STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

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Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

TERRY EDWARD MCCALL,

APPELLANT

APPELLATE CASE NO. 2015-001097

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# RECORD ON APPEAL

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LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29201
(803) 734-3727

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

ATTORNEYS FOR RESPONDENT

# INDEX

INDEX ..... i

TRIAL TRANSCRIPT ..... 1

MOTION TO SUPPRESS ..... 4

TESTIMONY (IN CAMERA)

ASHLEY NORMAN
Direct Examination by Mr. Overby ..... 20
Cross-Examination by Mr. Chambers ..... 25

DAVID MACALHANEY
Direct Examination by Mr. Overby ..... 28
Cross-Examination by Mr. Chambers ..... 43

DON BANNISTER
Direct Examination by Mr. Overby ..... 48

WES HIATT
Direct Examination by Mr. Overby ..... 57

WENDY BELL
Direct Examination by Mr. Overby ..... 62

TERRY MCCALL
Direct Examination by Mr. Chambers ..... 70
Cross-Examination by Ms. Drawdy ..... 72

RULING BY COURT ..... 77

OPENING STATEMENT BY MS. DRAWDY ..... 82

OPENING STATEMENT BY MR. CHAMBERS ..... 86

TESTIMONY

MARK ALLISON
Direct Examination by Ms. Drawdy ..... 94
Cross-Examination by Mr. Chambers ..... 100

GREG CERTAIN
Direct Examination by Ms. Drawdy ..... 101

ALLEN HALL
Direct Examination by Ms. Drawdy ..... 104

DANA SUDDETH
Direct Examination by Ms. Drawdy ..... 113

MOTION TO RELIEVE COUNSEL AND FOR A CONTINUANCE ..... 122

RULING BY THE COURT ..... 129

SALLY WARDWICK CLARK
Direct Examination by Mr. Overby ..... 135

JOHN JAMES
Direct Examination by Ms. Drawdy ..... 139

RYAN FREEMAN
Direct Examination by Ms. Drawdy ..... 156
Cross-Examination by Mr. McCall ..... 161

WES HIATT
Direct Examination by Mr. Overby ..... 163
Cross-Examination by Mr. Erwin ..... 170

DAVID MACALHANEY
Direct Examination by Ms. Drawdy ..... 173
Cross-Examination by Mr. Erwin ..... 191

ASHLEY NORMAN
Direct Examination by Ms. Drawdy ..... 195
Cross-Examination by Mr. Erwin ..... 202

WES HIATT
Direct Examination by Ms. Drawdy ..... 202

DON BANNISTER
Direct Examination by Ms. Drawdy ..... 208

LUKE PERRY
Direct Examination by Ms. Drawdy ..... 211

FIRST SERGEANT RIVERS
Direct Examination by Ms. Drawdy ..... 213

AMY STEVENS
Direct Examination by Ms. Drawdy ..... 217

WENDY BELL
Direct Examination by Ms. Drawdy ..... 221
Cross-Examination by Mr. Erwin ..... 223

MARYBETH MCCORMICK
Direct Examination by Ms. Drawdy ..... 224

CARMEN TUCKER
Direct Examination by Ms. Drawdy ..... 229

SHANNA SORRELLS
Direct Examination by Ms. Drawdy ..... 237
Cross-Examination by Mr. Erwin ..... 252
Re-Direct Examination by Ms. Drawdy ..... 255
Re-Cross Examination by Mr. Erwin ..... 255
Re-Direct Examination by Ms. Drawdy ..... 256

WILLIAM NIMMONS
Direct Examination by Mr. Overby ..... 258
Cross-Examination by Mr. Erwin ..... 263

TOMMY BROOKS
Direct Examination by Mr. Overby ..... 265

RENEWAL OF MOTION FOR DIRECTED VERDICT ..... 304

MOTION FOR MISTRIAL ..... 305

RULING BY THE COURT ..... 305

CLOSING ARGUMENT BY MR. ERWIN ..... 309

CLOSING ARGUMENT BY MS. DRAWDY ..... 314

CHARGE ON THE LAW ..... 318

VERDICT ..... 327

MOTION FOR A NEW TRIAL ..... 328

RULING BY THE COURT ..... 328

SENTENCING ..... 333

STATE'S EXHIBIT NO. 29 (URINE/BLOOD REPORT) ..... 335

COURT'S EXHIBIT NO. 2 (STATE'S BRIEF IN OPPOSITION TO SUPPRESSION OF BLOOD AND URINE SAMPLES AND ANALYSIS) ..... 336

COURT'S EXHIBIT NO. 3 (BLOOD/URINE REPORT) ..... 349

COURT'S EXHIBIT NO. 4 (CHAIN OF CUSTODY FORM) ..... 350

COURT'S EXHIBIT NO. 5 (CHAIN OF CUSTODY FORM) ..... 351

COURT'S EXHIBIT NO. 6 (PHOTOGRAPH) ..... 352

COURT'S EXHIBIT NO. 7 PHOTOGRAPH) ..... 354

COURT'S EXHIBIT NO. 8 (PHOTOGRAPH) ..... 356

COURT'S EXHIBIT NO. 9 (PHOTOGRAPH) ..... 358

COURT'S EXHIBIT NO. 10 (PHOTOGRAPH) ..... 360

COURT'S EXHIBIT NO. 11 (PHOTOGRAPH) ..... 362

COURT'S EXHIBIT NO. 12 (PHOTOGRAPH) ..... 364

COURT'S EXHIBIT NO. 13 (PHOTOGRAPH) ..... 366

COURT'S EXHIBIT NO. 14 (REPORT) ..... 368

RECONSTRUCTION HEARING TRANSCRIPT (DATED March 14, 2017) ..... 369

MOTION TO RECUSE SOLICITORS ..... 373

RULING BY THE COURT ..... 373

TESTIMONY

TRACY LANE
Direct Examination by Mr. Strom ..... 376

JOEL LANFEAR
Direct Examination by Mr. Strom ..... 391
Cross-Examination by Ms. Drawdy ..... 395
Examination by The Court ..... 396

JOSH ROBINSON
Direct Examination by Mr. Strom ..... 397

Cross-Examination by Mr. Overby ..... 406

TOMMY BROOKS
Direct Examination by Mr. Strom ..... 412

JAKE ERWIN
Direct Examination by Mr. Strom ..... 415
Cross-Examination by Ms. Drawdy ..... 431
Cross-Examination by Mr. Overby ..... 434
Re-Direct Examination by Mr. Strom ..... 436

TERRY MCCALL
Direct Examination by Mr. Strom ..... 445
Cross-Examination by Ms. Munson ..... 458

COURT'S EXHIBIT NO. 1 (AFFIDAVIT OF TRACY LANCE) ..... 471

COURT'S EXHIBIT NO. 2 (AFFIDAVIT OF CHRIS STACHE) ..... 474

COURT'S EXHIBIT NO. 3 (AFFIDAVIT OF TERESA DWEASE) ..... 477

COURT'S EXHIBIT NO. 4 (AFFIDAVIT OF JOSHUA ROBINSON) ..... 480

COURT'S EXHIBIT NO. 5 (AFFIDAVIT OF TOMMY BROOKS) ..... 483

COURT'S EXHIBIT NO. 6 (AFFIDAVIT OF ROBERT SUDDETH) ..... 486

COURT'S EXHIBIT NO. 7 (AFFIDAVIT OF JULIETTE MARTIN) ..... 489

COURT'S EXHIBIT NO. 8 (AFFIDAVIT OF TERRY MCCALL) ..... 491

PRO SE MOTION TO RELIEVE COUNSEL FILED MARCH 27, 2015 ..... 494

INDICTMENT ..... 496

SENTENCE SHEET ..... 498

CERTIFICATE OF COUNSEL ..... 499

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**
**COURT'S EXHIBITS NOS. 6-13 (PHOTOGRAPHS)**

1

| | |
|---|---|
| STATE OF SOUTH CAROLINA | COURT OF GENERAL SESSION |
| | 2012-GS-23-10242 |
| State of South Carolina | |
| | TRANSCRIPT RECORD |
| vs | |
| Terry Edward McCall | |

May 12, 2015 - Day 1
Greenville, South Carolina

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BEFORE: The Honorable Robin Stilwell, Judge

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

Sara Lee Drawdy, Esquire
Stan Overby, Esquire
Attorney for the State

Randy Chambers, Esquire
Jake Erwin, Esquire
Terry McCall, Pro se

Caroline Hiskell
Thirteenth Circuit Court Reporter

2

# I N D E X


| WITNESSES: | DR | CR | RED | REC |
|---|---|---|---|---|
| MOTIONS: | | | | |
| Ashley Norman | 26 | 31 | | |
| David MacAlhany | 33 | 49 | | |
| Don Bannister | 54 | | | |
| Wes Hiatt | 63 | | | |
| Wendy C. Bell | 68 | | | |
| Terry McCall | 76 | 78 | | |
| David Andis | 90 | | | |
| TRIAL: | | | | |
| Mark Allison | 135 | 140 | | |
| Greg Certain | 142 | | | |
| Allen Hall | 145 | | | |
| Dana Suddeth | 153 | | | |

3

E X H I B I T

| IDENTIFICATION | | ID | IN EVD. |
|---|---|---|---|
| State's | | | |
| 1 | Map | 136 | 136 |
| 2 | Scene Photo | 144 | 144 |
| 3-25 | Scene Photos | | |
| 26 | EMS Patient Record | 188 | 188 |
| 27 | EMS Patient Record | 188 | 188 |
| 28 | EMS Patient Record | 188 | 188 |
| 29 | SLED Urin/Blood Report | 236 | 236 |
| 30 | Urine Sample | | |
| 31 | Blood Sample | | |
| 32 | Photo of Urine/Blood | | |
| 33 | Photo | | |
| 34 | Implied Consent | | |
| 35 | Evidence Bag | 233 | 250 |
| 36 | Evidence Bag | 233 | 250 |
| 37 | Chain of Custody | 258 | 258 |
| 38 | Evidence Log | 263 | 263 |
| 39 | Evidence Log | | |
| 40 | Chain of Custody | | |
| 41 | Toxicology Report | 291 | 291 |
| 42 | Toxicology Report | 296 | 296 |

COURT'S EXHIBIT

| | | |
|---|---|---|
| 1 | Indictment | 8 |
| 2 | Brief | 15 |
| 3-5 | Documents | 28 |
| 6-13 | Photos | 35 |
| 14 | Report | 43 |
| 15 | Photo | 48 |

articulation of prejudice that visits upon the defendant as a consequence of the ticket or as a consequence of the indictment having been served today.

I don't see how there was anything that was not disclosed relative to the charges relative to the trial that was coming forward today, therefore, on all those basis I respectfully deny the motion.

MR. CHAMBERS: Your Honor, the other motions I have pretrial involves blood evidence that the solicitor, I believe, intends to admit. In this particular case, my client as well as Mr. Suddeth who was unfortunately injured in this wreck were both extricated from their automobile by emergency personnel, transported to the hospital for treatment. My client was somewhat ambulatory and was able to talk to the officer when he got there. It was certainly not a medical necessity for taking any kind of blood test rather than a breath test, but when the officer got to the hospital at some point, he required my client to first submit to a urine test which came back negative for any kind of drugs, but then took a blood test and we're asking to suppress the results of that.

The first issue that we have with that is my client -- first of all there was no probable cause to ask for that. At the time this accident in the making of this

investigation will bare this out, my client's car veered over into the other lane and struck Mr. Suddeth's vehicle.

There was some evidence in the making that my client's brake's failed. And my client informed some people there that he felt he was going to have a seizure. He's had medical issues involving seizures for most of his life since he was as child. So they knew all of this.

There was no alcohol on his breath. The officer even says that in his report. His for believing my client was under the influence was simply his demeanor and the way that he spoke. In this particular accident and this was known to the officer that my client was in as serious car accident. He had hit his head to the point where some of his teeth were knocked out and he hasn't had those replaced or anything, so he had taken a pretty good whip.

There was nothing to indicate that he was under the influence so there was no probable cause to ask for those things. So my first issue would be probable cause.

My second issue would be with the fact that the officer did not comply with the implied consent laws. We understand that under 56.29.46 that a defendant can not refuse to take the test where a felony DUI -- where there's probable cause that a felony DUI has taken place,

and so that is certainly the case here.

However, the officer is still required to inform my client of his implied consent rights and it even says in the implied consent form that under that statute that I just cited that they can require him to take chemical tests. They can require him to give a urine sample, they can require him to give a blood sample. Our position is they did not inform him of those rights.

There is an implied consent form that purports that have his signature on it that my client has looked at and said that is not his signature. Frankly when you look at it it is hard to distinguish who signature is it and my client will testify that he was never given this consent form.

The third issue we have is our position is United States Supreme Court ruling which was decided April 1, 2013, Missouri v. McNeeley that that particular statute that I just cited is unconstitutional. The Court held in a fairly long opinion that, first of all, "a warrantless search of a person is reasonable only if it falls within a recognized exception." Clearly this was what would be a warrantless search. The officer I'm sure would be it was appropriate under the statute.

The Court says, "Such an invasion of bodily integrity implicates a person's most personal and deep

rooted expectations of privacy."

The Court says that search warrants are ordinarily required for searches of dwellings for reasons of absent an emergency. The Court obviously stresses the fact that we're talking about invading someone's body and that reason you've got to get a warrant.

Finally, the court ruled that in drunk driving investigations, the natural dissipation of alcohol or we can argue by extrapolating drugs in the blood stream does not constitute an astringency in every case sufficient for conducting a blood test without a warrant.

Simply, there's no way to look at Missouri v. McNeeley and not find that the statute that allows a warrantless intrusion into the body of a defendant like Mr. McCall, is unconstitutional under this finding and that is our position and we ask that you suppress the blood evidence in this case, and at the appropriate time my client is ready to testify regarding the implied consent issue.

MR. OVERBY: If it please the Court, Your Honor, I'll address Mr. Chambers's motion in turn. The State would contend there was sufficient cause in this case to justify the execution of Section 296 obtaining blood draw. The State is happy to introduce the testimony of Trooper McAlhaney as to the facts and circumstances I

do want a couple issues I do want to clear up.

The first is that the blood test in this case was actually obtained prior to the urine test as evidence shown on the records that are involved here.

Second of all the probable cause in this case is not based off MAIT's investigation. MAIT's, major accident investigation team, did not finalize their report until after this ticket had been initiated. This is based off the observations of Trooper McAlhaney who was the primary investigating officer.

Further, the State concedes that there's no alcohol on the defendant's breath. The State would show that via his testimony that Trooper McAlhaney showed up on an accident scene, he conducted an alcohol investigation while out there and drew a field sketch showing this accident occurred in the opposite lane in which the victim, Mr. Suddeth stood; that the victim was transported to the hospital and was in extreme distress as a result of this accident and that upon arriving at the hospital, he didn't observe an order of alcoholic beverage; however, he did observe that he was some indicia that Mr. Chambers has highlighted and the defendant admitted to taking prescription drugs.

Based on that, and again I'll have to put that testimony on the record, again the State would

contend that probable cause existed to bring 2946 into play and it was correct to initiate the traffic ticket.

The second contention is the State would show via testimony as well that Mr. McCall was provided with this implied consent advisement and that the felony DUI implied consent advisement, which I have actually briefed the third argument and that's an exhibit to this brief and at that time I present that up to you.

The State would show via testimony that Trooper McAlhaney, stood next to Mr. McCall, read the advisement to him per the requirements of the implied consent form, ask him if he understood it and then had him sign it and witnessed him sign it. In that since, the State would show that he complied with the implied consent.

THE COURT: The State's position is that happened before the blood test was taken?

MR. OVERBY: Correct, Your Honor.

THE COURT: Now, the third aspect is the more muddy one as a result of the case of Missouri v. McNeeley which came out a couple of years ago from the Supreme Court and I initially I want to state that it has far reaching implications for the way that we handle DUI cases in South Carolina particularly when great bodily injury and death ensues.

10

State versus McCall

I'd like to present to the Court and make it apart of the record the State's brief in opposition, and I have a copy for the law clerk and court reporter.

(Brief marked as Court's Exhibit No. 2 for identification.)

THE COURT: Hold on, you've got to be careful. They can't do two things at once.

MR. OVERBY: I understand.

As to the arguments that are raised in that brief, I presented case law that implies here, most notably Missouri v. McNeeley, Schmurber (ph) v. California and really those are the two that we're dealing with in terms of interpretation.

The State's contention essentially is McNeeley has no effect on 2946 in terms of it's constitutionality. And actually the State has a couple of other arguments in advance of that. First, the State would show through testimony to Mr. McCall provided actual consent to the blood test. The State would show that through the testimony of nurse Ashley Norman who actually took the blood sample and the urine sample as well as Trooper MacAlhaney who requested it. Obviously the State understands that we have the burden of proof in that regard.

As to the argument, the legal argument about

the constitutionality of the statute. Much of DUI case law and the attainment of these chemical tests in a DUI case comes from the 1966 opinion Schrumber v. California in which the Supreme Court held that under certain set of facts most notably there was a traffic accident that a officer could not obtain a warrant in a timely fashion that he had to leave the scene. He could not get to an individual who was involved in this accident until several hours later and further that the dissipation of alcohol in the defendant's drug stream meant that as time is passing along, the test results are becoming less and less active.

Based on that that constituted and estrogen circumstances to the warrant requirement in the 4th Amendment and thus that blood and officers could obtain it in that circumstance.

In South Carolina we have a statutory protocol of implied consent. What implied consent does in effect is actually grant substantially more protections to the individual in question than the 4th amendment requires. The premise of that is the driving privilege is a privilege and not a right. That we can request that we can submit to testing if you're found to be if probably cause exists for driving under the influence but you have a right to refuse.

In this case with a blood draw and the urine

draw pursuant to 2946 which is all part and parcel of the same statutory protocol, this can only be done in cases where there's great bodily injury and death and by their nature they can only be done where there's a traffic accident of some sort because otherwise it's impossible for such a thing to arise out of this particular statute.

With that in mind, McNeeley involved what the court "a routine DUI" investigation. In other words, the officer had probable cause that a traffic violation had been committed. He stopped the defendant, Mr. McNeeley, in order to see what was going on. He had him step out of the vehicle order to conduct a field sobriety test and made a determination that he was driving under the influence. At that point he asked Mr. McNeeley to submit to a breathalyzer test to which Mr. McNeeley said, no, I'm not going to do it. Missouri did have a complied consent law at that time, however, it did not mandate that you necessarily provide the sample as well. It had a right of refusal. It did not have a statute on these lines with regards to felony DUI.

What ended up happening is that McNeeley was transported to the hospital by an officer and about 30 minutes after he was placed under arrest a blood draw was conducted over Mr. McNeeley's objection and was used against him at court at a subsequent trial.

That blood draw was actually suppressed by the trial court in the case and subsequent to that the State chose to challenge the suppression of that on the basis of trying to seek a bright line rule that the dissipation of alcohol in every case will constitute estrogen circumstances to proceed without a search warrant. That's all McNeeley deals with.

McNeeley says, okay, we understand your argument, that's overly broad. McNeeley holds that in Schmurber it said you can do these things but it had to be done on case by case analysis. One thing that they highlighted the additional special facts in the case.

They found that none of these special facts that existed in Schmurber existed here. They also highlighted a couple of additional factors, most notably that in some jurisdictions it's easier to obtain a warrant now thanks to technological advancements and things of that nature.

In any event, the court essentially said we're not going to go away from Schmurber's holding that there has to be a case by case analysis. We're just holding -- it is not a per se exception to the warrant requirement that dissipation of alcohol in the blood stream will constitute an exception.

Missouri essentially went for the gold and

the fell short in trying to get this bread line rule. As that relates to the present case, Your Honor, and the present nature of the 2946 statute, this only occurs in great bodily injury and death circumstances, and as stated by their very nature the only thing that can be involved is a traffic accident that involves injuries.

The State has numerous witnesses here to discuss the particular nature of these accidents. In addition this accident scene in question and these witness will to testify they are chaotic. They require investigation and time. There's often a lack of manpower in order to be able to deal with this, particular in this case where this accident was truly a horrific accident.

Further, South Carolina doesn't have a e-warrant or telephonic communication statute to allow for a magistrate to essentially -- a person to call over the phone and obtain a warrant. You have to have an affidavit sworn under oath in the presence of magistrate which means you got to go find them. These accidents occur in the middle of the night so that's all those part and parcel.

In addition, the real crux that makes this different and the felony DUI statute different as well, is that you can be charged with felony DUI based upon the belief that the person is under the influence of alcohol, drugs, or a combination there of. In McNeeley the court's

primary conclusion is we're not going to recognize this pro se rule because it's somewhat easy and predictable to make a determination about how alcohol is going to process out of the blood stream. You are able to do retrograded extrapolations now which can tell you, hey, he's got this point alcohol point so we can go back to the point before that in order to determine what his blood alcohol was.

With the narcotics it doesn't work that way. Narcotics have varying half lives. The SLED toxicology lab will testify about this variance and half lives, the unpredictability of these half lives in particular drugs. And the fact that in some cases the drugs can be out of the system in several hours.

So there's difference there in terms of what McNeeley was considering versus what we have in these particular cases.

In addition, implied consent protocols have been upheld and have withstood constitutional muster in numerous situations. In fact, McNeeley references implied consent statutes as a means by which states can obtain this evidence.

Finally, Your Honor, as to constitutionality of the statute. Statutes according to the South Carolina Supreme Court, all statutes are presumed constitutional and will, if possible be construed so as to render them

valid. So in other words unless we get some sort of ruling that says this statute is unconstitutional, they're presumed constitutional and therefore should be followed.

The State would then advance arguments that even if the State was to find that 2946 is not constitutional that estrogen circumstances based on the testimony of witnesses, exhibits existed in this situation they were very similar to Schmurber and I would argue 2946 essentially codifies this situation of Schmurber such that an estrogen circumstances existed. And finally, Your Honor, this felony DUI statute 2946 has been around for 16 years. It was first enacted in 1998.

Troopers are here from the South Carolina Highway Patrol that have been around for 20 years and they would show based off testimony, Your Honor, they have never sought a search warrant in a felony DUI case in that entire time. They rely upon 2946 as constitutionality essentially as a legislative method of limiting or making and rendering these 4th amendment searches reasonable. At the time that this particular test was conducted, that was still good law and based off that reliance, these officers haven't relied on a statute that was blatantly unconstitutional to the point it was totally unreasonable for them to rely upon.

Other jurisdictions have struggled with this

issue, Your Honor. There was a magistrate that suppressed 17 of these cases and that magistrate was overruled by a federal district court by what's called a good faith exception. In other words, you're relying on a statute and you believe you have the authority to attain it, it's not unreasonable for you to attain that sample and therefore we should be allowed to proceed.

I believe that on this particular issue, since it is a pretty large one, the State would request to proffer some testimony.

THE COURT: It's my understanding from all of you that there's a Jackson v Denno and I presume that the arresting officer will be testifying with respect to that as well. Am I right?

MR. OVERBY: It was not taken by the investigating ---

THE COURT: We'll take all of that and with these I'll take under advisement when I hear all the evidence related to that and the Jackson as well.

Mr. Chambers.

MR. CHAMBERS: Just a brief response, Your Honor. I hear this very complex argument from the solicitor and it seems to me as I listen that it comes down to they really needed the evidence because this was a really serious case and for that reason that justifies the

intrusion of my client's person to get his blood.

There was nothing at all ambiguous about the language from the United States Supreme Court in the McNeeley case. It flat out said we understand that there may be some estrogency in the fact that the substance inside a person will dissipate over time and time is of the essence in getting that out. We have to weigh that against this extraordinary intrusion, this extraordinary search in going into someone's body.

Basically what they're saying is, because they need it so badly, we should just be able to gather the evidence the way we see fit. This is an evidence gathering exercise. It's no different than trying to get a statement from somebody or going into someone's house to execute a search or any of those things. The Supreme Court said unambiguously that is not an estrogen circumstance that would obviate the need for a warrant.

They said in these particular circumstances they need to get a warrant.

I would also point out and I meant to raise this a minute ago and I guess it will be another issue in the case, if the circumstances were as estrogen as they say, our position is they were outside the time frame for collecting the blood. The statute requires the blood to be collected within a three hour time frame. The accident

report shows this accident in approximation occurred at 17:50. The blood draw, according to the form, happened between 20:45 and 21:05. There's no way to know when the blood itself was actually drawn. I'm assuming about 20:45 which arguable if our time was exactly right when the accident occurred would put them five minutes within that three hour time frame but I'm assuming since she then put 21:05 this process was a fairly lengthy process.

So actually taking the blood sample occurred somewhere near the end of that time frame. They would outside the three hour limit. That's another reason to suppress it but it also goes, if there is any credence what so ever to their argument that time was of the essence, it goes to that argument as well.

THE COURT: One question, under McNeeley, were they dealing with an implied consent statute? Did they take the sample pursuant to an implied consent statute?

MR. OVERBY: No, Your Honor.

THE COURT: Let's go ahead and proffer that into the record. I know that there is some Jackson v. Denno as well that you need to put into the record.

MR. OVERBY: That is correct, Your Honor.

THE COURT: Then if you would, you can call your first witness as it relates to the McNeeley issue and

then you can roll straight into the next issue of statements that you wish to introduce at trial.

MR. OVERBY: And Your Honor just to be clear, the State is now abandoning it's argument that Mr. McCall actually consented to this particular quarto. At this time the State would call Ms. Ashley Norman to the stand.

THE CLERK: Please come forward to be sworn in. Please raise your right hand place your left hand on the Bible.

ASHLEY NORMAN, having been duly sworn, testified as follows:

Thank you. You may be seated.

MR. OVERBY: The Court's indulgence, Your Honor.

DIRECT EXAMINATION

BY MR. OVERBY:

Q Good morning, Ms. Norman, would you state your name for the record.

A Ashley Norman.

Q And what do you do for a living, Ms. Norman?

A I am a staff nurse at Greenville Memorial emergency room.

Q How long have you been a staff nurse at Greenville Memorial?

A Over seven years.

Q Do you have training and experience that qualifies you for that particular role?

A I do.

Q Could you please provide the Court with that? Do you have a degree?

A I have a degree and I have a nursing license.

Q And that nursing degree is provided by the State of South Carolina?

A It is.

Q How long have you been a registered nurse?

A A little over seven years.

Q You've always been at Greenville Memorial?

A Also at Greenville Memorial.

Q And you work in the ER. Now as part of your duties -- what are some of your duties and responsibilities at Greenville Memorial Hospital?

A I care for patients as they come in based on their news, draw blood, start IV's, wound care, respiratory care.

Q One of those duties is a sample collection?

A Yes, I draw blood.

Q And urine?

A We collect urine.

Q What is the primary time in which you collect blood and urine?

A Typically based on a doctor's order. I mean based on a patient's condition.

Q Are you ever requested to obtain a sample by law enforcement?

A I have been.

Q Is there a difference in the manner in which those two samples are handled?

A There is.

Q Talk about that just briefly.

A With a legal sample, meaning a sample requested by law enforcement we don't use the alcohol swabs, we use a betadine(ph) swab and collect into grey tubes. We use just a small butterfly needle and collect the blood, label the blood and that goes directly to chain of command to the officer.

Q So it's handled differently than most other samples.

A Most other samples we use alcohol swab and draw the blood and label it and send it to the lab.

Q In the present case, were you on duty on the night of March 4, 2012?

A I believe I was.

Q Did you have occasion to come across the defendant in this case?

A I did.

MR. OVERBY: I'd like to have marked Court's Exhibit 3, 4, and 5.

(Documents marked as Court's Exhibits Nos. 3, 4 and 5 for identification.)

BY MR. OVERBY:

Q Ms. Norman, I'd like to present to you what's been marked as Court's Exhibit No. 3. Does your signature appear on here?

A It does.

Q What does that document show?

A I believe it's a blood urine collection chain of command which we typically use.

Q You typically use it to show you are the party that took this particular sample.

A It is.

Q And at the request of a law enforcement officer?

A Yes.

Q I'm going to show you Court's 4 and 5, can you tell me what those documents are?

A Those are chain of custody forms.

Q Does your signature appear on those documents?

A It does.

Q What are those chain of custody forms for?

A One is for blood and one is urine.

Q Can you tell me off those forms how the urine was

24



collected?

A It was voided specimen which means the patient was given a sterile urine cup and voided that specimen into the cup and was presented to us.

Q So he didn't have to be forced to provide the sample for urine?

A No.

Q So he presented that into a cup. Now, as to the blood, how many legal blood drugs have you conducted in your experience?

A Three, maybe four.

Q In your recollection have you ever had an individual refuse that sample?

A I have not.

Q Have you ever collected a sample where somebody who has refused?

A Not where somebody has refused.

Q Would you?

A I would not.

Q Was this case different?

A No.

Q Do you remember the specific act of withdrawal?

A I don't.

Q But based on these documents and your recollection, do you recall that he didn't resist.

A Right.

MR. OVERBY: Thank you. I have no further questions for this witness.

THE COURT: Mr. Chambers.

CROSS-EXAMINATION

BY MR. CHAMBERS:

Q One of the forms the solicitor talked to you about is this one that says South Carolina Law Enforcement Urine Blood Collection; is that correct?

A It is.

Q That's not your form is it, that's actually a form that's provided to you by the trooper?

A That's what the trooper bring, yes.

Q And your job is simply when the trooper says I want to do this blood draw and this urine test, you simply get the samples; is that correct?

A As long as the patient is agreeing.

Q I understand. You didn't make the determination that we're going to draw blood, that was the trooper who did that?

A Yes.

Q That's what we're talking about is the legal sample. You did get blood for medical purposes?

A I believe someone did.

Q And that was based on medical purposes and

provide treatment. Now, somebody checked that "subject has been advised of his or her consent rights." Did you check that?

A I don't remember. I probably just signed that name.

Q Most likely than not the trooper check that.

A I don't remember.

Q So you certainly didn't tell Mr. McCall about his implied consent?

A Absolutely not.

Q There's a signature on here that purports to be the subject signature, but all that indicates is that he received a copy of it, correct?

A I don't know that.

Q Okay. The only thing that you know about this form is that you signed this?

A That's the paper that we sign, yes.

Q So, you're only testimony then regarding whether nor not he gave his permission of his consent is that he didn't actively resist you when you did what the trooper told you to do and that is go collect the samples?

A No. In the instances that I have drawn legal samples, I confirm that before I stick someone that they're okay with that.

Q That they okay ---

A You're okay that I take this legal sample.

Q What the trooper asked you to do, correct?

A I'm not sure ---

Q I'm not trying to ---

A I'll tell you how I typically do it is I go in -- a trooper asks for a legal sample, I go in and I introduce myself to the patient and let them know that I'm understanding that you're agreeing to have a legal sample drawn and then they say yes or no. And I draw if they say yes.

MR. CHAMBERS: That's all the questions I have.

MR. OVERBY: I have no further questions on redirect, Your Honor.

THE COURT: Thank you. You may step down.

MR. OVERBY: At this time, Your Honor, I would call Trooper David MacAlhaney to the stand.

THE CLERK: Please come to the stand to be sworn in, place your left hand on the Bible and raise your right.

DAVID MACALHANEY, having been duly sworn, testified as follows:

Please state your name for the record.

THE WITNESS: David E. MacAlhaney.

DIRECT EXAMINATION

BY MR. OVERBY:

Q Good afternoon, how are you doing?

A Fine, sir.

Q What is your present occupation?

A I am currently working for Greenville Technical College in their police department.

Q What do you do for Greenville Technical College?

A I am an officer on campus and I cover the five campuses in Greenville County.

Q And you work there extensive -- have you worked there your entire career?

A No, I worked there since June of 2013 as I retired from the highway patrol in December of 2012.

Q So you were formally employed by the South Carolina Department of Public Safety, is that true?

A Yes.

Q How long were you a trooper for?

A Twenty-fine years.

Q During your time as trooper, what kind of training did you receive?

A I received training as far as accident investigations, as far as speed measuring devices, anything that can occur from a traffic accident or any kind of traffic violation regarding a motor vehicle.

Q Was that through the South Carolina Criminal

Justice Academy?

A It was.

Q Were you a trooper on the night of March 4, 2012?

A I was.

Q And were you the primary investigating officer in this present case?

A Yes, I was.

Q Talk to me a little bit about what you observed --

MR. OVERBY: Let me have marked as Court's Exhibits 6 through 13.

(Photo's marked as Court's Exhibit No. 6 through 13 for identification.)

MR. OVERBY:

Q I'm going to have you look at what's been marked as Court's Exhibit 6 through 13. What are those photographs of?

A They're of the accident in which I responded to at 291 and Worley Road in Greenville County.

Q They accurately represent and depict the accident as you perceived it?

A Yes, it does.

Q What are some of your responsibilities when you're out there on an accident scene investigation?

A Primary responsibility is to think of the roadway

itself and actually get in there investigate, do what you have to do, and try to clear the roadway in a timely manner. Everything stems from trying to find out who and place your driver's behind the wheel, find and locate any witnesses who may have seen the accident, to get out and take measurements, note the vehicles in the roadway. It's just a lot of technical things that has to be done depending in each accident. Some accidents take a lot longer and other accidents you can do pretty quickly.

Q Was this such an accident that you could do quickly?

A No, it was not.

Q What about this accident that it took time to investigate?

A It was a major accident. It was an accident where an individual in one vehicle was hurt really really bad. It was a situation where I didn't know at that point how it was going to end. It was a big debris field on the highway. And, of course, in Greenville County at that time of the day 291 north was a busy road. It was a lot of traffic wanting to come through, and trying to maintain a clean field of investigation and keep that traffic at bay.

Q What was the importance of the integrity of clear field of investigation?

A To preserve any evidence that maybe on the roadway. Pictures have to be taken, everything has to be noted, and you can't have traffic running through and investigation field.

Q What's the importance of marking all the vehicle?

A So at a later day place those vehicles back on the scene where they were.

Q What do you mean by that?

A I have read paint in the trunk of my car. I get it out and I got to the wheels and mark the wheel locations in a certain fashion to show angle of how the vehicle is sitting in the roadway.

Q Do you make a determination at the point of impact?

A I do.

Q Important to do so?

A It is.

Q Why is that?

A Point of impact tells you exactly where the two vehicles collided and places in a certain area in the roadway.

Q If you step down real quickly because I want to show you some photographs and ask you if they are fair and accurate of the accident scene.

Can you tell me whose vehicle that is?

A That is Mr. Suddeth's vehicle.
Q And who is Mr. Suddeth in this case?
A He's the individual that was traveling on 291 south and he was struck by an on-coming vehicle in his lane.
Q Were you around the vehicle, his vehicle at all during this time?
A I was.
Q Do you have any recollection of what his condition was?
A His condition was poor. He suffered great bodily injury.
Q Does that fairly and accurate depict his vehicle from another angle?
A It does.
Q I see you have multiple emergency service units out there, correct?
A Correct.
Q This photograph which is Court's Exhibit No. 7, what is that a photograph of?
A The accident scene 291 north.
Q Court's Exhibit No. 9:
A That is as well. That's the actual vehicle of Mr. Suddeth.
Q Do you remember if Mr. Suddeth got out of his

vehicle voluntarily?

A No, he did not.

Q What happened in that sense?

A He had to be extricated from the vehicle by the fire department and it took some time to extract him from the vehicle.

Q Was he the only person injured in this accident?

A No.

Q Who else was injured?

A Mr. McCall was injured as well.

Q What is this a photograph of?

A Mr. McCall's vehicle.

Q And Court's Exhibit No. 11.

A That again is Mr. McCall's vehicle.

Q No. 13.

A That too is Mr. McCall's vehicle.

Q Was this a simple accident to investigate?

A No, it was not.

Q You can have a seat.

Now, the photographs in question, you said that they do fairly and accurately represent the accident?

A Correct.

Q You had an opportunity to view these previously, correct?

A Correct.

Q I'd like to bring you notice to the time stamps that's involved in the bottom right of the photographs. Is that the correct accident date?

A No.

Q So that's actually a misprint of the particular time and date?

A It is.

Q But you have personal knowledge of the accident?

A I do.

Q You were there and you recognize the photographs as the scene?

A Yes.

Q Now, how long does an average accident scene take to investigate?

A It varies like I say from the severity of the accidents. I have investigated accidents as quick as a half hour and some have taken several hours.

Q Is it possible they always stay with the defendant or the accused in a particular situation during these times?

A Not all the time.

Q Was that the case here?

A Yes.

Q And why is that?

A The defendant was transported by EMS from the

scene as Mr. Suddeth was too. It was a very minimal time on the scene itself to do any conversations with either one of them.

Q And during this time you said that you're marking the scene, did you mark the scene in this case?

A I did.

Q You identified the drivers?

A I did.

Q You were securing the scene?

A Yes.

Q Did you have 20 people in order to direct for you to do these jobs?

A We had a couple of more units from highway patrol there. There was fireman there. Sometimes I have people volunteering to ask me if it's something they can do with the fire departments and agencies. In this case the investigative part had to be done on my part and the troopers that were out there with me.

Q Did that include interviewing witnesses?

A It did.

Q How many witnesses did you interview in this case?

A I had two witnesses.

Q Approximately how long did those witnesses take?

A They took from start to finish I had to have the

written statements as well as in car video, statements, verbal statements. I'd say it took a half hour each.

Q What time do you remember getting on the scene?

A Can't remember the exact time it was. I can't remember the exact time I got on the scene.

Q I'd like to show you this report here. I want to show you this document. What is that document?

A This is the call history from the CAD of the highway patrol.

Q Are you identified on that report?

A I am.

Q What is your call number?

A C47.

Q Based off that CAD report, does it refresh your recollection about what time you arrived on the accident?

A 18:12 according to my radio traffic.

Q Now, after you finished talking to the witnesses and after you finished investigating the scene, making sure that everything was secure, you said the driver's had already been transported.

A Yes.

Q Did you eventually go and try to speak with Mr. McCall?

A I did.

Q Do you remember about what time that was?

A Exact time I would probably have to refer to the CAD to find that out. I would say it was a couple of hours maybe, an hour and a half. I'm just guessing.

Q I'd like to show you what I've had marked as Court's Exhibit No. 14.

(Report marked as Court's Exhibit No. 14 for identification.)

BY MR. OVERBY:

Q Can you identify what Court's Exhibit No. 14 is?

A This is implied consent for felony DUI.

Q Now, in this particular case -- does that document show you what time that you began talking to Mr. McCall?

A No.

Q Well, let me ask you this, is that your signature?

A That's my signature.

Q What date did this occur?

A March 4 of 2012.

Q Let me show you another document to try to assist you with that. This has already marked as a Court's Exhibit 3. What time did you arrest the defendant? Does that show you what time you arrested the defendant?

A 20:13.

Q So you don't get there until 20:13 or you are at

the hospital at 20:13?

A Correct.

Q Talk to me about what happened when you were at the hospital?

A When I got to the hospital I asked the front desk about the two individuals involved in the wreck and she directed me back into the ER. Mr. Suddeth was in the trauma bay, Mr. McCall was in critical care. The trauma bay is kind of -- you can't really talk to anybody in the trauma bay, so I immediately went to the critical care section where I found Mr. McCall.

Q What did you notice about Mr. McCall on arrival?

A I noticed, of course, he had some injuries from the wreck. He was laying on a stretcher, I think, in the hallway of the critical care section. He was coherent, he could talk, he could speak. I asked him about the accident and he advised me that his vehicle went across the roadway and he had no brakes. He told me he had no calibers on the wheels so he had no brakes. And I asked him if he had anything to drink, any alcohol to drink, as I did observe cans in his vehicle. He told me that he didn't drink, he didn't have anything to drink.

Then I asked him if he had taken any kind of drugs, and he told me that he had taken some prescription drug.

Q When you conduct an accident investigation, you determine the point of impact correct?

A Correct.

Q Was Mr McCall's statement any different really from what your own investigation concluded?

A No.

Q Is it in fact a dereliction of duty to cross the center line in a driving case?

A It is.

Q At that time what did you know about Mr. Suddeth's condition?

A His condition I went back to the trauma bay and all I could see was him laying in the trauma bay. I couldn't really determine anything other than what I was told by the nurses and the doctor I spoke to I asked him about his probability of survival and he told me at that point he didn't know. He said he couldn't say.

Q So it was apparent to you that he was pretty badly injured?

A Definitely bad.

Q Now, you stated that the defendant told you he did not drink. Did you observe an order of alcohol beverage on him?

A No.

Q What did you observe about Mr. McCall?

A I observed that he wasn't responding to me in the way that I would feel as normal in concurrence with the amount damage and injury that he had in the wreck. His speech wasn't totally true and plain. If I remember correctly, his eyes were dilated to some degree. That along with his actions and his admission to taking prescription drugs, I felt it necessary to go further with the investigation.

Q When you say necessary to go further you mean place him under arrest?

A Place him under arrest and advise him of his implied consent.

Q Prior to having that conversation with Mr. McCall you wouldn't have necessarily come to that conclusion?

A That's correct.

Q I'm going to show you Court's Exhibit No. 14. Talk about that advisement?

A This is the driving under the influence advisement. This is the advisement that you read to someone that you will charge him or the felony DUI law and what you have to tell them as far as their rights.

Q What makes that advisement different from your standard consent advisement?

A This advisement informs them that they're going to have to admit to a test and that test usually is a

result of blood draw and they really don't have a choice in the matter.

Q Was it practical for you to go to the LEC and do a breathalyzer test?

A No.

Q Would it have shown anything?

A No, because he told me there was no alcohol nor did I detect any alcohol.

Q When you read that to him, how close were you to him?

A I was standing right next to him when he was laying on the stretcher.

Q And you read it in its totality to him?

A I did.

Q Did he appear to understand that?

A Yes, I asked him if he understood and he replied yes.

Q Did you hand him a copy of this advisement?

A I did.

Q Did you observe him sign this advisement?

A I did. I actually had to hold it above him and he signed laying on his back.

Q Once you had made that advisement, did you ask him if he was going to provide a sample?

A Yes.

Q And what did he say in response?
A He told me sure I'll give you a sample.
Q Did he ever indicate to you he would not provide you with a sample?
A No, he did not.
Q What did you do after that point?
A Then I tried to locate a nurse to draw the sample.
Q The nurse that testified earlier today?
A She is the one.
Q Now, during this process, were you present?
A Yes.
Q And as part of this process you observed this test being conducted?
A I did.
Q Now, was there any indication during that time frame that he would not submit to that test at that point?
A No, there was not.
MR. OVERBY: I have one final Court's Exhibit I'd like to mark and that's No. 15.
(Photograph marked as Court's Exhibit No. 15 for identification.)
MR. OVERBY:
Q You were with this Mr. McCall during the entire time, correct?

A Correct.

Q You had the opportunity to personally observe him?

A I did.

Q I'm going to show you what's been marked as Court's Exhibit No. 15. It's a photograph of Mr. McCall, correct?

A Correct.

Q Does it fairly and accurately represent Mr. McCall's appearance when you saw him at the hospital?

A It does.

Q Thank you.

MR. OVERBY: I have no further questions.

CROSS-EXAMINATION

BY MR. CHAMBERS:

Q Trooper MacAlhaney, from the time you arrived the fire department were already on the scene; is that correct?

A That's correct.

Q They had been there for some time, they had some difficulty with Mr. McCall and Mr. Suddeth getting them out of their vehicles; is that correct?

A I know they did Mr. Suddeth, but Mr. McCall I think was out when I got there.

Q Were you aware that the fire department had to

44



use hydraulic equipment in order the extricate Mr. McCall from his vehicle?

A I can't recall if they did or didn't.

Q When you arrived Mr. McCall was being treated by EMS?

A Yes.

Q And that picture that we saw a few minutes ago shows damage to both vehicle, correct?

A Correct.

Q You didn't get an opportunity to talk to Mr. McCall at the accident scene, correct?

A That's correct.

Q A couple of hours later when you were finished there, that's when you went Greenville Memorial?

A Right.

Q Is it your experience that trauma patients generally go to Greenville Memorial because they had at trauma center there?

A Usually. I guess we are fortunate to have a trauma center and I guess most people end up there in a trauma situation.

Q So by the time you got there, Mr. McCall who is in critical care and he was lying on a stretcher; is that correct?

A Yes, sir.

Q He wasn't up walking around when you got there?
A No, sir.
Q He did not get up during the time that you were talking to him, did he?
A No, sir.
Q He remained supine on the stretcher while you talked to him the entire time?
A Yes, sir.
Q You indicated that there was no evidence what so ever that he had been using alcohol?
A That's correct.
Q And you said he did have injuries?
A He did.
Q Were you aware among the injuries is that he hit his head with such force that he had lost several of his teeth?
A Seems like I do recall teeth missing.
Q And was that evident to you when you were talking to him?
A Yes, sir.
Q And that would also provide some evidence that he had hit his head and had suffered some trauma to his head during his accident; is that correct?
A That could be true.
Q And during the course of this discussion, he told

you he hadn't had anything to drink but he did tell you that he had taken some prescription medication?

A He did.

Q That is the statement he made prescription medication?

A Yes, sir.

Q So you're saying your probable cause for arrest for felony DUI at least as to the impairment issue is he didn't seem right and he told you he took prescription medication, right?

A Not totally. It stems to from my investigation o the scene.

Q Please articulate to me, and I'm really only interested in the impairment issue because we'll concede of course that there was great bodily injury in this accident, so as far as the impairment goes, what was your probable cause?

A My probable cause for impairment like I said his actions didn't seem right and it wasn't actions consistent with what his injuries appeared to be. As his admission to taking prescription drugs as well as the way the accident happened when he informed me he had no calibers. I do know a little bit about cars and brakes and if you don't have calibers then, of course, you have no brake pads. That in no way, shape, form, or fashion indicates

going to the opposite side of the roadway and hitting another vehicle. So with all that collective, I come to the conclusion that there was sufficient evidence to take a blood draw.

Q You say he didn't act right but you say he was lying on a stretcher this entire time.

A True.

Q And he had suffered head trauma?

A True.

Q And he was missing teeth?

A Yes, sir.

Q And he had been in a horrific accident?

A Yes, sir.

Q So what you just articulated that is the extent of your probable cause?

A Yes, sir.

Q So after that short discussion with him you said, well, I'm placing you under arrest and that's when you found a nurse to do a blood draw; is that correct?

A Correct.

Q You said that you read the rights to him and this is, you say, his signature right there, this scribble that's on the line?

A Yes, sir.

Q And you say he indicated that he would provide

samples?

A Yes.

MR. CHAMBERS: That's all I have.

THE COURT: Any follow up?

MR. OVERBY: No, Your Honor. I have no further questions.

THE COURT: Thank you, sir, you can step down.

Let's take a five or ten minute break.

(Brief break.)

Okay. Does the State have any other witnesses to call to the stand?

MR. OVERBY: Yes, sir. The State calls First Sergeant Don Bannister to the stand.

THE CLERK: Sir, would you step up to the stand to be sworn. Place your left hand on the Bible and raise your right.

DON BANNISTER, having been duly sworn, testified as follows:

Thank you. Would you please state your name for the record.

THE WITNESS: Don Bannister.

DIRECT EXAMINATION

BY MR. OVERBY:

Q How are you today?

A Doing well, you?

Q Fine. Where are you employed?

A South Carolina Highway Patrol.

Q How long have you been employed with the South Carolina Highway Patrol?

A A little over 24 years.

Q And what is your duty and responsibility presently at the South Carolina Highway Patrol?

A I'm the first sergeant for South Carolina so that makes me the post commander.

Q As part of being the post commander, what sort of responsibilities do you have?

A Well, I'm responsible for most everything. I do scheduling, assign equipment and I oversee all the supervisors and troopers that work in this county.

Q Do you work accidents?

A Yes, sir.

Q Through the course of your career, how many accident scenes you worked?

A I couldn't tell you. It's been a lot.

Q Hundreds?

A Yes.

Q Did those accident scenes range in severity?

A Yes, sir, they did.

Q What are some of the things that are most

concerning on an accident scene in general?

A On a very severe accident scene one of the things is going to be scene security and making sure that civilians that don't need to be in the scene aren't walking through it. You want to make sure the traffic is moving. In this particular case SC 291, you can't have traffic just stand still. You're going to have to detour traffic in some version so you need to detail people to that. You want to make sure that people are gathering evidence, photographing, taking statements.

If you have somebody transported to the hospital you're going to want to send another trooper to try to determine what they're injuries may be and those are just some.

Q Why do you go through all of these things?

A To be sure that you're accurate.

Q Why is it important to be accurate?

A Of course, you don't want to charge somebody falsely. You want to make sure that you're making the right charge and that you're completing the investigative steps to substantial the charge you're contemplating.

Q Do you have a duty to the public as well?

A Yes, sir.

Q It's important to get it right.

A Yes, sir.

Q Now, the tasks that you're talking about you ran through them in a few minutes, but in reality how long does it take to accomplish some of these items?

A At a severe collision scene, it's going to range especially with MAIT being involved, you're probably looking at a minimum of being able to clear that scene in three to five hours.

Q Who is MAIT just for the record?

A That's the reconstructive arm of our agency, of our department. They come out and assist with severe collision, doing vehicle dynamics and examinations of vehicles. Also they do -- they can recreate the scene on computer, plotting points, surveying and those matters.

Q Sounds like a lot of people have to have a lot of jobs?

A Yes, sir.

Q What kind of resources do you have to accomplish those things?

A Most times they're very limited. In the time that I've been a first sergeant we've ranged anywhere from 35 to 42 troopers and I've been a first sergeant since September of 2010. Back in the early '90s Greenville had 65 troopers stationed here and it's very much small than that now. So a normal crew is going to have anywhere between six to eight.

Q So you don't have 42 troopers at one time at your disposal?

A No, sir.

Q Six to eight?

A Yes, sir.

Q Now, a major accident like this, how many people is that going to involve?

A You can very well extinguish that number pretty quickly. You can put four people on the scene and keep them busy the entire time while you're detailing another two to maybe go to the jail to get warrants if you need those or go to the hospital and then you still have prioritize and use your remaining troopers to cover the rest.

Q Ideally in an investigation, when do you want to obtain a sample from an individual?

A As soon as possible.

Q Why is that?

A To make sure it's accurate. Especially in DUI cases it's well known we're dealing with fleeting evidence.

Q When you have to go and obtain a search warrant, talk a little bit about that procedure?

A To obtain a search warrant, you're going -- most times we're going to go to the jail. If it's after 5:00

we're going to have to go to the jail and sit down with the clerk to get one typed up. And then you're going to have to find a judge. If a judge is not in, you start making phone calls to the supervisor to find a judge to let them review it because we don't have the online system, call in type system, you're going to call them and take that warrant to them to let them review it to sign it.

Q When these accidents or collisions happen, there are still other happening around the county?

A Yes, sir.

Q You have to handle those, don't you?

A Yes, sir.

Q So you described a little bit about the warrant process, about how long does that take to get that done?

A In a perfect scenario, you're looking at an hour, hour-and-a-half. If you have to hunt a judge or wait on clerk -- the warrants are set up on through the county system so we don't have access to it until we get there. You're looking at probably about two hours or maybe a little more.

Q You said that usually you would go to the jail if you could?

A Yes.

Q Is the person you are looking to obtain something

from always at the jail at the same time?

A No, he could very well be at the hospital.

Q How long is it from the jail to Greenville Memorial, do you know?

A About 15 minutes to travel down there from the jail and of course when you get to the hospital with the warrant depending on where the subject may be, you're going to have to advise the hospital to request a blood draw or a urine sample or whatever the case might be. They're not standing waiting for us at the door so once they finish whatever task they're currently on, then they'll get to you.

Q That doesn't include the time that you're out there where ever that accident scene might occur?

A Yes, sir, it doesn't include that.

Q Now, you said that you been with the South Carolina Highway Patrol for 25 years, correct?

A Yes, sir.

Q Have you ever been the investigating lead officer on a case?

A Yes, sir.

Q Have you ever obtained a search warrant for an individual's blood in a great bodily injury accident?

A Up to about two years ago with this Missouri case, no, we didn't because the law allows us to have that

draw. 2946 states that we can get it, but there was some question as to whether we were still able to do that constitutionally. Now, from about late 2013, beginning of 2014 we do try to obtain search warrants now for blood or urine.

Q But you didn't start at the time of this accident?

A No, sir. The law allows us to retrieve those samples.

Q And the reason you started obtaining search warrants is because of this McNeeley case; is that correct?

A Yes, sir.

Q Why is that?

A So we don't run into any issues pertaining to what you spoke to earlier.

Q How much does that delay the process of obtaining these samples?

A Just like I said, ideally it's going to take you an hour, hour and a half, to get the warrant if everything is in place and get it to the hospital. It could take you as much as two and a half, three hours, to get it done, served and get the sample.

Q Would it be fair to say you relied on this statute prior to this whole case coming out?

A Yes, sir.

Q Sergeant Bannister, you don't have probable cause to obtain a search warrant right out of the gate just because of an accident, do you?

A No, sir.

Q How long does it take you to figure that aspect?

A Again, that's going to depend on what's on the scene. As an investigator you're going to start determining how this happened, what the contributing factors were. If a party is still on the scene, then, of course you can talk to him, observe him, put him through rounds of tests if you deem it necessary. But if you have to go to the hospital to start determining those things, of course, that's going to increase your time frame again. That's why a lot of time, if resources are available, we'll send an officer to the hospital to try to observe some of those things and to let us know what we're dealing with.

Q Not everybody is necessarily at the same place at the same time.

A Exactly.

Q I have no further questions for you. Answer any questions Mr. Chambers may have.

MR. CHAMBERS: I don't have any questions, Your Honor.

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

MR. OVERBY: At this time, the State would call Office Wes Hiatt to the stand.

THE CLERK: Please come up to the stand to be sworn. Place your left hand on the Bible and raise your right.

WES HIATT, having been duly sworn, testified as follows:

Thank you, you may be seated. Please state your name for the record.

THE WITNESS: Sergeant Wes Hiatt.

DIRECT EXAMINATION

BY MR. OVERBY:

Q Sergeant Hiatt, where are you employed?

A South Carolina Highway Patrol.

Q How long?

A Same amount of time as First Sergeant Bannister.

Q He beat you a little in time there. Do you take that personally?

A He's my boss.

Q What are some of your current duties and responsibilities?

A Mostly I have administrative duties right now and all of the paperwork and I also oversee shift supervisor

on two shifts and also act as a shift supervisor when I don't have a corporal working.

Q About how many troopers do you have under your command at any given time?

A It varies.

Q Let's start generally?

A May be 20, it varies.

Q Were you in this role on March 4, 2012?

A Yes, I was.

Q Now, you said that you are primarily the shift supervisor. Do you ever go out on an active scene?

A Quite frequently.

Q Why is that?

A Whenever I get called to an accident scene or any kind of scene, it's something that's pretty serious.

Q Were you called to this accident scene?

A Yes, I was.

Q Were you the first person to arrive from the Highway Patrol?

A I think I was. I was at the office which is not too far away from there.

Q When you get there, what are some of the duties of a scene supervisor?

A First of all make sure when I pull up to find our drivers, make sure we know who was driving each car,

secure the scene. Basically and see what I got, see which vehicle I think was at fault, secure our drivers secure the scene, make sure it's safe, make sure I got personnel to come into the scene to help with the investigation.

Q But you quite often are not the primary investigating officer in most cases, correct?

A No.

Q But you said one of your duties is to obtain manpower?

A That's correct.

Q Do you know on the night of this collision how many people you had under your control at that time?

A At that time we had a day shift which is from 7 a to 7 p and then we have a split shift which is 3 p to 3 a. I think at that time I had a total of nine people working combined with the seven and then my 3 to 3 people.

Q And during that particular time frame, do you know about how may people you had working that scene?

