim
25 was located in the car. How did that play into your

1 analysis of occupant kinematics and driver
2 determination?

3 **A** The victim's head location was under the,
4 what we consider the A-pillar, which is the support
5 for the front windshield of the vehicle. Right where
6 it comes to contact with the roof line, on the ground
7 as the car was sitting on its side, her head would
8 have been under that edge between the ground and the
9 car.

10 **Q** All right.

11 **A** Her feet would have been inside, from what
12 I understand, the floorboard capacity of the vehicle
13 on the passenger side. And all of her side from
14 where her head is extended through the passenger side
15 window was contained inside the passenger's
16 department in the vehicle.

17 **Q** And what, if anything, in particular about
18 Mr. Hester that gives you any indication that he was
19 the driver of the vehicle?

20 **A** Mr. Hester, when I went to visit him at
21 five o'clock that morning in the hospital, as I did
22 an interview as we spoke about earlier during the
23 other motion, he had a mark that started at the base
24 of about his right-side rib cage and came up in an
25 arc pattern curvature kind of down or coming across

1 rising up to about the middle of his sternum and
2 ended about midways on his rib cage on the other
3 side, as far as I remember, on the left-hand side.
4 That mark was curved and in my opinion, clearly
5 reflects where he had made contact with the steering
6 wheel. The steering wheel in the vehicle showed
7 damage from occupant contact where the body's coming
8 forward into the steering wheel broke forward and
9 leaned towards the speedometer area, towards the
10 dashboard of the vehicle. And the two patterns just
11 matched up to me.

12 Q Is the steering wheel difficult to bend?

13 A It is -- takes a good bit of force to do
14 that, yes, sir.

15 Q Tell me about the injuries on the -- other
16 injuries, superficial injuries, on the defendant and
17 how that came into play here.

18 A On the left side of his forehead, he had
19 some minor scratches and some red areas, as if he had
20 contact with something with the left side of his
21 head. He also had some damage on -- or some impact
22 injury on the, I want to say, his right wrist. I'm
23 sitting here trying to picture in my mind. I'm a
24 little bit confused on that. But the wrist really
25 didn't play much of a determination on that.

1 The deceased had a mark on the right side
2 of her forehead, as we heard the medical examiner
3 speak about, a rather large area where the skin was
4 torn and you could actually see up and into that
5 area. Those two things kind of lend me, again, to
6 support the story that Mr. Hester was on the left
7 side of the vehicle. Not only did they have the
8 steering wheel impact, but there's nothing on the
9 right side of the car to strike the left side of your
10 head on. Again, in a similar fashion, there's nothing
11 on the left side of the car to strike the right side
12 of your head on. With her being outside of that
13 vehicle with her body inside the vehicle, it just
14 kind of lined up to make sense to me as to what was
15 going on.

16 Q What about the -- describe the interior of
17 that vehicle, briefly. Is it -- just describe the
18 interior of it and is it conducive to moving back and
19 forth easily between the driver and passenger seats?

20 A Chevrolet Monte Carlo, as a lot of us know,
21 are the Nascar kind of cars. Those cars are designed
22 with that kind of frame of mind. Bucket seats. This
23 car has the center console with the gear shift in the
24 center of the vehicle as well. Puts you kind of in a
25 position to where the car should wrap and hold you in

1 the location as the driver because they have that
2 speed mentality in mind where it's supposed to handle
3 and hold you, much like a Corvette, Camaro, any kind
4 of sports car would be. It has a sports element to
5 the car, even though it is a full-size or larger size
6 car. So the seats are designed to hold you in them
7 and hold you in them comfortably.

8 The center console's there, armrest and,
9 I'm assuming, drink holders, right off the top of
10 mind, but that's where they all put them nowadays.
11 You're going to sit down in the car as opposed to
12 like a pickup truck or a bench seat where you sit up
13 in the car, if that makes sense.

14 Q Yeah, it does. So is there any connection
15 between the passenger footwell and the driver's
16 footwell?

17 A No, sir, there's not. What we call the
18 center stack, where the radio, the air conditioner
19 and all that stuff comes down and forms a smooth
20 transition into where the gear shift, cup holders,
21 armrest and all that stuff would be on anybody's car.

22 Q You described this car had bucket seats.
23 After the collision, were these bucket seats intact
24 or were they broken in any fashion?

25 A They were not broken. They were still

1 intact. They were sitting up in a reasonable position
2 to be traveling in the car. Not laid back or anything
3 like that.

4 Q How is the roof line of this car, how much
5 head room does it have, just in layman's terms?

6 A I would consider it a decent car. It's no
7 Crown Victoria or Highway Patrol car with ample room
8 with a cap or anything like that in it. But it is a
9 -- I would consider it to be ample head room. Nothing
10 along the headline as far as remote control access
11 for your car or sunglasses storage or anything like
12 that.

13 Q All right. The steering wheel marks, you
14 testified, was low on the chest of Mr. Hester.
15 However, if I'm imagining sitting in the car, the
16 steering wheel is more or less at face or chin level.
17 Does your training -- could it describe -- could it
18 explain the discrepancy as of where the steer --
19 where, in your opinion, the steering wheel mark is
20 and where, sitting in the car, kind of how you
21 approach the steering wheel?

22 A Absolutely. When the vehicle would have
23 left the ground and went into the vault, obviously,
24 the bodies are in the seat. The vehicle's carrying
25 them forward. It's all going in the same process.

1 Again, in the line of physics, when the vehicle
2 starts to drop, it's much like going to be the
3 experience you'd have on a roller coaster where it
4 drops out from under and starts to go down. Except
5 with a roller coaster, hopefully, you've got your
6 seatbelt or that lap bar on that's holding you in
7 place. But you're still going to get that same pull
8 where your body is trying to go in the same direction
9 that the car originally had it going. The car has
10 changed direction; however, at this point in time,
11 the body hasn't because nothing has contacted the
12 body or made it change it's direction.

13 So the driver in the car and the passenger
14 in the car would have both been lifted up out of the
15 seats if they were not restrained. And then when the
16 car comes down, if they're caught up into the roof
17 line or up out of the seat just minutely when the car
18 comes down, they are going to come forward. Again,
19 something's got to change their path and their
20 trajectory. They're going to impact with things in
21 front of them as the car is stopping, yet the
22 occupants had not quite stopped yet.

23 Q Okay. So essentially, what you're saying is
24 it's like a roller coaster. He could have been up out
25 of the seat a little bit?

1 **A** Absolutely. That's what would have
2 happened.

3 **Q** And you said the airbags deployed. What
4 happens? Does the airbag constrain someone who's not
5 buckled in a car?

6 **A** Airbags, a lot of times referred to as SIR,
7 the Supplementary Inflatable Restraints, they are
8 there to assist the seatbelts to help people ride
9 down the collision. They're not there to -- their
10 design will not work completely without having the
11 other things. They are a supplement to what's going
12 on. They're going to help the seatbelt to help you
13 ride down the crash.

14 The problem in a crash is the speed that's
15 going on and the speed that you slow down. If you're
16 going 100 mile an hour and it takes you several
17 seconds to slow down, there's not a problem. If
18 you're going 100 mile an hour and it takes you a
19 second to slow down,, there's an issue and that's
20 going to raise havoc on the body. In doing so, the
21 airbags are helped to ride the speeds down to kind of
22 cushion the blow.

23 **Q** Sure. But if you're not buckled up, does
24 the airbag keep you centered and square in front of
25 it? Or describe sort of how a person interacts when

1 they're not buckled up.

2 **A** Again, in this particular case, they are
3 going to be up higher than where the airbag is going
4 to be. If the airbag does deploy, it's still not
5 going to come in the position where it's going to
6 stop them from striking, obviously, within the
7 vehicle and getting injuries or damage from striking
8 things that are fixed, hard objects, anything.

9 **Q** And you said that there were two collisions
10 that were worthy of an airbag deployment. There's
11 obviously only one set of airbags?

12 **A** Correct.

13 **Q** So essentially, even if -- is it a fair
14 statement to say even if the airbags did cushion on
15 one collision that there was nothing that -- a parked
16 car in front of them for the second collision?

17 **A** Correct. Correct.

18 **Q** Based upon these findings, what is your
19 opinion of where the occupants were in the vehicle at
20 the time of the collision?

21 **A** Mr. Hester was in the driver's seat and the
22 deceased was in the passenger's seat.

23 **Q** You described -- I just want to back up
24 just a little bit to when y'all do the classes and
25 you use accelerometer data and cameras to verify, I

1 guess, what your investigation techniques are. Did
2 you use these same investigation techniques in this
3 collision that you would have in any of those control
4 tests?

5 **A** Absolutely. Same approach to looking at
6 what took place, looking at the data, looking at my
7 experience over the past 22 and a half years as a
8 state trooper and over the past, what, 15 years of
9 collision reconstruction, yes.

10 **Q** And in the field of collision
11 reconstruction and accident investigation, is these
12 types of investigation techniques deemed reliable by
13 the community?

14 **A** Absolutely.

15 **Q** That's all the questions I have. Please
16 answer any questions Mr. DeJong may have.

17 **THE COURT:** Mr. DeJong?

18 **MR. DEJONG:** Thank you, Your Honor. May it
19 please the Court.

20 **THE COURT:** Yes.

