THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC SUPREME COURT

APPEAL FROM LAURENS COUNTY
Court of General Sessions

W. Jeffrey Young , Circuit Judge

Appellate Case № 2015-000718

The State, ... Respondent,

vs.

Michael Vernon Beaty, Jr. ..... Appellant.

RECORD ON APPEAL
VOLUME TWO

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Q Were you ever given a statement by Mr. Beaty as to what happened that night?
A No, sir.
Q Never were? You were never told -- excuse me?
A Other than that she was at a party and --
Q And left?
A -- and left, yes.
Q You were never given what he said happened in that car with him grabbing her from behind?
A I have reviewed that --
Q Since then?
A -- recently. Yes, sir.
Q And recently being?
A Friday.
Q Friday.
A The past Friday.
Q Obviously something that did not enter into your decision?
A Correct.
Q Have you taken any measurements on the top she was wearing that night, which is State's Exhibit 47?
A No, sir.
Q Have you taken any measurements of the hem -- the hem of it around the neck?
A No, I have not.

Q Then you don't know how that hem compares with that ligature mark on the neck?
A Correct.
Q Whether it's the same size, smaller or larger, or what?
A Correct.
Q Let's go back also here to --
MR. WISE: Can you do the lights for me?
Q Now, on this particular -- you measured it as .2 inches --
A Yes.
Q -- as the width of the ligature? And that was back in this area right here?
A Yes.
Q Now, right in this area here is considerably smaller?
A Yes.
Q Is that correct?
A A little bit, yeah.
Q Excuse me?
A Yes.
Q did you measure that area?
A I don't believe so.
Q Now, when you're dealing with a hard item such as the cord they showed you earlier, that's a consistent width, isn't it?
A Correct.

Q And you would expect it to leave a consistent width?
A To an extent. The skin is elastic, so it's going to --
Q Excuse me?
A To an extent. Skin is elastic, so it's going to stretch some, in some areas.
Q But that is definitely less in that area?
A It's just less visible.
Q And it's narrower, too?
A Slightly, maybe.
Q This doesn't get slightly narrower from one end to the other end, does it?
A No.
Q It's a uniformed consistent width?
A Correct.
Q Now, you described that mark on the top of there -- right there as an abrasion, right?
A Correct.
Q That means scratching?
A It's a contusion abrasion that's surfaced --
Q Well, there's a difference between a contusion and abrasion.
A Yes.
Q Right? You describe in your autopsy report as an abrasion?
A Yes.

Q Which means a scratching?
A Correct.
Q Look at the end of this cord which was -- I forgot what number the State it says on it. But this cord that you all used the demonstration with. That's not something that would scratch the skin, is it?
A Yeah, it can.
Q This rubber cord can?
A Yes.
Q But probably wouldn't?
A If you press it on hard enough.
Q If you press it on hard enough you can scratch it or bruise it?
A Both.
Q Both?
A Yes.
Q Both. Which one did it do there? Did it scratch it or bruise it?
A Both.
Q It did both?
A Yes.
Q So that's an abrasion and a bruise?
A Correct.
Q Although in your report you just refer to it as an abrasion?

A Correct.
Q Earlier when you demonstrated -- if I could borrow Mr. Bentley again. Would you come around, please.
(Whereupon, Investigator Bentley approaches witness stand.)
Q Demonstrate on Mr. Bentley your theory of this being used.
A It crosses like so.
Q Hold your head up a little bit, Mr. Bentley. It crosses like how?
A Like so.
Q So it crosses like so. Move your left hand off of it. The big end is not creating any pressure on the neck, correct?
A I'm not sure what you're calling the big end.
Q I'm calling this end right here the bigger end of that cord.
A Correct.
Q Does that cause any pressure on the neck?
A It doesn't necessarily, no.
Q And without pressure on the neck you can never get an abrasion or bruising?
A We've got plenty of contact of this --
Q I want you to demonstrate to me, if you can, how you have contact with that big end on the neck to the extent it

would cause a bruise.
A There would have to be pressure against it.
Q I understand. How do you put the pressure?
A With your hand.
Q With your hand. Where on that neck is there any evidence that a hand was used? Because you said it was not a manual strangulation.
A There was no evidence. I mean, a manual strangulation would show fingertips like so.
Q So what you're saying is that a person would have to put their hand on this and hold it on there.
A That's one way.
Q That's one way.
A Plus, you know, there's -- the ligature seems to thin down down, I think, because the less pressure it's on top of -- the less pressure on top of it.
MR. WISE: Thank you, Mr. Bentley. You can go back.
(Whereupon, Investigator Bentley returns to his seat.)
Q You mentioned the hair could have prevented a -- you do not have a ligature in the back?
A Correct.
Q Correct. And normally when you don't have a ligature on the back, just on the sides, that's an indication that the pulling was from behind?
A Correct.

Q And you speculate that her hair was down?
A Correct.
Q If the testimony was at the time she was found her hair was in a ponytail or in a bun, then it would have been on her neck?
A Correct.
Q So that would tell you that the pulling was more than likely behind?
A Well, if there's a ponytail, then that still could have been around the back of the neck.
Q Did you get a description from the first person that saw her at the scene as to the condition of her hair in order to reach that conclusion?
A No, I didn't not.
Q You did not. Did you think about asking them?
A No.
Q So you simply speculate that the hair kept the ligature from bruising the back of her neck?
A Correct.
Q And absent that speculation, your conclusion would have been she was pulled from behind?
A Correct.
Q That's correct?
A Yes.
Q Did you get a list of medicines that she was taking?

A No, I did not. No, sir.
Q You did not?
A No.
Q Would that have been helpful or relevant?
A If I had to go back and -- if they had showed up on toxicology, yes.
Q I believe that you did mention at one time that there was a -- I hand you this -- that's a toxicology report?
A Yes.
Q You're familiar with that?
A Yes.
MR. WISE: I'd like to introduce that.
THE COURT: Any objection?
MR. STUMBO: The toxicology? No, sir.
THE COURT: Without objection, this will be Defendant's Exhibit Number 19.
(Whereupon, the toxicology report was marked Defendant's Exhibit Number 19 for identification.)
Q The blood was .231?
A Correct.
Q And you gave us a report earlier on the eye. Do you got that report in front of you?
A The -- a test we do in the hospital.
Q Excuse me?
A That's a test we do in the hospital that was .237.

Q .237 or 239?
A .239.
Q Let me see that report. And that was done -- you literally measured the amount of alcohol in the eye; is that correct?
A Correct.
Q And the reason for doing that is what?
A The alcohol level in the vitreous of the eye lags behind the level of the blood by about an hour. So if it's higher in the eye than it is in the blood, that means that the blood level at one time was that high.
Q Was .239?
A Correct.
Q Roughly 24, correct?
A Correct.
Q Now, there's no question that she had serious road rash?
A Correct.
Q From her hand hitting the road at a substantial rate of speed? And substantial meaning more than 20 miles an hour.
A I don't know if the speed has anything to do with it. Just so there's contact of her skin against a rough surface like road.
Q But you wouldn't get that at two miles an hour?
A You could get some.

Q You could get some. But you wouldn't get injured to that extent at two miles an hour?
A It depends on the duration also.
Q Well, if you did it for two hours, maybe. But if you did it for two or three minutes you're not going to get those kind of injuries at two miles an hour?
A It's possible. I don't know.
Q Did you do any experiments to determine how fast you would have to be going to do those injuries?
A No.
Q Someone pulling from the back of the shirt to keep someone from -- or someone -- and obviously, if she was in the car when these occurred, is there anything to indicate to you that she was not in the car when these occurred?
A No, sir.
Q So if she's leaning out of the car when these occurred and someone pulled her from behind with this shirt, it is possible that they would go unconscious in five to eight seconds?
A Correct.
Q Is that correct?
A Yes.
Q And if they pulled them back in the car they would still be unconscious, correct?
A Correct. And if they --

Q And then depending on what position they're in once they're pulled back in the car, that person may or may not recover?
A It would have to be --
Q You get positional asphyxiation if you're unconscious and you're simply sitting down and tipped your head down, don't you?
A No.
Q You don't?
A No.
Q You get positional asphyxiation if you lean over a seat?
A No. It would have to be such that you --
Q Excuse me?
A No. I don't know what you mean, sitting on a seat.
Q If somebody is leaning over this way in the seat would they get -- could they get positional asphyxiation?
A No.
Q Why not?
A It's not enough pressure on the neck.
Q Not enough pressure on the neck?
A Correct.
Q And if they were sitting in the front seat of the floorboard of the front seat with their head down, that would be a cramped awkward position?

A If their head was cramped someway. If they were upside or if she was trapped tightly underneath the dashboard, maybe.

Q You're familiar with the American Journal of Forensic Medical and Pathology, aren't you?

A Yes.

Q Excuse me?

A Yes.

Q It's one that's been in your field for a number of years?

A Yes.

Q I'm going to hand you an article here from 1992, if you would, please. And turn to page -- and this was a study of positional asphyxiation adults, a series of 30 cases from Dade-Broward County, correct?

A Yes.

Q Turn to page -- let me see if I can find the page here. It's toward -- toward the back where you have four pictures, correct?

A Yes.

Q The upper left corner is a picture of a person who died, according to this article, of positional asphyxiation sitting in a subway with his head down on his chest.

A He also had a tracheotomy. So that included the tracheotomy.

Q And how did he get that?
A He must have had some kind of pathology around his neck. So he had to breath through this airway, tracheotomy airway, and with his head down like that he asphyxiated himself from that way.
Q So something disrupted his normal ability to breath?
A Just breathing like that. I mean, he could still breath through his mouth and nose, except there must have been a blockage because he had this tracheotomy in.
Q And you would not know if she were pulled back in that car from behind after being passed out, you don't know what position she would have been in in that seat?
A No.
Q And the position she would have been in in that seat could have impacted her ability to survive?
A Yes. It would have to be --
Q Excuse me?
A Yes. As I say, her head would have to be trapped underneath something.
Q Head trapped on something?
A Yes.
Q Very awkward position to breath or something, correct?
A It would be a lot of pressure, yes.
Q Now, you first learned that Mr. Beaty gave a statement saying he had pulled her in from behind Friday of last week?

A Correct.
Q And I gather the testimony was that he had pulled her from behind by her shirt?
A Correct.
Q When you first looked at this in your first autopsy you mentioned, or described it as like a shoe string -- size of a shoe string, which is a cloth like item, correct?
A Yes. Something that had rounded edges. Yes.
Q So you're not talking about a shoe lace like this?
A No.
Q You're talking more a shoe string like this?
A Something like that.
Q Is that correct?
A Yes.
Q Just an ordinary round cloth shoe string?
A Yes.
Q It had the characteristics of that?
A Correct.
Q And this is a piece of cloth also that's long and reinforced?
A Yes.
Q Just like the shoe string?
A Correct.
MR. WISE: Thank you.
THE COURT: Any other redirect?

MR. STUMBO: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. STUMBO:

Q Dr. Ross, Mr. Wise asked you about -- he was demonstrating on Mr. Bentley -- and I'm not going to get him back down here. I'm sure he's had enough of being strangled. But the position of the cord I believe you demonstrated as being crossed over in this manner and then pulled back this way, right?

A Correct.

Q So there's a crossover effect right there where the square is, correct?

A Correct.

Q Now -- and I don't have him to sit here. But if you're putting pressure on this particular thing with metal and plastic --

MR. WISE: Your Honor, I object to him leading the witness.

Q -- could that cause the ligature --

THE COURT: Overruled.

Q Could that cause the ligature we see in the pictures of --

A They've developed a pattern injury, yes.

Q But there would need to be constant pressure on it though? Is that --

A Yes.
Q -- your opinion?
A Yes.
Q Which can be caused by any part of the body ultimately?
A Correct.
Q Would it be consistent with someone over the top of that person putting --
MR. WISE: Objection to him leading the witness again.
THE COURT: Sustained.
Q What kind of --
THE COURT: Rephrase your question.
Q What kind of position could a person be in over the victim who's doing that? Just explain.
A Any way you put pressure on the neck with the ligature.
Q Would it be consistent with someone reaching over with the hand?
A It depends on where the hand is.
Q Now, I'm going to talk a little bit about the hair again. Mr. Wise asked you if -- I'm just going to show you State's 30 here again. Is Ms. Asbill's hair up or down in this picture?
A It looks down.
Q And if her hair was down and the ligature went over the top of it, would it cause a firm mark?
A No.

Q Injuries to the arm. Mr. Wise asked you about the speed of the vehicle, possibly the duration of the drag. Would you -- what type of injuries would you expect if there was constant contact on a rough surface, on a road for example, for two minutes or greater?

A They'd start off scraping the surface of the skin, and if it continued you'd basically get down to the bone.

Q Would you expect significant injuries?

A Correct.

Q So the longer there's contact with the road, the greater the injury to the arm?

A Correct.

Q Mr. Wise spent some time with positional asphyxiation, and in particular pointed you to involved a gentleman who had an occluded tracheostomy tube?

A. Correct.

Q. And I believe it indicated that the ethanol level was .40 for that individual, right?

A. I don't recall. Yes.

Q. What's the significance of .40? How high are the BAC?

A. That can be lethal in some people without tolerance. With tolerance, I've seen people walk around that way. I've heard of people walking around that way. Walk into the emergency room.

Q. Is the positional asphyxiation theory here consistent, in your medical opinion, with these ligature marks, Dr. Ross?

A. No, sir

MR. STUMBO: Thank you. No further questions.

THE COURT: Any recross?

MR. WISE: Just a few questions.

RECROSS-EXAMINATION

BY MR. WISE:

Q First of all, Dr. Ross -- let me find the -- have a look at State's 34. You took a measurement back in this area?

A Yes.

Q And that was two-tenths of an inch?

A Correct.

Q Did you measure that rectangular object?

A No, I did not.

Q Do you have any idea whether or not it is proportional to the large end of the USB, if you didn't take a measurement?

A I didn't have that to measure.

Q You didn't have that to measure?

A No.

Q Well, did you need the cord in order to measure the mark on the neck?

A No.
Q But you didn't measure the mark on the neck?
A No, I did not.
Q And you don't know whether that was there before any ligature mark was put on her neck?
A No. But it's -- the ligature mark ends in that, so it appears to be the same.
Q Appears to be?
A Occurred at the same time.
Q But she could have -- just like she bruised her head?
A Correct.
Q And that would be consistent with falling down and hitting your head?
A Correct.
Q And she could have fallen down and hit something on her neck?
A Correct.
Q And hit a piece of wood or something?
A Yes.
Q That had a rectangular square end?
A Correct.
Q That caused that abrasion?
A Yes.
Q Have you got your autopsy report in front of you?
A Yes.

Q Please turn to page two of it. On the external examination. Did you report that her brown hair was in a ponytail with a black hair band?

A Yes.

Q How far down her back did that ponytail extend? Do you know?

A I don't know.

MR. WISE: Thank you.

THE COURT: Thank you, Doctor. You may step down.

(Whereupon, the witness steps down from the witness stand.)

THE COURT: Any objection to this witness being excused?

MR. STUMBO: None, Your Honor.

THE COURT: Any objection to this witness being excused?

MR. WISE: No, sir. No.

THE COURT: Thank you, Doctor.

MR. STUMBO: Your Honor, that's the State's case.

THE COURT: All right. Ladies and gentlemen of the jury, I have matters to take up with the attorneys at this time, so I will send you back to the jury room. Please do not discuss anything yet. If you'd like a Coca-Cola or take a smoke break you may do so.

(Whereupon, the jury exited the courtroom at 10:42

a.m.)

THE COURT: Are there any motions from the Defendant?

MR. WISE: Your Honor, I have -- the Defense would move for a directed verdict on the grounds, taking evidence in a light most favorable to the State, there's been no proof of any malice aforethought, any depraved heart, or any intent to kill in this case. This is a circumstantial evidence case. And the standard by which the Court rules says the trial court is to rule on circumstantial evidence, is there any substantial circumstantial evidence. I think if you can peruse through all the testimony you can speculate as to some. But to sit here and say there's -- there is not even substantial circumstantial evidence as to what item caused her death. There's not substantial circumstantial evidence that Mr. Beaty did anything intentionally. Even Dr. Ross, in her examination, didn't have all the information. Didn't compare things that she should have to eliminate those circumstances that would make it substantial, but she did not. So we have no substantial circumstantial evidence of malice aforethought, which is a clear requirement in murder. We have no substantial circumstantial evidence that he did anything other than what was described trying to pull her back in the car. There is no question about the fact that she was leaning out of the car. And Dr. Ross said that if you don't have an explanation for no ligature marks in the

back of the neck, the most probably consequence is that the person was being pulled from behind, exactly in keeping with Mr. Beaty's statement. Now, Dr. Ross tried to get around it and say the hair could have done it. Well, it turns out that she noted the hair was in a ponytail, and has no clue how far down the ponytail went to whether it would interfere with anything that went all the way around the neck. There's just simply a total lacking of substantial circumstantial evidence to show anything other than what Mr. Beaty said in his statements. He pulled her from behind and unfortunately, due to whatever circumstances after that, she died.

THE COURT: Solicitor.

MR. STUMBO: Thank you, Your Honor. It's our position that there has been substantial circumstantial evidence presented in this case, particularly in the light most favorable to the State, which is Your Honor's standard on directed verdict.

Just to note several issues in the ligature marks, Your Honor. The State has put forward a theory of the murder weapon, which is sitting right here on this table. And Dr. Ross did testify very conclusively that those -- that this particular cord, State's 46, is consistent with the ligature marks that she found on Ms. Asbill's body. Secondly, Your Honor, there's DNA. We had a DNA expert yesterday testify

and tell us that the ends of this cord are a mixture of Michael Beaty and EA Asbill's DNA on the ends of the cord. The middle of the cord was consistent with Emily Asbill's DNA. So we have DNA evidence.

Your Honor, going back to Dr. Ross. She testified that it would take at minimum two minutes, but generally based on her literature, three to five minutes for someone to apply that constant of a pressure to kill someone. We would submit, Your Honor, that's inconsistent with Mr. Beaty's last story to the police that he simply pulled her back in the car. It's inconsistent with medical literature.

And, Your Honor, finally, going to Mr. Beaty's statements himself. Twelve hours with law enforcement and the only theory he can come up with to them as to how she got hurt is that she cut herself. Statement after statement he was given an opportunity to tell law enforcement what happened to EA and he didn't do it. And then when he's confronted with the fact that she strangled to death, and that there's road rash on her arms and not cuts, sometime after that he starts to come up with what we believe to be partly the truth. That there was some road rash from Emily Asbill jumping out of the car, or trying to jump out of the car.

Your Honor, the very fact that he changed this story, the theory is accidental now, it would -- applying just

everyday common sense to this case, if he was trying to save her from herself, wouldn't that have been the first thing he would've told. But he told something to law enforcement that was obviously something he knew not to be true. He knew that she sustained injuries on the road, and he finally told them that later.

So, Judge, in light of all of that, all of those things taken in their totality in a light most favorable to the State, these are questions of fact we believe for the jury. It goes to weight, not the existence of the evidence, and we believe that it comports with the case law in this state on circumstantial evidence cases. Thank you.

THE COURT: Reply?

MR. WISE: Your Honor, the theory of that cord being used is so speculative at best it doesn't warrant, in my opinion, serious consideration by this jury as being a murder weapon. When they took swabs off of both ends and combined them into one swab, we have no clue whether Mr. Beaty's DNA was on one end, the other end, or both ends. We simply don't know. Coupled with the fact that the manner of DNA on the cord is totally inconsistent with a cord that had been used in strangling someone. Their DNA expert testified that when you have enough pressure to put a bruise like that on somebody's neck there should have been substantial DNA on that. Not every time. But the probably is there's going to

be, and there wasn't. It was just a very small amount equivalent, according to their expert, from someone simply touching the cord at that point. And that's not any substantial evidence -- substantial circumstance evidence that gets this case to the jury.

And Mr. Beaty said he -- constantly said, if you look at his testimony, "She's a cutter. I think she cut herself. She may have cut herself." He never said, "I saw her cut herself and that's what happened." Never said that. He was going by quite literally past experiences that she had cut herself in the past. And if you take a situation like this, find somebody with blood all over their wrist, know she has a history, that is a pretty natural reaction. So how is that transferring to substantial circumstantial evidence that justifies this jury making a decision in this case?

THE COURT: All right. I've listened to the evidence, and at this stage of the trial the Court is more concerned of the existence of evidence. And I understand we're contending circumstantial evidence has got to be more than mere suspicion, and I find at this point there is more than just mere suspicion. And I will look at this in a light more favorable to the non-moving party, which would be the State, and I am going to respectfully deny your motion for directed verdict.

Any other motions? Do you want me to questioning him

about whether he wants to testify or not?

MR. GROSE: Not at this point, Your Honor. We have our two experts here, and there was some concern that we may not have even been starting until about now yesterday. We want them to hear the testimony of one of the witnesses that testified earlier in the week before that. So we would -- and it won't take a long time. What we would recommend is, is that you release the jury now for lunch -- for an early lunch and give them a time to come back this afternoon -- what, 12:30 maybe? 12:30.

MR. STUMBO: Your Honor --

THE COURT: We have a schedule from what I thought we would do. I wasn't expecting that we would be breaking until about 11:30 from what we talked about yesterday.

MR. STUMBO: Yeah, I would just say this, Your Honor. In my experience -- maybe, of course, these fellows have been in court or tried a lot of cases and maybe they've had this experience. I've never had the experience of mid-trial having testimony played back for a particular witness that's coming late. I'm not sure if that's what they're asking, if testimony to be played on the record, or they recorded it and they want to --

MR. WISE: It's a public record. I've had trials --

THE COURT: We're earlier than we thought. I was expecting that we might break around 11:30, quarter to

12:00. But we've only been here for an hour and 15 minutes --

MR. WISE: Right.

THE COURT: -- and I'm not going to go ahead and make this jury eat breakfast a second time. So what I'll do is I'll give you until 11:15. We'll give them a substantial break, and then we will --

MR. GROSE: Are you denying our request?

THE COURT: I'm denying that request.

MR. GROSE: All right. Well, I have had trials where I have had real time transcripts. I've had trials where I've gotten transcripts during the trial. I'm moving that the court require the court reporter to give us a transcript of Ms. Simmons' testimony in trial. I think we're entitled to it. I think other Defendants of this state have had it. And I think that this is a reasonable request.

THE COURT: Are you happy to let them listen to it?

COURT REPORTER: I have audio that they can listen to.

THE COURT: She'll make that available.

MR. GROSE: Thank you, Your Honor.

THE COURT: I think I want to go ahead and question your client now while we're on break.

MR. WISE: Well, we haven't made the decision final.

THE COURT: That's right. You haven't.

MR. WISE: Yeah.

THE COURT: But that's why I'm questioning him now. Please stand and be placed under oath.

MICHAEL VERNON BEATY, JR., having been first duly sworn, testified as follows:

THE COURT: Mr. Beaty, at this time I need to explain to you certain of your rights. If you do not understand anything that I say, please let me know. And if you want me to explain something in greater detail, I'll be happy to do so. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Mr. Beaty, we've now reached the stage of the trial where you may present your defense. You have a right to claim protections given to you by the Fifth Amendment to the Constitution which in part states that no person shall be compelled in a criminal case to be a witness against himself. Now, this means that you cannot be required to testify in this case, but you do have the right to testify on your own behalf. However, no one can make you testify. This is a personal right and no one can waive the right except for you.

Now, if you decide to testify you will be subject to the same rules that govern other witnesses and you may be examined and cross-examined in any relevant issue in this case. In addition, if you have any convictions involving dishonestly, or false statements, or for crimes punishable

by imprisonment of more than one year, and I determine that the probative value of admitting this evidence outweighs the prejudicial effect on you, then the Solicitor will be able to introduce your record to attack your credibility.

Now, at this time I'm going to ask the State, do you have any evidence of prior convictions that you would put in or would want to put in should he take the stand?

MR. STUMBO: Not under the rules.

THE COURT: Very well. Now, if you decide to testify, this decision on your part must be made freely, voluntarily and intelligently with knowledge of the protections given to you by the Fifth Amendment and the consequences of your decision to testify.

Now, if you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever and that there's to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not you want to testify. You may talk with your attorney, your family, your friends, or anyone else, but the final decision will be entirely left up to you.

Now, have you understood all that I've told you this morning?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about anything

that I've told you?

THE DEFENDANT: No, sir.

THE COURT: All right. Now, what I'm going to -- I'm going to allow you to discuss it with your attorneys and with your family members. And before we begin court back again then I will ask you the ultimate question and then we'll proceed. All right?

MR. WISE: I think it may be more appropriate to ask him basically at the end of our case.

THE COURT: Well before you all -- before the case is over with --

MR. WISE: Right.

THE COURT: -- I'll ask him that.

MR. WISE: That will be find.

THE COURT: Thank you. All right. The Court's adjourned until 11:15.

(Whereupon, a recess was held, during which the court reporter replayed the testimony of a prior witness for the defense expert witnesses. Court was in recess until 11:28 a.m.)

THE COURT: Thank you. Please take your seats. Let's have our jury in.

(Whereupon, the jury entered the courtroom at 11:28 a.m.)

THE COURT: You may be seated. Is the Defense ready to

proceed?

MR. WISE: We are, Your Honor. We call Lindsey Dutch Johnson.

THE COURT: Please come forward and be sworn.

LINDSEY DUTCH JOHNSON, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WISE:

Q Dr. Johnson, where are you from?

A I currently live in Glendale, Arizona.

Q And what is your current occupation?

A I am a mechanical engineer with expertise in biomechanics, specifically injury biomechanics.

Q And you work for what firm?

A I work for myself. My company -- the name of the company is Wiltshire Forensic Biomechanics.

Q Tell us, if you would, some of your educational background.

A Sure. I actually took my first college course when I was stationed overseas in the Marine Corp. When I got out of the Marine Corp I went to community college for two years and then transferred to Oregon State University where I received my Bachelor and Master degrees in mechanical engineering. My minor for my Master degree was in biomechanics. I then went to Georgia Tech and received my

Ph.D in mechanical engineering, and also have a minor in biomechanics from Georgia Tech.

Q After you left Georgia Tech what did you do?

A I went to work for Failure Analysis Associates. I worked there for four years as the senior engineering in their vehicle engineering practice. There I conducted numerous full-scale automotive crash tests. We were reconstructing accidents involving transportation, typically. The automotive accident reconstruction tests that I managed consisted of full-scale automotive crash tests where we used full-scale vehicles, actual vehicles that had dummies in them, like the crash dummies that you see on TV. So we had instrumentation in them looking at things such as forces, loose motions, and then we used high speed video and film cameras to look at how the bodies moved in the vehicles. We also looked at airplane crashes, train crashes, and worked on some of the higher profile cases.

Q And after that what did you do?

A I ended up moving, and so I ended up working for myself. My company name was Wiltshire Analysis. Wiltshire being my middle name. I worked seven years again as basically a structural failure analysis, basically looking at mechanical failures injury.

Q And do you participate in any training courses with different organizations?

A Sure. Actually, a number of them. Most recently I completed a 40 hour blood stain pattern analysis with San Bernardino County Sheriff's Department. I also went through a shooting reconstruction course with the same organization in San Bernardino, California.

Q And have you lectured on the subject of biomechanics with different groups?

A I have. Actually, when research for my Master's degree was in the area of impact forces on athletes. That resulted in publications. But through a publication and a peer review journal I also presented the findings at the Society of Experiment Mechanics spring conference in Dearborn, Michigan. I went for my Ph.D I also consulted in publications as well, including the Journal of Biomechanics. I presented those findings at the Biomedical Engineering Society in Cleveland, Ohio. Should I go on talking about presentations that may be pertinent here?

Q Yes, you should.

A Okay, okay. I also -- when I worked at Failure Analysis Associate which later changed their name to Exponent, I wrote two publications through the Technical Series for the Society of Automotive Engineers. I represented that work in Detroit, Michigan. Also, after working at Failure Analysis myself I wrote a book entitled Practical Injuries. I presented that work in 2009 at the

Federal Law Enforcement Training Center in Artesia, New Mexico to U.S. Custom and Border Protection personnel. I also wrote a manual, somewhat of a layperson's guide to that book, entitled Human Collision Injuries. And presented that work also last year in, I believe it was, March to the security officials in Mexico City, as well as what would be considered there would be like the Department of Public Safety. It's a large suburb of Mexico City of about two million people.

Q Have you ever been qualified as an expert in courts in the United States?

A I have, yes.

Q Obviously in Nevada -- I mean, excuse me, obviously Arizona, where you're from?

A Yes.

Q What other states?

A And that is it.

Q That is it. All right. Have you testified in all the courts in Nevada?

A I've testified in -- let's see here. Wisconsin, I guess that's Tuscan and Phoenix, Arizona.

Q And have you ever been qualified as an expert in biomechanics?

A Yes, I have.

Q And biomechanics, in a quick one sentence summary, is

what?

A It's, very simply stated, biomechanics is physics applied to the human body. So physics on things such as forces and motions.

MR. WISE: I'd like to qualify Dr. Johnson as an expert in the field of biomechanics.

THE COURT: Would the State like to voir dire first?

MR. SCOTT: Just a couple of questions, Your Honor.

VOIR DIRE EXAMINATION

BY MR. SCOTT:

Q Did you say you have been qualified as an expert?

A Yes, I have.

Q In States other than Arizona?

A No.

Q But you've testified in other states?

A In Wisconsin, yes. Excuse me. Yes, I have. That is correct. Yes, I've been qualified in the State of Wisconsin. Yes.

Q And you were qualified as an expert in biomechanics?

A Yes, sir.

Q And how -- you're a mechanical engineer? How does biomechanics apply to the profession of mechanical engineering?

A Sure. I do have a couple slides that discuss in a little bit more detail about actually what biomechanics is,

as well as injury biomechanics. But simply stated, and I will discuss this opportunity through slide presentations, very similar to an NTSB individual going out and investigating a plane crash. For example, if you've got an issue with a turbine engine, one of the blades in there fails. They need to have a understanding of not just how the plane functions, how these rotors move in the engine, what the rotors are attached to, but also the materials of the rotors themselves and how those materials respond to things such as temperature, forces and so forth. Mechanical engineers receive a lot of training in that area, if at the Bachelor's level -- Bachelor's level. So as a mechanical engineer my research evoked -- for my Master's I spent two years researching on athlete -- forces on athletes. At Georgia Tech I spent six years in the biomechanics laboratory there. I specifically focused on soft tissue mechanics. So with the human soft tissues my focus was on the human eye. I also looked at vascular tissues, arteries, veins of the human body, as well as ligaments. We specifically tested all human tissues, tested forces and how they respond to forces. So for a mechanical engineer working in the field of injury biomechanics, that's myself. There's not just mechanical engineering but a significant amount of cross-training in the life sciences such as anatomy, physiology, as well as pathology.

Q I think that was going to be my next question. What type of medical training would you have and where did you receive that medical training?

A Well, I don't specifically -- I wouldn't say I have medical training, although I have taken certainly anatomy courses, physiology courses, as well as pathology courses, as well as a number of courses in specifically -- specific to biomechanics.

Q Would this course be an undergraduate or graduate type courses?

A I took my anatomy, physiology and pathology courses as a graduate student at Georgia Tech.

Q What type of clients, primarily, does Wiltshire Forensic Biomechanics service? Would it be like airline companies and automotive companies?

A Most of my work, I work primarily in criminal cases, either for the prosecution side or the defense side. So pretty much my clients would be attorney clients.

Q Okay. But in the criminal realm? Because you were discussing, I think, automotive crash reconstruction and things of that nature. Would that be in the criminal or civil realm?

A I actually have been working in the field for about 16 years. The last five years I've focused specifically on criminal cases. I've had two or three involving

automobiles. But prior to my -- the last five years I've worked primarily on civil related cases.

Q The last five years primarily civil, but prior to that --

A No. The last five years I've worked primarily on criminal cases, and the prior 11 years I worked in the -- primarily, not exclusively, in the realm of civil cases involving -- a lot of times involving automobiles. Parts on automobiles and so forth.

MR. SCOTT: Okay, thank you. Your Honor, I think that's all I have.

THE COURT: You don't have any objection to him being deemed an expert in biomechanics?

MR. SCOTT: No, sir.

THE COURT: All right. Ladies and gentlemen, as with the other witnesses, or the experts we've had to testify, normally a witness can only testify as to what they've seen, heard, smelled or felt, however, when someone an extra amount of education and experience in an area we will let them give their conclusions or opinions. Now, whether or not you decide to accept that will be up to you, and whether or not you decide that he has enough education to make those conclusions will be entirely up to you, and you should not give his testimony any greater weight simply because he is an expert.

You may proceed.
Q Mr. Johnson, did you prepare a slide presentation to aid the jury in this matter?
A Yes, I did.
Q All right. What were you requested to do when you were first contacted by us?
A I was initially asked to look at this case from a biomechanical engineering perspective.
Q You had -- how much information did you have at that time?
A The information I was provided -- at that time, nothing. But I requested certain information and Mr. Wise provided me with information such as law enforcement reports, some interviews, crime scene photographs, photographs of some of the evidence, as well as the autopsy report and autopsy photographs.
Q And in working on this case did you perform some tests?
A I did, yes.
Q And were those demonstrated in this Power presentation?
A Yes.
Q If you would then, tell us a little more fully about biomechanics.
A Sure. Again, I have a couple slides here that hopefully will be informative. As I mentioned before, biomechanics is, simply stated, physics applied to the human

body. Again, forces and motions. Basically how bodies move.

It's got a fairly significant history. I won't spend a lot of time on this, but it certainly dates going back to actually before 100 to 200 AD. We have some of the -- probably the most well-known engineer of all time, Leonardo da Vinci, who was an engineer who created hundreds of anatomical diagrams. In the 1600s an individual by the name of Giovanni Borelli, he was an Italian trained mathematician as well as physicist. He applied that background to the human body, and that work in his field, physics is the predecessor of the modern day, what we term, biomechanics or bioengineering.

In the 1960s, that's where a lot of scientific journal publications were -- research was conducted on biomechanics type materials such as Teflons and titaniums that you can put inside the human body and the body doesn't reject that. So today there are literally -- here we've got the ASME, which is the American Society of Mechanical Engineers. In 1948 they had their Human Factors Division. It changed that name to the Bioengineering Division in 1976. ASME has been around for a couple hundred years. Today there are thousands of peer review journal articles, basically articles written by scientists and engineers that have been reviewed by other scientists and engineers. And today there

are more than 20 professional societies, actually, well more than that, that are dedicated to working the advancement of biomechanics and bioengineering. And the bottom line there, there are actually significantly more than 40 colleges and universities that offer degree and certification programs in biomechanics, bioengineering, biomedical engineering. Now you guys have at Clemson, which has a very well established bioengineering program, and I think there are something like 40 panel members there in Clemson.

Q So basically it's a biomechanical engineer does to the human body what, as you've described earlier, what engineers do to material objects, like airplanes, cars and so forth?

A Right. And I would get into that now. And so, biomechanics, physics applied to the human body and motions enforce. The injury biomechanics is simply mechanical engineering principals applied to human injury. And, of course, mechanical engineering, the basis of all mechanical engineering, is, in fact, physics. The primary application for what I do and people working in the field of injury biomechanics is the reconstruction of events that result in injury or death. So typically the core of mechanical engineering can be considered as analysis of machines and structures using those principals of physics. Mechanical failure analysis is -- I talked about this a little bit earlier. But it consists of things when individuals going

in and investigating plane crashes, oil refinery explosions, automobile failures, such as the National Highway and Transportation Administration. If there's a problem with a car they recall it and they try to look at what happened and what caused it in hopes so that obviously doesn't occur again. And in human body impact, that's just another example, where you have a heart valve and something goes wrong with it. You're going to go in there and investigate what happened and hopefully redesign that part.

So the difference between what a mechanical failure analyst does and what somebody working in the area of injury biomechanics does is simply the materials. So, for example, again, engineering materials we consider as being something such as steels and aluminums, titaniums, for example, especially in a case of somebody investigating a plane crash. Somebody working in injury biomechanics is human body materials. Here we're working with things such as bones, ligaments, muscles and tendons.

Q Let me interrupt you one second. When you're dealing with materials, be they engineering materials or human materials, do all materials form according to physics?

A They do. There are differences in the way that materials behave. So if you can put a force on a piece of steel, versus you put a force on a piece of bone, they behave differently. But yes, there are engineering and

physics principals that they follow. So really the skill set of somebody working in the field as myself, injury biomechanics, consist of mechanics or physics. The classical mechanics are the things that we talked -- I talked about earlier. Forces and motions, for example. And in deformation mechanics is really the study of materials subjected to those forces. So if you had a Nerf ball, for example, and you put it here and I put a force on with my hand, the Nerf ball is going to deform. So it's the relationship between the forces and the deformation of the material is what is termed deformation mechanics.

As I mentioned earlier, anatomy and physiology are very important for what we do. Anatomy gives us the terminology. So just like somebody investigating a plane crash, they need to be familiar with the terminology used to describe different parts of the airplane. And all those parts are connected to one another. The same with anatomy. It gives us the terminology we need to be able to communicate and be able to understand, not just a technical literature from the engineering perspective, but also the medical literature as well, because you have to bridge the two together.

Physiology, again, similar to the individual who is investigating a plane crash. They not only need to know about the materials of investigating a turbine blade, for example. They need to know how it all functions together to

give you that understanding of what may have caused the failure. So physiology in our case would be things such as understanding how the muscles and tendon and bone are connected and how the blood circulates through the human body.

Pathology, as I described earlier, one of the primaries that's important to us is to understand the effect that disease has on the body's ability to resist forces. So probably the simplest example I can think of is osteoporosis. If somebody has an osteoporotic hip, for example, and they fall down, they will be more than likely to fracture their hip than somebody who did not have an osteoporotic hip bone.

And then kinematics is essentially the study of human motion. And then injury is something also that's used fairly extensively in what we do, and that is the volume of literature, scientific literature, where typically mechanical engineers have studied the limits of human tissues such as bones, ligaments, tendons, muscles, skin and so forth. So there is data in the literature indicating it takes -- for example, it might take 400 pounds to break the tibia, if you bend it a certain way. So that literature exists and we use that often times to make comparisons between an injury that was sustained and whether or not the forces in the environment are consistent with what can be

found in the literature via testing.
Q And what do you mean by expertise in this area then?
A Pardon me?
Q Expertise, I think, is where we're going next.
A Yeah. Expertise is essentially really an analysis of forces and motions, and have energies up here such as kinetic injuries and potential energies, as well as deformations, as I mentioned before. How an object, including the human body, bones and tissue deform when they're subjected to forces. As I just described. And really bottom line it comes down to the overall expertise to determine how the injury was caused, or the root causing injury. The first is what injury was caused, for example.
Q Go ahead.
A I think the next slides are switching my analysis of this case.
Q Correct. And you're going to acquaint us with some terminology that's important to understand all those.
A Okay.
Q All right?
A Sure. And we'll get into a lot of the terminology. I think the first thing I just want to cover here, while we're on that slide, I was just -- as I go through my slides I -- on the top of my slides where I have the photograph. And autopsy and a number. That's just pointing to the actual

autopsy photograph that I reference. The same thing with both the Clinton PD and the SLED photographs. And the testing down there at the bottom or at the top. Some slides have testing. Those are a photograph taken either by myself or a colleague when we're performing the testing associated with this case.

Q And so, turn it around so we can understand what you did, or part of what you --

A Right. In this terminology, these are just some real general medical terms describing orientations or directions in the human body. And the first one is anterior, just meaning more towards the front of the body. Posterior meaning just closer to the backside of the body. And then medial means the midline of the body. So the midline kind of running down from your nose to the sternum. Like down the center of your body. And that would mean that we're describing something closer to the midline. And then lateral would be further away from the midline, closer to the sides of the body.

Q What injuries did you observe in this case?

A I've got a slide for that. And this is -- these are not actual injuries that I observed directly with their injuries at --

Q What injuries did you observe from the photographs? Autopsy photographs.

A Photographs and descriptions in the autopsy report authored by Dr. Ross. And they consisted of the ligature mark across the front of the neck. Contusions next in line to the trachea, which I will explain in just a minute. Facial and conjunctival petechiae, those little red spots that Dr. Ross was talking about. And then abrasions and contusions of Ms. Asbill's hands and right forearm.

Q And then we have some injuries that also have some terms of art, so to speak.

A Right. And I know some of these have already been described. I wasn't -- I didn't know whether or not they would be or not. I put them up here just for reference purposes. Ligature mark being a mark such as a groove or indentation in the skin that results in that material -- which is resulting from material being tightly -- basically placed tightly around the material. And in this case, we're looking at the neck specifically. Contusion is basically just a bruise. Discoloration due to the underlying ruptured blood vessels. And then abrasion, as has already been described, but is the surface of a body part rubbing or scraping against another surface.

Q Now, is there a big difference between an abrasion and a contusion?

A Well, due to the way that they are -- a contusion, for example, it looked similar. And certainly if I had -- I'm

certainly not a pathologist, but if you look at an abrasion it has a rougher look to it, where a contusion might be a discoloration versus a roughness to it.

Q But are they caused by the same mechanism or different mechanisms?

A In general I would say they're caused by different mechanisms due to the rubbing, scraping associated with an abrasion, and more could be direct -- or direct contact due to bruising or a contusion. And there may be some fine differences that I'm not aware of. And again, that may be something left to a pathologist to describe that.

Q All right. Go ahead.

A Petechiae. We talked about petechiae being little red spots resulting from over pressurization of the capillaries. And then conjunctiva, this is the tissue membrane that covers the front of the eye and then continues out and covers under the eyelid.

Q Now, we unfortunately have to have a little bit of an anatomy lesson.

A Well, just real shortly. I just wanted to describe some of the things that are important here. This is just looking at the front of the neck. So this person would be facing us. And so, over here would be the right side. And showing in the red here are the common carotid arteries going up here. And they're the primary blood supply apply

to the brain. There are some additional vessels in the back of the neck that also supply blood to the brain. But the carotid arteries -- or the common carotid artery, and specifically internal carotid artery, supply the majority of the brain -- blood to the brain. The internal jugular veins, they are what drain blood from the brain. And this is actually -- I'm going to back up here. We see down here, we see this right here is the part, which is basically the Adam's apple. What you feel there. It looks like -- shaped like a tent kind of, if you're looking at the side. It's kind of angled there. It protects things such as your voice box. Up here just then here we have the trachea cartiledge which is basically the windpipe. The cartilage that's basically. The cartilage that keep the windpipe open. And there's a lot of tests. This is just another view of the lines in here. This is just the tyroid cartilage, the trachea and the hygloid bone. Just kind of showing how they're all relative to one another.

Q What's the mechanism of injury I this case?

A Well, these -- the first line is just essentially on the autopsy report. And asphyxia due to strangulation was noted in the autopsy report. And once again, I just have a couple definitions here. And I know realize -- I know I only be described before I got here. Asphyxia is an interference of the oxygen. Basically defines the body's

inability to get oxygen to the brain. And then strangulation is basically a force applied to the neck either manual or ligature. And as was mentioned by Dr. Ross, manual would be with the hands and ligature would be some other material other than the hands.

Q Asphyxia and strangulation are different concepts obviously?

A They are, yes. Yes.

Q Go ahead.

A This is -- so this is like a cross section. So that previous view I had showing the arteries and then the carotid arteries, again, which up against the neck. So it just cut through the neck like this and look down at the neck we see some things. Such as we see the jugular vein and carotid artery. Here we see the trachea and the esophagus in this, so that this esophagus is located behind the trachea. So what this is describing is just some of effects. This is not necessarily associated with this case. These are just general drawings. But here it's showing that if you apply a force to the sides of the neck you can actually collapse these vessels, the jugular vein and the carotid artery on both sides such that you stop the blood flow to and from the brain. And at that point --

Q Let me ask you one question about the one on the left. The one on the left you say cuts off the blood to the brain,

correct?

A It shuts off the majority of the blood to the brain, but you still have the vertebral arteries that go up in the spine that supply some blood to the brain as well.

Q Would that render a person unconscious?

A Yes, it could. And I have another slide that talks a little bit about that, if you don't mind. But yes, it could.

Q Go ahead.

A So this is a diagram showing that you could, in fact, actually could press on the neck and not actually closing the trachea off. The right-hand -- so this would be something like you might see like in the neck hold, where somebody -- like people talk about a choke hold, but you avoid pushing on the trachea. On the right-hand drawing here it's if you place a force on the front of the neck, such as if you had a bar or something and you pushed it on the neck. You could actually end up closing the trachea but not actually occluding the arteries. Now, most likely in a strangulation case or a case where we have ligature. More specifically, you would end up having somewhat of possibly a combination of both. Some degree the trachea may be reduced in diameter as well.

So the next thing I want to talk about human tolerance. And this is the occlusion. I know Dr. Ross talked a little

bit about this and I'll just get just slightly a little bit more in-depth here. With regards to the internal jugular veins, the actual force it takes to cut these off if we have a contact and pull it from behind. This pulling force takes about four and a half pounds to close off the jugular vein such that blood cannot be drained from the brain. It takes about twice that, about 11 pounds of that pulling from behind to actually occlude the carotid arteries.

Q Now, 4.4 pounds doesn't seem like very much.

A It's not a lot of force. And as Dr. Ross mentioned earlier, it does not take a lot of force to occlude those jugular veins.

Q Go ahead.

A And then we continue to the trachea in the order of 33 pounds, almost three times what it takes to occlude the carotid arteries. Again, that's the tension force if you're pulling on a ligature from behind.

Q And that's to collapse the trachea?

A Yes. Yes.

Q So 33 pounds to cut off the windpipe, so to speak?

A Correct. Those values here are stated in the literature and they do not have plus and minus associated with those values. These are directly from the literature.

With regards to oxygen deprivation. As Dr. Ross had mentioned, she -- I think she gave values somewhere between

-- I don't recall exactly. Was it --
Q Eight, 10 --
A Eight to 10 seconds. And there's variation in the literature. I've actually -- these are just a couple numbers from a couple sources I had. Between 10 and 15 seconds. But I know you can actually do that certainly between four and 15 seconds from experience.

For non-spontaneous return respiration. And this is something also Dr. Ross had mentioned. Really two minutes is the number that's quoted in a couple books, DeMille and Spitz and Fisher who are pathologists and have written books, as being the time for a person who would be essentially in a non-intoxicated state. Someone who had no physiology, meaning they were not predisposed to some sort of respiratory issue or something like that, it's going to take about two minutes or more. Two minutes or more to actually render to them to the point where they're not able to breath on their own.

Q And that would be a normal healthy human being?
A Well, that would be somebody -- yes. I would say yes.
Q And to the extent there's something impairing their system, do yo we have any real serious research on that?
A We do not. And again, you know, with regards to the physiology and how that may change things; alcohol and drugs in the system, there may be some effect, and it's

certainly not my area of expertise. Again, these values here are taken from the biomechanical literature. And specifically the bottom one was taken from a significant study in Calgary, in Canada.

Q What is the first thing you looked at in this case?

A Okay. The first thing we looked at would just be the abrasion. Just a couple initial observations that I made. Here is just some abrasions of Ms. Asbill's right hand and her fingers, her right forearm, and then her left hand. And just some of the initial characteristics or observations that I made. Certainly the abrasions of the right forearm is consistent with a slight contact between that body surface and an asphalt surface roadway. And I say that the speed is significantly greater than walking speed. And that's based on literally looking at tens of thousands of photographs. And as Dr. Ross said, it's associated certainly -- quite often seen in vehicular accident victims. Abrasions to the right fingers as well are consistent with abraded due to contact -- sliding contact with a roadway surface.

The neck ligature mark, just some observations here. You see as we point out -- Dr. Ross pointed out, it starts a little higher on the left side and drops down to the right-hand side.

Q Also looking at it, it appears to have a slight U-shape

or indention in it?
A More -- we see that in this photograph here.
Q All right.
A It does. It does. It appears to drop down, I guess, a maybe a little but U here and appears to some degree to follow the geometry of the trachea that pokes out of the neck in this particular slide.
Q And from your observations of the ligature mark, were they consistent in width?
A No. But I've got a slide actually that might help answer that question.
Q Okay. I'm getting ahead of myself.
A Yeah, this is just another photograph. It's a closer photograph showing ligature marks on the right-hand side of the neck. Ms. Asbill's neck. And the wideness is about here and it tends to taper down a little past the left of the center line of her neck. This is another photograph taken during the autopsy. And this is more -- taken more straight on. This would be more of the center line of the neck. Here we can see it's wider up here and it starts tapering down over here to the left of center line. Again, the initial observations that I made were that the ligature mark transverses basically goes across the neck, higher on the left side, and then it's lower on the right-hand side. Has an overall turning down kind of to the right of center

which Mr. Wise was just talking about. And then there is over the right-hand side and narrows down -- tapers down and it becomes narrow just to the left side of the neck.

Q And did you make some observations about the car in this case?

A About the car?

Q Yeah.

A I did. The first thing that I got from the photographs -- crime scene photographs, they note a red substance on the side of the car. And I think I've got a specific -- there's a closer photograph, which was later to be determined to be Ms. Asbill's blood on the side of the car. Also, this is a shot of the right wheel -- right rear hubcap. Excuse me. This is the right rear door and right rear quarter panel. And the -- so the right rear wheel is right here. And this is just a picture of the hubcap you see from that distance. But it also shows blood. You see the lines of blood in this direction, that direction, another one in that direction. And the same thing with what you see up here at the red staining, which was determined to be blood again, in various directions about the hubcap. And so, some of the initial observations of that on the side of the vehicle where the blood stain patterns on the right rear hubcap were consistent of blood at a very steep angle. So if this is the hubcap, and turned on the side, the blood basically came

in at a pretty steep angle, versus like 90 degrees for the hubcap. The next one, observations of the blood stain patterns on the right rear hubcap are consistent of blood impact the hubcap from different directions. It appears to from different direction.

Q And on the hubcap would that be surprising?

A It would not. In my next -- the next observation was that larger blood stain pattern on the right rear door and right rear quarter panel are consistent with blood impact angle. I calculated it to be, estimated again, about 20 degrees, and not critically important which is, again, a quick calculation. And upon impact, the blood moving approximately horizontally to the vehicle. So in answer to your question, no. If the vehicle is moving and you have blood to cluster on the hubcap, I would expect there to be -- you know, it would impact the hubcap at one position, the hubcap would move. I would expect it to hit the hubcap in another position. So that would indicate that most likely that vehicle was moving when that blood impacted the hubcap.

Q And we get the testing. What were you basically trying to do with the testing?

A Okay. Really -- if you don't mind giving me just a moment.

Q No.

A My throat is extremely dry. It's probably about 40

degrees cooler here than it is in Phoenix. Really the objective of my testing was to identify possible scenarios based on the physical evidence and the facts in this case. That was my ultimate objective here. So I have a that being the overall objective, a number of primary objectives that I wanted to look at and answer. I estimate the vehicles speed based on the blood stain pattern -- on the blood stain patterns. And I'll talk about why I was interested in obtaining the vehicles speed a little bit later. Identify the likely body positions that would have resulted in abrasions to Ms. Asbill's arm and hands. To evaluate various possible body movement restraints such as things including seatbelts, the door, basically the wind load of the door. The wind forcing the door to be closed. As well as being held by the shirt. The back of the shirt. Evaluate the body movement without restraint. So if she was not wearing a seatbelt or if something wasn't pulling on her shirt or if the door wind load was not making a difference, I want to know what effect that might have taking away any restraints.

Q Now, you're talking about the affect of the wind on the door. What do you mean exactly there?

A Okay. So in this case I'll talk a little bit more about the abrasions. But initially I'd lay those abrasions were associated with Ms. Asbill basically leaning out of the

vehicle at that point. That would indicate, based on her seating position, that that right front door would have to be open. And so, as you know, trying to open a door at a certain speed it just wants to push back due to that wind hitting the door. So I wanted to know what kind of force that door -- the door would have on pushing Ms. Asbill trying to keep her in the car.

Q And that's actually testing the force on that door?

A Correct. Correct. I did that work.

Q Go ahead.

A Not a lot more here. Identifying whether or not restraining Ms. Asbill by her shirt could have resulted in and pulling on her neck. And then measuring the force on there. So how much force would it actually put on her neck. And then comparing those forces with the force of the ligature that I mentioned earlier, it takes a certain amount of force to actually occlude the arteries in the neck, as well as the veins. And then I investigated the ligature mark characteristics produced by both the subject USB cable, same diameter of the subject USB cable, as well as the neck hemline of an exemplar shirt. Exemplar meaning very substantially similar to the actual shirt.

Q Go ahead.

A So this is -- the clothing that was used during my testing included the clothing that was selected based on the

autopsy photographs. And I think there was a photograph taken of Ms. Asbill in the hospital indicating which shirts were essentially cut off of her.

Q Let me ask you one question before we go any further. I hand you State's Exhibit 47, which you've seen pictures of before.

A Yes, sir.

Q But you've never seen the actual garment?

A I have not.

Q Look at that briefly and tell us whether or not that is substantially similar to the one that you used in your experiments?

A It appears to be certainly the same brand. And I think this is a model or type appears to be quite similar.

Q Go ahead.

A There are two of these shirts from, I think, the -- I think it was an EMT or somebody working on Ms. Asbill initially. Medical service personnel indicate there was an undershirt, and what I saw in the photograph to appear to be a camisole type of shirt. Saw maybe in the photographs, I believe, at the hospital, as well as some of the evidence photographs I believe was taken by Clinton Police Department. And I apologize if I'm mixing up between SLED and Clinton PD, but the law enforcement photographs. So on the left-hand side here is an exemplar camisole. On the

right is an exemplar tank top. A little different color, but everything else appears to be pretty substantially simpler. The -- both these shirts were provided to me by the attorney, Mr. Wise. The right-hand photograph is showing our surrogate. Basically a surrogate, meaning somebody who was very substantially similar in height and weight to Ms. Asbill. And this is showing her wearing the camisole and the tank top from behind. And here the black straps are her bra. And they were not provided to us. That was just something that our surrogate was wearing. This picture of our surrogate. She was height and weight selected on the autopsy report, as well as her driver's license photo provided by law enforcement. And she was measured to be right around five feet eight inches and very close to 160 pounds.

Q Why was it important to get somebody the exact same -- close to the same size?

A Yes. Important for a number of reasons. And the primary reason for my work is making sure we have somebody sit -- or have somebody leaning outside of the car, for example, if they have a -- if they're very tall, they may be more than likely to fall under the vehicle. They would position themselves seated -- if they were quite a bit shorter, they could potentially seat themselves very differently in the seat. The weight also is -- if we had

somebody who is, say, 300 or 400 pounds sitting in that right front seat, they way they would move in the car is significantly different than somebody who weighed 90 pounds. So most -- just a couple factors, or reasons why.

Q Go ahead.

A Sure. The exemplary vehicle. That was selected based on the vehicle's identification number from the police photographs. And we used a 2003 Buick Century. And this is a picture of our exemplary vehicle. It was a privately owned vehicle.

Q Go ahead. Sure. The seating position, one of the things that we need to account for is certainly the right front seat position. So we adjusted the right front seat based on crime scene photographs. At least the left-hand side is the crime scene photograph. Again, it's a little difficult to see here. From the right-hand side, this is the right front seat down here at the seat track from this angle -- this is a crime scene photograph or taken by law enforcement. The track right here you can see seven metal notches. That means that seat was adjusted back to the eighth notch. So we basically used my camera and use of the lense and said, okay, this is where we have the notches. And so, we placed it based on that photograph. The seat recline angle we got from this photograph here. So we zoomed in and looked at the -- this is the head rest. It's

actually covered by a towel in this case. So we just, based on holding this photograph up and looking at the exemplar vehicle. And it was interesting to note that one notch more reclined makes a significant difference, so we were pretty sure we got it in the right place. Because a notch forward gave us -- looked significantly different than what you see in this left-hand photograph. So that was just how we positioned the seat for testing.

Getting the vehicle speed estimates. One of the really the primary reason I was interested in looking at the vehicle's speed, or estimating it, is to get an idea of the wind load. As you can imagine that the faster you go there's more force on that door to the wind. So I wanted to get a feel for -- I tried estimating how much -- how fast the vehicle would be going at that point. So I could actually measure the force on the door accurately. So this is just showing a picture of me in a general position showing at that speed. At different speeds. I was dripping porcine blood, which is pig blood. It's commonly used in spatter analysis. It's also in the work at San Bernardino County Sheriff's Department with my class. We used the pig's blood to look at, create patterns and do analysis from.

Q So you went down the road and did what?

A So basically we were driving down the road. We had the

owner of the vehicle -- she's kind enough to be very -- very helpful, and we drove at various speeds. I started at 10 miles an hour. Had her -- she drove at 10 miles an hour. I dripped some blood. We incremented it up to 20, 25, 30, 35, and then 40 miles an hour. And each time, at each speed, I dripped the blood. At about that location.

Q Go ahead.

A And so, yes, I had the door open. And I was positioned in the door in that specific position. So these are the results of that test. Down here at this angle here and here, that's the direction the blood landed about 20 miles an hour. Up here we have 25 miles an hour. And 30 we've got one here. And we were going a little fast here. We slowed to 30 miles an hour. Then 35 and 40 miles an hour. And it was kind of interesting because between 25 miles and hour and 35 miles an hour it's almost horizontal. Probably something to do with the way the air was going around the door and around my body at between 25 and 30 miles an hour. But to get a horizontal -- horizontal reading, we estimated it to be at about 30 miles an hour.

Q What do we have here?

A So this -- this is our surrogate. In this case I asked her, I said, "What I want you to do is I want you to basically support yourself using the solar musculature" and put her in a position that I believe is fairly close to the

abrasions being in contact with the ground. So we kind of matched up the abrasions to Ms. Asbill's right forearm and her hands. So this is the position that I asked her -- well, I said, okay, "Look at the photographs." And she looked at these and she placed her arms in the position. And I asked her to maintain, keep herself up using the musculature of the body so we could take that photograph. Something certainly to be noticed here. When the vehicle was actually moving, this is her right forearm, is going to be moving out, and basically you get to a point where your shoulder stops. And really that arm -- her arm would only move probably to about here to maybe here. So it's like sticking straight out. So backing up a little bit. This is what we considered a contact type contact position. And that looks like the contact that you would have to make with the ground in order to get those abrasions. We have -- because due to the comfort of our surrogate, we asked her just to maintain that position versus trying to turn her shoulder out a lot, like you would expect -- if the grounds moving, you would expect your arms to kind of move toward the rear of the vehicle. And she spent a lot of time in similar positions. So we want to take care of our surrogate. And that's what we considered our contact position. And she's supporting her own weight in that case with her musculature. So we also looked at seatbelts. You

know, what effect seatbelts we have restraining Ms. Asbill. And one of the things we need to do is have an idea of where the seatbelt may have been in position. And again, from the law enforcement photographs we see over here that -- what they call a D ring, it's not all the way at the top, and this is where you're going to adjust that seatbelt up or down. So we placed the vehicle seatbelt on the right front passenger side to that position as well.

So this is a picture of our surrogate with both the lap and the shoulder belt on. I just asked her, I said, "Also, just relax. Move to your right and just relax." And this is -- we did this a number of times. And this is just a pretty typical photograph. She was never able to make contacts with either of her hands to the ground.

Q So with the lap and seatbelt on could Ms. Asbill have touched the ground?

A Not correctly restrained with a shoulder and lap belt. Not based on my testing. This is -- this is with a lap belt only. Again, we did this a number of times. We were only able to get Ms. Asbill to get in this position, this is pretty much -- this is as far as she could go. And that's basically on the top of her hand. It did not get to her forearm. And again, she's completely -- she was asked to completely relax as well.

Q And did you run that more than once?

A Oh, certainly. We believe you would have to see if it was just the way that the belt was set up. Just kind of do it over and over a number of times and say, "Okay. This is what we have." And the photograph was very typical of the positions that she endured lasting with only the lap belt on.

Q Okay. And what do we have here?

A This is me. I was sitting in the driver's seat. I actually used myself from the -- the facts of the case indicating that Mr. Beaty was driving in this case, and I'm very close to his weight. A little bit taller. And certainly based on my experience with the working surrogates, my height and weight are substantially similar to Mr. Beaty's for this person. So this is a picture of me holding on to the surrogate by her shirt. Specifically I'm grabbing her camisole and her tank top from behind. Actually, let me go back up here. At this point here I've asked the surrogate, I said, "relax." So now she's not holding herself up with her musculature. I just asked her to relax. So I'm holding on to the back of her shirt. So this is actually the device -- the clamp I ended up using. I made up a little clamp such that it would grab the shirt trying to get a way that might be similar to the way somebody would grab. So it's not just grabbing a single point, but it's grabbing across the material. So the clamp

is kind of wide. And then it's similar to a fish scale to the back of that clamp setup to actually measure the force on which I would be pulling on her clothing. So here it is. Again, these are -- here. But this is -- here we've got the clamp on her shirt. I'm pulling on the on the actual -- the scale. And again, I've asked her just to relax. So at this point I've got from the measurements I've got 23, plus or minus three pounds. Again, this is from doing it multiple times to get a feel for the range. So it wasn't just a simple 23 pounds. I measured it. We got the value. We started over again. I did it again. And we had to call them, you know, run number one through five. And this is just what we did. With regular force -- the minimum force for me to require to keep her in that position was 23 pounds plus or minutes three pounds. So on the left-hand side -- well, from here we see once again holding the surrogate by her shirt. And again, I just ask her to completely relax. And the left hand photograph I let go of the shirt. And the first time --

Q Let's talk about that for a minute. I mean, could you expect her the first time you let go -- could you expect her, the first time you let her go, to fall naturally?

A The first time -- well, we didn't -- we actually didn't know. Something we learned from testing, that when you let go of her, that enough of her body mass was outside the car,

that she was just going to go. And she went very fast. In fact, the first time she ended up catching herself and bumping herself on the head. But certainly after we did it a while we actually had some padding underneath. A blue towel, after our first run. So that was -- you know, I didn't know what to expect and this is why we did the testing. So again --

Q So the picture on the right demonstrates what?

A That demonstrates that if I was not pulling on her shirt, that she would have fallen most likely completely out of the car, and certainly would have obtained abrasions on -- as you can see her, certainly in her face, shoulders, probably the front of her torso, knees and so forth.

Q And in the right picture what's her degree of restraint?

A In the right picture there is no restraint. Now, one thing I'm not show here is I'm not showing the force of the door on her body, and I talk about that in a moment.

Q We'll get to that in a minute. But right there, you went from basically the picture on the left to the picture on the right by just letting her go?

A That's correct. And again, we did this putting in the number of runs. And as she got more comfortable and we got a little more padding under there. And she was -- we just kind of go. And this was one of those pictures. Her action

was comfortable, not catching herself.

Q So the picture on the left, what does that show in relation to her hands as per the damage you saw on the hands and arms?

A Yeah, the picture on the left, this is what we call our contact position. This would be the position where those parts of her body would have been in contact with the roadway. So the force I was using there is the minimum force that was required for me to maintain and keep that position. That she had -- had let her go further, we could see certain she would have had abrasions on other parts of her body.

Q Go ahead.

A You now have looked at this, as I showed an earlier photograph of the dripping -- or how we -- dripping the blood on the vehicle. And the door -- the distance I had the door open was based on essentially this photograph here. So in the photograph here we have our surrogate, again, asked her in this position to relax. But with her musculature of her shoulder and her arms, so she could maintain that contact position. We then close the door until we made contact with her, and then measured that distance from the measuring tape to the -- to this point right here on the outside of that door -- window frame is about 26 inches. It just happened to be one of the door

positions. Like if you open your door it'll stay in certain positions. If you open it further it'll stay. It just happened to be in the first middle point of the door rest, and can stay open on its own, if your car is stopped, for example. So that was the door width that the -- the door opening that we used when we actually made our vehicle speed runs and I dripped the blood on the side of the car.

The right-hand picture is me showing how I held the gauge to measure the wind load on the door. So if we back up one slide. Way up here there's a pretty thick black rope. And that's attached. I tied it to the door frame. So we unrolled the window a little bit and then we wrapped that rope around the window frame so we could attach our gauge onto it. And so, on the right-hand photograph it's showing the -- where the gauge is hooked onto that rope. Actually it would be a little carabineer, a little metal clip that we actually clipped the gauge into.

So this is a photograph of me on the left showing the position I was in when we went down the road. And again, we looked at going 30 miles an hour. These sums are estimated speed of the vehicle based on the blood stain patterns. Basically the nature of the blood stain drops, the larger ones seen by law enforcement, and photographed by law enforcement, were, in fact, horizontal. So this is the position. And I was holding the -- as we drove down the

road at 30 miles an hour. And here we ended up with a force of just only about five pounds.

Q And what did that tell you?

A That tells me that -- well, that told me that what we needed to do is we needed to place that five pounds of force only in the opposite direction to basically push on our surrogate to see if that had a restraining effect on her.

Q So in the previous pictures did you have any force on the door on her?

A No. As a matter of fact, here we showed that over here.

Q Those would have been separate -- some others we're getting ready to look at?

A Correct.

Q So now you know what force the wind has on the door?

A Yes. Yes. I see at 30 miles an hour, when we did our that there basically no head wind or tail wind that we could tell.

Q Go ahead.

A And here is -- again, the surrogate has been asked to be in the contact position and asked to support her musculature. Support herself in the contact position. The -- again, the owner of the vehicle -- again, she helped us out a lot here. She applied the force, which is directly the opposite to which I measure it here. So it's Newton's

law of equal and opposite force. So she applied the force on the left photograph so it's like pushing or clamping on the surrogate. In the right-hand photograph is where I asked the surrogate, "Okay. I just want you to relax." So she ended up just falling directly to the ground again. The door essentially had really negligible force when it comes to her falling out.

Q It looks like you changed her angle a little bit?

A Her angle a little bit?

Q Yeah.

A Yeah. The interesting thing here, when we did this it seemed like every time that we did this the owner of the vehicle, she ended up putting double the force on. So we measured a force of five pounds going down the road. But for some reason the -- the woman who was helping us, she ended up doubling that force every time. So when we put twice the force on the surrogate and it still seemed to make any difference with regards to keeping her in the vehicle. Keep her from falling out.

Q The force on the door by the wind would have what impact on someone falling out of the driver -- or passenger side door?

A Well, that's what we were trying to look at here. I didn't know if it would help restrain the surrogate or not. And based on this testing, that wind load at 30 miles an

hour, and in fact, probably quite a bit more because we actually had twice that force, really was insignificant with regards to restraining the person and keeping her in the vehicle. Our surrogate.

This is just some other -- something else we looked at. There was some discussion about Ms. Asbill being found in the right front foot well. So we just looked at one position here having our surrogate on her knees. And that picture I'm holding her by the neck of the shirt. I really didn't need to do much. And the left one is just me letting her go.

Q Could her -- sitting on the floorboard, could her hands make contact with the road in this manner that she was injured?

A Most likely no. And this is really the only photograph I have here. She's -- the surrogate is leaning -- she's basically facing away and she's on both of her knees. Now, we could have looked at some other positions, but I would say most likely no, just because she wouldn't have been able to rotate her torso to -- she would have to be leaning quite a bit further out.

Q You could get some of the right hand to contact with the road, but the left hand would be probably no?

A Yeah. It was a pretty -- it would be a pretty strange position for her to make contact with the road on her right

forearm or hands from the floorboard.

Q Go ahead.

A So this is just something else we looked at. We asked the surrogate to remain seating in what you would consider to be a normal seating position for you. Just relax, slide down to the foot well and move to the right. And we didn't have a door, of course, on here. We were just curious what would be happening. Whether she would get kind of stuck down there in the floor well or if she'd actually fell out. And she basically fell out of the car.

So the next thing that was interesting looking at is how could this ligature mark. And based on the -- I want to back up for just a moment. As I mentioned earlier, the objective of the testing was to get an idea, look at some possible scenarios based on the evidence in this case. And the thing that I noted, and the evidence I really had, looked in the front -- the right front area -- seating area where Ms. Asbill was seated and there was nothing that would indicate that -- the only thing close to her neck was her shirt. There were no cables or one sitting down there at foot level where she was sitting or in her seat or around her. So for me, okay, from -- that's what I had as evidence, it seems likely a possibility and I wanted to test that her shirt was possibly what created that ligature mark.

Q Let me go back to the shirt, too. How about the

strength of the shirt? Is that something to consider?
A Well, I'm going to talk about that in a little bit. The ultimate strength of the shirt in this case did not matter.
Q Okay. Go ahead.
A Other than the fact -- well, I will talk about that in just a moment. So the next thing I was interested in, well, how could we -- how could that ligature mark possibly run from real high and down to the right, as in autopsy photographs. And so the thing that we really noticed -- this is just one possibility. The left-hand picture is just showing the way I grabbed the shirt. The right-hand picture is just showing how it pointed on her neck. And again, just going from left down to the right. And it really -- to get into that position there are probably an infinite number of ways you can get the shirt in that position. It kind of depends on how her shirt initially was. If it was -- I just heard this word, disheveled. I had not heard that before. But if it had been bunched up on her neck had been pulled down on her back earlier, I don't know. So again, there are a number of different ways that her shirt could have ended up in the position I'm showing here on the left -- on the right-hand slide. Again, this is one possible way the shirt could have been held from behind and ended up on her neck. The -- let's see here. I think I've got -- and as Mr. Wise

said -- noted -- or, excuse me, Dr. Ross noted, we've got this dipping down curvature here. And so, again, it tends to follow around the geometry of the trachea right here. And it certainly if we look on the photograph back here. The shirt line -- the shirt line itself is a little bit of a loop. It dips down as well. And depending on what the abrasions are from up there in the center of her neck, there may have been at one point to where there's some pulling down on that neck hemline at that point to cause it to move downward. So those are just some of the comments that I just made.