A I think I originally called six but we were busy that day and I think we ended up with 5 on the scene.

Q And other emergency personnel was out there as well?

A Yeah, I couldn't count how many EMS.

Q Now, how long did it take to deal with this accident scene?

A I don't know at that time ---

Q Minutes?

A Hours because in this case I alerted the MAIT team and they come from different counties. It takes a good while to get there and once they get there, they investigate the scene.

Q Was it heavy traffic scene?

A Heavy. Mostly that's where my manpower went too and that's traffic direction and we had another incident on the scene where we had to arrest somebody so one of my men went to take care of that.

Q Did you have the opportunity to observe the defendant in this case?

A Yes, I did.

Q Where did you observe him?

A When I first got there, he was entrapped in his case and basically being entrapped, they had to pop his door with a door pop which is simple extraction from his vehicle.

Q Do you know what they had to do with Mr. Suddeth?

A Mr. Suddeth he was severely entrapped. It was a long extrication.

Q Was that the only time you observed him was when he was entrapped in his vehicle?

A No.

Q What else did you observe?

A While he was in his vehicle I did notice there was some beer cans in the car which led me to believe a lot of empty beer cans he may be drinking alcohol.

Q What did you do after that?

A After that I think Trooper MacAlhaney came up and I said there may be alcohol involved in this collision. I said there were beer cans in the car. I went back to the ambulance. Usually when you get them in the ambulance usually you can smell the alcohol. I went into the back of the ambulance and talked to the defendant. As I was talking to him, he had his eyes closed. He had a mouth injury. I asked him what happened. He said his brakes failed.

While I was talking to him he would close his eyes and he wouldn't answer your question. He opened his eyes and they were wide open. His eyes had just this wild look to them, dilated.

Q Was he in custody at that time?

A No, he wasn't. I did not smell any alcohol at that time so after I exited the ambulance I told Trooper MacAlhaney this guy seems to be under the influence of some type of drug.

Q But at that point you hadn't placed him under arrest?

A No.

Q You said you had an opportunity to observe the defendant.

A That's correct.

Q I'm going to show you what's been marked as Court's Exhibit No. 15. Does that fairly and accurately depict your observation of the defendant on the scene at the time?

A That's correct.

Q I have no further questions. Please answer any questions the defense may have.

MR. CHAMBERS: I don't have any questions.

THE COURT: Thank you. You may step down.

MR. OVERBY: At this time the State would call Wendy Bell to the stand.

THE CLERK: Please place your left hand on the Bible and raise your right.

WENDY BELL, having been duly sworn, testified as follows:

Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Wendy Bell.

DIRECT EXAMINATION

BY MR. OVERBY:

Q Good afternoon, Captain Bell, how are you?

A I'm fine.

Q Where are you employed?

A I am employed by the South Carolina Forensic Services Laboratory.

Q What are some of your duties and responsibilities in the forensic services lab?

A I am currently the captain and I oversee the forensic operations unit which is all the science units in the laboratory, physical science base. So that would be DNA, toxicology, trace evidence, drug analysis and implied consent. I've employed at SLED since 1998 and my background is in toxicology.

Q And talk a little bit about your background in toxicology.

A I started at '98 as a bench toxicologist and I worked on the bench doing case work for about 10 or 11 years. During that time I was made technical leader of the department so I oversaw all protocols and policies of the department. I oversaw training and in 2007 I was made supervisor of the drug analysis department and then in 2011, due to budget cuts, I was made co-lieutenant of the drug analysis and the toxicology departments. So I had two jobs. I was the chief toxicologist until I was named this current position as captain about a year and a half ago.

Q A little bit about your education, do you have any degrees?

A I have a bachelor's of science in chemistry for Furman University and I have a phd in analytical chemistry from the University of South Carolina.

Q Now, you said that you supervise toxicology correct?

A Yes, they're one of the units that I supervise.

Q And you said you were a bench toxicologist at one point?

A Correct. That means actually doing the work.

MR. CHAMBERS: Your Honor, I'm just curious as to what the solicitor is proffering this witness for in regard to the motion. I understand we are in the motion phase at this point and it would seem to be irrelevant.

MR. OVERBY: Mr. Chambers has raised as part of his constitutional argument that the dissipation of alcohol by in and of itself and presumable the same as the dissipation of other drugs that are involved in a person's system to which this witness will clearly testify that is not the case.

THE COURT: Why don't you ask her that question directly.

MR. OVERBY: Very well, Your Honor.

BY MR. OVERBY:

Q Tell me a little bit about the dissipation of other substances than alcohol in a person's drug screen?

A Certainly. Trying not to get too technical, alcohol follows very simple elimination in the body. It's called zero order kinetics so that means thousands of people have been tested and of those thousands there's a very narrow average elimination rate for all individuals. So when a person consumes a certain amount of alcohol and they hit a peak level, over time we know that they eliminate at a standard rate down to the point where they have no more in their body.

Other drugs are not that simple. They follow what's called first order elimination and it gets very complicated. As soon as you absorb anything in the body, your body immediately tries to start metabolising it and eliminating it out. Some drugs stay in the body for days, other are very fleeting and eliminated rapidly. It really depends on the substance the person had ingested and because of that it is very complicated to do toxicology. We have to be concerned about all drugs and how quickly they are metabolized or how long they may stay in a person's body.

Q And as part of SLED, you are requested frequently in accidents to do these toxicology reports, right?

A Yes. The toxicology department at SLED is the

only toxicology department in the State that does this type of work. We spend half of our time doing death investigation and half doing DUI investigation. So we perform analysis on approximately 3000 DUI cases a year.

Q How important is it to get a timely sample?

A You want to have a sample taken as close to the incident as possible because that is going to be the most accurate as to what was happening inside the person at the time of the accident.

Q Is it feasible for a particular narcotic that was ingested out of a person's system even before a sample is obtained?

A There are certain drugs that do eliminate quite rapidly and yes before they can even be taken to the hospital.

Q Does that include prescription drugs?

A It can include some prescription drugs, yes.

Q Would you give us a small spectrum of the kinds of drugs that you're talking about in terms of dissipation?

A Sure. One of the best commonly, elicited used drugs in our state is marijuana so the active ingredient in marijuana is tetrahydrocannabinol or THC. When someone smokes a joint they get a very rapid high within the first 10 or 15 minutes of smoking it and within 30 to 45 minutes

after smoking it the parent substance is almost impossible to detect in their blood. We can still detect the metabolites, but the metabolites are inactive and they deposit into the fat of the body. People know if you smoke marijuana regularly, someone can have a positive drug screen for marijuana for the metabolites up to a month after.

So it's very important that we get the blood quickly or we don't see that parent substance.

Q Can you detect that parent substance in a urinalysis?

A No. It's so rapidly metabolized that all we see on the urine is the inactive metabolite. Cocaine that's another substance that rapidly metabolized but it's longer than marijuana. In toxicology we call it half lives. A half life is the time it takes for that substance to be cut in half in your body. For cocaine it varies very widely. It's from 30 minutes to two hours so if a person has a rapid elimination rate of 30 minutes and the accident occurs and you don't get a sample for three hours later, that's six half lives that have passed.

There are other substances we see that are a little longer. Morphine, we see, has a two hour half life. Some of the benzodiazepines can have lives ranging anywhere from one hour up to 18 hours.

Q Now, when are benzodiazepines used for?
A That's a class of drugs used for a variety of things from anxiety to anti depression. Some of the trade names are Zoloft, Xanax.
Q Those are prescription drugs?
A Yes.
Q And other prescription drugs might not follow that same ---
A Anti-depressants are prescription drugs. Some narcotics can be prescription drugs.
Q I have no further questions for you. Please answer any questions the defense may have.
MR. CHAMBERS: I don't have any questions for this witness, Your Honor.
THE COURT: Thank you. You may step down.
MR. OVERBY: Your Honor, I have no further witnesses as to the motion that have been raised by the defense. All I have is Jackson v. Denno.
THE COURT: Mr. Chambers, do you have any witnesses to call.
MR. CHAMBERS: I put my client up very briefly just to the consent issue.
THE COURT: Yes, sir.
Do you want me to advise him of his right to remain silent before he takes the stand?

MR. CHAMBERS: Yes, Your Honor.

THE COURT: If you would, Mr. McCall, come forward. I have a couple of questions for you before we get started.

THE CLERK: Please place your left hand on the Bible and raise your right.

TERRY MCCALL, having been duly sworn, testified as follows:

Thank you. You may be seated. State your name for the record.

THE COURT: Mr. McCall, I think it's incumbent upon the Court to advise you of your right to remain silent, your constitutional right against self incrimination. As you probably know and as you've had the opportunity to discuss with your attorney, you have a right to remain silent guaranteed under the constitution which means you could not and will not be compelled to do or say or prove anything in this trial.

However, you can waive that right, you can waive that privilege and you can testify on your own behalf. You can make statements under oath but you do understand that if you make statements under oath anything that you say can be held against you, do you understand that, sir?

DEFENDANT MCCALL: I do.

THE COURT: Okay. For purposes of this hearing you want to waive that right, sir?

DEFENDANT MCCALL: Yes, sir, I do.

THE COURT: Alright, Mr. Chambers.

DIRECT EXAMINATION

BY MR. CHAMBERS:

Q Do you remember talking to Trooper MacAlhaney at Greenville Memorial Hospital?

A I remember seeing him and speaking with him.

Q When you spoke to him where were you?

A I was on a stretcher in the hallway, I think.

Q And how long had you be lying on the stretcher?

A Probably about 20 minutes.

Q And had you been carried there by the EMS?

A I was.

Q They had taken you into critical care as the trooper said?

A They did.

Q Do you remember he talked to you and what he talked to you about?

A He said, Mr. McCall, there are a lot of beer cans in your car and I had told him that I found him and picked him up because I collected them. And he said, you been drinking and I said, no, sir, I don't drink. He said let me smell your breath and I did and he said I don't smell

anything on him and he told the nurse, he's not drinking.

Q Let me ask you specifically do you recall him going over your implied consent rights with him, this form?

A No, I don't.

Q Is that your signature at the bottom?

A No, sir, it's not.

Q Are you certain?

A I'm sure.

Q Do you remember a nurse when she was drawing blood from you?

A I do and I don't. They draw it a couple of times, I think.

Q They probably took blood when you first came in for medical reasons; is that correct?

A I guess it was for medical reasons.

Q And do you remember signing this form?

A No, sir.

Q Is that your signature at the bottom?

A No, sir.

Q Are you certain of that?

A Yes, sir. I was unable to sign when I went into the hospital, into the trauma.

Q Did you give consent to anybody to draw blood from your for purpose of evidence gathering?

A No, sir.

MR. CHAMBERS: That's all the questions I have.

CROSS-EXAMINATION

BY MS. DRAWDY:

Q Mr. McCall, do you recall a lot of details about being at the hospital?

A A lot of details?

Q Yes.

A A little bit.

Q I asked you if you recall a lot of details?

A Not a lot.

Q Tell me what you remember about being at the hospital?

A Being at the hospital I was laying there with my teeth busted out, my face busted up, my chest was hurting and I was serious pain and I was asking for help.

Q They weren't helping you at the hospital?

A The lady was but I needed something for my mouth. My mouth was killing me. My teeth had been broken out. The air hurts, talking to someone makes it hurt.

Q You don't remember telling the trooper that you had taken prescription drugs?

A Do I remember that?

Q Yeah.

A I did tell him that I had taken something the night before. I didn't take it while I was driving. I would never do that.

Q Do you remember telling EMS that you had taken Ativan?

A Yes, I do. I told them I had taken it the night before but not while I was driving. I tried to be as honest I as I could.

Q So you did tell them you had taken prescription drugs, the trooper?

A I did tell the trooper that that I had taken it the night before. I did.

Q Does your signature look the same when you are upright signing as when you try to sign it lying down? Would you expect it to look the same?

A Would you?

Q I'm asking you if you would.

A I really don't know. I never signed that way before.

Q You didn't that way that night?

A What you mean?

Q You did not scribble on two documents that the trooper gave you?

A No, ma'am.

Q You don't remember that?

A No, ma'am. I don't how you can sign something that's behind you and you don't know what it is.

Q I didn't say behind you, I said in front of you, up above you ---

A No, I didn't sign that.

Q Would you expect your signature to look the way you usually sign it?

A Always.

Q If you were doing it this way, you would expect it to be equally legible?

A I would try to make it as good as I could.

Q You're saying that you were never advised of that felony DUI advisement?

A No, ma'am.

Q You don't remember that?

A I don't remember that. He only spoke to me maybe twice.

Q Do you remember talking to him about your brakes?

A No, I did.

Q You don't remember telling him you didn't have brakes?

MR. CHAMBERS: Your Honor, I'm going to object at this time because I believe it's beyond the scope of my direct testimony.

MS. DRAWDY: It goes to his ability to

remember things in general, Your Honor.

THE COURT: I'll grant you some latitude in that regard.

BY MS. DRAWDY:

Q You don't remember telling him that?

A I'll tell you what I told him. I said, sir ---

Q No, sir, I asked him if you remember telling him about the brakes?

A I said my brakes failed me, that's what I told him. I had a seizure and I tried to stop and my brakes failed me. That's what I told him. I have seizures.

Q We'll talk about that at the trial.

A Okay, Ms. Drawdy.

MS. DRAWDY: Nothing further.

MR. CHAMBERS: Nothing further.

THE COURT: Okay. Anything further from the defense?

MR. CHAMBERS: Nothing further.

THE COURT: Alright, it's 1:25 now. Let's adjourn and come back at 2:30. We can take up all the Jackson v. Denno issues, but the court personnel needs to go get lunch even if we don't.

MS. DRAWDY: We do.

THE COURT: Let's come back at 2:30 and we will resume. What I will tell the jury pool to -- how

THE COURT: Thank you. Mr. Overby, you wanted to address the three-hour issue and I'll let you start there.

MR. OVERBY: Thank you, Your Honor. I want to present to the Court the section which mandates the particular time of testing and that's 56 529.50 which is commonly referred to as just the implied consent statute which is essentially all part and parcel of this protocol that we've been talking about today.

Under 2050 the statute states that if a breathalyzer test is administered, the test must be administered within two hours of the time of arrest in order for it to be admissible. Any other tests administered most notably blood or urine, you have three hours to obtain those tests within the time of the arrest. The key language of that particular section, Judge, of the the arrest.

The testimony is supporting the fact that this collision occurred around 18:00 hours or 6:00 p.m., at night. It wasn't concluded between 19:00 hours or 20:00 hours. Most notably, Judge, Officer MacAlhaney didn't arrive at the hospital to speak with the defendant until somewhere in that neighborhood. At that point, as Trooper Hiatt told you, he was not under arrest. He was being transported by EMS to the hospital to deal with his

particular injuries.

The probable cause for the arrest hadn't been established is not established until Trooper MacAlhaney actually arrives at the hospital, talks to him, makes his own visual inspection of the defendant, hears that the defendant is under the influence of prescription drugs, and essentially makes the determination at that point that, yeah, I may have a felony DUI here and then he's placed under arrest.

THE COURT: When was the blood test taken?

MR. OVERBY: It was taken at 20:45.

THE COURT: And he arrived at 20:13.

MR. OVERBY: When he issued the ticket 20:13.

THE COURT: Okay. Mr. Chambers.

MR. CHAMBERS: I don't have anything with that.

THE COURT: Anything you'd like to put into the record regarding the admissibility of the blood tests?

MR. CHAMBERS: I feel I've made a thorough argument, Your Honor.

MR. OVERBY: Your Honor, at this time, the State would rely on the brief and the testimony.

THE COURT: I'm going to respectfully deny the defendant's motion. The first prong of the argument was that there was no probable cause to have initiated the

blood test. I do find that given the totality of the circumstances testified to by the officers that there was probable cause. There was testimony of dilated eyes and a wild look. There was also testimony concerning the wreck, the nature of the wreck, how it happened, explanation for the same, cans in and around the vehicle which obviously turned out to not have been alcohol he consumed but at the time it did add to the probable cause. And then also a direct statement from the defendant that he had taken prescription drugs at some time prior to the accident.

I think that any of those individual facts standing alone would not be sufficient to support a finding of probable cause, but in their totality I think that they establish probable cause without much question.

The second prong was a failure to comply with the implied consent statute. The clear testimony from the officers that he read the implied consent in it's totality and there's evidence, although the same is contested, that is executed and that it is signed by the defendant.

With respect to the unconstitutionality of the statute per McNeeley, over the lunch period I sat down and read both McNeeley and Schmurber and I believe the responsive case in this instance is Schmurber. If when you look at McNeeley, I don't think it changes the state of the law with regard to drug samples and illegal search

and seizure issues related to the blood sample in DUI cases. I think it simply clarifies Schmurber versus California.

In Schmurber, there's a portion in the case which suggest if taken to it's logical conclusion that because of the dissipation of the half life of alcohol in the system that there's an argument that could be made that you could take a drug sample under any set of circumstances. I think that McNeeley if you read it in its entirety essentially it's clarifying that to say that that does not stand for the proposition that you can pull a blood test under any set of circumstances in a DUI case. What it says is you look at the totality of the circumstances and you may be able to and you may not be able to.

However, such as in the case of McNeeley, an officer can't simply redirect to the hospital because he's gotten a clear indication from the defendant that he won't take a breathalyzer test, which is what had happened, which is clearly unconstitutional.

However, when you look at Schmurber, the facts are very similar and the distinguishing fact in Schmurber was there actually was an objection to taking the blood and not withstanding the objection to taking the blood, it still allowed that evidence to be admissible.

I also say one additional thing with respect to the illegal search and seizure and the nonconsentual taking of a blood sample. One thing that distinguishing this case in the State of South Carolina from the cases that were before the Supreme Court is that there is an implied consent statute. It's a specific statutory mechanism for felony DUI which means you do apply the implied consent to the taking of a blood sample in the event of the felony DUI.

Now, the Supreme Court may look at that and say that is in keeping with McNeeley and with Schmurber unconstitutional but that will be a decision for them to make. I presume it's constitutional at inception and find that there was an implied consent under the statute in the State of South Carolina.

I will say, as well, based on the evidence I think it was a very difficult proposition to say that Mr. McCall consented to this, that is an expressed consent. I don't think he expressly consented to it. Once that implied consent is read and the officer is essentially saying to him under the law I can take your blood or a sample regardless of whether you want me to or not and he has been placed under arrest, then it's difficult to make the argument that he consented thereto after the fact.

Based on all of that analysis, I find that it is admissible under the law in the United States and specifically in the State of South Carolina.

Okay. You got some Jackson v. Denno?

MR. OVERBY: Yes, Your Honor.

At this time, Your Honor, the State calls Lance Corporal Andis to the stand.

THE CLERK: Sir, please come forward to be sworn in. Place your left hand on the Bible and raise your right.

LANCE CORPORAL DAVID ANDIS, having been duly sworn, testified as follows:

Thank you. Please state your name for the record.

THE WITNESS: David Andis.

DIRECT EXAMINATION

BY MR. OVERBY:

Q How are you this afternoon?

A Fine.

Q Where are you employed, sir?

A South Carolina Highway Patrol.

Q In what capacity?

A I'm assigned to the multi disciplinary accident investigation team.

Q And what are some of your duties and

understanding of the law and the rules of evidence, so don't take away from that that I have a preference one way or the other, I truly do not.

Ladies and gentlemen, before we started with the opening statements, I'm going to ask the Clerk of Court to swear you in.

THE CLERK: Would you please respond and raise your right hand. The response to oath is "I will." You shall well and truly try case 2012-GS-23-10242, the State versus Terry Edward McCall indicted for felony DUI resulting in great bodily injury and a true verdict rendered according to the law and the evidence so help you God.

THE JURY: (Collectively) I will.

THE CLERK: Thank you. You may be seated.

THE COURT: Solicitor.

MS. DRAWDY: You thought you'd get to see something, didn't you? I'd like to demonstrate a point and it's like what Judge Stilwell told you. The State has the burden of proof in this case. The defendant is presumed to be at this point. There is a white canvas and nothing exists in this case until the State brings forth witnesses and evidence, the types of evidence the judge spoke about, to help you to determine what that picture actually looks like. And that's what you do. That's what

the finders of facts are.

It's called the burden of proof. It's very heavy to be lifting and I'm grateful to have co-counsel to help me. You probably have the biggest burden of all though because you have to sort through it all and decide what the facts are. And there may be some contradictory things that come into the record and you have to use your common sense to determine what is true, what is not, what makes sense in light of everything else that you hear so you're going to have to tie it all together.

I'm going to tell you a little bit about what the State must prove to you in order for you to reach a verdict of guilty in this case. We'll argue again at the conclusion of the case. What the State has to prove is Mr. McCall was driving a motor vehicle in the State of South Carolina and more specifically Greenville County and more specifically while he was operating that vehicle, he was impaired by having taken some type of drug or drugs.

And that's what the indictment accuses him of doing. So the State must prove to you that he had taken some type of drug that impaired him and that as a result of taking that drug he did something while he was driving that was incorrect or wrong or negligent and cause great bodily harm to another human being. That's what we have to prove to you.

We all have a duty to do the best we can when we get out on the road and when we go from point a to point b, we have no choice as to who we travel on the road with. We have an obligation to each other not to render ourselves impaired and then get out on a common road way when we're endangering others.

I'm going to ask you to listen carefully to the evidence, be fair, use your common sense and render a verdict that speaks the truth and that's what verdict means.

I'll give you a quick overview of the evidence and then Mr. Chambers to talk to you a little bit. This is an adversarial system and we each have a different role in this case, but just because it's an adversarial system doesn't mean that it has to be unpleasant or argumentative. We each do the best that we can to give you what we have to offer for your consideration.

You will hear testimony from the State and they'll be any more witnesses than maybe the defense would put up. It is our burden to give you everything that we found in our investigation and there are certain rules in court that may or may not allow certain pieces of information that we want to show you to come into evidence. But you'll hear from officers who investigated

the scene, you'll hear testimony from one or more eyewitnesses who saw the crash. You'll see photographs of the vehicles.

You'll hear testimony of the EMS workers and people who went to the aide of the victim. The evidence will ultimately show that this incident happened on March 4, 2012, a Sunday evening around 6:00, Robert Suddeth and his daughter Julia were on their way from Furman where she had volleyball practice to go to church. When the defendant crossed the center line and crashed into them.

It took almost 45 minutes for them to get Mr. Suddeth out of that mangled truck

The evidence at the scene will also show that the defendant, Mr. Suddeth was under the influence and the investigative officer ultimately went to the hospital and talked to him and decided to make the charge of felony DUI because Mr. Suddeth had life threatening injuries and that is the definition of great bodily injury. It's a technical legal issue great bodily injury as well as the use of your arms and your legs.

There will be evidence to put up to show that that's what happened to Mr. Suddeth. He is real lucky to be here today. Thank you.

MR. CHAMBERS: If it please the Court, Your Honor. Solicitor.

Ladies and gentlemen, as you heard, my client is sitting beside me, Terry McCall, is accused of committing a crime of driving under the influence resulting in great bodily injury. You heard from the solicitor the case that she's going to present to you.

We're going back, as she told you, March 4, 2012. On that day, sometime between 5:30 and 6:00 in the afternoon, still daylight outside, over there on Mount Pleasantburg. I'm sure who live in this area are probably family with that evidence because it's down there close to Cherrydale. Worley Road runs out -- if you're driving towards Cherrydale, there's a Spinx station right there on your left, and another gas station on the other side and it's just a few hundred yards from where Cherrydale.

So it's a busy road that time of day. There's four lanes of traffic and I believe that or a substantial part of that, there's a turn lane, not a raised median but a median, and that's where Terry McCall was going northbound and Mr. Suddeth was going southbound.

I will tell you from the outset that we will concede that there was great bodily injury in this case. There's absolutely no question about that. It's clear from the photographs was driving and he wasn't doing anything wrong. There was a curve and he was severely injured and those were life threatening injuries.

I know Mr. McCall feels bad about that and we don't want you to spend any time on that issue in this case. There's absolutely no question that that's the case. So the things that you're going to need to focus on are the things the solicitor told you about and one of those things is impairment.

We believe as this case unfolds you're going to see that there is a real question in this case as to whether my client was impaired. In fact the evidence will be clear to you when this is over that he was not impaired. He was also injured. He wasn't injured to the degree that Mr. Suddeth was injured, but he was in his 1994 Ford Explorer, a car that he had just got back two days before from the car dealer and he had already been driving it for a couple of days since he got back.

As he was northbound, you will hear evidence that he began to feel this familiar feeling that he was about to have this seizure. The medical history of seizures and he was about to have a seizure. He went to put on his breaks and low and behold his breaks did not work and as a result he swerved over into the other lane and, frankly, there's a lot he doesn't remember and you're going to hear that. So we have a question as to impairment.

What you're also going to have a question as

to that other one element that she told you about and that is for you to find somebody guilty, you have to find beyond a reasonable doubt that they either did an act that's forbidden by law or they neglected to observe a duty that is required by law. So keep those things in mind.

You will hear as their witnesses testified that Mr. McCall cooperated with the police. You'll hear when they got out there Office Hiatt was the first one to the scene and Mr. McCall was still trapped in his car. He had to be extricated out of his car using hydraulic equipment by the fire department and then he was in the ambulance. He was being evaluated and treated by EMS and Sergeant Hiatt made contact with him and went over there to talk to him. Mr. McCall did what he could what he remembered and told him that his brakes failed.

Then he's taken to the hospital and couple hours after that, you'll hear that Trooper McAlhaney went there upon his lying on his stretcher in the critical care unit and he begins to ask him questions as he's lying down. He told him, my brakes failed. They then submit him to a blood draw so they could test his blood and they also did a urine analysis and you'll get to hear what the results of that was.

He told police that he talks prescription

medication and he takes prescription medication. You will find that there was prescription medication in his system. The presence of prescription medication may be lead a person the believe that he's under the influence so you have to consider that as you go through this.

Those are basically the facts. There are a lot of things that are already agreed upon. I think you can already tell that, but there are some key things that are not agreed upon in this case.

As the solicitor told you, you are the finders of fact. You have a very important job here and Judge Stilwell told you this morning and as he indicated in his earlier remarks it is an extraordinary important. It is a job that goes all the way back to four founding fathers when they stressed the importance of a jury. It is so important that for example John Adams said that trial by jury is the very heart and lungs of democracy and that's true because the State can bring charges against people but they have to be able to prove those charges.

Before I go any further I want to say to you that it is irrelevant if they believe that they are correct in their conclusion that Mr. McCall is guilty. They probably believe that. I suspect that they do. People believe things sometimes that are wrong, and the thing that you bare in mind as you sit here in judgment as

the tryer of fact, is that their burden is beyond a reasonable doubt.

There are other trials. This is a busy week in this courthouse. We have common pleas going on which is what most people refer to as civil court and I can tell you because I have also practiced in common pleas that there are some very serious issues that are decided there. Cases like this one where someone was severely injured and will be impaired for the rest of their lives and millions of dollars sometimes are on the line, and in a situation like that we have said that the burden of proof is by a preponderance of the evidence simply by the greater weight of the evidence.

Which means if you start out at the beginning of a trial and let's say we have this metaphorical scale. The plaintiff, the person who is bringing that case, would only have to tip that scale a little bit in their favor, the greater weight of the evidence. If they do, in the jury's eye, they prevail.

There are other tribunals where the tryer of fact has to make their decision by clear and convincing evidence. That sounds like a high burden and it is, but ladies and gentlemen, the greatest burden is reserved for general sessions or criminal court. And the reason for that ladies and gentlemen, it is only court where somebody

can be denied their liberty. And liberty is the most precious thing that we have and it is a serious thing to take that away.

So as you listen to these witnesses testify and you consider the case that's in front of you, you're not just here to simply decide who I believe the most. It's not a contest. You have to decide am I convinced beyond a reasonable doubt. Am I firmly convinced by this evidence? Am I definitely sure.

I'm sure the solicitor will remind you at some point during this, they don't have to remove all doubt. That would be almost impossible to do. Some of us might believe under the right circumstances the sun is not going to come up tomorrow. That's not a reasonable doubt. It's certainly a possibility but not likely. But you do have to believe with enough certainty in your mind if there were something important that you had to bet on the outcome that you feel comfortable with that you're not going to go home and it's going to nag at you a couple days later.

Y'all are going to get to talk about it. Here's the way that this system works and why it's such a good system. We all come here from different walks of life, different backgrounds, different points of view, common sense that you have acquired just by living day to

day. You're going to size up witnesses the way you size up people every day. Do I believe this person based on their demeanor, based on whether it's corroborated by the evidence and in each instance you say to yourself do I believe this and does this establish what they're trying to establish beyond a reasonable doubt or is there doubt in my mind.

You're going to use your common sense just as the solicitor told you and then eventually after the case is presented to you, you will have been charged on the law by then. You will have the law that you need to apply to the facts in this case and you will begin to deliberate and see if you can come up with a unanimous decision.

Any group that you put together in this case a group put together by chance, some of you will be more opinionated than others, but the beauty of it is that all of you your vote matters just as much as the other and that's how things work, and that's how we will get justice in this case.

Ladies and gentlemen, I suspect this will be a somewhat lengthy trial. You heard the witness list. I don't know if all those witnesses will be called, but certainly a lot of them will. I will tell you that Mr. McCall has been waiting for this day since March 4, 2012. He is thankful that you are here. He is thankful

that he can get his day in court. He is pleaded not guilty to his case and I will have an opportunity to come back and talk to you but it is our position that the solicitor will not be able to prove her case and come to the end of this trial, there will be a not guilty verdict. I look forward to hearing the solicitor's case.

THE COURT: Okay, ladies and gentlemen, we're going to start with the introduction of evidence in just a few minutes. Let's take a very short break so you can see where your jury room is and get oriented in that regard, refresh for a second and then come back and the State will begin it's presentation of evidence.

I will tell you that there are some days when we'll go beyond 5:00, normal business hours. I won't do that today because I haven't had the opportunity to warn you of that before hand. If during the course of this trial, we have some days where we need to go late, I'll try to tell that as early in the day as I possibly can so you can make arrangements if we're going to do that.

I think that we got enough time to try this case. Based on what the attorneys have told me right now, I think that we will probably be finishing up some time Thursday morning. Don't hold me to that because I don't make guarantees and I don't control evidence that's presented. At this point, it's my best guess, so treat it

as the best guess and as we go along in the trial, I'll update you on how that estimate may change from time to time.

So take a brief break and please don't discuss the case.

(Jury exits the courtroom.)

(Whereupon there was a brief break.)

Alright, are we ready for the jury?

MS. DRAWDY: Yes, Your Honor.

THE COURT: Alright, bring them in.

Okay, you may call your first witness, ma'am.

MS. DRAWDY: The State calls Mark Allison.

THE CLERK: Mr. Allison, if you would come forward to be sworn in.

MARK ALLISON, having been duly sworn, testified as follows:

Thank you, you may be seated. Please state your name for the record.

THE WITNESS: Mark Allison.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Good afternoon, Mr. Allison. Thank you for being here.

A Thank you.

Q Mr. Allison, what part of Greenville County do

you live in?

A I live in Pebble Creek.

Q How long have you lived here?

A Eighteen years.

Q And how old are you, do you mind saying?

A 73.

Q I wanted to ask you if you actually saw a bad crash happen on March 4, 2012?

A Yes, ma'am, I did.

Q Where did that crash happen?

A Right above Worley Road. Somebody say east, somebody said south.

Q Let's see if we can figure that out. I'm going to show you State's Exhibit 1 and ask you if you can tell me what this is?

A That's a picture of 291 and Worley Road.

Q Is it a fair and accurate aerial picture of that area?

A Yes, ma'am.

MS. DRAWDY: We'd like to introduce this as State's Exhibit 1.

THE COURT: Any objection?

MR. CHAMBERS: No objection.

(Map marked as State's Exhibit No. 1 for identification was admitted into evidence.)

BY MS. DRAWDY:

Q If you want me to point, can you see this from where you're sitting?

A Sure.

Q And I will point if you'll tell me where to put the pointer?

A Okay.

Q What direction were you coming from?

A Cherrydale.

Q And which direction is Cherrydale?

A Back down this way.

Q This way, is that right?

A Yes.

Q And you were coming from that direction?

A Yes, ma'am.

Q What did you see happen in front of you as you came through the light at Worley Road?

A Well, we just got past the cement right there, I saw a green car just turn left all at once and hit a pick up truck and it bounced straight up it hit so hard.

Q And which direction and which lane was the pick up truck in?

A The left lane, he was in his lane.

Q Where was the pick up truck traveling?

A He was two cars ahead of me.

Q And he was traveling in front of you?
A Right.
Q So he was going in the direction away from Worley Road?
A Towards Rutherford Road.
Q And where was the green ford coming?
A North.
Q This way?
A Yes, ma'am.
Q Where did the wreck happen?
A That's the Spinx and the tire store and it happened right along in there.
Q Where did the impact happen?
A In the pick up truck lane.
Q The one that was going toward Wade Hampton?
A Yes.
Q And it was on his side of the median?
A Yes.
Q And where did the Ford Explorer come from?
A He just came down the northbound lanes and all at once he just flipped left coming and run right smack into the truck just about. It hit more on the driver's side. It hit straight on.
Q What did you do after you saw this happen in front of you?

A I parked in the median and there was a truck right ahead of me. It was a fireman, and me and him went up there. I could see the guy in the Ford Explorer he was moving around but the guy in the pick up truck was not moving at all.

Q Were you in any kind of position to render any aide at that time?

A We couldn't get to him. The truck was torn up so bad you couldn't get to him.

Q After that did you let some law enforcement know that you'd seen what happen?

A Yes, ma'am.

Q How long did you hang around the scene before they took your statement?

A About 15 or 20 minutes. They couldn't get the guy out of the truck. They had to cut the top out of it to get him out and take the jaws life out and put the steering wheel up.

Q And you stayed and watched all of that?

A Yes.

Q Let me show you something. I'm going to show you State's Exhibit 10 and 8 and ask you if this is what that truck looked like and if this is what you watched happened?

A Yes, ma'am, I see it. This is his truck here.

Q When you say his truck.
A The red pick up.
Q The pick up is ---
A With the top up on it right there, yes, ma'am. He was the one going this way in his lane.
Q Would you say he was the at fault vehicle or not at fault vehicle?
A No, not at fault.
Q And let's look at Exhibit 8.
A This is it too. It was a horrific crash. When it hit it sort of jumped up. It hit more on the driver's side than in the middle.
Q Let me ask you about the green Explorer it was coming towards you?
A Yes, ma'am.
Q Was any traffic in front of the green Ford Explorer?
A No.
Q None what so ever?
A You know there might be one on the other side but I didn't know why he turned like that to be honest with you.
Q You gave a written statement ---
A I gave a witness statement about 20 minutes, Trooper Vocklan I believe his name is.

Q Then after that, did he put you in his car to video tape your statement?

A I didn't know he was video but yes.

Q After that did you fill like you fulfill your obligations?

A Yes, the ambulance and stuff had got there so I did leave right after that. I moved my car so the fire trucks can get in.

Q Please answer any questions that Mr. Chambers might have.

CROSS-EXAMINATION

BY MR. CHAMBERS:

Q. Mr. Allison, the green car the Ford Explorer that you saw cross the lane, it also sustained a tremendous amount of damage; is that correct?

A It did.

Q An the damage was primarily on the driver's side of that vehicle, correct?

A Yes.

Q And you said that you saw the person inside that car, Mr. McCall, moving around some but he never got out of the vehicle?

A No, he didn't.

Q The fire people had to use equipment to get him out of the vehicle, correct?

A I don't know about that. I never did see him. That's the first time I seen him in my life.

MR. CHAMBERS: That's all the questions I have.

MS. DRAWDY: May he be excused from his subpoena, sir?

MR. CHAMBERS: No objection.

THE COURT: Thank you, sir.

MS. DRAWDY: The State call Trooper Greg Certain.

THE CLERK: If you could come forward and be sworn.

GREG CERTAIN, having been duly sworn, testified as follows:

Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Greg Certain.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Trooper Certain, are you with the highway patrol?

A Yes, I am.

Q Were you one of the troopers who responded to this scene?

A Yes, I was.

Q Were you in contact with either of the drivers?

A No, I did not.
Q What were you asked by your supervisors to do?
A To photograph and document the scene of the crash.
Q Do you have any idea of how many photographs you took?
A No, I have no idea.
Q I'm going to show you some of them. Among them are the photographs that I just show this witness and this would be State's Exhibit 2 through 25. Have you had an opportunity to review all the photographs that you took?
A Yes.
Q And all the photographs that you took, are they a fair and accurate representation of what you saw at the scene that night?
A Yes, they are.
Q Or that evening. Is there a problem with your photographs?
A The day on the actual printout is incorrect.
Q Did you use a camera that had a time and date stamp on it?
A Yes.
Q Tell me what happened.
A The cameras sit in that car and they are battery operated. You change the battery or it goes dead. It

changes the date on the actual screen so it's showing a different date than the actual date of the crash.

Q So what was the date it show on the screen?

A It shows March 2nd.

Q And you didn't notice that until after they printed?

A Correct.

Q But the accident in fact happened on March 4th?

A That's correct.

Q But that does not alter what is in the photographs?

A Correct.

Q These photographs were taken on what date?

A On the 4th.

MS. DRAWDY: Your Honor, we'd like to move State's Exhibit 2 through 25 into evidence at this time.

MR. CHAMBERS: No objection.

THE COURT: Alright, State's 2 through 25 are in evidence.

(Photographs marked as State's Exhibit Nos 2 through 25 for identification are admitted into evidence.)

BY MS. DRAWDY:

Q Is that all you did at the scene?

A Yes.

Q And how long were you at the scene?

A Probably two or three hours.

Q Some of the photographs you took went into the hours of dark; is that correct?

A Correct. There's some in the daylight and others that went into the dark as the date went on.

Q Thank you. Please answer any questions Mr. Chambers might have.

MR. CHAMBERS: Your Honor, I don't have any questions for this witness.

THE COURT: Appreciate you being here, sir. You can step down.

MS. DRAWDY: May be released from his subpoena.

THE COURT: Okay.

MS. DRAWDY: The State calls Allen Hall.

THE CLERK: Please come up to be sworn, place your left hand on the Bible and raise your right.

ALLEN HALL, having been duly sworn, testified as follows:

Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Allen Hall.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. DRAWDY:

Allen Hall - Direct

Q Good afternoon, Mr. Hall.
A Hello.
Q Mr. Hall, can you tell me what your profession is?
A I'm a firefighter lieutenant EMT.
Q How long have you been an EMT?
A Twenty years.
Q What exactly is an EMT and what type of duties do you have as an EMT?
A Emergency medical technician and we respond to traumatic and injuries, sick or injured.
Q Do you work crash scenes like this a lot?
A I do.
Q You've seen a lot?
A Yes.
Q Are you trained in lifesaving techniques when someone is seriously injured in one of these crashes?
A Yes, I am.
Q Are you involved in this in connection with your employment?
A Not at all.
Q Tell me how you are involved in this accident?
A My girlfriend and I was traveling to dinner that evening and we happened to be the vehicle behind the crash victim.

Q What was the crash victim driving?

A A burgundy reddish Chevrolet pick up truck.

Q And if you would, using State's Exhibit 1 tell the jury where you were traveling and explain exactly what you witnessed. If you'd like to step down, you can do that.

A We were in the inside lane driving southbound. Once we got about this area right here, I noticed the green Ford Explorer was coming northbound and there's a curve there. You can actually see it and if you've driven it, you know it's there. He made not attempt in the curving turning at all, he just came straight. I seen him coming straight and by the time he got into the median I know that the crash was inevitable, which there was no on coming traffic in front of the green Ford Explorer.

Q There was room for you to go there.

A Exactly. I pulled to the left so the impact would not come into my vehicle, but the debris from the crash did fly across my vehicle.

Q And to be clear, this is a photo that's taken at some other time, this is not the traffic that you saw on the road ---

A Not at all, no. There was no traffic in front of the green Ford Explorer. That's why I chose to take the left into the on coming traffic lanes. And then after the

impact, I went ahead and turned around the crash and parked in the median and got out of my vehicle.

Q And what did you do at that point?

A At that point I came to the burgundy red Chevrolet pick up truck.

Q Where was it?

A It was approximately right there. It was still in the lane and it was turned sideways where it was blocking basically the whole southbound travel right there.

Q Can you describe the damage that you observed in that truck?

A It was complete total loss. The engine compartment, the front bumper was basically on the victim on his lower extremity.

Q What was the first thing you did when you went to the truck?

A He had his daughter with him and she was basically distraught and she was crying and she had -- if I can recollect, she had a bloody nose or bloody mouth. She was bleeding from the face but she was ambulatory. She was screaming and crying and distraught. So I got her out of the vehicle because it was smoking like it was going to catch on fire. I got her out of the vehicle, took her to my girlfriend and she got in my truck and they

sat there. And then I went back to her dad and I could not make entry on his side because of the damage so I got into the back of the truck, the bed of the truck and came in through the back glass.

Q Did you do all of this before making any phone calls for help?

A As I was doing it I had my fire department radio with me so I was calling Greenville dispatch at the same time. And then once I got in there and seen what I had, I radioed back and gave them a patient report.

Q What did you report?

A I reported a priority 1 patient.

Q What does that mean?

A It's a triage system that Greenville County and all of the county systems use. Triage means basically we either they're walking wounded or a priority 2 is maybe both legs and a priority 1 is near death and a priority 4 is dead.

Q And what did you observe about the man in the truck?

A He was unconscious. At first when I got there he was mumbling some words. I couldn't make out too much. He was laying slumped over towards the passenger's side. Like I said the dash and all of this on the vehicle was down on top of his lower extremities, his legs, so he was

entrapped pretty heavily.

Q I'm going to show you State's Exhibit 10 and I know this is a farther away view up close, but does this show the intrusion on the side of the vehicle?

A Somewhat, yes. This is during basically -- they had already peeled the roof off so this was still a little bit opened already.

Q You couldn't get him out?

A Absolutely not.

Q How was he breathing?

A About five to eight times a minute.

Q Is there a term for that?

A Yes.

Q What is that?

A He was hypoxic. The breathing that he was breathing was what we call agonal respiration. Agonal respiration are basically they're not good enough, if you will. Respiration that normal healthy people have is 12 to 20 a minute and he was breathing about five to six times a minute. It wasn't sufficient. He wasn't moving oxygen.

Q In your training, what did you need to do for a patient like that?

A He needed to be innobated (ph).

Q Did you have the ability to do that?

A I absolutely did not, no.
Q Is there something that you do in the interim to assist somebody like that?
A Well, basically, all I could do was I checked for a revised trauma score and then I called that in and then I told them we had a priority 1 patient and I held his head in manual stabilization to protect his spine, his neck and his spinal column for any further injury and to help him breathe better also.
Q And how long did you hold that position until help got there?
A It seemed like forever. It was probably 10, 15 minutes roughly.
Q And how did you access him to do that?
A Through the back windshield.
Q You climbed up in the back of the truck?
A Yes, ma'am.
Q When EMS arrived, can you describe the sequence of what happened?
A Basically supervisor with EMS showed up in what they call a QRV, it's a little pick up truck. He showed up first and we know each other so he come to me as I'm standing in the back and he asked me what I have and I told him to get in the back of the truck that's the only way we can access him. So he come and got up with me and

he was standing there and I was telling him what we had and tried to get a plan together basically.

Q Did some point did EMT's arrive with EMS?

A Yes.

Q And what time did you turn care over to them?

A I basically turned care over to the supervisor when he first got there because he had equipment and I was there to assist him until the other paramedics and the ambulance and the fire department got there to start extrication.

Q And you mentioned a trauma score, what is a trauma score?

A It's basically psychological evaluation of a trauma patient. We take the glasco trauma score and the respiration and the systolic blood pressure and the heart rate and that's a cumulative score. A 12 is what you and I are right now on the revised trauma score.

Q And what was the driver of this vehicle?

A A trauma score of 9.

Q What is a 9?

A They called the coroner to the scene at a trauma score of 8 so he was near death.

Q Had he not received pretty much immediate attention, what would have happened to this man?

A He would have died. That's my opinion.

Q Did you see the driver of the green vehicle at all at the scene?

A No, ma'am.

Q So you were focused on the man in the pick up truck?

A Yes, ma'am.

Q About how long did you stay at the scene?

A At least an hour, maybe an hour and a half.

Q Were you there long enough to see him brought out of the vehicle?

A No. When they were doing the extrications, I had to leave.

Q So you left before this photograph was taken that I showed you which is State's Exhibit 10?

A Yes, ma'am.

Q Please answer any questions Mr. Chambers might have.

MR. CHAMBERS: I don't have any questions.

THE COURT: Thank you for being here.

MS. DRAWDY: Can he be released?

THE COURT: Yes, ma'am.

MS. DRAWDY: The State calls Dana Suddeth.

THE CLERK: Please place your left hand on the Bible and raise your hand.

DANA SUDDETH, having been duly sworn,

testified as follows:

Thank you. You may be seated. Would you please state your name for the record.

THE WITNESS: Donna Suddeth.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Good afternoon, Mrs. Suddeth.

A Good afternoon.

Q Mrs. Suddeth, would you give your full name?

A Dana Skinner Suddeth.

Q And are you married to Robert Suddeth?

A I am.

Q How long have you been married?

A 21 years.

Q Do you have children?

A We have four.

Q What are their names and ages?

A Julia our oldest is 18, Jessie just turned 15 and we have twins that are 10.

Q I want to take you back to March 4, 2012. Was your husband the man in the red car?

A He was.

Q Can you tell us how you found out about this accident?

A I was leaving home and I was going to Rock's

parent's house to pick up my twins.

Q Rock is how you refer to your husband Robert?

A Yes, we call him Rock.

Q It's okay to call him Rock.

A I was on my way to Rock's parent's house to pick up the twins for church and I had gone up the hill not even a block and Julia called, my daughter, that was in the truck. She was crying and hysterical. She was saying there was an accident and I was asking her if she was okay and she said yes, and I asked was her dad okay and for some reason I could not hear her answer every time I tried to ask her about her dad.

Q Where had been? Do you know where they had been?

A They had been to Furman. Julia played on a travel volleyball team at Furman and on Sunday afternoons Rock always took her to practice and they were on their way home because after that she has youth group at church and they were on their way back.

Q So how long did you speak with her on the phone?

A Probably a minute trying to understand what she said. There was a man with her and he finally got on the phone. He could understand what I was saying but I couldn't understand him because of the phone. He ended up calling me back from another phone to tell me I needed to come there right away.

Q And did he tell you where there was?
A Yes.
Q And as a result of that, where did you go?
A I went towards Cherrydale. I went down Wade Hampton and turned on Rutherford Road and then out towards Cherrydale.
Q Do you recognize what's depicted on State's Exhibit 1?
A Yes.
Q What is that?
A That's Pleasantburg 291.
Q Does that have significance to you?
A Yes.
Q Is that where the crash happened?
A Yes.
Q Can you just step down and point where you came from and where you parked?
A I was coming from this direction and I saw the accident from the road so I pulled into the median somewhere in here. I'm not exactly sure where. The accident was somewhere in here so I pulled into the median and got out.
Q Describe what you saw when you drove up?
A When I first drove up, I saw Julia's side of the vehicle which was not the side that was affected the most,

but I still know it was bad.

Q Did you find Julia?

A I did. There were some people sitting on the side of the road with her that hollered for me to come over to her first because I was going straight to Rock's truck and they hollered for me to come over to see her because she was strapped down on the stretcher and she was hollering for me so I went over there to see her first on the side of the road.

Q And how did you find her to be?

A She was shaken up, crying. She kept asking about her dad.

Q Were you ever able to go over to the truck?

A I was not. A police officer or someone kept stopping me from going all the way up to where he was.

Q And was your daughter eventually transported to the hospital?

A She was.

Q What did you do at that point?

A At the wreck?

Q Yes. What did you do after she was transported to the hospital?

A I waited on my husband to be taken out of the truck and as soon as his ambulance left, by this time my brother had gotten to the scene of the accident and he

carried me to the hospital. So I went to the hospital.

Q What happened in the hospital?

A I went into the pediatric ER and that's where they had Julia. Where they had Rock, I wasn't allowed to be back there. I waited with Julia to be checked out and I waited on information on how Rock was doing.

Q Approximately how long was it that night before you were able to see Rock?

A Hours. I know we were in the pediatric ER for several hours. I didn't hear from anybody for a long time. Julia's doctors began going back and forth trying to find information for me because they were so focused on Rock. I appreciate that they -- I didn't know what was going on so she began to find out information to bring to me. Eventually when the doctor's came out, it was, I don't know, maybe four hours. I don't know. It was later when they came out and told me of his injuries and they were moving him to ICU upstairs and so while they transported him and got him set up, we had to wait in the ICU waiting area.

Once he was set up in the ICU and they had everything ready, then they allowed us to come in, his mom and I to come in.

Q Were you able to speak to your husband then?

A We spoke to him but he didn't respond.

Q Was he hooked up to some equipment?

A He was.

Q Can you describe it?

A A ventilator and he was on a pic line up here. He had some other IV's going in him. He had a rod going through his leg to stabilize his leg. I believe he had something on one foot.

Q Let's move on to making a little progress. How long was it that you were able to speak with him and he could respond?

A This was a Sunday night, they took out the ventilator the second Friday that we were in ICU so that was almost two weeks.

Q Were you able to communicate with him then?

A I was able to talk to him. He was a little bit raspy and I couldn't understand him because he had had the ventilator.

Q How long was he in ICU?

A He got out that Monday -- Tuesday, so it was about 16 days.

Q And where was he then?

A He was on the main floor of the hospital to about seven days and then we were moved to Roger C. Peace.

Q How many days was he in the hospital before he went to Roger C. Peace?

A Three weeks.

Q And then he went to Roger C. Peace?

A Yes.

Q That's for rehabilitation; is that correct?

A Yes.

Q What was his status then? Can you describe what he was allowed to do and what he wasn't allowed to do, his restrictions?

A He wasn't able to do anything because his hip had been put back together basically with plates. He was told that he could not sit up for 12 weeks. He had to be lying down and could not go about the 60 degree angle for 12 weeks while that healed. He could not get out of the bed to go to the bathroom. He could not sit all the way up to eat. In order for us to move him to another bed to a reclining wheelchair, it took four of us. We each had a corner of the sheet and pick it up and move him over.

Q How long was he in Roger C. Peace?

A About three months.

Q To this day, does your husband remember anything about the crash?

A He doesn't.

Q Do you remember the date that he was allowed to come home?

A It was right at Father's day. It was in June

around the 17th, I think.

Q And what were his capabilities at the time he came home?

A He came home on crutches. I think it was suggested he be a wheelchair and he wouldn't so he came home on crutches. We moved a bed downstairs because we have steps in our house so his bedroom was downstairs for a few months and we had something at our steps in front of our house to help him get in. He had to be driven, he couldn't drive anywhere that he went. He went to rehab, outpatient rehab for maybe a month or two months, I'm not sure, and then he worked out at home as well with some things that Roger C. Peace gave him to work out with.

Q Tell me about your husband and what his physical condition was before the wreck?

A He loved to work out. He has always worked out at the gym about four days a week. At the time he was into mountain biking. He might work out four at the gym and go mountain biking two days a week or trails around our house. He's outside all the time. He plays basketball, football and baseball with our kids. He rides horsing, likes to canoe, anything outdoors. He loves it all.

Q So he was in really good health?

A He was.

Q Do you contribute that to his survival?

A I do.

Q Please answer any questions Mr. Chambers might have.

MR. CHAMBERS: I don't have any further questions.

THE COURT: Thank you Mrs. Suddeth.

Alright ladies and gentlemen, we're going to adjourn for the evening. If you would please be back here at 9:15 we'll try to start at 9:30 promptly. Please be on time, not out of consideration for me and the parties but out of consideration to one another because we won't be able to start without you. If one of you is not here then we'll just simply wait until you get here and you'll have to suffer the glares and looks of your fellow jurors when you come into the jury room.

Also tonight, I'm going to tell you again, don't discuss the case with those who may invite you to discuss the case. Watch some playoff basketball, read a book, have some fun but don't discuss the case. Y'all have a great evening.

(Jury exits the courtroom for the evening.)

Alright, we're back on the record tomorrow at 9:30. I'll be here much earlier for that so if you need me for anything, please come get me. If y'all need to go

P R O C E E D I N G S

THE CLERK: All rise, the Honorable Robin Stilwell presiding.

THE COURT: Thank you. Caroline, let me know when you're record.

We're back on the record and Mr. Chambers, I believe you indicated Mr. McCall has a motion.

MR. CHAMBERS: I'll repeat what I said earlier and then I'll turn it over to Mr. McCall. He has summoned me back this morning saying that he needed to talk to me and has told me that he feels I am not doing an adequate job. He doesn't want me to represent him anymore. I'll let him state what his reasons more but he made statements that led me to believe that my continuance as an attorney basically would put me in jeopardy as far as allegations he planned to make against me. So I think he has created a conflict between us.

He clearly does not want to me to continue as his lawyer and it's my understanding that the wants the Court to grant him a continuance and allow him to hire an attorney and with that I will let him say what he has to say.

THE COURT: Alright, Mr. McCall.

DEFENDANT MCCALL: Yes, Your Honor, I filed a motion to relieve Mr. Chambers back in March and I have

relieved him on some other charges and yesterday we got the indictment, it's the first time I have ever received it. I felt like we weren't prepared enough and I want to retain me someone else as counsel.

I don't know if it may be my feeling but I talk to my parents and they feel it may be in my best interest to hire someone else because there's a conflict between us that my dad feels like I'm not going to represented in the best defense.

I feel I need to get someone -- to retain a lawyer.

THE COURT: Mr. McCall, I'm going to have to deny your motion.

DEFENDANT MCCALL: I can't hire a lawyer?

THE COURT: It's too late for you to be making that decision. I recognize you have come before the Court before and you have made a motion for Mr. Chambers to be relieved and at that time, if I'm not mistaken, you ask that he remain on this case because you were satisfied his services.

I don't know what type of impasse that has become between the two of you. I will consider relieving Mr. Chambers as your attorney of record, if you want, but you will be required to proceed pro se for the remainder of this trial, sir.

DEFENDANT MCCALL: If that's what I got to do, that's what I got to do.

THE COURT: Would you like Mr. Chambers to continue to stay as stand by counsel?

DEFENDANT MCCALL: No, sir.

THE COURT: You understand that you have a right to have an attorney represent you?

DEFENDANT MCCALL: Yes, sir.

THE COURT: And you understand that if you decide and determine ---

DEFENDANT MCCALL: I don't want him to represent me, though.

THE COURT: You understand that if you decide to represent yourself you assume certain risks in doing so, do you understand?

DEFENDANT MCCALL: I do, but I'm not going to stand here and not have an attorney present when I have a constitutional right to have a lawyer. I'm asking you to let me hire an attorney.

THE COURT: Yes, sir. You have an attorney.

DEFENDANT MCCALL: He was appointed and I'm asking for me to be able to hire my own lawyer. I had a conflict yesterday come in and you allowed an indictment to come that I never seen before. I can't believe you allowed that. And indictment that I wasn't prepared and

all the other evidence that he's never reviewed. Come on, man. This is uncalled for. This is making a mockery of the court.

THE COURT: I understand that you take exception to my ruling and I respect that. My question is you clear that you take exception to the ruling I made, but that's not a reflection of the work that your attorney did in trying to exclude it and have the case dismissed.

DEFENDANT MCCALL: He never did.

THE COURT: He certainly did.

DEFENDANT MCCALL: Tried to dismiss what?

THE COURT: This case based on an inefficient and ineffective indictment. He made a compelling argument. He made all the appropriate legal arguments. I just happen to rule against you. That's not a reflection on his abilities as an attorney.