21 **CROSS-EXAMINATION**

22 **BY MR. DEJONG:**

23 **Q** A few moments ago, I think Mr. Cleveland
24 asked you about the -- who the driver was, who the
25 passenger was, where they were seated. If I

1 understood you correctly, your response was "makes
2 sense to me that Mr. Hester was the driver and the
3 deceased was the passenger." Is that a correct
4 statement?

5 **A** From my interpretation of this crash,
6 looking at the evidence, yes, sir, that's my
7 determination.

8 **Q** All right. Well, I want to jump back from
9 that one -- one step. I believe your words were
10 "makes sense to me." I want to know what scientific
11 principle you used to arrive at that opinion.

12 **A** Newton's laws of physics. The same
13 principles I mentioned a while ago, the first, the
14 second and the third laws of physics describe how
15 objects in motion react and what they have to do in
16 order to change their direction and reaction. The
17 training that I've received in that over the years
18 and watching these collisions, that's how I determine
19 that conclusion.

20 **Q** All right. Let's talk about watching those
21 col -- or doing these collisions. That uses a dummy,
22 right? A traffic dummy or whatever we want to call
23 it.

24 **A** For the ones that we stage in a controlled
25 environment, yes, sir. For the other ones that I've

1 looked at, no, sir. They use real people live and
2 dead, yes, sir.

3 Q I understand, but every accident is
4 different.

5 A But physics doesn't change.

6 Q No, but the variables in an accident
7 change.

8 A But the physics don't change.

9 Q We could do this all day.

10 A Yes, sir.

11 Q We're not going to.

12 A Good.

13 Q I understand you talking about Newton's law
14 of physics.

15 A Yes, sir.

16 Q I guess basically -- it's been a long time
17 since I've studied Newton's law of physics. Is that
18 kind of the one where a body in motion tends to stay
19 in motion? Is that Newton?

20 A That would be his first one, yes, sir.

21 Q What was his second one?

22 A His second one is going to be that in order
23 for it to change in its direction, it's going to have
24 some other force applied to it. So if he is in
25 motion, in order for him to be taken from that

1 motion, he's going to have to have that -- something
2 to counteract that.

3 Q Okay. Did you say you have a degree in
4 physics?

5 A No, sir. I have a degree in political
6 science.

7 Q I thought you said that. So what training
8 have you had in physics?

9 A The first two years I had in college, I was
10 an engineering major. My design -- my original plan
11 was to study at Lander University and transfer to
12 Clemson University to take engineering. That would
13 have gotten me a math degree at Lander and then an
14 engineering degree at Clemson. But two years into it,
15 I decided that wasn't for me because I had an
16 internship in a small room where I couldn't see
17 outside and decided that I would offer something
18 different. I had the basics of math and physics and
19 all that I applied to my electives in college so I
20 can get out of college in four years with an
21 associate, excuse me, with a bachelor's in political
22 science.

23 Q In this particular case, did the car roll?

24 A The car went up onto its side. It did not
25 make a complete rollover, no, sir.

1 Q Okay. So basically, what you're basing your
2 opinion on is this training that you have received. I
3 understand about Newton's law or whatever we want to
4 call it. But basically, it's on the training that you
5 have received since you been with the Highway Patrol?

6 A I would say it would be based on more than
7 that. I gave the example of a roller coaster a while
8 ago and I've ridden roller coasters. I've been in car
9 accidents. I'm 45 years old. I've been a lot of
10 things and done a lot of things, not to say all this,
11 exactly. But the things of physics that I have
12 learned apply to things in life that I experience and
13 it makes it where I understand it to see it.

14 Q Being in a car accident doesn't make you an
15 expert of where somebody was sitting.

16 A No, sir. 22 years of Highway Patrol law
17 enforcement, 1300 hours-plus worth of training and an
18 understanding of collisions seems to make sense to me
19 to make me an expert in that field.

20 Q All right, sir. You're really saying that
21 it's more based on your experience than anything
22 else.

23 A No, sir. I said it's a combination of both,
24 my experience and my training. The training makes my
25 experiences make sense and makes it relate to where I

1 understand what's going on and I get a basic
2 understanding of the elements.

3 **MR. DEJONG:** One moment, please,
4 Your Honor.

5 **THE COURT:** Okay.

6 (WHEREUPON, there is a pause.)

7 **BY MR. DEJONG:**

8 **Q** When you do this whatever with the crash
9 dummies, do -- are all those crash dummies the same
10 size and the same weight?

11 **A** No, sir. They're not. We use infants for
12 car seat, car restraints kind of examples. We have
13 struck Tennessee in 2000 and -- I believe it was 14.
14 We actually did pedestrian strikes, for example. And
15 we used children-sized dummies for pedestrian strikes
16 so that we understand how the body reacts when struck
17 by a car, not only for adults, but for children.
18 Motorcycle crashes that we've done at the South
19 Carolina Criminal Justice Academy and at -- I'm
20 trying to think of what other class that was at.

21 But anyway, we set the dummies on the
22 motorcycle. Both driver and passenger so that we see
23 how they react in a crash and get an understanding of
24 how they come off of the motorcycles, for example. We
25 use different sizes to accommodate different things.

1 Not only do we use cars, we use tractor trailers. We
2 use pick-up trucks. We use mopeds. We use any vehicle
3 that we can come up with that we're possibly dealing
4 with and we could afford to get, we crash them to try
5 to get an understanding.

6 Q The crash dummies on the interior of the
7 car, are they the same size?

8 A No, sir. As I mentioned a while ago, we use
9 children for child restraints. They use -- I mean,
10 when you watch the NITSA, the national highway safety
11 stuff, when they do their crashes in the barriers, we
12 use similar dummies to those kind of things in those
13 crashes. We use those in training.

14 Q Thank you, sir.

15 A Yes, sir.

16 THE COURT: Any other questions for this
17 witness?

18 MR. CLEVELAND: None, Your Honor. The State
19 would move to offer this expert as a -- this
20 witness as an expert in the field of accident
21 investigation and collision reconstructions. I
22 think that based upon his training and
23 experience and testimony that the evidence will
24 assist the jury, that the expert witness is
25 qualified and that the underlying science is

1 indeed reliable.

2 **THE COURT:** Let me ask you this, sir. Have
3 you testified in court before?

4 **THE WITNESS:** Yes, ma'am. I have -- let me
5 see. Make sure I give it to you right. I have
6 six prior testimonies as an expert, one of which
7 was actually here in Pickens County.

8 **THE COURT:** It was in circuit court?

9 **THE WITNESS:** It was, yes, ma'am.

10 **THE COURT:** All right. And was it of this
11 same nature?

12 **THE WITNESS:** It was. It was for collision
13 reconstruction and speed calculations under
14 Judge McMahon.

15 **THE COURT:** All right. All right. Very
16 well.

17 Yes, sir.

18 **MR. DEJONG:** Your Honor, the speed
19 calculations don't bother me. Braking, all of
20 that, that doesn't bother me. What bothers me is
21 the science that supposedly goes into them
22 identifying who is where in this crash. I
23 submit, Your Honor, there is no science for
24 that. We call a lot of things science nowadays
25 that is not science. I'm on the verge to think

1 fingerprints, which was believed in forever,
2 really isn't science. There's a lot of junk
3 science out there. I don't mean to be offensive
4 to Mr. Duncan when I say that.

5 I don't think when you say, okay, when we
6 look at the law of Newton and I been to these
7 training classes, that that rises to the level
8 of making this a scientific principle. I don't
9 believe, and the defense's position is, Your
10 Honor, that it does not rise to a science. The
11 training and experience that he talks about, I'm
12 sure he's investigated many accidents. We're not
13 talking about many accidents, we're talking
14 about one specific accident that happened on
15 January the 30th of 2015. I should -- simply
16 submit, Your Honor, that neither his training
17 and experience or scientific principles that he
18 says they use rises to the level to allow him to
19 render an expert opinion on the position of the
20 bodies in this car.

21 **THE COURT:** All right. Thank you. All
22 right. I find that based on Rule 702 of the
23 Rules of Evidence that the expert witness is
24 qualified in this case as an expert to in this
25 area, although he -- his educational background

1 in physics was limited to two years of his
2 college training. I believe he's more than made
3 up for that over years of his training through
4 recognized experts in the field, and that he's
5 been qualified as an expert in this court, maybe
6 not exactly in this exact testing, but in this
7 area of accident reconstruction. He's been
8 qualified in this court, in circuit court, six
9 times.

10 I find, of course, that the evidence would
11 assist the trier of fact in this case. I believe
12 that it is evidence or it is something that
13 would be outside the common knowledge of most
14 jurors. I find that the underlying science --
15 while I think the concern here is it's not an
16 actual test that's done, while it's not exactly
17 something that he's necessarily talking about
18 some experiment he ran or something along those
19 lines.

20 The underlying science sounds very accepted
21 and appears to be very excepted -- accepted in
22 his field and that he based it on principles
23 that have been long accepted in the field.
24 Based on that, I'm going to let the jury
25 determine how it would like to use this

1 information and evidence and testimony, but
2 certainly your objection is noted. I know you
3 will need to make it again.

4 **MR. DEJONG:** Thank you.

5 **THE COURT:** All right. You're going to go
6 with another witness first?

7 **MR. CLEVELAND:** Yes, Your Honor.

8 **THE COURT:** You can step down. We're ready
9 for them.

10 **THE BAILIFF:** Yes, ma'am.