Again, here's the -- located those two photographs I showed earlier of the actual ligature mark. This is the one showing kind of on the right-hand side of the neck. Showing the width is widest up here and tapers down as we traverse the left side of her neck. And it get pretty narrow width right here. And it's difficult to tell really, so I did some measurements and I measured at this point, because that's really the last point where I can see clearly where there's a ligature mark. Meaning there's like a white area and then two tracks on each side of that white area. So based on those last two photographs, using the scale from the autopsy, I measured the width, the ligature mark width varied from about five millimeters. And I'll back up here. And that five millimeter width, I took a measurement right

at this location here. And then I've got the one -- about one and a half millimeters to five millimeters. And so, that's the five millimeters I measured. And I've got about one and a half millimeters here. So there's a thickness variation of almost three times from its widest point to its most narrow point. Based on my measurements it wasn't -- I used the scale right here to actually get those values. From the autopsy report, and Dr. Ross mentioned this earlier, she measured the ligature mark to be 22 inches, which is about five millimeters.

So the next thing I wanted to look at is the actual ligature, the characteristic of width.

Q Let me interrupt you here. Where you sent pictures of the cable that's State's Exhibit, I believe, 48? The black cable?

A I was. That was number 67 at some point.

Q 67, that's correct. SLED number 67.

A Okay.

Q And did it have a scale with it?

A It did. It did.

Q Go ahead.

A And so, the USB cable, based on those photographs, measured the diameter of -- the USB cable measured about four millimeters in diameter. And this is the exemplar tank top that I was provided on the right-hand side.

This is just a picture of my setup where I have a scale on the top we have inches, on the bottom of my scale we have millimeters. And this is just the cable that I used. It wasn't necessary an exemplar, but it was a USB cable of the same diameter as the subject cable, and it was about four millimeters in width. And this is without any tension applied to it. This is the exemplar tank top with the -- showing the neck hemline and it had an overall wide of approximately eight millimeters across the neck hemline. And again, this is without tension. So this is just basically showing how the tension -- how to generate tension. The scale is not showing this position. I just was doing this myself, so I ended up putting the tank top around my shoe on the right and held my hand on the scale on the left and then taking photographs at the same time. So the idea was I was using a foot and my hand to pull on the tank top.

Q And is that -- was that as far as it'll go?

A No. In fact, this is not under tension at all. So this is -- so this is -- I used the tension force from our testing in the car of minimal force I had to pull on -- excuse me, pull on our surrogate to keep her from going beyond the contact point. So I pulled this USB cable at 23 pounds, and I got a little bit plus or minus here. Did it a number of times. And really the diameter essentially didn't

change. It remained at four millimeters.

So did the same thing with the tank top, and I'm pulling the neck hem close at this point. And saw that the neck hem varied actually from about two millimeters right around here out to five millimeters out at these ends here. So it tapered down in the center.

There's something else I noticed when I had the tank top and I actually moved it away a little bit, that -- and this is just an example photo -- that the hem curled away. So the neck line actually attempted to curl away from the neck. It's just an observation that I made. And there's that clear picture. You see that hemline right here. It's tending to curl away in the center. So based on these evidence and facts of the case and a coupled with my testing I came up with a number of conclusions.

So you want me to go ahead and --

Q Sure.

A The first conclusion was that the abrasion to Ms. Asbill's right forearm and hands are consistent with sliding contact being made between these body surfaces and an asphalt roadway surface.

The next one is the blood stains on the subject vehicle's right rear door, rocker panel, quarter panel, hubcap, were consistent with blood impacting these surfaces while the vehicle was moving forward.

The next one is based on my testing. These are the blood stain patterns with the subject vehicle moving forward at an estimated speed of 30 miles an hour, plus or minus five miles an hour. As I mentioned earlier, it was a little bit difficult to get right in that 30 mile an hour range. So certainly you can get an error rate of at least five miles an hour. And that's when I believe that the blood impacted the side of the vehicle at approximately 30 miles an hour.

The next one is that Ms. Asbill's abrasions are consistent with her leaning to the right from the right front passenger seat until her right forearm and hands made contact with the ground while the vehicle was in motion. And that would provide that sliding of contact surface to abrade the arms.

Based on my testing, Ms. Asbill most likely would not sustained abrasions to her right forearm and hands had she been properly restrained in the right front seat with the seatbelt. Based on my testing, had Ms. Asbill not been restrained by some means, that she was likely to have fallen completely out of the vehicle and/or received other abrasions to her body, such as her head, shoulders, torso, knees and so forth.

Also based on my testing, one method by which Ms. Asbill could have been restrained is by the driver having

pulling on her shirt. Something I want to note here is that when I pull on her shirt that is, again, that was the minimum force that was required to keep our surrogate in the vehicle. The shirt was certainly strong enough to withstand that, and I did not take the shirt to failure, so I did not try and see how much pressure it was going to take to cause the shirt to tear. But I can tell you that's significantly greater than 23 pounds to actually try to pull somebody back into the car in that position. Based on the next one, based on my testing, the exemplar tank top was more than strong enough to restrain the surrogate and keep her from falling out of the vehicle while being pulled on by the driver. And something we noticed with the camisole is that grabbing the camisole straps they, in fact, tore at less than -- around 20 pounds, less than the 23 pounds. So the tank top was certainly stronger than the camisole was. And also based on the camisole, the -- we couldn't get the camisole up to the neck. It ended under the armpits essentially, so we were just not going to be able to get that neckline of the camisole up to the neck.

So based on the testing, the minimum exemplar tank top force required to hold the surrogate in the car was 23 pounds, plus or minus two pounds, which is two times the actual tension force to occlude the carotid arteries, which I mentioned earlier is 11 pounds.

Q Let me ask you this while you're at it. Were you concerned about occluding the carotid arteries on the surrogate you had?

A Certainly, I was concerned. Although we maintained position for certainly well under 10 seconds. And we did that purposely. I'm certain there's information in the literature associated with making sure -- certainly law enforcement when holds are placed 20 to 30 seconds maximum. You want to release that hold to ensure, you know, spontaneous breathing. So we certainly want to take care of our surrogate because she spent a lot of hours with us. But there was no -- we had no problems with her passing out or reaching unconsciousness. We did it in a manner of seconds for photographs.

Okay. Let me see the next one. Based on the autopsy report, the ligature mark on Ms. Asbill's mark varied in width from maximum of five millimeters on the right side of her neck to a minimum of 1.5 millimeters just to left of center line of her neck. This is not based on the value that Ms. -- excuse, Dr. Ross mentioned that .2 -- two inches, or five millimeters. This is based on my measurements using her scale. Using the scale in the autopsy photographs. Based on my testing, the very width of the ligature mark is consistent with the geometry produced when the exemplar tank top neck hem was subjected to a

tension of 23 pounds. Again, I stretched it out and it varied in width from five millimeters down to about two millimeters. And based on my testing, the varying width of the ligature mark is not consistent with the geometry of the USB cable of the same diameter of the subject USB cable subjected to a tension of 23 pounds. Again, that USB cable maintained four inch -- or four millimeters constantly, or along the width of that -- along the length of the cable, whereas the neck hemline actually varied with you tensioned it.

And I believe we've got -- that finishes my conclusions and summary of the analysis that I performed.

Q Do you have a professional opinion as to whether or not State's Exhibit 47, which is the tank top worn by Ms. Asbill that night, could have caused the ligature mark to her neck?

A Based on my testing with the surrogate and the exemplary tank top, yes.

Q Between the USB cable and the tank top, which one most probably caused the mark to her neck?

A Well, based on my testing, once again, most likely I would say the neck hemline, just due to the fact that it varies in width and is actually quite close to what you measured on -- from the autopsy photographs.

Q Based on the tension that you detected when you pulled someone in, if a person were kept in that position for 15 to

30 seconds what would happen to them?
A Well, just based on the information that I have from literature, and from from personal experience in the military, basically that 15 seconds mark is the maximum. Somebody could -- if those carotid arteries are occluded, and you pull for 15 seconds, certainly that would lead to unconsciousness. Or less, depending on a number of other factors.
Q And you testified what -- is there any way to research or experiment, or however you want to put it, what position she would have been in if she was pulled back in the car?
A I supposed you may be able to do some testing. I can tell you at least based on what we did, our surrogate, when we asked her to relax, the position she ended up was she had her feet in the foot well. If you ended up pulling somebody back in, she very well may have ended up in that foot well. Certainly if she was relaxed.
Q But it's difficult to say that?
A It is. It is, without going through certainly some further testing.
MR. WISE: Thank you. Answer any questions Mr. Stumbo may have.
THE COURT: Let me see the attorneys for just a second.
(Whereupon a side bar was held.)
THE COURT: Ladies and gentlemen of the jury, this

appears to be a good time to break for lunch, so I'm going to excuse you for lunch on strict instructions that you don't talk to anybody. But let's be back here just a little bit before 2:00 so we can proceed with cross-examination -- or start with cross-examination. Thank you ladies and gentlemen.

(Whereupon, the jury exited the courtroom at 12:50 p.m.)

THE COURT: Dr. Johnson, I will remind you that you are still on the witness stand, therefore you can't talk with your attorneys or anyone else concerning your testimony. You can go to lunch, but you can't discuss your testimony. That's a rule in South Carolina. Thank you.

THE WITNESS: Thank you, sir.

(Whereupon, the witness steps down from the witness stand.)

MR. WISE: Your Honor, just one housekeeping matter. We printed out, it should be introduced as a Court's exhibit, a copy of the slide presentation. Not to go to the jury, but just --

MR. STUMBO: Judge, yeah, we would be okay with a Court's Exhibit.

THE COURT: Sure.

MR. WISE: Right.

MR. STUMBO: Not to go back to the jury.

THE COURT: Yeah. And, in fact, you all sent me a copy of it.

MR. STUMBO: Right.

MR. WISE: Right. Well -

THE COURT: Certainly.

MR. WISE: There are a couple little changes, but not anything major.

THE COURT: All right. The court is in recess until 2:00 p.m. Thank you.

(Whereupon, court was in recess from 12:50 p.m. to 2:07 p.m.)

THE COURT: Thank you. Please take your seats. Would the witness please return to the witness stand.

(Whereupon, the witness returns to the witness stand.)

THE COURT: Bring the jury in. Anything we need to clean up before?

MR. SCOTT: Judge, I'm going to be handling cross-examination. If I could have a minute. I may use Mr. Johnson's -- or Dr. Johnson's slides during cross. So if we could -

MR. SCOTT: No, sir. I've got one printed up. Just --

MR. WISE: I've got --

MR. SCOTT: Okay. Thank you.

MR. WISE: Okay, no problem. There's also the Court

exhibit right here.

MR. STUMBO: Judge, I had it on an iPad, but I obviously --

MR. SCOTT: Here's what I'd like -- if we could put it back up there. I'm going to question him on a few things, but I'd like the jury to see those pictures as we --

THE COURT: Okay. It only makes sense, if you're going to cross-examine somebody you need to have it at the same medium.

MR. SCOTT: Yes, sir. Thank you.

MR. WISE: And, Judge, while we're talking about logistics.

THE COURT: Yes, sir.

MR. WISE: After they get done with their cross-examination can we take a brief recess and handle some logistics before --

THE COURT: Well, he said this will probably take about 45 minutes, so that will be an appropriate time to take a break at that time.

MR. WISE: All right. Thank you, sir.

(Whereupon, the jury entered the courtroom at 2:08 p.m.)

You may be seated. All right, Mr. Scott. You may begin your cross-examination.

MR. SCOTT: Yes, sir. Thank you.

CROSS-EXAMINATION

BY MR. SCOTT:

Q All right. Mr. Johnson, I do want to thank you for being here. I know you've came a long ways. Some 1,700 miles, I think. From Arizona?

A Yes, sir.

Q And when did you fly in to South Carolina?

A Tuesday.

Q Originally you were scheduled to be in Vermont; is that correct?

A Yes, sir.

Q And was that going to be a court appearance or training, or vacation?

A No. It was -- actually it was going to be a trial. It settled last Friday afternoon.

Q Okay. You fly all over the country to testify as an expert, don't you?

A Not too often. But I've done it a few times.

Q This week you were scheduled to be in Vermont and South Carolina for trials to testify. What type -- you don't have to -- was that a criminal trial up there in Vermont you were going to testify?

A Yes, it was.

Q And was that going to be -- were you testifying for the defense or for the prosecution?

A That was for the defense side.
Q Okay. And typically a defense attorney calls you and you all arrange a fee if you will come to wherever they're holding court so you can testify for them?
A Either the prosecution side or defense will end up calling me and we'll discuss fees.
Q But there is a fee involved for your services, correct?
A Of course, yes.
Q Now, The Wiltshire Group -- and I was trying to ask you this -- I didn't ask enough questions probably. But what is the day-to-day -- what is an average day like for Wiltshire Corporation? What do you do day-to-day at your business mainly?
A Sure. My company is an LLC. It's Wiltshire Forensic Biomechanics. I'm the owner and primary member. And basically I receive cases in the form of materials, like legal documents, depositions, medical records, law enforcement, like in this case, photographs and police reports and so forth. So a lot of my day is spent evaluating that material. And those are the initial steps to receive materials like that from an attorney, evaluate that and provide them some initial observations or thoughts. And then they may or may not want me to prepare a report. And if necessary, I'll be available for a deposition or trial testimony.

Q Is it safe to say you're kind of a professional expert for legal purposes?

A No. I consider myself a mechanical engineer. I just happen to have expertise in injury biomechanics. And there seems to be a need for that on some of these cases.

Q And how often are you called upon to testify in court?

A This is my third time I testified at trial. I've given probably 10 or 12 depositions.

Q Do you recall when you were first contacted by this particular case?

A Yeah. I believe it was late June of 2014. So last year.

Q And do you recall what you were first told?

A Pardon me?

Q Do you recall what you were first told?

A Not exactly. I just recall being told really some overview of the case and no specifics until I was actually verbally retained by Mr. Wise.

Q So the initial consultation would have, I guess, sort of been to tell you what they were dealing with and who they represented, and then you were hired sometime later? Is that what you testified to?

A Right. Basically an initial conversation is Mr. Wise had a case. He mentioned, you know, specifics. Here's some issues in the case. Is this something that would be within

the scope of your expertise. And I told him that it would, and then at that point he did retain me.

Q Okay. And now, you were asked to perform some experiments, or was that your idea to perform these reenactments we looked at?

A We actually had some discussions, but I actually had first proposed that we do some testing to some possible scenarios.

Q Is that -- is that what you're normally called upon to do? I'm calling them reenactments, but they're sort of experiments, aren't they?

A They considered experiments. We're not trying to actually recreate the incident because, of course, we're using a surrogate woman. We're using an exemplar vehicle. We're not moving with the vehicle. So we're just trying to get a feel for some motions certain for my testing. It's a static sense that may have occurred with and without restraints, for example. It's just some different possibilities, or different scenario possibilities just based on that type testing we did. It wasn't -- we weren't trying to recreate what happened. But based on the physical evidence, such as the abrasions, the ligature mark, the fact that Ms. Asbill was noted as sitting in the right front seat. Bringing that evidence and those facts together to come up with some possible likely scenarios.

Q Okay. So you weren't trying to recreate something? You were looking for a possibility is what you just said?
A Correct. Most likely based on the physical evidence and the facts of the case, what most likely may have occurred in this case.
Q So you were looking to find what most likely occurred? Is that what you're saying?
A I'm just saying that that's reasonable.
Q Well, is that what you attempted to do, find out what most likely happened, or a possibility?
A Certainly most likely. Based -- once again, based on the physical evidence and the facts that I had associated with this case, perform the testing to look at what the most likely possibilities would have been. Excuse me. What was most likely events may have occurred.
Q All right. Tell me, what is an experiment?
A It's something typically where you -- there's some measurement involved typically with an experiment. And in this case, for example, we measured the forces on the shirt. What kind of forces were associated with pulling on the shirt. And then oftentimes in this case, certainly, with reconstruction, you'll end up comparing those numbers with what has been experimentally done in the past.
Q I looked up the definition of experiment. It is an orderly procedure carried out with the goal of verifying the

validity of a hypothesis.
A Okay.
Q Is that fair?
A That was fair.
Q What was the hypothesis you were trying to test?
A Based on, once again, the physical evidence and what I saw there. My hypothesis was that it's a possibility, prior to testing, that Mr. Beaty in the driver's seat could have been pulling on Ms. Asbill's shirt which resulted in the ligature mark, and possibly restrained her in the vehicle. Again, it took testing to run some things about somebody possibly falling out of the vehicle, whether or not there were restraint -- seatbelt type of restraints involved.
Q And you keep using that word possibility. So you were trying to see if this was possible?
A Well, initially we were interested in just some possible scenarios. And certainly based -- again, based on the evidence in this case, the -- my conclusions were most likely this is what occurred.
Q Okay. Correct me if I'm wrong. This is the first time this week you've ever stepped foot in the state of South Carolina, correct? I know you've been to North Carolina.
A I can't say for sure. But I would say I'm 99 percent sure that I have not been to South Carolina.
Q Well, welcome to South Carolina.

A Thank you, sir.
Q And Laurens County, specifically. And you've been called upon to look at this case from a biomechanical perspective?
A Yes, sir.
Q And you were asked to fly over some seven, eight, nine, 10 states to see if the theory that you were given was possible?
A Well, actually I wasn't given a theory basically. Again, looking at the evidence and the facts in the case, this is the hypothesis that I came up with and this is what we tested.
Q Wait a minute. You came up with this hypothesis independently? Now, what I'm asking, who first told you the story about restraining somebody riding down the road at 30 miles an hour?
A By my doing the testing.
Q Well, where did you first hear this story? Was it a coincidence that that's what Mr. Beaty told law enforcement?
A This story about 30 miles an hour --
Q No. Restraining somebody by a shirt. Where did you first hear that?
A I did not see that information until probably a little less than two weeks ago. I had already presented my Powerpoint presentation to Mr. Wise. I was then provided

with a written statement that apparently Mr. Beaty had written to law enforcement.

Q What did -- I call him Mr. Wise.

A Mr. Wise. I apologize. Mr. Wise.

Q When you're talking about Mr. Wise, what information did he give you before you began performing these tests?

A I was provided with law enforcement crime scene photos. I was provided with photographs of evidence, shirts, cables and so forth. I was provided with statements provided -- law enforcement statements, interviews, autopsy report, and the autopsy photographs. But I was not provided a couple of the statements that Mr. Wise provided me less than two weeks ago indicating that Mr. Beaty had been pulling on Ms. Asbill's shirt. I created -- I conducted all my testing, generated my opinions or conclusions in this case, and then he sent that information to me.

Q Now I'm confused. You get incident reports and various statements -- not his statement. How did you come up with the idea to test about -- you obviously knew what kind of shirt she was wearing?

A Right. Based on the autopsy photographs and crime scene photographs.

Q Did they tell you what kind of shirt she was wearing?

A Well, we had discussions about the photographs, and certainly there's a photograph in there that Ms. Asbill was

-- I believe she was on her right side. And the shirts had been cut, and there was a bra, a camisole and then a tank top.

Q Well, who provided the shirts to you?

A Mr. Wise provided the shirts.

Q So he did talk to you about the shirts and that being an issue he was concerned with, correct?

A Well, this is something we had discussed. Again, I proposed the testing. And certainly based on that evidence, again, the shirt appeared to be really the only thing that was close to her neck in this case.

Q So you were asked to determine whether it was possible to restrain somebody by the shirts and whether or not it would cause, I guess, occlusion of the carotid artery?

A No, actually I wasn't. I was asked to really look at that evidence and what do you see, Dutch. You know, what you see here. We had discussions about specifics about photographs and so forth and exemplar shirts. But basically it's through my looking at the evidence and the facts, again, in this case is that, hey -- we talked about the shirt. I don't know if it was my initial thought. But, hey, the shirt seemed like a pretty good possibility that -- really it's the only thing in that right front seat that possibly caused that ligature mark.

Q Did they tell you about the inventory of the other

items seized from the car?

A Which items, sir?

Q The entire inventory. All the items taken from the Buick. Did they tell you about what was taken?

A Basically, what I have are photographs. I had photographs of Ms. Asbill's clothing. I had photographs of some of the USB cables, charger cables and so forth. I don't know if I had a complete list of all the evidence or not.

Q So you had cables, you had pictures of the ligature marks. You had all this. But you only decided to test on a tank top?

A Right. Actually, once again, you know, based on the photographs that I had -- and I was looking -- primary photographs I used mostly is looking at that right front foot well area where Ms. Asbill was sitting, in that area, the seat, the console, the dash, everything around her. I didn't see anything else that could have created that mark on her neck. So to me it seemed reasonable for me to take a look at whether or not that shirt, that neck hemline, could have been something that caused that mark on her neck.

Q Wouldn't it have been more reasonable to look at the inventory? The other items that were taken out of the backseat and other areas of the car to test those items as well?

A Well, not for me. And actually, I did do some testing

with the USB cable. Mr. Wise actually told me that this was something that is a subject cable in this case, or subject material that caused the ligature mark. So that's why I did a comparison of that cable, the last few slides I presented. So for me, what I saw in that car, to me that seemed reasonable -- most reasonable for me to look at what I could see around her in the car as being something that would have caused that ligature mark.

Q Okay. Thank you. You got here Tuesday?

A Yes, sir.

Q So up until this week you've never laid eyes on the USB cord, or the actual tank top, or the actual Buick, or Mr. Beaty, or EA Asbill?

A Other than through photographs. No, sir.

Q Okay. Now, you would agree that the pressure needed to occlude, I think -- let's just say cut off blood flow to the head is relatively slight, correct?

A You have to define slight actually.

Q 4.4 pounds. Is that your -- if you know what slide it is.

A Right. Do you want me to bring that slide up or do you want me to --

Q Yeah, if you would, please. If I reference one and you know which slide it is, just --

A Sure.

THE COURT: Cut down the light.

Q That's what I was referencing, the 4.4 pounds. You're right. It depends on what the definition of relative is. 4.4 pounds. I guess the low end -- it's not a whole lot of pressure compared to what it would take to shut off the trachea.

A It actually -- well, it's actually the tension force. It's not actually pressure. It's actually the tension force in the ligature that's being pulled from behind her, whatever direction.

Q Okay. Well, compared to tension force here, 33 pounds, 4.4 is just a fraction of that, correct?

A Correct.

Q All right. And I know we're talking about relativity. But it really only takes a small amount of time for somebody to lose consciousness if constant pressure is applied to the neck area, correct?

A Once you occlude the carotid arteries, yes. Just 15 seconds.

Q 15? What was the range? If you have that slide.

A Well, okay. Yeah. I believe it's the next slide. That's just a range. It's really -- I've seen ranges, and Dr. Ross has seen other ranges. I've seen between four and 15 seconds.

Q And any one of those ranges is relatively short, 4 to

15 seconds and you lose consciousness?
A Yeah. If you consider 15 seconds being shorter -- yes. Yes.
Q Okay. And you admitted -- I think you said, "I'm certainly not a pathologist." And you're not. You're a mechanical engineer. But I think you agree, and Dr. Ross said sort of the same thing, about two minutes is kind of the critical time where constant pressure is applied to the neck with the proper force than -- that's kind of a critical time as far as like whether somebody can die if that constant pressure is applied, correct?
A Yeah. And based on my evaluation of the literature, scientific literature, yeah. That two minute mark appears to be a number that's cited. It's relatively often. It's not cited extensively, but two minutes and above. Yes.
Q Okay. That's 120 seconds.
A Correct. And more of a -- again, that's somebody whose in a state that doesn't have a preexisting condition that could cause a respiratory issue in less than two minutes, for example.
Q Okay. But that pressure has to be constant, correct?
A Right. That tension force from behind needs to basically be applied such that it maintains those arteries pinched off for that amount of time.
Q Because you know what happens once that pressure is

released, right?

A Sure. Yes.

Q What happens?

A Well, basically if you release that pressure then you start the blood flow again.

Q Right. And then the person regains consciousness, correct, after a period of time?

A Say that one more time, please.

Q The person would regain consciousness after a little bit of time, correct?

A Typically a normal person without any other condition, so within 30 seconds. If you release that hold there's an area between 30 seconds and two minutes. Thirty seconds, yes. Somewhere between there and two minutes. But typically two minutes is the mark. Beyond that, typically someone will not retain -- I guess, be able to regain their breathing on their own. They'll need assistance.

Q Okay. So that's why it's important you've got to maintain just a constant pressure. If you want to kill somebody, you've got to do it for at least two minutes or thereabouts two minutes, correct?

A Well, based on the literature, it does take about two minutes. There might be some factors in there. That might be questions more for a pathologist to talk about, you know, whether or not you release the pressure for a short period

of time and then reapply it. I'm not quite sure about some of those details. But again, that number, two minutes, seems to be one of those values cited for beyond that, or beyond a normal person -- typically somebody might being able to regain their ability to respirate, or breath.

Q And I think you mentioned just sort of in passing about being in the military and being familiar with like a choke hold type situation?

A Yes, sir.

Q Have you ever performed a choke hold on someone?

A Yes, I have. I had basic law enforcement training in the military, and that was something that we used to restrain an individual.

Q And have you ever done a choke hold to the point of somebody losing consciousness?

A Yes, I have.

Q And how long did that take? Do you recall?

A I really didn't measure it. It was relatively fast. And we had it done to ourselves. We each were choked out as well. I didn't time it, so I would guess within 15 seconds.

Q Do you remember how long it took once you released the pressure for them to wake back up and --

A Almost instantaneously. Get them on their side and make sure you're not on their body. You need to get them in a certain position and make sure they can respirate.

Basically expand their chest. So fairly quickly afterwards.
Q Okay. I've got as slide 46, but it's your objective slide.
A One of these?
Q Yes, sir. That one right there. Those were things that you wanted to determine, correct?
A Right. These are just some of the initial things I wanted to look at, yes.
Q And why was speed important to you?
A One of the main reasons I was interested in speed is to get an idea of the force on the door. So the closing force. And that was really one of the primary reasons I was interested in obtaining speed of the vehicle.
Q Okay. And the way you -- you explained it clearly. But you would -- I guess you compared first the pictures of the blood patterns found on the passenger door and passenger rear of the Buick. And then what you would do is drive at varying speeds and drip pig blood out the window, or out the door of the car at different speeds?
A Correct. Do you want me to put that slide in? I think there's -- let's see. Well, I guess I need to go backwards here. This would be the one of the photographs?
Q Yes, sir. Yes, sir. So what you -- I think you probably would look at those pictures and then try to figure out what speed it would take to duplicate those type drops;

is that correct?

A Right. And what I was looking at is I'm looking at these larger blood stains. These two, this one, and these here. And the orientation when the blood impacted was horizontal. So it makes a -- it's a horizontal direction.

Q It would indicate the car was moving at the time those --

A Right. And that's where the speed is -- you recall where I dropped the pig's blood at lower speeds it didn't become horizontal. But as we sped up that car it became horizontal.

Q And then I guess the faster you go the longer and thinner those drops would be probably?

A Not -- well, it's possible. It kind of depends on the droplet size actually. The size of the blood that's dropped itself that hits the car.

Q Would you go to the page that has your testing results?

A The conclusions, sir?

Q Yes, sir. Back one.

A Oh, back.

Q Is the one with the pig blood on the door.

A Okay.

Q And presumably these marks here, the ones you achieved at 30 miles an hour, looked the most similar to the ones on the Buick?

A No. I wasn't trying to recreate the look or the shape of the blood. I was actually trying to look at what speed would be deposited in a horizontal direction. I wasn't trying to recreate the actual -- the geometry of the blood stains at all.

Q Okay. I think I see what you're saying. And then like higher speed is kind of going at an up --

A Correct. Right.

Q So just approximately 30 miles an hour is the speed, you think, that the blood hit the back of the Buick?

A Yeah. Based on the testing at 30 miles an hour, plus or minus five miles an hour.

Q Okay. Now, I want to ask you why you wanted to evaluate results with and without a seatbelt.

A Again, it's just looking at different possibilities. It wasn't -- I wasn't sure that -- again, that's it. I just wanted to make sure it covered basis. Make sure that -- try to do the best that I could is looking at different possibilities. I just wasn't sure, you know, whether or not a seatbelt would retrain somebody and how far they could get out of the car. And so, I wanted to look at that.

Q Were you told whether or not EA Asbill was wearing her seatbelt when she arrived at Calvert Avenue?

A No, I wasn't told, sir.

Q But you had different results from when she was wearing

her seatbelt and when she was not wearing her seatbelt, correct?

A Yes, sir. With regards to her relaxing -- our surrogate relaxing and falling out or not falling out of the car. Yes.

Q Okay. Would it change your ultimate opinion if you found that she had been wearing her seatbelt?

A No. Certainly not based on my testing. No.

Q Would you go to the slide where it shows her fully restrained by the seatbelt, please.

A Sure. This slide here, sir?

Q Yes, sir. What are you attempting to demonstrate in this picture where she's wearing her shoulder and lap belt?

A Just that basically with restraint, that she would be in contact with her hand or with her forearm. Basically the contact position I talked about earlier, to obtain the abrasions that Ms. Asbill had on her right forearm and her hands, just seem to be affected by restraint. If she was wearing a seatbelt, if she was relaxed, our surrogate, could she get that far down to the ground.

Q If I told you she had been wearing her seatbelt the whole time, you're telling me that wouldn't change your ultimate opinion in this case?

A Not based on my testing. That's not what I found.

Q Well, your testing here is showing that she's unable to

fully get out of the car with her restraints on.
A Correct.
Q Am I missing something?
A Well, if I understand you correctly, sir, basically Ms. Asbill had abrasions to her right forearm, her hands, and if she was fully restrained like this, then based on my testing she would not be able to touch the ground with her right forearm or her hands.
Q Okay. So if I told you she had been wearing her seatbelt, how would she -- how would your testing have worked out? How would she have gotten those abrasions?
A Well, not wearing a three point seatbelt. Not wearing a lap belt and shoulder belt. Based on my testing she wouldn't have been able to get those abrasions.
Q Okay. So if I told you she had been wearing her seatbelt then she would not have been able to get those abrasions and the whole theory would not have proven correct?
A Well, based on my testing, just having our surrogate just relax, our surrogate was not able to touch the ground with her forearm and her hands --
Q Thank you.
A -- when she's fully restrained.
Q And all your tests, of course, were done, besides the speed estimate, in a non-moving car, correct?

A That's correct.
Q Mr. Johnson, you don't have to go through -- it's slide 47. It's the second set of objections you had hoped to test.
A Okay.
Q Or, I'm sorry, the first one. One of the --
A Oh, first set?
Q Yeah. One of the first things you had said was that you wanted to determine if EA could have been restrained by her shirt, correct?
A Correct, yeah. I think that one of the restraints, yeah. Being held by the shirt.
Q And I think ultimately you kind of -- the camisole, or the white tank top underneath, it sort of in your eyes became a non-factor, correct?
A Yes. With regards to the ligature mark, as well as the ability to withstand the force -- the pulling force to keep our surrogate in the position. The contact position. It tore at 20 pounds, somewhere around there, and we weren't able to get that camisole to be up to the neck from pulling from behind.
Q Okay. So really we're just concerned on the outer tank top, I guess.
A Correct. That was more of the focus.
Q And tell me, where did you get the tank top used in

your testing? I think -- did you say Mr. Wise gave it to you?

A Yes. He provided me with the tank top.

Q And how old was that particular tank top?

A I do not know.

Q Did it have tags on it?

A I believe one or two may have had a tag on it. I don't recall, sir.

Q Okay. Well, so it's probably new, store bought?

A They looked new. I believe there's probably one or two that may not have. They may have been tank tops used by somebody else.

Q You saw it earlier? You saw the tank top that they had up here. It's already been cut anyway. But it's probably thinner than the one you used and a little bit older, correct?

A That I don't know. It appears to be the same -- same brand and the same look of the tank top.

MR. SCOTT: Your Honor, I'm sorry. I beg the Court's indulgence.

THE COURT: Let me ask the jurors. Do any of you all need any water or anything like that or are you all good?

Q Is that similar, or does this look a little bit older maybe than the one you tested, and is the material -- I note it to be fairly thin. Is that sort of the texture that you

had that you tested?
A It appears to be pretty similar. This one obviously is dirty. Has stains on it. It appears like it's been stretched. I don't know what else with it. It appears very similar to the tank top that I used. I couldn't tell you without actually performing tests on the materials themselves to see whether or not it was different in strength or ability to be elastic.
Q Let's just do this. Can you hand me the shirt you used to test?
A I don't have it here, sir.
Q You didn't bring it with you?
A No, sir. I did not.
Q Where is it?
A It's sitting in my office, sir.
Q In Arizona?
A Yes, sir.
Q You didn't think that was necessary to bring with you to court today?
A I just didn't bring it, sir.
Q Because I want to use Investigator Bentley to show how this test would have worked. And it's not here?
A No, sir. It's not.
Q So we won't get to see how new it was or the textile strength of that particular one you used.

A I've certainly got it if there's need to be sent out here.

Q Okay. Well, let's go with what we've got then. Could you go to the one that shows the tank top that you used that's in Arizona?

A Yes, sir. Is this the slide, sir?

Q Yes, sir. Yes, sir. Thank you very much. Would you agree it seems to dip down fairly low in the front. And I think somebody referred to this as a racerback tank top. Are you familiar with that term?

A No, I'm not.

Q Would you agree -- I guess it has some sort of dip in the front, correct?

A Right. There's a dip in the back as well. I think the way I have it laid out there they appeared to be dipper further in the front, which may be the case, actually.

Q And I've got a slide 58. This one right here.

A This one, sir, or keep on going?

Q Surrogate restrained by holding shirt by the right hand.

A Right here, sir?

Q Yes, sir. And, of course, the car is not moving there, correct?

A That's correct.

Q And I think you measured 23 pounds to be the force

needed to keep that surrogate from falling out, correct?

A Making the position you see here to about 23 pounds, yes.

Q All right. She's not wearing a seatbelt, correct?

A That's correct.

Q And who is that surrogate?

A That's me.

Q Well, you're the driver. I'm calling her --

A Oh, I'm sorry.

Q Who's that female?

A It's a female I hired through a professional agency in Tempe, Arizona.

Q She's an actress?

A As part of her background, yes.

Q How much was she paid?

A One hundred dollars an hour.

Q And that is you in the driver's seat?

A Yes, sir.

Q Did you attempt to -- you're looking down at her here. Did you attempt to see what your vision out of the windshield would be if you had been moving in the car? If you had been driving?

A Certainly at that position I wouldn't be able to see out of the windshield. Certainly would not have been the ideal position for driving.

Q Right. And about 23 pounds it would have taken to hold her like that?

A Yes, sir. Actually, in this picture, sir, I believe I've got a hold of her camisole as well. But it's still -- I think I was just holding these 23 pounds just for the tank top.

Q Are you six-three or six-four?

A I'm about six-two, sir.

Q You're six-two?

A Yes, sir.

Q And you were able to reach across the front of that Buick to grab her. But you've gotten both shirts in that picture. Was that producing the tank top up around her neck? It's hard to tell in this picture.

A Yeah, and I don't recall. Honestly, I think -- I don't recall if it was lower or higher or actual position where it's high on the left or on the right.

Q Did you hold her in that position for 120 seconds?

A No, sir. I didn't.

Q Did she attempt to present herself as if she was unconscious? I'm talking about like dead weight type. Are you familiar with that term?

A Right. The idea was is just I had asked her in the pictures where there's some sort of restraint, whether I'm restraining her or the seatbelt, just completely relax. And

that was the -- what I asked her to do. She did a pretty good job, based on my observations of her.

Q Now, I want to ask you about the testing of the ligature mark, because that was an objective as well, correct?

A To look at the -- you want to look at the objectives again, sir?

Q Well, that was one of the -- you gave me this slide. But that was an objective, correct?

A Right. Looking at the ligature marks, yes. And I believe that's the last one down here. Investigating ligature mark characteristics produced by the cable and the neck hemline.

Q You wanted to see if the neck hemline was a possibility?

A That's right. Right, with regard to geometry. With the geometry similar to the ligature mark that's on Ms. Asbill's neck. I did that for both the cable and the neck hemline.

Q And you were here when Dr. Ross was testifying, correct?

A Yes, sir.

Q And she noted with a laser pointer and -- and I think you referenced it, I think. But did you note the crisscross pattern of the ligature?

A No, sir. I didn't.
Q Would you go to your -- just any one of your slides and show the ligature mark.
A Sure.
Q Now, with the thought in mind that you're not a pathologist, as you said, and that you've only looked at pictures so far, are you testifying that you don't see a crisscrossing pattern here?
A Well, I can -- let me just go through another photo, if you don't mind. Are you talking about where it appears that there's a marking up here and then this square kind of touches at that point?
Q Well, sure. That's what I'm talking about.
A That's the ligature mark really appears to the left side of her neck and down here. It's really where it's really clear. And this area starts -- it appears to be bruising or abrasions. Again, what they exactly are I'd leave to the pathologist. But I didn't see a clear ligature mark that certainly crossed anywhere. There may be some bruising that is in that area that appears, but based on looking at the photographs I don't see ligature marks that actually cross. And again, that may be some detail on there that I'm missing due to my, you know, not being a pathologist.
Q Yeah, I know. I'm not asking you to even be a

pathologist right now. We're all looking at this picture together. Now, I'm noting a line -- correct me if I'm wrong, but -- we can both follow it with our lasers here. There's another one that goes across here. Are you seeing what I'm seeing?

A Well, I'm certainly seeing -- I see this dropping down like this, and I see the bottom of this rectangle extending and getting into this area here. I just see where that --

Q And here's the other side right here.

A What are you seeing down here, sir?

Q What your tracing with your laser. That mark.

A So it seems to -- there seems to be a disruption at this point; is that correct? More bruising here, a little darker here, then lighter here, then darker here?

Q Yes, sir. Are you noting the crisscross pattern that we're all looking at here?

A Well, I can see where the bruising kind of intersect at that point. I don't see a crisscrossing of the ligature. No, sir.

Q Okay. Let me show you slide number 73. It's the -- this one here that's got the -

A Okay.

Q How were you able to achieve this picture here? Did it take both hands as you're demonstrating on the left?

A No. I think I was just placing this left hand down

here and pulling with my right hand. We do this a number of different times and that just happens to the photograph that was taken by my colleague. So it did not require two hands to -- again, and it really depended on the initial position of that tank top and basically how you grab it.

Q Did you test to see what sort of marks that left on the human skin when you did that to her?

A Pardon me, sir?

Q Did you test -- did you document what type of marks that left on her neck when you did that to her?

A No. In fact, I didn't -- I did not want to -- purposely did not want to leave marks on her neck. We applied pressure. Basically it got red and went away. So I did not look at the indentation marks. We didn't create any indentations in her neck.

Q That's fine. Let's look at the ones that showed a redness on her neck that that left behind. The pictures you --

A Oh, the pictures of our surrogate with the red?

Q Yeah.

A I don't have those, sir. I wasn't looking into recreating the ligature mark. I was looking simply to look at the shape. The geometry. The geometry of the ligature mark is high on the left, drops down on the right, and that's all we were trying to look to. Could that tank top

hemline be put in that position.

Q Well, we'll get there in a minute, but I want to see what mark that left on her neck, because one of your objectives is to test the ligature mark and whether a USB cable or a shirt can make the ligature mark.

A Well --

Q Where are the pictures that shows the mark it left on her?

A Actually, sir, that was not one of my objectives to make the ligature mark. If you go back to that objective. I apologize for having to step through these. Investigate ligature mark characteristics. And for me, characteristics means geometry. I wasn't specifically looking at what material -- what -- basically what mark is left on the skin by a ligature. In this case the neck hemline and the cable specifically with my interest was -- the characteristics I was specifically interested in was the geometry. Since the ligature on Ms. Asbill's neck tapered down, I looked at both the subject cable, the cable is similar in diameter, as well as the neck hemline.

Q Wouldn't the ligature geometry produce ligature characteristics that we all need to look at so we can compare the shirt to those autopsy photos?

A Well, sir, certainly something -- I wasn't going to do that with our surrogate. I wanted to protect her. Once

again, I looked at the geometry and compared the geometry to the ligature on Ms. Asbill's neck and the geometry that I tested.

Q I know. But just please show us the picture that shows the redness that you were describing that was produced on her neck.

A Oh, I don't. But I can tell you that the line here, basically where you see the neck hemline, had pulled on it. I think we looked at it once or twice. It was just red behind that neckline -- hemline.

Q But we don't have the picture to show the jury?

A No, sir. That wasn't -- it wasn't an objective of mine.

Q Okay. But the objective was to check out or test the ligature characteristics, or geometry?

A Right. And that's what I meant by characteristics. The geometry produced by the materials, cable and the neck hemline when placed under tension.

Q Did you test to see what sort of marks a USB cable would have left on a surrogate's neck?

A No. The same thing. I didn't actually place the cable on the surrogate's neck. I actually did it with myself a couple of times, in the mirror, just looking at how kind of the marks might leave. Certainly didn't take any photographs of that. I didn't do that to my surrogate. No,

sir.

Q Now, you mentioned the ligature mark rising on the right side of the neck? Is that what you said?

A I don't know about rising. It just seems to appear -- it's higher on the left side of the neck and then kind of draws down lower on the right side of the neck.

Q Well, if you don't mind, would you go to one of your slides?

A Sure.

Q That's a good one. And I think what you're describing is it does take sort of an upward trajectory, I guess? Is that the word?

A Correct, sir. It appears to be higher on the left of center, and this appears to be more on the right-hand side.

Q Let me see something. That's my animation there. So what you're describing is, I guess, a ligature that kind of takes that sort of angle?

A Well, it's actually -- I don't really see the ligature mark on the left side of her neck. You've indicated there's a mark on the left side of the neck?

Q Well, suppose -- either side of the neck. What you're noting is an upward rise?

A Well, at least the -- at this point here -- actually, we'll get a closer photo. This one here. It appears to -- it's sort of rising at this point here. Higher on the left

than it is on the right.

Q Now, just go to the picture -- let's see. I've got 58. And I can't remember which.

A Is it this, sir?

Q Yes, sir. Now, would you agree with me that her head is facing down and you would be pulling up on her with your right hand?

A Correct. In this -- this particular one I did all with my right hand. Right hand pulling certainly backward -- I mean, toward the driver's seat and maybe a little bit upward.

Q Now, we don't have to be experts in biomechanics to realize that the ligature that would leave would be more of a trajectory like that, correct?

A That is certainly one orientation. Yes, sir. Again, we're looking at the left side of the neck and it's -- it's one possible one.

Q Okay. Let me draw one that faces the other way for you.

A But I do understand what you're saying.

Q Okay. Let me do it again, just so we're on the same page. Now, what you had and you testified to was a ligature mark you observed rise toward the back of the head.

A A ligature mark from the autopsy photos, yes. It was lower on the left and it was -- I'm sorry. Higher on the

left and then higher on the right. That's based on the autopsy photographs.

Q In your demonstration, the ligature mark from that angle, and under your theory, would produce more of a pattern such as that, or a trajectory such as that, correct?

A No. That's a possibility. That's a possibility. But like I said earlier, that really depends on the initial position of the shirt. If that shirt is in the position that I showed in an earlier slide where I had the surrogate sitting up, where it's high on the left, it can virtually dig into the skin at that point and stay there without sliding up. And this is certainly a possibility. It's just one possibility though.

Q In that particular slide wouldn't you expect the bottom ligature mark on my diagram there?

A You know, sir, I don't know. Because we were able to look grabbing from behind. It appears the same, but we actually saw the neck hemline being a little higher on the left and lower on the right.

Q I'm not talking about the one that -- we're going to get to that one where she's sitting up and you see her face. In that slide on the left, what trajectory of a ligature mark would you expect? One like this, or one like that?

A Well, again, it would have to depend on the initial position of that neck hemline. I don't have a photograph of

that one, sir. But it's possible. What you're saying is a possibility.

Q And that's all you were looking for was possibilities, right?

A Well, I was looking for the most likely way that that ligature mark could have been -- basically she could have gotten that ligature mark. And certainly in this orientation that she appears, it's not likely that it basically goes in the opposite direction.

Q Okay. So your final opinion was that it's possible -- are you getting to --

A I believe that's the final one down at the bottom, sir.

Q So you're here to testify that in your professional opinion it's a possibility that Mr. Beaty's driving 30 miles down the road -- 30 miles an hour down the road while maintaining constant pressure, say, give or take 23 pounds of pressure on somebody who's hanging out of the door for at least 120 seconds?

A No, I'm not saying that, sir.

Q Well, we know 120 seconds is the minimum amount of time it takes somebody to die if constant pressure is applied to their neck, and we estimated his speed to be 30 miles an hour. What am I missing?

A Well, I didn't measure -- one thing I didn't -- I didn't look at the duration at which how long that -- the

ligature would have been held on the neck. All I looked at is the possibility of the -- I looked at the ligature mark itself --

Q The geometry.

A -- and the abrasions, but I did not look at the duration, like how long somebody would have held that mark to cause the ligature mark seen in the autopsy photographs. That would be a question for a pathologist.

Q Okay. But you did some research. You looked at some well respected medical journals and you came up with 120 seconds. And you've already testified that that's kind of on the low end. And that's a critical time. Two minutes. Because thereafter respirations don't just pick up on your own. Go back to the slide of the 120 seconds.

A Sure. No, I'm familiar with that slide. So could you restate the question again, sir, please?

Q Your testimony is that it's more likely -- or it's likely, or even possible, that Mr. Beaty is maintaining this woman's shirt in such a fashion that she's choking on her shirt, 23 pounds of pressure, while he's driving 30 miles an hour down the road for at least two minutes?

A No, sir. That's not what I'm saying.

Q What are you saying?

A I'm just saying that it's likely that that shirt is what caused the ligature mark. I'm not saying that it was

held there for 15 seconds or two minutes. I don't know what occurred afterwards. But for some reason he held on -- he held on the neck with the shirt, the ligature mark was there, she ends up in some strange position to create a respiratory issue. I don't know that. So I did not try to estimate. And I'm not saying that he was -- Ms. Asbill was held for two minutes by that shirt.

Q Okay. Because that's not reasonable, is it? That somebody's driving 30 miles down the road while holding somebody out the door for two minutes?

A You know, sir, that's a hard question to answer. A reasonable person who is not intoxicated. It sounds like a long time.

Q Come on. It's not reasonable though, is it?

A Well, for me it would not be reasonable.

Q All right. And tell me, how long was your flight to get over here?

A Four, four and a half hours.

Q What did your plane ticket cost? Do you know?

A Four to $500 dollars one way.

Q How many hours did you spend on this case?

A A lot more than I'm going to get paid for. I think at least 100, sir. At least.

Q A hundred hours?

A A hundred and fifty.

Q And how about the surrogate? How much time did she spend on it?
A I think we spent about nine hours with her.
Q Did she get paid 100 bucks an hour for that?
A She did. We went through the agency that we used when I worked at Failure Analysis Associates. We used surrogates quite often. And that agency, they have -- they have a minimum cost of three hours -- or charge three hours.
Q So what's your total fee?
A Pardon me?
Q What's your total fee for your work on this case?
A I haven't added up. I've been paid -- to date, at least, I've been paid, I think, somewhere around $6,000 or $7,000 to date.
Q How much more do you need to make yourself --
A I would say between seven and $9,000.
Q Did you say $16,000?
A Yes, sir. Yes, sir.
MR. SCOTT: All right. Thank you very much.
THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. WISE:
Q The tests you've done, were they done pursuant to normal scientific methods?
A Sure. Pretty much everything -- everything that we do

in terms of a test, we certainly use a scientific method. If you recall in high school or not -- or I don't want to start getting into engineering. But the four primary phases are data collection, hypothesis, testing of the hypothesis, and then conclusions. So yes, certainly I used scientific method.

Q Couldn't what you did be duplicated by another biomechanical engineer somewhere else?

A Absolutely.

Q And he can perform the same type of test?

A Yes, sir.

Q And basically what you know about the case or from what you've read, do you think that it is possible or probable for her to have had a seatbelt on when she was leaning out the car and her hands hitting the road?

A Based on my testing, no.

MR. WISE: Okay. Thank you.

THE COURT: Any recross?

MR. SCOTT: No, sir. Thank you, Mr. Johnson.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you, sir.

(Whereupon, the witness steps down from the witness stand.)

THE COURT: Any objection to this witness being excused?

MR. WISE: No objection, but --

MR. STUMBO: None from the State.

MR. WISE: -- he's got to ride with us.

THE COURT: All right. Well, we've been in here for about an hour. Why don't we take a 10 minutes recess. Please do not discuss the case.

(Whereupon, the jury exited the courtroom at 3:01 p.m.)

THE COURT: Court will be in recess until 10 after. Let me see the attorneys up here for a second.

(Whereupon, a recess was held from 3:01 p.m. to 3:16 p.m.)

THE COURT: Bring our jury in. Have you all made a decision on that question I had earlier?

MR. WISE: About him testifying? He's not going to testify.

(Whereupon, the jury entered the courtroom at 3:16 p.m.)

THE COURT: Thank you. You all may be seated. Ladies and gentlemen of the jury, are you all comfortable? If it's too warm or too cool. Actually, it feels pretty good right now. But if you all start getting hot or something like that. I want you all to be comfortable.

All right. The Defense may call it's next witness.

MR. GROSE: Your Honor, if it pleases the Court, we call Dr. Jonathon Arden.

THE COURT: Dr. Arden, come forward and be sworn.

THE WITNESS: Yes, Your Honor.

DR. JONATHON ARDEN, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GROSE:

Q Dr. Arden, what is your profession?

A I am a physician, and in particular I am a forensic pathologist.

Q And in order to be a physician and a forensic pathologist did you have to get a degree in specialized training?

A Yes. I had to go through education and specialized training.

Q And can you tell us -- tell the jury what that was, please.

A I attended college for two years at the Johns Hopkins University in Baltimore, and then for two years at the University of Michigan where I received my bachelor of science degree in 1976. I then attended and graduated from the University of Michigan medical school receiving my MD, or doctorate of medicine degree, in 1980. Following that I served in two speciality training programs, which people frequently call residency programs. The first was a three year program in the field of anatomic pathology, which took

place at the New York University Medical Center in New York City.

Q Stop there. What do you mean by anatomical pathology?

A Well, first of all, pathology is the medical speciality that studies and interprets the changes and the form, or sometimes the function, of the human body or its components. And by changes, what I'm referring to are the effects of diseases and/or injuries. So anatomic pathology is one of the two major branches of pathology that studies that long durations of the anatomy, the actual structures, that are then interpreted to diagnose diseases and injuries. So anatomic pathology involves naked eye examination of the body, or specimens for the body. It involves microscopic examination of portions of the body, and it involves making diagnoses from those examinations of the anatomy.

Q My wife has had some cysts removed before and they sent those off to be analyzed. Is that what you're talking about or part of what you're talking about?

A Yes. The -- typically when portions of the body are removed, whether it's a tumor, a cyst, a limb, whatever, or when samples are taken for biopsies, those are sent, quote/unquote, to pathology. That's surgical pathology, which is the majority of the practice of hospital pathology, which is the kind of anatomic pathology I've just described.

Q I got you. I interrupted you. You were about to talk

about -- more about your residencies, I believe.

A Yes. Actually, after I completed my general pathology or anatomic pathology training I then spent one additional year of training in the field of forensic pathology. That took place at the office of the chief medical examination of the state of Maryland that's located in Baltimore.

Q And what is forensic pathology?

A Forensic pathology is the branch, we call it a subspeciality of pathology, that incorporates the general background of general medicine. And more specifically, it deals with anatomic pathology as I've just described it to you, and then applies it primarily to the investigation and certification of deaths. And, in fact, forensic pathology particularly is applied to or involved with some kinds of deaths. First of all, all deaths are what we group together under the term violent. A violent death simply means any death where any kind of injury either caused the death or was part of causing that death. And any violent deaths, forensic pathology deals with deals that are sudden, unexpected or unexplained. So this involves people who died without medical attention, without a diagnosis outside of medical care. So people who die at home, people who drop dead in public, people who don't -- aren't walking around with a diagnosis that was reasonably expected to cause their death.

Q Now, have you worked as a forensic pathologist?

A Yes, I have.

Q And can you tell the jurors about that, please.

A After I finished the training that I just described for you and became board certified in both anatomic and forensic pathology, I then spent the next 20 years working as a full-time government medical examiner. I worked at four different offices. I spent a little less than two years in Suffolk County in New York, three years working for the state of Delaware, and then spent nine years as a medical examiner for the city of New York, rose through several titles, and finished as the first deputy chief medical examiner. That made me the number two man. I then spent about five and a half years as the chief medical examiner for Washington, D.C. After that -- and the total of all that was 20 years. After that I then opened this private consulting practice that brings me here today. And so, I'm not largely doing medical legal consulting work where I work with attorneys. I do civil matters. I do criminal matters. And I offer consultation expertise, and on occasion, testimony. In addition to my consulting work, I'm also -- I also have a part-time appointment with the office of the chief medical examiner of the state of West Virginia. And so, in that capacity I do the regular functions of medical examiner, investigating deaths, doing autopsies, issuing

death certificates and autopsy reports. But again, that's a part-time pursuit for me at the moment.

Q Do I take that to mean, though, that you still conduct autopsies?

A Yes, sir.

Q And you still testify when needed in those cases?

A I do.

Q Okay. Now, earlier you said something. You mentioned board certification. What is a board certification?

A Each of the medical specialities in this country has a governing board. So for me that's the American Board of Pathology. Each of these boards puts together the standards for education and training to be qualified in a given field or a piece of that field. So once you have completed the necessary requirements of education and licensure and speciality training you can then submit your qualifications to them, pay them a significant fee. They will let you sit for an examination in each of these areas. And if you pass the examination then they certify that you have met the -- you met the requirements. And it's a demonstration of your competency and accomplishment within your given field.

Q And I believe you said you had two board certifications?

A Yes. Both in anatomic and forensic pathology.

Q Now, how many autopsies do you think you've conducted

in your career?
A I didn't keep an exact count through most of my career, but I know conservatively estimated it's about 3,000 or so to date.
Q Now, you said you have a consulting service now.
A Yes, sir.
Q And do you -- do you travel around the country consulting?
A I do. I spend most of my time in my office consulting. But I have cases from all over the country. I have -- more of my cases come from the eastern half of the U.S. since I'm located on the east coast. And, of course, of all the cases that I've had -- of all the ones that I have consulted, I only testify in a minority of cases. But I'm available to go wherever the cases are.
Q Now, when you were working full-time as a medical examiner, forensic pathologist, were you qualified as an expert in courts?
A On many occasions, yes.
Q As a forensic pathologist?
A Yes, sir.
Q And how many states do you think you've been qualified as an expert in?
A Well, between my 20 years in government service when I worked in four different states and -- I'm sorry. Actually,

it's three different states. Four different offices, but two of them were in New York. So in those years I was qualified on many occasions, hundreds of occasions, in probably three or four states total. In the years that I've been doing consulting work I think I've been qualified as an expert in forensic pathology in about 33 states roughly, probably about eight federal courts, several military courts marshal.

Q And have you ever been qualified as an expert in forensic pathology in South Carolina?

A Yes, sir.

Q Roughly how many times?

A It's about four to six times. Right around there.

Q And Greenwood County is an adjacent county. It's one of the counties in our circuit. Have you been qualified in this judicial circuit?

A Yes, sir.

MR. GROSE: At this time, Your Honor, I would offer Dr. Arden as an expert in forensic pathology.

THE COURT: Would the State like to voir dire him?

MR. STUMBO: Just a couple questions, Your Honor.

VOIR DIRE EXAMINATION

BY MR. STUMBO:

Q Dr. Arden, I know you testified to this. You said you were the chief medical examiner for the District of Columbia

and then you went into private practice; is that correct?
A Yes, sir.
Q Was that -- what year was that?
A Late 2003.
Q 2003, since then. So for the past 11 to 12 years you have been in private consulting business, consulting with primarily attorneys; is that correct?
A For about 11 years. Yes, sir.
Q And on occasion were you retained to come to court and testify?
A Yes, sir.
Q And that's all over the country, correct?
A It could be all over the country. As I said, more of the eastern half. But I have -- I have testified on the west coast, for instance. Yes, sir.
Q I may have missed this. I know Mr. Grose asked you if you've been qualified in the courts of this state as an expert and you said yes. You said you were actually over in Greenwood at one point?
A Yes, sir.
Q How many times total?
A If I remember individual circuits or jurisdictions in South Carolina --
Q No, for the state.
A Oh, it was in the neighborhood of four to six times

total prior to today.

MR. STUMBO: Okay. Thank you.

THE COURT: Do you have any objection to him being deemed a forensic pathologist?

MR. STUMBO: No objection, Your Honor.

THE COURT: All right. Ladies and gentlemen, again, I'm going to deem him to be an expert, therefore he can give you an opinion or a conclusion as to what he's researched. And whether or not you want to accept it will be totally up to you to decide whether you want to accept it will be totally up to you to decide. Thank you. You may proceed.

Q And just to follow-up on one of Solicitor Stumbo's questions. You still are a part-time medical examiner of West Virginia?

A Yes, sir.

Q And when you are called to testify there who usually calls you?

A If I'm called to testify in criminal cases in West Virginia it would be by the state, by the prosecution.

Q Okay. I'm -- you kind of touched on this a little bit, but I want to ask you just kind of a general question. Can you tell us and describe for these jurors what a forensic pathologist does.

A Yes. Actually the phrase I used when you asked me to define forensic pathology is the same phrase that I use when

I tell people what a forensic pathologist does. The phrase was, we investigate and certify deaths. And it captures the two sides of the process that are both critical in order to do this well and to do this properly. In fact, you'll notice what I didn't say in response to your question, either of your questions, was -- my answer is forensic pathologists do autopsies. In order to -- I mean, in essence what you're doing as a forensic pathologist is figuring out how and why somebody died. So in order to do that you need to start with an investigation which sets the scene, the circumstances. It gives you the context for how and where and when the person died. You then also do some sort of medical examination of the body. Frequently an autopsy, which is a thorough external and internal examination of the deceased. You may also do technical analyst, like toxicology testing. You may do some other kinds of ancillary testing. But you have the investigation and you have the medical and scientific examinations. And then you pull those two together. And from the two of them you come up with the two ultimate conclusions, the cause of death and the manner of death. The cause of death is the specific underlying process, whether that's a disease or an injury, that starts in motion an unbroken sequence of events that ends in the death of the person. And the cause of death, because it's the -- it's the disease or injury is

highly dependent on the examination. On the other hand, the other conclusion that you are asked to make as a forensic pathologist, and you've heard Dr. Ross testify about this today, is the manner of death. The manner of death is the circumstantial explanation for how the cause of death came about. And because it's an explanation of how, and circumstances, it's highly dependent on the investigation. Most of the manner of death determination comes from the investigation. So you can't do this work properly without both components. You need the investigation. As I said, it makes your context. You don't go to your family doctor without a context. You don't go to the doctor and say, "Figure me out." You go to the doctor and you say, "I have a problem. My back hurts," whatever. And your doctor knows that -- it's a big difference if you're a four-year-old girl or an 82-year-old man as far as the medical context. We do the same thing with death investigation. We get that from the scene, the circumstances, the history. And that provides part of the critical evidence, especially for determining manner of death.

Q So when you say -- I mean, you do do autopsies?

A Yes.

Q But that's just one of the components of what you're talking about?

A Right.

Q And you talked about the investigation. What types of things come to you or do you look for as far as collecting data or getting resources for your investigation?

A Well, death investigation can involve a lot of different kinds of information. Depending upon the nature of the death and the circumstances and what findings you have at autopsy, for instance. So you may very well, and just about in any case, what to know where the person died, when the person died, what were the surroundings and circumstances, and basically who observed what. In some deaths -- some deaths, especially natural deaths due to disease, your investigation may go very far down the road of getting medical records and medical history and that sort of thing. And some deaths, such as violent deaths where somebody has been injured or died from injury, your investigation may go very strongly down a very different line of looking at law enforcement investigation, traffic investigation. Again, seeing investigation, trying to see what it is there is from the death, seeing that -- again, gives the physical context for the body and how they relate, and that helps tell you what happened.

Q And, for example, from the scene, information from a first responder, can that be important?

A Very frequently it is important, yes.

Q And do you ever -- I assume when you do autopsies you

take photographs?
A Yes, sir.
Q What is the purpose of doing that?
A Part of the process of doing the autopsy is documenting the autopsy. Especially in the forensic setting where the results and findings and the conclusions frequently will be used in other systems, including court, for instance. So that imitation is extremely important because you have to be able to record what you did and saw, and you also have to document important findings in ways that they can be independently examined or verified. So you take photographs to prove this is what there was, this is what I saw, these are the details of what I observed. And then somebody else can use those later either as an independent review, as evidence in court. But that's why you take photographs and that's in general why you document it.
Q Do you ever look at crime scene or incident location photographs?
A Yes. As a forensic pathologist you sometimes look at crime seen or incidents in photographs. In fact, it depends upon where you work and what system you're in. Some forensic pathologists on some occasions will respond to the death scene also.
Q Do you ever look at witness statements?
A Yes, sir.

Q And what's the purpose of doing that?
A Well again, depending upon the nature of the specific death that you're investigating, sometimes you need to know what activities the person was engaged in, what did the person look like, what did the person say, what did the person do, what actions did the person take. Those can all relate to how you interpret the injuries and the autopsy findings. And so, sometimes you need to know what somebody on the scene actually heard or saw. And then you get that from witness statements.
Q And sometimes do you find that witness statements aren't always accurate?
A That's true. Everything in the human experience. You get some reports and statements that are very accurate and some of them that are not accurate. You just always have to assess that.
Q And so, one of the things that you're looking at -- you're not just limited to statements in trying to figure out what happened?
A Correct.
Q You're actually looking the evidence and see where that evidence takes you?
A Right. If I had a statement that was seriously contradicted by a piece of hard physical evidence I had in front of me, then most likely I'm going to believe the piece

of evidence that I can look at myself and interpret and make a judgement that the statement was inaccurate. That's an extreme example.

Q And you might have already testified about this, but is toxicology something that's related to what you do in a death investigation?

A Yes. Toxicology is the laboratory study of whether there are foreign substances in the body or the components of the body. In other words, it's kind of a way of saying we're looking for drugs, medicines, poisons and, yes --

Q Alcohol?

A Alcohol is one of those, yes. And toxicology testing is extremely common in forensic autopsies. It's almost universal. And it is routinely used by forensic pathologists as part of the evidence on which to base their conclusions.

Q So it sounds like, from what you're saying, that there's a whole process that you can go through?

A A whole process that you do go through.

Q That you do go through. So in your practice would you typically reach conclusions at 10:00 on the morning after an incident happened?

A Well, I guess that depends upon how -- how much time I spent with the evidence and the body, and specifically what the evidence is. There are examples where you could bring

me the next morning -- show me the dead body, let me examine it, and by 10:00 I might have conclusions. There are many examples where that would be a bad procedure, because after a brief examination the next day it might not have toxicology, it might not have microscopic exam, I might not have a complete examination. So the answer to your question is it depends. Maybe yes, maybe no. But if I did not have enough information, if I felt that it was more that had to be nailed down before I could reasonable arrive at a conclusion, then the answer is no.

Q Now, in this case you had access to information, right?

A Yes, sir.

Q And if you could tell the jurors what type of new information -- or let me rephrase that. Tell the jurors what the information was that you reviewed.

A I was provided with a number of materials to review and examine before I arrived at my conclusions and came here today. Of course, I had the autopsy report on Ms. Asbill that included a -- it looked like a work sheet for the death certificate, and it included the toxicology reports. I also had the actual autopsy photographs taken by the forensic pathologist or by her staff at the autopsy. I also had a number of police documents, reports, statements made by people to law enforcement. So I had that piece of the investigation. I had -- eventually got some laboratory

testing that was also done as a part of the investigation. I had numerous photographs that I reviewed that came from law enforcement. The death scene, the automobile that was related to it, various pieces of evidence that were collected. Law enforcement also had photographs of Ms. Asbill in the hospital, and I believe some of their photographs were taken at the autopsy as well. So I had -- I guess to summarize. I had reports and statements and photographs and lab testing from law enforcement, had the autopsy and it's lab testing and its photographs. And I then hear -- being here today I've heard testimony of the two experts who have testified today. I heard a recording of another -- another witness who testified in this matter previously.

Q And which witness was that?

A I've forgotten her name. She was -- it was a young -- it sounded like a young woman who was an EMT. One of the emergency medical first responders. Would Lauren Simmons sound right?

A That's sounds right.

Q And she was the lady who -- from the testimony was involved in removing EA's body from the automobile?

A Yes, sir.

Q Before today you said you heard -- you heard Dr. Ross testify, correct?

A Yes, sir.
Q And you heard Dr. Johnson testify?
A I did.
Q Had you had an opportunity to review Dr. Johnson's PowerPoint before today?
A Yes. I'm sorry. I omitted that. I was provided with copies of those slides prior to today and I did review those.
Q And in the statements that you had, did you have Michael Beaty's statements?
A Yes, sir.
Q Now, I may be backtracking a little bit getting back to what you do in death investigations or as a forensic pathologist. But the principal, and I may not be saying this right, but Occam's Razor?
A Yes.
Q Are you familiar with that?
A I am.
Q And is that something that has been taught to you in medicine, or is taught in medicine?
A Yes, it is. It's taught in medical school.
Q All right. Well, can you tell the jurors what that is?
A Yes. Occam is somebody's name. It's O-c-c-a-m, in this case apostrophe S. And the word razor is a real old fashioned use of the term razor. It means some kind of

saying or aphorism, or your rule to live by kind of thing. And so, Occam's Razor is the principal of trying to explain a set of findings. A data set of observations or results that you have in front of you with a unifying theory or explanation. In other words, if you have five different things that you observe -- and I'll talk medicine here since that's what I do. I do an autopsy. I see five different things. Where your physician sees a live patient that has five different symptoms; fever, rash, headache, et cetera. And you try to pull them all together into one diagnosis, because that's the mostly thing that's happening. A person comes to you with a situation, a complaint, a problem. "I'm sick," in other words, with a live patient. It's most like that all of the new complaints relate to one process that has caused this person to be sick at that point. So you try to -- you don't say headache is caused by this disease, rash is caused by that disease, backache is caused by this disease. Not that anybody can't have more than one thing go wrong. But the principal of Occam's Razor is try to being them altogether and explain them by one unifying theory.

Q And is that something that you had in mind in this case as well?

A Yes, sir. That's actually something I had in mind in general when I try to make conclusions and diagnoses. But I think it very much applies to this case.

Q Now, I think you said that you had looked at, you know, various photographs.

A Yes, sir.

Q And there were injuries that you observed in those photographs, right?

A Yes, sir.

Q And I'm going to show you State's Exhibits 35 and 36. Were those significant to you?

A Yes, they were.

Q Okay. And what I'm going to do is I'm going to start with Exhibit 36.

MR. GROSE: If we could dim the lights, please.

Q What is that depicting?

A We have up on the screen now, Exhibit 36, is a photograph that primarily shows the right hand, wrist and forearm of Ms. Asbill. I'll point with the laser pointer. You can see center top is the hand, and then go down in the center you can see the hand giving rise to the forearm, which is going diagonally downward and to our right in the picture. This is showing the -- primarily the side of the forearm and hand that's contiguous with the small finger. The pinky finger. And most importantly is the darker reddened areas across the back of the fingers and along that whole side of the hand, wrist and up onto the forearm, really extending onto the front of the forearm starting

where the palm is. But the important point is, that this is a broad area of very deep abrasion or scraping type of injury that has removed the surface tissues.

Q And in your initial assessment of this case was this significant?

A Oh, yes. This was -- just at the risk of getting ahead of you. And the other part you're about to show me is similar and it's both very important and significant when I started opening this case.

Q I'm going to put Exhibit 35 up. And that's the other hand.

A Yes. You've got 35 on the screen now. And this is basically the back of the four fingers and the back of the hand. The left hand of Ms. Asbill. And you can see, again, there's some blood still on this. This has not been totally cleaned off. But the backs of the fingers have pretty severe abrasion with tissue loss and some of the fingernails are very damaged. So this is similar type of severe abrasions. I guess the other part of -- maybe even a little more striking since it's the right arm that -- where the abrasion goes all the way down onto the forearm as well. But I think this term has already been used in the other testimony, so let me use it as well. This is what people in common parlance call road rash. A term you get mostly from motorcyclists who unfortunately sometimes have the

experience of getting separated from the motorcycle at speed and sliding down the pavement scraping parts of their body in exactly this way. You do see it also in pedestrians who are struck and launched by motor vehicles who also end up sliding down the pavement. But this is -- this is a degree of scraping that is deep and severe and covers a surface like that. And that's the kind of thing that you get from sliding down a rough surface like pavement at speed.

Q And if you were in a car and ejected from a car could you get road rash?

A Yes. That's another scenario where if you get ejected you're now flying through the air. If you're going fast enough and you hit the pavement and slide, you can get the same appearance.

Q Now, if I'm riding a motorcycle and I'm unfortunate enough to have an accident, is it likely that the road rash is just going to be limited to my hands?

A It's not likely, because it's very hard -- if you mean specifically the distribution that she has --

Q Right. That's what I'm going to get to.

A It's very difficult if you are ejected from a moving motorcycle. And again, we're talking at speed here. We're not talking about falling down from standing or walking or running. We're talking about somebody going, you know, 20, 30 miles an hour or more kind of broad context. And so, it

would be very difficult to go sliding down the road only scraping the back of your left fingers and then the back of your right fingers and the adjacent forearm. Much more likely that you would land on other parts of your body that would also be scraping down the road.

Q So when we're looking for an explanation that pulls everything together, Occam's Razor, not only are we trying to pull together the injuries on the right hand and the left hand, and the right -- right arm and hand, we're also having to account for the absence of the road rash on the other parts of the body?

A Yes. If you were hypothesizing a pedestrian struck or someone ejected from the vehicle, or a motorcyclist who got off, as they say, yeah, you would expect to find it on other parts of the body.

Q Now, I'm going to show you what's State's Exhibits 32 and 33.

A Yes, sir.