DEFENDANT MCCALL: That's not what I'm upset about. It's not your ruling why I'm upset, it's the fact I have a conflict from the past with him and I didn't get to be heard in relation to it and he came in yesterday and started the trial without hearing my motion. And the rules on the motion was denied -- violated. I was supposed to be heard on the motion first.

MR. CHAMBERS: Your Honor, I would join him in the motion to relieve me from this trial and allow him

to proceed pro se because based on everything he has just said, I question whether I can effectively represent him anymore. I'm certainly prepared and I thought I was doing a pretty good job. I didn't know anything about a motion, the motion that he's talking about now.

It's clear to me at this point that rather than allowing me to effectively represent him through the remainder of this trial, he's trying to build some kind of a record so he can either on appeal or a PCR or something down the road and try to get any conviction overturned which will result basically in throwing me under the bus and saying that somehow I didn't do the job I was supposed to do.

So if he wants to proceed pro se, I certainly would join him in that motion. I have other places I could be and things I could be doing.

THE COURT: Okay. Mr. McCall, I'll give you the last word, sir. Any more arguments you would like to make?

DEFENDANT MCCALL: I would just like for him to be relieved.

THE COURT: Again, I'm going to ask you this as a consequence of relieving Mr. Chambers that you will be required to proceed pro se.

DEFENDANT MCCALL: I hear what you're saying.

You're forcing me to go forward.

THE COURT: I most definitely am.

DEFENDANT MCCALL: Alright.

THE COURT: You have waited until we have impaneled a jury. You have waited until we have begun the presentation of evidence.

DEFENDANT MCCALL: I told him yesterday that I didn't want him to represent me.

MR. CHAMBERS: You did not.

DEFENDANT MCCALL: Yes, I did. We had a conflict in there yesterday morning, Randy. And I said are you throwing me under the bus and you said, that's what you think I am.

MR. CHAMBERS: Actually you said I don't want you to throw me to the wolves and I said that was insulting and I don't want to talk about it any more and you said sorry. You told me you were just scared because you were on trial for your life and you never gave me any indication that you didn't want me to represent you but that's fine. Certainly, I would like to be relieved.

DEFENDANT MCCALL: I did. I did. I felt like I was being thrown under the bus.

THE COURT: Okay. I understand that. I want you to answer my questions. You understand that you would be proceeding on your own and you assume certain risks

because you may not have the knowledge and experience that an attorney can afford you in the trial of a case.

DEFENDANT MCCALL: I understand that.

THE COURT: And you are willing to assume those risks, sir?

DEFENDANT MCCALL: No, I am not.

THE COURT: Do you want me to appoint a public defender to sit with you?

DEFENDANT MCCALL: Out of the public defender's office.

THE COURT: To assist you in the trial of the case. Now, he's not going to try your case. He will assist you in answering any questions that you have because he can't possibly come up to speed in the case in the next 10 minutes.

DEFENDANT MCCALL: He can represent me then.

THE COURT: I'm telling you that he can't possibly represent you in the this period of time.

DEFENDANT MCCALL: Give us a continuance. You're not going to give us a continuance in the presence of this indictment that I just got served with yesterday?

THE COURT: No, sir, I'm not. I'm making that very clear to you and you don't have to ask me again.

DEFENDANT MCCALL: I'm asking you again.

THE COURT: The answer is no again. Do you

want me to have a public defender sit with you in this trial so that you can ask him questions about legal issues that may arise?

DEFENDANT MCCALL: I'm going to leave that up to you, Judge.

THE COURT: This is what I'm going to do. Mr. Chambers, I'm going to relieve you as counsel in this case. Would you please ask the public defender to send someone to the courtroom to sit with him and answer and address any questions that he may have during this trial?

MR. CHAMBERS: Yes, Your Honor.

THE COURT: So you are relieved of your duties with exception of doing that service for me.

DEFENDANT MCCALL: He's taking all the evidence with him. He's leaving me with nothing.

THE COURT: You can exchange that with whatever lawyer necessary.

MR. CHAMBERS: Yes, sir, Your Honor.

THE COURT: Mr. McCall, what I'd like you to do is you can go back to the cell and we'll be adjourned until someone comes back to assist you in that regard.

If you would let the jury know that we have some legal mattes that we are taking up.

(Court was adjourned.)

THE BAILIFF: All rise.

THE COURT: Take you seats please.

Okay. We are back on the record. I believe the record speaks for itself with respect to what has transpired. I will state that we conducted a hearing in accordance with Foretto(ph) versus California and I have made a determination that the waiver of prior counsel has been made knowingly and intelligently and that the defendant does have a right to proceed pro se. Also to protect his stated interest and in order to protect his procedural rights and his constitutional rights, I have appointed Mr. Jake Erwin of the Greenville County bar as stand by counsel to assist him in the conduct of the case.

Mr. Erwin's duties with respect to his representation and assistance of Mr. McCall shall be present to answer any questions and to assist in any way that you feel is -- each of you feels is necessary.

I will also say, Mr. Erwin, to the extent that you feel it is necessary to appropriate, I'll allow you to participate in the trial. However, I am not suggesting that you should or that it appropriate that you will. I'm just giving you that leeway. Each of you can make that decision as you go forward in this case.

DEFENDANT MCCALL: Your Honor, I would like to say something. I am not waiving my rights to counsel.

THE COURT: Yes, sir. I've also held a

hearing in accordance with State versus Fuller, 523 SE 2nd 168. In this case there has been a request for relief of counsel during the pendency the case after the jury had been impaneled and after the presentation of a significant and substantial amount of evidence. It is within the discretion of a trial judge to grant the motion for the relief of counsel during the pendency of the proceeding and I've elected to do that based on the totality of the circumstances.

I find specifically that the motion was ill-timed and that the ultimate end of a motion to continue and a motion for relief of counsel is to delay and hinder the administration of justice.

DEFENDANT MCCALL: I disagree, Your Honor.

THE COURT: I will tell you the continuance of this case would have a significant prejudicial effect on the state because the State had subpoenaed all of its witnesses which are substantial amount, over 40 in reading the witness list. Also, the defendant has had the opportunity to witness and view a specific amount of presentation of the case to include all of its tactical proceedings in opening statements and it's order and method of presentation of evidence.

In this case, I will tell you without reservation and unequivocally that my only interest is to

ensure that both parties get a fair trial.

If at the conclusion of this case, Mr. McCall you are acquitted, then I will walk away happy knowing that everyone was afforded a fair trial. So I have not stake in the outcome of this trial. I assure you I have no interest.

None of the rulings that I make are designed to prejudice or to profit either party. They are rulings that I make are in my estimation in keeping with the established law, procedure in the State of South Carolina and in the United States of America. Therefore, we will proceed in the trial of this case. When the jury comes in, I will tell them, pursuant to your request Mr. Chambers has been relieved and you are representing yourself. Mr. Erwin of the Greenville County bar is ---

DEFENDANT MCCALL: I didn't ask to represent myself.

THE COURT: You did, sir.

DEFENDANT MCCALL: No, I didn't.

THE COURT: I will further state that you may find yourself in an uncomfortable position ---

DEFENDANT MCCALL: You're forcing me.

THE COURT: You are in an uncomfortable position as a consequence of your own conduct.

DEFENDANT MCCALL: No, it's the conduct --

THE COURT: As the sole and exclusive consequence of your own conduct.

DEFENDANT MCCALL: He had told you on the record that he had problems and you didn't want to let me relieve him and now all of sudden you decide to relieve him.

THE COURT: Mr. McCall, I'm not arguing with you.

DEFENDANT MCCALL: I'm not arguing with you.

THE COURT: You could have kept Mr. Chambers.

DEFENDANT MCCALL: I didn't want to keep someone who is not in my best interest when we just seen the charges yesterday, never have seen them until yesterday.

THE COURT: I understand that, sir, and you've established a record in that regard and I thank you for that.

You may bring in the jury.

MR. CHAMBERS: Your Honor, before you do that, I just want to state for the record that I am turned over the entirety of my file to Jake Erwin. He has that in his possession. And also to my knowledge Mr. McCall has been provided with all of the discovery material that had been provided to me by the solicitor's office prior to today's day. Everything should be there.

THE COURT: Thank you, Mr. Chambers, I appreciate that.

DEFENDANT MCCALL: I don't know what's what here. I'll have to go through everything.

THE COURT: Bring the jury in.

(Jury enters the courtroom.)

Good morning ladies and gentlemen. I want to thank you first and foremost for your patience. I know that each of you were here on time at 9:30 ready to go. I know some of you had some trouble getting here this morning because of traffic but y'all arrived in time for us to start at 9:30.

I'm sorry we delayed but I had some legal issues that I had to take up before we got started this morning. As you may note, Mr. Chambers is no longer in the courtroom. Mr. McCall made a motion to have Mr. Chambers to be relieved as counsel and I granted that motion. As a consequence of granting that motion, Mr. McCall is representing himself in this matter. I have asked Mr. Jake Erwin of the Greenville County bar to act as stand by counsel for Mr. McCall, which means he will be ready and prepared to answer any questions and assist Mr. McCall with any issues that may arise in the case.

Having said that, we will begin. I do want to tell you in so far as scheduling is concerned today, we're

going to take a long lunch from 12:30 to 2:30. I'm sorry for that in advance. I had surgery on my knee two weeks ago and I have to go to physical therapy. I couldn't get that time changed. So I'm going to take that window time to do that. Having said that, we may stay a little bit late tonight. So over that period of time you can make arrangements.

I don't anticipate we will stay much after 6:00. If that's a problem for you, y'all let me know, but I'm thinking probably 6:00 just to make up some of the time that we lost this morning and some of the time that we'll lose over the lunch break.

Okay. Call you witness.

MR. OVERBY: May I please the Court, the State calls Sally Wardwick Clark to the stand.

THE CLERK: Please come up to the stand and be sworn. Please place your left hand on the Bible and raise your right.

SALLY WARDWICK CLARK, having been duly sworn, testified as follows:

Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Sally Wardwick Clark.

DIRECT EXAMINATION

BY MR. OVERBY:

Q Good morning, Ms. Clark, how are you doing today?
A I'm doing fine.
Q What is your occupation?
A I'm deputy director administration with Greenville County EMS.
Q And in that role, what sort of duties in responsibilities do you carry?
A Part of my responsibilities is the custodian of records for the field providers.
Q Do you have reports pertaining to this paticular case for all the patients that were involed with Greenville County EMS?
A I do.
Q How many patients were there?
A Three.
Q Who prepared these reports, do you know?
A The field providers that attended to the patients.
Q So each field provider who actually attended to each individual?
A Well, there's a time and they work together for the patient -- on the patient and together they complete that report.
Q Are these reports required to be kept in their regular duties?

A Yes.
Q And are these reports maintained by your office in the regular course of your business?
A Yes, they are.
Q Have they been altered or changed in any way as far as you can tell?
A No.
Q I'd like you to highlight these reports. The first has been marked as State's Exhibit No 26, what is that report?
A This is the pateint care report for Robert Suddeth.
Q As an initial matter, can you tell what time the call itself was received by that report?
A The call was received at 7:45 hour.
Q Can you tell me what time that report was closed?
A It was closed on March 5th at 6:28 hours.
Q I'd like you to reference State's 27 at this time. Who is the patient involved in that report?
A The report from this patient is Julia Suddeth.
Q And is the call time, the time of call was received the same as the others?
A Yes, it is.
Q What time was that individual report closed?
A It was closed on March 4, at 20:55 hours.

Q I'd like you to reference State's Exhibit No. 28 what is that a report of?

A This is a patient care report for Terry McCall.

Q Was the call time on that the same as the others?

A Yes, it was.

Q What time was that report closed?

A This report was closed on March 4th at 20:18 hours.

Q They are kept in the regular course of your business?

A Yes, they are.

Q And they have not been modified or changed at any way.

A No.

MR. OVERBY: At this time, Your Honor, I'd like a ruling that these documents have been authenticated as the records.

THE COURT: Any objections?

DEFENDANT MCCALL: No objection.

MR. OVERBY: For the record, Your Honor, I have no further questions for Ms. Clark on this matter.

THE COURT: Okay.

DEFENDANT MCCALL: I have no questions.

THE COURT: Thank you. I presume that they be asked that they be admitted at this time.

MR. OVERBY: No, Your Honor, I just ask that they be authenticated and at this time I have no further questions for Ms. Clark.

THE COURT: Do you have any questions of this witness, Mr. McCall?

DEFENDANT MCCALL: No questions.

MR. OVERBY: Your Honor, may this witness be excused?

THE COURT: Sure. You may step down. Thank you for coming.

MS. DRAWDY: The State calls John James.

THE CLERK: Please step forward to be sworn in. Place your left hand on the Bible and raise your right.

JOHN JAMES, having been duly sworn, testified as follows:

Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Lieutenant John James.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Good morning, Lieutenant James.

A Good morning.

Q Do you also work for Greenville County EMS?

A Yes, ma'am, I do.

Q How long have you been employed there?
A A little over 22 years.
Q What are your current positions and responsibilities?
A My position is (inaudible) shift commander and I am basically in charge of the operational shift during my duty shift which is usually 12 hours long.
Q What is your background in emergency medicine and what type of certifications have you earned?
A I graduated in high school in 1990 and then I went to college for two years, graduated from college with an associate's degree in emergency medicine and took my paramedic examine at that time and then I been at Greenville County ever since then working as a paramedic.
Q Is there a difference between the term EMT and paramedic?
A Yes, in the State of South Carolina we're regulated by DHEC and there are three certifications, the highest a paramedic and the middle an advance EMT and on the bottom level is EMT.
Q And you are paramedic?
A Yes, ma'am.
Q Were you shift commander for this incident in this trial on March 4th?
A Yes, ma'am.

Q I'm going to show you State's 26, 27 and 28, the exhibits that Ms. Clark was talking about and ask you if you are familiar with these documents and if you recognize what they are?

A Yes, I am familiar with the and I do recognize that they're all patient care reports.

Q And have you over the years been involved with producing patient reports?

A Yes, ma'am.

Q Can you tell me what the purpose of these reports is and who is responsible for generating them?

A Well, the purpose of the report is to document a patient encounter. Obviously it documents where ever that scene is, the position of where the patient was, their pain, some demographics about who that patient is, a physical examine, in other words, what that paramedic found whenever the assess them and whatever treatments that were done.

Q Did they also assess the mechanism of injury?

A Yes.

Q In crash scenes?

A Yes.

Q Can you tell me what that means mechanism of injury?

A It just means what happened and mechanism of

injury pertains to trauma patients. Like if they fell, how far did they fall, a 20 or 30 feet fall or a 10 feet fall and that makes a big difference as far as how we may treat them. It makes us kind of predict what injuries they may or may not have.

Q Is that information conveyed to the doctors in the ER when you transport the patient as well?

A Yes, ma'am.

Q Now, let's get back to how these reports are generated. Is this a computer base system?

A Yes.

Q Are there mobile computer terminals in the ambulances?

A There are.

Q And you have both EMT's and paramedics?

A Yes, we do.

Q Do they do entries on these at the scene?

A Yes, they do. Obviously when a patient is more critical it's a team effort so a patient that's more critical may require a more hands on approach by both partners and there not be time to pick up a laptop computer.

Q Is that information, none the less, entered into the computer as soon as is possible to do so?

A Yes.

Q Typically what is the time frame for completing that process?

A For completing the report prior to the end of their shift.

Q So that's within a matter of hours?

A Yes.

Q Anyone involved in any way with that patient required to review that report and sign off of it?

A Yes. And you can call in and electronically sign.

Q And this is all via the computer?

A That's correct.

Q So is it safe to say that everything in these records was either real time or in very close proximity after the events?

A Yes.

MS. DRAWDY: Your Honor, at this time we'd like to move State's Exhibits 26, 27 and 28 into evidence.

THE COURT: Give them the opportunity to review the same.

DEFENDANT MCCALL: I have no objection.

THE COURT: Without objection, they will be introduced into evidence.

(Reports marked as State's Exhibit Nos 26, 27 and 28 for identification was admitted into evidence.)

BY MS. DRAWDY:

Q Lieutenant James, do these reports include a time that the call was received by EMS on them?

A Yes, they do.

Q What was that time and you can give me military time?

A 17:45. Do you want the seconds as well, 44 seconds.

Q So that's when the call was received by EMS?

A Yes, ma'am.

Q And how many units were dispatched?

A From our department?

Q Yes.

A Three units.

Q And was one of those your units?

A Yes.

Q And is that actually listed on the report?

A No.

Q Why is that?

A My unit is what's called a quick response unit, it's not an ambulance, and therefore, it doesn't have a DHEC license. So we don't fill out reports, that's one reason. The second reason is obviously we don't -- it's not very sufficient when you have multiple reports for one patient. So in a case like this when I arrived the things

that I do are integrated into one report and I work together with the team of providers to make that report.

Q Which EMS unit was the first to arrive on scene?

A Let's see. That would have been Medic 9.

Q What time did they arrive on scene?

A At 17:52 and 55 seconds.

Q So they're the first to arrive from EMS?

A That is correct.

Q And who were the techs on that vehicle?

A Paramedic Chris Stache and then paramedic Ron Freeman but actually Ron was an intermediate EMT at that time.

Q Is Chris Stache a paramedic?

A Yes, he is. At the time they were called intermediates -- earlier when you ask me the questions of explaining the levels the term has changed and it's now called advanced.

Q Who was the second to arrive?

A It would have been me.

Q You don't know what time?

A No, it's not reflected on these records because I don't do a patient care report. The time on these records are the actual response.

Q So is this one reason why you document the time so when you go back you know things?

A That's correct.
Q Somewhere in here Lieutenant John James arrives?
A That would be reflected in our CAD.
Q You don't have that with you?
A No, I don't.
Q You know you arrived in between?
A That is correct.
Q When did the next EMS unit arrive?
A That was Medic 26 and they arrived.
Q 26 or MO26?
A M26. They arrived at 18:11, 33 seconds.
Q That's the second service EMS unit to arrive?
A Yes.
Q And are there also two medics in this unit and who are they?
A This is the same exact crew configuration, one was a paramedic and the other was a EMT. The paramedic was Gary Clark and the intermediate was Josh Robinson. Josh is now a paramedic.
Q Now, can you tell me from your reports what time each of these units, the first to the scene and the second to scene left with their patients?
A Medic 9 departed the scene at 18:40 and 48 seconds.
Q What time did Medic 26 leave?

A They departed the scene at 18:29 and 48 seconds.
Q Who was the first to depart?
A Medic 26.
Q And what patient or patients did they have on board, Medic 26, when they left?
A Was Julia Suddeth and Terry McCall.
Q So they were transported together?
A They were transported in the same ambulance, yes, ma'am.
Q When Medic 9 departed at 18:40, who were they carrying?
A Was carrying Robert Suddeth.
Q Now, we've been talking four digits for time, can you tell us how to translate that to standard time that most people use on a day to day basis?
A Yes, ma'am. How I explain it to their kids when they ask me, you subtract 12 so 17 if you subtract 12 from that it would be 5:45.
Q I'm not going to ask you to translate all of them.
A Okay.
Q Let's talk a little bit about the types of things that are in these reports, some of the forms that are in Exhibit No. 28 and can you tell me whose patient care report that was?

A Exhibit 28 is the patient care report for Mr. Terry McCall.

Q We haven't heard much about him until now. Can you tell me if vital signs were taken and any testing that was done at that time?

A When you refer to testing, what are you referring to?

Q What are the typical measurements that you take at a scene, what do you take?

A Blood pressure, pulse rate, respiratory rate, pupil size, those types of things. Your vital signs.

Q Do you also take glucose levels?

A Yes, ma'am.

Q Can you look on your report if you took glucose levels?

A Keep in mind I was not on this report but a crew. Member did. They did check his blood pressure and they did check his glucose that was done at 18:26 and it was -- do you want to know what was?

Q Yes, please.

A It was 93 milligrams per deciliter.

Q Is that glucose?

A Yes, ma'am.

Q And what was his blood pressure?

A His blood pressure -- there's several documented

here. The first one was 130 by palpation.

Q Is that taken at 18:26?

A No, ma'am. Would you like the one that was taken at 18:26?

Q Yes, ma'am. Was that the first one?

A No, that would be the second one that was documented.

Q This is not a final report. I guess we'll do this. When was the first one taken?

A The first blood pressure was taken at 18:12 and that was 130 by palpation.

Q What do you mean by palpation?

A That's the first blood pressure. On an accident scene, there's usually a lot of noise. I don't know how familiar you are with taking a blood pressure but it requires the use of a stethoscope. A lot of times there's a lot of noise, fire engines and things like that and you just can hear a blood pressure so we have a palpation. That's when you use a blood pressure cup and you feel a patient's pulse with your hand it only gives you one number and a blood pressure reading. It has two numbers, a top number and bottom number, systolic and diastolic. With the palpation method you only get that top number so the systolic reading was 130.

Q So the systolic and diastolic which was the first

one of those two?

A That would be the same time.

Q 18:26?

A Yes.

Q What was that?

A 140 over 80.

Q You mentioned something about pupil dilations, is that also recorded?

A The pupil size should be in this report, yes.

Q Is there a time for that or is that during the course of treatment?

A During the course of the examine it doesn't have a set time of what that was taken.

Q What was his pupil size?

A His pupil size was six millimeters on the left and also documented six millimeters on the right.

Q Six millimeters in both eyes?

A That's correct.

Q Now, you don't know the specific time. Would that have bee done on the scene before they left or during transport?

A It would either have been done on the scene or at some point during transport. I can't really say for sure which.

Q Okay. Now, let's move to something else.

James Jones - Direct

A Okay.

Q Let's talk about what you did at the scene. If you would step down with me please. We have some exhibits to show you. You can come with me here. I'm going to give you a pointer. I want to show you a series of exhibits and see if you can describe where were your different units that we've been discussing were located. These are State's Exhibits 3, 5, 11 and 10. Did you review these photographs before trial today?

A Yes.

Q And did you recognize this as being photographs of the scene?

A Yes, I do.

Q Are they a fair and accurate representation of what you recall?

A Yes, they are.

Q If you could look through these photos and select the one you can best use to explain to the jury, I know that the vehicles involved in the crash may not be fully or visible, but where they are in position to where your EMS vehicles are. You can use several.

A I'll use those two.

Q If you could say which exhibits for the record. Which one would you like to use first?

A This one.

Q State's Exhibit 5, can you explain which EMS units are shown in the photographs and where the vehicles are in relation?

A Yes, I can. You see this is a red light right here intersection, that would be the intersection of 291 and Worley Road and as you can see there's a Spinx station right there so that's the sign that we're seeing right here. This would be northbound on 291 headed towards Cherrydale.

The vehicle you see here is my vehicle and that's like I was telling you earlier on, I drive a quick response vehicle and it doesn't transport patients. This vehicle here would be Medic 26 which is the second vehicle to arrive. And then you can see it better in the photo but right there on that edge you can see one of the vehicle involved in the crash and I believe that's the green Ford Explorer.

Q Do you need the next photo?

A Yes.

Q Next is State's Exhibit 10.

A Just so you can get a perspective of this photo, the last photo would have been taken when you were standing about right here where this dot is facing backward. This vehicle here is my vehicle and you're seeing the front of it. This lane right here would be

southbound 291. The intersection of Worley Road would be back towards us. This vehicle here would be Medic 26. You see this the other vehicle involved which would be the burgundy pick up.

Q Who was in that vehicle?

A Mr. Suddeth and his daughter and Mr. McCall was like in a green small SUV. It would be positioned more right here in this photo, and then the first arriving transport unit, you can't really see it in this picture but it is parked about right in here.

Q Can you see it in the previous exhibit?

A No.

Q Now, when you arrived, where did you go first or what did you do, who did you assist?

A When I arrived on the scene Medic 9 was already on the scene, and EMT or paramedic Ryan Freeman, he had assumed command of the incident which means he was in charge of sizing up the incident. So when I get there, my job is to find whoever is in command, get a report from the as to what's going on on scene, so that's what I did. Ryan told me that he had two patients that were here, one was entrapped and then in the other vehicle, he said that patient was awake and was a priority 2.

From that point I assumed command of the incident and to assist with the care of Mr. Suddeth who

was in his pick up truck.

Q And based on the context of what you see happening there, at the time this photograph was taken, was Mr. Suddeth still in the vehicle?

A Yes, he was still in the vehicle. The reason I know that is because the stretcher is right here and he was not in the stretcher. He was so entrapped in the vehicle that the initial responders from the fire department did not know how to get him out. I had to have some conversation with them.

Q Do you have a background in that?

A In what?

Q Extrication?

A Yes, ma'am, I do. Greenville County used to perform extrication service for Greenville County. We stopped doing that a couple of years before this accident happened the fire department was in a transition for taking over. So, yes, I worked as a rescue tech for two years as part of career.

One of the ways of removing him as we discussed was flattening or removing the roof and as you can see here what they've done is they cut the a and the b post back here and then cut on the center and this firefighter is lifting it up. It's like taking the roof off of the can.

Mr. Suddeth is still in this vehicle right here. After this roof was flat, he was removed out the driver's seat and taken to the bed of the pick up and put on a spine board and at that point he was moved to the stretcher.

Q I'm going to show you 11 and ask if this shows what was happening after the roof was removed?

A As you see here the roof has been kind of flat all the way over and the headliner is facing towards the sky now. That's actually me standing right there at the pick up.

Q This is the moment he was being pulled out?

A That's correct.

Q Please answer any questions that the defendant might have.

THE COURT: Any cross?

DEFENDANT MCCALL: No questions.

MS. DRAWDY: Can he be released?

THE COURT: Sure.

THE CLERK: Please come up to be sworn in, place your left hand on the Bible and raise your right.

RYAN FREEMAN, having been duly sworn, testified as follows:

Thank you. State your name for the record.

THE WITNESS: Paramedic Ryan Freeman.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q For the purposes of your testimony I'm going to give you a copy of the patient record which is Exhibit 26. First before I ask you questions, are you a paramedic?

A Yes, ma'am, I am.

Q EMS?

A Yes, ma'am.

Q At the time of this incident, what unit were you attached to?

A I was on Medic 9.

Q Were you driving?

A Yes, to the hospital. As far as to the scene, I believe I did.

Q Is that something you alter with your partner?

A Yes, depends on what's required at the time.

Q Can you tell me what you did when you first drove up to the scene?

A Yes, ma'am, I was working with paramedic Chris Stache and we were one of the first to arrive. Our objective at that point is to identify patients, figure out who is involved and who is hurt and start the triage process and then we begin to work on the worse patient and then stair step down.

When we showed up we actually split. I went to the green SUV and identified the patient there, and my partner had gone to the pick up truck.

Q Please step down and ask you to look at State's Exhibit 13, 14 and 15 and ask you if you would look at those photographs. Were you given an opportunity to see these before today?

A Yes, ma'am.

Q And do you recognize what's pictured in those photographs?

A Yes.

Q What is that?

A This is the green SUV.

Q Are these fair and accurate representations of the way that appeared during the course of this incident?

A Yes, ma'am.

Q Which side of the vehicle was presented to you did you see first that you approached?

A When we drove up, I would be facing the driver's side of the vehicle.

Q The driver's side?

A Yes, I would parked here.

Q Is it your unit that's portrayed in Exhibit 16?

A Yes, that was our unit.

Q This is your unit?

A Yes.
Q In the foreground is the green Ford Explorer?
A Yes, ma'am.
Q And did you approach that vehicle?
A Yes, ma'am, I did.
Q And check on the occupant?
A Yes, ma'am.
Q How many occupants did you find?
A One.
Q And can you give an appearance of the occupant you found, white, black, male, female?
A Yes, ma'am, it was a white male, middle aged. That was all I gathered at that point. We were concerned about injuries versus physical characteristics.
Q He was the only occupant?
A Yes.
Q Where was he seated?
A He was in the driver's seat.
Q Did you speak to him?
A Yes.
Q What was your purpose in speaking to him?
A To identify that he was alert and has the mental status at that point to know that I'm speaking to him; that he's not unconscious, not altered, to establish the extend of his injuries.

Q So this is your first viewing the scene to determine who is injured worse?

A Yes.

Q How are his injuries compared with the person in the other vehicle?

A I did not see any severe or life threatening injuries at that point when I first walked up to him. So at that point we just identified him as a patient and the fact that he's wake and speaking.

Q Was he able to get up at this time?

A I don't believe so. I believe that the dash might have been sitting on his knees. That did prevent him from moving, but we always instruct everybody to stay seated.

Q Was the door also stuck?

A I remember pulling on the door and it wasn't necessarily wedged into the damage but it wasn't able to move freely.

Q I'm going to show you photograph Exhibit 15 and ask you if this shows how the vehicle looked after the door was popped open?

A Yes, ma'am.

Q Also 13, is this a slightly different view of the scene?

A Yes, ma'am. That would be the same

representation of the vehicle, rear of the vehicle.

Q How long were you at the green SUV before you went back to help?

A A short period of time, just long enough to get the basic information that I needed to prioritize him.

Q Did you go back and assist with the care of Robert Suddeth?

A Once John James arrived at that point it was me and my partner Chris Stache I actually step out of my role and get additional resources as needed. So I would have to call for additional ambulances of multiple patients, but once John James arrived, at that point I would assist with the most critical patient.

Q And do you recall if the coroner was called to the scene?

A Yes, he was.

Q Is that something that the EMS does?

A Yes, ma'am, that was a routine practice with anybody -- obviously if we had a death at the scene, but in this case with Mr. Suddeth's injuries being fairly life threatening and there was a question whether he was going to live through the scene, we called the coroner so they can do a first report of incident to gather information. If he were to become deceased, they would have the information to proceed with that case.

Q And would you please refer to the report that I gave you, State's Exhibit 26, and is this the report from Medic 9 crew?

A Yes, it is.

Q Would you turn to the electronic signature page. Did you sign off on this report after reviewing it?

A Yes, ma'am, I did.

Q What date and time did you do that?

A Let's see I signed the 4th at 21:50.

Q Please answer any questions the defense might have.

CROSS-EXAMINATION

BY DEFENDANT MCCALL:

Q I'd like to ask you when you came on the scene and approached the green Explorer, your observations were you didn't see any kind of influence or impairment at that time, is that correct?

A That's hard to answer due to the fact that we only answer very basic questions. Something like would be found if I asked more detailed questions like time, place, date and that nature. I would actually have a conversation with the patient. My basic question at that point is just free to even notice that I'm there.

Q So your answer is no, is that correct?

A If you're asking if I noticed any physical

impairments, the answer would be no just due to the brief exchange.

DEFENDANT MCCALL: No more questions.

MS. DRAWDY: No redirect.

We'd ask that this witness be excused.

THE COURT: Certainly, have a great day.

(AT WHICH TIME THE TESTIMONY OF CHRIS STACH, TERESA DAVIS DEWEISE AND JOSH ROBINSON CAN NOT BE TRANSCRIBED.)

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MR. ERWIN: Sorry, Your Honor.

THE COURT: It's okay. Are we ready for the jury?

MR. OVERBY: Yes, sir.

MR. ERWIN: Yes, sir.

THE COURT: Bring them in please.

(Jury enters the courtroom)

THE COURT: Good morning, ladies and gentlemen, welcome back. Alright, you may call your next witness.

MR. OVERBY: If it please the Court, Your Honor. At this time the state calls Sergeant Wes Hiatt.

THE CLERK: Sergeant Hiatt, would you come to the stand, place your left hand on the Bible and raise

your right.

WES HIATT, having been duly sworn, testified as follows:

Would you please state your name for the record, please.

THE WITNESS: Sergeant Wes Hiatt.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. OVERBY:

Q Sergeant Hiatt, how are you today?

A Just fine.

Q Where are you employed, sir?

A South Carolina Highway Patrol, Greenville County.

Q And how long have you been working for the South Carolina Highway Patrol, Greenville County?

A About 24 and a half years.

Q What is your present rank and status?

A I'm a sergeant in Greenville County, supervisor.

Q What are some of your responsibilities?

A I got an array of responsibilities. I do administrative work in the office, paperwork, oversee two teams that work underneath me. When those team supervisors are out I over see their times and that could be supervising an accident scene, major events that go on during that shift.

Q Do you have any responsibilities with regard to the collection of evidence in the case?

A I am the evidence custodian for Greenville County and Upstate Main.

Q So you have to wear a lot of hats?

A That's correct.

Q Were you in this role on the night of March 4, 2012?

A Yes, I was.

Q Discuss how you came to be involved in this case?

A Got a call from dispatch stating they had a very serious accident on SC 291 near Worley Road where they had two vehicles involved possibly head-on with entrapment.

Q What is entrapment?

A Somebody is trapped in the vehicle and they have to extricate them.

Q What did you do in response to that?

A I was at the office with -- our office is not that far from that location. I responded to the scene.

Q What do you do when you respond to the scene as a supervisor?

A I surveyed the scene first to see what you got to try to figure out where you're drivers were at. Where the vehicles were traveling. Also you want to secure the scene to make sure you preserve any evidence. You also

want to make sure this scene is safe. You also want to get the number of personnel there to help you investigate the accident and also help direct traffic to make the scene safe.

Q How many troopers were there at the scene to help you do that?

A I think I had nine.

Q Now, when you arrived, what was it that you perceived at the scene?

A There were two vehicles there but heavy damage to both vehicles. I think the fire department EMS was already there when I got there. There was an Explorer there and the driver was still in that vehicle. And then the pick up truck. The driver was severely entrapped in that vehicle. I was told there was another passenger in the pick up truck and she was ambulatory and she was not in the truck.

Q You said that you saw the driver in the Ford Explorer vehicle?

A That's correct.

Q What was he doing at that time?

A He was just sitting in his car. He was entrapped and I was told it would be a simple door pop to get him out. A door pop was just when they use a crow bar or the jaws of life, they just take it too there and just pop the

door open.

Q Do you remember about what time you got to the scene?

A I don't. It didn't take five minutes to get there about. I don't remember what time it was.

Q Is a CAD report conducted in each of one of these pages?

A It is.

Q Would it tell you what time?

A It should.

Q If it showed it to you, would it refresh your recollection?

A Sometimes you can get there before and see the scene and get out and not tell them you're there and they'll hear you on the radio and put you out and know you're there, so I could have got there.

Q I'd like to just show you this CAD report. Does it give you a better idea of what time you got there?

A Around 18:03, which is 6:03.

Q Were you the first person from highway patrol on the scene?

A I was.

Q And at that time he was still entrapped in his automobile?

A That's correct.

Q Now, what did you do after that in terms of your scene investigation?

A Well, I knew I wasn't going to be involved in the extraction so I started looking at the scene, making some calls, just getting the ball rolling just getting the investigation started.

Q And during this time, did the defendant in the case ever get removed from the vehicle?

A He did.

Q Once that occurred, did you have an opportunity to take a look at his car?

A The next time I saw his vehicle, he was not in it. I did not see him. He had already been placed in the ambulance. I took a quick look in his vehicle and I noticed numerous empty beer cans in the vehicle.

Q If you wouldn't mind, sir, I'd like you to step down. Sergeant, I'm going to show you State's Exhibit 21. Do you recognize that?

A That's the inside of the Explorer.

Q That's what it looked like with all the stuff around it, correct?

A That's correct.

Q I'm going to show you State's Exhibit No. 3. Do you recognize that?

A I do.

Q That's what you saw from your angle?
A That's correct.
Q You can step back up there. Once you saw those beer cans, what did you do?
A Well, seeing the empty beer cans in the car led me to believe that the driver might be drinking alcohol, might be under the influence of alcohol. After that I saw Trooper McAlhaney and I said there was some beer cans in the car, I said he may be under the influence of alcohol, get in the back of the ambulance and talk to him.
Q By this point, he's already in the ambulance?
A That's correct.
Q Did you go to the back of the ambulance?
A I went in the back of the ambulance and closed the door so we could hear.
Q Did you talk to him?
A Yes.
Q What did you hear?
A I asked him what happened. He told me his brakes went out on his vehicle. I asked him if he had been drinking any alcohol and he said no. I said well there's a bunch of beer cans in your car and he told he had collected those beer cans just to sell them, to recycle, and as I was talking to him, he wouldn't look at me. And I said you need to look at me when I talk to you. That's

when he opened his eyes real wide and that's when I noticed his eyes were glassy and his pupils were dilated.

Q You said that you told him there were beer cans in the car, did you smell an odor?

A I did not smell any alcohol.

Q What did you do after that happened?

A After that I got out of the ambulance and I told Trooper McAlhaney I didn't smell any alcohol. I don't think he's been drinking but he's on some kind of drug.

Q And from that point forward, what kind of responsibility you had with the accident scene?

A I had at that point when I knew I probably some type of drug involvement maybe driving under the influence charge or a serious injury, we had to go ahead and notify the lieutenant that was on call to get me involved because they investigate all the serious accidents involving alcohol, making sure all of my other troopers were in place, making sure McAlhaney was getting his witness statements, pictures taken, vehicles marked, investigating the scene properly.

Q How long were you out there at the scene total?

A I don't know exactly. I know I had Trooper McAlhaney at the office to process the evidence once he got back from the hospital.

Q How long was that?

A Three or four hours.
Q Okay. So you returned back to the office then?
A I did.
MR. OVERBY: Your Honor, at this time that's all the questions the State has for Trooper Hiatt. The State will be recalling him at a later time as to another issue with regards to chain of custody.
THE COURT: Good enough. Questions.
MR. ERWIN: Yes.

CROSS-EXAMINATION

BY MR. ERWIN:

Q Trooper Hiatt, good afternoon.
A Good afternoon.
Q As far as investigating this, you are pretty much a senior member of the time?
A That's correct.
Q You're in charge of a lot of this operation?
A That's correct.
Q Having that position, you are pretty much aware of the investigation that went on in this case, right?
A That's correct.
Q Obviously you had to get ready to testify today so you met with prosecutors and everything.
A That's correct.
Q So you'd say you have a pretty good handle on

everything that went down in this case, right?
A Yes.
Q And you're very experienced law enforcement so you know how these things go, right?
A Yes.
Q It's no surprise to you that there was no alcohol in his system, right?
A Well, it did surprise me being the cans in me that I saw but once you get in that ambulance you can tell if somebody had been drinking, so I could tell he hadn't been drinking.
Q So it was obvious to you then that he had not had been drinking and the cans just happened to be there, correct?
A That's correct.
Q When you were testifying earlier, you thought he had some kind of drug in his system, right?
A That's correct.
Q Just to be clear, you're basing that off of your observations, right? You're basing that off of his behavior?
A I'm basing that on past experience and what I've seen people on drugs.
Q But based on the investigation on the scene, you're just using your eyes, right?

A Right.

Q You're basing that on the way he was acting and you said earlier his eyes being glassy and dilated and you thought he was acting kind of goofy, right?

A And going from being drowsy to when I told him to look at me and his eyes going wide open and kind of wide-eyed.

Q This is going to sound silly, but it's not like you have some sort of instant drug tests or something like that? This is just based on what you can see, right?

A No, I don't have an instant drug test.

Q So just observation.

A That and he went on the wrong side of the road and had a car wreck.

Q So what we're talking about then is basically the accident itself and the way he was acting afterwards, right?

A Right.

MR. ERWIN: I have no further questions.

MR. OVERBY: I have no further questions at this time subject to what I said earlier.

THE COURT: Okay.

MS. DRAWDY: The State calls former Trooper David McAlhaney.

THE CLERK: Please come forward to be sworn.

Place your left hand on the Bible and raise your right.

DAVID MCALHANEY, having been duly sworn, testified as follows:

Thank you. You may be seated. Please state your name for the record.

THE WITNESS: David McAlhaney.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Mr. McAlhaney, some time has passed since this happened; is that correct?

A That is true.

Q And in the interim, have you had the fortune of retiring?

A I have retired actually December of that same year.

Q Were you the primary investigator on this case?

A I was.

Q And how did that happen?

A Dispatched informed me of the accident on 291 North.

Q Was Sergeant Hiatt responsible for assigning it to you?

A He probably was, probably was.

Q Tell me at that time, how long were you with the parol?

A At that time I would have been in y 24th year.

Q I'm going to roll the time clock back and ask you to tell me about some of the training that you received in order to become a highway patrolmen. I just want to know the type of training you received in accident investigation, DUI investigation and that sort of thing.

A I received that when I started the highway parol in 1986 and numerous times every year in service training that reiterated. You go for refresher accident investigation course. You constantly new things come out, you're enlightened on those new things, DUIs, just anything and everything that goes with paroling the highways.

Q At the conclusion of your investigation, did you write a brief report?

A I did.

Q Have you had an opportunity to review that in preparation for your testimony today?

A I did.

Q Do you have those records?

A I do.

Q Did you have an opportunity to review photographs that were taken at the scene?

A I was.

Q Did that refresh your memory?

A It did.

Q We'll be showing you some of those to see if that squares with your memory. Now, can you tell me approximately what time you arrived on the scene? And do you have a report that helps you?

A I have a CAD report here. Approximately I arrived on there I believe it's 18:12.

Q Describe what you found at the scene?

A I found numerous emergency vehicles there, patrol vehicles there. I parked behind one of the ambulances and when I got out of the vehicle, I noticed then the Chevrolet truck on the southbound truck of 291 with major damage to it, and then I noticed the Ford Explorer on the northbound with damage to it as well.

Q Did you check on the condition of the occupants of the vehicles with EMS?

A I did. Of course, the truck -- at that moment I couldn't found anything about the driver of the truck. They were too busy trying to excavate him out of the truck. I was on my way to talk to Mr. McCall and EMS had already started their procedures with him as well. The only thing I could really do was identify my drivers and I knew exactly where they were.

Q Did you also have a conversation with Sergeant Hiatt about what he observed?

A I did. As he just testified, he was able to go inside the ambulance and talk to Mr. McCall and when he came out that's when he informed me that beer cans that were in the vehicle. He picked them up. He didn't smell any alcohol on him but there had to be something else and he did mention there could be drugs.

Q Let's talk about what you did at the scene in the way of investigating.

A I had to locate witnesses, find anybody that was there, anybody that saw the accident.

Q Were you able to find any witness?

A I found two of them. After I found them, I went back to my car and got the witnesses statements and gave it to both of them and asked them to start writing out in detail what they saw.

Q Did you also look at the evidence in the roadway and the position of the vehicles?

A I did. It was obvious to me just from what I could see as far as fault was concerned it was on the Explorer because it had crossed the median and hit the Chevrolet truck and it was almost side swiped head on.

Q Did you interviews with the witnesses conflict with that or confirm it?

A They confirmed it. They actually told me that the way they saw it happened the Ford Explorer for no

reason that they could see just darted across the median and hit the truck.

Q Approximately -- how long did it take you roughly to finish your duties at the scene?

A Close to two hours.

Q And did you then go to the hospital to check out Mr. McCall?

A I did. When I left the scene I arrived at the hospital went into the emergency incident, told the nurse up front who my victims were, names that were involved in the accident and she directed me where to go. Mr. Suddeth was in the trauma unit and Mr. McCall was in critical care.

Q Were you able to speak with Mr. Suddeth?

A No, I was not. He was in no position to talk.

Q Did you direct you attention to Mr. McCall?

A I did.

Q Where you find him?

A He was laid out on a stretcher in the hallway. Critical care is a long hallway with rooms all down the side and he was in the hallway outside of the emergency room.

Q Did you have a conversation with him?

A I did.

Q What was the content of that conversation?

A I first asked him what happened? What caused this accident, and he told me he did not have any calibers on the wheel of his vehicle and the caliber is what holds the brake pad in place. So with no calibers he had no brakes at all on the car. He told me he knew there was no brakes on the car and he also advised me that the car -- I don't know, there was a conflict in my mind as to whose car it was and where he got it. He said he knew it didn't have any brakes and I then asked him if he had anything to drink. And he replied no he didn't drink, he didn't have any alcohol. I couldn't smell anything myself. There was nothing of an alcoholic nature about it.

Q What did you notice about it, though?

A I knew something wasn't right because of his reaction to my questions. The way he reacted his eyes was kind of a sleepy type of mode and I would have to try to say something. I would ask him a question and then he would open his eyes real wide and answer and reply to it. I'd ask him then if he had taken any drugs of any sort. And he advised me he had taken prescription medication.

Q And he just said prescription medications?

A Yes, ma'am.

Q I'm going to show you State's Exhibit I and ask you to look at that photograph. Whose portrayed in that photograph?

A Mr. McCall.
Q Does that photograph fairly and accurately depict how he looked that day in the ER?
A Yes, it does.
MS. DRAWDY: We'd like to move this into evidence as State's Exhibit I.
THE COURT: Any objection?
DEFENDANT MCCALL: No objection.
THE COURT: Introduced into evidence with no objection.
(Photograph marked as State's Exhibit I for identification was admitted into evidence.)
BY MS. DRAWDY:
Q Now, based on your observations of Mr. McCall, did you make a decision at that point whether or not you were going to levy any criminal charges?
A At that point based on all the evidence that I saw, everything that I saw at the scene, everything that I heard from the witness, based on him telling me that he drove a vehicle knowing there were no brakes on it, his reactions to my questions, it just didn't add up to me as a person who was sitting there with no faults, so yes, I did. I determined then that I was going to charge him with felony driving under the influence due to the great bodily injury.

Q And as part of a felony driving under the influence investigation either prior to arrest or follow up, what are you trained to do about collecting more evidence?

A Well, what you're supposed to do is in a felony case, you have to lead a felony DUI advisement.

Q I'm going to show you State's Exhibit D and ask you if you recognize what that is?

A I do, it's the advisement of implied consent for felony DUI.

Q Is it a copy of the one that you read to Mr McCall that night?

A Yes, it is.

Q Would you read that for the jury and did you explain it to him?

A I explained it to him and I read it word for word the advisement and asked him if he understood it.

Q Please read that to now.

A "You are under arrest for felony driving under the influence, Section 56.5.3945 of South Carolina Code of Laws 1976 as amended, or a law enforcement officer has probable cause to believe that you have violated this section. The officer has directed that samples be taken for alcohol and or drug testing. The samples will be taken and tested according to Section 56.5.2950 of SLED

policies. Pursuant to Section 56.5.2946 you must submit to either one or combination of chemical test for the purposes of determining the presence of alcohol, drugs, or a combination of alcohol and drugs. The resistance, obstruction, or opposition to testing pursuant to Section 56.5.2946 is evidence admissible at trial. If your test or samples have an alcohol concentrate of 15th 100th of 1 percent or more your privilege to drive in the State of South Carolina must be suspended for a period of one month. You have the right to have a qualified person of your own choosing to conduct any additional independent tests which are at your expense and the officer, upon request, must provide you affirmative assistance. You have the right to request an administrative hearing within 30 days of the issuance of the notice of suspension. If you do not request an administrative hearing or if your suspension is upheld in an administrative hearing, you must enroll in an alcohol and drug safety action program."

Q After you read that, did you provide him with a copy?

A I did.

Q Did you ask him to sign acknowledging receipt?

A These copies are all together and after I read it to him I asked him to sign for a copy of this and since he was laying down on the stretcher, I held it above his head

and he said he would sign it. So I held it above his head and I told him where to sign and he signed his name.

Q Now, I assume later that evening -- did you leave him at the hospital or was he treated and released eventually?

A He was treated and released.

Q And where did you take him after that?

A After that I took him to the Greenville County Law Enforcement Center where I booked him in.

Q Was this also left at the Law Enforcement Center in his property, his copy?

A It was.

Q I turn your attention to -- after you read that and he agreed, what did you do?

A After I read it to him and he agreed I went and found a nurse and told her that I had a subject that was willing to voluntarily give me a blood sample and I read him his implied consent and he agreed.

Q Is there another form that you use for felony DUI's of if you're collecting a blood sample that your agency provides to you?

A Yes, it is.

Q I want to show you State's Exhibit C and ask you if that is the other form?

A It is.

Q What is that?
A It's a blood urine collection report where I have to check off different portions of it that the subject is under arrest and the subject has been advised which I did check those. And then it has the nurse's name on here and checked again that the is still under arrest for felony DUI and it's got my signature at the bottom and there again I had to ask Mr. McCall if he would sign it and he said yes so I held it up for him again and he signed this one as well.
Q Was a copy provided to him in his property when he went to the jail later that night?
A Yes, it was.
Q And who was the nurse?
A Ashley Norman.
Q How do you know?
A Her name is on his form.
Q Do you also record a time of arrest on this form?
A I believe there is one on there. Time of arrest in this case was 20:13.
Q You found the nurse?
A I did.
Q And did she actually take samples?
A She did take samples.
Q What types of samples?

A She took blood sample and urine samples.
Q I'm going to show you State's -- were you present when these samples were collected?
A I was.
Q I'm going to show you State's Exhibit A and ask you if you can tell me what that is?
A This is a hospital form chain of custody.
Q Is your signature on that?
A It is.
Q Is this a highway patrol form or a hospital form?
A It's a hospital form.
Q Is it something the nurse filled out and started?
A Yes, it is.
Q Does the chain of custody show when the sample was drawn?
A It does.
Q Does it also show -- what time was it drawn?
A At 20:45.
Q Is that the blood or the urine sample?
A This is going to be I think the blood sample.
Q Let me see.
A Alright. Okay, the first specimen was urine.
Q At 20:45?
A Yes. I see it down there.
Q And did you sign acknowledging receipt?

A I did .
Q I'm going to show you State's Exhibit B and ask you if that is the same type of document but for the blood sample?
A It is, that's for the blood.
Q Were you present when that was drawn?
A I was.
Q And did the nurse turn that sample over to you after she had labeled and properly capped it?
A I did and I signed for it.
Q How many viles of blood were drawn?
A Two.
Q Let me ask you about the container for the urine, what did that look like?
A It was a jar with a screw cap.
Q Did she put those in something to give you to take back?
A The blood was put into a like a little blue bio hazard bag and the urine was placed also in a bag of its own.
Q Give me that time for the blood draw.
A 21:05 for the blood.
Q Now, when you took these samples from the nurse where did you go, what did you do?
A That's when I took Mr. McCall into custody and

they released him. I believe I may have signed the discharge papers when he was released and then we went to the Greenville County Law Enforcement Center.

Q And did you take the blood and urine samples with you?

A I did. I had them in my possession the whole time.

Q Where did you put them in your car?

A When I opened the trunk to secure my car i have a box in there and I placed the in the trunk of my car.

Q And then you -- after you finished up with Mr. McCall, did you lock up your car when you went into the jail?

A Yes, my car is always locked.

Q When you finished up there, then what did you do?

A After I left the jail. that's when I went straight to the patrol office and took the blood and the urine with me, met with Sergeant Hiatt and we put them into evidence.

Q I'm going to show you State's Exhibit 33 and 32 and ask you if you recognize what's in those photographs?

A Yes, I do.

Q What is that?

A That's the two viles of blood and the container of urine.

Q Is that how they appeared when Ashley Norman put them in the bag and gave them to you?

A Yes, they are.

MS. DRAWDY: These are already in evidence, Your Honor.

BY MS. DRAWDY:

Q You went to the central office with the blood sample and urine sample?

A I did.

Q And it was Trooper Hiatt when you went there?

A It was.

Q And he's your custodian?

A He is.

Q For what purpose did you go to the office?

A Because we have to put the blood samples and urine samples into evidence. The blood has to be placed in the refrigerator which we have at the office which is locked. Sergeant Hiatt is the one with the key to it.

Q While you were there did Sergeant Hiatt put it in an evidence bag?

A He did.

Q I want to show you State's -- I don't think this has been marked yet.

MS. DRAWDY: 36 please.

(Evidence bag marked as State's Exhibit No.

36 for identification and admitted into evidence.)

BY MS. DRAWDY:

Q I'm going to show you what's been marked as State's 36 and ask you if that is one of the types of evidence bags that you use?

A It is.

Q And were the samples placed inside of an evidence bag like that?

A Yes.

Q And does that appear to have the information on this case?

A It does.

Q Who wrote that on the back?

A That's going to be Sergeant Hiatt.

Q Before he took custody of it and placed it in the refrigerator. Did you sign a chain of custody at that time for these items?

A I did.

MS. DRAWDY: 37 please.

(Chain of custody marked as State's Exhibit No. 37 for identification.)

BY SOLICIOR2:

Q I'm going to show you State's 37 and ask you if this is a copy of the chain of custody that you signed or initialed?

A Yes, it is.

Q Where did you sign or initial?

A I signed when turning the evidence into the refrigerator.

Q Did you put it in the refrigerator or Sergeant Hiatt?

A Sergeant Hiatt put it in there.

Q After you finish that process, were your duties in this case more or less concluded?

A Well, for that night they were concluded.

Q They been resurrected today.

MS. DRAWDY: May I approach?

THE COURT: Yes.

BY MS. DRAWDY:

Q We have been discussing State's Exhibit C a little bit earlier which you said was a copy of the Urine Blood collection form. Would you tell me what's stamped at the bottom of this?

A It has Mr. McCall's name on it.

Q That's a record from the hospital, their copy of the form?

A Yes.

Q After you finished up, you had other copies of it; is that correct?

A That's correct.

Q Did you fill in from the information add to this information from the two hospital forms that showed the time the samples were collected?

A I did.

Q And has that been added to the highway patrol copy of it?

A Yes, it has.

Q Where is that?

A Right here.

Q It says?

A "Time of arrest."

Q What's after that?

A "Time of test."

Q And that's on the chain of custody sheets that the nurse started?

A Yes.

Q And that's the only difference between those two?

A That's the only difference.

Q Is there a -- these forms that you use is it just a sheet a paper or are they carbonless copies?

A Carbonless copies.

Q Is it more than one copy?

A Yes.

Q Are they designed to go different places?

A Different places.

Q And can you tell me where are they designed to go?
A This is the hospital copy.
Q Where are the three places that they are designed to go?
A I get one, the subject gets one that you formed the test on, and then the staff gets a copy.
Q And the hospital?
A And the hospital.
MS. DRAWDY: We'd like to move this in as State's 29.
DEFENDANT MCCALL: No objection.
THE COURT: Without objection.
(Copy of test marked as State's Exhibit No. 29 and admitted into evidence.)
MS. DRAWDY: I have no further questions.

CROSS-EXAMINATION

BY MR. ERWIN:
Q I want to start out talking about the brakes for a second. You charged Mr. McCall with felony DUI, right?
A Correct.
Q You did not charge him with reckless driving, right?
A No, sir.
Q You didn't charge him with attempted murder?

A No.
Q You charged him with driving under the influence?
A Correct.
Q You agree that he had not been drinking any alcohol?
A I do.
Q You were talking about what Sergeant Hiatt told you about the car, right, what he had seen and smelled around there.,
A Right.
Q That he had not smelled any alcohol or anything like that?
A That's correct.
Q Let's talk about what he had not seen or smelled. He didn't tell you he had smelled marijuana, right?
A Right.
Q He didn't tell you he smelled crack cocaine or anything like that, right?
A He didn't name a specific drug.
Q He didn't tell you that he saw paraphernalia or anything like that?
A No.
Q He didn't tell you of any drugs he had seen being used in that car, right?
A No.

Q Your decision to charge with Mr. McCall with driving under the influence, that came from your observations when you interacted with him, right?

A My observations, interacting with him, and my 24 years of experience.

Q So you used your eyes and saw what you saw and you put that together and made you help come to your conclusion, right?

A Yes, sir.

Q And you had never met Mr. McCall before in your life, have you?

A Right.

Q This is the only time you had ever interacted with him was there in that hospital, right?

A Right.

Q And you said that he was acting strange, right?

A Different.

Q He was acting goofy, you said his eyes were strange, right?

A True.

Q So that together with the circumstances of the actual accident that you were aware of, right, those two things together led to you charging him with DUI, correct?

A Correct.

MR. ERWIN: No further questions.

MS. DRAWDY: I have no further questions of this witness. May he be released so he can go back to his retirement.