11 **(WHEREUPON, the jury enters at approximately**
12 **10:27 a.m.)**

13 **THE COURT:** Good morning, Ladies and
14 Gentlemen. I am so sorry to keep you waiting. I
15 assure you we were in here working. I need to
16 tell you that it was something directly
17 attributable to me this morning. I don't know if
18 any of you can sympathize with this. We had a
19 skunk attack at our house this morning, which I
20 grew up in Seneca, so I'm used to a skunk
21 attack, but this one was a particular --
22 particularly bad.

23 I couldn't even drive my car. So I had to
24 get someone to come and pick me up this morning.
25 So the delay was mine and I apologize for that.

1 We've been in here for about the last 45 minutes
2 working on some things to streamline things for
3 you a little bit later on.

4 We're now ready to proceed. I just would
5 ask everyone on the jury, y'all have been a
6 wonderful jury. We are -- we believe we are in
7 the last day of this trial and the case will be
8 in your hands today. I would ask everyone to pay
9 close and strict attention. If anybody feels
10 drowsy at any time or anything like that, just
11 signal to me and we'll take a break and let
12 somebody get a cup of coffee or a cold cup of
13 water or something like that. All right.

14 We ready to proceed?

15 **MR. BUCKNER:** Yes, Your Honor. The State
16 would call Jared Duncan to the stand.

17 **JARED DUNCAN**

18 having first been duly sworn, testifies as follows:

19 **THE CLERK:** Sir, if you would, have a seat
20 and state your name for the record please.

21 **THE WITNESS:** My name is Jared Duncan.

22 **DIRECT EXAMINATION**

23 **BY MR. BUCKNER:**

24 **Q** Jared, how are you doing today?

25 **A** I'm doing great.

1 Q Would you please tell the jury your law
2 enforcement experience and how long you've been with
3 Highway Patrol and that kind of thing.

4 A Yes, sir. I started with Oconee County
5 Sheriff's Office in '04. I've worked approximately
6 two years. In '06, I applied with the Highway Patrol
7 and started my career around March of '06. I been
8 there -- I worked the road for approximately eight
9 years prior to going on the MAIT team for
10 approximately two years. Came off the MAIT team and
11 went back to the road.

12 Q Okay. So when did you first start with the
13 MAIT team?

14 A I don't have that date right in front of
15 me.

16 Q If you could, just give us an
17 approximation.

18 A It was about a year prior to this
19 collision.

20 Q Okay. So were you with the MAIT team on
21 January 30th of 2015?

22 A Yes, sir. I was.

23 Q Okay. Let's go into exactly what your role
24 was with this collision. Can you explain for the
25 jury, you know, what started when you got there and

1 what you did in your investigation?

2 **A** Yes, sir. I was notified by Sergeant
3 Duncan. I was the on-call investigator, myself and
4 Lance Corporal John Craig.

5 **Q** Uh-huh.

6 **A** We were notified to report to this. I, at
7 the time, lived in Walhalla. So I left my house. Once
8 I got going -- I obviously got woke up out of sleep.
9 So I had to kind of get going and get myself
10 together. I went to the scene. On scene, every one of
11 the occupants -- both occupants were already gone
12 from the scene when I arrived on scene.

13 **Q** Who all was there? Do you remember?

14 **A** I remember the first person I spoke to was
15 Lance Corporal Neal Nimmons. He was the first one
16 that made contact with me. Brian Mayfield, the
17 trooper that has since retired, he was on scene as a
18 supervisor when I got there. That's the only two
19 troopers that I remember seeing there. I know there
20 was a few fire department personnel still on the
21 scene. The -- I'm trying to think. It was just a few
22 minutes prior to my arrival that Lance Corporal Craig
23 arrived on the scene. I arrived there shortly prior
24 to him getting there.

25 **Q** How many members of the MAIT team,

1 specifically, were there?

2 **A** Myself, Lance Corporal John Craig and
3 Sergeant Al Duncan was on scene. And there's no
4 relation.

5 **Q** Let's clear that up.

6 **A** Yeah, let me get that clear.

7 **Q** All right. Well, let's talk about
8 specifically what you did in your role with the MAIT
9 team there that night.

10 **A** I was there to -- myself and Lance Corporal
11 John Craig and Al Duncan, Sergeant Al Duncan, was
12 there. Our major task is to collect evidence and to
13 make sure that we do that as far as with photography,
14 video, any evidence that has not been marked with
15 orange paint. We use orange to mark the scene of
16 significant evidence left, that would be left in the
17 roadway or in driveways and stuff. You know, some of
18 the evidence does fade fast, like tire marks and the
19 sun comes up and burns them off. That's why when you
20 go through intersections, you don't see tire marks
21 forever.

22 **Q** Yeah. Well, let's go through each one of
23 those just briefly.

24 **A** Okay.

25 **Q** When you said you used orange paint, what

1 are you doing with that?

2 **A** We're making indications on the surface. It
3 could be on a vehicle and it could be on other
4 evidence, as far as like a tree, in this case, where
5 the tree was struck. We will indicate where evidence
6 has been left. We'll indicate the beginnings of the
7 skid marks, the end of the skid mark. We'll indicate
8 throughout the skid mark, the continuing skid marks
9 to make sure we -- if we come back at a later date,
10 we can come back and re-look at stuff. We also mark
11 the final rest of the vehicle and stuff. That stuff
12 will be moved from the scene. It won't be there
13 anymore.

14 **Q** Do you recall, just off the top of your
15 head, what you marked that night on the scene with
16 paint? And was that your specific role, too?

17 **A** That would have been one of my specific
18 roles. On that night, the scene, because Lance
19 Corporal Neal Nimmons was there prior to my arrival
20 on the scene. He was a former MAIT member. He already
21 knew the protocol of marking evidence. The evidence
22 was already marked.

23 **Q** Okay.

24 **A** So I'm not sure if Lance Corporal Craig had
25 marked anything, but I wasn't -- I don't remember

1 marking anything.

2 **Q** Okay. Let's talk about what else you did.
3 We'll get to the photographs in a second. What was
4 your -- what was some of the other things you did on
5 the scene investigation?

6 **A** Well, I did walk down to the vehicle and
7 just took a total look at the scene. I walked through
8 the scene briefly just to kind of --

9 **Q** What position was the vehicle in when
10 you --

11 **A** It was still up against the building. It
12 was blocked off.

13 **Q** Okay. And the scene had already been taped
14 and secured?

15 **A** Yes, sir. It had.

16 **Q** All right. What did you observe when you
17 got down there?

18 **A** When I got down there, I seen the silver-
19 in-color Monte Carlo up against the building. The
20 windshield was out of it. There was debris around the
21 car. I seen the marks, indicating marks going towards
22 the tree, as well as I also remember seeing -- in the
23 picture, we seen the other day in evidence, you know,
24 the shoes, the pool of blood and the passenger
25 window. That's all I can remember off the top of my

1 head as far as the vehicle without looking at
2 pictures.

3 Q Okay. And what about we've had a lot of
4 testimony about calculations and measurements and
5 stuff like that? Describe your role for the jury with
6 kind of surveying the scene and making the
7 calculations or retrieving the data that is used for
8 the calculations by the MAIT team.

9 A The scene was sur -- as you say, surveyed.
10 We used the total section to collect the data, as, I
11 think, the other troopers had spoke about earlier.
12 It's a centralized station. We center the point and
13 we shoot points, which hold a prism pole to get exact
14 points where evidence is left on the roadway. It's a
15 -- you hold a prism pole. Y'all seen them when they
16 build bridges and build roadways and they use these
17 things to mark. They know exactly where they're
18 going. So it's pinpointed. They can take it back.
19 They can put it on a computer. It's the same thing
20 we're doing. We're pulling it back.

21 Q Is that something similar to like what a
22 surveyor would use?

23 A Exactly, yes. That's what we're doing.
24 We're getting those exact points. Once that data
25 collector -- all those points where the tire marks

1 begin or they end, the edge of the roadway, the
2 yellow -- all of this is marked. That data is
3 captured into that handheld device. From there, that
4 is downloaded into the computer. Lance Corporal Andis
5 will take it from there. Those points are brought
6 back. They are various precise position points. You
7 know, that's what we do. Myself and Lance Corporal
8 Craig did do that.

9 With it being cold that night, too -- it
10 was about 17 or 18 degrees. It was very cold. I know
11 -- and you have to use your hands. You can't wear
12 gloves to operate the equipment. Myself and Lance
13 Corporal Craig were taking turns going back and
14 forth. It was getting to the point that you couldn't
15 even feel your hands. We use gloves for a little bit
16 to do that. That was one of the things we did.

17 Another thing we did, once the -- once the
18 scene was, you know, at a point where we could do it
19 and safely do it, the picture was shown of the car
20 where it was placed back on the tires. You know, the
21 battery had been disconnected from the car, but from
22 the fire department. There was no more computer, you
23 know, input. Once that car was positioned in a safe
24 place, I hooked up the data retrieval -- the data
25 retrieval system to retrieve the data from the airbag

1 control module.

2 Q And what exactly is the airbag control
3 module?

4 A It is a device. It's kind of like a black
5 box of a car. It holds other information. But it's
6 actually in -- it's not black. It's different colors
7 and different shapes and different sizes. Different
8 cars have it in different places. It's usually in the
9 occupant -- the occupant cabinet of the cars
10 somewhere. It could be under the seat. It could be on
11 the center console, on the center transmission hump.
12 It could be there.