Q And those are the pictures of the eyes that we saw earlier today.

A That's the eyes and parts of the face. Yes, sir.

Q Okay. I'm just going to go in number order and put State's 32 on the screen. What do you see in that photograph?

A It's a little -- little more difficult looking at it

projected. But I see -- first of all, for the record, this is -- this is 32, you said?

Q Yes, sir.

A 32 is a photo, meaning a closeup photo of the left side of her face, and primarily center of her eye. You see the gloved hands of somebody pulling her eyelid up. And you can see therefore exposed the white of the eye and the upper half of her eyeball. And there are several of these red spots there. That's the real importance of this photograph. Those red spots are petechiae, or petechial hemorrhages. It's the same thing. Those are little pinpoint hemorrhages you've heard about earlier that Dr. Ross mentioned.

Q All right. Let's -- while we're talking about those. Can you describe for us how those are caused.

A Yes. Petechial hemorrhages are caused when the tiniest blood vessels, they're microscopic in size, they're called capillaries, burst or rupture allowing a little tiny area of bleeding around the tiny burst blood vessel. So they can be caused from several different mechanisms. But primarily, especially in forensic pathology, we think about petechiae that occur from increased pressure in those blood vessels. So, for instance, if you have neck compression and you block off the veins that drain the blood from the head, but you don't completely block the arteries, so there's still some blood going in but there's no blood going out -- it's kind

of a simple concept. More going in, none going out, it back ups inside the circuit so the blood vessels in the head, including the ones on your eyeball, get overly filled and some of them will burst. So you can get petechial hemorrhages from a pressure phenomenon. You can get it from other different causes though. It doesn't have to be neck compression, for instance.

Q And I'm going to come back to that question. I switched out. I put one of Dr. Johnson's slides up there from earlier about the anatomy of the neck.

A Yes, sir.

Q And he talked about the carotid artery and the jugular vein.

A Yes, sir.

Q And how did those two veins relate to what you were just talking about?

A You can see from the diagram on each side of the neck, which is relatively close to the front of the neck, you have in this diagram the big -- the big red tube going each side is the carotid artery, and the big blue tube coming down each side is the jugular vein. The carotid arteries are the major source of blood supply into the brain. In fact, into the entire head. I think you heard mentioned earlier there is actually -- there's a pair of arteries up your spine -- inside of your spine that provides blood mostly to the lower

rear portion of your brain. But most of the blood supply getting into the brain and into the head is from each of those carotid arteries, one on each side of the front of your neck. In fact, you can feel on each side of your owns Adam's apple you'll feel a pulse there. That's your carotid artery. Going right next to each of those carotid arteries is the jugular vein. And again, analogous to the carotid arteries, the jugular veins are the main source of drainage of blood out of the brain, out of the head, back down to the chest.

Q So if the blood's not draining but it's still showing up, then you get that pressure?

A Correct.

Q Now, you said neck compression is not the only way to get petechiae?

A Correct.

Q And what are some other ways?

A Well, just to be complete, and I'll be very, very brief. You can get petechial hemorrhages from bleeding disorders. So you have problems where your blood doesn't clot correctly, things like that, usually related to a variety of diseases. That's one possibility. I just want to mention that to be complete. But I'm going to move on, because I don't think that relates to --

Q And that was going to be my question.

A Right.
Q I mean, that's not what we're dealing with here.
A No. But closer to what we are dealing with though. There are other reasons for having a degree of heart failure where the heart doesn't pump well enough and blood kind of backs up a degree and you get petechial hemorrhages in the eyes. And that happens with natural deaths. Various kinds of natural heart related or cardiac deaths. And so, you can actually see petechial hemorrhages in many instances that come from natural deaths that have nothing to do with neck compression or strangulation.
Q Now, I have Exhibit Number 33 up there now. This is the other eye.
A Yes.
Q Do you also see the petechiae there?
A I can just barely see them. I do not have the best vision in the world. But there's a few tiny red spots on the iris aspect. The iris side of white of her right eye. And Dr. Ross pointed at some of the marks on her skin here. I'm not sure if these are petechiae or if they're freckles at this point and from this resolution. But certainly on the surface of the eyeball I think those really are petechiae.
Q So you agree that she has petechiae?
A Yes, sir.

Q And you have an opinion as to what could have caused this in EA?
A I do.
Q And what is that opinion?
A She, indeed, did have evidence of neck compression. You've heard a lot of testimony already about ligature marks, and there were a few very minor internal injuries around the throat structures. So I believe that she had neck compression and I believe that those particular hemorrhages in her eyes related from that compression.
Q And that would be some of what we talked about earlier with jugular vein compressed but while the blood was still flowing through the artery?
A Yes, sir.
Q Anything else that you want to talk about with regard to either one of these photographs?
A No, sir.
Q I want to show you what we have premarked as Defendant's Exhibits 1, 2 and 3.
A Yes, sir.
Q Do those -- do those depict injuries?
A Yes, sir. What you've marked as Defendant's 1, 2 and 3 are pretty slightly different views, photographs of Ms. Asbill's neck at autopsy demonstrating injuries on the surface of the neck.

Q And would these -- referring to these photographs assist your testimony?
A Yes, sir.
Q And that's a little dark, but can you see that?
A Yes, sir.
Q And what do you see in those pictures?
A This photograph -- I'm assuming you're going in numerical order. This is Number 1?
Q No, I apologize. That's the -- that's Number 3 actually. It's the larger view.
A Sorry. It's the better starting point. So Number 3 on the scene in front of us is an autopsy photo of Ms. Asbill. It shows the lower part of the face down to the upper part of the chest. You can see the ruler scale with the autopsy face number across the bottom just below her neck. And most importantly, just about the middle of the photograph, you can see that there is a line that starts on her left side, comes down across the front, has a little bit of a curvature and then goes off almost horizontally toward her right side of the photo. And that's the ligature mark that's been discussed today. And then just above that, roughly in the middle of the front of the neck and extending to her left a little bit, is a rectangular area of bruising.
Q Okay. And I'm going to switch. And this is Number 1 this time, Doctor.

A Yes, sir.
Q And what are you looking for in that?
A Number 1 on the screen is a slighter closer view of the front and right side of the neck of Ms. Asbill at autopsy. You can see the ligature mark and it's -- it's going about half to two-thirds of the way up the picture, the way you've got it oriented vertically with the case number upright, such that it's coming -- from our right it's coming downward. And then you can see better the slightly curved and horizontal portion would be the right side of her neck. You can see that it's pretty distinct along the right side and going towards center. And then it gets kind of thinner and fuzzier. You can also see the rectangular area of bruising that's up right adjacent to the ligature mark.
Q And this is Defendant's Exhibit Number 2?
A And again, this one is even darker. But this is another fairly closeup view very similar to Number 1 that you just had immediately previously. And again, roughly in the middle and going almost horizontally is the ligature mark. It's angling upward, relative to her head upward on our right. That's her left. And then it's going -- it looks like it's angling upward because of the perspective of the picture. But we know from seeing all the pictures that on her right side of the neck, even though it is angling upward because of the way the camera is tilted, it's

actually horizontal relative to her body. And then again here in the middle upper of this photo you can see the rectangular area of bruising that butts into the ligature mark on her left.

Q I'm going to switch gears a little bit. This is one of the slides from Dr. Johnson's presentation.

A Yes, sir.

Q And that's marked as autopsy photo ending in Number 26, and that's -- would you agree that's very similar to Defendant's Exhibit Number 3 except maybe a closer up?

A Yes, sir.

Q Now, there's been some questioning about a crisscross pattern. What do you think of that?

A I don't see anything in these photos, or any of the evidence that I see, that I would describe with the term crisscross pattern. Now, when I first heard that term, what that evokes to me is a repetitive pattern of crossing lines. Really what you would call cross-hatching. So there's nothing -- there's nothing in any of these marks or patterns that has a cross-hatched kind of appearance. I thought -- when I heard the term crisscross, that's what I thought was being referred to. I gather from today's testimony that's not what was intended by the use of the word.

Q And what did you gather from today's testimony?

A After witnessing Dr. Ross's testimony and the

questioning and the photographs, my impression was that the term crisscross was being used to indicate that two components making the marks, maybe both the ligature or maybe not, or a cross, where on part had crossed over the other.

Q And what do you think of that analysis of it?

A Well, I still would not use that term for this appearance in any way. First of all, the ligature mark is the thin mark. And even though the photo you have here shows the center and the right well, we know from looking at all the photographs that along the left side of the neck it goes frontward and backward and gets ever fainter and less distinct. Now, the rectangular mark that's does not appear to me to be related to the ligature in any way. It's clearly a different configuration. It doesn't look like a long thin ligature the way a ligature mark is appearing. So I think we have, at best, I would call this an intersection of two different marks. Though the rectangular one is reflecting something manmade that has that rectangular configuration. I actually very much agree with the way Dr. Ross presented that when she said straight margins and right angle forms aren't found in nature. And so, that's some sort of rectangular object or a portion of an object made enough of an imprint there -- in impact there, because in my opinion that's a bruise, to leave the rectangular area

bruising. And then something longer and thinner showed as a ligature cross the front and part of the sides of the neck, but not the back of the neck, and it goes next to it or possibly overlapping it. It doesn't look to me like these are part and parcel and of the same things. So I'm not -- I'm not buying into this crisscross terminology.

Q Dr. Arden, I want to talk to you about -- well, we've got a sticker on here that's State's Exhibit Number 46. And it's been marked. And you can see where this evidence bag has been opened and closed. But it's what we've also identified as SLED item 67.

A Yes, sir.

Q And this is the USB cord.

A Yes, sir.

Q Now, it's been suggested that the larger end of the USB cord caused that rectangular -- you said it was a bruise?

A Yes, sir.

Q Do you agree with that?

A That this caused that?

Q Yes. That this USB cord, SLED 67, caused that square or rectangular bruise that's on the slide right now?

A No, sir. I don't agree with that.

Q And why is that?

A May I?

Q Please.

A First of all, if we wanted to compare any specific object with any specific injury, if you want to say this caused that, or even that this is highly consistent with that, you need to know, for instance, that these are the same sizes. And I'm not aware that there was any measurements made and compared to show that this object is really the same size as that bruise. So, just to begin with, the process of comparison here appears to be relegated to kind of like eyeballing something as opposed to this is a valid comparison. Second of all, the configuration of the larger plug-in on the USB cord doesn't match the configuration of what's there. The rectangular area. Look at the -- look at the --

Q How about if I put that on the screen.

A Sure.

Q That might -- that might help a little bit.

A If you look at the configuration of the USB cord, the black plastic part that you would grasp if you were plugging it in or unplugging it is actually not rectangular. At the -- at the business end, at the plug-in, it has square pointers, like a part of the rectangle. At the end where the cord attaches, the corners are rounded. So it's not really totally a rectangle. Just the start of it. Second of all, the actual business end, as I'm calling it, the protruding silver colored metal part that you actually plug

into the USB socket is of a different size from the remainder of the plug, the handle. So the configuration of this is not a solid rectangle of any sort, and it's actually a configuration of two different components. The plug-in being smaller in width than the handle end. So the configuration of that plug is not reproduced in the rectangular mark.

Q And you can kind of see what you're talking about there, right?

A Yes. You have the photo of Dr. Johnson's slide up on the screen next to the actual plug-in of the USB cord, and you see just what I described and about the configuration of the USB plug-in, which I won't repeat. And again on our left you see the end of this looks nice and rectangular on her left side, which doesn't match the totality of the configuration of the USB plug. Even notwithstanding that we don't have evidence that these are the same size.

Q And you mentioned that. And did you hear Dr. Ross testify that she did not measure the bruise?

A Yes, sir.

Q No. Were you present in the courtroom when Mr. Wise asked Dr. Ross to demonstrate --

A Yes.

Q -- with this USB cord?

A Yes, I was.

Q Did she have some problems with that?

MR. STUMBO: Your Honor, I would object --

MR. GROSE: I'll rephrase.

THE COURT: Sustained.

MR. GROSE: Mr. Wise, let me get you to come over here for a second, please. Bring your chair.

(Whereupon, Mr. Wise approaches the witness stand.)

Q Now, you recall Mr. -- basically they were trying to say that the cord was here and then wrapped all the way around the neck.

A Yes, sir.

Q Now, when they were doing that do you recall there being some questions about whether the -- as you referred to it, the business end of the USB port actually was making contact with the neck?

A I do recall.

Q So if it's wrapped in that manner and not making contact with the neck it wouldn't -- would it leave a bruise?

A No. If it is not -- it not only has to make contact. It has to be pressed firmly into the neck in order for it to damage the tissue and cause the bruise. So if it's not being pressed, it's not making the bruise. And, in fact, if you look at the photo -- Dr. Johnson's slide is still there.

Q Right.

A You'll notice that the long thin ligature mark seems to go up to where the rectangle ends. I'm not entirely convinced they cross over. But even if we just -- you know, let's assume that there is some degree of crossover between if this rectangle really extends farther and the ligature mark. Let's say there is some degree of contact. It's interesting to me that the area of where her bruising is at its maximum is the part farther to her right. The part that isn't even touched by the other part of the ligature mark. So, in other words, not an area that is being pressed directly in is the area with the most bruising, and the area which hypothetically, or theoretically, would be where this cord is supposedly pressing on the plug is barely bruised at all. And that would be the area of maximum pressure. That pattern doesn't match that scenario.

Q So there should be more bruising where the crossing supposedly happens?

A Yes.

Q Now, there were some questions about, well, what if you just take this and push it in. The business end of the USB cord.

A. Yes, sir.

Q Do you have an opinion about that?

A I do.

Q And what is that opinion?

A Well, the scenario you just demonstrated, taking your hand and using it to press the plug-in, the business end, of the USB cord into the neck to make the bruise involves you using your hand to compress your -- the volunteers neck. So now you have created an element of manual strangulation, and you have no evidence from the actual autopsy in this case that there was manual strangulation.

Q And then just to -- manually strangulation is with the hands?

A Yes, sir.

Q And the ligature is with a cord or a -- some type of object?

A Some type of encircling object, frequently long and thin, that allows you to compress the neck.

Q Okay. So under both of those scenarios you kind of have some issues with that conclusion of Dr. Ross?

A In my opinion, the actual evidence we're looking at is inconsistent with both of those scenarios.

Q Okay. Now, you were here when Dr. Ross -- you know, basically in the demonstration. We've got the cord being wrapped all the way around the neck?

A Yes, sir.

Q Okay. And --

A And it is also, by the way, inconsistent with the evidence.

Q And that's what I want to get to. Did you -- you said that you listened to some earlier testimony, --

A Yes.

Q -- from Ms. Simmons, the EMS person?

A Yes, sir.

Q And was that testimony significant with regard to the ligature mark?

A It was.

Q And how so?

A Well, you just now specifically had started asking me about that testimony --

MR. STUMBO: Your Honor, I'm going to object again.

MR. GROSE: Well, at this point I'm asking about if he -- he can testify that he relied on the first responder. That's what we're getting at.

THE COURT: I'll give him a little leeway and then you can cross-examine him.

MR. STUMBO: Yes, sir.

THE COURT: Not far.

Q Was the first responder's -- did you rely on that in forming your opinion?

A Yes, sir.

Q And what did you learn from her that was significant in your opinion regarding the ligature mark?

A What is significant from her testimony is that she

testified that Ms. Asbill's hair was in a ponytail and picked up into what she referred to as a bun. In other words, it wasn't down. It wasn't covering her neck. And it relates to what you've just done with Mr. Wise there. You had the ligature encircling his neck completely all the way around. And if the ligature were used to strangle someone and it went all the way around the neck. And it were not padded by some intervening object like the hair, it would leave some degree of marking all the way around the neck.

Q So based on your review of the evidence and what you know about Ms. Asbill's hair when she was found, if a wrapping around the neck was what caused the death, you would expect to see a ligature mark that went around the entire neck?

A Yes, sir.

Q And is that what we have?

A It is not.

Q And nobody has suggested that we have it going all the way around the neck, do we?

A Correct.

Q I'm putting up another one of Dr. Johnson's slides. This is testing the ligature mark width and ends in Number 9. And that is similar -- although it may be zoomed in some, similar to -- I believe that's Defendant's Exhibit Number 1?

A Yes, this is Defendant's 1 you handed me. And yes, this is similar. I think that's the exact same photo. That's just the -- again, the slide from Dr. Johnson who has been cropped. So the central portion is showing, but it's the same picture.

Q All right. And what is the relevance of this picture?

A The relevance again is the rectangular mark being, in my opinion, something separate from the ligature. The relevance is the configuration of the ligature mark that appears to be going across the front and on each side, although with a different angulation on the person's left. It's also -- a point here. Near the front of her neck, as the ligature mark goes up and backward on the front and then her left side, just beneath the more prominent portion of the rectangular bruise you'll see that the ligature mark is thinner in that location.

Q And if I put up this slide that ends in autopsy photo number 16, that's similar to Defendant's Exhibit Number 2?

A Yes.

Q And again, is this -- what's the significance of this?

A This is another one of those photographs of the front of the neck showing both the ligature mark and the rectangular area. It demonstrates features of ligature mark that I've mentioned several times. And also shows the -- what I just mentioned a few minutes ago. The rectangular

mark is much darker and more pronounced in the area away from where the ligature mark may cross it and conversely is much lighter in the area where the ligature may be crossing it.

Q Is there -- do you find -- is it of significance to you the fact that the ligature mark is not the same all the way around?

A Yes, it is.

Q And what is that?

A You can get some variation of the thickness of ligature mark depending on how much pressure is being applied to the ligature. You can also get variation if the ligature itself varies in thickness. And I took from the testing of Dr. Johnson that when he demonstrated the tension on the hem of the garment, the tank top, that not only did the edge of the hem become thinner when it was pulled, but the part in the middle was thinner than the other parts. So it wasn't equally thinned along it's length when it was stretched with the tension. It was variable. And right near the center was the narrowest part which seems to be at least close to where the narrowest part of the ligature mark is here.

Q And if I put up another one of Dr. Johnson's slides testing the ligature mark, is this what you're talking about?

A This is related to what I was talking about. This one

is showing that some of the hem on the edge not only stretched but turned outward which would tend to present a slightly thinner profile, one that's pressed against the skin. But, yeah, he has another one that wasn't just the turning outward, but was actual thickness of the hemline -- that's the one that you have now. Where you can see that his -- his caption show that when he put it on tension it varied from approximately two to five millimeters in thickness, and the thinner portion is roughly in the middle where I'm pointing with the pointer now.

Q And did you hear Dr. Johnson's description about the measurement of the ligature mark?

MR. STUMBO: Your Honor, again, this is converse. They keep bolstering Dr. Johnson's testimony.

MR. GROSE: He's allowed to rely on that, Your Honor.

THE COURT: I'm going to allow it. I overrule your objection.

Q Did you hear Dr. Johnson's testimony about the varying width of the ligature mark?

A Yes, sir.

Q And did that have any significance to you?

A Yes, it does.

Q And what is that?

A It has significance on several levels. First of all, I agree that I observed that myself when I looked at the

photographs. And second of all, it also relates to ways in which you could explain that. And one of the ways that you can easily explain that is exactly what's still up on the screen from his testing of pulling the hemline under tension.

Q Now, the direction of the mark -- I'm going to put autopsy photo number 26 back up. Did the direction of the ligature mark also have some significance for you?

A Yes, sir.

Q And what was that?

A Well, it's interesting to me that it angles more sharply upward on the left side. It has somewhat of a curvature in the front going to the right, and then it comes off the right side again basically horizontal relative to her body. And so, it indicates to me that whatever this ligature was it was not following a simple straight line across the neck. So it's different from my experience. If you have somebody take a ligature, like that cord you handed me, wrap it all the way around the neck, hold tight, typically it follows a straight line all the way around the neck however you orient it. If you have a ligature that has some more flexibility, that may ly on the neck in different angles before it gets pulled tight, maybe because of the way it gets bunching up or something like that and/or positioning of the skin of the person, you can get a

ligature mark that doesn't follow a single straight line that's all on the same orientation. So this is -- this is again something that is consistent with the concept that the edge of the shirt was pressed up against her neck from behind, because it's the kind of object that could do that. And, in fact, and two -- two other points that are relevant to that -- that idea. One is, again, you don't have a ligature mark in the back, which is most consistent with somebody pulling something from behind that's not tightly wrapped around. And coincidentally, everything I just testified to were observations and conclusions I had made on my own earlier. But furthermore, what I think we see of Dr. Johnson's slides, he showed his examples because he did the experiments with the volunteer and the exemplar. And there was a photograph that showed -- maybe we have it in front of us now on the right side of the screen. Shows the hemline or the neckline of that shirt being pulled up tight against her neck. And low and behold, it's angling up around her left. It's going downward. It looks like there may be a little turn, but it's largely horizontal going off to her right. And so, he's managed to reproduce by pulling on that shirt from behind a very similar pattern to the actual mark on Ms. Asbill's neck.

Q And then --

MR. STUMBO: Your Honor, I would object to that last

comment about -- I think he's bolstering Dr. Johnson's testimony.

MR. GROSE: But he can rely on --

THE COURT: I'm going to let you cross-examine him.

MR. GROSE: Thank you, Your Honor.

Q And we have the tank top, State's Exhibit Number 47, that's been in the evidence. And it's kind of difficult to kind of reconstruct. But you have that curved neckline, right?

A Yes, sir.

Q And so, is what you're observing -- and you had seen photographs of this?

A Yes, I have.

Q And what you're observing with the tank top that's State's Exhibit 47, is that consistent with what you're seeing in Dr. Johnson's experiments?

A Yes, it is.

Q And why is that?

A Because apparently we had a similar tank top of a similar size person. The experiment doing that action of pulling it from behind. And the edge of the tank top, the hemline, or the neckline, in that photograph is reproducing to a very large degree the actual ligature mark that I could observe in the autopsy photographs of Ms. Asbill.

Q Now, I want to go back to the Occam's Razor principal.

With the observations with the ligature mark you want to try to fit that in with the -- of course, the ligature mark, we've already talked about how it goes with the petechiae?

A Yes, sir.

Q And so, you want to fit the ligature mark and the petechiae with the other injuries which is the injuries to the hand, correct?

A Yes, sir.

Q Now, I've got one of Dr. Johnson's slides where he compares it with the three photographs of the injuries to the hand.

A Yes, sir.

Q Does this have any significance to you in forming your opinion?

A Yes, it does.

Q And what is that, please?

A The significance of these photos, in my opinion, is that it actually demonstrates observations and conclusions that I have reached independently. So as you said a moment ago, we're always thinking Occam's Razor. How do I get all the facts to fit together into one unified explanation. I was struck really from the beginning of the time when I started to review the materials in this case, by the injuries to the backs of the hands and particularly to the right forearm. The, quote/unquote, road rash.

Q. And we talked about that a little bit earlier.
A Yes. And that really demands that she had an episode in which those parts of her body were scraping forcibly along a rough surface like the pavement. And it's not consistent with her simply falling down. It's not part of the injuries that relate to strangulation or neck compression. So there has to be some other activity or some other part of the scenario that explains her going at speed dragging those parts of her body along the pavement. Now, the other thing that struck me early on in this case was the blood spattering on the passenger side of the car behind the front passenger door.
Q I'm going to put State's Exhibit Number 13.
A Yes.
Q Now, just before you get into that, as far as a complete death investigation, is blood spatter something you look at?
A It many cases. You know, it depends on the nature of the case. But yes, in many instances, blood spattering at the scene can be very important to try and figure out what happened. So yes, that can be a very important part of any death investigation.
Q And you've had training in interpreting blood spatter?
A I had some training and some experience in blood spatter interpretation, although I am not a blood spatter

expert. So I am familiar with it and I have looked at these before, but I don't hold myself out as a spatter expert.

Q To the extent that you rely on that in your work, what does the pattern of the blood on this car tell you?

A Well, it immediately told me that there was blood being cast off in small droplets going toward -- like from the front toward the back of the car, striking the side of the car, looked to me like a relative shallow angle, and being deposited as the spatter pattern that went on the side of the car --

MR. STUMBO: Your Honor, I'm going to object.

THE COURT: I'm going to sustain that, because he just said he is not a blood spatter expert. So I'm going to stop him at this point.

MR. STUMBO: Thank you, Your Honor.

THE COURT: Objection sustained.

Q But what you know about it is it consisted with the car being in motion?

A Yes, sir.

Q And back to the Occam's Razor. If we take the car being in motion from the blood spatter, and the car being in motion as far as the injuries to the right hand and right arm and the left hand, does that fit together?

A It can.

Q And how so?

A She would have to be dragging her right arm and left hand along the ground --

MR. STUMBO: Again, Your Honor, same objection.

THE COURT: Sustained. He's evaluating where the blood is coming from and how it falls. He said he is not an expert.

MR. GROSE: Well, I'm not -- let me just talk about the injuries to the hand and the car being in motion.

Q I believe you testified that you believe the car was in motion for the injuries to the arms and hand, right?

A Yes, sir.

Q And we were talking about that in that picture earlier?

A Yes, sir.

Q So back to the Occam's Razor principal. If -- do you agree with that positioning could have caused the injuries to her hand?

A I do.

MR. STUMBO: Your Honor, same -- I think this is the same --

THE COURT: I think this is a different question. I'm going to overrule.

MR. GROSE: Thank you, Your Honor.

Q Do you agree that that positioning could cause the injuries to her right arm and hand and her left hand?

A I do.

Q Now, combining the injuries to the arms and the hand with the ligature mark, how does that fit together?
A Again, trying to get a unifying theory for everything. If the ligature is most consistent with pulling from behind, not wrapping around, and she's leaning out of the car such that those parts of her hands and arm are dragging on the ground as the car is driving it's speed, then if she were being held from behind by some ligature, such as her clothing, then you can now put all these things together and not only do you explain ligature mark and the petechial hemorrhages, you explain the injuries to the hands in the right arm. And without commenting on spatter patterning, you explain how blood could be deposited.
Q And that gets us back to Dr. Johnson's area of expertise?
A Yes, sir.
Q Do you have an opinion as to the most probable cause of EA's injuries?
A I do.
Q And what is that opinion?
A My opinion is that the most probable cause of Ms. Asbill's injuries are exactly the scenario that I just described to you, that she was being held from behind by the clothing which formed a partial ligature across the front of her neck, that while she was leaning out of the opened

passenger side car door her left hand, right hand and right forearm dragged along the road surface while the car was moving at speed, and that explains part of those injuries.

MR. GROSE: Beg the Court's indulgence for a moment.

THE COURT: Yes, sir.

Q Now, I want to go back to Ms. Simmons, the EMS person's testimony. Was there anything that she said in the testimony that you listed to that was significant regarding the position that EA was found in?

A Yes, sir.

Q All right. And what was that?

A She described finding Ms. Asbill seated in the floor well -- I forget exactly what term we're using for that. But the foot well in what is called the -- in the front passenger seat of the car. And she had used -- she talked about her legs being crossed, but that she was sitting down in the floor well area of the right front seat.

Q And I want to stop you there and put State's Exhibit Number 18 on the board. On the screen.

A Yes, sir.

Q Does that sort of help put this into context?

A Yes. That's a picture of the car looking through the open passenger side front door. And it shows you the dashboard on that side, the floor well on that side, with a few things in the floor area, and the seat of the -- the

seat portion of the passenger seat as well. It shows that this is a relatively confined space.

Q And did she -- Ms. Simmons describe it as an awkward position?

A Yes.

Q Now, earlier Mr. Wise asked some questions about positional asphyxiation. Can you describe for the jurors what that is?

A Yes. First of all, I think you heard this definition earlier. But asphyxia, or asphyxiation, is when there's interference with either getting oxygen into the body or using the oxygen. And very commonly asphyxia involves some way that limits breathing. And positional asphyxia is when your body is in a position where you compromise your ability to breath. For instance, you can have your head sharply flexed down, chin to chest kind of thing, and that can partially close off your airway and make breathing difficult. Especially if you don't wake up. You can have other ways that you can get into a position where something is pressing on your neck and you don't get yourself out of the position until it's too late and then you interfere with breathing and asphyxiate. But the other way that you can cause positional asphyxiate is by interfering with the breathing mechanism. Not necessarily closing down the throat or the neck, but by making it difficult to breath.

So you can have people who are folded up, who are hanging upside down, who are twisted, who are wedged into places, various ways that make it difficult to breath in sufficiently that you give yourself enough oxygen. And that's another way you can positional asphyxia.

Q So getting back to the photograph of the floorboard of the car and Ms. Simmons' testimony and what you just talked about. Do you have an opinion of whether or not positional asphyxiation played a role in Ms. EA Asbill's death?

A I do.

Q And what is that?

A My opinion is that positional asphyxiation did play a role in her death, because we have evidence of surface injuries. We have evidence of some degree of ligature strangulation, which in and of itself may not be fatal. The natural markers for strangulation are not fatal injuries, per se. You can have ligature marks, you can petechial hemorrhages and survive them, and people do. So we've had evidence that she was -- she had a degree, at least, of ligature strangulation. We have her significantly intoxicated with a high blood alcohol concentration. We had her in -- kind of crammed into the foot well of the passenger seat in a, so called, awkward position which could very easily have limited her ability to breath. And then going back to Occam's Razor, that will then explain

essentially everything that we have looked at and discussed today, if that were a final event. The awkward positioning contributing to or causing positional asphyxia, in the context of somebody who was already unconscious from the ligature and was also extremely intoxicated, and therefore didn't wake up to extricate herself from the position.

Q Explain that. I believe with comparing the blood and the ocular fluid Dr. Ross said EA's blood alcohol was close to .24.

A Yes, sir.

Q So how would the intoxication of .24 play into all of this?

A Well, several possible mechanisms, and they're not mutually exclusive. First of all, at a .24 she might have been passed out. Can't say for certainty she was, but that's within the realm of the possible effects of a .24. If she were not passed out it is likely that it diminished her ability to respond and to react. Second of all, alcohol classification causes respiratory depression. It lessens your drive and ability to breath. So if she were already made unconscious from a different mechanism, such as the ligature, and if she were placed into an awkward position while she had a -- almost .24 blood alcohol concentration, then she might not be able to breath as deeply as a person without the alcohol could. And alcohol also lessens the

muscles -- the muscles in your throat which promotes closure of the airway. At least narrowing, I should say, of the airway, which is another compromise.

Q You said it was not mutually exclusive, so more than one of those could be at play?

A Yes, sir.

Q Okay. If you could, could you just summarize your opinion for the jurors.

A In summary, the scenario in which she is hanging out the driver's side door dragging her hands and arm, being held up and pulled back in by the clothing, and then being put into the awkward position and a tight space in the floor well, can explain -- in the context of having her elevated blood alcohol, can explain all of the findings, including the ligature, petechiae and the road rash and her ultimate death by asphyxiation.

MR. GROSE: Beg the court's indulgence.

THE COURT: Yes.

MR. GROSE: Thank you. Please answer any questions that the Solicitor's Office might have.

THE COURT: Before we do that, ladies and gentlemen, I think we probably need a break. So I'm going to send you back to the jury room for about a 10 minute recess. You can get something to drink and stuff like that. But we're going to take a short recess. Please do not discuss anything

about the case.

(Whereupon, the jury exited the courtroom at 4:45 p.m.)

THE COURT: Please be seated. Mr. Beaty, you remember talking to me earlier concerning your decision to testify. Have you had an opportunity to speak with your family?

THE DEFENDANT: Yes, sir.

THE COURT: Have you had an opportunity to speak to your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Have you decided whether or not you want to testify.

THE DEFENDANT: I will not testify.

THE COURT: You will not testify. All right. Very well. You may be seated. And recess until 10 minutes till.

(Whereupon, a recess was held from 4:47 p.m. to 5:00 p.m.)

THE COURT: Thank you. Please take a seat. Bring in the jury.

(Whereupon, the jury entered the courtroom at 5:00 p.m.)

THE COURT: You may be seated.

Solicitor, you may proceed.

MR. STUMBO: Thank you, Your Honor. If it please the Court.

CROSS-EXAMINATION

BY MR. STUMBO:

Q Dr. Arden, I'm David Stumbo. I don't believe we've officially met. I'm the prosecutor here in this district.

A Yes, sir.

Q Welcome to South -- welcome back to South Carolina --

A Thank you.

Q -- since you've been here before. I'll try to keep this as brief and concise as possible. You testified on direct ultimately that part of the process of what you do as a forensic pathologist is to try to get a unifying theory, correct?

A Yes, sir.

Q Is that maybe a fancy way of saying you want to take all the facts and circumstances and try to get the best answer possible to what happened to this person that's no longer with us?

A Yes, sir.

Q Now, when you were talking about -- I know Mr. Grose asked you a lot of questions about Dr. Johnson's PowerPoint slides and the theory that he put forward. And you stated that these are all ways that you could explain the injuries that we see to EA Asbill, correct?

A Yes, sir.

Q I believe you used the words also, when you were

talking about blood alcohol content, that it could have a number of effects, right?

A Correct.

Q And you said "could have effects," right?

A Yes, sir.

Q I believe you used the words "might have been this, might not have been this." I mean, those are the words you used in talking about the effect that, say, the alcohol contained, correct?

A Yes. In that context I believe I did use those words. Yes, sir.

Q Now, earlier on you did testify the context and the investigative materials that are given to you are very important, correct?

A Yes, sir.

Q And here they are especially important because you didn't actually conduct an autopsy on Emily-Anna Asbill, did you?

A Well, they're especially important because they're necessary to explain what happened to her irrespective of whether I'm the one who did the autopsy or not. But yes, you're -- obviously you're correct. I did not do the autopsy.

Q They are important, correct?

A Yes.

Q And they're especially important when you didn't handle the body, cut the body open, physically handle the injuries and document themself, correct?

A No. They're not especially important because of that. They would be equally important if I were the autopsy pathologist in this case. But the importance of the investigation is what it is regardless of whether you were talking to the pathologist who did the autopsy or one who reviewed the autopsy.

Q Right. But here you're relying on Dr. Ross' autopsy, correct?

A Yes. But that wasn't the question.

Q But you are relying on her results because you weren't the one who did the autopsy? That would be fair to day?

A Yes. I'm relying on her results in part -- in part her written word, and part in photographs that I can independently assess.

Q Okay. And let's just get this out there. I think you would agree -- we would agree here, it seems like we could agree based on your direct testimony, that the cause of death of EA Asbill was that she was asphyxiated, correct. Asphyxia is the cause of the death here in this case, correct?

A It hate to be splitting hairs with you, but cause of death to a forensic pathologist is a term of art. And as I

defined it earlier, cause of death must get to a specific underlying process. Asphyxiate is what we call a mechanism of death. Asphyxiate is the mechanism by which different causes may result in death. So for me to agree that -- I agree with you that she died from asphyxiation.

Q Well, that's what I'm asking. Is that the cause of her death?

A Well, I'm not trying to fight with you. But asphyxiate was how her death was caused. But the cause of death, that's a term of art. The cause of death has to be in a specific way in which someone were asphyxiated. If I simply agree that asphyxia was the cause of death, I haven't differentiated positional asphyxia, from strangulation, from cyanide poising, which is a form of asphyxia. So that's why I can't give you a simple yes or no. Yes, she was asphyxiated, in my opinion, to death, and I believe there were two mechanisms that were working in her case. But the asphyxiate itself needs an underlying cause to answer your question. That was the cause of death.

Q Okay. So again, she died of asphyxiation though, correct? That's the cause of death? I'm not asking for a specific type of asphyxia. But you agree with Dr. Ross' findings that she died likely from asphyxia --

A Every time you add the phrase that was the cause of death I can't answer yes or not. Did she die from

asphyxiation? Yes. Was that the cause of death, when you're asking a forensic pathologist was that the cause of death, no. But did she die from asphyxiation? Yes, sir.

Q Dr. Arden, isn't the purpose of the autopsy to determine the manner of death?

A One of the purposes.

Q And the cause of death, correct?

A Well, again. Two of the purposes in conjunction with investigation. Yes.

Q Okay. So the answer is yes, it is manner and cause of death that we're after in an autopsy?

A In the context of an investigation. The autopsy by itself doesn't give you manner of death, and sometimes it doesn't even definitively give you cause of death with an investigation.

Q Correct. And I didn't ask you that. The investigation is part of it? It is part of the process to determine cause and manner of death?

A Investigation is part of the process of a medical legal death investigation. It's not part of the process of the autopsy.

Q Right. And I didn't ask you that. The cause and manner of death are the results that you get to when you issue an autopsy report, right?

A Yes, sir.

Q Do you not give he coroner who is asking you to do the autopsy what the cause of death is and what the manner of death is?
A Yes, you do.
Q Okay. So the answer is yes. Cause of death is --
A The way it's phrased now the answer is yes. The way it was phrased originally, I'm sorry, I have to take exception.
Q Okay. You would not dispute Dr. Ross' cause of death in this case, would you?
A I do in part.
Q She determined that the cause of death here was that EA Asbill - Emily-Anna Asbill died from asphyxia. That was the cause of death. You're saying you do disagree with that?
A You're misquoting Dr. Ross.
Q Okay. What does she say? Do you have her autopsy?
A I have it right here.
Q Okay. What was the cause of death?
A She says asphyxia due to strangulation.
Q But she said asphyxia. That's the first word in the cause of death, correct?
A Yes, it is. But it's not the underlying cause of death. I'm sorry, sir, but you're misusing terms of art. And she doesn't agree with the way you phrase the question.
Q So you agree that asphyxia is at play, but you don't agree that it's asphyxia due to strangulation. Is that what

you're telling this jury?

A I don't agree that it's asphyxia solely due to strangulation. That's correct.

Q And you said that view investigative materials are important because it gives context, right?

A Yes, sir.

Q And you said you reviewed a number of eyewitness statements.

A Yes, sir.

Q Statements that law enforcement gave you?

A Yes, sir.

Q Whose statements did you review specifically?

A I can't quote from memory all the statements. I know that I had statements from Mr. Beaty. Those were particular important to me. I believe there were statements from the other passenger in the car. I'm not sure who other's statements, as opposed to reports, that I got.

Q But it's important to have that context, right?

A Yes, sir. And I did.

Q Well, can you tell the jury which witnesses or eyewitnesses in this case you were able to review, or which statements? You told us about Mr. Beaty.

A Yes, sir.

Q The passenger in the car. That would be William Alexander?

A Yes, sir.
Q Who else?
A I don't recall specifically who else I had direct statements from. I didn't bring them all with me. My documents are electronic. I didn't print them all out. If there was something else that I specifically relied upon or wanted to cite you I would remember that.
Q Okay. You listened to a playback of the EMT's -- Lauren Simmons? Her testimony earlier; is that correct?
A Yes, sir.
Q Did you testify to that. Did you review her initial statement?
A Again, I do not recall specifically if I saw her statement or if I saw references to interviews of her. I hadn't retained that level of detail in all the background information.
Q Okay. You indicated that earlier though that Lauren Simmons, you said this on direct, that she stated in part that this victim's hair was up in a bun is how you described it, right?
A She used that word. Yes, sir.
Q She used the word bun in her testimony? Are you sure?
A I recall hearing the word bun. And she then -- she described having hair in a ponytail that's like fully up with a clip kind of thing. I don't know if it was

necessarily wrapped up to what a hairdresser would call a bun. But that was the word she used.

Q Are you sure those are the words she used? We can --

A That's my recollection. And I specifically remember her talking about the hair pulled up and being clipped in the back. I should say fastened in the back. I don't know if she used the word clipped.

Q Well, if my notes are correct, it can be --

MR. GROSE: Objection, Your Honor.

Q -- a ponytail.

MR. GROSE: If he wants to replay the testimony that would be fine.

THE COURT: He's on cross-examination. I'm going to give him a little leeway. Overruled.

Q Is there a difference between a ponytail and a bun?

A Yes, sir.

Q Okay. What's the difference between the two?

A Ponytail is where you bring the hair back, usually to the back of the head and fix it with something like a rubber band, or something along those lines, and then the rest of the hair hangs done in more like a ponytail. A bun is where you somehow wrap it up in the back of the head in a round shape. Like a ball or something.

Q Up on top of the head?

A Could be the back, could be the top. One on each side.

Q Kind of like similar to what Amish ladies do when they pull it up tight to the back of their head?
A That's certainly one version, yes.
Q I'm going to show you State's 29. Do you know where this picture was taken?
A Not exactly. It looks to me like she's in the emergency department.
Q How would you describe -- the emergency department at the hospital? Is that what --
A Yes, sir.
Q I just want to make sure we're straight. Would you describe this as a ponytail, or bun, or down, or how would you describe that?
A It looks like the hair is down to me.
Q Now, we can't see around the back. There could be a rubber band holding it together or not. I don't know if that's the case. But it's certainly not up in a bun on top of her head, correct?
A Correct.
Q And you're sure that the EMT testified earlier that it was in a bun, not a ponytail.
A I recall her using that term and then qualifying it such that she wasn't talking about carefully wrapping it into a small ball. But like some women do when they have a ponytail and kind of fold it back on itself and fix it that

way so it stays up. And she said it as the effect of the way she had her hair at the time.

Q Did you see the way the EMT worker had her hair?

A Of course not.

Q Were you there when she testified?

A No, sir.

Q So you don't how she had it, correct?

A I'm basing it on her testimony. I heard the words.

Q How about -- you mentioned Michael Beaty's statements earlier. I'm going to show you State's 3, 4 and 5.

A Thank you.

Q Those are written statements. Have you ever seen those?

A Yes, sir. Not in the originals, of course, but I've seen them as electronic documents.

Q Was it of note to you that the first two statements -- or, excuse me, the first statement given, State's 3, indicates that Mr. Beaty didn't know what happened to the victim, and is that important that he kind of didn't give any explanation to start with?

A Yes, sir.

Q Okay. That's significant to give you context in this investigation, correct?

A Yes, sir.

Q Is it significant that he indicated that the victim cut

herself on numerous occasions throughout his statements?
A Yes, sir.
Q Now, your review of Dr. Ross' autopsy photos and the other information, did you find any evidence whatsoever that this person, EA Asbill, had cut herself with a sharp knife?
A No, sir.
Q What's the significance of that to you? That he gave that information?
A He was incorrect.
Q Right. Would it also be significant that he didn't talk about the victim going out of the car and her hand hitting the road until after he's told what the cause of death is?
A I realize the sequence is significant. It is significant, and I was aware that he described that until later in the process.
Q Particularly if your opinion is that she died accidently, right? That's one of the manners of death. Homicide is one, accident is another, correct?
A Yes, sir.
Q So is your opinion here to this jury today that this is an accidental death?
A Actually I haven't offered any opinion on manner of death. If she died in a way that I believe she did, you could actually make an argument for that being an accident

in that the final phase is she's placed in the floor well of the car and that's what ultimately causes her fatal asphyxia. I would say you could easily make an argument to call that a homicide. Along the lines of the testimony that Dr. Ross gave, which is homicide simply means death at the hands of another person. It doesn't have any implication for whether a crime was or was not committed. It's a vital statistic's tool. And so in the scenario I laid out of some ligature strangulation from pulling back on her shirt and then putting her into a position in which she asphyxiates, I think you would actually have a very solid argument to call that a homicide as well. Just for purposes of manner of death. I make no comments on criminality.

Q So the answer to that is you don't have a manner of death? You're uncertain as to which it might be, correct?

A I think you could argue it'd be one of those two choices.

Q Let's talk a little bit about the injuries to the arm. I think we can agree that it was some sort of contact with a rough surface that caused those injuries, correct?

A Yes, sir.

Q And the injuries in light of the blood on the side of the car, I think you testified to earlier, that it would be consistent, looking at her injuries, that she may have made contact with the road while it's moving. Would that be fair

to say?
A Yes, sir.
Q Is it significant to you that Mr. Beaty gave that statement some 12 hours after this incident?
A Not particularly. I mean, it's significant to me that he did give the statement, which ultimately, in my opinion, deals consistent with all the evidence. I can't speak to why he gave it later and not initially.
Q But you would agree that it was not given -- in your review of all of his statements, was not given until sometime the next day after -- after the autopsy was done?
A Yes, sir.
Q Let's talk a little bit more about the ligature marks. And so, to avoid having to put them back up on the overhead, let's look at State's 56. This is a blown up photograph of one of the pictures submitted into evidence. Now, earlier you took great exception to the word crisscross. We're not going to use that. We're going to use the term intercept because you preferred that one, correct?
A Yes, sir.
Q How do you explain what apparently is an intercepting mark here in the ligature? What would be your expert explanation for that, doctor?
A Quite simply, it had two different marks that, in fact, have intercepted. It's not unreasonable that two different

lesions could coincide, at least in part, in where they are in the body. You have one mark, that's the rectangular bruise, that clearly was caused by some object because it's a pattern of injury. You have another park that's a ligature mark that's indicative of an elongated thin object or margin that's pressing against the neck. Those two things are not -- those two things don't really go together. You're not describing the same object causing them. And so, you have a mark from one object and a mark from another object and they happen to intersect.

Q But you're saying that it's physical possible that it could be two objects, correct? Correct? You're saying --

A Well, of course it's physically possible. Almost anything is possible. In my opinion, it is much more likely that those are two separate objects, because those are decidedly different patterns. These are patterned injuries.

Q Well, this part of the crisscross is a straight line, correct, going into the rectangular portion? Is it possible -- physically possible that this could be one ligature apparatus and not two?

A Anything is physically possible. Is there any reason to conclude that, is there anything that I can dream up that would support that theory, no.

Q You're saying that this is rectangular on this end. How about this end of this bruising? Is there any -- are

there any straight lines here on this side of the bruising?
A Well, there certainly appears to be a straight line roughly horizontally in the middle. So it goes with what I said earlier. As you go farther to her left, the bruising is much less distinct.
Q Correct. It's less distinct in that the lines are not as clearly drawn as here, these 90 degree angles on that --
A The bruising -- the bruising is much fainter and less distinct. And the one you're asking me about, by the way, would reflect the edge margin, it could reflect some configuration of whatever object caused this. But in comparison to the line of the ligature mark, it looks decidedly different. It's a solid line. It doesn't have the train track look. It's narrower than the ligature mark. So there's nothing about it that suggested it's caused by this ligature.
Q You testified earlier that could change -- the type of mark or the width of the mark could change based on the amount of pressure exerted, correct?
A Yes, sir.
Q Now, this side of the neck. What is this -- this purple area on the left -- on her left side? To our right side. To the left side of Ms. Asbill's neck?
A Actually, I think that's lividity coming up from behind. It's hard to tell, because you're asking me about a

part of the photo that's really not in the photo.
Q Well, let's look at another one then.
A Other photo.
Q State's 58. That's a straight on shot of the side of the neck. What -- the left side.
A Yes. Actually that just confirms what I was saying. The left side of the neck has this lividity purple discoloration on it, which is not bruising. You notice it doesn't look like the bruise. It doesn't look like the ligature mark. It's the beginning of settling of the blood postmortem.
Q Well, you can say with great certainty that this purple on her neck is not a bruise?
A Yes. In my opinion, that's not a bruise.
Q Could it be a bruise? Because you said anything was physically possible a moment ago. Is it physically possible that that's a bruise and not lividity.
A If you want to ask me the is it possible questions, the answer is always yes.
Q Correct, okay.
A But is it probable? Does it have the features? In my opinion, the answer is no.
Q The next question will be this. This bruising will be caused by some, what appears to be, a rectangular square object pressed tightly against her neck, correct?

A Pressed tightly, or impacting against the neck in that area.

Q Okay. Now, is it physically possible for this ligature to be caused by a noose type effect from sort of cord?

A Again, if you ask me any question is physically possible, including do Martians come in the courtroom, the answer is yes. I mean, I'm not -- anything possible.

Q But let's talk about this for a second. If the left hand is pressed in such a manner with a thumb --

A You're demonstrating with your right hand.

Q No. Pressing of the left hand, pulling back with the right to strangle. You're telling me that that is not consistent with the marks you see here?

A It's not consistent with the marks. It's not consistent with what you've just demonstrated. The overlap -- the overlap of the ligature and the rectangular area -- the decidedly rectangular portion is not really overlapped maybe, so that's not the area of maximum pressure. What you've just demonstrated has two other features that are inconsistent with the autopsy findings. One is, if you're going to press with your hands, you've now introduced the element of manual strangulation, for which there's no evidence and in which Dr. Ross said it didn't happen, and you've just make a circumferential ligature all the way around the neck which is not matching the evidence in the

autopsy either.
Q Oh, you said Dr. Ross indicated in her report that there was -- there was no other marks or contusions or abrasions to the neck?
A I didn't say that. I just said that Dr. Ross agreed that, today in testimony, that this was not manual strangulation. That's what I said.
Q Right. She said it was ligature strangulation.
A Yes.
Q Could it be a combination of both? A hand is used to keep and hold a ligature in place like that?
A It is physically possible to have a combination and ligature and manual strangulation, however there is no evidence for the manual component in this case.
Q So it's not likely, or not even medically likely, that a hand could be held with a thumb pressing this part, where one cord intersects and this is pressed with a rectangular -- now, this is two parts rectangular. There's another part plastic, correct?
A Yes.
Q Or the --
A Notably of different sizes, which is not reflected in the mark on the neck.
Q Correct. And if it was pressed tightly against just the black portion of this, then the black portion would be

making contact with the skin, not the metal part, correct?
A I think that's highly unlikely that you would press the black part so hard and the metal part, wouldn't you make contact?
Q If it was synched in a noose effect and you were pushing and you were making sure that it stayed cinched, your thumb would be right there, would it not?
A And where would the rest of your fingers be?
Q There again, around the other side of the neck. Here. Emily-Anna Asbill's left side, correct?
A I don't know if correct, because you're the one making up the scenario. But there's no other evidence of manual strangulation.
Q You're saying that this is absolutely not bruising in your medical opinion?
A I'm saying, in my opinion, that is not bruising. And it certainly does not have the configuration of finger marks, if you're implying that that's where the rest of the hand is.
Q Not the fingers cinched into the throat, but this?
A Yes, but that doesn't -- first of all, that doesn't match that pattern. Second of all, what you just demonstrated is not what manual strangulation looks like.
Q Dr. Arden, what we're dealing with here though is what things are physically possible based on the evidence,

correct?
A No.
Q Where is there a rectangular mark on this shirt that you said is most likely the evident -- the ligature that strangled EA Asbill?
A There is no rectangular structure on that shirt, which is exactly consistent with my testimony opinion that a shirt like that, or in this case, that shirt, caused the ligature mark and something else caused the rectangular mark.
Q Is there any way that this shirt is together and pulled tightly from behind that there's any intersecting effect to the hemline of this tank top?
A Sure, if there's another lesion there. What if that rectangular mark were already there? Then we could intersect it with the edge of the hemline making the ligature mark.
Q We're dealing with what ifs now. What if? Where did the rectangular mark come from?
A I don't know, but didn't come from that. It didn't come from what made the ligature mark.
Q The only things of evidence that's been submitted in this case, to my knowledge, that you reviewed to put your opinions in context that has those kind of rectangular qualities would be this?
A Not the shirt. No. That doesn't have those

rectangular qualities. That's one of the problems.
Q The end of this cord is not 90 degree rectangular?
A Well, first of all the end is. But it's contained within the context of the handle part. It has the handle part around the edges. Nobody is showing me that the dimensions of this matches that.
Q Your testimony to this jury, to a reasonable degree of medical certainty, in your opinion, this shirt caused this ligature mark?
A Yes, sir.
Q Despite the intersection of -- what would appear to be the intersection of two marks here?
A Yes, sir.
Q And you're doing that essentially using, what you called a second ago, the eyeball test on this. So Dr. Ross was using the eyeball test, right?
A If somebody were comparing the two and saying this is specifically consistent with, so far that's the best I've seen is the eyeball.
Q Well, isn't that what you're doing?
A Well, it's easy to eyeball something when the two things are inconsistent. It doesn't matter if the size is the same if the configuration doesn't match.
Q But it's true that you're eyeballing pictures that were submitted to you through the autopsy, through law

enforcement, pictures of these particular items that were submitted to you, and you're making comparisons based on your subjective opinion that a certain thing matches the markings, correct?

A Actually, most of my opinions were about what doesn't match. And mismatch is a lot different from does match or consistent with. I'm also -- I also arrived at the opinion that the thin edge of the hemline, the neck line, is consistent with a thin ligature mark. And subsequent to that I have seen the measurements made by Dr. Johnson that actually confirm the impression I had earlier.

Q Let's talk a little bit about positional asphyxiation. It appeared to me earlier that in support of that you base that on listening to the EMT's testimony earlier, correct?

A Yes. Actually, I had raised that consideration much earlier before I heard that testimony, but that testimony was helpful to me as well.

Q She testified just essentially that she was in an awkward position, correct?

A Yeah, sitting in the floor well of the passenger side of the front of the car.

Q We talked about reviewing eyewitness statements earlier. Did you review the statement of Henry Simmons, the step-father of the Defendant?

A I don't recall.

Q Did you review his testimony?
A No, sir.
Q Would it change your opinion on this asphyxiation view to hear that when he arrived her head was back?
A No, sir.
Q Okay. Why not?
A Well, for one thing, my understanding is by the time he arrived Mr. Beaty had already opened the door. So we don't know if her head being back is the same position she was in. And for another thing, even with her head back, that doesn't change the -- kind of being stuck into the floor well as far as your torso and the legs, and I'm much more concerned about that preventing her from breathing as opposed to relying on her neck position. If her head had been flopped forward prior to the step-father testifying -- or observing, I should say, that might have been a contributor factor. But I'm concerned about her awkward position, we're calling it stuck into that small area, which could limit her breathing in and of itself, especially in the context of high blood alcohol and being unconscious from the ligature effect already.
Q Dr. Arden, you just said that -- basically you're relying on her testimony. But we're speculating here, aren't we, on the position she was in when she died, or before she got to the house? Aren't we speculating that

position? And as you said, Mr. Beaty came around and unbuckled her?

A I didn't say that.

Q Well, you said he came around and repositioned her in some way before Mr. Simmons came out.

A I said he might have.

Q Might have, right. We're dealing with mights and possibles. But we don't know what position he was in -- she was in when they pulled up to that house, do we?

A We don't know exactly what position, but the only descriptions I have had her seated in the floor well of the passenger seat area, which is going to confine her.

Q You're basing your whole theory on positional asphyxia on a might have been. On where she might have been positioned.

A I'm basing it on probabilities based on all the evidence I have both from what happened before that and how she was found after that.

Q Dr. Arden, now, you testified for both the state and the defense. You've testified to that. But generally when you're retained on a case in your private consultation business you're hired by defense attorneys, correct? Criminal defense attorneys?

A In the half of my work that is criminal, most of it -- the vast majority is for defense attorneys. I do

occasionally get hired by prosecutors as an outside consultant. But the vast majority if defense work, because that's usually who needs an outside consultant.

Q You were retained in Buffalo in 2014, just last year on a Candace Cartagena case. That was a child homicide where the child was alleged to have been asphyxiated, correct?

A Yes, sir.

Q You testified for the defense in that case, correct?

A I did.

Q And you testified that it was not asphyxiation, right?

A I did.

Q 2012 in Minnesota you testified in a homicide by child abuse case involving a four-month-old baby. You testified for the defense in that case. That was a Damien Marsden. Do you remember that one?

A I remember the name. I don't remember the facts of that case.

Q But you did testify and were retained by the defense in that case to offer courtroom testimony, right?

A Yes, sir.

Q You were the chief medical examiner in 2003 for the city -- or the District of Columbia, correct?

A Yes, sir.

Q It is true that you were suspended without pay before leaving that job, correct?

A Yes, sir.
Q And it's true that there were a variety of reasons for that, including there was an excessive backlog of the autopsies, right?
A Yes, sir.
Q And you were also alleged -- or accused by five different women of sexual harassment, correct?
A Allegations were made by five women who were medical examiners of various kinds of harassment. They didn't all claim each of the types. They divided up the numbers and, you know, took lots. Some of them claimed sexual harassment, charges which were not only false, were never adjudicated, nothing was ever proven against me. I resigned my position when it became untenable. And, you know, people can claim whatever they want when they want to get rid of you, and that's what happened to me.
Q Before you resigned your position the city actually suspended you without pay, correct?
A No. Actually it wasn't before. It was part of the process. It was an agreed upon -- it's a mechanism that when somebody is going to resign that they put you on suspension pending the fulfillment of the resignation.
Q And since then you have been working on contract for lawyers to consult on these sorts of cases, correct?
A Yes. I've been a consultant primarily since then. I

had a stint doing part-time work for the Virginia medical examiner's system and I've had a long stint working for the West Virginia system. But primarily I'm a consultant.

Q And, Dr. Arden, these attorneys, Mr. Wise and Grose, retained you in this case, correct?

A Yes, sir.

Q And they're paying you how much for your work on this case?

A I don't know what the full amount is going to be. It's probably -- probably going to end up somewhere in the seven or $8,000 range total. It started in 2013.

Q How much per hour? What's your fee scale?

A This case I'm charging $375 an hour.

Q So similar to a roadside musician; they pay you and you sing whatever song they want you to sing, correct?

A No, not at all. I spend lots of time telling attorneys that the facts are against them and I can't testify for their clients. Happens all the time. Several cases in criminal, prosecution and defense. So no. I don't sing the song they want. I tell them what the facts are, tell them what my opinion is, and it goes from there.

MR. STUMBO: Thank you, Doctor. No further questions.

THE COURT: Any redirect?

MR. GROSE: Yes, sir.

REDIRECT EXAMINATION

BY MR. GROSE:

Q Solicitor asked you if you looked at Lauren Simmons' statement. I'll hand that to you now and let you take a look at it.

A Yes, sir.

Q Just let me know when you're done.

A Yes, sir. I'm ready.

Q Does that statement from Lauren Simmons reflect that EA was found on the floorboard?

A It does.

Q If I can hand you a Laurens County EMS report. Take a moment and look at that, please.

A Yes, sir.

Q Have you had a chance to review that?

A Yes, sir.

Q Does that indicate that EA was found on the floorboard?

A Yes, it does.

Q Now, you had mentioned in answering the Solicitor's question that positional asphyxiation is something that had come up in this case?

A Yes, sir.

Q And are those consistent with having had information that she was found on the floorboard?

A Yes, sir.

MR. GROSE: Can you dim the lights for a moment,

please.
Q I'm going to put Plaintiff's -- or State's Exhibit 29 back on the board. Now, looking at that photograph, and in your experience, is that the same condition she would have been found in the car?
A No, sir.
Q Why not?
A Well, clearly she's already had medical intervention. She's got a medical apparatus, the tubes that are going through her throat, a breathing tube, with a device that holds it there. She's got two of those adhesive EKG electro pads on her upper chest. The clothing has been taking off. So clearly her body has been altered by the process.
Q So is it really fair to say look at that picture and say that's indicative of how she was found in the car?
A No, sir.
Q And let me go back. There were some questions about whether or not she had been approached in the car. Did you review anything that said that a cloth had been wrapped around her arm?
A Yes, sir. It's in one of the two documents you just handed me.
Q Would you find that for me.
A Are these marked?
Q They're not marked. They're just --

A In the witness statement from Ms. Simmons, the EMT, the handwritten one, it says that -- I just had it here a second ago. I'm sorry. Hang on one minute. Oh, there's a notation about a tee shirt wrapped around the right arm. And then in the other document, which is the Laurens County EMS report, this is a typed document, there is almost the same statement. Something about boyfriend informing them he wrapped the shirt on the arm. And there's a mention later in when the shirt was removed from the right arm. So that seems to confirm that it was there.

Q So we realize that -- I mean, that seems to confirm that Michael or somebody had been with the body before they got there?

A Yes, sir. And had done something to it.

Q Now, Solicitor asked you about these two. And I want to start with State's Exhibit Number 56. First of all, have you reviewed any report from anybody in this case that there was manual strangulation?

A No, sir.

Q Now, and we talked about this earlier. First of all, is there any scale for these two? Right now I'm looking at State's Exhibit 56.

A No, there's not.

Q What's the relationship between the shape of the object and a bruise?

A If you have a bruise caused by an object and the object itself has shape and confirmation, then typically the bruise recapitulates the configuration of the object. That may be a part of the object. It may be the whole object. But it's -- you know, the distinction here between if you get bruised by hitting a flat surface, you hit the wall, you fall down, you get bruised, typically even by a rounded non-specific non-pattern surface, which commonly happens with fists, you get nondescript bruises; round, oval, no real specific shape or configuration. Now, an object with a specific configuration that impacts the skin and it makes a patterned injury which reproduces the pattern of the object.

Q And the pattern of the USB cord, is that reproduced -- the business end of the USB cable, is that reproduced in what we're looking at in Plaintiff's Exhibit 56?

A Well, the pattern is not -- the size comparison, which is an important thing we can't really make because we don't have a measurement here, but the pattern, just the shape and configuration, is not.

Q And when we talk about that we're -- and I'm sorry to do this to you, but could you turn that right back off, please. You know, again, we had this up there earlier. And while there's a rectangle, it also widens out at the black rubber part and then it's round, right?

A Yes, sir.

Q And that's not -- that pattern is not reproduced?
A Correct. It is not the pattern that's on the neck.
Q Now you can turn that back up. I'm sorry to have done that to you so quickly. Now, in State's Exhibit 58 there were some questions about this here. Do you have Dr. Ross' autopsy report?
A I do.
Q Did she describe any bruising on that part of the neck?
A No. As a matter of fact, she doesn't describe any bruising there whatsoever. So she didn't call it a bruise. I don't call it a bruise.
Q And it seemed from a question that there was a suggestion -- in fact, you asked -- when Solicitor Stumbo was talking about it, he was talking about the left hand, or the hand, being around that side of the neck, right?
A Yes, sir.
Q In your review of Dr. Ross' report did she find any evidence of the hand causing the bruising on that side of the neck?
A No, sir.
Q As a matter of fact, did she even find any bruising on that part of the neck?
A No, sir.
Q So even Dr. Ross agreed with that, on that point?
A Yes, sir.

Q And if -- well, we know it wasn't. But if that was caused by a hand, then we would be talking about manual strangulation?

A Correct.

Q And --

A If.

Q If. And we're not. So we can just take that if out.

MR. STUMBO: Your Honor, that's making his own statements.

THE COURT: I'm going to give you an opportunity to recross.

MR. STUMBO: It didn't sound like a question that was in there.

THE COURT: Ask the question.

Q Is there any evidence of manual strangulation?

A No, sir.

Q Is there any evidence of Solicitor Stumbo's scenario of the hand having caused that?

A No, sir.

Q Is there any suggestion by Dr. Ross that a hand caused that?

A No, sir.

Q Is there any evidence in this case that a hand caused that?

A No, sir.

Q Now, you were trying to explain something about pooling of the blood.
A Yes, sir.
Q What is that? Describe that processing.
A When the heart stops beating the blood is not circulating so it settles due to gravity. And when blood settles, in whichever direction is down, the skin in that area starts to get discolored. Could be pink, could be red, could be purple. And that discoloration from the postmortem settling of the blood is called rigor mortis or lividity. And it gives you that kind of mottled look to it. Something I've seen thousands of times. And in some instances it may be mistaken for bruising and in some cases it may simulate bruising. But in my opinion, looking at that photo of the left side of the neck, that is lividity and it is not a bruise. And again, there's no indication in the autopsy report that that is a bruise.
Q Now, we're not -- we don't have all the autopsy photos in evidence, do we?
A No, sir.
Q And did you see other evidence of lividity in the autopsy photos?
A Yes, sir.
Q And that really doesn't help with the death investigation, does it?

A Well, in the broad scheme of things, lividity may help with death investigations under some circumstances. But in this instance, is it relevant to any of these questions or helping. No.

Q So we don't have pictures of that other lividity in evidence?

A Oh, in evidence, no. I've seen them, but apparently not in evidence.

Q So that -- so you have other evidence other than just that picture to support your opinion?

A Yes, sir.

Q And if we were to say that the three statements, 3, 4 and 5, let's just assume for a second that they didn't exist. Based on all of this evidence would you still be able to come up with an opinion about the process of death, as you referred to it?

A Yes, sir.

Q And earlier I think I asked you about sometimes statements are not accurate.

A That's correct.

Q And so, if you have a statement that contradicts the physical evidence, can you make an assumption about whether that's accurate or not?

A Yes. In fact, that's what you commonly due. You look at the all evidence critically and see if it all fits well

together, see if it fits with what you know about forensic pathology, and there are times when you must conclude that a give statement is inaccurate, or part of a statement is inaccurate.

Q And going back to the term of art, manner of death. And Dr. Ross was asked about that. What are the different terms for manner of death?

A The choices for manner of death are homicide, suicide, accident, natural and undetermined.

Q And what is the purpose of those manners of death? What are they used for?

A They are used to compile vital statistics. The governor, in his public health role, has a need to know who and why people die for various reasons. And so categorizing those deaths both by cause and manner allows them to be analyzed on a population basis.

Q Does the term homicide equate to a crime?

A For a manner of death, no.

Q And can you explain that?

A It's death at the hands of another person. When one person commits an intensional or volitional act that directly results in the death of another person we categorize that for purposes of manner of death for vital statistics as a homicide. If one person -- well, the example that I most frequently use when I'm talking about or

teaching about this is, for instance, if a police officer shoots and kills another person in the line of duty and the shooting is deemed to have been completely justifiable and appropriate as a police action, the that death will be classified as a homicide, because one person shot the other, even if the investigation shows that there was nothing incorrect or criminal about it.

Q So that's not a crime, even though we call it a homicide?

A We, on the pathology side, call it a homicide. Most people who use the term homicide in the criminal code are using the word with different meanings.

Q And a homeowner defending themselves is considered to be justified self-defense. That's not a crime. Would that be considered a homicide, too?

A Yes, sir.

Q What about a hunting accident where somebody thinks they're shooting at an animal and it turns out to be another hunter in camouflage?

A Typically, and in my opinion, that should be called a homicide, even though it's not intention and it's not a crime.

Q Okay. So if we take out the debate of whether you can classify this for statistical purposes as an accident or a homicide, homicide in this case doesn't equate to crime,

does it?
A Not in this case --
MR. STUMBO: Your Honor, objection.
THE COURT: Sustained. I don't think it's his position to make that determination.
Q As a medical term, homicide is not equivalent to crime?
MR. STUMBO: There again, Your Honor.
MR. GROSE: I think that is in his --
THE COURT: I think that's within his --
MR. GROSE: And responsive to -
THE COURT: -- because he is an expert in forensic pathology.
A Correct.
Q Now, I want to the position on asphyxiation again for a second. And again, the EMS records indicated that somebody had gone and wrapped -- you know, been next to EM before the EMS people got there. What I want to do is I want to get back to -- I believe you testified on direct that there's two ways for positional asphyxiation?
A Well, I mentioned two different ways in which position may asphyxiate somebody. One is compromising the airway in the neck and one is compromising the ability of the chest to breath.
Q And the Solicitor asked you some questions about the neck and the airway. Was that what you were getting at in

this case, or were you getting at the chest compression?

A No, I was getting at the chest restriction, being crammed into that tiny little space.

MR. GROSE: Will you turn the lights down again a minute.

Q And I've got one of Dr. Johnson's slides up there. Is this the position that we're talking about?

A That's the location that relates to a position, yes.

Q When you see a ligature mark like it's the case we see here, can that be survivable?

A Oh, sure. People do survive strangulation by ligature.

Q All right. And with the petechiae, does that -- can that be survivable, too?

A Yes, sir.

MR. STUMBO: Your Honor, we may be getting beyond the scope of cross.

THE COURT: And this is recross.

MR. GROSE: That's fine, Your Honor. And that's all I wanted to ask. Thank you.

THE COURT: Redirect.

MR. STUMBO: Just one question, Your Honor.

REDIRECT EXAMINATION

Q Dr. Arden, do you have Dr. Ross' -- well two questions. Dr. Ross's report in front of you?

A Yes, sir. I do.

Q Okay. Can you read number one there on the front page of that evidence for strangulation. Read number one through A, B and C.

A Yes, sir. This is under the final diagnoses. Number one says, "Evidence for strangulation," sub(a), "A ligature mark across the anterior neck," sub(b), "Facial and conjunctival petechiae, " sub©, "contusions next to larynx and trachea."

Q Did you say "next to larynx and trachea," correct?

A Yes, sir. Those are internal findings. Those are not the left side of the neck you were pointing to.

Q Well, I didn't ask you that. I asked you -- it says, "next to," correct?

A It does.

Q Okay. Separate and apart from the ligature marks, but it's inside the body, correct?

A Yes, sir.

Q So additional findings of contusions and abrasions next to the trachea and -- the larynx and trachea?

A Contusions, yes. Abrasions, no.

MR. STUMBO: No further questions.

THE COURT: Thank you. You may step down.

MR. GROSE: Your Honor, we want to respond to that.

RECROSS-EXAMINATION

BY MR. GROSS:

Q You said that was internal?
A Yes, sir.
Q The contusions next to the larynx and trachea?
A Yes, sir.
Q And how do you -- what else do you look at to determine that -
MR. STUMBO: Judge -
THE COURT: I'm going to give you --
Q What do you look at to confirm that that was internal?
A In the autopsy report, on page three, the paragraph entitled dissection, or at the end of that paragraph starting in the middle of the sentence it says, "There is a small contusion on the right side of the larynx and the lower midline just below the larynx and over the upper trachea." So those are internal descriptions under the heading of dissection which she goes on to describe internal findings.
Q All right. And if you would, turn to her case summary on page five.
A Yes, sir.
Q In the second paragraph it starts off, "Autopsy findings include evidence for strangulation."
A Yes, sir.
Q What does she document there?
A To the words, evidence for strangulation, she puts in

parenthesis, "ligature marked across the anterior neck. Facial and conjunctival petechiae, small internal contusions of the anterior neck near the larynx," and then she goes on with the rest of the sentence.

Q And then she talks about the hands and the forearm?

A Right.

Q So was the word internal your word or does that actually appear in her report?

A It is in her wording in the report.

Q So when the Solicitor asked you to read number 1©, does it appear that you and Dr. Ross agree or disagree about the contusions near the larynx?