THE COURT: You are excused.

MS. DRAWDY: Your Honor, may we have a break at this point.

THE COURT: Sure. Ladies and gentlemen, we'll take a break for about five or ten minutes and then resume testimony.

(Jury exits the courtroom.)

(Brief break.)

MS. DRAWDY: Your Honor, while we're still on the record, it was brought to my attention that I neglected to move in two exhibits and I would like to, with the agreement of counsel, move in 32 and 33 into evidence.

MR. ERWIN: We do not object to these exhibits being moved in. Obviously we'll be objection when the actual blood is move in but these pictures I do not object to.

THE COURT: I understand and I recognize that Mr. Erwin you're working with some deal of handicap just coming into the case. I know there was an objection initially in pretrial to the introduction of the blood evidence and I denied that motion. As of this point,

there's been no introduction of the blood evidence itself, just the taking of it. You may make a contemporaneous objection as to the introduction of the evidence and your objection is protected for the record.

We ready for the jury?

MS. DRAWDY: Yes.

MR. ERWIN: Yes, Your Honor.

THE COURT: Bring them in, please.

(Jury re-enters the courtroom.)

You may call your next witness.

MS. DRAWDY: The State calls Ashley Norman.

THE CLERK: Please come up to the stand to be sworn in and place your left hand on the Bible and raise your right.

ASHLEY NORMAN, having been duly sworn, testified as follows:

Thank you. You may be seated.

State your full name for the record.

THE WITNESS: Ashley Norman.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Ms. Norman, you're going to have to speak up a little more than that.

A Sorry.

Q It's okay. Ms. Norman, what is your occupation?

A I'm a nurse at Greenville Memorial the ER.
Q Are you a registered nurse?
A I am.
Q What state is your license?
A South Carolina.
Q What education did you receive and training to become a registered nurse?
A I did get my associates degree in nursing and I also passed the nursing board for the state of South Carolina.
Q And how long have you been a nurse?
A A little over seven years.
Q Now, you say you were employed with Greenville Hospital Systems.
A Yes, ma'am.
Q What part of the hospital do you work in?
A I work in emergency room.
Q All seven years?
A I have.
Q Were you working in the emergency room on March 4, 2012?
A I was.
Q Did you at some point have occasion to come in contact with the defendant Terry McCall?
A I did.

Q I'm going to hand you what's marked as State's E and ask you if you recognize that document?
A I do.
Q What is that?
A This is a patient chart from the emergency room.
Q Whose chart is it?
A Terry McCall.
Q From what date?
A It was from March 4, 2012.
Q Did you have input into that chart?
A I did.
Q In what capacity?
A The blood and urine that were obtained from him, I drew the blood and urine.
Q Were you assigned as his nurse?
A I was not.
Q How did you come to take a blood and urine sample from him?
A I was asked by the state trooper if I could get sample for him.
Q Have you been asked by other law enforcement to get a sample in the ER?
A I have.
Q How many occasions would you say?
A Three, maybe four.

Q When the trooper asked you take this sample from Mr. McCall, did he have you sign a document?

A He did.

Q I'm going to show you State's C and do you recognize your signature on that document?

A I do.

Q What does that signature indicate?

A Drawing the blood, something the officers asked me for.

Q And what procedure did you follow in terms of approaching the patient about drawing the blood?

A I approached the patient and introduced myself and explained to him I was requested by the trooper to get blood from him and it was mu understanding he was okay with that and he was willing to do that and he agreed.

Q Was that the only type of sample that he took?

A He also gave us a urine sample.

Q I want to show you State's A and ask you if you can identify that document?

A That's the hospital's chain of custody form.

Q Is that the same of company form that the urine sample that you took from him?

A It is.

Q Who initiated the information on this?

A I did.

Q What type of information did you write on this form?
A Just the type of the test being performed, what specimen we were using, how we would take it, that I collected it and a description of the specimen.
Q How did you obtain this sample?
A Mr. McCall was given a sterile cup that we use to collect urine and he gave us a voided specimen into that cup.
Q And then what did you do with the specimen?
A Then it was labeled and then placed into a blue biohazard bag.
Q And the cup?
A The cup was -- I'm sorry, the cup was sealed when he gave it to me and then it was labeled and the cup was then placed into the blue biohazard bag.
Q You say it was labeled, what type of label was placed on it?
A All patients have identifying labels. We get a sheet for each patient that has at least 20, 25 labels on it and any time we collect, blood, urine, clothing, we put a label on it that has identifying information, their name, their birth date, their record number, the date that they were admitted to the ER.
Q So you placed one of those labels on the jar?

A I did.

Q Did you also collect a blood sample from Mr. McCall?

A I did.

Q I'm going to show you State's Exhibit B and ask you to identify that form.

A That's the same form as the urine but this is for the blood.

Q What procedure did you follow when you collected that sample?

A I again I introduced myself as before and used a betadine(p) swab to clean the site, obtained a butterfly needle to draw his drug into the two grey top viles.

Q So you took two viles of blood?

A I did.

Q A grey cap to you?

A Yes.

Q Why did you use a grey cap? I know that means something to you but why did you use that?

A This is what is used to collect the blood alcohol for legal purposes.

Q What did you do with the sample?

A The blood samples, I put labels on each tube with my tech code and the urine I also put my tech code on there to identify who drew it and the time it was drawn

and put the labels on the urine and the blood.

Q Was the trooper there when did you all of this?

A He was.

Q After you labeled the samples and put them in the blood bag, you filled out your part of the chain of custody what did you do?

A We filled out the chain of custody, we signed the samples and he took it from there.

Q Was he provided with a copy of this chain of custody?

A He was.

Q I'm going to show you State's Exhibit 32 and 33 and ask you if you recognize what's pictured in these photographs?

A I do.

Q What is pictured in those photographs?

A The urine sample cup and the viles that had blood in them.

Q Did you have an opportunity to examine these photographs before trial today?

A I did.

Q Did the fairly and accurately portray the condition of those samples at the time that you gave them to the trooper?

A They did.

Q And they do not appear to have changed in any way or been opened?

A They don't appear to be.

Q Please any questions that Mr. McCall or co-counsel might have.

A Sure.

CROSS-EXAMINATION

BY MR. ERWIN:

Q You ever met Mr. McCall outside of the day he was in this hospital?

A I have not.

Q So you don't know what he's like or anything like that?

A I do not.

MR. ERWIN: I have no further questions.

THE COURT: Any redirect.

MS. DRAWDY: No redirect. May this witness be excused?

THE COURT: Yes, ma'am.

Thank you for being here.

MS. DRAWDY: The State calls Sergeant Wes Hiatt.

THE COURT: You remain under oath.

REDIRECT EXAMINATION

BY MS. DRAWDY:

Q Sergeant Hiatt, when you returned to the office after working this wreck, did you at some point take in the blood samples that Trooper McAlhaney got at the hospital?

A The blood and urine sample.

Q I'm going to show you State's Exhibit 37 and ask you if you recognize what that document is a copy of?

A It's a copy of our chain of custody that we use for all evidence at the Department of Public Safety.

Q And is this the chain of custody associated with this case?

A Yes, it is.

Q Who initiated this particular chain of custody?

A Trooper McAlhaney at the time.

Q Is that a form that you keep at the office?

A It's a computer generated form. It's a form we keep on the computer.

Q What does it show whose sample it is?

A Terry Edward McCall.

Q What evidence did you take into custody?

A Two viles of blood and one plastic container of urine.

Q When Trooper McAlhaney brought to samples to you, what did they look like?

A They were in a blue biohazard bag from the

hospital and blood was in two viles, separate viles, and urine was plastic container.

Q Did you place those materials into what's referred to as an evidence bag?

A I actually filled out the bag in my handwriting and we also have to go into our police central which is the evidence tracking system on the computer and put it in the system electronically to make labels to go on the evidence.

Q And what did you do with those labels?

A I put those on the actual outside of the evidence bag and on the chain of custody also.

Q I want to show you State's Exhibit 36. What is portrayed to be in that photograph?

A This is actually the bag with the defendant's name, what we put in it and the evidence labels that I placed on the bag.

Q Does that bag appear to be sealed?

A Yes.

Q Are these special evidence bags that you're providing?

A Yes, they are provided by the department.

Q And how do you seal the bag?

A The strip on the back, if you peel that strip off it's got a glue substance and if you go over that and it

seals the bag.

Q Once it's glued, is there any way to open it again?

A No, you'd have to cut it.

Q In this photograph, is that bag still in tact?

A Yes, it is.

MS. DRAWDY: Your Honor, at this time we'd like to move State's Exhibit 36 into evidence?

THE COURT: Any objection?

DEFENDANT MCCALL: No objection.

THE COURT: Into evidence without objection.

(Bag marked as State's Exhibit No. 36 for identification, was admitted into evidence.)

(Handwritten log marked as State's Exhibit No. 38 for identification.)

BY MS. DRAWDY:

Q In addition to that chain of custody, is there? Other documentation of what happens with the sample when you have it in your office?

A We also keep a handwritten log of all the evidence.

Q I'm going to show you State's Exhibit 38 and ask you if that is a copy of what you maintain permanently in your office?

A Yes, it is.

Q And does that contain the information about this sample?
A Yes, it does.
Q Does that document the movement in and out of what you refer to as the refrigerator log?
A That's correct.
Q Tell me exactly what the refrigerator is and what type of security is maintained there.
A The refrigerator is in a secured evidence room that's key card access only for supervisors to get into the evidence room. The evidence refrigerator has a padlock on it with a combination lock that the evidence custodian's have.
Q And are you one of the evidence custodians?
A I am.
Q Does this refrigerator log show that the samples from Mr. McCall were placed in the refrigerator?
A Yes.
Q By whom?
A By the chain of custody I actually opened the refrigerator myself and he placed it in there.
Q And then you locked ---
A The refrigerator back up, that's correct.
Q Did you personally have any more interaction with this sample?

A No, when it was transferred, it was transferred by another supervisor.

Q And does it show in this log when that happens?

A Yes, it has the date and where it went and which supervisor signed it out and who he gave it to to transport it.

Q Who was that?

A First Sergeant Bannister would have been the one who removed it from the refrigerator and he gave it to Trooper Perry to drive it to central evidence in Columbia.

Q Is that same transaction reflected on the chain of custody that is displayed in Exhibit 37?

A Yes, it is.

Q Please answer questions defense might have.

DEFENDANT MCCALL: I don't have any questions for you.

THE COURT: Thank you, sir, you may step down.

MS. DRAWDY: May Sergeant Hiatt be released from his subpoena?

THE COURT: Yes, ma'am.

MS. DRAWDY: The State calls First Sergeant DL Bannister.

THE CLERK: Sir, could you please come forward to be sworn in. Place your left hand on the Bible

and raise your right.

DON BANNISTER, having been duly sworn, testified as follows:

Thank you. You may be seated. State your name for the record.

THE WITNESS: Don Bannister.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q First Sergeant Bannister, you are also an evidence custodian for the local highway patrol office?

A Yes.

Q I'm going to show you State's Exhibit 38 and 37 and ask you if you recognize those documents?

A I do.

Q Do these documents contain a record of when the samples were next handled by anyone?

A Yes.

Q And what do these documents show?

A They reflect that on the 5th of March 2012, I removed the evidence from the refrigerator, logged it to myself, and then I gave it to Trooper Perry to transport to our central evidence facility.

Q You gave it to Trooper Perry and he took it to your central evidence facility, where is that?

A In Columbia.

Q Is that where all biological sample and pretty much all evidence you have in cases ultimately go?

A Yes.

Q Now, when you took the sample out of the refrigerator, was it still in an evidence bag?

A Yes, ma'am.

Q Does that appear to be a photograph of that bag?

A Yes.

Q Was State's Exhibit 37 kept with that in the refrigerator?

A The original stays with the evidence.

Q The actual sealed package?

A Yes.

Q The evidence log is something you keep local to keep track as well?

A Yes.

Q Did Trooper Perry sign the chain of custody that stays with the sample acknowledging he received it?

A Yes, he printed his name and initialed.

Q As far as you know did he leave with the sample and go down to central evidence in Columbia?

A Yes, ma'am.

Q Please answer any questions defense may have.

DEFENDANT MCCALL: We don't have any questions.

210



MS. DRAWDY: May First Sergeant Bannister be released from his subpoena?

THE COURT: Yes, ma'am.

Thank you for coming.

MS. DRAWDY: The State calls Investigator Luke Perry.

THE COURT: Ladies and gentlemen, let me tell you right now I know we're going through some various tedious evidence but understand that the State wishes to produce evidence of fungible materials, then they must establish a strict chain of custody. It's unavoidable. Therefore, what you're hearing now is chain of evidence custody which they hope to introduce at a later date. So bare with us. I see your body language and it looks probably like mine.

MS. DRAWDY: Let's not talk about mine.

THE COURT: Could you come up to be sworn in, place your left hand on the Bible and raise your right hand.

LUKE PERRY, having been duly sworn, testified as follows:

Thank you. Please be seated. State your name for the record.

THE WITNESS: Lance Corporal Luke Perry.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Trooper Perry, did you, in fact, take custody of this sample?

A I did.

Q On what date did you take custody of it?

A March 5, 2012.

Q That was the day following this incident?

A Yes.

Q Did you go straight to Columbia to the central evidence facility?

A I did.

Q And did you deliver that sample?

A I did.

Q When you received that sample from First Sergeant Bannister, can you described how it was packaged?

A As stated before it was packed in our Department of Public Safety Evidence bag, and it was properly seal and it had the original chain of custody attached to it.

Q Did you deliver those items to central evidence?

A I did.

Q Who did you deliver them to?

A To First Sergeant Rivers.

Q And is that transfer documented on this chain of custody?

A It is. I have written my name and initialed it

that I received it from First Sergeant Bannister, then also written my name and initialed that I transferred it to First Sergeant Rivers in Columbia.

Q Did also First Sergeant Rivers also sign that acknowledging receipt?

A He did. He wrote his name and initiated by it.

Q And when you handed it to first Sergeant Rivers, was it steal properly sealed in its evidence bag?

A It was.

Q Please answer any questions defense counsel might have.

DEFENDANT MCCALL: I don't have any questions.

THE COURT: Thank you, you may step down.

MS. DRAWDY: The State calls First Sergeant Rivers.

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

RIVERS, having been duly sworn, testified as follows:

Thank you. Please be seated. State your name for the record.

THE WITNESS: First Sergeant Rivers.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q First Sergeant Rivers, are you in charge of central evidence in Columbia for the South Carolina Highway Patrol?

A Yes.

Q And are you the custodian of the records for that facility?

A Yes.

Q Do you have the original documents that you keep at central evidence regarding samples like this and in particular this sample with you today?

A Yes.

Q I'm going to ask you to tell me if State's Exhibit 37 is a true and accurate copy of your office records?

A Yes, ma'am, it is.

Q And these records are maintained in the ordinary course of your agency's business?

A Yes.

MS. DRAWDY: Your Honor, we'd like to move this in as State's Exhibit 37.

DEFENDANT MCCALL: No objection.

THE COURT: Okay. The same is admitted into evidence.

(SCDPS chain of custody marked as State's Exhibit No. 37 for identification was admitted into

evidence.)

BY MS. DRAWDY:

Q First Sergeant Rivers, refer to your chain of custody, did you receive this package from Luke Perry?

A Yes, I did, on March 5, 2012.

Q Did you sign the chain of custody reflecting that fact?

A Yes, I did.

Q What type of package did he deliver to you?

A The package was in a DPS evidence bag that was marked with labels identifying the case numbers as well as the defendant's name.

Q Are those bar coded labels?

A Yes, ma'am.

Q So you also have a computer tracking system for all of these items?

A Yes.

Q And do those bar labels match that are on the chain of custody coinciding matching on the outside of the evidence bag?

A Yes, ma'am.

Q After you received this from Trooper Perry, what did you do with it?

A Once I receive it, then I would go into our computer system and I will actually electronically change

the location from the post location, here in Greenville, to our location at central evidence facility. Once I completed that, I will take it back into our secure warehouse which is also identified and termed as our safe and I will put in our refrigerator at that time.

Q Who has access to that area?

A The only people who have access to that area or central evidence employees which consist of five officers.

Q When they access that area, is there a way that it is tracked?

A Yes, it's tracked through a scantron keypad.

Q When is the next time that this evidence it's handled?

A The next time it was handled was on March 8, 2012, identifying on the chain of custody being removed from the safe, the refrigerator, by Trooper Ellen Dunkel, and employee of central evidence facility.

Q Where does it indicate that Trooper Ellen Dunkel took this?

A She took it from central evidence and the reason for removal was delivery to SLED.

Q And had Trooper Dunkel been subpoenaed to be here today?

A Yes, she was.

Q And is she going to be able to be here today?

A No.

Q Why not?

A She fell ill over the weekend and she was out sick yesterday as well as today and was certainly not in any condition to travel or testify.

Q Please answer any questions that defense counsel may have.

DEFENDANT MCCALL: I don't have any questions.

MS. DRAWDY: May Trooper Rivers be released from his subpoena?

THE COURT: Sure. Thank you for coming.

MS. DRAWDY: The State calls Amy Stevens.

THE CLERK: Please come up to be sworn in. Place your left hand on the Bible and raise your right.

AMY STEVENS, having been duly sworn, testified as follows:

Thank you. You can be seated. State your name for the record.

THE WITNESS: Amy Stevens.

MS. DRAWDY: Your Honor, let me check with co-counsel. I hope we're not getting messed up with our numbering.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Ms. Stevens, where are you employed?

A I'm employed with the South Carolina Law Enforcement Division also known as SLED.

Q And where do you physically work?

A Our office is based out of Columbia, South Carolina.

Q Are you associated with the SLED laboratories?

A I am. I'm a forensic technician in the evidence control department and our daily responsibilities are to log in, package and transfer evidence for forensic analysis.

Q Were you the forensic technician who took this into the custody of SLED?

A Yes, I was. I received this particular evidence box on March 8, 2012 at 9:50 a.m.

Q Did you start a SLED chain of custody when you received this?

A Every case that is submitted to our laboratory an electronic chain of custody is generated.

Q And did you bring that complete chain of custody with you today at our request?

A Yes, I did.

Q This has been marked as State's Exhibit 40.

DEFENDANT MCCALL: No objection, Your Honor.

THE COURT: Alright, 40 shall be admitted

without objection.

(Paperwork marked as State's Exhibit No. 40 for identification and admitted into evidence.)

BY MS. DRAWDY:

Q Who submitted this evidence to you?

A I received the evidence from LM Dunkel from the South Carolina Department of Public Safety.

Q And is there some type of documentation that LM Dunkel brought it to you indicated on the SLED chain of custody?

A Yes, her signature is on this chain of custody.

Q I'm going to show you what has been marked as State's 36. It is a photograph of an evidence bag. Does that appear to be a photograph taken by SLED?

A Yes, it is.

Q Is there a SLED label placed depicted in that photograph?

A Yes, it is.

Q Is that associated with this particular chain of custody and evidence?

A Yes, it is.

Q What condition was the packaging that Trooper Dunkel brought this in? What was the condition of it?

A I received evidence bag from Trooper Dunkel from the Department of Safety.

Q And what did you do with that sealed evidence bag?

A Once I received the sealed evidence bag, I would place it in a SLED heat seal pouch, seal the heat seal pouch and the main officer, which in this case was Office Ellen Dunkel, she would have initialed and dated the top of the heat sealed pouch as well as time and date the front and the back.

Q I'm going to show you State's Exhibit 39 and ask you what that appears to be?

A This is a SLED heat sealed pouch which is initialed and dated by Ellen Dunkel and has the associated lab number to this case to the outside of the heat sealed pouch.

Q And is that still sealed in that photograph?

A Yes, it is.

Q So that's the condition that it was in when it left your custody?

A Yes, it was.

Q Who did you give it to?

A Once I logged it in and placed the evidence into our evidence room, on March 19, 2012, I retrieved it from our evidence room and transferred it to our forensic technician Brandon Williams of the toxicology department.

Q Is that movement into the forensic room

documented on the chain of custody?

A Yes, it is.

Q How does it get there?

A I basically would walk it back and place it into the refrigerator located in our evidence room.

Q How does the documentation get entered on the chain of custody?

A Everything within or department -- actually inside the laboratory is electronically documented. Every evidence that is admitted to our laboratory a bar code is placed on every piece of evidence. Every time evidence is transferred, that bar code will be scanned and the movement of the evidence is documented in the chain of custody.

Q And who was the next person to receive -- to handle this evidence?

A After I logged it in and transferred it to the evidence room, I then also removed it to the evidence room and transferred it to forensic technician Brandon Williams.

Q Was he at that time an employee who was part of the SLED toxicology lab?

A Yes, he was.

Q Please answer any questions that defense counsel might have.

DEFENDANT MCCALL: No question, Your Honor.

THE COURT: Thank you, very much.

MS. DRAWDY: We'd call Wendy Bell to the stand.

THE CLERK: Ms. Bell, please place your left hand on the Bible and raise your right.

WENDY BELL, having been duly sworn, testified as follows:

Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Wendy Bell.

BY MS. DRAWDY:

Q Captain Bell, are you also an employee of SLED?

A I am.

Q How long have you been with SLED?

A I been employed for 17 years.

Q Were you affiliated with the toxicology department at one time?

A I was. I currently supervise -- I'm an assistant lab director so the toxicology department still falls under me, but at the time in 2012 I was the lieutenant of the toxicology department which means I was the direct supervisor of that unit.

Q Did Brandon Williams work in that unit?

A He did.

Q What was his position and what were his responsibilities?

A Brandon is a forensic technician and his duties are to primarily keep the lab running smoothly and get the analyze the things they need. Daily he would go down and retrieve evidence from our central evidence storage, bring them upstairs, document the condition of that packaging. He would one at a time open each evidence packaging pouch and photograph all of the evidence and any packaging that inside those. He would also put the case number and his initials on every item of evidence that's there and make sure that it match the description of what was submitted to our laboratory.

At that time, he would take that evidence and put it back into the heat sealed pouch, reseal it and put it in our refrigerator for the next analyst to pick it up.

Q Does it conform to SLED policies and procedures to guard the integrity of the samples?

A It does.

Q Does this chain of custody indicate that the samples were properly handled throughout the entire process?

A It appears all policies were followed and safeguarded.

Q Brandon Williams, does he still work for you?

A He's now employed at South Carolina DHEC.
Q Is he available to testify today?
A I believe he's out of the country on vacation.
Q Please answer any questions defense counsel might have.

CROSS-EXAMINATION

BY MR. ERWIN:

Q As to the work that Mr. Williams did in this case, when you were speaking about what he did, you were saying what procedures would have dictated, right?
A And from what I can tell from the pictures that he made.
Q Yeah, right, so you're looking at the pictures and his signature and initials on the bags and stuff like that, but you didn't follow around and watch him take every step in this process, did you?
A No, but what I didn't mention is this is a two person process. He's the one logged in but there is always a second person assisting, so any variations would have been noted.
Q Do you know who the second person was in this case?
A We did not have note of that in this case.
Q Did you see the second person?
A I didn't.

Q Again, you're speaking from the standard policies and procedures. As to specific actions that were taken in this case, you have no idea.

A Right.

MR. ERWIN: No further questions.

THE COURT: Any redirect?

MS. DRAWDY: No, Your Honor. Please release this witness.

THE COURT: Thank you for being here.

MS. DRAWDY: The State calls Marybeth McCormick.

THE CLERK: Ms. McCormick, can you come forward.

MARYBETH MCCORMICK, having been duly sworn, testified as follows:

Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Marybeth McCormick.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Good afternoon, Ms. McCormick. Did you drive up from Columbia, today?

A Yes.

Q Are you employed in the SLED laboratory?

A Yes.

Q How long have you been employed with the SLED laboratory?

A Seven years.

Q What is your current position?

A Currently, I am a forensic scientist in the drug analysis department.

Q What was your position in March of 2012?

A In addition to working in the drug analysis department, I was also assisting the drug analysis department with drug analysis.

Q Can you tell me what kind of education, training and experience you have had to prepare you to perform the duties that you perform at SLED?

A I have a bachelor of science degree in chemistry and also a master of teaching chemistry and physics both from the University of South Carolina. I completed the training at SLED in the drug analysis department as well as the toxicology blood analysis training.

Q So you are qualified as forensic technician?

A My title now is a forensic scientist.

Q At that time a forensic technician?

A Yes.

Q You were a forensic scientist then.

A I was not a full toxicologist at that time.

Q I need to hand you State's Exhibit 40 and ask you

if you recognize that document?

A Yes.

Q What is that document?

A This is a chain of custody associated with L1202821.

Q And that's the SLED lab number?

A Yes.

Q And that's the SLED lab number for the sample in this case?

A Yes.

Q Are you the next person after Brandon Williams to handle this evidence?

A Yes.

Q I'm going to ask you what you did in order to obtain custody of this evidence?

A I retrieved the evidence bag from the toxicology refrigerator. I labeled a glass vile with the lab number. I then cut into the evidence bag.

Q Before you cut into the evidence bag, did you examine it?

A Yes, I made sure that it was sealed and it was.

Q It was sealed.

A Yes.

Q Had it not been sealed, what would you have done?

A The analysis would have been stopped and I would

have contacted the supervisor.

Q Did the sealed evidence bag have the appropriate initials over the seal to indicate that Brandon Williams was the last person to handle it?

A Yes.

Q Now, for what purpose did you retrieve the sample from the refrigerator?

A To test if there was any alcohol present in the blood.

Q Is that a standard first test at SLED for any blood sample that's sent to SLED in a DUI case?

A Yes.

Q And please describe the procedure that you followed at this time?

A I labeled a glass vile with the associated lab number. I made sure the evidence bag was sealed which it was. I made sure that the label on the evidence bag matched my label vile. I think cut into the evidence bag, retrieved one of the tubes of blood, placed a sample of blood into that glass vile and then it was placed on an instrument which was in this case was a Hespace Catscomedagraph(ph) or Hespace CG for short.

Q What were the result of that test?

A Negative for alcohol.

Q After you finished with the evidence sample, the

original sample, let me show you State's Exhibit 33 and 32 an ask you if that is a photograph if the evidence that was contained in that bag?

A Yes.

Q Did you place those back into the sealed -- I guess it wouldn't be sealed at that time -- back in to the evidence bag?

A I placed the evidence back into the bag. I heat sealed it, initialed and dated.

Q And then what did you do with it?

A I returned it to the toxicology refrigerator.

Q How long was it in your custody, the actual sample from Mr. McCall?

A It was actually in my custody for less than an hour form 10:13 a.m., to 11:03 a.m.

Q And according to the chain of custody, who was the next person to retrieve the sample for some type of testing?

A Carmen Tucker.

Q Please answer any questions defense counsel might have.

DEFENDANT MCCALL: We have no questions.

THE COURT: Thank you very much. Thank you for coming. You may be excused.

MS. DRAWDY: The State calls Carmen Tucker.

THE CLERK: Please place your left hand on the Bible and raise your right.

CARMEN TUCKER, having been duly sworn, testified as follows:

Thank you. You may be seated. Please state your name for the record.

THE WITNESS: Carmen Tucker.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Ms. Tucker, I'd ask you to refer to State's Exhibit 40 as you answer questions, if you would.

A Sure.

Q Are you the next person to handle this sample?

A I am.

Q On what date did you retrieve the sample from the secure location?

A March 14, 2012.

Q Do you have a time that you did that?

A 9:27 a.m.

Q For what purpose?

A For a drug screen analysis.

Q What type of ---

A The blood.

Q Up to this point, no sample has been performed on the urine; is that correct?

A That's correct.

Q Please describe the procedure, your observations about the packaging and what you did?

A I would go to the walk-in refrigerator which is what we have as describe before having access with a magnetic key card, I have no own, retrieve the bag of evidence then make sure the label matches what I have on my documentation to make sure I have the right bag of evidence. I check the seals to make sure the person prior to me has sealed it properly and there is initials and dates of that person. I will then proceed to cut into the bag to retrieve the blood tube that I need for analysis.

Q What is your position at SLED?

A Forensic toxicologist level one. I wasn't a full toxicologist at the time.

Q Please share of us your time at SLED and training and experience in order to perform the analysis that you were about to perform on this sample?

A I have a bachelor's of science and a master's of science in chemistry. I have about close to three years experience in pharmaceutical preparations and chemistry at RTI North Carolina. I also came to SLED and originally started out in the drug analysis lab for about four years and then transferred over to tox and received in house training.

Q Did your in house training include proper handling of samples and policies and procedures?
A Yes, it did.
Q Did you follow all those policies and procedures?
A Yes, I did.
Q And you said you did a drug screen?
A Yes.
Q And it's a screening test?
A Yes, it's a presumptive test for a handful of plastic compounds that we look for.
(Documents marked as Exhibits No. 41 and 42 for identification.)
BY MS. DRAWDY:
Q What type of results did you receive on your test?
MR. ERWIN: Objection, Your Honor, may we approach?
THE COURT: Sure.
(Counsel approached the bench.)
Alright, ladies and gentlemen, when we have little bench conferences like this, essentially what we're talking about administrative issues, objections, evidence, admissibility, evidence that may be posed and a lot of times attorneys are looking to me for some guidance about how and when I would like for them to impose those

objections.

I just wanted you to know there are not secrets to what we're doing up here but sometimes when we have discussions they don't need to be on the record. They may be admissible, they may not be but we don't know until we have that discussion.

At this point we are midway through the afternoon and after this witness, we'll have one additional witness and then we'll conclude. So we're at a pretty good pause point. There is a matter of law that I will need to take up with the attorneys for a few minutes before we move on with this testimony. So I'm going to ask you to take a break for about 10 or 15 minutes. I don't know how long it's going to take you to get to the legal issues, and then we'll come back and we'll conclude. Please don't discuss the case.

(Jury exits the courtroom.)

MS. DRAWDY: Your Honor, can Ms. Tucker step down while we do this.

THE COURT: Sure.

Mr. Erwin, I know that you have a motion or objection to put on the record, sir.

MR. ERWIN: I would object to the blood coming in at all and therefore the results of the test and the test itself coming in and I've got a couple of reasons

for that, Your Honor. First would be the objection that Mr. Chambers posed pretrial yesterday. I wasn't here for that and I'm pretty sure I got a handle on what he objected to and I a renewing his objection.

I also have an additional objection as to the chain of custody of this evidence. From the testimony of the last several witnesses we've been hearing from this afternoon, we had a complete chain. The prosecutor have to acknowledge there were two gaps that came up in the chain of custody, one was Trooper Dunkel who did not testify at all.

The evidence went from Sergeant Rivers to Trooper Dunkel and then to Ms. Stevens. I acknowledge that both Sergeant Rivers and Ms. Stevens testified that they gave it to and received it from Trooper Dunkel and she is not here to testify at all about what happened to that evidence when it was in her possession. I would argue that it's a pretty big break in the chain of custody.

And, Your Honor, it is a very similar situation with Brandon Williams, the forensic technician from SLED. Again, it went from Amy Stevens to him and then to Ms. McCormick after that. And I know Ms. McCormick was able to testify after that about policies and procedures and practices and stuff like that

and I acknowledge that it sounds like everything was followed; however, without that witness here to testify about what happened when he was the only in custody of this evidence, there is again a whole in the chain of custody.

Again, this is fungible evidence. There is a reason why chain of custody is strictly enforced in these cases and it's because it's easy to get this stuff confused. There are two holes here that we have no one here to testify to and I would argue that because of that, the evidence itself can not be in evidence, and as a result the testing on that evidence can not itself come into evidence.

Your Honor, I believe the case of State v Williams, a South Carolina case, says that the proof of the chain of custody need not negate all possibility of tampering but my establish a complete chain of evidence as far as practically. We have documented every person that handled this and there is -- this goes to the weight of the evidence but not the admissibility. We have shown very clearly who handled it, what they did, and that two people never did any analysis and would not have had any reason to open the evidence, and, in fact, did not open the evidence are the only two missing.

We had the person on either side to confirm

the packaging of the samples in between the times that they handled it, and we believe that the State has proven the chain of custody is in order to establish admissibility.

THE COURT: Alright, while proof of the chain of custody is fungible evidence is a strict standard. It is not an absolute standard, and the law suggests that the State must prove it as much as practice and establish everyone who may have touched it along the line, but testimony for each and every one of those witnesses is not required under the law.

If there is a lack of testimony from someone who may have handled it, that goes to weight of the evidence pursuant to State versus Carter and not it's admissibility.

Certainly you'll have the opportunity to argue with regard to the weight of that evidence and whether it should be considered credible by the jury, but it does not negate it's admissibility.

With respect to renewing in limine motions, I respectfully deny it on the same basis that we had discussed before we began the trial of the case.

MR. ERWIN: Thank you, Your Honor.

THE COURT: Let's take five or ten minutes and make sure they're ready to come back in. Let me make

sure I'm square on this, you're going to finish up the current witness and then have the toxicologist and that will be it.

MS. DRAWDY: Thank you, Your Honor.

(There was a brief break.)

THE COURT: Okay. Let's bring them in.

(Jury re-enters the courtroom.)

Your witness, ma'am.

BY MS. DRAWDY:

Q Ms. Tucker, am I correct in my understanding that you did an initial screen test?

A Yes.

Q And would any positives be reported by your lab without going to a senior toxicologist to do additional testing and or to check your work?

A No, ma'am. The way we write our reports is when we do the initial screen or the compounds or classic compounds, anything that's negative is listed on the reports and if it is positive, it is then goes on to be confirmed by the assigned toxicologist.

Q Please answer any questions that defense counsel might have.

DEFENDANT MCCALL: No questions.

THE COURT: Thank you, Mr. McCall.

You may step down.

MS. DRAWDY: Your Honor, I don't recall if I moved in State's 40 or not. Can you tell me, Madam Reporter.

COURT REPORTER: Yes.

MS. DRAWDY: The State calls Shanna Sorrells.

THE CLERK: Would you please state forward to be sworn.

SHANNA SORRELLS, having been duly sworn, testified as follows:

Thank you. You may be seated. Would you state your name for the record.

THE WITNESS: Shanna Sorrells.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Ms. Sorrells, are you employed by SLED?

A Yes, I am.

Q And are you the senior toxicologist assigned on this case?

A Yes, I am.

Q Would you please give us your background and training as it relates to your employment as a senior toxicologist at SLED.

A I have a bachelor's degree in chemistry from the University of South Carolina. I also have my master's degree in analytical chemistry also from the State of

South Carolina. I had to go through an extensive year-long training program in the toxicology lab. I'm one of the senior toxicologist. I've had to undergo multiple competency tests and proficiency tests every year to maintain that so I am still able to analyze items correctly I attended the highly recognized organ science school of alcohol and driving and the organ science school of drugs and driving.

Q Did you also receive training at SLED in their policies and procedures?

A Yes, I did.

Q How long have you been associated with working in the SLED toxicology lab?

A I had been at SLED for nine years but I worked in the toxicology lab for eight years.

Q Have you ever been found by a court to be an expert?

A Yes, I have.

Q What fields have you found to be an expert in?

A Forensic toxicology, forensic pharmacology, chemistry and biology.

Q And have you testified in the area of forensic toxicology on more than one occasion?

A Yes, I have.

Q Have you ever been offered as an expert in that

field and not been found to be qualified?

A No, I have not.

MS. DRAWDY: Your Honor, we'd like to offer Ms. Sorrells in the area of forensic toxicology.

THE COURT: Any objection?

MR. ERWIN: Just brief voir dire, if you don't mind.

THE COURT: Sure.

VOIR DIRE

BY MR. ERWIN:

Q Of those times that you testified in court, have they all been on behalf of the State?

A No, they have not.

Q How many times have you testified on behalf of the defense?

A Twice.

MR. ERWIN: I have no further questions and I have no objection to her being qualified as an expert witness.

THE COURT: Ladies and gentlemen, she has been qualified as an expert witness and I will qualify her as an expert witness.

The reason a party to a lawsuit may want to qualify someone as an expert witness is because of someone's expertise, experience and specific

qualifications that person may be able to testify as to opinion evidence that a lay person would not otherwise be able to testify to.

Now, understand, just because someone is qualified as an expert witness doesn't mean that their testimony has greater value than any other piece of evidence that you receive in a trial.

You look at an expert witness's testimony in the exact same light that you look at any other piece of evidence that you receive in a trial, and that is, you determine whether it has value and you determine whether it has weight just like any other piece of evidence.

You may proceed.

BY MS. DRAWDY:

Q Ms. Sorrells, before you became a senior toxicologist, did you perform the same types of testing that Ms. Tucker and Ms. McCormick did?

A Yes, I did.

Q And how many different types of instruments that you use in SLED for drug and alcohol analysis of blood samples?

A Blood samples, I think during this time we had five we were using.

Q Are they designed for different purposes?

A Yes, they are.

Q Did you also perform analysis on urine samples?
A Yes, I did, when it arose.
Q And, in this case, up until the point that you received information about the case and you began working with the samples yourself, had any analysis been done on the urine?
A No, it had not.
Q Did you review the work of Ms. McCormick and Ms. Tucker?
A Yes, I did.
Q Did you find it to be accurate and conforming to the policies of SLED?
A Yes, I did and it did and all the controls fell within the range of which they were supposed to fall.
Q Do these instruments have internal controls that you can check to make sure readings are accurate?
A Yes, I did.
Q Did all of those tests fall into the parameters to insure accuracy?
A All of the tests were within the parameters.
Q When did you first handle this evidence?
A I received it from the refrigerator on March 15, 2012.
Q And what type of procedure is involved in taking it from the refrigerator?

A Once the drug screen is complete, the case is then assigned to an analyst. This case was assigned to me at random and it is placed on my shelf that is specific to me in my refrigerator. That's how I knew it as assigned to me.

I went into the refrigerator, retrieved the case, came back to my lab bench, had my specific bar code that is assigned to me specifically as an analysis, scanned that, scanned the bar code and I put the case electronically into my custody.

Q And did you examine the condition of the outer evidence bag at the time you retrieved it?

A Yes, I did.

Q What was the condition?

A It was sealed and it was last sealed by Carmen Tucker.

Q And the last person in the chain in the case who handled it?

A That is correct.

Q For what purpose did you retrieve the sample?

A When I was given the case file, I reviewed the blood alcohol and the drug screen and the drug screen had a positive screen on it. It was my job then to go in, confirm that that screen was positive, and to see if there were any other drugs of concern present.

Q Do you report out as a lab in any public way as a report or testimony before this confirmation analysis has been performed by a senior analyst?

A No, we do not. We confirm any positive that is given to us by the screen.

Q Were there positives that you confirmed?

A Yes, there was.

Q What type of instrument did you use to do that?

A I used a gascromtography maspectometer which is more commonly known as the GCMS.

Q What kind of results did you find?

A It was positive for methamphetamine.

Q Let's talk about a little bit about methamphetamine. As a forensic toxicologist, are you familiar with the apparent effects, the physiological and biological effects of various drugs on the body?

A Yes, I am.

Q First, let's talk about the apparent effects, can you tell me the typical way that this type of drug is ingested?

A There are three ways that this drug is normally ingested. Methamphetamine can be taken orally in a pill shape or powder, it can be smoked and it can also be injected intravenously.

Q And just to be clear, is methamphetamine a legal

substance to possess in South Carolina?

A In rare occasions, you can get a prescription for it.

Q What are the recreational uses of this drug that remain in the blood from the time of ingestion?

A From the time of ingestion, based off of what I've learned, I did not -- methamphetamine has a half life of about 10 hours which means after 10 hours half of it disappears. As soon as you inject a drug your body attacks it and it tries to break it down to get rid of it. It metabolizes it. With methamphetamine, it begins actually once you ingest it start metabolizing into amphetamine in the system. I did not find a significant amount of amphetamine. I did not find enough to trigger a positive screen and I did not find enough to quantitate. So you're looking at a very short time, sometime around 10 hours based off of what I found.

Q Are there any observable physical effects that methamphetamine would cause a person to exhibit while under the influence of the drug?

A Methamphetamine -- first you look for any kind of stimulant not just methamphetamine. You'll see dilated pupils, elevated heart rate and elevated blood pressures.

Q If someone has dilated pupils that has taken the drug, is it safe to say that they were under the influence

of it as long as they're pupils are dilated?

A The effect of the drug is dilated pupils but as long as the drug is in their system, they are under the drug.

Q When you say in their system --

A The blood system.

Q Are there also ways to detect, historical use of methamphetamine by testing urine?

A Yes, we use the urine to show a history. It's not accurate for time because it can last up to three days and longer for some drugs.

Q Is that the result that you just reported of the testing -- this initial testing that was done? Did you put that in a report?

A The blood testing?

Q Yes.

A Yes, I put it into a report.

Q What is the date of that report?

A April 20, 2012.

Q Do you have that report with you?

A I do, yes.

Q I'm going to show you State's Exhibit 41 and ask you if this is your report.

A Yes, it is.

MS. DRAWDY: We'd like to introduce this into

evidence at this time.

MR. ERWIN: Subject to my prior objection.

THE COURT: Subject to your prior objection, I will allow it into evidence.

(Report marked as State's Exhibit 41 for identification and admitted into evidence.)

BY MS. DRAWDY:

Q I'd like to ask you a little bit more about process and drug classes. This report, the initial drug screen on this report, only reports the negatives?

A That is correct.

Q Any positives are passed along to you for confirmation?

A Yes.

Q After you finished testing of the blood or taking the sample out for testing, did you place it back in the refrigerator?

A Yes, I did. After I finish, the case is returned back into the refrigerator, but in this case it remained in my custody until I was finished.

Q Did you have occasion to do additional testing?

A Yes, I did.

Q And when you did that additional testing, did you do that on the blood sample?

A Yes, I did.

Q Did you do initial sampling on the urine sample?

A Yes, I did.

Q What caused you to do that?

A I was later informed after the initial receiving of the case that Ativan or Lorazepam was expected. Lorazepam is one of those drugs that a special analysis has to be done for us to detect. Nothing in my original case notes implied that I had any suspect to look for it so I did not, at that time, until it was brought to that attention.

Q And what class of drugs is Lorazepam?

A A class of drugs of benzodiazepine.

Q And the type of testing that Ms. Tucker did for the initial drug screen, the drug screen that she performs, does that include the benzodiazipam class?

A It does.

Q And the type of initial testing that SLED does, will it often not detect Lorazepam on the initial screen?

A The benzodiazepine, they are between 35 and 40 different benzodiazepines. For one screen it is difficult to detect all of those. They all have different structures, so the benzodiazepine screen that we use targets the most common one in particular diazepam which is your Valium, Alprazolam of your Xanax. Lorazepam doesn't not have a good interaction with the screen and

could not be detected along with our other benzodiazepines in our benzodiazepine screen. A different instrumentation method has to be used and a different distraction method has to be used for benzodiazipines, it was not found on the original report.

Q So did you do a different type of testing in order to see whether or not there was Lorazepam and that is commonly known as Ativan, one of the brands?

A Yes.

Q And when you performed that test, what did you find as a result of that test?

A I did find the Lorazepam, but I also found a compound called a compound called (unable to locate) which is a metabolite of clonazepam which is commonly known as Klonopin which also does not react with our screen.

Q And do these drugs you found have impairing effects?

A By themselves, yes, they can. They are seen as depressants. Benzodiazipines have a similar effect to alcohol. You'll see similiar effects most commonly associated with alcohol.

Q And what type of physical manifestations of a person who is under the influence of these drugs exhibit?

A A depressant slows you down. You'll see drowsiness, just in general, confusion, dizziness

sometimes, just distancing.

Q And are there any other findings that you made as a result of the additional testing that you did?

A Upon finding the (unable to locate) in the blood, I had been informed of the Ativan, but I had not been informed, but to confirm that, nobody told me Klonopin could be present, I went to the urine. Urine shows a wider range of time and in the urine I confirmed that the (unable to locate) was present along with the present Klonopin.

Q Did the urine also exhibit evidence of Lorazepam?

A Clonazepam is a metabolite. It also had methamphetamine, amphetamine, anthropologic which is another metabolite of methamphetamine.

Q The blood shows a more recent use, is that safe to say?

A Yes. Urine just depends on how much you've had to drink, how much you metabolize. So many factors go into the urine that we only use it for a history and most of your drugs can last in our urine up to 72 hours and some can last much longer.

Q Would the ingestion of meth or laz and it's differrent, please let me know, when it is ingested, how long would it take for evidence to show up in the urine?

A That can vary on a log biological factors but it

usually starts to show up within one half life in the urine. With the meth within ten hours the laz is much shorter than that.

Q How close in time at ingestion does it take to show up in the blood?

A It can show up in the blood -- you start absorbing it as soon as you ingest it so it can show up in the blood almost immediately.

Q In an amount that you can detect?

A Depending on how much was taken.

Q With the testing that you use?

A The testing that we use, yes.

Q Once a sample is removed from the body put in a jar and vile, does the metabolizing of the sample end?

A Yes, it does.

Q So there's no further change to what's in the blood and urine?

A No, it would not change.

Q The drugs we're talking about it would not?

A It would not, no.

Q Did you prepare a report with regard to your additional testing?

A Yes, I did.

Q What was the date of that report?

A It was June 4, 2012.

Q Is this a copy of your report State's Exhibit 42?
A Yes, it is.
MS. DRAWDY: I'd like to move that into evidence.
THE COURT: Mr. Erwin.
MR. ERWIN: Again, subject to my prior objection.
THE COURT: Subject to your objection which was denied it will be introducted as State's Exhibit 42.
(Report marked as State's Exhibit 42 for identification was admitted into evidence.)
BY MS. DRAWDY:
Q Ms. Sorrells, at the levels you saw in the defendant's blood of these substances, is it your opinion it would have been safe for him to operate a motor vehicle?
A No ---
MR. ERWIN: Your Honor, I would object to that question and the answer. She's already testified several times that it depends. I know she's been qualified as an expert but it calls for a speculation beyond her expertise.
THE COURT: I'll respectfully overrule the objection. It's within the scope of her expertise. Go ahead.

BY MS. DRAWDY:

Q In what manner would you expect for it to impair him?

A The methamphetamine level I received at the time of the blood draw was very high. You would see a lot of the stimulating effects, dilated pupils. Your reactions are going to be off when you're driving. It would not be safe to operate a motor vehicle.

Q We discussed the crash, is there a crash after using meth?

A Yes, and again you're coming off of the high. Your body is very excited, overly excited for an extended time and it's like you've been up for 48 hours and your body just wants to shut down.

Q What type of appearance that a person have if they were in the crash stages?

A You would see a lot of the oppressive effects instead of the stimulant effects, drowsiness, droopy eyelids, dizziness.

Q Thank you. Please answer any questions defense has.

CROSS-EXAMINATION

BY MR. ERWIN:

Q It all depends, right? The results of these tests that you're telling us about, you told her several

times that there's variables in there, right?

A About the elimination rates and absorption rates, yes, there are.

Q And that has to do with the manner of the ingestion of the drug, right?

A It can have -- it's going to affect your system a lot faster if you take it intravenously than if you take it orally because it doesn't have to go through the first task metabolism cycle.

Q And it has to do with the tolerance of the person using that drug?

A As long as the drug is in your blood stream, not matter how fast you metabolize or absorb, as long as that drug is in your drug screen, it's having an effect on your system.

Q Okay. But the effect -- the degree of impairment has to do with variables such as tolerance, right?

A I don't like the word tolerance. Tolerance is more of a learned behavior. Best example is alcohol, for a lot of alcoholics out there, they've learned to cope with the effects. If they notice that they're waddling, they'll just separate their feet a little wider or lean up against something, but they are still having that CNS repression. Same thing wit the stimulant, no matter how you've learned to cope, it is still altering your brain

waves and the way you're thinking.

Q So call it whatever you want you would agree with me depending on the way the drug is used and the amount of drugs they've used in the past, drugs can effect different people differently, right?

A Yes.

Q And obviously you've never met Mr. McCall before?

A No, I have not.

Q You weren't on scene for this accident, right?

A No, I was not.

Q You don't know what his behavior was like?

A No, I do not.

Q All you know is the number that came out when his blood was put into the system?

A That is right.

Q And you would agree that depending on who he was and what he was like, the effects of what that number indicates as far as impairment was could be different?

A It could vary slightly between person to person, but at this number as this level, you will see a CNS stimulant effect.

Q That's hyperactivity, right, something that's part of it?

A Yes, that is part of it.

Q So at this level, you expect excitation?

A I say this for most people, yes, at this level.
Q So it can vary for different people?
A I said it can vary for different people.
MR. ERWIN: No further questions.
MS. DRAWDY: Redirect, Your Honor.

REDIRECT EXAMINATION

BY MS. DRAWDY:

Q Are you familiar with the term poly-drug effect?
A Yes, I am.
Q If someone had both methamphetamine and Lorazepam in their system, would that produce a poly-drug effect?
A It could, yes.
Q Explain how the Lorazepam would interact in terms of the impact it had on the individual?
A Just because you have a central nervous system stimulant in your system and you add a central nervous system depressant, that does not counteract the other drug. They react on different parts so your system is now fighting if it's going to be in the depressant mode or the stimulant mode.
Q Are both drugs impairing drugs?
A Both of them are impair drugs.
MR. ERWIN: Brief recross, Your Honor.

RECROSS-EXAMINATION

BY MR. ERWIN:

Q Again, poly-drug effects can have different effects on different people, correct?

A That is correct.

Q It all depends on when those drugs were taken and what manner they were taken?

A It can depend on when they are taken and how long the drugs were taken.

Q So, yes.

A Again, I'm not going to answer yes, completely to your question but it can depend on when they were taken and how long of a time that person is taking them.

Q I'm going to get you to say yes to one question. So it does depend on who that person is, how long they've taken it and how much they've taken, right?

A It can depend on this.

Q All of which in this case you have no idea, right, because that's not your job, right?

A No, it is not.

MR. ERWIN: I have no further questions.

RE-REDIRECT EXAMINATION

BY MS. DRAWDY:

Q Regardless of whether it's your job or not, do you have an idea about it based on scientific principles that you saw in the samples?

A Based on multiple studies that have been done not

only across this country but across the world and based on what we have scene on a regular basis just coming through the tox lab, this level of methamphetamine is impaired.

MS. DRAWDY: Thank you.

THE COURT: You can step down.

MS. DRAWDY: Can she be excused?

THE COURT: Yes. Anything further from the State this afternoon?

MS. DRAWDY: Nothing further, the State will have no more witnesses today.

THE COURT: How many do you anticipate?

MS. DRAWDY: About four.

THE COURT: Alright, ladies and gentlemen, we're going to recess for this afternoon, we'll follow the same schedule and if you would be here at 9:15 and we'll start promptly at 9:30.

The State has four witnesses. I don't how long that it will take and that sounds to me like most of the morning will be occupied by the State. The defense may also elect to put evidence in the record. If the defense would elect to do that, then I would imagine we would probably be taking evidence for most of tomorrow. If that is the case, we would probably go to argument and charge of the law on Friday morning.

We don't want to charge and argue too late

little be longer than I wanted.

Having said that, we're ready to proceed.

MR. OVERBY: If it please the Court, Your Honor, the State calls Trooper Neil Nimmons to the stand.

THE CLERK: Please come forward to be sworn. Place your left hand on the Bible and raise your right.

NEIL NIMMONS, having been duly sworn, testified as follows:

Thank you. You may be seated. State your name for the record.

THE WITNESS: William Neil Nimmons.

DIRECT EXAMINATION

BY MR. OVERBY:

Q Good morning, Trooper Nimmons, where are you employed?

A South Carolina Department of Public Safety, highway patrol division.

Q And where are you assigned presently in the highway patrol?

A Presently I'm with Troop 3, Pickens Oconee County.

Q Where all have you worked in the highway patrol?

A I started out in Greenville. From Greenville I transferred to Anderson. From Anderson I transferred to Oconee Pickens home and then in 2009 I was assigned to the

MAIT team, and I was with the MAIT team for four years and then transferred back to Oconee Pickens.

Q What is the MAIT team?

A It's the multi disciplinarian accident investigation team. Primarily we investigate the counties in major cases.

Q In connection with these accident investigations, do you interview witnesses?

A Yes, sir.

Q Do you interview individuals who are charges with an offense?

A Yes, sir.

Q Do you have any play in the charging decision of these individuals?

A No, sir.

Q What is the primary reason why you interview these individuals?

A We interview everyone that's involved in the crash whether it be a witness, a victim, or someone -- all the drivers, all of the occupants of the vehicle, and anyone that may have seen it, try to get all of the facts of the case, to put them together and make a determination on what exactly happened.

Q Are you a sworn officer?

A Yes, sir, I am.

Q Do you have arrest powers?
A Yes, sir, I do.
Q Were you involved in an accident investigation that occurred on March 4, 2012?
A I was.
Q Were you involved -- did you speak with the driver in that particular accident, the Ford Explorer?
A Yes.
Q Is that person in the courtroom?
A Yes.
Q Would you point him out?
A The gentlemen at the table over there in the white shirt.
Q Were you with another trooper at that time?
A I was.
Q What was that trooper?
A Trooper Andis.
Q Is Trooper Andis able to be here today?
A No, sir, he is not.
Q Why is that?
A Because his wife -- his -- he's having a child. His girlfriend is having a baby, having their first child.
Q Where did this interview occur?
A It occurred at the Greenville Detention Center.
Q Were you there for the entire interview?

A I was.
Q Did you provide him with his Miranda Warnings in this case?
A No, sir, I did not provide that.
Q Who provided them?
A Trooper Andis provided him with Miranda. I did add a little thing at the end of Miranda just to make sure he knew that he could stop answering questions at any time and talk to an attorney. Other than that, the actually Miranda warning itself, Trooper Andis read it.
Q You observed him do this?
A Yes, sir.
Q Did Mr. McCall indicate whether he understood those warnings?
A He did.
Q Did he indicate whether he would provide a statement?
A He said he would.
Q Did you stay there for that statement?
A For the entire time, yes.
Q Was that statement audio recorded?
A Yes, sir, it was.
Q And had you had an opportunity to listen to that audio recording?
A Yes, sir.

Q Has it been modified, changed or altered in any way?

A No, sir.

Q Trooper Nimmons, did you bring a disk with you into court today?

A I did.

Q Okay. I believe that has been marked as State's Exhibit No. 43, has it not?

A Yes.

Q When did you receive this particular disk?

A I received it this morning.

Q Had you had opportunity to listen to its contents?

A The entire CD.

Q And is it a fair and accurate copy of this audio recording?

A Yes, sir, it is.

Q Has it left your possession since you received it?

A No, sir.

MR. OVERBY: Your Honor, at this time, we'd like to move State's Exhibit No. 43 into evidence.

MR. ERWIN: Subject to prior objections.

THE COURT: I think pretrial I don't think there were any objections. I could be wrong about that,

we had a Jackson v. Denno but I don't think there were any objections.

MR. ERWIN: Well, as you know, Judge, I wasn't here.

THE COURT: I just wanted to make sure.

If there are any objections on the record in that record, I respectfully deny the same.

(CD marked as Plaintiff's Exhibit No. 43 for identification and admitted into evidence.)

MR. OVERBY: Your Honor, at this time I'd like to publish the audio interview for the jurors.

(Whereupon, CD was played in open court.)

Thank you, Trooper Nimmons, that's all the questions I have for you.

CROSS-EXAMINATION

BY MR. ERWIN:

Q So you were in that room when Mr. McCall is being interviewed, right?

A Yes.

Q So you got a really good look at him, you were sitting right across the table from him?

A Yes.

Q What was going on -- I mean he had some injuries from the accident, right?

A Yes.

Q His teeth were messed up?
A Yes.
Q So, I guess, did it seem to you like his tooth had gotten knocked out in the accident?
A It could have been. I wasn't there when he was at the hospital so I don't know. Is it possible it got knocked out direct, yes.
Q What's really important here is his face were messed up and his teeth were messed up, right?
A Yes.