13 But this data retrieval software we have,
14 it will tell you where that car is located in certain
15 cars, or the ACM, if it has one, where it's located.
16 Sometimes, you know, it's different places and we
17 have to take parts out to get to it. This time, I was
18 able to back power the car, which is basically just
19 hook the junk box up. Once it was in a certain
20 position, I hooked the -- hooked it up as I was
21 trained through a CDR class I had to take. At that
22 point, I'm not certified any longer, but at the time
23 I did the retrieval, I was certified to do it. I had
24 to let my class expire.

25 Q You were certified?

1 **A** I was certified. It just expired. I never
2 went back through the remedial training. I did allow
3 -- I hooked it up exactly the way I was trained. I
4 entered the data into the machine as prompted by the
5 computer software. Once I was at that point, you are
6 prompted different steps to do. The data was
7 retrieved. I retrieved the data, saved it to the
8 computer, saved it to a disk and then put it on our
9 drive. And from there, it was taken and analyzed by
10 -- I'm not an analyst so I don't -- I can't look at
11 that data or --

12 **Q** So you retrieve that data for another
13 member of the MAIT team to later review, correct ---

14 **A** Yes, sir.

15 **Q** --- and make additional findings based on
16 the collision ---

17 **A** Yes, sir.

18 **Q** --- what is being analyzed?

19 **A** Yes, sir.

20 **Q** Okay. Did you do anything else on the scene
21 as far as data retrieval or any kind of other
22 investigation of the collision itself?

23 **A** Other than photoing the scene and that, not
24 that I'm aware of right now that I did.

25 **Q** Did you take any video?

1 **A** I did the next day. Not on the active
2 scene, I did the next day -- not the next day, I'm
3 sorry. I have to look back at my notes.

4 **Q** Yeah, you can refer to your notes.

5 **A** (Reviewing.)

6 I believe it's going to be on February 6th.
7 I actually went back to the scene and took some
8 daytime photos and daytime video.

9 **Q** Daytime video?

10 **A** Yes.

11 **Q** I'm going to show you what's already been
12 put into evidence as State's Exhibit 46.

13 **A** Yes, sir.

14 **Q** You recognize that?

15 **A** I do.

16 **Q** Is this -- what is this disk?

17 **MR. DEJONG:** Your Honor, just for the
18 record, I don't know that that -- this part of
19 the video had been put in. I think we just
20 put --

21 **MR. BUCKNER:** I'm going to clarify that.

22 **MR. DEJONG:** I'm not going to object to
23 this part coming in.

24 **THE COURT:** All right. Very good.

25 **MR. BUCKNER:** Your Honor, at this time, the

1 State would move for the last portion of the
2 MAIT video, just surveying the scene during the
3 daytime ---

4 **THE WITNESS:** Yes, sir. That's on that
5 video.

6 **MR. BUCKNER:** --- that Jared Duncan just
7 referred to be put in evidence.

8 **THE COURT:** All right. Without objection,
9 it's so admitted.

10 **MR. BUCKNER:** Thank you, Your Honor.

11 **(WHEREUPON, the remainder of State's Exhibit 46**
12 **is admitted into the record.)**

13 **BY MR. BUCKNER:**

14 **Q** All right. Let's -- you took video of the
15 scene. When you did that during the daytime -- I'm
16 not going to publish that for the jury right now, but
17 what was that done for, just to give a little more
18 clear picture?

19 **A** At some scenes, and a lot of times, we get
20 called in the nighttime. Daytime videos are --
21 daytime video and daytime pictures, we take those
22 because a lot of stuff, you can't see at night. The
23 pictures are harder to take at night. They don't show
24 as much. We did that just to have a broader view of
25 stuff to clear stuff up.

1 **Q** I understand. Okay. You mentioned taking
2 some photos. Give me just a second.

3 **MR. DEJONG:** One moment, please, Your
4 Honor.

5 **(WHEREUPON, there is a pause.)**

6 **BY MR. BUCKNER:**

7 **Q** I'm going to show you what's been marked
8 State's Exhibit 23 -- this is 23 through 42 with the
9 exception of State's Exhibit 35 and 39. Do you
10 recognize those photos? Have you reviewed those?

11 **A** Give me just a second please.

12 (Reviewing.)

13 Yes, sir. I do recognize those photos.

14 **Q** Are these photos a clear and accurate
15 representation of the scene of the accident that
16 night and you took the daytime photos as well?

17 **A** Yes, sir. They are.

18 **MR. BUCKNER:** Your Honor, at this time, I
19 would move State's Exhibits 23 through 42, with
20 the exception of 35 and 39 into evidence.

21 **THE COURT:** Any objection?

22 **MR. DEJONG:** That's all in there, Your
23 Honor. No objection.

24 **THE COURT:** All right. So admitted.

25 **MR. BUCKNER:** Thank you, Judge. Hang on

1 just a second.

2 Your Honor, I would like to publish State's
3 Exhibit 23 for the jury at this time.

4 (WHEREUPON, State's Exhibits 23, 24, 25, 26, 27,
5 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 40, 41 and 42
6 are admitted into the record.)

7 **BY MR. BUCKNER:**

8 Q Jared, would you just describe this photo
9 for the jury and why you took it at the scene?

10 A This is the -- as Sergeant Al Duncan said a
11 while ago, the A-pillar of the car where the
12 windshield meets the top of the roof line, the very
13 corner. As you can see, that's the door seal there.
14 This right here is from the damage done. You can see
15 a woody-type transfer there where the vehicle struck
16 the tree. That's where some of that's coming from.

17 And this is a long, dark-in-color hair
18 that's pinched in the damage from when the impact
19 happened. That would be right there.

20 Q What is that -- where is that hair pinched
21 in on the car?

22 A There's actually another picture that shows
23 a little better view of that. I think it will be a
24 little easier to see off that.

25 Q That is the passenger side?

1 **A** Passenger-side roof line, yes.

2 **Q** Okay. I'm going to show you --

3 Your Honor, I'm going to publish for the
4 jury State's Exhibit 24B.

5 Jared, if you will, just describe why this
6 photo was taken and what it's going to show.

7 **A** This photo right here is after the car had
8 been put into a safe place so we can collect the data
9 retrieval and take a few other pictures. But they
10 would be in this area right in here is where that
11 photo was taken, the initial photo. That was the
12 passenger side of the car, the roof line and top of
13 the windshield.

14 **Q** All right. And publish State's Exhibit 26A
15 and B. Just describe briefly for the jury these
16 photos. First A.

17 **A** A, this is going to be the driver's side of
18 the vehicle. As you can see, there's no damage from
19 -- well, very minor damage from here back. The
20 majority of the damage is from the front, around in
21 here around on the passenger side.

22 **Q** And that's in order to contrast with what I
23 believe to be the passenger side here?

24 **A** Yes, this is just to show how much
25 contusion was done to the side of the vehicle from

1 this angle. You can see. On this side right here,
2 there should be this A-pillar, which is here. And
3 this is to prevent rollover. It's a very strong
4 metal. It should be running right there. That's gone.

5 Q All right.

6 A Well, not gone, damaged.

7 Q State's Exhibit 29, both A and B. If you
8 will, just describe A.

9 A Obviously, the steering wheel -- this
10 picture was taken after the airbag was taken. You can
11 see the -- that's where the airbag was actually cut
12 out. This picture was also taken once the car was
13 placed back on its wheels. If you can look, the
14 steering wheel here, see how tight this is right here
15 and how -- separation here? From this angle, it's
16 hard to tell. That separation there is where the
17 steering wheel was actually bent away and has pulled
18 that back.

19 Q I think B may actually show that as well.

20 A Yes.

21 Q Is that what you are describing right here
22 on the steering wheel?

23 A You can actually see a scuff mark right
24 here in this picture where something has struck that
25 steering wheel and scuffed it.

1 Q All right. I'll show you what's for the
2 jury, State's Exhibit 34. Briefly describe that, 34A
3 for the jury.

4 A This is the tree that was struck. The only
5 tree we seen struck in the collision scene. That's
6 the damage -- this is where the damage to the
7 passenger side of the vehicle was caused. This is the
8 tree that left that -- I believe that left that woody
9 substance on the damage. Of course, that's the
10 building, the same building you seen the picture of
11 where the blocks had been shifted over.

12 Q All right. I'll show you 34B as well. This
13 is just a closeup of that?

14 A Just a closeup of that shot, yes. As you
15 can see, there's parts of that car there that was
16 stripped away as it hit the tree and, it looks like
17 fluids from the car there.

18 Q All right. State's Exhibit 37A. Describe
19 what's in this photo and why you took it for your
20 investigation.

21 A These are the blocks here where the car was
22 propped up there. There is a pool of blood there.
23 We've discussed that. This is the front corner of
24 that A-pillar with the windshield and the headline --
25 the roof meet and all the headliner and all that.

1 That's the area where that long hair, long dark-in-
2 color hair was discovered.

3 Q And is that a female's shoe that's located
4 right next to that window?

5 A Yes.

6 Q That was described earlier?

7 A Yes.

8 Q And the other shoe, is that a different --

9 A It looks to be a different shoe.

10 Q All right. I'll show you State's Exhibit
11 39, which I believe is already in evidence. What's
12 going on here?

13 A This is a photo I take -- took. It's
14 showing the property labeled evidence back where John
15 Craig -- it's John Craig's hand with a glove he
16 discussed earlier. This is the prior, show the
17 evidence intact before I -- he retrieved it. I just
18 photographed that to document that.