A We agree.

Q And are there photographs that document that?

A Yes, sir.

MR. GROSE: Thank you.

THE COURT: Mr. Stumbo, you may follow up questions on that.

RECROSS-EXAMINATION

BY MR. STUMBO:

Q So when you said earlier that there was no evidence of other injuries to the neck, I believe you said, "There was no evidence of any kind of injuries that would be indicative of manual strangulation," that's incorrect, right, based on --

A That's not what I said. I said there's no evidence of manual strangulation. I didn't say there were no other injuries. Those injuries, as Dr. Ross has said, are consistent with totality of the evidence for ligature strangulation.

MR. STUMBO: Nothing further, Your Honor.

THE COURT: Thank you. You may step down.

MR. GROSE: Thank you, Your Honor.

THE WITNESS: Thank you.

(Whereupon, the witness stepped down from the witness stand.

THE COURT: Any objection to this witness being excused?

MR. STUMBO: None, sir.

MR. GROSE: None. And the Defense rests, Your Honor.

THE COURT: All right. Let me see the attorneys up here, please.

(Whereupon, a side bar was held.)

THE COURT: All right. Ladies and gentlemen, that's all the testimony that you are going to hear. I am going to send you home for the evening with absolute instructions that you not look at any media or any coverage of this. Don't look at any media whatsoever. And then be back here a little before 10:00 tomorrow morning where we will finish the trial. So get a good night's rest. You may have a long

day tomorrow. Thank you ladies and gentlemen. Have a good evening.

(Whereupon the jury was dismissed for the day at 6:03 p.m.)

THE COURT: You may be seated. I understand you want to put something on the record.

MR. STUMBO: I would just object to this being done. I don't know why we need to do this on the record other than Mr. Wise summarizing what the testimony would be. I don't see what the purpose is other than -- based on what I understand the testimony, to embarrass this family.

MR. WISE: No. The testimony -- the testimony relates to the defense we have about her jumping out of the car.

THE COURT: I have denied it coming in.

MR. WISE: Correct.

THE COURT: They want to proffer it for appeal purposes, I'm sure.

MR. WISE: And I don't mind getting an affidavit written and just putting it in the record, if you want me to.

MR. STUMBO: I don't have a problem doing that, Judge. If they want to get an affidavit. I would prefer that.

THE COURT: All right. Scheduled for tomorrow will be the attorneys and I will be here for a charge conference at 9:00. My law clerk has already sent you a draft -- a

boilerplate draft of the charge and at 9:00 we'll discuss what else needs to be added to it or taken away from it, and then we'll have closing arguments at 10:00.

Thank you. Courts adjourned for everybody else until 10:00. Y'all be here at 9:00.

MR. STUMBO: Thank you, sir.

TRIAL DAY 5-01/30/15

THE COURT: We had a brief conference in Chambers and we need to put some objections on the record for both sides.

MR. STUMBO: Correct. Judge, I can start out since the Defense proposed a number of charges. I believe we objected to charges number one, which, I believe, Your Honor, has indicated that you will charge that one.

THE COURT: That's going to be a --

MR. STUMBO: That's correct.

THE COURT: And I think there's evidence in the record that, if believed, there is possibly a murder in this situation.

MR. STUMBO: Yes, sir. Thank you, Your Honor. Just for allowing us to put an objection on the record.

But charge number two --

THE COURT: I've already got that in my charge.

MR. STUMBO: Certainly, right.

THE COURT: That's the law.

MR. STUMBO: No problem with that. Charge number three

we objected to. We believe is a little bit wordy and maybe confusing on -- particularly the premeditation as opposed to aforethought.

THE COURT: I think I added that.

MR. STUMBO: You did, Your Honor.

THE COURT: Yeah.

MR. STUMBO: And I'm just putting that on the record. Number four --

THE COURT: I'm adding that part --

MR. STUMBO: Correct.

THE COURT: -- a malice charge.

MR. STUMBO: Which we have no objection to four.

THE COURT: That's the depraved heart.

MR. STUMBO: That's correct, Judge. We don't object to that.

THE COURT: I did not put in the charge concerning *State vs. Edwards.* I've got the language concerning *State vs. Logan* in charge number six.

MR. STUMBO: That's correct, Judge. And we're --

THE COURT: And I think you all wanted to go back to *Edwards*.

MR. WISE: That's correct.

THE COURT: Which is not the current law, but maybe one day it will be. You never know.

MR. STUMBO: And, Judge, we objected to number seven as

well. And I think Your Honor indicated you would not --

THE COURT: I did. I did. That was the involuntary manslaughter --

MR. WISE: Correct.

THE COURT: -- and I will not charge involuntary manslaughter, because there's no evidence of that.

MR. WISE: We need to put on the record, I will --

MR. GROSE: Whoa, whoa, whoa. We need Michael.

THE COURT: I'm sorry. This was -- really at this point in time this was --

MR. WISE: Yeah.

THE COURT: -- just primarily for the attorneys to put your objections on the record.

MR. GROSE: She's recording, yeah, so -- yeah.

THE COURT: Yeah.

MR. WISE: I thought, you know -

THE COURT: As long as you're on the record I think we're -

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

THE COURT: He's here, isn't he? He's in the building, isn't he?

MR. STUMBO: I assume he is, Judge. I haven't seen him this morning.

MR. GROSE: We both made a mistake of making an

assumption.

MR. STUMBO: Correct.

(Whereupon, a brief recess was held)

THE COURT: You may proceed.

MR. STUMBO: Judge, I do believe -- I think we have a charge. The stuff is settled. And I don't have any other objections on charges and we're satisfied on the charge.

THE COURT: All right. Mr. Wise.

MR. WISE: Thank you. Your Honor, we would object to the failure to charge number three, and our objection to that is the current charge in South Carolina we think places too great -- lacks emphasis on the aforethought part of the murder charge. There has to be malice aforethought. We have, over the years, reduced aforethought down to however slight, which, to me, virtually eliminates it. And in a true understanding of murder there has to be some real deliberation, and we think this charge, while probably not going as far as I like, at least give the jury a better understanding that deliberation does require some aforethought and some plan to do it ahead of time and not instantaneous with the act as -

THE COURT: And the reason I'm not is because that's not the status of the law in the State of South Carolina. If you convince the Appellate Court to change the law in the State of South Carolina then I will charge that in my next.

MR. WISE: Well, I understand that. But note our objection. We also, of course, would object to you not charging number five, which goes back to the exclusion of every other reasonable hypothesis under *State vs. Edwards* which we think, of course, shouldn't be charged.

THE COURT: And again, I repeat, that's not the law of the state.

MR. WISE: We would like to hand up to the Court as a Court's Exhibit our requested charge.

THE COURT: And these are my -- I've got a copy.

MR. WISE: Right. I'm just going to make it as a Court exhibit.

THE COURT: Right.

(Whereupon, Court's Exhibit No. 2 was marked for identification.)

THE COURT: And I will let you all have a copy of the full charge before I actually charge. We've got a number of things to do before we actually charge the jury.

MR. WISE: And then, of course, our objection to your failure to charge involuntary manslaughter, which we think when the evidence considered in this case reveals, according to the testimony and the statements from -- not the testimony, but the statements of Mr. Beaty that he was highly intoxicated, pulled the woman back in the car resulting in her death, then I think it would be very easy

for a jury to find that there was gross negligence in the way he handled it and, therefore, it could be proper to have involuntary manslaughter.

THE COURT: And I disagree. I think there's enough evidence to charge that. I will charge the sudden emergency, but I don't think there's any evidence of involuntary or voluntary manslaughter in this matter. It's murder or not murder. Anything further?

MR. WISE: And, of course, we had made the motion in chambers that the State be required to open fully on the law and the facts, and I understand they are going to open fully on the law and the facts, and not just open on some of the facts, but fully on the facts to explain their theory of this case so that --

THE COURT: They will open and explain and then they will have final argument which I will allow them to go int - -

MR. WISE: Correct.

THE COURT: -- what they want to talk about.

MR. STUMBO: And, Judge, just for the record, and we believe the law in the state right now is the State has -- should have the option, and does under the law now, to bifurcate or to give one argument. We honestly would prefer to give one argument, but if the Defense demands that we open and close, I don't have any problem with it.

THE COURT: You can do it either way.

MR. STUMBO: We can do it either way.

THE COURT: Is the jury here?

THE BAILIFF: Yes, sir.

THE COURT: All right. We'll let's go ahead let's start --

MR. STUMBO: Yes, sir.

MR. WISE: Well, the requested charge -- well, we'll take a break after --

THE COURT: I'm not going to charge them now. You all got to argue --

MR. WISE: I understand that. But we're going to take a break after the argument.

THE COURT: Absolutely. Absolutely.

MR. STUMBO: Judge --

THE COURT: And I'm not going to limit your charges of timing on those. You all just need to --

MR. STUMBO: Could you give us about -- all the evidence is sitting in a box over there. I need about five, 10 minutes.

MR. WISE: In between the arguments we're going to need to be able to set up.

THE COURT: I will allow you to set up.

MR. WISE: Fair enough. Fair enough.

THE COURT: You need to be able to get the objections

put on the record.

MR. STUMBO: Yes, sir.

THE COURT: Court will remain at ease.

MR. STUMBO: Thank you, Judge.

THE COURT: Let me have the attorneys up here real quick.

Mr. Grose.

MR. GROSE: Yes, sir.

THE COURT: Let me go ahead and put on my record as to the charge concerning Mr. Alexander. This is what I propose is the initial charge. Ladies and gentlemen, you have heard reference to the other person in the vehicle, Will Alexander. Will Alexander is unavailable to testify. Therefore, you should not infer in any way what he would testify about. I repeat, you should not infer anything for the State or for the Defense. This trial concerns Michael Beaty only. You should consider only the evidence presented in this trial in your deliberations.

MR. GROSE: Could you read the first part again?

THE COURT: Ladies and gentlemen, you have heard reference to the other person in the vehicle, Will Alexander. Will Alexander is unavailable to testify. Therefore, you should not infer in any way what he would testify about.

MR. GROSE: All right. I just missed part of the first

part. Thank you. We would just renew our objection based on --

THE COURT: To anything.

MR. GROSE: -- *State vs. Hughes*. To anything. Yes, sir.

MR. STUMBO: And we would agree with the charge based on State v Braddock, and I think we've put that on the record.

THE COURT: Incorporate that into the charge. Very well. Thank you. We'll be at ease for a few minutes.

(Whereupon, a recess was held from 10:01 a.m. to 10:11 a.m.)

THE COURT: Thank you, ladies and gentlemen. Please take your seat. Are you all ready?

MR. STUMBO: Yes, sir.

THE COURT: Let's bring our jury in.

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

THE COURT: You may be seated. Ladies and gentlemen, as I told you yesterday, all the evidence in this case has been presented to you. Now is the time where each side is giving their closing arguments, and we'll take a break after that. We may take a couple breaks while that's going on. Then I will charge you the law that is applicable to this case, and then we will give you lunch and we will being your

deliberations. All right?

Is the State ready to proceed?

MR. STUMBO: I am, Your Honor. Thank you. If it please the Court.

THE COURT: Yes, sir.

CLOSING ARGUMENT

BY MR. STUMBO: Emily-Anna Asbill. After sitting here for an entire week, and you all have been very patient -- I've been watching you all and you all have been very patient and attentive. And after hours and hours and hours of testimony over the last five days it would be very easy to forget the person that's really at the heart of this case. You've heard her name a lot. But this is her. This is the girl that was born in this county, grew up here, lived her life here over in Clinton here in Laurens County. Clinton, South Carolina is where she died at the age of 19. Now, you've heard a lot of evidence over the last few days and it would be very easy to get lost in the legal terminology you've heard from the lawyers and from the Judge, very easy to get lost in the scientific and medical terminology that we've heard this week, but I want you to remember that because of what he did, Michael Beaty, this beautiful smiling 19-year-old girl became this.

I want to thank you for your service this week. I know you all didn't have a choice on whether to be here, so --

but that being said, you have families, you have lives, you have activities you could have been at. You probably would have much rather been somewhere else listening to pleasant things rather than the unpleasant things you've had to hear this week. So I want to thank you for your service, because without what the 15 of you have done here this week and your service, we wouldn't have a criminal justice system. Now, our founding fathers set up the jury system because of that, because it's ordinary citizens, regular folks that at the consciousness of the community, that make the decisions in our criminal justice system on guilt and innocence. Certainly not a perfect justice system. Not by any stretch of the imagination, but it's the best we have. And let me tell you why. Folks, we heard just yesterday in this courtroom, just on Thursday, January the 29th, we heard over $20,000, almost $25,000 worth of testimony from the Defense. I'm so glad that we have jurors that serve, because it really gets at the heart of what we're doing here this week. That it's ordinary citizens from all walks of life in Laurens County that make these decisions. Not high paid experts from Arizona, from Virginia. They don't make the decisions on these things. Regular folks do, and that's why it's the greatest justice system the world's every had. Even though, as we said, it's far from perfect. So I want to thank you for being here this week.

Let's talk a little bit about the law first. I'm going to have a chance to address some issues here at the beginning, and you're going to hear from Mr. Wise and Mr. Grose, and at the end I'm going to come back and we're going to talk a little bit more about this case. But first of all, let's go ahead and talk a little bit about the law.

Now, the Judge instructed you at the beginning, Judge Young said he's the law -- or the judge of the law in this case. So anything that he tells you at the end of this case, that's the law of this case. But I wanted to point a few things out.

Let's talk about proof beyond a reasonable doubt. What does that mean? And the burden is on the State, and Mr. Scott and Mr. Andrews and I gladly bear that burden in this case. And we're going to talk a little bit more in a few minutes why we gladly bear the burden of proof in this case. But what does this mean? Sometimes reasonable doubt can be very confusing. But you're going to hear the Judge tell you at least twice in his charge that it's proof that leaves you firmly convinced that the Defendant did what he's alleged to have done. Firmly convinced. It's not some kind of scientific formula. It's not some kind of mathematical equation. Simply it is taking the view of this case from seeing the whole forest and not just the trees. Taking all the evidence into account, are you firmly convinced in the

Defendant's guilt. Okay? So don't over think this. Don't make it any more complicated than it is. And the Judge is going to tell you, firmly convinced is your standard. So at the end of this case, after hearing the evidence, seeing the evidence and filtering it through -- remember Mr. Scott told you at the beginning of this case, don't check your commonsense at the door. So once you've filtered all that information through your good logic and common sense that the good Lord gave you, you're firmly convinced that he's guilty of murder.

Now, what are the elements of murder? Very simply it's the killing of another person, which is essentially a homicide. We heard some evidence of that in this case. Killing someone by your hands is a homicide. But this is the key. That the killing is accomplished with malice aforethought. In South Carolina that's the law. That murder is simply defined as killing another person with malice aforethought. Now, you probably don't use the word malice in everyday life. Probably don't use the word aforethought in everyday life. So let's unpack that a little bit.

What the Judge is going to charge you is that malice is the intentional doing of a wrongful act without just cause or excuse and with the intent to inflict an injury. And he's going to go into some detail and give some further

explanations of that. But those words you're going to hear in his charge. Now, how can you prove malice? And that's kind of the question here. What evidence can you see that would prove malice and how is that done. You can do it by two ways; either expressed malice or inferred malice. Now, expressed malice can be as simple as someone verbalizing that their intention is to kill someone. That's the most simple way to prove malice when somebody expressly says out of their mouth, "I intend to kill you." Okay? That's the first kind. But we don't normally see that in murder cases. Most people don't announce that they're going to kill somebody before they do it. Another way to express malice can be shown as by actions. By actions of lying in wait. And the Judge is going to tell you about that. Or by actions that would show a direct attention to kill. Pulling out a firearm, pointing it directly at somebody and shooting is essentially expressed malice if it's done without just cause or excuse. So anyway, the intentions are expressed by either words or actions. Now, inferred malice is probably a little bit closer to what we're dealing with in this case, so let's talk about that. Inferred malice, and the Judge is going to charge you that circumstances demonstrate a total disregard for the value of human life. And so, by the facts and the actions of the Defendant it demonstrates that they don't have any care regardless to whether the person lives

or dies in that moment. A reasonably prudent person would have known that there was a strong likelihood that death would follow the contemplated act. Strangulation, which we've heard from this witness stand from witnesses, that it takes at least two minutes, maybe -- Dr. Ross said even three to five minutes of constant pressure on someone's neck, on the victim's neck, to accomplish strangulation where there's not going to be continuation of breathing and life. So someone doing that, it would demonstrate, one, a reckless disregard, or a complete and total disregard for the value of the life of the person that they've strangled. And, quite frankly in this case, we believe that the facts and circumstances will show that there was known that there was a strong likelihood that death would follow the contemplated act.

Aforethought, let's move on to that. This is a very important concept here. A lot of times, if you watch TV and watch crime shows, you've heard the term premeditation. Well, in South Carolina it's not premeditated murder. What we have is called aforethought. Malice aforethought. It's a similar concept. But what the law says, and you're going to hear this from the Judge, is that there's no requirement that malice must exist for any appreciable length of time before the commission of the act. It may be conceived at the moment that the assault occurs. That's very important.

Don't be taken in by this idea that from what you've heard before, or what you may hear from the defense later, that there's this requirement that there's a long planning period that's required to prove a murder case. That's not the law of South Carolina. It can be actually conceived just before the moment the act is done.

A direct evidence and circumstantial evidence. That's something I want to talk about a little bit here. Cut the lights back on for now. This is a very concept, direct evidence. And Mr. Scott touched on this a little bit in his opening statement. Direct evidence is evidence of an eyewitness. It's evidence of -- it can be a surveillance tape capturing a crime being committed. But traditionally before -- long back in our history before we had such things as video cameras and audio equipment, going back into history, how could you prove something by direct evidence. Well, it would be the people that saw it happened. So the people that witnessed it. So that eyewitness testimony is still some of the most important testimony we have in this state to prove criminal acts. I will submit to you in this case, and we'll talk a little bit more about this in detail in a few minutes, but if there were three people ultimately that were in the car, according to what we know from the facts in evidence, when EA Asbill was killed by Michael Beaty, it was Emily-Anna Asbill, Michael Beaty and William

Alexander. We have statements in evidence, not only from the three that he wrote with his own hand, which you'll have in the jury room to review, State's 3, 4 and 5, but from the other statements. And we're going to go through those here in a little bit in detail of the timeline of the statements that Michael Beaty gave. So we have direct evidence, not that he confessed to the crime, but he says some very interesting things in his statements that are extremely applicable to this case. And he has eyewitness testimony because he was there, correct?

Circumstantial evidence. Let's talk about that. And quite frankly, folks, circumstantial evidence is a major part of this case. The Judge is going to tell you that there is absolutely no distinction in the value of direct evidence versus circumstantial evidence. They're both equally important. The only difference is circumstantial evidence requires you to deduce facts from other facts. Now, Mr. Scott gave you a very good analogy of this in opening statements. And it was the -- you know, you remember he talked about the jurors coming in the door. One's wearing a raincoat that's wet. One has an umbrella. One's tracking in water with their shoes. Now, when he came in earlier that morning the sun was shining, the skies were blue. But several hours later, having no windows in this building, if he sees somebody come in the door -- three

people come in the court wet, the assumption is going to be that it's raining outside. And you could deduce that from the facts of what you see with those people coming in the door. Now, is it physically possible, or is it in the realm of possibility that you could have someone standing on the front -- on the roof outside the front door with a water hose spraying people coming in? Sure, you can prove that it's physically possible for that to happen. But using your power of deduction and common sense does that make any sense at all? I would submit to you, ladies and gentlemen, that what we're going to hear from the Defense and what we've heard from them all week is them insulting your intelligence, asking you to check your common sense at the door before you came in this courtroom, and paid a lot of money for these guys to come here to try to get you to buy the man on the roof spraying people with water coming in the front door. So I want you to remember that as you listen to the Defense's argument.

We've heard a lot about this shirt. This very light, thin tank top that Emily-Anna was wearing that night. The Defense would have you believe that this was the object that took her life that night. At least two minutes of constant pressure being accidently applied by Michael Beaty as he's driving down the road at 30 miles an hour trying to maintain control of the car. That's their theory, ladies and

gentlemen. You'll have this shirt in the jury room. You can hold it. You can look at it. See what kind of material it is. You won't have the tank top that Dr. Johnson used in his physics experiment out in Arizona where he said this was all physically possible. He didn't bring that to court with him. But you'll have the shirts that this young lady was wearing that night. And you'll also have this cord. That's State's 46. You'll have a number of other cords there when you go back to the jury room. You can take them out. You can look at them. You can look at the characteristics that they have on both ends and in the middle. You can inspect those. Folks, you will have not only these pictures, or a smaller form of them, but you'll have them hung up on posterboard and you'll be able to compare the marks that were left on Emily Asbill's neck with all of the apparatus on this table. I will submit to you, ladies and gentlemen, that it does not take a Ph.D in biomechanics, it does not take a Ph.D in forensics pathology, to be able to look -- and you heard what Dr. Arden said yesterday. I asked him if basically this is the eyeball test, and, of course, he wouldn't give me a straight answer on it when I asked him. But basically isn't that what we're about? It doesn't take a doctor to compare markings made by an item that were left on human flesh. It certainly helps and assists you to have testimony. And we have Dr. Ross testifying that -- very

conclusively, that this is consistent with being put into a noose and put around Emily-Anna Asbill's neck. And she was the one that actually conducted the autopsy, remember. Not Dr. Arden. He looked at her pictures. He looked at her report. But Dr. Ross told you in her expert opinion, after doing over 8,000 autopsies, over her long and distinguished career, that in her opinion this apparatus here was a consistent ligature with these marks. I'm not going to belabor that point. You'll have the posters. You'll have all of the evidence in the jury room. But you'll get this evidence. And there again, filter it through that great filter that you have. It's like a coffee filter. You put the coffee grounds in. You put the water in. And it filters through the grounds and you have coffee. Very similar here. The coffee grounds are your commonsense. And as this evidence filters through that what's going to come out of the bottom? Mr. Scott and I are confident -- and I'm going to have a chance to come back and talk to you again in a few minutes. We're going to go into more detail about why commonsense dictates that this is the instrument that killed Emily-Anna Asbill, and that commonsense would dictate that this is not the apparatus that killed Emily-Anna Asbill. We're confident after you're able to hear all the evidence, take the direct evidence of Michael Beaty's own statements, his lies for the first 12 hours that, oh, she just cut

herself. That's how she got hurt. You're going to have the physical evidence to look at. You'll have your common sense. And we are confident -- Mr. Scott, Mr. Andrews, Mr. Bentley and I are confident. And when you're able to do that and really filter everything through that filter of commonsense there's going to be one verdict that speaks the truth.

Now, that's what verdict means, folks. It's two Latin words, verus dictum, that literally the word verdict means. To speak the truth -- or to speak truth. And we're confident that you're verdict will speak the truth at the end of this case, that Michael Beaty is guilty of murder.

So please listen patiently to anything the Defense has to say and we're looking forward to addressing you at the end of that. Thank you.

THE COURT: Did you all say you all needed a break before --

MR. WISE: We need to set up. Yeah.

THE COURT: Ladies and gentlemen, I'm going to send you back to the jury room just for a few minutes. They need to set up some things. So please do not discuss anything in the jury room.

(Whereupon, the jury exited the courtroom at 10:33 a.m.)

THE COURT: Court will be in recess -- you need 10

minutes?

MR. WISE: That should be fine, Your Honor.

THE COURT: Okay. Ten minutes.

(Whereupon, a recess was held from 10:33 a.m. to 10:44 a.m.)

(Whereupon, the jury entered the courtroom at 10:44 a.m.)

THE COURT: You may be seated. All right. Mr. Wise.

CLOSING ARGUMENT

BY MR. WISE: Madam Forelady, and ladies and gentlemen of the jury. We're going to divide our discussions with you of the issues in this case, because I don't like to call it an argument because it really is supposed to be a discussion, into two parts. I will discuss the concept of the law, the standards by which you judge this evidence, and then Mr. Grose will discuss with you the facts of this case.

If you go into the jury room and say to yourselves, or among yourselves, you know, Michael Beaty with a depraved heart, and with malice aforethought, probably killed EA, what should your verdict be? Your verdict should be not guilty. Because when we talk about proof beyond a reasonable doubt is the highest standard known to man short of an absolute certainty. We're not here to decide what probably happened, what might have happened, or what could have happened that tragic night of June 29 of 2013. We're

here to see if the State has proven it's case against Mr. Beaty beyond any and all reasonable doubt. It is that standard which we brag to people about when we talk about our judicial system. And that is the standard by which you have to judge this case. I like to tell people one way of looking at it is this. We've all watched football games and they have instant replay, and they'll question an officials call, and the announcers will sit there and say as you look at the video time and time again while he officials look at it, there has to be irrefutable evidence to overturn the call on the field. Irrefutable evidence. And you'll look at that replay and you'll say, "Well, I don't know. Well, I may have made a different call. Well, now, the official may have made a different call. I'm just not quite sure about that." But then you say to yourself, is the evidence irrefutable, and you say finally, no it isn't, or yes it is, and then the ruling goes accordingly. The call on the field in this case is not guilty. And what your job is basically say, to a higher standard than irrefutable, is there proof beyond a reasonable doubt to say the call on the field is wrong. When we talk about the search for truth and we talk about the truth staying in reality, what we're talking about is has the State proven it's case to your satisfaction beyond any and all reasonable doubt, because that's what you have to go by in this case.

There's evidence of -- types of evidence of -- as mentioned earlier, circumstantial evidence. This is basically a circumstantial evidence case. There is no eyewitnesses as to how this happened. You know, circumstances of this case show -- have to be added together and come together to prove beyond a reasonable doubt. What we need to understand is these circumstances, as proven by the State, must, when added together, point conclusively to the guilt of Michael Beaty. Not to the point where it's a probability or a possibility. Conclusively to the guilt of Michael Beaty. That is what we talk about when we look at circumstantial evidence, whether or not those circumstances taken together give you no other alternative virtually than to accept the guilt of Michael Beaty. Is there another reasonable explanation? If there is in your mind then, of course, the burden has not been met. The State has not met it's burden. Because another reasonable explanation is not conclusive proof when you add all the circumstances together. The burden of proof, as we've mentioned, of course, is on the State, because a presumption of innocence, as the Judge will charge you, stays with Mr. Beaty until your deliberations.

I want to mention one other thing to you. The State stood up in front of you and said we're going to talk about the facts of this case and tell you about what happened.

And then we get to speak and then they get a reply. The State elected to not tell you how she received the scratches on her arm. The State elected not to tell you that theory on exactly what did happen. How did that -- how was that cord used. The State elected not to tell you a lot of details of what happened in here. Mr. Grose will speak in a moment and he will give you ever detail we have and every theory we have and every inference we have from the evidence as to why the State has not made its burden of proof in this case. We will lay it all out for you. We will lay it all out for the State to stand up and reply, if they can, to everything Mr. Grose says. Then what's going to happen is this. The State's then going to come up with their real theory. How the arm got scratched, exactly how this alleged strangulation took place, and we have to sit moot. We will not have the chance to come back and refute that, and yet they'll have a chance to refute everything that we've laid out there. That was their choice as to how they chose to do the closing arguments. I can't make them do it any differently. That's their choice. That is something you can consider. But when the State gets up there and gives their true theory of this case, to which we will not be able to respond, do as you'll do -- will do during Mr. Grose's argument. Question things. Look at -- ask them in your mind about pieces of evidence, as you would think that we

would do had we had a chance to come back and refute their true theory. Thank you.

THE COURT: Mr. Grose, a continuance of your summation.

MR. GROSE: Thank you, Your Honor. Could we dim the lights, please.

CLOSING ARGUMENT

BY MR. GROSE: Mr. Wise talked about how this is an opportunity for us to discuss the facts of the case and how we think it fits with the theory of the law that you're going to hear. One of the things that is important about our system is that what we discuss, or sometimes people call it an argument, is not evidence in the case. And the importance of that is is because the evidence is what comes to you through this witness stand and through the exhibits that are entered into evidence. It's not what we come up here and argue about. What you have to look at is whether or not during the course of the trial was there facts presented that support or undermine the different theories that are advanced.

Now, one of the things that became important in this trial, and I want to talk about this right off the bat, and I'm probably going to come back to it a couple of times. One of the things that became important in the trial was the testimony of Lauren Simmons, the EMS lady who was the first responder who was the one who found EA Asbill on the

floorboard of that car and removed her. Dr. Ross said if she was found on the floorboard, that information should have been provided to me, but she was unaware of it. If her hair was found in a bun, that information -- a ponytail and a bun, that information should have been provided to Dr. Ross, and she was unaware of it.

Again, we're talking about discussion. What I say is not evidence. What they say about that is not evidence. You have the right as jurors in this case to ask to come back into this courtroom and have any evidence replayed. And I would encourage you to ask for Lauren Simmons' testimony to be replayed. And you're going to have to listen all of it. It's 20 minutes, maybe slightly longer. Twenty to 25 minutes. The reason you're going to have to hear all of it is because what she talks about comes up in a couple of different parts. She does talking about finding EA on the floorboard, legs crossed Indian style. But you get all the way to the end. We did direct, cross, redirect. When they get back up -- or when they got back up on Tuesday and redirect is where the testimony about her hair comes into play. Don't take my word for it. Don't take their word for it. Ask to hear it. Because right there, that's where their theory falls apart. Their theory is the cord was wrapped around the neck and pulled time. Dr. Ross' explanation on this witness stand to you in this case was

that the reason there was no ligature mark on the back of the neck -- and that is an undisputed fact. No ligature mark on the back of the neck. The justification that she gave for that is because EA's hair was covering it. And she told you, if EA was found in the floorboard, if there was something about it, that information should have been provided to her and it wasn't. So you can take somebody like Dr. Ross who's performed a lot of autopsies, and performed it in this case. But if you look at the facts and data and the information that she had, and those facts are incomplete or wrong, and those facts that are incomplete or wrong are so central to her opinion that they're advancing that this was wrapped around the neck and pulled tight to the point that that undermines their theory, the only demonstration that they provided in this courtroom, that in and of itself is reasonable doubt. That in and of itself is reasonable doubt. And we know from her other testimony that she wasn't provided all the information in the case. She was asked when she saw Michael Beaty's statements about him trying to pull EA back into the car, last Friday, a week ago today. Last Friday. We didn't wake up on Monday morning and decided, hey, this is the day we're going to try the case. We knew this trial was coming. They knew this trial was coming. They had Dutch Johnson's PowerPoint before the trial. Why did they wait so long to do that. We would

suggest to you that they came to a theory at the beginning of the case, a hypothesis that we've heard the term this week, but a theory at the beginning of the case, on that Sunday in June of 2013. And then they're doing everything they can to try to make the facts fit their theory. The reason I started with this on the board, and in their closing, and in Mr. Stumbo's presentation, you didn't hear them talk anything about that. We don't know the theory that they're going to advance about the sequence of evens and the timing of how those injuries got on her arms. They have had evidence in this case for 19 months.

Officer Jones was the first police officer to testify, and he talked about -- he talked about putting up the crime scene tape. The yellow tape. The reason that they have the burden of proof is because they have the resources. They have the first responders with Public Safety. They have the investigators from SLED that can come to a case. They have the forensic people to come and collect the evidence in a case. They have the people to test evidence. And don't kid yourself for a second. All those resources cost money. But the big thing they get is they get the first chance. They get the first chance. As soon as they decide they're going to conduct an investigation they can secure the evidence. And not only did they put up this yellow tape to secure the evidence, you heard that they processed the car not once,

but twice, and that they didn't do the second time immediately because they had removed it from here and put it in a secure location. And you heard that there's been a bunch of photographs. And not all of them have been brought to you, because we do try to take an bring what -- both sides get a change, or at least when it's there, get a chance to try to bring you what they think is important so that you can review it. And one of the things that they have not told you, and they will not tell you, because they don't know, is where this cord was found in the car. You do have a picture of the floorboard of the car where EA was found, and you can look at that picture. And you're going to have it in the jury room. And what you know is this is not found in that floorboard. We don't even know where they ultimately found it. I mean, this was taken before they removed anything. But they told you that they took everything out of the car and put it back in. So we didn't photograph if the second time around because we might have moved it the first time and it might not have even been in the right place. What's important is -- and gain, this gets back to this being a discussion and not a presentation of evidence. The opportunity is to present the evidence and to present the theory is when the witnesses are testifying in the courtroom and the photographs and the objects are being introduced. And what I'm getting at is, it's not your job

to try and take this and figure it out. The job is on the state of South Carolina and the prosecutors to conduct this investigation in a way that preserve the evidence in a manner that both sides would have a fair opportunity to present it to you and ask questions about it. Not to get up here at the end and speculate about a theory.

Now, when we're discussing the evidence, there's a lot that undermines their case. One of the definitions that the Judge is going to use about reasonable doubt is whether it causes you to hesitate to act, which is kind of like asking questions. Do you have some unanswered questions that are important. First of all, we don't know where this came from in the car. And we know that they examined it for DNA. And what they told you was is that there was a large amount of EA's DNA on one of the ends of the cord. One of the ends of the cord. Your job is not to figure out which end of the cord it was one, because you can't do it. They can't do it. And the reason that they can't do it is because the way you collect the DNA is you put on gloves, not to cross-contaminate it, and you take swabs. And if you want to find out if EA's DNA is on the big end of this cord, or Michael's DNA is on the big end of this cord, you take a swab on that end and you secure it. And then you get out another Q-tip, or another swab, and you go to the little end of the cord and you swab it and you put it away and you secure it. And

then if you want to find out what's in the middle of the cord you take it and swab it in the middle of the cord and secure it. And you could actually do points on the cord and get more swabs. But they only did two swabs on this whole cord. And what they're saying is, based on the demonstration that they did, and they had some issues with that demonstration, because if you put it around one way and wrap it, the end is not pressing against the neck. So then they say, oh, you have to press against the neck to hold it in, even though, once again, an undisputed fact in this case. The difference between manual strangulation and ligature marks. Dr. Ross testified on the stand and she testified when Mr. Wise cross-examined her, that there as no evidence of manual strangulation. But yet, when they were trying to cross-examine our experts yesterday they tried to come up with it. And you've got to ask yourself why are they going with a theory that's different from their own forensic pathologist. Because they're trying to create things that aren't there and they're trying to get you to accept things that aren't there in their theory.

But getting back to the DNA. Because we don't know which end they measured they're probably going to tell you it's because her DNA was there because Michael Beaty was pressing it into her neck. But they don't know that. They don't know that the DNA was on that end of the cord. And

they're going to tell you that there was a partial profile of Michael Beaty's DNA on the ends. Again, they don't know which end. But it was a partial profile and it was a very, very small percentage. And again, you can have that testimony played back if you think it'll help you. A very, very small percentage. Now, use your commonsense. If it's, they're probably going to suggest, it was because pressing it hard, number one, you would have both DNA's there in a large amount. And number two, you would have the actual shape, which you would have the squared end where the silver part is, and it would come out again on both sides, and you don't have that.

Now, if you think back to the DNA testimony -- this was collected at the autopsy. I'm talking about the tank top was collected at the autopsy. So they had this in evidence on the morning of June 30th, 2013. And it took a while to do all the testing and get to the final report, but it seems like the lady from the DNA lab said she started on this right away. First week in July. When I say this, doing the DNA testing. Now, an explanation that they tried to give you was we get requests to test evidence in CDV cases and we can rarely find it.

There was a blue lanyard, a cloth lanyard, that was also collected and they tested it. This is the one where they found EA's DNA and an unidentified male's DNA that

wasn't either of the people, Michael or Will, that was in the car. There was a scarf that they collected from the car, again cloth, and they tested it for DNA. This is the blue and white polka-dotted scarf. And here is a black and white -- white scarf with black polka-dots that they collected from the car and they tested for DNA. And they found DNA samples on every one of these three items. Now, your commonsense, why would they come into the courtroom when they know that there's evidence that they tested those three things and found DNA and then tell you, oh, it just doesn't work. We just never find it on clothing. Was that a mistake? Did they intentionally not test it? It's not our job, or your job, more importantly, to figure that out. What we know is that what they actually did contradicted -- contradicted their testimony. And they're going to talk and they're going to try and suggest, because they did it a little while ago, that this couldn't have done it. And you're going to have it. You can look at it. You know what our testing was on it. But I will point you back to the evidence in this case it was two times, or in two context, that it came up that they were considering fabric or cloth type things as a possibility. One was those three exhibits we just took out that they did DNA testing on. The other one was, you might recall Mr. Wise asking Dr. Ross if she had ever said that a shoe string or a shoe lace -- and he

had both kinds. He had kind of a tennis lace kind of shoe string and a more dressy kind of shoe string, and she acknowledged that she had considered it. So ask yourselves for a minute why would they consider these other items and not consider what Michael Beaty said was involved when he pulled her back into the car. It's because they got the hypothesis, or the theory at the beginning, and then tried to cram the facts into their theory, as opposed to a process where you take the facts and you try to follow them to see where you go. Now, if they get up here and kind of pick and choose do this but don't consider that, or they try to say, oh, eyeball and consider this, but we didn't take any measurements, that's a question that you can ask. That's something that you can think about. And they're probably going to talk about the statements a lot. And this gets back to they have the first opportunity. Remember I said a few minutes ago that if it's available both sides get to decide what to bring to you and each side gets to ask questions about it.

We talked about there being basically three times where there was conversations between law enforcement and Michael Beaty. The first one was that Lieutenant Goggins at Calvert Avenue and then Michael Beaty agreed to go down to the police station. Then the second one from 12:50 in the morning that goes on until 7:50 the next morning, and then a

third one that starts around 10:20 a.m. Now, we may have spent a lot of time on these timelines and that may have got a little bit boring. But the point is, if you take from 12:50 in the morning to 7:20 a.m., that's seven hours -- or 7:50 when the statement ended. Seven hours. Michael is back just two and a half hours later at 10:20, 10:30 all the way until 5:00 when they said that he was taken to the Detention Center under arrest. And you've got statements that talk about how he and EA left Greenville earlier in the afternoon to come to Clinton to spend some time with -- maybe doing some odds and ends and spend time with the family before going to the party. You got Michael Beaty up for over 24 hours. For over 24 hours. And as we had testimony in this case, but you have to take all of the evidence and try to look at it and consider it altogether and how it fits together, that there's three reasons why you have to question the accuracy of Michael's statements.

The first one, and they tried to -- they didn't put this in any of statements. They didn't bring this out on direct. I had to do it. Beaty stated, "He wished he could remember more, but he couldn't due to the amount of alcohol that he consumed." Every witness that has testified has said that Michael Beaty had consumed alcohol at that party. And even at 3:00 in the morning when some of these officers were getting there for the first time -- yeah, he probably

sobered up by then because he's been without alcohol since before midnight, but even they said you could still tell that he'd been drinking. And again, when they were asking about the shirt thing, he stated that he didn't think that she had been hurt that bad. And why didn't that get into their statements or that get into their testimony? Because it's a diversion. It's a diversion. They're trying to divert you from the physical evidence. And they're trying to divert you from everything that happened that night. And they're trying to divert you from the process which is a whole investigation.

Now, what we know, from 12:50 on Sunday morning to 2:03 on Sunday morning, an hour and 13 minutes, you all had the opportunity to listen to that interview. And if you think about how that developed in this trial, Commander Roberts testified about that late in the afternoon on Tuesday, and she had her incident report that she was using to refresh her memory and she was able to be more detailed in that part of her report because she said she had the tapes to go by in drafting it. And she got up here and summarized it. And if we were to sit down and compare it, it's going to be basically accurate. I say basically. You know, she didn't go through every word that was said. She had summaries that were said. Her questions weren't in there. And the order she testified about it may or may not have been right. But

then the next morning the first thing we did was play that tape because we wanted you all to be able to consider what actually happened in that interview room.

Now, we've all lost people that are close to us. When my mother died and my dad and my brother reacted differently than I did, but we all reacted. Everybody has their own way of dealing with things. And when you listen to that tape you can hear the emotion. You can hear the tone of stuff. It would have been nice if we had it on video, because then you could look at it, too. And oh, this is where -- oh, we don't have the resources. We're just a poor little police department in Clinton, South Carolina, until we're reminded of in 2008 when they were investigating the case that luckily Mr. Wise just happened to be involved in or we might not have known about it, that they had an interview room equipped with videotape. And in this day and age, that's not expensive. We've a poor police department is not an excuse. It's not an excuse to claim that you're an assisting agency to help smaller police departments and we don't bring audio and we don't bring video. And we write down notes and throw them away. What's up with that? They said it's because you can interpret things. Well, that's what they're doing. They're deciding how they want to interpret things. That they had a theory and they're going to make the facts fit that theory. Wouldn't it have been

nice for both sides to have been able to pick out the parts of that interview that -- the two interviews, the seven hour one over the night and the one that took almost an entire workday on Sunday, to pick the parts for you to hear so you can make your own judgement? But they were in control of that. They chose how to do that.

Now, I'm not going to go back over the law, but there's an example that I kind of think about sometimes when we're talking about circumstantial evidence. You know, and they're theory is kind of ridiculous about the person on the roof. But let's say I've got a box down here, and I pick this box up and I sit it here and I take the lid off. And I reach down and I've got a little cage or something and I take a mouse out and put it inside the box. And I reach back down and I've got a cat and I put the cat in the box and I put the top back on and I sit it down. And then, let's say, we continue this discussion for two, three, five, 10 minutes, and then I come back and pick the box up. Sit it back up here and we take the top off and there's just a cat in the box and the mouse is gone. The first thing that might come to your mind is that that cat ate the mouse. Then if I turn this box around and you see the other side and there's a hole there that's big enough for the mouse to go through, did the cat eat the mouse or did the mouse get away? You don't know. You don't know. And when we're

talking about circumstantial evidence and it has to point conclusively to something, the example that I gave you does not point conclusively to the cat eating the mouse. It's reasonable to think that the mouse got out of the box through that hole. And so, when you're in a circumstantial evidence case and you're talking about reasonable doubt, that the burden on them with the resources and the power to make these decisions about what they preserve and don't preserve, that hole in the box represents reasonable doubt. And you can take that and then you start looking at the holes in their case. We already talked about the DNA. We already talked on the cord. We already talked about the hair and how that's a huge hole. That for their theory to work either the ligature mark goes all the way around the neck or they have to account for it not going all the way around the neck, and we have evidence that puts a hole in that.

Dim the lights again, please.

What Dutch Johnson did is he took the evidence and conducted testing. And I mentioned earlier, these three photographs -- and you'll have photographs of the same stuff in the same subject matter in the jury room, are the evidence about the injuries to the arms. And Dr. Arden said that was significant and everybody agrees that those are kind of serious -- not kind of. Substantial serious

injuries. And it's not the type of injury you get if you fall and skin your knee. Everybody talked about that this would have to be some kind of road rash. And example that Dr. Ross gave is you can get road rash if you're in a car, a moving car, and you get ejected from the car. Dr. Arden, I think, maybe talked about seeing it in a motorcycle accident. But in the same type of concept that you see from a moving vehicle where somebody separated, I think was his work, falls off from the motorcycle and has the hard rough contact with the road. And again, this is where the evidence and the statements kind of meet up. Because what Dr. Johnson as trying to do is he was trying to determine what position a person had to be in in order to get those injuries. And a position that you have to be in for your right arm to have the injuries in the right hand, that's got to be in contact with the road for it to rub across the skin and cause that abrasion. And for it to be on the knuckles of the right hand, that's got to touch the road. So reasonably -- and he said, you know, that the arm could be dragging. The car's moving. It would probably be dragging the other way. But they tried to do it in a way that's comfortable, and look. Not only is it illegal, it's amoral to try to strangle somebody to figure out how that goes. For anybody to suggest that these weren't done to the point of causing injuries, for the sake of getting that

information, is kind of crazy. You do the best you can. So then you take -- well, we've got the knuckles on the ground, we've got the arm on the ground. How do we get the person to that position. And he wanted to test -- I'm not going to talk about the door restraint. But he wanted to test three things about -- I mean, the door closing in on her, because right now I want to focus on the seatbelt. With the shoulder harness on. Remember he talked about looking at their pictures to figure out what position the shoulder harness was in? I mean, very detailed. You can't get in that position. You can't get in that position. Even if you use just the lap belt you can come closer, but you're not getting the full contact. But you can get into the position to cause those injuries if the driver is pulling on the back of the tank top.

Now, they had the actual car. They had the actual tank top. And they've had it for 19 months. To this point in this trial with all the evidence done, they have not -- they have not presented any witness that has given an expert opinion about the process, the chain of events, that could have taken place, probably took place in the expert's opinion, to get the injuries in those three photographs. And this gets back to whose job it is to prove the case beyond a reasonable doubt. It's their job to figure it out. It's their job to present witnesses. With regard to that,

we presented somebody with the training and expertise in a particular area who conducted testing to come up with a reasonable hypothesis, a reasonable theory. We took the facts, the forensic evidence, the photographs, we took the facts and used that to try to come up with theory of what happened. The scientific method. You heard that talked about sometime. When you're doing something in the scientific method you go through the detail that Dr. Johnson did. You take the measurements that Dr. Johnson did and you record them so somebody else can look at it. You had his whole process. For 19 months they have not done any testing on this USB cord, they have not done any testing on this tank top, and Dr. Ross wasn't even given Michael's statements until last Friday. A reasonable hypothesis is the hole in the box, a hole in their case.

You're going to have the photos in evidence of the blood spatter on the car. And you heard Dr. Johnson talk about how you can use, pig blood because it's similar to human blood, to conduct experiments and determine how fast the car has to be moving to get streaking marks in a certain direction. They had the actual car in evidence. They could get a similar car, just like Dr. Johnson did. They could conduct their own experiments and they didn't. Now, let's just stop and think about this for a second. They're already taking shots at our experts and talking about how

much money it cost. Not talking about the opinion, talking about the money, talking about where they live. They cross-examined them on their slides and said but this or that or whatever, and they tried to turn what our testimony was as to probability, or a most likely scenario, into a possibility. They tried to water it down. But isn't that kind of hypocritical? And I know that's a strong word. But it's it kind of hypocritical for them to come in and spend all day yesterday and start off today taking potshots at our experts about the testing that they did when they haven't even conducted their own tests? When they were the ones who had the evidence. They're the ones who have to present the case and burden of proof. And it gets back to the evidence coming in here and not lawyers getting up here talking about what they think of. Because what we're talking about now, what we're discussing, we actually present.

The ligature mark. And I know these photographs are hard to look at and we wish we could do these cases without doing them. You can't see it.

Mr. Wise, if you could maybe adjust that a little bit. Let's just do this -- okay, that's better. Anyway, let's just go -- let's just go to the next one.

You're going to have the photographs that you can look at. And like I said, these are hard to look at. But what Dr. Johnson was trying to do is trying to determine what

could cause a ligature mark, and he talked about the geometry of the evidence. And there was some scales that they had in there from the autopsy. And we had some close-ups of some of the scales, with scales on it, from the autopsy. And he wanted to try to determine how the geometry of the two items would work. And what he came up with was is you can get that mark that starts higher on one side and goes down based upon the fabric of the shirt. He used the cord similar to what we knew, because we get discovery. We know what they were going to try to say. He used a cord that's similar to what they were going to try to say so that he could measure the geometry of that. He got a shirt that was similar, which they haven't done, ever. Got a shirt that was similar and measured it without it being stretched. Then he stretched the cord and found out that when you put the amount of force on the cord that he determined in the testing that would be applied pulling EA back into the car, the diameter didn't change. And then what he determined was that when you stretched on the tank top the diameter is not consistent. And we had testimony about how the width of the mark, the diameter of the mark, how it was not the same all the way across. And the reason why that was important is the geometry of the shirt, the conclusions that he got to, the geometry of the shirt, was more consistent with how the ligature mark varied in width than the USB cord that stays

the same. Now, if they want to say, well, maybe if you put more pressure on one part or another. But their theory, wrapped around and pulled tight. Wrapped around and pulled tight. EA's DNA is not on there, the amount that would represent that. And when it's pulled tight and you're putting pressure all the way around you would expect to see the constant geometry of the ligature mark from the cord that's width doesn't vary.

And back to the floorboard. Back to Ms. Simmons, Lauren Simmons, the EMS worker's testimony, which Dr. Ross told you she didn't even know about. That the information that was provided -- or that was learned by Ms. Simmons should have been provided to her. And that came up in two things, as we already talked about. It wipes away the theory because of the bun. Wipes away the theory that the ligature was -- went all the way around, because you would expect to see it. Everybody agreed that if hair wasn't an issue and you were pulling back, you would have a mark that goes around part of the neck and not the entire neck. Everybody agreed about that. And the floorboard is a tight space. Now, they asked our doctor, well, did you look at Ms. Simmons' statement, and he couldn't remember. Well, there's lots of stuff in this case. And they showed him a copy of Ms. Simmons' statement, and Ms. Simmons' statement, like her testimony talked about the floorboard. Finding EA

on the floorboard. And I showed him the typed written EMS report from Laurens County, and just like Ms. Simmons' testimony and just like her statement, talked about finding EA on the floorboard in an awkward position, her legs crossed kind of Indian style. And this gets into the positional asphyxiation aspect of all of this, because it doesn't -- and everybody agreed on this. Pulling on the shirt with a certain amount of force would be enough force, four and a half pounds, less than five pounds, to pinch the jugular vein. Eleven pounds, maybe 12 pounds to pinch off and stop the blood flow in the artery. Dr. Ross estimated as little as eight seconds for somebody to be unconscious. But unconsciousness could occur in as little as 10 to 15 seconds on the higher end. Fifteen on the higher, eight to 10 on the lower. And then you take into account alcohol. And they talked about different tolerances with people who may be an alcoholic and have been drinking for 40 years versus somebody who is a 19-year-old and body hasn't built up as much. And we know that EA had been at the party and her blood alcohol level was .24, which is substantial, and that that can have -- a big thing about alcohol is a depressant. We know that. And it has an effect on the respiratory system. And then if you talk about not the one -- they're going to probably want to focus on the airway being obstructed. But if you're in a cramped space,

unconscious and can't breath, and can't get yourself out of that position, that can explain the cause of death. And it gets back to circumstantial evidence. The burden of proof not being on the State. And the hole in that box where we don't know if the mouse ate the cat -- I mean, the cat ate the mouse or the mouse got out the hole. If there is a reasonable explanation as to what happened, that's not malice, that's not an intentional deliberate killing, that's not a depraved heart, if there is another explanation, then that means that the circumstantial evidence doesn't point conclusively to the theory of murder.

And like Mr. Wise said when he was up here talking about the law, we still haven't heard their full theory. We started on picked you all as jurors on Monday afternoon, I guess, and had three days of testimony. And, yeah, they put some things out there and they did a demonstration that was a little awkward and didn't -- kind of gave you some contrary things. But when you're talking about the sequence of events, how those injuries occurred and explain how the death occurred, they have not given a theory. Remember that Occam's Razor, which I don't really know a lot about, but we heard about a lot in this trial -- learned about in the trial? That you've got to look for an explanation that incorporates everything. Everything. We've tried to give you, through Dr. Johnson and Dr. Arden, we have given you an

explanation that incorporates the petechiae, that's incorporated in our theory, that incorporates the ligature marks, that incorporates the injuries to the right arm, right hand and left arm, incorporates the position that Ms. Simmons says that she found EA on the floorboard, and we have tried to give, and did through the testing in a scientific way. Getting back to the scientific method. We have tried to give you a reasonable explanation about what happened. It's not your job to try and figure it out. This is not a situation if you're confronted with two reasonable -- well, we still haven't heard there's. But two different theories. If you're confronted with two theories. If not, you go back there and try and pick one. It's following the process to determine whether or not they have met their burden of proof to prove their case beyond reasonable doubt and make all the circumstances point conclusively to one theory.

Now, this is tragic. I mean, this case. I mean, from all accounts, you know, EA was a wonderful person. From all accounts. And I think everybody in this courtroom wishes that she was still here and we weren't here having to talk about this. But every tragedy is not a crime. Every death is not murder. And in this case, in this case, when you look at all the evidence and you try to look at how it can be explained in reasonable ways, they have not proved

murder, and the verdict that we're asking for is not guilty. Thank you.

THE COURT: Thank you, Mr. Grose. Ladies and gentlemen of the jury, we'll take a 10 minutes recess. Please do not discuss anything about the case.

Ladies and gentlemen, they're going to send an order form and that will be for your lunch. So wait 10 minutes and figure out what you want.

(Whereupon, the jury exited the courtroom at 11:55 a.m.)

THE COURT: The Court is in recess until 12:05.

(Whereupon, a recess was held from 11:55 a.m. to 12:13 p.m.)

THE COURT: Thank you. Please take your seat.

MR. WISE: Can we put a brief matter on the record?

THE COURT: Yes, sir.

MR. WISE: Mr. Grose and I realized, the lateness of the hour last night, we forgot to ask for a directed verdict. I assume -

MR. WISE: And I have the affidavit I mentioned yesterday. It's Court's Exhibit whatever. The State has seen it.

(Whereupon, Court's Exhibit No. 3 was marked for identification.)

(Whereupon, the jury entered the courtroom at 12:13

p.m.)

THE COURT: Thank you. You may be seated. I hope you all ordered the expensive stuff.

Solicitor, are you ready to proceed?

MR. STUMBO: Thank you, Your Honor.

CLOSING ARGUMENT

BY MR. STUMBO: Two minutes of video. Wouldn't it be nice if we had two plus minutes of video to make our job a lot easier. Two plus minutes of video that we can hit instant replay like a football game, as Mr. Wise suggested, of Emily-Anna Asbill being choked to death back on June 29th, 2013. It would make our job a lot easier, wouldn't it. Pop video in, put it up on the big screen. You couldn't watch it and we could all go home knowing exactly what happened. But this isn't a football game, folks. Criminal trials are not football games. They never have been. And according to the standard Mr. Wise gave you for what your job is and what the State's burden is, if that were the truth then no one ever would have been convicted of a crime before we had the capability of videotape. Think about it. What he's telling you is you need something that you can actually see the crime happen, which as all of us know in this room is completely unrealistic and ridiculous, which is why the Judge is going to instruct you what your real standard is here. Beyond a reasonable doubt is not seen conclusively on

a videotape for instant replay like we'll do Sunday when we watch the Super Bowl, but it's using your sound judgement and reasoning to take this evidence, take the words we heard out of Michael Beaty's own hand, filter that through your common sense and come up with a verdict that speaks the truth. That's the standard. So don't be mislead into thinking because we don't have a videotape that's two plus minutes long of Emily Asbill being strangled to death that night, that you don't have the tools you need to go back in that jury room, reason together as a group, and come out and speak the consciousness -- you're the consciousness of this community as the jury, and speak the truth.

What we just heard in the last hour plus, and in the last couple of days, all day yesterday with the $25,000 worth of testimony that we heard from these Defense doctors, reminds me of a story I heard from my grandfather one time, and he told me this story about not letting people take you for a ride or deceive you. Talking about a man standing on the side of the road by a fairly large puddle of water. It had just rained recently and there was a puddle of water about that deep on the side of the road and he's standing by it. An old wise fellow comes up to him and he says, "I bet you $100 I can make that coin --" there's a coin in the bottom of the puddle, a little silver quarter down there that's reflected from the sun. Old wise man says, "I bet

you $100 I can make that coin disappear without even touching it." The young man standing by the puddle says, "Sure, I'll take that bet. That's a no-brainer." Old man walks over, picks a stick up off the ground, walks over to the puddle and starts stirring up the dirt around that corner. Within seconds that puddle starts to cloud over and that little corner at the bottom of that puddle disappears completely. That's what they've been doing the last couple of days. Muddying the water with ridiculous theories to defy commonsense so that must maybe, maybe, their hope is that you do check your commonsense at the door and that you listen to these so-called experts that we heard yesterday on this witness stand and that you can't see what really happened which is that coin at the bottom of the puddle. I'm not standing up here for another couple of hours. We've offered plenty of evidence this week. But let's take a few minutes here and let's unmuddy and uncloud those waters so we can see that quarter at the bottom of the puddle. Direct evidence in this case. As we talked about before, this is -- who was there when it happened. We know the guy sitting over at that table was there when it happened. Okay? And he voluntarily -- he waived his rights to remain silent that night. He was warned about giving up his rights, as we've already heard by the investigator, who did a fine job in this case. There's been a lot of attacks on law enforcement

in the last few minutes.

MR. WISE: Objection. Improper vouching.

THE COURT: Overruled.

MR. STUMBO: But we heard from --

THE COURT: This is closing.

MR. STUMBO: We heard from officers in this case that that night went about doing their jobs. One of the things they did was gave Michael Beaty an opportunity to tell what happened. Tell us what happened. How did she get these injuries on her arms? How did -- why is she not responding, not breathing? Why is her heart not beating? They gave him immediately an opportunity to talk. They wanted to figure out what happened. The officers didn't have any kind of motive to try to blame this on somebody. They did what officers do. They come from the city, they find a young lady who appears to be deceased in a suspicious position, markings on her neck, with injuries on her hands, and they're trying to figure out what happened. What's the first thing Michael Beaty tells them about these pretty significant injuries to Emily-Anna's hands? He tells them that she cut herself. She's a cutter. Why? We'll come back to that.

There is one moment though when Tyrone Goggins talks to Michael Beaty on the driveway here at [redacted]. He says Michael is sitting on this driveway here. He comes up to

him and he talks to him and says Michael is sitting on the driveway, and there's a moment of raw clarity here before the lies start. You can remember what Tyrone Goggins testified to. He said that Michael told him, "You can blame me for this. It's all my fault." Now, that's a curious thing for someone to say who supposedly just tried to safe his girlfriend from jumping out of a car. Wouldn't the first thing he'd say is, "I tried to save her. I tried to keep her from doing it"? No. The first thing he says is -- that raw moment before he starts formulating the story, right there when the officers come on scene, "You can blame me for this. It's all my fault." What starts after that is the evolution of a story or a deception or a lie where he's going to give some explanations. And then as he's told what really happened to her and what law enforcement knows now, he's going to alter that story.

First story, like we said, this is to Tyrone Goggins, she's a cutter. Now, the reason I'm putting this on the screen, folks, is the last thing I want you to do is have to read my chicken scratch and Mr. Scott's chicken scratch on this board here. But as we had the witnesses up here we laid out the timeline one at a time. It's about 8 statements. So let's go through them one at a time.

First statement, she's a cutter. Known to cut her wrists. He's clueless as to what happened to Emily-Anna

between the time they leave the party and the time they get to his parents' house. No clue. I don't know. She's just unresponsive. He did indicate that Will Alexander with him was severely intoxicated and the reason that he was with them is he was going to give him a ride home. He says here that EA's head was titled forward and she didn't answer him.

Now, remember Henry Simmons, the step-dad, said that when he gets out to the car after the ringing at the doorbell, that EA's head was tilted back. That's what the EMT workers said. That's what Josh McClendon how works for Clinton City said, that she was in a position -- the way that EMT Lauren Simmons said, she was suspicious almost that the body had been positioned that way intentionally. Remember when she said that? Already formulating the lie.

Second statement, and you listened to it, folks. I hope you don't hold it against me for initially not playing that audio for you. I knew we had already put it into evidence. You had availability to that audio when you went back in the jury room. It was in evidence. But you listened to the hour plus audio of this. You know, he shed no tears according to Crystal Roberts until this one moment, and then there's this outburst of emotion when she tells him that EA has past. But very quickly after that, and you can listen to it again if you want to, you can hear how he goes back to this relaxing philosophical about his relationship

with EA and the things they went through, and I wanted to marry her. Very quickly after this outburst of -- and you can judge whether that outburst was authentic or not, grief or not, folks. But very shortly after that he's back to blaming her. At least twice here he again, on his own volition -- and you heard Detective Roberts. That was far from an interrogation. She has very few questions. She just sat there, had pressed play on her audio and read him his Miranda rights, and he's just talking, folks. This is, again, why would he say she cut herself if he knew she didn't. Why would someone who had done nothing wrong be so insistent on selling this story that EA Asbill had cut herself with some kind of sharp object. We know the physical evidence doesn't match that. Even the Defense at this point is not trying to allege that that story has any validity whatsoever. Again, he just says he doesn't know what happened. We get to , EA is lifeless.

Statement number three, SLED agents come in. Again, he's giving this voluntarily. He's under Miranda. He's been given his rights. He's waived them. He gives a little more detail about the party. We left about 10:00. And now we know from the 911 call came at 11:13 p.m. So according to Michael's statement there's about an hour there. And I don't know if you remember the Stewart's. And we'll talk more about them later. I know it's been a long time since

Tuesday morning when Kyle and Rose Stewart testified. They were the ones who had the party. But they say that they leave sometime between 9:00, 9:30 or 10:00. They couldn't give an exact time, but it was sometime in that time range. So based on what we know from when the call came in to Laurens County 911 from Mr. Simmons, we have about an hour, hour and a half time-frame here. Now, what's interesting in this statement -- again, he says nothing dramatic happened. She's unresponsive. This time he goes into notices the blood on the arm and he mentions shards of glass. Do you all remember hearing that? Absolutely no evidence from any of the witnesses, from the crime scene investigators to the first responders was there any broken glass at all. So why is he making that up? He's trying to hide something. That's the other thing. He told them that they went straight from the party to his parents' house -- to the Simmons' house at Calvert Avenue. The drive only took about 10 minutes. Well, why is he giving that time-frame. We already know that that's a misrepresentation, too. That he's trying to mislead. It was a short ride. I don't know what happened. Nothing about her trying to maybe jump out of the car or nothing about that. Injuries to the arm. Well, she must have just cut herself and now she's -

Finally at 7:50 a.m. he gives Lieutenant Roberts -- Commander Roberts a handwritten statement that memorializes

basically what he was telling them all night. Don't know what happened. She's not responding. I realized she was unconscious. Tried to get her attention. Make her regain consciousness. And this is an odd statement here that he makes, and it's in State's Exhibit Number 3. I'll quote it exactly here. He said, "I felt she was gone." And there again, you know, why would you make that statement if you are under the belief that she cut herself. Which as we know now he knew that it wasn't that. But it's just an odd statement that he's talking about her in the past tense, like when he knows that he can't get her to be conscious he's already thinking that she's gone. He knew more. He knew more, that's why he's -- he's giving you a little bit of the truth in the midst of a string of lies here. He assumes the blood was from self-inflicted wounds, which again we know now is not accurate. Goes home and they call him back in. And the officers indicated why they called Michael back in. It's because they had just gotten the autopsy results. Right? They were informed, given the preliminary results, that EA Asbill died from strangulation by some sort of ligature. And obviously the injuries to the arm. They already knew this from just looking at them that it wasn't a cut. But Dr. Ross confirmed that again that this came from some sort of contact with a rough surface. It was a road rash type injury. Again, even at that moment

-- well, right before he's told he talks to Lieutenant Goggins. Right when he comes in he talks about her cutting herself. He says -- asked by Lieutenant Goggins if he caused her death, he said, "I don't think I did." I don't think I did? Again, no mention of EA trying to jump out of that vehicle. Okay? A few minutes later this conversation happens where he's informed what the autopsy came back as. But right before Lieutenant -- or Commander Roberts testified to this, and as well as Agent Collins, that before that he was still sticking to this story that nothing happened on the ride that -- he said at this point, neither he nor Will Alexander ever tried to hurt EA. So there at that point he was saying, you know, Will didn't touch her. Didn't do anything to her. He already said she was intoxicated -- he was intoxicated in the backseat. Again though no mention of trying to jump out of the car. What he's told though -- they know. About an hour later he gives a statement at 12:20. What does he say? He's had an hour, give or take a little bit, to think about what's my next story going to be. It's interesting that he says here, that he did say, "Okay. Well, we did argue," which that's the first time that had come out. He secondly says that EA tries to jump out of the car to punish me. There again, it's all about her -- her doing it. It's EA. She tried to hit me. She tried to bite me. She tried to blame me for

this. And he'd been doing that all night already. It's all EA's fault. Listen to this. And this is in State's 4. You all with have this back in the jury room, too. He said he felt disrespected because of the attention EA was showing Will. Disrespected. There again, a little bit of clarity and a little bit of truth in the midst of the lies. This is, again, the first mention of any of the injuries resulting from her trying to jump out of the car. And, folks, he finally says, "I tried to grab her clothes to pull her back in." Now, we'll talk a little bit about the injuries to the arms in a minute. But quite frankly, as I said, a little bit of truth in the lie. The investigator has already had the crime scene photos of the blood on the side of the car. Right? So Michael's story that there was some attempt for her to get out, causing injuries and blood being on the side of the car would be indicative of the car moving when that happened. The investigator started to say, okay, well, maybe now we're getting somewhere. He still how the injuries to her arms occurred. Which would seem to be consistent with the evidence. But, of course, the story is he grabs her to pull her back in.

One last chance for him to tell us what actually happened that night. This was the agent with SLED. He's the agent with the glasses that testified. The last in the order of agents. This was about mid-afternoon. You'll have

the statement, folks. He basically said, "I didn't ask him a lot of questions. I said, Michael, this is one last chance." This is four pages of the original statement that he wrote. Michael Beaty wrote. You'll have that in the jury room and you can look at it. Well, let's look at some of the aspects of this. He recalls EA saying -- him and EA saying hurtful things to one another. Again, the story about her trying to get out of the car and him pulling her back in. This is key, and I want you to all pass this statement around in the jury room and look at this. This is very important. He says after this incident happened where EA tries to jump out of the car and he pulls her back in, he said, "Everything started to calm down somewhat, although everyone was shaken. At this point, EA made it seem like I had made her want to hurt herself." You see what's going on here? And we're going to get into this in a second with the Defense's theory. And what apparently they're saying is that these ligature marks are somehow caused by this tank top when she's trying to jump out of the car, their theory, ladies and gentlemen, are that the injuries to her hands and the ligature mark that caused her strangulation happened in this serious of events. This incident. While Michael Beaty's own words, he cuts the legs out from under the story. Why? Because he admits that EA is alive and making it seemed like he tried to want to hurt herself after she's

back in the car and everything started to calm down. His own words cut against the Defense theory.

After that, that's the last statement we get from the eyewitness here that we have in evidence. So what else do we have? We have circumstantial evidence. There again, I could stand up here all day and list things. We're going to go through a few of these though now.

Let's talk about circumstantial evidence, first of all, in light of the Defense's theory that was put forth by Michael Beaty for the first time the afternoon after all this happened. And we continued on through today with high paid experts flown in from all over the country. What were the problems with this? First of all, let's talk about -- you know, Dr. Arden. Dr. Jonathon Arden, the forensic pathologist first. Let's talk about him. The very fact, ladies and gentlemen, that he sat on this witness stand, and even the most straight forward simple questions he wouldn't answer should tell you everything you need to know about Jonathon Arden. Testifies very regularly for the defense in these cases. In the last couple of years testified in child homicide cases for Defendants. More recently in Buffalo where he testified that it wasn't an asphyxiation. It was something else. A guy that's in private practice now because he was removed from his office there at Washington, D.C. for some -- under bad circumstances. But the way -- I

don't want you to think -- don't focus on that point, folks. Focus on what you saw from Dr. Arden on the stand. When I asked him a question, Dr. Arden, you would agree that Dr. Ross' causation of death is asphyxiation. You would agree with that finding, would you not. What did he say? It took five minutes for him to clarify and parse words to get back around to the answer that, yes, I do agree that asphyxiation was the cause of death. He had a problem with crisscross versus intersect. And there again, I could go on and on. But he wouldn't give you a straight answer. And the reason for that is this. It's because he's getting paid to come in here and sell you the story.

Dr. Johnson. Very nice guy. Very different disposition on the stand. Mr. Scott had a good discussion with him. Very interesting on the biomechanics and some of the physics experiments that they conducted. I was impressed by that. But there's some problems with that theory, too. Let's start with the obvious. The supposedly smoking gun evidence on the strangulation. Now, up to the point where he's talking about the injuries to the arm and the dynamics of how that could have happened coming out of the car with the blood spatter, very consistent with the evidence and seems to match. Now, let's get back to this though. And we'll talk about this in a moment. We don't know why she tried to jump out of that car. Don't know why.

Also, it could have happened at some point she gets back in hanging the arm out the window to get the breeze to hit it to make it feel better, because I'm sure it hurt pretty bad, and blood could have gotten on the car. There's probably a number of explanations that could cause that. But Dr. -- Dutch Johnson's dynamics of that are fairly accurate, or appear to be. And when we have the problems is this tank top and the theory of strangulation and the ligature marks. And he didn't even take the time to bring the shirt that he used in the testing here to court this week so you can handle it, touch it, see it, see if it actually was comparable to this. He said it was. We don't know that. He used pig blood to simulate the blood on the car. Couldn't he have come up with something to simulate human skin so we can have some pictures of -- and yeah, of course, I agree with Mr. Grose. It would not be ethical, moral to strangle an actress who's trying to help him with this experiment. But couldn't you come up with something to simulate human skin and shown us at least what the indentions would be? Whether that would be an upward angle whether there was any explanation whatsoever. And we'll talk about this more in a little bit. But this rectangle. There was no explanation for it. The fact that the rectangle is here was acknowledged by Dr. Johnson, it was acknowledged by Dr. Arden, but they could never tell you how

this tank top, or anything else, caused this in the course of strangling EA Asbill. Why did they do that? Because it's the -- it's the 500 pound elephant in the room for them. And you didn't hear anything about that in Mr. Gross' closing on the facts. What caused this? This was not caused by anything, as Dr. Ross said, that we can find in nature. We'll talk a little bit more about that in a moment.

