

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE,

V.

RESPONDENT,

TIMOTHY ADAM HESTER, SR.,

APPELLANT

APPELLATE CASE NO 2017-000201

RECORD ON APPEAL

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1 **A** I swear that they were back there, but I'm
2 not sure. I seen headlights, I mean, taillights, but
3 I'm not positive that it was them.

4 **Q** And how did -- how would you describe Adam
5 driving away? Was he driving slow, fast?

6 **A** Fast.

7 **Q** After y'all went past the little white
8 church, did you ever see him again in the car?

9 **A** No, I didn't see him again until he was in
10 the hospital.

11 **Q** Okay. At that stop sign, did you ever see
12 anyone get out of the car?

13 **A** I don't believe I had enough time, no.

14 **Q** Did you see anybody?

15 **A** No.

16 **Q** Did you get to that stop sign right after
17 they pulled out?

18 **A** Yeah.

19 **Q** Y'all didn't lollygag around and leave
20 after them?

21 **A** We left right after they did.

22 **Q** All right. Okay. Is it fair that y'all were
23 all leaving together, just in separate cars?

24 **A** Right. Probably like 30 seconds behind each
25 other.

1 **Q** Okay. All right. What did you do, you and
2 James do after y'all left the house?

3 **A** We had visited our friend, Scott. We were
4 waiting on Alanah and Adam to get there. Probably two
5 hours past and we hadn't heard them or seen them. I
6 started calling Adam and Alanah's phone and neither -
7 one of them were answering.

8 **Q** All right. So what did y'all do then?

9 **A** Me and James decided to leave to go see
10 where they was. And on the way back to James Moore's
11 house, we seen a wreck, an ambulance and all that.
12 And James said, that looked like Tiffany Mauldin's
13 car. I couldn't really see it. We ended up going to
14 Tiffany Mauldin's house instead to go get Tiffany.

15 **Q** Uh --

16 **A** But I stayed there with the kids while they
17 went back to the scene.

18 **Q** You said Tiffany Mauldin. I think you just
19 called her Tiffany earlier. Is that the defendant's
20 girlfriend?

21 **A** Yes.

22 **MR. CLEVELAND:** Beg the Court's indulgence
23 for just a moment.

24 **THE COURT:** Sure.

25 **(WHEREUPON, there is a pause.)**

1 **BY MR. CLEVELAND:**

2 **Q** How much time had you spent with the
3 defendant on that day?

4 **A** Probably three hours.

5 **Q** All right. Did you -- how much did you
6 observe him drinking?

7 **A** Wait. Yeah. I don't know. Probably a good
8 bit.

9 **Q** You --

10 **A** As much as me.

11 **Q** All right. You testified --

12 **A** I know --

13 **Q** I'm sorry. I didn't mean to cut you off.
14 You testified earlier that you tried to stop him. You
15 told him he was too drunk to drive.

16 **A** Yeah.

17 **Q** Was that based on your observation of him
18 throughout the day?

19 **A** Yeah.

20 **Q** Do you have any recollection as to what the
21 defendant was wearing, by any crazy chance?

22 **A** Maybe a white shirt.

23 **Q** Okay.

24 **A** And black shoes.

25 **Q** What kind of shoes?

1 **A** Knowing him, probably --

2 **Q** Don't say probably. Don't say probably.

3 **A** Okay.

4 **MR. DEJONG:** Your Honor --

5 **THE COURT:** Sustained.

6 **THE WITNESS:** Probably -- I mean, black
7 shoes.

8 **BY MR. CLEVELAND:**

9 **Q** Don't -- okay. Are those -- do you recall
10 if those are tennis shoes, dress shoes, boots?

11 **A** Tennis shoes.

12 **Q** You recall what kind of pants?

13 **A** Regular pants..

14 **Q** Okay. Any color description or anything
15 like that?

16 **A** No.

17 **Q** I'm going to show what's been previously
18 marked and entered into evidence as State's Exhibit
19 Number 10. Take a minute and look at that photograph.

20 **A** Okay.

21 **Q** There appears to be a shoe sitting in the
22 middle of that photograph. You recognize that shoe?

23 **MR. DEJONG:** Your Honor, I'm going to
24 object. It was asked, answered, she said she
25 didn't know.

1 **THE COURT:** After the seeing the
2 photograph, I'm just going to see if she can --
3 if she can answer.

4 **THE WITNESS:** I mean, I do believe it is
5 his.

6 **BY MR. CLEVELAND:**

7 **Q** I mean, you don't -- do you believe you
8 recognize it? Have you ever seen that shoe before?

9 **A** Yeah, I'm sure. ,

10 **Q** Okay. Whose shoe is that?

11 **A** Adam Hester's.

12 **Q** Just to clear up, did you ever -- after
13 Adam drove off that night, did you ever see him
14 switch drivers with anybody else in the vehicle?

15 **A** No.

16 **Q** Was there anybody else in the vehicle other
17 than him and Ms. Holcombe?

18 **A** No.

19 **Q** Thank you, Ms. Forshee, please answer any
20 questions Mr. DeJong has.

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

22 **MR. DEJONG:** Thank you, Your Honor. May it
23 please the Court.

24 **THE COURT:** Yes.

25 **CROSS-EXAMINATION**

1 BY MR. DEJONG:

2 Q So from Mr. Moore's house to the church,
3 how far is that?

4 A Less than a quarter mile.

5 Q Okay. I just wasn't sure if that was -- is
6 the church right there around where that stop sign
7 is?

8 A Yeah. It's a four -- I mean, it's almost
9 like a four-way.

10 Q Okay. And does the church sit on one of
11 those corners?

12 A Yeah.

13 Q Okay. Now, when you get to the stop sign,
14 which direction do you turn?

15 A Left.

16 Q Which direction did Mr. Hester turn?

17 A Left.

18 Q Okay. So you're still behind him?

19 A No. That's the thing. Like, we were behind
20 him, but he was driving a little fast to where I
21 didn't see him no more. Then I seen headlights behind
22 the church thinking that it was him because I didn't
23 see him no more.

24 Q All right. So the last you saw of Mr.
25 Hester was when they pulled off into the church?

1 **A** Right. If that was their vehicle, yes.

2 **Q** Pardon me?

3 **A** Yes. If that was their vehicle, yeah.

4 **Q** Okay. Now, how long were they behind the
5 church, you don't know?

6 **A** No.

7 **Q** What happened behind the church, you don't
8 know?

9 **A** Correct.

10 **Q** So any number of things could have
11 happened, but you wouldn't know what they were,
12 right?

13 **A** Right. I wasn't there, so I wouldn't know.

14 **Q** Pardon me?

15 **A** I wasn't there with them in the car ---

16 **Q** Yes, ma'am.

17 **A** --- so I wouldn't know.

18 **Q** Absolutely. Now, at some point, I think
19 earlier in the day, you said you went to the liquor
20 store?

21 **A** Yeah.

22 **Q** Who went to the liquor store?

23 **A** Me and Adam Hester, that morning.

24 **Q** All right. What time was that?

25 **A** About 10:00.

1 Q In the morning?

2 A Yes.

3 Q And you took him back home?

4 A Yeah.

5 Q All right. And then what time did he show
6 up at James Moore's house?

7 A Like I said before, it was any time after
8 7:00.

9 Q Well, who -- for want of a better term, I
10 guess, we'll call it a party -- who furnished the
11 liquor for the party?

12 A Honestly, I can not recall.

13 Q Did you ever take Ms. Holcombe to the
14 liquor store?

15 A I don't believe I did that night, no. I
16 picked her up at 6:30. We wouldn't have enough time.

17 Q Well, how much liquor was there?

18 A I know at least a -- a little bit more than
19 a liter.

20 Q A liter? So there was one liter of liquor
21 there?

22 A Yeah.

23 Q Okay. How many people were drinking the
24 liquor?

25 A I believe just me, Alanah, James and Adam

1 and maybe Jackie.

2 Q Okay. So five people drinking a liter of
3 alcohol, right?

4 A Yeah.

5 Q When you left James Moore's house, was that
6 alcohol gone?

7 A I don't know. I don't recall.

8 Q All right. I'm a little confused. And I
9 know with time, it's a little hard to recall. I
10 understand that.

11 A Uh-huh.

12 Q You said -- well, let's nail this down.
13 January the 30th of 2015, it gets dark early, right?

14 A I guess so, yeah.

15 Q All right. So you don't really remember
16 what time Mr. Hester got over there?

17 A No.

18 Q Well, do you remember how long Mr. Hester
19 was there before you left for Scott's house?

20 A I know at least an hour. Had to have.

21 Q Pardon me?

22 A I said it had to have been at least an
23 hour.

24 Q Do you remember what time you and Mr. Moore
25 left for Scott's house?

1 **A** Maybe 10:00 or 11:00.

2 **Q** At night?

3 **A** Uh-huh.

4 **Q** The shoes we're talking about, you can not
5 say that that was necessarily the picture you looked
6 at was Adam's shoes, can you?

7 **A** I mean, I've seen those shoes before. I've
8 seen him wear them before, so yeah.

9 **Q** But there's nothing particularly uncommon
10 about those shoes.

11 **A** No, I mean, they could have been anybody's,
12 but why would they be in their car if they're not
13 his.

14 **Q** Well, I understand. But the point of that
15 is you can not say that that was Adam Hester's shoes.

16 **A** No, I can't. But ain't that a coincidence
17 that they'd be in there and not be his?

18 **Q** So Adam was there for about an hour and
19 then 10:30 or 11:00, you left for Scott's house?

20 **A** Yes.

21 **Q** Where does Scott live?

22 **A** Riggins Road in Pickens.

23 **Q** Where?

24 **A** Riggins Road in Pickens.

25 **Q** Okay. Now, when you and Mr. Moore left, did

1 y'all find -- let me back up a little bit. When you
2 come to that, basically, four-way stop where you
3 turned left, do you know the name of that road that
4 you turned left on?

5 **A** No, I don't remember.

6 **Q** Okay. Are you familiar with that area?

7 **A** Yeah.

8 **Q** Okay. When you and Mr. Moore went to
9 Scott's house, did you go on Prater's Road?

10 **A** No.

11 **Q** Okay. How did y'all go?

12 **A** Allgood Bridge Road.

13 **Q** I'm sorry?

14 **A** Allgood Bridge.

15 **Q** Okay. How did you get to Allgood Bridge
16 Road?

17 **A** What do you mean? How do I get there from
18 my car?

19 **Q** What route did you take? What roads?

20 **A** I don't know the names of them.

21 **Q** Okay. All right.

22 **A** But I know that Prater's Creek and the way
23 that we went is two different ways.

24 **Q** I'm sorry.

25 **A** Prater's Creek and Allgood Bridge Road,

1 it's, like, two different ways.

2 Q Yes, ma'am. Okay. So you can go to Allgood
3 Road via Prater's Creek or you can get to Allgood
4 Road by another route? Is that what you're telling
5 me?

6 A No, I'm saying, like, here's, like, the
7 main road. I mean, there's Allgood Bridge and then,
8 like, Prater's Creek.

9 Q Okay.

10 A Which I believe Prater's Creek is, like,
11 the shorter way.

12 Q So how long did it take you to get to
13 Scott's house?

14 A 15 minutes.

15 Q How long?

16 A 15 minutes.

17 Q Well, you say you think you left Mr.
18 Moore's house between 10:30 and 11:00.

19 A Uh-huh.

20 Q And then it wasn't until two and a half
21 hours later that you decided to look for him?

22 A Yeah, I mean, I had been calling them
23 previously before that, but yeah.

24 Q So that would have been some time in the
25 morning, early morning hours of January the 31st,

1 right?

2 **A** Yeah.

3 **Q** Did you introduce Ms. Holcombe to Adam?

4 **A** I believe so.

5 **Q** When was that? Do you recall?

6 **A** Probably about a year earlier from then.

7 **Q** But you're not sure about that?

8 **A** No.

9 **Q** Now, when Adam came to your house -- excuse
10 me, not your house, but Mr. Moore's house on January
11 the 30th of 2015, his father drove him?

12 **A** Correct.

13 **Q** Did his father stay there?

14 **A** No.

15 **Q** Where did he go, if you know?

16 **A** He left walking, I guess, back home. He got
17 mad.

18 **Q** Okay. Did you see the father again, then,
19 either the 30th or the 31st?

20 **A** No.

21 **Q** Was it cold?

22 **A** I'm sure. It was January 31st.

23 **Q** I'm sorry?

24 **A** I'm sure it was. It was January.

25 **Q** Did Adam have a coat on?

1 **A** No.

2 **Q** Just a shirt?

3 **A** Yeah. I mean, he might have had a coat, but
4 I don't recall.

5 **Q** How much did you have to drink out of that
6 one liter bottle?

7 **A** I don't recall, but I know enough to be too
8 drunk to drive.

9 **Q** All right. So what you're saying is you
10 were drunk that night, right?

11 **A** Uh-huh.

12 **Q** And this has been almost two years ago,
13 right?

14 **A** Correct.

15 **Q** All right. So you were drunk. And almost
16 two years ago, memories fade, right?

17 **A** Yeah. Yeah.

18 **Q** And things change, right?

19 **A** Uh-huh.

20 **Q** Did you talk to anybody about your
21 testimony today?

22 **A** Did I talk to anybody about it? Mr. Baker.

23 **Q** Pardon me?

24 **A** Mr. Baker.

25 **Q** This gentleman seated right here?

1 **A** Yeah.

2 **Q** How many times did you meet with him?

3 **A** Once?

4 **Q** Was that today or before today?

5 **A** Before today.

6 **Q** All right.

7 **A** Just to go over some things, though.

8 **Q** Huh?

9 **A** Just to go over it.

10 **MR. DEJONG:** I'm sorry, Your Honor. If I
11 may have a moment.

12 **THE COURT:** Certainly.

13 **(WHEREUPON, there is a pause.)**

14 **MR. DEJONG:** Thank you, Ms. Forshee.

15 **THE WITNESS:** Uh-huh.

16 **THE COURT:** Any follow-up for this
17 witness?

18 **MR. CLEVELAND:** Yes, Your Honor.

19 **REDIRECT EXAMINATION**

20 **BY MR. CLEVELAND:**

21 **Q** Ms. Forshee, did you ever talk to law
22 enforcement about the night of January 30th?

23 **A** I did.

24 **Q** All right. And do you remember talking to
25 Trooper Marlow who's seated right here at counsel

1 table?

2 **A** Which one?

3 **Q** Mr. Marlow right here.

4 **A** In person?

5 **Q** Yeah. Do you remember? You remember talking
6 to him?

7 **A** Yeah.

8 **Q** Did you give him a statement about the
9 incident?

10 **A** I did.

11 **Q** And is that statement -- did you tell him
12 what you told this jury today?

13 **A** Basically, yeah.

14 **Q** Was your statement that you told him that
15 night the truth to the best of your recollection?

16 **A** Yes.

17 **Q** Is that what you're telling this jury is
18 the truth to the best of your recollection?

19 **A** Yeah.

20 **Q** I want to hit on a few things that came up
21 when you were talking to Mr. DeJong. He asked if you
22 introduced Ms. Holcombe and Adam. You said it was
23 about a year ago. How many times, to your knowledge,
24 had Ms. Holcombe and the defendant hung out or spent
25 time together?

1 **A** Not many. Probably like three or four.

2 **Q** All right. What was the -- based on your
3 observations of them, how would you characterize
4 their relationship?

5 **A** Associates.

6 **Q** Was there any romantic involvement between
7 the two of them, to your knowledge?

8 **A** No, just, you know, talking about it.

9 **Q** Talking about what?

10 **A** Having sex.

11 **Q** Who, particularly?

12 **A** Alanah. And Adam would tell me that he
13 would.

14 **Q** Is your understanding that the defendant
15 did have at least some romantic interest in Ms.
16 Holcombe?

17 **A** Yeah. I mean, just to have sex, but that's
18 it.

19 **Q** Okay. All right. You didn't think that it
20 was long-term plans or desires?

21 **A** No.

22 **Q** How far away -- let me ask you this. Does
23 the defendant's father live with the defendant or did
24 he on the date of this wreck?

25 **A** Yeah.

1 Q And how far away is that house from where
2 James lives?

3 A Maybe a mile.

4 Q All right. Is it -- is it, in your
5 approximation, too far to walk?

6 A No.

7 Q I just want to ask you briefly, too, about
8 your car. You said, what kind of car do you have?

9 A A Honda Civic.

10 Q All right. Two-door or four-door?

11 A Four.

12 Q Was there room in that car for four adults
13 on the night of this wreck?

14 A Yeah.

15 Q That's all I have, Ms. Forshee. Thank you.

16 A Okay.

17 **RECROSS EXAMINATION**

18 **BY MR. DEJONG:**

19 Q Do you remember the statement you gave
20 Mr. Marlow?

21 A Yeah.

22 Q Do you need to look at it?

23 A No.

24 Q Is there anything in that statement that
25 said Adam Hester was driving too fast that night?

1 **A** I don't recall that.

2 **Q** Well, let me let you look at your
3 statement.

4 **A** Okay.

5 **MR. DEJONG:** If I may approach the
6 witness.

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

8 **THE WITNESS:** No, I didn't say that he
9 pulled off too fast.

10 **BY MR. DEJONG:**

11 **Q** I'm sorry?

12 **A** I didn't say that he pulled off too fast.

13 **Q** Nothing in there that said he was driving
14 too fast?

15 **A** No.

16 **Q** All right. Thank you, ma'am. Nothing
17 further.

18 **THE COURT:** Anything else for this
19 witness?

20 **MR. CLEVELAND:** No, Your Honor.

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

22 **THE WITNESS:** Okay.

23 **MR. DEJONG:** No objection to her being
24 excused, Your Honor.

25 **MR. CLEVELAND:** The State would request

1 that she could be excused at this time.

2 **THE COURT:** All right. Thank you for being
3 here, Ms. Forshee.

4 **MR. CLEVELAND:** At this time, Your Honor,
5 the State would call Sergeant Aaron Duncan to
6 the stand.

7 **AARON DUNCAN**

8 having first been duly sworn, testifies as follows:

9 **THE CLERK:** Thank you. If you would, have
10 a seat and state your name for the record
11 please.

12 **THE WITNESS:** Aaron Duncan.

13 **DIRECT EXAMINATION**

14 **BY MR. CLEVELAND:**

15 **Q** Sergeant Duncan, what is your current rank
16 and assignment with the Highway Patrol?

17 **A** I'm a sergeant with the South Carolina
18 Highway Patrol Multi-disciplinary Accident
19 Investigation Team, what everybody so far through the
20 trial has been referring to as MAIT. It's the
21 collision reconstruction unit for the Highway Patrol.

22 **Q** All right. And how long have you been part
23 of the MAIT team?

24 **A** I have been an actual part of the team
25 itself since March of 2008. Originally, I was a MAIT

1 associate, so I did a system on collisions through
2 the counties that we were working in. But I became a
3 full member of the team on March the 8th.

4 **Q** All right. Briefly, let's talk about your
5 educational background. What college do you have and
6 what other training do you have in the realm of
7 collision reconstruction and accident investigations?

8 **A** Okay. I have a bachelor of science degree
9 in political science from Lander University, in my
10 hometown of Greenwood. I came on the Highway Patrol
11 in August of 1994. And throughout the years of
12 Highway Patrol, I've had training such as advanced
13 accident investigation and reconstruction where I
14 received 120 hours of that, some mapping and other
15 things that are involved in it, as y'all have heard
16 about through testimony here today or in this trial,
17 at scene collision and traffic investigation,
18 advanced collision investigation, collision forensic
19 investigative techniques, for example, different
20 interviewing training, crash data retrieval system
21 technician.

22 I'm also a crash data retrieval specialist
23 or an analyst for what's been referred to as the
24 black box in the car. I can take that data and
25 analyze that data to see if it's applicable to the

1 crash that it's involved in. Traffic crash
2 reconstruction at traffic signals, motorcycle
3 collision reconstruction, human factors in traffic
4 crash reconstruction, commercial vehicle, post-crash
5 inspections, occupant kinematics for the traffic
6 crash reconstructions, vehicle nomenclature, advanced
7 pedestrian and bicycle crashes and the list goes on
8 and on. I have about -- around 13- to 1500 hours
9 worth of collision reconstruction and accident
10 investigation training.

11 Q All right. And as a part of MAIT, how many
12 accident investigations do you estimate that you've
13 been involved in?

14 A Oh, wow. Since 2008, in the past eight
15 years, several hundreds. We average over -- over 150
16 a year that we get involved in, at the minimum.

17 Q And have you ever testified as an expert in
18 the courts of South Carolina in the fields of
19 accident investigations and collision reconstruction?

20 A I have six times.

21 Q Tell me just a little bit about -- and I
22 apologize. I'm looking at your resume, about some of
23 these conferences that you attend. Tell the jury what
24 are the purposes of those.

25 A Through our training, I also have what is

1 called ACTAR, it is a national accreditation as a
2 collision reconstructionist. It is a standard set up
3 nationally and internationally to set the standard as
4 far as what should be considered a collision
5 reconstructionist. I have that, that I obtained -- in
6 2009, I believe it was, is when I got that
7 accreditation. In doing that, I also have to maintain
8 so many continuing education units, if you will.
9 Conferences, training classes, anything like that is
10 applicable for those continuing education credits.

11 Through the Highway Patrol, they send us to
12 different conferences. There are some in
13 Pennsylvania, some in Tennessee, Maryland, all over
14 the United States as far as that goes. One in
15 particular, I'm also the secretary of the South
16 Carolina Association of Reconstruction Specialists.
17 In doing that, part of my position, what we do at the
18 conferences is we have a controlled environment where
19 we set up crashes along with the training that we're
20 doing as well.

21 We set up crashes and have staged crashes
22 where we know the input that's coming in. Knowing
23 that input, then we're able to take and apply the
24 theories and the techniques that we're trained and
25 are practiced in. To not only see that what we're

1 doing is working, but also to see the crashes as
2 they're happening. We have cameras set up in the
3 cars, cameras set up around the cars and the crash
4 site, it's a real high tech situation, accelerometers
5 in the cars. Since the invention of the drone, that's
6 a real neat thing. We're able to set up above the
7 crashes so we can see how cars come together and how
8 they react in the crashes.

9 Again, we use that data that we're able to
10 capture through these investigations -- as far as the
11 staged crashes, we're able to use that information to
12 prove that theories and the techniques we use in
13 collision reconstruction works and does pan out to be
14 accurate.

15 **Q** Are those theories and techniques commonly
16 accepted theories and techniques across the United
17 States in the field of collision reconstruction?

18 **A** It is. It is.

19 **Q** And generally speaking, as you carry out
20 these synopses and do these controlled wrecks, do
21 these theories and methods prove reliable?

22 **A** They do. They do.

23 **Q** I want to touch on one specific class
24 before we go forward. This occupant kinematics for
25 the driving crash reconstructionist, can you briefly

1 just describe to the jury what occupant kinematics
2 means?

3 **A** That whole class was focused on how people
4 within a car react during the car crash. So what
5 forces, and when those forces are applied to the car,
6 whether people are restrained or unrestrained, how
7 they react within the car and also things such as
8 ejection portals, when windows are opened and how
9 people can get ejected from vehicles and focused on
10 how a person inside a car that's crashing reacts
11 within that crash.

12 **Q** All right. And as a sergeant with the
13 Highway Patrol MAIT team, what are your
14 responsibilities currently?

15 **A** I'm currently responsible for the 12
16 counties of the Upstate, both Troop 2 and Troop 3.
17 I'll list them out, Newberry, Saluda, Edgefield,
18 McCormick, Greenwood, Abbeville, Laurens, Anderson,
19 Pickens, Oconee, Greenville and Spartanburg. That's
20 the region that I cover. The team that I coordinate
21 is six investigators beneath me. Anytime there is a
22 traffic collision that rises to the level that
23 requires a MAIT investigation, we'll respond to that
24 within that area that I just labeled out for you. We
25 investigate that crash and try to come up with the

1 particulars of what took place and happened and make
2 sure we have an understanding before anything is
3 proceeding forward.

4 **MR. CLEVELAND:** Very good.

5 At this time, Your Honor, the State would
6 offer Sergeant Duncan as an expert in the fields
7 of accident investigation and collision
8 reconstruction.

9 **THE COURT:** Any additional voir dire or
10 any objection?

11 **MR. DEJONG:** None, Your Honor. Just over
12 my objection.

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

14 **MR. DEJONG:** And so I don't have to keep
15 jumping up and down and interrupting everybody,
16 just for the record, Your Honor, I object to the
17 entirety of this witness' testimony.

18 **THE COURT:** I understand. Your objection
19 is noted and overruled respectfully at this
20 time.

21 Yes, sir.

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

23 **BY MR. CLEVELAND:**

24 **Q** Sergeant Duncan, were you involved in the
25 investigation of the crash that occurred on Allgood

1 Bridge Road on January the 30th of 2015?

2 A I was.

3 Q All right. What was your initial response
4 or responsibility regarding that crash?

5 A I was to supervise that investigation and
6 make sure that as much details as we possibly could,
7 related to that crash, were gathered in accordance
8 with the MAIT policies and procedures.

9 Q All right. And what was the first thing you
10 did?

11 A I originally went to the scene immediately
12 to observe. Coming from Greenwood, it's going to take
13 me a little bit longer than it does Lance Corporal
14 Duncan or Lance Corporal Craig to get to the scene.
15 By the time I got there, they were already on the
16 scene. The team works as a well-oiled machine. They
17 were already doing the pictures and photographs of
18 the vehicles and of the scene. They were in the
19 process of doing video.

20 I walked through the scene, looked at the
21 physical evidence. I did do a general vehicle exam on
22 the car that was involved -- actually on both cars
23 that were involved in the crash and just kind of
24 oversaw and got an idea of what was laid out there at
25 the scene. I think, originally, when I arrived on the

1 scene, I spoke with Corporal Mayfield, which was the
2 same supervisor for the Troop. Then I also spoke with
3 Lance Corporal Marlow, who was the investigating
4 officer.

5 Q Very good. What responsibilities or what
6 tasks did you conduct on the scene?

7 A On the scene, aside from the supervision,
8 to, again, make sure things are going in accordance
9 with MAIT policies and operating procedures, I did a
10 general vehicle exam on both the Toyota Corolla that
11 was involved and on the 2005 Chevrolet Monte Carlo.

12 Q All right. And was that a comprehensive
13 exam on the vehicle as you found it?

14 A It was.

15 Q Okay. We'll come back to that in a moment.
16 What else did you do that night in the collision?

17 A At the time I arrived on the scene, it was
18 on into that morning on the 31st. The team had
19 everything under control on the scene itself. I left
20 and went to the Greenville Memorial Hospital to see
21 if I could find Mr. Hester and speak with him.

22 Q All right. And were you able to speak with
23 Mr. Hester that night?

24 A I was.

25 Q All right. What condition did you find Mr.

1 Hester in?

2 **A** He was in the hospital room. He was sitting
3 up in the bed. When I came inside to introduce myself
4 and to, first off, identify him to make sure I was in
5 the right room, introduce myself to him. He was
6 sitting up. He was shirtless at the time. I don't
7 recall him having a blanket or whether he had on
8 pants or shorts or whatever at that point. He still
9 had some stickies to him, if you will, for lack of a
10 better term, where they had had the machines hooked
11 up to him. I don't recall any IVs or anything like
12 that to him. He was up in the bed. He was talking
13 and alert. I introduced myself to him and, again, had
14 conversation with him after his reading him his
15 Miranda rights.

16 **Q** All right. What injuries did you observe,
17 if any, of the defendant?

18 **A** For a collision of this magnitude, they
19 were what would call relatively small injuries. He
20 had -- on his left side of his temple, up in the
21 forehead region, he had some scratches and a little
22 bit of dried blood up in that area. Not a great deal
23 of injury there, just a minor thing. There was some
24 red irritation as if he had made contact with
25 something on the side of his face up in this area.

1 Seemed like there was a scratch on his left shoulder.

2 The most succinct injury that I recall was
3 one that started at about the bottom side of his
4 right rib cage and came upward in an arch motion and
5 come back down across it, about the midways of the
6 sternum, maybe not quite that high, and then went off
7 onto the left side of his rib cage, but it stopped
8 about midways of the left rib cage.

9 Q All right. I'm going to show you what's
10 already been entered into evidence as State's Exhibit
11 21 and 22. First, State's Exhibit 21. Does that
12 photograph accurately depict the injuries as you
13 observed them on Mr. Hester that night?

14 A It does.

15 Q Describe -- we've got a laser pointer up
16 there. Just kind of point out what you said you
17 observed.

18 A The injuries to the left top of his
19 forehead, the red irritated marks on the side of his
20 cheek. If I can get my hand up high enough to shoot
21 across the Kleenexes. You see the dried blood. Again
22 nothing really extreme as far as the injuries were
23 concerned that's in that area. Everything was to the
24 left side of his face.

25 Q Okay. And of course, in this picture, you

1 can't see all the way around to the right. I
2 apologize. Did you note any injuries to the right
3 side of his face?

4 **A** I do not recall any injuries to the right
5 side of his face.

6 **Q** State's Exhibit 22, what does this picture
7 depict?

8 **A** I mentioned the scratches and whatnot to
9 his left shoulder. You can see a little bit of it up
10 in that corner. But more so is the arch indication
11 right across through here. It's a little smoother
12 than I'm moving the laser, but you can see where it
13 starts at the base on the bottom side of the right-
14 hand ribs and comes across up into the center section
15 of his ribs and then off to the left on this side.

16 **Q** All right. Thank you. You may have said
17 this already, but was he conscious when you went to
18 talk to him?

19 **A** He was. He was alert and able to speak and
20 talk with me.

21 **Q** You recall about what time of the day or
22 morning it was?

23 **A** It was approximately five o'clock in the
24 morning.

25 **Q** And did you identify yourself as a law

1 enforcement officer to him?

2 **A** I did. I came in and, like I mentioned
3 earlier, made sure he was who I was looking for. Then
4 I introduced myself as Aaron Duncan with the South
5 Carolina Highway Patrol MAIT Unit reconstruction unit
6 and informed him of his Miranda rights after I told
7 him who I was.

8 **Q** All right. And after you informed him of
9 his Miranda rights -- well, just briefly, for the
10 jury, what are those rights?

11 **A** That he did have the right to remain
12 silent, anything he said could and would be used
13 against him in the court of law. He'd have the right
14 to have an attorney and have him present while
15 answering any questions. If he could not afford an
16 attorney, one could be appointed to him at no cost.
17 If, at any point in time, he wanted to stop answering
18 questions until he could speak with an attorney, he'd
19 have the right to do that as well. And that -- made
20 sure that he understood his rights and asked him if
21 he did want to speak with me.

22 **Q** Did he indicate that he didn't want to
23 speak with you?

24 **A** He did not indicate that he did not want to
25 speak with me. He did indicate that he did.

1 **Q** Okay. At any point in time that you were
2 talking with him, did he ever stop the conversation,
3 request a lawyer, or say he didn't want to talk to
4 you anymore?

5 **A** No, sir.

6 **Q** At any point in time, did he ever request
7 any comfort or medical care that you denied him until
8 the interview was over?

9 **A** No, sir. In fact, midway through the
10 interview, one of the hospital staff came in for some
11 reason and we paused the interview, let her attend to
12 him and his well-being, and then she turned and left
13 and we proceeded with the interview.

14 **Q** Did you make any promises, threats or
15 coerce him in any way to talk to you, at least for
16 the first portion of the interview or at any point in
17 time in the interview, rather?

18 **A** I did not make any promises or threats or
19 coercion to get him to talk.

20 **Q** And did he answer the questions you asked
21 him appropriately?

22 **A** He did.

23 **Q** Did he seem to understand what was going on
24 based on your observations of him?

25 **A** He did. He was alert and very capable of

1 answering and talking.

2 **Q** The questions -- his answers that he gave
3 were sensible and made sense related to the question?

4 **A** Yes, sir.

5 **Q** All right. I'm going to show you what's
6 been marked as State's Exhibit 47. Do you remember
7 looking at the contents of that disk at any point in
8 time?

9 **A** I do. Yes, sir.

10 **Q** What is on that disk?

11 **A** That is our MAIT file.

12 **Q** All right. And contained within this MAIT
13 file, is there an audio recording of your
14 conversation with Timothy Adam Hester that night?

15 **A** It is. It would be labeled with the case
16 number, Mr. Hester's name, the date and my name and
17 then also I have an indication of what date it was on
18 that.

19 **MR. CLEVELAND:** At this time, Your Honor,
20 the State would like to move -- I'll read that
21 file name off on the record -- that particular
22 audio file from the same disk, State's
23 Exhibit 47, into evidence.

24 **MR. DEJONG:** Your Honor, I'm objecting to
25 all this testimony. I'm objecting to that.

1 **THE COURT:** All right. It will be so
2 admitted.

3 **(WHEREUPON, State's Exhibit 47 is admitted into the**
4 **record.)**

5 **MR. CLEVELAND:** All right. Your Honor, for
6 the record, the State seeks to play -- we'll
7 start the interview at 4 minutes and 33 seconds.

8 **THE COURT:** Okay.

9 **(WHEREUPON, State's Exhibit 47 is played.)**

10 **MR. CLEVELAND:** For the record, I'm stopping
11 this particular portion of the recording at 16:10.

12 **THE COURT:** All right.

13 **BY MR. CLEVELAND:**

14 **Q** Now, Sergeant Duncan, did y'all have some
15 more conversation in the hospital that night? Did
16 that conclude his narrative of the scene?

17 **A** That's essentially the -- that is the
18 layout of what he gave me that night. That is his
19 story, the way he described the collision and what
20 took place.

21 **Q** All right. Ultimately, and we've heard with
22 the last two witnesses ago that he had heard at the
23 hospital that her head was entrapped. Did you inform
24 him of the way the victim was found at the scene?

25 **A** I did. I informed him of her head being

1 pinned up under the side of the vehicle at the roof
2 line with what we call the A-post up at the front. I
3 think I said her head was pinned outside the
4 passenger side of the vehicle.

5 Q Let's move to the -- back to the
6 investigation of the crash at this time.

7 A Yes, sir.

8 Q All right. You've already discussed the
9 defendant's injuries in this case that you observed.
10 Based on the investigation, what were the injuries to
11 the deceased, Ms. Holcombe, in this case? What did
12 she have?

13 A Ms. Holcombe's visible injuries that I was
14 able to see, as the medical examiner explained, there
15 was an injury on the right side of her head around
16 the temple area, a rather large laceration or opening
17 up in that area where her head made contact with
18 something.

19 Q All right. While we're talking about her
20 head, how would you describe the hair that Ms.
21 Holcombe had? Was it short hair, long hair?

22 A She had rather lengthy hair. Not way down
23 her back, but maybe shoulder-length, give or take.

24 Q What color was it?

25 A As I recall, it was a brown color.

1 **Q** All right. I want to talk about the general
2 vehicle inspection that you conducted. Tell the jury
3 about what your procedure doing general vehicle
4 inspection is.

5 **A** We make -- what we do is a general vehicle
6 exam. It's not a full-blown mechanical exam. We
7 document things about the car, specifically things
8 like the VIN number on the car so we can make sure
9 that the identification serial number on the vehicle
10 matches up with the reports, matches up with things
11 that we look for. Later, we look for things like
12 recalls on that car to see if there's something that
13 might have attributed to the crash.

14 We document things like the tires, the air
15 pressure, the tread depth. There's a DOT number on
16 the tires that tells where the tire was made at, if
17 you know how to read the codes, what month and week
18 and year that the tire is made as well. Tires, like
19 everything else in the world, have a lifetime
20 expectancy on them. So we have those things
21 documented.

22 We try to document things such as the
23 steering wheel, the brake pedal. If there's something
24 unusual that we note, for example, sometimes cars
25 will be there with the radio blaring, we try to note

1 things like that. Windshield wipers on, we'll make
2 notes of things like that. But we look at the
3 condition of the vehicle as we find it and see if
4 there's anything that stands out to us about the
5 condition of the vehicle.

6 Q All right. And going around the exterior of
7 the vehicle -- and we've got photographs that have
8 already been admitted into evidence. If you need to
9 refer to any of those, please just let me know.
10 Describe the findings on the exterior vehicle.

11 A From the rear of the vehicle, there wasn't
12 an awful lot of damage. You have what's called
13 contact damage and you have what's called induce
14 damage. Obviously, contact damage is just what that
15 is, when two things come together. Where they make
16 contact, that is from that contact. That is where the
17 damage comes from. Induce damage would be, for
18 example, where you push on the top of the can and the
19 sides buckle in or where you have something hit you
20 in the front of the car and it buckles the side of
21 the car so the door doesn't open.

22 There was some induce damage down the rear
23 of the vehicle, some buckling. But there wasn't
24 anything where it had made contact with anything on
25 what would be from essentially the right rear quarter

1 panel or the right rear wheel or the right rear
2 fender around the full side to the driver's door. The
3 driver's door -- both doors were actually wedged
4 shut. The roof line of the vehicle had some damage to
5 the right, what I, again, call the A-post. A-post
6 being the front post of the windshield; B-post being
7 behind the passenger driver's window and then on
8 back. Essentially, depending on how many posts you
9 have as to how many letters you use. Damage to the
10 roof-line there. Damage to that post. Damage to the
11 right-side passenger door.

12 Front right wheel. Front-wheel-drive
13 vehicle. The CV axle was showing where the axle had
14 been pulled away from the engine where it's able to
15 drive it to make the wheel maneuver, all of that was
16 kind of pushed backwards. The right front fender
17 itself was completely missing from the vehicle. That
18 was found over by the pecan tree that was struck.
19 Pecan, pecan. It was found over by the tree laying at
20 the base of the tree. Front-end damage to the
21 vehicle. Really, everything was essentially for the
22 full front side of the vehicle back towards the two
23 doors because of it being a two-door vehicle. Both of
24 those doors had some damage again induced as opposed
25 to contact damage, more so on the right side of the

1 vehicle than on the left side, but everything in the
2 front from the doors forward.

3 Q All right. I'm going to put up State's
4 Exhibit 25A, previously admitted into evidence. Is
5 that a depiction of the passenger side as you
6 observed it?

7 A That is.

8 Q Just in general terms, which side of this
9 vehicle suffered more damage, the passenger or the
10 driver's side?

11 A Obviously, the passenger's side. You can
12 see the heavy damage here at the right front wheel.
13 What we call the bumper skin, or the cover of the --
14 I guess it's more or less for cosmetic, to cover up
15 where the bumper actually is -- the bumper skin was
16 completely torn off of it. But the fender itself was
17 also removed and torn off from the front of the
18 vehicle.

19 Q Did you inspect the tires on the vehicle?

20 A We did.

21 Q All right. What -- did you make any
22 findings regarding the tires?

23 A I did. Let me flip to a page so I can make
24 sure I give you that.

25 Q And just for the record, what is that

1 document that you are referring to to refresh your
2 memory?

3 **A** This is our MAIT notes package. It's all
4 the information that was collected by the Highway
5 Patrol MAIT team through this investigation. Sketches
6 that we'd drawn out, CADs that we'd drawn. Anything
7 that was generated in reference to this case is put
8 into what we call the MAIT notes. And it's
9 information that was derived by the whole team about
10 the investigation.

11 **Q** In the field of collision reconstruction
12 and accident investigation, is it practice to rely on
13 all the findings of the whole MAIT team and draw
14 conclusions about a collision?

15 **A** It is. It -- obviously, it's a team. It's
16 in the name. But more so than that, with the number
17 of collisions that we investigate -- so far, this
18 year, I'm on case number 12 -- it's impossible for me
19 to be able to oversee every case and be at every
20 crash scene and to look at every piece of evidence
21 there on the scene. I have to rely on photographs. I
22 have to rely on notes. This is an oddity because I
23 was actually out at this scene, so I got to see
24 things firsthand. But on a day-to-day basis, a lot of
25 the decisions I have to make are based on information

1 that the team has gathered in the field.

2 **Q** All right. What were the findings regarding
3 the tires?

4 **A** I did the general vehicle exam on both of
5 them.. The Chevrolet obviously is what we're
6 interested in. I looked at the tires on it. It had
7 decent tread depth on it. As you can look at the
8 picture, I mentioned the right front caught a lot of
9 damage, the right front tire was deflated from
10 contact damage. It actually had a hole torn inside of
11 it. But I did note that all of the tires on the
12 vehicle were of different size or make. The, uh, --
13 I'm trying to make sure I get the right size -- the
14 sizes correct. 215 55R16 was on the left front; 215
15 60R16 was on the right front; the left rear had a 225
16 60R16 on it; and the right rear had a 225 55R16 on
17 it.

