

20151

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL AVERY HUMPHREY,

APPELLANT

Appellate Case No. 2011-191566

RECORD ON APPEAL

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SC Court of Appeals

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1 State of South Carolina

Court of General Sessions

2 County of Lexington

3
4
5 State)

6 v.)

Transcript of Record
09-GS-32-0982

7 Michael Avery Humphrey)

8)
9 Defendant.)

10
11 April 25 - 27, 2011
Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable William P. Keesley, Judge; and a
15 jury.

16
17 A P P E A R A N C E S:

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19 Samuel R. Hubbard, Deputy Solicitor
Attorneys for the State

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Attorney for the Defendant

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24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

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1 (The following proceedings were held on
2 April 25, 2011.)

3 **THE COURT:** Ladies and gentlemen of the jury,
4 my name's Billy Keesley. I live in Edgefield. I'm
5 a resident judge of our circuit, which is Lexington,
6 McCormick, Saluda and Edgefield Counties. And the
7 Chief Justice has assigned me to preside over
8 general sessions court this week here in Lexington.
9 You've met Judge McMahon upstairs who is the other
10 resident judge of our circuit and he's gone through
11 the general qualifications.

12 What we're going to do now is we're going to
13 turn to a specific case. I'm going to be asking you
14 questions that are designed to elicit from you any
15 possible interest, bias, prejudice that you might
16 have related to the case. So we're going to be
17 asking you things like whether you have any
18 connection to the case or anybody in it, whether
19 you've ever been through something similar to this
20 that might affect your ability to be fair and
21 impartial, whether anybody close to you has ever
22 been through a similar situation, things of that
23 nature.

24 If you keep those goals in mind that we're
25 trying to get a jury that's fair and impartial, I

1 think the questions will make more sense to you.

2 Remember that you're under oath. You have an
3 obligation to be completely truthful and honest with
4 me. If I ever ask you anything that you prefer to
5 discuss more privately, just let me know you want to
6 come down front, we'll talk about it over here on
7 the side.

8 I do need to explain to you some things. And
9 if I'm saying things you already know because of
10 what you were told upstairs, I apologize. I wasn't
11 up there. I was down here doing paperwork while you
12 were upstairs.

13 But this is a court of record and what that
14 means is that Ms. Sheppard over there is taking down
15 everything we say. So when you speak, part of my
16 job is to make sure that the record is clear and so
17 I will have to get you to first identify yourself by
18 your name and your juror number so that we will know
19 who is speaking and the record will be clear. Then
20 listen carefully to the question I ask of you and
21 answer that question.

22 The case that you've been sent down to this
23 courtroom to be qualified on, to potentially serve
24 as jurors on, is captioned the State versus Michael
25 Avery Humphrey. Mr. Humphrey is charged in an

1 indictment with the offense of involuntary
2 manslaughter.

3 The indictment alleges that Michael Avery
4 Humphrey did in Lexington County, South Carolina, on
5 or about October 17, 2004, with reckless disregard
6 for the safety of others, unlawfully kill one Megan
7 D. Jackson. Specifically, it's alleged that
8 Mr. Humphrey with criminal negligence and with
9 reckless disregard for the safety of Ms. Jackson,
10 engaged in a physical altercation with her and that
11 that led her to fall from a moving vehicle resulting
12 in injuries that caused her death. It is alleged
13 that she died on October 21, 2004, as a proximate
14 result.

15 Upon his arraignment on this charge,
16 Mr. Humphrey has entered a plea of not guilty. He
17 is presumed to be innocent. It is incumbent upon
18 the State of South Carolina, having brought this
19 charge, to prove the guilt of the defendant beyond a
20 reasonable doubt.

21 This indictment is not evidence of anything.
22 An indictment is a charging paper. It's nothing
23 more than the formal means by which someone is
24 charged and brought to trial, so you cannot give the
25 charge, the indictment, any evidentiary value at

1 all.

2 All right. Once again, I'll be asking you
3 questions. If the questions apply to you or you
4 have doubt about whether they apply to you, please
5 discuss it with me. If you do have any doubt about
6 whether the questions apply to you, you should
7 disclose the information to me and let me resolve
8 the doubt.

9 Is Michael Humphrey in the courtroom?

10 Mr. Humphrey, I need for you to turn so the jury can
11 see you, please.

12 (The defendant stands and faces the jury
13 panel.)

14 **THE COURT:** Thank you very much, sir. You may
15 be seated.

16 Is there any member of the jury panel who is
17 related by blood or marriage or connected by
18 employment with the defendant in the case,
19 Mr. Michael Humphrey; if so, please stand?

20 (There was no response.)

21 **THE COURT:** Mr. Humphrey will be represented by
22 Mr. Rob Madsen.

23 (Mr. Madsen stands and faces the jury
24 panel.)

25 **THE COURT:** Thank you very much, Mr. Madsen.

1 Were any of you related by blood or marriage or
2 connected by employment with Megan D. Jackson; if
3 so, please stand?

4 (There was no response.)

5 **THE COURT:** Do any of you know anything at all
6 about this matter? Have you heard, seen or read
7 anything about it? Has anybody talked to you about
8 it to the best of your recollection? Do you know
9 anything whatsoever through any media source? If
10 you have any knowledge about this matter from any
11 source, please stand.

12 (There was no response.)

13 **THE COURT:** The following persons have been
14 identified as potential witnesses for the State. If
15 they are present, I need for them to stand and as
16 the name is called, if I mispronounce the name,
17 please don't hesitate to correct me.

18 Corporal Nicolas VanPut, turn so they can see
19 you, thank you, sir; Officer Emmitt Gilliam, thank
20 you, sir; Officer Charles Thomas, thank you, sir;
21 Mr. William E. Maye, thank you, sir; Chief Oswald,
22 Batesburg-Leesville Police Department, thank you;
23 Dr. Armstrong who works with the Lexington Medical
24 Center; Lieutenant Day of the South Carolina Highway
25 Patrol, thank you; Mr. David Jackson.