19 Q Okay.

20 A I believe that's -- the top is the
21 passenger side and the bottom is the driver's side.

22 Q State's Exhibit 40.

23 A This is a daytime photo that was taken. As
24 you can see the orange paint we referred to. This is,
25 like I say, again, this is to help us come back to

1 reference. This is almost a week later, I believe,
2 when this was taken. This is the closeup. We can find
3 the beginning of the skid mark here. This is the box,
4 as indicated, that we use. We put several dots
5 throughout the skid mark to indicate -- so we can
6 stay on track with the same skid mark. This is a --
7 excuse me. I have to remember what road this is on. I
8 can't remember the intersection or the road name. If
9 you will, give me just a second to look at my notes.
10 I don't want to misquote it. (Pause.)

11 It's Praters Creek Road that we're looking
12 at right there.

13 Q Okay.

14 A And the skid marks are leading up to the
15 edge of Allgood Bridge Road.

16 Q And this is just --

17 A It's a continuation of that.

18 Q Going into the roadway?

19 A Going into the roadway, yes. This dotted
20 white line is the fog line. It's broken there. It has
21 a break in the intersection. That's what that's
22 indicating.

23 Q Finally, I'm going to show you State's
24 Exhibit 42A and B. Just sort of describe why you took
25 these photos and your investigation.

1 **A** Yes, this is a daytime photo. This is the
2 building where the car was previously laid up
3 against. This is -- I guess the homeowner covered
4 that building up and tried to secure it the best they
5 can. This is the tree that was struck and that's some
6 of the crime scene tape that was left on the scene.

7 **Q** How about 42B?

8 **A** That is actually from the building shooting
9 back up the driveway.

10 **Q** All right. That's -- did you take this in
11 order to show --

12 **A** To show the distance. Not to measure
13 distance, just to kind of give a visual distance,
14 yes.

15 **Q** So other than the photos, did that conclude
16 your investigation as far as the scene? What else?

17 **A** I actually interviewed a few people. Those
18 interviews were recorded, downloaded on her drive.
19 They were indicated by my name, as well as their name
20 who I interviewed, and the date and time for those
21 interviews.

22 **Q** Did you interview the defendant in this
23 case, Mr. Hester?

24 **A** I did. That happened on February 6th,
25 around 09:40 hours at the Pickens County jail.

1 Q At the Pickens County jail?

2 A Yes, sir.

3 Q What was the date of that interview? I'm
4 sorry.

5 A February 6th.

6 Q February 6th. So almost a good bit after?

7 A Almost a week.

8 Q Almost a week?

9 A Yeah.

10 Q All right. Describe when you interviewed
11 Mr. Hester, what were the circumstances. Other than
12 it being at a jail, where was the interview taken?

13 A It was -- it was taken at the jail.
14 Obviously, there's really not a -- not a really --
15 lot of good spots in there. So I try to find a place
16 and make him the most comfortable to isolate us. We
17 actually went into the breathalyzer room. We use that
18 room. It has windows in there. That way, there was no
19 outside interference in that room.

20 Q All right. And when you spoke with Mr.
21 Hester that day, did you read him his Miranda rights?

22 A I did. And on my audio interview, you can
23 hear those rights.

24 Q And during the interview, did you coerce
25 him in any way?

1 **A** No, sir. I did not.

2 **Q** Did he ever ask for the interview to
3 cease ---

4 **A** No, he did not.

5 **Q** --- or for you to quit asking him
6 questions?

7 **A** He did not.

8 **Q** Did he ever ask for anything as far as
9 food, water, anything like that and you refuse him?

10 **A** No, sir.

11 **Q** Also during the interview, did you ask him
12 anything unrelated to the accident itself or just to
13 further your investigation?

14 **A** Everything I asked him was to further
15 investigation. I don't recall asking him anything
16 outside of that scope.

17 **Q** I'm going to show you what's been marked as
18 State's Exhibit 47. Do you recognize what that is?

19 **A** That's -- you showed it to me earlier. It
20 has the audio clips on them.

21 **Q** And what exactly is this disk? What is on
22 it?

23 **A** It has the interview from the defendant on
24 there with the date, time and --

25 **Q** But what does it contain totally? I mean,

1 what all is on this disk?

2 A It actually has the whole MAIT case file on
3 that disk.

4 Q Okay. Is there a folder, an audio folder on
5 that?

6 A Yes, sir. There is an audio folder on that
7 disk. You have to go in and open the disk up. There's
8 actually the audio that has all the audio-related
9 stuff in that audio folder.

10 Q And within that audio folder, is there --
11 the interview that you conducted with Mr. Hester, is
12 it contained within that folder?

13 A It is, yes, sir.

14 Q Is it labeled with your name or with the
15 defendant's name?

16 A Both.

17 Q Okay. And does it have the date on that as
18 well?

19 A It does. Date and time.

20 Q And Your Honor --

21 Also, has it been altered in any way?

22 A No, sir.

23 Q Had the contents of the disk been altered
24 in any way since you conducted the interview?

25 A Since I conducted the interview, no.

1 **MR. BUCKNER:** Your Honor, at this time, the
2 State would move State's Exhibit 47 into
3 evidence, just the interview that Jared Duncan
4 conducted with Mr. Hester at the jail, which is
5 located within the audio file.

6 **THE COURT:** Yes, sir.

7 **MR. DEJONG:** I'm not necessarily objecting
8 to that, Your Honor, but it gets a little
9 tricky. May we approach?

10 **THE COURT:** Certainly.

11 **(WHEREUPON,** a bench conference is held off the
12 record.)

13 **THE COURT:** All right. It's admitted and
14 -- and -- we might need to substitute the disk
15 out just for a better disk.

16 Ladies and Gentlemen, there is a portion of
17 this video that is just not relevant to -- would
18 not be worth watching. And in the interest of
19 time, we've agreed just to only show you the
20 relevant portions. I didn't want you to think
21 we're hiding something from you or that either
22 side is hiding something from you because we're
23 not. We're just trying to save a little time.
24 We're going to give you that redacted portion of
25 the video before it comes back to you if you

1 want to watch it in your jury deliberation room.
2 All right.

3 (WHEREUPON, State's Exhibit 47 is admitted into
4 the record.)

5 MR. BUCKNER: Thank you, Judge. Your Honor,
6 at this time, I'd ask permission to publish it.

7 THE COURT: All right. Certainly.

8 MR. DEJONG: Your Honor, since they are
9 putting those speakers way, way over there, may
10 I go stand over there?

11 THE COURT: Please do.

12 MR. DEJONG: Before they play that, Your
13 Honor, may I approach?

14 THE COURT: Certainly.

15 MR. DEJONG: One of y'all.

16 (WHEREUPON, a bench conference is held off the
17 record.)

18 THE COURT: Ladies and Gentlemen, I'm
19 going to have to ask you to step to your jury
20 deliberation room for just a moment. This will
21 only take a moment.

22 (WHEREUPON, the jury exits at approximately
23 11:01 a.m.)

24 THE COURT: It's my understanding that
25 there may be a picture of the deceased that is

1 propped up on a pew. Ma'am, is that correct?

2 **VICTIM'S FATHER:** Yes, ma'am.

3 **THE COURT:** First of all, I want to say to
4 you, sir, and to you, ma'am, I am so sorry for
5 your loss. Whatever the outcome of this trial
6 may be, my heart goes out to you and I am so
7 sorry for your loss. However, could I please see
8 this picture, where and how it's --

9 **MR. BUCKNER:** Judge, it was laying on the
10 bench with the face out.

11 **THE COURT:** Laying on the bench face up?
12 How long has it been like that?

13 **VICTIM'S MOTHER:** I just have her sitting
14 beside me every day.

15 **THE COURT:** I understand. So it's been
16 there for the balance of the trial like that?

17 **VICTIM'S MOTHER:** Yes.

18 **THE COURT:** Has it been face up the entire
19 time?

20 **VICTIM'S MOTHER:** Yeah, she's just been
21 sitting beside me.

22 **THE COURT:** All right. I'm going to have
23 to ask you, and I understand -- I -- well, I say
24 -- I can not understand what you're going
25 through. I am so sorry, but I'm going to have to

1 ask you to put that picture up. I'm going to
2 have to ask the jury -- I don't want to
3 highlight the situation, but I don't -- they may
4 not have seen it.

5 **MR. DEJONG:** Well, I saw it actually
6 propped up on the pew. It was just not laying
7 flat on the pew, Your Honor. As I shared with
8 the Court and Mr. Buckner, I don't think all of
9 the jurors could have seen it. Certainly the
10 jurors as I'm facing the jury box on the left-
11 hand, my left, could have seen it. They switched
12 chairs. I didn't quite hear how long the picture
13 had been there. I really don't know.

14 **THE COURT:** It sounds like it's been there
15 through the balance of the trial ---

16 **MR. DEJONG:** Okay.

17 **THE COURT:** --- is what my understanding
18 is. I think probably to rectify this situation,
19 I mean, first of all, it's clear that -- that
20 someone is deceased in this. I mean, that's not
21 something that the jury doesn't know. Second, I
22 imagine that at some point I don't know if you
23 all -- that the State was intending on showing a
24 picture of the deceased or anything along those
25 lines. I don't know how much it would influence

1 them. I don't want to highlight what the
2 situation is, but I think I should maybe remind
3 them, when they come back in, that their
4 verdict, ultimately, can not be -- can not be
5 based on any sympathy whatsoever, but just on
6 the evidence presented at trial.