18 **Q** All right. You said you don't do a full
19 mechanical inspection on a car. Did you do a
20 mechanical inspection on this vehicle?

21 **A** We did not.

22 **Q** All right. What would you be looking for --
23 what factored into that decision not to do a full
24 mechanical inspection?

25 **A** Generally, when we do a full mechanical

1 inspection, there's some reason somebody's making a
2 claim that something mechanical failed on the
3 vehicle, things like tire failure or a tire coming
4 off, brake failure or the brakes giving out in the
5 midst of it. Those are typically the things we look
6 for in a mechanical exam. We found no reason to do a
7 mechanical exam on this. No one had made any claim
8 that there was a mechanical issue. In looking at the
9 evidence, I found no reason to think there would have
10 been a mechanical issue.

11 Q Just for example, what's some of the
12 evidence that gives you rise to think that there is
13 no mechanical issue?

14 A Well, in this particular case, all four
15 tires are still on the car and all four tires were
16 intact, aside from the right front, which had made
17 contact with the pecan tree, pecan tree. In looking
18 at that, there's no claim that a tire failed on that.
19 As mentioned earlier in some of the photographs you
20 were able to see, the skid marks in the roadway, it
21 was obvious that brakes were working because they
22 locked up. There's no reason to think that the brakes
23 weren't functioning and functioning properly.

24 I think also in Lance Corporal Anderson's
25 testimony, he mentioned that if one brake were

1 working stronger than the other brake, the vehicle
2 would pull one direction or the other. In the
3 photograph, you're able to see that the tires were
4 sliding straight and true down the roadway. So
5 there's no indication of there being a braking
6 problem with that. The vehicle had been able to
7 travel from the point that it left up to the area of
8 the collision and would have maneuvered through and
9 around the areas through there. There was no
10 indication of any steering problem that we needed to
11 look at. So nothing mechanically stood out from my
12 angle to deem it necessary to do a mechanical
13 inspection on the vehicle.

14 Q All right. Is there anything else about the
15 exterior of the vehicle you would like to note based
16 on your general vehicle exam at this time that you
17 think the jury should -- that you would point out to
18 the jury?

19 A No, sir. I think we covered everything on
20 the --

21 Q All right. Was there any data retrieved
22 from this car interpreted as part of your
23 investigation?

24 A There was.

25 Q All right. And what is that?

1 **A** Common on all vehicles now, any vehicle
2 that has an airbag to it has what's call an airbag
3 control module or a restraint control module or
4 something that -- no matter what the company or
5 manufacturer calls it -- something that controls
6 whether or not the airbag deploys. It, essentially,
7 realizes by the data that's constantly running
8 through the computer's car system, the car system's
9 computer, it realizes that, hey, something's wrong; I
10 need to, A, deploy the airbag or just lock the
11 seatbelt pretensioners up or maybe it doesn't need to
12 do anything because you just hit a big pothole or
13 something. But it wakes up and determines whether it
14 needs to do that.

15 In doing so, the by-product of that
16 happening is it also locks in data for studies within
17 the manufacturing industry which also happens to work
18 out for law enforcement because we're able to obtain
19 this information by imaging what's on it. I've heard
20 it referred to as a download. It's not a download.
21 It's merely us essentially taking a picture of the
22 data that's on there because we can not manipulate it
23 or change it or do anything to it. We just image that
24 data off of that airbag control module.

25 **Q** And what type of data does that module

1 record?

2 **A** Different vehicles record different things.
3 In the mid-90s, it started out being a real
4 simplistic thing and all it recorded is what we call
5 Delta V, which is a change in speed. And it only
6 recorded it in a longitudinal direction, which
7 doesn't do a lot of good in a lot of different
8 crashes. As time has progressed, these things have
9 really become in-depth and detailed as far as what
10 they show.

11 The details go as far as how much steering
12 angle you put into it, not necessarily the weight,
13 but the percentile of the person sitting in the
14 passenger-side seat, if either occupant is wearing a
15 safety belt or not, what gear the car is in, how fast
16 the car is going, if they were putting on brakes. If
17 the airbag -- excuse me -- if the -- obviously if the
18 airbags have deployed, it makes note of that -- if
19 the ABS braking system is working. The data that it
20 catches now is just phenomenal.

21 **Q** All right. And what did this 2005 Chevrolet
22 Monte Carlo report?

23 **A** This particular vehicle recorded a handful
24 of things with it. Obviously, as I mentioned earlier,
25 it recorded about the airbags. It captures these

1 events and it stores this stuff inside of it. It
2 captures information about the driver safety belt, it
3 captures information about the vehicle speed, the
4 RPMs, the percentage of throttle and the braking and
5 timing in relation to how far before the -- what we
6 call -- algorithm enable or before the machine is
7 waking up and deciding what it needs to do, which is
8 in milliseconds of time, split seconds, to determine
9 what it needs to do. It records data before that and
10 captures that data and locks it in.

11 Q And how many circumstances does it record
12 data?

13 A For several days, this one recorded two
14 events. They have three different kinds of events.
15 You have what's a non-deployment. It's just that, the
16 airbag doesn't deploy. You have a deployment event,
17 which is just that, the airbag deploys. Then you have
18 a deployment level event, which is, okay, if I had an
19 airbag, I would deploy it. The airbag is already
20 deployed, so I can't do it. This one recorded two
21 events, one being a deployment event and the second
22 being a deployment level event.

23 Q Are those two events indicative of two, for
24 lack of a better term, hard collisions?

25 A They would be, yes.

1 **Q** Please describe for the jury what data was
2 interpreted or how you interpreted the data from the
3 modules on the first event.

4 **A** When I look at this stuff, and being an
5 analyst of this stuff, I look at the -- there's data
6 limitations. There's things that explains to you and
7 talks to you and tells you about things that are
8 known within the vehicle itself how things should be
9 looked at. For example, with the steering and things,
10 it tells you which direction would be positive
11 steering and which direction would be negative
12 steering so that you can interpret the data properly.

13 It also has information about the ignition
14 cycles at deployment and ignition cycles at
15 investigation. At the time of the deployment when the
16 airbag deployed, there were 19,305 ignition cycles.
17 At the time we did our investigation, there were
18 19,306, which lets me know that when we cut that
19 ignition back on to get power to the box to image the
20 information on that box, we were the very next
21 ignition cycle as far as when the airbag deployed
22 compared to when we were doing investigation. That's
23 important because sometimes people have a box that
24 they cut the airbag out of the car and just cover it
25 up with duck tape. I've seen that happen. They just

1 keep driving. It aligns this up with being in the
2 time frame of the investigation of the collision
3 itself.

4 I looked at information about the driver's
5 seatbelt, which it said it was not buckled at the
6 time of deployment, and just recorded five seconds
7 worth of information prior to the deployment event
8 itself. During that five seconds, it shows the
9 vehicle speed at 94 mile an hour, running 3,712 RPMs
10 and 30 percent throttle. That's important, because
11 when you relate it back to the braking that it's
12 showing, at five seconds before the algorithm enable
13 or when the airbag deploys, it's showing no braking
14 is going on. As it proceeds down, the speed goes five
15 seconds, to four seconds, at 92 mile-an-hour; three
16 seconds at 91 mile-an-hour.

17 At 91 mile-an-hour, as I mentioned, there's
18 also the percent throttle. That percent throttle goes
19 down to zero. So whatever's going on in the vehicle,
20 the driver is taking their foot from the throttle and
21 is off of the throttle at that point in time. Because
22 at three seconds, there's still no braking. From
23 three seconds to two seconds, the speed goes down to
24 27 mile-an-hour, zero percent throttle. The engine
25 RPM is dropped from in the 3000's, down to 1088 RPMs.

1 At two seconds, there's also what the brake
2 switch circuit state is on, which means somebody has
3 put their foot on the brake and they are starting to
4 try to control the vehicle to slow the vehicle down.
5 Then, from two seconds to one second, there's zero
6 miles per hour, 768 RPMs, zero percent throttle.
7 There's still braking being applied at that point in
8 time.

9 Q All right. What about the deployment level?
10 Is it after the deployment event?

11 A It was.

12 Q How far after the deployment event was the
13 deployment level?

14 A 117 milliseconds, so .0117 seconds. Very
15 quickly.

16 Q All right. It's the -- because it was so
17 quickly thereafter, is the lead up five seconds,
18 similar to the other one?

19 A I'm sorry. Say it again, please.

20 Q Is the data recorded for the five seconds
21 leading up to that similar to the other ones?

22 A Yes, sir. It's exact from what I can tell
23 looking at it from one to the next. Yes, sir. All the
24 RPMs, the braking, the percent throttle, the speeds,
25 everything is recorded the same. This stuff is

1 recorded asynchronously, so between five and four
2 seconds. It may be closer to five seconds or closer
3 to four seconds because of the gap when it's actually
4 pulling that information. But it's so close that it's
5 negligible as to be in consideration. You won't be
6 able to change much speed in that time frame.

7 **Q** All right. Explain, based on your
8 expertise, how a speed can go from 94 miles an hour
9 to 27 miles an hour in a second. That seems like an
10 awful quick decline.

11 **A** Right. Well, the picture that you showed
12 earlier gives a great deal of that information. You
13 get wheel lock-up. The airbag control module is
14 gathering its information from the wheel speed
15 sensors. As those wheels are turning, same thing as
16 reading your speedometer and giving its information,
17 that information is being conveyed to that box. That
18 box is using that data to process what it's going to
19 do.

20 As it's going into this situation and
21 dropping from 91 to 27 mile an hour, you've got wheel
22 lock-up. It's not completely locked up all the way,
23 but it's locked up enough that it's starting to leave
24 tire marks. Even the skidding tire or the other tires
25 on the vehicle that aren't skidding are leaving that

1 information in there. It could be that that's the
2 time that it's in the air. For example, if all four
3 tires come off and all four tires lock up, you'd be
4 getting zero for that information.

5 Q Is there any indication where there is zero
6 speed prior to the deployment level event?

7 A There was. One second prior to deployment
8 was zero speed, 768 RPMs, zero percent throttle and
9 braking was being applied.

10 Q How can you explain that?

11 A Again, going back to the pictures and
12 looking at it, you see where the skid marks are
13 coming in. That shows the decrease and the 90's down
14 into the 20's. Then in the pictures and in the CAD
15 and things that have been testified to, you see where
16 the vehicle lofts and goes into what we call a vault.
17 It goes into the air and goes airborne. That was
18 indicative because from the time the tire marks
19 ended, it's at the crease of the roadway. And the
20 next contact we see is down in the driveway right
21 about the time it's striking the Toyota. So through
22 that time period, he is -- the vehicle is in the air
23 and the brakes are applied to it. So all four wheels,
24 potentially could be locked and, therefore, not
25 registering a speed.

1 **Q** All right. Based on your -- have you -- we
2 heard evidence about the site exam and the CAD
3 drawings and everything else. Have you reviewed all
4 of that in totality in developing your opinions about
5 what happened in this wreck?

6 **A** I have.

7 **Q** All right. And based upon your total
8 review, what actually happened at the first
9 deployment event? What -- what caused it?

10 **A** What caused the first deployment or the
11 actual deployment event itself, not the deployment
12 level event, but the deployment event. As the vehicle
13 is going through the air, the box is starting to read
14 the zero miles per hour and things aren't quite
15 matching up as it noses down into the dirt. The front
16 end of the vehicle being heavier, center mass sitting
17 towards the front of the car going nose down first.
18 When it hits, that's going to be the time that it
19 says, okay, we need to deploy the airbags for the
20 protection of the people in the car. So that is your
21 deployment event.

22 **Q** All right. So based on your examination,
23 what, in your opinion, is the deployment level of
24 event that this vehicle suffered?

25 **A** At the point where the car is nosing down

1 into the dirt, you're getting the front bumper skin
2 removed and you're getting some damage there. The
3 right front wheel is the contact with the pecan tree,
4 pecan tree. At that point, that's going to be what I
5 consider the second level -- or the second deployment
6 level event, the second event -- deployment level
7 event. That's when it's saying, okay, if I had an
8 airbag, I'd be deploying it because this is a pretty
9 severe crash as well.

10 Q All right. Is that the only two events
11 recorded by that computer?

12 A It was.

13 Q And does that match up with the evidence
14 you saw at the scene of how this crash carried out?

15 A Completely.

16 Q How long do airbags stay inflated for,
17 typically?

18 A It's not going to be a very long process.
19 It's going to be designed -- it's going to puff out
20 and then start going down immediately. It's designed
21 -- let me think of the way they put it -- the SIR,
22 Supplemental Inflatable Restraint, it's not designed
23 to stop you in the crash. It's designed to help you
24 ride out the crash in excessive to the seat belt. So
25 it's going to puff out and then it's going to

1 immediately start to go down as it's allowing you to
2 kind of ride out the -- what we call the Delta V or
3 change of velocity of the car.

4 Q All right. So is it more or less about a
5 10th of a second or that was --

6 A As far as the full length of time that it
7 takes, I guess it depends on how much pressure is put
8 on it and what's going on in the car. It wouldn't be
9 a long length of time. But it still -- depends on
10 what hits it and what requires --

11 Q I guess my question is it doesn't blow up
12 and stay inflated like a balloon, correct?

13 A No, not like in cartoons or on TV comedy,
14 no.

15 Q Now, have you reviewed Lance Corporal
16 Andis' calculations about how fast this car was going
17 based upon evidence that was collected at the scene?

18 A I did.

19 Q All right. And that was 81 miles an hour,
20 correct?

21 A It is.

22 Q Prior to applying the brakes?

23 A That's correct.

24 Q And you just testified that the computer
25 said the car was going 94 miles per hour when there

1 was -- 92 miles an hour when there was no brakes. Can
2 you describe for the jury why there would be a
3 discrepancy in those findings?

4 **A** Yes, I can.

5 **Q** What Lance Corporal Andis had done is what
6 we consider to be a minimum speed. There's a lot of
7 things we can't take into consideration. With
8 crashes, energy is a huge part of it, obviously. The
9 energy in a crash is not only the vehicle coming in,
10 but it's the vehicles when they come together or when
11 it comes together with whatever object. In doing
12 that, it takes energy to crush car. To take that
13 metal and wrinkle it up, you are losing energy there.

14 You also lose energy in heat. So when the
15 brakes are locked up and it's sliding across the
16 ground, you're losing energy in that direction and
17 you also lose energy in sound, for example. So the
18 noise that it's making is another way that energy is
19 dissipated out of a crash so that it can't be
20 accounted for in those levels.

21 What Lance Corporal Andis has also done is
22 I remember him speaking about it and looking at it,
23 it only give him 70 percent braking. The front tires
24 on the car give more braking than the rear tires on a
25 car. That way, the front stays in control. You don't

1 have to back in trying to come around or anything
2 should there be anything going on with the brake
3 system as you're putting on brakes to cause it to get
4 out of whack. As I mentioned, just one pulling more
5 than the other. He only gave 70 braking because you
6 can only see two tire marks out there. He can only
7 say from the physical evidence that two tires were
8 locking up. However, he also mentioned that it was
9 possible more brakes were being applied, that the
10 rear wheels just didn't lock up. The front locked and
11 the rear didn't.

12 Q All right.

13 A That could attribute for why there's a
14 difference in the speed.

15 Q All right. You mentioned that wheel
16 sensors were what gave the airbag module its data.
17 Does the difference in tire size, could that
18 contribute to what the speed that the computer is
19 reading?

20 A Absolutely.

21 Q Describe that please, why that happens?

22 A The wheel tire size is going to make a
23 difference as to how fast the computer thinks it's
24 spinning. So if you've got a bigger tire, it's
25 obviously spinning slower than a smaller tire would

1 be spinning. In this particular case, the car was
2 designed to have a little larger tire on it than what
3 it was running on three of the four wheels. With that
4 being in mind, that tire would be the only tire --
5 the one tire with the proper tire size is the only
6 one that's reading properly. The other three tires
7 were smaller. Therefore, they're reading a little
8 different than what the car should be reading.
9 Therefore, that makes the speed register higher on
10 what the black box or the AMC data shows compared to
11 what vehicle was actually doing.

12 Q All right. So is it a fair characterization
13 that -- you testified that Andis did a minimum speed?

14 A Correct.

15 Q Okay. And the tire size, is it my
16 understanding, could contribute to a higher speed
17 being recorded by the airbag?

18 A That's correct.

19 Q All right. Thank you. I want to move to the
20 passenger compartment of this vehicle. Did you
21 inspect the interior of the vehicle as part of your
22 general vehicle inspection?

23 A We do. We look inside, outside the vehicles
24 and all around the vehicles to try to see anything
25 that we note to be worthy of documenting and keeping.

1 Q All right. Walk the jury through your
2 findings in the driver's-side passenger compartment
3 of the vehicle.

4 A The driver's side compartment of the
5 vehicle?

6 Q Yeah.

7 A The seats were in a normal position in the
8 vehicle. They weren't reclined or laid back or
9 broken, as you see in some collisions. The seats are
10 bucket seats. There's a center -- what we call a
11 center tunnel in the vehicle. The shifter's actually
12 going to be between the driver's seat and the
13 passenger's seat. There's an armrest. The center
14 stack and all comes down and joins into that. By the
15 center stack, I mean, the air conditioning control
16 knobs, the radio and things like that.

17 The vehicle essentially puts a cockpit
18 around the driver's area. The steering wheel up in
19 front. The airbag was deployed on the vehicle. The
20 steering wheel, what I would consider the top of the
21 steering wheel was leaned to the side but it was
22 crushed forward and leaning out of line with the rest
23 of the steering wheel.

24 Q All right. And what does a crushed steering
25 wheel indicate based on your training and experience?

1 **A** Something within the dynamics of that crash
2 and within the elements of that crash made contact
3 with that steering wheel and pushed it forward.

4 **Q** All right. Was there any other notable
5 damage on the driver's side of that vehicle?

6 **A** None that I recall.

7 **Q** What about the passenger seat compartment
8 of that vehicle?

9 **A** Passenger seat compartment was similar to
10 the driver's seat as far as being a bucket seat.
11 Glove compartment, dashboard in the front, really,
12 center console down the left-hand side, center stack
13 and everything, same way, just on the opposite side
14 where -- you know, left to the right side comparative
15 to the -- relative to the driver and the passenger.
16 The A-post had been leaned back inward, that being A-
17 post at the front windshield as I mentioned earlier.
18 And the roof line had had some damage to it.

19 **Q** What about was there any damage to the dash
20 or front of that compartment?

21 **A** It would have been some damage to the dash.
22 Airbags were deployed on that one as well. As far as
23 being able to tell if any kind of contact or anything
24 pushing on it, there wasn't anything indicative of
25 that. But there's so much damage up in that area from

1 contact induced from the outside pushing through that
2 I couldn't be for certain what might have made
3 contact with any part of that.

4 **MR. CLEVELAND:** Beg the Court's indulgences
5 for just a moment. (Pause.)

6 I apologize.

7 **BY MR. CLEVELAND:**

8 **Q** I'm going to start by showing you State's
9 Exhibit 16, which has already been entered into
10 evidence. All right. Can you see what you described
11 as the crush of the steering wheel in that
12 photograph?

13 **A** Absolutely. You can see where the steering
14 wheel itself, the alignment of the steering wheel is
15 through this area. You can see how that particular
16 portion of the steering wheel leaning towards the
17 speedometer, if you will, towards the dashboard, if
18 you will. You can see that it is -- there's
19 deformation in that particular area.

20 **Q** All right. Now, I'm going to direct your
21 attention to State's Exhibit 28B, which has already
22 been admitted into evidence. Any -- could you
23 illustrate that same damage in this photograph?

24 **A** Again, that damage runs from about here all
25 the way across to the other side. This top section of

1 the steering wheel is out of alignment with the rest
2 of the steering wheel as far as the way you would see
3 a steering wheel typically on a new vehicle.

4 Q All right. Let me show you State's Exhibit
5 14, already entered into evidence. You described the
6 A-post on that side being crushed. Can you illustrate
7 that for the jury? Does that photograph illustrate
8 that for the jury?

9 A It does. A-post is laying back in here at
10 this point. Where it would typically run from the
11 corner of the roof line down to the dash area, it's
12 laid completely back.

13 Q I've got this -- State's Exhibit 15,
14 previously entered into evidence. It's a little
15 closer shot of the same thing. What is that red
16 matter?

17 A You talking about the blood in the area
18 here on the roof line?

19 Q Yes.

20 A Yeah.

21 Q Does your investigation reveal the
22 potential source of that?

23 A There's also hair in that similar area. The
24 way the vehicle was laid up on its side matches up
25 with blood that was also pooled on the ground. It

1 would have been in the area where Ms. Holcombe was
2 found.

3 **Q** All right. Just, in general, before we get
4 into your conclusions, we discussed in your
5 qualifications this occupant kinematics. You said
6 that describes what happens with people inside of the
7 vehicle. For unbuckled passengers inside the vehicle,
8 can you describe just generally for the jury what
9 happens at a collision of this magnitude?

10 **A** Absolutely. For unbuckled passengers in the
11 collision, they are going to want to continue going
12 in the direction that they were originally going. So
13 if the car comes to a sudden stop, they are going to
14 go forward in the vehicle. If the car does a sudden
15 drop, they are going to want to go and maintain that
16 same position. They are going to want to stay in the
17 upward position. So they would go -- as the car comes
18 down, it would actually be coming down on top of them
19 as opposed to them going up. They are actually
20 maintaining that position, that direction of travel
21 that they were originally going prior to whatever
22 change the car made.

23 Because they are not restrained, they are
24 going to continue in that path and they are going to
25 make contact with interior compartments, pieces

1 inside the car or even come out of the car at that
2 point in time. That's the whole design of the safety
3 belt is to hold you in the car and to ride out the
4 collision so that those forces aren't applied to your
5 body directly, but slowed down.

6 Q All right. What happens to an occupant,
7 unbuckled occupant in a vehicle during a vault or
8 like you described, this accident?

9 A In a vault, the person in the car, as the
10 car goes up, the vehicle is traveling, reaching its
11 peak. They are going to maintain that position in the
12 car so he can be held in the car seat. As the vehicle
13 starts to change its direction and drop down, much
14 like on a roller coaster where you go across the top
15 of the hill and it starts to drop and you feel that
16 lift in the seat, you're going to experience that
17 same thing, except in a car without a safety belt on,
18 you're going to rise up off of that seat and get off
19 of the seat. Not sure how far but higher than what
20 you would be, obviously, if you were in the seatbelt.
21 It would hold you in place. So you're going to
22 experience that feeling that you're lifting up in the
23 car when the car is actually lowering down back on
24 top of you and catching you back into the force that
25 the car is imposing upon your person or your body.

1 **Q** In the study of occupant kinematics and
2 during this -- during these type of investigations,
3 is driver determination a common item y'all seek to
4 discover?

5 **A** The whole purpose of occupant kinematics is
6 to place people back in the location within the
7 vehicle prior to the collision. Some crashes,
8 everyone sustains fatal injuries. Some crashes, every
9 is ejected from the car. Some crashes, it's just a
10 matter of trying to determine who the driver is. But
11 this is something that we use, not going to say on a
12 monthly basis, but it seems -- it seems like we do it
13 entirely too many times in a year. Of course, if we
14 do it once, it's more than we need to or we should
15 have to. It's something that we use often in
16 investigations.

17 **Q** All right. And considering the totality of
18 this investigation and your review, do you have an
19 expert opinion as to the locations of the two
20 occupants in this vehicle during the crash?

21 **A** I do.

22 **Q** All right. And what is that opinion?

23 **A** From my investigation, Ms. Holcombe was the
24 passenger in the vehicle and Mr. Hester was the
25 driver of the vehicle.

1 Q All right. Initially, please describe for
2 the jury what main indications led to your conclusion
3 that Ms. Holcombe was the passenger in that vehicle.

4 A Again, looking at the dynamics of the crash
5 and flying occupant kinematics, as the car comes up
6 and starts to come back down nose first, when it hits
7 into the dirt, she's going to continue to come
8 forward and into the dashboard of the vehicle. That
9 could be an explanation to impact damage of the
10 injury to the right side of her head. But essentially
11 when the car makes contact with the tree, what we
12 consider is the principal direction of force, how the
13 force is applied to the car. That force is still
14 coming straight back in on the front right wheel of
15 the vehicle and driving back towards the driver and
16 the passenger seat of the car. That's going to
17 continue her forward again.

18 At that point in time, that A-post and all
19 that stuff is crushing back. She's going to make
20 contact with it. That explains the blood and the long
21 hair trapped up into the metal fiber -- or the metal
22 of the vehicle. Once the car slides out and it comes
23 to the side, that A-post has been missing. The
24 vehicle dumps to its side and she comes out of that
25 section and the car comes back across the top of her

1 head. That puts her in that position. The bucket
2 seats and the dynamics of the crash is not enough
3 rotation or violent rotation to throw people from one
4 side to the next at that point through those elements
5 of that crash.

6 Q All right. Does the fact that the car has
7 bucket seats and a side console factor into your
8 conclusion in that matter?

9 A Absolutely it does.

10 Q All right. What about the mention of the
11 seats were not broken? Does that factor into it at
12 all?

13 A The seats not being broken just lines up
14 with everything that I said about the crash. When the
15 car comes down, there's no force back against the
16 seats because the occupants are coming forward. That
17 explains things like the steering wheel and the hair
18 and all in the front. There's no pressure back
19 against the seats. The seats just rided out the same
20 position.

21 Q And -- at any time when I'm talking about a
22 young lady, I have to be tactful, but how would you
23 describe the physical status of Ms. Holcombe?

24 A With all respect, she was a, uh, -- about
25 five foot four and 270 pounds. So she was stocky, if

1 you will.

2 **Q** Was there anything else about your
3 investigation that lent to your opinion that she was
4 the passenger and not the driver? Passenger of that
5 vehicle, specific to her.

6 **A** Absolutely. Not to her, no, sir.

7 **Q** All right. Please tell us what findings you
8 made that led to your conclusion that Mr. Hester was
9 the driver of said vehicle.

10 **A** Okay. Again, the majority of the dynamics
11 of this crash put everything being thrown from the
12 seats forward, nothing in a rotation so much, except
13 for with a little spill with the vehicle from the
14 pecan tree up against the building, which is not a
15 violent portion of the crash. But there's not a lot
16 of movement in it. It's a quick movement. It's just
17 kind of a sudden -- the vehicle landing again is
18 going to lift someone up in the seat on both sides.

19 If you look at Mr. Holcombe's injury that I
20 pointed out, that I saw in the hospital where the
21 arch shape comes across from the right side over to
22 the left side, it's sitting a little lower than what
23 the steering wheel will be. Explain that, in my
24 opinion, is that the vehicle is dropping, so he's
25 raising up in the seat or the seat is coming out from

1 under him is the proper way to put it. As the seat
2 comes out from under him, it's also coming down to
3 the ground.

4 When that vehicle noses into the ground,
5 he's thrown forward into that steering wheel. That
6 causes that steering wheel to fold forward. And that
7 causes that mark across him. There's nothing else in
8 the vehicle I can find of any simulation to match
9 that. And in 22 years of doing this, I've seen that a
10 few times. Once the vehicle hits the tree, again,
11 he's going to be pushed back up into that same area.
12 There's nothing that's capturing any differing aside
13 from the left-hand scratches or minor injuries that
14 he has to the left side of his temple. There's
15 nothing on the left side of that car for him to make
16 contact with at these points. He's got to be making
17 contact with something on the left side. He's coming
18 forward and up into that same B-post -- excuse me --
19 A-post area.

20 Q I want to stop you there. You said left
21 side twice. You said there's nothing on the left side
22 of that car.

23 A I'm sorry. Nothing on the right side of
24 that car to make contact with the left side of your
25 head. Similar with her, there's nothing on the right

1 side or the left side of her if she's in the
2 passenger seat to make contact with the right side of
3 her head. Make sure I haven't twisted that up in my
4 explanation just a moment.

5 Q Based upon the way you described earlier
6 about the direct line of force -- I'm going to
7 paraphrase. Make sure I said that correctly. Being in
8 line with the passenger side of the car, would you
9 expect in this collision that the passenger would
10 sustain more serious injuries than the driver.

11 A Yes.

12 Q That's not a valid question. I might not be
13 phrasing it right.

14 A I mean, if you look at the damage on the
15 whole car itself, yes. More -- what I call is the
16 reconstruction terms, principal direction of force,
17 how the force is coming through the car. Looking at
18 the damage on that car, the damage down that right-
19 hand side, that right front fender and everything's
20 kind of coming in line with the passenger seat, you
21 would suspect that the passenger would sustain more
22 serious injuries than the driver.

23 Q Anything else lead to your indication that
24 Mr. Hester was in the driver's seat at the time?

25 A Listened to interviews, listened to him

1 speak about his stuff, me speaking with him.

2 Q I mean, just physical evidence?

3 A Physical evidence? No, sir. I believe we
4 covered all the avenues.

5 Q Just to touch on real quick and back up for
6 just a second about the rotation, based on your
7 findings, did this entire crash, with the exception
8 of the twist at the end that threw the car up on the
9 building, occur in essentially a straight line?

10 A Yes, everything with a longitudinal or in a
11 linear straight forward fashion, except for that
12 little twist at the end.

13 MR. CLEVELAND: Beg the Court's indulgence
14 for one moment. (Pause.)

15 That's all the questions the State has at
16 this time, Sergeant. Please answer any questions
17 the defense has.

18 THE COURT: Before we get started, let's
19 take our afternoon break. Please step to your
20 jury deliberation room. Ladies and Gentlemen, I
21 probably -- I think y'all have probably figured
22 out, our time estimate is off a little bit.
23 We're going to go into tomorrow. I just want to
24 tell you that to have you prepared. I don't know
25 how late we will be here tomorrow. But I would

1 think tomorrow morning the case would be in your
2 hands. I just want to revise my estimate for you
3 for planning purposes. All right. Thank you.

4 (WHEREUPON, the jury exits at approximately
5 3:20 p.m.)

6 THE COURT: All right. Let's take a 10-
7 minute break.

8 (WHEREUPON, the Court goes off the record at
9 approximately 3:21 p.m.)

10 (WHEREUPON, the Court goes on the record at
11 approximately 3:35 p.m.)

12 THE COURT: All right. We're ready to
13 bring the jury back in?

14 MR. DEJONG: Ready for the defense,
15 Your Honor.

16 (WHEREUPON, the jury enters at approximately
17 3:37 p.m.)

18 THE COURT: Yes, sir.

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

21 CROSS-EXAMINATION

22 BY MR. DEJONG:

23 Q So Mr. Duncan, you say you give expert
24 opinion, right?

25 A Yes, sir.

1 Q What's your error rate?

2 A What's my error rate?

3 Q Yes, sir.

4 A Aside from people like you trying to point
5 it out, I don't know of an error rate.

6 Q I'm not talking about me.

7 A I don't know of an error rate, sir.

8 Q Excuse me. I'm talking about somebody
9 reviewing your work, telling you what your error rate
10 is.

11 A Oh, absolutely. Yeah. I don't have a
12 percentage that I can tell you. But when we complete
13 our investigation, we take it before what we call our
14 Internal Review Committee. That is the sergeants, the
15 lieutenants, and the captains with the Highway
16 Patrol. They take it. They overview it. They use that
17 same training that we've all received under the MAIT
18 Unit. They review that report before it's sent and I
19 guess the Highway Patrol seal of approval is put upon
20 it.

21 Q Those are all Highway Patrolmen, too,
22 aren't they, that review that?

23 A That would be the Highway Patrol review,
24 yes, sir.

25 Q Yes, sir. You're part of the Highway

1 Patrol?

2 A Absolutely.

3 Q All right. Now, you have -- I believe Mr.
4 Cleveland asked you how many accidents you have been
5 involved in. You've said several hundred cases,
6 right?

7 A Hundreds, yes, sir.

8 Q Pardon?

9 A Hundreds, yes, sir.

10 Q Several hundreds?

11 A Yes, sir.

12 Q All right. How many of those had a fatality
13 involved?

14 A Well, for the -- for a MAIT case to be
15 involved into it, there's either a fatality or a
16 great bodily injury. The majority of what I work are
17 fatal collisions.

18 Q Now, you went to the crash scene -- let me
19 back up a little bit. You interviewed Mr. Hester on
20 February 5th, right?

21 A No, sir.

22 Q Oh, I'm sorry.

23 A January the 31st.

24 Q I'm way off. I'm sorry. You interviewed him
25 on January the 30th or the 31st?

1 **A** The 31st at five o'clock in the morning.

2 **Q** All right. And you said you didn't recall
3 him having any IVs. Trying to sort through all these
4 pictures is almost impossible. But do you remember
5 seeing that picture that Mr. Cleveland put up a while
6 ago?

7 **A** I do. The one where we identified the
8 injury with the laser?

9 **Q** Yes, sir.

10 **A** Yes, sir. I do recall that.

11 **Q** Did you notice the IV in his arm?

12 **A** Yes, sir. But that's not the room where I
13 witnessed him at. I saw him in a regular room. He had
14 already been removed from trauma and taken up to a
15 regular room.

16 **Q** Well, so then you weren't -- this picture
17 was taken before you ever got there?

18 **A** It was, yes, sir.

19 **Q** All right. Is that pretty much what you say
20 you saw? I'm referring to State's Exhibit Number 22.

21 **A** Now, the injury is what I saw. I did see
22 the tabs upon him. There were no wires still attached
23 to it.

24 **Q** Okay.

25 **A** And the IVs were not there.

1 Q All right. Well, when you interviewed him,
2 at any time did Mr. Hester say that he was driving
3 the car at the time of the crash?

4 A No, sir. He maintained the position that he
5 was not driving the car at the time of the crash.

6 Q Okay. Now, looking -- let me just hand it
7 up to you. Handing you State's Exhibit Number 22.
8 Those are more scrapes and abrasions, what I'm
9 talking about on the chest. Would you agree with
10 that?

11 A You talking about the arch pattern that I'm
12 telling you I saw and matched up to the steering
13 wheel?

14 Q Yes, sir.

15 A I would agree that there are abrasions
16 there. But much like Indian sunburn, does not
17 necessarily have to scratch across something. It can
18 be the pressure applied to it that's caused that.

19 Q Yeah, but that's what you saw, right?

20 A That is the mark I saw, yes, sir.

21 Q You didn't see any bruising?

22 A No, sir. I did not see any bruising at that
23 point in time.

24 Q And to your knowledge -- you say this was
25 what you saw, but I would ask you anyway, to your

1 knowledge, did Mr. Hester have any broken ribs?

2 **A** No, sir. I couldn't see his ribs.

3 **Q** Understand that. Just answer.

4 **A** Yes, sir. I just answered you. No, sir. I
5 couldn't see his ribs. I could see no indications
6 that he had any broken ribs.

7 **Q** Any indication, perhaps, of fractured ribs?

8 **A** Not from what I could see in that picture.

9 **Q** Any other knowledge in your investigation?
10 You did all this investigation, right?

11 **A** Yes, sir. No indication that he had
12 anything broken or fractured.

13 **Q** All right. When you went to the scene on
14 January the 30th --

15 **A** I wouldn't have gotten there until the
16 31st.

17 **Q** Okay. So pretty much everything had been
18 cleared up. Was the car still there?

19 **A** Yes, sir. Everything was still there. I
20 just have to come the furthest. I came from
21 Greenwood.

22 **Q** And at that point in time, you had not met
23 Timothy Hester?

24 **A** Had not. No, sir.

25 **Q** All right. I'm not real clear who does

1 what. But I gather you were the man in charge; is
2 that correct?

3 **A** Of that scene, yes, sir, I would have been.

4 **Q** All right. Now, what, if any -- I'm not
5 talking about pictures or videos. What, if any,
6 physical, tangible evidence was taken into Highway
7 Patrol's custody?

8 **A** I know the airbags were taken. To the best
9 of my knowledge, from that crash scene, that is the
10 only physical evidence that was removed from the
11 scene. Everything else was merely documented.

12 **Q** Well, let's talk about the airbags for a
13 second. Do you know, as chief investigating officer,
14 when those airbags -- well, let me rephrase it. Those
15 airbags ever go to SLED?

16 **A** They did go to SLED, yes, sir.

17 **Q** When did they go to SLED?

18 **A** I can not tell you directly. I know that
19 those things were not immediately sent to SLED
20 because of protocol of the standard operating
21 procedures of MAIT.

22 **Q** Okay. Well, if I said October 11th of 2016?

23 **A** That would seem reasonable, yes, sir.

24 **Q** Okay. Some -- I'm not good with math --
25 nine months after the alleged crash?

1 **A** Yes, sir. A good bit of time had passed
2 before they were sent to MAIT. I mean, sent to -- a
3 good bit of time had passed before they were sent to
4 SLED.

5 **Q** And evidence can change over time. Things
6 can be destroyed on evidence, right?

7 **A** If it were put in a position where it could
8 be handled or climate could change or things like
9 that, that could potentially happen. But these things
10 are stored in a secured facility, in a climate-
11 controlled facility. The process of the Highway
12 Patrol is when we gather evidence like that, until we
13 need the results, we don't just send down everything
14 that we pull or everything that we get. If so, it's
15 overwhelming for SLED with the number of crashes we
16 had. Until we deem it necessary to need this
17 information, we hold back on the things that we send
18 to an outside agency.

19 **Q** All right. And I hear what you're saying,
20 but there could be chemical reactions between the
21 evidence and other things, can they not?

22 **A** I don't know of anything like that that
23 goes on with it, no, sir.

24 **Q** All right. And you've been doing this how
25 long?

1 **A** I've been on MAIT since March of 2008, if
2 that's what you're asking.

3 **Q** All right.

4 **A** I have never seen anything like that
5 happen, so I can't say that it does or doesn't.

6 **Q** Okay. So you got there on January 31st.
7 What time?

8 **A** I would have probably arrived -- not being
9 exact on -- I know the team arrived somewhere just
10 after midnight. I would probably have arrived
11 somewhere in the neighborhood of one o'clock or 1:30.

12 **Q** All right.

13 **A** It does take a bit longer to try to --

14 **Q** You being the chief investigating officer,
15 we talked about this hair on the car. Was any of that
16 taken into evidence?

17 **A** There was no need to take any of that into
18 evidence.

19 **Q** No need?

20 **A** No need.

21 **Q** All right. Okay. Cause you knew the answer
22 right then?

23 **A** Well, it would be much like comparing yours
24 to mine. There's no need to compare hers to
25 Mr. Hester's. There's no need to compare it.

1 Q Well, we're looking at each, right?

2 A Well, I know what the hair of Ms. Holcombe
3 was. I know where she was found and it was in the
4 same area. It, to me, makes sense that it's there.
5 Now that we look at it, it's still the same
6 comparison. He does not have -- did not have long
7 hair. No need to compare it.

8 Q All right. So you just make the assumption
9 and we go about our business, right?

10 A I don't understand what you mean "we go
11 about our business." It is a reasonable assumption
12 based on the circumstances where her body was located
13 and the damage and all. All of it lines up and makes
14 sense.

15 Q Okay. I hear what you're saying. But with
16 all the science and everything out here, you just
17 don't take evidence?

18 A That wasn't evidence. I didn't need that
19 evidence. I saw Ms. Holcombe laying there. I saw the
20 color of Ms. Holcombe's hair, the length of
21 Ms. Holcombe's hair, the blood on the ground where
22 she was. Everything's in line. It belongs to
23 Ms. Holcombe.

24 Q Ms. Holcombe wasn't there when you got
25 there, was she?

1 **A** No, she was not there when I got there. But
2 through my investigation, that comes into play.

3 **Q** Well, I realize that. But on January the
4 31st, she wasn't there.

5 **A** She was there January the 31st. She just
6 wasn't there when I got there and looked at it.
7 However ---

8 **Q** You didn't see her?

9 **A** --- people were there that told me, showed
10 me where she was and that's where I used my opinions
11 and decisions.

12 **Q** You based your assumptions on what other
13 people told you?

14 **A** I based my opinions on the evidence that
15 was there, not only through what was told, but what I
16 have seen. I saw the hair on the vehicle. I saw the
17 location of the blood.

18 **Q** Well, I guess you can look at blood and
19 tell me whose blood it is.