1 If any of you are related by blood or marriage
2 or connected by employment with any of the potential
3 witnesses for the State, please stand.

4 (There was no response.)

5 **THE COURT:** Did I leave anybody else out?

6 **MR. WEDEKIND:** We can add Lieutenant Clair,
7 sir.

8 **THE COURT:** McClare?

9 **MR. WEDEKIND:** Clair, C-l-a-i-r, Lieutenant
10 Steven Clair.

11 **THE COURT:** Lieutenant Steven Clair. Thank
12 you, sir.

13 Any of you related by blood or marriage or
14 connected by employment with any of the potential
15 witnesses for the State; if so, please stand?

16 (There was no response.)

17 **THE COURT:** The State will be represented by
18 members of the Solicitor's Office of the Eleventh
19 Judicial Circuit, Mr. Larry Wedekind and Deputy
20 Solicitor Rick Hubbard.

21 (Mr. Wedekind and Mr. Hubbard stand and face
22 the jury panel.)

23 **THE COURT:** Thank you.

24 Do any of you have any connection of any kind
25 with any of the entities involved in the case? Now,

1 I've got a list here -- Mr. VanPut, what is Johnson?
2 Is that supposed to be Johnston?

3 **CORPORAL VANPUT:** It's Johnston out of the
4 County of Edgefield.

5 **THE COURT:** I'm familiar with Johnston. I
6 practiced law there for 13 years, but didn't know
7 about Johnson.

8 All right. Any of you have any connection of
9 any kind with any of the entities involved in the
10 case, that would include Johnston Police Department,
11 the Columbia Police Department, the Wagener Police
12 Department, Batesburg-Leesville Police Department,
13 South Carolina Highway Patrol, the Lexington Medical
14 Center or the Solicitor's Office of the Eleventh
15 Judicial Circuit; if so, please stand?

16 (Jurors stand.)

17 **THE COURT:** Your name, please?

18 **JUROR:** Victoria McDermott, 112.

19 **THE COURT:** Ms. McDermott is juror number 112,
20 14 on our list.

21 What's your connection, ma'am?

22 **JUROR:** My husband and Larry Wedekind served in
23 the National Guard together and served a tour of
24 duty in Afghanistan together.

25 **THE COURT:** Is there anything at all about that

1 relationship that affects your ability to be a fair
2 and impartial juror in this case?

3 **JUROR:** No, sir.

4 **THE COURT:** When you're on this case, if you're
5 picked for this jury, will you have any thought of
6 being concerned about what Mr. Wedekind may think of
7 your decision?

8 **JUROR:** No, sir.

9 **THE COURT:** Do you have any doubt whatsoever
10 about any of that?

11 **JUROR:** No, sir.

12 **THE COURT:** Thank you.

13 Ms. McDermott is eligible to serve, juror
14 number 112.

15 In the blue shirt, your name, sir?

16 **JUROR:** 129, Doug Noland.

17 **THE COURT:** Mr. Noland's juror number 129.
18 He's 28 on our list.

19 What's your situation, please?

20 **JUROR:** I'm associate chaplain with Lexington
21 Medical Center.

22 **THE COURT:** To the best of your knowledge, do
23 you know anything about this matter?

24 **JUROR:** No.

25 **THE COURT:** How long have you been a chaplain

1 with the medical center?

2 JUROR: About a year.

3 THE COURT: Is there anything at all about your
4 experiences or your relationship with the Lexington
5 Medical Center that would affect your ability to be
6 a fair and impartial juror in this case?

7 JUROR: No.

8 THE COURT: Any doubt in your mind?

9 JUROR: (Juror shook head.)

10 THE COURT: You need to speak your answer.

11 JUROR: No.

12 THE COURT: Thank you. She takes down what we
13 say. Thank you, sir.

14 Mr. Noland's juror number 129, eligible to
15 serve.

16 Yes, your name, please.

17 JUROR: Tony Roof, 150.

18 THE COURT: Mr. Roof is juror number 150, 15 on
19 our list.

20 Go ahead, please.

21 JUROR: I don't know if it's relevant, but I've
22 been friends with Mr. VanPut's children and
23 stepchildren for years.

24 THE COURT: Friends with who?

25 JUROR: Mr. VanPut, Officer VanPut.

1 **THE COURT:** To the best of your knowledge, have
2 you ever had any conversations related to this case?

3 **JUROR:** No.

4 **THE COURT:** And is there anything at all about
5 your relationship or experiences with that family
6 that affect your ability to be a fair and impartial
7 juror in the case?

8 **JUROR:** No, sir.

9 **THE COURT:** If you're on this jury, will you
10 have any concern whatsoever about what Corporal
11 VanPut may think of your decision?

12 **JUROR:** No, sir.

13 **THE COURT:** You can decide the case without
14 regard to what he may think?

15 **JUROR:** Yes, sir.

16 **THE COURT:** Any doubt in your mind about any of
17 that?

18 **JUROR:** No.

19 **THE COURT:** Thanks very much.

20 Mr. Roof's 150. He's eligible to serve.

21 Yes, sir, your name, please?

22 **JUROR:** 121, Gregory Mundy.

23 **THE COURT:** Mr. Mundy is 121. He's 2 on our
24 list.

25 What's your situation, please?

1 **JUROR:** I'm in public safety, so I have
2 dealings with several of the agencies represented
3 here.

4 **THE COURT:** And which particular agency do you
5 work for?

6 **JUROR:** Irmo Fire District, so we deal with
7 Columbia specifically and the South Carolina Highway
8 Patrol.