The other problems with the theory are this. Obviously if someone is being strangled or losing air and they're about to go out, wouldn't a natural reaction before losing consciousness be to grab at or pull away from whatever the pressure is? You can pick this up in the jury room. But as thin as this shirt is, even pulled tight, do you not think that it would be reasonable for the person being strangled here, Emily, to try to pull at that or to stretch the hem of this garment to try to pull away, pull the pressure away from her neck that was strangling her to death? And never explained in this scientific experiment that Dr. Johnson did. The other thing is this. And you'll see this. You can pick it up and look at it again. What you'll find is that there are some transferred type stains, blood stains on the shirt. But when you look at the front at this hem, you'll be able to look at it, the place where they're saying was pulled across her neck, that she would have needed to

try to get free, there's no blood on the inside of it. Now, according to their theory she would have already gone out of the car, hands had hit the ground, they're bleeding. Wouldn't you expect her to try to pull that away from her and have blood on the inside of that hem? It would be natural human reaction to try to get the ligature off. Or, instead of trying to go out of the car, pull back in to take the pressure off. Makes no sense. And that's the point, folks. It doesn't make sense. But maybe -- Michael Beaty's own words. This is another thing. He says that he unbuckled her when they got to the house. He says that twice in this statement here. Again, undercutting their theory that she was unbuckled and hands hitting the road. At some point she would have had to get back in the car and rebuckle, or be rebuckled for him to go around and unbuckle her. Maybe that happened. But it's certainly not consistent with the theory that she's crumbled in the footboard of the car the entire ride back from her hands being injured. Not consistent.

But probably the most ridiculous thing about this theory is this, folks. The theory is that Michael Beaty was doing something heroic here. That his girlfriend was trying to hurt herself and he was trying to just get her back in the car. So wouldn't the logical thing to do there, or the thing to do if you're trying to safe somebody, to apply the

brakes, pull the car over and get things under control? Their theory is going to require you to believe that for two minutes plus he keeps his foot on the accelerator, driving down the road, leaning all the way out -- and you can look at the picture again of Dr. Johnson leaning way out of the car, 30 miles an hour down the road, for long enough to leave these ligature marks and to strangle her to death. Just pull the car over. He's trying to save her, don't you just pull the car over? Their theory does not pass the common sense test, folks. It's ridiculous. And what Mr. Gross said to you is that when you have competing reasonable theories of what happened as to be not guilty, well, using your commonsense and matching it up to the physical evidence here, it is not a reasonable theory of what happened. To say that this tee shirt was used for over two minutes driving down the road at 30 miles an hour and not doing the things that would have made sense, pulling the car over, getting her back in the car -- another thing, if she was unconscious with 15 seconds, it would have been very easy just to slide her back into the seat, right? At that point she's not resisting trying to get out. But still he keeps the pressure up supposedly on her neck for two minutes to kill her. There again, doesn't make sense.

The defense of accidental strangulation, the defense of positional asphyxiation, defies commonsense, and what they

would like you to do is check that commonsense at the door and come back with a not guilty verdict. But there is a reasonable explanation for that happened. There is a very reasonable explanation for why this smiling girl, EA Asbill, became this, lying in a bed, not breathing, gone from this world.

I want to take you back to the Stewart's testimony. Kyle and Rose Stewart. They were party -- they're friends with Michael Beaty and with Will Alexander. They met that night for the first time Emily-Anna Asbill. How did they describe her? Do you remember this? That was a long time ago, Tuesday morning. Outgoing. Never met a stranger. Hugging everybody in the room, everybody loved her. They were very impressed with EA and who she was. She seemed to be very upbeat throughout the night. Rose Stewart even took her to the store with her so they could buy some cigarettes, come back. At no time did Rose say -- I asked her this question. Did she ever seem upset about anything? Did she seem angry? No, not at all. Very happy. Having a good time. That doesn't sound like the kind of person that we're hearing later from Michael Beaty's statements. And we know they left about 9:30, 10:00, sometime in that range. So where did they go? Didn't go straight to . We know that. At some point during the ride things get testy. Why she tried to jump out of that car, seems to match with

the physical evidence here. I don't know. Why she tried to do that? I don't think any of us will ever know that. Michael Beaty says because she's trying to get back at him. Try to punish him. I don't think we know that. We can't prove that, because we don't have the two minutes of instant replay to show how all that played out. Maybe she was trying to get away from him. Remember he said he felt disrespected during this argument. Disrespected, angry boyfriend. Maybe she was trying to get away from him. I don't know. We know at some point she got these injuries on her arm. Now, isn't it possible, folks, and seems to be likely according to the evidence, and also Michael Beaty's own statements, that she's saying things to him after she hurts her hands. How painful do you think that was to have the skin peeled back on your arm and your hands? Do you think that calmed things down any? I'm sure at that point, between that point and the house he's saying she's not unconscious and not unresponsive at that point. But what if she was screaming in pain, still maybe angry from whatever argument their having, and they get to still arguing. At some point, who knows if Will Alexander is still in the car or goes somewhere else. We don't know. But what if, because she's so angry and he's obviously in his parents' neighborhood now. Don't want to wake up the neighbors, I'm going to shut her up.

I'm going to have Investigator Bentley come up here. I know we did this with Dr. Ross. He's going to have to be the guinea pig here one more time. This is State's 46. We know it was found in the car. As Mr. Grose pointed out, the car had been searched once, searched again. We don't know exactly where it was in the car. It would be nice to know. At some point during this process this cord is wrapped around Emily's neck with not -- you know, we talked about no finger marks on the neck that were apparent. Maybe a little bit of bruising, or as Dr. Arden says, that's lividity. That's not bruising. But what -- because he had to cinch this up, what if he had to hold it in place with his thumb? I'm going to ask Investigator Bentley to tilt his head back. Michael Beaty gets on top of her to shut her up, pulls this cord as hard as he can and presses in. I want you to look at those marks, and look at this. You don't have to be a doctor, folks, to be able to make a comparison between the physics, or dynamics or geometry of this apparatus and this mark. Intersection, crisscross, whatever you want to call it, Dr. Arden, that crisscross or intersection is not caused by the hem of a tank top being pulled tight. The hem of the tank top being pulled tight does not leave a rectangular bruise that's very square on one end. And you'll see this. You can look at it in the jury room. But the pressure is being applied just to the black part. The metal part might

not even be touching. Not squared on the ends. Kind of loses it's depth defying markings here, but on this side it is very clearly 90 degree angle, something that's not caused in nature. And Mr. Grose calls our theory ridiculous? You'll have the pictures, you'll have the tank top, you'll have the USB cord back in the jury room, folks.

The ligature marks are consistent. The DNA is consistent. As Mr. Grose said, it would be nice maybe if SLED had determined to take three -- three different swabs. But at the end of the day we know the swab taking from the ends had whose DNA on it? It has EA Asbill's DNA and it has Michael Beaty's DNA. Correct? So if this is formed in a noose around the neck, then you would expect there to be a mixture on a swab taken from both ends of both of those individuals.

So the physical evidence is consistent, folks. It makes common sense, doesn't it, if her arms are hurt and she's not unconscious that she'd be upset, screaming, and he would need to shut her up. One of these theories is reasonable and it passes the common sense test. One of these reasons -- one of these theories is not. And I'd submit to you, ladies and gentlemen, you're going to have everything you need in this jury room to find that this crime was committed maliciously, hatefully by Michael Beaty with this cord. Maybe the most powerful circumstantial

evidence I can think of is what we're about to show you. I said at the beginning of this case is two minutes is all it took. Two minutes is what it took to take Emily-Anna Asbill off this earth. Now, two minutes, if you broke it down in your day may not seem like a lot of time. Of course, you could go through maybe the drive-thru and order and have your food in those two minutes. You broke your day into two minute segments two minutes would seem like a lot of time. But I want you to think about two minutes as we experience it here with something like this being pulled tightly around somebody's neck. I want you to compare that to two minutes of this being pulled tightly while somebody is trying to drive down the road. I want you to think about those two possibilities in light of two minutes.

(Whereupon, there was a two minute pause.)

Time was up on EA Asbill after that two minutes. This family was going to be celebrating her 21st birthday this coming Tuesday, February 3rd. But instead of now celebrating with her we go into a cemetery to remember her. Never again to go and have -- Amanda, her sister, to be setting up a get-together for her 21st birthday with the girls. Her dad, Ashley, should be able to give her a hug on that day. Her momma should be able to take her to lunch and have a good time. Take her shopping. Instead of those things on Tuesday they'll be going to the graveyard with a

tombstone. Malice, hatred, ill-will. You'll have an opportunity when you go back to that jury room to deliberate, speak as one mind based on the evidence you have using your good common sense and speak with one voice to Michael Beaty. Time's up on him. The lies and deception end today. Find him guilty. Thank you.

THE COURT: Solicitor, please secure the courtroom. Thank you.

All right. Ladies and gentlemen, all of the testimony and other evidence to be presented to you in this case has now been presented. The attorneys have given you their summations and now is the time when I will charge you the law that is applicable to this case.

Ladies and gentlemen, I'll remind you that during this trial you had I had certain duties to perform. As the trial judge it is my responsibility to preside over the trial of this case and I also have the duty to rule on the admissibility of evidence that has been offered in this trial. But you are consider only the competent evidence before you. If there was any testimony that was stricken from the record in this case during this trial you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand and any exhibits which are going to -- have been made a part of the record in this case, and any stipulations of counsel.

Ladies and gentlemen, I have the additional duty to charge you the law that is applicable in this case, and as the presiding judge I am the sole judge of the law in this case and it is your duty as jurors to accept and apply the law exactly as I now state it to you. If you already have some idea as to what the law is or what the law ought to be and it does not agree with you what I now tell you the law is, you must abandon that idea. Because, ladies and gentlemen, you are sworn to accept and apply the law exactly as I now state it to you.

Ladies and gentlemen, every case tried in this court before the jury, you the jury become the sole and exclusive judge of the facts of this case. As a trial judge I cannot intimate, state, comment or make any statement to a trial jury about the facts in a case. Since you are the jury, you are the sole judges of the facts and you are not to defer by anything that I have said during the progress of this trial in ruling on the admissibility of evidence or otherwise, or anything that I say now during the course of these instructions, that I have any opinion about the facts in this case. The law simply does not allow me to have an opinion about the facts. This is a matter solely for you, the jury, to determine. And as jurors it is your duty to determine the effect, the value, the weight and the truth of the evidence that has been presented during this trial.

Ladies and gentlemen, the indictment in this case alleges one offense against the Defendant, Michael Vernon Beaty, Jr. Under indictment 2013-GS-30-1553 the charge is murder. And ladies and gentlemen, I'll remind you, as I've done before, that the fact that the Defendant was arrested, charged and indicted is not evidence in this case and cannot be considered by you as evidence of guilt, nor does it create any presumption or inference of guilt. In fact, it is simply a formal written instrument which contains the charge made against the Defendant. It is the formal document by which this case is brought to this court.

Now, ladies and gentlemen, the Defendant has pled not guilty to the charge in the indictment, and that plea puts the burden on the State to prove the Defendant guilty. And a person charged with committing a crime in South Carolina is never required to prove himself innocent. I charge you that this is an important rule of law that the Defendant in a criminal trial, no matter the seriousness of the charge, how serious it may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proved by evidence satisfying you of that guilt beyond a reasonable doubt. And the presumption of innocence does not end when you begin your deliberations but it accompanies the Defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying

you of that guilt beyond a reasonable doubt. The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant, which remain with that Defendant until it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt. The presumption of innocence is not a mere legal theory. It is not just a legal phrase that we use, but it is a substantial right to which every Defendant is entitled unless you, the jury, are satisfied from evidence of the Defendant's guilt beyond a reasonable doubt.

Now, ladies and gentlemen, the State has the burden of proving the Defendant guilty beyond a reasonable doubt. And some of you may have served as jurors in civil cases where you were told that it is only necessary to prove a fact more likely true than not true such as by the greater weight or the preponderance of the evidence. In criminal cases, however, the State's proof must be more powerful than that. It must be beyond a reasonable doubt. And proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

Ladies and gentlemen, there are very few things in this world that we know with absolute certainty. In a criminal case the law does not require proof that overcomes every possible doubt. If based upon your considerations of the

evidence you are firmly convinced the Defendant is guilty of the crime charged, you must find the Defendant guilty. If, on the other hand, if you think that there's a reason possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

Now, ladies and gentlemen, there are two types of evidence which are generally presented during a trial; there's direct evidence and there's circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence and the law makes no distinction between the weight or value to be given to either direct or circumstantial evidence. However, to the extent that the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. And if these circumstances merely portray the Defendant's behavior as suspicious, the proof has failed. And the State has the burden of proving the Defendant beyond a reasonable doubt and this burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence or some combination of the two.

Now, ladies and gentlemen, I instruct you and I emphasize the fact that the Defendant did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration of the question of guilt or innocence of the Defendant. It must not be considered by you in any manner whatsoever.

Ladies and gentlemen, a Defendant has the Constitutional right to remain silent and the assertion of this right must not be considered by you in your deliberations. And I repeat, under the oath, you are to draw no conclusion whatsoever from the fact that the Defendant in this case did not testify. The fact that the Defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have stated to you, is on the State. The Defendant is not required to prove his innocence, and the burden of proof remains on the State to prove guilt beyond a reasonable doubt.

Now, ladies and gentlemen, you have heard references to the other person in the vehicle, Will Alexander. Will Alexander is unavailable to testify. Therefore, you should not infer in any way what he would testify about. And I repeat, you should not infer anything for the State or the Defense. This trial concerns Michael Beaty only. You should consider only the evidence presented in this trial in your deliberations.

Now, ladies and gentlemen, necessarily you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. And it becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

Now, ladies and gentlemen, in determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses, or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining parts of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. And you may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. And you may also consider the appearance and manner of the witness while on this witness stand.

Now, ladies and gentlemen, the rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert witnesses. A witness who by education and experience has become expert I some art, science, professional or calling may state an opinion as to relevant and material matters in which the witness claims to be an

expert, and may also state to reasons for the opinion. You should consider any expert opinion received in evidence in this case, and like any other evidence, give the weight you think it deserves. If you decide that the opinion of an expert is not based on sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witnesses testimony is to be given no greater weight of that than any other witness simply because the witness is an expert. Further, you are not required to accept an expert's opinion even though it is not contradicted.

Now, ladies and gentlemen, the Defendant is charged with murder and the State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought. Malice is hatred, ill-will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with the intent to inflict an injury or under circumstances that the law will infer an evil intent. Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time the act is committed. Therefore, there must be a combination of previous evil intent and the act. Malice aforethought may

be expressed or inferred. These terms, expressed or inferred, do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved. And malice -- expressed malice is shown when a person speaks words which express hatred or ill-will for another, or when the person prepared beforehand to do the act which was later accomplished. For example, lying in weight for a person or any other acts of preparation going to show that the deed was within the Defendant's mind would be expressed malice. Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon or a deadly weapon is an article, instrument or substance which is likely to cause death or great bodily harm, and whether an instrument has been used as a deadly weapon depends upon the facts and circumstances of each case. Malice imports wickedness and excludes any just cause or legal excuse. Malice springs from depravity and from a depraved spirit, from a heart devoid of social duty and fatally bent on mischief. It does not necessarily import or ill-will towards others, the specific person who is injured, but rather it signifies a general malignancy towards and recklessness for the life and safety of another, or condition of the mind that shows a heart devoid of social

duty and fatally bent on mischief, and there has to be a combination between evil intent existing aforethought just before and at the time of the commission of the battery and the act producing the battery. Now, obviously malice is a state of mind and the State has to prove to you that either the element of malice existed either by direct evidence or circumstantial evidence or a combination of both.

Ladies and gentlemen, where a Defendant is suddenly placed in an emergency situation through no fault of his own, is compelled to act instantly to avoid an injury to another person, he is not negligent if he makes a choice that a person of ordinary judgement might make if placed in the same emergency situation and he is not required to make the best choice, but only one that is reasonable under the circumstances.

Now, ladies and gentlemen, there are two possible verdicts which you may find in this case on the charge of murder. Under indictment 2013-GS-30-1533, not guilty or guilt. And, ladies and gentlemen, there is no significance whatsoever in the order in which I state the possible verdicts. It's simply that one must be stated first.

Now, ladies and gentlemen, your verdict must be a unanimous one. All 12 of you must agree on your verdict, and your decision must not be based on sympathy, passion, prejudice, emotion or any other consideration that is not

evidence in this case.

Now, Madam Forelady, when the jury agrees on the verdict -- and I'm going to give you this verdict form for you to take into the jury room with you. When you make your -- come to an agreement, please check the appropriate box of not guilty or guilt. Sign your name. Then please knock on the jury room door, inform the bailiff that you have reached a verdict. At that time you will be received back in the courtroom for the publication of your verdict.

Now, ladies and gentlemen, I'm going to ask that you go back to your jury room. Your lunch should be there. And please don't begin your deliberations. Now, there's three alternates that I need to pull off to the side. You're not allowed to go into the jury room at this point and begin your deliberations, but I do have lunch for the three alternates. Thank you, ladies and gentlemen.

(Whereupon, the jury exited the courtroom at 1:16 p.m.)

THE COURT: If you could pull the three alternates. I'll talk with them in just a minute. Thank you.

Thank you. You may be seated. Are there any other objections to the charge that has been made?

MR. WISE: Your Honor, I have something else to put on the record.

THE COURT: Yes, sir.

MR. WISE: That closing argument by Solicitor Stumbo

was nothing but one big sandbag, which we discussed in chambers. He agreed to open fully on the law and the facts. He did not. He sandbagged his entire argument. I think that's a gross violation of due process that either a mistrial shall be declared or this jury brought back in and give Mr. Grose and I about 10 minutes to refute the arguments that he made. I can go through a list of things that we would like to have had the opportunity to refute, that had he given that argument in his opening statement we could have refuted it.

THE COURT: Yes, sir.

MR. STUMBO: Judge, as we discussed in chambers -- I don't think we had a full discussion of this on the record. We believe the state of the law here in South Carolina is I don't have to bifurcate. I can just argue in full at the end. And so, we have a fundamental disagreement with Mr. Wise and Mr. Grose on what the law is in this area, first and foremost, which to me should make their argument moot about what I argued the second time. Because in my view, the law would allow me to argue the entire thing. I never agreed to somehow muzzle myself in closing on the law or the facts in this case in the second argument.

MR. GROSE: Your Honor, to be able to establish prejudice I'd like to talk for a minute about things we would have talked about had we --

THE COURT: I'll give you an opportunity, because I don't intend to --

MR. WISE: I understand, but we want to proffer that for a minute.

THE COURT: Okay. Well, you may proffer.

MR. WISE: In the interest of time with the jury, we can proffer it after we go over our objections.

THE COURT: That'll be fine. That'll be fine.

MR. WISE: That will be good.

THE COURT: Why don't you call get together and gather the evidence --

MR. WISE: We've got some objections to the charges.

THE COURT: Oh, okay.

MR. WISE: You did not take out inferred malice with use of a deadly weapon. We think that violates *State vs. Belcher* and it has to be -- the jury has to be --

THE COURT: I had asked you all about that and everybody agreed to the -- I mean, I gave you time to look at it again and nobody said a word about it.

MR. WISE: We did not have time to look at it again.

THE COURT: I gave you all 15 minutes to look at it.

MR. WISE: I thought the conversation in chambers, I thought you had turned to your clerk and said take that out. Correct?

MR. STUMBO: And, Judge, I don't think it's overly

prejudicial, but according to *State vs. Belcher* I think what that case says that inferred malice by use of a deadly weapon cannot be the only way you can infer malice. That was still something the jury could consider but it had to be other -- other indicators of inferred malice, such as depraved mind and --

THE COURT: I think I will bring them back in just to tell them that they cannot infer malice only by the use of a --

MR. STUMBO: I don't have a problem with that being cured in that, Your Honor. I think that would comport with *State vs. Belcher.*

THE COURT: I have no problem with that.

MR. GROSE: I don't think that that cures it. I think what *Belcher* --

THE COURT: I think that'll cure it.

MR. WISE: Well, we disagree. Do you want to hear why we disagree?

THE COURT: You can put it on the record.

MR. WISE: Okay. I think what *Belcher* said is that when there's alternative theories, in *Belcher* it was self-defense, they mention insanity, here you charged accident, that by --

THE COURT: I didn't charge accident. I said --

MR. WISE: Sudden emergency. Sudden emergency. You

had the accident language in it. And that's the defense. So we need the criteria that there's a defense that's alternate to malice, and the prejudice comes from directing them in how to infer malice and emphasis that in it. We think this is directly in conflict with *Belcher* as well as probably a comment on the facts of the case in violation of the State Constitution.

THE COURT: Then I will bring the jury in. I will tell them that they cannot infer malice simply by the use of a deadly weapon.

MR. WISE: And I question the charge of a deadly weapon in this case, because a cord is not commonly called a deadly weapon.

THE COURT: The charge says that a deadly weapon can be anything that --

MR. WISE: And I object to that -- I object to that portion of the charge also.

THE COURT: All right. Thank you.

MR. GROSE: And also, I think -- I think you said on the record the request that we requested earlier are preserved?

THE COURT: Yeah, absolutely. You've already made objection to those. They're preserved.

MR. GROSE: And particularly the involuntary manslaughter I want to make an additional comment about

because -- and this is separate. This goes to the charge, not the response. But Solicitor Stumbo -- actually it'll go to both. I'll talk about it again in a minute. But in his closing argument, the final argument, Solicitor Stumbo talked about why didn't he just stop the car. And there's factors regarding intoxication, the time, a whole host of factors that go into why that was recklessness and would support a verdict for involuntary manslaughter, and Solicitor Stumbo has basically now equated reckless with malice and that would be cleared up. So we would renew the request to charge that and give them --

THE COURT: And I'm going to deny your request. Let's bring our jury back in. I just want the primary.

BAILIFF: Do you want the alternates?

THE COURT: Put them in a separate room and I'll release them in just a minute.

You all want me to just recharge all the malice without that term being in there? That may be the easiest way to do it.

MR. STUMBO: That suites us fine, Judge.

MR. WISE: I'm inclined to tell you that it was error for me to charge you you can infer malice from use of a deadly weapon and you're to disregard that.

THE COURT: Okay. That's fine.

MR. WISE: Your Honor, for the record, we really don't

know if that can be cured and we would ask for a mistrial.

THE COURT: Denied.

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

THE COURT: You all may be seated. Ladies and gentlemen, I just wanted to clarify something from in my original charge. I charged that malice would be inferred from conduct -- could be inferred by use of a deadly weapon. Please disregard that statement, but everything else I said about malice is correct. But please disregard that malice could be inferred by the use of a deadly weapon.

All right. Thank you, ladies and gentlemen.

(Whereupon, the jury exited the courtroom to begin deliberations at 1:26 p.m.)

THE COURT: All right. Thank you. Anything else?

MR. WISE: Yes. We still have objection to that charge. But we would like to put on the record --

THE COURT: I'm going to go ahead and dismiss the three alternates.

MR. STUMBO: Are we are ease?

THE COURT: You all are at ease. Court is at ease pending the call of court.

(Whereupon, all exhibits were submitted to the jury and deliberations began at 1:26 p.m.)

(Whereupon, a recess was held from 1:26 p.m. to 2:51

p.m.)

THE COURT: Yes, sir.

MR. WISE: Your Honor, first I'd like to put on the record the conference we had earlier today. At that time we presented to the Court a small brief and our motion to require the State to open fully on the law --

THE COURT: Yes, sir.

MR. WISE: -- and the facts of the case, and I'd like to enter as a Court's exhibit a copy of that brief, which the Court has. After some discussion on that as to the merits and demerits of that particular argument, I believe His Honor finally ruled that the State should open fully on the law and the facts. Mr. Stumbo objected to that and finally acquiesced. I kept saying he's got to open fully. There's one point during the conversation His Honor basically said, in a humorous -- not a humorous, but in a light manner, no stonewalling, to which --

THE COURT: I think sandbagging was --

MR. WISE: Sandbagging. Excuse me. Sandbagging, to which we agreed. It was my understanding that the State was going to do exactly what they represented. I think the closing argument by the State was nothing but a complete sandbag. We have numerous items that we would like to, and to some extent I want to start at the last and go forward.

For the first time in their reply argument, in 19

months of being involved in this case, the State comes up with the theory that Mr. Beaty got in the car and strangled her with the cord. All right? On top of. In addition to which we could have replied that there's absolutely no physical evidence to even remotely back that theory up. In addition, the State argued to the jury, to which we -- if they made this in their true opening. The State argued to the jury that had our theory by which she leaned out of the car and he grabbed her by the shirt and pulled her in had been true, she would have reacted by grabbing her neck and we would see marks of that, to which we could have responded --

THE COURT: I thought that was already in evidence. I thought that came up in evidence at some point in time.

MR. WISE: That was their argument. To which we would have responded a at .24 blood alcohol that would not have been likely, and with her hands out of the car. The State further argued that then when they got back to the house she was screaming, of which we could have argued there was simply no evidence, and he wanted to quiet her. If the State's theory of screaming, being sober enough to scream, more accurate, then, of course, if he tried to strangle her in the car at that point, her hands clearly would have gone up to her neck where we would have seen large amounts of blood on her neck and on her shirt which we could have

pointed out to the jury, which did not exist.

The State argued -- they said that -- they argued that it took them over an hour to get to Calvert Avenue. We would have pointed out in response to that that no one was sure of the exact time they left.

THE COURT: But wasn't that already in evidence? That was clearly in evidence.

MR. WISE: That was in evidence. But peoples' times varied 30 minutes to an hour.

THE COURT: But, I mean, that was clearly in evidence when he said he came in at one point in time and then he left the party at the later point in time.

MR. WISE: I'm not arguing it wasn't in evidence. I'm arguing that had he opened it in full, our response to his argument would have been that peoples' times were guesstimates. They could be off 30 minutes. Many officers in this case recalled, "I don't know what time I did something," and would give us a 30 minute range on that point. They further argued that Michael unbuckled her but then never gave an explanation for her being found on the floorboard. They argued that EA's head was titled forward, according to his statement. To that we would have argued that was perfectly in keeping with positional asphyxiation which we discussed earlier. And then I believe Mr. Grose had several others. Oh, and they argued the two minutes

plus, as they did when they were clocked, to which we would have pointed out, as we did in our argument, that it only took about 10 seconds or so for her be unconscious. And Mr. Grose -- he was making notes on, too.

THE COURT: Yes, sir.

MR. GROSE: Well, and they actually adopted a significant portion of what Dutch Johnson had testified to about how the injuries could have happened to the arms, and we would have pointed out the fact that once they adopted that they also adopted the theory that the seatbelt wasn't on. They also adopted the theory that the statements weren't accurate. And they sort of went through and nitpicked some of the things in the statements and took them out of context. And so, we would have been able to go back and put that into context and to explain, talk about what was going on at the time. Particularly we could have responded to them saying there was only crying at one point. You actually -- you listen to that tape you hear some emotion and he's in the room by himself. And that was just not accurate in how they portrayed it. They called it fake, which we could have responded to that. They talked about him thinking, you know, EA was deceased in the past tense. We could have talked about his step-father having taken the pulse and he would have known about that. We could have talked about all the information as to why it might point

that way, but he still, you know, had a hope. We could have pointed out the fact that Crystal Roberts on the tape was talking to him and consoling him about his grief and loss of a particular person and how what she obviously believed at the time.

You know, it gets back to the whole thing we could have responded to the lack of the seatbelt and how she would have fallen out if there wasn't pulling on the tank top. You know, at one point they talked about her arm hanging out of the window and that could have explained some blood spatter. Absolutely no testimony about that in this case. And, in fact, it would have been smearing a different type of transfer than spatter. And so, we could have talked about that.

And I mentioned earlier, when we were talking about the jury instructions, about why not stop the car, which gets into the recklessness and why we thought involuntary should be charged. But I could have responded to them, you know, that that's more of the consistent with the accident theory, the intoxication. You know, just sort of the nature of that evening. They sort of misrepresented how Dr. Arden responded to some of their questions with regards to it took five minutes to get an answer, when part of the answer was that the Solicitor himself was misquoting the autopsy report in the question. We could have responded to that and we

could have talked about how that had to do with the whole process. And, you know, Dr. -- I'm sorry. And the whole lividity thing. They did try to argue that that could have been some bruising.

And going back to the climbing on top type thing, that that was one thing. You know, we would have talked at least about how they didn't have single fact in the record about that. That they were arguing it an inference that Dr. Ross didn't even adopt that as part of her testimony during the trial. And I think that, you know, pretty much covers it in a nutshell. The argument would have been different. It would have included some more facts had we been able to respond and not have been sandbagged.

MR. WISE: And I do want to -- I do want to add one. The PowerPoint they put up implied that Michael said that EA made it seem like I made her want to hurt herself. That was totally taken, in my opinion, grossly out of context that we could have pointed out to the jury. The full sentence when read is, "It's either before or at this point I believe that I made it seem -- that made it seem like -- that EA made it seem like I had made her want to hurt herself, which is common for us when we are arguing." He never said she did. He said I believe, and he was obviously doing, as he said, the best he could because it was -- she said this either at this point or before. I think what was put on this

PowerPoint was misleading and we could have clarified that with the jury also.

MR. GROSE: And I do want to put one other matter on the record, and this actually gets back to the objection to the opening charge, and we think that was -- the most significant part of that was from the -- what the charge refers to a charge that comes from the Chief Justice Commission on Professionalism. A lot of judges don't give that for the very reason that we objected to. They actually incorporated that language and used it in their argument. And so, we think that that adds to the prejudice that resulted from that opening instruction.

THE COURT: Anything from the State?

MR. ANDREWS: Your Honor, just very briefly. Everything the State argued was either in evidence or a reasonable inference from that evidence. You know, the mention of the PowerPoint where Mr. Beaty stated has been taken out of context. That's an evidentiary exhibit. That's back before the jury. I think to sum up our point, from the conference that we had in chambers I don't think anyone at this table got the impression from you that there was supposed to be a civil style closing in this case.

THE COURT: There was not. No.

MR. ANDREWS: I mean, we believe the state of the law is the Defense can require the State to do its first part of

its closing with an opening on the law and that's all the Defense can require. While we disagreed with Your Honor kind of opening that part one of the closing up to facts, the Solicitor agree to that, and that's what we did. I don't -- I did hear the word sandbagging several times. I'm not sure that it was Your Honor used the word sandbagging. I know Mr. Wise used it, and I know that was a concern of his, but that's just not the state of the law in this state. I realize the -- the full part one closing, for lack of a better term, is the law of the civil court. It's the law in other states. It's not a current law in South Carolina.

MR. WISE: And, Your Honor, for the record, I will -- well, one, I don't necessary agree with Solicitor Andrews that the current law in the state in a criminal case is the State's not required to open fully on the law. The cases that's cite -- or cited for that proposition rely upon an old civil rule in which that used to be the rule in civil cases. There have been no real cases decided by appellate courts since we've changed the civil rule to require the State opening fully on the law.

Now, if the discussion in chambers had been we're not going to change the law, all we're going to do is open on the law and then we'll go on with the facts, frankly we would have tweaked our closing argument a little bit, but not substantially. But by the same token I left that

conference in chambers thinking that there would be no sandbagging.

THE COURT: I did not think there was sandbagging. Your objections are noted for the record, and that's --

MR. WISE: And, of course, our relief we requested briefly was to reargue before the jury or to declare a mistrial.

THE COURT: Right. And I'm not going to do that. And a motion for a mistrial is denied.

MR. ANDREWS: And, Your Honor, I should have said this before. I do just want to put the case I was citing. I want to put that citation on the record. That is *State v. Rogers, 269 SC 22, 235 S.E.2nd 808.* It's a 1977 case.

THE COURT: All right. Very well. Thank you. Court's at ease. I've got another matter to take care of.

MR. STUMBO: Thank you, Judge.

(Whereupon, a recess was held from 3:03 p.m. to 3:12 p.m.)

THE COURT: Thank you, ladies and gentlemen. Please take your seats. Before the jury comes out let me admonish everyone. The jury has been here for a whole week. This is obviously not an easy decision for them to make. I will not excuse any outbursts by anyone on either side. Again, I know this case is full of emotion and charged. But if you don't think you can keep your emotions in check, now's the

time to leave the courtroom, because if somebody overreacts on this then the next trip will be to the Laurens County Jail. Does anybody need to leave at this point in time?

(Whereupon, there is no response from the audience.)

THE COURT: All right. Let's bring our jury in.

(Whereupon, the jury entered the courtroom at 3:12 p.m.)

THE COURT: You may be seated. Madam Forelady, has the jury reached a verdict?

MADAM FORELADY: We have, Your Honor.

THE COURT: Is it unanimous?

MADAM FORELADY: It is.

THE COURT: All right. Please publish the verdict. The Defendant will stand.

THE CLERK: Your Honor, in the case of the State of South Carolina versus Michael Vernon Beaty, Jr., case number 2013-GS-30-1553, as to the charge of murder, we the jury unanimously find the Defendant guilty. Signed by the Forelady, Doris Elaine Hammond, dated January 30th, 2015, Laurens, South Carolina.

Ladies and gentlemen, if that be your verdict, please indicate by raising your right hand.

(Whereupon, jurors raise their right hand.)

THE CLERK: Thank you.

THE COURT: Thank you. Does the Defense request

polling of the jury?

MR. WISE: Yes, we do, Your Honor.

THE COURT: Please poll the jury.

THE CLERK: Ladies and gentlemen, the verdict that I have just published was the verdict you reached in the jury room. I asked you was it your verdict then and is it your verdict now. Please -- as I call your name, please answer yes or no.

Doris E. Hammond?

JUROR: Yes.

THE CLERK: Randy Dearman?

JUROR: Yes.

THE CLERK: Earl Richard?

JUROR: Yes.

THE CLERK: Jody Robinson?

JUROR: Yes.

THE CLERK: Willie Campbell?

JUROR: Yes.

THE CLERK: Edith Martin?

JUROR: Yes.

THE CLERK: Tina Honeycutt?

JUROR: Yes.

THE CLERK: Barbara Tompkins?

JUROR: Yes.

THE CLERK: Tommy Williams?

JUROR: Yes.

THE CLERK: Joseph Parsons?

JUROR: Yes.

THE CLERK: Holly Coleman?

JUROR: Yes.

THE CLERK: Beneshia Wesley?

JUROR: Yes.

THE COURT: All right. The jury has been polled. The verdict stands. You may be seated at this time.

Ladies and gentlemen of the jury, it is never easy holding the life of a fellow citizen in your hands, but you took an oath to listen to the evidence and come to a verdict and you have done that. And I would tell you that if you had come guilty or not guilty, because you actually -- and it's always hard to get 12 people who don't know each other to come together and make a decision on anything. And I want to thank you for your efforts in this.

Now, ladies and gentlemen, throughout this trial I've told you you can't talk to anybody about it. That prohibition has now lifted. You can talk to anybody you want to for as long as you want, or as little bit of time as you want. So if somebody persists in talking to you and you don't want to talk to them, then you don't have to. And again, if they persist, let one of the bailiffs know and I'll make sure that doesn't happen.

Now, ladies and gentlemen, this counts as your jury service, so you cannot be a juror for the next year, and you don't have to be one for the next three years if you choose not to.

Now, ladies and gentlemen, as we go through these court things, and I've been on the bench for over 10 years now, you know, we always try to figure out what makes America great. Well, it's not the lawyers, it's not the politicians. What makes America great is people like you who come from their jobs, their homes, and come together and resolve differences between us. You know, one of the things that makes America unique within the world community is the fact that only a citizen can say that another citizen is guilty in America. We don't have the government do it. We don't have politicians do it. But only citizens can say whether another citizen is guilty or not. And today you have done that. And so, I'm going to release you. Now, ladies and gentlemen, you've been here all week long and you certainly have a right, now that you have rendered your verdict, at 3:30 I will sentence the Defendant according to the laws of the state of South Carolina. So if you would like to stay you can come back and sit in the jury box and see what the sentence is. From that point though, if you don't to, you're welcome to leave. And, ladies and gentlemen, as you leave I would just like to give you my

heart felt thanks. I won't shake your hand like I normally do because I've had a cold all week and I don't want to spread that to you. But, ladies and gentlemen, thank you for your service. Thank you so much.

(Whereupon, the jury was released.)

THE COURT: Are there any post-trial motions, or do you want 10 days to submit them?

MR. WISE: Can we take the 10 days?

THE COURT: Certainly. Any objection to that?

MR. STUMBO: No objection.

THE COURT: And if necessary, if I have to come back up here --

MR. WISE: You're not that far.

THE COURT: Say what?

MR. WISE: You're not that far.

THE COURT: I'm not that far, so I can come back. I'll give you both sides an opportunity to get their arguments together on that before I sentence, but I will sentence the Defendant at 3:30. Thank you.

(Whereupon, a recess was held until 3:30 p.m.)

THE COURT: Do you have the sentencing sheet?

MR. STUMBO: I do, Judge. It's right here. If I may approach.

THE COURT: You may. Thank you. All right. Solicitor, would you like to say anything for the victim?

MR. STUMBO: Just briefly, Your Honor. We do have some victim impact. Would you rather hear that at the end or right now?

THE COURT: It makes no difference. However you want to present. And then, of course, I'm going to give them an opportunity to speak, too.

MR. STUMBO: Absolutely. Well, we can go ahead with our victim impact. We have several family members that wish to speak.

Judge, just as a matter of -- before we get to the family though, I did want to on the record indicate to the jurors that stayed that we appreciate your service as well. I know Your Honor did that already. We don't typically get a chance to thank jurors, and I wanted to do that on the record. The justice system worked exactly like it was supposed to this week when ordinary citizens made this decision, and we want to thank you for your week-long service and all their hard work and attention.

Judge, first of all, I want to bring up for Your Honor Amanda Asbill. Amanda -- Amanda is EA's sister. She was EA's only sibling. She'd like to tell, Your Honor, how this is affecting her.

THE COURT: Yes, ma'am.

MS. ASBILL: Your Honor, Emily-Anna, EA, was my younger sister. My only sister. And this has been the hardest 19

months of my life without her here. Every time I come home to Clinton she's not here anymore, and I'll never get to see her again because of what he did. EA not only was a sister and my best friend, she was a daughter, a granddaughter, a cousin, and a once in a lifetime friend to everyone. I miss her every day and being to hear her voice, her singing. Her amazing talent. And I lost all of that. And that's why I think that he deserves life without parole.

THE COURT: Thank you.

MR. STUMBO: Judge, next, who's already up here, this is Emily Joy. Emily is Emily-Anna Asbill's mother --

THE COURT: Yes, ma'am.

MR. STUMBO: -- and she would like to address Your Honor.

THE COURT: Yes, ma'am.

MS. JOY: For the record, I am Emily Crystal Joy. I'm the mother of Emily-Anna Asbill. We all call her EA. Exactly 19 months ago today she was pronounced dead. This coming Tuesday, February 3rd she would have been 21 years old. Emily-Anna spent her short 19 years of making people smile. She was courageous, loving and a happy woman who embraced her life and lived to the fullest. She never met a stranger and she loved everyone. With her musical gifts she wrote songs, played her guitar, sang with her beautiful voice. We will never hear that voice again on earth. We'll

hear it again when we get to heaven to be with her. EA attended First Baptist Church. She sang in the children's choir when she was little. She was involved with the youth group. She was a Girl Scout, and avid tennis player, and a goalie for Clinton High School lacrosse team. In 2011 she was chosen as a delegate to Girls State. In May of 2013 Emily-Anna had just completed her first year at Greenville Technical College. She had planned to transfer to the University of South Carolina in Columbia to study psychology. EA loved animals. She volunteered at the Carolina Loving Hound Rescue in Greenville nursing hounds back to health. That's what gave her great joy. She loved the Blue Tics. She had a Blue Tic named Buck. On June 29th, as I sat watching the 11:00 news with my boyfriend, Brad Barker -- he's a part-time fire fighter and first responder for the city of Clinton, his pager went off. I thought nothing about it until the details come across and the concern of the dispatcher, "All responders report to Calvert Avenue. Unconscious patient." I jumped up and I said, "That's the Simmons' residence, and I believe it's going to be Emily-Anna." That's not but three blocks from my home. We got up there, and as we turned on to Calvert and then on to South Holland and I jumped out of his truck running because I saw EA's car there with the doors open. She was lying on a stretcher receiving CPR, and I jumped out

of the truck running toward my child screaming, "What's wrong." Josh McClendon, first responder, grabbed me and he said, "Stay back, Ms. Emily. EMS is working with her." As I looked across the yard there was lights blinking and there was a tree near the car and stood Michael Vernon Beaty, Jr. and I heard him say twice, "Emily-Anna, come back to life." I stood in shock. I saw Emily-Anna's head bouncing up and down while Lauren Simmons was working with her. Josh told Brad to take me on to the hospital while they were working with her and they would be there shortly. When we arrived and they arrived, Coroner Nick Nichols, who had watched my child grow up across the street from him, said, "Honey, we're going to find out who did this," and I said, "Mr. Nick, what's wrong." He said, "She's been murdered." Michael Vernon Beaty, Jr. murdered Emily-Anna. Your Honor, you've heard the evidence. You know Michael used the USB cord. Using the cord as a ligature. He strangled the breath out of -- the life out of my child. I will never be able to look at a USB cord again without feeling the pain and the horror of what my baby girl must have felt that night as he was strangling her and he squeezed her neck until he was certain she was dead. Michael Vernon Beaty, Jr. took a loving daughter from her mother and father. He took a loving sister from her sister, Amanda. He took her away from her grandparents, aunts, uncles, cousins. And

like Amanda said, a once in a lifetime friend. Emily-Anna will never realize her dreams to be a psychologist. She will never walk down the aisle on her father's arms and meet her husband alter. She will never know the incomparable joy of seeing a newborn's baby's face or hear her baby's laughter. She will never have first or last true love. Emily-Anna's life and light are gone never to be seen on this earth again. Our lives once sweetened by her song, her sparkle in her eyes were changed forever. We are sad. We are broken. Instead of listening for my child to call me at the end of every night, I have night terrors. Instead of looking forward to my next day, I have panic attacks. I've been in counseling now for 19 months since her death, and I've been hospitalized twice for the symptoms that I can't seem to overcome. I've been involved with starting an organization called No More Lies and Bruises. The mission of this organization is to create awareness of domestic violence. We hope to prevent the Michael Beaty, Jr.'s of this world from killing any more innocent young women. Your Honor, no parent should ever have to raise their child to be murdered. I ask that you see Michael Vernon Beaty, Jr. be sentenced to life in prison with no chance of parole for the hateful murder of Emily-Anna Asbill. Yes, I went to the funeral home. I cut and styled my daughter's hair. I've been a cosmetologist for 30 years. I gave her her first

hair cut, style, and I gave her her last one, and then I saw her body and what he did to her. And then I sat here for bond hearings. I don't ever want to see his fast again. Please, Lord, give him the worst penalty our laws will allow, life with no parole. Give our family some peace. Thank you, Your Honor.

THE COURT: Thank you, ma'am.

MR. STUMBO: Your Honor, lastly we have Agent Ashley Asbill. This is Emily-Anna's father. He served our state honorably for over 20 years as a law enforcement officer. A lot of the officers here in this room have worked with him over time are here this week in support. He would like to speak with, Your Honor.

THE COURT: Thank you. Yes, sir.

MR. ASBILL: If it please the Court. Your Honor, my daughter, Emily-Anna, was born February the She entered this world with the most beautiful smile, the biggest heart, and a head full of black hair. Through the years I watched Emily-Anna grow into a beautiful young lady, full of life. She was so smart and talented, an athlete, and a joy to be around. During Emily-Anna's elementary school years she enjoyed making crafts and playing with her friends. In middle school she taught herself to play the guitar, play volleyball, and her favorite part was the day was with her sister, Amanda. In May 2013 Emily-Anna

completed her first year of college and we were all so very proud of her. Our lives will never be the same as a result of the actions of Michael Beaty and William Alexander. The night of June the 29th of 2013, that night we were only left with cherished memories, photos and a headstone in a cemetery with her name on it. Never again will I be able to see her beautiful smile, hear her distinctive laugh, or even have a conversation with her again. Emily-Anna's presence is missed by my whole entire family on holidays and celebrations. The only way we can include her now is visit her at the grave site with flowers. As I think about the future without her my first thoughts are I'll never be able to see her graduate college. I'll never be able to walk her down the aisle and give her away. I will never have the opportunity to be a grandfather by Emily-Anna. I will never be able to share in the ups and downs of life with Emily-Anna. I wish more than anything I could hug her and tell her for the last time I love her. Emily Anna you are loved and will be greatly missed. Your Honor, I respectfully ask that Michael Vernon Beaty be given life without parole.

THE COURT: Thank you, sir.

MR. STUMBO: Judge, just briefly in closing, I think I've said in the course of the trial everything I need to say, but there were a couple of witnesses that we thought about calling in this case. As we discussed with Your Honor

and the Defense were probably inadmissible type evidence under Lyle. But these were witnesses, Your Honor, that talked about even weekly leading up to this incident how they had witnessed some things. EA had a busted lip. She indicated to somebody she had been choked by Michael Beaty. There was an incident in public at a restaurant that somebody who didn't even know her came forward and gave -- obviously for purposes of trial, Judge, we think it, you know, was probably not directly relevant to the incidents that night. But, Your Honor, it's well documented that in this state we've led the nation before -- I think we were second last year in victims killed by spouses or significant others. Homicides were domestic in nature by boyfriends or husbands, or vice-versa, by girlfriends. Judge, that's got to stop. And we hope by the result this week we can get a little bit closer to stopping that epidemic in South Carolina. And we agree with the jury's verdict, Your Honor. We're glad that this family finally had some closer. And we leave sentencing in your sound discretion.

THE COURT: What's the Defendant's criminal history?

MR. STUMBO: Your Honor, he has a fairly minor criminal history. It's a lot of magistrate court's stuff. I think this came out in the trial in his statement to Commander Roberts. He has four convictions for possession of marijuana. He has open container. He has possession of

beer or wine by a minor. Breach of the peace in 2001. First conviction was 2001 and his last conviction was 2008. There again, they're all magistrate level offenses for marijuana, alcohol and breach of peace.

THE COURT: All right. Thank you.

MR. STUMBO: That's all we have, Your Honor. Thank you for listening to us.

THE COURT: Mr. Grose.

MR. GROSE: Yes, sir. First I just want to respond to something the Solicitor said there at the end. He disclosed to Judge Addy at the last bond hearing that they do not have a single witness who ever saw Michael lay a hand on EA to cause harm. The statement that he talks about at the bar was an argument. There was no actual domestic violence there. So I don't want --

THE COURT: Well, I will sentence based on what I heard in his trial, not with anything else.

MR. GROSE: Your Honor, I would like to bring Michael's mother, Cynthia. Some of what you've heard in the trial was about a head injury, if you remember from the tape. You heard a question about what the scar is. You may even be able to see it on the side of his face from there. And what I want Cynthia to tell you about is the experience that he went through and the recovery he made and, you know, how that caused some problems for him, but that he was working

with all of that and improving himself.

THE COURT: Thank you. Yes, ma'am.

MS. SIMMONS: Your Honor, I appreciate the opportunity to speak to you. And you may fuss at me in just a minute, but one of the main things that I've always believed in is not making excuses for my children. I hold them accountable for whatever they do. We have had a difficult -- a lot of difficult times with a serious car accident, with a not so happy divorce, with substance abuse. My children have not been perfect by any means. Michael has made lots of mistakes, stupid mistakes, which I have never tried to hide. I'm not proud of them, but I would never try to hide them. Never in his life has he ever hurt anybody in any way. I lost two children on June the 29th. I've lost Michael, and I lost EA because she had become a part of my family. She was like a daughter to me. And I love and I miss her very much. We spent hours, and hours, and hours together trying to talk things through, and concerns and problems that she had and the difficulties in their relationships. I cannot imagine what her mother and father and sister are going through, and I am totally devastated on my son's watch. But I honestly -- I accept the verdict because I believe in our judicial system. But I know my child.

MR. GROSE: Could you tell him about the accident?

MS. SIMMONS: Yes. When Michael was 14-years-old he

was a car and he was thrown from the car and had a severe closed head trauma and was in a medically induced coma for a week. When he first came to and we had testing done it was found that his IQ was marginal. And we didn't know what the damage had been. But fortunately, by the grace of God, he was able to survive that and to come back --

THE COURT: Take your time.

MS. SIMMONS: -- to come back to a functioning individual with intelligence, be able to go to school and do -- you know, do well. We were very thankful. And Michael, like I said to you before, this is not an excuse, he has made ridiculous decisions that have kept him from being able to get a job. Never in his life has he been anything violent. And he was -- he loved her so much. And it was not a good relationship because they're both substance abusers. Emily and I both talked to them about that fact. But they both were trying so hard to make it. Thank you.

THE COURT: Yes, ma'am.

MR. GROSE: Melissa Claire Catron.

THE COURT: Good afternoon.

MS. CATRON : Good afternoon, Judge. I haven't really --

THE COURT: And who are you?

MS. CATRON: I'm sorry. I'm Melissa Claire Catron. I'm Michael's sister. The one who he talked about in the

statement. I would like to say how much Michael loves EA and how he did do a lot of stupid stuff. He -- but she was his inspiration to become a better man. And he received a call from her around the last weekend in March of 2013 saying please, come get me. I'm tired of trying to live the lifestyle that I'm living right now, and he came and got her. And they were going to try and make it on their own, albeit they weren't very well equipped to do that. But they got up and they made it through every day together. And he helped her finish that second semester at school by helping her get to school, get to work. And he loves her. On June 30th -- June 29th of 2013 I was about eight weeks pregnant, and we found out at about 20 weeks that I was having a little boy, and his name is Ethan Andrew, named, in part, after EA. We love her. And we're so sorry that she's gone. But again, I'll go with my momma. I can go on with stories about my brother and stuff, but I just -- he deserves -- I feel like he deserves some opportunity to live a little bit of his life.

MR. GROSE: Mr. Beaty, would you like to say something?

THE COURT: You're obviously his other sister?

MR. GROSE: Yes. This is Marsha.

THE COURT: Good afternoon, sir.

MR. BEATY: I'm Michael Vernon Beaty, Sr., and I'm going to echo what Cynthia said about how devastated we are

that EA is not with us anymore. And earlier a question was asked of Henry Simmons, Cynthia's husband, and it was about had she gone on vacation with them. I may not know the question. But Henry said, "No." And, in fact, where she had gone on a very brief vacation was to our house in Little River, South Carolina, which is North Myrtle Beach. And we had a grand time, and she was just a wonderful girl. It's the first time I'd ever met her. And we had a big ole time. I tell my friends, when I tell them about all of this, I said because she ate at my table. And we did have a difficult divorce. It was very tough. It was very tough on the children. And I take full responsibility for that. And I would just hope that you could factor in some of these things in your judgement regarding Michael's punishment.

THE COURT: Thank you, sir.

MR. GROSE: Judge Young, I typically advise people at this stage, clients, not to speak for legal reasons.

THE COURT: I understand.

MR. GROSE: But what I want to -- I want to echo what, you know, his family said, his mother and his sister and his father, about Michael loving her and still loving her. He wasn't released into bond until sometime late last year. The file will reflect the date. Just standing here right now I can't remember that. But in that over a year that he was in jail, Rauch and I together, and individually in

separate visits, spent hours and hours with Michael on many occasions. And a lot of what we talked about was the relationship between him and EA, the ups and downs. Because I think you heard that there was some ups and downs in the testimony in the presentation of the case. I think there was a lot of truth to -- I think what Melissa Claire said about inspiration. That, you know, Michael, not having a steady job -- and I think a lot of that goes back to the head injury. I think that goes back to giving him difficulty kind of getting started in life and led to some decisions. I've seen that in all kinds of clients that I've represented over the years. And he talked -- I think you mentioned in the tape that you heard about how you they were -- not his exact words, but living paycheck to paycheck, or payday to payday. That they didn't have a whole lot, but they had to stretch it and they had to -- they had to stretch -- plan a lot of their trips because of how little gas money that they were going to have. They had to plan how much the food was going to be. They were paying rent. But I think there was probably even some times that they missed rent a little bit because they were struggling. But out of all that I think there was, you know, some shared hope there. But more importantly, I think, when Mr. Wise and I were spending all that time with him, we were really the only ones that he could talk to about the loss that he

suffered. We unfortunately have to tell our clients that are in jail not to talk to anybody about situations like this, not even family members, not even over the phone, for legal reasons. And we were the only ones that he could talk to. And I can tell you from this day he still loves her and he misses her and he is still grieving. He's -- I don't think he's had some time to begin to do that. He's not been able to visit her grave. And hopefully one day he'll be able to do that. And unless Mr. Wise wants to say anything else, I --

THE COURT: Mr. Wise.

MR. WISE: Charles could probably do more than I could do. Katherine Wood is here. Would you stand up, please?

(Whereupon, Ms. Wood stands.)

MR. WISE: EA and Michael lived with her from about March 23rd until this incident. It was her house they left from on that Saturday. In talking with her, there was no domestic violence in that home. I mean, there was simply known. She and her husband both lived there, and they rented a room to Michael and EA. And the reason I mention that, Your Honor, is this is -- I mean, and I understand that domestic abuse is a problem in South Carolina and we need to do more than we do. But I think the focus on this case has gotten a little off. Because this case was not about domestic abuse. This case was about alcohol abuse.

And I have looked at these facts and looked at these facts and it almost doesn't matter which version you go with. Had somebody in that group remained sober we would not be here, and that is the tragedy of it. I mean, and that's the message that needs to get out from this. Just somebody had remained sober. If Michael had remained sober he wouldn't have been here. I am so firmly convinced of that from meeting him and knowing him. And that's the -- that's the tragedy of it.

MR. GROSE: Just in summation. Had an argument in our Supreme Court a couple of weeks ago about mercy, of all things, and we've had a lot of talk today about our criminal justice system and how the system works. And because of that argument I've been in the position where I've studied the role of mercy, not just in our religious history and in our society, but how it's been a part of our court system going back to England, and it's consistently been a part of our tradition here in South Carolina. And I understand, and, you know, we accept the verdict, and I understand that we need to accept that you have a lot of discretion in giving --

THE COURT: But you understand the minimum sentence here is 30 years day for day?

MR. GROSE: I understand that. I understand that. And -- but you have a lot of discretion about going up from

that. And we would ask that your sentence also take into account mercy and -- for Michael Beaty. Thank you.

THE COURT: Thank you. We've been here since Monday. I have listened to all of the evidence. I've even been presented stuff that was not admissible evidence. And I truly feel the pain that is in this community. And I must say, I'm an outside judge and I don't know this community very well, but I'm impressed by the love from both sides of this case. And again, everybody in here are community members. It's just that this situation occurred that made people who normally loved each other draw sides. And I'm sorry for that. But it's obvious that EA was greatly loved in this community. There's no doubt about that. I mean, it's been -- you know, the Defendant's family showed me that as much as anything. Michael's family is obviously distraught, and I can understand that. And I certainly understand EA's family. I'm a father of four children and a grandchild and I just can't imagine the loss. I'm not sure who said it, but I think it was Michael's mother who said she lost two children that day, and I understand that, just from the standpoint that two people are going to be out of this community after today. But again, I have to think and I have to remember that all of the tragedy in this case came about as a result of the hands of Michael Beaty. And I've handled over 30 murder trials that had to do with a number

of different objects that were used in the murder, and very gruesome. But to this date, the idea of a strangulation is the most brutal thing I have seen. The idea that you can hold another person and keep them from breathing or pumping blood for over two minutes or less, but to hold that person until the body is lifeless is almost inhumane, and that deserves a severe punishment. This is the absolute definition of malice.

Therefore, the Court hereby -- please stand. Court commits the Defendant, Michael Vernon Beaty, Jr., as being found guilty of murder, to the State Department of Corrections for a term of his life.

Thank you.

MR. STUMBO: Thank you, Your Honor.

THE COURT: And let me say to the attorneys, you have all certainly upheld your civility oath. It's never a pleasure trying a case, but at least we were able to get through with the civility. Thank you, Mr. Wise. Thank you, Solicitor.

MR. STUMBO: Thank you for your patience as well.

Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 26th-30th day of January, 2015.

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

June 26, 2015

Tara T. Scott

Circuit Court Reporter

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

Murder
16-03-0010

At a Court of General Sessions, convened on the 6th day of September, 2013, the Grand Jurors of Laurens County present upon their oath:

That Michael Vernon Beaty Jr, in Laurens County, on or about June 29, 2013 willfully, feloniously, and with malice aforethought kill one Emily Anna Asbill by means of strangulation and that the said Emily Anna Asbill did die in Laurens County as a proximate result thereof on or about June 30, 2013, in violation of Section 16-3-10 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 cases made and provided.

Solicitor

WITNESSES

Tyrone Goggins

Clinton Police Department

WARRANT NUMBER

2013A3020100359

True Bill

Randall S. Powell

Foreman of the Grand Jury

Date: 9-6-13

VERDICT

_____

_____

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

September Term, 2013

Indictment # 13GS30- 1553

THE STATE

vs.

Michael Vernon Beaty Jr

INDICTMENT FOR

Murder
16-03-0010

CDR: 0116

P856

LYNN W. LANCASTER

THE STAT OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
2015 JAN 26 A 9:38	)	Warrant Number(s): 2013A3010200216
THE STATE	)	2013A3020100359
	)	
	)	
vs. LAURENS COUNTY CLERK OF COURT	)	Mr. Beaty's Pretrial Brief
	)	
Michael Beaty	)	
	)	
	)	

To: The Honorable W. Jeffery Young, Presiding Judge, Eighth Judicial Circuit.

The defendant, Michael Beaty, Jr., submits this following pretrial brief.

I. Factual Background.

On June 29, 2013, Emily Anna ("E.A.") Asbill, William Alexander, and Mr. Beaty left a party together. All three consumed a substantial amount of alcohol at the party. When they arrived at 502 Calvert Avenue, Clinton, South Carolina,[1] Ms. Asbill was not responsive. Mr. Beaty's stepfather called 911. Ms. Asbill died. She had a ligature mark on her neck. Mr. Beaty is informed and believes that the prosecution will claim a USB cord caused this mark. Ms. Asbill also had abrasions on her left hand and right arm and hand.

On June 30, 2013, Michael Beaty signed a statement informing investigators, "E.A. threatened and did open the door to jump out, threatening harm to herself." Mr. Beaty explained, "The injuries [to her arm and hands] had come from her hanging out of the car as I held her clothing to try to pull her back in" the car. Dr. Dutch Johnson, Ph.D, an expert in Biomechanics, conducted extensive testing. Dr. Johnson concluded the injuries to Ms. Asbill's left hand and right arm and hand were caused by scraping on the pavement while the car was in motion. He

[1] This address is the home of Cynthia and Henry Simmons, Mr. Beaty's mother and stepfather.

concluded Ms. Asbill's clothing is the most probable cause of the ligature mark. A copy of Dr. Johnson's PowerPoint presentation outlining his testing and conclusions is submitted contemporaneously with this brief.[2]

II. Pretrial Publicity & Jury Selection.

This case generated an extraordinary amount of pretrial publicity. The families of both Mr. Beaty and Ms. Asbill are prominent in Laurens County. Mr. Beaty's stepfather, Henry Simmons, is a former high school principal and remains employed in the public schools. Mr. Beaty's mother, Cynthia Simmons, taught school at the Thronwell Academy in Clinton, South Carolina.

Ms. Asbill's father, Ashley Asbill, works for the South Carolina Law Enforcement Division (SLED). Since her daughter's death, Ms. Asbill's mother, Emily Joy, has been a community activist regarding domestic violence. She has appeared with Attorney General Alan Wilson and Solicitor Stumbo at public events. She has been active in a group called "No More Lines, No More Bruises," which is popular on Facebook, found at https://www.facebook.com/NoMoreLiesAndBruises (last viewed 1/19/15), with 2,336 likes.

As a result of the families' prominence and Ms. Joy's activism, there has been a lot of community interest and publicity. The Honorable Eugene C. Griffith, Jr., in fact, issued a gag order that was challenged by Laurens County Newspapers, Inc. d/b/a the Clinton Chronicle and Advertiser Printing Co., Inc. d/b/a The Laurens County Advertiser.[3] Both of these newspapers have written extensively about this case and the trial of co-defendant Will Alexander that occurred in September 2014. There is also a popular Emily-Anna Asbill Memorial Page on

[2] A copy of Dr. Johnson's PowerPoint was provided to the Solicitor's Office on January 20, 2015.

[3] Jay Bender represents these newspapers.

Facebook, found at https://www.facebook.com/EmilyAnnaAsbillMemorialPage (last viewed 1/19/15), with 4,158 likes.

The unusual publicity in this case, combined with Ms. Joy's activism, created a public perception that Ms. Asbill's death resulted from an intentional strangulation rather than an accident as outlined in Section I, *supra*. This Court, therefore, should ensure that the jurors selected in this case could be fair and impartial despite the pretrial publicity. Mr. Beaty respectfully requests that this Court identify potential jurors exposed to pre-trial publicity and question those jurors individually and separate from the entire panel.

III. Potential Evidentiary Issues.

Mr. Beaty will not challenge the voluntariness of his statements. There are no issues regarding chain of custody. Mr. Beaty anticipates the following potential evidentiary issues.

A. Unavailability of Co-defendant Will Alexander.

Law enforcement charged Will Alexander with accessary after the fact of murder. The State tried him before Judge Griffith and a jury during the week of September 8, 2014. The jurors convicted Mr. Alexander of accessary after the fact of murder. Judge Griffith sentenced Mr. Alexander to seven years, suspended on the service of three years, followed by three years probation. Mr. Alexander's appeal is currently pending.

The prosecution of Mr. Alexander was based solely on his statements to law enforcement. Outside the presence of the jurors, Mr. Alexander's counsel informed the Court that he had recanted those statements. At trial, Mr. Alexander's defenses did not point our that Mr. Alexander's statements are refuted by the forensic evidence or call any witnesses to explain the forensic evidence. Rather, the defense was that Mr. Alexander's conduct did not meet the elements of accessory after the fact.

Mr. Alexander's absence from this case raises the following potential evidentiary issues:

1. Mr. Alexander's statements are inadmissible because of the Confrontation Clause. U.S. Const. Am. VI; S.C. Const. Art. I, § 14. *See also Crawford v. Washington*, 541 U.S. 36 (2004).

2. Mr. Alexander's statements are inadmissible hearsay. Rule 802, SCRE.

3. Mentioning the result of Mr. Alexander's trial, conviction and/or sentence in Mr. Beaty's is not relevant to Mr. Beaty's trial. Rules 401 & 402, SCRE.

4. The prejudicial effect of mentioning Mr. Alexander's trial, conviction, and/or sentence during Mr. Beaty's trial substantially outweighs any probative value. Rule 403, SCRE.

B. *Lyle*/Rule 404(b), SCRE.

On July 25, 2014, Mr. Beaty moved for the Solicitor's Office to disclose any evidence the State intends to introduce at trial pursuant to Rule 404(b), SCRE. *See State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923). Solicitor Stumbo identified Shannah Drury, Vanessa Ramos, Autausha Smith, and co-defendant Will Alexander as potential *Lyle* witnesses. Mr. Alexander, of course, is unavailable. *See* Section III(A), *supra*. Before the prosecution calls any of the other three witnesses, the Court should convene an *in camera* hearing to determine whether the proposed testimony meets one of the exceptions to Rule 404(b). Mr. Beaty contends it does not.

IV. Circumstantial Evidence & Directed Verdict.

Mr. Beaty contends that the murder charge against him is based upon circumstantial evidence with no direct evidence establishing that he killed Ms. Asbill with malice aforethought. The defense will request a jury charge in accordance with *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013). In the alternative, the defense will request a circumstantial evidence charge that refers to the exclusion of every other reasonable hypotheses as established in *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955). In determining if the State has established

enough evidence to send the case to the jury, the Court should be guided by the principles established in *State v. Ewards,* 298 S.C. 272, 379 S.E.2d 888 (1989); *State v. Hernandez*, 382 S.C. 260, 677 S.C. 620 (2009) and *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2012). Copies of these cases are attached. The defendant contends that at a minimum the State is required to prove substantial circumstantial evidence to send the case to the jury. Arguably under the latter two cases, viewing the disputed evidence in the light most favorable to the State, the State is required to prove the guilt of the defendant to the exclusion of any other reasonable hypotheses before the case may be submitted to the jury. Under the facts viewed in the light most favorable to the State, if innocence is as likely as guilt, then the State has not met its burden under any standard of review.

V. Sudden Emergency Doctrine.

The defendant contends that under the facts of this case he was presented with a sudden emergency, which was not created by any fault of his. The emergency arose when the deceased attempted to jump from the moving vehicle he was driving and he attempted to prevent her from injuring or killing herself by leaving the moving automobile. As a result, he was confronted with a sudden emergency. The defendant contends that the Court should charge the jury the law of sudden emergency. The proposed charge would be as follows: "Where a defendant is suddenly placed in an emergency situation, through no fault of his own, and is compelled to act instantly to avoid any injury to another person, he is not negligent if he makes a choice that a person of ordinary judgment might make if placed in the same emergency situation. He is not required to make the best choice, but only one that is reasonable under the circumstances." *Singletary v. S. Carolina Dep't of Educ.*, 316 S.C. 153, 157, 447 S.E.2d 231, 233 (Ct. App. 1994).

VI. Potential Scheduling Issues.

Finally, the Court should be aware of potential scheduling issues involving Mr. Beaty's experts. Dr. Johnson is available to testify on Wednesday, Thursday, and Friday morning. Dr. Jonathon Arden, a forensic pathologist is available to testify on Thursday and Friday.

Respectfully submitted,

By _____

C. Rauch Wise
301 Main Street
Greenwood, SC 29646
(864) 229-5010

E. Charles Grose, Jr.
404 Main Street
Greenwood, SC 29646
(864) 538-4466

Counsel for the Defendant

January 21, 2015

LYNN W. LANCASTER

THE STAT OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
2015 JAN 26 A 9:40	)	Warrant Number(s): 2013A3010200216
THE STATE	)	2013A3020100359
	)	
	)	
vs. LAURENS COUNTY CLERK OF COURT	)	Voir Dire
Michael Beaty	)	
	)	
	)	

Pursuant to the Sixth Amendment of the United States Constitution, Article I, Section 14 of the South Carolina Constitution, and Section 14-7-1020 of the South Carolina Code of Laws, the defendant, Michael Beaty, requests that the jurors be placed on their oath and asked questions to determine whether any potential juror "has any interest in the cause, has expressed or formed any opinion, or is sensible to any bias or prejudice."

I. Introduction.

As a result of the enormous pre-trial publicity, the Court should determine two threshold issues.

First, the Court has summoned additional jurors. This same procedure was followed during the trial of co-defendant Will Alexander in September 2014. Because of the number of potential jurors present at that time, space in the courtroom was limited. The Court, therefore, should take extra precautions to ensure that the general public is allowed to be present during *voir dire*. *See Pressley v. Georgia*, 558 U.S. 209 (2010) (Defendant's Sixth Amendment right to a public trial was violated when trial court excluded the public, including a defendant's family member, from the courtroom). *See also*, S.C. Cont. Art. I, Sec. 14.

Second, the Court's voir dire should be guided by *Skilling v. United States*, 561 U.S. 358 (2010). The District Court's voir dire included questions to determine whether the prospective

jurors had formed any opinions about defendant and issues involved in the case. The Court individually questioned all jurors providing affirmative responses. The Court allowed counsel for the parties to ask follow up questions.

II. Proposed Voir Dire Questions.

1. After reading the names of the state's potential witnesses and the potential witnesses listed on the attached witness list, please ask the potential jurors the following question:

    a. Does any potential juror otherwise ***know*** any of the potential witnesses in this case, or do you know of any of the potential witnesses through your involvement in the community?[1]

    b. If so, who do you know?

    c. How do you now them?

    d. Based upon your relationship, has that caused you to form an opinion regarding their potential testimony? If so, please explain.

2. Do you know anyone who works with the 8th Circuit Solicitor's Office? This includes lawyers, investigator's, victim's advocates, and support staff. If so, please state who and how you know that person.

3. Has any juror ever been a civilian or military law enforcement officer? If So, Please explain.

4. Do you know anyone that works for any law enforcement agency in Laurens County, Newberry County, Greenwood County, or Abbeville County? If so, please state who and how you know that person.

---

[1] The Office of the Public Defender for Greenwood and Abbeville Counties represented the defendant in *State v. Guillebeaux*, 362 S.C. 270, 607 S.E.2d 99 (2004). After the jury trial, the defendant learned of evidence that there was a relationship between one of the jurors and the state's most important witness, who was the confidential informant claiming to have purchased drugs from the defendant. While the nature of the relationship was disputed, the juror admitted that she knew the informant well enough to say "hi" in passing on the street, that she had attended high school worked at his brother's filling station, which is across the street from her hairdresser." *Id.* 362 S.C. at _, 607 S.E.2d at 101. This information is the type of information that would influence the decision to exercise a preemptory strike. The Court of Appeals, however, reasoned "juror was not asked during voir dire if she knew of any of the witnesses, she was asked if she had any type of social relationship with Smith." *Id.* 362 S.C. at __, 607 S.E.2d t 102.

5. Have you ever campaigned for, or made a contribution to Ricky Chastain, or David Stumbo? If so, please stand.

6. Has any potential juror, a close family member, relative or friend ever been or is currently a member of a victim's advocacy group, such as MADD (Mother's Against Drunk Driving), CAVE, SAD, or any similar organization?

    a. Based upon your involvement, would that cause you to have an opinion regarding your role as a juror in this case? If so, what is that opinion?

7. Has any member of the jury panel attended any advocacy meetings concerning domestic violence? If so, please stand.

8. Has any potential juror, a close family member, relative or friend ever been a victim of a serious crime? If so, please come forward and explain.

9. Who among you just don't like lawyers, particularly lawyers who represent persons accused of a crime in cases like this?

10. There are some crimes that make people so angry that just because a person is accused of the crime, they believe he is guilty. Would you agree with that?

11. When you hear the word "murder," is the first thing you think about unfair to the accused defendant in this case? If it is unfair, please stand.

12. Does anyone have an opinion about Michael Beaty? If so, what is your opinion, and what forms the basis of your opinion.