20 **A** No, sir. I can not. But I can say that the
21 person laid there on the ground bled more than the
22 other person that was out. Mr. Hester had very little
23 and dried blood on him, whereas Ms. Holcombe had a
24 great deal of blood on her head and her face area.

25 **Q** What treatment had Mr. Hester received

1 before you saw him?

2 **A** I don't know what treatment he had
3 received, but they obviously didn't clean him up
4 because he still had blood on his head.

5 **Q** Well, you don't know that. You're assuming
6 that.

7 **A** No, sir. I saw that. It's in the pictures.

8 **Q** Yeah. What happened before the picture was
9 taken?

10 **A** I don't know, but they didn't clean him up
11 well. When I got there, he still had blood upon him.

12 **Q** That picture that you say is a steering
13 wheel, that one puzzles me. Airbag deployed in the
14 vehicle, right?

15 **A** Both airbags deployed in the vehicle, yes,
16 sir.

17 **Q** Both airbags deployed. Before I get to
18 there, you found no damage on the dashboard in the
19 passenger seat?

20 **A** The damage on the dashboard in the
21 passenger's seat can be induced damage. It could be
22 where the airbag itself deployed on that side. But
23 there's no indication where -- we use the example
24 when knees strike the dash, sometimes it will move
25 the cup spaces where the knees made contact with

1 that. There was nothing like that. No, sir.

2 Q No indication where a heavy torso was
3 either, is there?

4 A There's nothing I can say that can confirm
5 or deny that part, no, sir.

6 Q Right. Now, you, in your opinion, say that
7 Mr. Hester was driving the vehicle?

8 A Yes.

9 Q The damage in this picture -- and if you
10 need to look about it, I'll show it. The scrapes and
11 abrasions, if you will, start on the right-hand side.

12 A Yes, sir.

13 Q You agree with that?

14 A I would agree with that.

15 Q Then they would go off to the left?

16 A They arch across, yes, sir.

17 Q To the left?

18 A Yes, sir. I'd agree with that.

19 Q Okay. And again, you and I disagree, but
20 the abrasions are heavier on the right side than they
21 are on the left side, right?

22 A When you say the abrasions are heavier, let
23 me make sure I understand what you're saying.

24 Q They are more serious, if you will.

25 A Well, they are more visible. I would agree

1 with that, yes, sir.

2 Q Okay. All, right. So would you not agree
3 that that would indicate what he struck first was on
4 the right-hand side?

5 A Maybe what he struck most was on the right-
6 hand side. More pressure was applied to the right-
7 hand side. Maybe more airbag came in between him and
8 the steering wheel at that side and it didn't show up
9 on that side. Why it's not more centered or complete,
10 I can't tell you. But it is a steering wheel mark in
11 my opinion.

12 Q Let's talk about airbags. Airbags cause
13 damage.

14 A Sure, they do.

15 Q Broken bones?

16 A Can't say that, sir. I've seen bloody noses
17 and I've seen burnt arms. I can't say I've seen any
18 broken bones.

19 Q They certainly create abrasions?

20 A They can.

21 Q And you don't know on January the 30th when
22 this crash occurred how Mr. Hester was dressed?

23 A No clue. No, sir. I didn't see him prior to
24 the collision.

25 Q There has been a recall on this vehicle,

1 has there not?

2 **A** I do believe there was one, yes, sir.

3 **Q** Actually, there was more than one. I'm more
4 interested in one.

5 **A** Yes, there were some recalls to it.

6 **Q** Recall had to do with the ignition; is that
7 correct?

8 **A** Let me look through it.

9 **Q** Take your time.

10 **A** I don't have one that -- (Reviewing.)

11 **Q** I think if you will look --

12 **A** Let me read through this one fully, please,
13 sir, on the steering shaft, the main parts. No, sir.
14 I don't see one in the list that I have. I had one on
15 the fuel system, one on the steering, one on the
16 electrical system and one on the steering.

17 **Q** I'm looking on one that I believe came back
18 -- I could be wrong, but I don't know how all this
19 stuff works. Whoever did the information on the Monte
20 Carlo found the information that there had been a
21 recall regarding keys in the ignition.

22 **A** My recall list was taken February the 4th
23 of 2015.

24 **Q** Uh-huh.

25 **A** I show nothing about ignition in there.

1 **Q** Well, let me show you this and see if you
2 recognize that.

3 **A** This was actually taken after my recall.

4 **Q** Just one moment please. I didn't show it to
5 the Solicitor. I need to show it to him. (Pause.)

6 Given enough time, which we never have
7 enough of, I could find it in part of the MAIT
8 report. I just can't put my eyes on it right now. Are
9 you familiar with that?

10 **A** I'm not, sir. I was going to read it right
11 quick and familiarize myself with it.

12 **Q** Sure.

13 **A** (Reviewing.)

14 Okay. I'm not familiar with it, but now I
15 see it.

16 **Q** Pardon me?

17 **A** I'm not familiar with it, but now I see it.

18 **Q** All right. There had been a recall. You and
19 I know what we're talking about. The jury doesn't. So
20 can you tell the jury what that information is?

21 **A** This was sent to Ms. Mauldin, the owner of
22 the vehicle, that the National Traffic and Motor
23 Vehicle Safety Act, that they are advising that
24 there's a recall on the vehicle. If the key ring is
25 carrying added weight and the vehicle goes off road

1 or experiences some other jarring event, it may
2 unintentionally move the key away from the run
3 position. If this occurs, engine power, power
4 steering and power braking may be affected,
5 increasing the risk of crash. If the ignition switch
6 is not in the run position, the airbags may not
7 deploy if the vehicle is involved in a crash
8 increasing the risk of injury or fatality.

9 Q Now, let me show you what's been marked
10 State's Exhibit -- I can't read sixes and eights. Let
11 me get my glasses. Showing you what's been marked
12 State's Exhibit 16, which is the interior of the
13 vehicle, correct?

14 A That would be, yes, sir.

15 Q That shows the ignition, does it not?

16 A It does, yes, sir.

17 Q And certainly, there are quite a few keys
18 on that key ring, aren't there?

19 A There are quite a few keys on that key
20 right, yes, sir.

21 Q Since that picture was taken by one of your
22 team members, I gather that's the keys that were in
23 the ignition when the crash occurred?

24 A That would be my understanding of it, yes,
25 sir.

1 **Q** And yet, in spite of all that -- well,
2 you're saying you didn't even know there had been a
3 recall, right?

4 **A** I didn't know that particular recall was
5 out there. It was -- according to the date on it, it
6 was after the date that I had run my recall list. But
7 we did do a recall check on it, as I mentioned to you
8 earlier, on February the 4th of 2015.

9 **Q** Right. At any rate, you did not do a
10 mechanical inspection on the vehicle?

11 **A** I did not, sir.

12 **Q** Did anybody else?

13 **A** No, sir. We did not.

14 **Q** Okay. The tires --

15 **A** Yes.

16 **Q** I'm not sure. Were there three different
17 tire sizes on this vehicle?

18 **A** Four, as I recall.

19 **Q** Okay. Four different sizes?

20 **A** Yes, sir.

21 **Q** Okay. Would that affect the driveability of
22 the car?

23 **A** If all tires are properly maintained, the
24 difference between them, I wouldn't think, would
25 experience a big change in the ability to drive it.

1 As if you put a set of 33s on a pickup truck on one
2 side instead of 28s on the other side where it's
3 sitting at a big difference. I can't imagine it would
4 have changed the stability of this vehicle.

5 Q Let's say you have four different size of
6 tires on a car and someone that is not familiar with
7 driving that vehicle.

8 A If the tires are properly inflated and
9 everything's rolling, I can't imagine that it would
10 impact it. Again with the size tires that we're
11 looking at here, there's not a huge difference in it.
12 No, sir.

13 Q Were they all properly inflated?

14 A What I found afterwards, three of the four
15 were. Three of the four maintained good tread
16 patterns. I say properly inflated. They had the
17 majority -- it wasn't like one was running eight
18 pounds and the other was running 50.

19 Q Okay.

20 A But they all seemed to be well-maintained
21 aside from the one that had struck the pecan tree.

22 Q You just eyeballed it. You didn't check the
23 pressure on it?

24 A I did check the pressure on it.

25 Q What was the pressure?

1 **A** Let me find that page, sir. If you'll give
2 me just a moment. (Reviewing.)

3 The Chevrolet Monte Carlo, the left front
4 had 38 pounds of pressure. The right front has zero
5 pounds of pressure. As I mentioned, it did have
6 damage from contact. The left rear had 20 pounds of
7 pressure and the right rear had 34 pounds of
8 pressure. The left front ran six thirty-seconds tread
9 depth of an inch, five thirty-seconds for the right
10 front, five thirty-seconds for the left rear and five
11 thirty-seconds for the right rear.

12 **Q** What was the proper tire inflation for that
13 vehicle?

14 **A** I would have to check the pictures where
15 they took the pictures and -- well, let me see if
16 it's in my -- my notes. The average car is running
17 about 35 pounds of pressure, if I'm not mistook on
18 that. Let me see if it has it. (Reviewing.)

19 There's nothing on the vehicle stats that
20 say, on my auto stats of the vehicle, that say. I
21 would have to look at the actual tire or photograph
22 of the tire to give you what the manufacture says. I
23 know that's not in the realm untypical of what I see.

24 **Q** Okay. Let's say 32 or 35 pounds. So one of
25 them was substantially less?

1 **A** One of them was running 20 pounds, yes.

2 **Q** That would be substantially less than 32 to
3 33 pounds or 32 to 35 pounds, right?

4 **A** Give me just a moment while I find that
5 page again. I was flipping.

6 **Q** All right.

7 **A** It was running 20 pounds of pressure on the
8 left rear. So yes, sir, there is a difference in
9 that.

10 **Q** All right. And I believe you stated it, but
11 just so I'm clear, this vehicle had a center console
12 in it; did it not?

13 **A** It did.

14 **Q** On that center console, there was a gear
15 shift, was there not?

16 **A** That's correct.

17 **Q** So -- while I'm talking about that, what
18 gear was the car in?

19 **A** I do not know. I couldn't tell you from
20 looking at it from the outside of the vehicle. The
21 center console was actually shifted, the whole tunnel
22 piece, the plastic surrounding it, the cosmetic
23 portions, were broke loose and it was shifted around
24 it.

25 **Q** All right. But I thought the black box that

1 we've been referring to you what gear the car was in.

2 **A** No, sir. I told you some of them do. This
3 one, I don't particularly remember. I don't recall it
4 telling me. Let me look just to make sure. I don't
5 think there was an indication as to that. No, sir. I
6 don't recall seeing anything on it telling me what
7 gear it was in. This particular model doesn't have
8 all the data. Some of them are quite phenomenal with
9 the data they maintain.

10 **Q** All right. So when you got out there on the
11 early morning hours of January 31st, were the airbags
12 still inflated?

13 **A** No, sir. The airbags were not deflated.

14 **Q** When they actually deflated, you don't
15 know?

16 **A** No, sir. It would have been relatively
17 quick in the crash.

18 **Q** Okay. The steering. As I understand what
19 you're saying, was the steering wheel bent?

20 **A** Yes, sir. It was pushed forward on the top
21 section.

22 **Q** Well, okay, that's where I'm struggling
23 here. Okay. Was part of the wheel -- the steering
24 wheel actually bent towards the dashboard?

25 **A** Yes, sir. The whole top section above where

1 the center brace is, where the horn would be ---

2 Q Uh-huh.

3 A --- all of that is leaned forward.

4 Q Okay. I'm going to show you what's been
5 marked State's Exhibit 16. Let me put it up here so
6 the jury can see it, if I can figure out how to work
7 this thing. Okay. So what I think we're talking about
8 is this area, right here?

9 A That's correct. Yes, sir.

10 Q Now, that would be the left side, would it
11 not?

12 A No, sir. That's the top side of it. You'll
13 find another picture looking at it from head on. You
14 can see that the steering wheel is canked slightly to
15 the left.

16 Q Okay. But -- well, what I'm looking at is
17 this area right here.

18 A Yes, sir.

19 Q That is not bent?

20 A That is bent, but that is the top of the
21 steering wheel because the steering wheel is turned.

22 Q Okay. If you say so.

23 A If you'll find a different picture, it will
24 be more obvious.

25 Q I'm sorry?

1 **A** If you'll find the other picture, it would
2 be more obvious. There was another picture that they
3 presented to me. It showed it from the front where
4 the airbag is missing.

5 **Q** Well, let's see what I can find here.
6 (Pause.)

7 **A** That one make any difference?

8 **A** Yes, sir. That's it. You can see that the
9 steering wheel is turned. There you go.

10 **Q** All right. So where is the steering wheel
11 bent?

12 **A** In this particular picture, the bend is not
13 as obvious using the laser pointer. From up in this
14 area across through here, that is the portion that is
15 bent.

16 **Q** Well, that is why I'm confused. You're
17 saying that is the top of the steering wheel.

18 **A** That is the top of the steering wheel, sir.

19 **Q** Is that --

20 **A** If you'll look, the Chevrolet bow tie is
21 here. This is the side where the controls are here.
22 The control is here. A brace at the bottom. This is
23 the middle. This is the top. This is the bottom.

24 **Q** Okay. I see what you're saying, but was
25 that the position the steering wheel was in when you

1 looked at the car?

2 **A** Yes, sir. To the best of my knowledge,
3 looking at the car as it's been rolled over or done
4 -- whatever was done with it, that is the steering
5 wheel as I saw it.

6 **Q** All right. And we'll agree that that's the
7 top of the steering wheel but that was not the
8 position of the steering wheel when you saw the
9 vehicle. It was to the left.

10 **A** That was to the left, sir.

11 **Q** Well, for a moment ago, you said it was the
12 top.

13 **A** That is the top, but it is to the left in
14 this presentation.

15 **Q** Yes, sir. Okay. Well, we finally got there.
16 We're both talking about the same thing. Now, to bend
17 that steering wheel, that would take a lot of force.

18 **A** It would take some force, yes, sir.

19 **Q** By the way, do you know how much Mr. Hester
20 weighed on January the 30th of 2015?

21 **A** Can't tell you what he weighed because I
22 did not weigh him. I believe his driver's record says
23 he was about 170 pounds.

24 **Q** Okay. So without trying to be disrespectful
25 to the deceased, she weighed a great deal more than

1 he did.

2 **A** Approximately 100 pounds more, yes, sir.

3 **Q** Yes, sir. And that would be more weight to
4 bend that steering wheel?

5 **A** More weight to bend the steering wheel. I
6 will answer like this, that weight would have bent
7 the steering wheel also.

8 **Q** Yes, sir. And probably would have bent it
9 more quickly.

10 **A** I don't know how fast that bent, but okay.

11 **Q** More quickly may not be the exact word, but
12 you have an idea what I'm talking about. That weight
13 would be more inclined to bend the steering wheel
14 than 170 pounds?

15 **A** I can't say that. I can say that it would
16 bend the steering wheel as well under similar
17 circumstances, in my opinion, yes. If the indications
18 were not there on what I saw from Ms. Holcombe in the
19 photograph to indicate anything like that as clearly
20 as it was on Mr. Hester.

21 **Q** But I believe you were testifying about
22 pathologist reports earlier. Ms. Holcombe's injuries
23 -- death was from blunt force trauma, right?

24 **A** Yes, sir.

25 **Q** Now, the car ultimately turned up and

1 landed on the passenger side?

2 **A** Passenger side down, yes, sir.

3 **Q** Right. So tell me how it ended up on the
4 passenger side?

5 **A** It was involved in a collision and struck a
6 pecan tree.

7 **Q** Well, I know. But I'm looking for some
8 scientific reference for you to tell me how that car
9 ended upon its side.

10 **A** Okay. The best I can determine, in me
11 examining the collision, once the car struck the
12 pecan tree, that force is coming straight in towards
13 the passenger side. The driver's side is still
14 wanting to go forward. That vehicle is going to
15 rotate around and that building is going to tip it up
16 to the side. The vehicle did not tumble. It did not
17 roll and it not do any complete overturning.

18 **Q** All right. Can you tell me at what point in
19 time it went up on its side?

20 **A** After it struck the pecan tree.

21 **Q** Okay. How far was the pecan tree from the
22 building?

23 **A** I can give you an estimate in my opinion,
24 sir. But without having the CAD program in front of
25 me, I can not give you specific distance because I

1 did not measure that.

2 **Q** Okay. So again, a lot of what you looked at
3 basically was the work product of someone else,
4 right?

5 **A** When you say a lot of what I looked at, no,
6 sir. I did go to the scene. I did look at the vehicle
7 myself personally. I did look at Mr. Hester's
8 injuries personally.

9 **Q** Uh-huh.

10 **A** I take the data as I'm watching the team
11 that I have, that's all been trained, and we all work
12 together -- the data that they have collected under
13 my supervision that I've watched them taking and
14 doing, and use that data to derive my opinion through
15 this report, yes, sir.

16 **Q** You said you couldn't give me an exact
17 distance from the pecan tree to the outbuilding. What
18 do you think it was?

19 **A** If I had to estimate in it in a linear
20 fashion, I would put it somewhere in the neighborhood
21 of 30 feet.

22 **Q** Okay.

23 **A** That'd be a safe assumption.

24 **Q** So that car was traveling on its side for
25 some 30 feet?

1 **A** As -- it is in the process of going from
2 properly positioned, as a car would typically be, up
3 to its side and up against that building, yes, sir.

4 **Q** And we would agree that that is -- as it is
5 turning, there could very conceivably be a lot going
6 on inside that vehicle?

7 **A** In that short distance in that short period
8 of time with what else is going on in that vehicle, I
9 wouldn't constitute it as a lot. No, sir.

10 **Q** Okay. How did Mr. Hester exit the vehicle?

11 **A** I can't say how he came out of that
12 vehicle. I know what he told me was he crawled out of
13 the car, but he did not tell me specifically how. I
14 know he told Lance Corporal Duncan that he woke up in
15 the grass. How he got out of that car, I can not say.

16 **Q** That's not a part of accident
17 reconstruction?

18 **A** How he got out of the car is not a concern
19 to me at that point in time.

20 **Q** Well, if someone was ejected from a
21 vehicle, that is not important in accident
22 reconstruction?

23 **A** There was no indication that he was ejected
24 from the vehicle. No blood spots. No tapped down
25 grass. No dent in the dirt. Nothing to indicate he

1 was ejected from the vehicle.

2 Q Nothing to indicate that he was trapped in
3 the vehicle either, is there?

4 A Never said he was trapped in the vehicle
5 either. No, sir.

6 Q All right. Okay. No seatbelts were being
7 used either by Ms. Holcombe or Mr. Hester?

8 A There were no indications that either one
9 of them had seatbelts on. Everything lends to neither
10 one of them having seatbelts on.

11 Q All right. That's something that comes from
12 the black box?

13 A That information for Mr. Hester is
14 displayed in the black box, yes, sir.

15 Q Okay. What about passenger seat?

16 A In some vehicles, it is. But we also look
17 at things like is the seatbelt latch intact, was the
18 seatbelt cut in order to remove her from the vehicle.
19 Did anyone observe her in the seatbelt? Any
20 stretching on the seatbelt or anything like that
21 indicative of someone wearing a safety belt.

22 Q So we're in agreement neither one was using
23 a seatbelt?

24 A I'm very comfortable with that, yes, sir.

25 MR. DEJONG: One moment, please,

1 Your Honor.

2 (Pause.)

3 BY MR. DEJONG:

4 Q No two accidents are the same, are they?

5 A I can't imagine that they could be, no,
6 sir. Much like fingerprints. Different elements, yes.

7 Q In any collision, in any crash, a lot of
8 variables?

9 A You're going to have to explain to me what
10 you mean by variables and what you mean by a lot of
11 them.

12 Q Well, no two are alike. So what might be
13 common to this crash would not be common to this
14 crash.

15 A I guess it depends on what kind of crash
16 you are comparing and what you're looking at. If you
17 comparing a car to a tractor trailer or a motorcycle
18 and --

19 Q I'm comparing cars to cars. There's a lot
20 of variables in any accident.

21 A But we're not talking about a car to car
22 accident in this particular case.

23 Q I realize that.

24 A That's why I say I need you to be more
25 specific on what you mean by a lot of variables.

1 **Q** The car that crashes into a tree and lands
2 on its side, on the side of a building. Any two
3 accidents, there's going to be variables in that.

4 **A** Well, I understand now more what you're
5 getting at. But a while ago, you were a bit vague.
6 There are different variables applied to each
7 collision, yes, sir.

8 **Q** Humanly, we can not know all those
9 variables, can we?

10 **A** I'm trying to find the right way to answer
11 your question. You are correct in that some things
12 that I mentioned earlier. I can not account for
13 things such as sound, heat, energy it takes, some
14 things are there that the variables are obvious on
15 and some things are there that they may be gray on.
16 Some things are there that you can plant your flag
17 and say, absolutely, this is what took place and
18 happened.

19 **Q** And really, by and large, the MAIT
20 investigation hinges on computer programs, doesn't
21 it?

22 **A** No, sir.

23 **Q** Well, the mapping is done through basically
24 a computer program.

25 **A** A computer program is utilized in the

1 mapping of it. It could be done without that. This
2 mapping software simply simplifies the process, makes
3 it more accurate, makes it more efficient.

4 Q And then we heard something about an Edge
5 program? Am I saying that correctly?

6 A Again, it's something to assist it to make
7 it simpler and make it easier, but it's not something
8 that's required to do the job. No, sir.

9 Q Right. That's what was used in this case.

10 A It was, yes, sir.

11 Q Thank you, Mr. Duncan.

12 A Yes, sir.

13 MR. CLEVELAND: Briefly, Your Honor.

14 **REDIRECT EXAMINATION**

15 **BY MR. CLEVELAND:**

16 Q Sergeant Duncan, Mr. DeJong hit on a gray
17 area, for example, crash and sound. In making your
18 calculations and observations, how do you account for
19 those variables?

20 A Those variables, such as -- again, the
21 heat, the sound, the energy to do those things is not
22 accounted for. If we were to try to find some way to
23 account for anything to do with that would increase
24 the finding that we had because we can't measure it
25 safely and in a -- I guess a real solid foundation.

1 We just ignore those things. Those things give the
2 benefit towards the person that we're investigating.

3 Q You mean -- by ignoring those, it makes the
4 situation appear better towards the person you are
5 investigating?

6 A Absolutely. It takes away that energy that
7 would be considered in that portion of the crash and
8 just does not consider it at all. Therefore, the
9 energy that we're dealing with becomes less, which
10 makes the speed become less.

11 Q Very good. We hit -- there was some talk
12 about a recall. What was the date of that letter of
13 that recall?

14 A March of 2015, if I'm not mistook. I don't
15 have that in front of me, again. Thank you. It just
16 says March of 2015.

17 Q All right. I think we both agree that this
18 particular car was in the junk yard on March of 2015?

19 A I would imagine it would have been at that
20 point, yes, sir.

21 Q All right. So did you have any knowledge of
22 that particular recall during your investigation?

23 A I did not know about that recall. But with
24 what the recall says and in looking at the airbag
25 control module image data, I can kind of make some

1 inferences about that -- well, let me change that. I
2 can make inferences about that. There's no indication
3 through the airbag control module that there was a
4 loss of power as the stipulations in the -- let me
5 find the right word -- the data limitations area of
6 Bosch's report indicate there are no anomalies.
7 Everything is consistent within that report. There
8 are no unfilled fields, if you will. There are no
9 clippings, nothing in there that indicates there was
10 a loss of power to that vehicle as that recall would
11 suggest would happen by having too many keys.

12 Q All right. So is it a fair -- I just want
13 to be concise. Is that recall essentially saying that
14 heavy keys can cause the car to turn off in certain
15 situations?

16 A That's correct. Loss of power, which would
17 cause a loss of airbags and possibly injury or death.

18 Q But based upon your analysis of the data
19 recorded in the car -- I forgot the term. Pardon me
20 -- there is no indication that any of that happened
21 in this instance?

22 A According to the ACM, there is no
23 indication there is a loss of power. It's obvious
24 that the airbags did deploy. It recorded a deployment
25 level event. So power was running through the system

1 at the time.

2 **Q** All right. Just real quick, lastly, y'all
3 were talking about the top of the steering wheel and
4 the positioning of the steering wheel. I believe this
5 photograph, State's Exhibit 29A, with Mr. DeJong,
6 y'all were cuing over it for just a moment. Is there
7 any indication that that is the position of the
8 steering wheel when the initial crash occurred, based
9 on your investigation?

10 **A** I have no indication to say that the
11 steering wheel was -- let me change that. The vehicle
12 would have been traveling in a straight fashion when
13 the vehicle collided with the ground and with the
14 tree. All of the physical evidence on the roadway and
15 on the ground in the driveway indicate that the
16 vehicle is traveling straight. I have no indication
17 to believe that the steering wheel would have been
18 leaning to that angle at any point in time during
19 those points of impact.

20 **Q** Based on a -- what way would the steering
21 wheel had been facing based upon your findings?

22 **A** As -- the steering wheel should have been
23 in a straight-line fashion with the center top --
24 obviously, the Chevrolet bow tie, bottom of the
25 steering wheel with this brace -- I would consider

1 this the center top of the steering wheel. That
2 should be upward at the time of the collision.
3 Judging from the physical evidence on the roadway,
4 physical evidence at the time the vehicle impacted,
5 damage on the vehicle from where it impacted both the
6 ground and the tree.

7 **Q** And speaking of that tree collision, I
8 believe you testified that it struck the passenger
9 side front tire. Could that collision have induced
10 some yaw into the steering wheel one way or the
11 other?

12 **A** Originally, yes, sir. I also testified that
13 the CV axle or the front drive shaft was separated
14 loose, so a lot of the mechanism for control on the
15 right front tire was broken and appeared to be broken
16 from the impact with the tree. That could have very
17 well made the steering go out of alignment as far as
18 the way the steering wheel would be lined up or down,
19 left or right.

20 **Q** Is it possible -- much like the steering
21 wheel turns the tires, is it possible that the tires
22 could turn the steering wheel?

23 **A** Absolutely.

24 **MR. CLEVELAND:** No further questions,
25 Sergeant Duncan. Thank you.

1 **MR. DEJONG:** Just a couple, Your Honor.

2 **THE COURT:** Okay.

3 **RECROSS EXAMINATION**

4 **BY MR. DEJONG:**

5 **Q** Was that --

6 Could we leave that on for a minute please,
7 sir?

8 That's the position you found the steering
9 wheel in or whoever took the picture?

10 **A** That's correct. Yes, sir.

11 **Q** All right. And there are a lot of things
12 that could be, a lot of things that are possible, but
13 we don't know that that's not the position of the
14 steering wheel when the impact occurred?

15 **A** From the injuries on Mr. Hester, that's not
16 the position of the steering wheel when the impact
17 occurred, because he wouldn't have impacted it that
18 way.

19 **MR. DEJONG:** Your Honor, thank you.

20 **THE COURT:** Anything else?

21 **MR. CLEVELAND:** Nothing from this witness,
22 Your Honor.

23 **THE COURT:** Sir, you may step down.

24 **MR. CLEVELAND:** Your Honor, at this time,
25 the State rests.

1 **THE COURT:** All right. Will the attorneys
2 approach for a moment?

3 **MR. CLEVELAND:** Actually, with one small
4 housekeeping matter to be taken up in just a
5 moment, the State rests.

6 **THE COURT:** Sure.

7 **(WHEREUPON,** a bench conference is held off the
8 record.)

9 **THE COURT:** All right. Ladies and
10 Gentlemen, I have some legal matters that are
11 necessary for me to take up with the attorneys
12 at this point. Therefore, rather than send you
13 back to your jury deliberation room and come
14 back in, we're going to pick up tomorrow morning
15 at 9:30. If you will, be in your jury
16 deliberation room at 9:30.

17 If you're wondering why we're starting at
18 that time, we'll have more -- as we get to the
19 end of the trial, more and more legal issues
20 that are required of us to take up. We will have
21 some to take up first thing in the morning. So I
22 just wanted to let you know that we will be here
23 working.

24 But we hope the case will be in your hands
25 at this point, but, of course, it is not yet in

1 your hands. So I'll just give you the same
2 instruction. Please don't do any independent
3 research or talk to anyone about it. Go home and
4 forget you're a juror on the case. Although I
5 said it with confidence yesterday, I can say it
6 with true confidence today that the case will be
7 in your hands tomorrow. All right. Thank you so
8 much for your service. I look forward to seeing
9 you back tomorrow.

10 (WHEREUPON, the jury exits at approximately
11 4:23 p.m.)

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

13 **MR. CLEVELAND:** Yes, Your Honor. Just
14 briefly before the State rests, I want to put on
15 the record the State and the defense had,
16 essentially, a gentleman's agreement agreeing to
17 stipulate to the chain of custody of each of the
18 items pertaining to the DNA in this case, which
19 was two airbags and two swabs. We'd reached that
20 agreement over the telephone prior to trying
21 this case.

22 I just want to put that on the record, one,
23 for the purpose of in case it comes back up at
24 any later proceeding; and two, the defense is --
25 I don't know where he's going with it. I don't

1 know if he's even going to. He kind of hinted
2 upon the fact that you don't know what's
3 happened to these airbags or anything like that.
4 Certainly, the State would have presented
5 competent evidence of the folks that handled
6 these items and say that it was in a secure
7 fashion and everything of that nature. I just
8 don't want this to be an opportunity for the
9 defense to say you don't know what happened to
10 these airbags, people were stomping on them and
11 stuff and, in two years, they were tested. That
12 would just be --

13 **MR. DEJONG:** That's a waste of my words,
14 Your Honor. I'm not saying I'm not going to talk
15 about the delay in getting them there, but the
16 chain of custody, I'm not raising that issue at
17 all. We did have a gentleman's agreement and I'm
18 going to live up to my agreement.

19 **THE COURT:** All right. Certainly. All
20 right. Very well then.

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

22 **THE COURT:** Then that's noted for the
23 record.

24 Mr. DeJong.

25 **MR. DEJONG:** You want me to make my

1 motion, Your Honor?

2 **THE COURT:** Sure.

3 **MR. DEJONG:** Okay. Well, firstly, I would
4 renew my motion for mistrial. My concern is,
5 Your Honor, and again, I'm not trying to be
6 argumentative with your ruling, but I just am
7 not comfortable that my client, at this point in
8 time, has a fair and impartial jury and that he
9 is guaranteed, I think under the Fifth and the
10 Sixth Amendments of the Constitution of the
11 United States as applied to the states, through
12 the 14th. I just renew my motion. I'm not going
13 to belabor the point. I just renew my motion.

14 **THE COURT:** Certainly, your motion is
15 renewed and noted for the record. Respectfully
16 denied ---

17 **MR. DEJONG:** Thank you, Your Honor.

18 **THE COURT:** --- based on my previous
19 reasons I set forth.

20 **MR. DEJONG:** Yes, sir. Yes, ma'am. I'm
21 sorry.

22 **THE COURT:** It happens every day.

23 **MR. DEJONG:** Late in the day. I apologize.
24 I try not to do that. Finally, Your Honor, as
25 far as motions at this point in time, I would

1 move the court for a directed verdict and that
2 the State has not presented any substantial,
3 credible evidence from which the jury could find
4 a verdict of guilt. Therefore, I would
5 respectfully move for a directed verdict.

6 **THE COURT:** Well, I do find that based on
7 the evidence that's been presented and my notes
8 throughout the trial that the State has at least
9 presented some evidence as to each element of
10 the offenses that are charged in the
11 indictments. Therefore, I find that it's proper
12 -- it would be proper to submit that for the
13 jury's consideration and the motions are denied.

14 **MR. DEJONG:** And I thank you, Your Honor.

15 **THE COURT:** All right. Is there anything
16 else we need to take up? I know I need to --
17 have to do some questioning this evening.

18 **MR. DEJONG:** I have no other motions,
19 Your Honor.

20 **THE COURT:** Okay. Mr. Hester, will you
21 stand and raise your right hand please?

22 **MR. HESTER:** Yes, ma'am.

23 (WHEREUPON, the defendant is first duly sworn.)

24 **THE COURT:** Okay. You can put your hand
25 down but remain standing please.

1 **MR. HESTER:** Yes, ma'am.

2 **THE COURT:** I know that you have not yet
3 probably finalized your decision, but I need to
4 advise you of some things and make sure you
5 understand certain things with regard to your
6 right to remain silent in this case. I know that
7 you and your attorney have probably talked at
8 length about whether or not you intend to
9 testify in the trial of this case. I've released
10 the jury for the evening, so you're not going to
11 be doing that today in any event.

12 Do you understand that you have an absolute
13 right to remain silent in this case? You don't
14 have to testify in the trial of this case. In
15 fact, I'll inform the jury that you can not even
16 discuss it in their deliberations in the jury
17 room. It can not come up at all and it may not
18 be held against you in any way whatsoever. Do
19 you understand that?

20 **MR. HESTER:** Yes, ma'am.

21 **THE COURT:** You also understand that by
22 the same token, this is your opportunity to tell
23 your side of the story. Do you know that?

24 **MR. HESTER:** Yes, ma'am.

25 **THE COURT:** And have you had an

1 opportunity to talk to your attorney about this,
2 at least somewhat?

3 **MR. HESTER:** We haven't discussed about me
4 yet.

5 **THE COURT:** Sure. And I understand. I
6 understand earlier that your attorney wanted you
7 to wait until the State rested and they just
8 rested. We're in a position -- and you're going
9 to have some time to discuss that with your
10 lawyer. You'll have some time over the evening
11 to discuss it. Are there any convictions that
12 you believe would be qualifying under the
13 statute, I mean, under the rule for impeachment
14 purposes if the defendant were to take the
15 stand?

16 **MR. CLEVELAND:** Under the rule, Your Honor,
17 the defendant has a 2013 conviction for Grand
18 Larceny valued over \$2000 that the State would
19 seek to use for impeachment.

20 **THE COURT:** All right. So you understand
21 that if you were to take the stand, you could --
22 the State or your attorney, either one, could
23 bring that up against you. You understand that?

24 **MR. HESTER:** Yes, ma'am.

25 **THE COURT:** All right. I won't ask you all

1 the questions that I normally ask you. I just
2 want you to be -- I just want you to be aware of
3 these things. You understand this must be your
4 decision and your decision alone. You know that?

5 **MR. HESTER:** Yes, ma'am.

6 **THE COURT:** You're going to want to listen
7 to what your attorney has to say about it.
8 You're going to want to listen to his wise
9 advice. This is not, by any stretch of the
10 imagination, the first time he's done this. So
11 if he's going to have some advice for you,
12 ultimately, it has to be your decision because
13 this trial is against you ---

14 **MR. HESTER:** Yes, ma'am.

15 **THE COURT:** --- not against him, right? No
16 one can force you into this decision and no one
17 can pressure you into this decision. I'm going
18 to need to know tomorrow when you make your
19 decision that you've done so freely and
20 voluntarily. I also am going to need to know
21 that you are not under the influence of any
22 drugs or alcohol and there's been no pressure
23 applied to you in any way or any promise is made
24 to you. You understand that?

25 **MR. HESTER:** Yes, ma'am.

1 **THE COURT:** Do you have any questions for
2 me about the decision that you're going to need
3 to make in the morning about whether or not
4 you'll testify in the trial of this case?

5 **MR. HESTER:** No, ma'am.

6 **THE COURT:** All right. Anything else you
7 want me to ask him at this time?

8 **MR. DEJONG:** (No audible response.)

9 **THE COURT:** Anything you want me to ask
10 him?

11 **MR. DEJONG:** I didn't hear that part,
12 Your Honor. Not at this time, Your Honor.

13 **THE COURT:** All right. Well, I just wanted
14 you to be aware of those things and know that it
15 is very likely that you will be called upon to
16 do that first thing in the morning to make that
17 decision.

18 All right. Anything from the State in that
19 regard?

20 **MR. CLEVELAND:** Nothing from the State,
21 Your Honor.

22 **THE COURT:** Any other matters we can take
23 up this evening before we break?

24 **MR. CLEVELAND:** With respect to the charge,
25 I don't have any, Your Honor. The State -- we

1 don't have any other motions.

2 **THE COURT:** Okay. I think we've sent a
3 final -- a final, to a certain extent -- our
4 final version of the charge with the -- it does
5 have some explanation as to what an inference
6 is.

7 **MR. DEJONG:** I saw that, Your Honor.
8 Again, the charge, I still -- I will probably
9 object once it is given. I still think it's very
10 perilously post-commenting on the facts. We
11 understand that.

12 **THE COURT:** Certainly.

13 **MR. DEJONG:** The only other thing I saw
14 when I looked at it a bunch of times, and I
15 don't think it's any big deal, but at one point
16 in the charge, you say you are sending the
17 indictments back with them.

18 **THE COURT:** We'll check and see. If one
19 sentence of that slipped by, we'll fix it. I'm
20 sorry about that.

21 **MR. DEJONG:** Well, I don't know that it's
22 a biggie. I know that it could be confusing to
23 the jury.

24 **THE COURT:** Yeah, it's confusing. It would
25 be confusing, so we'll double check about that.

1 **MR. DEJONG:** Thank you, Your Honor.

2 **THE COURT:** Anything else?

3 **MR. DEJONG:** No. I'll remember five things
4 when you get off the bench.

5 **THE COURT:** That's fine. That's what
6 tomorrow morning is for.

7 **MR. DEJONG:** I might be asking for some
8 lesser includeds, Your Honor. We'll face that
9 tomorrow.

10 **THE COURT:** I wondered about that, but
11 we'll cross that bridge when we get to it.

12 **MR. CLEVELAND:** I just have one -- I guess
13 I have one question. This is not really a
14 motion. Within the limitations, I don't see
15 where it requires one particular member of the
16 State's prosecution team to do both arguments.
17 Me and Mr. Buckner discussed if that indeed
18 becomes the situation, split duties on that
19 close. Does the Court have an opinion on that?

20 **MR. DEJONG:** From my side of the
21 courtroom, before you even answer that question,
22 I don't want them both opening and both closing.

23 **MR. CLEVELAND:** Oh, no, no, no. One each.

24 **MR. DEJONG:** If one wants to open in full,
25 that's fine. If the other one wants to come in

1 behind him, I don't care about that.

2 **THE COURT:** Good enough. That is one thing
3 I had not thought of. I don't see any limitation
4 on it. All right. So yes, that certainly will be
5 fine. I'm assuming just for planning purposes --
6 of course, you're all free to change your mind
7 -- but for planning purposes, if you are
8 planning to put up some evidence tomorrow, I
9 imagine that you're going to ask that the State
10 open in full.

11 **MR. DEJONG:** Yes, ma'am, and I will do
12 that formally, right? Well, I can't really do it
13 formally because I haven't put anything up yet.
14 So we'll -- I'll have to do that tomorrow.

15 **THE COURT:** Okay. All right. Well, that
16 sounds good. We'll plan then to meet back
17 tomorrow morning at 9:15. Hopefully, I'll be a
18 little more prompt than I was this morning.

19 **MR. DEJONG:** No more skunks.