9 **THE COURT:** Is there anything at all about your
10 relationship or experience with any of these
11 agencies that affects your ability to be a fair and
12 impartial juror in the case?

13 **JUROR:** No, sir.

14 **THE COURT:** Any doubt in your mind?

15 **JUROR:** No, sir.

16 **THE COURT:** Thanks very much.

17 Mr. Mundy is juror number 121. He's eligible
18 to serve.

19 All right. Folks, I've asked you about
20 relationships. I've asked you about particularly if
21 you were related by blood or marriage, connected by
22 employment. I need to expand that so that if you
23 have any connection of any kind with anybody in this
24 case that you haven't disclosed to us, you need to
25 do that, that would include such things as being a

1 neighbor, a friend, attending the same church or
2 civic clubs. If you've got any connection of any
3 kind with anybody in this case that you haven't
4 disclosed to us, please stand and let us know about
5 it.

6 (Juror stands.)

7 **THE COURT:** Your name again, sir?

8 **JUROR:** 129, Doug Noland.

9 **THE COURT:** Mr. Noland is juror number 129 and
10 he is number 28 on our list.

11 Go ahead, please.

12 **JUROR:** I'm not sure, it looks like -- I
13 recognize Mike Humphries a little bit. I'm not sure
14 exactly where I recognize him from. I might have
15 worked with him or something.

16 **THE COURT:** Did you say Humphries?

17 **JUROR:** That's what I heard. I didn't know him
18 by name. I'm just telling you he looks familiar to
19 me, that's all.

20 **THE COURT:** Oh, Mr. Humphrey. I apologize.

21 Let me talk to the lawyers a second.

22 (Whereupon, a bench conference was held off
23 the record, in the presence of the jury, but out of
24 the hearing of the jury.)

25 **THE COURT:** Mr. Humphrey works for Dick Dyer

1 Toyota. Did you buy a car from them?

2 JUROR: That's what it was. It's been a while.

3 THE COURT: All right. Is there anything at
4 all about that relationship or experience that would
5 affect your ability to be a fair and impartial juror
6 in the case?

7 JUROR: No.

8 THE COURT: Any doubt in your mind?

9 JUROR: No.

10 THE COURT: Thanks very much.

11 Mr. Noland's juror number 129, eligible to
12 serve.

13 Are any of you members of or financial
14 contributors to any organization that has as one of
15 its primary purposes, the support of law enforcement
16 or assistance of victims' rights, that would include
17 volunteering for any sort of shelter or making any
18 sort of financial contributions to any such
19 organization, any police or other law enforcement
20 benevolent association, troopers association,
21 anything like that; if so, please stand?

22 (Juror stands.)

23 JUROR: Did you say shelter?

24 THE COURT: Yes, sir.

25 JUROR: I work with a children's shelter.

1 **THE COURT:** Mr. Noland is 129.

2 Is that volunteer work?

3 **JUROR:** No, it's paid.

4 **THE COURT:** So you're a chaplain for the
5 children's shelter.

6 **JUROR:** No. I'm a relief parent for the
7 children's shelter.

8 **THE COURT:** Relief parent?

9 **JUROR:** Uh-huh.

10 **THE COURT:** Okay. I think that's all I need to
11 know about that unless you think that might affect
12 your ability to be fair and impartial.

13 **JUROR:** No.

14 **THE COURT:** Thank you.

15 (Juror stands.)

16 **THE COURT:** Yes, sir, what's your name?

17 **JUROR:** 145, James Rennick.

18 **THE COURT:** Mr. Rennick is 145, 32 on our list.
19 Go ahead, please.

20 **JUROR:** I'm not sure if I still am, six months
21 ago, I was a member of South Carolina Corrections
22 Association along with the national organization
23 that does that same type of thing. I don't remember
24 the name of that one, though.

25 **THE COURT:** Okay. Anything about your

1 relationship with those organizations that would
2 affect your ability to be a fair and impartial juror
3 in this case?

4 JUROR: No, sir.

5 THE COURT: Any doubt in your mind?

6 JUROR: No, sir.

7 THE COURT: Thank you.

8 Mr. Rennick's juror number 145. He's eligible
9 to serve.

10 All right. Folks, I'm going to ask you a
11 question. It's going to be multiple parts. When I
12 finish with the question, I'll need you to stand so
13 I'll have some idea about how many people may be
14 involved in this. But in any event, we're going to
15 discuss this up front. We're not going to talk
16 about it in front of everybody else.

17 If any of you, any of your immediate family
18 members, any of your close, personal friends have
19 ever -- well, that's a poorly phrased question. Let
20 me start over.

21 If any of your immediate family members or
22 close, personal friends have ever been involved in
23 any sort of motor vehicle incident which resulted in
24 a fatality or if any of you, any of your immediate
25 family members, close, personal friends have ever

1 been accused of being involved in a motor vehicle
2 situation that resulted in a fatality, please stand.

3 (Jurors stand.)

4 **THE COURT:** Here's what we're going to do:
5 We'll kind of go row by row and I'll get you to
6 filter out and form a line, so you can sit until you
7 need to come up. We'll start with the two gentlemen
8 on the first row on either side. If y'all will just
9 form a line there and come up front.

10 The attorneys may join me on the side.

11 Mr. Humphrey may join us on the side if he likes.

12 (Whereupon, the following bench conferences
13 were held on the record.)

14 **THE COURT:** What's your name, sir?

15 **JUROR:** Brian McLendon, 114.

16 **THE COURT:** Mr. McLendon's 114. He's 13 on our
17 list.

18 What's your situation, please?

19 **JUROR:** A friend of mine was involved in a
20 motor vehicle accident which resulted in a fatality.

21 **THE COURT:** Did your friend die?

22 **JUROR:** No, the other person did.