7 **MR. DEJONG:** I appreciate Your Honor
8 offering that. I -- I don't know, at this point
9 in time, nor will I ever know, number 1, how
10 many jurors have seen the picture; number 2, how
11 it has affected them, what prejudice it may have
12 created. I understand Your Honor's comments. I'm
13 not trying to be argumentative.

14 **THE COURT:** No, I --

15 **MR. DEJONG:** But I am respectfully asking
16 for a mistrial at this point in time because I
17 can not know. And even if Your Honor addresses
18 the issue, as you have said, I don't know if
19 that drives it deeper, makes it worse, makes it
20 better. The cat's out of the box, Your Honor. I
21 would therefore request -- respectfully move for
22 a mistrial.

23 **THE COURT:** All right. Anything from the
24 State?

25 **MR. CLEVELAND:** Yes, Your Honor. As Your

1 Honor stated earlier, there is no secret that
2 there is someone deceased in this case. It is a
3 23-year-old female. There have been pictures
4 admitted into evidence of portions of her body
5 at the scene, as well as her body covered up in
6 a sheet. I don't see how a picture -- I mean, it
7 just follows logically that this is a trial
8 involving humans with humans involved that the
9 small picture of the face of someone could in
10 any way prejudice a jury beyond, you know, what
11 other evidence is presented in this case.

12 I mean, it is far more prejudicial just
13 talking about the medical examiner's testimony
14 and her violent demise is far more invoking of
15 sympathy or prejudice or anything, which is
16 admissible evidence than simply a small picture
17 of her. Quite candidly, the State had
18 entertained the idea of using her picture to
19 show the jury what she actually looked like in
20 the closing arguments. I think that's proper and
21 admissible.

22 I don't see how -- there's been no overt
23 action, no contact. I don't even see what the
24 prejudice would be other than the fact that
25 there's somebody here on the part of the

1 deceased. There's no prejudice to the defense.
2 There's no action by the State in this. We're
3 talking about speculation, at absolute best,
4 that some jurors, 1, may have even seen it and,
5 2, that it had any prejudicial effect
6 whatsoever.

7 I think that Your Honor's charge -- I mean,
8 if we're talking about this, we've got to talk
9 about every other outside stimuli in the world.
10 Personal knowledge of the jurors of someone
11 who's lost a child. We've got to inquire into
12 any and everything that could possibly have as
13 minuscule of an impact in their overall
14 deliberations as this.

15 I think Your Honor's charge to the jury at
16 the end of the trial that they are to weigh the
17 evidence and the evidence alone and they've
18 taken an oath to do that is far more sufficient
19 to rectify any outside stimuli that they may
20 encounter, including this photograph that the
21 victims have. I mean, you know, again, it's no
22 secret they lost their daughter in this case.

23 They have not been identified to the jury.
24 No one pointed out in openings or anything else
25 that this is Randy and Caroline Holcombe, the

1 father and mother of the deceased. If Your Honor
2 wishes to do that, we will limit and not either
3 show a picture of her or identify the victims in
4 this case to try to -- you know, we know the
5 rules about bringing in prejudice and trying to
6 pull at the heart strings of the jury. The State
7 has no intent on doing that.

8 I just think, at this point in time, this
9 is a minuscule illustration and it does not
10 warrant a mistrial. I don't even think it
11 warrants a directive instruction because I think
12 that does draw -- that causes more attention,
13 definite attention to the issue when we are
14 addressing some speculative attention to the
15 issue. I think Your Honor's charge at the end of
16 the case to consider the evidence as it was
17 given in the courtroom and nothing else suffices
18 in this matter. A mistrial certainly should be
19 denied.

20 **THE COURT:** Yes, sir.

21 **MR. DEJONG:** Obviously, I'm not prepared
22 to give Your Honor case law because I had no
23 idea we were going to come up on this. I think
24 there is some case law somewhat similar where
25 people were wearing buttons or t-shirts or

1 something along the line. I think that may have
2 been a murder case. I'm not sure. There may have
3 been more than one case. I don't remember. It's
4 been a while since I looked at that, Your Honor.

5 **THE COURT:** All right. I'll tell you what,
6 I want to look at those cases. Off the top of my
7 head, I'm going to tell you that I believe that
8 those cases were more egregious and more open
9 than this particular situation. I'm going --
10 this is probably a good time for a break anyway.
11 I'm going to take a break, take a look at a few
12 of those cases and come back. But let's be in
13 recess for 10 minutes.

14 **MR. DEJONG:** Thank you, Your Honor.

15 **THE COURT:** Thank you.

16 **(WHEREUPON, the Court goes off the record at**
17 **approximately 11:09 a.m.)**

18 **(WHEREUPON, the Court goes on the record at**
19 **approximately 11:24 a.m.)**

20 **THE COURT:** I've had an opportunity to
21 review the case law, and I've had a moment to
22 think about it. I'm going to deny --
23 respectfully deny your motion for a mistrial.

24 Ma'am, please, please put the picture up.
25 I find based on the button case -- excuse

1 me -- Carey versus Musladin -- maybe that's how
2 you say it -- Carey versus Muslandin, which is
3 referred to as the button case, where someone
4 was -- where a group of folks were wearing a
5 button that was not inherently prejudicial to
6 the jury. As I noted, I do think the State would
7 have had a right, whether they exercise it or
8 not, to have shown a picture of the deceased
9 before her death. Furthermore, I think some of
10 the testimony in this case would have been
11 probably more -- would have invoked more
12 sympathy than simply a picture. However, your --
13 your motion is certainly noted and your
14 exception to my ruling is certainly noted as
15 well.

16 **MR. DEJONG:** Thank you, Your Honor.

17 **THE COURT:** Thank you.

18 Will the witness retake the stand please?

19 **(WHEREUPON, the jury enters at approximately**
20 **11:27 a.m.)**

21 **THE COURT:** All right. We're ready to
22 proceed. Ladies and Gentlemen, thank you for
23 your patience with us. We needed to take up a
24 matter outside of your presence.

25 **MR. BUCKNER:** Thank you, Your Honor. May it

1 please the Court?

2 **THE COURT:** Yes.

3 **MR. BUCKNER:** Your Honor, at this time,
4 we'd like to publish the video that was just put
5 into evidence, State's Exhibit 47, starting at
6 the three minute and 27 seconds.

7 (WHEREUPON, State's Exhibit 47 is played.)

8 **MR. BUCKNER:** Your Honor, just one more
9 brief question.

10 **BY MR. BUCKNER:**

11 **Q** Jared, do you remember, in your interview
12 with the defendant, him ever mentioning anything
13 about lifting the victim off of him to be able to get
14 out of the car?

15 **A** No.

16 **Q** He never said that to you?

17 **A** No, what we heard there was the complete
18 interview.

19 **MR. BUCKNER:** Judge, I have no further
20 questions at this time.

21 Please answer any questions for Mr. DeJong.

22 **THE COURT:** Mr. DeJong?

23 **MR. DEJONG:** Thank you, Your Honor. May it
24 please the Court.

25 **CROSS-EXAMINATION**

1 BY MR. DEJONG:

2 Q So Mr. Duncan?

3 A Yes, sir.

4 Q You were asked a question a few moments
5 ago, did you pressure, use any coercion, make any
6 threats or promises, correct?

7 A To get a statement, yes, sir.

8 Q Well, attempting to play on one's guilt
9 feelings, if they had any, do you not consider that
10 coercion?

11 A I don't.

12 Q What would you consider coercion?

13 A Making an offer, some kind of sentence deal
14 or something like that.

15 Q I see. All right. Well, through all of that
16 ---

17 A Yes, sir.

18 Q --- everything you were saying, did Mr.
19 Hester ever say that he was driving the vehicle at
20 the time of the crash?

21 A No, sir. He did not.

22 Q And maintained steadfastly that he was not?

23 A He did. Yes, sir.

24 Q Now, let's go back out to -- back up here a
25 little bit. So when did you actually get to Pra -- I

1 guess it's Praters Road, Allgood Church Road? I don't
2 know.

3 **A** Yes, sir. I understand what you're talking
4 about.

5 **Q** What time did you get there?

6 **A** I can't -- I don't recollect the exact
7 time.

8 **Q** Pardon me?

9 **A** I don't remember the exact time.

10 **Q** Okay. I think you said, but help me out
11 here. Put me in a time frame of who was there.

12 **A** Neal Nimmons was there already. There was
13 already -- the scene was already secured before I got
14 there.

15 **Q** So basically, was it Highway Patrol out
16 there when you got out there?

17 **A** Yes, sir. Highway Patrol, fire department
18 was there, EMS had already gone.

19 **Q** EMS was gone?

20 **A** Yes, sir.

21 **Q** All right. Now, your function when you got
22 out there was -- I'm not 100 percent clear. Was your
23 function to collect evidence, take photos of where
24 this crash allegedly occurred or both?

25 **A** Both, yes, sir.

1 **Q** Okay. So we know you took pictures because
2 we saw them, right?

3 **A** Yes, sir.

4 **Q** There had been some talks about some hair
5 that was on the car. I'm sure you took that into
6 evidence, didn't you?

7 **A** No, photographed the evidence.

8 **Q** Pardon me?

9 **A** Photographed the evidence.

10 **Q** Well, that wasn't my question. I know you
11 photographed it.

12 **A** Yes, sir. But the hair in that, no, it
13 wasn't placed into evidence.

14 **Q** Certainly there's DNA evidence in hair,
15 isn't there?