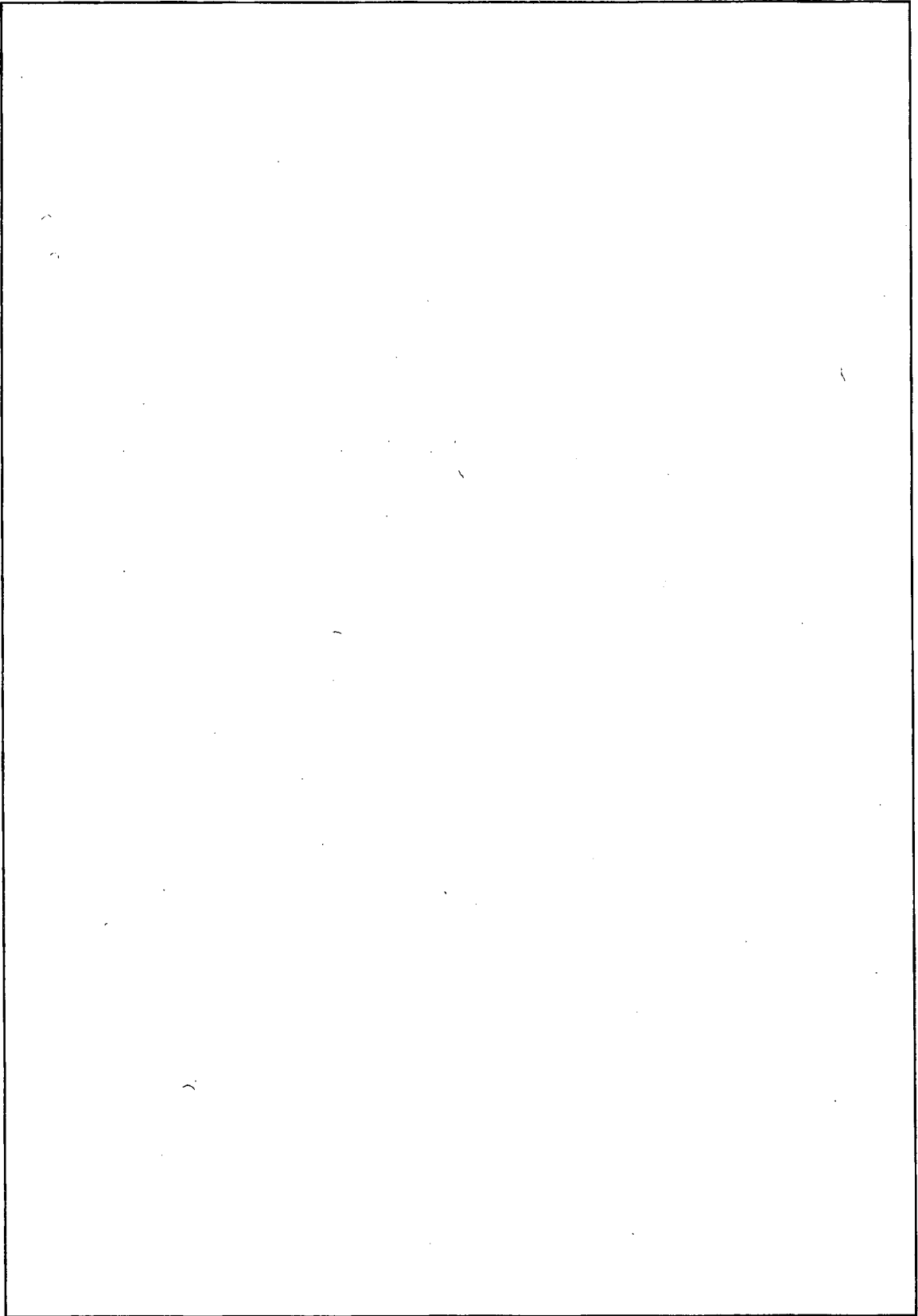
20 **THE COURT:** No more skunks.

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

22 **THE COURT:** All right. Y'all have a good
23 evening.

24 **(WHEREUPON,** the Court recessed for the day at
25 approximately 4:34 p.m.)

1



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

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

Official 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 4 of 4
	)	
Defendant.	)	

January 23-26, 2017
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

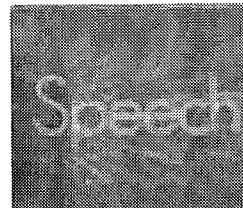
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P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 26th day of January, 2017 at approximately 9:38 a.m.)

THE COURT: All right. Any matters we need to take up before we -- oh, yeah. We do. We've got a big matter, don't we?

MR. DEJONG: Your Honor, my client thought about it over the evening. We talked about it numerous times, but he shares with me he wishes to testify.

THE COURT: All right. Very well. Sir, will you raise your right hand for me once again.

(WHEREUPON, the defendant is first duly sworn.)

THE COURT: Okay. Put your hand down but remain standing, if you don't mind. You and I discussed yesterday that you have an absolute right to remain silent and I will instruct the jury that they can not consider your silence in any way against you. That is an absolute right. They can't even discuss it in the jury room. You remember that? We talked about that and you understand that?

MR. HESTER: Yes, ma'am.

THE COURT: Okay. You also know I also

1 told you this is your chance to tell your side
2 of the story. Sounds like that's what you're
3 wanting to do. But I need to know has anybody
4 pressured you into this or offered you anything
5 to get you to do this in any way?

6 **MR. HESTER:** No, ma'am.

7 **THE COURT:** Are you under the influence of
8 drugs or alcohol here today?

9 **MR. HESTER:** No, ma'am.

10 **THE COURT:** You understand that this is
11 your decision and your decision alone. You know
12 that?

13 **MR. HESTER:** Yes, ma'am.

14 **THE COURT:** And Mr. DeJong, you feel like
15 he's understood the conversations?

16 **MR. DEJONG:** I do, Your Honor. As I said,
17 we've been over his rights to testify numerous
18 times. I believe he's understood all those
19 conversations -- has a right not to testify.

20 **THE COURT:** And you understand that it's
21 very likely I will allow the state to use your
22 Grand Larceny conviction to impeach your
23 credibility.

24 **MR. HESTER:** Yes, ma'am.

25 **THE COURT:** You understand all that?

1 **MR. HESTER:** Yes, ma'am.

2 **THE COURT:** All right. And anything else
3 the State wants me to ask him with regards to
4 this?

5 **MR. CLEVELAND:** Nothing, Your Honor.

6 **THE COURT:** Anything else from the
7 defense?

8 **MR. DEJONG:** Nothing further on my behalf.
9 All right then. Very well, sir. You can have a
10 seat. Anything else we need to take up before
11 we bring the jury back in?

12 **MR. CLEVELAND:** Nothing from the State,
13 Your Honor.

14 **THE COURT:** All right. Anything from the
15 defense?

16 **MR. DEJONG:** Something is sticking there,
17 but I don't know what it is. So for the
18 moment ---

19 **THE COURT:** It will come to you.

20 **MR. DEJONG:** --- I'm going to say nothing
21 at this time.

22 **THE COURT:** It will come to you at some
23 point. All right.

24 **(WHEREUPON, the jury enters at approximately**
25 **9:42 a.m.)**

1 **THE COURT:** Good morning, Ladies and
2 Gentlemen.

3 Yes, sir. You ready to proceed?

4 **MR. DEJONG:** I am, Your Honor. Defense
5 would call Ms. Tiffany Mauldin to the stand.

6 **THE COURT:** All right.

7 **TIFFANY MAULDIN**

8 having first been duly sworn, testifies as follows:

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

11 **THE WITNESS:** Tiffany Mauldin.

12 **DIRECT EXAMINATION**

13 **BY MR. DEJONG:**

14 **Q** All right. Ms. Tiffany, pull that
15 microphone up there. Tell me your name again.

16 **A** Tiffany Mauldin.

17 **Q** All right. I think if you stay there, we
18 can hear you. How old are you, Ms. Mauldin?

19 **A** I'm 28.

20 **Q** Do you know Timothy Adam Hester?

21 **A** Yes.

22 **Q** How do you know him?

23 **A** He is my fiancé.

24 **Q** All right. What is your and Mr. Hester's
25 living arrangement, if you will?

1 **A** We've lived together for the past 13 years.

2 **Q** All right. So you've known him for a long
3 time, right?

4 **A** Yes.

5 **Q** Y'all have any children together?

6 **A** We have three.

7 **Q** Okay. What ages are they?

8 **A** 10, 8 and 5.

9 **Q** Do you recall what ages they were on
10 January the 30th of 2015?

11 **A** 8, 6 and 3.

12 **Q** And on January the 30th of 2016, were any
13 or all of them in school?

14 **A** Yes, well, my two oldest were.

15 **Q** Okay. I guess the -- you said three?

16 **A** Three-year-old, she wasn't.

17 **Q** She wasn't. Okay. Now, do you work,
18 Ms. Mauldin?

19 **A** Yes..

20 **Q** And let me take you back more specifically
21 to January the 30th of 2015, did you work at that
22 point in time?

23 **A** Yes.

24 **Q** Was -- Mr. Hester goes by Timothy, Adam,
25 what does he go by?

1 **A** By Adam.

2 **Q** Adam?

3 **A** Uh-huh.

4 **Q** Was Adam working during that period of
5 time?

6 **A** He was doing odds and ends jobs at that
7 time. He had just got laid off.

8 **Q** Did he do any babysitting?

9 **A** Yes.

10 **Q** Okay. What hours did you work, Ms. Mauldin?

11 **A** My first job, I had to be at work at 5:00
12 and got off at 9:00. So he kept them from that time,
13 got them on the bus. My second job, I went in at 2:00
14 and got off at 7:00. So he had them that whole time
15 there.

16 **Q** Let me back up and make sure I'm sure. On
17 the 5:00 to 9:00, was that in the morning?

18 **A** Yes.

19 **Q** Okay. And then your second job?

20 **A** Was from 2:00 in the afternoon to 7:00.

21 **Q** Okay. On January the 30th of 2015, do you
22 recall what time you got home?

23 **A** In the morning or the afternoon?

24 **Q** Afternoon, ma'am.

25 **A** It would have been around 7:30.

1. Q All right. And you've been with Adam for 13
2 years.

3 A Yes.

4 Q When you got home on January the 30th of
5 2015, could you tell whether or not Adam had been
6 drinking?

7 A He hadn't been drinking. He was actually
8 cooking supper and getting my kids their baths and
9 everything ready for bed.

10 Q All right. Now, to your knowledge, did Adam
11 work the day of January the 30th of 2015?

12 A No, he didn't.

13 Q Do you know what he did that day? Not what
14 he told you, but do you know what he did that day?

15 A I got home at 9:00 in the morning and
16 stayed at home until 1:30. We pretty much just
17 watched TV and that was it that day.

18 Q Now, after you got home on January the
19 30th, 2015, was that around 7 o'clock?

20 A That night? 7:30.

21 Q By the way, did you own a car at that point
22 in time?

23 A Yes.

24 Q What kind of car was it?

25 A The 2005 Monte Carlo.

1 Q At some point in time, did Adam leave
2 y'all's house that evening?

3 A He did.

4 Q You know what time it was?

5 A It was around 8 o'clock, I'm guessing.

6 Q And when he left your home, did he leave
7 with anyone else?

8 A With his father.

9 Q Okay. And how did they leave your home?

10 A In my car.

11 Q You know who was driving that car at the
12 time?

13 A Yes, his father.

14 Q Okay. You know where he was going?

15 A They were supposed to be running over to
16 James Moore's house.

17 Q Okay. Do you know James Moore?

18 A Yes.

19 Q How do you know him?

20 A He's my cousin.

21 Q Okay. Tiffany Forshee, do you know her?

22 A Yes.

23 Q How do you know her?

24 A Through Adam.

25 Q How long have you known her?

1 **A** Since me and Adam got together.

2 **Q** Thirteen years ago?

3 **A** Thirteen years ago.

4 **Q** Okay. After Adam and his father left your
5 home around 7:30 on January the 30th of 2015, did you
6 see his father again?

7 **A** No, I didn't.

8 **Q** Okay. And when was the next time you saw
9 Adam?

10 **A** It was probably three or four weeks later.

11 **Q** Okay. Was that due to a separation between
12 the two of you?

13 **A** Yes.

14 **Q** Okay. Did you pack up and leave?

15 **A** No. We were separated because he was put in
16 jail.

17 **Q** Okay.

18 **A** And --

19 **Q** It wasn't a matter where you said the heck
20 with the relationship?

21 **A** No.

22 **Q** Okay. All right. The accident, crash,
23 itself, do you know anything about that?

24 **A** No.

25 **Q** I'm not asking what anybody told you, but

1 just do you have any personal knowledge of it?

2 **A** No.

3 **Q** All right. I want to show you -- before I
4 do that, do you recall, Ms. Mauldin, how Adam was
5 dressed when he left your house?

6 **A** We had actually just got him a pair of
7 Adidas. Him and my son, I had just went and bought a
8 brand new pair of shoes. He had blue jeans and a
9 white t-shirt on.

10 **Q** Do you recall what color those Adidas shoes
11 were?

12 **A** They were white.

13 **Q** White?

14 **A** Uh-huh.

15 **Q** Okay. Let me show you a picture that has
16 been marked State's Exhibit Number 10. Do you
17 recognize that shoe in that picture?

18 **A** Yes, I do.

19 **Q** Is that Adam Hester's shoe?

20 **A** No, it is not.

21 **Q** Do you know whose shoe it is?

22 **A** James Moore's.

23 **Q** Do you know how that shoe came to be in
24 your vehicle?

25 **A** I put that shoe in my car -- well, shoes in

1 my car along with a trash bag full of James' clothes.
2 He had been staying with me here and there.

3 Q I'm sorry. You dropped your voice a little
4 bit. Along with the trash bag of what?

5 A Full of clothes.

6 Q Okay. And whose clothes were those?

7 A Those were James Moore's.

8 Q And he is your cousin?

9 A Yes.

10 Q You said that, I think, Adam and your son
11 had just purchased new tennis shoes. Are those the
12 shoes that he had on when he left that night?

13 A Yes.

14 MR. DEJONG: Thank you, Ms. Mauldin.
15 Witness is with you, gentlemen.

16 THE COURT: Yes, sir.

17 MR. CLEVELAND: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. CLEVELAND:

20 Q Good morning, Ms. Mauldin.

21 A Good morning.

22 Q First off, I just want to clarify a few
23 things about that 2005 Chevy Monte Carlo. Is it true
24 that you had the brakes worked on that car within
25 months of this crash happening?

1 **A** Not that I know of.

2 **Q** All right. Do you recall telling Trooper
3 J.K. Duncan on a telephone call on February the 5th
4 of 2015 that you had fixed the brakes on that car
5 within six months or had the brakes worked on within
6 six months?

7 **A** Not that I can remember. I didn't even have
8 that car for a year. I only had it for 10 months.

9 **Q** All right. Was it a good car?

10 **A** Yeah, it was. Pretty much.

11 **Q** A safe car, in your opinion?

12 **A** Pretty much, yeah.

13 **Q** Did you -- at the time you owned it, did
14 you put your kids in the car and take them places?

15 **A** Yes.

16 **Q** You testified a little while ago that you
17 split up with Mr. Hester because of jail, you
18 separated because of jail. But isn't it true that
19 y'all actually split up about a week before this
20 wreck?

21 **A** We were still living together. I mean, we
22 might have had an argument and said we're not
23 together no more, but that never stood. I mean, me
24 and Adam, we had been together for 13 years. We've
25 never split up.

1 Q I understand. Is it safe to say that you
2 were going through a rough patch at the time, though?

3 A I mean, we may have been had an argument,
4 like every couple does. But it wasn't nothing that
5 would tear us apart or even put a stress on our
6 household, no.

7 Q Do you remember telling Trooper Duncan as
8 well in that same phone conversation on February 5th
9 that y'all had been separated for about a week? He
10 was still living there, but y'all had just separated
11 and you were going to move out?

12 A No, I do not remember telling him I was
13 going to move out. No.

14 Q Let's talk a little bit about -- did you
15 know the victim in this case, Ms. Alanah Holcombe?

16 A I did not personally, no.

17 Q Isn't it true that about -- around this
18 time that Adam had been talking about a girl that he
19 liked around you?

20 A He had told me that he had met Alanah
21 through Tiffany and that they were -- had been
22 hanging out.

23 Q Okay. Were you -- you testified earlier
24 that you were at home and awake when the defendant's
25 father and him left for the night to go to James'?

1 **A** I was just getting ready for bed. I
2 actually had Tiffany Forshee's daughter with my three
3 children.

4 **Q** Okay.

5 **A** And I was getting them laid down and I was
6 laying down to go to bed because I had to be at work
7 at 5 o'clock the next morning.

8 **Q** All right. Now, in that same phone
9 conversation with Trooper Duncan, do you recall
10 saying that you were not awake when they left, that
11 you were already in bed when they left for the second
12 time?

13 **A** I was in bed the second time, yes. I was
14 laying in bed.

15 **Q** All right. Well, specifically, during that
16 phone conversation, do you remember telling him that
17 they left to go to the store, which was only about
18 two or three minutes away? You remember telling them
19 that?

20 **A** His father had went to the store.

21 **Q** Do you remember telling him that they, as
22 in the defendant and the father, left to go to the
23 store, which was only two or three minutes away?

24 **A** No. Only his father had left to go to the
25 store.

1 Q All right. Do you remember saying that
2 they, meaning the defendant and his father, came back
3 to the residence?

4 A He came back to the residence. His father
5 came back to the residence.

6 Q Okay. And I understand what you're saying.
7 I'm just asking do you remember saying these things
8 to the trooper?

9 A I do not remember saying they went to the
10 store because only his father did.

11 Q Okay. Do you remember telling this trooper
12 that after you came back -- after they came back from
13 the store that you went to sleep and that you guess
14 -- I think the exact words, I guess they left after
15 that.

16 A I remember after he came back from the
17 store, I was laying in the bed. I had all four of the
18 children laid down asleep. I went and laid in bed
19 until they fell asleep. His father had my keys to my
20 car. He said, 'I'm going to run over here with Adam.
21 I'm going to take him over here. I said, all right,
22 just be careful.

23 Q Okay. So your testimony today is you're
24 sure you remember exactly when they left and how they
25 left. My question is, do you remember specifically

1 saying after they got back, I went to sleep and I
2 guess they left after that?

3 **A** After he had got back from the store, I was
4 laying in bed. I was not asleep.

5 **Q** Okay. And this conversation, again, that
6 I'm pointing to was on February the 5th of 2015,
7 which was six days after this crash occurred. You
8 don't remember telling the trooper those particular
9 things. Is that my understanding?

10 **A** I wasn't asleep whenever they left. I was
11 laying in the bed.

12 **Q** I understand and I understand what you're
13 saying. I'm just asking you specifically, isn't it
14 true that you are denying telling the trooper that
15 you went to sleep and you guess they left after that?
16 Did you not tell him that?

17 **A** Not that I can remember, no.

18 **Q** Okay. Did Mr. Hester, the defendant, have
19 permission to drive your car?

20 **A** He didn't drive my car. He didn't have a
21 license, so his father and myself are the only people
22 that pretty much drove my car.

23 **Q** All right.

24 **A** Occasionally, I let James Moore drive my
25 car. Other than that, nobody.

1 Q And you said that this shoe belonged to
2 James Moore?

3 A Yes.

4 Q And there was a bunch of other clothes in
5 the car that belonged to James Moore?

6 A In the trunk of the car, yes.

7 Q Why was just those -- that single pair of
8 shoes floating around the car loose when all those
9 other clothes was in a trash bag?

10 A Because he was supposed to have got them
11 out whenever he was at my house earlier. But I guess
12 he just left them in there. He also had, like, a
13 toothbrush and some other personal items. He had got
14 them. I assume he just left his shoes in there and
15 forgot to get them. I don't know.

16 Q Okay. Where were the shoes in the car when
17 you put them in there?

18 A They would have been in the back seat.

19 Q Okay. In the floorboard of the back seat,
20 sitting on the back seat? Do you remember?

21 A Just in the back -- probably in the back
22 seat, honestly. I was just throwing stuff in the back
23 seat.

24 Q All right. But isn't true you had two child
25 seats in the back seat of that car as well?

1 **A** Yes.

2 **Q** So most of the back seat was taken up by
3 child seats, right?

4 **A** Yes.

5 **Q** All right. So two-door Monte Carlo,
6 probably only about yea-much seat left available
7 after those two car seats were in there.

8 **A** I mean, I put stuff in the seats of my
9 children's car seats.

10 **Q** Okay.

11 **A** They weren't with me that day. They were at
12 school when I was at home and then I went to my
13 second job and they were at home. I had my car.

14 **Q** Okay. You remember -- going back to that
15 same -- do you remember talking to J.K. Duncan at all
16 on the telephone on February the 5th of 2015?

17 **A** I remember talking to someone. I can't tell
18 you who I talked to.

19 **Q** Okay. Did that person -- do you remember
20 that person identifying himself as a member of the
21 Highway Patrol?

22 **A** I really don't remember much of that --

23 **Q** You remember talking about the day of the
24 accident?

25 **A** I remember talking about the accident. He

1 asked me what I knew. I stated that I did not know,
2 for I was at home with my kids.

3 Q Let's talk about that. Isn't it true that
4 after you went to bed, you don't know what Timothy
5 Hester did, meaning the defendant's father?

6 A They told me that they were going to -- he
7 told me that he was going over the James' with Adam.

8 Q Yeah, but you weren't with him. You don't
9 actually know what they did?

10 A No, I was in the house.

11 Q And you don't know what the defendant, Adam
12 Hester, did, correct?

13 A No.

14 Q Isn't it true that sometime that night that
15 Tiffany Forshee and James Moore came to your house
16 and told you that your car might have been involved
17 in a wreck?

18 A Yes.

19 Q And isn't it true that you also went to the
20 crash scene, correct?

21 A Yes.

22 Q And that was your 2005 Chevrolet Monte
23 Carlo that was involved in the wreck, correct?

24 A Yes. I pulled up and I asked the state
25 trooper, I said, I believe that's my car; I'm just

1 trying to find out if that is my car and what's going
2 on. He said, well, that's not your car and you need
3 to move on. So I went on down the road, went to the
4 stop sign and turned left. He came flying up behind
5 me and said, that is your car, you need to come back.

6 Q And while you -- when they got you to come
7 back, did you talk to the Highway Patrol that night?

8 A Yes.

9 Q That being around late night -- I don't
10 know if it was January 30th or January 31st. It would
11 have been late at night. Do you remember that?

12 A Yes. He asked me what I knew and all that.

13 Q And you talked to Trooper Nimmons that
14 night, correct?

15 A I'm not sure. I did talk to somebody. I
16 couldn't tell you who I talked to.

17 Q Okay. But he was a state trooper. You sat
18 in his car and talked to him about the wreck?

19 A Yes.

20 Q And during that conversation, you remember
21 telling him that you went to sleep at 9 o'clock that
22 evening, about 9 o'clock that evening?

23 A Yes. Well, I was in the bed around that
24 time.

25 Q All right. You remember telling him that

1 the defendant, Mr. Hester, had access to your car?

2 **A** No, I do not remember telling -- I remember
3 telling him I gave my keys to Tim Hester, Adam's
4 father, to take Adam and himself over to James
5 Moore's house.

6 **Q** All right. Do you remember telling him that
7 it was the defendant and his dad who went to the
8 store, but they came back before you went to bed and
9 you don't know what else they did?

10 **A** No, I did not tell him that they went to
11 the store. His father was the only one that asked me
12 to go.

13 **Q** Okay. Currently, where do you work, Ms.
14 Mauldin?

15 **A** I work at a t-shirt company.

16 **Q** And does the defendant, Mr. Hester, still
17 live with you?

18 **A** Yes.

19 **Q** And does he work currently?

20 **A** No, he does not. He's not allowed to at the
21 moment.

22 **Q** All right. Y'all's three kids still living
23 at the house?

24 **A** Yes.

25 **Q** All right. Anybody else live at that house

1 with y'all currently?

2 **A** Yes, his father.

3 **Q** Isn't it true also Mr. -- you said he --
4 isn't it true that even up until recently, Mr. James
5 Moore was staying with y'all as well?

6 **A** He stayed with us up until about two or
7 three months ago. He stayed there for a couple of
8 months. Then he went back out.

9 **MR. CLEVELAND:** Thank you, Ms. Mauldin.

10 **MR. DEJONG:** Nothing on redirect, Your
11 Honor.

12 Step down please, Ms. Mauldin.

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

14 **MR. CLEVELAND:** No objection to the witness
15 being excused.

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

17 **MR. DEJONG:** Thank you, Your Honor.

18 Thank you, Mr. Cleveland.

19 The defense would call Mr. James Moore to
20 the stand.

21 **JAMES MOORE**

22 having first been duly sworn, testifies as follows:

23 **THE CLERK:** Have a seat and state your
24 name for the record please.

25 **THE WITNESS:** My name is James Moore.

DIRECT EXAMINATION**BY MR. DEJONG:**

Q Okay. You're going to have to speak up a little bit more.

A My name is James Michael Moore.

Q Ahh, stay right there. Now, I can hear you. How old are you, Mr. Moore?

A 29.

Q All right. Where do you live?

A I live at [REDACTED] East Bay Street in Liberty.

Q On January the 30th of 2015, do you remember where you lived?

A Repeat the question.

Q On January the 30th of 2015, do you recall your address?

A I do believe [REDACTED] Woodland Way.

Q Okay. Do you know -- well, I'm going to call him -- how do you know him? Timothy, Adam, Mr. Hester?

A I met him through my cousin.

Q All right. What do you call him?

A I call him Adam.

Q All right. How long have you known Adam?

A I don't really know for how long. I don't keep track of time. But I'd roughly say about 10

1 years.

2 Q Okay.

3 A Somewhere around in there.

4 Q On January the 30th of 2015, I think you
5 said you were living on Woodland Way?

6 A Yes, I did.

7 Q And you know where I think -- let me ask it
8 this way, did you know where Adam lived at that point
9 in time?

10 A I did.

11 Q About how far would you say it was from
12 your Woodland Way address to where Adam lived?

13 A Roughly around 1.3 miles.

14 Q 1.3 miles? All right. At some point in time
15 after January the 30th of 2015, did you live with
16 Adam and Tiffany?

17 A I had stayed with him before because I had
18 a fallout with some of my family.

19 Q All right. Let me ask you this, do you
20 recall having been convicted for Possession of
21 Methamphetamine?

22 A I do.

23 Q When was that? Do you remember?

24 A I don't keep track of that stuff.

25 Q All right. So let's go back now to January

1 30th of 2015. You recall that day?

2 A It's hard for me to, like, say. To be
3 honest with you, time does not exist to me.

4 Q We're not really talking about times right
5 now. Okay. Let me ask you this, were you working at
6 that point in time?

7 A Yes.

8 Q Were you working days, nights or when were
9 you working?

10 A I worked two jobs. One, I can't talk about,
11 it's classified, and one I worked as a mechanic.

12 Q Okay. You recall on January 30th of 2015
13 what time you would have gotten home?

14 A Roughly -- well, when I work, I get off at
15 different times. Somewhere around 8:00, 8:30,
16 somewhere around there.

17 Q You got off from work that particular
18 evening. Did you go straight home?

19 A I did.

20 Q Are you married?

21 A No, sir.

22 Q When you were living at the Woodland Way
23 address, did anyone else live there with you?

24 A I had random people staying with me when
25 they didn't have nowhere to go. They would help out.

1 Q On this particular day, speaking of January
2 the 30th of 2015, was anyone living there with you?

3 A I had Josh. I can't remember if my brother
4 was staying with me at the time or not. Other than
5 that, it was just me and Tiffany Forshee would come
6 and stay with me sometimes.

7 Q On January the 30th of 2015, was she
8 staying with you?

9 A No, she was there waiting on me to come
10 home from work.

11 Q Was anyone there with her when she was
12 waiting there for you to come home from work?

13 A Yes, Alanah Holcombe and Josh was there.

14 Q All right. And was Timothy -- excuse me,
15 Adam Hester there when you got home that evening?

16 A No, he was not.

17 Q Okay. When you say Tiffany -- was that
18 Tiffany Forshee or Tiffany Mauldin?

19 A Tiffany Forshee.

20 Q Okay. She and Ms. Holcombe were waiting for
21 you. Were they waiting inside or outside?

22 A They was inside.

23 Q Okay. At that point in time, not what
24 anybody told you, Mr. Moore, but at that point in
25 time, did you observe any alcohol?

1 **A** Yes.

2 **Q** What did you see?

3 **A** I seen a bottle of Devil's Cut. And Alanah
4 had brought me a personal small bottle because I
5 didn't want to drink Devil's Cut.

6 **Q** Okay. Now, did you drink that evening?

7 **A** I had took one shot. I went and got in the
8 shower because I was greasy. I did -- I used to work
9 on cars. I retired from that.

10 **Q** Okay. At some point in that evening, about
11 nighttime, did you see Adam Hester?

12 **A** I did.

13 **Q** Were you home when he came over?

14 **A** When he come over, I was home. Right before
15 I got in the shower, he had showed up.

16 **Q** Okay. Did anyone show up with him?

17 **A** His dad, Tim Hester.

18 **Q** Do you know how Adam got to your house?

19 **A** Tim had drove him over there.

20 **Q** Who?

21 **A** Tim, his father.

22 **Q** Okay. They both have the same names?

23 **A** I believe so. I ain't never really asked
24 them their names.

25 **Q** All right, sir. Did Adam bring anything

1 with him when he came over there?

2 **A** No, sir.

3 **Q** All right. And you've known Adam for a
4 number of years, right?

5 **A** I have.

6 **Q** Could you tell when he came over there
7 whether he had been drinking or not?

8 **A** I did not visually see him drunk or
9 slurring or staggering. He was just actually kind of
10 fidgety.

11 **Q** Is that normal for him?

12 **A** It is.

13 **Q** Okay. How long did y'all stay at your house
14 that evening?

15 **A** Roughly about an hour.

16 **Q** And then you finally left your residence?

17 **A** We did.

18 **Q** And when you left your house there on
19 Woodland, how many people left?

20 **A** Four.

21 **Q** And who were those four people?

22 **A** Adam Hester and Alanah had left in the
23 Monte Carlo before me. And me and Tiffany Forshee had
24 left behind them. There was a small time lag in
25 between our distance traveling.

1 Q Did you ever lose sight of them?

2 A I did.

3 Q And where did you lose sight of them?

4 A When I went to take a left by the church, I
5 don't know the name of the road, but a car had come.
6 So I had to pause for a minute. And then as I turned,
7 as I was going down that road, I had noticed some
8 Monte Carlo taillights in the driveway that goes into
9 that neighborhood to the right. I assumed that was
10 Adam and Alanah going into that neighborhood.

11 Q Well, let's back up a little bit. When you
12 left your home on Woodland that evening, what was the
13 plan? Where were y'all going?

14 A We were headed to Scott's to smoke some
15 meth.

16 Q Okay. And where does Scott live?

17 A In Pickens.

18 Q Do you know what his address was?

19 A I don't.

20 Q Okay. You know what road he lived on?

21 A I don't.

22 Q Okay. Well, when Adam and Ms. Holcombe left
23 your house, did they leave in the Monte Carlo?

24 A Repeat the question.

25 Q When Adam and Ms. Holcombe left your house

1 on Woodland, were they in the Monte Carlo?

2 **A** Yes, they was.

3 **Q** And when they left your residence on
4 Woodland, who was driving?

5 **A** Adam was.

6 **Q** Okay. Did you -- you said there was a
7 little time lapse that you were a little behind them.
8 Were you able to observe his driving at all?

9 **A** Not really. I was in the middle of
10 adjusting the radio and talking to Tiffany Forshee.

11 **Q** Okay. Would you say they turned -- you said
12 they turned into a road. Was that in the vicinity of
13 a church or is that near a church?

14 **A** It is.

15 **Q** Okay.

16 **A** I always said it -- I always called it
17 right there next to the church.

18 **Q** Okay. After they turned into the church --
19 well, let me rephrase that. Did you turn in the
20 church behind them?

21 **A** I did not. I resumed my destination.

22 **Q** Okay. So you just kept heading towards
23 Scott's, right?

24 **A** I did.

25 **Q** So you didn't -- you never went down the

1 same road or behind the church or anything like that?

2 **A** I did not.

3 **Q** So what may have happened behind the church
4 there, you would not know?

5 **A** I would not.

6 **Q** Okay. Now, did you -- did you finally make
7 it to Scott's?

8 **A** I did.

9 **Q** And when you got to Scott's, was Adam and
10 Ms. Holcombe there?

11 **A** They was not.

12 **Q** Okay. Did you see Adam again that evening?

13 **A** Well, after -- on our way back to see if we
14 could find them, we noticed the Monte Carlo. I
15 assumed that was them. Later on that night, we went
16 to the hospital/to visit them.

17 **Q** Did Adam and Ms. Holcombe ever come to
18 Scott's house?

19 **A** Once or twice.

20 **Q** Well, I mean on that evening.

21 **A** Oh, no.

22 **Q** On January the 30th of 2015?

23 **A** No.

24 **Q** So why did you go back looking for them?

25 **A** Well, Tiffany had called them and --

1 Q Which Tiffany? I'm sorry.

2 A Forshee.

3 Q Okay.

4 A -- had called them a couple of times and
5 they would not answer. So she got worried. So we went
6 back to see if they went back to my house or
7 anything. That's when we noticed the accident.

8 Q I may have asked you -- I apologize if I
9 did, but did you know Ms. Holcombe?

10 A I mean her, like, a week, week and a half
11 before that.

12 Q Okay. Did you know where she lived?

13 A I have took her -- well, I gotta rephrase
14 that. It's been about a month before that. I have
15 took her home a few times in my Mustang.

16 Q And where did she live?

17 A Uh --

18 Q Not necessarily --

19 A Roughly around three, four miles from
20 Scott's house.

21 Q Do you know what road?

22 A I do not know the name of the road.

23 Q Okay. Let me show you a picture, Mr. Moore.
24 It had been marked State's Exhibit Number 10. Do you
25 recognize a shoe in that picture?

1 **A** I do.

2 **Q** Do you know whose shoe that is?

3 **A** It was my shoe.

4 **Q** Do you know how that shoe got into that
5 Monte Carlo?

6 **A** They put it in there. Before -- before we
7 left, I was going to get them out, but I said I'll
8 just get everything after we get back.

9 **Q** Did you have anything other than those
10 shoes in that car, to your knowledge?

11 **A** They said I had some clothes in the trunk.
12 I did not physically see them because I didn't look.
13 I said when we get back, I would get them.

14 **Q** Are you referring to when you got back from
15 Scott's house?

16 **A** Yes.

17 **Q** So you don't know who put the shoes -- your
18 shoes in that car, right?

19 **A** Right.

20 **Q** And -- well, that's enough of that. One
21 moment please.

22 **THE COURT:** Certainly.

23 **BY MR. DEJONG:**

24 **Q** Approximately, Mr. Moore, from where you
25 were living then, on Woodland, Woodland Way, whatever

1 it was, to where this church or the road that Adam
2 turned onto, how far is that roughly?

3 **A** Roughly around a quarter of a mile.

4 **Q** Now, you say Adam got there and you went
5 and took a shower?

6 **A** I did.

7 **Q** Now, when you got out of the shower, is
8 that when y'all left to go to Scott's house?

9 **A** We sat around for about 15 to 20 minutes
10 before the idea even come up.

11 **Q** And was anybody or everybody drinking
12 alcohol at that point in time?

13 **A** Everybody had done took a couple of shots
14 while I was in the shower. I took a shot before I
15 went and got in the shower. Other than that, that's
16 about all I know.

17 **Q** When you left Woodland heading towards
18 Scott's house, were you driving the vehicle?

19 **A** I was driving the Honda Civic, yes.

20 **Q** Was that your -- was that your car?

21 **A** No, it was Tiffany Forshee's.

22 **Q** Are you related to Tiffany Forshee?

23 **A** I am not.

24 **Q** Okay. You're related to Tiffany Mauldin?

25 **A** I am.

1 Q Okay. I just wanted to clarify that.

2 MR. DEJONG: The witness is with you,
3 gentlemen.

4 MR. CLEVELAND: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. CLEVELAND:

7 Q Mr. Moore, at any point in time on the
8 night after Alanah Holcombe and Adam Hester left your
9 house, did you watch them switch drivers?

10 A I physically did not see them.

11 Q All right. But isn't it true you were still
12 behind them at the stop sign at the end of Woodland
13 Way, the stop sign right down the road from your
14 house?

15 A As I was pulling up to the stop sign, they
16 was taking off.

17 Q Okay. But you did not see at that stop sign
18 the doors in the Monte Carlo open and people switch
19 drivers?

20 A That -- when I -- they had just, like, hit
21 the brakes. Then they let off the brakes and took
22 off.

23 Q Okay. So you saw brake lights at the stop
24 sign. Did you actually see him hit the brakes, no
25 brakes, brakes and then go through the stop sign?

1 **A** I seen them flash back and forth a few
2 times.

3 **Q** All right. So is it fair to say you saw the
4 car driving, coming up to the stop sign, tap the
5 brakes and make a left onto Rices Creek Road?

6 **A** When I noticed -- when I seen the car after
7 I had talked to him, it was at a complete stop.

8 **Q** Okay. That's not what you said a minute
9 ago. You said you saw them tap the brakes on and off?

10 **A** Yeah. In other words, what I'm saying is
11 when they stopped, they must have hit the brakes,
12 looked and then left off and then tapped them again.

13 **Q** Okay.

14 **A** As if they might have had a car coming and
15 they might have overjudged it or something. I mean,
16 that's what I'm thinking.

17 **Q** I see what you're saying. You're saying
18 there's a gap of time in between when they left and
19 when you left?

20 **A** Yes, because I had to turn around. See, I
21 don't turn around in the road. I turn around in the
22 driveway.

23 **Q** All right. Which way was the Monte Carlo
24 facing in the driveway when they got in?

25 **A** When they got in, they would have had to be

1 going in reverse to get out.

2 Q Okay. So talking about Woodland Way, if
3 you're standing at the stop sign looking back towards
4 your house, your house is on the right, correct?

5 A Say again?

6 Q If you're looking up Woodland Way from the
7 stop sign, your house would be on the right, correct?

8 A Second one on the right.

9 Q They had to back out of your driveway and
10 then go straight down Woodland Way?

11 A Yes.

12 Q And you had to just back up in your yard
13 and then turn and pull out onto Woodland Way?

14 A I'm superstitious.

15 Q Okay.

16 A I like to come out of my driveway facing
17 out.

18 Q Sure. I mean, you'd agree with me that it
19 doesn't take much longer to turn around in your yard
20 than it does to turn around in the street if you've
21 got to back up and do a three-point turn, would it?

22 A It depends on if I want to play or not.

23 Q All right. So you saw Monte Carlo
24 taillights pulling into that neighborhood, correct?

25 A The one next to the church?

1 Q Yes.

2 A Yes.

3 Q All right. And isn't it true that that
4 neighborhood is essentially a dead-end street?

5 A It is.

6 Q When you say it's a neighborhood, isn't it
7 true that that's more or less just a trailer park
8 with some trailers spread out over the area, correct?

9 A It is.

10 Q Is it -- it's pretty dark back in there,
11 isn't it?

12 A It is.

13 Q All right. Based upon your conversations
14 with Mr. Hester or anybody that night, did you have
15 any indication of what they were doing back there?

16 A I have no idea.

17 Q All right. And then you said you went to
18 Scott's house to smoke some meth?

19 A I did.

20 Q And you had been previously convicted in
21 April of 2013 for possession of methamphetamine;
22 isn't that true?

23 A It was my car it was found in. I
24 automatically got accused of it.

25 Q Well, you got convicted of it. Wouldn't you

1 agree?

2 **A** Yes.

3 **Q** All right. You talked to the police on
4 several occasions after this incident, didn't you?

5 **A** Twice.

6 **Q** All right. Isn't it true you actually
7 talked to them three times? Once on the scene in the
8 patrol car. Once on the telephone.

9 **A** I didn't -- I don't remember talking to
10 them on the scene in the patrol car.

11 **Q** All right. So on the night of January 30th,
12 you don't remember sitting in Officer Neal Nimmons'
13 patrol car and giving him the statement about what
14 you had done that night?

15 **A** I was kind of in shock that night, so I
16 couldn't remember.

17 **Q** In shock or high on methamphetamine?

18 **A** I...

19 **Q** So you don't remember at any time during
20 that conversation telling Trooper Nimmons that you
21 had never seen Adam Hester before that day?

22 **A** I did not say that.

23 **Q** You did not say that you -- he called you
24 and you told him you were at Scott's and he was
25 supposed to come meet you at Scott's?

1 **A** If you were referring to that night that he
2 says I sat in that car, then I would have to say he
3 was lying.

4 **Q** You don't remember saying -- you don't have
5 any idea who was driving or nothing like that to
6 Trooper Nimmons?

7 **A** Well, I know when the officer come to
8 Tiffany Forshee's house, I told him that.

9 **Q** All right. So let me just concise this up.
10 Do you deny making any statement to Officer Neal
11 Nimmons on the night of the crash, sitting in his
12 patrol car?

13 **A** I do not remember speaking to him that
14 night.

15 **Q** All right. Let's move on. The next day, you
16 talked to two individuals from the Highway Patrol;
17 isn't that correct? Al Duncan on the telephone,
18 Trooper -- Sergeant -- or at the time, Corporal
19 Duncan on the telephone.

20 **A** That was actually a couple of days after.

21 **Q** Okay. But you remember talking to him on
22 the telephone a day or two after the wreck?

23 **A** I do.

24 **Q** And you remember talking to Trooper Marlow
25 here sitting in his Dodge Charger?