MR. ERWIN: I have no further questions.

THE COURT: Any redirect?

MR. OVERBY: No, Your Honor.

THE COURT: Thank you. You may step down. You may be excused.

MR. OVERBY: At this time, the State calls Corporal Tommy Brooks to the stand.

THE CLERK: Sir, please come up to the stand to be sworn, place your left hand on the Bible and raise your right.

TOMMY BROOKS, having been duly sworn, testified as follows:

Thank you. Please state your name for the record.

THE WITNESS: Tommy James Brooks.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. OVERBY:

Q Good morning, Corporal Books, how are you today?

A I'm well. Thank you.

Q Where are you employed, sir?

A I'm with the South Carolina Department of Public Safety with the highway patrol division.

Q Where within the highway patrol are you employed?

A The MAIT team here in the Upstate.

Q He mentioned some of the duties, can you expand on some of those duties as it relates to accident investigation?

A Yes, sir. Typically what happens when a road trooper comes on the scene of a collision and they have a question about something, did something happen why it went left of the center or was there some mechanically wrong with the vehicle, then they'll notify their supervisor who then in turn gets our MAIT supervisor. We respond to the scene.

Typically, unless there's a death involved, we will only send one trooper to the active collision scene which means where the cars are still there and have come to rest. He's start document the scene, photographs, videos and also looking where the road tripper where

actually marked. All the evidence that they can find will be marked with orange paint. The next working day that we can get out there, that's where we do our forensic mapping.

In most cases, like I said if there was a death involved, we would actually do it that night.

When we go on the scene, we'll actually do a forensic mapping of it and basically what that is what a surveyor does when they go out and they're mapping points, elevation points and different things, but instead of us marking corners of property, we're doing evidence points. The only difference is we use a data collector that has to label the evidence like tire marks, skid marks, fluid trails, things of that nature.

And typically we will map the entire roadway, edges of payment, all of the lines as you see them on the road and we can come up with a scale diagram, and also map of the evidence that's identified. We'll actually come up with a scale diagram so that you can look at it and see what happened. With that we try to answer all the questions that the troop may have. If something left the center, which one left the center or maybe why did it go off the center and things of that nature.

Q That sounds awfully complicated. Did you have to have some special training in order to do that?

A Yes, sir, I did.

Q Talk about that a little bit.

A Well, I actually -- I have to keep this. There's so much. There's well over 1000 hours of training, but basically to be on the MAIT team you have to have what we call the three core courses, which is your basic knowledge for the accident reconstruction.

In 2001, I had the accident scene traffic investigation course, which was 80 hours. December of 2001 I went to the advance collision investigation course which was 80 hours, and then in January of 2002, I went to the traffic collision reconstruction which gave me my three basic core courses.

From 2001 up until 2008, I was what was considered a MAIT associate which meant I had all the skills. I was able to help the MAIT team as they came to our respective counties to work on cases, but I wasn't on the permanent MAIT team. I actually became a member of MAIT full time in 2008. I have been there ever since.

Q How long is MAIT been around?

A It actually started when they came on the highway patrol in 1996.

Q So they've been doing this for a while?

A Yes, sir.

Q How long have you been doing accident

reconstruction?

A Since 2001 -- actually 2002 when I finished up. Once you get through with the three core courses, you're allowed to go in and assist with the cases, so since 2002 when I was turned loose.

Q And could you estimate how many accidents you've been involved in investigating?

A I wouldn't want to try.

Q Very well. Have you ever been qualified as an expert to testify by a court?

A Yes, sir, I have, three different occasions in general sessions.

Q And what have you been qualified as?

A In collision reconstruction in all three cases.

MR. OVERBY: Your Honor, at this time I would offer Corporal Brooks as an expert in the field of collision reconstruction.

THE COURT: Any objection?

DEFENDANT MCCALL: No objection, Your Honor.

THE COURT: Okay, I will so qualify him as an expert in this field.

Ladies and gentlemen, as I stated to you yesterday, somebody may be qualified as an expert because of their expertise, experience, or knowledge. Just because somebody is qualified as an expert witness as an

expert witness doesn't mean that you prefer their testimony over any other piece of evidence. You can consider it exactly like you consider any other piece of evidence or any other testimony that you receive from any other witness. That means you consider what weight it has in your deliberations.

Go ahead, Mr. Overby.

BY MR. OVERBY:

Q Corporal Brooks, was the MAIT team assigned to an accident scene investigation on March 4, 2012?

A They were.

Q Were you actively dispatched to the scene?

A No, sir. Since a death was not involved, they actually sent one trooper out and that ended up being Lance Corporal Andis.

Q In general for accident investigations, what is the importance of that trooper being out there on the scene?

A Well, first and foremost you have certain types of evidence that will disappear over time. You have marks that tires make when they begin to heat up when these collisions forces apply themselves and the will actually disappear. So we send a guy out to go ahead and make sure that these things have been marked properly. Sometimes, the road troopers they don't see it but then we go back

behind them and we look at what we have and we will actually physically mark it if it hasn't been marked.

Again, some of the stuff that gets marked doesn't apply to the collision but we have to mark it and photograph it and mark it anyway.

Q So when you say mark, typically how is something marked?

A Well, it really depends on what it is. It's like say for instance if it's final rest of a car, like if the Bible here was a vehicle, where it stops on the counter here, if it's left rear, right rear, whatever, we're going paint exactly where that tire is at, so when we go back and map it we can actually put a scaled car back on the same spot at its final rest and that's how we come up with the final rest positions.

Skid marks are the same way. They are actually marked and gouge marks, fluid trails and things of that nature.

Q I'm going to ask you to step down and just a minute, if you wouldn't mind, and stand to my right, sir. I'm going to show you what's marked as State's Exhibit No. 17, okay, and it's already into evidence.

Do you see evidence of markings from the scene itself?

A Yes, sir, I do.

Q Would you just point them out to the jury if you wouldn't mind?

A The tire right here with the orange paint there's "t" right there. Typically what happens is you put the orange paint down the side of the tire and the portion that comes out it forms a "t" is actually in the center where the wheel is. Typically what happens is when you mark these things you mark the wheels that you can actually get to. Sometimes they're damaged so badly that you can't mark them, you can't spread the paint on them, but in this case they were able to mark the final rest of this truck.

Q Was the same thing done on this right here?

A Yes, sir. And what the road troopers have done here since it was so deformed, they marked the wheel here, wheel here, and actually drew a line where the front of the car was. They'll do that from time to time depending. Sometimes they'll put a line and an arrow showing the direction that it was sitting when it got there.

Q Do you actually recognize this vehicle?

A Yes, sir, I do.

Q Where have you seen this vehicle?

A I actually saw this vehicle at a wrecker service. Along with my normal duties I'm actually Upstate mechanic. I do vehicle inspections on cars and I'm also the tire

inspector for the whole state. So I was actually tasks with doing a mechanical exam on this particular vehicle.

Q Okay. You can have a seat.

A Thank you.

Q I'm going to show you what I'd like to have marked as State's Exhibit No. 44 through 64.

(Photographs marked as State's Exhibit Nos. 44 through 64 for identification.)

BY MR. OVERBY:

Q I'm showing you some items that have been marked as Exhibit 44 through 64, can you tell me what those are photographs of?

A These are actually photographs of the inactive collision scene out there on 291.

Q Do those photographs, have you ever seen those photographs before?

A Yes, I have.

Q When have you seen those photographs?

A I reviewed these again this morning.

Q And do they fairly and accurately depict the accident scene as you perceived it?

A Yes, sir.

MR. OVERBY: At this time, Your Honor, I request to move State's through 44 through 64 into evidence.

THE COURT: Any objections?

DEFENDANT MCCALL: No objection.

THE COURT: Alright admitted into evidence.

(Photographs marked as State's Exhibit Nos 44 through 64 for identification were admitted into evidence.)

BY MR. OVERBY:

Q You mentioned those are photographs of inactive collision scene?

A Yes, sir.

Q What is an inactive scene?

A An inactive scene is where all the vehicles have been clear away, debris has been removed and all the emergency vehicles that were there responding to the wreck are gone.

Q Now, the markings that you indicated in the other photos, where are they?

A They're still on the pavement.

Q And how do you use those in your investigation?

A Well, once we go out and we begin our forensic mapping, again we set up our station just like a surveyor would. Once we begin we have a guy who is an architect who is going around with the prism pole. He actually sits on each point and tells the guys who are running the station what this particular point is going to be whether

it be the beginning of a gouge mark or beginning of a tire mark, lane line, edge of payment, whatever, that's what he is actually doing. He's actually physically walking around and sitting right there on top of the evidence points and we're noting those into the data clip. So once we go back and put the forensic mapping in to the computer, we're able to draw a scale of what we see.

Q So the data collector is collecting the information from the architect?

A That is correct.

Q And that is how you create a scale of diagram?

A Yes, sir.

Q Corporal Brooks, I'm handing to you what I'd like to have marked State's Exhibit No. 65.

(Disc marked as State's Exhibit No. 65 for identification.)

BY MR. OVERBY:

Q What is that, sir?

A That's the disk for the photographs that I viewed this morning. I actually initialed that.

Q Okay. The photographs on this disc are they the exact same ones you just reviewed?

A Yes, sir.

MR. OVERBY: Your Honor, at this time I'd like to move State's Exhibit 65 into evidence.

DEFENDANT MCCALL: No objection.

(Disc marked as State's Exhibit No. 65 for identification was admitted into evidence.)

BY MR. OVERBY:

Q Now, Corporal Brooks, I about 20 photographs, correct?

A Yes, sir.

Q When you photograph the scene, how do you do it?

A It depends on the investigator that's actually taking the photographs. We have our own certain beginning points, but particular what happens with photographs is you will take the duration that one vehicle is coming, say the Ford Explorer, and you'll take photographs all the way up until the area of impact and then you'll follow it from the area of impact all the way to its final rest and then you come back in the other direction. If it's two cars, as in this case, you begin to take it from the other direction so you'll have both ends of the spectrum.

Q Now, I'm going to ask you again to step down, sir. Okay. What is this a photograph of?

A This is 291 and if you're familar at all with 291 near Cherrydale, the Spinx Station is back behind us and on the right. This is actually facing northbound the direction of where the pick up truck would be going. In an instance where you'll see we're not directly in the

lane taking the photograph, the only reason we're not standing in the middle of the lane is the amount of traffic. We can't do that, but in this case the view that you have is the direction that the pick up truck would be going.

Q So if we were to look at State's No. 1, here, which direction would this photograph be facing?

A This photograph is actually -- the direction of travel is you're looking up this direction and you can actually see where the painted media starts to close in and that's right in the area of this turn right here.

Q Okay. What is that a photograph of?

A The final rest for the Ford Explorer.

Q Okay. Why are there only three markings here.

A The three marks is the damage on the Ford Explorer was so severe they can only get to it and put it down exactly where it was it.

Q I see the mark that was back there and it's on the one that's on the farthest right there, what is that mark?

A That is the left rear.

Q And how do you know that that's the case?

A Well, if you zoom in it's labeled as LR. Some people put left side, LSB, but in this case left rear is the driver's side rear.

Q What is that a photograph of?
A Different area of the same.
Q What are we looking at here?
A Again, what the investigator in this case and like I said earlier and we map. This is Greenville county so we have people that wreck all the time so we have to separate the evidence as we find it. In this case what he's showing me here there's actually a tire mark right here that had been marked by the troopers. It's in a straight line, however we still would document with photographs and if we go back and map it, if it doesn't match we go back to a separate later. Everything that's out there we will map it.

There's a curve marked here along with a fluid trail that actually came from the Ford Explore.

Q You know that based on the evidence marking scenes and the information you've collected?
A Yes, sir.
Q These photographs, what are they showing you?
A Closing in the final rest and what we call the area of impact of the two vehicles.
Q Moving in a little bit more. You used the word gouge mark, could you just expand on that a little bit?
A Any mark in the pavement that's not there naturally. Any kind of metal touching the ground or

touching the pavement or anything that it scrapes cross.

Q The area of impact, how much deviation is there from actually point of the impact?

A It can be two to three feet. In this particular collision this was one that we would consider an offset head on and what I mean when I say offset head on is when yuo think of a collision you think of two cars hitting, once they move off, every car has its on set of mass which is in between. Anything outside of the offset mass is an offset headon. In this case where the vehicles got together, that's basically what we had.

Q We know that whree the vehicles collided is?

A Right in here, yes, sir.

Q You mentioned the tire marks from the truck earlier, is that evident in this photograph?

A Yes, sir.

Q And that's indicated by those marks there?

A Yes, sir and you can actually see where this one stops for the left rear and the right rear continues on underneath the tire.

Q Okay. You said that generally speaking yuo take them from the point of view from the vehicle itself, point of travel.

A Yes.

Q So is this essentially what thees photographs

show?

A What you clicked pass would be the actual be the direction of travel for the Explorer.

Q This one right here?

A Yes, sir. Again, we can't out in the lane because the traffic was so heavy.

Q This would be Mr. McCall's vehicle, correct?

A Yes.

Q Thank you. You can have a seat. Mark all the evidence and you've looked at the scene and you mentioned t he word forensic mapping.

A Yes, sir.

Q Once you've input all he data, what is created by that?

A It's created a scale diagram. It's a color drawing of the road and then it's two scale.

Q So the general background is 291?

A Yes, sir.

Q And it's two scale?

A Yes, sir.

MR. OVERBY: I'd like to show you what I'm going to have marked as State's Exhibit No. 66 through 68.

(Photographs marked as State's Exhibit Nos. 66 through 68 for identification.)

BY MR. OVERBY:

Q What do we have there?
A Impact evidence that we have on the scene and vehicles at final rest along with the evidence.
Q And this is what you created as part of your investigation?
A Yes, sir.
Q Has it been altered in any way?
A No, sir.
MR. OVERBY: I'd like to move these into evidence.
DEFENDANT MCCALL: No objection.
(Photographs marked as State's Exhibits No. 66 through 68 admitted into evidence.)
BY MR. OVERBY:
Q This is State's 66.
A Yes, sir.
Q The roadway is essentially the first diagram?
A That's correct.
Q So everything else that gets added to the diagram goes on this?
A Yes, sir. The one that we would generate is roadway which is what you see right there, a road with no cars on.
Q What is depicted in this diagram?
A We're using that angles of collision off of the

damaged profiles of the two cars, placed them back on the area of impact we're able to determine where the Ford came into the pick up truck at.

Q I'm going to show you State's No. 14 which is the Explorer?

A Yes, sir.

Q And No. 17.

A Yes, sir, that's the pick up truck.

Q You mentioned area of collision, based off the Explorer, what do you see there and why is that important?

A If you look at it you can see how the front end is pushed back towards the driver's compartment and these SUV vehicles sit up just a little bit higher. In this case, these trucks are extremely rigid, they're strong. It just so happens that the weaker points any time you see something special that are done with these trucks, they are actually done broad side or dead center when they test these things.

In this case it rode up in the softer metal that was on thre and the fact that the damage is so high leads me to believe from my experience, there's no braking involved from the Explorer prior to it engaging in this pick up truck.

Q These vehicle inspections, I want to show you a photo of the pick up truck, State's 6, essentially you

notice -- does that help you notice what your opinion is?

A You can actually see that on the driver's side is more on the -- all of this stuff is broken out. It's typically induced by the collision. All of the major damage, you can see the direction of the hood is actually pushed. Headlight area to the side of it pushed all the way down the side, side swipe offsetting head on.

Q So your opinion is in this photograph show you where you think the area of collision is on the truck?

A You can see it went in right there in the headlight area just pushed into the softer metal and rode all the way down the side. The gouging would be right in here and this would be your area of impact.

Q Based off that, how does the diagram reflect your findings?

A Again, that shows the first touch of the vehicles. It's not going to show maximum engagement, but this is the area of impact for the vehicle.

Q Did you do a speed calculation in this case?

A No, sir. This particular case was a left the center case. Sometimes you have to do a speed calculation if we think that that's a sole factor in the collision. In this case, the question was we had a vehicle went left of center, which on did it. So we were able to go back and do the forensic mapping and answer the question.

Q You've been involved in a lot of accidents, correct?

A Yes, sir.

Q Were you able to estimate a range of speed?

A The softer metal on the cars I've seen damage like that from 40 to up to high 60.

Q I'm going to show you State's Exhibit No. 63 what is this diagram demonstrate?

A This is what we call the sequence of events. What we do is we take a car from the direction that they were initially traveling and find out which one was going which direction. We line them back up on the scale diagram, all the evidence that was marked and mapped Again, the would be like our impact area which is the first touch. We have a tire mark that leads away and you can't really see. It would be like a purple color with just a little line on it because you can't run the scale and see it because it wouldn't fit on the paper.

Again, the Explorer goes through and comes to its final rest is here and the pick up truck actually rotated back off and came to its final rest right there.

Q What is State's Exhibit No. 67?

A That is what we call the evidence and final rest layer. It's both vehicles where they stop after the collision and it shows the evidence that we map. And

actually if you had the piece of paper, you'd be able to see the gouge mark on here. It's just harder to see on the projector.

Q Let me see if I can zoom in.

A You'll see it that was marked in that little oval orange color.

Q Okay. I'm going to show you 68 again. Tell me about the path of travel based off the forensic evidence that you found?

A This case the road you saw from the photo curves back to the right and typically what you see with vehicles that don't have any kind of steering to it, they'll continue straight to the curve. People call it straighening out the curve is what we call it. If you let go of the wheel the car wants to keep going forward, it wants to go straight and unless you actually maneuver to make it go around the curve, it's not going to do that.

In this case angle that we lined it up on, puts it drifting over. And again with driver input if soemthing happens, an evasive maneuver that you could take to move around something and you could try to get in your car, don't do it on the road, do it in the parking lot, if you turn your car hard back to one direction or the other, you're actually going to feel your car wanting to move, but you're still wanting to go straight in the direction

it your going. It will actually load up and put all the weight on one corner of it either on the left or the right side and it will leave a little tire mark or leave marks where it's loading up because the tire heating up from all the weight shift.

In this case, they looked at that and they couldn't find anything in the other lanes.

Q You mentioned straightening out the curve, I'm going to show you State's No. 1 and is that depicted on State's No. 1.

A Yes, sir. This is a long sweeping curve and this is you Spinx station right here but the Explorer is coming in this direction and it continues to drift over into the other lane.

Q So was there any evidence of an evasive maneuver taking in this case?

A No, sir.

Q When would you find evidence of an evasive maneuver? Describe what that is?

A If you were traveling on this road and something was out in front of you or something run out in front you and you're turning the wheel and sometimes you don't know you're doing in. In this case, to get over to where this car is you would really have to sit down on it to get it over. There was no markings on the other lane. You had

weight shift on the other vehicle. It looked like it just drifted straight over to the other lane.

Q It doesn't look like the Ford Explorer used anything to dodge?

A No, sir, there was no kind of pre-breaking or anything on the other car.

Q You also said you do vehicle inspections?

A Yes.

MR. OVERLY: I'd like to have this marked as 70 and 71.

(Photographs marked as State's Exhibit Nos. 69, 70 and 71 for identification.)

BY MR. OVERLY:

Q Did you have an occasion -- I'm going to show you what's been marked as 69, 70 and 71. Do you recognize those photographs?

A Yes, sir.

Q What do they depict?

A This actually depicts the work I did in my mechanical exam photographs of a brake fluid resevoir in the Ford Explorer and the last photograph was specifically of the right rear of that same Explorer.

MR. OVERBY: I'd like to move State's Exhibits 69, 70 and 71 into evidence.

THE COURT: Any objections?

DEFENDANT MCCALL: No objections.

(Photographs marked as State's Exhibit Nos 69, 70 and 71 for identification was admitted into evidence.)

BY MR. OVERBY:

Q When you do vehicle inspections, did you do a vehicle inspection on Mr. McCall's vehicle?

A Yes, sir.

Q What all did you inspect?

A For this particular instance, the defendant said he didn't have any brakes and typically when we get that, they're going to find me anyway to do a check, eight times out of 10 there's always brakes. In this case he's 100 percent accurate. There was no service brakes at all on the vehicle.

Q What did you see about the vehicle that made you confirm that?

A The left front caliber wasn't working. The right front caliber was missing, parts missing so it couldn't have worked and with the brake fluid resevoir being empty. What causes the drums brakes to work is fluid bust from the brake fluid. Without fluid in the resevoir, nothing has ever pushed those brakes cylinders out on the back to push the pads out. The only brake that was functioning was the parking brake, the emergency brake. You don't get

as much pressure out on the drum.

In this case the parking brakes are not adequate to stop a vehicle. They are designed just to hold a little bit of static pressure on the drum to keep the car was moving.

Q I'm going to show you State's Exhibit No. 70, could you tell the jury what that photo is?

A That is actually the resevoir for the brake fluid and the booster is directly behind it.

Q Was there any indication that the resevoir was leaking or anything?

A No, there was no indication that it was leaking.

Q And State's Exhibit No 69..

A That's again of a view showing inside the resevoir. And this is where the fluid resevoir would be and there is no indication there was ever any fluid in there.

Q Was there any fluid in there?

A Not during my inspection, no.

Q You heard Mr. McCall's audio?

A Yes, sir.

Q And you would agree with that?

A Yes, sure, 100 percent there was no brakes other than the park brake.

Q Do you see any evidence in the photograph of your

theory on that?

A In this case you can tell that all of the paint is gone and that's from the extreme heat build up. You get that if something.

(Due to technical difficulties, this portion of the transcript can not be produced.)

THE COURT: Alright, we'll be in recess for about 10 minutes.

MR. ERWIN: One thing before we bring the jury back out. I mentioned that we have a witness under subpeona, Ms. Juliet Martin. Mr. McCall has asked to speak with her before she testifies so we can be prepared a little bit. On his next break, since he's going to be here so can it be arranged to have him meet her out here or go back there just for a few minutes during a break.

THE COURT: To give him access to her, y'all decide the appropriate way to do it. I defer to y'all entirely on security issues so however y'all want to make it happen, make it happen.

It is also my understanding that a nurse from the detention center will be coming up at 12:30 to bring the medication.

MR. ERWIN: Thank you.

DEFENDANT MCCALL: Thank you.

THE COURT: Bring in the jury.

(Jury re-enters the courtroom.)

You may call your next witness.

MS. DRAWDY: The State calls Dr. Tracey Lance.

THE CLERK: Would you please come forward to be sworn in. Place your left hand on the Bible and raise your right.

TRACEY LANCE, having been duly sworn, testified as follows:

Thank you. You may be seated. Would you please state your name for the record.

THE WITNESS: Tracey Lance.

DIRECT EXAMINATION

BY MS. DRAWDY:

Q Dr. Lance, are you employed with the Greenville Hospital System?

A Yes.

Q What is your capacity?

A I'm an emergency room attending.

Q Attending what?

A Seeing patients and we have residents that we also teach and the ones that are already have are the attendings.

Q So you have your medical degree?

A Yes.

Tommy Brooks - Direct Examination

Q Where did you take your medical degree?
A Saint Vincent's Hospital in Cleveland, Ohio.
Q When did you receive your medical degree?
A 1996.
Q Since that time where have you practiced and what type of medicine?
A Emergency medicine and I practice at the Greenville Health System.
Q And are your board certified?
A Yes.
Q By who?
A American Board of Emergency Medicine.
Q Briefly give us a little bit more about your education and experience.
A After medical school, I spent a year in Kentucky doing an internship because I didn't know exactly what field I wanted to go into. Once I decide I spent three more years in Dayton Ohio doing a residency in emergency medicine. I took my boards, passed and been practicing ever since.
Q And how long have you been practicing in emergency medical total?
A 19 years.
Q How many years with the Greenville Hospital System?

Tommy Brooks - Direct Examination

A I was here for three years, left for 11 years and I've been back since 2010.
Q As part of your training did you have to learn about the properties of prescription drugs and the effects on the human body?
A Yes.
Q And do you regularly prescribe prescription drugs?
A Yes.
Q Is that why you need to know about that?
A Yes.
Q Were you also trained in the effects of elicit drugs on the human body?
A Yes.
Q Why do you need to know about that?
A There are certain medications that we can give a patient that may interact with elicit drugs and we have know how they interact.
Q Are you familiar with the impairing effects of prescription drugs?
A Yes.
Q Are you familiar with the impairing effects of illicit drugs?
A Yes.
Q What is a typical shift where you are working now

at Greenville Memorial?
A We work 36 hours a week and that can be spread out anywhere from 8 to 12 hour shifts.
Q And that's year in and year out?
A Yes.
MS. DRAWDY: Your Honor, we'd like to qualify Dr. Lance as an expert in the areas of the pratice of medicine and specifically emergency medicine and the pharmacelogical properties of prescriptin drugs and illegal drugs.
THE COURT: Any objection.
DEFENDANT MCCALL: No objection.
THE COURT: She is so qualified.
BY MS. DRAWDY.
Q Were you employed by GHS on March 4, 2012?
A Yes.
Q You were working in the ER?
A Yes, I was.
I'm going tc show you what's Exhibit E and ask you if you could identify what that is?
A This is our emergency department record.
Q And who is the patient?
A Terry McCall.
Q For what date?
A March 4, 2012.

Q Is that a record that you have made input into?
A Yes.
Q Why is that?
A This is our emergency department record where everything we do for them is placed through the computer.
Q And what was your capacity that evening with regard to Mr. McCall?
A I was his attending physician.
Q So you performed an examination on him?
A Yes.
Q Can you tell when he arrived?
A He was greeted at 19:00.
Q At that time what is first done with the patient?
A The nurse greets the patient in their triage into the emergency department.
Q Is there any information obtained from the patient at that point?
A Yes, the nurse actually obtains a history of present illness also.
Q Is that something you review before you examine the patient?
A Most of the time, yes.
Q And what on this particular occasioon were the ocmplaints that Mr. McCall expressed?
A He was complaining of chest and abdominal pain,

chest wall pain that increased with movement and inspiration, and mouth pain.

Q Did he complain of any type of head injury?

A No.

Q Did he complain of any type of seizure at that point?

A No.

Q Did he say anything about having loss consciousness?

A Yes, he said he denied loss of consciousness.

Q After that is done, are vital signs taken?

A Yes.

Q They were taken that night?

A Yes.

Q 19:00 he was in the ER at that point?

A Yes.

Q Was he asked if he loss consciousness?

A I think he was because he denied it.

Q So is he also asked if he had a past medical history?

A Yes.

Q What did he state his past medical history?

A Hypglycemia.

Q What is that?

A Low blood sugar.

Q Mr. McCall says that's his past history, the low blood sugar. Did he claim any other history?
A Medical history, no.
Q Was he asked about surgical history, social history?
A Yes.
Q I'm not asking you about all of that but is he the source of this early information?
A Yes.
Q Do you also ask about family history?
A Yes.
Q And the patient himself is the source of this information?
A Correct.
Q Did he tell you what his current medications were?
A Yes.
Q What did he tell you?
A Loritab.
Q Something that he is currently taking or prescribed for him?
A Yes.
Q What is Loritab?
A It's a narcotic mixture codiene and tylenol.
Q That's given for what?

A Pain.
Q What sort of effects does that have on the body?
A It slows your body down, all of your reflects, anything you think of you become slower at.
Q Now, at some point did he discuss the accident with you?
A Yes.
Q Did you note of what he said?
A Yes.
Q What did he say?
A He said he was involved in an accident, he was the driver and it was headon and the steering wheel was actually in is lap. It happened just prior to coming to the emergency department
Q Did you check on his neurological condition?
A Yes.
Q What did you find?
A On my physical exam I found that he had no motor or sensory deficits. His speech was very slow but appropriate.
Q Let's look at your physical exam. If you'll refer to the notes on Page 2. Did he make a statement about what he thinks may have made him cross the center line?
A Yes.

Q What does he think?
A He thought his blood sugar may have been low and made him cross the center line.
Q Did you order a lab test to check his blood surgar?
A Yes.
Q Can you refer to the record and tell us what that was?
A 96.
Q And tell me what a blood sugar level of 96?
A That's not a low blood sugar, that's a normal blood sugar.
Q Did you go on to conduct a physical exam of Mr. McCall, if you would review your notes and tell us what you discovered starting with the head?
A His head was a-traumatic, it looked normal. His pupils are equal, his (inaudible) where you look up down and sideways was all normal. He did have his left lower midline boney cervical tenderness and muscular gender as bilaterally. His chest was tender anteriorly. It hurt when you push on it and his breasts sounds were decreased bilaterally, on both sides. His heart was regular. He did have some diffuse tenderness in his abdomen which was mild and seemed to be worse in the upper part of the abdomen. His back exam was normal, no tenderness. That

doesn't include the neck. He has a skin tear to this part of his hand. On his legs, his left fourth toe was bruised.

The rest of his skin exam was normal and he was alert and oriented.

Q Did you see any evidene to indicte that he had suffered a concussion from the accident?

A No.

Q And what would you normally look for that you did not see?

A Disoriented and say repeative things, ask you the same question over and over again.

Q Did he have any head trauma?

A No.

Q Did you look for it?

A Yes.

Q Did you see any evidence of a recent seizure having been suffered by Mr. McCall?

A No.

Q What would you have expected to see ycu did not see?

A When people have a seizure, they will regularly bite their tongue so you will see bite marks on the tongue. They may or maynot be incontinent, he was not incontinent. Sometimes they will come in confused and

will not remember what happened. That was not the case.

Q So he told you he had been in a motor vehicle accident?

A Yes.

Q And you did not see confusion to the level that you would have considered him to have possible have a seizure?

A No.

Q If he had a seizure in the last couple of hours, he would have seen those things you just talked about?

A Yes.

Q And you did not?

A No.

Q Let me ask you if you'd ordered any other blood work?

A Yes.

Q What other blood lab test did you order?

A I ordered a CVC blood screen and alcohol level screen and urine drug screen.

Q Why would you do that?

A This was a significant accident and he could have had some significant injuries and as a screening measure we order those just in case there is something wrong with him and he has to be admitted to the trauma service.

Q Why would being admitted to the trauma service

make it important to know what he had in his system?
A They routinely give specific medications for pain and sedation and they have to know if there's something in his system that could interact with what they're going to give him. They could make him worse if they don't know.
Q So that's why you ordered that?
A Yes.
Q Can you tell what time samples were taken for the blood and urine for the purpose of those tests?
A The labs were drawn at 19:15.
Q Is that both?
A The urine was collected at 20:45.
Q And what was the blood sample used to test?
A The blood was used to test the CBC, the alcohol level.
Q Was there any alcohol in his system to the extent that it would have been medically significant?
A No.
Q So there was none?
A No.
Q Was the urine screen show any substances that would have been medically significant and of interest to you?
A Yes.
Q What were those substances?

A His blood screen was positive for amphetamines, benozodiazpines, cocaine, marijuana and opiods.

DEFENDANT MCCALL: Objection, Your Honor.

THE COURT: Thank you. I overule the objection.

BY MS. DRAWDY:

Q Is methamphetamine and amphetamine?

A Yes.

Q Tell us what they do to the body?

A They speed you up that's why they call it speed in the general public, heart rate, make you go really fast and not think the way you should think because everything is going to fast to think appropriately.

Q What would some of the psychiological facts it would have on the body a person could observe if you gave a physical examination, such as their eyes?

A They would hold their eyes open wide, their pupils may be bigger than normal.

Q Dilated?

A Yes. They may look around really quickly fast. They would not necessarily be able to sit still.

Q What is a normal range of pupil size if you re not under the influence of any type of drug?

A Normal is 2 or 3 millimeters.

Q If a pupil size was 6 millimeters could that be

under the influence of methamphetamine?

A Yes.

Q Did you actually examine those pupil size?

A No, they were reactive. Let me look at my notes. Not the size just that they were equal bilaterially.

Q What was the next thing that was found in the urine screen?

A Benzodiazapine.

Q What are the effects of those drugs?

A Those are drugs that we use for anxiety. They calm them down.

Q So much the opposite effect?

A Yes.

(Due to the techinical difficulties, this portion of the transcript can not be produce.)

THE COURT: Alright, ladies and gentlemen, you have seen all of the evidence that will be presented in this case. We will proceed to argue and charge. We will do that in a few minutes. We need to have a very short charging conference with the attorneys and talk to them about exactly what it is that I'm going to charge so they will be able to fashion their closing arguments to the law that will be charged.

So what I anticipate I'm going to ask the attorenys to argue as expeditiously as possible no more

than half an hour a piece. They may go less or a little bit more but that's the guidance that I'm going to give them and my charge will probably take somewhere around 20 minutes. If I am guess right, you will get this case and you may deliberations around 4:00. That's my hope.

When you begin your deliberations, you will take you as long as it will take you to come to a decision. It can take you a significant amount of time, it can take you a little amount of time. It's entirely up to you because you at that point will be the deliberating persons to determine what the facts are.

So what I will tell you if I can't give you any specific guidance on when you will be out this afternoon, but I will suggest to you that you probably Will need to plan to be here at least past 5:00 and then beyond you, it's going to be entirely up to you.

If you need to make arrangements, I'll let you use your phone at this period of time and say this is my best guest this point. The reason I've given you all of this information is that you can make a best guess.

Please don't discuss the case.

(Jury exits the courtroom.)

Any motions?

MR. ERWIN: Yes, sir, I have a couple of things. The first one I would like to renew my directed

verdict motion and renew all of the objections that have been made in this trial by Mr. Chamers, Mr. McCall and myself as a team. I'd like all of those objections to be renewed.

THE COURT: Yes, sir.

MR. ERWIN: Secondly, and I know the answer to this for the record I'd like to officially move for a mistrial based on the representation situation that we've been dealing with over the last couple of days. I do think it has prejudiced the client unduly and I would ask the Court to consider granting a mistrial at this point based on that.

THE COURT: The ruling with regard about all of the prior motions remain. With respect to the mistrial, I will respectfully deny the same and I stated this before and I know Mr. McCall took some exception to it and it's not directed to you personally, it's just the fact of the matter as I see it, all of the problems that have risen in this case is with regard to the defendant's counsel and his representation and consequence of his own decisions, therefore, I respectfully deny the request for a mistrial.

MR. ERWIN: Thank you, Your Honor.

THE COURT: Anything further?

MR. OVERBY: No, Your Honor.

THE COURT: It is my understanding that there were no specific requests for charges which is fine. Do you have any, sir?

MR. ERWIN: I don't know if you have a standard charge as far as him representing himself. I know that you mentioned that to the jury when I came in that they wre not to hold that against him. I would ask that maybe a quick nodd to that at some point in the charge.

THE COURT: Okay. I will.

MS. DRAWDY: And the State would suggest that because the indictment itself only alleges that he was under the influence of drugs and the evidence is clear that alcohol is not a factor in this case, that all of the usual charges related to alcohol be admitted.

THE COURT: I think that I've taken all those out. Now, I may slip up and say alcohol so to the extent that I may say it, I'll try to correct it. If I don't remind me after the fact and I will change it.

I will charge reasonable doubt, I'll define reasonable doubt, I will not define it as the type of doubt that would cause a reasonable person to hesitate to act, rather I will charge the firmly convinced language. You can fashion your arguments to that definition.

Otherwise, it's a fairly simple charge. I

will give you a copy and let you take a look at a copy of your verdict form as standard as can be.

MS.** : Your Honor, may I inquire as to whether you considered this to be general intent or it requires criminal intent?

THE COURT: In as much as intent in this action hadn't been an issue in the case, I'm not going to define it specifically unless you give me your request with regard to intent. I can. What I find in a case like this, it's better to charge the law and let them make determination because when you start defining too much it, for lack of a better term, muddy's up the charge.

MS. DRAWDY: I just didn't think he had to have the intention to commit a crime.

THE COURT: I agree with that.

Alright, does the State waive opening?

MS. DRAWDY: The State waives opening, Your Honor.

THE COURT: Do we think we can confine ourself to 30 minutes or less?

MR. ERWIN: No problem, Your Honor.

MS. DRAWDY: I usually go 15 minutes.

THE COURT: I was going to say 20 is probably right but I was going to give you some latitude in your argument. We'll say as ladies and gentlemen, 20 minutes

tops?

MR. ERWIN: I don't see that being a problem, Your Honor.

THE COURT: Okay. If you would put Dr. Jones in the foreperson's seat, please.

(Jury re-enters the courtroom.)

Alright, Dr. Jones, congratulations to you, sir, you have demonstrated yourself to be such an exceptional juror, you've been appointed as foreman of the juror.

Now, your role as a juror is fairly ill-defined. What you must do as foreman of the jury is assure that everybody in the jury has a voice, that everybody has the opportunity to be heard in your deliberations. Sometimes when 12 people go into a room and begin deliberations, you're going to have some very loud voices and some people aren't necessary as loud, but it's your job as every opportunity to have input in deliberations.

Beyond that I can't tell you what a foreman does because I've never been on a jury and it's illegal for me to even come in to your jury room while you deliberate. So I don't know what you do. So beyond that I can't tell you how the organize the deliberation or manor or method, all I can tell you is good luck. Make

sure everybody has an opportunity to be heard.

Okay, ladies and gentlemen, we're going to proceed with closing arguments. As I told you at the beginning of the trial, arguments are not evidence. Evidence, all he eevidence has already been presented. Arguments are simply advocacy by the perspective attorneys trying to persuade you to their perspective sides.

The attorneys, although, I told you they tak about 30 minuts a piece, they have charitable and considerable just toldme tha they will take 20 minutes or less. So if they hit the 20 minutes, start giving them the evil eye because that's the representation they made to me.

I will defer to defense counsel, Mr. Erwin for his closing.

MR. ERWIN: Thank you, Your Honor. Good afternoon. Give me just one second. So as has been explained to y'all a couple of times, maybe, I'm not actually Mr. McCall's lawyer. He's representing himself in this trial. Judge asked me to come in and help where I could so that we can make sure no rules are broken adn we've made it to the end.

Mr. McCall asked if I could do the closing for him because these are all his ideas but he's asked me to talk for him because this is what I do and you'll haer

it a little bit better coming from me.

Let's talk a little bit about Mr. McCall because that's what this trial is about. Iv'e spent some time with him over the last few days. You may have seen us sitting over here fussing at each other a little bit and you guys actually known him for longer than I have because you were here for the whole first day. I'll say this, you'll probably tell he's a strange dude. There's really no way around that.

You guys have seen our relationship. He fired his lawyer in the middle of a trial. He's driving around in a car that by his own admission has basically no brakes. You met his girlfriend earlier today, ex-girlfriend earlier today, they certainly seen to haev an interesting relationship. We know one thing that is absolutely true, he is not high right now.

I asked him questions when he was up here and he's been held in jail during the duration of this trial so we know that he has not had access to any drugs at all. Yet, here we are. This is the man. I know he's probably pretty mad at me right now, but this is a DUI case. He is charged with driving under the influence. He's charged with driving while impaired and there's no doubt in my mind that the reason he got charged with that is becasue he's a weird dude.

Everybody who came into contact with him after that accident, the paramedics, the doctors, law enforcement folks, all commented on the way he weas speaking, the way he was acting, and it was a little off, a little strange. I put it to youo that that's just the way he is and I think that you guys seen enough of that in the courtroom this week.

Now, that does not excuse his behavior the day of the accident. There is also no doubt in my mind that this accident was his fault. He's driving around in a car that doesn't have brakes. He's apparently has an onset of a seizure coming on yet decides to continue driving. These are all reckless acts. These are all negligent acts. These are things that you can get punished for in a lot of different ways.

There are crimes that behavior would f..t under. There are civil remedies that the victims could take against him based on that behavior and there's no doubt in my mind he would be in the wrong as far as all of those go. But that's not what your job today is about. Your job today is to decide very simply was he impaired while he was driving. Was he impaired because of drugs? Right? So he admitted that he took some drugs the day before and that was in his system. There's no way around that.

Frankly, there's drugs in his system. He tested positive for drugs. That does not mean that he was impaired by those drugs. We heard from the toxicologist up here yesterday afternoon. It depends, it varies, there's a lot of different ways that the effects of a drug can be changed based on the context in which those drugs are taken.

How long ago was it? How much of a drug user are you? Just the fact that he had drugs in his drug stream does not mean that he was high. I'll admit the audio tape that we heard earlier today of him talking to law enforcement, he sounded pretty goofy on that tape, but again, this is the guy we're talking about.

Keep in mind that he was just in a really serious car accident and it was his fault but he was in an accident and his teeth were broken and very possibly in shock. His behavior on that day does not prove beyond a reasonable doubt that he was impaired. No one has been able to do that for you yet.

I'd say that the closest we got this week, the closest the State got beyond a reasonable doubt that he was impaired on that day and was the toxicologist we heard from yesterday and the doctor we heard from this morning that both said it's probably true that if those drugs are in his blood system that he was probably high

and, you know, their testimony was from professionals, scientists, trained and educated and know what they're doing and they want you to understand that what they're saying is precise and it's measured and they don't make mistakes and this is dead on solid, correct information.

I'm not saying that it isn't. I know they did not have the context of what happened. They don't know Mr. McCall and they all said this is the first time that they had seen him. I couldn't help but notice going through this evidence the medical report here State's Exhibit E, like I said the doctors and the scientists that testified they want you to believe they are not mistakes made and they want you to think that what they're talking about, but people make mistakes. People are people.

On Page 6 of 7 on this medical report that was created by a whole team of medical professionals who are educated, who are trained and who are smart folks who are doing their job, on Page 6 of this medical record, it says, "Labs drawn at time of placement on this less than three year old patient." In the medical records it says he's less than three years old, that's not true. It's a mistake. I don't know if they have a form that they fill out and it spit out the wrong number, who knows? I'm just saying that as trained and as education and as professional these folks are, it is still within the realm

State versus McCall

of possibility that they don't have complete control of everything.

One thing I know they don't have complete control over is this strange dude sitting over here. So when you go back in the jury room, please, please, I want to make this as simple as possible there's one issue in this case and that is was he impaired that day? Do you know beyond a reasonable doubt that he was impaired that day or was he just being a reckless, negligent, weird dude? Please take the time to think about and I think you should find him not guilty and I would ask that you consider that while you're back there.

Good luck to you all.

MS. DRAWDY: If it please the Court.

THE COURT: Yes, ma'am.

MS. DRAWDY*: Ladies and gentlemen, Mr. McCall is sitting there not guilty right now. Mr. Erwin is right and it doesn't matter whether I think he's guilty or Mr. Erwin thinks he's not guilty. It matters what you decide in the course of your deliberations based on the evidence that's been provided to you.

The Judge is going to charge you that when you are considering testimonial evidence, that means a witness is telling you something. You can chose to

State versus McCall

believe all of what someone is telling or none of what someone says or part of what they say and not so much the other part.

In doing so, you take into account their ability to observe a fact, their ability to recall something, their bias, their reason to be truth and their reason to be untruthful. In addition to that, you measure that testimony in light of the other things that you know, things like blood sugars. The same blood sugar level that was observed at the hospital that the doctor told you was normal is what was observed in the ambulance. Both wrong? I don't think so. It's consistent.

I think if you look at the witnesses who testified for the State, you will find that these are people who were doing the best they could. They were doing their job. They were meeting their responsibilities. It makes you feel pretty good about living in Greenville County. Another thing that makes you feel good about living in Greenville County is that the mass majority of us are responsible. We hold ourselves accounting for maintaining our automobiles, for not getting on the road in a condition in an impaired conditioon that could endanger others.

It's not a defense that you're weird. That does not give you a license to be irresponsible and it is

State versus McCall

not a mask for impairment. How do we know he was impaired at the time, the dilated eyes 6 millimeters. The doctor said that's a sign of being under the influence of methamphetamine. He had dilation 6 millimeters.

We also have very good evidence from the toxicologist of what was in his blood stream. We have how he looked. This is not acting weird. This is a photograph of a man who appears to be impaired. That's something we can all appreciate and that's something we can see when we look at this picture, which is what's on the outside. And that's what police officers have to go on. They said, there is something definitely not right about this man. It was not only the things he said but his condition.

But I'll tell you we have another photograph. That's this one, the blood and the urine. Now, we can't look at this and make any conclusions based on it but the SLED toxicologist can look into this and give us an insight as to what was going on and that insight was methamphetamin and Ativan, the very things that the defendant admitted in his own statement to the police very close in time, the very next day, that he had taken four Ativan.

Now, the methamphetamine he never admitted, he never said. The defendant's girlfriend said that she

State versus McCall

did not see him ingest methamphetamine the day before the accident up until about eight hours before the accident. She wasn't with him the whole time, and the toxicologist tell tell you the window was 10 hours. He had a 10 hour window in which to ingest that and she wasn't with him the whole time and she was asleep most of that time.

We started out with a blank sheet and I could go on and suggest to you things that you should consider, but you have it all, you have it all. We had a burden to provide you with as much information as we could and you use your good judgment to determine whether or not you think a minor mistake on something makes everything else wrong.

You judge the caliber of the witnesses who testified for the State, their information at the time, that they observed all these things and did all these things, it was for accuracy. It was for saving lives. It was for accurately documenting what was in a scene. The little details that were presented are documented because those are things you can't remember.

I'm asking you to focus on the State's case and decide whether or not the State painted a picture that proves to you this man was very impaired on that day. There is simply no explanation for him going across a road other than that. Every other excuse that has been

suggested to you is just that, an excuse. Mr. McCall is not only weird but he is a man who can not bring himself to hold himself accountable for the things that he does. Nothing is his fault or responsibility.

I leave you with thought, the suggestion was made that the victims could have sued him. Well, the victims did not bring these charges. The State of South brought these charges on behalf of the people of South Carolina who drive on the roads. That's who brought this case and that's what this is about.

This has been a big burden and at this point it's being transferred to you to determine what you are confirmly convinced of what the facts are in this case.

THE COURT: Alright, ladies and gentlemen, it's time for me to give you the law. Let me start out by saying you recognize, of course, that during the course of this trial that Mr. McCall changed attorneys. Now, that's not relevant to your determination in this case. You can't hold that against him. In the State of South Carolina and the United States of America, a person has a right to have counsel represent him or her, and that person also has a right to proceed on his or her own. But the long and short of it is ultimately that's not relevant to your consideration.

What you are here to do is determine whether

State versus McCall

the State has met its burden of proof and has proven all of the elements of the offense beyond a reasonable doubt.

Now, when we began this case I told you that you have roles and I have a role and my role is to be the judge of the law. I'm going to charge you on the law with regard to the evidence you've heard in this case. Now, if you've come into this courtroom with any predisposition or any prior notion of what you think the law is or what you think the law should be and I would charge you of disabuse yourselves of that because under your oath you swore to accept the law as I give it to you.

Now, of course, your role is to be the judge of the facts. You will determine what the facts are based on your analysis of the evidence that has been presented in this case. You will look at all of the evidence in its totality and determine whether the State has met its burden of proof. You will look at everything that's been submitted and decide what has weight and what doesn't have weight. You'll determine what type of relevant weight it has, that is you'll determine what's important or not.

You'll also look at witnesses and you'll determine whether they are credible or not. Also understand that you can look at a witness's testimony and determine only a portion of it was credible and discard the rest or you may determine that all of it was credible

State versus McCall

or all of it was conversely not credible. My point is it's entirely up to you what you take away from a witness's testimony.

From your own common sensey ou know how to judge credibility. You know that by looking at someone seeing their facial expressions, seeing their body language, recognizing whether they hve something to gain or lose from their testimony, whether someone is credible or not. You would apply your common sense to determine the credibility of witnesses. Also know that as you saw and as I charged you during the conduct of the case you heard testimony from expert witnesses.

You don't value their testimony any more highly than you do any other witness's testimony. You consider that evidence in the same context as any other peice of evidence that you may receive in the case.

Now, go back to what I told you when we first started qualification or selection of jury in this case, Mr. McCall is presumed innocent until such time 12 deliberating jurors determine that the State has met its burden of proving each and every element of the offense that he is charged with beyond a reasonable doubt. He maintains that presumption of innocence until you make that determination.

Now, as he sits here right now in front of

State versus McCall

you, he is presumed innocent. He wears that cloak of innocence and you will in fact determine whether the State has met it's burden of proof.

Now, we thrown about this term reasonable doubt and it does beg the question what exactly is it. In a lot of different court settings there are different standards of proof. If you been in a civil trial you may have heard a standard of proof which is called preponderance of the evience which is a greater weight or more likely or not or if you've heard the most recent court about Tom Bradey, you may have heard that as well. That's more likely than not a probability.

There's a different standard of proof for things such as fraud or or punitive damages and that would be clear and convincing evidence which is higher than preponderance of the evidence. But in criminal trial the standard of proof is beyond a reasonable doubt.

Now, proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilty. Now, there are very few things in this world that you can know with absolute certainty and the law does not require that the State proves it's case beyond any possible doubt. However, do understand that in your deliberatioons that you determine there is a real possibility that the defendant is innocent, then under

State versus McCall

your oath you would find him not guilty of the offense.

Now, ladies and gentlemen, I'm going to reading a little bit of this and sometimes when I get precise definitions, it's incumbent upon me to read because this is an important case for the defendant and for the State. It's an important case for you as well. You spend a little bit of time on it so I apologize I'll read a little bit.

Ordinarily evidence is presented in the courtroom comes in one of two different forms either direct evidence or circumstantial evidence. Direct evidence is evidence that immediately proving a fact to be proven. Circumstantial evidence by contrast is a proof of a chain of facts or chain of events which in combination and in the agragit proves the main fact to be proven.

Now, that's a fairly simple definition but I'm going to give you an example which may help you conceptionalize it a little bit better. Let's say on a January evening you're going to bed and you walk past your front door or your front window and you look out on your front lawn or the parking lot and you see that there's no percipation on the ground. The next morning you walk pass that very same window or door and you see there's a blanket of snow on the ground. You also see in that snow, footsteps which lead to your front door and then lead

State versus McCall

away.

In that set of circumstances you got direct evidence its snowed that night. You can touch it, feel it, taste it, it's there. You also have circumstantial evidence that someone either late that night or early that morning walked to that door and walked away. Now, you can't see that person, touch him or smell, but you know the consequeces of the timing of the falling of the snow and the footprints in the snow leading to your door and then walking away, that's circumstantial evidence.

Ladies and gentlemen, I will tell you that the law does not prefer direct evidence over circumstantial evidence. Again, jsut like with any other piece of evidence you apply whatever weight that you think is appropriate to either direct evidence or circumstantial evidence that you may have received in tihs case.

However do know that to the extent that the State relies on circumstantial evidence all of the CEE must be consistent with each other and when taken together point exclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances mere portray the defendant's behavior as suspicious, the proof has failed.

Alright, ladies and gentlemen, as you know in this instance the defendant has been charged with felony driving under the influence resulting in grave bodily

State versus McCall

injury. Ladies and gentlemen, the State must first prove beyond a reasonable doubt the defendant drove a vehicle while under the influence of drugs.

Now, to prove first all they ahve to prove that he was driving. Next the State must prove beyond a reasonable doubt tht the defendant was sufficiently under the influence to impair his ability to drive with reasonable care with due regard for others and himself as a reasonable prudent person would drive. It is not necessary to show the defendant was in a helpless condition or passed out or even intoxicated or on the other hand the fact that the defendant had at sometime prior to the incident took the drug, does not prove that the defendant was driving under the influence.

Next the State must prove beyond a reasonable doubt that while driving the defendant did an act forbidden by law or neglected a duty imposed by law.

Finally the State must prove beyond a reasonable doubt that the act of the defendant proximately caused great bodily injury to another person.

Alright, ladies and gentlemen, I'm going to pass down to you or pass to you in your jury room this jury verdict. You can't see it from where you are but it's a very simple jury verdict and I'll go it with you very briefly. When you see it in the jury room, I'll

State versus McCall

understand exactly what it is and what you are to do.

It's a very simple verdict form. It has the caption of the case. Then it says we the jury unanimously find the defendant Terry Edward McCall -- understand this says unanimously. It's important for me to know your verdict must be unanimous. If you find that the State has met its burden proving each and every element beyond a reasonable doubt, then that must be unanimous. It can't be 11 to 1, it can't be 10 to 2. It has to be a unanimous verdict of all 12 of you. That verdict must be based upon the evidence that was presented in court and the law as I have defined it to you.

It can not be based upon prejudice or emotion, bias, caprise or any other factor other than the evidence in the facts that have been presented in this case.

So ladies and gentlemen it goes on, as to the charge of felony of driving under the influence resulting in great bodily injury you have two choices, not guilty and guilty. Now, don't think that from the order in which I have placed these two choices that I have any particular preference. One of them has to got be first and I just list them on there, so don't deduce there are any secret messages or attempts from me because I honestly have none.

After you come to a unanimous decisioon you

State versus McCall

will check either guilty or not guilty. Then Dr. Jones after y'all have come to a unanimous decision, you will sign as foreperson and date and let the bailiff know that you have come to a unanimous decision.

Now, I'm going to send you back to your jury room. I don't want you to begin your deliberations quite yet. After this, the attorneys are going to hve the opportunity to take exception to my charge or remind me of something that I failed to say or said in here, and if I made a mistake which I do from time to time and what I'll do is I'll bring you back out and I'll correct it, and then I'll send you back in to deliberate.

If there are no exceptions, I'll send back to you this verdict form and you can begin your deliberations. The attorneys will do an inventory of all of these evidence and when they have done a full inventory they will send back to evidence so you'll have that as well. Please don't begin your deliberations until you get a specific instruction or me to do so.

Please return to your jury room.

(Jury exits the courtroom.)

Exceptions to the charge?

MS. DRAWDY: None from the State.

MR. ERWIN: None from the defense.

THE COURT: I will congratulate and commend

State versus McCall

everyone for having tried an excellent case, for having been civil and professional during the trial. Everyone conducted themselves very well and it makes my job easier. I truly do appreciate it. Thank you, very much. Good luck to all of them.

Please take this verdict form back to them and ask them to begin their two deliberations. Send the alternates to my office and I will discharge them in chambers.

(Jury begin their deliberations.)

THE BAILIFF: Court come to order, court is now in session.

THE COURT: Alright, ladies and gentlemen, I have been advised that the jury has reached a verdict. Is everyone ready to receive the verdict?

(Jury re-enters the courtroom.)

Alright, Mr. Foreman, has the jury reached a unanimous verdict, sir?

MR. FOREMAN: Yes, Your Honor.

THE COURT: Would you pass the verdict form to the bailiff, please.

Madam Clerk, would you publish the verdict?

THE CLERK: Yes, sir.

Your Honor, this is case no 2012-GS-23-10242, the State versus Terry Edward McCall. We the jury

unanimously find the defendant Terry Edward McCall as to the charge of felony driving under the influence resulting in great bodily injury guilty. Signed foreperson George Jones. This is your verdict, please raise your right hand.

(Jury complies)

Thank you.

THE COURT: Alright, counsel, anything further for this jury?

MR. ERWIN: Nothing further for the jury, Your Honor.

MS. DRAWDY: Nothing from the State.

THE COURT: Any post-trial motions?

MR. ERWIN: I make a motion for a new trial at this time.

THE COURT: I'll respectfully deny the motion. We will respect the jury's verdict in this regard.

If you would please approach for sentencing.

Anything additional the State needs to put on the record with regards to sentencing in this matter?