16 **A** I'm sure. Yes, sir.

17 **Q** All right. It didn't bother you not to take
18 that into evidence and get DNA done on it?

19 **A** That was a -- I figured somebody else had
20 already done it. I'm sorry.

21 **Q** Well, there's also been talk about blood
22 out there. I'm not talking about blood that may have
23 been on the deceased. I'm talking about blood on the
24 vehicle now, okay?

25 **A** Yes, I understand.

1 Q I'm sure you took swabs of that and sent it
2 to Columbia for analysis, didn't you?

3 A No, sir. Like the previous trooper said,
4 he --

5 Q Pardon me?

6 A That hadn't -- that did not get taken into
7 evidence.

8 Q So no blood swabs were taken off of the
9 vehicle?

10 A No, sir.

11 Q All right. Once you took the airbags into
12 possession --

13 A I didn't take them in.

14 Q I'm sorry. Let me rephrase that. You didn't
15 take them in?

16 A No, sir. I did not.

17 Q You just took the pictures of the bags; is
18 that correct?

19 A Yes, sir.

20 Q All right. And then after that, you had
21 nothing more to do with the evidence?

22 A That's true.

23 Q All right. So as far as what we would call
24 physical evidence, you did not take anything into
25 possession?

1 **A** If you consider -- an ACM download, I took
2 that, if you consider that physical evidence. It's
3 data.

4 **Q** Well, I'm talking -- excuse me, sir. I
5 didn't mean to interrupt you. I'm speaking -- for
6 example, there's a picture of a shoe in there. Did
7 you take that into physical custody?

8 **A** No, we didn't. I did not personally, no.

9 **Q** To your knowledge, did anyone else?

10 **A** No, sir. Not to my knowledge.

11 **Q** So the point of it is -- I've heard what
12 you said about the download, but the point of it is
13 physical evidence, things you can put in your hand,
14 you can put in an envelope, you took none of that?

15 **A** None of that. No, sir.

16 **Q** Now, when you started spraying orange
17 paint, was that based on your observation or what
18 others told you when you got out there?

19 **A** Sir, I think if I recall, the statement was
20 made that that orange paint was already sprayed prior
21 to my arrival.

22 **Q** I'm sorry, sir. I can't hear you.

23 **A** That orange paint was already sprayed prior
24 to my arrival is what I said earlier.

25 **Q** So the orange paint, you didn't spray?

1 **A** No, sir.

2 **Q** Okay. All right. Now, the -- this black box
3 download, is that done through a computer program?

4 **A** Yes, sir. It's actually not -- it's
5 referred to as a black box, but it's not really
6 black.

7 **Q** I understand.

8 **A** Yes, sir. It is done by computer download.

9 **Q** I guess we get black boxes from the ---

10 **A** Airplane.

11 **Q** --- airplane crashes ---

12 **A** Yes, sir.

13 **Q** --- don't we? And the color's not
14 particularly important. But we'll call it a black
15 box. We both know what we're talking about ---

16 **A** Yes, sir.

17 **Q** --- right? Now, that downloads into a
18 computer program?

19 **A** Yes, sir.

20 **Q** Is that a South Carolina Highway Patrol
21 program?

22 **A** No, they don't -- they didn't come up with
23 the program or design the program, if that's what
24 you're asking.

25 **Q** That is what I'm asking.

1 **A** No, sir. That's actually put out by --
2 Bosch designed that program.

3 **Q** All right. And other than, I guess you take
4 this black box and plug it into something and it just
5 downloads, right?

6 **A** In a short form, yes.

7 **Q** And basically, you're just dealing as a
8 technician --

9 **A** I just pull the data.

10 **Q** When it downloads ---

11 **A** Yes.

12 **Q** --- right?

13 **A** Yes.

14 **Q** No interpretation?

15 **A** No, sir. No interpretation.

16 **Q** Actually -- I'm sorry -- do you even know
17 what is downloaded?

18 **A** I don't. I look to make sure the file is
19 complete. That's all. I don't look at it and
20 interpret it. No, sir.

21 **Q** Don't even look at it?

22 **A** No, sir.

23 **Q** Okay. All right. Now, the video -- well,
24 if I understood, you took the video ---

25 **A** In the daytime.

1 Q --- on February the 6th, seven days
2 after --

3 A Almost a week, yes, sir.

4 Q -- after the crash took place? The pictures
5 that you were talking about, when were they taken?

6 A The pictures, the daytime pictures?

7 Q Well, I'm not sure if they were daytime or
8 nighttime.

9 A The nighttime pictures were taken the night
10 that I responded to the scene.

11 Q Okay.

12 A The daytime pictures were taken the same
13 day the video was taken. All that was was to
14 illustrate so we can see in the daytime.

15 Q Okay. Pictures that Mr. Buckner flashed up
16 on the screen, did you take those pictures?

17 A I did.

18 Q Was that on the 30th, 31st?

19 A I would have to see which picture you're
20 talking about.

21 Q Which ones? These ones?

22 A I don't want to misinform anybody.

23 Q Pardon me?

24 A I don't want to misinform anybody. The ones
25 that were taken in the daylight were taken on

1 February the 6th. The ones taken in the nighttime
2 were taken on the time I arrived on the scene. Well,
3 not the time, but...

4 Q Well, how many of those were taken on
5 February the 5th?

6 A Of these right here?

7 Q Yes, sir.

8 A Okay. (Reviewing.)

9 Give me just a second. (Reviewing.)

10 It would be these right here.

11 Q Okay. So --

12 A Well, actually, it was taken on February
13 the 6th.

14 Q On the 6th?

15 A Yes.

16 Q It looks like three, four --

17 A Six.

18 Q Oh, I'm sorry. There's two on each page.

19 A Yes, sir.

20 Q All right. So on the 6th, a week has passed
21 and things have changed, right?

22 A Yes, sir. And that was just to show the
23 markings that were done. Those -- obviously, the
24 markings don't change. That's what that was to show.

25 Q Okay. All right. Thank you, sir.

1 **A** Thank you.

2 **THE COURT:** Any --

3 **MR. BUCKNER:** Nothing further.

4 **THE COURT:** Sir, you can step down.

5 **THE WITNESS:** Yes, ma'am. Thank you.

6 **MR. DEJONG:** No objection to him being
7 excused.

8 **MR. BUCKNER:** None from the State, Your
9 Honor.

10 **THE COURT:** All right. Thank you, sir, for
11 being here.

12 **THE WITNESS:** Yes, ma'am. Thank you.

13 **MR. CLEVELAND:** May we approach briefly,
14 Your Honor?

15 **THE COURT:** Certainly.

16 **(WHEREUPON, a bench conference is held off the**
17 **record.)**

18 **THE COURT:** Ladies and Gentlemen, I know
19 we've kind of being going in stops and starts
20 all morning, and I apologize for that. It could
21 not be helped. We're going to take a lunch break
22 now. We're going to break until 1:30. So if you
23 will, be back in your jury deliberation room by
24 1:30, we'll start promptly thereafter. We feel
25 like we've got plenty going forward -- we're in

1 pretty good shape going forward and still
2 anticipate getting this to you this afternoon,
3 hopefully. All right. Thank you. I hope you have
4 a good lunch.

5 **(WHEREUPON,** the jury exits at approximately
6 12:16 p.m.)

7 **THE COURT:** We're emailing an updated jury
8 charge and the verdict form to you. We've
9 included the language that -- we included the
10 language about considering each separately. We
11 also changed a couple of places where I felt
12 like it was confusing about signing the
13 indictment. Changed that. We also added the
14 language straight from the charge book. Nothing
15 added.

16 **MR. CLEVELAND:** Thank you, Your Honor.

17 **MR. DEJONG:** I'm not arguing with that,
18 Your Honor. The thing that always concerns me
19 about that -- and I'm not saying juries are not
20 intelligent -- but the difference between an
21 inference and a presumption, that's what bothers
22 me. I don't know if there's any way of
23 working --

24 **THE COURT:** We'll look and see if we can
25 find some language about an inference and add

1 that to it. If you come across something over
2 the lunch hour that you want me to consider, I'm
3 happy to look at it. I know you'll argue it to
4 the jury really well. If I have -- I'll see if I
5 can find something that might give them more of
6 an explanation.

7 **MR. DEJONG:** They listen to you more than
8 they do me.

9 **THE COURT:** I don't know about that, but
10 still...but anyway, we'll work on that. There
11 was something else that we added, but I can't
12 remember what it was. It was all the points you
13 all made, so we included all of it. All right.
14 Let's be in recess until 1:30.

15 **MR. CLEVELAND:** Thank you, Your Honor.

16 **MR. DEJONG:** Thank you, Your Honor.

17 **(WHEREUPON, the Court goes off the record**
18 12:19 p.m.)

19 **(WHEREUPON, the Court goes on the record at**
20 approximately 1:37 p.m.)

21 **THE COURT:** Still waiting on a juror.

22 **MR. CLEVELAND:** Okay, Your Honor. I'm
23 trying to fix the disk that we can send back. I
24 don't know if it's the format or something. I'm
25 trying to do a redacted deal. I apologize.

1 **THE COURT:** Well, this is what we'll do,
2 we'll just let the jury know that if they want
3 to listen to it, then we'll need to bring them
4 back into the courtroom.

5 **MR. CLEVELAND:** I can cue it up to the same
6 place and everything.

7 **MR. DEJONG:** I have no problem with that.