23 **THE COURT:** Were any sort of criminal charges
24 ever brought against him?

25 **JUROR:** None.

1 **THE COURT:** Is there anything at all about that
2 experience or your relationship with your friend
3 that affects your ability to be a fair and impartial
4 juror in the case?

5 **JUROR:** No. It was actually an accident.

6 **THE COURT:** Any doubt in your mind?

7 **JUROR:** None.

8 **THE COURT:** Thanks very much.

9 All right. Mr. McLendon is juror number 13 --
10 I mean, number 114, 13 on our list. He's eligible
11 to serve.

12 Yes, sir.

13 **BAILIFF:** 121, Your Honor.

14 **THE COURT:** Mr. Mundy is 121, 2 on our list.

15 Go ahead, Mr. Mundy.

16 **JUROR:** My father was killed in a motor vehicle
17 accident due to negligence when I was young. I was
18 part of that trial process.

19 **THE COURT:** Was it a criminal charge or a
20 civil --

21 **JUROR:** Yes.

22 **THE COURT:** Criminal?

23 **JUROR:** Yes, sir.

24 **THE COURT:** What was the result of the case?

25 **JUROR:** It was the

1 system -- I mean, the driver was found guilty and
2 there was -- through a limousine service, there was
3 some corporate -- it was actually down in Louisiana.
4 The parties were found guilty.

5 **THE COURT:** What happened to them? Did they go
6 to jail?

7 **JUROR:** Some of them did, yes. I was just paid
8 moneys, yes, sir.

9 **THE COURT:** You understand Mr. Humphrey is
10 charged in this incident where it's alleged there
11 was a motor vehicle involved and this lady fell from
12 it and ultimately died from it?

13 **JUROR:** Yes, sir.

14 **THE COURT:** Anything at all about your
15 experience that affects your ability to be a fair
16 and impartial juror in the case?

17 **JUROR:** Not that I'm aware of.

18 **THE COURT:** Do you have any doubt in your mind?

19 **JUROR:** A little.

20 **THE COURT:** I need to set you aside if you've
21 got any doubt, that's why we bring so many people
22 in.

23 What you got them doing, Myra, calling in?

24 **THE CLERK:** Calling after 6:00, yes, sir.

25 **THE COURT:** Did they explain that to you

1 upstairs about calling that number?

2 **JUROR:** Yes, sir.

3 **THE COURT:** Okay. You can leave, just call
4 that number after 6:00.

5 Isn't that right, Myra?

6 **THE CLERK:** Yes, sir.

7 **THE COURT:** Just call after 6:00. Thank you.

8 Chief Mundy is juror number 121. He's 2 on our
9 list. He's set aside on this trial.

10 **BAILIFF:** 55, Your Honor.

11 **THE COURT:** Mr. Gifford?

12 **JUROR:** Yes, sir.

13 **THE COURT:** He's 11 on our list.

14 What's your situation, please?

15 **JUROR:** I had a close friend that was hit by a
16 drunk driver, killed. It's probably been 25 years
17 ago.

18 And, also, when that gentleman over there asked
19 if he had recognized the defendant, when he said
20 Dick Dyer, I was in the automotive business and he
21 looks vaguely familiar, like, at some point, at one
22 of the dealerships I was at.

23 **THE COURT:** Did you ever work at Dick Dyer?

24 **JUROR:** No, sir, but in the car business,
25 people float around.

1 **THE COURT:** I understand.

2 **JUROR:** I just wanted to make you aware of
3 that.

4 **THE COURT:** Okay. But you don't remember him
5 right now?

6 **JUROR:** Vaguely. It didn't dawn on me until
7 when he said Dick Dyer, I thought maybe that's where
8 I've seen that individual before was in the
9 business.

10 **THE COURT:** Okay. The situation with your
11 friend, would that in any way affect your ability to
12 be fair and impartial?

13 **JUROR:** No, sir.

14 **THE COURT:** Do you have any doubt in your mind
15 about that?

16 **JUROR:** No, sir.

17 **THE COURT:** What about the relationship through
18 the car dealership, would that affect your ability?

19 **JUROR:** No, sir.

20 **THE COURT:** Thank you very much.

21 Mr. Gifford's juror number 55, 11 on our list.
22 He's eligible to serve.

23 **BAILIFF:** Number 42, Your Honor.

24 **THE COURT:** You're Mr. Drafts?

25 **JUROR:** Yes, sir.

1 **THE COURT:** 33 on our list, 42 juror number.

2 What's your situation?

3 **JUROR:** I had several friends killed in an
4 automobile accident.

5 **THE COURT:** One wreck?

6 **JUROR:** One wreck, three individuals. Highway
7 patrol was not ever able to determine the
8 perpetrators, cause of the accident, anything.

9 **THE COURT:** So it was a hit and run?

10 **JUROR:** They weren't able to determine that,
11 Your Honor, whether it was hit and run or racing or
12 exactly what it was. The car was forced off the
13 road, hit some trees. The two fellows driving the
14 car was killed, the lady riding in the back was
15 killed. Her parents, I think, they brought charges
16 against the individual that was driving, but, you
17 know, he was deceased, so I'm not sure what ever
18 came of it.

19 **THE COURT:** So they brought a civil suit
20 against --

21 **JUROR:** Yes, sir, I'm sure they brought a civil
22 suit.

23 **THE COURT:** Is there anything at all about that
24 experience that affects your ability to be fair and
25 impartial in this case?

1 **JUROR:** I doubt it, sir.

2 **THE COURT:** Do you have any doubt about it?

3 **JUROR:** No, sir.

4 **THE COURT:** Thanks very much.

5 Mr. Drafts is number 42, 33 on our list. He's
6 eligible to serve.

7 **BAILIFF:** Number 104, Your Honor.