13. Does anyone have any personal knowledge of the allegations in this case? If so, please stand.

14. Has anyone had a conversation about this case with anyone? If so, then please explain.

15. Has any member of the jury panel read about this case in the newspaper, heard about it on the radio or TV, read about it on the Internet, which includes Facebook and Twitter?

    a. If so, then please explain.
    b. Based upon that, what have you heard?
    c. Have you formed an opinion regarding that information?
    d. If so what is that opinion?

16. Has any member of the jury panel liked or followed any of the following Facebook pages?

    a. Emily-Anna Asbill Memorial page?
    b. No More Lies and Bruises page?
    c. Emily Crystal Joy page?
    d. Laurens County Sherriff's Office Page?
    e. Domestic Violence Crime Watch Page

17. Has any potential juror, a family member, friend, or one of your Facebook friends changed their Facebook profile picture to a picture of the decedent in this case, Emily Anna ("E.A.") Asbill? If so, please come forward.

18. Does any potential juror or member of your family listen to His Radio?

19. Does any potential juror know the family of Emily Ann Asbill, specifically her mother Emily Crystal Joy, her father Ashley Asbill, or her sister Amanda Asbill?

    a. If so, please explain.
    b. Based upon your relationship, has that caused you to form an opinion regarding this case? If so, please explain.

20. The decedent in this case is a family member of law enforcement. Knowing that, would that affect your ability to be an impartial juror in this case?

21. Is any member of the jury patrons of Emily Hair Designs and color specialty located on 101 Elm Street, Clinton, SC or South Side Salon located on 998 South Broad Street, Clinton, SC?

22. Have you formed any opinion regarding this case, if so, what is that opinion?

Finally, I instruct you that if you are selected as a juror in this case, if you become aware of anything that changes any of your answers to any of these questions, you should notify one of the bailiffs who in turn will notify me immediately.

Respectfully submitted,

By _____

C. Rauch Wise
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E. Charles Grose, Jr.
404 Main Street
Greenwood, SC 29646
(864) 538-4466

Counsel for the Defendant

January 26, 2015

#2

Voluntary Witness Statement

NOT UNDER ARREST

Page(s) 1 of 1

Date of Statement: 6/30/13 Time Statement Started: 7:29 pm 24 Riverwalk Greenville SC

Name: Michael Beaty Jr. Address: Clinton

Date of Birth: Social Security Number: Phone Number(s):

I completed the grade in school and Can ☑ / Cannot ☐ read and write.

I, Michael Beaty Jr. am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Officer Crystal Roberts.

I understand that I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

At 6pm Saturday Emily Ann Asbill and I left Ruby's Food Store and drove to Kyle Stewart's house to a memorial service for a mutual friend. EA drove and was to remain sober to be the DD as I planned to drink. Her father texted implying he knew we were in town at which point I took the batteries out of both phones. Once at Kyle's we both drank alcohol and mingled with the group. She left with the other females around 8 to get more beer. A mutual friend Will was there and by far the most intoxicated. When the time came that we were ready to leave, we agreed to take Will home. This was around 10 I think. From Kyle's house, I drove us to my parents' house. Upon arriving, I realized EA was not responding. I rushed from the drivers seat outside to the passenger side and realized she was unconscious. After trying to get her attention and make her regain consciousness, I felt she was gone. Will or someone at my house called 911 and after EMT arrived I left her side. Since then I have been present with law enforcement. I have and will continue to comply in all ways possible. When I opened the passenger door I noticed blood on her arm and assumed it to be from self inflicted wounds. I tied it off with my shirt

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presenc during any part of this statement, or any time before it was finished did I request that this statement be stopped. I also declare th prompted what to say in this statement.

PLAINTIFF'S EXHIBIT 3 1-26-15 SH

This statement was completed at 7:50 pm (time) on the 30 day of June, 2013

Witnessed: Date: 6/30/13 Signature: Date: 6-30-13

Voluntary Witness Statement

NOT UNDER ARREST

Page(s) _____ of _____

Date of Statement: 6-30-13 Time Statement Started: 1220

Name: Michael Vernon Beaty, JR Address: [redacted], Clinton, SC 29325

Date of Birth: __ Social Security Number: ___ Phone Number(s): _____

I completed the 14yrs grade in school and Can ☑ / Cannot ☐ read and write.

I, Michael Vernon Beaty am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Officer Shelton / Kinsley.

I understand that I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

While arguing, EA threatened and did open the door to jump out threatening harm on herself to punish me for what I argued with her about which was me feeling disrespected that she was focusing more on Will than me. The injuries she had came from her hanging out of the car as I held her clothing to try to pull her back in I remember her screaming asking me why I made her do that.

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of [illegible] during any part of this statement, or any time before it was finished did I request that this statement be stopped. I also declare that I was not prompted what to say in this statement.

This statement was completed at 1230 pm (time) on the 30th day of June, 2013.

PLAINTIFF'S EXHIBIT 4 1-26-15 JDA

PENGAD 800-631-6989

Witnessed: K Kinsley Date: 6-30-2013 Signature: [signature] Date: 6-30-13

Supplemental Statement

Page(s) _____ of _____

Statement of _____, Continued.

While arguing, EA threatened and did open the door to jump out threatening harm on herself to punish me for what I reacted with/her about which was feeling disrespected that she was focusing more on [redacted] than me. The ingredients she had used while she was hanging out of the car as I held her clothing to try to pull her back in.

Notes

AVB

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, or any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at _____ (time) on the _____ day of _____, 20___.

Witnessed: _____ Date: _____ Signature: _____ Date: _____

PLAINTIFF'S EXHIBIT 5 1-26-15 DA
PENGAD 800-631-6989

We left Simpsonville around 1 or 2 to head to Clinton as I had a few odd jobs lined up. First we stopped in Laurens at my grandfather's house and visited with he and his girlfriend. We stayed there til about 3 or 4 and during that time the other jobs I had lined up got postponed. So we left there and went to my parents house where we visited and lounged around and EA showered and changed. We left there at around 6. From there we went to C Mart where I bought beer and gin. On the way there to Kyle's I asked EA if she would stay sober so she could drive us home since I planned to drink. We arrived at Kyle Stewart's house for a memorial party/cookout. We met our mutual friend Will there. He was already extremely intoxicated. While there, EA took to hanging out with the other females at first while I caught up with old friends. After a while I realized EA was actually drinking too so I figured I would end up driving. After 9 or so beers Will was so intoxicated we used that as an excuse to leave soon and

want to hurt herself which is common for us when we argue. But again things were settling somewhat. Throughout I have little to no recollection of what Bill was doing or saying if anything. Upon arriving at my parents house I tried to get EA's attention but she wouldn't respond. I nudged her and felt her body was limp. I jumped out and rushed around to the passenger side and unbuckled her seatbelt and on my knees tried to get her to come to. When I opened the door first her arm dropped out and I noticed blood which I believed to be from a self inflicted cut which EA has done before. I tied off her arm with my shirt and that was when I fell to my knees and unbuckled her I held her head up and her body trying to get her to come to and frantically yelled and pleaded with her to wake up. Around this time I can't recall if Tor Will or both went to the house to get help and have someone call 911. I stayed holding EA's body until EMT arrived

met pretrial on stretcher.

MS MJL 6-30-13

would take him home. Around this time I had gotten somewhat uncomfortable with how much attention EA was showing Will and I believe I had said something about it that started an argument. So the three of us set off in the car at which point I realized how intoxicated I was which swayed me to go towards my parents house rather than to Will's parents which would have taken much longer. During the ride EA and I continued to bicker and argue with both of us saying hurtful things but I don't recall specifically what was said. I feel as though the intoxication magnified the hurt feelings. After or during the argument EA tried to jump out of the car but I grabbed her shirt to try to stop her. When this happened part of her body - her right arm - made contact with pavement, although I was not aware of this until later. After that everything started to calm somewhat although every one was shaken. Not sure what Will did at this point. I believe that EA made it seem like I had made her

#26

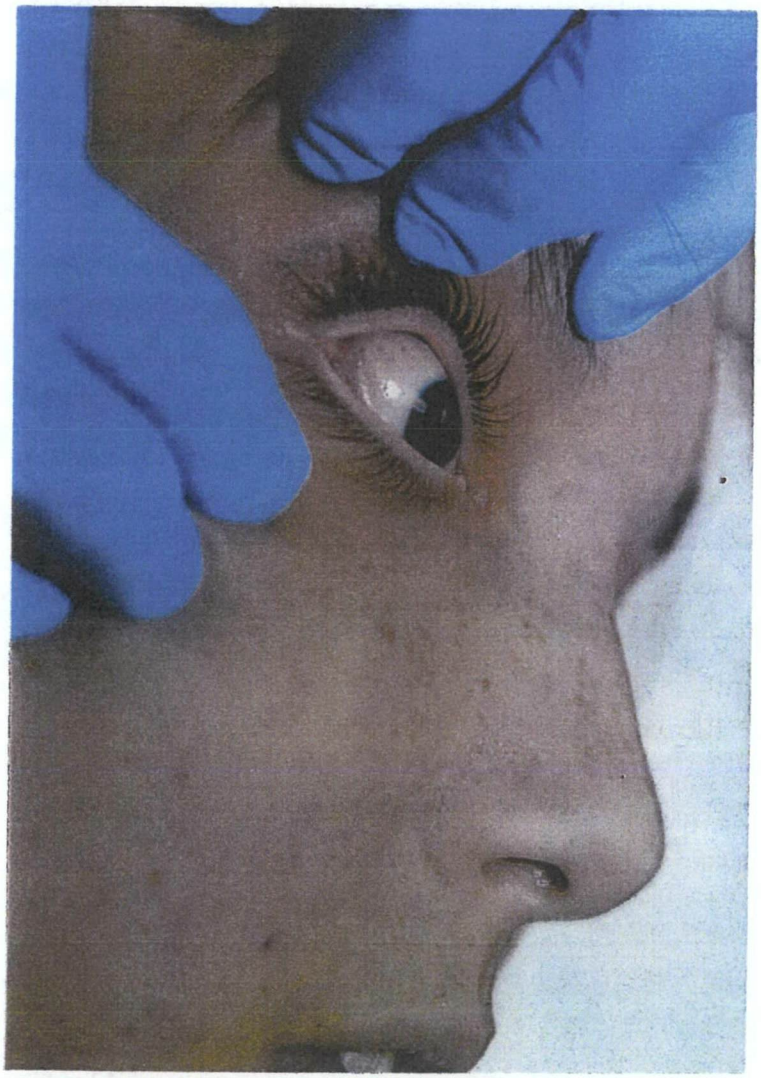
#27

#32

#30

#34

#33



Laurens County Health Care System

REGISTRATION

MEDICAL RECORDS NO.: 957075	☐ Admission ☐ Outpatient Surg ☐ Outpatient ☒ ER ☐ Clerk: MGR	AGE: 18	FIN CLASS: BBA	PATIENT NO.: 1025422	
PATIENT NAME (LAST, FIRST, MIDDLE): ASBILL EMILY ANNA				SEX: F	RACE: W
NURSE STATION: 026	ROOM NO/BED NO: ED-35	PREV ENCOUNTER DATE:	TYPE OF ADM: ER	MAR ST: S	MAIDEN NAME:
HOME ADDRESS:			STATE:	ZIP:	EMP PHONE:
EMPLOYER: STUDENT	EMP ADDRESS:	CITY:		ZIP CODE:	
CHIEF COMPLAINT: ER LAC	ADMIT DT: 9/16/12	TIME: 1:15	AC REL:	DT/TM OF ACCIDENT: 9/16/12 30	EM REL: PT TY: ER PT REL:
FAMILY DOCTOR: PARTEE PETER M	ATTENDING PHYS: PARTEE PETER M	NOTIFY IN EMERGENCY: ADAMS LISA	NOTIFY PH: (864)467-0430	NOTIFY ADDRESS:	
GUARANTOR NAME (LAST, FIRST): ASBILL EMILY ANNA	GUARANTOR ADDRESS:	CITY:	STATE:	ZIP CODE: 29325	
GUARANTOR EMPLOYER NAME: STUDENT	GUAR EMP ADDRESS:	CITY:	STATE:	ZIP CODE:	
GUAR SSN:	GUAR HOME PH:	GUAR EMP PHONE:	ASC:	ADMIT PHY: WEAVER BRIAN MD	
INSURANCE NAME 1: 400 BLUE CROSS STATE-O/P	CONTRACT NO:	GROUP NAME: BCBS STATE	GROUP NO:		
INSURANCE NAME 2:	CONTRACT NO:	GROUP NAME:	GROUP NO:		
INSURANCE NAME 3:	CONTRACT NO:	GROUP NAME:	GROUP NO:		

DISCHARGE INFORMATION

	CODE
PRINCIPAL DIAGNOSIS	
COMPLICATIONS	
SURGERY (INCLUDE DATE/SURGEON) TRANSFUSED: YES NO WHOLEBLOOD PACKED CELLS	

DISCHARGE DATE	DISCHARGE TIME	DAYS OF CARE	CONSULTING PHYSICIAN'S SIGNATURE
		0D	

☐ RECOVERED ☐ NOT IMPROVED ☐ AGAINST ADVICE ☐ HOME HEALTH ☐ DIED + 48 HRS ☐ AUTOPSY

☐ IMPROVED ☐ HOME ☐ TRANSFERRED TO: _____ ☐ DIED - 48 HRS ☐ NO AUTOPSY

DEFENDANT'S EXHIBIT NO. 14 1-27-16 SDJ

LAURENS COUNTY HEALTH CARE SYSTEM

ED Physician Orders

1025422 957075 P/T-ER
ASBILL EMILY ANNA F 18

WEAVER BRI PARTEE PET
PARTEE PET 09/16/12 B/D

Time:

Time	Nursing Interventions	Initial Done
	☐ INT	
	☐ IVF-	
	Start Time_____ Stop Time_____	
	☐ Cardiac Monitor	
	☐ O2 sat _____	
	☐ O2_____via_____	
	☐ FSBS_____mg/dl (ref range 70-110mg/dl)	

Time	Radiological Orders	Initial Done
	☐ CXR ☐ PA/LAT ☐ Port	
	☐ C-spine ☐ T-spine ☐ LS-spine ☐ Port	
	☐ ABD Series	
	☐ Shoulder ☐R ☐L ☐Hip ☐R ☐L	
	☐ Elbow ☐R ☐L ☐Knee ☐R ☐L	
	☐ Wrist ☐R ☐L ☐Ankle ☐R ☐L	
	☐ Hand ☐R ☐L ☐Foot ☐R ☐L	
	☐ CT	
	☐ U/S_____	
	☐ Other:	

Time	Cardiopulmonary Orders	Initial Done
	☐ ECG	
	☐ Repeat ECG	
	☐ ABG	
	☐ Repeat ABG	

Discharged Instuctions reviewed and Accepted :

Time	Laboratory Orders	Initial Done
	☐ H &H	
	☐ CBC w/auto	
	☐ BMET	
	☐ D Dimer	
	☐ CMET	
	☐ BNP	
	☐ Cardiac Profile	
	☐ Troponin	
	☐ Amylase ☐ Lipase	
	☐ PT/PTT	
	Blood Bank	
	☐Type/Cross	
	x_____units	
	☐Type/Screen	
	☐ UA void/ cath	
	☐ UCG	
	☐ HCG	
	☐ Quant HCG	
	☐ GC/Chlamydia	
	☐ Wet Prep	
	☐ UDS	
	☐ ETOH	
	☐ Ammonia	
	Drug levels	
	☐ ASA	
	☐ Acetaminophen	
	☐ Digoxin	
	Other labs	
	☐	
	☐	
	☐	
	Cultures	
	☐ Blood x 2	
	☐ Urine	
	☐ Sputum	
	☐ Wound	
	site	
	☐ Rapid Strep test	
	☐ Flu swab	

Time	Critical Test Results	Initial Done
	Patient Name:_____	
	Test/Result :_____	
	Test/Result :_____	
	Test/Result :_____	
	Test/Result :_____	
	MD Notified:_____	
	RN Signature:_____	

Signature MD / PA / NP

PATIENT AUTHORIZATION-FINANCIAL RESPONSIBILITY AND RELEASE OF INFORMATION

I AUTHORIZE THE HOSPITAL AND ATTENDING PHYSICIAN(S) TO RELEASE ANY INFORMATION ACQUIRED IN THE COURSE OF MY EXAMINATION AND TREATMENT IN CONNECTION WITH THIS HOSPITAL STAY FOR THE PURPOSE OF INSURANCE AND/OR MEDICARE BENEFIT PAYMENTS

I FURTHER AUTHORIZE PAYMENT DIRECTLY TO HOSPITAL AND PHYSICIAN(S) ACCEPTING THIS ASSIGNMENT OF ALL HOSPITALIZATION AND MEDICAL BENEFITS APPLICABLE AND OTHERWISE PAYABLE TO ME BUT NOT TO EXCEED THE REASONABLE AND CUSTOMARY CHARGE FOR THESE SERVICES RENDERED BY SAID HOSPITAL AND PHYSICIAN(S)

WHERE MEDICARE OR MEDICAID BENEFITS ARE APPLICABLE, I CERTIFY THAT THE INFORMATION GIVEN BY ME IN APPLYING FOR PAYMENT UNDER TITLE XVIII OR XIX OF THE SOCIAL SECURITY ACT IS CORRECT, AND REQUEST THAT SAID PAYMENT OF AUTHORIZED BENEFITS BE MADE ON MY BEHALF

I UNDERSTAND THAT I AM RESPONSIBLE TO THE HOSPITAL AND PHYSICIAN(S) FOR ALL REASONABLE CHARGES INCURRED BY ME AND NOT PAID FOR BY THIRD PARTY BENEFITS

I UNDERSTAND THAT THE HOSPITAL WILL NOT HOLD ON DEPOSIT ANY MONEY OR VALUABLES FOR WHICH THE HOSPITAL HAS ISSUED A SAFE-KEEPING RECEIPT AND IS NOT RESPONSIBLE FOR PERSONAL PROPERTY RETAINED IN PATIENT'S ROOM

I AUTHORIZE THE REFUND OF OVERPAID INSURANCE BENEFITS IN ACCORDANCE WITH MY INSURANCE POLICY CONDITIONS WHEREBY COVERAGES ARE SUBJECT TO A COORDINATION OF BENEFITS CLAUSE

I AUTHORIZE THE HOSPITAL TO ACT IN MY BEHALF AS ATTORNEY IN FACT IN (1) THE COLLECTIONS OF BENEFITS FROM ANY RESPONSIBLE THIRD PARTY THROUGH WHATEVER MEANS MAY BE DEEMED NECESSARY, AND (2) IN THE ENDORSEMENT OF BENEFIT CHECKS MADE PAYABLE TO MYSELF AND/OR THE HOSPITAL.

THIS FORM HAS BEEN FULLY EXPLAINED TO ME AND I CERTIFY THAT I UNDERSTAND ITS CONTENTS

DATE	WITNESS	PATIENT (OR CLOSEST RELATIVE OR LEGAL GUARDIAN)	
5 15 DATE	17 43 WITNESS	RESPONSIBLE PARTY AND/OR INSURED	RELATIONSHIP TO PATIENT

LAURENS COUNTY HEALTH CARE SYSTEM

CONSENT FOR HOSPITAL AND MEDICAL TREATMENT

I, (OR PATIENT OR CLOSEST RELATIVE OR GUARDIAN) KNOWING THAT I (OR PATIENT OR CLOSEST RELATIVE OR GUARDIAN) AM (IS) SUFFERING FROM A CONDITION REQUIRING EMERGENCY ROOM CARE DO HEREBY VOLUNTARILY CONSENT TO SUCH EMERGENCY ROOM CARE ENCOMPASSING ROUTINE DIAGNOSTIC PROCEDURES BY DR _____ AS IS NECESSARY IN HIS JUDGEMENT

I AM AWARE THAT THE PRACTICE OF MEDICINE AND SURGERY IS NOT AN EXACT SCIENCE AND I ACKNOWLEDGE THAT NO GUARANTEES HAVE BEEN MADE TO ME AS TO THE RESULT OF TREATMENTS OR EXAMINATIONS IN THE EMERGENCY ROOM

TESTING TO PROTECT HOSPITAL EMPLOYEES AND OTHERS: I CONSENT TO APPROPRIATE TESTS FOR THE PRESENCE OF INFECTION SUCH AS BUT NOT LIMITED TO INFECTION BY THE HEPATITIS B VIRUS OR THE HUMAN IMMUNODEFICIENCY VIRUS IF DEEMED NECESSARY FOR THE PROTECTION OF OTHERS AND I AUTHORIZE THE WITHDRAWAL OF BLOOD OR OTHER BODY FLUIDS FOR THIS PURPOSE

PATIENT AUTHORIZATION-FINANCIAL RESPONSIBILITY AND RELEASE OF INFORMATION

I AUTHORIZE THE HOSPITAL AND ATTENDING PHYSICIAN(S) TO RELEASE ANY INFORMATION ACQUIRED IN THE COURSE OF MY EXAMINATION AND TREATMENT IN CONNECTION WITH THIS HOSPITAL STAY FOR THE PURPOSE OF INSURANCE AND/OR MEDICARE BENEFITS PAYMENTS

I FURTHER AUTHORIZE PAYMENT DIRECTLY TO HOSPITAL AND PHYSICIAN(S) ACCEPTING THIS ASSIGNMENT OF ALL HOSPITALIZATION AND MEDICAL BENEFITS APPLICABLE AND OTHERWISE PAYABLE TO ME BUT NOT TO EXCEED THE REASONABLE AND CUSTOMARY CHARGE FOR THESE SERVICES RENDERED BY SAID HOSPITAL AND PHYSICIAN(S)

WHERE MEDICARE OR MEDICAID BENEFITS ARE APPLICABLE, I CERTIFY THAT THE INFORMATION GIVEN BY ME IN APPLYING FOR PAYMENT UNDER TITLE XVIII OR XIX OF THE SOCIAL SECURITY ACT IS CORRECT, AND REQUEST THAT SAID PAYMENT OF AUTHORIZED BENEFITS BE MADE ON MY BEHALF

I UNDERSTAND THAT I AM RESPONSIBLE TO THE HOSPITAL AND PHYSICIAN(S) FOR ALL REASONABLE CHARGES INCURRED BY ME AND NOT PAID FOR BY THIRD PARTY BENEFITS

I UNDERSTAND THAT THE HOSPITAL WILL NOT HOLD ON DEPOSIT ANY MONEY OR VALUABLES FOR WHICH THE HOSPITAL HAS ISSUED A SAFE-KEEPING RECEIPT AND IS NOT RESPONSIBLE FOR PERSONAL PROPERTY RETAINED IN PATIENT'S ROOM

I AUTHORIZE THE REFUND OF OVERPAID INSURANCE BENEFITS IN ACCORDANCE WITH MY INSURANCE POLICY CONDITIONS WHEREBY COVERAGES ARE SUBJECT TO A COORDINATION OF BENEFITS CLAUSE

I AUTHORIZE THE HOSPITAL TO ACT IN MY BEHALF AS ATTORNEY IN FACT IN (1, THE COLLECTION OF BENEFITS FROM ANY RESPONSIBLE THIRD PARTY THROUGH WHATEVER MEANS MAY BE DEEMED NECESSARY, AND (2) IN THE ENDORSEMENT OF BENEFIT CHECKS MADE PAYABLE TO MYSELF AND/OR THE HOSPITAL.

THIS FORM HAS BEEN FULLY EXPLAINED TO ME AND I CERTIFY THAT I UNDERSTAND ITS CONTENTS

DATE	WITNESS	PATIENT (OR CLOSEST RELATIVE OR LEGAL GUARDIAN)	
DATE	WITNESS	RESPONSIBLE PARTY AND/OR INSURED	RELATIONSHIP TO PATIENT

IF PATIENT IS UNABLE TO CONSENT OR IS A MINOR COMPLETE THE FOLLOWING
PATIENT (IS A MINOR_____YEARS OF AGE) IS UNABLE TO CONSENT BECAUSE _____

DATE	WITNESS	CLOSEST RELATIVE OR LEGAL GUARDIAN	RELATIONSHIP TO PATIENT

RELEASE FROM RESPONSIBILITY FOR DISCHARGE

I (OR_____ FOR_____) KNOW AND ACKNOWLEDGE THAT MY DISCHARGE IS AGAINST THE ADVICE OF THE ATTENDING PHYSICIAN AND OF THE HOSPITAL ADMINISTRATION I ACKNOWLEDGE THAT I HAVE BEEN INFORMED OF THE RISKS INVOLVED AND HEREBY RELEASE THE ATTENDING PHYSICIAN HIS ASSOCIATES, PARTNERS, ASSISTANTS, AND/OR DESIGNEES, AND THE ABOVE NAMED HOSPITAL AND ANY OF ITS PERSONNEL FROM ALL RESPONSIBILITY FOR ANY ILL EFFECTS WHICH MAY RESULT FROM SUCH DISCHARGE.

WITNESS	SIGNATURE OF PATIENT
WITNESS	CLOSEST RELATIVE OR LEGAL GUARDIAN

I ACKNOWLEDGE AND UNDERSTAND THAT I HAVE RECEIVED MEDICATION TO TAKE HOME THAT IS PACKAGED IN A NON CHILD RESISTANT CONTAINER I DO NOT HOLD THE HOSPITAL RESPONSIBLE FOR ANY INCIDENT RESULTING FROM THIS PACKAGING

Partee

29 Laurens County Healthcare System
EMERGENCY NURSING RECORD
Upper Extremity Problem

1025422 957075 P/T-ER
ASBILL EMILY ANNA F 18
WEAVER BRI PARTEE PET
PARTEE PET 09/16/12 B/D

TRIAGE DATE 9/16/12 TIME 0410 1 2 3 (4) 5

TIME TO ROOM: 0555 ROOM: Rm4

NAME Asbill, Emily
D.O.B: ____ AGE: 18 M (F)
HISTORIAN: (patient) paramedics family ____
BARRIERS: learning communication interpreter ____

ARRIVAL MODE: (car) EMS police ____
IMMUNIZATIONS: tetanus ____ years UTD unsure
flu ____ pneumovax ____

TREATMENT PTA see EMS report IV D5
last blood glucose ____ mg/dL ★ ASA Rx Vanderbilt

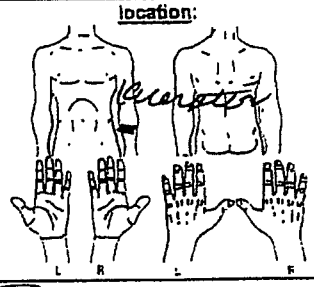
VITALS Height ____ Weight ____ kg
BP 129 / 89 P 99 RR 16 Temp 98.5 °F TM (O) R
SpO2 ____ % RA / ____ L O2 via NC / mask

PAIN LEVEL (1/10) current 6/10 max ___/10 acceptable ___/10
scale used Wong-Baker FLACC ____

CHIEF COMPLAINT Laceration to
started ____ min / hrs / days ago Rt forearm

quality: pain, swelling, tenderness, numbness, tingling

location:



ALLERGIES NKDA
PCN / ASA / sulfa / codeine / iodine / latex ____

MEDS none (see med list) ____

PAST MEDICAL HX
asthma / heart disease / HTN depression
diabetes: Type 1 Type 2 diet / oral / insulin ADHD
indwelling line / drainage shunt ____
past surgeries none ____

LNMP last wk pregnant / postmenop / hysx ____

SOCIAL HX occupation student
★ smoked in past 12 months 0 ppd quit date ____
drugs / alcohol 0
smoking / alcohol cessation counseling 0

• SCREENINGS
infectious disease risk: measles / HIV / TB exposure / symptoms 0
physically hurt or threatened by someone close 0
fall risk 0 suicide risk 0

Elizabeth Sanford RN / LPN 9/16/12 0413
Circle positives, backslash negatives, check √ normals

PRIMARY ASSESSMENT TIME ____

√ Airway patent	___ compromised ____
√ Breathing unlabored	___ labored / respiratory distress ____
√ Circulation nml	___ pale / diaphoretic ____
___ neuro awake alert	___ lethargic / obtunded ____

SECONDARY ASSESSMENT

NEURO
√ oriented x 4
___ disoriented to ____ person place time situation
___ memory loss ____

CHEST
___ nml breath sounds
___ no evidence of trauma
___ wheezing / rales / rhonchi ____
___ decreased breath sounds ____

CVS
___ regular rate
___ pulses strong & equal
___ tachycardia / bradycardia ____
___ pulse deficit ____

ABDOMEN / GU
___ nml inspection
___ soft, non-tender
___ bowel sounds nml
___ tenderness / guarding / rebound / rigid ____
___ bowel sounds hyper hypo absent ____
___ catheter present ____
(L) forearm ____

EXTREMITIES
___ non-tender
___ moves all extremities
___ no edema
see diagram ____
___ limited ROM / contractures ____
___ edema ____
___ weakness / numbness ____
___ wound / drainage ____
___ erythema / increased warmth ____
≈4 cm linear lac to (L) FA

SKIN
___ warm & dry
___ intact
___ cool / cyanotic / diaphoretic ____
___ bruises / rash ____
___ pressure ulcers sacrum hip heel ____

• FUNCTIONAL / NUTRITIONAL ASSESSMENT
___ independent ADL
√ appears well nourished / hydrated
___ assisted / total care ____
___ obese / malnourished ____
___ recent weight loss / gain ____

ADDITIONAL FINDINGS
0130 - Rt and family made aware of pt's allergy to the NP Clinic dispense at the present time
0330 - Awaiting to be seen

INITIAL ACTIONS

TIME			INIT
	(ID) / allergy band	applied / verified	
	disrobed / (gowned)	(blanket provided)	
	bed (low position)	side rails up (x1) x2	
	call light in reach	head of bed elevated	

Nurse Signature ____ 0815

* core measures for Pneumonia / AMI • Respiratory Measure

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ACTIONS

TIME		INIT
	cardiac monitor[1]	
	★pulse oximeter____% RA/____L	
	O_2 ____L via NC/[2]mask[3]/[2]NRB[3]	
	[2]bedside glucose____mg/dL[2]	
	[3]emesis / incontinence care[3]	
	ready for provider eval / notified provider	
	extremity elevated cold pack	
	[3]restraints[3] see documentation	
	social worker intervention [2]limited[2] [2]extended[2]	

IV STARTS [1]lock[1] [4]IV fluid[4]

TIME	#	site	Ga	attempts	comments	INIT

IV / MEDICATION INFUSION RECORD

Start Date/Time	Solution / Med	Type	Rate ml / hr	Stop Time	Amount Infused	INIT
	Response: no change improved					
	Response: no change improved					
	Response: no change improved					

MEDICATIONS ★ ASA / thrombolytics / antibiotics / pneumovax

Date/Time	Medication	Dose	Route	Site	INIT
	Response: no change improved pain __/10				
	Response: no change improved pain __/10				
	Response: no change improved pain __/10				
	Response: no change improved pain __/10				

[1]immunizations[1] [1]OTC[1] [3]prescription PO / SL / TOPICAL[3]
[4]parenteral meds[4] [4]blood products[4] [4]crit care med[4]

PROCEDURES

TIME		INIT
	to Xray [3]single[3] [4]multi[4] w/ [5]monitor[5] / [5]nurse[5] / O_2 / tech	
	return to room	
	[4]to CT[4] w/ [5]monitor[5] / [5]nurse[5] / O_2 / tech	
	return to room	
	lab drawn / sent by ED tech / [3]nurse[3] / lab	
	★ABG drawn	
	12-lead EKG performed notified	
	[3]Foley[3] / [3]straight cath[3]	
	see continuation sheet for details	
	[2]splint[2] / [2]sling[2] applied arm leg short long	
	type	
	post-splint assessment: rmi color / sensation / movement	
MB	[2]cleaned wound[2] [1]applied abx ointment[1]	TB
MB	[2]applied dressing[2] / [2]Band-Aid[2] / [2]elastic wrap[2]	TB
	[2]clean catch[2] / [2]urine pregnancy test[2] results back	

Upper Extremity Problem - 29

VITAL SIGNS

TIME	BP	P	RR	T	SpO_2	Rhythm	Pain	INIT
							/10	
							/10	
							/10	
							/10	
							/10	
							/10	

ADDITIONAL NOTES

0700-Lac repair done per Dr. Weaver. —TB
0725-Lac now well-approximated c continuous sutures intact. No active bleeding. Pt insistent she is no harm to self & is eager to go home. —TB, RN

INTAKE_____ OUTPUT_____
__IV / lock discontinued: cath intact no swelling no redness_____
Time_____ INIT_____ __IV / lock to floor: amount remaining_____
PROPERTY TO: patient family security safe see patient belongings list

Discharge Vitals: BP 110/70 P 92 RR____ T____°F
pain level ___/10 SpO_2_____ GCS_____ Time 0720

CONDITION

__unchanged ✓improved __stable __other_____

DISPOSITION

__discharged home nursing home police [3]medical examiner[3] [3]funeral home[3]
✓verbal ✓written instructions / [3]RX given[3] to: patient
✓verbalized understanding
✓accompanied by Male Visitor
__notified family / police / medical examiner_____
_____
__[5]admitted / transferred[5] to_____
__report to_____ time_____
__transfer documentation completed see transfer of care template
__[1]left AMA / LWBS[1] signed AMA sheet refused_____
__physician notified:_____
Mode: walk crutches W/C stretcher ambulance_____
Depart Date 9-16-12 Time 0725

Discharge Nurse Signature Tracy Burris, RN 9-16-12 0730

☐Continuation Sheet 2 Highest E / M Level

SIGNATURE	INITIAL
Tracy Burris, RN	TB

★ core measures for Pneumonia / AMI

1025422 957075 P/T-ER
ASBILL EMILY ANNA F 18
116 KESTREL CRT TAYLORS , SC
WEAVER BRI PARTEE PET
PARTEE PET 09/16/12 B/D

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06 Laurens County Health Care System

EMERGENCY PHYSICIAN RECORD
Upper Extremity Injury

1025422 957075 P/T-ER
ASBILL EMILY ANNA F 18

WEAVER BRI PARTEE PET
PARTEE PET 09/16/12 B/D

TIME SEEN: 616 ☐ on arrival ROOM: _____ __ EMS Arrival
HISTORIAN: (patient) spouse paramedics _____
__HX / __EXAM LIMITED BY: _____

HPI

chief complaint: injury to: R (1) hand wrist (forearm)
elbow arm shoulder collar-bone area _____

onset / duration:
(just prior to arrival)
today / yesterday _____
_____ min / hrs / days ago

where:
(home) school neighbor's
park work street

severity of pain:
(mild) moderate severe
(1/10) _____

worse / persistent since _____
pain intermittent / lasting _____

context: fall blow (incision) crush burn

self inflicted cut to four inches was to scratch self but didn't realize the knife was so sharp. - meds

associated symptoms:
tingling / numbness distally _____
loss feeling / power arms _____

modifying factors:
__none
pain on movement _____

ROS

MS - neck / back pain _____
CONST - recent illness / fever _____
CVS - chest pain _____
RESP - shortness of breath / cough
GU - problems urinating _____
LNMP _____ preg post-menop

GI - nausea / vomiting _____
NEURO - headache _____
LYMPH - ankle swelling _____
SKIN - rash _____
PSYCH - anxiety / depression _____

☒ except as marked positive, all systems above reviewed and found negative

* NEURO / MS components also addressed in HPI

PAST HX ☒ see nurses note, reviewed by me

__no chronic diseases R / L HANDED
cardiac disease Afib CAD CHF MI hypertension _____
diabetes Type I Type 2 _____ hepatitis / HIV _____
diet / oral / insulin _____ prior injury _____
__old records reviewed / summary: _____
Depress

Tetanus immun. (UTD) / given in ED _____
Meds- __none ☒ see nurses note, reviewed by me _____
Allergies- __NKDA ☒ see nurses note, reviewed by me _____

SOCIAL HX smoker __ppd / past / quit __days / mos / yrs ago
drugs _____ alcohol (recent / heavy / occasional) _____

FAMILY HX cardiac disease _____

☒ Nursing Assessment Reviewed ☒ Vitals Reviewed _____

PHYSICAL EXAM

General Appearance
☒ no acute distress
☒ alert
__c-collar / backboard (PTA / m ED) _____
__mild / moderate / severe distress _____
__anxious _____

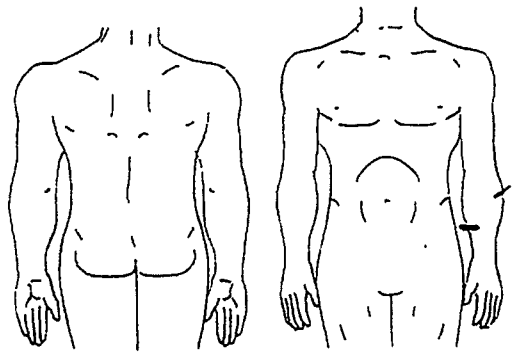
EXTREMITIES

HAND
☒ nml inspection
☒ non-tender
__see diagram _____
__tenderness soft-tissue / bony _____
__swelling / ecchymosis _____
__deformity _____

WRIST
☒ nml inspection
☒ non-tender
☒ nml ROM
__see diagram _____
__tenderness soft-tissue / bony _____
__tenderness in anatomical snuff box _____
__wrist pain on axial thumb load _____
__swelling / ecchymosis _____
__limited ROM _____
__deformity _____

FOREARM / ELBOW
__nml inspection
__non-tender
__nml ROM
☒ see diagram _____
__tenderness soft-tissue / bony _____
__swelling / ecchymosis _____
__limited ROM _____
__deformity _____

ARM / SHOULDER
☒ nml inspection
☒ non-tender
☒ nml ROM
__see diagram _____
__tenderness soft-tissue / bony _____
__swelling / ecchymosis _____
__limited ROM _____
__deformity _____



Yellow color side front.

T=Tenderness PT=Point Tenderness S=Swelling E=Ecchymosis B=Burn
C=Contusion L=Laceration A=Abrasion M=Muscle spasm PW=Puncture Wound
(Ø = without m=mild mod=moderate sv=severe)

NEURO / VASC / TENDON

☒ sensation nml
☒ motor nml
☒ no vascular compromise
☒ tendon function nml
__sensory / motor deficit _____
__pallor / cool skin / abnml cap refill _____
__pulse deficit radial ulnar _____
__deficit in tendon function _____

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Circle (positives) backslash negatives, check √ normals

SKIN
~~warm, dry~~
~~intact~~
__diaphoretic / cool / cyanotic
__pressure ulcer *location*

HEAD / ENT
__nml inspection
__pharynx nml
__tenderness
__swelling / ecchymosis

NECK / BACK
__nml inspection
__non-tender
__tenderness
__swelling / ecchymosis

RESPIRATORY
__chest non-tender
__breath sounds nml
__tenderness
__swelling / ecchymosis / abrasions
__crepitus / subcutaneous emphysema
__decreased breath sounds
__wheezes / rales / rhonchi

CVS
__heart sounds nml
__tachycardia / bradycardia

ABDOMEN / GU
__non-tender
__no organomegaly
__tenderness / guarding
__catheter present

PROCEDURES

Wound Description / Repair: *Time:* 520

length 4 cm location chin

~~linear~~ stellate irregular flap into: subcut / muscle

~~clean~~ contaminated *moderately / heavily*

distal NVT: ~~neuro~~ / ~~vasc~~ intact no tendon injury

anesthesia: ~~local~~ topical ____ lidocaine / bupivacaine epi / bicarb

prep: ~~wound cleanser~~

~~irrigated with saline~~ debrided *mod. /extensive*

wound explored wound margins revised

to base / in bloodless field multiple flaps aligned

foreign body identified

foreign material removed

repair: *Wound closed with: adhesive / steri-strips no closure required*

SKIN- #____ 4 -0 nyon / prolene / staples

SUBCUT- #____ ____ -0 vicryl / chromic

OTHER- #____ ____ -0

Fracture / Dislocation Care / Other *Time:*

__procedural sedation (see attached sheet)

__local / regional anesthesia ____ lidocaine / bupivacaine

__reduced with manipulation

__post reduction *neuro / vasc intact alignment good / fair / poor*

__splint *Velcro OCL / Ortho-glass / Plaster Aluminum-foam Volar Thumb spica Ulnar Wrist Sugar-Tong Cock-up Colles*

applied by ED Physician / MLP / Tech / Nurse

examined post splint application *neuro / vasc intact alignment good*

__sling

__foreign body removed *with forceps with incision*

1025422 957075 P/T-ER
ASBILL EMILY ANNA F 18

WEAVER BRI PARTEE PET
PARTEE PET 09/16/12 B/D

LABS & XRAYS

CBC *normal except*	Chemistries *normal except*	UA *normal except*	ETOH____
WBC____	Gluc____	____	TOX____
Hgb____	BUN____	____	PT/PTT____
Hct____	Creat____	HCG	INR____
Platelets____	Na____	serum / urine	____
____	K____	POS NEG	____
____	CO2____	____	____

XRAYS ☐ Interp. by me ☐ Preliminary read ☐ Discsd w/ radiologist

R / L hand wrist forearm elbow humerus shoulder

__nml / NAD __nml alignment __no fracture __nml soft tissue

Other ____

PROGRESS

*Time*____ unchanged improved re-examined

Pt still denies any syncope, dizziness or lightheadedness. She has had some vaginal bleeding to wash her face. She will F/U with OB/GYN for evaluation of the right side lower

__referred to / discussed with Dr.____

will see patient in: ED / hospital / office in ____ days

Counseled patient / family regarding: Additional history from:
lab / rad. results diagnosis need for follow-up family caretaker paramedics

CRIT CARE TIME *(excluding separately billable procedures)* ____ *min*

CLINICAL IMPRESSION

Abrasion / Contusion / Dislocation / Sprain / Strain / Laceration
R / L shoulder arm elbow forearm wrist hand

Fracture R / L open / closed displaced / non-displaced
radius *distal / shaft / proximal Colles*
ulna *distal / shaft / proximal / ulnar styloid*
humerus *distal / shaft / proximal / supracondylar*

(1) Laceration to chin
(2) Depression / Stress

Discharge Instructions wound wash
stitches out 1 wk

Follow up with Dr. PMC follow up date____

Rx given____

Return to work/school____

Return to ED____ ☐ Immediately if worse____

DISPOSITION DECISION TIME- 700 ☒ home ☐ transfer____

☐ admit __POA *pressure ulcer / UTI (foley)* ____

CONDITION- ☐ unchanged ☒ improved ☐ stable____

Care transferred to Dr____ Time:____

____ *NP / PA*

☐ Patient history has been reprelliminary read, and I agree with the PA/NP findings, unless otherwise stated here.____
Relevant findings of the HPI are as documented on the T-Sheet.

☐ I performed a physical exam, and I agree with the PA/NP findings, unless otherwise stated here.____

☐ Medical decision-making with reference to this patient has been documented on the T-Sheet and has been reprelliminary read.

(Please note: This documentation does not replace the ED physician co-signature, which is still needed on ALL charts.)

ATTENDING SIGNATURE: B Wh

☐ Template Complete ☐ See Addendum (Dictated / Template #____)

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Laurens County
Health Care System

☐ Discharge
☐ ED Triage

HOME MEDICATION LIST

Patient Name: ASBILL EMILY ANNA Date of Birth: Acct #: 1025422 MR#: 957075 Age: 18
Admit Dr: WEAVER B Family Dr: PARTEE Admit Date: 000000 Date: 091612 Race: W Sex: F

Allergies: No Known Drug Allergies

Reactions / Comments:

Data collection by: EVL, RN ☐ PPD- positive

HOME MEDICATIONS: Info obtained from: PT ☐ Instructed to bring meds ☐ DENIES HOME MEDS

Medication Disposition: ☐ Home ☐ Security ☐ Patient Rm ☐ LCHCS Pharmacy ☐ Sent Home with:

Home Medication & Dose (Include Insulin/Herbal/OTC/ Vitamins/Eye Drops/Topicals)	Route	Frequency	Cont	Dis-Cont	Last Dose / Reason for Med / Special Instructions / Comments:
VYVANASE	ORAL	DAILY			
CYMBALTA 30 MG	ORAL	DAILY			
BIRTH CONTROL PILLS	ORAL	DAILY			

☐ VORB/TORB ORDERS RECEIVED FROM: BY:
☐ Home meds reconciled w/ physician orders *Nurse:*_____ *Date/Time:*_____
☐ COPY GIVEN TO PATIENT *Physician:*_____ *Date/Time:*_____

Printed: 9/16/2012 1:09:18 AM

The Patient was given access to the following documents on Sep 16, 2012

SUTURE CARE - AfterCare(R) Instructions(ER/ED), English
Special Instructions:
Discharge Transition Record

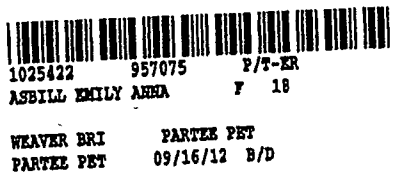
Principal diagnosis at discharge (or chief complaint) is/are: LACERATION WITH SUTURE REPAIR TO LEFT FOREARM; DEPRESSION/STRESS

Plan for follow-up care: SUTURES OUT IN 7 DAYS, RETURN TO YOUR PRIMARY MD OR ED.

Follow up with FAMILY HEALTHCARE. Call office # IN AM to make appointment.

Major procedures and/or tests performed during ED visit were:

O None



O CBC
O BMET
O PT/PTT
O Urinalysis
O Urine Culture
O Blood Culture
O Cardiac Enzymes
O EKG
O Wound Repair OF LEFT FOREARM
O Incision & Drainage

O Fracture Management
O Joint Reduction
O X-Ray of:
O Ultrasound of:
O CT of:

O OTHER:

NEW MEDICATIONS: NONE

O Refer to Home Medication List for new medications and/or changes, including quantity. Prescription given to the patient.

O No new medication or changes in home medications at this time.

Patient instructions: Return to Emergency Department if worse or with any signs/symptoms listed on the attached aftercare instructions.

THANK YOU FOR CHOOSING LAURENS COUNTY HEALTH CARE SYSTEMS - HAVE A WONDERFUL DAY!

Signature of person receiving a copy of the above instructions:

Emily Anna Asbill DATE: 9-16-12

CONDITIONS OF ADMISSION

GENERAL DUTY NURSING: The hospital provides only general duty nursing care. Under this system nurses are called to the bedside of the patient by a signal system. If the patient is in such condition as to need continuous or special family duty nursing care, such must be arranged by the patient or legal representative. The hospital is not responsible for failure to provide the same and is hereby released from any and all liability arising from the fact that said patient is not provided with such additional care.

IMAGERY: I understand that photographs, videotapes, digital, or other images may be recorded to document my care, and I consent to this. I understand that Laurens County Health Care System will retain the ownership rights to these photographs, videotapes, digital, or other images, but that I will be allowed access to view them or obtain copies. I understand that these images will be stored in a secure manner that will protect my privacy and that they will be kept for the time period required by law or outlined in Laurens County Health Care System's policy. Images that identify me will be released and/or used outside the institution only upon written authorization from me or my legal representative.

MEDICAL AND SURGICAL CONSENT: The patient's care is under the direction of the attending physicians and the hospital is not responsible for any act or omission of the physicians. The undersigned consents to any x-ray examination, laboratory procedure, anesthesia, debridement, biopsy, medical or surgical treatment or hospital services rendered the patient under the general and special instructions of the physician. The undersigned recognizes that most medical staff members furnishing services to the patient, including the radiologists, pathologist, anesthesiologists, and the like (are) independent contractors and not employees of the hospital.

ASSIGNMENT OF INSURANCE BENEFITS AND THIRD PARTY CLAIMS: I/we hereby guarantee payment of all charges incurred for the account of the patient and hereby assign any hospital benefits, major medical benefits, PIP benefits, sick benefits, or injury benefits due because of any insurance policy and the proceeds of all claims resulting from the liability of the third party payable by any person, employer or insurance company to or for the patient unless we pay account in full upon discharge. If eligible for Medicare, I request Medicare services and benefits. I understand I am responsible for any charges not covered by insurance, Medicare, Medicaid, or other benefits.

ASSIGNMENT OF PHYSICIAN BENEFITS: In the event that I, the patient in addition to hospital benefits, am entitled to physician or physicians benefits of any type whatsoever, arising out of a policy of insurance insuring me or any other party's liability to me, I hereby assign said benefits to any physician rendering care or treatment during this stay or outpatient visits, to be applied to my bill.

FINANCIAL AGREEMENT: The undersigned agrees he signs as agent or as patient that in consideration of the services to be rendered to that patient, he hereby individually obligates himself to pay the account of the hospital, in accordance with the regular rates and terms of the hospital. Should the account be referred to an attorney for collection, the undersigned shall pay reasonable attorney's fees and collection expense. All delinquent accounts may bear interest at the legal rate. I do hereby appoint the Hospital as my true lawful attorney to act in my behalf to collect the above mentioned claims and to give full and final receipt for me for all amounts so collected, and to endorse for me any checks made payable to me for benefits or claims collected under the above agreements. In the event insurance benefits exceed the actual amount of hospitalization. I hereby authorize and direct the Hospital to apply any overpayment that I may otherwise be entitled to, to any account that may exist at the Hospital for myself, my spouse, or my children or any other account for which I am responsible.

RELEASE OF MEDICAL INFORMATION: I hereby authorize the Hospital and the Physician to furnish necessary information from the medical record requested by my insurance company, its designated agency, or sponsoring third parties (to include Medicare and Medicaid) whose benefits have been assigned for purposes of benefit payment. This information may be transmitted in writing or verbally for the sole purpose to receive benefit payment for services rendered. During my hospitalization at the Hospital, I authorize my treating physicians to direct copies of my medical records to other physicians as they deem necessary for continuity of care while an inpatient.

PERSONAL VALUABLES: The hospital is not responsible for personal property retained in the patient's room and will not be responsible for any personal property of the patient unless it is accepted for safekeeping by the hospital and receipts are issued therefore.

TESTING TO PROTECT HOSPITAL EMPLOYEES AND OTHERS: I consent to appropriate tests for the presence of infection, such as, but not limited to, the Hepatitis B virus or HIV, if deemed necessary for the protection of others. I authorize the withdrawal of blood or other body fluids for this purpose.

THE FOLLOWING INFORMATION CONCERNING ADVANCE DIRECTIVES:

Check the following statements that pertain to you:

_____ I HAVE executed an Advance Directive
_____ A Living Will
_____ Designation of a Health Care Surrogate
_____ Durable Power of Attorney for Health Care
_____ I HAVE Not executed an Advance Directive (A Living Will, Durable Power of Attorney For Health Care Designation of a Health Care Surrogate).
_____ I WOULD like additional information concerning Advance Directives.

To be completed by Admitting:

_____ Patient is unable to complete at time of admission
_____ Copy of Advance Directive not available at the time of admission. Requested that a copy be provided
_____ Patient requests more information.
_____ Copy of Advance Directive is included on the chart for admission.

X **I have received a copy of "Patients Rights in Health Care Decisions". Medical Care is not conditional, NOR will discrimination in care occur based on whether Advance Directives have been executed.**

_____ **I acknowledge that the LAURENS COUNTY HEALTH CARE SYSTEM cannot be responsible for PRE-CERTIFICATION.** It is the responsibility of the patient and/or the patient's physician

X **I acknowledge that I have received the Lewis Blackman Patient Safety Information Sheet of the LAURENS COUNTY HEALTH CARE SYSTEM,** which sets forth the ways in which I may contact my attending physician, addresses the practice of clinical trainees, and provides a list of abbreviations utilized on LCHCS name badges

X **I acknowledge that I have read (or have had read to me) the conditions of admission. I understand and consent to the conditions.**

Patient: ASBILL EMILY ANNA DOB: 02/03/1994

Account Number: 1025422 Medical Record Number: 957075

9/16/2012	MERRY G RHODES		
DATE	WITNESS	PT OR AUTHORIZED REP	RELATIONSHIP TO PT
DATE	WITNESS	PT OR AUTHORIZED REP	RELATIONSHIP TO PT

Sunday, September 16, 2012 01:16 / MGR 1

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT	COUNTY LAURENS
State of South Carolina, V. Michael Vernon Beaty, Jr.,	CASE NO. 2013-CR-30-1553
	SUBPOENA FOR ☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)
TO:Medical Records, Laurens County Hospital-Greenville Health System	
☐ YOU ARE HEREBY COMMANDED to appear in the above-named court at the place, date, and time specified below to testify in the above-entitled case.	
PLACE	COURTROOM
	DATE AND TIME
☒YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).	
LIST DOCUMENT(S) OR OBJECT(S) All medical records of Emily-Anna Asbill during the year 2012. This Subpoena may be complied with by submitting documents to the attorney named below by January 22, 2015.	
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.	
CLERK OF COURT Lynn W. Lancaster (BY) DEPUTY CLERK	DATE January 15, 2015
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE: ☐ SOLICITOR ☒ DEFENDANT	ATTORNEY'S NAME AND ADDRESS C. Rauch Wise Attorney at Law 305 Main Street Greenwood, SC 29646

#15.00 fee

SCCA 253 (JULY 1, 1993)

PROOF OF SERVICE

SERVED	DATE	PLACE	
SERVED ON (PRINT NAME)			MANNER OF SERVICE
SERVED BY (PRINT NAME)			TITLE

DECLARATION OF SERVER

I certify that the forgoing information contained in the Proof of Service is true and correct.

Executed on

_____
SIGNATURE OF SERVER

ADDRESS OF SERVER

SCCA 253 (JULY 1, 1993)

Paul Fredrick
paulfredrick.com
Paul Fredrick Men's Italian Silk Bordered Dots Printed Pocket Square

Emily Crystal Joy

Add Friend Message

Timeline About Friends Photos More

DO YOU KNOW EMILY?

To see what she shares with friends, send her a friend request.

Add Friend

Emily Crystal Joy shared No More Lies & Bruises's photo.
January 23 at 7:26pm

No More Lies & Bruises

We are so excited to announce that the song Lies & Bruises is being recorded by Nashville recording artist Ryan Daniel in Nashville this weekend. Things have st...

See More

Share

4 people like this.

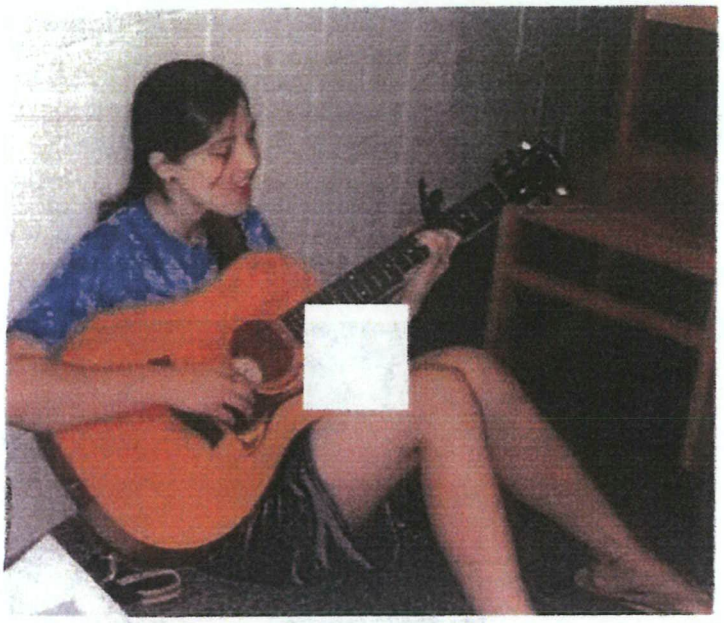
Emily Crystal Joy uploaded a new video
January 22 at 11:29pm

I want to say "WOW" and thank you to all of you for sharing EA'S picture of your Facebook page!

My heart breaks so much that we lost her at such a young age. She was such a Blessing to everyone. She loved everyone, never met a stranger. EA, spent her 19 years making friends from all walks of life, and all over the world.

As we prepare ourselves to walk into the Courtroom again I ask that you pray for us ... See More

COURT'S EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT.#
DATE: 1-26-15
PENGAD 800-631-6989



00:16

1 075 Views
Share

57 people like this.

21 shares

View 11 more comments

Jo Ann Franklin Praying
January 23 at 10 57am

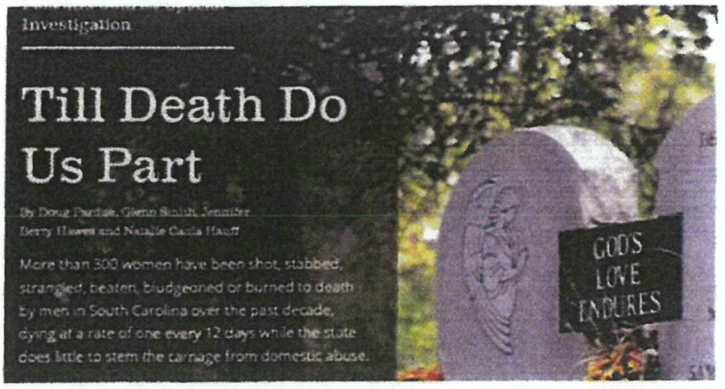
Betsy Bootle Putnam She was a precious gift and for her and for you and your amazing family, I pray that justice will be served! I love you all!
January 23 at 12 52pm

Jerri Walker Praying for justice! The Lord is your comforter.
January 23 at 3 01pm

Deneaer Rice Curry My prayers are with you always.
January 23 at 8 21pm

Emily Crystal Joy via No More Lies & Bruises
January 22 at 11 23am · Edited

Very Powerful! A wake up call for S.C.



Post and Courier domestic violence series wins national award

The Post and Courier's series on domestic violence "Till Death Do Us Part" has been

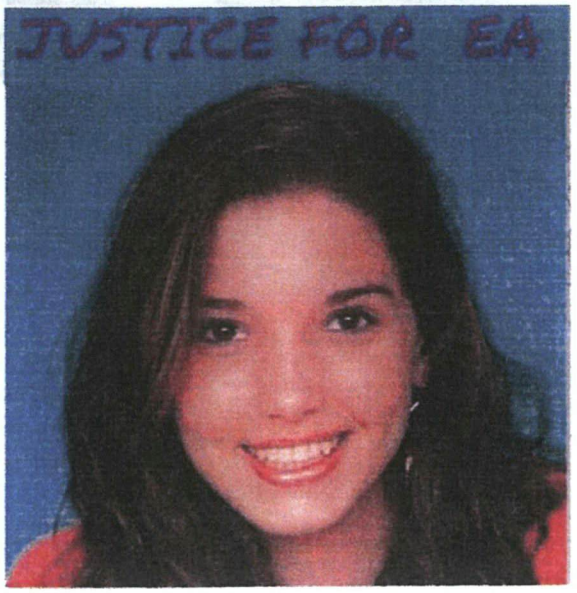
named winner of a national journalism award for "Excellence in Criminal Justice...
WWW.POSTANDCOURIER.COM

Share

6 people like this

4 shares

Emily Crystal Joy updated her cover photo
January 22 at 10:28am

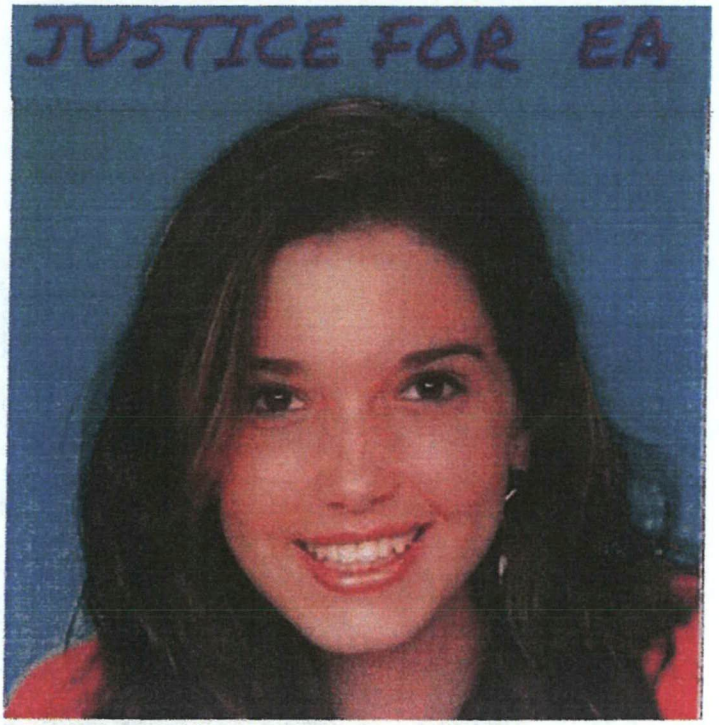


Share

20 people like this

Emily Crystal Joy
January 21 at 11:47pm · Edited

Look at those sweet little Angel kisses all over her face!
Oh how I miss her so much!



Share

11 people like this.

13 shares

Sara Brantham Fowler Such a beautiful girl. Just heartbreaking.
January 22 at 12:36am · 1

Judy M Snow Beautiful girl,Beautiful smile,May God's protective angels give you comfort in the name of Jesus!
January 22 at 6:48am 1

Georgia Ward Alexander Prayers for you, Emily!!
January 22 at 11:36am 1

Emily Crystal Joy Thanks to all of you, this is in God's hands. I appreciate all of your continued support and prayers for our family as we face this
January 22 at 11:38am 1

Emily Crystal Joy shared SCCADVASA's photo
January 21 at 11:28pm

SCCADVASA

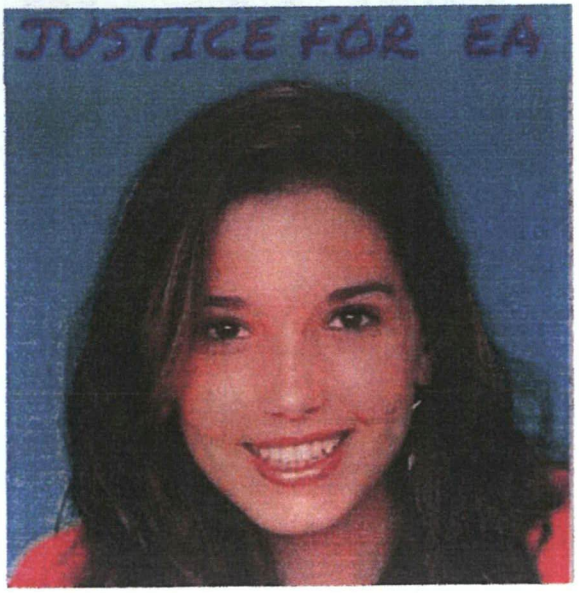
Thank you to the Judiciary Committee for approving the passage of S3 to the full Senate for consideration. We especially wish to thank Senators Martin and Hembr

See More

Share

3 people like this.

Emily Crystal Joy updated her cover photo
January 21 at 11:25pm



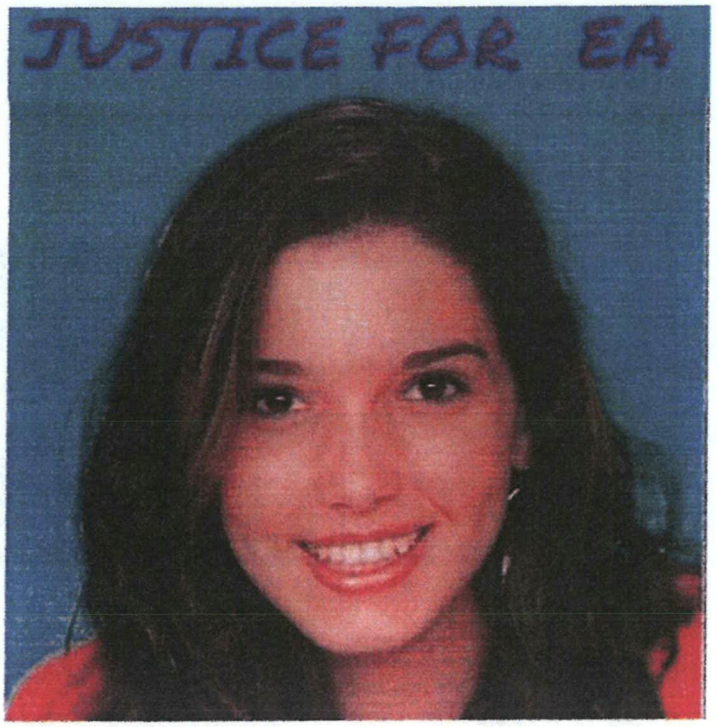
Share

6 people like this.

Emily Crystal Joy Just look at those Angel kisses all over her sweet little face
Oh how I miss her
January 21 at 11:46pm

Emily Crystal Joy
January 21 at 11:24pm

Please feel free to use this picture as we begin this battle



Share

33 people like this.

4 shares

Emily Crystal Joy shared Ryan Daniel's photo
January 21 at 4:58pm

"Lies & Bruises " will be recorded this weekend! Way to go Dwayne MooreMoore Ryan Daniel Ennis

Ryan Daniel

Aww yea! I will be in the studio in Nashville Friday & Saturday recording new single with Barry Best and Rich Herring (Little River Band). Not possible without the support of you, the fans, friends, family and now a huge Thank you to Stringer Holdings/ Stringer

Performance'

Share

6 people like this.

Emily Crystal Joy updated her cover photo
January 21 at 7 53am

Share

21 people like this.

Darlene King Summer Is that yours
January 21 at 8:03am 1

Brenda Baldwin Watkins Better not be lol
January 21 at 8 11am 1

Emily Crystal Joy No, it's a waitress at Fatz
January 21 at 10 14am 1

Patricia S. Wilbanks I love that saying!
January 21 at 6 36pm 1

Emily Crystal Joy
January 21 at 7:51am

Amanda Asbill, your mother loves you so much.
Have a great rest of the week at CofC.
We are Survivors!
Be anxious for nothing, but...let your requests be made known to God; and the peace of God; will Guard our hearts and minds through Jesus Christ. Phil; 6-7

Share

142 people like this

View 20 more comments

Tookie Webster Nemchak Sending love and strength to you both
January 21 at 10 51pm 1

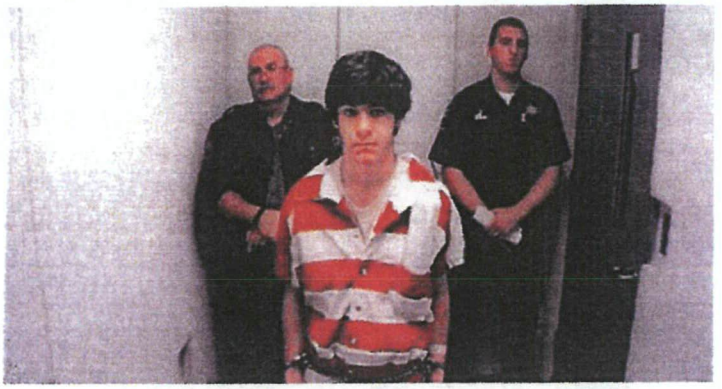
Jamie Cook Ferguson Beutiful Pic ladies
January 22 at 11:26am

Betsy Bootle Putnam Love you both!
January 23 at 12:45pm

Susan Lawson Anderson Wonderful pic of both of you. I love you ladies!
January 23 at 8:58pm

Emily Crystal Joy commented on an article
January 20 at 8:54pm

Teen Violence



Schoolmate's mother comforted teen after stabbing, begged him to 'just hold on, please' during 911 call; Wando community grieves

WWW.POSTANDCOURIER.COM

Share

3 people like this.

Emily Crystal Joy shared Chicago Fire's photo
January 20 at 4:51pm

Tonight!

Chicago Fire

We have way too much fun

Share

Activist at No More Lies & Bruises
Past Kenneth Shuler School of Cosmetology

Studied at Piedmont Tech

Lives in Charleston, South Carolina

From Clinton, South Carolina

783 friends

Became friends with Ann Grady and 18 other people

FRIENDS 783

Taylor Thomas

Buddy Golomoski

Leslie Jarvis Davenport

Betsy Buotte Putnam

Brian Driggs

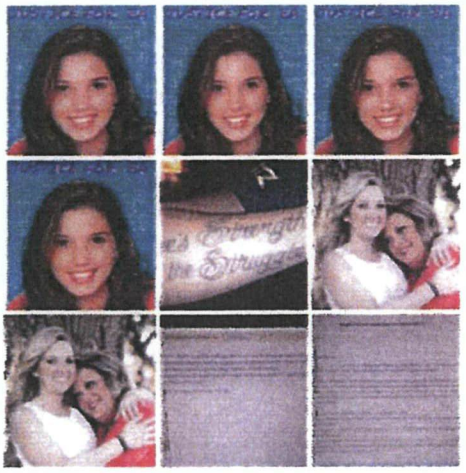
Amanda Asbill

Sara Barrow Pumph

Cindy Callahan Sweatbury

Ann Mayfield

PHOTOS



PLACES

Lodge Alley Inn
About 2 weeks ago

Minero Charleston - with Amanda Asbill
About 2 weeks ago

Sottile Theatre at College of Charleston - with Amanda Asbill
About 2 weeks ago

8 people like this

View 2 more comments

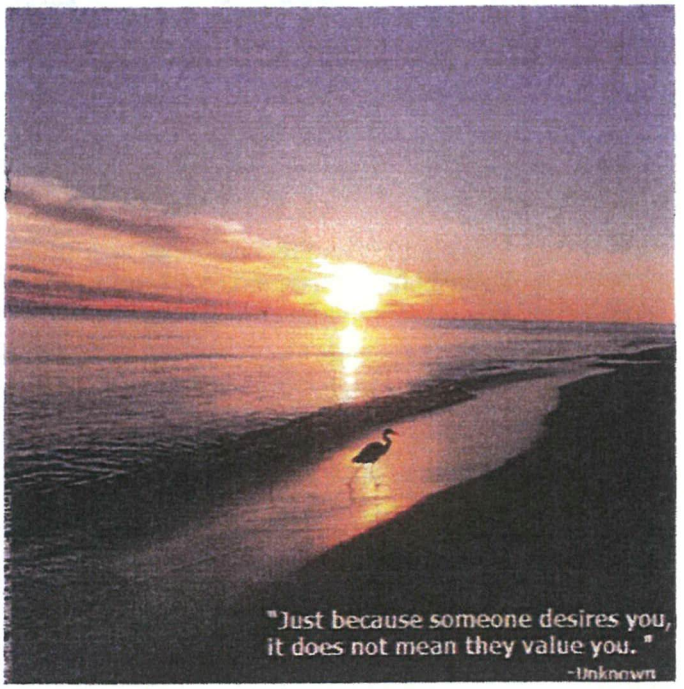
Hannah King Yeah I just checked on the TV. He comes on 4, 7, 13 pretty much all the channels.
January 20 at 6:05pm 1

Emily Crystal Joy
January 20 at 7:30pm

Kathy Sanders BS!
January 20 at 7:55pm 1

Brenda Baldwin Watkins I was in Greenville and hurried home to find out it was not one! Who wants to look at Obama lol
January 21 at 6:55am 1

Emily Crystal Joy shared Domestic Violence Crime Watch's photo
January 19 at 9:46am



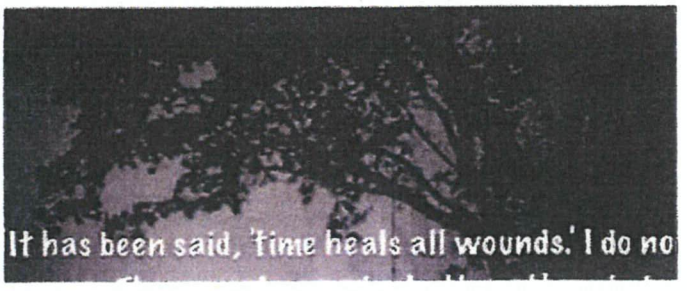
Domestic Violence Crime Watch

Share

8 people like this.