1 **A** The one with the timing chains that was --

2 **Q** Yeah, the one that had the tensioners and
3 the guides that were worn out on it.

4 **A** Yes.

5 **Q** All right. That was on February the 1st of
6 2015?

7 **A** I guess so.

8 **Q** Now, you remember telling Trooper Marlow,
9 actually, that y'all got in the cars at the same
10 time?

11 **A** They had got into the car before I got into
12 the car. I personally was trying to talk them into
13 getting in the car with me.

14 **Q** Okay. And I'll give you all the time in the
15 world to explain and clarify your testimony. I'm just
16 asking you specifically do you remember telling the
17 officers these exact things? Do you remember telling
18 Marlow that y'all -- all four of y'all got in the
19 cars, meaning, the Honda Civic and the Monte Carlo,
20 at the same time?

21 **A** Well, I don't remember saying that. I
22 don't --

23 **Q** All right. Well, do you remember saying
24 that at the time he left, he -- he, being Adam Hester
25 -- was in the driver's seat?

1 **A** When we left my driveway ---

2 **Q** Yeah.

3 **A** --- he was in the driver's seat.

4 **Q** And you remember telling them they went
5 into the neighborhood?

6 **A** I do remember that.

7 **Q** All right. But you just said a minute ago
8 when you're talking about the trooper in your
9 driveway, I asked you if you said you don't have any
10 idea of who was driving that night or nothing like
11 that.

12 **A** Well, after the fact that I had done passed
13 that road, I don't know what happened. And to be
14 honest, that might not have even been the Monte
15 Carlo. I don't know. I'm driving. Why would I want to
16 be looking around, to cause an accident, when I
17 should be watching the road?

18 **Q** I understand. I'm just asking you what you
19 told him. You told him they went into that
20 neighborhood. You didn't say I saw Monte Carlo
21 taillights. You didn't say it could have been them.
22 You said they turned off into that neighborhood and I
23 continued on to my designation. Did you tell the
24 trooper that?

25 **A** If I did, it's because I recognized Monte

1 Carlo taillights going into that neighborhood.

2 Q All right. Chevrolet Monte Carlo, you know
3 a lot of people that drive them?

4 A They are common cars.

5 Q You testified earlier -- oh, did you -- you
6 -- going back to Trooper Marlow. You remember telling
7 him that you talked to the trooper the night before
8 and it would be the exact words that you just gave
9 him in a statement but -- you were drunk when you
10 said it, but it would be the exact same words as you
11 told him first?

12 A If I'm thinking right, I said that the
13 night I was drunk when I was on the phone.

14 Q Okay. But you didn't tell Trooper Marlow
15 that sitting in his car with the timing chain, right?

16 A What? About me being drunk?

17 Q Being drunk the night before.

18 A The night before what?

19 Q The night before you were talking to him.

20 A Well, at that time, I had been drinking a
21 lot, so I probably did say it. I don't remember.

22 Q Did you give Trooper Marlow a written
23 version of your statement in addition to telling him
24 what you told him in the car?

25 A I remember speaking into a camera and I

1 remember writing.

2 **Q** Okay. Go on to this telephone call you had
3 with Sergeant Duncan. He was Corporal Duncan at the
4 time. Do you recall Tiffany Forshee getting a phone
5 call and then she essentially handed the phone off to
6 you?

7 **A** Yes, I remember that.

8 **Q** And do you remember him identifying himself
9 as a highway patrolman and speaking to him?

10 **A** Yes.

11 **Q** All right. Do you remember during that
12 phone call that you told him that the defendant was
13 drinking Canadian Hunter, Jack Daniels Fire, he had
14 drank pretty much anything he could get his hands on?

15 **A** When? The night of the accident?

16 **Q** Yes.

17 **A** I don't remember saying all that. I
18 remember -- I remember that Alanah had some Devil's
19 Cut and she had brought me a small bottle. I don't
20 remember what the bottle was. I mean, I don't know
21 what all Adam had consumed that night.

22 **Q** But specifically, do you remember telling
23 him that the defendant was drinking Canadian Hunter
24 and he had some Jack Daniel's Fire, specifically?

25 **A** I don't remember saying that. But I may

1 have.

2 Q All right. You remember telling Sergeant
3 Duncan that you saw the defendant turn down behind
4 the church the night of the wreck?

5 A Yes.

6 Q At any point in time during the interview,
7 Sergeant Duncan, Trooper Marlow, did you ever mention
8 anything about seeing them change drivers?

9 A I personally did not see them change
10 drivers. I'll have to stick with that.

11 Q All right. Thank you, Mr. Moore.

12 MR. DEJONG: Just a couple of questions ---

13 THE COURT: Certainly.

14 MR. DEJONG: --- on redirect please, Your
15 Honor.

16 **REDIRECT EXAMINATION**

17 **BY MR. DEJONG:**

18 Q Once they turned off and went into the
19 neighborhood or the church, do you know what they
20 did?

21 A I do not.

22 Q Do you know if they stopped?

23 A I do not.

24 Q Do you know how long they stayed there?

25 A I do not.

1 **Q** Thank you, sir.

2 **THE COURT:** Anything else for this
3 witness?

4 **MR. CLEVELAND:** Nothing, Your Honor. Thank
5 you.

6 **THE COURT:** Sir, you can --

7 **MR. CLEVELAND:** No objection --

8 **THE COURT:** -- sir, you can step down.

9 **MR. CLEVELAND:** -- no objection to him
10 being excused, Your Honor.

11 **THE COURT:** Thank you, Mr. Cleveland.

12 **MR. DEJONG:** The defense will call
13 Mr. Timothy Adam Hester to the stand.

14 **TIMOTHY HESTER**

15 having first been duly sworn, testifies as follows:

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

18 **THE WITNESS:** My name is Timothy Adam
19 Hester.

20 **DIRECT EXAMINATION**

21 **BY MR. DEJONG:**

22 **Q** Straight up on that microphone so we can
23 hear you, Mr. Hester. How old are you?

24 **A** I'm 30 years old.

25 **Q** Where do you live?

1 **A** I live at [REDACTED] Rices Creek Church Road.

2 **Q** How long have you lived there?

3 **A** I've lived there approximately --

4 approximately -- probably five years.

5 **Q** And who lives there with you?

6 **A** Tiffany Mauldin and my three kids.

7 **Q** What is your relationship with Tiffany

8 Mauldin?

9 **A** She's my -- I'd say wife.

10 **Q** Okay. How long have y'all been together?

11 **A** 13 years.

12 **Q** Y'all have any children together?

13 **A** We have three kids together.

14 **Q** What ages are they now? Do you remember?

15 **A** I have a problem remembering stuff.

16 **Q** So you're telling me you don't remember how

17 old they are?

18 **A** I know they -- I can get -- I'd say 5 -- 5,

19 8 and 10.

20 **Q** Okay. All right. And since, I believe you

21 said you live at Rices Creek Church Road?

22 **A** Yeah, it's Rices Creek Church Road.

23 **Q** A lot of Rices Creeks and everything else

24 around there. Okay. About five years, have you and

25 Tiffany Mauldin and those children lived there

1 together continuously?

2 **A** Before that, we lived right next to
3 Anderson Meats.

4 **Q** Where?

5 **A** Anderson Meats. Right near Anderson Meats.

6 **Q** Okay. All right. Have you and Ms. Mauldin
7 ever separated?

8 **A** No, sir.

9 **Q** You ever move out of the house?

10 **A** No, sir.

11 **Q** She ever move out of the house?

12 **A** Sir?

13 **Q** She ever take the kids and leave you?

14 **A** No, sir.

15 **Q** Okay. Now let's come up to January the 30th
16 of 2015. You remember that day?

17 **A** Yes, sir.

18 **Q** Let's kind of start out in the morning and
19 just briefly go through the day. About what time did
20 you get up, Mr. Hester?

21 **A** I would say usually about the time she
22 comes home.

23 **Q** You remember what time she came home?

24 **A** She comes home about 9:00, 9:30.

25 **Q** All right. On that day, did she come home

1 around 9:00 or 9:30?

2 A Yes, sir.

3 Q Okay. Once she came home, what did y'all
4 do?

5 A Eat breakfast. I usually cooked breakfast
6 for her. We sat around and watched TV for about the
7 rest of the day up until the kids come home.

8 Q Were any of the children home with you that
9 day?

10 A Yes, my youngest one was.

11 Q All right. And then did Ms. Mauldin stay
12 there for the rest of the day or did she leave again
13 or what?

14 A She leaves again about 2:00 -- well, about
15 1:30, 2 o'clock.

16 Q Okay. At that point in time, were you
17 working?

18 A No. No, sir.

19 Q Okay. So after she left at 2 o'clock, what
20 was your job, if any?

21 A Wait for the kids to come in. Take care of
22 the kids. Give the kids baths.

23 Q Did -- well, before she left at 2 o'clock,
24 did you drink any alcohol?

25 A No, sir.

1 Q After she left for her 2 o'clock job, did
2 you drink any?

3 A No, sir.

4 Q All right.

5 A I can't hold my liquor well.

6 Q Okay. Now, what's your father's name?

7 A It's Timothy Ray Hester. Mine is Timothy
8 Adam Hester.

9 Q Okay. So middle names are different; is
10 that correct?

11 A Yes.

12 Q All right. Where does your dad live?

13 A He lives with me.

14 Q Pardon?

15 A He lives with me and Ms. Mauldin.

16 Q Okay. Was he living with you and
17 Ms. Mauldin on January the 30th of 2015?

18 A Yes, sir.

19 Q Were there any vehicles available at that
20 house other than the Monte Carlo?

21 A No, sir.

22 Q Did your father, from time to time, drive
23 that vehicle?

24 A He drove me -- either Tiffany or he drove
25 me where I had to go.

1 Q Okay. But the question is did your dad,
2 from time to time, drive that vehicle?

3 A Yes, sir.

4 Q On January the 30th of 2015, did you go
5 with your father to the store?

6 A No, sir. I did not.

7 Q Now, at some point on January the 30th of
8 2015, did you leave your home on Rices Creek Church
9 Road and go someplace?

10 A Yes, sir.

11 Q And where did you go?

12 A I went to James Moore's house.

13 Q You know the address at James Moore's
14 house?

15 A No, sir.

16 Q How did you get to James Moore's house?

17 A My father drove me in the Monte Carlo.

18 Q Okay. Once you got to James Moore's house,
19 what did your father do?

20 A He just hung out with us.

21 Q Okay. Well, did you finally leave James
22 Moore's house?

23 A Yes, sir.

24 Q Was your dad still at James Moore's house
25 when y'all left?

1 **A** Yes, sir.

2 **Q** Was the plan that he was -- well, let me
3 back up a little bit. What was the plan when y'all
4 left James Moore's house?

5 **A** To actually go to Scott's house.

6 **Q** And -- well, what -- do you have any idea
7 what time you would have got to James Moore's house?

8 **A** It has to be after 7:30 because she had
9 come in from work.

10 **Q** Okay. You have any memory of what time you
11 would have left James Moore's house?

12 **A** No, sir. I had been drinking then and it's
13 kind of hard to remember all that.

14 **Q** Okay.

15 **A** I mean, I remember leaving and I remember
16 things starting out. I started getting sick.

17 **Q** Okay. Hold on just a minute. Okay. Okay. So
18 who all was going to go to Scott's house?

19 **A** Me and James and Tiffany and -- well, me,
20 Tiffany and James and Alanah.

21 **Q** Okay. Who was -- well, was more than one
22 car going to go to Scott's house?

23 **A** Yes, sir.

24 **Q** And how many cars were going to go to
25 Scott's house?

1 **A** Those two.

2 **Q** Now, do you know what kind of cars those
3 were?

4 **A** Honda and Monte Carlo.

5 **Q** All right. The Monte Carlo, was that the
6 Monte Carlo that your dad had taken you over there
7 in?

8 **A** Yes, sir.

9 **Q** When you left James Moore's house, what car
10 did you get into?

11 **A** I got into the Monte Carlo.

12 **Q** Okay. Did anybody else get in that vehicle
13 with you?

14 **A** At first, no.

15 **Q** Finally, did somebody else get in the car
16 with you?

17 **A** I actually backed out of the driveway. As I
18 backed out of the driveway, Ms. Alanah come running
19 out of the house and was hollering wait, wait. I got
20 -- I pulled back into the driveway.

21 **Q** When you left James Moore's house, were you
22 driving?

23 **A** Yes, sir.

24 **Q** Okay. Even knowing that you didn't have a
25 license?

1 **A** At the time, I was intoxicated. I shouldn't
2 had been driving. Yes, sir.

3 **Q** How much did -- how much did -- did you
4 take any liquor over to James Moore's house?

5 **A** No, sir.

6 **Q** Was there liquor at James Moore's house?

7 **A** Yes, sir.

8 **Q** What kind?

9 **A** Devil's Cut, if I'm not mistaken.

10 **Q** Was there anything else other than the
11 Devil's Cut?

12 **A** Not as I remember.

13 **Q** Okay. So how long did y'all work on that
14 Devil's Cut?

15 **A** I probably took maybe three shots. That's
16 over my limit.

17 **Q** You say after you -- backing up a little
18 bit into the morning hours, I believe you said you
19 and Ms. Mauldin ate breakfast; is that correct?

20 **A** Yes, sir.

21 **Q** After you ate breakfast, what else did you
22 have to eat that day?

23 **A** It's kind of hard to remember.

24 **Q** Okay. Was it a lot, a little or do you
25 remember?

1 **A** Well, I mean, I'm a pretty healthy boy, so
2 I'm sure I ate a lot more that day.

3 **Q** Okay. So once -- well, let's back up. You
4 started backing out of James Moore's driveway,
5 correct?

6 **A** Yes, sir.

7 **Q** Where was James Moore and Tiffany Forshee
8 when you started backing out?

9 **A** They were actually coming out of the door
10 behind Alanah.

11 **Q** Okay. You stopped and let Alanah get in the
12 Monte Carlo?

13 **A** I actually was already backing out of the
14 driveway.

15 **Q** Yes, sir.

16 **A** I'm saying, as I pulled -- I pulled back
17 into the driveway. I don't know why I did, but I did.
18 And she come and got and jumped in the car, yes, sir.

19 **Q** Okay. So now you have to back out of the
20 driveway again?

21 **A** Yeah, then I had to back back out of the
22 driveway, yes, sir.

23 **Q** When you were backing out of the driveway
24 the second time, were you able to see where James
25 Moore and Tiffany Forshee were?

1 **A** They were actually coming out of the fence
2 of James' house. He actually got a fenced in front
3 yard.

4 **Q** Okay.

5 **A** They were actually coming out of that
6 fence.

7 **Q** Okay. So how far or how close would you say
8 they were to the Monte Carlo at that point in time?

9 **A** I mean, they were -- they were actually not
10 that close. They were probably from here to the juror
11 over there from the car.

12 **Q** Okay. So you backed out of James Moore's
13 driveway. What was the next stop or the next thing
14 that you did?

15 **A** I proceeded -- I went through the stop
16 sign. I took a left. As I started down the hill right
17 there, we started to come up on the church on the
18 right. As you come up on the church, that's when I
19 started -- I started feeling sick when I was getting
20 to the stop sign. I pulled up right there at the
21 church. When I pulled into the church, I had to get
22 out of the car immediately and started puking out in
23 front of the car.

24 **Q** Okay. Were you in front of the church,
25 behind the church?

1 **A** Beside the church right there. If you seen
2 the church, you would be able to --

3 **Q** Okay. When you were doing that, did you --
4 were you able to observe or did you pay any attention
5 to where James Moore and Tiffany Forshee went?

6 **A** After that, everything goes blurry.

7 **Q** Where the church is there, is it dark
8 there?

9 **A** Yes, sir.

10 **Q** How long, Mr. Hester, did y'all stay at the
11 church?

12 **A** I do not remember exactly how long.

13 **Q** Okay. You say you threw up?

14 **A** Yes, I was throwing up.

15 **Q** And after you threw up, what did you do
16 next?

17 **A** Alanah helped me -- actually helped me. I
18 was saying I couldn't drive. She helped me into the
19 passenger's seat. I figured we was going back to
20 James Moore's house, but I woke up in the grass.

21 **Q** So basically between you getting in the
22 passenger seat and sometime after the crash, you --

23 **A** I --

24 **Q** -- your memory gone?

25 **A** Yes, I don't remember nothing after that. I

1 mean, how we got on Praters Creek, I don't -- I
2 wouldn't have went that way.

3 Q You say you wouldn't have gone that way?

4 A No, sir.

5 Q How would you have gone?

6 A I mean, I would have went down and got on
7 Allgood instead of going -- I don't know how I would
8 have got on Praters Creek.

9 Q All right. How long did you know Ms.
10 Holcombe?

11 A Not long.

12 Q Who introduced you?

13 A Tiffany Forshee.

14 Q Do you know where Ms. Holcombe lived?

15 A No, sir.

16 Q Okay. Do you ever take her home?

17 A No, sir.

18 Q So the next thing you remembered is, as I
19 understand it, you waking up in the grass?

20 A Yes, sir.

21 Q What did you do then?

22 A I woke up. As I looked, the car was laying
23 on its side. Ms. Alanah was actually laying --
24 hanging out of -- I mean, not hanging out of the car
25 -- was laying flat on the ground. I put my hands on

1 her back. She was laying -- her feet was stuck up in
2 the car. I put my hands on her back. I said, please
3 wake up, Alanah. Please wake up. She would not wake
4 up. I went to the first house and the porch light was
5 on. I was beating on their door. They turned the
6 porch light out on me. I drug myself from there to
7 the next house. Then someone come out with a
8 flashlight.

9 Q Do you know who called 911?

10 A The man that come out with a flashlight was
11 calling 911.

12 Q All right. Now, how did you leave the scene
13 where this crash happened?

14 A The ambulance.

15 Q And where did they take you? Do you know?

16 A No, sir.

17 Q I'm sorry?

18 A I mean, I guess Greenville.

19 Q All right. By the way, Mr. Hester, you have
20 a criminal record?

21 A I have a grand larceny on my record, yes,
22 sir.

23 Q You remember when that was?

24 A From back 2012, 2013, somewhere around in
25 there.

1 Q All right. So you're in the back of the --
2 well, before we get there, did you talk to anybody at
3 the scene that you recall?

4 A No.

5 Q You remember talking to the ambulance
6 driver?

7 A I remember talking to the man that come out
8 with a flashlight.

9 Q Okay. So now they get you to the Greenville
10 Hospital System, right?

11 A Yes.

12 Q And where did you go within the hospital,
13 if you know?

14 A I really don't remember being in the ER,
15 being questioned by the police, I really don't
16 remember all that. I remember being -- I remember I
17 had a lot of pain in my leg and I remember them
18 giving me medicine up there for my leg.

19 Q Doing what?

20 A Giving me something for my pain for my leg.
21 I had broke my leg some months before that. Almost a
22 year before that, I actually got run over by a car
23 and been in a coma for 18 days.

24 Q All right. But that was about a year before
25 this accident?

1 **A** Yes. They said it upset my break in my leg,
2 that's why I was in so much pain.

3 **Q** All right. Well, as I understood it, you
4 said they gave you something. Do you know what they
5 gave you?

6 **A** It was 10 milligram something.

7 **Q** Pain killer?

8 **A** Yes, sir.

9 **Q** Did they have to put your leg in a cast?

10 **A** No, sir.

11 **Q** Okay. Did they put it in a soft cast or
12 anything?

13 **A** No, sir. They said it just upset my break
14 -- upset the break in my leg because it wasn't
15 completely healed.

16 **Q** Okay. So did you have any broken ribs?

17 **A** No, sir.

18 **Q** Any bruised ribs?

19 **A** No, sir.

20 **Q** Did you have any pain in your chest?

21 **A** No, sir.

22 **Q** Were you treated for any pain in your
23 chest?

24 **A** No, sir.

25 **Q** So basically, well, I don't want to do

1 that. You know how you got out of the car?

2 **A** No, sir. All I know is in the jailhouse, I
3 picked glass out of my forehead for months while I
4 was in the jailhouse.

5 **Q** But when everything came to rest, you were
6 not in the car?

7 **A** No, sir.

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

10 **THE COURT:** Certainly.

11 **(WHEREUPON, there is a pause.)**

12 **BY MR. DEJONG:**

13 **Q** Are you familiar with this area?

14 **A** This area we're standing in now?

15 **Q** No, Praters -- is that Praters Creek Road?

16 **A** Yes, Praters Creek Road.

17 **Q** And Allgood?

18 **A** Allgood Road, I guess.

19 **Q** Allgood Road. No creek or church after it?

20 **A** No, sir.

21 **Q** Would Praters Road -- strike that. You were
22 going to Scott's house?

23 **A** Yes, sir.

24 **Q** What road, if you know, did Scott live on?

25 **A** Riggins Bridge Road.

1 Q All right. And was -- going down Praters
2 Church Road, could you have gotten to Scott's house
3 from there?

4 A Yeah, you could from Praters Creek Road,
5 yes, sir.

6 Q I'm sorry?

7 A Yes, sir. Going down Praters Creek, yes,
8 sir.

9 Q Ms. Holcombe ever been with you to Scott's
10 house before?

11 A I'm not -- she never rode with me to
12 Scott's house, no, sir.

13 Q So you don't know if she's been there
14 before?

15 A No, sir.

16 Q But as I understand it, she was friends
17 with Tiffany Forshee, correct?

18 A Yes, sir.

19 Q Best of your recollection, Mr. Hester, were
20 you wearing your seatbelt that night?

21 A No, sir. I don't think I was.

22 Q Let me show you what's been marked as
23 State's Exhibit Number 10. I ask you to look
24 specifically at the shoe in that picture.

25 A Yes, sir.

1 Q Is that your shoe?

2 A No, sir.

3 Q You know whose shoe it is?

4 A It's James Moore's shoe.

5 Q You know how it got in the car?

6 A My wife said she put it in the car.

7 Q Okay. You know where she put it in the car?

8 A Most likely, she probably threw it in the
9 back seat. If the kids weren't in there, she just
10 threw stuff in the back seat.

11 Q Okay. That is not your shoe?

12 A No, sir.

13 Q You remember what kind of shoes you were
14 wearing that night?

15 A Yes, sir. I had white Adidas.

16 Q Yes, sir.

17 A And I still haven't seen them white Adidas
18 since I went to the hospital and they took them off
19 of me.

20 MR. DEJONG: All right. The witness is
21 with you, gentlemen.

22 THE COURT: Yes, sir.

23 MR. CLEVELAND: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. CLEVELAND:

1 **Q** Now, Mr. Hester, you've been seated in here
2 for this entire trial, which now is ---

3 **A** Four days.

4 **Q** --- in its fourth day, correct? Wouldn't
5 you agree with me that what you just told the jury
6 was the fifth version of events that supposedly came
7 from you about what happened that night?

8 **A** For the first time or when they questioned
9 me when I was --

10 **Q** Yes or no. Is that the fifth version that
11 this jury has heard about what you said happened that
12 night?

13 **A** The first two statements? I don't remember
14 really taking them.

15 **Q** I mean, whether you remember or not, you
16 agree with me that there are five different versions
17 from you about what happened that night?

18 **A** I mean, obviously so. I didn't know you
19 could question someone while they were under the
20 influence of alcohol or under the influence of drugs.

21 **Q** All right. Let's do -- let's talk a little
22 about what happened. It's your testimony that you got
23 sick, started throwing up just as you left James'
24 house.

25 **A** Yes, sir.

1 Q And where, exactly, after the church did
2 y'all pull off so you could throw up?

3 A We actually pulled inside the church.

4 Q Okay. So you didn't pull into the
5 neighborhood?

6 A The church and the neighborhood is right
7 beside each other.

8 Q But did you pull down the driveway into the
9 neighborhood or in the parking lot of the church or
10 what?

11 A It was actually on the left side of the
12 church, if you was facing -- if you was standing out
13 in the road looking at the church, it would be on the
14 left side.

15 Q On the left side, not on the right behind
16 the church?

17 A No.

18 Q And you would agree with me that there's a
19 little thicket of woods in between the church parking
20 lot and where that trailer park is on the right,
21 correct?

22 A It's -- there is a little thicket, yes,
23 sir.)

24 Q But y'all are saying you just pulled off to
25 the left on the left side of the road.

1 **A** If you are standing in the road, looking at
2 the church, it would be on the left side of the
3 church, yes, sir.

4 **Q** Okay. Did you pull on the right side of the
5 road or the left side of the road?

6 **A** I don't understand the question.

7 **Q** If you're driving in front of the church or
8 driving past the church, did you pull off on the
9 right or did you pull over on the left side of the
10 road?

11 **A** You would pull off to the right.

12 **Q** Okay. Did you pull off to the right?

13 **A** Yes, you would pull off to the right.

14 **Q** Did you pull parallel to the road or did
15 you drive down some distance off the road or what did
16 you do?

17 **A** It was actually a little bit of pavement
18 there in front of the church. There was a little bump
19 that you drop off of. I remember the front end of the
20 car dropping off in front of that bump.

21 **Q** Okay. So you just pulled immediately off
22 the road. You didn't drive any distance off the road.
23 You just pulled right over?

24 **A** No, I pulled right over to the side.

25 **Q** If you're sick, you've got to throw up. I

1 mean, you need to get out of that car as soon as you
2 can, right?

3 **A** Yes, sir.

4 **Q** All right. So --

5 **A** If y'all would have tested, probably --
6 there was probably some vomit still on the front of
7 the car or on the side of the car.

8 **MR. CLEVELAND:** That's nonresponsive, Your
9 Honor.

10 **THE COURT:** So stricken.

11 **BY MR. CLEVELAND:**

12 **Q** So wouldn't you agree that when Mr. DeJong
13 was questioning you about what happened when you
14 left, you were pretty eager to respond that you had
15 gotten sick just a minute ago, right?

16 **A** Yes, sir.

17 **Q** All right. Were you eager for this jury to
18 know what happened that night and how you weren't in
19 the driver's seat of that car?

20 **A** No, sir. I was eager for them to know that
21 -- yeah, I wasn't in the driver's seat, because I
22 wasn't. That's what this is all about.

23 **Q** All right. So after you got sick, your
24 testimony today is the next thing you remember is
25 waking up in the grass?

1 **A** Yes, sir.

2 **Q** All right. Where in the grass around the
3 car did you wake up?

4 **A** I'm not exactly sure. I wasn't worried
5 about where I woke up at, I was worried about her,
6 Alanah.

7 **Q** I know that you were worried about her, but
8 do you remember the first thing you saw when you came
9 to? Were you beside the tree, beside the --

10 **A** Yeah, I remember the first thing I seen was
11 the car standing up on its side and Alanah, I'm
12 saying, laying faced down in the grass.

13 **Q** All right. So you were on the front of the
14 car or on the back of the car?

15 **A** I remember looking up there -- if I stood
16 up and I looked, the car was sitting here against the
17 building.

18 **Q** Okay. So you were by the tree?

19 **A** I mean, I don't remember -- I don't even
20 remember the tree being there.

21 **Q** Okay. Did you see Ms. Holcombe's head
22 trapped under the passenger side of the car?

23 **A** To my recollection, the car was not laying
24 on top of her head.

25 **Q** And do you remember -- you said her feet

1 were up in the car.

2 **A** Her knees were bent and her feet was up
3 into the car. Actually, her torso was laying flat
4 down on the ground. Her head -- she was facing the
5 ground. I actually put my hands on her back. The
6 medical examiner said that he put electrodes on her
7 back, he was -- that car had to either fall after I
8 went for help. That car was not laying on top of her.

9 **Q** All right.

10 **A** I know for a fact it wasn't.

11 **Q** So you're saying that she was sticking out
12 of the car so far where her head, her back and her
13 whole torso were coming out of the window of the
14 passenger side of the car?

15 **A** I put my hands on her back.

16 **Q** All right. Did she respond to you?

17 **A** No, sir. She did not. That's what I was --

18 **Q** So if her head is hanging out of the car
19 and her back is hanging out of the car, where are her
20 feet inside the car?

21 **A** Her knees were bent and they were up in the
22 passenger side of the car.

23 **Q** So if she's laying on her back face down --

24 **A** Face down, yes, sir. Not on her back. She
25 was laying face down.

1 Q And obviously, you would agree with me that
2 you can bend your torso this way, but you can't bend
3 your torso very far this way. What part of her was
4 sticking in the car and where were her feet and what
5 direction were they in?

6 A They were bent. Her knees was bent. Her
7 feet was up in the car.

8 Q Okay. So if I understand you correctly, if
9 -- let's say the car was right here -- the only part
10 of her that was inside that car was her feet sticking
11 back up in the window?

12 A Yes, sir.

13 Q Ms. Holcombe's average height, wouldn't you
14 say?

15 A She was a short girl.

16 Q Short girl. But even a short girl, what is
17 that? A little over five feet?

18 A Probably.

19 Q Five feet, her knees are bent, bottom of
20 her leg might be a foot, two foot or something like
21 that?

22 A Something like that, yes, sir.

23 Q So the only part of her that was in the car
24 was her feet with bended knees. If that car rolled
25 over, wouldn't you agree that it would hit her

1 somewhere around her back side or her back or maybe
2 even her shoulders?

3 **A** Yes, sir.

4 **Q** All right. I want to just go through --
5 since you say you don't remember anything other than
6 waking up in the grass after-you were throwing up,
7 you don't remember anywhere where y'all were going
8 that night or where she might have been going?

9 **A** Yeah, we were going to Scott's.

10 **Q** Okay. You don't remember telling Trooper
11 Marlow that you were taking her home? Do you know
12 where she lives, by the way?

13 **A** No, sir.

14 **Q** All right. So immediately once you're at
15 the hospital, do you remember Trooper Marlow and
16 Trooper McDowell coming and talking to you?

17 **A** Vaguely.

18 **Q** You don't remember telling Trooper Marlow
19 at that time that Ms. Holcombe landed on top of you
20 in the car?

21 **A** No, sir. I do not.

22 **Q** You don't remember telling him that you had
23 to lift her up to be able to exit the vehicle?

24 **A** No, sir. I do not.

25 **Q** You don't remember telling him that you

1 told her several times to slow down?

2 **A** No, sir. I do not.

3 **Q** You don't remember telling him that you
4 were carrying Ms. Holcombe home?

5 **A** No, sir.

6 **Q** You did say you remember talking to the EMS
7 driver when you were being questioned by Mr. DeJong.
8 Do you remember telling the EMS worker that you were
9 ejected from the vehicle?

10 **A** No, sir. What I remember telling him was to
11 go check on her, to check on her.

12 **Q** Okay.

13 **A** Don't worry about me. That's what I
14 remember.

15 **Q** All right. So let's get back into what you
16 told Mr. DeJong about the incident.

17 **A** Yes, sir.

18 **Q** You testified that you put your hands on
19 Ms. Holcombe's back, she did not respond?

20 **A** Yes, sir.

21 **Q** You went to the first house. Is that the
22 house that essentially the storage shed belongs to
23 with the car crashed into it?

24 **A** Yes, sir.

25 **Q** And you were banging on the door of that

1 house?

2 **A** Yes, sir.

3 **Q** And you say somebody cut the porch light
4 off on you?

5 **A** They actually cut the porch light off on
6 me.

7 **Q** Did you see someone cut the porch light off
8 or could it had been a motion light?

9 **A** I mean, the porch light actually was on and
10 then it cut off when I started banging on the door.

11 **Q** Okay. And then you testified you went to
12 another house in the area and that's when someone
13 came out with a flashlight, correct?

14 **A** I didn't make it to the other house. I
15 started from the yard. I had to come off the porch.
16 My leg was -- I barely was dragging myself because of
17 my leg.

18 **Q** All right.

19 **A** When I come off the porch and started
20 towards the next house, the old man come out with a
21 flashlight. That's basically when I hit the ground
22 and about passed out again.

23 **Q** All right. So when you came to and saw that
24 car wreck, there was nobody else standing around you?

25 **A** No, sir.

1 Q Ms. Holcombe was the only person that was
2 there ---

3 A Yes, sir.

4 Q --- at the time? After you put your hands
5 on her and walked up to the porch of the other house,
6 nobody had showed up on the scene, nobody was around?

7 A The other -- the other -- I'm saying the
8 other house, the dude come out with a flashlight.
9 Yes, sir.

10 Q But he came out of the house after you had
11 knocked on the door and someone cut off the porch
12 light, right?

13 A Yeah. No one else come out.

14 Q You have any idea how long you were
15 conscious or not conscious or how long you were out
16 before you woke up on the ground?

17 A No, sir.

18 Q How long did it take for the EMS and the
19 firefighters to get there?

20 A I do not know.

21 Q But wouldn't you agree that you and
22 Ms. Holcombe were both on scene when the fire
23 department and the EMS showed up, obviously?

24 A Yeah.

25 Q And you were still on the scene when you

1 told the EMS and the fire to go down and check on
2 Ms. Holcombe, not worrying about you.

3 A Yes, sir.

4 Q And at that point in time -- I mean, you
5 were here. You heard Mr. Miller testify that the car
6 was on top of Ms. Holcombe?

7 A Yes, sir.

8 Q At any point while you were there, did you
9 hear the car shift or change positions or roll?

10 A No, sir. I was trying to find help at the
11 time.

12 Q All right. Do you remember any sounds from
13 the wreck, anything else?

14 A No, sir.

15 Q Do you remember going down Praters Creek
16 Road at all?

17 A No, sir.

18 Q Do you remember the brakes on the car
19 locking up or anything of that nature?

20 A No, sir.

21 Q Let's move on to the conversation that the
22 jury heard between you and Sergeant Duncan. That was
23 at five o'clock in the morning, roundabouts, at the
24 hospital after you had gotten moved into a regular
25 room. Do you remember talking to him?

1 **A** Not really. I mean, that's when I was
2 actually on pain meds.

3 **Q** Okay. But --

4 **A** As you can tell from the recording, I was
5 slurring and everything else in that recording.

6 **Q** Yeah, but you also testified that you were
7 intoxicated that night.

8 **A** Yes, sir. I was.

9 **Q** So when you talked to, then Corporal
10 Duncan, now Sergeant Duncan over here, do you
11 remember telling him that you stopped and let her
12 drive?

13 **A** Yes, sir.

14 **Q** Ever say anything about you got sick and
15 threw up?

16 **A** You talking about the recording -- as the
17 recording -- on the recording?

18 **Q** Yeah.

19 **A** I don't remember really that recording.

20 **Q** Okay.

21 **A** I remember taking this statement while I
22 was in the police station. I remember taking that
23 statement.

24 **Q** Okay. Well, let's talk about that when we
25 get there. Do you remember stating that you had

1 stopped and let her drive, that you said she could
2 drive?

3 A No, I do not remember.

4 Q But you agree with me -- we all heard the
5 recording -- you didn't say anything about you got
6 sick and had to pull over?

7 A That's right. I didn't really want everyone
8 to know I was sick. That's not something -- if you
9 got sick, would you want everybody to know that you
10 got sick and puked?

11 Q Well, wouldn't you agree with me that since
12 we have a dead young lady in a wrecked car, that
13 being sick is not exactly something that I would be
14 concerned with?

15 A Yes, sir.

16 Q There are bigger fish to fry?

17 A Yes, sir.

18 Q And wouldn't you agree that the most
19 important thing in any investigation is to tell the
20 truth?

21 A Yes, sir.

22 Q Didn't you just take an oath to tell the
23 truth?

24 A Yes, sir.

25 Q So is it your testimony that, despite

1 everything that was going on, that you were still
2 embarrassed about throwing up when you were talking
3 to Sergeant Duncan at the hospital?

4 **A** You see now that I admit to this when I
5 swore on the Bible, cause I don't lie to that.

6 **Q** All right. You remember telling him that
7 you were driving at least 70 or 80 miles an hour?

8 **A** No, sir.

9 **Q** Up until the wreck scene, or she was
10 driving. Remember telling him that you don't remember
11 how you got out of the car, but also do you remember
12 telling him that she -- telling him that she was on
13 your right, but then she was on top of you in the
14 car, essentially?

15 **A** No, sir.

16 **Q** You remember telling him that you pulled on
17 her and pulled on her and pulled her by the shoulders
18 and you got her to move a little bit?

19 **A** Yes, sir.

20 **Q** You remember him telling you after you had
21 been interviewed by him that she was partially
22 ejected from the passenger side of the car and that
23 her head had the weight of the car was laying on it
24 when they arrived -- when the EMS arrived on the
25 scene?

1 **A** No, sir.

2 **Q** Okay. But at some point, you were told
3 that her head was trapped under the car because you
4 told Gary Duncan at the jailhouse that yeah, they
5 told me that; yeah, they told me that. Do you
6 remember telling him that?

7 **A** No, I do not. In the recording, I don't
8 remember saying that, yeah, they told me that.

9 **Q** All right. So -- but you remember when
10 Sergeant Duncan testified he said that after the
11 recorded portion at the hospital, he did inform you
12 that she had been pinned under the car, her head had
13 been pinned?

14 **A** No, I do not remember that. At the
15 hospital, I do not remember that.

16 **Q** All right. You say you do remember the
17 conversation at the jail, though?

18 **A** Yes, sir.

19 **Q** Were you sober at the time?

20 **A** Yes, sir.

21 **Q** Had any pain medication or any intoxicating
22 substance that would cause you not to understand what
23 you were talking about with Jared Duncan?

24 **A** No, sir.

25 **Q** All right. Remember him threatening you or

1 anything like that for you to speak or did you speak
2 freely and voluntarily with him?

3 **A** No, I remember him telling me if I would
4 give DNA, that when they got the DNA off the airbags,
5 that they would actually drop the charges.

6 **Q** Okay. But that didn't come up anywhere
7 during this trial -- anywhere during this statement,
8 you would agree? During the recording.

9 **A** I mean, obviously not. He must have turned
10 the recording off.

11 **Q** During that interview, you told him -- you
12 remember telling him you switched drivers and then
13 the next thing you remember was waking up in the
14 grass?

15 **A** Yes, sir.

16 **Q** You told him, though, that you switched
17 drivers at the end of the road at the stop sign.

18 **A** Might have.

19 **Q** You might have or you did?

20 **A** I'm talking about I might have told him
21 that. Like I said, it was vaguely.

22 **Q** We've got the recording in evidence. I can
23 let you listen to if you'd like.

24 **A** I mean, if you want. Like I said, I would
25 have been drinking that night.

1 Q But this is the day of the -- we're talking
2 about the day at the jail.

3 A Yes, sir.

4 Q So you're telling me that your -- even a
5 week later, February 5th -- February 6th, I think --
6 been at the jail for a week. You'd sobered up. Your
7 memory of the night was different than it was today?

8 A No.

9 Q All right. So I want to be clear about what
10 I'm saying. I'm sorry. There's a lot of information
11 in this case. It's a lot to process.

12 A Yes, sir.

13 Q But what I'm saying is you are testifying
14 that even though you were sober on the day you told
15 him, the fact that you were drinking on the night of
16 the wreck caused you to tell him a different version
17 of the story that day than you did today in court?

18 A No, sir.

19 Q What -- how can you explain that?

20 A I remember switching drivers.

21 Q Okay.

22 A I remember getting in the car and then
23 somewhere between right there and between that
24 church, we switched drivers. I remember that part.

25 Q Okay. Well, you just testified earlier that

1 you remember exactly where. Going down to the detail
2 that you felt the bump of the payment where the car
3 pulled off on the right side of the road after the
4 church, after the second stop sign, y'all took a
5 right and then you got out of the car.

6 **A** I remember at the church.

7 **Q** Okay.

8 **A** Somewhere between there and his house, we
9 switched drivers. It has to be at the church. That's
10 where they seen us pull in at.

11 **Q** But again, how can you explain the fact
12 that you told Jared Duncan, a week after this wreck
13 when you were sober, that you switched at the stop
14 sign down the road from James' house?

15 **A** I do not know.

16 **Q** Do you remember telling Jared Duncan that
17 you apologize to the parents of Alanah Holcombe or
18 you wanted to?

19 **A** For the events that happened that night?
20 Yes, sir.

21 **Q** Now, you also told him that you don't
22 remember how fast y'all were going?

23 **A** I don't remember nothing after switching
24 drivers, no, sir.

25 **Q** All right. That's not what you told him.

1 You told him that you were going fast and you kept
2 telling her to slow down, you kept telling her to
3 slow down, but you don't remember how fast?