8 **THE COURT:** Mr. Maddaloni?

9 **JUROR:** Yes, sir.

10 **THE COURT:** He's 27 on our list. 104 is juror
11 number.

12 What's your situation, Mr. Maddaloni?

13 **JUROR:** In high school, I had a friend that was
14 killed on a moped by, I guess, a drunk driver that
15 tipped him and clipped him and he died.

16 And I didn't realize until after he said where
17 he worked, I do know one of the general managers of
18 his employment, his company he worked with I should
19 say.

20 **THE COURT:** How old are you now?

21 **JUROR:** Thirty-three.

22 **THE COURT:** So in high school, a friend was
23 killed by a drunk driver?

24 **JUROR:** Yeah. He was on a moped and clipped
25 and hit and then he died after he left the scene.

1 **THE COURT:** Okay. Is there anything about that
2 experience that affects your ability to be a fair
3 and impartial juror in the case?

4 **JUROR:** No.

5 **THE COURT:** Do you have any doubt in your mind?

6 **JUROR:** No, sir.

7 **THE COURT:** And knowing the general manager,
8 would that affect your ability to be a fair and
9 impartial juror in the case?

10 **JUROR:** No, it should be all right.

11 Sorry about one of your bosses, but he took one
12 of my girlfriends. I don't mean to say that
13 jokingly, but I lost my girlfriend and he married
14 her, so I got to be honest. I don't know if it's
15 the finance manager or the manager, but I don't know
16 -- Jessie. It could be a different location. They
17 have a couple different ones, so I could be wrong.
18 I just had to be honest since you asked.

19 **THE COURT:** Sure, that's all I want you to do
20 is be honest.

21 **JUROR:** I don't even know if he knows him or if
22 it was a different location. I just heard the name.

23 **THE COURT:** Okay. So that might affect your
24 ability to be fair and impartial?

25 **JUROR:** I'll be fair to this gentleman because

1 I'd want someone to be fair to me, but I do want him
2 to know that I do have that connection.

3 **THE COURT:** All right. Thank you very much.
4 Mr. Maddaloni is juror number 104. He's
5 eligible to serve.

6 **BAILIFF:** 166, Your Honor.

7 **THE COURT:** Ms. Taylor?

8 **JUROR:** Yes.

9 **THE COURT:** She's 29 on our list.
10 Go ahead, please, ma'am.

11 **JUROR:** My nephew was struck and killed in '95.
12 He was chased by Milton, Massachusetts, Police
13 Officers and he was struck and killed. He was --
14 hit a flatbed and died instantly.

15 **THE COURT:** He was driving a vehicle?

16 **JUROR:** Yes.

17 **THE COURT:** And Massachusetts Police --

18 **JUROR:** He was being chased by Massachusetts --
19 Milton, Massachusetts, Police Officers.

20 **THE COURT:** And he hit a flatbed truck?

21 **JUROR:** Correct.

22 **THE COURT:** Is there anything about that
23 experience that affects your ability to be fair and
24 impartial as a juror in the case?

25 **JUROR:** Yes, it does. I'm a breast cancer

1 survivor and this is my sister only son and they're
2 still being distraught behind that.

3 And, also, my brother-in-law, Christopher
4 Taylor, is a police officer with the Spartanburg
5 Police Department who works in criminal law
6 enforcement and I just hear a lot of stuff with
7 that.

8 **THE COURT:** Okay. If I understood you
9 correctly, you said it would affect your ability, so
10 I need to set you aside. Do you have that number
11 that they gave you upstairs to call?

12 **JUROR:** Yeah, uh-huh.

13 **THE COURT:** Just call that number after 6:00
14 tonight and follow the instructions, please, ma'am.
15 You're free to go. Thank you.

16 Ms. Taylor's juror number 166, 29 on our list.
17 She's excused from the trial of this case.

18 **BAILIFF:** 150, Your Honor.

19 **THE COURT:** Mr. Roof?

20 **JUROR:** Yes, sir.

21 **THE COURT:** 15 on our list, 150.

22 What's your situation?

23 **JUROR:** My best friend was killed by a drunk
24 driver in a head-on collision.

25 **THE COURT:** How long ago?

1 JUROR: August 30th, 2007.

2 THE COURT: Was the driver of the other vehicle
3 killed?

4 JUROR: No.

5 THE COURT: Did they charge him?

6 JUROR: Charged him in some sort of -- nine
7 months, she only did three.

8 THE COURT: What county was that in?

9 JUROR: I believe Lexington or maybe Richland.
10 It was off Bush River Road.

11 THE COURT: Is there anything about that
12 experience that affects your ability to be fair and
13 impartial in this case?

14 JUROR: I'm not sure.

15 THE COURT: You have some doubt?

16 JUROR: Maybe.

17 THE COURT: Okay. I'll set you aside on this
18 trial, Mr. Roof. Do you have that telephone number
19 they gave you upstairs to call in?

20 JUROR: Yeah.

21 THE COURT: Just call that number tonight after
22 6:00 and follow the instructions. You're free to go
23 for the day, okay. Thank you, sir.

24 Mr. Roof's juror number 150, 15 on our list.
25 He's set aside from the trial of this case.

1 **BAILIFF:** Number 82, Your Honor.

2 **THE COURT:** Mr. Howell?

3 **JUROR:** Yes, sir.

4 **THE COURT:** What's your situation?

5 He's 23 on our list.

6 **JUROR:** I have a friend awaiting trial on
7 manslaughter.

8 **THE COURT:** In this county?

9 **JUROR:** Yes, sir.

10 **THE COURT:** Was it vehicular manslaughter?

11 **JUROR:** Yes, sir.

12 **THE COURT:** What's his name?

13 **JUROR:** Eric Wilson.