Sherrill Green Soooooo true!
January 21 at 8:14am

Emily Crystal Joy shared Emily-Anna Asbill memorial page's photo
January 18 at 2:49pm



South Carolina State House
About 2 weeks ago

SPORTS · 1

South Carolina Gamecoc...

MUSIC · 35

Darius Rucker

Southern Drawl Band

Sawdust Road

Frases Florence + The

Florence + The Machine

Ryan Daniel

LIKES · 152

Caw Caw Interpretive C

Liza's Lifeline

The Devin Grace Founda

TaylorSCHouse

South Carolina State H

SAVEveryday or g

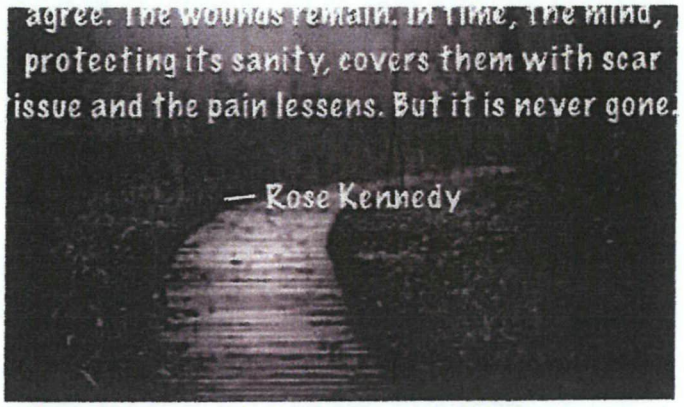
REVIEWS · 2

Beauty By Jaimee

So proud of y'all !

Laurens County Sheriff

RECENT ACTIVITY

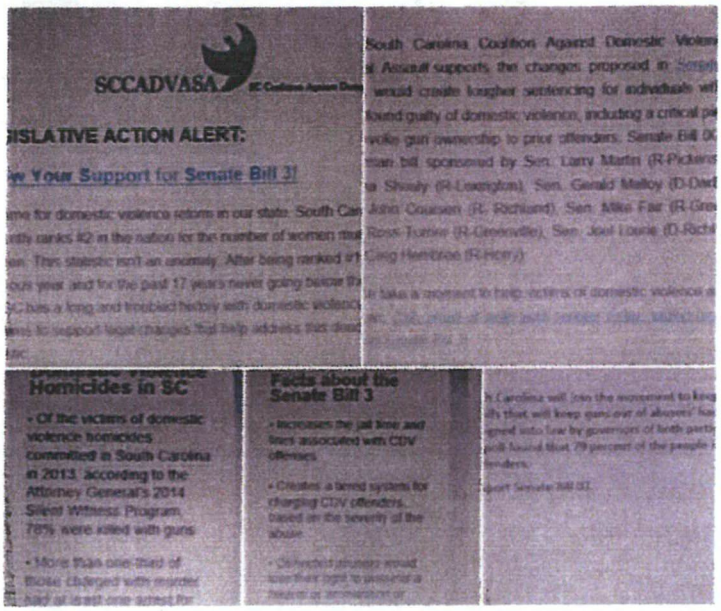


Share

20 people like this.

Emily Crystal Joy added 7 new photos
January 15 at 3:48pm · Clinton, SC

I'm asking all of you to please Call, email, or write your Senator today, urging him/ her to support Senate Bill 3. I've even added a sample of what to write. This is from SCCADVASA.
SC Coalition Against Domestic violence and Sexual Assault
Thanks



Share

21 people like this

2 shares

Emily Crystal Joy
January 14 at 10:06pm · Edited

400 hundred miles in 24 hours. CDV Reform Bill at the State House tomorrow afternoon. " No More Lies & Bruises meeting tomorrow night!
Thank you my precious daughter Amanda Asbill for being by my side last night!

Twelve more days, Anxiety levels are running high!
#IWILLNOTSTOPFIGHTINGILOVEUEA . See More

Share

Emily is now friends with Ann Grady and 9 other people

Emily recommends Speaker Lucas applauds actions of domestic violence ad hoc comm

Emily likes Liza's Lifeline

English (US) Privacy Terms Cookies Advertising More
Facebook © 2015

26 people like this.

2 shares

View 3 more comments

Kathy Sanders God Bless You
January 14 at 10:24pm 1

Emily Crystal Joy GOD IS GOOD!
January 14 at 10:26pm 1

Sheila Wheeler You have done what you could for the fight for ea she is proud of you and the love shown us so precious Emily and Amanda god has his arms around you don't think that justice will be done god bless your heart
January 15 at 6:04am 1

Sheila Wheeler justice is gonna be done I know god bless your heart
January 15 at 6:06am 1

2015

HIGHLIGHTS

More posts from January 14 to December 31

Emily Crystal Joy added 2 new photos
January 14 at 9:49am · Charleston, SC · Edited

Michael Lee Polson made the front page Charleston's Post and Courier paper this morning holding EA'S Silloute

Share

60 people like this.

1 share

View 9 more comments

Travis Smith wow..
January 14 at 1:43pm 2

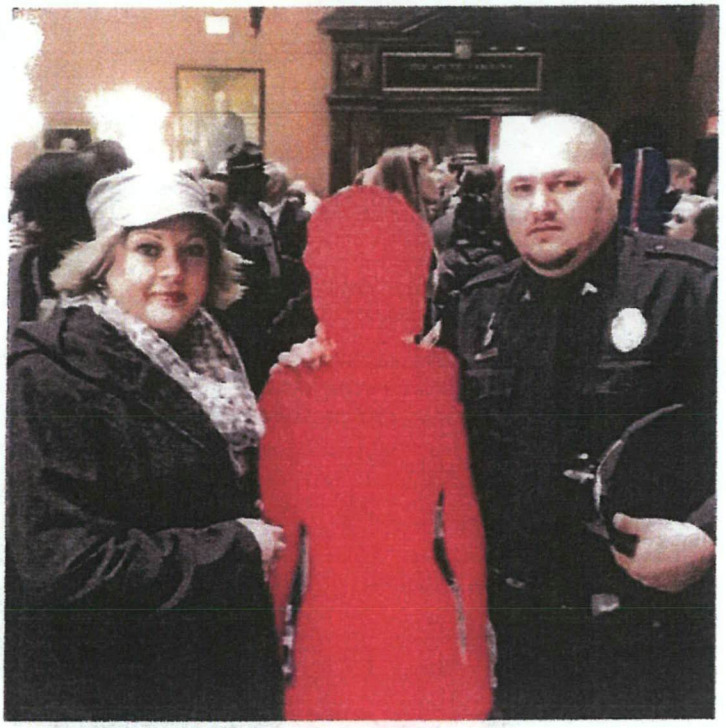
Carol Polson Navarrete So. Very proud of u son and..evryone thats standing with u.words can't express. Love u keep up the good work we need more like u in this world.
January 14 at 2:37pm 2

Sheila Wheeler So good. Ea is so proud to
January 14 at 5:37pm 2

Lisa Hitt Luu Keep up the work you are doing to make a difference love ya!!!
January 15 at 10:34pm 2

More posts from January 14

Emily Crystal Joy changed her profile picture
January 14 at 9:28am



Share

37 people like this.

1 share

Patty Toussaint I love you Emily!
January 14 at 10:35am 1

Emily Crystal Joy I love you too Patty
January 14 at 10:51am

Mary McNeill Shell Love you! Stay strong!
January 19 at 8:32am 1

More posts from January 13 to 14

Emily Crystal Joy shared her photo
January 13 at 10:43pm

#iwontstopfighting

Emily Crystal Joy

Holding EA'S Silloute with Solicitor David M. Stumbo

Share

8 people like this.

Sandra Strange Sooooo Sweet. Thinking about you and your journey
January 13 at 11:50pm

Emily Crystal Joy
January 13 at 10:36pm

Today has been along day, but we are going to make progress here in SC. This is our new Speaker of the House Jay Lucas of Darlington County said, this is the year that the Domestic Violence Laws will be changed!

Share

18 people like this.

1 share

Lisa M Rodgers YES!!!!!
January 13 at 10:37pm

Graham Duncan Speaker Lucas is an awesome guy.
January 16 at 2:18pm

Emily Crystal Joy
January 13 at 10:00pm

What Channel is Chicago Fire on in Charleston? My happy place! – at Lodge Alley Inn

Share

6 people like this.

More posts from January 1 to 13

More posts from January 12 to December 31

Emily Crystal Joy was with Amanda Asbill at Minero Charleston
January 13 at 9:16pm

Share

6 people like this.

More posts from January 13

Emily Crystal Joy
January 13 at 6:58pm

Town Hall , Your voice. Your Future CDV — with Amanda Asbill at Sottile Theatre at College of Charleston.

Share

17 people like this.

Emily Crystal Joy
January 13 at 12:38pm · Columbia, SC · Edited

Mater Patrol Michael Lee Polson held EA'S Silloute during the rally. Thanks so much for being here ! RALLYING AT THE STATE HOUSE in Columbia! NEW LAWS CDV!

Share

17 people like this.

2 shares

Emily Crystal Joy
January 13 at 12:35pm · Columbia, SC

Thanks Mark Leonard for being there with me today . EA would be proud – with Mark Leonard and David M. Stumbo

Share

27 people like this.

Emily Crystal Joy
January 13 at 12:33pm · Columbia, SC

Christan Rainey with Real Mad addressing everyone

Share

19 people like this.

Emily Crystal Joy
January 13 at 12:31pm

Holding EA'S Silloute with Solicitor David M. Stumbo – at South Carolina

State House

Share

23 people **like this.**

2 shares

Betsy Bootie Putnam Beautiful!
January 13 at 12 36pm 1

Sheila Wheeler So great for ea god bless you Emily
January 13 at 5 18pm 1

Jamie Woody Gatchell i'm beyond proud of you for all you are doing! EA has an awesome mother and Amanda does too!
January 13 at 6 42pm 1

Emily Crystal Joy changed her profile picture
January 12 at 11 27am

Share

39 people like this

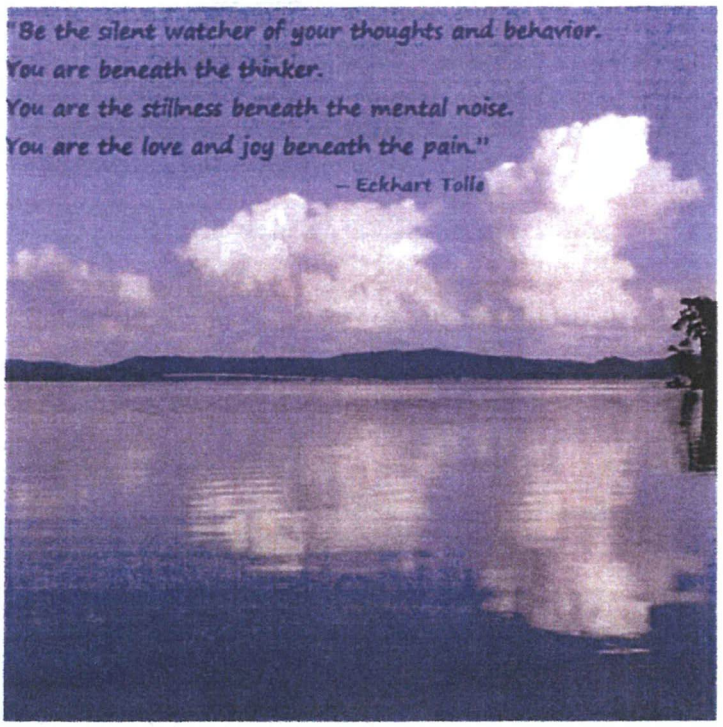
Lynn Greenway Where is this at?
January 12 at 12 19pm

Emily Crystal Joy Charleston, at their silent witness program, someone from Real Mad posted it back in October
January 12 at 12 24pm Edited

Real Mad we did a faith based training on domestic violence with Danielle Author Richardson and these silhouettes were designed by Project Unity USA - the Official Website in which I am the director and REAL MAD that I founded and Christan Rainey is the executive director we do trainings all over SC and usually display the victims from the silent witness put on by the attorney generals office Allen Alan Wilson
January 12 at 1 28pm 2

More posts from January 12

Emily Crystal Joy added a new photo
January 12 at 9 21am



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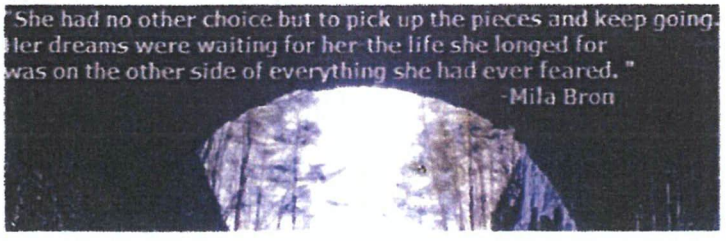
7 people like this.

More posts from January 1 to 12

More posts from January 11 to December 31

Emily Crystal Joy added a new photo
January 11 at 11 19am



Share

13 people like this.

1 share

More posts from January 10 to 11 »

Emily Crystal Joy
January 10 at 11:03am

Amanda Asbill, Just finished my class. A+ !!
Now a treat. – at Panera Bread

Share

32 people like this.

Sandra Strange Good Job Amanda
January 11 at 10:04am

More posts from January 9 to 10 »

Emily Crystal Joy
January 9 at 3:12pm

This is very emotional, thanks for sharing Jennifer Barksdale EA will always be with you

Jennifer Barksdale

Share

23 people like this.

1 share

Jennifer Baldwin Tummons How sweet if Jennifer is half as sweet as her mom ! know she has been a huge help to you!
January 9 at 6 36pm 2

Emily Crystal Joy She is strong and a great young lady. EA loved her so. My house is full of photos of them together. They were so silly! Could make each other laugh often
January 9 at 5 42pm 2

More posts from January 8 to 9

Emily Crystal Joy
January 8 at 9 48am

Happy birthday Elvis !
Remember this Cara Blanton Puntch?
#neededtolaughtoday

ELVIS PRESLEY: Kentucky Rain

Seven lonely days and a dozen towns ago I reached out one night and you were gone Don't know why you'd run, what you're running to or from All I know is I wa...

YOUTUBE.COM

Share

6 people like this.

More posts from January 7 to 8

Emily Crystal Joy
January 7 at 3 06pm Edited

Nice talking with Senator Katrina Frye Shealy of Lexington today at the State Judiciary Subcommittee meeting (CDV) First Step!

Share

62 people like this

1 share

View 2 more comments

Carole McGee Good choice. Emily. Katrina is one of the good ones!!
January 7 at 5:59pm 2

Emily Crystal Joy Carole McGee I thought you would know her. She's great!
January 7 at 6:04pm 1

Garrett Bedenbaugh My cuz!
January 7 at 8:31pm 2

Emily Crystal Joy Garrett Bedenbaugh, such a nice lady!
January 7 at 8:34pm

Emily Crystal Joy
January 7 at 12:37pm Edited

Attending the Senate Judiciary subcommittee meeting — at South Carolina State House

Share

50 people like this.

View 14 more comments

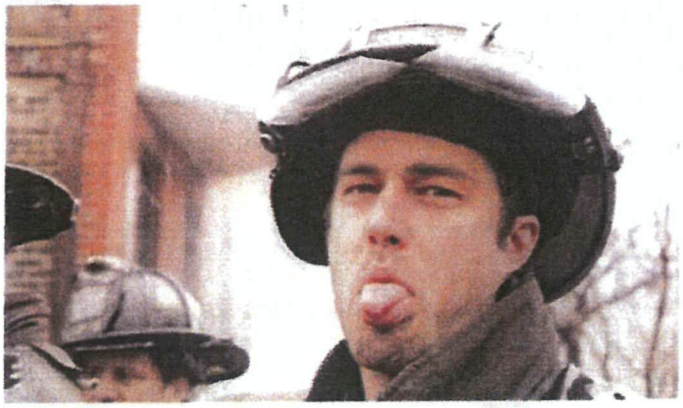
Emily Crystal Joy Thank ya'll #notgoingtostopfighting
January 7 at 7:11pm Edited 2

Donna F Summers Keep fighting !! Proud of you. !!!!
January 7 at 7:50pm 1

Laura Shepard Howell Keep the Faith and keep Standing for what right.
January 7 at 10:56pm 1

Phyllis Simmons Keep up the good work very proud of you Emily
January 8 at 1:20am 1

Emily Crystal Joy shared Chicago Fire's photo
January 6 at 7:17pm



Emily Crystal Joy Charles Home

Emily Crystal Joy Timeline 2015 Highlights Add Friend

Share

7 people like this.

Elizabeth Schultz Soooo I randomly watched this the other day. And I LOVE it
January 6 at 7:35pm

Recent
2015
January
2014
2013
Born

FRIENDS 2015

Brooke Hoole Sheila Griffin

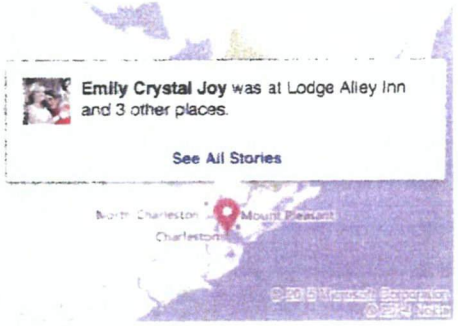
Roger A Harrison Andy Patterson Jason Denby

+18

Samuel Bailey

PLACES 2015

Visited 4 Places



LIKES · 2015

+8

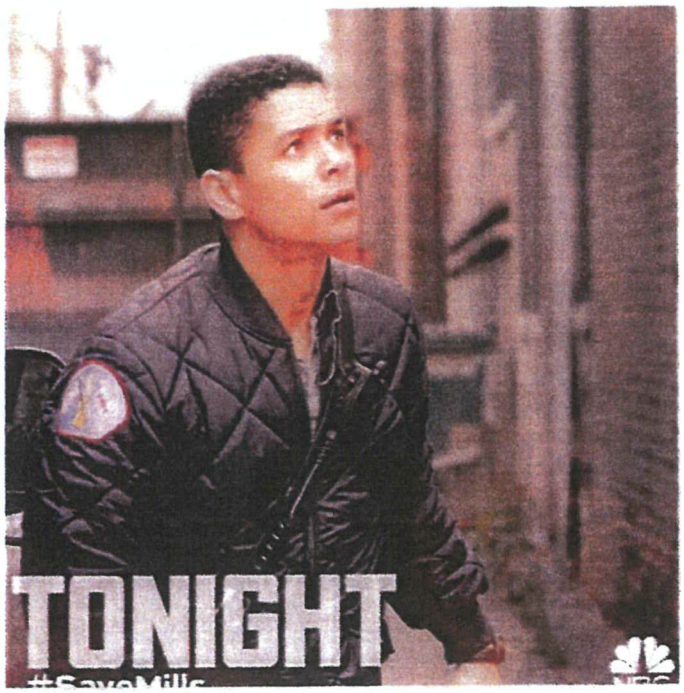
Liza s Lifeline The Devin Grace

Earlier in 2014

Elizabeth Schultz Especially this guy ^. He is reallyyyy nice to look at.
January 6 at 7:35pm

Emily Crystal Joy shared Chicago Fire's photo
January 6 at 11:16am

Ok Ladies, Betsy Bootle Putnam, Brenda Baldwin Watkins, Susan Lawson Anderson
Chicago Fire tonight!!
Again, no text, calls, messages, or visits to me!



Chicago Fire

Can the squad #SaveMills? Find out TONIGHT at 10/9c!

Share

11 people like this.

View 6 more comments

Cindy Heaton Humphries No spoilers for me please. I have to watch it on DVR tomorrow
January 6 at 6:44pm 1

Cindy Heaton Humphries BUT I CAN'T WAIT!!!!!!
January 6 at 6:44pm 1

Mary McNeill Shell 2 hours 15 minutes
January 5 at 7:46pm 1

Dawn Birdsall Wesson Me too!!
January 6 at 9:20pm 1

More posts from January 1 to 6

HIGHLIGHTS

More posts from December 30 to 31

Emily Crystal Joy commented on a link
December 30, 2014 at 10:44am

FRIENDS · 2014

Amanda Comert

James Loveless

Ana Matthew (Wedding Scherrer

Alexis Corrigan Moore

Casey Bearman

Samantha Black

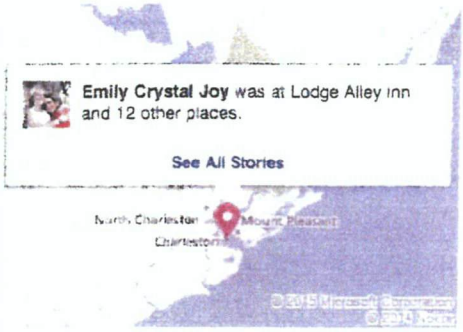
Jason Tamplet Jr

Liz Lucas Stanislawski

+349

PLACES · 2014

Visited 13 Places



LIKES · 2014

Fox Carolina News

Traci Young Fant- PF

+119

Laura is a former student of mine, from Kenneth Shuler School of Cosmetology in Greenville SC. Precious girl ! Please help police find this hit and run driver. Praying for you Laura

Woman left for dead in Breckenridge snowbank; police search for hit-and-run suspect | SummitDaily.com

At St. Anthony Summit Medical Center in Frisco, Laura Hamilton met with a doctor Monday afternoon to talk about the impacts of her brain injury. Then she did physical

WWW.SUMMITDAILY.COM

Share

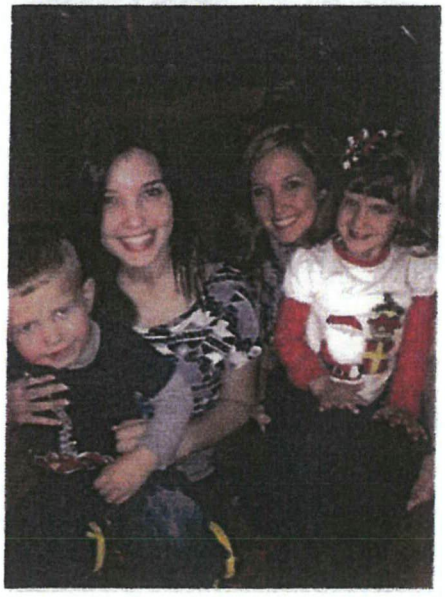
7 people like this.

Nicole Jones Rowland Omg!!!
December 30, 2014 at 8:11pm

More posts from December 24 to 30

Emily Crystal Joy
December 24, 2014

Christmas 2011 with Zack and Madison April Barker Lawson



Share

47 people like this

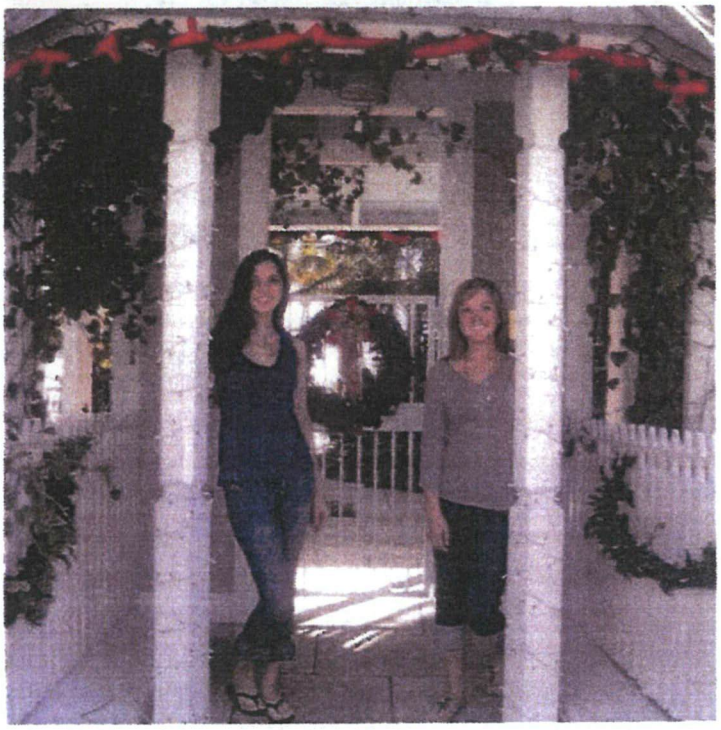
April Barker Lawson Such a special picture!
December 24, 2014 at 10:49am

Emily Crystal Joy Yes it is, one of my favorites!
December 24, 2014 at 10:55am

Darlene King Summer Beautiful Pic THINKING OF YOU SO MUCH DURING THE HOLIDAYS. WE MISS OUR LOVE ONES DURING THIS TIME. THERE ARE OUR ANGELS WATCHING OVER US ALWAYS REMEMBER THAT
December 24, 2014 at 1:30pm

More posts from December 22 to 24

Emily Crystal Joy changed her profile picture
December 22, 2014 · Edited



Share

78 people like this.

1 share

Paige Entrekin Beautiful! Miss EA so much!
December 22, 2014 at 8:24am 1

Karen Saltzman This is beautiful!
December 22, 2014 at 10:19am 1

More posts from December 15 to 22

Emily Crystal Joy
December 15, 2014 · Edited

Santa with Darlene King Summer, Emily Crystal Joy Regina and Sharon at Fatz Clinton enjoying Christmas memories. Over 134 years of Cosmetology! With Nan (who we are missing tonight) it would be 175 years! Cosmetologist Friends Forever!

Share

61 people like this.

View 2 more comments

Vickie Cheek Awwwwwww....y'all are so pretty.
December 15, 2014 at 8:19pm 2

Emily Crystal Joy LMBAO! Tammy D Kelly. Can't keep the good women down!
December 15, 2014 at 8:47pm 2

Karen Saltzman Pretty!
December 15, 2014 at 11:11pm 1

Becky Evans I took this pic hope u ladies enjoyed ur selves!!
December 31, 2014 at 11:42pm 1

Emily Crystal Joy
December 15, 2014

Love my Manicurist, makes me happy and my nails look great! Thank you Hannah Ngoc Han Huynh. Great the therapy for Ms. E

Share

47 people like this

1 share

Leslie Copeland Hughes Love her she does mine!
December 15, 2014 at 5:08pm 1

Carol Church Cute. Is she really taller than you?
December 15, 2014 at 6:25pm 1

Emily Crystal Joy Yes Carol ChurchCarol she is!
December 15, 2014 at 9:11pm 1

Jamie Woody Gatchell Two beautiful ladies.
December 15, 2014 at 9:27pm 1

Emily Crystal Joy changed her profile picture
December 15, 2014

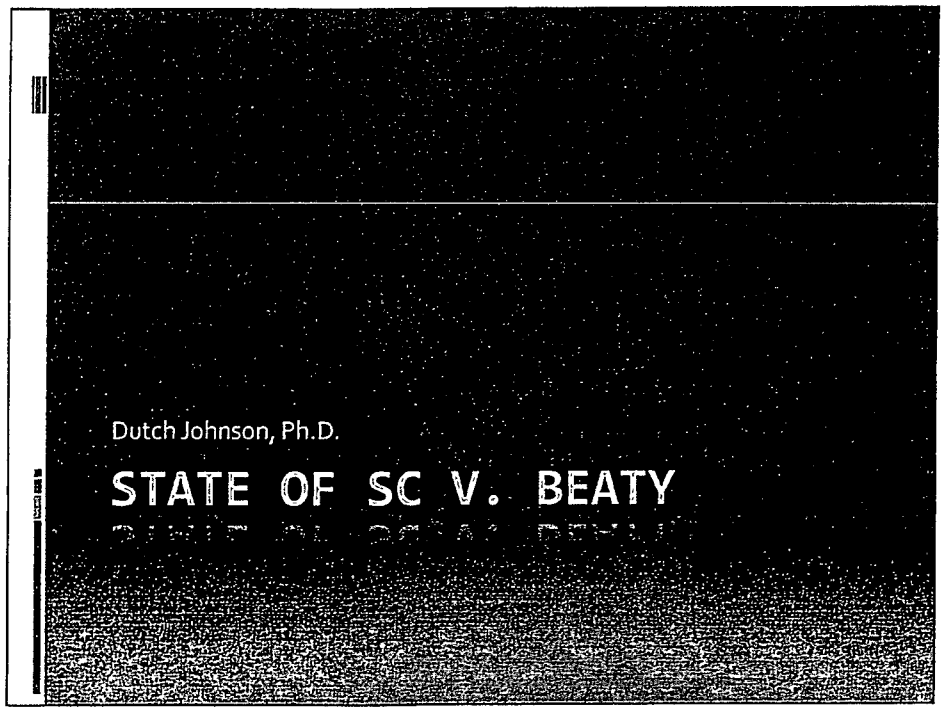
Share

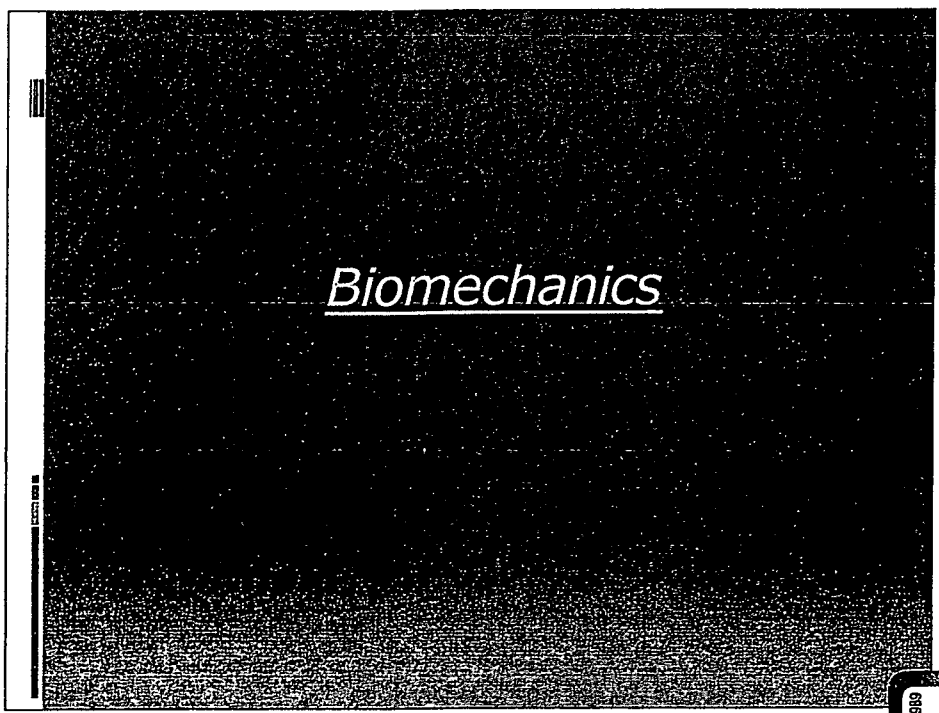
39 people like this.

Janice Ward Pretty.
December 15, 2014 at 5:08pm 1

More posts from January 1 to December 15

See More 2014 Stories





PENGAD 800-631-6989
COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT.# M. Beaty
DATE: 1-29-15

Biomechanics – Overall

- Defined:
  - Physics applied to the human body

Biomechanics – Overall

- History:
  - Claudius Galen, gladiator physician, 100–200 AD
  - Leonardo Da Vinci, engineer/anatomist, 1400s
  - Giovanni Borelli, Iatrophysics, 1600s
  - U.K., biocompatible materials, 1950s
  - ASME, Human Factors/Bioengineering Div., 1948/1976
  - 1000's of peer-reviewed journal articles
  - 20 professional societies
  - 40+ colleges & universities w/ degree or cert. programs

Injury Biomechanics

Injury Biomechanics – Overall

- Defined:
  - Mechanical engineering principles applied to human injury
- Application:
  - Reconstruction of events that resulted in injury or death

Injury Biomechanics – Skill Set

- Mechanical Engineering:
  - Analysis of machines & structures
- Mechanical Failure Analysis:
  - Analysis of machine & structural failures
    - Plane crashes
    - Oil refinery explosions
    - Automobile component failures
    - Human body implant failures

Injury Biomechanics – Skill Set

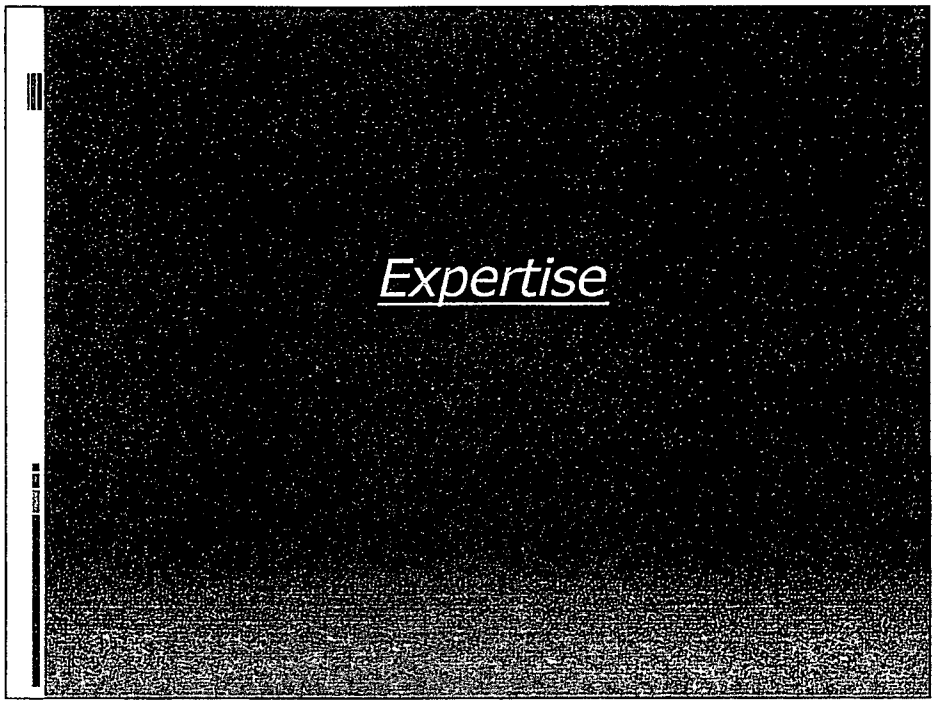
- Mechanical Failure Analysis:
  - Analysis of machine & structural (i.e., material) failures
- Injury Biomechanics:
  - Analysis of human body structural (i.e., material) failures

Injury Biomechanics – Skill Set

- Injury Biomechanics = Mechanical Failure Analysis:
  - Analysis of material failures
- Engineering Materials
  - E.g., steel, aluminum, plastic, composites, wood, etc.
- Human Body Materials
  - E.g., bone, ligaments, tendons, muscle, skin, etc.

Injury Biomechanics – Skill Set

- Mechanics (physics)
  - Classical
  - Deformation
- Anatomy & Physiology
- Pathology
- Kinematics
- Injury Tolerance



Injury Biomechanics – Expertise

- Expertise:
  - Analysis of forces, motions, energies, & deformations
  - Injury tolerance
  - Determining how an injury occurred

Biomechanical Analysis

Photographs

- Autopsy ###:
  - Photos taken during Ms. Asbill's autopsy on June 30, 2013.
- Clinton PD ###:
  - Evidence photos taken by Clinton PD on June 29, 2013.
- SLED ###:
  - Crime scene & hospital photos taken by SLED on June 29, 2013.
- Testing:
  - Photos taken by WFB during testing with surrogate, exemplar clothing, and exemplar vehicle during Dec 2014 & Jan 2015.

Terminology - General

- Anterior: Toward the front of the body.
- Posterior: Toward the back of the body.
- Medial: Toward the midline of the body.
- Lateral: Away from the midline of the body.

Injuries

- Ligature mark across anterior neck*
- Contusions next to larynx & trachea*
- Facial & conjunctival petechiae*
- Abrasions & contusions of hands & right forearm*

*Report of Autopsy authored by Janice E. Ross, MD, performed June 30, 2013 @ 9:00 am.

Terminology – Injuries

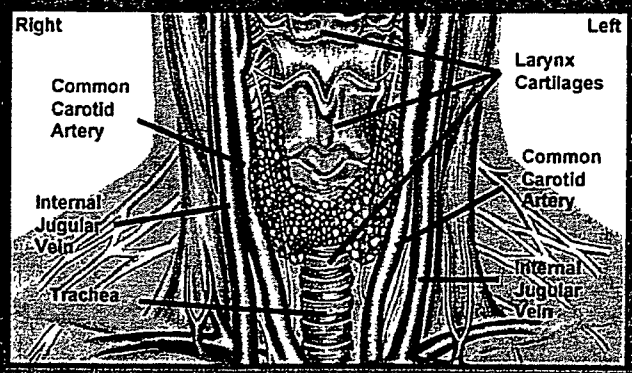
- Ligature mark: A mark, such as a groove or indentation in the tissue, resulting from a material being tightly applied around the body structure (e.g., neck).
- Contusion: Bruise. Discolored skin due to underlying ruptured blood vessels.
- Abrasion: Surface of skin is worn away by rubbing or scraping.

Terminology – Injuries

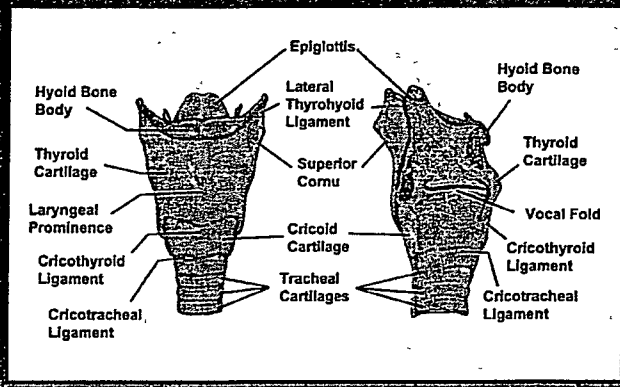
- Petechiae: Small dark red spots caused by bleeding into the skin due to ruptured capillaries resulting from over-pressurization.
- Conjunctiva: Tissue membrane that covers the front of the eye and lines the inside of the eyelids.

Relevant Anatomy

Anatomy – Neck



Anatomy – Larynx



Injury Mechanisms

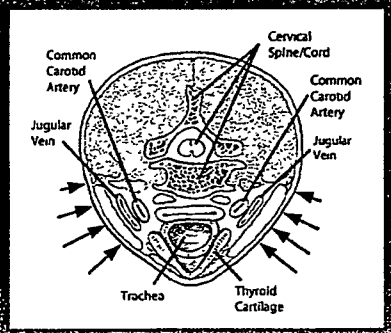
Injury Cause & Mechanism

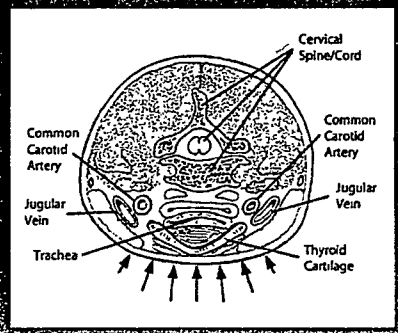
- Asphyxia due to strangulation*
- Definitions:
  - Asphyxia: Variety of conditions that result in the interference with the uptake of oxygen (e.g., compression of the neck with or without blockage of the airway).+
  - Strangulation: Force applied to the neck manually or with a ligature.++

*Report of Autopsy authored by Janice E. Ross, MD, performed June 30, 2013. +Spitz & Fisher, 2006. ++Polson & Gee, 1973.

Injury Cause & Mechanism

- Effect of externally applied forces on internal neck structures.





Human Tolerance

Human Tolerance – Occlusion

- Ligature tension to occlude blood vessels (normal)
  - Internal jugular veins: 4.4 pounds*
  - Common carotid arteries: 11 pounds*
- Ligature tension to occlude the airway
  - Trachea: 33 pounds+

*Di Maio & Di Maio, 2006; +Polson & Gee, 1973

Human Tolerance – O_2 Deprivation

- Carotid artery occlusion effect with time (normal)
  - Unconsciousness: 10 to 15 seconds*+
  - Non-spontaneous return of respiration: > 120 seconds**^

*Di Maio & Di Maio 2006; +Spitz & Fisher 2006; **Hall & Butler 2007; ^Polson & Gee 1973

Arm & Hand Abrasions

Photo – Autopsy FA13-465-21

Photo – Autopsy FA13-465-22

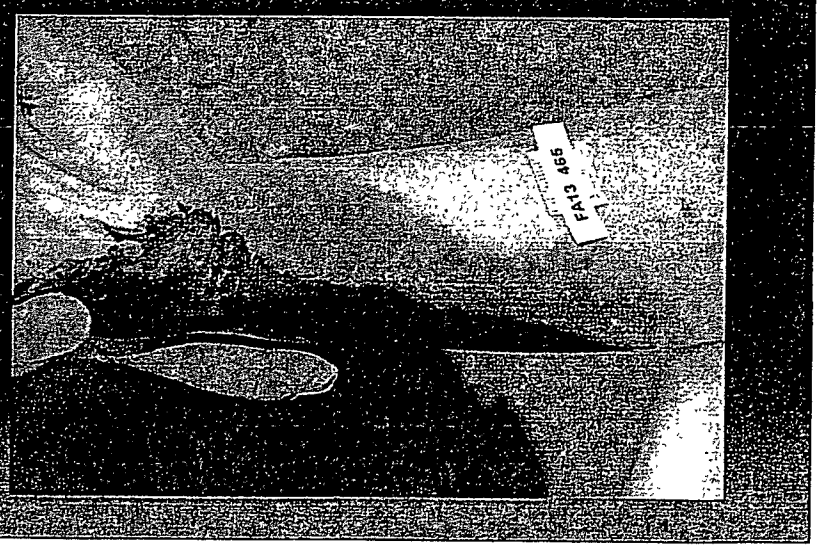
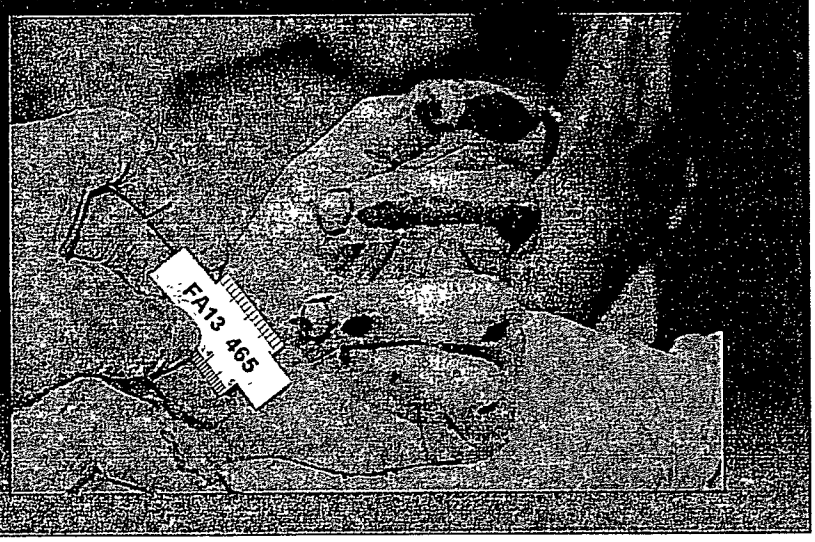


Photo – Autopsy FA13-465-18



Arm/Hand Abrasion Characteristics

- Abrasion to right forearm is consistent with sliding contact being made between these body surfaces and an asphalt surface (i.e. roadway) at a speed significantly greater than that of normal walking.
- Abrasions to right and left hand fingers are consistent with sliding contact being made with an asphalt surface (i.e. roadway).

Neck Ligature Mark

Photo – Autopsy FA13-465-26

Photo – Autopsy FA13-465-31
FA13-465

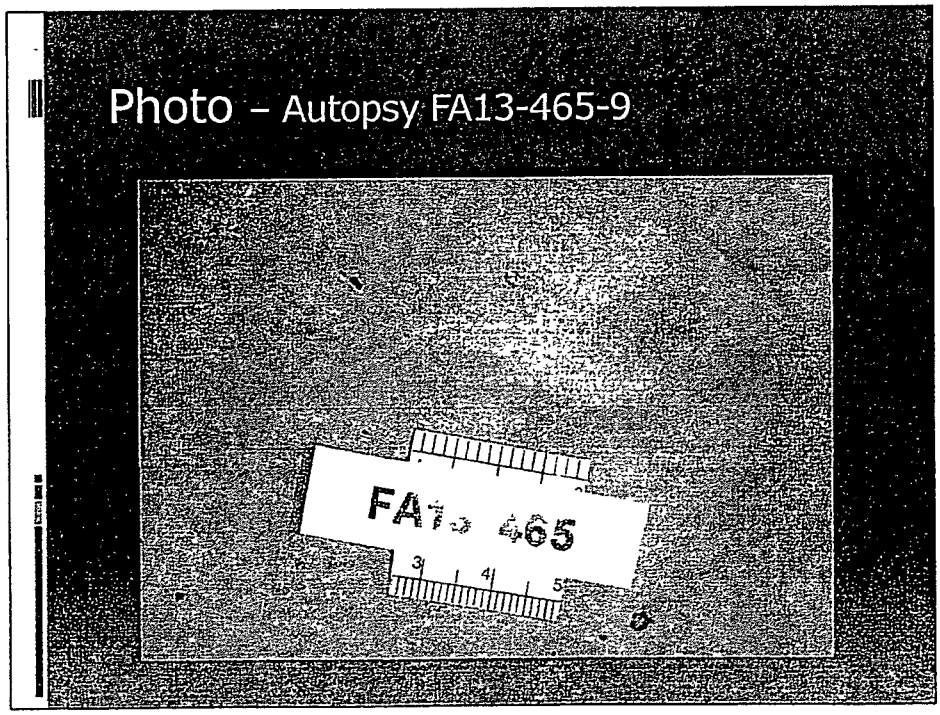
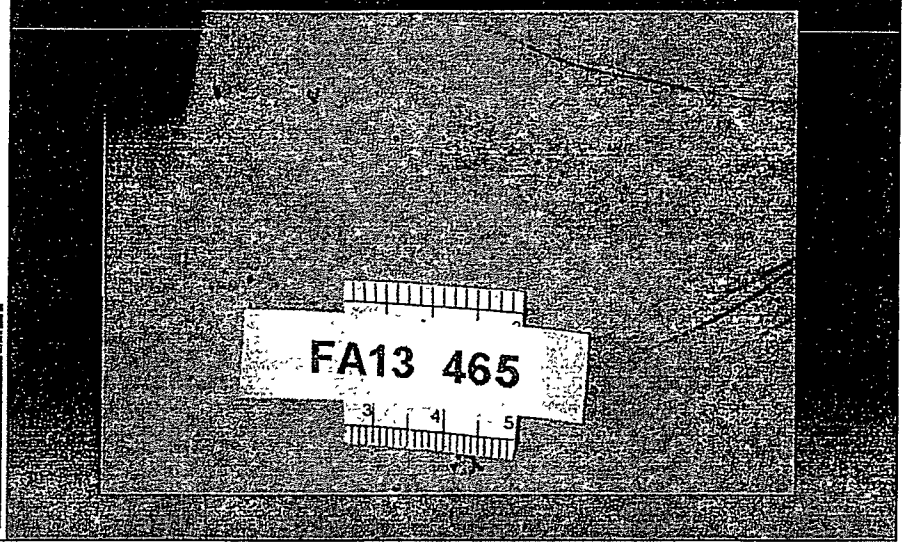


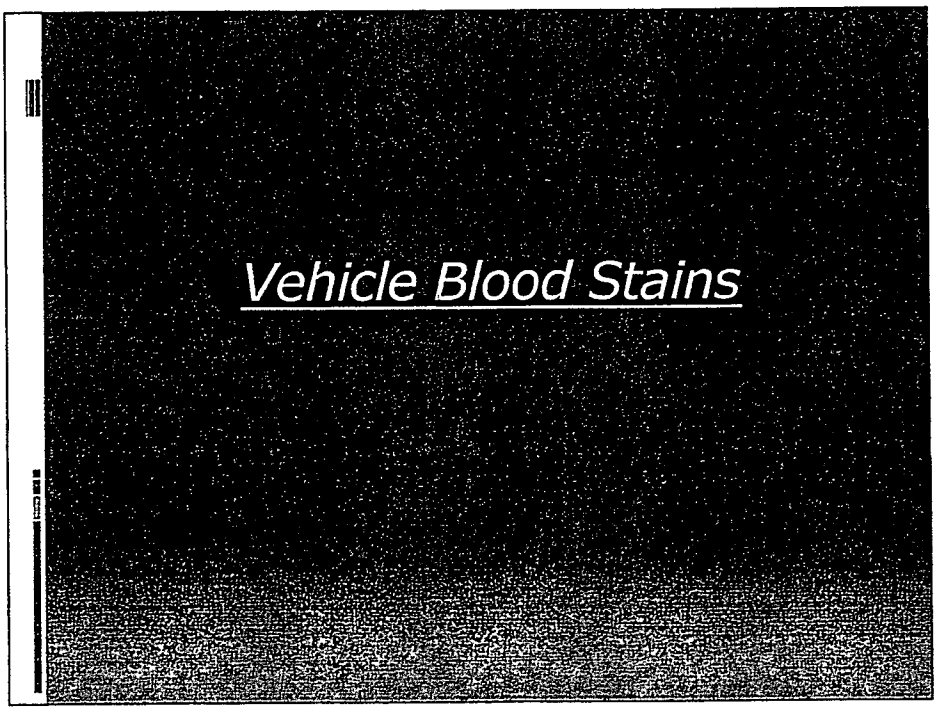
Photo – Autopsy FA13-465-9
FA13-465

Photo – Autopsy FA13-465-16



Ligature Mark Characteristics

- Traverses front of neck with the higher end on left side & lower end on right side.
- Has an overall appearance of curving downward at right of center of neck.
- Varies in width being overall wider at the right side & narrower toward the center & left side.


Vehicle Blood Stains

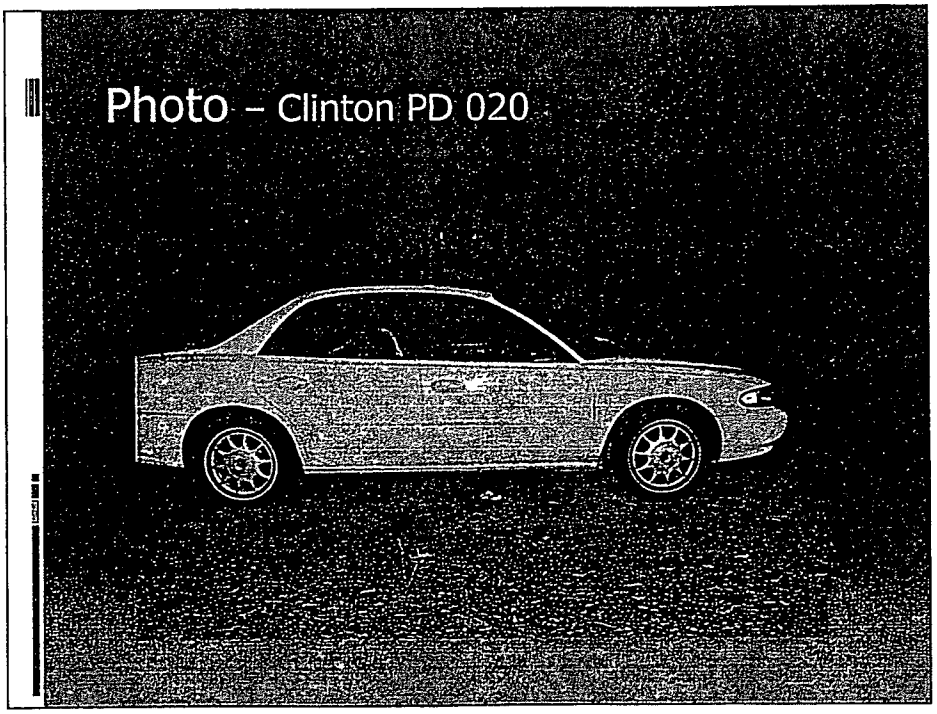


Photo – Clinton PD 020

Photo – Clinton PD 234

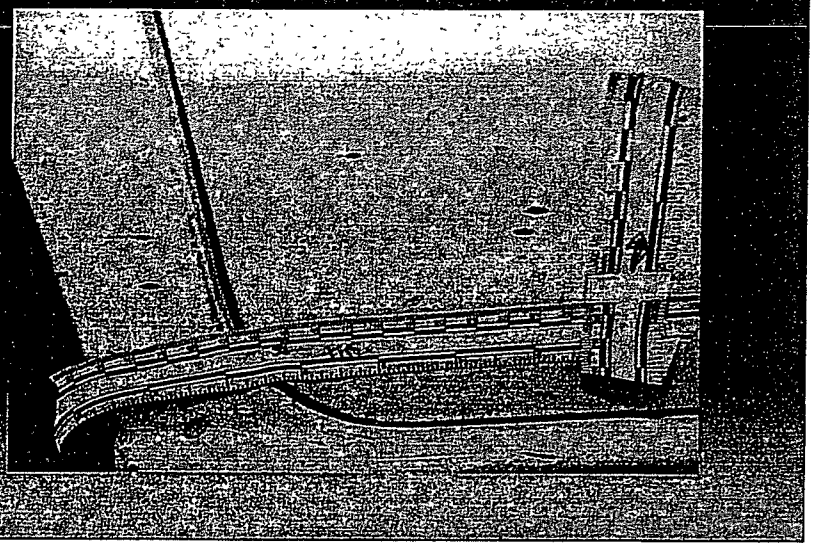


Photo – Clinton PD 046

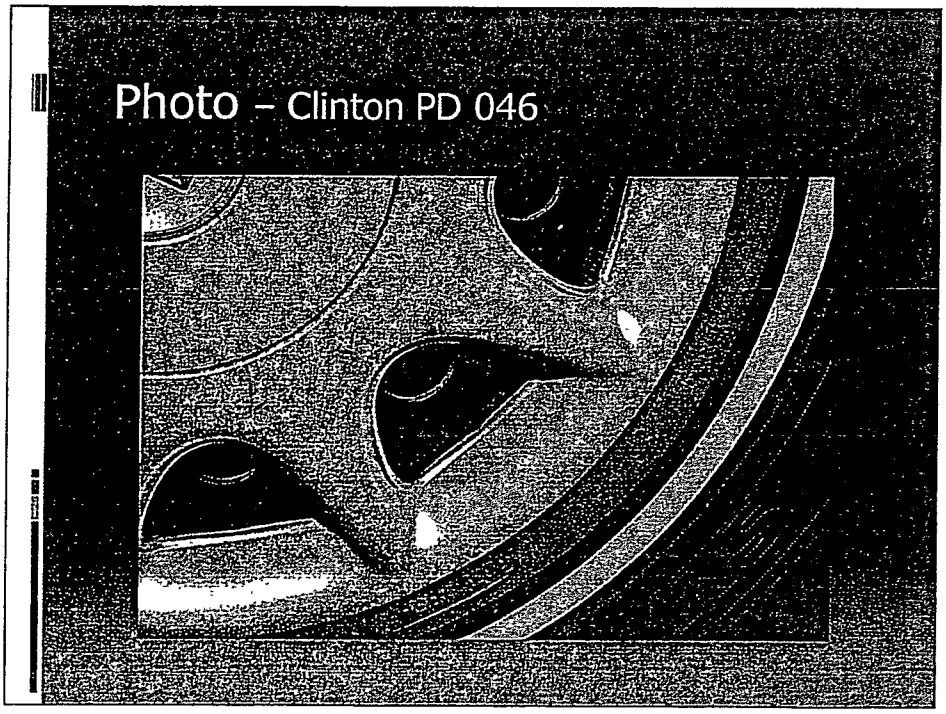
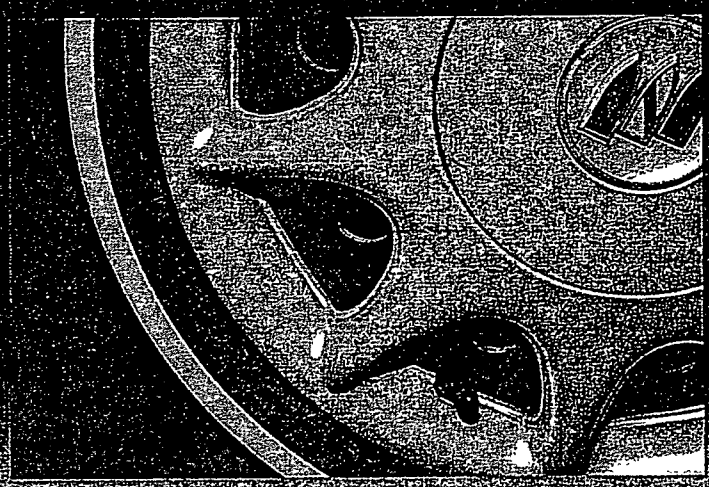
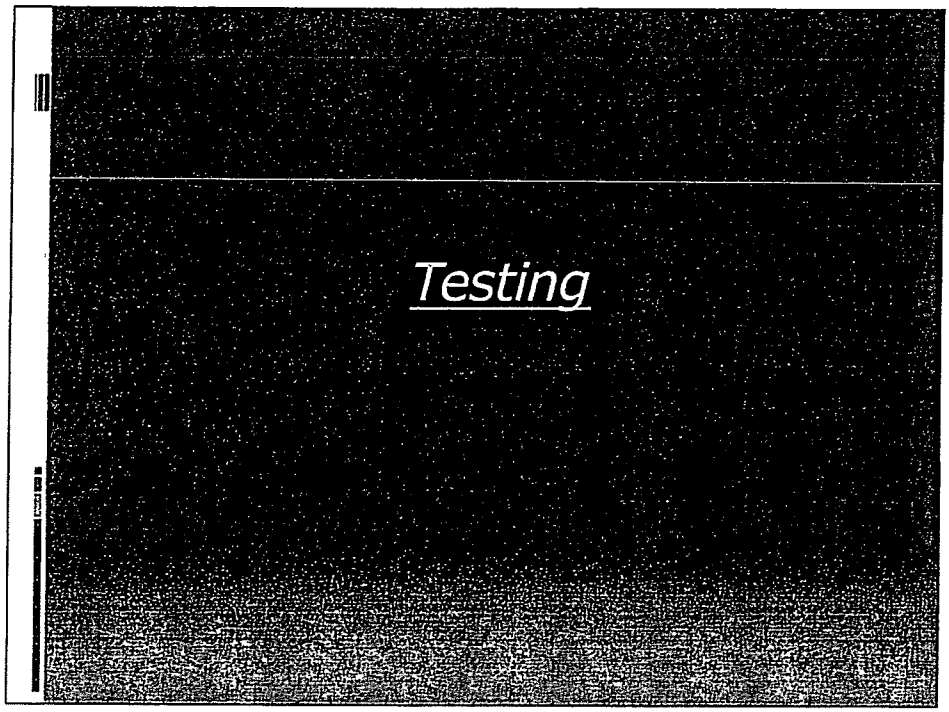


Photo – Clinton PD 050



Vehicle Bloodstain Patterns

- Blood stain patterns on right rear hubcap are consistent with blood impacting the hubcap face via shallow angles.
- Blood stain patterns on right rear hubcap are consistent with blood impacting hubcap from different directions.
- Larger blood stain patterns on right rear door and right rear quarter panel are consistent with the blood impact angle being approx. 20 degrees and upon impact the blood moving approx. horizontally from front to rear of the vehicle.



Testing – Purpose

- Overall
  - Identify possible incident scenarios based on the physical evidence and facts of the case.

Testing – Objectives

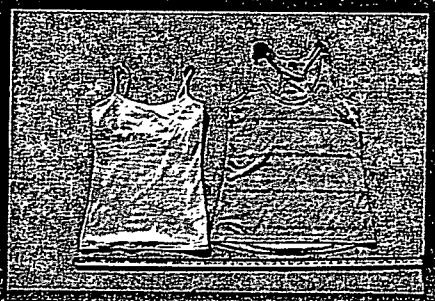
- Primary
  - Estimate speed of vehicle based on blood stain patterns.
  - Identify the likely body positioning that would have resulted in the abrasions to Ms. Asbill's arm & hands.
  - Evaluate various possible body movement restraints including seat belts, door, and being held by the shirt(s).
  - Evaluate body movement without restraints.

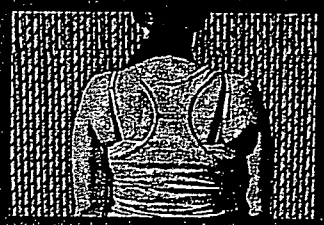
Testing – Objectives

- Primary
  - Identify whether or not restraining Ms. Asbill by her shirt(s) could have resulted in them pulling on her neck.
  - Measure the shirt pulling (on the neck) forces.
  - Compare the measured shirt pulling (neck) forces with those in the literature known to cause unconsciousness.
  - Investigate ligature mark characteristics produced by a USB cable with the same diameter as the subject cable & the neck hem line of the exemplar camisole & tank top.

Testing – Clothing

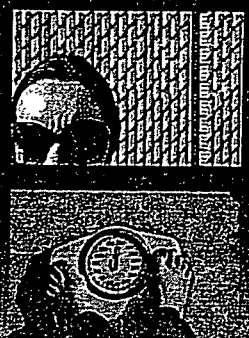
- Selected based on autopsy and Clinton PD photographs.
- Exemplar camisoles and tank tops provided by attorney.





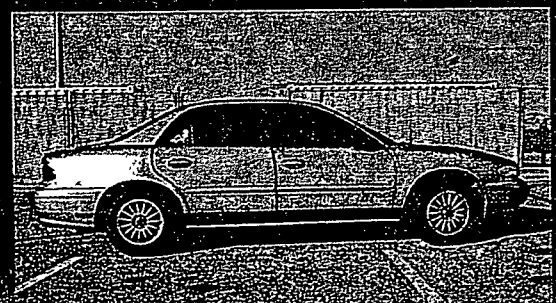
Testing – Surrogate

- Selected based on autopsy report and driver's license.
- Female, 5' 8" tall, 160 pounds.



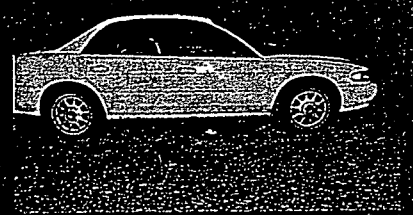
Testing – Exemplar Vehicle

- Selected based on subject vehicle's VIN.
- 2003 Buick Century.



Testing – Seat Positioning

- Based on SLED crime scene photographs

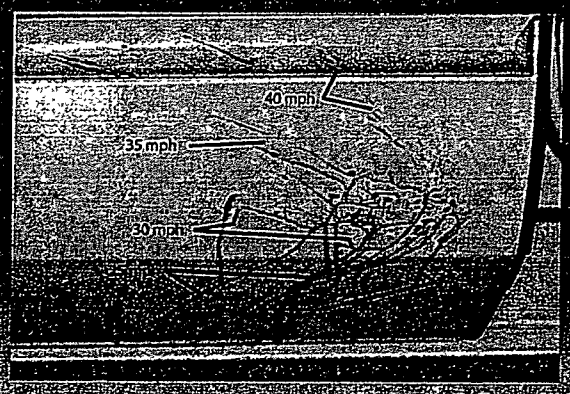


Testing – Vehicle Speed Estimate

- Based on largest bloodstains on RR door/quarter panel.
- Porcine blood dripped onto vehicle at different speeds.

Testing – Vehicle Speed Estimate

- Estimated vehicle speed: 30 mph.



Testing – Body Positioning

- Based on autopsy photographs (arm & hand abrasions).
- "Contact" position.

Testing – Body Movement

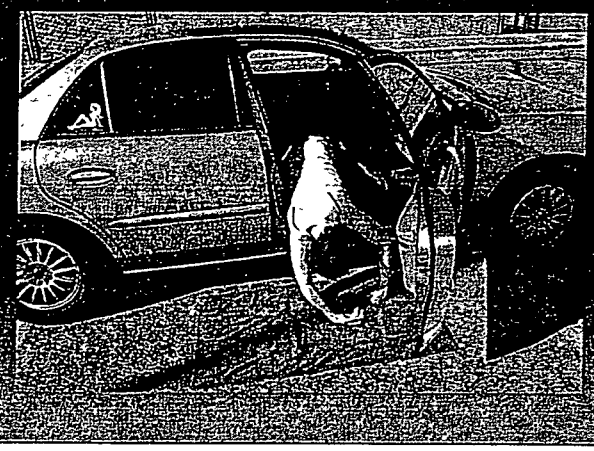
- Seat belt position based on SLED photographs.

Testing – Body Movement

- Surrogate restrained with seat belt – lap & shoulder.

Testing – Body Movement

- Surrogate restrained with seat belt – lap only.

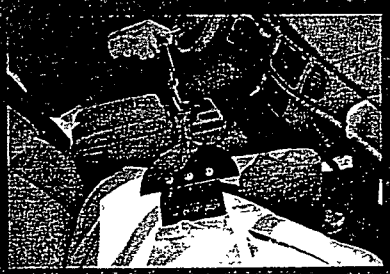


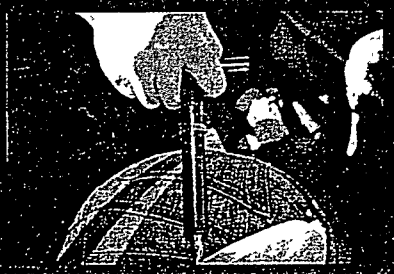
Testing – Body Movement

- Surrogate restrained by driver holding "shirts" with right hand.

Testing – Surrogate Restraining Force

- Measured using special clamp and force gage.



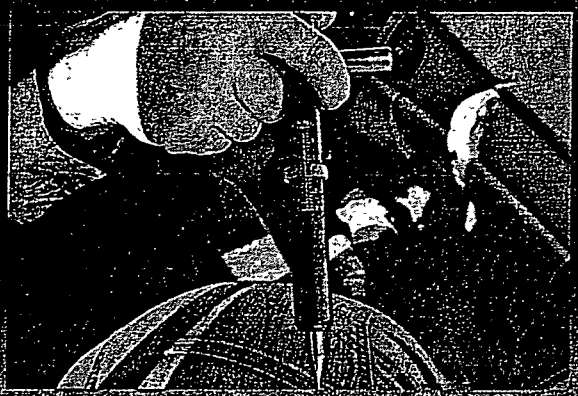


Testing – Surrogate Restraining Force

- Driver restraining surrogate by "shirts" with clamp and force gage.

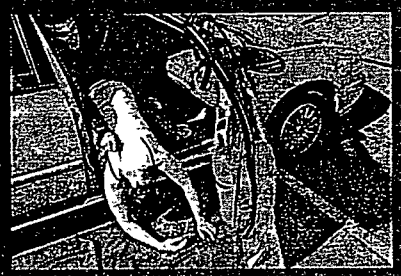
Testing – Surrogate Restraining Force

- Restraining force measured to be: 23 (+/- 3) pounds.



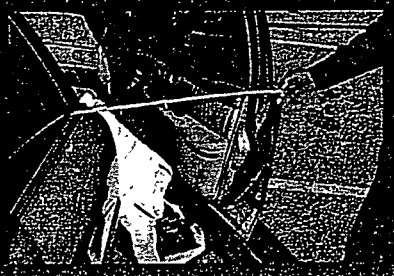
Testing – Body Movement

- Surrogate restrained by driver holding "shirts" with right hand then releasing hold on "shirts."



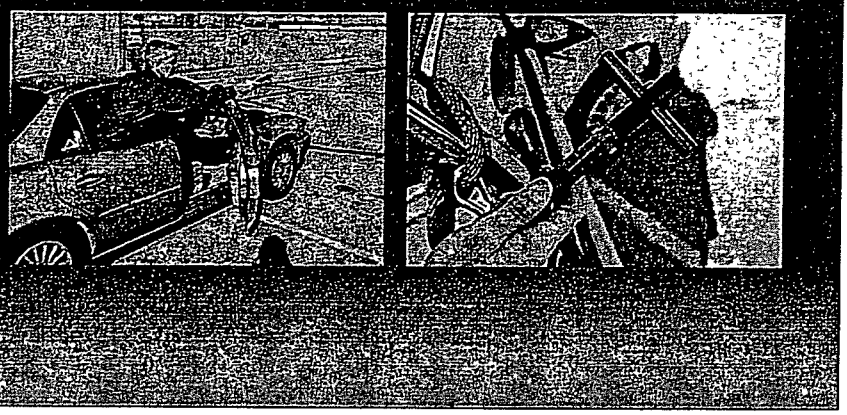
Testing – Door Restraining Force

- Measured using force gage attached to RF window frame at previously estimated vehicle speed (~30 mph).