4 A No, I did not tell him that.

5 Q Do you remember telling Trooper Marlow and
6 Al Duncan at the hospital that you kept telling her
7 to slow down?

8 A No, I do not remember those statements --
9 taking those statements. No, sir.

10 Q Mr. DeJong brought up the fact that you had
11 been convicted -- I'm sorry if I'm digressing, but
12 you had been convicted of grand larceny. Is that
13 correct?

14 A Yes, sir.

15 Q Would you agree with me that that actually
16 occurred on or about July of 2013?

17 A That's when I was convicted, yes.

18 Q The incident occurred before then, but
19 that's when you were convicted.

20 A Yes, sir.

21 Q Did you plead guilty to that or were you
22 convicted at trial?

23 A Yes, sir. I plead guilty.

24 Q All right. And isn't it true that that
25 event involved you scraping some trailers that didn't

1 belong to you?

2 **A** Yes, sir.

3 **Q** All right.. So you would agree with me that
4 you have a criminal record for doing dishonest things
5 to get something that you want?

6 **A** No, sir.

7 **MR. DEJONG:** Your Honor, I'm going to -- I
8 realize that this is cross-examination, but I
9 keep thinking talk about the conviction itself,
10 but the underlying allegations and what they
11 consider to be facts I don't think are relevant
12 to this case. He can talk about the conviction
13 all he wants to, but beyond that, getting into
14 the allegations, I object to that.

15 **THE COURT:** I think you've established the
16 conviction.

17 **MR. CLEVELAND:** Yes, ma'am. Thank you. Beg
18 the Court's indulgence for just a moment.

19 **THE COURT:** Certainly.

20 **BY MR. CLEVELAND:**

21 **Q** Again, I apologize for jumping around.
22 There's a lot of information in this case,
23 Mr. Hester. In that jailhouse interview that you
24 state that you remember, do you remember telling
25 Jared Duncan that you were actually pretty well sober

1 the night of the accident?

2 A No, sir.

3 Q You remember the interview though, don't
4 you?

5 A Which one?

6 Q The interview at the jailhouse.

7 A Yes, sir.

8 Q And the one we played in court yesterday.

9 A What I can remember.

10 Q But you would agree -- I mean, you wouldn't
11 disagree with me that we've got the tape?

12 A Yeah, you've heard the tape.

13 Q And you told them you were pretty well
14 sober the night of the wreck?

15 A I mean, sober enough to where -- I guess
16 pain meds and drinking and all that. I guess I was
17 sober. They said I was. I don't really know.

18 Q You testified earlier that you can't hold
19 your liquor. After those three shots, that caused you
20 to throw up.

21 A Yes, sir.

22 Q Would you agree with me that that's not
23 very sober at all?

24 A Yes, sir.

25 Q All right. How well did you know Ms. Alanah

1 Holcombe?

2 **A** Not very well.

3 **Q** How many times had you hung out with her
4 prior to this incident?

5 **A** I would say two or three maybe at the most.

6 **Q** Did you like her?

7 **A** She was a very sweet girl.

8 **Q** Did you have any interest in her other than
9 being friends with her?

10 **A** No, sir.

11 **Q** Was there -- isn't it true that there was
12 room for the four of y'all in Tiffany Forshee's
13 Civic?

14 **A** I would say there was. But Tiffany Forshee
15 has the car seats and stuff like that too.

16 **Q** All right.

17 **A** Is it true that James Moore tried to get
18 y'all, all four of y'all to ride together?

19 **A** Not as I know of.

20 **Q** But you agree with me that after you pulled
21 over, James and Tiffany drove on by. Did you see
22 that?

23 **A** I did not see their car going by.

24 **Q** Did they stop and help you or see why you
25 had to pull over?

1 **A** I do -- no, they did not.

2 **Q** Would you agree with me that they weren't
3 following you or you weren't following them at any
4 point in the drive after y'all pulled over?

5 **A** I do not know.

6 **Q** Would you agree with me that once you woke
7 up from the collision that there was nobody else
8 other than Ms. Alanah Holcombe around the wreck site?

9 **A** Yes, I agree with you.

10 **Q** Wouldn't you agree with me that you didn't
11 see anybody or talk to anybody until the old man --
12 neighbor came out with the flashlight?

13 **A** Yes, sir.

14 **Q** You were all alone with Ms. Holcombe?

15 **A** Yes, sir.

16 **Q** From the moment you say y'all stopped and
17 changed drivers until the old man showed up and the
18 first responder showed upon the scene?

19 **A** Yes, sir.

20 **Q** Thank you. No further questions.

21 **THE COURT:** Any follow-up?

22 **REDIRECT EXAMINATION**

23 **BY MR. DEJONG:**

24 **Q** There was one stop sign involved, right,
25 after you left James Moore's house?

1 **A** Yeah. There would be one stop sign, yes,
2 sir.

3 **Q** That stop sign to the church, how far is
4 it?

5 **A** It's approximately from here -- from here
6 to the store right down there probably at the most.

7 **Q** All right. Thank you, sir. Nothing further.

8 **THE COURT:** Anything else for this
9 witness?

10 **MR. CLEVELAND:** Nothing, Your Honor.

11 **THE COURT:** Sir, you can ---

12 **MR. DEJONG:** Step --

13 **THE COURT:** --- step down.

14 **MR. DEJONG:** -- step down, Mr. Hester.

15 **THE COURT:** Mr. DeJong, anything else from
16 the defense?

17 **MR. DEJONG:** The defense rests, Your
18 Honor.

19 **THE COURT:** All right. Very well. Ladies
20 and Gentlemen, we've now come to a point where I
21 need to take up a couple of legal matters with
22 the attorneys. If you would, step to your jury
23 deliberation room. We're not finished yet.
24 Please don't discuss the case with one another
25 please. All right.

1 **(WHEREUPON, the jury exits at approximately**
2 11:15 a.m.)

3 **THE COURT:** All right. Anything we need to
4 take up?

5 **MR. DEJONG:** Trying to think, Your Honor.
6 Bear with me one second, if you would please.

7 **THE COURT:** That's okay. Well, I can ask
8 the State an easier question.

9 **MR. DEJONG:** I think I've got -- I'm
10 sorry.

11 **THE COURT:** Okay.

12 **MR. DEJONG:** At this point in time, Your
13 Honor, I would renew my motion for a mistrial
14 without further argument.

15 **THE COURT:** All right. Your motion is
16 respectfully denied based on my reasons set forth
17 earlier.

18 **MR. DEJONG:** Thank you, Your Honor. I
19 would renew my motion for a directed verdict as
20 previously stated, Your Honor.

21 **THE COURT:** All right. And I'll deny your
22 motion as well.

23 **MR. DEJONG:** Thank you, Your Honor. My
24 final motion is that I would move that the State
25 fully open on the law and the facts of this

1 case.

2 **THE COURT:** All right. All right. Okay.
3 And I'll turn to the State and say do y'all have
4 any reply?

5 **MR. CLEVELAND:** The State would like to
6 call one, maybe two, very brief reply witnesses.
7 I don't intend on introducing any videos. It
8 would be very brief reply.

9 **MR. DEJONG:** Maybe I jumped the gun, Your
10 Honor.

11 **THE COURT:** Well, I thought about it when
12 we were talking. I thought there might be some
13 reply. Okay. Let's take a 10-minute break. We'll
14 come back and do those reply witnesses. We'll
15 take a moment -- are y'all ready to move into
16 closing arguments? The look on your face says
17 no.

18 **MR. BUCKNER:** Judge, we probably would just
19 need a moment to just kind of ---

20 **THE COURT:** Sure. Okay.

21 **MR. BUCKNER:** --- organize some things.

22 **THE COURT:** Let's take a 10-minute break.
23 We'll bring the jury back in. Y'all kind of
24 organize things while we take a break. We'll
25 give you a moment to renew everything you need

1 to renew.

2 MR. DEJONG: Yes, ma'am.

3 THE COURT: And then we'll move on to
4 closing arguments then.

5 (WHEREUPON, the Court goes off the record at
6 approximately 11:17 a.m.)

7 (WHEREUPON, the Court goes on the record at
8 approximately 11:36 a.m.)

9 THE COURT: All right. Please be seated.
10 Y'all ready to bring the jury back in?

11 MR. CLEVELAND: The State's ready, Your
12 Honor.

13 THE COURT: Okay.

14 (WHEREUPON, the jury enters at approximately
15 11:36 a.m.)

16 THE COURT: All right. Ladies and
17 Gentlemen, it's my understanding that the State
18 has some brief reply testimony. Then we'll get
19 into closing arguments and my charge on the law.
20 Your Clerk of Court, Pat Welborn, has ordered
21 you some lunch. So hopefully it's going to work
22 out, our timing, that you'll be able to -- about
23 the time the case goes to you, somewhere
24 thereabouts, hopefully, your lunch will be here.
25 It's not going to be a precise science, but

1 we're going to do our best to make it work out
2 for you. All right.

3 Yes, sir.

4 **MR. CLEVELAND:** Thank you, Your Honor. The
5 State would recall Neal Nimmons.

6 **THE COURT:** And sir, you've been
7 previously placed under oath in this trial.
8 Remember you are under oath.

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** Thank you.

11 **NEAL NIMMONS**

12 having previously been sworn, testified as
13 follows:

14 **DIRECT EXAMINATION**

15 **BY MR. CLEVELAND:**

16 **Q** Trooper Nimmons, did you have a
17 conversation on January 30th with one James Michael
18 Moore?

19 **A** Yes, sir.

20 **Q** And where was that conversation?

21 **A** At the scene.

22 **Q** All right. And when you say at the scene,
23 was that at Praters Creek and Allgood Bridge Road?

24 **A** Correct, at the collision scene.

25 **Q** Was it inside your patrol car, outside?

1 Where was it?

2 A Inside.

3 Q Did he tell you the same story that he told
4 this jury today?

5 A No, sir. He didn't.

6 Q Could you tell the jury what he told you he
7 had been doing that day and the events of that night?

8 A Yes, sir. Mr. Moore stated to me that he
9 had been working that day. He came home and started
10 drinking and everything. And while he was doing that,
11 he was -- he talked to Mr. Hester there. They were
12 supposed to meet up.

13 Q You said he talked to Mr. Hester there. Do
14 you mean there seated at the table or there --

15 A On the telephone.

16 Q Okay.

17 A By telephone. All this happened on the
18 telephone. When I talked to him at the collision
19 scene, he told me that he had not seen -- he had
20 talked to them and they were supposed to meet up, but
21 it never worked out.

22 Q Okay.

23 A Cause they were going to hang and drink
24 together. He hadn't seen them all day.

25 Q Who did he say drove him that night?

1 **A** His girlfriend.

2 **Q** So to be clear, did he ever tell you
3 anything about being at his house with Mr. Hester?

4 **A** No, sir. According to him, he had not seen
5 him all day.

6 **Q** Okay.

7 **A** Had intentions on getting together that
8 night, but they never did.

9 **Q** So on the day of the accident, he told you
10 that he had never seen Adam Hester at all?

11 **A** Correct.

12 **Q** Did he say -- that's all the questions I
13 have. Please answer anything Mr. DeJong has.

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

15 **MR. DEJONG:** Thank you, Your Honor. No
16 questions.

17 **THE COURT:** All right. Sir, you can step
18 down.

19 Anything else from the State?

20 **MR. CLEVELAND:** The State would briefly
21 recall Trooper Farris Marlow.

22 **THE CLERK:** He's still under oath?

23 **THE COURT:** Yes, sir. I'm sorry.

24 I'll just remind you you are still under
25 oath.

1 **THE WITNESS:** Yes, Your Honor.

2 **FARRIS MARLOW**

3 having previously been sworn, testified as
4 follows:

5 **DIRECT EXAMINATION**

6 **BY MR. CLEVELAND:**

7 **Q** Trooper Marlow, did you conduct an
8 interview on Mr. James Moore?

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

10 **Q** And when and where was that interview
11 conducted?

12 **A** The interview was conducted at [REDACTED] Woodland
13 Way in Liberty, South Carolina -- or correction --
14 this interview was -- the interview with Mr. Moore
15 was done at Ms. Forshee's house in Easley.

16 **Q** All right. On what date?

17 **A** It was done on January the 31st, 2015.

18 **Q** All right. Can you tell the jury what Mr.
19 Moore told you on that evening about -- just -- and
20 limited to the portions of leaving his house and what
21 he observed the defendant doing.

22 **A** He told me that -- Mr. Moore stated that he
23 and Ms. Forshee and Mr. Hester and Ms. Holcombe all
24 decided to leave the house and go to Scott's house,
25 which is a friend. He stated that Mr. Hester and Ms.

1 Holcombe got into one vehicle. Mr. Hester get behind
2 the driver -- getting into the driver's side of the
3 vehicle and that he and -- Mr. Moore and Ms. Forshee
4 got in the vehicle behind Mr. Hester. Mr. Hecker --
5 Mr. Hester and Ms. Holcombe proceeded out of the
6 driveway and Mr. Moore and Ms. Forshee was right
7 behind him.

8 Q All right. What did he say he saw them do?
9 Did he tell you what he observed them do?

10 A He stated that they took a right. They
11 actually turned onto Rices Creek -- Rice Creek Road,
12 and that he seen Mr. Hester and Ms. Holcombe take a
13 right into a neighborhood just past the white church.

14 Q All right. Did he reduce that in write --
15 to writing?

16 A He did.

17 Q Would you just please publish or just read
18 for the jury what he wrote down regarding that?

19 A You want me to read the whole thing?

20 Q Just the first -- pertinent portion.

21 A Okay. After taking a left out of --

22 Q Oh, start at the beginning. I'm sorry.

23 A Okay. I, James Moore, was at my house when
24 we all decided to go hang out with a friend. We left
25 out behind Adam in a silver Monte Carlo. After taking

1 a left turn out of Woodland Way, turned left again at
2 the four-way. At the church on Rice Creek, Adam and
3 Alanah then took a right into a neighborhood after
4 the little church. We then kept going onto Scott's
5 house in Pickens.

6 Q All right. Thank you. No further questions.

7 THE COURT: Any questions for this
8 witness?

9 MR. DEJONG: No questions, Your Honor.

10 THE COURT: Sir, you can step down.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: All right. Are we ready to
13 move on? I know we need to take care of --

14 MR. DEJONG: May we approach, Your Honor?

15 THE COURT: Yes.

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

18 THE COURT: All right. Ladies and
19 Gentlemen, we are now ready to turn to closing
20 arguments and my final charge to you on the law.
21 So with that, we'll begin with the State.

22 MR. BUCKNER: May it please the Court,
23 Your Honor?

24 THE COURT: Yes, sir, Mr. Buckner.

25 MR. BUCKNER: Mr. DeJong.

1 Ladies and Gentlemen of the jury, my name
2 is Graham Buckner. I don't know if you remember
3 it or not. It's been since Monday afternoon and
4 I realize that it's been quite some time, but I
5 am an Assistant Solicitor here in Pickens.
6 Baker Cleveland and I both work in that office
7 and we are prosecuting this case together.

8 Now, I want to thank you for your service
9 this week. This is a very complicated case with
10 a lot of evidence. I hope you understand that
11 every case is -- every criminal case is
12 different. Some are short. Some are long. Some
13 have a lot of evidence. Some have a little bit
14 of evidence. This case, in particular, had --
15 obviously, had a lot of evidence. You can tell
16 by the many exhibits, photos and everything else
17 that we have put in front of you here during the
18 course of the trial. I just want to thank you
19 for your patience and bearing with us. I know I
20 speak for the victim's family and really
21 everyone here in the courtroom when I thank you
22 for your service this week and taking time away
23 from your job, your family, and your children,
24 if you have any. So I want to thank you for
25 that.

1 Now, let's get down to what you consider
2 here at trial and what you're going to do when
3 you start deliberating. Mr. DeJong will talk
4 about this when he gets up. The judge will
5 explain this in full to you when she gives you
6 your instruction or your charge here in a little
7 while. So if anything I say differs from what
8 the judge tells you, obviously, listen to the
9 judge. I don't have a robe on. I'm just a
10 lawyer. I'm trying to explain it to you, though,
11 in advance. She is going to tell you that the
12 burden of the proof -- the burden of proof in
13 this case lies with the State. As a prosecutor,
14 I gladly accept that burden. Mr. Cleveland
15 gladly accepts that burden. It is our job to
16 prove Timothy Adam Hester committed this crime
17 beyond a reasonable doubt.

18 Now, let's talk about what reasonable doubt
19 means. Reasonable doubt is proof that leaves
20 you, the jury, firmly convinced of the
21 defendant's guilt. He was driving that night
22 under the influence and caused this wreck, which
23 lead to Alanah Holcombe's demise. Now, to go
24 into that a little deeper, firmly convinced
25 means there's enough proof to not cause you to

1 hesitate to act. This is not an impossible
2 burden to overcome. Like I said before, as a
3 prosecutor, I gladly take on that burden. Every
4 -- this will put things in perspective, every
5 single criminal defendant that has been
6 convicted of a crime at trial, this burden was
7 in place and a jury of 12 individuals, just like
8 yourselves, came together, deliberated, talked
9 about the evidence and found them guilty beyond
10 a reasonable doubt.

11 Now, throughout the course of this trial,
12 I've heard a lot of evidence from the State. I'm
13 going to get into that, so please bear with me.
14 It may take a while. But Mr. DeJong has brought
15 up a few things during cross-examination of the
16 State's witnesses. What I'd like to call those
17 are red herrings. What they are are
18 distractions. When you have as much evidence as
19 the State has in this case, you have to use
20 distractions. Let's go through a few. I'm just
21 going to mention a few.

22 He brought up the fact that the vials or
23 the tubes that the blood was collected in may
24 have been expired. But then you heard testimony
25 from a later witness, from SLED that that had no

1 impact on any kind of contamination of that
2 blood evidence. He brought up the fact that the
3 tires, during cross-examination of Aaron Duncan,
4 that the tires -- one tire had a little bit of
5 different psi. Obviously, one tire was
6 completely flat because Mr. Hester nailed the
7 tree at the incident location. But the back left
8 tire had a little bit less psi, but then you
9 heard Aaron Duncan explain that that would have
10 no impact on this wreck whatsoever, in his
11 expert opinion.

12 You also heard testimony -- or you also
13 heard on cross-examination various other things.
14 I just want to point out and highlight to you
15 that those are meant to distract you from the
16 State's evidence, the hard evidence that's been
17 put in front of you. It's so much in this case
18 that we will or we have proven that Timothy
19 Hester committed this crime beyond a reasonable
20 doubt.

21 Now, there are also different types of
22 evidence that have been put in front of you. The
23 judge will also instruct you on this. But
24 there's what's called direct evidence and
25 there's what's called circumstantial evidence.

1 Now, direct evidence, just to use an example or
2 illustration, say it's nighttime and you're at
3 your house and you walk outside and you see that
4 it's raining, that is direct evidence that it
5 was raining. You saw it with your own eyes. You
6 walked outside. You felt the water on your hand,
7 your face or your head.

8 But circumstantial evidence would be this,
9 say you're at your house, you went to bed and
10 you woke up and you walked outside and there was
11 water in the grass or on the ground. One would
12 conclude from that that it rained the night
13 before. That is circumstantial evidence. You are
14 not to give -- you are to consider both when
15 examining the evidence in this case. You can
16 give it whatever weight you want.

17 In this case, there is a ton, an
18 overwhelming amount of circumstantial evidence
19 that Mr. Hester was driving the car that night.
20 An overwhelming amount. You make the decision
21 for yourselves with that. But there is no direct
22 evidence outside of Mr. Hester, because Alanah
23 Holcombe is not with us anymore. She can't
24 directly testify as to what happened. We have to
25 use this enormous amount of circumstantial

1 evidence that we have from the accident
2 investigation, from the testimony of lay
3 witnesses that saw him driving when he left
4 James Moore's house that night.

5 Another thing for you to consider as a jury
6 that's very important is the credibility of
7 witnesses. That's for you to judge, yourself.
8 Now, there's been a lot of witnesses that have
9 testified in this case, mainly for the State.
10 Every one of the witnesses that testified from
11 the State, there was no mention of any criminal
12 record on any of those witnesses. Most of those
13 witnesses investigated this crime in their role
14 of law enforcement -- a member of the law
15 enforcement agency. They have no reason to lie.
16 They are just trying to figure out what
17 happened. There's no motive there. They just
18 want to know what happened that night.

19 Tiffany Forshee, the only State's witness
20 that was not a member of a law enforcement
21 agency, you heard testimony that she has been a
22 friend of the defendant, Timothy Adam Hester,
23 for a very long time. Known him well. In fact,
24 they were step-brother and sister. She got up on
25 the stand and said I saw him driving that night.

1 If anything, she would have a motive not to tell
2 the truth because of her relationship with
3 Mr. Hester, but she did. She told the truth,
4 because she took an oath when she went up there.

5 Now, it's a different story when we talk
6 about the credibility of the defense witnesses.
7 You heard from James Moore. He testified this
8 morning. He has a possession of meth conviction
9 on his record. He admits that he was under the
10 influence when he gave statements to law
11 enforcement about this accident. He admits that
12 he was very good friends with Adam Hester. In
13 fact, he lived with him for a period of time.
14 Him and Tiffany Mauldin.

15 He had every reason to lie on the
16 defendant's behalf, and he did. His story
17 changed so many times it's hard to even -- I'm
18 sure it's very difficult to make heads or tails
19 of what his story even was. I had a very
20 difficult time even following him. He
21 contradicted himself over and over and over
22 again.

23 Then you have Tiffany Mauldin. She also has
24 a very clear motive not to tell the truth in
25 this case. She's with the defendant. They are

1 common-law married, as they described. They
2 lived together. They have three children.
3 Tiffany is the dependant on Mr. Hester to help
4 raise those children. They are in love. They are
5 together. They have been for 13 years. She's got
6 every reason to get up here and help him if she
7 can.

8 Now, she couldn't help him very much cause
9 she wasn't there that night. She wasn't with him
10 ahead of time. She wasn't with him in the car.
11 She -- the only thing that she could say during
12 her testimony was that that shoe was James
13 Moore's. That's the only way she could benefit
14 Mr. Hester with her testimony, and once she
15 figured it out, she did it, on his behalf.

16 Then you have the defendant himself,
17 Timothy Adam Hester. He has a conviction on his
18 record for grand larceny. Not too long ago,
19 either. 2013. That goes to his credibility.
20 Also, he's on the hook here. He's on trial. He
21 wants to avoid getting in trouble. He's got
22 every, every bit of motive to try and save
23 himself here.

24 Now, moving on past credibility of
25 witnesses, let's talk about the specific charges

1 which the defendant is on trial for. Bear with
2 me just a moment. I'm going to put them up on
3 the projector one at a time. They are just
4 three.

5 Driving under Suspension, the first charge.
6 This lays it out for you. A person who drives a
7 motor vehicle on a public highway of this state
8 when that person's license to drive is canceled,
9 suspended or revoked. Now, in this case, there
10 was a stipulation. You heard it put into
11 evidence earlier that the defendant's driver's
12 license, he had been notified that he was under
13 suspension. That's not at issue in this case.

14 The only element of this crime that's at
15 issue in this is the defendant driving a motor
16 vehicle on a public highway. Now, he admits in
17 his own testimony that he did drive that night.
18 He got out on the road and drove. So there you
19 go. The defendant is guilty of driving under
20 suspension. Now, he certainly did continue to
21 drive that night, and we're going to get into
22 that, which, ultimately, caused Alanah Holcombe
23 to die. But for purposes of this, the defendant
24 has admitted in his own testimony that he was
25 driving that night and, therefore, is guilty of

1 driving under suspension.

2 Second charge in which the defendant is on
3 trial is Habitual Traffic Offender causing
4 Death. Now, you also were informed earlier when
5 Mr. Cleveland read this into the record that the
6 defendant admits that under the law, he was
7 considered an habitual traffic offender at the
8 time of this incident. So the State, in this
9 case, would not have to show that he received
10 the proper notification from the South Carolina
11 DMV.

12 So what we're going to talk about is simply
13 this, the defendant, who was an habitual
14 offender, drives a motor vehicle on a public
15 highway, like we talked about earlier, his
16 license was under suspension at that time, which
17 he has already admitted to, and while he was
18 driving, he did something, an act or neglected a
19 duty imposed by law, and when he did that, such
20 action proximately caused death to a person
21 other than himself.

22 Now, let me explain that a little further.
23 In this case -- we're going to get into the
24 evidence of him being the driver in a little
25 bit, cause there's so much I'd like to talk

1 about at one time. It's going to be involved in
2 the next charge as well. So we'll go over that
3 together. But the duty or act which he neglected
4 to do or the law which he broke in this case,
5 there's been testimony he was driving, by the
6 MAIT calculations, a conservative calculation,
7 81 miles an hour when he hit the stop sign at
8 the T-intersection. They examined the skid
9 marks, they looked at the scene, from photos,
10 through their investigation, they made that
11 determination.

12 Now, there's a stop sign right there.
13 Mr. Hester blew through that stop sign, went
14 through the T-intersection well, well over the
15 speed limit. So there's two acts right there
16 that caused and lead to this accident, which
17 ultimately led to Alanah Holcombe passing away.
18 Running the stop sign -- not supposed to do that
19 -- and driving well over the speed limit at 81
20 miles an hour. Then, of course, you've heard the
21 testimony that at this point, he went down the
22 driveway and ultimately hit the tree where the
23 accident took place. But we're going to get into
24 that in a little bit.

25 On top of that, you have to go into that

1 action proximately causing the death of Alanah
2 Holcombe. Proximately cause means just the
3 direct cause. So driving at that speed and going
4 through the stop sign and then going down that
5 driveway has to be the direct cause of the
6 victim's death in this case. You've heard
7 testimony that that is definitely what happened.
8 I don't think anybody has said anything remotely
9 close to contradict that. You're driving at that
10 speed.

11 There was testimony from Highway Patrol
12 MAIT team. The car went up in the air and then
13 came down. At that point, the airbags initiated.
14 You heard testimony from Dr. Fulcher that the
15 victim died from blunt force trauma. There was
16 testimony from the MAIT team, expert testimony
17 that that, in fact, is what led to her demise.
18 Once they made contact with that tree, she was
19 hit. She died almost instantaneously. Loss a
20 large amount of blood and was dead on the scene.
21 I'll come back to this in a little bit. Let's --
22 that element of this crime, of habitual traffic
23 offender causing death is also an element of
24 felony DUI resulting in death.

25 Let's go over this very quickly. Felony DUI

1 resulting in death, the final charge for which
2 Mr. Hester is on trial for. A person, while
3 under the influence of alcohol, drives a motor
4 vehicle and when driving does any act by law or
5 neglects any duty imposed by law, that's what we
6 just talked about, running the stop sign at a
7 high rate of speed and then going down a private
8 driveway, and that act is the proximate cause or
9 the direct cause of the victim's death, which is
10 also what we just talked about, what led to
11 Alanah Holcombe's death.

12 Now, the first element, the State must
13 prove that the defendant was under the influence
14 of alcohol. You've heard a lot of testimony
15 about that, first and foremost, there was blood
16 evidence in this case. The defendant's blood was
17 taken at the hospital. The results were put into
18 evidence during the course of this trial. The
19 results of that blood or -- the blood results
20 from the defendant were that he had a .122, I
21 believe, blood alcohol content. Now, under South
22 Carolina state law, you may infer or you are to
23 infer that if the defendant --

24 **MR. DEJONG:** I'm going to object to that,
25 Your Honor. I think that's a mistatement of the

1 law. They may infer.

2 **THE COURT:** I understand. I think it is
3 they may infer.

4 **MR. BUCKNER:** You may infer --
5 Continue, Judge?

6 **THE COURT:** Certainly.

7 **MR. BUCKNER:** -- you may infer if an
8 individual has a blood alcohol content level of
9 .08, that he is under the influence of alcohol,
10 he or she. In this case, as I just said, the
11 defendant had a blood alcohol content level of
12 .122, well over a .08. Therefore, he's under the
13 influence of alcohol. There's also been a lot of
14 testimony about how much the defendant was
15 drinking that night, from even the defense
16 witnesses.

17 They all say he was drinking. He admit --
18 the only time anyone said the defendant was not
19 under the influence of alcohol was the defendant
20 himself, and he did that when he was in the jail
21 and gave a statement which contradicted
22 everything he had previously said. That was a
23 week or so after this collision took place. You
24 heard it from Tiffany Forshee that he's under
25 the influence of alcohol. You heard it from

1 James Moore he's under the influence of alcohol.
2 You heard it from the defendant himself. In
3 fact, he, in his most recent version of what
4 happened, his fifth one, he talks about how he
5 vomited because of how much alcohol he had. I
6 would say that's pretty clear evidence he's
7 under the influence of alcohol.

8 He literally had -- he's claiming that he
9 pulled over and vomited. Now, that didn't
10 actually happen, but that's what he's saying. So
11 he's admitting to being under the influence of
12 alcohol. Firmly convinced beyond a reasonable
13 doubt he's under the influence of alcohol.

14 Now, the last element that we have not
15 talked about, because we've gone through the
16 other ones at this point when we looked at the
17 last -- when we looked at the HTO and theft
18 statute, is that the defendant was driving that
19 night at the time when this accident took place.
20 Now, there has been a lot of evidence put forth
21 that puts the defendant behind the wheel, in
22 fact, it's an overwhelming amount of evidence.

23 Let's start -- I'm going to take this down
24 just for a moment. We'll put it back up. Let's
25 start with this, and you will have these photos

1 to take back in the jury room to examine them.
2 They are already in evidence. Here's the
3 defendant the early morning hours of January
4 31st after this accident took place. The
5 injuries that you can see are on the left side
6 of his face. I'll get back to that in a second.
7 Also, the other photo from that night -- this is
8 on -- this is not but a few hours after this
9 took place. The mark just below his chest. I'm
10 going to leave that up there for a little while.

11 Through the investigation conducted by MAIT
12 and several other members that weren't on the
13 MAIT team, from Highway Patrol, you've heard
14 expert testimony from Aaron Duncan, who is an
15 expert in this field, testified many times in
16 court as an expert. He's gone and taken all
17 these different classes on accident
18 reconstruction. He examined this. He said that
19 is the mark of a steering wheel. Right there.
20 Didn't see that on the victim in this case. No
21 one saw that. No one noticed that. Just on the
22 defendant. There's no steering wheel on the
23 passenger side of a Monte Carlo. We're not near
24 a -- where you're driving on the other side of
25 the road. He was clearly behind the wheel in

1 this case and that shows it.

2 Now, you also heard Aaron Duncan testify
3 about the injury -- significance of injuries
4 being on his left side. He went into a detailed
5 explanation using physics about how when the car
6 left the road or left -- got in the air after
7 getting off the main road and then coming down
8 on the driveway on that downhill slope, that the
9 defendant would have risen in the air within the
10 car. Now, they also, through using their
11 technology and their data collection, discovered
12 that neither one of the occupants in this
13 vehicle were wearing a seatbelt. Therefore, Mr.
14 Hester went up in the air and then came down on
15 that steering wheel on the driver's side. Once
16 again, nothing on the passenger's side that
17 would have shown that.

18 He also testified that the injuries being
19 on his left side would have come from being in
20 the driver's seat because there's nothing on his
21 right side that he could have banged his head on
22 at that point in time. When they made contact
23 with that tree, there -- this isn't a bench
24 seat. These are bucket seats. He's on the
25 driver's side. His head is going to make contact

1 with the driver's side window. Thus, the reason
2 for these injuries being on the left side.

3 Now, you also heard a lot of testimony from
4 Aaron Duncan with the South Carolina Highway
5 Patrol about the victim's injuries. Now, the
6 victim's injuries were all on her right side,
7 and she's dead. The tree that the car made
8 contact with was on the right side, as evidenced
9 by the front right tire being completely blown
10 out. Now, the blunt force trauma occurred on the
11 victim's right side, not her left side, which is
12 further indication that she was in fact in the
13 passenger's seat.

14 Bear with me. There's just so many photos
15 here, it's going to take me a while to pull up
16 some. Here's another photo that clearly shows
17 and demonstrated what Aaron Duncan was talking
18 about with the steering wheel. It's bent back.
19 His explanation of how the defendant went in the
20 air and came down, that would bend back the top
21 of that steering wheel. No injury like that was
22 seen on the victim, only on the defendant.

23 Here's another photo. Notice the difference
24 between the driver's side and the passenger side
25 on that car. One looks a heck of a lot worse

1 than the other one. I mean, a heck of a lot
2 worse. One person lived through this collision,
3 another one didn't. The defendant, sitting right
4 here in the courtroom today, he lived through
5 it. That driver's side looks pretty intact, in
6 comparison. The victim is no longer here.
7 There's a lot of damage on that passenger side.
8 Initial contact with that tree was on the
9 passenger's side. Just a further illustration of
10 just how, in fact, that driver's side looks.

11 Now, you heard the testimony from John
12 Miller, EMS, that when he spoke with the
13 defendant, as well as testimony from Trooper
14 Marlow, that the defendant claimed he was lying
15 beside the victim in this case, Alanah Holcombe,
16 and that he was, in fact, on the passenger side.
17 Yet, everyone who was on the scene testified
18 that her head was trapped in between the top --
19 the car -- the passenger side window and the
20 ground to where they had to literally lift the
21 car off the ground to get her out.

22 The defendant's claiming, at least
23 initially before he concocted a different story,
24 that he lifted her up and got out of the car.
25 It's not physically possible. Not only is the

1 car extremely heavy, but the victim in this case
2 is 270 pounds. You can tell where the boards are
3 underneath there. That's where they had to slide
4 her out from when they lifted the car up. Also,
5 photo taken showing long hair in the passenger-
6 side window. Aaron Duncan testified female hair
7 is what they concluded from their investigation.
8 Long female hair only found in the passenger
9 side window.

10 Mr. Hester does not have long hair, did not
11 have long hair at the time. Was not his. Now,
12 talk about a few more things. This may seem very
13 simple that points that the defendant was
14 driving. The car was not Alanah Holcombe's. It
15 wasn't. Why would she be driving somebody's car?
16 Why? It's his wife's, Tiffany Mauldin's. You
17 think she wanted Alanah Holcombe driving her
18 car?

19 She testified that it was in working order.
20 That's another thing that's just a distraction,
21 a red herring, so to speak, like I was talking
22 about earlier. That car was clearly functional.
23 Tiffany Mauldin was driving her kids around in
24 that car prior to this accident. But it's her
25 car, it's not Ms. Holcombe's. That's why

1 Ms. Holcombe wasn't driving that night.

2 Adam Hester was driving.

3 Bear with me. It's just a lot to go through
4 here. Now, you heard Tiffany Forshee, we talked
5 about earlier, who has a friendship with the
6 defendant in this case and is, at best, a
7 relative, so to speak. She said, I saw Adam
8 driving. I never saw them switch drivers.
9 Combine that with this overwhelming evidence
10 from the investigation. What we -- we talked
11 about also and you saw this in that video that
12 was shown where there was no commentary. I
13 believe John Craig.

14 There was a male shoe stuck underneath the
15 driver's seat in this case. While we heard some
16 conflicting testimony from other witnesses that
17 that may have been James Moore's shoe, I sure
18 didn't see in that video a female shoe on the
19 driver's side. Yet, Ms. Holcombe was supposed to
20 be driving the vehicle at this time. No female
21 shoe in that driver's seat. Just the male shoe.
22 These shoes were never recovered, these white
23 shoes that Mr. Hester reports that he was
24 wearing, no mention of that anywhere.

25 Also, when I was talking about types of

1 evidence earlier, there's a lot of scientific
2 evidence in this case that doesn't -- isn't
3 given by someone who has any ulterior motive or
4 has any reason to not tell the truth. It's just
5 data. It's hard data that was collected by a law
6 enforcement agency that's trying to figure out
7 what happened in this crash. That was all the
8 State's evidence. The only person -- the only
9 evidence in this case that Alanah Holcombe was
10 driving in the car that night is just what the
11 defendant said, the defendant who's on trial.
12 That's it. Everything else points at Timothy
13 Adam Hester driving the car at the time of the
14 accident.

15 Now, I'm going to briefly talk about all
16 the different statements that Mr. Hester has
17 given. You've heard Mr. Cleveland discuss this
18 during cross-examination earlier. Five different
19 stories. Five. Five different versions of what
20 happened that night. It started with him being
21 in the car. He remembered specifically lifting
22 the victim off of him and then exiting the
23 vehicle. He gave that story twice.

24 Then he gets to the hospital and he talks
25 with Aaron Duncan and he realizes through that

1 discussion that the victim's head was trapped
2 between the ground and the passenger-side door.
3 So then the story changed at that point. At that
4 point forward, he starts talking about how he
5 was basically ejected from the car.

6 If he was ejected from the car, wouldn't
7 there be some further injury in this case? If he
8 was on the passenger side of the vehicle and was
9 ejected, they hit a tree. He would have hit that
10 tree. Timothy Hester wouldn't be here today if
11 he was on the passenger side of that car. It was
12 plain and simple. You've seen the photo of the
13 damage. You've heard the expert testimony of how
14 the collision occurred and what happened. One
15 person was in that passenger seat and she's not
16 here.

17 Now, I could go all day talking about the
18 different conflicting portions of testimony he,
19 the defendant, gave through the different
20 officers in this case. I really could. He says
21 he's sober. He says he's not. He says he's
22 drinking. He says he's not. He says he's in the
23 car. He says he gets out. All of a sudden, he
24 doesn't remember anything. He doesn't remember
25 anything.

1 One thing I did not touch on earlier, that
2 blood alcohol level at .122, that was a few
3 hours after this crash took place, after
4 Mr. Hester had received an IV in this case.
5 That's something else to consider.

6 Ladies and Gentlemen, Timothy Hester, that
7 night, was driving that car at a very high rate
8 of speed. He blew through that stop sign. He
9 went down that driveway. He nailed that tree.
10 The car ended up next to that shed. He did that.
11 He was in the driver's seat and I don't know
12 how, but he somehow got out, crawled out of that
13 car, did whatever he did.

14 Then he ran up on the porch of that house
15 that's right there. He knocked. He checked to
16 see if somebody was there. He realized nobody
17 was there. He realized that Alanah Holcombe was
18 dead when he exited that vehicle. At that point
19 in time, knowing that he's an habitual traffic
20 offender and his driver's license is under
21 suspension, that he's under the influence of
22 alcohol, that he's driving the car, that he's
23 responsible, at that point in time, he looked at
24 Alanah Holcombe, knowing she's dead and said,
25 that's the only person that could put me behind

1 the wheel of the car.

2 From that point forward, he maintained that
3 story. And when you hear that his story never
4 changed that he wasn't the driver, he knew it
5 had to. He knew it had to. The only person that
6 could say without a shadow of a doubt is not
7 here today.

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

9 **MR. DEJONG:** Thank you, Your Honor. May it
10 please the Court.

11 Mr. Cleveland.

12 Mr. Buckner.

13 Mr. Foreman and Ladies and Gentlemen of the
14 jury, it has been one, and only one, consistent
15 thing in this trial: I was not driving the car
16 at the time of the crash. That started out with
17 the first person on the scene. Mr. Hester had
18 been involved in a horrible crash. EMS persons
19 said he was confused, he was foggy -- not sure
20 he used the word foggy -- and somewhat
21 combative. Who would make up that story in that
22 short amount of time? Mr. Buckner wants to give
23 him credit for the length of this whole process,
24 what he thought. I would suggest, Ladies and
25 Gentlemen, he didn't think any of that. He was

1 not the driver of that vehicle.

2 Now, y'all have been, for the last two-plus
3 days, very attentive, very alert and very
4 patient. I thank you for that. I'm not going to
5 stand up here and rehash all of the testimony.
6 You've heard it. You've seen the exhibits.
7 You're going to have what you heard and the
8 exhibits back in the courtroom. I do want to
9 touch on a few things, briefly.

10 We have that consistent theme throughout
11 this case. Now the State says they've brought
12 you all this witness -- all this testimony and
13 evidence that Mr. Hester was the driver of that
14 vehicle. Hogwash. They've brought you a ton of
15 evidence in here in that on January the 30th of
16 2015, a horrible car crash occurred. None of it
17 says Timothy Hester was the driver, from the
18 damage to the vehicle to whatever.

19 Now, they rely -- as I see the case,
20 they've brought you all that evidence, they've
21 brought you all that testimony and want you to
22 jump to a lot of conclusions as a juror. And let
23 me say here, Ladies and Gentlemen, we're
24 horribly sorry Ms. Holcombe died in this crash.
25 But the fact that she died and Mr. Hester

1 survived is no proof whatsoever in this case.