14 **THE COURT:** Is there anything at all about that
15 relationship or experience that affects your ability
16 to be a fair and impartial juror in this case?

17 **JUROR:** No, sir.

18 **THE COURT:** Do you have any doubt in your mind?

19 **JUROR:** Yes, sir.

20 **THE COURT:** Okay. Then I'll have to set you
21 aside, Mr. Howell. You got that telephone number
22 they gave you to call in?

23 **JUROR:** Yes.

24 **THE COURT:** Call tonight after 6:00 and follow
25 the instructions, but you're free to go right now,

1 okay.

2 **JUROR:** All right. Thank you, sir.

3 **THE COURT:** Mr. Howell is juror number 82.
4 He's set aside from the trial of this case.

5 (The bench conferences were concluded.)

6 **THE COURT:** Have any of you formed or expressed
7 any opinions about this case; if so, please stand?

8 (There was no response.)

9 **THE COURT:** Are any of you aware of any
10 interest, bias or prejudice that you might have for
11 or against the State, for or against Mr. Humphrey,
12 for or against anyone or any entity that may be
13 involved in this case; if so, please stand?

14 (There was no response.)

15 **THE COURT:** Can each of you give both the State
16 of South Carolina and the defendant, Michael
17 Humphrey, a fair and impartial trial? If you know
18 of any reason why you cannot, please stand now.

19 (Juror stands.)

20 **THE COURT:** Your name, sir?

21 **JUROR:** David Slagle, 161.

22 **THE COURT:** Mr. Slagle is 161. He's number 7
23 on our list.

24 I'll set you aside on this trial, Mr. Slagle.
25 Do you have that telephone number?

1 JUROR: Yes, sir.

2 THE COURT: Call tonight after 6:00, please.

3 JUROR: Okay.

4 THE COURT: Anyone else?

5 (There was no response.)

6 THE COURT: Further questions from the State?

7 MR. WEDEKIND: None from the State, sir.

8 THE COURT: Further questions from the defense?

9 MR. MADSEN: None from the defense, Your Honor.

10 THE COURT: Thank you. The jury panel is
11 qualified. The strikes are five for the State and
12 five for the defense.

13 Ladies and gentlemen, you probably were
14 upstairs when they drew a jury, I'm not certain, but
15 what happens is the clerk will call a name from a
16 list that's been randomly chosen by a computer. If
17 it's your name, gather your personal belongings and
18 come down front, just come over here around where
19 this copy machine is, stand there, face back that
20 way, the direction from which you came. And based
21 on the responses that we're given, you'll be told
22 either to have a seat in the jury box or return to
23 your seat in the courtroom.

24 We only have a center aisle, so you don't have
25 to go back to exactly the same seat if there's one

1 closer, all right. But you do need to bring your
2 personal belongings because your next stop may be
3 over here.

4 Madame Clerk, give us a jury, please.

5 **THE CLERK:** Juror number 59, Thomas Gordon.

6 (Whereupon, Thomas P. Gordon, a white male,
7 was called forward.)

8 **THE CLERK:** What sayeth for the State?

9 **MR. WEDEKIND:** Please seat the juror.

10 **THE CLERK:** What sayeth for the defense?

11 **MR. MADSEN:** Please seat Mr. Gordon.

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

14 Juror number 126, Charles Newton.

15 (Whereupon, Charles M. Newton, a white male,
16 was called forward.)

17 **THE CLERK:** What sayeth for the State?

18 **MR. WEDEKIND:** Please seat the juror.

19 **THE CLERK:** What sayeth for the defense?

20 **MR. MADSEN:** Please seat Mr. Newton.

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

23 Juror number 163, Renee Smith.

24 (Whereupon, Renee L. Smith, a white female,
25 was called forward.)

1 **THE CLERK:** What sayeth for the State?

2 **MR. WEDEKIND:** Please excuse the juror.

3 **THE CLERK:** If you'll return to your seat,
4 ma'am.

5 Juror number 37, Sabrina Cureton.

6 (Whereupon, Sabrina G. Cureton, a white
7 female, was called forward.)

8 **THE CLERK:** What sayeth for the State?

9 **MR. WEDEKIND:** Please seat the juror.

10 **THE CLERK:** What sayeth for the defense?

11 **MR. MADSEN:** Please excuse Ms. Cureton from the
12 trial of this case.

13 **THE CLERK:** If you'll return to your seat,
14 ma'am.

15 Juror number 6, Nancy Atkinson.

16 (Whereupon, Nancy B. Atkinson, a white
17 female, was called forward.)

18 **THE CLERK:** What sayeth for the State?

19 **MR. WEDEKIND:** Please seat the juror.

20 **THE CLERK:** What sayeth for the defense?

21 **MR. MADSEN:** Please excuse Ms. Atkinson from
22 the trial of this case.

23 **THE CLERK:** If you'll return to your seat,
24 ma'am.

25 Juror number 81, Stephanie Hopkins.

1 (Whereupon, Stephanie C. Hopkins, a white
2 female, was called forward.)

3 THE CLERK: What sayeth for the State?

4 MR. WEDEKIND: Please seat the juror.

5 THE CLERK: What sayeth for the defense?

6 MR. MADSEN: Please seat Ms. Hopkins.

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

9 Juror 171, Michael Unrue.

10 (Whereupon, Michael W. Unrue, a white male,
11 was called forward.)

12 THE CLERK: What sayeth for the State?

13 MR. WEDEKIND: Please seat the juror.

14 THE CLERK: What sayeth for the defense?

15 MR. MADSEN: Please seat Mr. Unrue, please.

16 THE CLERK: If you'll have a seat in the jury
17 box, sir.

18 Juror number 40, Julia Dial.

19 (Whereupon, Julia A. Dial, a white female,
20 was called forward.)