MS. DRAWDY: Yes, Your Honor, we would like to give the Court the defendant's record. It begins in 1980 with possession of methampetamine, possession of marijuana, 1981 possession of marijuana, possession with

State versus McCall

intent to distribute meth; 1984 petty larceny; 1985 shoplifting; 1986 involuntary manslaughter, obtaining controlled substance by fraud; 1988 conspiracy or attempt to possess crack cocaine; 1991 obtaining prescription drugs by fraud, shoplifing; 1992 burlgary second degree and petty larceny; 1993 possession of drug paraphanilla; 1994 burglary Nonviolent second degree and petty larceny; 1995 destroying jail property and three counts of obtaining prescription drugs by fraud; 2000 DUS; 2001 shoplifting, DUS, fraud check; 2002 driving undre suspension; 2003 possession of drug parphanailla; 2005 possession of crack; 2007 resisting arrest, failure to stop for blue light wreckless driving; 2008 possession of meth, drinking alcohol in a public conveyance; 2011 shoplifting; 2013 in North Carolina breaking and entering a motor vehicle; possession of stolen goods and resisting arrest, and 2014 two counts of petty larceny and shoplifting.

The defendant currently has eight pending charges. There are some new ones in our office, the most serious of which is breaking into a motor vehicle burglary second degree and possession of meth or cocaine.

THE COURT: Let me make sure I'm clear on the possible punishments, fine of no less than $5100 and no greater than $10,100 and imprisonment between 30 days and

State versus McCall

15 years, am I correct?

MS. DRAWDY*: And the State's offer to the defendant was for a 10 year sentence for a plea.

THE COURT: Mr. McCall, Mr. Erwin.

DEFENDANT MCCALL: I would like to say to the family I'm sorry this wreck occurred. It was never my intention for anything like this to happen and I would like to take into consideration I realize I have a lengthy record and I realize I made some mistake in my life but everything that you read off I was not convicted of. A majority it was disposed of or nole prossed or not guilty. It was just my record, and I'm asking I'll be 56 years old on August 8th and I'm asking you to -- my poor old lady was in here the other day and I'd like to see them again and I want you to know that I'm sorry and if you could have mercy on me, please.

MS. DRAWDY: I'm sure the Court was aware I did not read anything that was not a conviction. There are --

THE COURT: I understand and that will bare upon my decision to some degree but not to a major extent. I recognize from your record that you have a profound drug problem that you have had probably since adolescents that has followed you your entire life and that's what your criminal record tells me.

State versus McCall

If there's anything that's wrong about that, you're welcomed to clarify.

DEFFENDANT MCCALL: I agree with that, Your Honor, I've had a drug problem. I know they found me guilty of being impaired and I know I wasn't, but never the less I needed help. I've never had any kind of help in my life and I'm asking you if there's anyway you can give me some help with my problem. Prison is not going to do it, I've been there before. It doesn't do anything, it makes things worse.

THE COURT: Do you have the sentencing sheet?

MS. DRAWDY: I do.

THE COURT: Alright. Mr. and Mrs. Suddith, what I'm about to say has no bearing upon sentencing but I do want to take the opportunity to tell you that I'm personally sorry that this has happened to you. Regardless of the circumstances yuo didn't deserve it and as a spouse and a father I can't imagine what you felt on the scene that day. Sir, I know that you have injuries that are going to effect you for the remainder of your life although I'm happy to have had an opportunity to spend some time with you, I'm sorry that it's under these circumstances and I'm sorry this happened to you. You didn't deserve it.

Mr. McCall, again, in looking at your record

it looks like you have a very profound drug problem. Drug problem has followed you for all of your adult life, it appears. Not with standing your assertion that you were not under the influence of an intoxicant, the evidence was overwhelming that you were. I recognize the position that you take. That position is without credibility, okay.

Regardless of whether you were under the influence even driving that car and the condition it was in and given your self-professed physical issues you were having at that point demonstrates a wreckless disregard fo the safety of others. Regardless of whether you characterize it as an intoxication or just a general malfescents, it's not the kind of conduct that can be tolerated in our community.

Now, understand this when I sentence people I'm looking at three things. I'm looking at rehabilitatioon, the deterrant effect and I'm looking at punishment. If you're a first time offender, I'm looking at rehabilitation and I'm looking at punishment last and you would get probation in most cases, but when you become an incorrable crimial and you demonstrate over the course of 30 years that you lack the ability to exercise responsibility and conform you conduct to the mandates of a civil socieity and it ultimately manifests itself in you almost killing someone and affecting him for the rest of

State versus McCall

his life and his daughter mentally for the rest of her life and his wife mentally for the rest of her life, then that's something that is entirely inexcusable.

I know as a matter of fact based on my experience in this system you have been given chance after chance after chance. I knwo that there have been any number of times when you have come in front of a judge like me or another type and you have asked for help with your drug problem and you have not taken advantage of it.

DEFENDANT MCCALL: I've never had any treatment, Your Honor, never.

THE COURT: Mr. McCall, when I sentence you I want you to know, as I've spoken to you any number of times, my decision in this case has not been personal in any way, shape, or form and I wish no ill-will upon you and I have no personal animosity towards you what so ever. The sentence that I hand down in my estimation reflects your conduct in context with the law.

Given that, sir, you are to be sentenced to the State Department of Corrections for a period of 15 years credit for time served. While you are in the Department of Corrections I recommend the addiction treatment unit.

DEFENDANT MCCALL: Your Honor, do I get cred for the ---

State versus McCall

MR. ERWIN: He gave you credit.

THE COURT: I gave you all credit statutory time that you are entitled to that is subsequent to the issuance of your initial ticket you get that time.

Good luck to you, sir.

DEFENDANT MCCALL: This here is non-violent?

THE COURT: It is non-violent.

Good luck to you, sir.

Ladies and gentlemen, you can return to your jury room and relieve you of your responsibilities this week and give you an opportunity to ask me any questions you may have.

Thank you.

---END OF TRANSCRIPT RECORD---

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

Subject: McCALL (Last Name) Terry (First Name) Edward (Middle Name) Greenville (County of Arrest)

Subject's Address: [redacted] Greenville SC 29611

Driver's License Number: [redacted] State: SC DOB: [redacted] Sex: M Race: W

Arresting Officer: DE McAlhany Agency: SCHP

Date of Arrest: 3-4-2012 Time of Arrest: 2013 AM/PM Traffic Ticket Number: F

Date of Test: 3-4-2012 Time of Test: 2045/2105 AM/PM Location of Collection: Greenville Memorial

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

- [x] Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415; or is in violation of Section 56-5-2945, 50-21-113 or 56-1-286 of the 1976 South Carolina Code of Laws as amended.
- [x] Subject has been advised in writing of his/her Implied Consent Rights.

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

- [ ] Subject has completed a valid breath test (DataMaster reading: _____) and the officer has reasonable suspicion that the subject is under the influence of drug(s) other than alcohol therefore a urine sample is requested.
- [ ] Subject has not completed a valid breath test and a voluntary blood sample has been requested to test for the presence of volatiles and/or drugs.
- [ ] Subject is unconscious or otherwise incapable of refusal (has not taken a breath test) and is considered informed, therefore, a blood sample is requested.
- [ ] A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.

  Name and Tilte of Licensed Medical Personnel: Ashley Norman, RN (Please Print)

  Signature of Licensed Medical Personnel: Ashley Norman, RN
- [x] Subject is under arrest for, or in violation of, Section 56-5-2945 (Felony DUI) or 50-21-113 (Felony BUI), and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.
- [ ] A blood sample is requested by the subject for his/her own independent test.

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

- [x] Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
- [x] A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

  Name of Licensed or Trained Collector: Ashley Norman RN (Please Print)

  Signature of Licensed or Trained Collector: Ashley Norman RN

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

- [x] Sample collection was under my direct supervision.
- [x] Sample container is properly labeled with the subject's name and time of collection.
- [x] Sample is properly sealed and ready for transport.

Signature of Officer: [signature] Date: 3-4-2012

I, [signature] (Subject's Signature) received a copy of this report on 3-4-2012 (Date).

Copy to: Subject, Hospital, SLED

JOINT EXHIBIT State 29

PENGAD 800-631-6989

SLED Forensics Form # TOX 001, May 2010

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF GREENVILLE | ) | IN THE COURT OF GENERAL SESSIONS<br>THIRTEENTH JUDICIAL CIRCUIT |
| THE STATE OF SOUTH CAROLINA<br><br>VS. | ) | INDICTMENT # 2012GS2310242 |
| TERRY EDWARD MCCALL,<br>DEFENDANT. | ) | **STATE'S BRIEF IN OPPOSITION TO SUPPRESSION OF BLOOD AND URINE SAMPLES AND ANALYSIS** |

COURT'S
EXHIBIT NO. 7
IDENTIFICATION/EVIDENCE
DKT.#
DATE:
PENGAD 800-631-6989

COMES NOW the State of South Carolina, by and through the undersigned, who submits this Brief in Opposition to Defendant's Motion for Suppression of the Defendant's Blood and Urine Samples. For the following reasons, the State requests that this Court deny Defendant's motion.

## STATEMENT OF FACTS

On March 4, 2012, at approximately 5:50 P.M., a collision occurred between Robert Sudduth and Terry Edward McCall near the intersection of SC 291 and Worley Road in Greenville County. Just prior to the collision, Mr. McCall was traveling northbound on S.C. 291 towards U.S.-276, near the Cherrydale Shopping Center. Mr. Sudduth was traveling southbound on S.C. 291 towards U.S.-29, or Wade Hampton Boulevard. Mr. McCall was driving a 1994 green Ford Explorer. Mr. Suddeth was driving a 1997 GMC Sierra. S.C. 291 is a six-lane highway, three lanes in each direction, with a paved central median separating the two directions of travel. Both vehicles were rendered inoperable by the collision.

Greenville County Emergency Services, Parker Fire Department, and the South Carolina Highway Patrol all responded to the scene. Trooper David McAlhany with the South Carolina Highway Patrol conducted an initial investigation of the collision. Trooper McAlhany determined that the accident occurred in Mr. Sudduth's lane. Witnesses at the scene provided statements that they observed Mr. McCall's Explorer proceed across the median and collide with Mr. Sudduth's truck in his lane. The South Carolina Highway Patrol Major Accident Investigation Team ("MAIT") also responded to the scene. Their accident reconstruction confirmed the collision location.

Mr. Sudduth suffered severe, life-threatening injury in the collision, and was non-responsive after the accident. He was entrapped inside his vehicle for 45 minutes before being extricated from the vehicle by Parker Fire. He was then transported immediately by EMS. Mr. McCall was responsive at the scene, though he also suffered injuries. He was transported to Greenville Memorial

Hospital by EMS at 6:29 P.M. Several empty beer cans were found in the front passenger area of his vehicle.

Trooper McAlhany concluded his investigation of the scene at the direction of his scene supervisor, Sgt. Wes Hiott. He then began to interview witnesses to the accident before proceeding to the hospital to speak with Mr. McCall. At approximately 7:58 P.M., Trooper McAlhany arrived at the hospital. During his discussion with the Defendant, Trooper McAlhany did not observe an odor of alcoholic beverage, but he observed the Defendant appeared to be under the influence of drugs. Mr. McCall also admitted to taking prescription drugs prior to the accident. Having established probable cause for a Felony DUI based on the accident investigation, the injuries to the victim, the observation of the Defendant, and the admission of the Defendant, Trooper McAlhany placed the Defendant under arrest for Felony Driving Under the Influence at 8:13 P.M. At that time, pursuant to S.C. Code § 56-5-2946, Trooper McAlhany advised the Defendant that he was under arrest, provided him with a "Felony Driving Under the Influence Advisement," and requested that he submit to a blood and urine sample. *See* State's Ex. A. No search warrant was obtained for these samples. The Defendant stated he understood the advisement, signed the advisement, and provided a blood sample at 8:45 P.M. and a urine sample at 9:05 P.M. Trooper McAlhany and Ashley Norman, the nurse who collected the sample, will testify that the Defendant gave actual consent. A subsequent analysis of these samples performed at SLED revealed positive results for methamphetamine and lorazepam.

## ARGUMENT

This Court should deny Defendant's motion to suppress the blood and urine samples and their subsequent analysis for the following reasons:

I. The Defendant provided actual consent to the collection of samples and/or he was not permitted to refuse to provide the samples pursuant to S.C. Code § 56-5-2946, *see* State v. Long, 363 S.C. 360, 610 S.E.2d 809 (S.C. 2005); State v. Cuevas, 365 S.C. 198, 616 S.E.2d 718 (S.C. Ct. App. 2005);

II. The recent United States Supreme Court case of Missouri v. McNeely, 133 S. Ct. 1552, 185 L. Ed. 2d 696 (2013), did not render the collection of the samples allowed by S.C. Code Ann. § 56-5-2946 unconstitutional;

III. Should the Court rule S.C. Code Ann. § 56-5-2946 is unconstitutional pursuant to McNeely, the State would show the facts of the case and the unique nature of Felony DUI Cases Establish Exigent circumstances such that a warrant to attain the samples was not required;

IV. If the Court Finds that Exigent Circumstances Did Not Exist and that a Warrant was Required, then the Evidence Should Not Be Excluded Based on the "Good Faith" Exception to the Warrant Requirement. *See* United States v. Leon, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984).

## I. The Defendant Provided Actual Consent to the Collection of Samples

At the outset, the State concedes that the obtainment of forensic samples from a Defendant constitutes a "search" under the Fourth Amendment. *See* Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966). Searches under the Fourth Amendment where the subject of the search has provided consent do not require a warrant or probable cause. *See* Schneckloth v. Bustamonte, 412 U.S. 218, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973); *see also* State v. McKnight, 352 S.C. 635, 576 S.E. 2d 168 (S.C. 2003). The key inquiry in determining whether consent was given is whether the consent was "voluntary" based on the totality of the circumstances. Id. "Whether a consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances." State v. Greene, 330 S.C. 551, 499 S.E.2d 817 (S.C. Ct. App. 1997). The State concedes that the Defendant was informed that he must provide a sample pursuant to S.C. Code Ann. § 56-5-2946. The State would show, through testimonial evidence of Trooper McAlhany and Nurse Ashley Norman, that the Defendant did not resist or provide any objection to giving the samples. Therefore, his voluntary consent renders the samples taken admissible even in the absence of a warrant.

## II. Under S.C. Code § 56-5-2946 the Defendant Was Not Permitted to Refuse to Provide the Samples And McNeely Did Not Render the Collection of Samples Allowed by S.C. Code § 56-5-2946 Unconstitutional

S.C. Code § 56-5-2946, titled "Submission to Testing for Alcohol or Drugs," states:

> (A) Not withstanding any other provision of law, a person must submit to either one or a combination of chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs, if there is probable cause to believe that the person violated or is under arrest for a violation of [the offense of felony driving under the influence].
>
> (B) The tests must be administered at the direction of a law enforcement officer. The administration of one test does not preclude the administration of other tests. The resistance, obstruction, or opposition to testing pursuant to this section is evidence admissible at the trial of the offense which precipitated the requirement for testing...
>
> (C) The provisions of Section 56-5-2950 [the implied consent statute] relating to the administration of tests to determine a person's alcohol concentration, additional tests at the person's expense, the availability of other evidence on the question of whether or not the person was under the influence of alcohol, drugs, or a combination of them, availability of test information to the person or his attorney, and the liability of medical institutions and persons administering the tests are applicable to this section....

Pursuant to the clear language of S.C. Code Ann. § 56-5-2946, the Defendant is not permitted to refuse the testing of his breath, blood, and urine where there is probable cause to believe that he has committed a Felony DUI, but all other aspects of South Carolina's Implied Consent statute are incorporated. This statute, as well as S.C. Code Ann. § 56-5-2950, constitute the totality of South Carolina's implied consent protocol.

***A. Implied Consent Statutes Are Reasonable Under U.S. Jurisprudence***

The premise of "Implied Consent" law is that a person who operates a motor vehicle on a public highway is deemed to give consent to testing for alcohol and/or narcotics where an officer has arrested the individual for acts "alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs." *See* S.C. Code § 56-5-2950(A). The refusal to provide a sample is punishable by a license suspension and the ability to use the refusal against the individual in court. *See* S.C. Code § 56-5-2951. *See also* S.D. v. Neville, 459 U.S. 553, 103 S. Ct. 916, 74 L. Ed. 2d 748 (1982) (holding that it is not a violation of Fifth Amendment for a state to utilize evidence of refusal pursuant to an implied consent statute against a Defendant at trial). South Carolina has had an implied consent statutory scheme since 1962. *See* S.C. Code § 46-344(a) (1962). Further, all fifty states have enacted implied consent statutes. *See* Missouri v. McNeely, 133 S. Ct. 1552, 1566, 185 L. Ed. 2d 712 (2013) (citing NHTSA Review 173, No. 811374, Mar. 2011). These statutes have consistently withstood constitutional scrutiny. *See* Neville, *supra*; *see* also Mackey v. Montrym, 443 U.S. 1, 99 S. Ct. 2612, 61 L. Ed. 2d 321 (1978) (holding that Massachusetts implied consent statute does not violate Due Process Clause of Constitution because license suspension after refusing to submit to test is subject to judicial review); *see* State v. Miller, 257 S.C. 213, 185 S.E.2d 359 (S.C. 1971) (*citing* State v. Smith, 230 S.C. 164, 94 S.E. 2d 886 (S.C. 1956) and holding that the use of a Defendant's refusal in a prosecution for driving under the influence does not violate Fifth Amendment privilege against self-incrimination).

South Carolina's implied consent protocol imposes a direct set of rules limiting the scope of law enforcement searches under the Fourth Amendment. A breath test must first be administered to determine if alcohol is the impairing substance. If an officer has reasonable suspicion to believe the person is under the influence of drugs other than alcohol or a combination of drugs and alcohol, a urine test may be collected after the breath test. *See* S.C. Code § 56-5-2950(A). Further, an officer may not request a blood sample unless licensed medical personnel indicate that the arrestee is

physically unable to provide a breath sample, the arrestee is unconscious or dead, or the arrestee has an injured mouth that would compromise the accuracy of the breath test. Id. The United States Supreme Court has clearly supported a State's legislative decision to impose protections greater than what the Fourth Amendment requires. *See* Virginia v. Moore, 553 U.S. 164, 128 S. Ct. 1598, 170 L. Ed. 2d 559 (2008) (holding that a State is free to impose higher standards on searches and seizures than required by the Federal Constitution). This statute acts as a legislative agreement to balance the State's interest in accurate investigation and enforcement of highway safety laws with the constitutional rights of the citizenry under the Fourth, Fifth, and Fourteenth Amendments. *See* Mackey, *supra*; Neville, *supra*.

### *B. S.C. Code § 56-5-2946 is Part of the Implied Consent Scheme and is Supported by Supreme Court Case Law*

This legislative backdrop is the basis for the implementation of S.C. Code § 56-5-2946 and is part of this statutory protocol. The first iteration of this code section was established in 1998 by L. 1998, Act 434 § 6. While S.C. Code § 56-5-2950 has seen a number of modifications since its initial passage, S.C. Code § 56-5-2946 has remained unchanged aside from the addition of subsections. The statute allows for the warrantless mandatory chemical testing of an arrestee's blood, breath or urine in a very specific circumstance, namely, where a person involved in an accident with an individual who is suspected of impairment due to alcohol and/or drugs is subjected to great bodily injury or death. This is because the nature of this particular situation creates an exigent circumstance which is not subject to the warrant requirement. This reasoning on the part of the legislature is reflected in the seminal case of Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966).

In Schmerber, the Petitioner Defendant, was convicted of driving under the influence after a traffic accident. Id. at 758. The Defendant was transported to the hospital for medical treatment and the officer stayed behind to investigate the accident. The officer in Schmerber observed on the scene that the Defendant's eyes had a "bloodshot, watery...glassy appearance." Id. at 769. The officer observed that the Defendant appeared the same at the hospital two hours after the accident. The Defendant refused to provide a blood sample at the officer's request. Id. at 759. A blood sample was obtained from the Defendant over his objection. Id.

The Defendant argued that test constituted an unlawful search under the Fourth Amendment. Id. The Supreme Court rejected the Defendant's argument and affirmed his conviction. In reaching its determination, the Court reasoned that the "special facts" of Schmerber, namely the time required

to investigate the accident scene, the dissipation of alcohol from the Defendant's blood stream as time passes, and the fact that there was no time to seek out a magistrate and secure a warrant, established exigent circumstances such that the use of a blood test to determine the Defendant's blood alcohol level was reasonable. Id. at 771. The Court also held that the use of the blood test was a highly effective means of determining the degree to which a person was under the influence of alcohol, and that it was a minimal intrusion to the Defendant's Fourth Amendment protection against unreasonable searches and seizures. Id.

S.C. Code § 56-5-2946 is a virtual codification of the "special facts" that were present in Schmerber. The statute is only applicable where an individual is under arrest for a violation of S.C. Code § 56-5-2945, which by its very nature mandates that a traffic accident has occurred that has resulted in serious bodily injury or death to a driver.

As stated *supra*, this statutory provision has been in place since 1998 and law enforcement has relied upon its use. The only case law interpreting the statute since that time is based on reconciling conflicts with the implied consent law, the DUI videotaping statute, and the unique situation implicated in S.C. Code § 56-5-2946. *See* State v. Long, 363 S.C. 360, 610 S.E.2d 809 (S.C. 2005) (holding that S.C. Code § 56-5-2946 allows an officer to request a blood test instead of a breath test in spite of the requirements of S.C. Code § 56-5-2950); *see* State v. Cuevas, 365 S.C. 198, 616 S.E.2d 718 (S.C. Ct. App. 2005). In Felony DUI cases in Greenville County, officers solely relied on the statute to obtain blood until the Supreme Court's ruling in Missouri v. McNeely.

### *C. McNeely Does Not Render S.C. Code § 56-5-2946 Unconstitutional*

In Missouri v. McNeely, the Supreme Court addressed a circuit split arising out of the Court's holding in Schmerber. McNeely involved a "routine DUI investigation" where the Defendant was subjected to a traffic stop. McNeely, 133 S. Ct. at 1556. The officer in McNeely noticed several signs of intoxication. Id. After a series of poorly performed field sobriety tests, the officer presented the Defendant with a portable breathalyzer and asked him to provide a breath sample. McNeely, 133 S. Ct. at 1556-57. The officer then placed McNeely under arrest and began to transport him to the station house, but when McNeely indicated that he would not submit to a breath test there, he changed course and took him straight to a hospital. Id.

At the time of McNeely's arrest, Missouri had an implied consent statute. Id. *See* Mo. Ann. Stat. § 577.020.1. 577.041 (West 2011). However, the statute did not provide for any particular test to be administered before any other, nor did it mandate that a test be taken where great bodily injury

had occurred. Id. In short, the arrestee always had a right to refuse under Missouri law, subject to a license suspension.

Upon arrival at the hospital, the officer requested that McNeely submit to a blood test. McNeely, 133 S. Ct. at 1557. McNeely was read his implied consent rights and informed of the consequences of failing to take the test. Id. McNeely still refused, and the officer directed hospital personnel to draw a blood sample over his objection. Id. The sample was obtained at 2:35 AM, and the initial arrest occurred at 2:08 AM. Id.

At trial, McNeely argued that the blood result was obtained pursuant to an unlawful search. Id. The trial court held that the State had violated the Fourth Amendment because the only evidence of exigent circumstances was the dissipation of alcohol in McNeely's blood and suppressed the evidence. Id. The Missouri Supreme Court agreed, holding that Schmerber required courts to undergo a totality of the circumstances analysis when determining whether exigency permits a nonconsensual, warrantless blood draw. Id.

On appeal to the Supreme Court, the State argued the broad proposition that the nature of drunk driving cases will always justify warrantless blood draws because the dissipation of alcohol in a person's blood is akin to the exigent circumstance of "destruction of evidence," one of the major holdings of Schmerber. McNeely, 133 S. Ct. at 1560. The State urged the Court to adopt a bright line rule that warrantless blood draws were *per se* reasonable in all driving under the influence cases involving alcohol. Id. The Supreme Court rejected this argument and declined to adopt a bright line rule, holding that reasonableness based on an exigent circumstance requires a case-by-case assessment. Id. at 1561. Further, the Court held that "[i]n those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the efficacy of the search, the Fourth Amendment mandates that they do so." Id. In summary, the Supreme Court's ruling did not overrule its holding in Schmerber, but merely stated that a case-by-case analysis must be applied and that a bright line *per se* rule that blood draws in all drunk-driving investigations based solely on the dissipation of alcohol in the blood stream could not pass constitutional muster.

There are a number of very important factual differences between the McNeely case and those involving blood draws pursuant to S.C. Code § 56-5-2946. First, by its very nature, a traffic accident is always implicated where § 2946 is involved. This is a substantial difference from the "routine DUI investigation" in McNeely. Second, the probable cause that arises may not be based solely on the consumption of alcohol. In many cases where § 2946 is applied, and in the present

case specifically, officers may not know what particular substance is causing the impairment. It is vital to the accuracy of the investigation that an accurate determination is made with regards to the impairing substance. McNeely highlighted the gradual and relatively predictable manner that alcohol dissipates over time. McNeely, 133 S. Ct. at 1561. However, numerous substances with substantial impairing effects can have an unpredictable half-life and may not be in the system for long at all. Third, McNeely involved a very short time frame. The time between arrest and testing was only thirty minutes. Where an accident is involved, as was demonstrated in Schmerber, the investigation may require hours to complete before an officer can arrive at the suspect's location for testing. These circumstances are vastly different from those that the court considered in McNeely, and the State has a substantial interest in ensuring that in the very limited circumstance when these exigencies exist, officers understand the procedures required in order to obtain these samples.

There are also aspects of the warrant procedure that the McNeely court highlighted in dicta that are inapplicable in South Carolina. McNeely highlighted the vast improvements in technology which assist in obtaining warrants from a neutral and detached magistrate. McNeely, 133 S. Ct. at 1562. However, such rapid means are not permissible in South Carolina as the state has chosen to place greater restrictions on search warrants by mandating that the warrants be issued in the presence of a magistrate, under oath, and upon an affidavit. *See* S.C. Code § 17-13-140. *See also* State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 678 (S.C. 2000). Therefore, in all cases where officers obtain search warrants, it is necessary to appear before the magistrate in person and to provide a sworn affidavit, which must be prepared in advance. This takes critical time that gradually erodes the reliability of any tests conducted pursuant to § 2945.

Finally, the McNeely court recognized the viability and importance of Implied Consent statutes, and cited South Carolina's statute as an example in footnote 9 of the opinion. McNeely, 133 S. Ct. at 1566 f. 9. In so doing, the Court reasoned that because "[s]tates have a broad range of legal tools to enforce their drunk-driving laws and to secure BAC evidence without undertaking warrantless nonconsensual blood draws," and further that because "[s]tates place significant restrictions on cases where officers may obtain a blood sample despite a suspect's refusal," they were even less inclined to adopt the per se rule that the State sought. *See* McNeely, 133 S. Ct. at 1566. This observation in dicta clearly highlights the Court's acceptance that state legislatures can dictate particular circumstances more restrictive than what the Fourth Amendment requires where such searches are reasonable.

### *D. Because McNeely Did Not Hold That Implied Consent Statutes Mandating Sample Collection in Felony DUI Cases Were Unconstitutional, the Statute is Constitutional and the Samples are Admissible.*

In summary, the Supreme Court's holding in McNeely merely states that the dissipation of alcohol in a person's blood stream is not a per se reason to justify a warrantless search. This has no implication on the constitutionality of S.C. Code § 56-5-2946. As the South Carolina Supreme Court has stated, "[a]ll statutes are presumed constitutional and will, if possible, be construed so as to render them valid." Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (S.C. 1999). Therefore, in the present case, which is factually inapposite to McNeely and more in line with Schmerber, the blood and urine samples obtained pursuant to S.C. Code § 56-5-2946 are admissible.

## III. The Collection of Samples Did Not Require a Warrant Based on the Exigent Circumstances Exception

Even if this Court were to decide that S.C. Code § 56-5-2946 is unconstitutional in light of McNeely, the State would show that "special facts" existed to establish exigent circumstances alleviating the State from the warrant requirement.

The State concedes that a warrantless search is per se unreasonable and thus violative of the Fourth Amendment unless the search falls within one of the exceptions to the exclusionary rule. Flippo v. West Virginia, 528 U.S. 11, 120 S. Ct. 7 145 L. Ed. 2d 16 (1999) (holding that there is no exception allowing a general search of a crime scene); United States v. Karo, 468 U.S. 705, 104 S. Ct. 3296, 82 L. Ed. 2d 530 (1984); State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000); State v. Bultron, 318 S.C. 323, 457 S.E.2d 616 (Ct. App. 1995). The exigent circumstances doctrine allows warrantless entry by criminal law enforcement officials based upon probable cause when there is a compelling need for official action and no time to secure a warrant. State v. Brown, 289 S.C. 581, 347 S.E.2d 882 (1986); *see also* Roaden v. Kentucky, 413 U.S. 496, 93 S. Ct. 2796, 37 L. Ed. 2d 757 (1973).

Schmerber held that the collection of the samples in that case was justified under the exigent circumstances exception. As stated in II-C, the factual scenarios between Schmerber and McNeely are vastly different. While Schmerber held that the dissipation of alcohol in the blood is one of the factors to consider, it also highlighted delays in obtaining a sample as a result of investigating a traffic accident, the difficulty in obtaining a warrant, and the possibility that the suspect and the officer may be in two different places at or near the time of the investigation. Schmerber held that

all of these "special facts" justified obtaining samples without a warrant under the Fourth Amendment.

Here, the same "special facts" highlighted in Schmerber exist. When Trooper McAlhany arrived at the collision scene, both drivers were being treated by EMS personnel. Trooper McAlhany's first responsibility, as directed by Sgt. Wes Hiott, was to assist in the accident investigation. During the course of this investigation, Trooper McAlhany took written and videotaped statements from two witnesses to the accident. It was not until more than two hours later that Trooper McAlhany went to the hospital to meet with the Defendant. Further, as stated *supra*, South Carolina does not have telephonic or e-warrants. All warrants must be sworn to by affidavit in the presence of a magistrate.

In addition, and in contrast to both Schmerber and McNeely, Trooper McAlhany observed that it was unlikely that the Defendant was under the influence of alcohol based on the lack of odor of an alcoholic beverage. At that time, based on his experience and training, he could tell that the Defendant was impaired, but he did not know by what substance. At a minimum, Trooper McAlhany only knew that the Defendant had taken prescription drugs at some point during the day based on the Defendant's statements. Because drugs can vary widely in their half-life, it was vital to conduct a chemical test immediately to ensure the probative value of the test. This additional "special fact" in conjunction with all others aforementioned justifies the warrantless obtainment of the samples in this case.

Finally, and also in contrast to Schmerber and McNeely, the Defendant in this case stated that he would provide the samples. In both Schmerber and McNeely, the Defendant affirmatively refused to provide the samples requested.

Because this case contains "special facts" that are much more in line with Schmerber than McNeely, exigent circumstances existed to justify the collection of the samples without a warrant under Fourth Amendment jurisprudence.

## IV. The Court Should Not Suppress the Samples in this Case Based on Trooper McAlhany's Good Faith Reliance on S.C. Code § 56-5-2946

If this Court finds that S.C. Code § 56-5-2946 is unconstitutional and that exigent circumstances did not exist to justify the sample collection, then the Court should decline to utilize the exclusionary rule to suppress the evidence based on the "Good Faith Exception."

The exclusionary rule does not require the suppression of evidence obtained by an officer acting in an objectively reasonable reliance on a statute that is later declared to be unconstitutional.

Reliance on a statute is not reasonable if "the legislature wholly abandoned its responsibility to enact constitutional laws" or if "a reasonable officer should have known that the statute was unconstitutional." Illinois v. Krull, 480 U.S. 340, 107 S. Ct. 1160, 94 L. Ed. 2d 364 (1987).

The question of suppression for a Fourth Amendment violation turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct. Herring v. U.S., 555 U.S. 135, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009) (exclusionary rule does not apply for police record keeping error).

This issue is one of first impression in South Carolina. In light of McNeely, multiple jurisdictions have struggled with squaring their holdings and their own practices in the collection of samples in DUI cases. However, a court in the Fourth Circuit has recognized the viability of this exception in the context of DUI cases.

The District Court of Maryland provides excellent analysis on this issue. In United States v. Lechliter, 3 F. Supp. 3d 400 (U.S. Dist. Ct. D. Md. 2014), after McNeely was decided, a federal magistrate issued an order in seventeen pending cases that (1) McNeely applied retroactively, and (2) that warrantless blood testing constituted a violation of the Fourth Amendment and the good faith exception did not apply. Id. at 401. On the facts of the case, the officer obtained a warrantless blood draw in response to a traffic accident that occurred in a United States Park. Id. At the scene, the officer observed numerous indicia of alcohol impairment. Id. The officer placed the Defendant under arrest for driving under the influence and began to take the Defendant back to the station for a breath test. Id. The officer made the decision to request blood because the Defendant stated that he "absolutely would not" consent to a breath test. Id. at 402. The officer obtained the blood sample without a warrant and over the Defendant's objection. Id. When asked why he did not obtain a warrant, the officer stated that he did not know he had to because "under 36 C.F.R. § 4.23(c)(3), he had the right to choose blood, urine or breath." He added that he had "never" sought a warrant for a "blood test" in the past and that he was unaware of any procedure for obtaining a warrant in the middle of the night. It is also of note that in response to McNeely, the United States Park Police immediately established an expedited warrant procedure. Id. However, the District Court overturned the federal magistrate's ruling suppressing the evidence in Lechliter, because the officer acted in accordance with the law at the time the sample was obtained.

In the present case, the reliance on statutory law is even more pronounced where a protocol has existed for sixteen years without constitutional challenge. Based on this statute, a "Felony Driving Under the Influence Advisement" was created by SLED and a specific procedure has been

followed by all officers in obtaining the samples. Law Enforcement Agency training established that this method of obtaining samples was the only method of doing so. There is no question that these actions were conducted in "objectively" reasonable reliance on a statute later challenged as unconstitutional. *See* Krull, *supra.*

Law enforcement agencies acting in reliance on law existing prior to McNeely have had to adjust their methods in light of those issues. It is true that at this time Greenville County agencies have officers obtain search warrants for blood in Felony DUI cases. These agencies also no longer inform the Defendant he does not have a right to refuse. Essentially, during the current uncertainty, law enforcement has adjusted their investigative means to ensure the admissibility of these samples. This is due to the fact that until McNeely, there was never any question that the samples could be obtained pursuant to S.C. Code § 56-5-2946. The present case is one of such circumstances. Trooper McAlhany never considered that he would have to obtain a warrant for the Defendant's blood. It was impractical for him to obtain anything other than a blood or urine test because the Defendant was at the hospital and it was clear that impairment was caused by drugs. In short, he relied on his training based on a law that was and to this day still is constitutional. This scenario falls squarely within the "Good Faith" exception to the warrant requirement.

## CONCLUSION

For the aforementioned reasons, the State requests that this Court deny Defendant's Motion to Suppress the Blood and Urine Samples obtained in this case

Respectfully Submitted,

Stan Overby – Bar No. 79870
Assistant Solicitor
13th Judicial Circuit

Sara Lee M. Drawdy – Bar No. 1747
Assistant Solicitor
13th Judicial Circuit

May 12th, 2015

# ADVISEMENT OF IMPLIED CONSENT RIGHTS

Jerry Edward McCall — [redacted]

Subject's Name (Print) — Date of Birth

[redacted] — SC

Driver's License Number — State Licensed

## FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT

(A) Will test be video recorded? If answer is Yes, start here→ - Inform subject of video recording.
If answer is No, start here → - Inform subject of type samples requested(i.e. breath,blood,urine).

(B) Provide subject with a written copy of the following advisement and read the advisement to the subject:

- You are under arrest for Felony Driving Under the Influence (Felony DUI), Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section.
- The officer has directed that samples be taken for alcohol and/or drug testing.
- The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- Pursuant to Section 56-5-2946, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs.
- The resistance, obstruction, or opposition to testing pursuant to Section 56-5-2946 is evidence admissible at trial.
- If your tests or samples have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month.
- You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
- You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
- If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

(C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occured.)
(D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occured.)

## ADVERTENCIA POR EL DELITO DE MANEJAR BAJO LOS EFECTOS DE ALCOHOL O DROGAS(FELONY DUI)

(A) ¿Se grabará en video el análisis? Si la respuesta es Si, empieza aqui→ - Informe al sujeto que va a ser grabado en video.
Si la respuesta es No, empieza aqui→ - Informe al sujeto de lo que se requiere(ejemplo: soplar, sangre, urina.)

(B) De al sujeto una copia escrita de la siguiente advertencia y lea la advertencia al sujeto:

- Usted queda detenido por el Delito de Manejar Bajo los Efectos de Alcohol o Drogas (Felony DUI), Sección 56-5-2945, del Código de Leyes de Carolina del Sur de 1976, según su enmienda, o un agente del orden público tiene motivo justificado para afirmar que usted ha quebrantado esta sección.
- El agente ordenó que usted se someta a que le saquen muestras de alcohol y/o drogas.
- Se obtendrán y se analizarán las muestras según la Sección 56-5-2950 y las normas de SLED.
- Según la Sección 56-5-2946, usted tiene que someterse a alguno de los análisis químicos, o a una combinación de los mismos, para determinar si existe la presencia de alcohol, drogas o una combinación de alcohol y drogas.
- Si usted se resiste, dificulta o se opone a los análisis, según la sección 56-5-2946, este hecho se considera prueba admisible ante un tribunal de justicia en un juicio oral.
- Si en sus análisis o muestras se detecta una concentración de alcohol de quince centésimos del uno por ciento (0,15%) o más, se le deberá suspender el derecho de manejar en Carolina del Sur por lo menos durante un (1) mes.
- Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice sus propios análisis adicionales, los cuales usted mismo tiene que pagar y en ese caso, el agente debe brindarle ayuda si usted lo solicita.
- Usted tiene el derecho de solicitar una audiencia administrativa dentro de los treinta (30) días de la fecha en que se emitió la notificación de la suspensión.
- Si usted no solicita una audiencia administrativa o si se le confirma la suspensión en la audiencia administrativa, usted tiene que matricularse en un Programa de Medidas Contra el Abuso del Consumo del Alcohol y las Drogas.

Si aplica, efectue los procesos siguientes:

(C) Inspecciona la boca del sujeto y quite material ajena de la boca. (Ignora si se niega el sujeto.)
(D) Anade datos biograficos en el DataMaster DMT. (Esto es requerido para todos los examenes aunque se niege el sujeto.)
(E) Observe al sujeto un minimo de (20) minutos antes de obtener un ejemplar al soplar aire.(Ignora si se niega.)

Subject's Signature
Firma del Sujeto (Recibió una copia)

Officer's Signature — 3-4-12 2013
Firma del Agente — date/time fecha/hora

# SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

Subject: McCALL (Last Name) Terry (First Name) Edward (Middle Name) Greenville (County of Arrest)

Subject's Address: [redacted] Greenville SC 29611

Driver's License Number: [redacted] State: SC DOB: [redacted] Sex: M Race: W

Arresting Officer: DE McAlhany Agency: SCHP

Date of Arrest: 3-4-2012 Time of Arrest: 2013 AM/PM Traffic Ticket Number: F

Date of Test: 3-4-2012 Time of Test: _____ AM/PM Location of Collection: Greenville Memorial

## CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

- [x] Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415; or is in violation of Section 56-5-2945, 50-21-113 or 56-1-286 of the 1976 South Carolina Code of Laws as amended.
- [x] Subject has been advised in writing of his/her Implied Consent Rights.

## CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

- [ ] Subject has completed a valid breath test (DataMaster reading: _____) and the officer has reasonable suspicion that the subject is under the influence of drug(s) other than alcohol therefore a urine sample is requested.
- [ ] Subject has not completed a valid breath test and a voluntary blood sample has been requested to test for the presence of volatiles and/or drugs.
- [ ] Subject is unconscious or otherwise incapable of refusal (has not taken a breath test) and is considered informed, therefore, a blood sample is requested.
- [ ] A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.

  Name and Tilte of Licensed Medical Personnel: Ashley Norman, RN (Please Print)

  Signature of Licensed Medical Personnel: Ashley Norman, RN
- [x] Subject is under arrest for, or in violation of, Section 56-5-2945 (Felony DUI) or 50-21-113 (Felony BUI), and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.
- [ ] A blood sample is requested by the subject for his/her own independent test.

## *THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR*

- [x] Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
- [x] A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

  Name of Licensed or Trained Collector: Ashley Norman RN (Please Print)

  Signature of Licensed or Trained Collector: Ashley Norman RN

## FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

- [x] Sample collection was under my direct supervision.
- [x] Sample container is properly labeled with the subject's name and time of collection.
- [x] Sample is properly sealed and ready for transport.

Signature of Officer: [signature] Date: 3-4-2012

I, [signature] (Subject's Signature) received a copy of this report on 3-4-2012 (Date).

Copy to: Subject, Hospital, SLED

080014976022 250239376
MCCALL,TERRY EDWARD
MD,ER
EMS
Admit Date - 03/04/12
Date of Birth [redacted]

PENGAD 800-631-6989
COURT'S EXHIBIT NO. 3
IDENTIFICATION/EVIDENCE
DKT.# _____
DATE: _____

# CHAIN OF CUSTODY
## GREENVILLE HOSPITAL SYSTEM LABORATORIES

This form must accompany all specimens which have medico-legal implications (drug screens, blood alcohol, rape cases, bullets, etc.). Submit a separate form for each specimen type.

ABMH ___ MMOB ___
CHOS ___ UTCWH ___
GMMC Y NGH ___
HH ___

Other (please specify)

080014976022 250239376
Name MCCALL,TERRY EDWARD
MD,ER
EMS Admit Date - 03/04/12
Date of Birth - [redacted]
DOB
SS# Sex
Account # Physician Lance

Test to be performed urine drug screen Patient Status

## STATEMENT OF ORIGIN

Type of Specimen: Urine Y Blood ___ Vitreous Fluid ___ Bile ___ Other (please specify) ___

Site from which obtained: ___

Technique used for obtaining: mided specimen

Specimen obtained by: Sign Ashley Norman RN Print Ashley Norman RN

## DESCRIPTION OF SPECIMEN

Include model #, identifying marks, condition, etc. when appropriate.

clear amber urine in specimen cup

Urine temperature within range: ✓ Yes, 90 - 100°F / 32 - 38°C ___ No, record temperature here ___ ___ N/A

Specimen described by: Sign Ashley Norman RN Print Ashley Norman RN

## CHAIN OF CUSTODY

Each person signing below certified that the above described specimen was transferred to him / her in the condition described (unless otherwise noted) and he / she holds themselves responsible for the specimen until relinquished to the next person.

| DATE | TIME | SPECIMEN RECEIVED / RELINQUISHED BY: | REMARKS |
|---|---|---|---|
| 3/4/12 | 2045 | SIGN Ashley Norman RN<br>PRINT Ashley Norman | specimen collected and given to Trooper DE McAthany |
| 3/4/12 | 2046 | SIGN DE McAthany<br>PRINT DAVID E McAthany | |
| | | SIGN ___<br>PRINT ___ | |
| | | SIGN ___<br>PRINT ___ | COURT'S EXHIBIT NO. 1 IDENTIFICATION/EVIDENCE DKT.# ___ DATE: ___ PENGAD 800-631-6989 |
| | | SIGN ___<br>PRINT ___ | |

GHS/Laboratories Rev 12/94 SA

# CHAIN OF CUSTODY
## GREENVILLE HOSPITAL SYSTEM LABORATORIES

This form must accompany all specimens which have medico-legal implications (drug screens, blood alcohol, rape cases, bullets, etc.). Submit a separate form for each specimen type.

ABMH ___ MMOB ___
CHOS ___ UTCWH ___
GMMC X NGH ___
HH ___

Other (please specify) _____

080014976022 250239376
Name MCCALL,TERRY EDWARD
MD,ER
EMS Admit Date - 03/04/12
Date of Birth - [redacted]
SS# DOB
Account # Sex
Physician Lance

Test to be performed blood alcohol level Patient Status alive

## STATEMENT OF ORIGIN

Type of Specimen: Urine ____ Blood X Vitreous Fluid ____ Bile ____ Other (please specify) _____

Site from which obtained: _____

Technique used for obtaining: non-ethanol prep used to clean site, blood collected in unused vial

Specimen obtained by: Sign Ashley Norman RN Print Ashley Norman RN

## DESCRIPTION OF SPECIMEN

Include model #, identifying marks, condition, etc. when appropriate.

Red blood in grey top tube

Urine temperature within range: ____ Yes, 90 - 100°F / 32 - 38°C ____ No, record temperature here _____ ____ N/A

Specimen described by: Sign Ashley Norman RN Print Ashley Norman RN

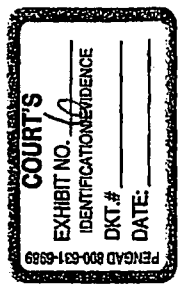
## CHAIN OF CUSTODY

Each person signing below certified that the above described specimen was transferred to him / her in the condition described (unless otherwise noted) and he / she holds themselves responsible for the specimen until relinquished to the next person.

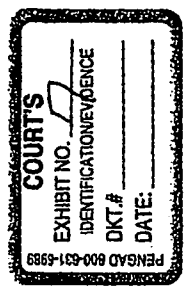
| DATE | TIME | SPECIMEN RECEIVED / RELINQUISHED BY: | REMARKS |
|---|---|---|---|
| 3-4-12 | 2105 | SIGN Ashley Norman RN<br>PRINT Ashley Norman RN | blood sample in 2 grey top tubes given to Trooper D.E. McAlhany |
| 3-4-12 | 2106 | SIGN [signature]<br>PRINT DAVID E McALHANY | |
| | | SIGN _____<br>PRINT _____ | COURT'S EXHIBIT NO. _____ IDENTIFICATION/EVIDENCE DKT.# 5 DATE: _____ PENGAD 800-631-6989 |
| | | SIGN _____<br>PRINT _____ | |
| | | SIGN _____<br>PRINT _____ | |

GHS/Laboratories Rev. 12/94 SA


03.02.2012 20:41
392

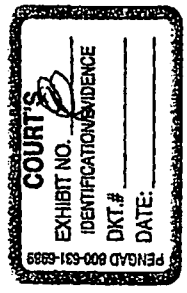

COURT'S
EXHIBIT NO. 10
IDENTIFICATION/EVIDENCE
DKT.#
DATE:
PENGAD 800-631-6989

03.02.2012 20:40


COURT'S
EXHIBIT NO.
IDENTIFICATION/EVIDENCE
DKT.#
DATE:
PENGAD 800-631-6989

356

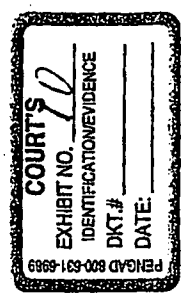



COURT'S
EXHIBIT NO.
IDENTIFICATION/EVIDENCE
DKT.#
DATE:
PENGAD 800-631-6989


03.02.2012 20:56


COURT'S
EXHIBIT NO.

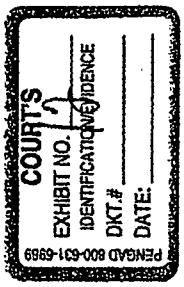

360
M26
03.02.2012 20:42


COURT'S
EXHIBIT NO. 10
IDENTIFICATION/EVIDENCE
DKT.#
DATE:
PENGAD 800-631-6989

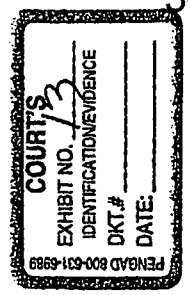

EMERGENCY
MEDICAL
SERVICES
03.02.2012 20:42


COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
800-631-6989


03.02.2012 20:45


COURT'S
EXHIBIT NO. 7
IDENTIFICATION/EVIDENCE
DKT.#
DATE:
PENDAD 800-631-6989


03.02.2012 20:46


COURT'S
EXHIBIT NO. 13
IDENTIFICATION/EVIDENCE
DKT.#
DATE:
PENDAD 800-631-6989

368

# ADVISEMENT OF IMPLIED CONSENT RIGHTS

Terry Edward McCall — Subject's Name (Print)

[redacted] — Date of Birth

[redacted] — Driver's License Number

SC — State Licensed

## FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT

(A) Will test be video recorded? If answer is Yes, start here→ - Inform subject of video recording.
If answer is No, start here → - Inform subject of type samples requested(i.e. breath,blood,urine).

(B) Provide subject with a written copy of the following advisement and read the advisement to the subject:

- You are under arrest for Felony Driving Under the Influence (Felony DUI), Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section.
- The officer has directed that samples be taken for alcohol and/or drug testing.
- The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- Pursuant to Section 56-5-2946, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs.
- The resistance, obstruction, or opposition to testing pursuant to Section 56-5-2946 is evidence admissible at trial.
- If your tests or samples have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month.
- You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
- You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
- If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

(C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occured.)
(D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occured.)

## ADVERTENCIA POR EL DELITO DE MANEJAR BAJO LOS EFECTOS DE ALCOHOL O DROGAS(FELONY DUI)

(A) ¿Se grabará en video el análisis? Si la respuesta es Si, empieza aqui→ - Informe al sujeto que va a ser grabado en video.
Si la respuesta es No, empieza aqui→ - Informe al sujeto de lo que se requiere(ejemplo: soplar, sangre, urina.)

(B) De al sujeto una copia escrita de la siguiente advertencia y lea la advertencia al sujeto:

- Usted queda detenido por el Delito de Manejar Bajo los Efectos de Alcohol o Drogas (Felony DUI), Sección 56-5-2945, del Código de Leyes de Carolina del Sur de 1976, según su enmienda, o un agente del orden público tiene motivo justificado para afirmar que usted ha quebrantado esta sección.
- El agente ordenó que usted se someta a que le saquen muestras de alcohol y/o drogas.
- Se obtendrán y se analizarán las muestras según la Sección 56-5-2950 y las normas de SLED.
- Según la Sección 56-5-2946, usted tiene que someterse a alguno de los análisis químicos, o a una combinación de los mismos, para determinar si existe la presencia de alcohol, drogas o una combinación de alcohol y drogas.
- Si usted se resiste, dificulta o se opone a los análisis, según la sección 56-5-2946, este hecho se considera prueba admisible ante un tribunal de justicia en un juicio oral.
- Si en sus análisis o muestras se detecta una concentración de alcohol de quince centésimos del uno por ciento (0,15%) o más, se le deberá suspender el derecho de manejar en Carolina del Sur por lo menos durante un (1) mes.
- Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice sus propios análisis adicionales, los cuales usted mismo tiene que pagar y en ese caso, el agente debe brindarle ayuda si usted lo solicita.
- Usted tiene el derecho de solicitar una audiencia administrativa dentro de los treinta (30) días de la fecha en que se emitió la notificación de la suspensión.
- Si usted no solicita una audiencia administrativa o si se le confirma la suspensión en la audiencia administrativa, usted tiene que matricularse en un Programa de Medidas Contra el Abuso del Consumo del Alcohol y las Drogas.

Si aplica, efectue los procesos siguientes:

(C) Inspecciona la boca del sujeto y quite material ajena de la boca. (Ignora si se niega el sujeto.)
(D) Anade datos biograficos en el DataMaster DMT. (Esto es requerido para todos los examenes aunque se niege el sujeto.)
(E) Observe al sujeto un minimo de (20) minutos antes de obtener un ejemplar al soplar aire.(Ignora si se niega.)

080014976022 250239376
MCCALL,TERRY EDWARD
MD,ER
EMS Admit Date - 03/04/12
Date of Birth [redacted]

Subject's Signature
Firma del Sujeto (Recibió una copia)

Officer's Signature
Firma del Agente

3-4-12 2013
date/time
fecha/hora

SLED Forensics Form # ICS 011, February 2009

COURT'S EXHIBIT NO. 14 IDENTIFICATION/EVIDENCE DKT.# DATE:
PENGAD 800-631-6989

| | |
|---|---|
| STATE OF SOUTH CAROLINA | |
| | COURT OF GENERAL SESSIONS |
| COUNTY OF GREENVILLE | 2012-GS-23-10242 |
| STATE OF SOUTH CAROLINA<br>PLAINTIFF | |
| vs. | TRANSCRIPT OF RECORD |
| TERRY E. MCCALL<br>DEFENDANT | |

ORIGINAL

March 14, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

SARA LEE DRAWDY, ASSISTANT SOLICITOR
JUDY MUNSON, ASSISTANT SOLICITOR
STAN OVERBY, ASSISTANT SOLICITOR
Attorneys for the State

JOHN STROM, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

## INDEX OF WITNESSES

TRACY LANCE

Direct By Mr. Strom . . . . . .9

JOEL LANFEAR

Direct By Mr. Strom . . . . . 24
Cross By Ms. Drawdy . . . . . 28
Examination By The Court . . . . . 29

JOSH ROBINSON

Direct By Mr. Strom . . . . . 30
Cross By Mr. Overby . . . . . 39

TOMMY BROOKS

Direct By Mr. Strom . . . . . 45

JAKE ERWIN

Direct By Mr. Strom . . . . . 48
Cross By Mr. Strom . . . . . 63
Cross By Mr. Overby . . . . . 67
Redirect By Mr. Strom . . . . . 68

TERRY MCCALL

Direct By Mr. Strom . . . . . 79
Cross By Ms. Munson . . . . . 91

» > o < «

Certificate of Reporter . . . . . .102

## COURT EXHIBITS

| NO | DESCRIPTION | ID | EV |
|---|---|---|---|
| 1 | Affidavit of Tracy Lance | 18 | 18 |
| 2 | Affidavit of Chris Stache | 21 | 21 |
| 3 | Affidavit of Teresa Dwease | 21 | 21 |
| 4 | Affidavit of Joshua Robinson | 22 | 22 |
| 5 | Affidavit of Corporal Tommy Brooks | 22 | 22 |
| 6 | Affidavit of Robert Suddeth | 24 | 24 |

| | | | |
|---|---|---|---|
| 7 | Affidavit of Juliette Martin | 24 | 24 |
| 8 | Affidavit of Terry McCall | 24 | 24 |
| 9 | Courtroom Journal | 26 | 26 |
| 10 | Exhibit Receipt Dates 5-14-15 | 27 | 27 |
| 11 | Patient Records | 44 | 44 |

THE COURT: All right, ladies and gentlemen, we're on the record in the case of The State vs. Terry McCall. And the appellate case number is 2015-001097. We are here before the Court today for a reconstruction hearing, as ordered by the South Carolina Court of Appeals.

Mr. McCall, I recognize that you had a motion you wanted to argue before we get started, sir?

MR. MCCALL: I go ahead and waive that motion, Your Honor.

THE COURT: Yes, sir. Okay, thank you, Mr. McCall, I appreciate it.

Okay. All right. Then we can begin with the proceedings. I know that we're going to go a little bit out of order today because I have been advised that the doctor has a commitment at two o'clock. So, we're going to handle the doctor's testimony and trying to reconstruct any gaps in the record and identify objections and the rulings on the same during the course of her testimony. So, I defer to counsel. You can preface her testimony or discuss the same and call her to the stand, if necessary.

MR. STROM: Thank you, Your Honor. One brief issue that I'd like to talk about before we get into testimony.

THE COURT: Yes, sir.

MR. STROM: It's my understanding that The State would like Ms. Drawdy to question the witnesses. We would move to have her, essentially, designated as a witness, pursuant to The State v. Sierra and The State v. Lee, as well as Rule 3.7. The Rules of Professional Conduct dealing with restrictions on lawyers acting as advocacies in the same proceeding.

THE COURT: Yes, sir.

MR. STROM: We realize it's not a pure adversarial system, Your Honor. It just comes down to the risk that was primarily identified in State v. Sierra that during cross-examination, she may end up, essentially, pitting herself against a witness. And so, frankly, we'd like to avoid that. And have her just act solely in the capacity as a witness as opposed to having -- and she can certainly help Ms. Munson as far as suggesting questions and things like that. But actually serving as counsel for The State, we would move to, I suppose, relieve her of that role.