2 The Solicitor said that all the damage to
3 Ms. Holcombe was on her right side. I disagree
4 with him vehemently based on Dr. Fulcher's
5 testimony. She had the head injury. That is
6 true. What else did he testify to? He testified
7 that she had, I believe probably in lay
8 terminology, a broken pelvis. Well, Aaron Duncan
9 testified they would raise out of their seats
10 when there was an impact, and then, I guess,
11 settle back down into the seats. I would suggest
12 to you, Ladies and Gentlemen, that does not
13 break one's pelvis. There had to be a lot of
14 jostling, moving around in this vehicle. This
15 vehicle had a center console. As I recall, Aaron
16 Duncan's testimony was that the console had
17 actually been shifted in this vehicle. Again, I
18 mean no disrespect to Ms. Holcombe, but she was
19 a large woman.

20 The point I want to make there right now is
21 all the injuries were not to her right side.
22 That is not what the doctor testified to. That
23 is not what the testimony in this case -- other
24 than Highway Patrol. Parenthetically, Highway
25 Patrol is 100 percent credible. Do they not work

1 for the very same people that are trying to get
2 a conviction in this case? Of course, they do.
3 That makes them credible?

4 Again, I ask you to remember that the
5 injury -- as I understood Dr. Fulcher's
6 testimony, the injury that actually caused Ms.
7 Holcombe's demise was not the head injury, it
8 was the blunt force trauma. Now, the State comes
9 to you and said, oh, the steering wheel was
10 bent. Mr. Hester had these abrasions on his
11 chest that we think is a steering wheel. Think
12 about this, Ladies and Gentlemen. Mr. Hester has
13 no broken ribs. Mr. Hester doesn't have any
14 bruised ribs. Mr. Hester had no treatment for
15 any injuries to his chest. Mr. Hester has no
16 blunt force trauma. Yet, they say he's the one
17 that hit the steering wheel and bent the
18 steering wheel? A 170-pound man, according to
19 the testimony of the State, bent that steering
20 wheel as opposed to a 270-pound woman who died
21 of blunt force trauma?

22 The State, and especially their expert,
23 tries to lump all of this together. There is no
24 way, Ladies and Gentlemen, I'll submit to you,
25 you can't take any part, any at all, and you can

1 break that accident down by millisecond by
2 millisecond by millisecond and know what went on
3 in that car. Nobody can.

4 And you know the expert, he's testified
5 he's an expert in accident reconstruction. Well,
6 when I asked what happened to Mr. Hester,
7 basically in my opinion, he shrugged it off.
8 He's an accident reconstructionist. No bias. The
9 decision was made early on, I submit to you,
10 Ladies and Gentlemen, in this case, Ms. Holcombe
11 is deceased and Mr. Hester survived and we're
12 going to nail Hester for this accident.

13 Think about it. What did they do as far as
14 evidence? They took a ton of videos and took a
15 ton of pictures. I'll be the first to admit
16 that. What evidence do they actually have when
17 they were at the scene? Hair. Hair. We know who
18 the hair belongs to. Blood. We don't need the
19 blood. We know who the blood belonged to. I
20 didn't hear that they were experts in DNA,
21 chemistry or anything else. We don't need it.
22 We're charging Timothy Adam Hester with Felony
23 DUI with Death. And that was from the very
24 outset, from January the 30th of 2015 to today.

25 They took Mr. Hester's blood and urine on

1 January the 30th of 2015. If memory serves me
2 correctly, that blood and urine went to the
3 State Law Enforcement Division, SLED, on
4 February the 3rd or February the 5th of 2015.
5 That blood and urine goes to the same place that
6 airbags go for testing. SLED. Did they take
7 them? No. They didn't take them. They didn't
8 take the airbags to SLED until a year -- if my
9 math is correct -- a year and nine months later.
10 Was that negligence or intent? I don't know.

11 But as I recall, the young lady, Ms. Leisy,
12 I believe was her name, that did the DNA test,
13 and they couldn't get any DNA. As I recall her
14 testimony, it's possible they couldn't get any
15 DNA because some of the chemicals in the airbag
16 may have destroyed the DNA. You let it sit for a
17 year and nine months before you do anything with
18 it? These guys are supposed to be investigating,
19 not jumping to conclusions.

20 Obviously, neither party -- I say
21 obviously. I think that's the testimony in this
22 case -- neither party in this case was wearing a
23 seatbelt.

24 Now, getting back to that picture, and
25 again, I know you heard what Aaron Duncan

1 testified to. I'm going to ask you to take a
2 look at that picture. As you take a look at
3 that, number one, there does not appear to be
4 any bruising. Again, I don't recall exactly when
5 the picture was taken. Shortly after. But as I
6 do recall, whoever went to the hospital at five
7 o'clock -- I guess that was January the 31st --
8 that officer testified he saw basically the same
9 thing. So now, there's been several hours that
10 had lapsed. What he saw was an abrasion, which
11 wasn't showing in that picture. I would submit
12 to you that if Mr. Hester hit that steering
13 wheel with such force as to bend it at 170
14 pounds, he would have had upper body issues. As
15 I already said, even more importantly than that,
16 after the hours passed, would that not turn into
17 bruises rather than still showing as an
18 abrasion?

19 If you look at that picture, it starts on
20 the right side. Then it kind of tapers -- tapers
21 off. The airbags in this car went off. Nobody in
22 the State would say when or where or how Mr.
23 Hester got out of that car. They don't care.
24 Wouldn't it make as much sense if the airbags
25 deployed -- the airbags deploy and he scrapes

1 the airbag starting on the right side and goes
2 through the windshield? He's out. Ms. Holcombe
3 is still in. The console is bent. Excuse me. Not
4 bent, shifted, I think, is the words.

5 I heard a lot from Aaron Duncan about the
6 training he says he's had. I didn't really hear
7 anything about science. The only science I heard
8 is they love to use computers. That doesn't make
9 sense in this case. The problem is who was
10 driving the vehicle. The very thing I shared
11 with you is what they have. That's what this
12 case is about. Not how much damage there was to
13 the car or what side the damage was on. That's
14 not what it's all about.

15 So I'm going to mention this, Aaron Duncan
16 talks about bent steering wheel. There's no
17 damage, as I recall his testimony, to the
18 dashboard on the passenger side. He says the
19 airbag deployed and all of this. Yeah, probably
20 did. But if this car was moving with such
21 velocity that they say it was and Ms. Holcombe
22 was sitting in that passenger seat, I would
23 submit to you that with the size of the lady,
24 there would have been damage to that dashboard.
25 As I recall, there was none.

1 Ladies and Gentlemen, in this case, you
2 have no friends to reward. You have no enemies
3 to punish. Your sole function on this job -- it
4 is a job -- your sole function here is to decide
5 whether or not the State has met its burden of
6 proof beyond a reasonable doubt.

7 Now, Her Honor is going to charge you on
8 the law. You take the law as you hear it from
9 her. The charge, I think, may sound a little bit
10 like what Mr. Buckner said when he was talking
11 to you. He left the other part out. The part he
12 left out was if you think there is a real
13 possibility that Mr. Hester was not the driver
14 of this car, you must, under the law that Her
15 Honor gives you, give Mr. Hester the benefit of
16 that doubt and find him not guilty.

17 I thank you for your time. I thank you for
18 your attentiveness. Thank you for sitting here
19 and listening.

20 **THE COURT:** Mr. Cleveland, anything in
21 reply?

22 **MR. CLEVELAND:** Yes, Your Honor, if it may
23 please the Court.

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

25 **MR. CLEVELAND:** It's that easy, Ladies and

1 Gentlemen, that if you're accused of a crime to
2 just say it wasn't you that did it. Is it that
3 easy to just say, in light of all the evidence,
4 that wasn't me and then you can walk away
5 without any repercussions of what you've done?
6 It's not, Ladies and Gentlemen. It's not that
7 easy. We have law enforcement. We have
8 investigators. We have people that from the very
9 start to the very end were sitting right here to
10 hold people accountable for their actions that
11 they commit. That began on the scene that
12 Trooper Marlow, when he showed up, and it ends
13 with the 12 of you sitting in that box today.

14 Now, the law allows me to come back and
15 talk to y'all a final time to address some of
16 the issues the defense brought up. That's what I
17 want to do. I'm not going to take much time. I'm
18 going to put it in y'all's hands.

19 The defense contends that the consistent
20 theme throughout this trial is that the
21 defendant said that he was not driving that car.
22 To call the defendant's stories consistent is
23 like saying a cookie and a cake and a pie are
24 all the exact same thing because they all have
25 sugar in it. The only thing consistent about the

1 defendant's five stories is he says that he
2 wasn't driving. Every other detail about how he
3 got out of the car to what he's doing to what he
4 can remember changes in every single one of his
5 stories. And that's because he finds out more
6 information as everything -- as the case goes
7 on, the more people he talked to. His first
8 story was he had to lift her off of him because
9 that makes sense in his mind that, oh, I'm
10 seated in the passenger seat. The car was on its
11 side. I saw where she was in the car so she had
12 to fall on top of me. Again, that's not what
13 happened. That's what I'll tell them.

14 Then Aaron Duncan says, you know her head
15 was trapped, was hanging out the passenger
16 window and you know she was trapped under the
17 weight of the car. Oh, man, this is a problem.
18 There's no way that I could fit between the
19 large 270-pound Alanah Holcombe in the tight
20 passenger compartment of a Chevrolet Monte Carlo
21 when her head was actually hanging out of the
22 window.

23 Mr. DeJong says, who in the world could
24 come up with a story so fast, could come up with
25 something like that? Every criminal that's ever

1 come up with a -- criminals. That's who.
2 Criminals consistently don't tell the truth to
3 try to save their own skin. We're talking about
4 the credibility of witnesses in this case. Who,
5 at this case, has more at stake than Timothy
6 Adam Hester? Who else has more incentive to
7 maneuver the facts of this case into his own
8 favor? That's who.

9 As the evidence points out, there is not a
10 single soul, other than Alanah Holcombe that
11 could account for what Timothy Hester was doing
12 from the minute they drove out of the sight of
13 James Moore until the first responders arrived
14 at the scene. No one. No one saw the crash. No
15 one saw how he got out of the car. No one saw
16 how it all came down. That area is where he's
17 trying to come up with a story that benefits him
18 in these proceedings. But, Ladies and Gentlemen,
19 your common sense should tell you that the
20 incredible evidence in this case points strongly
21 to Adam Hester. The defense contends that none
22 of this is evidence that he was driving. I could
23 not disagree with that more.

24 Collision reconstruction experts, Highway
25 Patrol. Oftentimes, there is nobody to say what

1 happened in an accident. Oftentimes, everybody
2 or the sole occupant in a car is killed. So
3 Highway Patrol has used and developed techniques
4 to identify what happened to the best extent
5 they can in an accident based upon the evidence
6 that they have.

7 In this case, they've given you the
8 location of the injuries and the abrasions.
9 They've correlated how bad the car was damaged
10 and where the car was hit with the number of
11 injuries that were attributed to those
12 passengers of that car. They have given you firm
13 evidence and expert opinion of someone who has
14 been doing this for a long time and has
15 investigated hundreds of crashes and thousands
16 of hours of class, who does this for a living. I
17 believe he's said he's already done a dozen or
18 so cases just this year. He sees this all the
19 time and came and gave you his opinion.

20 The defense pointed at the injuries, talked
21 about Ms. Holcombe's injuries and wanted to say
22 that the injuries are to the right side of her
23 head -- that all of her injuries were to her
24 chest, but the injury to the right side of her
25 head is not significant. I could not disagree

1 with that more for the same reason why I noticed
2 that they didn't touch on the injuries on the
3 left of Mr. Hester. That conclusively and in
4 your common sense puts them in the positions of
5 the car which were where they were on that
6 incident, Adam Hester was in the driver's seat
7 of the car.

8 The steering wheel, Ladies and Gentlemen,
9 you can not without speculating, draw any
10 conclusions about what Alanah Holcombe would
11 have done to that steering wheel, what -- if she
12 would have hit it, what would have happened. The
13 degree that it was bent, you know, separating
14 that between a 170-pound man and a 270-pound
15 woman, what would happen. You shouldn't even
16 consider that argument. There is zero evidence
17 that anybody other than Adam Hester touched that
18 steering wheel. There is firm evidence that the
19 steering wheel was hit and the steering wheel
20 was bent by something in the vehicle, an
21 occupant, the driver, but there is no evidence
22 that that degree of bending is more attributable
23 to Alanah Holcombe than it is to Adam Hester.
24 Again, distractions.

25 As far as the evidence goes, the hair, the

1 blood, Aaron Duncan described that succinctly.
2 What is the reason that they were to get the
3 hair and get the blood when they arrived on the
4 scene and Alanah Holcombe's head was laying in
5 the puddle of blood and her hair matched the
6 hair that was on the car was all right there
7 together?

8 We don't need to waste resources and time
9 and state costs testing every single thing under
10 the sun. They didn't question whether they got a
11 sample from the pecan tree to see that it was
12 indeed a pecan tree. They didn't have to go to
13 the manufacturer of Chevrolet and compare parts
14 to see that really was a 2005 Monte Carlo.
15 Ladies and Gentlemen, officers of the law, just
16 like you in your jury box, use common sense to
17 investigate the case or investigate. Second-
18 guessing what is obvious is not part of their
19 job.

20 The defense said that no one could say when
21 the airbags deployed or anything. That's not
22 true. You heard from Aaron Duncan, who
23 downloaded the airbag module that the first
24 impact, the car hitting the ground, deployed the
25 airbags. And then the second impact, which was

1 violent enough to deploy airbags was at the
2 tree. I think that's pretty clear. Just wanted
3 to remind all of y'all of that.

4 The defense made a big deal about the
5 degradation of the DNA on the airbags. Again,
6 that's a distraction. That's a red herring. That
7 is something to try to get you to sway from the
8 issues in this case. Surely, the evidence wasn't
9 tested right away. Aaron Duncan said it was
10 protocol. Don't know what the protocol was as
11 far as that goes.

12 But at this time, what's more significant
13 about the testimony was that Captain Leisy said
14 that the airbag, it is not uncommon in that
15 situation for something like an airbag, where
16 there is no blood on the airbag, to not get
17 touch DNA. They are relying on skin cells
18 flaking off onto that airbag to get DNA. She was
19 able to develop some DNA evidence, but just not
20 enough to attribute it to a person, which she
21 said was not uncommon in this situation.

22 What she did also say is she's not -- I
23 don't remember any discussion about the
24 degradation, that it was that significant of an
25 issue with the airbag. It was what it was and

1 you should take her evidence as it was given to
2 you and as you heard.

3 Mr. DeJong told you what he thought
4 happened in that accident. He said that
5 Mr. Hester was riding in the passenger seat of
6 that car and when it hit the first time, the
7 airbag popped off, created a rainbow shaped
8 scratch on his chest and he flew out of the
9 vehicle and that somehow, Ms. Holcombe caused
10 the steering wheel to bend and cause the console
11 to shift. But at that time, Mr. Hester was
12 essentially popped out. To believe the
13 defendant's version of events, to believe that
14 that's what happened and to believe that he was
15 not the driver, you have got to speculate to a
16 large degree. You've got to ignore the locations
17 of the evidence, of the marks of evidence.

18 To line up with the evidence, this is what
19 would have to happen: Ms. Holcombe would have
20 had to be driving and fly through that
21 intersection. Before the car hit the ground or
22 before the car hit the tree, the two occupants
23 would have to either look around 180 degrees or
24 somehow switch places in the air so that when
25 they both hit and were flown forward, they each

1 received marks on, the victim, the right side of
2 her face and, the defendant, the left side of
3 the face.

4 At some point in the collision, but not
5 when the car hit the tree, Adam Hester would
6 have had to have been ejected from the vehicle.
7 You heard from Aaron Duncan, and it was
8 uncontroverted that the wreck occurred in a
9 complete straight line until at the very end,
10 that car swooped around and hit the building.
11 The only -- what -- the only thing that would
12 cause ejection -- two things that would cause
13 ejection on the passenger side of that vehicle:
14 the car hitting the ground, which would throw
15 the defendant out the front in front of the car,
16 in which he would be run over and killed, more
17 than likely, or the tree that they hit, which
18 was right in front of the passenger side of the
19 car which would have ejected him onto the tree.
20 I submit to you he wouldn't be sitting here with
21 us today.

22 You would also have to think that
23 Ms. Holcombe, who is a 5-foot-4, 5-foot-5, 270-
24 pound woman, at some point in time would have
25 had to hit, damage the steering wheel, yet the

1 steering wheel is uniquely damaged but no damage
2 was transferred to her, that she would have to
3 turn her head in some manner to where the right
4 side of her head got hit, that Mr. Hester would
5 have to get out of the way or that she would
6 have to back up completely -- we're talking
7 about a relatively large female -- to come out
8 from under the steering wheel -- and remember
9 the seats in the car weren't broke. So the seats
10 were still upright.

11 Much like sitting under this table, under
12 the dash of a car. She would have to come out --
13 and the roof line of the car is here. We're
14 going to have to be moving back this way --
15 come out fully, all 5-foot-4 of her and all
16 relatively large size of her, cross over the
17 center console of the vehicle, the shifter, the
18 armrest, get down into the passenger side of the
19 vehicle with her feet there and then as the car
20 comes around hit something or stick her head out
21 the window and the car come and land on her
22 head.

23 Somehow, during that impossible ballet
24 inside that vehicle, Adam Hester has either got
25 to get out of the way to move and go pass

1 through the same stage she did or to be ejected,
2 miraculously, directly through a tree or
3 directly in front of a non-moving car or out a
4 window where we heard testimony that there was
5 no force, there was not enough yaw or anything
6 to cause a great jostle of this vehicle. And,
7 Ladies and Gentlemen, I submit to you that that
8 is not credible.

9 What happened in this case, to the best of
10 our knowledge, is that Adam Hester contacted the
11 -- the airbags popped when the car hit the
12 ground. Either around then or when it hit the
13 tree, Adam Hester contacted that steering wheel.
14 Alanah Holcombe crashed forward into the dash
15 either when it hit the ground or when it hit the
16 tree.

17 And the defense said the passenger-side
18 dash wasn't damaged. That's not what the
19 testimony was. The passenger-side dash was
20 destroyed. What the testimony was that there was
21 no damage to the dash that is attributable
22 directly to occupant contact. It could have been
23 anything. But you've got the pictures. You can't
24 even tell where the passenger side dash is. It
25 is destroyed. But there is nothing as unique as

1 the steering wheel bend or steering wheel break
2 that is imprinted on Mr. Hester's chest to
3 directly connect Ms. Holcombe for contacting
4 that dash. There is no imprint or indication
5 that was passed on from that dash, like the
6 steering wheel was passed on to Mr. Hester. But
7 the passenger-side dash was destroyed and the
8 pictures show. The whole passenger side of the
9 car was destroyed.

10 I'm going to let y'all have this. I want to
11 ask y'all again, is it that easy? Is it that
12 easy in face of the evidence? Is it that easy to
13 just say you didn't do it to get away with it? I
14 would submit to you it's not, because the 12 of
15 you have been sitting here for four days now.
16 You've heard the evidence. You've heard the
17 credible evidence. You're weighing the
18 credibility of each of these witnesses as they
19 testify. You need to say to Mr. Hester, no, sir,
20 it's not that easy. Say to him with a verdict
21 that represents the fact of this case that
22 verdict is guilty on all counts. Thank you.

23 **THE COURT:** All right. Ladies and
24 Gentlemen, we are almost to the end. I am very
25 aware of the fact that I'm standing between you

1 and lunch too. My final charge on the law to you
2 is going to take me about 25 minutes, I expect.
3 So if anybody feels like you need a break or you
4 feel like you want to take your lunch break
5 before I do it, that's up to you. Otherwise --
6 oh, forget that. If anybody needs to take a
7 break before I do that, otherwise, I will
8 continue on. Anybody?

9 (No audible response.)

10 This is not the moment to be shy. Anybody
11 need a break before I get going?

12 (No audible response.)

13 All right. Mr. Foreperson, Ladies and
14 Gentlemen of the jury, you have seen and heard
15 the evidence presented, as well as the arguments
16 of counsel. It now becomes my duty and
17 obligation to instruct you on the law applicable
18 in this case. It will then be your duty and
19 obligation to begin your deliberations, through
20 which process you will decide the facts, apply
21 the law as instructed by the Court, and
22 determine whether the State has met its burden
23 of proof in this case.

24 It is your exclusive duty to determine the
25 facts in this case. You do that based upon your

1 own common sense examination and evaluation of
2 the testimony and other evidence received during
3 the trial of the case. You, 12 jurors alone,
4 will decide what weight, value, and effect that
5 is to be given to any particular testimony or
6 other evidence received. Your ultimate goal is
7 to determine whether the State has met its
8 burden of proof in this case, and in doing so,
9 you will have fulfilled your obligations as
10 jurors.

11 In this state -- excuse me -- in this case,
12 the State of South Carolina, through the Circuit
13 Solicitor, has charged the defendant with the
14 criminal offenses known as Felony DUI Resulting
15 in Death, Habitual Traffic Offender causing
16 Death, and Driving Under Suspension. The
17 allegations charging the defendant with these
18 crimes are set forth in the indictments that
19 have been previously explained to you. The
20 indictments are not evidence in this case and
21 may not be considered by you as evidence against
22 the defendant at all.

23 As to each of the charges set forth in the
24 indictments, the defendant has entered a plea of
25 not guilty. That plea of not guilty has,

1 therefore, placed upon the State the burden of
2 proving the allegations that are set forth in
3 the indictments, the burden of proving each of
4 the essential elements of any crimes charged,
5 and therefore, the burden of proving the guilt
6 of the defendant to the satisfaction of you
7 twelve jurors beyond a reasonable doubt before a
8 verdict of guilty could be returned as to any
9 indictment.

10 The burden is never upon a defendant to
11 prove that he is not guilty or to prove that he
12 is innocent because, in some cases, that might
13 be possible. The burden is always upon the
14 State, because they have made the allegations,
15 to prove the defendant guilty beyond a
16 reasonable doubt.

17 You are further instructed that it is a
18 vital, important, and cardinal rule of law that
19 every defendant in a criminal trial, no matter
20 how serious the offense might be for which he
21 stands charged, shall always be presumed
22 innocent of that charge, and that presumption of
23 innocence shall be with the defendant from the
24 moment of his arrest and throughout the course
25 of the criminal process, and even throughout the

1 course of the actual trial.

2 The presumption of innocence shall be with
3 the defendant even as you go into the jury room
4 to begin your deliberations, and that
5 presumption of innocence shall be with him there
6 and be with him forever, unless you twelve
7 jurors determine that he is no longer entitled
8 to that presumption of innocence. It is only if,
9 unless, and until you are satisfied of the
10 defendant's guilt beyond a reasonable doubt that
11 he would no longer be entitled to the
12 presumption of innocence.

13 I remind you that, during this trial, you
14 and I have certain duties to perform. As the
15 trial judge, it is my responsibility to preside
16 over the trial of this case, and I also have the
17 duty to rule on the admissibility of the
18 evidence offered during this trial. You are to
19 consider only the competent evidence before you.
20 If there was any testimony ordered stricken from
21 the record in this case, you must disregard that
22 testimony. You are to consider only the
23 testimony which has been presented from this
24 witness stand, any exhibits which have been made
25 a part of the record in this case, and any

1 stipulations of counsel.

2 I have the additional duty to charge you
3 the law applicable in this case. As the
4 presiding judge, I am the sole judge of the law
5 of this case, and it is your duty, as jurors, to
6 accept the law and apply the law as I now state
7 it to you. If you already have any ideas as to
8 what the law is or what the ought to be and it
9 does not agree with what I now tell you the law
10 is, you must abandon this idea because you are
11 sworn to accept the law and apply the law
12 exactly as I state it to you.

13 In every case tried in this court before a
14 jury, the jury becomes the sole and exclusive
15 judge of the facts in this case. A trial judge
16 can not intimate, state, comment on or make any
17 statement to a trial jury about the facts in a
18 case. Since you, the jury, are the sole judges
19 of the facts in this case, you are not to infer
20 from what I have said during the progress of
21 this trial in ruling upon the admissibility of
22 evidence, or otherwise, or anything that I say
23 now during the course of this instruction to you
24 that I have any opinion about the facts in this
25 case. I do not. The law does not allow me to

1 have an opinion about the facts in this case.
2 This is a matter solely for you, the jury, to
3 determine. As jurors, it is your duty to
4 determine the effect, value, weight, and truth
5 of the evidence presented during this trial.

6 The State has the burden of proving the
7 defendant guilty beyond a reasonable doubt. Some
8 of you may have served as jurors in civil cases,
9 where you were told that it is only necessary to
10 prove that a fact is more likely true than not
11 true, such as by the greater weight or
12 preponderance of the evidence. In criminal
13 cases, the State's proof must be more powerful
14 than that. It must be beyond a reasonable doubt.
15 Reasonable doubt is the kind of doubt that would
16 make a reasonable person hesitate to act. Proof
17 beyond a reasonable doubt is proof that leaves
18 you firmly convinced of the defendant's guilt.

19 There are very few things in this world
20 that we know with absolute certainty, and in
21 criminal cases, the law does not require proof
22 that overcomes every possible doubt. If, based
23 on your consideration of the evidence, you are
24 firmly convinced that the defendant is guilty of
25 the crimes charged, you must find the defendant

1 guilty. If, on the other hand, you think there
2 is a real possibility that the defendant is not
3 guilty, you must give the defendant the benefit
4 of the doubt and find him not guilty.

5 There are two types of evidence that are
6 generally presented throughout a trial: direct
7 evidence and circumstantial evidence. Direct
8 evidence directly proves the existence of a fact
9 and does not require deduction. Circumstantial
10 evidence is a proof of a chain of facts and
11 circumstances indicating the existence of a
12 fact. Crimes may be proven by circumstantial
13 evidence.

14 The law makes no distinction between the
15 weight or value to be given to either direct or
16 circumstantial evidence. However, to the extent
17 the State relies on circumstantial evidence, all
18 of the circumstances must be consistent with
19 each other and, when taken together, point
20 conclusively to the guilt of the defendant
21 beyond a reasonable doubt. If these
22 circumstances merely portray the defendant's
23 behavior and suspicious, the proof has failed.

24 The State has the burden of proving the
25 defendant's guilt beyond a reasonable doubt.

1 This burden rests with the State regardless of
2 whether the State relies on direct evidence,
3 circumstantial evidence or a combination of the
4 two.

5 Necessarily, you must determine the
6 credibility of witnesses who have testified in
7 this case. Credibility simply means
8 believability. It becomes your duty as jurors to
9 analyze and evaluate the evidence and determine
10 if the State has met its burden of proof in this
11 case.

12 In determining the believability of
13 witnesses who have testified in the case, you
14 may believe one witness over several witnesses
15 or several witnesses over one witness. You may
16 believe a part of the testimony of a witness and
17 reject the remaining part of the testimony of
18 that same witness. You may believe the testimony
19 of a witness in its entirety or reject the
20 testimony of a witness in its entirety. You may
21 consider whether any witness has exhibited to
22 you any interest, bias, prejudice, or other
23 motive in the case. You may also consider the
24 appearance and manner of a witness while on the
25 witness stand.

1 As I have stated to you, the rules of
2 evidence ordinarily do not permit witnesses to
3 testify to opinions or conclusions. An exception
4 to this rule exists for witnesses we call expert
5 witnesses. A witness, who by education and
6 experience, has become expert in some art,
7 science, profession or calling may state an
8 opinion as to relevant and material matter in
9 which the witness claims to be an expert and may
10 also state the reasons for that opinion. You
11 should consider any expert opinion received in
12 evidence in this case, and like any other
13 evidence, give it the weight you think it
14 deserves. If you decide that the opinion of an
15 expert witness is not based on sufficient
16 education and experience or if you conclude that
17 the reasons given in support of the opinion are
18 not sound or that the opinion is outweighed by
19 other evidence, you may disregard the opinion
20 entirely. An expert witness' testimony is to be
21 given no greater weight than that of other
22 witnesses simply because the witness is an
23 expert. Further, you are not required to accept
24 an expert's opinion, even though it is not
25 contradicted.

1 Statements alleged to have been made by the
2 defendant have been admitted into evidence in
3 this case. While the court has determined that
4 the statements are admissible, I instruct you
5 that you make the ultimate decision of whether
6 or not the defendant made the statements. If the
7 defendant did make the statement, you must
8 determine whether the statement was made by the
9 defendant voluntarily and of his own free will.
10 This means that the statement was not caused by
11 pressure, force, fear, threats, coercion or
12 intimidation or by a hope or promise of leniency
13 or reward of any kind.

14 In determining whether the statement was
15 voluntary, you should consider both the
16 characteristics of the defendant and the details
17 of the questioning. Some of the factors you must
18 consider are: one, the age of the defendant;
19 two, defendant's education or lack of education;
20 three, defendant's mental ability or capacity;
21 four, the defendant's IQ or intelligence; five,
22 the defendant's background and environment; six,
23 the place and length of detention; seven, the
24 nature of the questioning; and eight, the advice
25 or lack thereof to the defendant of his

1 constitutional rights, including, but not
2 limited to the right to remain silent, that any
3 statement could be used against him in a court
4 of law, the right to have a lawyer present, that
5 if he could not afford a lawyer, a lawyer would
6 be appointed to represent him without any cost
7 and that he could stop making a statement at any
8 time. You must carefully consider all of the
9 surrounding circumstances before you give any
10 weight to an alleged statement. The State has
11 the burden of proving beyond a reasonable doubt
12 that the alleged statement was voluntary. If you
13 determine it was, you may give the statement any
14 further consideration that you deem proper. You
15 must decide what weight, if any, should be given
16 to the alleged statement. If you determine the
17 alleged statement was not the free and voluntary
18 statement of the defendant, you should not
19 consider the statement at all.

20 The defendant is charged with Felony
21 Driving Under the Influence. The State must
22 first prove beyond a reasonable doubt that the
23 defendant drove a vehicle while under the
24 influence of alcohol and/or drugs. Driving a
25 motor vehicle means that the vehicle was in

1 motion. This may be proved by direct or
2 circumstantial evidence. A movement of the
3 vehicle might occur without any affirmative act
4 by a driver or, in fact, by any person. If a
5 vehicle is moved by some power beyond the
6 control of the defendant or by accident, this
7 would not be driving. The State must prove
8 beyond a reasonable doubt that the defendant was
9 sufficiently under the influence to impair his
10 ability to drive with reasonable care with due
11 regard for others and himself or as a reasonably
12 prudent person would drive. It is not necessary
13 to show that the defendant was in a helpless
14 condition, passed out or even intoxicated. On
15 the other hand, the fact that the defendant,
16 sometime prior to this incident, drank an
17 alcoholic beverage or took a drug does not prove
18 that the defendant was driving under the
19 influence.

20 Next, the State must prove beyond a
21 reasonable doubt that while driving the
22 defendant did an act forbidden by law or
23 neglected a duty imposed by law. The State
24 alleges the defendant drove reckless and/or
25 disregarded a stop sign, which acts and/or

1 neglect proximately caused the death of the
2 victim. Except when directed to proceed by a
3 police officer, every driver of a vehicle
4 approaching a stop sign shall stop at a clearly
5 marked stop sign.

6 Finally, the State must prove beyond a
7 reasonable doubt that the act or neglect of the
8 defendant proximately caused great bodily injury
9 or death to another person. Proximate cause is
10 the direct cause. It is the immediate cause. It
11 is the efficient cause. It is that cause without
12 which the death of the victim would not have
13 resulted.

14 There must be a chain of causation from the
15 time of the act by the defendant until the time
16 of the victim's death. Proximate cause does not
17 necessarily mean that the act occurred
18 immediately prior to the death. There may be
19 more than one proximate cause. The act of two or
20 more persons may combine together to the
21 proximate cause of the death of a person. The
22 defendant's acts may be regarded as the
23 proximate cause if it is the contributing cause
24 of the death of the victim.

25 The fact that other causes also contributed

1 to -- contribute to the death of the victim does
2 not relieve the defendant from responsibility.
3 The defendant's act need not be the sole cause
4 of death, but must be a proximate cause
5 contributing to the death of the victim. It is
6 not a defense to show that the victim might have
7 recovered had the victim been treated according
8 to the most approved surgical or medical
9 standard or as a reasonably prudent doctor would
10 have treated in the case or even by showing that
11 the treatment was negligent.

12 If, however, the death was caused, not by
13 the wound or the injury that the victim had, but
14 was caused by gross erroneous, willful,
15 deliberate treatment, the defendant would not be
16 liable. In other words, negligence on the part
17 of someone else would not relieve the defendant
18 from liability if the injury was the proximate
19 cause of the victim's death. However, gross
20 negligence or intentional activity on the part
21 of the practitioners would relieve the defendant
22 of liability. The propriety of the medical
23 procedures is an integral question in
24 determining causation.

25 The amount of alcohol in the defendant's

1 blood at the time of the test, as shown by
2 chemical analysis of the defendant's breath or
3 other -- other bodily fluids may be considered
4 by you in deciding whether the defendant was
5 under the influence. If the alcohol
6 concentration was eight-one hundredths of one
7 percent or more, it may be inferred that the
8 defendant was under the influence of alcohol.
9 This inference is simply an evidentiary fact to
10 be considered by you along with the other
11 evidence in the case. You may give it the weight
12 you decide it should receive.

13 The defendant is also charged with
14 violating the Habitual Offenders Act. The State
15 must first prove beyond a reasonable doubt that
16 the defendant was operating a motor vehicle in
17 this state. Operating a motor vehicle does not
18 necessarily mean driving the vehicle. Driving
19 means that the vehicle is actually in motion.
20 However, in order to be operating a motor
21 vehicle, there does not need to be any motion.
22 Operating includes starting the engine or using
23 any mechanical or electrical part of the vehicle
24 which will set the vehicle in motion.

25 The State must prove beyond a reasonable

1 doubt that at the time the defendant was
2 operating the motor vehicle, the Department of
3 Public Safety had found the defendant to be a
4 habitual traffic offender and had revoked the
5 defendant's license to drive based on that
6 finding.

7 The State must also prove beyond a
8 reasonable doubt that while driving, the
9 defendant did an act forbidden by law or
10 neglected a duty imposed by law. The State
11 alleges that the defendant drove reckless and/or
12 disregarded a stop sign, which acts and/or
13 neglect proximately caused the death of the
14 victim. Except when directed to proceed by
15 police officer, every driver of a vehicle
16 approaching a stop sign shall stop at a clearly
17 marked stop sign.

18 Finally, the State must prove beyond a
19 reasonable doubt that the act or neglect of the
20 defendant proximately caused great bodily injury
21 or death to another person. The meaning of
22 proximate cause is as I defined it in the
23 previous section to you.

24 The defendant is charged with Driving under
25 Suspension. The State must prove beyond a

1 reasonable doubt that the defendant drove a
2 motor vehicle on a public highway in the state
3 during the time the defendant's driver's license
4 was cancelled, suspended or revoked. To be
5 guilty of driving under suspension, the
6 defendant must have been notified by the
7 Department of Public Safety that his driver's
8 license has been cancelled, suspended or
9 revoked.

10 Ladies and Gentlemen, your verdict must be
11 a unanimous one.

12 Mr. Foreperson, when the jury agrees on the
13 verdict, you will complete the verdict form
14 indicating a unanimous verdict of the jury as to
15 each indictment and sign your name as
16 foreperson.

17 I remind you that each indictment charges a
18 separate and distinct offense. You must decide
19 each indictment separately on the evidence and
20 law applicable to it uninfluenced by your
21 decision as to any other indictments. The
22 defendant may be convicted or acquitted on all
23 or any of the offenses charged. Excuse me. You
24 will be asked to write a separate verdict of
25 guilty or not guilty for each indictment and the

1 verdict form lays it out, I believe, very
2 clearly. It's broken out as to each charge.

3 Then, when you have completed your
4 deliberations and reached your verdict as to
5 each of the charges, knock on the jury room door
6 and inform the bailiff that you've reached a
7 verdict. At that time, we'll receive you back
8 into the courtroom.

9 **THE CLERK:** It's on the way.

10 **THE COURT:** I ask that you now return to
11 your jury room but do not begin your
12 deliberations until you're told by the bailiff
13 to do so. There are a couple of quick matters
14 that I need to take up with the attorneys. It
15 will be your signal to begin deliberating when
16 you receive the verdict form and the exhibits in
17 this case.

18 There are some exhibits that have been --
19 audio recording. If you need to listen to any of
20 those, then if you would inform the bailiff
21 about that, we'll receive you back in the room
22 to have you listen to any of those. Thank you so
23 much for your service in this case. I ask you
24 again not to begin deliberating.

25 If -- your lunch should be here very

1 shortly. If someone needs to take a break at
2 some point to each your lunch, I just ask that
3 all 12 of you be focused on deliberating. You
4 can still eat and deliberate if you'd like, but
5 that needs to be the decision of the group as a
6 whole, Mr. Foreperson. All right. Thank you so
7 much.

8 **(WHEREUPON,** the jury exits at approximately
9 1:18 p.m.)

10 **THE CLERK:** Mark this as a Court's
11 Exhibit.

12 **(WHEREUPON,** Court's Exhibit 3 is marked for
13 identification purposes.)

14 **THE COURT:** Any objection to my charge on
15 the law from the State?

16 **MR. CLEVELAND:** None from the State, Your
17 Honor.

18 **THE COURT:** Any from the defense?

19 **MR. DEJONG:** No objection, Your Honor. I
20 told you a while ago there was something nagging
21 at me. You may say I'm too late, but I'd ask
22 anyway. Based on the testimony that there was
23 driving on Mr. Hester's part, I would simply ask
24 for the lesser included of DUI and Habitual
25 Traffic Offender. The State's position on that?

1 **MR. CLEVELAND:** The State would object at
2 this point in time, Your Honor. That request is
3 not timely and the jury's been charged and told
4 they were going to begin deliberation. I would
5 oppose that request.

6 (WHEREUPON, there is a pause.)

7 **THE COURT:** I'll give them -- I will give
8 them a brief charge just referencing the
9 previous charge.

10 **MR. DEJONG:** That's all I want. I don't
11 think it needs to be long, Your Honor. It may
12 require some change to the verdict form.

13 **MR. CLEVELAND:** Your Honor, I would also
14 like to --

15 **THE COURT:** Hold on just one second. I'm
16 sorry.

17 **MR. CLEVELAND:** My objection also stands
18 because this lesser included charge wasn't
19 given, we were not given the opportunity to
20 argue to the jury the lesser included charge on
21 the defense side and on the prosecution's side.
22 I think that's a substantial deprivation of
23 rights for the State to be able to argue against
24 the lesser included or for lesser included, same
25 with the defense. Having that not given at the

1 time, I think that prejudices the State's case
2 and ask that it be denied.

3 **THE COURT:** Anything in response to that?

4 **MR. DEJONG:** Not really, Your Honor. Like
5 I say, I take full responsibility for it. I
6 really didn't have an opportunity because we
7 went pretty much into closing arguments and the
8 charge. I guess I could have asked to have
9 approached, but I didn't want to disrupt
10 arguments at that point in time, Your Honor.

11 **MR. CLEVELAND:** Your Honor, I asked the
12 defense whether he was going to ask for lesser
13 includeds yesterday when we were talking with
14 the jury outside. He didn't respond in any way,
15 shape or form.

16 **THE COURT:** Here's what I'm going to do.
17 It's not an ideal circumstance and it's not an
18 ideal solution. Here's what I'm going to do. I'm
19 -- since their pizza's not quite here yet
20 anyway, I'm going to let you do a very mini
21 closing on -- on that. I'll let you respond to
22 it very briefly and I'll come back and let you
23 reply very briefly. Then I'm going to give the
24 briefest of charge. It's not an ideal way to do
25 it, but in light of all the circumstances...

1 **THE BAILIFF:** You ready, ma'am?

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

3 **(WHEREUPON,** the jury enters at approximately
4 1:22 p.m.)