21 THE CLERK: What sayeth for the State?

22 MR. WEDEKIND: Please seat the juror.

23 THE CLERK: What sayeth for the defense?

24 MR. MADSEN: Please seat Ms. Dial.

25 THE CLERK: If you'll have a seat in the jury

1 box, ma'am.

2 Juror number 55, Scott Gifford.

3 (Whereupon, Scott J. Gifford, a white male,
4 was called forward.)

5 **THE CLERK:** What sayeth for the State?

6 **MR. WEDEKIND:** Please seat the juror.

7 **THE CLERK:** What sayeth for the defense?

8 **MR. MADSEN:** Please seat Mr. Gifford.

9 **THE CLERK:** If you'll have a seat in the jury
10 box, sir.

11 Juror number 143, Jacqueline Rankin.

12 (Whereupon, Jacqueline D. Rankin, a white
13 female, was called forward.)

14 **THE CLERK:** What sayeth for the State?

15 **MR. WEDEKIND:** Please seat the juror.

16 **THE CLERK:** What sayeth for the defense?

17 **MR. MADSEN:** Please excuse Ms. Rankin from the
18 trial of this case.

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

21 Juror number 114, Brian McLendon.

22 (Whereupon, Brian A. McLendon, a white male,
23 was called forward.)

24 **THE CLERK:** What sayeth for the State?

25 **MR. WEDEKIND:** Please seat the juror.

1 **THE CLERK:** What sayeth for the defense?

2 **MR. MADSEN:** Please seat Mr. McLendon.

3 **THE CLERK:** If you'll have a seat in the jury
4 box, please.

5 Juror number 112, Victoria McDermott.

6 (Whereupon, Victoria L. McDermott, a white
7 female, was called forward.)

8 **THE CLERK:** What sayeth for the State?

9 **MR. WEDEKIND:** Please seat the juror.

10 **THE CLERK:** What sayeth for the defense?

11 **MR. MADSEN:** Please excuse Ms. McDermott from
12 the trial of this case.

13 **THE CLERK:** If you'll return to your seat,
14 ma'am.

15 Juror number 123, Sandra Nates.

16 (Whereupon, Sandra L. Nates, a white female,
17 was called forward.)

18 **THE CLERK:** What sayeth for the State?

19 **MR. WEDEKIND:** Please seat the juror.

20 **THE CLERK:** What sayeth for the defense?

21 **MR. MADSEN:** Please seat Ms. Nates.

22 **THE CLERK:** If you'll have a seat in the jury
23 box, please.

24 Juror number 77, Jason Hilbert.

25 (Whereupon, Jason A. Hilbert, a white male,

1 was called forward.)

2 THE CLERK: What sayeth for the State?

3 MR. WEDEKIND: Please seat the juror.

4 THE CLERK: What sayeth for the defense?

5 MR. MADSEN: Please seat Mr. Hilbert.

6 THE CLERK: If you'll have a seat in the jury
7 box, please.

8 Juror number 156, Bradley Sheppard.

9 (Whereupon, Bradley W. Sheppard, a white
10 male, was called forward.)

11 THE CLERK: What sayeth for the State?

12 MR. WEDEKIND: Please seat the juror.

13 THE CLERK: What sayeth for the defense?

14 MR. MADSEN: Please seat Mr. Sheppard.

15 THE CLERK: If you'll have a seat in the jury
16 box, sir.

17 Juror number 30, Marguerite Clarkson.

18 (Whereupon, Marguerite D. Clarkson, a white
19 female, was called forward.)

20 THE CLERK: What sayeth for the State?

21 MR. WEDEKIND: Please seat the juror.

22 THE CLERK: What sayeth for the defense?

23 MR. MADSEN: Please excuse Ms. Clarkson from
24 the trial of this case.

25 THE CLERK: If you'll return to your seat,

1 ma'am.

2 133, Paul Peck.

3 (Whereupon, Paul C. Peck, a white male, was
4 called forward.)

5 **THE CLERK:** What sayeth for the State?

6 **MR. WEDEKIND:** Please excuse the juror.

7 **THE CLERK:** If you'll return to your seat, sir.
8 Juror number 56, Phillip Gilbert.

9 (Whereupon, Phillip F. Gilbert, Sr., a white
10 male, was called forward.)

11 **THE CLERK:** What sayeth for the State?

12 **MR. WEDEKIND:** Please seat the juror.

13 **THE CLERK:** What sayeth for the defense?

14 **MR. MADSEN:** Please seat Mr. Gilbert.

15 **THE CLERK:** If you'll have a seat in the jury
16 box, sir.

17 Juror number 60, Renee Greathouse.

18 (Whereupon, Renee N. Greathouse, a white
19 female, was called forward.)

20 **THE CLERK:** What sayeth for the State?

21 **MR. WEDEKIND:** Please excuse the juror.

22 **THE CLERK:** If you'll return to your seat,
23 ma'am.

24 Juror number 73, Patrick Hegwood.

25 (Whereupon, Patrick R. Hegwood, a white

1 male, was called forward.)

2 THE CLERK: What sayeth for the State?

3 MR. WEDEKIND: Please seat the juror.

4 THE CLERK: If you'll have a seat in the jury
5 box, sir.

6 MR. MADSEN: Please seat Mr. Hegwood.

7 THE CLERK: I'm sorry.

8 THE COURT: All right. Give us one alternate.

9 Strikes are one for the State, two for the defense.

10 THE CLERK: Juror number 95, Stacy Keese.

11 (Whereupon, Stacy M. Keese, a white female,
12 was called forward.)