THE COURT: Okay. All right. Okay. I'm going to respectfully deny. I appreciate your position on that and I certainly understand the authority which you cite. However, thoughts contemplate that we

would be in a adversarial proceeding as opposed to a strictly ministerial proceeding where we're being ordered to reconstruct the -- reconstruct the record to the extent possible in the first proceeding. Ms. Drawdy is here because it's essential that she be here in order to reconstruct the hearing. She's not acting as an advocate on behalf of the State. And I will instruct both -- all attorneys in the courtroom that I don't consider any of you acting as advocates on behalf of either particular party. You are here as officers of the court in a ministerial capacity to reconstruct the record. And that is all.

So, if at some point in time I feel there may be advocacy and that we're conducting ourselves in something other than a ministerial capacity as officers of the court, then we can address it at that point. But as I sit here, I don't think that those rules of professional conduct bearing upon witnesses and who may be advocates not being able to represent a party are applicable. So, having said that, I think it was much, much more productive and practical for Ms. Drawdy to act in the capacity as The State's attorney in a reconstruction hearing, than for someone who was not involved in the prosecution at all. Okay. It would be of help and assistance to

the Court. All right. Okay.

MR. STROM: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. STROM: We now call Dr. Tracy L. Lance to the stand.

THE COURT: Yes, sir, you may.

MR. STROM: One final thing, Your Honor, I don't know your rules regarding referring to security, but Mr. McCall, if we can get him uncuffed so he can take some notes during the hearing.

THE COURT: I defer entirely to the officers in the courtroom with regards to security.

MR. STROM: I understand. If y'all are comfortable doing it, I'm comfortable allowing you to do it.

THE DEPUTY: We're just going to have him remain cuffed.

THE COURT: Okay.

MR. STROM: Thank you, Your Honor.

TRACY LANCE, after being duly sworn, testified as follows:

THE CLERK: Please be seated, state your name for the record.

THE WITNESS: Tracy Lance.

DIRECT EXAMINATION

BY MR. STROM:

Q Good afternoon, Dr. Lance, thank you for being here, we'll try to keep this as brief as possible. Do you recall treating Mr. McCall?

A Yes.

Q Do you recall testifying in his trial?

A Yes.

Q We had a substantial portion or a significant portion of your testimony missing. With the agreement of the Solicitors, the trial testimony is in those three binders to your left, three booklets to your left. They're consecutively page numbered. It would be Page 357 is where your missing testimony begins. And if you need to just to refresh your memory, turn to Page 354, 355 and sort of read through.

A (The witness complies.)

Q I'm sorry, 358 is actually where the missing portion of the testimony is. The last part of this that's transcribed is beginning on Line 13.

A Uh-huh.

Q Do you recall you had just talked about how Mr. McCall's pupils were reactive? And roughly equal size. Then you were turning to the issue of the different drugs found on the screen. Do you recall whether that screen was provided, that drug screen was provided by SLED

or provided by the Greenville County Hospital System that you were referring to in your testimony?

A The Greenville Hospital System.

Q And then do you recall the, with any degree of certainty, the remaining drugs that he tested positive for?

A Not without looking at his chart.

Q Okay.

And, Your Honor, I have -- may I approach?

THE COURT: Yeah, sure.

MR. STROM: I had the clerk's office bring up the Court Exhibits if you just bear with me for one second.

THE COURT: Sure.

MR. STROM: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

BY MR. STROM:

Q I'm showing Dr. Lance exhibits -- State's Exhibits A through I, do you recognize those?

A The top one I don't. Looks like that's a chain of custody, I don't deal with that. These I don't.

Q Okay.

A This is his hospital.

Q Okay.

A This is the chart.

Q And that is Exhibit E.

A Yes, sir.

Q Okay. Turning to Exhibit E, Dr. Lance, do you have -- you've already spoken about, I believe it was, the prescription drug -- do you remember your basis for concluding that there were other drugs in his system based on Exhibit E?

A Yes, there was a drug screen that was done.

Q Okay. What are the other drugs in -- it tested positive for?

A Sympathetic amines, benzodiazepines, cocaine, opioids, and cannabinoids.

Q And that record that you're relying on, Exhibit E, that only test positive for whether or not it's above the threshold; is that correct?

A That I don't know.

Q So, it's just an initiative?

Just to clarify, Your Honor, and I'll move along shortly.

THE COURT: Yes, sir.

BY MR. STROM:

Q But that's not -- the reading is is that it's initial --

And I apologize for leading.

But it's an initial positive test result above the stated threshold, correct?

A It's above the cutoff, what they call the cutoff level.

Q The cutoff, yes.

A Yeah.

Q It's not a specific amount?

A No.

Q Okay.

THE COURT: And, Mr. Strom, I'll advise you and all the other attorneys, I'll let you lead. We're reconstructing a hearing, okay.

MR. STROM: Thank you, Your Honor.

THE COURT: Yes, sir.

BY MR. STROM:

Q Dr. Lance, to the best of your recollection, do you recall if there were any objections lodged during your testimony?

A Any objections?

Q Did either of the other attorneys or Mr. McCall stand up and say, Objection?

A Yes.

Q And you were instructed to stop. Do you recall how many times it occurred?

A Once, I think.

Q And if you'll turn to Page 357.

A In here, I think.

Q Beginning on Line 3. You see the objection from Mr. McCall?

A Yes.

Q Do you recall if there were any additional grounds stated for that objection? Do you have a specific recollection one way or another as to whether there was any subsequent argument taken on the issue?

A I don't think so.

Q Okay. Okay. And do you recall who cross-examined you? Whether it was Mr. McCall or Mr. Erwin? Do you remember if it was my client, Mr. McCall, that cross-examined you?

A I don't remember for sure. I think so.

Q It was quite some time ago so that's very likely an answer. But you say you only have a specific recollection as to that one objection?

A Correct.

Q And you don't recall there being any further argument on Page 357 regarding that objection?

A No.

Q Okay.

MR. STROM: No further questions, Your Honor.

THE COURT: I don't presume The State has any

questions?

MS. DRAWDY: No, Your Honor.

THE COURT: All right, thank you very much for coming, I appreciate it.

MR. STROM: Thank you for coming, doctor.

THE WITNESS: Sure. Do I just leave this here?

THE COURT: Yes, ma'am, you may leave that there. Thank you, very much, I appreciate it.

MR. STROM: May I approach, Your Honor?

THE COURT: Sure.

MR. STROM: Just scheduling wise let's do the affidavits now if that's okay with you.

THE COURT: Well, let's talk through that and let's make sure that there aren't any outstanding issues regarding her testimony and objections that either have been identified or recollected regarding her testimony.

MS. DRAWDY: Sara Lee Drawdy. I was responsible for direct on this particular witness. I, likewise, only recall that single objection. I do not recall any objections during the gap in testimony. And there certainly weren't none during cross-examination.

THE COURT: Okay.

Mr. Erwin, and I so directed Mr. Jake Erwin who

was standby counsel and ultimately began representing Mr. McCall, in the examination of the doctor, do you remember, first of all, if you conducted cross-examination or whether Mr. McCall did?

MR. ERWIN: Big caveat to everything I'm going to say involved in this hearing that I feel like I need to say on the record, I know I said this individually to all the players, but just for the record.

THE COURT: Yes, sir.

MR. ERWIN: A little context here, I was appointed in the middle of the trial so I did not prep for this case. That is going to effect the way I remember it a lot. Because I didn't spend nearly as much time with this case the other attorneys would have.

THE COURT: Right.

MR. ERWIN: And also, in the moment, in doing the trial would not have really been keeping notes because I'm trying to keep my head up and watch what's happening because I didn't know what was going to happen next. So, all that being said, if it was a question of who cross-examined the doctor, it would have been me. But again, I'm just kind of going off what I think my practice would have been, not

necessarily specific memory.

THE COURT: I understand. I understand.

MR. ERWIN: I think it would have been me. If it was a question of whether I crossed or Terry crossed --

THE COURT: Yes, sir.

MR. ERWIN: My suspicion in thinking about this case is that I probably would only have -- I mean, ultimately, it would have been Terry's call. But I probably would have strongly suggested that he not cross any witnesses who were sophisticated, professional, a doctor, for example, or anybody from law enforcement. I remember he crossed his girlfriend and that's fine, a lay witness I would have been a little -- giving him a little more leeway as far as letting him do that. But I think I would have strongly suggested that he not try to cross her. Obviously, somebody crossed her, it probably was me. Do I remember specific things that I would have crossed her on or things I would have objected to, absolutely not. But I can tell you what I probably would have done.

THE COURT: Okay. And what you've said squares fairly well with my recollection as well. By the way, that's good tactical practice that you

articulated. But it is my recollection and the recollection of everyone here that there was only one objection that was made during the examination and/or cross-examination of the doctor that was made by Mr. McCall. And I know you don't recollect that and I'm not asking you to recollect that. I can tell you that no one recalls any additional objection. And I can tell you as the Judge presiding over the case, I don't recall any other objection to that witness either. And I don't think based on who she was and what she was testifying to, that there were a lot of possibilities or potentials for objections. Both from a tactical standpoint that you suggest and just from an evidentiary standpoint. You take exception to any of that?

MR. ERWIN: I do not.

THE COURT: Okay. All right. Okay.

Yes, ma'am.

MS. DRAWDY: Your Honor, at this time I would like to submit the affidavit with regard to Dr. Lance that I have signed and of my recollection. And I put that into the record what it states, if it would make it easier for the reconstruction, and also I'd like to introduce this as an exhibit. Mr. Strom has been provided with this.

THE COURT: Okay.

MS. DRAWDY: It's in affidavit form. I do recall that both -- that Mr. McCall had some questions for Dr. Lance and then Mr.~Erwin also asked her questions. There's one question that's specific that I remember Mr. McCall asking about whether or not he had been given Ginger Ale in the ER. And her response was she did not recollect that and it was not recorded.

THE COURT: Okay.

MS. DRAWDY: But I'd like to introduce the record reconstruction summary in affidavit form for Tracy L. Lance in evidence at this time as part of the reconstruction record.

THE COURT: All right, if you'll mark it I'll introduce it as Court's Exhibit No. 1.

MR. STROM: No objection, Your Honor.

THE COURT: All right, thank you.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification and received into evidence.)

MS. DRAWDY: And there are other similar ones--

THE COURT: Okay, hold on let her finish.

THE COURT REPORTER: Thank you.

THE COURT: Okay, before we move on to another witness, just let me say, I think that we've

discussed the examination and the record as it relates to the doctor. And the only objection that has been recalled is the one which actually appears in this transcript of record on Page 357. And I would suggest that the record stands for itself.

All right, yes, sir.

MR. STROM: Yes, Your Honor. The one issue that Mr. McCall has, who I was planning on having testify today, has a slightly different recollection of the objection that he made.

THE COURT: Okay.

MR. STROM: So, it may be an issue of the correctness of the transcript.

THE COURT: Oaky.

MR. STROM: Certainly we can cross that bridge when he gets put up to testify.

THE COURT: When Mr. McCall gets up, if he wants to state some exceptions to what appears in the record, I'll allow him to do that.

MR. STROM: Thank you, Your Honor.

THE COURT: Yes, sir. Okay.

MR. STROM: And now -- I'm sorry, Your Honor.

THE COURT: No, go ahead.

MR. STROM: I was going to go ahead and offer up the remaining exhibits that we've agreed to --

THE COURT: Yes, sir.

MR. STROM: As far as the specific witnesses. So, it's Chris Stache, who was the emergency first responder. You want to read them out loud or we can. . .

THE COURT: No, what you can do is if they are sufficient to establish the record and they recite any and all objections that were made and the rulings that were made on those objections and the basis for those rulings, then you can just put them in the record. We'll make them a Court's Exhibits, they'll stand for themselves. If there's something you need to add to them, then certainly you can place that on the record as well. I just want to make sure that when we give them, we all have our appellate advocate hats on and we say, okay is this something that the Appellate Court can look at and determine what happened.

MS. DRAWDY: Mr. Strom and I are in agreement that the record reconstruction summaries in affidavit form for Chris Stache and for Teresa Dwease are an accurate reflection of what occurred during the gaps. There's also a summary that states who cross-examined, whether there was cross-examination and whether there were objections. We are in

agreement that there were no objections raised during these two witnesses testimony. And that the exhibits that were introduced by -- while Ms. Dwease was on the stand, were accepted into evidence without objection from Mr. McCall or Mr.~Erwin. And we would like to have theses marked as Exhibits 2 and 3.

THE COURT: Okay.

MS. DRAWDY: And entered into the record as an agreement by all the parties that these are accurate.

THE COURT: Okay.

MS. DRAWDY: Recollection of what happened.

THE COURT: All right.

MR. STROM: That's correct, Your Honor.

THE COURT: Okay. All right, then we'll mark those as Court's Exhibit No. 2 and No. 3.

MS. DRAWDY: Your Honor--

THE COURT: Hold on, let Ms. Herron mark those.

(WHEREUPON, Court's Exhibits Nos. 2 & 3 were marked for identification and received into evidence.)

THE COURT: Yes, ma'am.

MS. DRAWDY: Your Honor, Mr. Strom and I are also introducing as foundational documents, record reconstruction summaries in the inform of affidavits for the testimony of Joshua Robinson, a State's

witness who was a EMS worker. And for Corporal Tommy Brooks with the MAIT Reconstruction Team. We agree that in so far as they go they are accurate but he wants to cross-examine these witnesses.

THE COURT: Okay.

MS. DRAWDY: And flesh out some additional aspects of their testimony.

THE COURT: Sure.

MS. DRAWDY: We would like to introduce these as exhibits.

THE COURT: That would be four and five?

MS. DRAWDY: Four and five.

THE COURT: Okay. And just before we introduce them, that's subject to your cross-examination, Mr. Strom.

MR. STROM: Yes, Your Honor.

THE COURT: Okay.

MR. STROM: And that would also be subject to cross-examining the attorneys as well.

THE COURT: Okay, that's fine. So, we'll introduce those as Court's Exhibits 4 and 5.

(WHEREUPON, Court's Exhibits Nos. 4 & 5 were marked for identification and received into evidence.)

THE COURT: All right.

MS. DRAWDY: We have three more reconstruction summaries in the form of affidavits that have been prepared by the State's attorneys and affidavits attached. Also subject to the same right of cross-examination of witnesses.

THE COURT: Okay.

MS. DRAWDY: They would be from the witness Robert Suddeth, who was the victim in this case. For Defense witness, Juliette Martin. And for the Defendant's testimony, Terry McCall.

THE COURT: Okay. All right. So, subject to the same exception, we'll present those as exhibits as well.

Correct, Mr. Strom?

MR. STROM: Yes, Your Honor.

THE COURT: Okay.

MS. DRAWDY: And, Your Honor, I would add that these are in affidavit form.

THE COURT: Okay.

MS. DRAWDY: So, we would like for them to be considered as part of the record.

THE COURT: They are, I'm making them Court's Exhibits.

MS. DRAWDY: Okay.

MR. STROM: Your Honor--

THE COURT: Hold on--

MR. STROM: I'm sorry.

THE COURT: Wait until she's done, okay.

MR. STROM: I'm sorry.

THE COURT: She's got to mark it, log it, make sure it's in the record. As I'm sure you're aware, the Court Reporter has a very important role to play.

MR. STROM: Yes, sir.

(WHEREUPON, Court's Exhibits Nos. 6, 7 & 8 were marked for identification and received into evidence.)

THE COURT: Okay, counsel, we can proceed.

MR. STROM: Your Honor, we would call Joel Lanfear to the stand.

JOEL LANFEAR, after being duly sworn, testified as follows:

THE CLERK: Ms. Lanfear, please state your name for the record.

THE WITNESS: My name is Joel Lanfear.

DIRECT EXAMINATION

BY MR. STROM:

Q Ms. Lanfear, I realize you're now at the solicitor's office but back in May of 2015, you were employed by the clerk's office?

A Yes, sir.

Q And you were the member of the clerk's office that sat on Mr. McCall's trial?

A Yes.

Q As far as --

If, Your Honor, if I may approach?

THE COURT: Yes, sir. You may lead too.

MR. STROM: I'll absolutely take it.

BY MR. STROM:

Q The first document there, Ms. Lanfear, do you recognize it?

A I do.

Q Is that -- what is it?

A This is a courtroom journal that is -- was part of my responsibilities as a courtroom clerk to maintain kind of record of what was going on.

Q Okay. So, have you reviewed that document?

A I did a while ago but, yes.

Q To the best of your recollection is it an accurate reflection of the events of the trial?

A Yes.

MR. STROM: Okay, Your Honor, we mark that as Court's Exhibit 6 --

MS. DRAWDY: 7.

THE COURT REPORTER: Nine.

MR. STROM: Nine.

THE COURT: Nine, okay.

All right, without objection?

MS. DRAWDY: Without objection, Your Honor. We would have introduced it if he hadn't.

THE COURT: Okay. All right.

Ms. Lanfear, will you hand that to Ms. Herron so that she can mark that.

THE WITNESS: Yes, sir.

(WHEREUPON, Court's Exhibit No. 9 was marked for identification and received into evidence.)

THE WITNESS: So, do I need to refer to it?

BY MR. STROM:

Q No, I was going to have you to identify the exhibit list.

A Yes, this is the exhibit list that Caroline put together for what was introduced in evidence.

Q And you were a member of the clerk's office that reviewed it and signed it?

A Yes.

Q So, to the best of your recollection and memory, this receipt for the exhibits is a true and accurate reflection of the exhibits that were entered into at trial? Entered into evidence at trial?

A Yes.

MR. STROM: Your Honor, we move to have that

marked as Court's Exhibit 10.

THE COURT: Okay, I presume there's no objection to that?

MS. DRAWDY: No, objection.

THE COURT: All right, let us mark it as Court's Exhibit No. 10. It is so introduced.

MS. DRAWDY: Your Honor, I believe that's already a part of the official record of the trial.

THE COURT: Okay. Inasmuch as he's referenced it again, we'll just mark it as 10.

MR. STROM: For the Court's information, the clerk's journal isn't in the public file so that's why I wanted to move it in.

THE COURT: I understand.

MR. STROM: Out of an abundance of caution.

THE COURT: That makes sense.

MR. STROM: I --

THE COURT: Hold tight and let her mark it and then we'll move on, okay?

(WHEREUPON, Court's Exhibit No. 10 was marked for identification and received into evidence.)

THE COURT: Okay, you're good.

MR. STROM: I have no further questions, Your Honor.

MS. DRAWDY: I have a few.

THE COURT: Okay.

CROSS-EXAMINATION

BY MS. DRAWDY:

Q Just to clarify your courtroom journal.

A Yes.

Q And what you were doing with the entries that you made, is one of the things that you did is right the time that a witness took the stand and the time they left the stand?

A Yes.

Q And did you do that throughout the trial?

A Yes.

Q I noticed in one place toward the bottom of the first page, it's a two page document, that you have Exhibits 2 through 25 listed.

A Yes.

Q What does that indicate?

A This witness was on the stand when the exhibits were introduced.

Q Okay. Did you continue that throughout the trial?

A I did not.

Q And so, you -- just because there are no -- that's the only time you did it?

A Yes.

Q So, were there other exhibits entered into evidence that you did not note in the journal?

A Yes, there were a lot of them, yes.

Q Okay.

MS. DRAWDY: Those are all the questions I have.

THE COURT: Okay.

EXAMINATION

BY THE COURT:

Q Ms. Lanfear, I'll ask you this. You wrote the time they took the stand and the time they got off the stand; right?

A Yes.

Q And if there were a break in between that testimony, your notes wouldn't reflect the break?

A Yes, they do.

Q They do reflect the break?

A Yes.

THE COURT: Okay, good enough, that's all I need. Thank you, very much.

MR. STROM: We now call Mr. Robinson to the stand.

THE BAILIFF: Place your left hand on the Bible, raise your right hand and face the Clerk.

JOSH ROBINSON, after being duly sworn, testified as follows:

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

THE WITNESS: Josh Robinson.

DIRECT EXAMINATION

BY MR. STROM:

Q Mr. Robinson, do you recall responding to the accident in this case?

A I remember portions of it, yeah.

Q And how -- well, by way of sort of introduction, how long have you been a first responder and how long were you a first responder at the time that you responded to this accident back in 2000 -- excuse me, March 4th 2012?

A I began as a first responder in 2004, I believe. And if it was in 2012, would have been eight years.

Q Okay. And then, at the time, your partner was Mr. Gary Clark.

A Correct.

Q And he is currently lives in Canada?

A Yeah, I believe he was living in Main and I believe he moved over into Canada.

Q And so, do you also have any -- do you have a, I guess, distinct memory of testifying in this case?

A I remember vague portions of it, I guess.

Q Would, perhaps, looking at a summary of your testimony jog your memory?

A It might.

MR. STROM: Your Honor, we request to show Mr. Robinson his -- the affidavit that was compiled by the attorneys.

THE COURT: Sure, absolutely.

BY MR. STROM:

Q Hand you now, Mr. Robinson, Court's Exhibit 4. Just take a second to review the. . .

A Yeah, that seems to be pretty accurate.

Q Okay, I'd just like to ask you a few questions about now your refreshed memory.

A Yes.

Q And if you need to refer back to it, let me know.

A Sure.

Q You testified -- or the affidavit states that you testified -- or excuse me, that you treated primarily Juliette Suddeth?

A Correct.

Q And that your partner, Mr. Clark, treated Mr. McCall?

A Correct.

Q And so, to the best of your recollection Mr. Clark was not present at trial?

A He was not present, no.

Q Do you have a specific recollection that Mr. McCall was acting erratically at the time that he was being transported?

A He was -- he was very concerned with what was going on.

Q Just to clarify that for me, are you talking about with regards to his teeth being badly damaged or an injury?

A I can't speak for certain but I believe I testified that it was more or less that he felt bad about the accident and that it had occurred.

Q Do you recall having -- excuse me, do you recall reviewing a report generated by your partner, Mr. Clark?

A Yeah.

MR. STROM: Your Honor, may I approach with what was original trial Exhibit 28?

THE COURT: Yes, sir.

BY MR. STROM:

Q This was an original exhibit that was introduced at trial. Do you recall if you were the witness that it was introduced through?

A I don't recall.

Q All right. And based on your knowledge, I'm assuming you've filled out or seen hundreds of these reports done?

A Yes.

Q Who else, other than you and your partner, would have -- would have had sufficient knowledge to enter in that report?

A It would have just been me or my partner.

Q So, if the -- the only two people who would have been in a position to know about this report's creation, how it was drafted, are you and Mr. Clark?

A Yes. I'm not sure if the administrators at Greenville County EMS generated reports to bring to court that day.

Q And Greenville County EMS, are they controlled by Greenville Hospital System?

A No.

Q It's a government agency?

A It's a county agency?

Q County agency?

A Correct.

Q Okay.

A I believe they may have been introduced by a Sally Clark, possibly. But I can't say for certain.

Q Okay. But the actual author of this report is?

A Gary Clark.

Q Gary Clark?

A Correct.

Q Do you recall there being any objections during your testimony from either the Defense or the State?

A I don't recall.

Q Do you recall being asked to give an opinion as to whether or not dilated pupils were consistent with someone taking a specific kind of drug?

A Yeah, I believe that was asked.

Q Okay. Do you recall, one, your answer to it?

A Uh-huh.

Q If you could give-- I'm sorry, what was your answer?

A Usually -- I don't remember exactly what I said during that court case. But in my professional opinion, dilated pupils are usually associated with some sort of amphetamine usage.

Q Okay. And do you recall over the course of providing that opinion, there being any interruptions by Defense counsel or by the Defense?

A I can't specifically recall any.

Q I mean, if you can't remember, you can't remember.

A Right.

Q Do you recall approximately the length of time that you were being asked questions by either Mr. McCall or by Mr. Erwin?

A Probably about 20 minutes or so, roughly.

Q And do you remember, generally, what the subject of that cross-examination was?

A No, I don't. Just the cross-examination?

Q Correct.

A No, I can't remember off the top of my head.

Q And then with respect to Exhibit 28, again, if you still have it in front of you.

A Uh-huh.

Q At the top right corner of Page 1 it indicates that you have crew number one and crew two?

A Correct.

Q It shows you as the driver?

A Correct.

Q And yet, if you turn to the affidavit submitted by counsel, it references the fact that you evidently testified to observations of both Mr. Clark entering the report and of the Defendant?

A Correct. So in this, in Exhibit 28, Gary had marked me as the driver, it should have been marked as a secondary caregiver. On the report that I generated for Ms. Juliette Suddeth, I was listed as the primary caregiver and he was the secondary caregiver. From the best of my recollection, we were actually drove in by a member of the Parker Fire Department.

Q And then again, to the best of your recollection, there was no objections to you looking at this report. Do you recall the extent to what you used this report in your initial testimony?

A I just reviewed it and any other questions that were asked, I probably refereed back to either this report or the report that I offered.

Q Again, you didn't do any -- again, you were mostly focused on Ms. Suddeth?

A Correct.

Q So, if you turn to Page 2 and I just have a few more questions.

A Yes.

Q It says, and again, this is Mr. Clark's report.

A Correct.

Q But it says, Mental present, oriented person, oriented time, oriented place within normal limits?

A Uh-huh.

Q That would seem to conflict with your testimony that Mr. McCall was acting erratically?

A Well, I mean, you can still know where you are. Because literally all we do is ask, Do you know where you are? Do you know who you are? And do you know what month it is?

Q And then on Page 3.

A Literally. Yes.

Q The top entry and the action and comment section.

A Yep.

Q Says?

A Oriented to person, place, time and event.

Q Uh-huh?

A Uh-huh.

Q Complaining of pain all over.

A Uh-huh.

Q Out of his vehicle?

A Uh-huh.

Q But he said, Okay and cooperated.

Again, though your recollection is that he was acting erratically?

A I believe my testimony was when we were in the back of the ambulance after we had already immobilized him and got him into the back of the ambulance.

Q Do you recall to any degree of specificity his injuries?

A No.

Q Okay.

A I can go off this report but just off the top of my head, no.

Q It's all right. My final questions, if you'll

turn to what is Page 5, it's actually listed as Page 2 of the authorization signature?

A Correct.

Q Again, this is Greenville County EMS document?

A Correct.

Q Is that to the best of your recollection Mr. McCall's signature?

A Yes, but that would have been Gary obtaining that.

Q Okáy.

A So, I would have obtained--

Q But you don't recall Gary signing -- or Gary wouldn't, in the normal course of things, sign that?

A No. No.

Q Okay. It would be--

A If anything --

Q -- or unable to sign?

A Correct. If the patient is unable to sign, we obtain a signature from the receiving facility's nurse.

Q Okay.

A Who signs on the patient's behalf.

Q So, it's either going to be Terry McCall or--

A Or --

Q -- or the nurse?

A Or -- yeah, another party that is associated

with his medical care.

Q Okay.

No further questions, thank you.

MR. OVERBY: Judge, I just have a couple of questions.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. OVERBY:

Q Mr. Robinson?

A Yes, sir.

Q Do you recall supervisors -- a supervisor of yours testifying in the proceedings?

A Uh-huh. John James.

Q Lieutenant John James?

A Correct.

Q And do you recall -- you mentioned Sally Clark earlier?

A Right.

Q Can you just say who Sally Clark is?

A Sally Clark is one of the assistant directors. I think she's a Deputy Director of Greenville County EMS. She, I believe, was called upon to actually bring the physical copies of our patient care reports to the court that day.

Q To the best of your knowledge, is she the

custodian of records of those reports?

A To the best of my knowledge.

Q Okay. And Lieutenant James reviews your reports?

A Occasionally he will.

Q Okay.

A Yeah, for quality assurance purposes.

Q Okay. But you were not asked to put those reports into evidence, correct?

A I don't think I was.

Q Okay. All right. Do you remember if those reports were in evidence or not when you saw them? If you don't remember, that's okay.

A I can't.

Q Okay.

A I can't say with any certainty.

Q With regards to -- with regards to some your testimony on this, you've reviewed the affidavit?

A Correct.

Q Correct?

A Yes.

Q That's my affidavit, I note that I'm the one who's on there.

A Right. That's very accurate as far as the best of my recollection.

Q Okay. And those factors include, essentially, what the back of your ambulance looks like --

A Correct.

Q And what Mr. Clark's role would have been?

A Right.

Q Was at the day of this incident?

A Correct.

MR. OVERBY: I have no further questions.

THE COURT: Any follow up, Mr. Strom?

MR. STROM: None, Your Honor.

THE COURT: Okay. All right, good enough. Thank you, sir, you may step down.

THE WITNESS: Would you like me to just leave these up here?

THE COURT: Yes, sir, please.

MR. STROM: Have they been entered as exhibits for this hearing?

THE COURT: I don't know. What I tell you to do, go take a look at it and see what has been entered and what has not. If they're documents that need to be entered, then y'all can enter them by acclimation or consent. And while you're at it, give me the transcripts that you brought in.

MR. STROM: And I can email you a copy of the transcript. I'm sorry, if--

THE COURT: No, that's okay.

MS. DARWDY: Your Honor, Mr. Robinson is under subpoena so he would like to know if he can be relieved?

THE COURT: Yeah.

You're okay, he can go, Mr. Strom?

(There was no response.)

THE COURT: Yes, we'll take silence is acquiescence. Thank you for being here.

MR. STROM: I'm sorry, Your Honor.

THE COURT: That's okay.

MR. OVERBY: Judge.

THE COURT: Yes, sir.

MR. OVERBY: I understand that, in terms of the ministerial proceeding, obviously, so it's kind of a little unorthodox manner. The only thing that I wanted to point out, because I think that there's a little bit of a issue about when that medical report came into evidence.

THE COURT: Yes, sir.

MR. OVERBY: I refer to the record with regards to A Part B-2 of Page 183 dealing with Ms. Sally Clark, proceeding through Page 188, specifically to 118 of the record --

THE COURT: Right.

MR. OVERBY: -- with regards to Lieutenant John James. At that point State's Exhibit No. 26, 27, 28, which I believe was the extent of the cross-examination was handled there. And that's when Ms. Drawdy actually moved those into evidence. And Mr. McCall did not have an objection at that time.

THE COURT: Okay. All right.

Mr. Strom, do you take any exception to that representation?

MR. STROM: No, Your Honor.

THE COURT: Okay. I think this record reflects that those documents that were referred to in the most recent testimony, in the reconstruction hearing today, those documents were actually introduced by Sally Clark. They were authenticated and introduced through her without objection.

MS. DARWDY: Your Honor, the record does reflect that they were authenticated through Sally Clark, they were introduced with some -- after additional testimony by Lieutenant James while he was on the stand.

THE COURT: Okay.

MS. DRAWDY: You specifically, and the record show this --

THE COURT: Yes, I understand.

MS. DRAWDY: Specifically requested whether Mr. Overby was moving them into evidence and he said, Not at this time.

THE COURT: Okay. Authenticated by Ms. Clark, moved into evidence by the next witness.

MR. OVERBY: Correct, Your Honor.

THE COURT: And the record reflects that.

MR. OVERBY: Yes, Your Honor.

THE COURT: Yes. Okay, good enough.

MS. DRAWDY: And, Your Honor, I believe we have an exhibit, if we could let her mark.

THE COURT: Okay.

That's Court's Exhibit what?

THE COURT REPORTER: Eleven.

THE COURT: Eleven.

MS. DRAWDY: Which was State's Exhibit 28 during the trial.

THE COURT: Okay.

(WHEREUPON, Court's Exhibit No. 11 was marked for identification and received into evidence.)

THE COURT: Okay, good enough.

Yes, sir.

MR. STROM: Your Honor, we call Tommy Brooks. Call Corporal Brooks to that stand.

THE CLERK: Corporal Brooks, please place your

left hand on the Bible, raise your right hand.

TOMMY BROOKS, after being duly sworn, testified as follows:

THE CLERK: Please be seated, state your name for the record.

THE WITNESS: My name is Tommy Brooks. I'm loud. I'm a preacher so I can be loud.

DIRECT EXAMINATION

BY MR. STROM:

Q Mr. Brooks, how long have you been with the highway patrol?

A As of today, 21 years.

Q And you responded to the wreck involving Mr. McCall and Mr. Suddeth? I'm sorry, you're a member of the MAIT Team?

A Yes, sir, that is correct.

Q Okay. And how long you been a member of the MAIT Team?

A Been an active member of MAIT since 2008. I have been a MAIT associate since 2001.

Q And what was your capacity in investigating the accident involving Mr. McCall and Mr. Suddeth?

A In this particular event it was just the condition of the vehicle. I was called in to do a mechanical examination of his vehicle.

Q And do you recall if -- with respect to your testimony, you were qualified as an expert?

A Yes, sir.

Q And do you recall the field?

A Accident reconstruction in general.

Q And what is -- do you recall during your testimony that you determined how the accident occurred?

A Yes, sir.

Q And then if you'll --

Judge, may I approach the witness with my copy of the transcript?

THE COURT: Sure.

BY MR. STROM:

Q So, missing portion of your testimony that we're trying to reconstruct begins on Page 344. If you would like to refer to a few pages ahead of that to try to jog your memory as to what was being testified to.

A Yes, sir. (The witness complies.) All right, sir.

Q Do you recall -- so at that point in the testimony, you had just stated that you had inspected the car?

A Yes, sir.

Q Mr. McCall's vehicle?

A Yes, sir.

Q Made a determination that there weren't any operable brakes other than the emergency brake?

A That is correct.

Q Do you recall there being any objection made to that conclusion?

A No, sir.

Q To your conclusion?

A No, sir.

Q You don't recall Mr. Erwin objecting to the scope of that opinion as beyond that of a accident reconstructionist?

A No, sir.

MR. STROM: Your Honor, I don't have any other questions at this point.

THE COURT: Okay.

All right, questions from the State?

MR. OVERBY: None from the State, Your Honor.

THE COURT: Okay, thank you, appreciate you being here. Thanks.

Any objection to this witness being excused?

MR. STROM: No, Your Honor.

MS. DARWDY: No, Your Honor.

THE WITNESS: Thank you, Judge.

THE COURT: Have a great day, thank you for being here.

MR. STROM: If Your Honor's ready, the defense would call Mr. Jake Erwin.

THE COURT: Sure.

JAKE ERWIN, after being duly sworn, testified as follows:

THE CLERK: Please be seated, state your name for the record.

THE WITNESS: My name is Jake Erwin.

DIRECT EXAMINATION

BY MR. STROM:

Q Mr. Erwin, just provide us some background, how long -- at the time of this trial back in 2012 -- or excuse me, 2015, how long had you been practicing law?

A At that point I would have been practicing law for four years.

Q And if you could provide us with some background as to how you came to be appointed in this case?

A Okay. So, at the time I worked for the Public Defender's Office here in Greenville. And I would have been working for the Public Defender's Office since 2011 here in Greenville. I was at the Public Defender's Office in Cherokee County for a year before that. So, at that point, my entire career had been appointed criminal work.

That morning, I was in plea court down in Courtroom 8. Going about my normal business of dealing

with clients that were there for guilty pleas, going over discovery, all the normal stuff that I do on plea day with a long list of clients. One of our office managers came into the courtroom and grabbed me and said that Judge Stilwell had said something about getting the first public defender that you can see and bring him to my chambers, and that just happened to be me.

So, I went back in chambers and the prosecutors were back there and the Judge was back there. And it was explained to me that Mr. McCall's appointed counsel at the time, who was Randy Chambers, had just been relieved and that they were still going to go forward with the trial, if they could. And then Judge Stilwell was appointing me as standby counsel at that point to sit with Mr. McCall, who at that point wanted to represent himself. To sit with Mr. McCall to do -- fulfill the duties of a standby counsel. Which generally, are to just kind of be there to provide advice, if asked. Kind of help the defendant who is representing himself get through the procedure. You know, just kind of make sure that they stand up at the right time and say somewhat the right thing but not to really give much advice or take over questioning.

Although Judge Stilwell, I do remember said, If at any point you feel like it's necessary for you

to jump in, go for it.

And that he was going to give me a lot of leeway to kind of just handle the situation from a defense perspective as best as I thought I could. So, that's how I got involved in this case. And we literally came back out and The State called their next witness. So, I was just kind of at that point, just kind of rolling.

At that point, I had tried a whole lot of cases. It was certainly not by any means my first criminal trial, it's not my first felony DUI trial. It was -- from that point of view I was in my comfort zone, I had done it a lot. I think at that point -- I remember laughing because I got appointed to this case, it was something like that three for four terms of court in a row, I had tried a case. And I was finally, okay, great, I get a break this time around. And as soon as I thought that, boom, I was sitting right there.

So, I was in my comfort zone but at the same time I wasn't prepared. I had not prepared for the trial. So, you know, I was shooting from the hip.

Q Okay. So, you had, obviously, no prior knowledge of anything that happened in this case regarding earlier hearings seeking to relieve Mr. Chambers or other cases or anything to do with discovery or any issues in this case?

A No, I mean, it had been explained that Randy had been relieved. And I got a very bare bones, sort of skeleton outline of how -- of where we were in the trial. I mean, but there were times, like, I remember the first time -- I don't remember if it was Mr. Overby or Ms. Drawdy, but somebody had a picture and was showing it to the jury and I had to ask that we approach. Because I didn't know if it was in evidence or yet or not. So, I didn't know whether I needed to object or not at that point. So -- but yeah, I did not have a lot of knowledge of what had happened before that point.

Q And then -- but you did have experience at that point in your career in dealing with -- you said dealing with felony DUIs, so I assume medical reports, expert witness testimony, accident reconstruction testimony, things of that nature?

A Yeah, all those things are things that at some point or another I had dealt with.

Q So, you wouldn't have felt comfortable making an objection if you thought it warranted?

A Oh yeah.

Q And Judge Stilwell specifically advised you or instructed you to feel free to interject or relative to a normal stand-by counsel situation?

A Right. And I think, if I remember correctly, it

was that he was appointing me as standby counsel but was going to give me a lot of leeway as far as -- as a defense attorney, what I thought needed to be done, that I could do it. And then, I do remember that not far into the trial, it might have been the first or second witness that I was here for, I had -- Mr. McCall and I had a quick chat and it was decided that I had to take a little bit more of an active role at that point. Essentially, was going to be trying the case from that point forward.

Q You don't have a specific recollection as to what witness that may have been?

A No. And I know that it was pretty quick but that's, you know, I don't have any specific recollection of when that would have been.

Q There's been some questions asked of Mr. Robinson, EMS, were you in the courtroom?

A Uh-huh.

Q Do you recall ever lodging an objection to Exhibit 28, State's Exhibit 28?

A That's his record, his report--

Q And I can --

My I approach the witness, Your Honor?

THE COURT: Yes, sir, absolutely.

BY MR. STROM:

Q This is State's Exhibit 28, but it's Court's

Exhibit 11 for the purposes of this hearing.

A Do I remember objecting to this document coming into evidence?

Q Correct.

A No. I mean, I don't remember whether I did or not. The specifics -- I mean, like I said, I had not prepped for the case so I was kind of just shooting from the hip. So, I don't remember whether I would have. Or whether or not I did or not with that.

Q Do you remember lodging any sort of objection to Mr. Robinson testifying to a report written by his partner who was not present?

A I mean, it seems to me that I very likely would have made that objection.

Q Okay. Turning to Mr. Robinson's testimony, and I'll hand you a copy of the transcript here in just a moment. Actually, if you could for me, if the Court Reporter will hand you the affidavit for Mr. Robinson. I believe it is Court's Exhibit --

THE COURT REPORTER: It's four.

MR. STROM: Four. Thank you.

BY MR. STROM:

Q Do you recall The State attempting to qualify Mr. Robinson as an expert in some kind of level of drunk diagnosis?

A With all the many caveats that I've given, now that I see their summary and everything, I do remember somewhat that that happened.

Q And again, bearing in mind some of the circumstances under which you came into representing Mr. McCall, and giving your experience, if that summary is correct in the fact in some respects it says you made the objection or Mr. McCall made the objection, Mr. Robinson was not qualified as an expert. That affidavit says that you did not subsequently object to, essentially, The State eliciting testimony from Mr. Robinson that covered the same ground as his expert witness statement?

A Right. So, what I remember, and again this all sort of through a very heavy -- this is just my practice. And in getting ready for this hearing I went over the affidavits and the summary with Ms. Drawdy. In going through all that, best way I can put this is I know I would have objected to him being qualified as an expert in that area. And it seems like from the summary that we agreed that I did. If he then, subsequent to that objection being made and sustained, if he then started testifying -- giving testimony as if he was an expert, I have a really hard time believing that I would not have objected to that. I think that I probably would have been all over that one. Because that's not unusual. This

is -- we're getting into sort of style and tactics and stuff like that now, but it's pretty usual for someone -- for a law enforcement official who is testifying to get into expert territory. I mean, that's sort of line is something that in a criminal trial of this nature, we all -- both prosecutors and defense attorneys kind of dance around. And so, I would have been very conscious of that line. And that's something that, as a general practice when I'm trying a case, I'm really paying attention to. So, I find that hard to believe that I would have missed that. But again, I don't specifically remember.

MR. STROM: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

BY MR. STROM:

Q I'm going to hand you Court's Exhibits 5, 6, 7 and 8. Starting with Court's Exhibit 5, which is Tommy Brooks' affidavit. If you can, review that for me and let me know when you finish.

A Just the first one?

Q Yeah--

A I'm done with the first one.

Q Okay. Having reviewed that, do you recall sort of the scope of Corporal Brooks' expertise as a member of

the MAIT team?

A I mean, yeah, it seems like what was in the -- I mean, having had MAIT team members testify before, it seems consistent with what the scope usually is. This all sort of rings true with what's in the affidavit.

Q Have you ever objected to the scope of their expertise with respect to limiting acts of reconstruction to physics of the accident as opposed to the mechanical causes?

A Have I ever? Probably.

Q As a general practice?

A I mean, again, this is the same thing that I was just talking about with Robinson. When you have someone in law enforcement who is testifying and they're testifying either as an expert or they're getting close to that line, that's something that I usually pay very close attention to. And I'm usually eager to object to and usually try to make sure that witness knows that I'm watching them as far as they get to that line, so.

Q But to be fair you have no specific recollection--

A Absolutely not, yeah.

Q Do you recall approximately how long your cross-examination was?

A I have no idea.

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

THE COURT: Yes, sir.

BY MR. STROM:

Q The affidavit states that, I believe it is, that you conducted the cross-examination but then refers to Mr. McCall doing the questioning. Do you have any recollection as to whether you both did the questioning? I realize that Judge Stilwell made some accommodations.

A No, I have no recollection as to how that would have worked out. And, you know, I just now, reading this affidavit, realized that it says both. But again, I don't remember.

Q Okay. If you'll turn to Robert Suddeth's affidavit.

A Yes.

Q Which I believe is Court's Exhibit number -- it should be marked.

A It's Court's Exhibit No. 6 for this hearing.

Q Okay. If you'll let me know when you've reviewed it.

A Okay.

Q It states that there's an objection made there, could you sort of flesh that out for us? I realize that he's the victim in this case, do you recall with any

degree of specificity the level of impairment or the kind of suffering that he was describing that led you to object.

A I remember from the facts that I know about the case, being shocked that Mr. Suddeth survived. So, personally, not that I remember but as a person I remember being like, you know, amazed at the amount of pain and suffering that he must have gone through to still be standing here and testifying at that trial.

Now, having said that, as a defense attorney, I'm obviously thinking about that the jury might go through that same thought process, and in advocating for Mr. McCall, I'd like to stop that. Because I don't want them to identify with the victim anymore than necessary because that's not really probative to the elements that The State has to establish in the trial, but absolutely can lead the jury to feel bad for the victim or to want to help the victim and sometimes that can lead to them voting for guilty.

So, that is the line of testimony that I would have most likely jumped all over. And I can see here when I, in this summary, when he said that, you know, I would have -- if I had died that day I would have lived a full life. Like I can hear that statement, like, in my head I'm already half way up out of my seat objecting to

that. Because I have no idea where the next couple of sentences are going in that testimony. And it's not relevant and really bad for my client. So. . .

Q Do you have any recollection as to how -- you said you can almost feel the sentence coming. Do you have any recollection as to how long that kind of testimony or how lengthy that kind of testimony was? Either before you objected or did The State come back around to it after the objection?

A Judging from the summary, which I have, my affidavit says that I don't really remember anything other than what happened here. And this seems pretty right. It seems like it would have gotten -- like I said, it's -- he would not -- I would not -- I can't imagine that I would have let him get much further than about three words into that before I would have jumped up and said something about it.

Q So, your recollection is that it was a single sentence or a paragraph, sort of answer, from the Defendant before you objected? Trying to get a sense of whether it's a single reference or whether it was a multiple, you're having to object over and over again to prevent that testimony.

A To answer that question, I don't remember. You know, I -- I would like to think that I would have gotten

on that one the first time. But, you know. . .

Q And policed it from there?

A Yeah.

Q Then I'm sorry to take this out of order but going to Dr. Lance on Page 357 --

Your Honor, I'll approach with my copy of the transcript.

THE COURT: Sure.

BY MR. STROM:

Q On Page 357 Mr. McCall makes an objection. You stated earlier that you, essentially, taken over representation at some point fairly early on in the trial. This is now day three, do you recall if there was any further argument done regarding this objection?

A Give me a second. Let me --

Q Yeah, feel free to read the context.

A I don't remember whether there was more argument than that or not. I honestly don't remember much other than what I'm reading here.

Q And if you'll flip to the next page for me is where her testimony ends.

A Uh-huh.

Q Do you recall -- and you were in the courtroom for this. She had talk about several of the other drugs that he had, the initial screen came back positive for.

Do you recall objecting to any of that? Do you have a specific recollection of an objection?

A I don't have a specific recollection of that, no.

Q Do you have a recollection of there being anymore objections, or just that single one line by Mr. McCall during Dr. Lance's testimony?

A I don't. I mean, it doesn't mean that there weren't but I don't, so.

Q Turning to the directed verdict argument was also not transcribed, do you recall the specific grounds you raised when making the directed verdict motion?

A No, I don't. If I had to guess it was probably just my kind of like standard, let me get this on the record directed verdict motion. And that's just because again, I wasn't--

Q Can you provide us with an example of that?

A Oh, yeah, it's been a while but. Move -- defense moves for a directed verdict, The State has not established any evidence to prove any of the evidence -- or any of the elements that are required for a conviction in this case. Or something like that.

Q Did you touch on any of the specific elements for felony DUI, great bodily injury?

A I don't remember what I did in this case. But

if I was doing that directed verdict motion, like I said, I just kind of get it on the record directed verdict motion. I try to stay away from being too specific because I'm just trying to get the record set and let y'all at appellate defense have a little bit of room to work if there's anything there. I don't really -- I want to try -- unless -- if I have the grounds that I think it's going to be granted on, I will get into that specific thing and try to fight for it. But if I don't, I generally just kind of make sure I don't get too specific because I want the record to be as protected as I can let it be.

Q Well, certainly appreciate that. Do you recall renewing the motions that were previously made?

A I really hope I did that, yeah. I mean --

Q It's in the --

A -- that's an essential part of a directed verdict motion, so yeah.

Q And part of it is in the record --

A Okay.

Q But do you have any specific recollections, any additional arguments made to those renewals? Perhaps with respect to Mr. Robinson's expertise or any other area?

A No, I don't. I mean, I don't. I'm sure that I would have done that but as far as how much I would have

talked about it or whether I just would have put it on the record and left it there, I don't remember.

MR. STROM: That's all the questions I have for Mr. Erwin, Your Honor.

THE COURT: Yes, ma'am.

MS. DARWDY: I have a few.

CROSS-EXAMINATION

BY MR. STROM:

Q Mr. Erwin, I'm going to try to do this chronologically.

A Okay.

Q Let's go back to when you first became involved in this case.

A Okay.

Q Do you recall coming -- leaving the courtroom with Mr. Chambers?

A Uh-huh.

Q And him turning over his file to you?

A Yes, yes.

Q That did happen?

A Yeah.

Q You went into a conference room, he turned it over to you?

A We went out in the hall. And Randy -- Randy had separated his file into a bunch of little yellow folders.

And I don't know what the method was there. Because everybody has their own thing. I do my files a certain way, everybody does it differently. And we went out in the hall and Randy gave me the yellow folders and like, I mean, made a comment and then took off down the hall. So, it wasn't much of a conference, it was sort of like here you go, good luck.

Q But you were given an opportunity to get everything before. . .

A In the sense that I got someone else's trial file and it was completely unorganized, I couldn't make any sense out of it, I had about 30 seconds to review, yeah, I got it before.

Q I'm not throwing darts at what you did after that.

A Yeah, yeah --

Q Just that it was --

A I physically had possession of a trial file that was absolutely worthless to me.

Q And over the course of the trial you were in conversation at various times with Mr. McCall --

A Yes.

Q -- and at counsel table, were you not?

A Yes.

Q And would you describe his participation and

decision making and deciding and commenting on what was going on in the courtroom to be fairly active?

A I feel, and sorry if I'm making this more difficult than it has to be. I feel very uncomfortable answering that question. I feel like that's getting close attorney/client privilege that really --

And Judge, I really -- I really don't want to answer that question.

BY MS. DRAWDY:

Q Okay.

A Because of attorney/client privilege.

Q Can I ask it in a way that wouldn't be -- make you so uncomfortable. You did have discussions with him at the table?

A Yes.

Q I'm not asking about the content of those discussions.

A Yes.

Q And he was fairly active in participating in discussions with you at the table?

A We talked at the table, yes.

Q Okay. And I wanted to ask you about, specifically, about the objection to Mr. Robinson, the EMS worker?

A Uh-huh.

Q He was not law enforcement; right, he was EMS?
A Yeah, I guess when I said that earlier --
Q Okay --
A -- I guess, technically speaking, he's not law enforcement. Forgive me for doing my defense lawyer thing where I kind of lump them all together.
Q That's all right.
A I don't think he was expert in. . .
Q And I think that if -- well, I don't want to comment on that but I think that if everyone in this room has an opportunity to give a recollection of whether you did make that initial objection --
A Uh-huh.
Q -- I think we can do that.
A Okay.
Q And find out what everybody says about that. It is possible that if you did miss objecting, as you usually would have, when Mr. Overby sort of asked the question in a different way that I think he thought might have been a different way, then you could have missed that because you were talking to Mr. McCall. Is that possible?
A Sure.
Q Okay.
A But lots of things are possible.
Q That's all I'm saying. And I think we can ask

everyone who was there, whether they recall whether you did, in fact, make that follow up objection. But you don't remember whether you did or not, is that fair to say?

A I --

Q You don't --

A Ask that question again.

Q You don't actually recall whether you did that or not?

A I don't actually recall.

Q Okay.

MR. OVERBY: I just want to. . .

CROSS-EXAMINATION

BY MR. OVERBY:

Q Mr. Erwin, so during the -- during Josh Robinson's testimony, I know that you indicated that it's kind of fuzzy and I can't really blame you because you got thrown in a felony DUI trial right then and there. But you remember me trying to -- or do you remember my questioning trying to discuss Josh Robinson's -- the importance of Josh Robinson knowing, particular, when somebody might be under the influence of a particular drug?

A I mean, that seems like a likely road you would have gone down. I don't remember specifically remember

that.

Q Okay. Do you remember me trying to ask and you objected? Do you remember the objection at all independently?

A No.

Q Okay. And you don't remember -- you don't remember my rephrasing the question. Do you remember having -- do you remember if there was a distinction between the way that I phrased the question previously and the way that I phrased it after the fact?

A Stan, I don't remember, like, the specifics of that really at all.

Q Okay.

A That all sounds like stuff that could have, may have happened.

Q Okay.

A But like. . .

Q No worries. No worries.

MR. OVERBY: I have no further questions.

THE COURT: Yes, sir.

MR. STROM: Just one or two questions, Your Honor.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. STROM:

Q Have you ever been found ineffective for failing to miss an objection?

A That's a good question. I have not been -- to my knowledge, I don't think I've been ineffective for failing to miss an objection. But I got to explain that a little bit. I was in the Public Defender's Office for six or seven years. Handled thousand of cases for clients that are very litigious. I ended up being on the other end of PCR's many, many times. A lot of those hearings, I don't -- I'm not really privy to what the ruling is, the Judge takes them under advisement, I'm just a witness in that case so it doesn't really ever get back to me whether I was found ineffective or not. I am aware that I have been found ineffective at least one time. I don't remember exactly what that was for. And I don't think it was for missing an objection, but who knows.

Q But particularly with respect to where you've already won the objection the first time, your normal practice would be to be aware that the solicitor may try to rephrase questions in such a way so that it circumvents the successful previous objection. That's something that you're aware of as a matter of practice?

A Yeah. I mean, look get to the heart of all this, it's possible that I missed that. I would be

embarrassed if I missed that. And if I did miss that, I am embarrassed. But, you know, people make mistakes, there you go.

MR. STROM: Thank you, Judge, no further questions.

THE COURT: Any questions?

(There was no response.)

THE COURT: Okay, thank you, Mr. Erwin, I appreciate it.

MR. ERWIN: That's it? Okay.

THE COURT: All right, any other discussions, issues we need to take up with respect to Mr. Erwin's testimony?

MR. STROM: I don't have anymore, Your Honor.

THE COURT: Okay. So, the question outstanding with respect to that specific line of questioning is whether an objection was made or not to -- was it -- was it the EMS's -- the EMS officer's testimony that dilated eyes was an indication of methamphetamine?

MR. STROM: Correct.

MS. DARWDY: That's consistent with it; that's the second question.

THE COURT: Okay. And have we established whether that question was answered and whether it was asked?

MR. OVERBY: It was.

THE COURT: Okay. And is the recollection from The State is that there was an objection that was posed?

MR. OVERBY: I don't know -- I mean, I'm the one who most directly remembers this entire situation, I feel like.

MS. DRAWDY: And I have a specific recollection about that because I was watching.

MR. OVERBY: But I don't know how you want to take that up.

THE COURT: Well, I want you to tell me right now as officers of the court. I don't want to put you under oath because you're officers of the court.

MR. OVERBY: Sure, sure, okay. The way that I recall this whole segment going was that Josh Robinson testified that he was with EMS. That he had a long standing -- that he had experience and training in identifying particular types of drugs. That he had to have as part of his experience with dealing with patients in emergency medical situations. Then he testified about the specific -- that he testified specifically about his arriving at this accident scene in 2012. That he and Gary Clark were in back of Medic 26, which was an ambulance.

That they specifically had or that they were there on. That was corroborated by, I think, State's Exhibit No. 28. That it's cramped in there. State's Exhibit 28 was in evidence at that point in time. It was in evidence through Sally Clark and John James, previously. He was in the back of Medic 26, it's very cramped, Gary Clark is working on Mr. McCall over on one side, he's over here with--

MR. STROM: Your Honor, if we may?

THE COURT: Yes, sir.

MR. STROM: I plan on having Mr. Overby testify. I was going to offer The State -- it might be easier to put him -- put him on now and put him under oath rather just having him--

THE COURT: He's an officer of the court, no need to put him under oath.

MR. STROM: If it satisfies, Your Honor --

THE COURT: You can -- and I'm going to let you cross-examine him on all that too.

You keep on, then you can take the stand --

MR. OVERBY: Sure.

THE COURT: -- and let Mr. Strom --

(WHEREUPON, everyone was talking over one another.)

MR. OVERBY: The reason I remember this is this

was my witness. So, he testified basically that it was really cramped, that they worked as a team and he's inputting stuff live on a terminal, which is where these reports are coming from. And that's basically how that whole thing went. The idea was is that I'm establishing presence sense impression. That was the whole purpose of -- that Gary Clark would have had presence sense impression. And the exhibit was already in evidence. So, once that was squared away and I had laid that foundation, I started to ask that Mr. Robinson about pupil dilation and what kind, in his opinion, what kind of -- if six millimeters was, in fact, a very dilated pupil? Or if that would be considered dilated pupils?