5 **THE COURT:** Ladies and Gentlemen, I'm
6 sorry to bring you back in here. I'm going to
7 need to trespass on your time just a moment
8 more. After speaking with the attorneys, there
9 is a matter that I'm going to give you a little
10 additional charge on the law about. However, I
11 want the attorneys to have an opportunity to
12 speak to you about it. This is going to be very
13 brief. On all sides, very brief and very brief
14 from my standpoint as well, too. So if you will,
15 bear with us for just a moment. I'm going to
16 allow the State to speak with you and then give
17 the defense a brief reply about two lesser
18 included charges of Driving Under the Influence
19 and Habitual Traffic Offender.

20 Yes, sir.

21 **MR. CLEVELAND:** Thank you, Your Honor. May
22 it please the Court. I hope this little added
23 option doesn't confuse y'all but I just want to
24 touch on what we're talking about. Mr. Hester is
25 charged with Habitual Offender Involving --

1 Causing Death and Felony DUI resulting in Death.
2 That is what we've argued to you before and that
3 is what my position is that he's guilty of both
4 of those charges. However, there's some wiggle
5 room in the law. It's called lesser included
6 offenses.

7 In each of the cases of Driving Under the
8 Influence and Habitual Traffic Offender, there
9 is the option that you could find that the
10 defendant did drive under the influence and was
11 driving as a habitual offender, however, they
12 did not cause the death of the person alleged.
13 What that is is a lesser included. Essentially,
14 I have to prove every element of every offense.
15 I have to prove that he drove while he was a
16 habitual offender, that he neglected an act or
17 did an act that proximately caused the death of
18 Alanah Holcombe. I think we've proved that. But
19 just as a starting point, if y'all want to find
20 that he did drive a motor vehicle or operated a
21 motor vehicle and he did -- he was declared a
22 habitual offender, then he's guilty of the
23 lesser charge of Habitual Offender.

24 Now, of course, you don't stop there. If
25 you find he met those two elements, you go on to

1 consider the death of Ms. Holcombe as far as the
2 charge that he's facing on the indictment, which
3 is Felony Habitual Offender Involving Death.
4 Much like the DUI, you can kind of start your
5 deliberations or start your discussions. If you
6 find that he was driving on the highways of this
7 state under the influence of alcohol, then you
8 find him guilty of what's the lesser included of
9 driving under the influence. Regular old DUI.
10 Then you consider whether that while he was
11 driving under the influence he proximately
12 caused the death of Ms. Holcombe, which we
13 allege that he did.

14 Essentially, what it is is there's going to
15 be two more options added to your verdict form.
16 Under HTO causing Death, there's going to be
17 just plain HTO, which I submit to you he's
18 guilty to in addition to HTO causing Death, and
19 DUI as a lesser included of Felony DUI causing
20 Death, which I submit to you he's guilty of that
21 in addition to -- if you don't find him guilty
22 of both -- you only find him guilty of HTO or
23 regular DUI if you determine that he's not
24 responsible for Ms. Holcombe's death but he was
25 driving while either under the influence or in

1 the case of the Habitual Offender, a habitual
2 offender.

3 Again, Ladies and Gentlemen, the evidence
4 in this case, all the credible evidence points
5 to the fact that he was driving when this
6 accident occurred and this accident is the
7 proximate or less than direct cause of Ms.
8 Holcombe's death and I find -- then I ask you to
9 find him guilty as charged. Thanks.

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

11 **MR. DEJONG:** Thank you, Your Honor. May it
12 please the Court. L

13 Very briefly, Ladies and Gentlemen.
14 Basically, in my opinion, here's two stages to
15 this case. One stage is leaving James Moore's
16 house to the church. I think the testimony is
17 uncontroverted at that point in time and even by
18 Mr. Hester's testimony, he was driving -- he
19 drove that short distance, however far it was.
20 So the question is if he was driving there, then
21 certainly you could find him guilty of these
22 lesser included offenses and find that he was
23 not driving at the time of the crash.

24 So I would simply ask you to consider these
25 lesser included offenses. We still -- nothing

1 has changed about what we would say about his
2 driving at the time of the crash, that we still
3 deny. But he could be found guilty of just DUI
4 and habitual traffic offender for the short
5 drive from James Moores' driveway to wherever
6 the church is. Thank you very much.

7 **THE COURT:** Anything else from the State
8 in reply?

9 **MR. CLEVELAND:** No reply, Your Honor.

10 **THE COURT:** All right. Ladies and
11 Gentlemen, as stated, you can consider the
12 lesser included offenses. If you find the
13 defendant not guilty of Felony DUI resulting in
14 Death, then you can consider the simple -- the
15 charge of DUI. The State must prove beyond a
16 reasonable doubt that the defendant drove a
17 vehicle while under the influence of alcohol
18 and/or drugs and that the defendant was
19 sufficiently under the influence to impair his
20 ability to drive with reasonable care, with due
21 regard for others and himself or as a reasonably
22 prudent person would drive. The inference that I
23 spoke with you about, as well as the definition
24 of driving, all of that still applies with DUI.

25 As to Habitual Traffic Offender causing

1 Death, if you find the defendant not guilty of
2 Habitual Traffic Offender causing Death, you may
3 consider the lesser included of Habitual Traffic
4 Offender. The State must prove beyond a
5 reasonable doubt that at the time the defendant
6 was operating a motor vehicle, the Department of
7 Public Safety had found the defendant to be
8 Habitual Traffic Offender and/or revoked the
9 defendant's license to drive based on that
10 finding. Operating is as I defined it to you
11 earlier. All right. Thank you very much.

12 I hope your lunch is going to be here by
13 now. But I'd ask you now to return to your jury
14 deliberation room. Please do not begin
15 deliberating until you get the exhibits in this
16 case. Thank you.

17 (WHEREUPON, the jury exits at approximately
18 1:29 p.m.)

19 **THE COURT:** All right. Any objection to my
20 charge on the law with regard to the lesser
21 inclusions from the State?

22 **MR. CLEVELAND:** None from the State, Your
23 Honor.

24 **THE COURT:** Any from the defense?

25 **MR. DEJONG:** None from the defense, Your

1 Honor. I apologize to the Court. I'm sincerely
2 sorry.

3 **THE COURT:** All's well that ends well.
4 Their lunch just arrived. So that worked out
5 actually in our favor with scheduling.

6 **MR. DEJONG:** Thank you so much.

7 **THE COURT:** All right. I have marked the
8 initial charge on the law as Court's Exhibit
9 Number 3. It's not going back, but I just wanted
10 to let you all know that. We're getting a new
11 verdict form. It simply says we unanimously find
12 the defendant not guilty or guilty of Felony DUI
13 resulting in Death or guilty of DUI, and then
14 the same set-up for Habitual Traffic Offender
15 resulting in Death. It's just like that. Y'all
16 can take a look at it before it goes back,
17 though. I think it's pretty standard. All right.
18 Anything else we need to take up? If y'all will,
19 just make sure all the exhibits are together.

20 I want to tell both sides I thought all of
21 you all tried an outstanding case. No matter how
22 this case turns out, you have to know that your
23 attorney has done -- your attorney or the
24 attorney for the State has done everything
25 possible with regard to this trial.

1 **MR. DEJONG:** You are always so kind, Your
2 Honor.

3 **THE COURT:** Well, it's true.

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

5 **THE COURT:** It's absolutely true.

6 **MR. CLEVELAND:** Greatly appreciate it.

7 **THE COURT:** All right then. We'll be in
8 recess pending a verdict once we've got the
9 exhibits together.

10 **MR. DEJONG:** Thank you, Your Honor.

11 **(WHEREUPON,** the Court goes off the record at
12 approximately 1:32 p.m.)

13 **(WHEREUPON,** jury deliberations begin at
14 approximately 1:37 p.m.)

15 **(WHEREUPON,** the Court resumes at approximately
16 2:38 p.m.)

17 **THE COURT:** All right. We've gotten one
18 note from the jury. Needed a magnifying glass to
19 better view the pictures. You will be interested
20 -- I did not call y'all in here because you will
21 be interested to know that your Clerk of Court
22 could find a magnifying glass in the courthouse,
23 and he did. He delivered a magnifying glass. So
24 we did not call you in for that.

25 All right. The next one asked for first

1 recording and second interviewing Mr. Hester.
2 Okay. Y'all know exactly what we're talking
3 about here? I know there are recordings. You
4 know where we're getting at?

5 **MR. CLEVELAND:** I think the first -- did
6 this in kind of a transposed order, but there
7 was two recordings of interviews ---

8 **THE COURT:** Right.

9 **MR. CLEVELAND:** --- of Mr. Hester that were
10 published to the jury. That's the only two that
11 I could --

12 **THE COURT:** So I think they want to listen
13 to those again, obviously. Then they want to
14 hear Mr. Duncan's testimony on accident
15 reconstruction. I guess the portion dealing with
16 accident reconstruction. I'm trying to think if
17 -- I'm going through and I'm trying to remember
18 his testimony. For the most part, it's -- for
19 the most part, if it's not the reconstruction of
20 it, it's his investigation, you know, about
21 certain things to prepare that reconstruction.
22 Am I correct on that?

23 **MR. CLEVELAND:** I mean, at the end,
24 obviously, I asked him what his opinion as to
25 what happened and where everybody was. But I'm

1 not certain that there's any particular part of
2 his testimony that can be distilled out of that
3 unless they want to -- unless you want to
4 inquire as to --

5 **THE COURT:** I may bring them in here and
6 see if there's something more specific.

7 **MR. CLEVELAND:** Sure./The direct is an
8 hour, I think, 'a little over an hour; the cross
9 could be too.

10 **THE COURT:** Okay. Can you bring the jury
11 back in?

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

13 **THE COURT:** Maybe what -- do you have
14 those recordings handy and ready to be played?

15 **MR. CLEVELAND:** They're in evidence.

16 (WHEREUPON, the jury enters at approximately
17 2:41 p.m.)

18 **THE COURT:** All right. We want to make
19 sure that we know exactly what you're
20 requesting. When you say first recording and
21 second interviewing of Mr. Hester, those are the
22 two recordings of interviews of Mr. Hester, is
23 that right, that were played?

24 **THE JUROR:** That's correct.

25 **THE COURT:** All right. Next, Mr. Duncan's

1 testimony on accident reconstruction. Is there
2 any -- it can be the whole testimony replayed
3 for you. I'm happy for that to happen. We're set
4 up for that to happen. But is there any
5 particular portion that you all wanted to hear?
6 If you need to talk about it, I'm happy for you
7 to go back to your jury room and talk about it
8 for a moment if you think there's some portion.
9 Or if you would like to hear that testimony
10 replayed in its entirety, then we've got it cued
11 up and ready for you to hear all those things.
12 So if y'all need to take a minute and talk about
13 it, that's fine, too.

14 **THE JUROR:** The whole thing.

15 **THE COURT:** The whole thing. All right.
16 Very well. That's what we'll do. We'll begin
17 with the recordings if that's all right.

18 Yes, sir.

19 **THE JUROR:** The only other thing was it
20 was hard to hear some of the recordings. They
21 requested it be moved closer to us.

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

23 **THE CLERK:** I'll need to go get them out
24 of the jury room.

25 **(WHEREUPON, there is a pause.)**

1 **THE COURT:** We'll go off the record.)

2 **(WHEREUPON,** State's Exhibit 47 is played for the
3 jury.)

4 **(WHEREUPON,** the jury exits at approximately
5 3:45 p.m.)

6 **THE COURT:** No introduction. None of the
7 cross-examination. Black box. Details of wreck
8 based on what info was retrieved. Five-second
9 breakdown and accident description as it
10 pertains to black box data. No intro of
11 education or cross-exam info needed. I think
12 they're saying the same thing.

13 **MR. DEJONG:** Kind of sounds to me like,
14 Your Honor, they're asking for just the black
15 box testimony.

16 **THE COURT:** I think that's what they're
17 pretty much wanting.

18 **MR. CLEVELAND:** Judge, do you mind reading
19 it again?

20 **THE COURT:** Yeah. I'm reading it exactly
21 as it's written here. No introduction. None of
22 the cross-examination. Bullet point, black box.
23 Details of wreck based on what info was
24 retrieved. Bullet point, five-second breakdown
25 and accident description as it pertains to black

1 box data. In parentheses, no intro of education
2 or cross-exam info needed.

3 **MR. CLEVELAND:** I mean, I agree that it
4 sounds like that they are asking for the black
5 box information as well, but it sounds like
6 they're also asking for a little bit more of
7 just the info that he gathered at the scene as
8 well.

9 **MR. DEJONG:** I --

10 **MR. CLEVELAND:** It's a little vague. I
11 mean --

12 **THE COURT:** It just says as -- it says, as
13 pertained to black box data.

14 **MR. DEJONG:** Well, I'm more on the five-
15 second thing.

16 **THE COURT:** Yeah, I don't know what that
17 is.

18 **MR. DEJONG:** I think Investigator Duncan
19 talked about perhaps when it hit the car or the
20 street and ended up on its side. I'm not sure --

21 **MR. CLEVELAND:** How long the wreck took,
22 time-wise?

23 **INVESTIGATOR DUNCAN:** The recording
24 actually goes back five seconds. That's where it
25 starts gathering data, five seconds before.

1 **THE COURT:** Oh, wow. Okay.

2 **MR. CLEVELAND:** Okay.

3 **MR. DEJONG:** Okay.

4 **THE COURT:** Gotcha. Okay.

5 **MR. CLEVELAND:** So I guess that just gives
6 Teresa a long break to figure it out.

7 **THE COURT:** Yeah, now she's thinking.

8 **(WHEREUPON, there is a pause.)**

9 **THE COURT:** Okay. We're ready for them.

10 **(WHEREUPON, the jury enters at approximately**
11 3:56 p.m.)

12 **THE COURT:** All right. Thank you. That
13 helps us a lot. My Court Reporter was able to
14 identify about a 10-minute segment. About five
15 minutes of it is, I think, exactly what you
16 want, but just so it's in some context and we're
17 not cutting off some things, this 10-minute
18 section -- let me say, though. If any member of
19 the jury thinks this is not the section or this
20 isn't enough or whatever, feel free to let us
21 know. We want you to hear what you need to hear.
22 All right.

23 **(WHEREUPON, a portion of Aaron Duncan's testimony**
24 is played for the jury.)

25 **THE COURT:** Ladies and Gentlemen, is that

1 the portion you believe you wanted to hear?

2 THE JUROR: Could we hear a little more?

3 THE COURT: All right.

4 (WHEREUPON, a portion of Aaron Duncan's testimony
5 is played for the jury.)

6 THE COURT: All right. Everybody believes
7 that's what you needed to hear? All right. Then
8 I'll ask you to return to your deliberations.

9 (WHEREUPON, the jury exits at approximately
10 3:56 p.m.)

11 THE COURT: All right. We'll be in recess
12 pending the verdict.

13 (WHEREUPON, Court's Exhibits 4, 5 and 6 are marked
14 for identification purposes.)

15 (WHEREUPON, the Court goes off the record at
16 approximately 3:57 p.m.)

17 (WHEREUPON, the Court goes on the record at
18 approximately 4:35 p.m.)

19 THE COURT: Y'all ready to bring the jury
20 back in?

21 MR. CLEVELAND: The State's ready,
22 Your Honor.

23 THE COURT: All right. The defense?

24 MR. DEJONG: Ready for the defense.

25 THE COURT: All right.

1 **(WHEREUPON,** the jury enters at approximately
2 4:36 p.m.)

3 **THE COURT:** Mr. Foreperson, it's my
4 understanding that the jury has reached a
5 verdict; is that correct?

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

7 **THE COURT:** Do you mind handing the
8 verdict form to the bailiff please? Or, well,
9 you can just give it to Mr. Welborn.

10 **(WHEREUPON,** the verdict form is passed to the
11 Court.)

12 **THE COURT:** The verdict form appears to be
13 in order. You may publish it.

14 **THE CLERK:** Okay. State of South Carolina
15 versus Tim -- Timothy Adam Hester, indictments
16 number 2015-GS-39-612, 2016-GS-39-2635 and 2013-
17 GS-39-611. As to the charge of Felony DUI
18 resulting in Death, we, the jury, unanimously
19 find the defendant guilty and we, the jury,
20 unanimously find the defendant guilty of
21 Habitual Traffic Offender causing Death.

22 Is this your verdict and still your
23 verdict, so say you all by raising your right
24 hand?

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

1 **THE COURT:** And also, just for the record,
2 as to the charge of Driving under Suspension,
3 we, the jury, unanimously find the defendant
4 guilty as well. It was on the second page as
5 well.

6 **THE CLERK:** Excuse me, Your Honor. I
7 should have told you -- I should have told y'all
8 that.

9 Ladies and Gentlemen, I speak for all the
10 attorneys involved in this case and everyone in
11 the court system, I thank you so much for your
12 service. As you're gathering your things to
13 leave, I just want to come back there and say
14 goodbye to you before you leave. But thank you
15 so much for your service. Thank you for how
16 seriously you took your duty. And you might know
17 this, but this concludes your jury service for
18 this week in Pickens county. All right. I'll be
19 right back to talk to you.

20 **(WHEREUPON, the jury exits at approximately**
21 4:38 p.m.)

22 **THE COURT:** I want to speak to the jury
23 before they leave.

24 **MR. DEJONG:** Yes, ma'am.

25 **THE COURT:** But we'll come back and move

1 to sentencing, if everyone agrees. Let's just
2 say 10 days for any post-trial motions. Is that
3 good enough?

4 **MR. DEJONG:** That will be fine.

5 **THE COURT:** All right. I'll be back in
6 just a moment.

7 **(WHEREUPON, the Court goes off the record at**
8 **approximately 4:38 p.m.)**

9 **(WHEREUPON, the Court goes on the record at**
10 **approximately 4:45 p.m.)**

11 **THE COURT:** All right. So we'll move
12 directly to sentencing. Is there anything else
13 the State would like to say?

14 **MR. CLEVELAND:** Your Honor, for the record,
15 I would just like to start by informing the
16 Court of the defendant's driving record.

17 **THE COURT:** All right.

18 **MR. CLEVELAND:** We've already heard he's
19 been declared a habitual offender. But just
20 working through, what appears his 10-year
21 driving record is a 2000 -- January 2015
22 accident; August 2014 accident; he was declared
23 a habitual offender on March 7th, 2013; had a
24 driving under suspension from February of 2013
25 -- I apologize -- January 2013; failure to pay

1 traffic ticket from July 2011; failure to pay
2 traffic ticket from September 2011; failure to
3 appear and pay traffic ticket from June -- July
4 of 2011; failure to pay -- same one -- operating
5 unsafe vehicle, May of 2011; Operating Unsafe
6 Vehicle, July of 2011; Reckless Driving, June of
7 2011; Driving under Suspension, June of 2011;
8 Failure to Pay Ticket, June 2011; No Insurance,
9 March 2011; Driving in Improper Lane, April
10 2010; Speeding, April 2010; Driving Under
11 Suspension, July of 2006; Changing Lanes
12 Improperly, April 2006; Driving Under
13 Suspension, May 2016.

14 In addition to that, Your Honor, his
15 criminal record in General Sessions. You heard
16 about his 2013 Grand Larceny which he pled
17 guilty to. He was sentenced to five years
18 suspended to five years of probation. He was on
19 probation for that Grand Larceny when this
20 offense occurred.

21 These are the saddest type cases. It's not
22 like we're standing here on a murder where
23 someone intentionally killed somebody. This is
24 gross negligence and recklessness on someone's
25 behalf that causes someone to lose their life.

1 In normal instances and like, quite frankly, in
2 the instance that's supposed to plead guilty
3 tomorrow, it's a felony DUI with Death, but
4 there is no prior record. It was a horrible
5 accident where someone acted extremely careless.

6 However, in Mr. Hester's case, his driving
7 record speaks volumes. The State enacted a
8 Habitual Offender Law to protect and to give
9 such a harsh punishment for people with his type
10 of driving record to not drive anymore to
11 prevent things like this from happening. But
12 Mr. Hester refused to heed that warning. He's
13 currently got an April of 2014 HTO pending in
14 our office that's yet to be resolved and even on
15 bond for that and on probation for the Grand
16 Larceny. He was out driving again, grossly
17 intoxicated and this time, Alanah Holcombe paid
18 the ultimate price for his recklessness. His
19 recklessness, which has been documented for 10
20 years on his driving record how he refuses to
21 acknowledge his license is suspended, he refuses
22 to stop driving, even while getting caught.

23 Your Honor, there is no part of me in any
24 place that suggests that Mr. Hester ever had any
25 intent to harm or kill Ms. Holcombe. But the

1 fact that his repeated recklessness and
2 disregard for the traffic laws of this state put
3 him in the position to be a habitual offender
4 and put him in the position not to drive
5 anymore. Not only did he drive recklessly, he
6 drove recklessly while drunk and Ms. Holcombe
7 lost her life.

8 In negotiating this case, we offered a 10-
9 year sentence. I thought that was a real olive
10 branch in his particular situation considering
11 what happened. Quite frankly, I think the
12 sentence in this case, whatever Your Honor does,
13 should be consecutive on the DUI and the HTO
14 because if he had been stone cold sober and
15 driven across that street and Ms. Holcombe had
16 of died, he would be facing 20 years for HTO
17 with Death. Had he had a perfectly clean driving
18 record and he decided to drink that night and
19 get behind the wheel, he'd be facing Felony DUI
20 with Death. It's two separate set of bad choices
21 that span for a long period of his life leading
22 up causing one, and a bad decision on that day
23 causing the other one.

24 The parents of Ms. Holcombe are here. They
25 would like to briefly address the Court in this

1 matter. But I would ask for a sentence that's
2 approximately and consecutive in this matter to
3 fully memorialize the behavior that Mr. Hester's
4 done in this case.

5 **THE COURT:** Let me ask you this, how long
6 has he spent in jail or any credit?

7 **MR. CLEVELAND:** Your Honor, he spent 84
8 days in jail, originally. He was released on
9 bond at that time. He has been on ankle monitor.
10 He's been on house arrest bond since then. Of
11 course, it's in Your Honor's discretion to grant
12 him credit for that time he's been on the ankle
13 monitor. But since the date -- he should have --
14 he could essentially received -- he's entitled,
15 absolutely to 84 days in jail. But I believe
16 he's been on the ankle monitor ever since his
17 release from jail. So ever since the incident
18 date, it's within the Court's discretion to give
19 him that much credit. And whenever appropriate,
20 the victims are ready.

21 **THE COURT:** By my calculations, by my
22 calculations, it's 642 days of HIP time; is that
23 right?

24 **MR. DEJONG:** I think that -- what day did
25 you actually go on HIP? Do you remember

1 Mr. Hester?

2 MR. HESTER: The day I got out.

3 MR. DEJONG: The day you got out?

4 THE COURT: Well, I think it's two years
5 ago, so that's 730 days ago minus 4, so 726 and
6 I'll take out 84 days that he served. That comes
7 to 642 unless my math is really not good.

8 MR. DEJONG: Mine is not good at all, but
9 that sounds about right.

10 THE COURT: I think it's -- I think it's
11 642 days on HIP. All right. Yes, sir.

12 MR. DEJONG: I would ask Your Honor --

13 THE COURT: Oh, I'm sorry. I apologize.
14 Yes, ma'am.

15 VICTIM'S MOTHER: I'm Caroline Holcombe.
16 I'm Alanah's mother. I wanted to say a few
17 things to Mr. Timothy Adam Hester, things that
18 I've thought about over the last two years. I
19 just want you to know what you took from me was
20 my firstborn, my best friend, my heart and soul
21 and my baby, and her name was Alanah. You took
22 away my daily phone calls and talks with her.
23 There was never a day that she didn't call and
24 we didn't talk half the morning.

25 I will never get to hear her voice again,

1 never get to kiss her forehead, kiss her good
2 night, hug her or tell her I love her or hear
3 her "I love you, Mama" from her. You took away
4 my walking buddy. We used to walk in the
5 evenings, stop and taste the honeysuckles. Never
6 again. I walk by myself now and cry when I see
7 honeysuckles.

8 You took away my chance to ever have a
9 grandbaby from her. She was beautiful, sweet and
10 kind. She loved children. She would have been a
11 wonderful mother. She'll never have the chance
12 now. You took her away from every birthday,
13 summer holidays, Halloween, the one she loved so
14 much, Thanksgiving and Christmas, too. She'd
15 help me cook dinners. We'd laugh while cooking.
16 Never again. I barely survived these first
17 holidays and second holidays without her. I
18 thought of you still here with your family while
19 you had destroyed ours and how crazy that was
20 and what an injustice that is and no longer
21 looked forward to the holidays. Never again.

22 These are just a few of the things. There's
23 so many more. But most of all, Timothy Adam
24 Hester, you took away my life when you took her.
25 You ripped out my heart that night. I will never

1 be the same woman I was before. It's the most
2 awful pain in the world. I feel sorry for your
3 mama, your wife and your kids and the people
4 that you've hurt. God have mercy on you.

5 **THE COURT:** Thank you, ma'am.

6 **MR. CLEVELAND:** Your Honor, I apologize.
7 Mr. Holcombe, I believe has a brief --

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

9 **VICTIM'S FATHER:** I'm Andy Holcombe,
10 Alanah's dad. I just had a letter that I kept
11 since the day Alanah was born, [REDACTED] 1991.
12 I joined the Marine Corp to make sure I could
13 take care of my baby that was on the way. The
14 letter I received on this day, only three
15 people's ever seen this letter. Today, I'm going
16 to share it with you, Mr. Hester.

17 It says, Hi, Daddy. Monday morning at 9:55,
18 seven pounds one ounce, about 10 and a half
19 inches, chest and head 13 inches. She looked so
20 much like you that I cried when I first saw her.
21 She has a head full of black hair. The nurses
22 even said she had to look like you cause she
23 looked a lot like me. She's the prettiest baby I
24 ever saw. God, I sure wish I could see her. You
25 have to love her. She's you made over. A lot

1 more of that letter, but that's mine.

2 Mr. Hester --

3 **THE COURT:** And sir, just to -- for
4 security reasons, I'm just going to ask you to
5 direct your comments to me.

6 **VICTIM'S FATHER:** I just want to say that
7 I forgive him for what he done. I don't hate
8 him. I forgive him. His family, I pray for them.
9 I want to thank the Solicitor's office, Highway
10 Patrol and everyone that did an outstanding job
11 for what they've done for me and my family. Your
12 Honor, it's in your hands now and I just ask for
13 justice.

14 **THE COURT:** Thank you, sir. To her
15 parents, let me just say I am so sorry for your
16 loss. I can't imagine what you've gone through.
17 But I hope in some way, at least having this
18 part of the grieving behind you, knowing that
19 this trial was upcoming, maybe in some way that
20 will give you some comfort now that the trial is
21 over with. Thank you for being here.

22 Mr. DeJong?

23 **MR. DEJONG:** Thank you, Your Honor. We
24 agree. Absolutely this was a horrible tragic
25 event. How a moment in time can change so many

1 lives, Ms. Holcombe's, Mr. Hester's, their
2 families involved. If it were just the two
3 people, it would be tragic. As you get into that
4 ripple effect into the families, it becomes even
5 more tragic.

6 Your Honor, I'm sure you heard when Mr.
7 Hester testified, he is 30 years of age, Your
8 Honor. He and Ms. Mauldin, who also testified,
9 have been involved in a relationship for 13
10 years. They have three children. All three
11 children are still at home. Most of his adult
12 life, Your Honor, when he did work, he was in
13 heating and air. He was not able to work since
14 he went into the electronic monitoring because a
15 judge forbade that he even be able to go out and
16 look for work. He has been pretty much at home.

17 I would share with the Court that as far as
18 I know, he's had no violations on the Home
19 Incarceration Program while he's been out on
20 bond. He was bond in this area, Your Honor. He's
21 lived in this area all of his life. His mother,
22 who is not present in the courtroom now has been
23 present for most of the trial. As I'm sure
24 you've heard, his father is still living, but
25 he's been living with Mr. Hester and Ms.

1 Mauldin.

2 Your Honor, as far as his prior record
3 goes, he does have the prior record. There's no
4 denying that. I do take a little issue with what
5 the Solicitor said is reckless disregard. I find
6 it rather fascinating, Your Honor -- he was 28
7 at the time this offense occurred. He had no
8 DUIs on his record, none whatsoever. Most of
9 what his record was was failure to pay traffic
10 tickets. That's where the suspensions started
11 coming in. He did continue to drive. His license
12 had been suspended, obviously.

13 But as you look back through most of that
14 driving record, most of it was for failure to
15 pay traffic tickets. Actually, his -- the notice
16 he got on the Habitual Traffic Offender was for
17 two suspensions and one reckless driving. As far
18 as his other -- shall we say other criminal
19 record, any offenses that, as far as General
20 Sessions Court crimes, if he had any of it,
21 obviously, the most serious was the Grand
22 Larceny. I think that was back in 2013. I would
23 ask the Court to take all of that in
24 consideration. I would ask the Court whatever
25 your sentence may be that you do give him credit

1 for the time he's been out on Home Incarceration
2 on bond, Your Honor.

3 **THE COURT:** Thank you. I want to thank
4 you, Mr. DeJong. You clearly made the jury think
5 about this case. Clearly, you did an outstanding
6 job. They were reviewing and considering the
7 evidence very, very, very carefully. You want
8 your client to say anything in light of this
9 situation?

10 **MR. DEJONG:** I'm going to leave that
11 totally to him. If you want to say anything, say
12 it briefly and please address your remarks to
13 Her Honor.

14 **MR. HESTER:** Your Honor, I want to say
15 sorry for everything that happened. Your Honor,
16 please have mercy on me. I do have three kids at
17 home. Someday, I would like to be back -- be
18 back with them. I'm so sorry for everything that
19 happened.

20 **THE COURT:** All right. Thank you, sir. All
21 right. (Pause.)

22 I will tell you, Mr. Hester, that I take
23 into consideration a number of things. One of
24 the things is something the Solicitor said, and
25 that is I don't think you intended to hurt

1 anybody that day. I take into account that you
2 do not have any prior DUIs. I also take into
3 account the fact that you were on probation at
4 the time. I take that into account. I take into
5 account the fact that you did have a prior
6 record and your driving record, for whatever
7 reasons that it turned out to be, is bad. You
8 should have never been behind that wheel, drunk
9 or not. I never, ever penalize anyone for
10 exercising their right to trial. I would not
11 dream of doing that, ever.

12 But I will say that I should tell you that
13 I found your testimony to be not credible. The
14 testimony that you were not driving that car
15 that night -- and I don't want you to respond to
16 this because there may be things in the future -
17 - I personally found that not to be credible
18 evidence and credible testimony in any way. I
19 feel like it -- it was an ever-changing story. I
20 don't ask you to be honest here right now
21 because of the posture that this case is in, but
22 I do want you to know that.

23 I take into account the harm that you
24 caused by what you did. That just can't be
25 quantified. There's no way to quantify it. All

1 those things, I take into consideration. The
2 sentence of the Court is this, on the DUI
3 resulting in Death, sentence of the Court is 10
4 years. Consecutive to that, the Habitual Traffic
5 Offender Causing Death when License has been
6 cancelled, suspended or revoked, the sentence of
7 the court is six years. Credit for the 84 days
8 you served and in addition, for the 642 days you
9 served on home incarceration and credit -- and
10 then just credit for time served, a time served
11 sentence on the DUS. I wish you the best of
12 luck, sir, and best of luck to your family.

13 **MR. DEJONG:** Thank you, Your Honor.

14 **THE COURT:** Good look to you all.

15 Oh, we've got a probation matter to take
16 up.

17 **MR. DEJONG:** Come back around here just a
18 minute. Come back around here just a minute.

19 **PROBATION AGENT:** It's just the
20 conviction, Your Honor. I did, of course, with
21 the probation case, add the monetary stuff in
22 there just so we could wrap everything up at one
23 time. Mr. Hester is aware, I think, of his
24 monetary stuff on this case that we're taking
25 care of due to the conviction and sentence was

1 my understanding. Okay.

2 **THE COURT:** Okay.

3 **PROBATION AGENT:** We've talked about it
4 previously.

5 **MR. DEJONG:** Obviously, the conviction
6 today, Your Honor, would be a violation ---

7 **PROBATION AGENT:** Right.

8 **MR. DEJONG:** --- of the probation.

9 **PROBATION AGENT:** And that is the only
10 conviction violation.

11 **MR. DEJONG:** I understand.

12 **THE COURT:** All right. Well, I'll just
13 terminate his probationary case. Does he have
14 any outstanding restitution?

15 **PROBATION AGENT:** He does.

16 **THE COURT:** Civil judgements for anything
17 outstanding. Good luck to you.

18

19 (Proceedings conclude at approximately

20 5:03 p.m.)

21

22

23

24

CERTIFICATE

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 4 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

Official Court Reporter

WITNESSES

F. W. Marlow

S. C. Highway Patrol

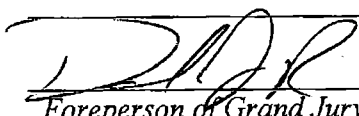
1/31/2015

ARREST WARRANT NUMBER

H194566

TRUE FILE

ACTION OF GRAND JURY

Date**APR 14 2015**
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-39-0612
CCL

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

APR 14 2015

TERM 2015

THE STATE

vs.

TIMOTHY ADAM HESTER SR

Indictment for

0395

FELONY DUI (RESULTING IN DEATH)

VIOLATION § 56-05-2945(A)(2)

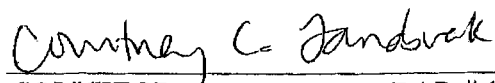
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
FELONY DUI (RESULTING IN DEATH)

At a Court of General Sessions, convened on **APR 14 2015** the Grand Jurors of Pickens
County present upon their oath:

That TIMOTHY ADAM HESTER SR did in Pickens County, on or about the 31st day of January, 2015, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law, to wit: the defendant drove reckless, which acts and/or neglect proximately caused the death of ALANAH E. HOLCOMBE. This is in violation of §56-5-2945 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 100158

WITNESSES

F. W. Marlow

S. C. Highway Patrol

1/31/2015

ARREST WARRANT NUMBER

H194567

ACTION OF GRAND JURY

TRUE BILL

Date

APR 14 2015


Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-39-0611

CCL

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

APR 14 2015

TERM 2015

THE STATE

vs.

TIMOTHY ADAM HESTER SR

Indictment for

3798

DRIVING UNDER SUSPENSION

VIOLATION § 56-01-0460

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
DRIVING UNDER SUSPENSION

At a Court of General Sessions, convened on **APR 14 2015** the Grand Jurors of Pickens
County present upon their oath:

That TIMOTHY ADAM HESTER SR did in Pickens County, on or about the 31st day of January, 2015, drive a motor vehicle on a public highway of this state when his license to drive was suspended, such not being the first such offense within a period of five years including and immediately preceding the foregoing date. This is in violation of §56-1-460 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Courtney C. Jandovick
SOLICITOR BAR # 100158

WITNESSES

F. W. Marlow

S. C. Highway Patrol

1/31/2015

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

DOB: [REDACTED]-1986

SS# [REDACTED]

ACTION OF GRAND JURY

~~TRUE BILL~~

~~Date~~

NOV 08 2016

[Signature]

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-39-

JBC

2635

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 08 2016 TERM 2016

THE STATE

VS.

TIMOTHY ADAM HESTER SR

Indictment for

3456

HABITUAL TRAFFIC OFFENDER CAUSING
DEATH

VIOLATION § 56-1-1105(B)

INDICTED

Certified Copy

[Signature]
Clerk of Court
Pickens Co. SO

Dated

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

INDICTMENT FOR
 HABITUAL TRAFFIC OFFENDER CAUSING DEATH

At a Court of General Sessions, convened on

NOV 08 2016

the Grand Jurors of Pickens

County present upon their oath:

That TIMOTHY ADAM HESTER SR did in Pickens County on or about the 30th day of January 2015, drive a motor vehicle on a public highway of this State while his license was canceled, suspended, or revoked, and after having been determined to be a Habitual Traffic Offender, and did an act forbidden by law, or neglected a duty imposed by law, to wit: The defendant drove under the influence of alcohol and/or disregarded a "stop" sign, which resulted in a motor vehicle collision, which act and/or neglect proximately caused the death of Alanah Holcombe. This is in violation of § 56-01-1105 of the South Carolina Code of Law (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR

BAR # 78744

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Timothy Adam Hester Sr

AKA:

Race: WHITE Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DUS / DRIVING UNDER SUSPENSION 3rd OR ABOVE

in violation of § 56-01-0460 of the S.C. Code of Laws, bearing CDR Code # 3798

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

100344

Buckner, Daniel Graham

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☒ County Detention Center,
for a determinate term of 84 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 84 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3900611

A/W#: H194567

Date of Offense: 1/31/2015

S.C. Code § : 56-01-0460

CDR Code #: 3798

SENTENCE SHEET

SC Court of Appeals

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

Certified Copy
Clerk of Court
Pickens County, SC
Dated 1/27/17

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

839

COUNTY OF
STATE

Pickens

VS.

Timothy Adam Hester Sr

AKA:

Race: WHITE Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Rices Creek Rd

City, State, Zip: Liberty, SC 29657

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Dui / Dui Resulting In Death

INDICTMENT/CASE#: 2015GS3900612

A/W#: H194566

Date of Offense: 1/31/2015

S.C. Code § 56-05-2945(A)(2)

FEB 03 2017

CDR Code #: 0395

SC Court of Appeals

SENTENCE SHEET

1 yr. - 25 yrs.
\$10,000 - \$25,000☒ CONVICTED OF or☐ PLEADS

in violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Buckner, Daniel Graham

100344
SC Bar#

Defendant

John W. DeJoy

001620
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 10,000, provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 84 days + 642 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	10,000.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	10,750.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	100.00
§ 56-5-2995 (DUI Assessment)	\$12	100.00
§ 56-1-286 (DUI Breath Test)	\$25	12.00
Proviso 61.6 (Public Def/Probation)	\$500	
§ 14-1-212 (Law Enforce. Funding)	\$25	25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	
§ 50-21-114 (BUI Breath Test Fee)	\$50	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	
3% to County (if paid in installments)	\$	629.61

TOTAL \$ 21,049.61

Clerk of Court/ Deputy Clerk

Court Reporter: Teresa Johnson

SCCA/217 (07/2016)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: _____

Sentence Date: 1/26/17

Certified Copy
Handed P. W. DeJoy
Clerk of Court
Pickens County, SC
Dated 1/27/17

RECEIVED

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Timothy Adam Hester Sr

AKA:

Race: WHITE Sex: M Age: 30

DOB: [REDACTED] SSN: [REDACTED]

Address: [REDACTED] Rices Creek Rd

City, State, Zip: Liberty, SC 29657

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Traffic / Habitual offender - Causing Death when license has been canceled, suspended, or revoked

in violation of § 56-1-1105(B) of the S.C. Code of Laws, bearing CDR Code # 3456

☒ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Buckner, Daniel Graham

100344
SC Bar#

Defendant

John W. DeJoy

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 6 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ \$15000; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 84 days + 642 days HTP☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$	5000.00
§ 14-1-206 (Assessments 107.5 %)	\$	5375.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	
§ 56-5-2995 (DUI Assessment)	\$12	
§ 56-1-286 (DUI Breath Test)	\$25	
Proviso 61.6 (Public Def/Probation)	\$500	
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§ 14-1-213 (Drug Court Surcharge)	\$150	
§ 50-21-114(BUI Breath Test Fee)	\$50	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	
3% to County (if paid in installments)	\$	315.00

TOTAL \$ 10815.00

Clerk of Court/ Deputy Clerk

Court Reporter:

:CCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS3902635

A/W#: 2016GS3902635

Date of Offense: 1/30/2015

S.C. Code § : 56-1-1105(B)

CDR Code #: 3456

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FEB 03 2017

SC Court of Appeals

SENTENCE SHEET

\$5,000 - \$10,000

☒ CONVICTED OF or☐ PLEADS

in violation of § 56-1-1105(B) of the S.C. Code of Laws, bearing CDR Code # 3456

☒ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

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100344
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3% to County (if paid in installments)	\$	315.00

TOTAL \$ 10815.00

Clerk of Court/ Deputy Clerk

Court Reporter:

:CCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

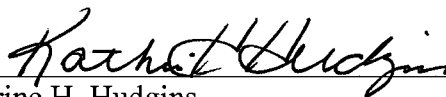
 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Certified Copy
Handwritten P. W. DeJoy
Clerk of Court
Pickens County, SC
Dated 1/27/17

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 1st day of February, 2018.

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FEB 01 2018
SC Court of Appeals