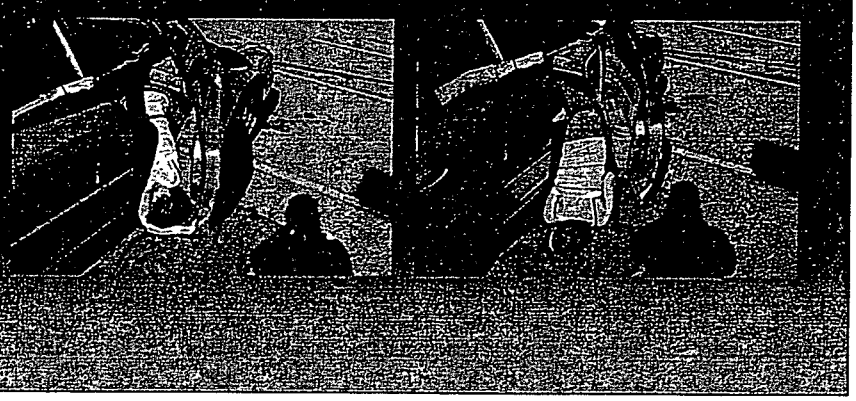
Testing – Door Restraining Force

- Restraining force measured to be 5 (+/- 1) pounds.



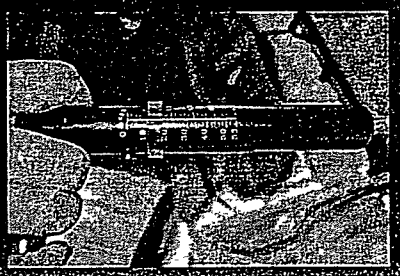
Testing – Body Movement

- Surrogate self restraining in contact position then asked to completely relax while door restraining force applied.



Testing – Body Movement

- Surrogate self restraining in contact position then asked to completely relax while door restraining force applied.



Testing – Body Movement

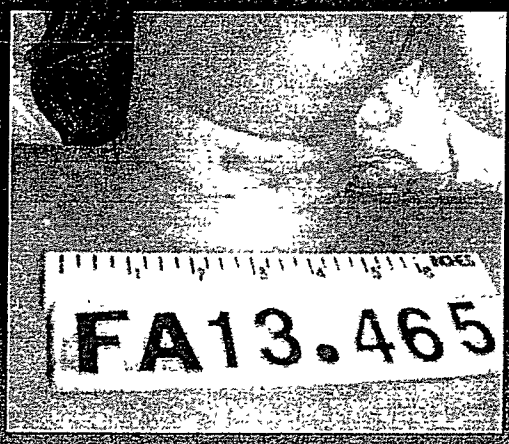
- Surrogate on knees in RF foot-well restrained by driver holding shirts, then driver releases hold on shirts.

Testing – Body Movement

- Surrogate asked to relax and slide down to RF passenger foot-well while turning to the right.

Testing – Ligature Mark L-R Orientation

- Autopsy photo FA13-465-26



Testing – Ligature Mark L-R Orientation

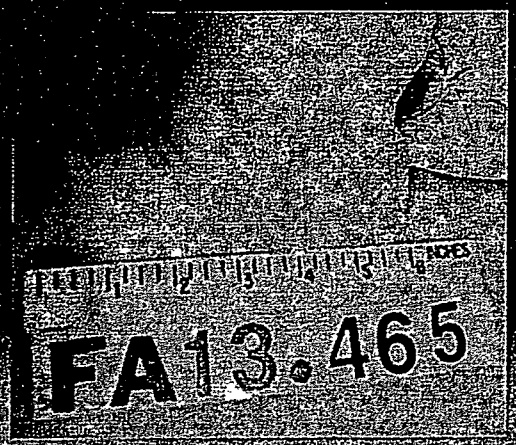
- Various grab locations and initial shirt positions evaluated.

Testing – Ligature Mark Overall Curvature

- Autopsy photo FA13-465-26

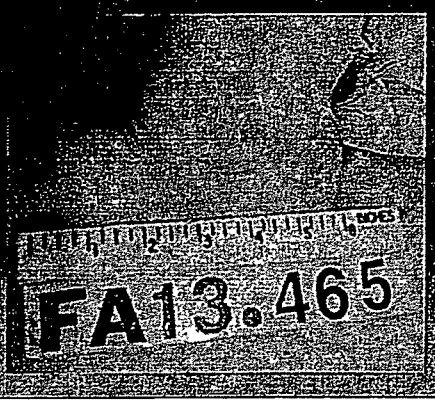
Testing – Ligature Mark Overall Curvature

- Autopsy photo FA13-465-31



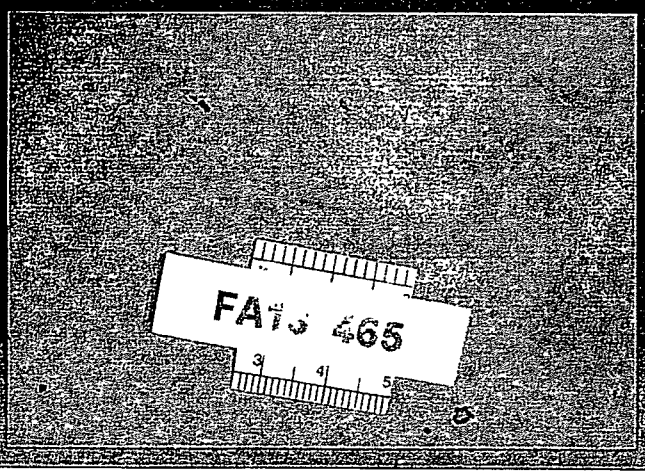
Testing – Ligature Mark Overall Curvature

- Downward curvature ("dip") near abrasions on neck.
- Curve approximates geometry of neck around trachea.



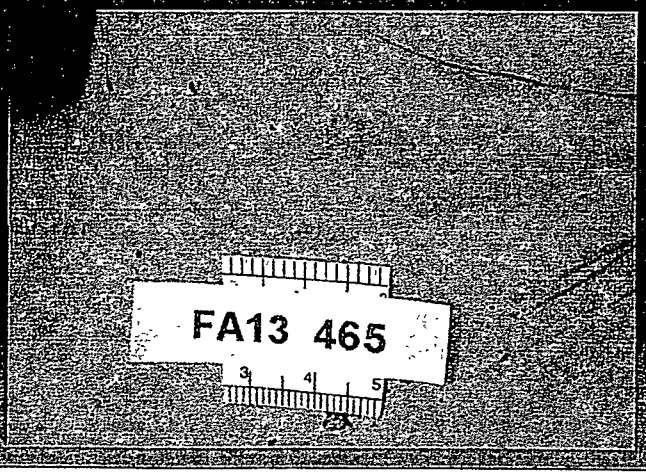
Testing – Ligature Mark Width

- Autopsy photo FA13-465-9



Testing – Ligature Mark Width

- Autopsy photo FA13-465-16

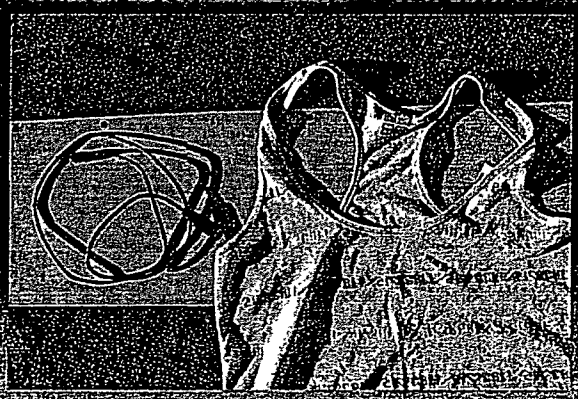


Testing – Ligature Mark Width

- Based on Autopsy photos FA13-465-9, 16.
- Ligature mark width varies from ~1.5 to ~5 mm.
- Autopsy Report states ligature mark width = 0.2" (~5 mm).

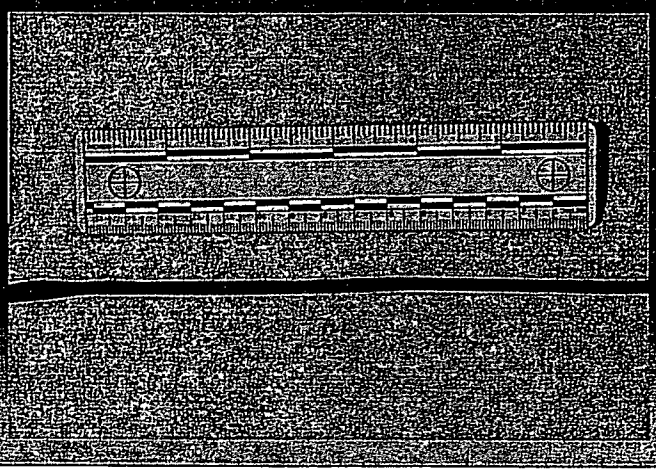
Testing – Ligature Mark Width

- USB cable, ~4 mm diameter.
- Exemplar tank top.



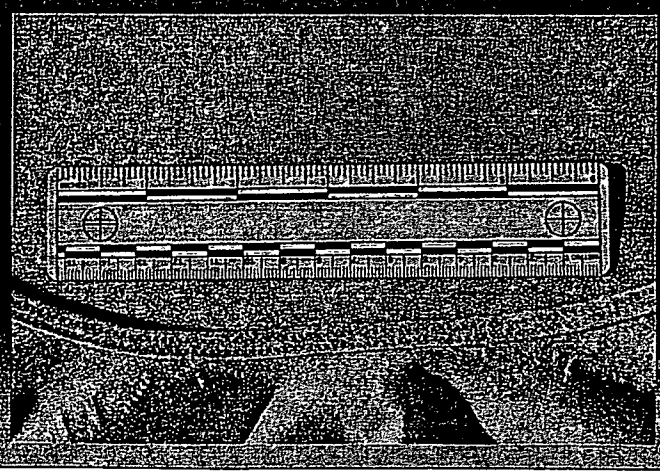
Testing – Ligature Mark Width

- USB cable, ~4 mm diameter – without tension.



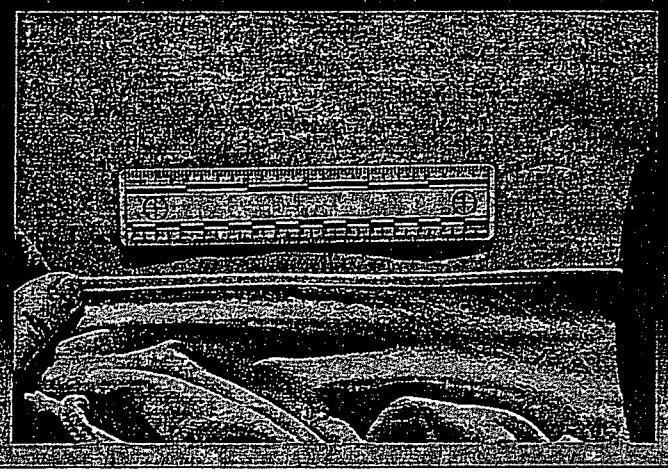
Testing – Ligature Mark Width

- Exemplar tank top, ~8 mm hem – without tension.



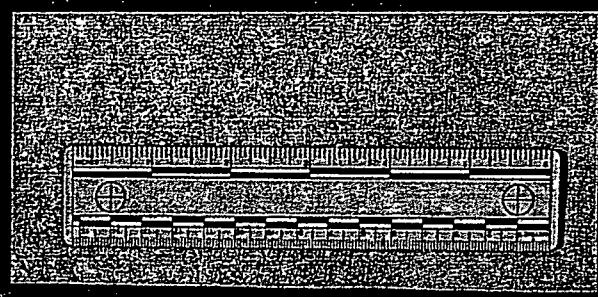
Testing – Ligature Mark Width

- Set up showing how tension was generated.



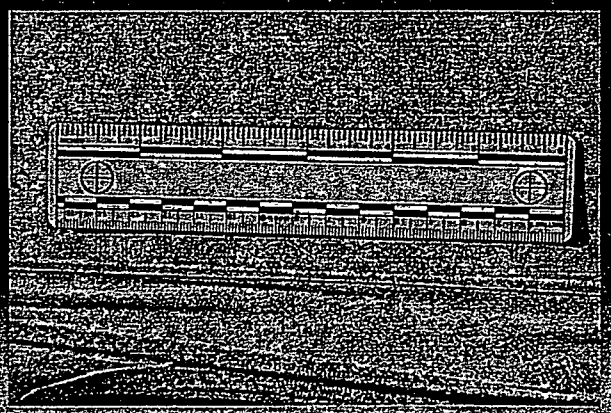
Testing – Ligature Mark Width

- USB cable with tension, 23 (+/- 2) pounds.
- Diameter unchanged at ~4 mm along length.



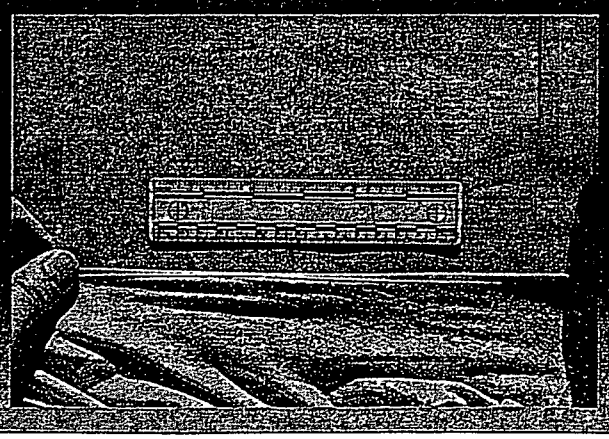
Testing – Ligature Mark Width

- Exemplar tank top with tension, 23 (+/- 2) pounds.
- Hem width varies along length from ~2 to 5 mm.



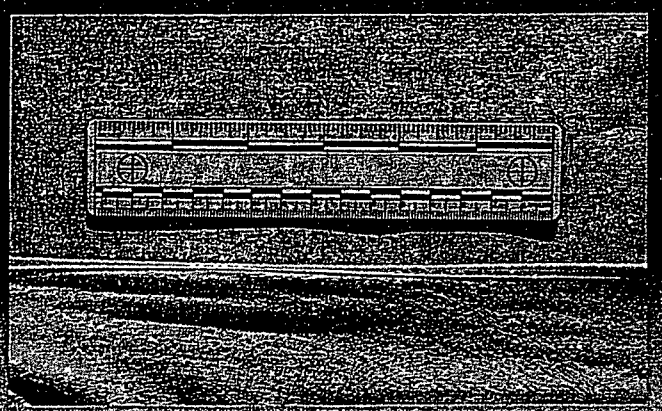
Testing – Ligature Mark Width

- Exemplar tank top with tension, 23 (+/- 2) pounds.
- Hem curls outward.



Testing – Ligature Mark Width

- Exemplar tank top with tension, 23 (+/- 2) pounds.
- Hem curls outward.



Conclusions

- The abrasions to Ms. Asbill's right forearm and hands are consistent with sliding contact being made between these body surfaces and an asphalt roadway surface.
- Blood stains on the subject vehicle's right rear door, rocker panel, quarter panel, and hubcap are consistent with the blood impacting these surfaces while the vehicle was moving forward.
- Based on WFB's testing, using the blood stain patterns, the subject vehicle was moving forward at an estimated speed of 30 (+/- 5) mph when the blood impacted these surfaces.

Conclusions

- Ms. Asbill's abrasions are consistent with her leaning to her right from the right front passenger seat until her right forearm and hands made contact with the ground, while the vehicle was in motion.
- Based on WFB's testing, Ms. Asbill most likely would not have sustained abrasions to her right forearm and hands had she been properly restrained with the right front seat belt.
- Based on WFB's testing, had Ms. Asbill not been restrained by some means, she most likely would have fallen completely out of the vehicle and/or sustained additional abrasions to her body.

Conclusions

- Based on WFB's testing, one method by which Ms. Asbill could have been restrained is by the driver grabbing & pulling the back of her tank top.
- Based on WFB's testing, the exemplar tank top was more than strong enough to restrain the surrogate and keep her from falling out of the vehicle while being pulled on by the driver.
- Based on WFB's testing, the minimum exemplar tank top pulling force required to restrain the surrogate was measured to be 23 (+/- 2) pounds, which is 2X the force required to occlude the carotid arteries (11 pounds).

Conclusions

- Based on autopsy photographs, the ligature mark on Ms. Asbill's neck varied in width from a maximum of ~5 mm on the right side of her neck to a minimum of ~1.5 mm just to the left of the centerline of her neck.
- Based on WFB's testing, the varying width of the ligature mark is consistent with the geometry produced when the exemplar tank top neck hem was subjected to a tension of ~23 (+/- 2) pounds.
- Based on WFB's testing, the varying width of the ligature mark is not consistent with the geometry produced when a USB cable of the same diameter as the subject USB cable was subjected to a tension of ~23 (+/- 2) pounds.

Dutch Johnson, Ph.D.

STATE OF SC V. BEATY

THE STAT OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	Warrant Number(s): 2013A3010200216
THE STATE	)	2013A3020100359
	)	
	)	
vs.	)	
	)	Mr. Beaty's Request to Charge
Michael Beaty	)	
	)	
	)	

Request to Charge Number 1

"Where a defendant is suddenly placed in an emergency situation, through no fault of his own, and is compelled to act instantly to avoid any injury to another person, he is not negligent if he makes a choice that a person of ordinary judgment might make if placed in the same emergency situation. He is not required to make the best choice, but only one that is reasonable under the circumstances."

Singletary v. S. Carolina Dep't of Educ., 316 S.C. 153, 157, 447 S.E.2d 231, 233 (Ct. App. 1994).

COURT'S EXHIBIT NO. 2 IDENTIFICATION/EVIDENCE DKT.# 1-30-15 DATE: M. Beaty
PENGAD 800-631-6989

Request to Charge Number 2

"A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act."

State v. Manning, 305 S.C. 413, 417, 409 S.E.2d 372, 375 (1991).

Request to Charge Number 3

Murder is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements—willfulness, deliberation, and premeditation—must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the action.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

Request to Charge Number 4

So what do we mean by malice? Malice imports wickedness, and it excludes any just cause or legal excuse. Malice springs from depravity, from a depraved spirit, from a heart devoid of social duty and fatally bent on mischief. It does not necessarily import ill will towards the specific person who is injured, but rather it signifies a general malignancy towards and recklessness for the life and safety of another or a condition of the mind that shows a heart devoid of social duty and fatally bent on mischief. There has to be a combination between this evil intent existing aforethought, just before and at the commission of the battery, and the act producing the battery....

Now obviously malice is a state of mind. The State has to prove to you that the element of malice existed by either direct evidence or circumstantial evidence or a combination of both.

State v. Kinard, 373 S.C. 500, 504-05, 646 S.E.2d 168, 170 (Ct. App. 2007).

Request to Charge Number 5

Every circumstance relied upon by the State [must] be proven beyond a reasonable doubt; and ... all of the circumstances so proven [must] be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis. It is not sufficient that they create a probability, though a strong one and if, assuming them to be true they may be accounted for upon any reasonable hypothesis which does not include the guilt of the accused, the proof has failed.

State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989).

Request to Charge Number 6

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed. The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013).

Request to Charge Number 7

Reckless disregard for the safety of others signifies an indifference to the consequences of one's acts. It means something more than mere negligence or carelessness, which indicates inadvertence, that is, the failure to exercise due care, sometimes called ordinary care, meaning such care as a person of ordinary reason and prudence would exercise in the same circumstances. Recklessness, willfulness and wantonness, which convey the same general idea, mean a conscious failure to exercise due care or ordinary care. Willfulness is the fact or quality of acting purposely or by design.

§2-8 Involuntary Manslaughter, Anderson, S.C. Requests to Charge - Criminal, Anderson's South Carolina Requests to Charge - Criminal, 2nd Ed.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE COURT OF GENERAL SESSIONS

The State,)
)
-vs-)
)
Michael Beaty,)
Defendant.)

20013-CR-30-153

ORDER

PERSONALLY appeared before me VALERIE STEWART JONES, who after being duly sworn deposes and says:

1. I was the honors English teacher of Emily Anna Asbill when she was 15 years of age.

2. One day she was staying after school to work on her project involving "To Kill a Mocking Bird." She started discussing her problems at home concerning her parents who objected to a boy she was dating. She said she had been feeling depressed. She said to me "Mrs. Jones I have been cutting myself." We discussed her feelings. She then informed me that she had threatened to jump out of her mother's car.

3. I reported the incident to Dr. Alexander who infomred me that he would contact her parents. I heard nothing further from her or the school concerning this incident.

SWORN to and subscribed before
me this 30 day of January, 2015

Notary Public of South Carolina
My commission expires: 12/2/2019

Valerie Stewart Jones
VALRRIE STEWART JONES

COURT'S
EXHIBIT NO. 3
IDENTIFICATION/EVIDENCE
DKT.# M. Beaty
DATE: 1-30-15
PENGAD 800-631-6989

THE STAT OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	Warrant Number(s): 2013A3010200216
THE STATE	)	2013A3020100359
	)	
	)	
vs.	)	
	)	
Michael Beaty	)	
	)	
	)	

The defendant, Michael Beaty, moves he court for an order requiring the state to open fully on the law and the facts and then reply only to matter raised by defense counsel in his closing argument.

In South Carolina no Rule of Criminal Procedure addresses the question of the order of argument to the jury. The practice of the State opening only on the law and then closing fully on the facts after the defendant has given the closing argument is long on tradition but short on law to support that tradition. The early practice in South Carolina was for the state to open fully on the law and the facts. In *State v. Atterberry,* 129 S.C. 464, 124 S.C. 648 (1924), the Supreme Court held that the failure to require the state to open fully on the law and facts was reversible error. At that time Circuit Court Rule 59 provided, "The party having the opening in argument shall disclose his entire case and on his closing shall be confined strictly to a reply to the points made, and authorities cited by the opposite party."[1] In reversing the conviction of the defendant the Court said, "The defendant moved the court to require the solicitor to make the opening speech to the jury before the defendant's attorney's were required to make their arguments. This

[1] Rule 59 in 1924 was part of the Code of Civil Procedure. The concurring opinion by Acting Associate Justice Aycock makes reference to the fact that nothing in the Code of Civil Procedure limits the application to civil cases. Rule 1 of the South Carolina Rules of Civil Procedure today does limit their application to civil cases.

COURT'S EXHIBIT NO. 4 IDENTIFICATION/EVIDENCE DKT.# M. Beaty DATE: 1-30-15
PENGAD 800-631-6989

was refused. This was error." *Atterberry*, 129 S.C. at ___, 124 S.E. at 651. In his concurring opinion Acting Associate Justice Aycock stated the principle best when he said, "It is but fair that the party who has the advantage of the last address to a jury should be required to open and apprise the opposing party of his views as to his entire case." *Id*. at ___, 124 S.E. at 651. As a matter of legal history, the State in South Carolina was required to open fully on the law and the facts.

The more recent practice developed when the Circuit Court Rules were changed. This change was noted in *State v. Lee*, 255 S.C. 309, 178 S.E.2d 652 (1971). Again the defense counsel requested that the state be required to open fully on the law and the facts. The trial judge denied this request. The Court noted that since the decision in *Atterberry,* Rule 59 of the Circuit Court Rules had been changed to Rule 58 and the rule then read, "The party having the opening in an argument shall disclose fully the law upon which he relies if demanded by the opposite party." The Court in *Lee* concluded, "It follows that the trial judge, under the changed rule, was correct in holding that a solicitor is no longer required to make an opening argument to the jury on issues of fact."[2] *Lee,* at 318, 178 S.E.2d at 656. Thus began the more recent, but incorrect, practice of requiring the state to open only on the law and not the facts.

Today Rule 43(j) of the South Carolina Rules of Civil Procedure controls the order of argument in civil cases. This rule now provides that the plaintiff shall have the right to open and close at the trial of the case. The rule then concludes, "The party having the right to open shall be required to open in full, and in reply may respond in full but may not introduce any new matter." With Rule 43(j) of the South Carolina Rules of Civil Procedure, the long practice in civil cases of plaintiff's lawyers "sandbagging" and saving their real argument for their last

[2] Again this was a change in the Code of Civil Procedure which the court had no problem applying to a criminal case.

argument, came to an end. But the practice, without any support in the law, continues in the general sessions courts not based upon the law or logic, but upon misapplication of the civil rules.

The practice of "sandbagging" in a closing argument was a basis for reversal of a criminal conviction in Delaware. In *Bailey v. State*, 440 A.2d 997 (Del. 1982) the court noted that "Closing argument is 'an aspect of a fair trial which is implicit in the Due Process Clause of the Fourteenth Amendment.'" *Id.* at 1004 (internal citations omitted). The court further held "Application of these authorities to the facts at hand compels us to reverse and remand the case for a new trial on the ground that the Trial Court abused its discretion in permitting the State to utilize the inherently prejudicial "sandbagging" trial strategy." *Id.* In South Carolina, "sandbagging" by a prosecutor is not only approved but is actually legalized.

The majority of states and the federal courts require the prosecutor to open fully on the law and the facts. *See, e.g.* Fed. Rul Cr. Proc. 29.1; Ark. Code Ann . 16-89-123; Ga. Code Ann. § 17-8-71; Nev. Rev. Stat. Ann 175.141; Tenn. Rules of Crim. Proc. Rule 29.1; In Re AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE-FINAL ARGUMENTS, 957 So.2d 1164 (Fla. 2007) *but see*, *Degadillo v. State* , 262 S.W.3d 371 (Tex. Ct. App. (2008). The treatise writers also support the requirement that the state open fully on the law and evidence. *See*, Jacob Stein, Closing Arguments 2d, § 1:6 (2010) and 75A Am. Jur. 2d *Trial* § 448 (2010). In revising its rules as to closing argument the Florida Supreme Court noted "The statute provides that in accord with the common law, the prosecuting attorney shall open the closing arguments, defendant or his or her attorney may reply, and the prosecuting attorney may reply in rebuttal." *In re AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL*

PROCEDURE- FINAL ARGUMENTS , 957 So.2d at 1166.[3]

South Carolina should break with a practice that has no support in logic or the law and require that the State be required to open fully on the law and the facts. The current procedure in South Carolina simply permits the State to legally "sandbag" its argument and not afford the defense the opportunity to reply to new arguments that the State used in its closing. The inherent logic of this position has been acknowledged by our Court of Appeals concerning reply briefs and oral argument. "An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant's brief." *Bochette v. Bochette* , 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989). The reason of this rule in the appellate court is a party should have a fair chance to respond to matters raised by counsel in their briefs. The rule should also be applied to arguments before a jury.

IT IS SO MOVED.

Respectfully submitted,

By _____

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January 29, 2015

[3] The Florida Supreme Court also noted that forty-seven states follow the common law.

THE STAT OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	Indictment Number(s): 2013-GS-30-1353
THE STATE	)	
	)	
	)	
vs.	)	New Trial Motion
	)	
Michael Beaty	)	
	)	
	)	

LAURENS COUNTY
CLERK OF COURT
2015 FEB -9 A 9:47
LYNNE W. LANCASTER

The defendant, Michael Beaty, moves the Court for a new trial based on the following grounds. *See* Rule 29, S.C.R.Crim.P.

1. **The Court erred by not instructing the jurors on involuntary manslaughter.**

Both in chambers and on the record, Mr. Beaty requested the Court instruct the jurors about involuntary manslaughter and provide that option on the verdict form. The Court denied these requests.

"The law to be charged to the jury is determined by the evidence presented at trial. . . . , [and] a trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence." *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). "In determining whether the evidence requires a charge of [a lesser included offense], the Court views the facts in a light most favorable to the defendant." *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "If there is ***any*** evidence warranting a charge on involuntary manslaughter, then the charge must be given." *State v. Reese*, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006) (emphasis added) *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009). "To warrant a court's eliminating the offense of manslaughter, it should very clearly appear that there is no evidence whatsoever tending to reduce the crime from murder to manslaughter." *Knoten*, 347 S.C. at 302, 555 S.E.2d at 394. *See also State v. Brayboy*, 387 S.C. 174, 691 S.E.2d

482 (Ct. App. 2010) (reversible error not to charge involuntary manslaughter).

Michael Beaty told investigators, "E.A. [Asbill] threatened and did open the door to jump out, threatening harm to herself." Mr. Beaty explained, "The injuries [to her arm and hands] had come from her hanging out of the car as I held her clothing to try to pull her back in" the car. This statement alone required the Court to charge involuntary manslaughter. Mr. Beaty also presented testimony from two expert witnesses that supported his statement.

Dr. Dutch Johnson, Ph.D., an expert in Biomechanics, conducted extensive testing. Dr. Johnson concluded the injuries to Ms. Asbill's left hand and right arm and hand were caused by scraping on the pavement while the car was in motion. The Solicitor did not dispute these conclusions during his closing argument. Dr. Johnson further concluded Ms. Asbill's clothing is the most probable cause of the ligature mark. A copy of Dr. Johnson's PowerPoint presentation outlining his testing and conclusions was presented to the jurors and made a court exhibit. Slides contained in this presentation not only demonstrate Ms. Asbill's position at the time of the injuries to her arm and hands, but also demonstrate how pulling on Ms. Asbill's tank top created the ligature mark. Without being restrained in this manner, Dr. Johnson concluded that Ms. Asbill would have fallen out of the automobile. Dr. Johnson concluded that the geometry of the neckline of the tank top is consistent with the geometry of the ligature mark, whereas the geometry of the USB cable is inconsistent with the geometry of the ligature mark.

Dr. Jonathon Arden, a forensic pathologist, concurred with Dr. Johnson's assessment of how Ms. Asbill received her injuries. Dr. Arden provided medical testimony about Ms. Asbill's injuries. He testified about how unconsciousness results from restricting blood flow to the brain through the carotid artery. Based on Ms. Asbill's positioning on the floorboard of the car, Dr. Arden also opined that positional asphyxiation contributed to Ms. Asbill's death.

During closing arguments, the Solicitor pointed out the dangerousness associated with Mr. Beaty continuing to drive down the road while holding onto Ms. Asbill's shirt with her hanging out of the car. This argument gave the jurors the impression that they could convict Mr. Beaty of murder if they concluded he acted recklessly. The Court's instructions to the jurors reinforced this conclusion. Although the Court charged the doctrine of sudden emergency, which would be consistent with an involuntary manslaughter instruction, the Court denied Mr. Beaty's requests to charge involuntary manslaughter and explain recklessness.

Evidence presented at trial thus supported the conclusion that Ms. Asbill's injuries resulted from the excessive consumption of alcohol and Mr. Beaty's recklessness, and her death was unintentional. "This is not the traditional strangulation type situation. [Mr. Beaty] was not attempting to strangle [Ms. Asbill] by placing his hands around [her] neck. As such, [his] actions were not the kind which would naturally tend to cause serious bodily injury or death. Under the facts of this case, [Mr. Beaty] was entitled to a charge on involuntary manslaughter." *State v. Chatman*, 336 S.C. 149, 153, 519 S.E.2d 100, 101-02 (1999).

The Court should order a new trial.

2. The Court erred by not directing verdict.

In order to comply with the Due Process requirements of the Fourteenth Amendment of the United Statues Constitution and Article I, Section 3 of the South Carolina Constitution, the Court may not submit the case to the jurors if the State failed to present substantial circumstantial evidence on any element of the crime. *See Jackson v. Virginia*, 443 U.S. 307 (1979) and *In re Winship*, 397 U.S. 358 (1970). This requirement is so fundamental that the Court shall direct a verdict "on motion of the defendant or on its own motion . . . if there is a failure of competent

evidence tending to prove the charge in the indictment." Rule 19, S.C.R.Crim.P.[1]

Mr. Beaty contends that the murder charge against him is based upon circumstantial evidence with no direct evidence establishing that he killed Ms. Asbill with malice aforethought. The defense requested a jury charge in accordance with *State v. Logan*, 405 S.C. 83, 747 S.E.2d 444 (2013). In the alternative, the defense also requested a circumstantial evidence charge that refers to the exclusion of every other reasonable hypotheses as established in *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955). In determining if the State has established enough evidence to send the case to the jury, the Court should be guided by the principles established in *State v. Ewards*, 298 S.C. 272, 379 S.E.2d 888 (1989); *State v. Hernandez*, 382 S.C. 260, 677 S.C. 620 (2009) and *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2012). Copies of these cases were submitted to the Court by email along with Mr. Beaty's pretrial brief. The defendant contends that at a minimum the State is required to prove substantial circumstantial evidence to send the case to the jury. Arguably under the latter two cases, viewing the disputed evidence in the light most favorable to the State, the State is required to prove the guilt of the defendant to the exclusion of any other reasonable hypotheses before the case may be submitted to the jury. Under the facts viewed in the light most favorable to the State, and the reasonable inferences from these facts, if innocence is as reasonable inference as guilt, then the State has not met its burden under any standard of review. Substantial circumstantial evidence is not met when jurors are forced to elect between two reasonable hypotheses.

At the close of the State's case Mr. Beaty made a detailed argument as to why the State

[1] To the extent that Rule 19's "existence or non-existence of the evidence" standard is inconsistent with *Jackson* and *In re Winship*, the rule violates the state and federal constitutions.

had failed to prove the case against Mr. Beaty.[2] This Motion was denied. Again, after the close of the defendant's case, Mr. Beaty renewed his motion to which the court did not request any further argument. The motion was denied with assurance that the record protected Mr. Beaty. Mr. Beaty now requests a new trial on the ground that the evidence was not sufficient to convict.

The State only produced direct evidence that Mr. Beaty accidentally strangled Ms. Asbill when Mr. Beathy tried to prevent her from jumping out of the automobile. The circumstantial evidence of malice was not substantial nor was it credible. The State contended that Mr. Beaty intentionally strangled Ms. Asbill in front of the residence of his mother and step father with a USB cord. The objective evidence simply does not support this contention. The State never measured the size of the bruise that they contend was cause by the larger end of the USB cord. No one could or did testify that the size matched. The State never had an explanation that was consistent with the direct evidence for the lack of a ligature mark around back of the neck of Ms. Asbill. The State never accounted for the lack of blood on her neck or clothing that would have been present had she struggled in the car as contended by the State. The State never gave an explanation for the lack of cast off blood inside the automobile that would have been present had Ms. Asbill struggled as contended by the State.

The State's theory that the USB cord, identified as SLED item 67, was used is even more suspect. No one knows where it was found in the car, except that it is not seen in photographs of the fort seat. Due to the manner in which the cord was tested for DNA, the State has no proof

[2] At the time of the Motion for Directed verdict Mr. Beaty did not have the advantage of knowing exactly how the State would contend Ms. Asbill was killed. The lack of this information, however, does not impact Mr. Beaty's Motion for Directed Verdict. If Mr. Beaty had known of the State's theory, the Motion for Directed Verdict would have been stronger.

that the DNA of Mr. Beaty was found on both ends of the cord.[3] Likewise, the State did not prove whether the large quantity of Ms. Asbill's DNA was on the large end of the USB cord, the small end of the USB cord, or both. The State, accordingly, did not prove that any of Ms. Asbill's DNA was on the large end of the USB cord, which the State theorizes made the rectangular mark on her neck. The lack of substantial DNA belonging to Ms. Asbill on the cord is proof that the cord was not used to strangle her. The expert for the State testified that had the cord been tightly pressed against the neck of Ms. Asbill, the expectation would be that there would have been a substantial amount of DNA left on the cord.

The evidence discussed above is not substantial circumstantial evidence nor does it exclude every other reasonable hypothesis. The evidence falls short of the standard required for conviction.

The Court should order a new trial.

3. Order of closing arguments.

In chambers, counsel for Mr. Beaty understood that the Court was requiring the State to open fully on the law and facts, that the State would not be allowed to "sandbag," and the State would have an opportunity to respond to anything new raised in Mr. Beaty's closing argument. Counsel tendered a memorandum on law on this issue that was later made a court exhibit and that is incorporated herein by reference.

The Solicitor did not open fully on the law and the facts. The Solicitor waited until his reply argument to argue the State's view of the facts. Mr. Beaty objected to the prosecution's

[3] During at least one of the Solicitor's demonstrations to the jurors, he placed his thumb on the large end of the USB cord and his index finger on the middle of the USB cord as it wrapped around the surrogate's neck. If Mr. Beaty had used the USB cord to strangle Ms. Asbill in this manner, then some amount of Mr. Beaty's DNA would have been found on the middle of the USB cord. The complete absence of Mr. Beaty's DNA on the middle of the USB cord refutes the State's theory.

"sandbagging," moved for a mistrial, and proffered for the record how his closing argument would have been different had the State complied with the Court's instructions. Mr. Beaty's memorandum of law, at p. 3, specifically addressed the Due Process violation that results from this type of "sandbagging." *See also* U.S. Const. Am. XIV and S.C. Const. Art. I, Sec. 3.

The prosecution responded to Mr. Beaty's objection and motions by arguing the State is allowed to "sandbag" under current state law. In South Carolina, however, the special responsibilities of prosecutors include "specific obligations to see the defendant is accorded procedural justice." *State v. Jones*, 343 S.C. 562, 578, 541 S.E.2d 813, 822 (2001) (quoting Comment, Rule 3.8 of Rule 407, SCACR).

The Court should order a new trial.

4. The Court erred by instructing the jurors to search for the truth and find the "true facts."

During the preliminary charge to the jurors, the Court instructed the jurors, multiple times, to "search for the truth." This language appears to come from Chapter Three – Preliminary Charge, Juror Expectations – Professionalism Charge, contained in the Judicial Department's Suggested Jury Instructions for criminal cases, found at http://www.sccourts.org/juryCharges/GS%20InstructionsJune2013.pdf (last viewed February 5, 2015). The Court also instructed the jurors to find the "true facts." This language is contained in the General Charge found in Chapter Three of the Suggested Jury Instructions for criminal cases.

Immediately following the Court's preliminary charge to the jurors, Mr. Beaty objected based on *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000). Mr. Beaty also requested a curative instruction, which the Court denied. In his closing argument, the Solicitor parroted this language and asked the jurors to render a verdict that speaks the truth.

The concern expressed by our Supreme Court is "that this language could result in jurors

substituting concepts of justice or fairness for the State's constitutional duty to prove guilt beyond a reasonable doubt." *State v. Daniels*, 401 S.C. 251, 264, 737 S.E.2d 473, 480 (2012). *See also In re Winship, supra.* Our Supreme Court, thus, warned trial court judges about "issuing instructions which run the risk of depriving defendants of their right to a fair trial." *Id.* 401 S.C. at 264, 737 S.E.2d at 480.

The Court should order a new trial.

5. The Court erred by denying Mr. Beaty's request for voir dire number 9.

Mr. Beaty's request for *voir dire* number 9 asked, "Who among you just don't like lawyers, particularly lawyers who represent persons accused of a crime in cases like this?" When the Court did not ask this question, Mr. Beaty renewed his request prior to selecting jurors. The Court declined this request. Throughout the trial, the prosecutors attacked the defense lawyers. During opening statements and closing arguments, they accused the defense of asking the jurors to "check your common sense at the door." When witnesses identified Mr. Beaty—even though his identity was never in dispute—the prosecutors called attention the fact that Mr. Beaty was sitting between his two lawyers. During cross-examination and closing arguments, they called attention to the cost of the defense experts and accused Mr. Beaty's lawyers of hiring these experts to provide favorable opinions or even "sing" a particular tune.

The purpose of *voir dire* is to determine whether any potential juror "is sensible to any bias or prejudice." S.C. Code Ann. §14-7-1020. Because the Court did not ask Mr. Beaty request for voir dire number 9, he was not able to strike jurors with a bias or prejudice against criminal defense lawyers.

The Court should order a new trial.

Conclusion

The Court should order a new trial.

IT IS SO MOVED.

Respectfully submitted,

By _____

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February 7, 2015

2013A3020100359

STATE OF SOUTH CAROLINA COUNTY OF LAURENS	)	IN THE COURT OF GENERAL SESSIONS EIGHTH JUDICIAL CIRCUIT
The State	)	2015 FEB 18 P 2:27
v.	)	STATE'S REPLY TO DEFENDANT'S MOTION FOR NEW TRIAL
Michael Vernon Beaty, Jr., DEFENDANT.	)	Indictment Number 2013-GS-30-1553

The State respectfully asks this Court to deny Defendant's motion for a new trial, based on the following grounds:

1. **The Court correctly did not instruct the jury on involuntary manslaughter based on the facts and evidence presented at trial by both the State and Defendant.**

There was simply no evidence by which the jury could have found Defendant guilty of the crime of involuntary manslaughter. "Involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either: (1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others." *State v. Reese*, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006). The theory that Defendant Beaty presented to the jury was that he simply prevented the victim Emily Anna Asbill from diving out of a moving car by grabbing the back of her shirt. In the course of doing this he inadvertently applied pressure to her throat, possibly causing her to lose consciousness and leaving ligature marks on her neck with the hem of her shirt. Once the victim was back in the car she possibly settled into an awkward position, partially sitting on the floorboard of the passenger side. The stress caused by this awkward seated position, along with the effect of excessive alcohol consumption, possibly led to a "positional asphyxiation" that killed Ms. Asbill. Under Mr. Beaty's theory, there is no unlawful

act. Defense expert Dutch Johnson opined that Ms. Asbill would have fallen out of the vehicle if Mr. Beaty had not acted to restrain her. According the testimony of Dr. Johnson and defense witness Jonathon Arden, Defendant was heroically, not recklessly, trying to save Ms. Asbill's life. The Defendant's case actually presents him as showing serious regard for the safety of another person, not a reckless disregard.

Further, Defendant's motion takes a statement made by the State in closing arguments completely out of context, and distorts it for the purpose of supporting an involuntary manslaughter charge. The State presented the image of Mr. Beaty continuing to drive with his left hand while restraining Ms. Asbill by her shirt with his right hand simply for the purpose of illustrating to the jury the inconsistency and implausibility of Defendant's theory. The State never argued that Defendant acted with any level of criminal intent in restraining Ms. Asbill. The State drew particular attention to Defendant's admission in his 4-page handwritten statement (State's Exhibit #5), that: 1) things had calmed down, and 2) Ms. Asbill blamed Defendant for making her do this to herself. By Defendant's own voluntary statement given the day after this incident, Ms. Asbill was alert and conscious after he pulled her back in to the vehicle, thus undercutting his theory at trial.

In contrast, the State's theory of the case was clear and consistent: Defendant killed Ms. Asbill with malice aforethought by strangling her with a USB cable (State's Exhibit #42) that was found inside the vehicle by crime scene investigators. The State's theory was corroborated by DNA evidence on the USB cord, distinct ligature markings on Ms. Asbill's throat which were remarkably consistent with such a cord being crossed-over in a noose-like manner, and the testimony of the pathologist (Dr. Janice Ross) who conducted the autopsy.

In conclusion, the jury was first presented substantial circumstantial evidence that Defendant murdered Ms. Asbill with a USB cord. The jury was presented an alternate theory by Defendant that he only acted heroically in defense of Ms. Asbill's life which resulted in her asphyxiation, either by her shirt or by the way she was positioned in the car after she was pulled back into the passenger seat. The jury could not have reasonably concluded from the facts and evidence presented that Defendant caused Ms. Asbill's death by acting in "reckless disregard for the safety of others." Accordingly, the Court correctly concluded that an involuntary manslaughter charge to the jury was not appropriate.

2. The Court properly denied Defendant's motion for directed verdict.

As there was substantial circumstantial evidence presented by the State to the jury proving Defendant's guilt, the Court properly denied Mr. Beaty's motion for directed verdict at the conclusion of the State's case. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *State v. Lane*, 410 S.C. 505, 507, 765 S.E.2d 557, 558 (2014) (quoting *State v. Weston,* 367 S.C. 279, 292–93, 625 S.E.2d 641, 648 (2006)).

In this case, there was testimony regarding the following:

1) Defendant gave several statements to law enforcement that varied materially from one another;
2) Defendant initially suggested that Ms. Asbill died because of a self-inflicted cutting-type injury, when it became clear from later statements that he knew this to be untrue;
3) The pathologist who conducted the autopsy, Dr. Janice Ross of Newberry, opined that Ms. Asbill's cause of death was a ligature strangulation and that the ligature marks were consistent with a USB cord found in the car (State's exhibit #42);

4) Investigators found a USB cord (State's #42) in the vehicle whose diameter appeared to be consistent with the diameter of the ligature mark and whose rectangular end was remarkably consistent with the ligature marks on Ms. Asbill's throat;

5) The USB cord had a mixture of Defendant's DNA and Ms. Abill's DNA on the ends of the cord, and Ms. Asbill's DNA in the middle.

Defendant argues that in a case where the state has only circumstantial evidence, when ruling on a motion for directed verdict, this Court should hold the State to the standard of "excluding all reasonable hypotheses other than the guilt of the defendant." In support of his argument, Defendant relies heavily on *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011). It is noteworthy that the Court in *Odems* never explicitly adopts this as the standard to be used by the circuit courts for weighing the State's evidence at the directed verdict stage. Rather, the *Odems* Court in reversing the denial of the defendant's directed verdict motion says, "[T]he definition **illustrates** the lack of evidence against Petitioner (emphasis added)." *Id.* at 590, 720 S.E.2d at 52. *State v. Lane* is the more recent and controlling precedent which clearly lays out the proper standard to be applied by the circuit court at directed verdict: Is there "any direct evidence or substantial circumstantial evidence reasonably tending to demonstrate the guilt of the accused?" The *Lane* Court does not even refer to the "exclusion of any reasonable hypothesis other than guilt" standard on which Defendant so heavily relies.

In its case in chief, the State presented substantial circumstantial evidence from which the trier of fact could conclude beyond a reasonable doubt that Defendant murdered Emily Anna Asbill by strangulation. Accordingly, the Court applied the appropriate standard, as articulated in recent decisions of the South Carolina Supreme Court, and properly denied the Defendant's motion for directed verdict.

3. The Court did not err in denying Mr. Beaty's proposed order of closing arguments.

When the defendant presents evidence and puts up witnesses in its defense, there is no absolutely no requirement under the either the law or criminal practice procedures in South Carolina courts that the State must bifurcate its closing argument to the jury. "The solicitor is not required to make an opening argument to the jury on issues of fact, (quoting *State v. Lee*, 255 S.C. 309, 178 S.E.2d 652 (1971)), but may do so in his discretion." *State v. Rodgers*, 269 S.C. 22, 23, 235 S.E.2d 808, 809 (1977). The Court instructed the State to open on the law as was requested by the Defense, but the Court in no way required the State to present its entire closing argument to the jury in this opening. In the first phase of the State's closing argument, the Solicitor opened on the law and then briefly summarized State's theory of the case (even though there was no requirement under the law or by order of the Court that he do so). In the second phase, the Solicitor again laid out the State's theory of how Defendant murdered Ms. Asbill, and contrasted it with the inconsistencies and implausibility of the theory put forward by Defendant.

The State agrees that it has special responsibilities under the rules of professional conduct. However, these special responsibilities do not and should not prevent the State from prosecuting fully and vigorously within the boundaries of the law. "The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor-indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a

wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger v. U.S.*, 295 U.S. 78, 88, 55 S.Ct. 629, 633 (1935).

The State did absolutely nothing in its closing argument to the jury to violate these special responsibilities of a prosecutor articulated by the United States Supreme Court, and furthermore presented its closing argument squarely within the confines of South Carolina law pursuant to *State v. Rodgers*. The accusations of misconduct made by defense counsel in his motion are completely baseless, and rely on a faulty interpretation of the case law and accepted criminal trial practices of this State.

4. The Court did not err based on the content of its introductory statement to the jury.

In *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000), the language at issue was the trial court's instruction that the jury has "but one single objective, and that is to seek the truth, to seek the truth regardless of from what source that truth may be derived." *Id.* 343 S.C. at 26, 538 S.E.2d at 251. The *Aleksey* Court found no error in the circuit court judge's instruction: "While we have urged trial courts to avoid using any "seek" language when charging jurors on either reasonable doubt or circumstantial evidence (see *State v. Needs*, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998)), the "seek" language here did not appear in either the reasonable doubt or circumstantial evidence charges, but in the instructions on juror credibility. Both the reasonable doubt and circumstantial evidence charges were complete and proper." *Id.* 343 S.C. at 27, 538 S.E.2d at 251 – 252. The Court added, "The remarks were prefaced by a full instruction on reasonable doubt and followed by an additional exhortation to bear in mind the State's heavy burden of proof... [T]he instruction as a whole properly conveyed the law to the jury and there is not a reasonable likelihood the jury applied the judge's instructions to convict appellant on less than proof beyond a reasonable doubt." *Id.* 343 S.C. at 29, 538 S.E.2d at 253.

While this Court's opening remarks to the jury in this case made mention of a search for the truth, the Court also told the jury that these remarks were not a charge on the law. At the end of the presentation of evidence and argument of counsel, the Court properly charged the jury on the law applicable to this case. The Court's charge on the law did not instruct the jury to "search for the truth" or "seek the truth." Accordingly, any issues regarding the Court's introductory remarks were resolved when the Court properly charged the jury on the presumption of the Defendant's innocence and the State's burden of proof.

As to the State's remarks in its closing argument to the jury, the State never asked the jury to search for, find, or seek the truth. The State merely urged the jury to do its duty as the judge of the facts and render a verdict that "speaks the truth." The State argued to the jury that the word "verdict" comes from Latin root words that literally mean "to speak truth." Consistent with the Court's charge on the law, the State properly explained its burden of proof ("proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt"), as well as direct evidence versus circumstantial evidence.

5. The Court did not err in denying Defendant's request for voir dire # 9.

There was no error in the Court's refusal to ask potential jurors, "Who among you just don't like lawyers, particularly lawyers who represent persons accused of a crime in cases like this?" During the course of this trial, the State did not make any remarks insulting or expressing animosity toward counsel for Defendant. In saying that the Defendant's counsel wanted jurors to "check their common sense at the door," the State was simply attacking the reasonableness and plausibility of Defendant's theory of the case. The State was not making a personal attack whatsoever against either Mr. Grose or Mr. Wise. As for the identification of the Defendant, Mr. Beaty sat between his attorneys, and the jury could clearly see this. The cross-examination and

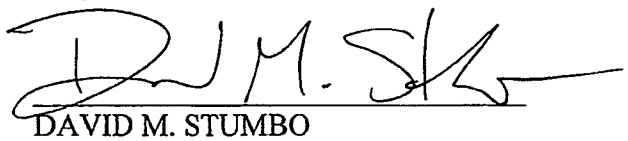
comments the State made during its closing dealt with the potential bias of witnesses who were collecting fees for their testing, review, and testimony, as is permissible under SCRE 608 (c).

Conclusion

Based on all of the facts and evidence presented at trial, and after argument of counsel and the Court's charge on the law applicable to this case, the jury deliberated for approximately an hour and a half and returned a verdict of guilty to murder. Our criminal justice system worked in the trial of the Defendant exactly as it is supposed to work, shaped by hundreds of years of common law and the wisdom of our founding fathers in their framing of the United States Constitution and the South Carolina Constitution. A jury of twelve Laurens County citizens has removed the "robe of righteousness" that hangs on the shoulders of the accused, and with one voice has declared that Michael Vernon Beaty, Jr. is guilty of the murder of Emily Anna Asbill. Accordingly, the Court should deny the motion a new trial and the jury's verdict of guilty should stand.

IT IS SO MOVED.

Respectfully submitted,



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Attorneys for the State of South Carolina

Greenwood, South Carolina
February 18, 2015

THE STAT OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	
	)	Indictment Number(s): 2013-GS-30-1353
THE STATE	)	
	)	
	)	
vs.	)	Reply to State's Response to Mr. Beaty's New Trial Motion
Michael Beaty	)	
	)	
	)	

The defendant, Michael Beaty, replies to the State's response to his New Trial Motion. *See* Rule 29, S.C.R.Crim.P.

1. **The Court erred by not instructing the jurors on involuntary manslaughter.**

The prosecution argues, "There is simply no evidence by which the jury could have found Defendant guilty of the crime of involuntary manslaughter." Response, p. 1. Evidence presented at trial demonstrated that all three occupants of the car—Mr. Beaty, E.A. Asbill, and Will Alexander—were intoxicated. Because of his intoxication, Mr. Beaty reacted in a reckless manner to the emergency created by Ms. Asbill attempting to jump out of the car. As the Solicitor suggested in his closing argument, Mr. Beaty should have stopped the car, helped Ms. Asbill back into the car, secured her in the car, determined the state of her health, and called for medical attention.

The State also contends, "Defendant's motions takes a statement made by the State in closing arguments completely out of context" because the statement was made "for the purpose of illustrating to the jury the inconsistencies and implausibility of the Defendant's theory." Response, p. 2. The theory poised by the Solicitor—that Mr. Beaty drove for two minutes while hanging on to Ms. Asbill's clothing—while not the precise theory advanced by the defense, is a reasonable inference from the evidence. If the Solicitor did not want the jurors to consider his comment as

evidence of recklessness, then he should not have made the comment. In addition, as noted in the opening brief, in making the determination as to what law to charge, all the evidence and all reasonable inferences from that evidence should be viewed in the light most favorable to the defendant. As this Court determined that the facts were sufficient to charge a sudden emergency, there were sufficient inferences from the facts to justify an involuntary manslaughter charge.

Finally, Mr. Beaty disagrees with the prosecution's contention that "the jury was presented with substantial circumstantial evidence that Defendant murdered Ms. Asbill with a USB cord." Response, p. 3. *See* New Trial Motions, Ground 2.

The Court should order a new trial.

2. The Court erred by not directing verdict.

Following a summary of the evidence presented, the prosecution argues, "In its case in chief, the State presented substantial circumstantial evidence from which the trier of fact could conclude beyond a reasonable doubt that Defendant murdered Emily Anna Asbill by strangulation." Response, pp. 3-4. The prosecution relies exclusively on circumstantial evidence to prove malice. The forensic evidence, when viewed in a light most favorable to the State, is capable of multiple inferences. Because these inferences do not exclude innocence and involuntary manslaughter, the prosecution did not present substantial circumstantial evidence of malice.

In addition, as this is a completely circumstantial evidence case, the State's case is no stronger than it weakest link. Under its theory, the State in item 5 on page 4 has argued "The USB cord had a mixture of the Defendant's DNA and Ms. Asbills DNA on the ends of the cord, and Ms. Asbill's DNA in the middle. Due to the manner in which the DNA was collected, no one knows if this statement is true except for a trace amount of DNA belong to Ms. Asbill was found

in the middle of the cord. The evidence requires the jury to speculate as to which end of the USB cord the DNA of Ms. Asbill was found. The jury was left to speculate as to which end of the USB cord the DNA of Mr. Beaty was found. At trial, the state demonstrated its theory of the crime by showing one end of the USB cord being pressed against her neck and the other end being held by Mr. Beaty while she was strangled.[1] The jury is left to completely speculate as to whether Mr. Beaty's DNA was on both ends of the cord as required by the demonstration. As the collection of the DNA from one end was contaminated by using the same swab to collect a sample from the other end, the odds are only one in three that Mr. Beaty's DNA was on both ends. Without his DNA being on both ends of the cord, the State's theory of the alleged murder must fail. The State has not produced substantial circumstantial evidence of how the alleged murder occurred.

The Court should order a new trial.

3. Order of closing arguments.

The State contends, "The Court instructed the State to open on the law as was requested by the Defense." Response, p. 5. This statement completely mischaracterizes the ruling made by the Court in chambers. Mr. Beaty moved for the State to open fully on the law and facts and provided the Court and opposing counsel with a memorandum of law. In chambers, the Court consider the motion and memorandum and then told the State to open on the law and the facts. After the Solicitor sandbagged Mr. Beaty during closing arguments, Mr. Beaty recounted on the record the discussions in chambers and made his memorandum of law a court's exhibit.

The right to confront the prosecution's case is so fundamental that it is embedded in the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 14 of the Constitution of the State of South Carolina. These rights include the right for Mr. Beaty to be

[1] If the State's theory is correct. Mr. Beaty would have been required to hold only the small end of the USB cord, apparently between two fingers, as his DNA was not found on the cord itself.

fully heard in his defense. Because of the prosecution's sandbagging, Mr. Beaty did not get an opportunity to respond to the State's theory and was denied procedural justice.

The Court should order a new trial.

4. The Court erred by instructing the jurors to search for the truth and find the "true facts."

The prosecution argues, "While the Court's opening remarks to the jury in this case made mention of a search for the truth, the Court also told the jury that those remarks were not a charge on the law." Response, p. 7. The Court actually told the jurors that there would be a more complete charge on the law at the end of the case. The Court did not tell the jurors that the opening charge was not the law of South Carolina. Under the analysis advanced in the State's response, the jurors would be free to disregard the Court's instructions not to discuss the case with others or follow the news about the case, because it is not an instruction on the law. In the suggested criminal case charge book, the Judicial Department designates these instructions as a "charge" on the law.

The prosecution discusses *State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000). Response, p. 6. *Aleksey*, in reality, disapproves of trial judges telling the jurors to search for the truth. In that case, the instruction was not prejudicial because the trial judge correctly instructed the jurors about reasonable doubt and circumstantial evidence. Here, the Court did not give contemporaneous instructions about these other two legal concepts. As a result, the jurors spent the entire trial believing they had to search for the truth. This prejudice was compounded when the Solicitor parroted the truth-seeking language during the closing argument, even though he knew such language is disfavored and lowers the burden of proof.

The State's response completely ignores *State v. Daniels*, 401 S.C. 251, 264, 737 S.E.2d 473, 480 (2012), where our Supreme Court warned trial court judges about "issuing instructions which run the risk of depriving defendants of their right to a fair trial."

The Court should order a new trial.

5. The Court erred by denying Mr. Beaty's request for voir dire number 9.

The prosecution's response, at pp. 7-8, completely ignores the purpose of *voir dire* is to determine whether any potential juror "is sensible to any bias or prejudice." S.C. Code Ann. §14-7-1020. Because the Court did not ask Mr. Beaty request for voir dire number 9, he was not able to strike jurors with a bias or prejudice against criminal defense lawyers. While the state contends that their statements and arguments at trial are allowed by the rules of evidence, Mr. Beaty is likewise entitled to identify and strike jurors that might have a bias and respond negatively to Mr. Beaty because of the prosecution questions and arguments.

The Court should order a new trial.

Conclusion

The Court should order a new trial.

IT IS SO MOVED.

Respectfully submitted,

By _____

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Counsel for the Defendant

February 23, 2015

STATE OF SOUTH CAROLINA COUNTY OF LAURENS	)	IN THE COURT OF GENERAL SESSIONS EIGHTH JUDICIAL CIRCUIT
The State	)	
v.	)	ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL
Michael Vernon Beaty, Jr., DEFENDANT.	)	Indictment Number 2013-GS-30-1553

LYNN W. LANCASTER
2015 MAR 27 A 9:22
LAURENS COUNTY
CLERK OF COURT

Defendant was convicted by jury of murder during the General Sessions term of January 26, 2015. After the jury returned its verdict, this Court held a sentencing hearing and sentenced Defendant to a life sentence. Counsel for Defendant filed a written motion for a new trial on February 9, 2015. The State filed a written reply on February 18, 2015. After careful review of the arguments of the parties and the entire record in this case, the Court denies the motion for a new trial

1. **This Court properly declined instructing the jury on involuntary manslaughter based on the facts and evidence in the record.**

There is no evidence in the record by which the jury could have found Defendant guilty of the crime of involuntary manslaughter. "Involuntary manslaughter is the killing of another without malice and unintentionally while engaged in either: (1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others." *State v. Reese*, 370 S.C. 31, 36, 633 S.E.2d 898, 900 (2006). The theory that Defendant presented to the jury was that he simply prevented the victim Emily Anna Asbill from diving out of a moving car by grabbing the back of her shirt and inadvertently applying pressure to her throat. The defense rested on the proposition that the ligature marks on Ms. Asbill's neck were caused by the hemline of her shirt. The

defense also proposed that after Defendant pulled Ms. Asbill back into the car, she settled into an awkward position, partially sitting on the floorboard of the passenger side. Along with the effects of excessive alcohol consumption, defense witness Dr. Arden testified that the awkward position possibly led to a "positional asphyxiation" that killed Ms. Asbill.

Under Defendant's theory, there is no evidence of an unlawful act. Defense expert Dutch Johnson opined that Ms. Asbill would have fallen out of the vehicle if Mr. Beaty had not acted to restrain her. According the testimony of Dr. Johnson and defense witness Jonathon Arden, Defendant was heroically, not recklessly, trying to save Ms. Asbill's life. Defendant's case actually presents him as showing serious regard for the safety of another person, as opposed to a "reckless disregard."

This Court finds the nothing in the State's closing arguments that would support involuntary manslaughter charge. The State presented an image in its closing of Defendant continuing to drive with his left hand while restraining Ms. Asbill by her shirt with his right hand. First, arguments of counsel are not evidence. But more importantly, it is apparent to this Court that the State's purpose was only to argue to the jury the inconsistency and implausibility of Defendant's theory, not to argue that there was evidence that the defense acted with criminal negligence. This Court finds that the State's theory throughout the trial was abundantly clear: Defendant killed Ms. Asbill with malice aforethought by strangling her with a USB cable (State's Exhibit #42) that was found inside the vehicle by crime scene investigators. The State's theory was corroborated by DNA evidence on the USB cord, distinct ligature markings on Ms. Asbill's throat which were remarkably consistent with such a cord being crossed-over in a noose-like manner, and the testimony of the pathologist (Dr. Janice Ross) who conducted the autopsy.

The State in its case-in-chief presented the jury with substantial circumstantial evidence that Defendant maliciously strangled Emily Anna Asbill with a USB cord. Defendant then chose to present the jury an alternate theory, by way of two expert witnesses, that he acted heroically in defense of Ms. Asbill's life but that she was tragically asphyxiated as a result. The jury could not have reasonably concluded from the facts and evidence presented that Defendant caused Ms. Asbill's death by acting in "reckless disregard for the safety of others." Accordingly, the Court correctly concluded that an involuntary manslaughter charge to the jury was not appropriate in this case.

2. This Court properly denied Defendant's motion for directed verdict.

As there was substantial circumstantial evidence presented by the State to the jury proving Defendant's guilt, the Court properly denied Mr. Beaty's motion for directed verdict at the conclusion of the State's case. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." *State v. Lane*, 410 S.C. 505, 507, 765 S.E.2d 557, 558 (2014) (quoting *State v. Weston,* 367 S.C. 279, 292–93, 625 S.E.2d 641, 648 (2006)).

In this case, there was testimony regarding the following:

1) Defendant gave several statements to law enforcement that varied materially from one another, from which a jury could reasonably infer guilt;
2) Defendant initially suggested that Ms. Asbill, his girlfriend, died because of a self-inflicted cutting-type injury on her arm, when later statements indicate that he knew this to be untrue;
3) Defendant and his friend William Alexander, departed in a car from Kyle and Rose Stewart's house with Emily Anna Asbill;

4) Ms. Asbill was found unresponsive, and likely deceased, in the car when Defendant's step-father came out of the house at 702 Calvert in response to Defendant and William Alexander ringing the doorbell;

5) Investigators found a USB cord (State's Exhibit #42) in the vehicle, its diameter consistent with the diameter of the ligature mark and its rectangular end remarkably consistent with the ligature marks on Ms. Asbill's throat;

6) The USB cord had a mixture of Defendant's DNA and Ms. Abill's DNA on the ends of the cord, and Ms. Asbill's DNA in the middle; none of the DNA on cords pulled out of the car matched William Alexander;

7) The pathologist who conducted the autopsy, Dr. Janice Ross of Newberry, opined that the manner of death was homicide, the cause of death was ligature strangulation and that the ligature marks on Ms. Asbill's neck were consistent with the USB cord found in the car.

Defendant argues that in a case where the State has only circumstantial evidence, when ruling on a motion for directed verdict, this Court should apply the standard of "excluding all reasonable hypotheses other than the guilt of the defendant." In support of his argument, Defendant relies heavily on *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011). It is noteworthy that the Court in *Odems* never explicitly adopts this as the standard to be used by the circuit courts for weighing the State's evidence at the directed verdict stage. Rather, the *Odems* Court in reversing the denial of the defendant's directed verdict motion says, "[T]he definition **illustrates** the lack of evidence against Petitioner (emphasis added)." *Id.* at 590, 720 S.E.2d at 52. *State v. Lane* is the more recent and controlling precedent which clearly lays out the proper standard to be applied by the circuit court at directed verdict: Is there "any direct evidence or

substantial circumstantial evidence reasonably tending to demonstrate the guilt of the accused?" The *Lane* Court does not even refer to the "exclusion of any reasonable hypothesis other than guilt" standard on which Defendant so heavily relies.

In its case in chief, the State presented substantial circumstantial evidence from which the trier of fact could conclude beyond a reasonable doubt that Defendant murdered Emily Anna Asbill by strangulation. Accordingly, this Court properly denied the Defendant's motion for directed verdict at the close of the State's case.

3. The Court did not err in denying Defendant's proposed order of closing arguments.

When a defendant presents evidence and puts up witnesses in its defense, there is absolutely no requirement under the either the law or criminal practice procedures in South Carolina courts that the State must bifurcate its closing argument to the jury. "The solicitor is not required to make an opening argument to the jury on issues of fact, (quoting *State v. Lee*, 255 S.C. 309, 178 S.E.2d 652 (1971)), but may do so in his discretion." *State v. Rodgers*, 269 S.C. 22, 23, 235 S.E.2d 808, 809 (1977).

This Court instructed the State to open on the law as was requested by the Defense, but in no way required the State to present its entire closing argument to the jury in this opening. In the first phase of the State's closing argument, the Solicitor opened on the law and briefly summarized State's theory of the case even though there was no requirement under the law or by order of the Court that he do so. In the second phase of his closing, the Solicitor again laid out the State's theory of how Defendant strangled Ms. Asbill to death, and contrasted it with theory put forward by defense counsel in closing.

This Court finds that the Solicitor did absolutely nothing in his closing argument to violate the special responsibilities of a prosecutor as articulated in the Rules of Professional

Responsibility. The accusations of prosecutorial misconduct made by defense counsel are without merit. Moreover, the defense argument as to improper order of closing argument relies on a faulty interpretation of the case law and accepted criminal trial practices of this State.

4. The Court did not err based on the content of its introductory statement to the jury.

In *State v Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000), the language at issue was the trial court's instruction that the jury has "but one single objective, and that is to seek the truth, to seek the truth regardless of from what source that truth may be derived." *Id.* 343 S.C. at 26, 538 S.E.2d at 251. The *Aleksey* Court found no error in the circuit court judge's instruction: "While we have urged trial courts to avoid using any "seek" language when charging jurors on either reasonable doubt or circumstantial evidence (see *State v. Needs*, 333 S.C. 134, 155, 508 S.E.2d 857, 867–68 (1998)), the "seek" language here did not appear in either the reasonable doubt or circumstantial evidence charges, but in the instructions on juror credibility. Both the reasonable doubt and circumstantial evidence charges were complete and proper." *Id.* 343 S.C. at 27, 538 S.E.2d at 251 – 252. The Court added, "The remarks were prefaced by a full instruction on reasonable doubt and followed by an additional exhortation to bear in mind the State's heavy burden of proof... [T]he instruction as a whole properly conveyed the law to the jury and there is not a reasonable likelihood the jury applied the judge's instructions to convict appellant on less than proof beyond a reasonable doubt." *Id.* 343 S.C. at 29, 538 S.E.2d at 253.

While this Court's opening remarks to the jury in this case made mention of a search for the truth, the Court also told the jury that these remarks were not a charge on the law. At the end of the presentation of evidence and argument of counsel, the Court properly charged the jury on the law applicable to this case. This Court's formal charge on the law did not instruct the jury to "search for the truth" or "seek the truth." Accordingly, any issues regarding the Court's

introductory remarks were resolved when the Court properly charged the jury on the presumption of the Defendant's innocence and the State's burden of proof.

As to the State's remarks in its closing argument to the jury, I find that the State never asked the jury to search for, find, or seek the truth. The State merely urged the jury to do its duty as the judge of the facts and render a verdict that "speaks the truth." The State argued to the jury that the word "verdict" comes from Latin root words that literally mean "to speak truth." Consistent with the Court's charge on the law, the State properly explained its burden of proof ("proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt"), as well as direct evidence versus circumstantial evidence.

5. The Court did not err in denying Defendant's request for voir dire #9.

There was no error in this Court's refusal to ask potential jurors: "Who among you just don't like lawyers, particularly lawyers who represent persons accused of a crime in cases like this?" I do not find this question to be directly relevant or probative to the issues at hand, and the discovery of any potential bias of jurors towards Defendant or his counsel was sufficiently vetted by other questions asked of the jury pool during voir dire.

As to other assertions made by Defendant in his motion under this argument, I do not find any attempt by the State to offer insulting remarks or expressions of animosity toward defense counsel during the course of the trial. The State did not personally attack either Mr. Grose or Mr. Wise in any manner. By stating in his closing that the Defendant's counsel wanted jurors to "check their common sense at the door," I find that the State was simply attacking the reasonableness and plausibility of Defendant's theory of the case. Lastly, this Court finds completely proper the cross-examination of defense experts and comments during the State's

closing questioning the potential bias of witnesses who were collecting fees for their testing, review, and testimony, as is permissible under S.C. Rule of Evidence 608(c).

Based on all of the facts and evidence in the record, this Court finds that the Defendant's arguments for a new trial are without merit. Accordingly, the Court denies the motion and the jury's decision stands.

IT IS SO ORDERED.

W. JEFFREY YOUNG
Presiding Circuit Court Judge

Sumter, South Carolina
20 March, 2015