He responded, Yes.

And then I asked him what his opinion was with regards to that. Which drew the objection from Jake in that I had not qualified him as an expert at that point. At that point I asked to qualify him as an expert.

Which, Your Honor, said, No.

And then at that point, I simply asked, Do dilated pupils -- can dilated pupils be consistent with a drug classification? So, stepping away from his opinion is essentially how I asked it. Rather

than asking about his opinion, I asked about drug classifications and his knowledge on that. And he said nothing about that. And that's how that line of testimony went.

THE COURT: Okay. All right. Then I presume --

MR. OVERBY: The only thing I will add to that is that after that there was not an objection. And I don't want to put any words into Mr. Erwin's mouth--

THE COURT: I gotch you, I gotch you. So, subsequent to him stating it was consistent with methamphetamine, there was no objection at that point?

MR. OVERBY: That's my recollection.

THE COURT: All right. Okay. And remember you just testified as an officer of the court.

And Mr. Strom, do you have questions that you would like to ask him about that? He can take the stand or you can do it from right there.

MR. STROM: He can stand right there, that's fine by me.

So, you have specific recollection that as you are asking -- trying to qualify Mr. Robinson as a expert, that you essentially lost that battle? That the Court said that he didn't have the necessary skills, training or experience to give opinions as to

what drugs would cause someone's pupils to be dilated?

MR. OVERBY: It wasn't as to that. What I lost the battle on, I think, is from my recollection, is that I started to ask for an opinion which drew the objection. And then, which would have related to this specific incident. But I did not ask for an opinion with relations to his actual drug and his ability as an expert to diagnose specific drugs.

MR. STROM: But you then came around and said, Dilated, in your experience, training, expertise, dilated pupils are consistent with methamphetamine use? Essentially, what you were trying to get him to testify to?

MR. OVERBY: Well, he said it, I didn't specifically say it. I asked what drug classifications would dilated pupils be consistent with.

MR. STROM: He wasn't qualified as an expert and it's your recollection--

MR. OVERBY: Sure.

MR. STROM: -- that he was not qualified as an expert. There was no objection to that testimony despite Mr. Erwin's testimony?

MR. OVERBY: My recollection is that there was

no objection to the rephrased question.

MR. STROM: Okay.

If that what he remembers, then that's what he remembers, Your Honor.

THE COURT: Okay. Good enough.

MS. DRAWDY: Your Honor, may I offer my recollection?

THE COURT: Yes, ma'am.

MS. DRAWDY: I particularly remember this. Mr. Overby and I worked on this trial very hard together. We knew it would probably be appealed and it was actually my case, he came to help me on it. The -- we knew that the doctor would also be talking about the dilated pupils and what that meant. And that is reflected in the record she did testify exactly the same way that that was indicative of methamphetamine.

I was paying very close attention to the testimony because this was an important part of our case. And I recall being surprised that Jake did not object to the second question. So, I have a very distinct memory about that that he did not object. And I can -- so I do have a distinct memory of that as well.

THE COURT: Do you recall the first objection?

MS. DRAWDY: Yes, sir.

THE COURT: Very distinctly?

MS. DRAWDY: Yes, very distinctly.

THE COURT: Okay.

MS. DRAWDY: And I was surprised he didn't object to the second one. There was important testimony that I paid very close attention to because it interplayed with a witness that I was going to be performing direct examination on.

THE COURT: Okay. All right. Had the doctor already testified or was that the EMS provider testified before the doctor, do you remember?

MS. DRAWDY: He testified before she did.

THE COURT: Okay.

MR. STROM: Your Honor, may I grab my copy of the transcript?

THE COURT: Sure. As a matter of fact, I think I got it.

MR. STROM: Well, Your Honor, you're welcome to keep that, make it a Court's Exhibit if you want to.

THE COURT: No, I'm good. I'm good.

Let's -- we've been at it for a little bit, let's take a break and we'll come back in and we'll pick up right where we left off.

Mr. Strom, I'll give you the opportunity to read

through what you want when we come back in, okay.

MR. STROM: Okay.

THE COURT: What, let's say 10 minutes, okay.

MR. STROM: Thank you, Your Honor. Just for planning purposes, it's just Mr. McCall after.

THE COURT: Okay.

MR. STROM: From our side.

THE COURT: Okay. Good. Fair enough.

MR. ERWIN: Judge, when we come back from the break, is my presence necessary?

THE COURT: Y'all decide that. I think I'm comfortable.

(WHEREUPON, a short break was taken.)

THE COURT: Okay, ready to proceed?

MR. STROM: Yes, Your Honor, I call Mr. Terry McCall.

THE COURT: Yes, sir.

THE CLERK: Place your left hand on the Bible, raise your right hand.

TERRY MCCALL, after being duly sworn, testified as follows:

THE CLERK: Please be seated. State your name for the record.

THE WITNESS: My name is Terry McCall.

DIRECT EXAMINATION

BY MR. STROM:

Q Mr. McCall, I'm going to streamline this just a little bit. You've been here for the hearing, you've had a chance to review the affidavit from the attorneys as relates to Chris Stache, EMS responder. Are you largely in agreement with that recollection? With the attorneys recollection as to his testimony?

A Yes, sir, I'm in agreement with that.

Q Moving to Teresa Dwease, I apologize if I butcher that name. Have you had a chance to review the affidavits submitted by the attorneys regarding this witness' testimony?

A I have.

Q And you're in agreement that that, to the best of your recollection, reflects her testimony at trial?

A Yes, to the best of my recollection I do, Uh-huh.

Q Turning to the next witness, Josh Robinson, have you had a chance to review the affidavits submitted regarding Mr. Robinson's testimony?

A Yes, sir, I have.

Q And I understand that, I guess, based on our conversations, that you're in agreement with a significant portion of his testimony?

A That's true, uh-huh.

Q But that there is an issue regarding his objection that we've been discussing for which you have a different recollection than that of the prosecution?

A That's true, it is different.

Q And so your recollection, and again, let me know if I'm incorrect, your recollection is that you had asked Jake to take over questioning of the emergency services and the police officers at this point in the trial?

A I did.

Q Of Mr. Robinson's testimony?

A I did.

Q Your recollection is also that Jake successfully or, excuse me, Mr. Erwin successfully objected to The State accepting to qualify Mr. Robinson as an expert witness?

A He did.

Q And then there's been conflicting testimony presented as to whether or not Jake or you subsequently objected when The State attempted to rephrase their question. Do you have a recollection as to whether or not The Defense, either you or Mr. Erwin, objected to this testimony from Mr. Robinson regarding whether dilated pupils were consistent with a particular class of drug?

A I do. Jake immediately jumped up and jumped straight to his feet--

Q And that's a specific recollection that you have?

A I do. He jumped straight to his feet and went to arguing.

He hollered, Objection.

And went to arguing about it.

Q Turning to Corporal Brooks, have you had a chance to review the affidavits submitted by the attorneys with respect to Mr. Brooks?

A Yes, sir, I have.

Q And while you're able, do you agree with some of the content? Do you have a different recollection than that that's recorded in the affidavit?

A Yes, sir.

Q Do you recall -- do you have a specific recollection that there was an objection as to whether or not Corporal Brooks was qualified to testify regarding the condition of the brakes on your vehicle?

A Yes, sir.

Q And to the best of your recollection, who made that objection?

A Jake did, Mr. Erwin did.

Q And again, this is at the point in the trial where you have, again, a fair degree of responsibility to Mr. Erwin as your standby counsel?

A That is true.

Q And, in fact, he conducted both the cross-examination of Corporal Brooks and Mr. Robinson; is that correct?

A That is true.

Q So, you have a distinct recollection that Mr.~Erwin objected to the scope of Mr. Brooks testimony regarding operable brakes?

A He did.

Q And just generally, as you reflect on the conduct of this trial, is it your memory that Mr.~Erwin would interject fairly freely, either with an objection or questioning a witness?

A Yes, sir.

Q Do you recall that he did that?

A I do, uh-huh.

Q And that would be, in several instances, where you begin a cross-examination or he did cross-examination of a witness and he would always participate, correct?

A That is true, uh-huh. The Judge gave him the leeway.

Q And then, like to turn to Dr. Lance's testimony. There's been testimony today regarding the objection you logged on Page 357 of the transcript.

Your Honor, is there a copy of the

transcript up there?

THE COURT: I have it right here, thank you. Do you need it?

MR. STROM: Just briefly, if I may approach the witness?

THE COURT: Yeah, sure. I'll give you all three to find what you want.

BY MR. STROM:

Q Having you look at Page 357, beginning with Line 3. And, Mr. McCall, if you would read the preceding couple of pages to get a sense of where that is in the trial, please feel free to do so. Let me know when you're ready.

A Okay. I'm ready.

Q Okay. Do you see that the transcript reflects that it simply says, Objection, with no stated grounds? Do you have a recollection to the contrary or recollection that suggests that that, perhaps, is not accurate or a full transcription of the objection?

A I do. I objected -- I said, Your Honor, the record reflects something different.

Q And when you're referring to the record, are you referring to the SLED drug reports that were entered into evidence at your trial?

A Yes, sir, I was.

MR. STROM: And for the record, Your Honor, if you'll just allow me one minute I can get you the exhibit number for those.

THE COURT: Okay.

MR. STROM: I believe that will be State's Exhibit, essentially, 35 through 42, that's including the evidence bag chain of custody evidence log but particular 41 and 42.

THE COURT: Yes, sir.

BY MR. STROM:

Q Are those the two exhibits that you're referring to?

A Yes, sir.

Q Mr. McCall?

A It is.

Q And then other than the objection to Dr. Lance's testimony regarding the initial drug screens, do you have any memory to the contrary or disputes what's stated in the affidavit?

A No, sir.

Q Turning to the final State's witness, Robert Suddeth. You were in the courtroom when Jake Erwin testified regarding the objection that he lodged to testimony by Mr. Suddeth stating the impact of the accident had had on his life or his reflections on the

accident. Do you have any, I guess, recollection to the contrary as to -- to that objection? Do you recall it any differently than Mr. Erwin did?

A No, I don't, no.

Q And so, looking at that affidavit, again, the affidavit of Mr. Suddeth, you are largely -- you're in agreement with the factual recitation of it?

A Yes, sir.

Q Okay. Turning to the defense case, Mr. McCall. The first witness, if you can explain, who Juliette Martin was?

A She was my girlfriend at the time.

Q And she was called -- you called her as a witness in your case. Have you had a chance to review the affidavit from the attorneys?

A Yes, sir.

Q Detailing the testimony?

A I have.

Q Do you have -- are you in agreement with it, do you disagree?

A I disagree with it.

Q And what areas do you disagree with the affidavit?

A Well, it's got down here -- it's got that Ms. Martin testified that she and Mr. McCall went to sleep

on the night of March the 2nd. And that would be incorrect, it would be the 3rd.

Q Well, let's sort of try to set the timeframe here. But the accident occurred on the evening of March 4th?

A Yes, sir.

Q And then on March 2nd, do you agree that Ms. Martin was in jail at that point?

A Yeah, it's stated on here that she--

Q So, you agree with their recollection?

A Yes, sir.

Q Was she released on the 3rd to the best of your memory?

A Pardon?

Q Was she released from jail on the 3rd or the 2nd?

A It was over the morning.

Q So morning of the third?

A Uh-huh.

Q So, when they're referring to March 2nd to March 4th and then the second reference on the night of March 2nd, you believe that's actually March 3rd?

A Yes, sir.

Q And when the affidavit states that she woke up and you were no longer in the room, that would be

referring to waking up on the 3rd?

A That is correct. No, the 4th.

Q Excuse me, the 4th?

A The 4th, yeah.

Q I'm sorry, the 4th.

A Yes, the 4th.

Q But other than that, you're -- other than the date being the 2nd and the 3rd instead of the 3rd and the 4th, excuse me, I mixed that up. It's the 3rd and the 4th instead of the 2nd and the 3rd. Other than that, though, you are in agreement with the affidavit?

A Well, only to the point that where it goes on, I think, this one or the other one about the medication.

Q Well, we have still have your affidavit--

A This is --

Q -- to go forward.

A Yeah.

Q Excuse me, the affidavit dealing with your testimony?

A Well then, yeah, I guess, I'm in agreement with it all but the fact she said he took the Ativan on the night of March 2nd, I'm in disagreement with that.

Q So, you didn't take Ativan?

A Not on March the 2nd.

Q Okay. Turning to your -- excuse me, the

attorneys affidavit, their memory of your testimony, have you had a chance to review it?

A Yes, sir.

Q And I understand from our discussions that you have some objections to it or different recollection?

A Yes, sir, I do.

Q What -- if you can sort of begin at the start of the summary of the testimony and explain your first area of disagreement.

A Well, it's saying that McCall testified that on the day before or on the day of the collision, Counsel cannot recall but stated that he drove Ms. Martin and his Ford Explorer to the pharmacy for a prescription. He testified at some point that Ms. Martin gave him several of her Ativan pills and he took them.

There was no several pills to it. There were only two pills.

Q So, the several -- your recollection is that you testified you were only given two pills?

A It was only two pills.

Q Then the next paragraph also states that immediately before the accident, you told Ms. Martin -- or excuse me, you testified that you were going to go out to wash clothes. Your recollection, and correct me if I'm wrong, is that you testified that you were going out to

eat?

A Went to get us something to eat.

Q Then having reviewed the remainder of the affidavit summarizing your testimony, do you agree with those remaining portions of it beginning on the third paragraph continuing on the second page?

A No, sir. They said that I testified that the beer cans that were found in the vehicle were ones that I had picked up on the side of the road. That wasn't what I said. It was behind the motel. There was a dumpster sitting there, I picked them up.

Q But other than that, other than the location of the how you collected the beer cans, it's, first of all, no one is alleging -- no one's alleged in your case that you were drinking?

A Yeah.

Q But other than the issue of where you picked up the beer cans from, the rest of it, that remaining final paragraph is -- final two paragraphs are -- you're in agreement with those?

A Well, it's got here it says that Juliette Martin had been asleep for several hours just prior to the time of the collision. She had been waking up. I was asking her what she wanted to eat.

Q So, you had some brief discussion then--

A Right.

Q --and then you went on your way.

A She then may have went back to sleep once I left.

Q Okay. And then, in our discussions you voiced some concerns as to when Caroline Hiskell left her employment at the Court of Appeals?

A Court Administration.

Q Excuse me, Court Administration.

A Yes, sir, I do, uh-huh.

Q And specifically your concern is that she was not a certified court reporter at the time that she signed the certification form verifying the transcript?

A That's exactly right. Because the one I received with the initial transcript was never signed. And then in between me trying to find out if she was going to be relieved or whatever, whatever was going on with the court, she sent me a letter, and I have it over there, that she was no longer a court official, a judicial officer. And then a certification came in because you guys had written her and explained that you needed a certification.

Q So, you're concerned that the certification came after she was no longer--

A Yeah, I believe so.

Q -- allowed to certified transcripts?

A I'm not sure, I'm still trying to find that out.

Q Okay.

A But I believe -- I believe so.

MR. STROM: Your Honor, there's -- Terry and I --

BY MR. STROM:

Q I know you've -- we've talked extensively but I want to make sure, have I covered all the issues as it relates specifically to the integrity of the transcript?

A Yes, sir, I think so.

MR. STROM: I have no further questions, Your Honor.

THE COURT: Okay, cross-examination.

CROSS-EXAMINATION

BY MS. MUNSON:

Q Hi, Mr. Martin -- Mr. McCall. Golly, I'm sorry about that. It's rude I didn't call you by the right name.

A That's all right.

Q I'm Judy Munson with the solicitor's office, I just have three little areas to talk to you about, okay?

A Okay.

Q All right, the first one is with the EMS guy, Robinson. The testimony that came in through him about

dilated pupils being consistent with methamphetamine all of that, do you remember that part?

A Uh-huh.

Q All right. Did the doctor, the lady that testified here earlier today, did she not testify to that as well when she was on the stand in your trial?

A I think so.

Q Okay.

A And not sure if that's not 100 percent.

Q Okay, well it's a lot stuff to remember. If that is in the record, would you have any disagreement with that? That she did testify that dilated pupils are consistent with meth use. Or meth -- like the effect of having meth in your system. You wouldn't disagree that she testified to that?

A I'm not going to say being for sure, I'm not for sure.

Q Okay. But if it's in the record--

A If it's in the record --

Q -- then you accept it?

A I would accept her saying it, sure.

Q Okay. All right, thanks. I didn't ask that very well, I'm sorry.

A That's all right.

Q Now, about Corporal Brooks, the trooper?

A Uh-huh.

Q Now, there was -- Jake objected -- your recollection is that Jake objected to him testifying about the brakes on the car, that that was beyond the scope of accident reconstruction. Do I have that right?

A Well, he objected, I think, to his expertise.

Q Okay. So, he objected to him being an expert at all?

A Uh-huh.

Q All right. But the testimony did come in anyway?

A Uh-huh.

Q Okay. And then one other thing then I'll be done. When Dr. Lance was testifying about drugs in a report that she was looking at, your recollection is that you objected that what she was saying was incorrect. Isn't that what you just said on the stand?

A Yeah, it was incorrect.

Q Okay. Now, there were two drug analysis, do you recall that? One from SLED and one from Greenville Hospital System.

A I do.

Q So, the one she was talking about was from Greenville Hospital System.

A And that could be true.

Q And it could be different than the one from SLED?

A That's possible.

MS. MUNSON: Okay, thank you, very much, that's all I have, Mr. McCall, thank you.

THE COURT: Mr. Strom, any additional questions?

MR. STROM: Nothing further, Your Honor.

THE COURT: Thank you, Mr. McCall, I appreciate it, sir, you can step down.

THE WITNESS: You want me to leave this here?

THE COURT: Yes, sir, please.

Yes, sir, Mr. Strom, anything else, sir?

MR. STROM: I just renew my earlier objection. I feel bad if I forgot to do so.

THE COURT: That's okay. I will say this, I think your initial objection was just as to Ms. Drawdy, I'll let you expand that to Mr. Overby, too.

MR. STROM: Please, Your Honor. As well as to Mr. Overby regarding the advocate witness rule, essentially, it's Rule 3.7 State v. Sierra.

THE COURT: Okay. Good enough, good enough. Thank you very much.

Anything The State needs to put on the record?

MS. MUNSON: Yes, Your Honor, just goes to show

I have no idea what I'm doing here, this is new to me, but there are a couple more questions, I think, in order to make a good record that should be asked of Ms. Drawdy and of Mr. Overby.

THE COURT: Okay.

MS. MUNSON: If I may do that now?

THE COURT: Sure, you may.

MS. MUNSON: Y'all speak up so she can hear you.

MR. OVERBY: Okay.

MS. MUNSON: All right, Ms. Drawdy, with the victim, Mr. Suddeth, the objections that were drawn, it sounds like he just sort of spontaneously started talking about If I die, my life would be full. And then an objection was raised?

MS. DRAWDY: Yes.

MS. MUNSON: Okay. Did that go any further?

MS. DRAWDY: It did not, the question. And the question I asked him is what is the last thing that he -- I asked him if he remembered the accident?

And he said, No.

I said, What is the last thing you remember before the accident?

And that is when he talked about having coffee and making the remark. An objection was drawn.

MS. MUNSON: Was it sustained?

MS. DRAWDY: It was sustained. And I assured The Court that that is not where we were headed with our questioning. That was not something I had sought to elicit. And when we moved on, we left that topic all together and moved immediately into the map and the route.

MS. MUNSON: Okay. And as to directed verdict motions, do you have any independent recollection of the directed verdict motions?

MS. DRAWDY: Just that they were very perfunctory. There was really no detail given specific to the lack of evidence, it was just stated as a conclusion that taken in the light most favorable to The State.

MS. MUNSON: Okay.

Nothing further, Your Honor.

THE COURT: Mr. Strom, any questions?

MR. STROM: I apologize, Your Honor, yes.

So, the objection -- so you were asking him what his last memory was prior to the accident?

MS. DRAWDY: Yes.

MR. STROM: If he remembered the accident itself?

MS. DRAWDY: Yes.

MR. STROM: Did his wife -- his wife testified,

correct, Mrs. Suddeth?

MS. DRAWDY: Yes, she did.

MR. STROM: You said he made the statement, did she corroborate that he made the statement sometime the morning before this happened?

MS. DRAWDY: I don't recall.

MR. STROM: And the daughter didn't testify, correct?

MS. DRAWDY: The daughter did not testify.

MR. STROM: Is that -- she--

MS. DRAWDY: Now, the wife did corroborate that he didn't remember the accident.

MR. STROM: But didn't she corroborate this sort of morning of reflection by Mr. Suddeth? That he was -- seemed somewhat blissful?

MS. DRAWDY: I don't believe she did.

MR. STROM: And so, your recollection is that Jake objected and you sort of steered it back to the brass tacks of here's your map, here's your route?

MS. DRAWDY: Yes. Yes.

MR. STROM: And then, consistent with Jake's recollection, the directed verdict didn't necessarily in detail, in any detail, address the--

MS. DRAWDY: Specifics of the case.

MR. STROM: Elements or the facts of the case?

MS. DRAWDY: Yes. Yes.

MR. STROM: Okay.

MS. DRAWDY: And if I may add, the purpose of the discussion of --

Did I mess you up?

MS. MUNSON: No, I'm just--

MS. DRAWDY: The discussion of his physical therapy was merely to show the protracted loss of the member. How long he had to do physical therapy to regain in his wonderful physical recovery.

MR. STROM: No further questions, Your Honor.

MS. MUNSON: Briefly for Mr. Overby on Corporal Brooks--

MR. STROM: I'm sorry, Corporal Brooks?

MS. MUNSON: Tommy Brooks.

MR. STROM: Yeah.

MS. MUNSON: He was qualified as an expert in accident reconstruction?

MR. OVERBY: Correct.

MS. MUNSON: And then you recall going into some questions with him about the brakes of the car, the mechanics of the car?

MR. OVERBY: Yes.

MS. MUNSON: Okay. And did that draw an objection that you recall?

MR. OVERBY: I don't recall an objection as to the vehicular examination as his qualifications. I recall a substantial portion of cross-examination taking place. And in my affidavit, I should note, that it says that the cross-examination was conducted by Jake Erwin. What I should note is that that was actually an error. I apologize. My recollection is Mr. McCall actually conducted that cross-examination.

MS. MUNSON: Okay.

MR. OVERBY: Dealing specifically with the brakes.

MS. MUNSON: Did they both cross-examination Corporal Brooks?

MR. OVERBY: My recollection is only Mr. McCall.

MS. MUNSON: All right. Well, since you said that, is there anything else that you can think of that you need to correct?

MR. OVERBY: Nothing else other than that.

MS. MUNSON: Okay.

THE COURT: All right, anything else we need to put on the record?

MR. STROM: Nothing else, Your Honor.

MS. DRAWDY: Nothing else.

THE COURT: Okay. All right. Well, I appreciate y'all being here and I appreciate y'all

assisting with the reconstruction of the record. I recognize that the reconstruction isn't perfect. I do believe that most of the substantive portions of the record have been clarified. There do seem to be a few outstanding issues which are subject to some discussion and debate. The Court of Appeals can make a determination as to whether those are relevant to the issues on appeal. And whether if objections were raised, what the impact on the case would be.

I'm not going to -- inasmuch as I am an impartial observer and objective, I'm not going to revisit any of the motions and rulings that may have been made during the case. I think the record for the most parts -- for the most part, stands for itself. I will say just, again, as an officer of the court who is recalling the record in this case and recalling the conduct of this case, that in this case when you read the transcript and in all the objections that were made, in most instances it seems, and even in the instances that have been recalled here by the attorneys of record, most of the objections lodged by the Defendant were granted. That's in keeping with my judicial philosophy of when you have a pro se litigant or someone who is in a compromised position. And I routinely err on the

side of the defense. And you will see that some of those objections that were made, I actually sustained those objections. With the exception of the one that wherein the doctor was relating what was on her report. That's a matter of fact. If the objection were, and the record doesn't reflect it, but if the objection were, that that's not what the record reflects, that's up to the jury to determine whether the record reflects that or not. So, it's a matter of fact, it's not a matter for the Court.

But I will say this, I will say this. Also, in this case, you come upon cases as a judge from time to time and you just wonder why the case is going to trial. In this case, I tried to determine at the outset what The Defense's position was. And I listened for it intently throughout the entire trial. There was never an articulation of an intelligible defense or theory of defense in this case. The evidence in this case, taken as a whole, was overwhelming. If there were a directed verdict motion that was made, clearly under the standard articulated by the law, it was not appropriate for directed verdict.

This was one of those cases where there was no good reason for anybody to go to trial. The evidence

was absolutely overwhelming. It is very unfortunate that the record was not full and complete in this matter. I don't have any stake at what happens in this matter. And if it's overturned, then that is entirely fine by me. If it comes back to trial and there's an acquittal, that is entirely fine by me. But I will just state for the record, this is one of those few cases that I've had in my career where the evidence was incontrovertical [verbatim] and overwhelming. Okay. Good luck to all of you.

MS. DRAWDY: Thank you, Your Honor.

MS. MUNSON: Thank you, Your Honor.

MR. STROM: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )
COUNTY OF GREENVILLE )

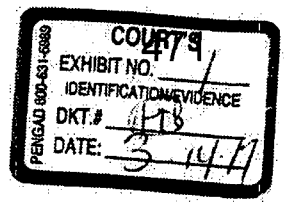
I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 14th day of March, 2017.

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

June 23, 2017

April P. Herron

APRIL P. HERRON, Court Reporter




**STATE v. TERRY MCCALL**

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

## Record Reconstruction Summary

**Witness: Tracy L. Lance, MD** (State's Witness)

Position: Emergency Room Physician, Greenville Memorial Hospital

**[ Day 3, Page 358, Line 14 ]**

DIRECT EXAMINATION BY: Sara Lee Drawdy

CROSS EXAMINATION BY: Terry McCall and by Defense Counsel, Jake Erwin

Objections during Testimony: None during the portions of the testimony that were not transcribed.

Evidence introduced: None

Summary of Testimony (that was not transcribed):

The majority of the direct examination of Dr. Lance was included in the record and the State would rely on the record as created until the above-referenced end to transcription.

Following the break in transcription, Dr. Lance was asked about the remaining three positive drug class results found in Mr. McCall's urine drug screen and the effects that those drugs have on the human body. She testified that each of the drugs for which there were positive results in the urine drug screen had impairing effects and that someone who was under their influence would have difficulty safely operating an automobile. This concluded the direct examination of Dr. Lance.

SLD JKE

Cross examination by Mr. McCall centered on whether he had been given some ginger ale prior to the time that his blood sugar had been tested in the ER. Dr. Lance responded that there was no record of that having happened.

SD JKE

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STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )

Personally appeared before me Sara Lee M. Drawdy, who being duly sworn, says that she is an Assistant Solicitor with the 13th Circuit Solicitors Office and that she was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Ms. Drawdy also states that the within Summary of Testimony for Tracy L. Lance, MD, *supra* is her best recollection of the testimony given by Dr. Lance.

Sara Lee M. Drawdy
*Signature*

Sara Lee M. Drawdy (Bar# 1747)
Print Name

Sworn to before me this
9 day of March, 2017.
Kelly Readenour
Notary Public for South Carolina
My Commission Expires: 7.28.24

**********

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Tracy L. Lance, MD.

*Signature*

Jake Erwin (Bar# 74141)
Print Name

Sworn to before me this
9th day of March, 2017.
S. Bradley Jolliff
Notary Public for South Carolina
My Commission Expires: 12.30.24

COURT'S EXHIBIT NO. 2 IDENTIFICATION/EVIDENCE DKT.# AB DATE: 3-14-17
PENGAD 800-631-6989

**STATE v. TERRY MCCALL**

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

**Record Reconstruction Summary**

**Witness: Chris Stache** (State's Witness)

Position: Emergency Care Worker, Greenville County EMS

**[ Day 2, Page 207 ]**

DIRECT EXAMINATION BY: Sara Lee Drawdy

CROSS EXAMINATION BY: No cross examination.

Objections during Testimony: None

Evidence introduced: None

Summary of Testimony:

Chris Stache testified that he was working as a Paramedic with Greenville County EMS on March 4, 2012 when he and Ryan Freeman were dispatched to a collision on SC-291 near Worley Road. He testified that they were riding in "Medic 9" and that they were the first EMS unit to arrive at the collision scene. Mr. Stache testified that when they arrived at the scene he immediately went to check on the occupant or occupants of the Red pick-up truck as Ryan Freeman went to check on the condition of the occupant or occupants of the other vehicle that was involved in the crash. He testified that an off duty fireman was leaning through the rear window of the truck, holding the head of the driver of the pickup truck.

Mr. Stache testified that it was apparent that this driver had very serious injuries. He testified that the dash had collapsed down on the driver. Mr. Stache testified that he was able to access the driver by entering the cab through the passenger door. He testified that the driver's pelvis



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was broken and unstable. Mr. Stache testified that the driver was conscious and in a lot of pain, but that he was able to give his name (Robert Suddeth) and some medical history. He testified that he had to "bag" the victim because he was having difficulty breathing. Mr. Stache testified that the victim was entrapped in the vehicle for some time because the first crew from the fire department was not comfortable with removing the victim from the truck. Mr. Stache testified that his supervisor, Lt. James arrived at the scene and assisted with the extrication of the victim.

Mr. Stache testified that because the victim's condition was so serious, Lt. James rode in the back of the ambulance to assist with patient care as they transported Mr. Suddeth to the hospital. Mr. Stache testified that the victim's injuries were life threatening and that he was surprised to learn much later that he had not died. He attributed the victim's survival to the fact that he was in very good physical condition.

Mr. Stache testified that he had no contact with Mr. McCall.

There were no objections during the testimony of Mr. Stache and the defense did not cross examine Mr. Stache.

SD OKE

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STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )
)

Personally appeared before me Sara Lee M. Drawdy, who being duly sworn, says that she is an Assistant Solicitor with the 13th Circuit Solicitors Office and that she was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Ms. Drawdy also states that the within Summary of Testimony for Chris Stache, *supra* is her best recollection of the testimony given by Mr. Stache.

Sara Lee M. Drawdy
*Signature*

Sara Lee M. Drawdy (Bar# 17477)
Print Name

Sworn to before me this
9 day of March, 2017.
Kelly Dreadwzy
Notary Public for South Carolina
My Commission Expires: 7·28·24

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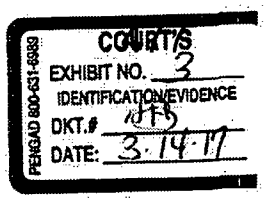
STATE OF SOUTH CAROLINA )
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COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )
)

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Chris Stache.

*Signature*

Jake Erwin (Bar# 79441)
Print Name

Sworn to before me this
9th day of March, 2017.
S. Bradley Jollison
Notary Public for South Carolina
My Commission Expires: 12·30·24




**STATE v. TERRY MCCALL**

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

**Record Reconstruction Summary**

**Witness: Teresa Davis Dwease** (State's Witness)

Position: Custodian of Records for Greenville Memorial Hospital System

**[ Day 2, Page 207 ]**

DIRECT EXAMINATION BY: Sara Lee Drawdy

CROSS EXAMINATION BY: No cross examination

Objections during Testimony: None

**Evidence introduced**

The following exhibits were introduced and entered into evidence without objection:

State's Exhibits A, B, C, D, E, F, G, and H

Summary of Testimony:

Ms. Dwease testified that she is the Custodian of Records for the Greenville Hospital System. She testified that as part of her official duties she has custody and control of patient records for the Hospital System, to include the Emergency Room at Greenville Memorial Hospital. Ms. Dwease testified that she had been subpoenaed to testify and to bring with her certain records pertaining to the examination, medical care and treatment of Mr. McCall at the Greenville Hospital Emergency Room on March 4, 2012. She testified that State's Exhibits A,B,C, D, E, F, G, and H were true and accurate copies of documents from the patient records for Terry McCall from his treatment in the Emergency (hereinafter, ER) on March 4, 2012. She testified that these patient records were created and/or retained by the Greenville Hospital System in the ordinary course of business.



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Ms. Dwease testified that State's Exhibits A and B were copies of the Hospital's Chain of Custody form on which the ER nurse who collected urine and blood samples from Mr. McCall recorded information that documented the collection of those samples. She testified that these documents were copied and scanned as a permanent part of the patient's record.

Ms. Dwease testified that State's Exhibits C and D were copies of forms that the law enforcement officer provided and that State's Exhibits C and D were scanned into the hospital's records system by ER personnel during the time that Mr. McCall was in the ER.

Ms. Dwease testified that State's Exhibit E was a copy of the Emergency Room Patient Care Record for Mr. McCall from his visit to the ER on March 4, 2012. She testified that the doctors and nurses who examined and treated Mr. McCall in the ER created this ER Patient Care record by entering details of the examination, care and treatment of Mr. McCall into the hospital's automated record keeping system using terminals located in the Emergency Room. Ms. Dwease testified that the results of any lab tests were uploaded via computer to the Patient Care Record where they could be accessed by the treating physicians.

Ms. Dwease testified that State's Exhibit F was a record summarizing Mr. McCall's vital signs over the course of his treatment in the emergency room. She testified that State's Exhibit G was a record of the lab test results for Mr. McCall. Ms. Dwease testified that State's Exhibit H was a copy of the Discharge Instructions Receipt for Mr. McCall.

The State made a motion to introduce State's Exhibits A, B, C, D, E, F, G, and H into evidence and all of these exhibits were entered into evidence without objection.

There were no objections during the testimony of Ms. Dwease and the defense did not cross examine Ms. Dwease.

SZD JKE

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STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )

Personally appeared before me Sara Lee M. Drawdy, who being duly sworn, says that she is an Assistant Solicitor with the 13th Circuit Solicitors Office and that she was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Ms. Drawdy also states that the within Summary of Testimony for Teresa Davis Dwease, *supra* is her best recollection of the testimony given by Ms. Dwease.

Sara Lee M Drawdy
*Signature*

Sara Lee M. Drawdy (Bar# 1747)
Print Name

Sworn to before me this
9 day of March, 2017.
Kelly Deardorff
Notary Public for South Carolina
My Commission Expires: 7.28.24

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STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )

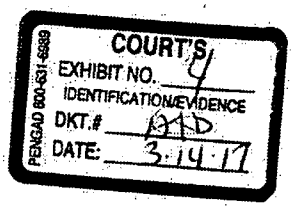
Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Teresa Davis Dwease.

*Signature*

Jake Erwin (Bar# 79441)
Print Name

Sworn to before me this
9th day of March, 2017.
S. Bradley Jellison
Notary Public for South Carolina
My Commission Expires: 12.30.24

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**STATE v. TERRY MCCALL**

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

**Record Reconstruction Summary**

**Witness: Joshua Robinson** (State's Witness)

Position: Emergency Care Worker, Greenville County EMS

**[ Day 2, Page 207 ]**

DIRECT EXAMINATION BY: Stan Overby

CROSS EXAMINATION BY: Defense Counsel, Jake Erwin.

Objections during Testimony: Yes

Evidence introduced: None

Summary of Testimony:

Joshua Robinson was part of the EMS crew that responded to the collision location at SC-291 and Worley Road in Greenville County. Mr. Robinson testified about his training and experience with regards to Emergency Medicine. Mr. Robinson testified that he was an intermediate at the time of the incident, but that he became a paramedic subsequent to the collision. Mr. Robinson testified that he was experienced in emergency medical care. He testified about the necessary training that is required of a person in his position. Mr. Robinson testified that he was working with a "primary" paramedic, Gary Clark. Mr. Robinson testified that they were dispatched to the collision scene in Medic 26 on March 4th, 2012. Mr. Robinson testified that they treated two patients at the scene, Julia Suddeth and the Defendant, Terry McCall. Mr. Robinson testified that he primarily treated Julia Suddeth. Mr. Robinson testified that a third individual drove Medic 26 to Greenville Memorial Hospital once both patients were loaded. Mr. Robinson testified that both he and Gary Clark were in the back Medic 26. Mr.



JKE SLO

Robinson testified that Gary Clark was treating the Defendant Terry McCall. Mr. Robinson testified that Defendant McCall was acting erratically. Mr. Robinson testified that the back of an EMS transport with multiple individuals is very cramped. Mr. Robinson testified there was very little distance or room for the actions of the Defendant and Gary Clark to not be observed. Mr. Robinson testified that he observed Gary Clark entering information in the computer in the back of the ambulance in real time. Mr. Robinson testified that as a matter of course notes are input into the computer as they are perceived and that the reports are time stamped. Mr. Robinson testified that he observed Mr. Clark input information in the computer. Mr. Robinson testified that he is responsible for reviewing the report as well after the report is closed and that he must sign off on the report. Mr. Robinson testified that his experience and training requires him to be familiar with the effects of certain drugs on the human body.

Mr. Robinson was shown state's exhibit # 28 (in evidence without objection, p. 188, line 24-25) which was a patient care report for Terry McCall. Mr. Robinson testified that the Defendant had a measured pupil size of 6.0 in both eyes. Mr. Robinson testified that the measured pupil size of 6.0 would be considered to be "dilated". Mr. Robinson testified that this measurement is typically taken in real time and that this was what Mr. Clark observed about the Defendant's pupil size. Mr. Robinson was asked his opinion of whether this indicated that the Defendant was on a drug. The Defense at this time objected to the question on the grounds that the witness could not provide that opinion. The State attempted to qualify Mr. Robinson as an expert which the Court refused to do. Mr. Robinson was then asked whether dilated pupils were consistent with a particular kind of drug class. This question did not draw an objection. Mr. Robinson then testified that dilated pupils could be consistent with methamphetamine use.

Cross was conducted on Mr. Robinson by defense counsel. To the best of counsel's recollection, the subject matter focused on the witness' lack of familiarity with the Defendant prior to that moment.

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JEE SLO

STATE OF SOUTH CAROLINA )
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COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )
)

Personally appeared before me Stan Overby, who being duly sworn, says that he is an Assistant Solicitor with the 10th Circuit Solicitors Office, formerly with the 13th Circuit Solicitor's Office, and that he was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Overby further states that the within Summary of the Testimony for Joshua Robinson, *supra* is his best recollection of the testimlny given by Mr. Robinson.

*Signature*

Stan Overby (Bar # 79870)
Print Name

Sworn to before me this
10 day of March, 2017.

Kelly Broadway
Notary Public for South Carolina
My Commission Expires: 1/30/24

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STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE ) **AFFIDAVIT**
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STATE OF SOUTH CAROLINA )
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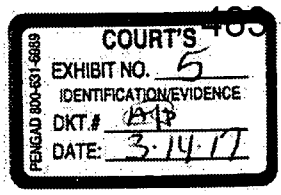
Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he believes that he would have objected to the question asked of Mr. Robinson about "whether dilated pupils were consistent with a particular kind of drug class", however, he does not have exact recall of whether he did object to that question. Mr. Erwin also states that he does not recall anything further about the testimony of Joshua Robinson.

*Signature*

Jake Erwin (Bar# 7441)
Print Name

Sworn to before me this
7th day of March, 2017.

S. Bradley Jollison
Notary Public for South Carolina
My Commission Expires: 12-30-24




**STATE v. TERRY MCCALL**

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

**Record Reconstruction Summary**

**Witness: Corporal Tommy Brooks** (State's Witness)

Position: MAIT Team Piedmont Region, SCHP

**[ Day 3, p.344 Line 5 ]**

DIRECT EXAMINATION BY: Stan Overby

CROSS EXAMINATION BY: Defense Counsel, Jake Erwin.

Objections during Testimony: None

Evidence introduced: None introduced during the "gap" in the transcription.

Summary of Testimony (that was not transcribed):

The vast majority of Mr. Brooks' testimony remains intact and the State would rely on the record as created until the above-mentioned gap. Cpl. Brooks additionally testified that the accident was not a result of "driver input", in other words, that the driver of the Ford Explorer, who was established to be the Defendant, straightened the curve on SC-291, and that it resulted in the collision in the opposite lane. Additionally, Cpl. Brooks testified that there were no workable breaks during his vehicle examination and that his theory is that the Defendant was utilizing the parking brake to stop the vehicle.

The portion of the record that was not produced was primarily cross-examination of the witness. Mr. McCall conducted cross-examination of Mr. Brooks. Mr. McCall asked several questions about the brake reservoir in the case. To the best of counsel's recollection, these questions had



JKE SLO

to do with whether it was possible for the brake reservoir to be filled with fluid which subsequently leaked out, thus creating operable brakes. Mr. Brooks testified that the reservoir was dry. The Court had to admonish the witness and the Defendant as the testimony became combative.

JHF SLO

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STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )

Personally appeared before me Stan Overby, who being duly sworn, says that he is an Assistant Solicitor with the 10th Circuit Solicitors Office, formerly with the 13th Circuit Solicitor's Office, and that he was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Overby further states that the within Summary of the Testimony for Corporal Tommy Brooks, *supra* is his best recollection of the testimony given by Corporal Brooks.

*Signature*

Stan Overby (Bar # 7170)
Print Name

Sworn to before me this
10 day of March, 2017.

Notary Public for South Carolina
My Commission Expires: 7-28-24

**********

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Corporal Tommy Brooks.

*Signature*

Jake Erwin (Bar# 74941)
Print Name

Sworn to before me this
9th day of March, 2017.

Notary Public for South Carolina
My Commission Expires: 12-30-24

COURT'S
EXHIBIT NO. 6
IDENTIFICATION/EVIDENCE
DKT.# 316
DATE: 3.14.17
PENGAD 800-631-6989

**STATE v. TERRY MCCALL**

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

**Record Reconstruction Summary**

**Witness: Robert Suddeth** (State's witness)

The Victim in this case.

**[ Day 3,** The final State's witness.]

DIRECT EXAMINATION BY: Sara Lee Drawdy

CROSS EXAMINATION BY: None

Evidence introduced: State's Exhibit # 72 (admitted without objection)

Objections: One objection by defense counsel, Jake Erwin.

Summary of Testimony

Mr. Suddeth testified that he was the driver of the red pickup truck and that he was the victim in this case. He identified State's Exhibit # 72 as a fair and accurate aerial view of SC 291 at Worley Rd and the surrounding area. Mr. Suddeth testified that this aerial map would assist him in explaining his testimony. State's Exhibit # 72 was then entered into evidence without objection. Mr. Suddeth testified that he did not recall the accident and that his last memory was from that morning when he was having his morning coffee. He testified that he had made the remark that if he died that day he would have lived a full life. This drew an objection from defense counsel with concerns that the State was about to embark on eliciting potentially inflammatory testimony. The State's attorney assured the Court that this was not where direct examination was designed to go. Testimony continued with no further objections.

Mr. Suddeth identified the location of Furman University and the location of his home on State's Exhibit # 72. He pointed out the route that he would take from Furman to his home when taking



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his daughter home from volleyball practice at Furman. *(This route passed through the location where the collision with Mr. McCall.)*

Mr. Suddeth testified about the injuries that he sustained in the accident and the extensive physical therapy that he underwent inpatient, outpatient, and later on his own at his home. He testified that he still has a number of plates and screws in both of his legs and also that are holding his pelvis together.

The defense did not cross examine Mr. Suddeth.

SJD SKE

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STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE ) AFFIDAVIT
)
STATE OF SOUTH CAROLINA )

Personally appeared before me Sara Lee M. Drawdy, who being duly sworn, says that she is an Assistant Solicitor with the 13th Circuit Solicitors Office and that she was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Ms. Drawdy also states that the within Summary of Testimony for Robert Suddeth, *supra* is her best recollection of the testimony given by Mr. Suddeth.

Sara Lee M Drawdy
*Signature*

Sara Lee M. Drawdy (Bar# 1747)
Print Name

Sworn to before me this
9 day of March, 2017.
Kelly Treadaway
Notary Public for South Carolina
My Commission Expires: 7-28-24

**********

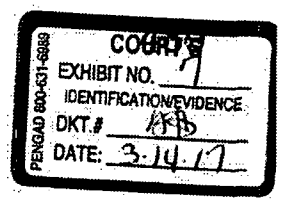
STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Robert Suddeth.

*Signature*

Jake Erwin (Bar# 79941)
Print Name

Sworn to before me this
21st day of March, 2017.
S. Bradley Jollison
Notary Public for South Carolina
My Commission Expires: 12-30-24




**STATE v. TERRY MCCALL**

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

**Record Reconstruction Summary**

**Witness: Juliette Martin** (Defense witness)

The Defendant's girlfriend

**[ Day 3]**

DIRECT EXAMINATION BY: Terry McCall

CROSS EXAMINATION BY: Stan Overby

Objections during testimony: None

Evidence introduced: None

Summary of Testimony

To the best of counsel's recollection, the direct examination focused on Mr. McCall and Ms. Martin's actions during the time from March 2nd, 2014 to March 4th, 2014. Ms. Martin indicated that the two stayed at the Savannah Suites off of Wade Hampton Boulevard at that time. Ms. Martin testified that Mr. McCall had problems with the brakes of his vehicle. Ms. Martin testified that she and Mr. McCall went to sleep on the night of March 2nd, 2014 and that when she woke up he was no longer in the room. She testified that he took Ativan on the night of March 2nd. She testified she did not see him after that time.

On cross-examination, the State pointed out that Ms. Martin was in jail on March 2nd.

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JKT SLO

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )
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STATE OF SOUTH CAROLINA )

**AFFIDAVIT**

Personally appeared before me Stan Overby, who being duly sworn, says that he is an Assistant Solicitor with the 10th Circuit Solicitors Office, formerly with the 13th Circuit Solicitor's Office, and that he was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Mr. Overby further states that the within Summary of the Testimony for Juliette Martin, *supra* is his best recollection of the testimony given by Ms. Martin.

*Signature*

Stan Overby (Bar # 79870)
Print Name

Sworn to before me this
10 day of March, 2017.
Kelly Jeardy
Notary Public for South Carolina
My Commission Expires: 7-28-24

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STATE OF SOUTH CAROLINA )
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COUNTY OF GREENVILLE )
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STATE OF SOUTH CAROLINA )

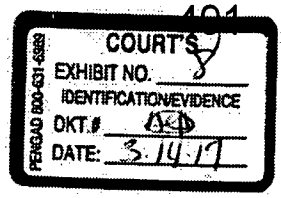
**AFFIDAVIT**

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*Signature*

Jake Erwin (Bar# 79941)
Print Name

Sworn to before me this
9th day of March, 2017.
S. Bradley Jollison
Notary Public for South Carolina
My Commission Expires: 12-30-24




**STATE v. TERRY MCCALL**

Original Indictment #: 2012-GS-23-10242

Appellate #: 2015-001097

## Record Reconstruction Summary

**Witness: Terry McCall** (Defense witness)

The Defendant in this case.

**[ Day 3 ]**

DIRECT EXAMINATION BY: Jake Erwin

CROSS EXAMINATION BY: Sara Lee Drawdy

Evidence introduced: None

Objections during testimony: None

Summary of Testimony

To the best of counsel's recollection, Mr. McCall testified that at the time of the collision, he and his girlfriend, Juliette Martin, had been staying in a room at the Savannah Suites on Wade Hampton Blvd. Mr. McCall testified that (either on the day before, or on the day of the collision – counsel cannot recall which day) he drove Ms. Martin in his Ford Explorer to a pharmacy to fill a prescription. He testified that at some point after that Ms. Martin gave him several of her Ativan pills and he took them.

Mr. McCall testified that on the day of the collision, he got up and left the motel while his girlfriend was sleeping. To the best of counsel's recollection, he testified that he was going to wash clothes.

Mr. McCall testified that shortly before the accident happened he got a funny feeling, like he was going to have a seizure. He testified that he has a history of having seizures.



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Mr. McCall testified that the Ford Explorer had a problem with the brakes and that he kept adding brake fluid to the reservoir. Mr. McCall testified that the beer cans that were in his vehicle were ones that he had picked up on the side of the road.

Cross examination was very brief. To the best of Counsel's recollection, Mr. McCall admitted that his girlfriend, Juliette Martin had been asleep for several hours just prior to the time of the collision.

SJS JKE

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STATE OF SOUTH CAROLINA )
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COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )

Personally appeared before me Sara Lee M. Drawdy, who being duly sworn, says that she is an Assistant Solicitor with the 13th Circuit Solicitors Office and that she was one of the two prosecuting attorneys in the trial of Terry Edward McCall for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2015 through May 14, 2015. Ms. Drawdy also states that the within Summary of Testimony for Terry McCall, *supra* is her best recollection of Mr. McCall's testimony.

Sara Lee M Drawdy
*Signature*

Sara Lee M. Drawdy (Bar# 1747)
Print Name

Sworn to before me this
9 day of March, 2017.
Kelly Dardaway
Notary Public for South Carolina
My Commission Expires: 7.28.24

**********

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE ) **AFFIDAVIT**
)
STATE OF SOUTH CAROLINA )

Personally appeared before me, Jake Erwin, who being duly sworn, says that he is a Criminal Defense attorney, that he was with the Public Defender's Office in Greenville County in May of 2015, and that he participated as stand-by counsel for Terry Edward McCall during his trial for Felony DUI Resulting in Great Bodily Injury, Indictment No. 2012-GS-23-10242, that occurred on May 12, 2016 through May 14, 2015. Mr. Erwin further states that he does not recall anything about the testimony of Tracy McCall.

*Signature*

Jake Erwin (Bar# 79441)
Print Name

Sworn to before me this
2nd day of March, 2017.
S. Bradley Jollison
Notary Public for South Carolina
My Commission Expires: 12.30.24

State of South Carolina
County of Greenville

State

12-10248

V.

Terry Edward McCall, Pro Se'
Defendant

In The Court of General Sessions
Thirteenth Judicial Circuit
Warrant/Ticket # F540654 Felony DUI, GBI, Autobreaking, Petit Larceny x3 Unknown W/M

# Motion To Relieve Counsel

FILED IN THE COURT OF COMMON PLEAS
GREENVILLE, S.C.
PAMELA WORTHINGTON
2015 MAR 27 AM 11 08

Now comes the above named Pro Se' defendant to move this Court for and Order to relieve counsel.

The above named defendant was arrested and charged with Felony DUI, great bodily injury on 3-4-12 by a Uniform Traffic Ticket. The defendant request to relieve his counsel on All charges and represent himself. The defendant has a United States Constitutional Right to represent himself and request the Court allow him to proceed Pro Se'. The defendant was granted his Pro Se' representation on his charges previously incarcerated on. Somehow the Court has failed to identify all warrant numbers and or Indictment numbers. Therefor causing a great deal of conflict for the defendant, and depriving him his right to go forward.

Wherefor defendant Prays the Court nalles its Order to relieve counsel or as it deems just and Proper; The defendant will except attorney as stand by if so Ordered as has been in Previous order for other charges

Greenville, S.C.
Date 3-23-15

Jerry Edward McCall, Pro Se'
G.C.D.C. 20 McGee St.
Gville, S.C. 29601

# Certificate of Service

I, Terry E. McCall have Properly served the parties listed below with a Motion To Relieve Counsel by Placing same in U.S. Postal Service Postage Prepaid, Affixed And mailed to Addresses below:

Clerk of Court
305 East North St
Gvile, S.C. 29601

Greenville Solicitors Office
305 East North St. Suite 325
Gvile, S.C. 29601

Public Defender Office
Randy Chambers
305 East North St.
Gvile, S.C. 29601

Dated 3-23-15

Terry E. McCall, Pro Se'
G.C.D.C. 20 McGee Street
Gvile, S.C. 29601

- filed + mailed to AJ/SO
- Ret copies to def as req.

**WITNESSES**

D E Mcalhany

S. C. Highway Patrol RS

3/4/2012

**ARREST WARRANT NUMBER**
F540654

**ACTION OF GRAND JURY**

**TRUE BILL**

FOREMAN GRAND JURY

*Foreperson of Grand Jury*

**VERDICT**

Guilty

5/14/15

*Foreperson of Petit Jury*
*Date:*

**DOCKET NO. 2012-GS-23-** SLD 010212

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

February TERM ~~2012~~ 2013

**THE STATE**

**vs.**

**TERRY EDWARD MCCALL**

**Indictment for**

0406

**FELONY DUI (RESULTING IN GREAT BODILY INJURY)**

VIOLATION § 56-05-2945

ENTERED
ACCT LDH

**RECEIVED**

DEC 21 2012

Clerk of Court
Greenville County

496

STATE OF SOUTH CAROLINA )
)
COUNTY OF GREENVILLE )

INDICTMENT FOR
**FELONY DUI (RESULTING IN GREAT BODILY INJURY)**

At a Court of General Sessions, convened on FEB 19 2013 the Grand Jurors of Greenville County present upon their oath:

That TERRY EDWARD MCCALL did in Greenville County, on or about the 4th day of March 2012, drive a motor vehicle while under the influence of drugs, and did an act forbidden by law and/or neglected a duty imposed by law, to wit: the defendant failed to exercise due care and/or drove an unsafe vehicle on a highway and/or drove too fast for conditions and/or crossed the center median and/or drove into the oncoming lane of travel striking another vehicle, which acts and/or neglect proximately caused great bodily injury to ROBERT LAGRANDE SUDDUTH. This is in violation of §56-5-2945 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Sara Lee McCarty
SOLICITOR

498

STATE OF SOUTH CAROLINA )
COUNTY OF Greenville )
STATE VS. )
Terry Edward Mccall )
AKA: )
Race: WHITE Sex: M Age: 55 )
DOB: [redacted] SS#: [redacted] )
Address: [redacted] )
City,State,Zip: Greenville, SC 29611-4465 )
DL#: [redacted] SID#: )
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

10511

INDICTMENT/CASE#: 2012GS2310242
A/W#: F540654
Date of Offense: 3/4/2012
S.C. Code § : 56-05-2945(A)(1)
CDR Code #: 0406

**SENTENCE SHEET**

In disposition of the said indictment comes now the Defendant who was ☑ CONVICTED OF or ~~☐ PLEADS~~
TO: DUI / Felony driving under the influence, great bodily injury results

in violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406
☑ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Drawdy, Sara Lee | 1747 SC Bar# | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 5 days/months/~~years~~ or ☐ under the **Youthful Offender Act** not to exceed — years
and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment
of $ —; plus costs and assessments as applicable*; the balance is suspended with **probation** for —
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

**Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence ) to ship,transport,possess,or receive a firearm or ammunition.**

**SPECIAL CONDITIONS:**

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

| | | |
|---|---|---|
| *Fine: | | $ |
| § 14-1-206 (Assessments 107.5 %) | | $ |
| § 14-1-211(A)(1) (Conv. Surcharge) | $100 | $ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge) | $100 | $ 100.00 |
| § 56-5-2995 (DUI Assessment) | $12 | $ 12.00 |
| § 56-1-286 (DUI Breath Test) | $25 | $ 25.00 |
| Proviso 47.9 (Public Def/Prob) | $500 | $ |
| § 14-1-212 (Law Enforce. Funding) | $25 | $ |
| § 14-1-213 (Drug Court Surcharge) | $150 | $ |
| § 50-21-114(BUI Breath Test Fee) | $50 | $ |
| § 56-5-2942(J) (Vehicle Assessment) | $40/ea | $ |
| Proviso 90.5 (SCCJA Surcharge) | $5 | $ 5.00 |
| 3% to County (if paid in installments) | | $ 7.24 |
| TOTAL | | $ 349.24 |

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: fee AKU.

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul Blitch 1314
Court Reporter: Haskell
Presiding Judge _____
Judge Code: 2138
Sentence Date: 14 May 15

SCCA/217 (03/2011)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 24th day of August, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 24th day of August, 2018.

RECEIVED
AUG 24 2018
SC Court of Appeals