8 **THE COURT:** All right. And just to be
9 clear for the record, that's exhibit what?

10 **MR. CLEVELAND:** 47.

11 **THE COURT:** 47?

12 **MR. CLEVELAND:** Yes.

13 **THE COURT:** And just for our record,
14 Exhibit 47, only a portion of it was entered and
15 played for the jury. The other portions were not
16 relevant. We were unable to fix the disk, so
17 just the portions that were played during court
18 will be the only ones available to the jury.

19 **MR. CLEVELAND:** Thank you, Your Honor.

20 **THE CLERK:** I think we have our juror.

21 **THE COURT:** Oh, we do? Okay. All right.

22 Are y'all ready to bring the jury back in?

23 **MR. DEJONG:** Just a moment, Your Honor.

24 **THE COURT:** Okay.

25 **MR. DEJONG:** I have one question ---

1 **THE COURT:** Yes, sir.

2 **MR. DEJONG:** --- Your Honor, and that is,
3 I have been batting around Monday, yesterday --
4 this feels like it should be Friday, but it's
5 only Wednesday, and that is State versus Beatty
6 on closing argument.

7 **THE COURT:** Yeah.

8 **MR. DEJONG:** And I'm not -- I know it's a
9 recent case.

10 **THE COURT:** Yeah.

11 **MR. DEJONG:** I don't know if it is
12 finalized yet or not.

13 **THE COURT:** Well, I'll tell you this is
14 what I did last week in trial was, the way I
15 interpreted it is this, if you request, then the
16 State will -- and you present evidence, then the
17 State will need to open in full. Then you'll get
18 -- then, of course, you'll go, and then a reply
19 only to matters that you brought up, no new
20 matters. Then the same procedure as has always
21 been if you decided you wanted to reserve last
22 argument.

23 **MR. DEJONG:** But you are -- if I request,
24 you are, for want of a better term, honoring
25 that request?

1 **THE COURT:** I am.

2 **MR. DEJONG:** Okay. Thank you.

3 **THE COURT:** Very much so.

4 **MR. DEJONG:** That's all I needed to know.

5 **THE COURT:** And furthermore, I corrected
6 my initial -- if you noticed, my initial charge
7 on the law. I didn't talk about a fair verdict.
8 I talked about the State meeting its burden.

9 **MR. DEJONG:** Right.

10 **THE COURT:** And I do it in my closing as
11 well.

12 **MR. CLEVELAND:** The State's going to have a
13 little different order of witnesses after lunch.
14 I'm sorry. We're going to call the main witness
15 first.

16 **THE COURT:** All right. Whatever is good
17 for you. Anything else we need to take up?

18 **MR. CLEVELAND:** Nothing from the State,
19 Your Honor.

20 **THE COURT:** All right. All right.

21 (WHEREUPON, the jury enters at approximately
22 1:40 p.m.)

23 **THE COURT:** All right, Ladies and
24 Gentlemen. We're ready to resume.

25 Yes.

1 **MR. CLEVELAND:** Thank you, Your Honor. May
2 it please the Court. The State would call
3 Tiffany Forshee at this time.

4 **TIFFANY FORSHEE**
5 having first been duly sworn, testifies as follows:

6 **THE CLERK:** If you would, have a seat and
7 state your name for the record, please.

8 **THE WITNESS:** Tiffany Forshee.

9 **THE COURT:** Ms. Forshee, I think you've
10 probably got a soft voice. I'm going to have to
11 ask you to speak up as much as you can please.

12 **THE WITNESS:** Okay.

13 **THE COURT:** Thank you, and into the
14 microphone.

15 **THE WITNESS:** Okay.

16 **MR. CLEVELAND:** You can scoot the
17 microphone towards you.

18 **THE COURT:** Yeah.

19 **DIRECT EXAMINATION**

20 **BY MR. CLEVELAND:**

21 **Q** Ms. Forshee, do you know the defendant,
22 Timothy Adam Hester?

23 **A** I do.

24 **Q** And how do you know him?

25 **A** Through my stepdad and my mom and him were

1 together for about 11 years.

2 Q All right. And how long had you known him?

3 A For about 14.

4 Q All right. And did you know the victim in
5 this case, Alanah Holcombe?

6 A I did.

7 Q And how long had you known Ms. Holcombe?

8 A Three years.

9 Q All right. I'm just going to cut right into
10 it. Do you remember January 30th of 2015?

11 A I do.

12 Q All right. Tell me about what you were
13 doing that day.

14 A Well, about 10 o'clock that morning, I had
15 picked up Adam Hester when I went to the liquor
16 store. I was hanging out. I dropped him back off at
17 his house. James had got off work.

18 Q All right. Hold on second. When you say
19 James, who are you talking about?

20 A James Moore.

21 Q And who is he?

22 A Right there.

23 Q All right. And what was your relationship
24 with him?

25 A We were boyfriend/girlfriend.

1 Q At the time?

2 A Yeah.

3 Q Are y'all still dating?

4 A No.

5 Q Okay. All right. We talked about -- about
6 what time did you pick James up? Continue.

7 A Honestly, I don't remember what time. I
8 know that after that, we all went to his house. I had
9 went and picked up Alanah around 6:30 that night.

10 Q All right. And did you pick up James in the
11 evening or the early afternoon or do you remember?

12 A I don't remember.

13 Q And where does James live?

14 A He was living in Liberty at that time.

15 Q Okay. All right. You said you went and
16 picked Alanah up, or Alanah. What did y'all do then?

17 A She got in the car and we had went back to
18 James' house.

19 Q All right. And what did y'all do at James'
20 house?

21 A We was drinking.

22 Q Okay. Did the defendant, Mr. Hester, ever
23 come back around that day?

24 A That night, yes.

25 Q And describe that. Where were y'all and how

1 did you encounter him?

2 **A** We was at James' house. Timothy Hester, his
3 dad, had brought him over there.

4 **Q** Okay. Now, you said Adam Hester and you
5 said Timothy Hester. I want to clear some things up.
6 When you say Adam Hester, who were you referring to?

7 **A** Right there.

8 **Q** Okay.

9 **A** Adam Hester.

10 **Q** All right.

11 **A** When I say Timothy, I mean his dad.

12 **Q** Okay. All right. So what kind of car was
13 Tiffany's car that he brought him over there in?

14 **A** A silver Monte Carlo.

15 **Q** And who is Tiffany?

16 **A** His girlfriend.

17 **Q** How long had him and Tiffany been together?
18 Do you know?

19 **A** 10, 11 years.

20 **Q** All right. Did they live together at that
21 time?

22 **A** Yes.

23 **Q** Do they have any children together?

24 **A** Three.

25 **Q** So about what time did the defendant's

1 father and the defendant show up at James' house?

2 **A** If Tiffany was working, it'd have to be
3 after 7:00 cause she worked at the liquor store.

4 **Q** Okay.

5 **A** So any time after that.

6 **Q** Why is that? Why do you figure it had to be
7 after that time?

8 **A** Because most of the time, she had her car.

9 **Q** Okay. What did y'all do after y'all all got
10 to the house?

11 **A** We was drinking. That was pretty much it.

12 **Q** Did y'all decide -- did y'all ever leave
13 the house that night?

14 **A** Yeah. We decided to go to a mutual friend
15 of ours to meet up there.

16 **Q** All right. Who was that mutual friend?

17 **A** Scott.

18 **Q** Okay. About what time do you remember that
19 y'all did that?

20 **A** Maybe 10:00 or 11:00.

21 **Q** Was it dark outside?

22 **A** Yeah. It was dark.

23 **Q** Tell us about leaving that house. Who left
24 the house?

25 **A** Well, I was too drunk to drive. Me and

1 James had got in our car. Alanah had got in the
2 passenger seat of Tiffany Mauldin's car and Adam
3 Hester got in the driver's side. I walked over to the
4 car. I put my foot underneath the tire and I said,
5 Adam, you don't need to drive because you're too
6 drunk. He told me to move my foot or he'd run it
7 over. He said you'd better move it. I'm going to run
8 it over. So I moved my foot and he closed the door
9 and backed out of the driveway and took off. I got in
10 my car and James took off right behind him.

11 Q All right. And how far -- describe the
12 roadway, I guess, leaving James' house and how you
13 saw him leaving.

14 A Like, here's the driveway, but it's a hill
15 before you get to the stop sign. But, like, it's a
16 little hill. It's less than a quarter of a quarter
17 mile probably.

18 Q Okay.

19 A So --

20 Q All right. In which direction did you see
21 the defendant drive off?

22 A To the left.

23 Q Of?

24 A Of the stop sign.

25 Q All right. So is this stop sign -- and I

1 apologize. I don't have a map. It's hard to describe.

2 How long is James' driveway?

3 A Uh --

4 Q Is it a big driveway, short driveway?

5 A Short.

6 Q And the street that it connects to, is that
7 the street that has the stop sign at the end of it?

8 A Yeah.

9 Q So did you see the defendant drive through
10 that stop sign?

11 A I did. I believe so. Yes.

12 Q All right. You said you were following
13 behind them in your car, right?

14 A Yeah, James was.

15 Q You were not driving?

16 A No.

17 Q Okay. Where did -- you said the defendant
18 went to the left. Where did you observe him go from
19 there?

20 A I could have sworn that they went behind
21 the white church because whenever me and James had
22 took that left -- here's the stop sign to the left.
23 Then there was another left and there's a little
24 church right there.

25 Q Okay.