13 THE CLERK: What sayeth for the State?

14 MR. WEDEKIND: Please seat the juror.

15 THE CLERK: What sayeth for the defense?

16 MR. MADSEN: Please excuse Ms. Keese from the
17 trial of this case.

18 THE CLERK: If you'll return to your seat,
19 ma'am.

20 Juror number 8, Dana Bangerter.

21 (Whereupon, Dana B. Bangerter, a white male,
22 was called forward.)

23 THE CLERK: What sayeth for the State?

24 MR. WEDEKIND: Please seat the juror.

25 THE CLERK: What sayeth for the defense?

1 **MR. MADSEN:** Please seat Mr. Bangerter.

2 **THE CLERK:** If you'll have a seat in the jury
3 box, sir.

4 **THE COURT:** Draw another alternate. Strikes
5 are one for the State, two for the defense.

6 **THE CLERK:** Juror number 104, James Maddaloni.

7 (Whereupon, James A. Maddaloni, a white
8 male, was called forward.)

9 **THE CLERK:** What sayeth for the State?

10 **MR. WEDEKIND:** Please seat the juror.

11 **THE CLERK:** What sayeth for the defense?

12 **MR. MADSEN:** Please excuse Mr. Maddaloni from
13 the trial of this case..

14 **THE CLERK:** If you'll return to your seat, sir.
15 Juror number 129, Douglas Noland.

16 (Whereupon, Douglas E. Noland, a white male,
17 was called forward.)

18 **THE CLERK:** What sayeth for the State?

19 **MR. WEDEKIND:** Please excuse the juror.

20 **THE CLERK:** If you'll return to your seat, sir.
21 Juror number 85, Eric Jackson.

22 (Whereupon, Eric M. Jackson, a white male,
23 was called forward.)

24 **THE CLERK:** What sayeth for the State?

25 **MR. WEDEKIND:** Please seat the juror.

1 **THE CLERK:** What sayeth for the defense?

2 **MR. MADSEN:** Please seat Mr. Jackson.

3 **THE CLERK:** If you'll have a seat in the jury
4 box, sir.

5 **THE COURT:** Are there any matters to take up,
6 including composition of the panel, prior to the
7 jury being sworn, from the State?

8 **MR. WEDEKIND:** None from the State, Your Honor.

9 **THE COURT:** From the defense?

10 **MR. MADSEN:** None from the defense, Your Honor.

11 **THE COURT:** Thank you very much.

12 Ms. Dial, you're going to be the foreman of the
13 jury. When you come back in, just be the last one
14 in, have a seat on the end to my right of this row.

15 The two alternates, Mr. Jackson and
16 Mr. Bangerter, you can sit in either one of those
17 seats throughout the trial unless I have to replace
18 you with one of the jurors -- for one of the jurors,
19 then I'll move you in.

20 The rest of you may sit anywhere you like in
21 the jury box. The only thing I'm going to ask of
22 you is this: Please file all the way in as you come
23 in. Jury boxes are generally very tight and we did
24 have an incident over in the other courthouse where
25 a lady broke her ankle, so I don't want that

1 happening to any of you. So if you're like every
2 other jury I've ever had and you develop a favorite
3 chair, some of you, step to the side out here and
4 then ask your fellow juror if you can slip in and
5 get your favorite chair.

6 While I'm thinking about it, some of you may be
7 cool in this room, some of you may be hot. There's
8 nothing I can do about it. So I strongly suggest to
9 you that you bring something with you that you can
10 -- some sort of wrap or something you can put on if
11 you're cold and remove if you get too warm.

12 Now, what's going to happen is I have to send
13 you back into the jury room for a few minutes so
14 that I can get my bearings. I don't know anything
15 about the case. I'll be hearing it like you for the
16 first time.

17 In South Carolina, I don't know what Judge
18 McMahon explained to you upstairs, I usually tell
19 the juries that the prosecutors call the cases in
20 our state. So they're familiar with them. They do
21 the calling of the cases. And, typically, I find
22 out what they're going to try just moments before
23 you find out what they're going to try.

24 So they'll tell me some information about the
25 expected length of the trial and I can do some

1 planning, see if we have any pretrial issues.

2 Normally, there are pretrial issues in every trial.

3 And as soon as I know what to tell you, I'll bring
4 you back out here and give you some guidance as to
5 where we go from here.

6 Now, it's important that you understand that
7 you are not to discuss the case in any way among
8 yourselves until I tell you to and that will be at
9 the very end of the trial. So don't discuss this
10 case in any way. When I say don't discuss the case,
11 I mean don't talk about the people involved, don't
12 talk about the type of case it's alleged to be,
13 don't talk about this case in any way whatsoever.

14 If you have cell phones, they will probably
15 take them from you, but in any event, turn them off
16 until I give you instructions about the cell phones,
17 don't use them when you're in the jury room.

18 If you'll step back in the jury room, follow
19 the bailiff, I'll get you back out here as quickly
20 as I can.

21 (The jury retires to the jury room.)

22 **THE COURT:** Ladies and gentlemen, if you were
23 not selected on this jury, my instructions are to
24 tell you to call that number that you were given
25 upstairs tonight after six o'clock, follow the

1 instructions on the message.

2 If I don't see you again, thank you very much
3 for your service. You're free to go for the
4 remainder of the day. Thank you. Call tonight
5 after 6:00.

6 (The remaining jury panel was excused.)

7 **THE COURT:** Do y'all have pretrial issues?

8 **MR. WEDEKIND:** Yes, sir. There should be a
9 Denno issue with Corporal VanPut, Mr. Thomas and
10 Officer Gilliam and I think that would pretty much
11 be anything for pretrial from the State, sir.

12 **THE COURT:** Do you know of anything, Mr.
13 Madsen, other than Denno?

14 **MR. MADSEN:** Yes, Your Honor. We have quite a
15 few motions. We have a motion to quash the
16 indictment under Rule 3 of the Rules of Criminal
17 Procedure. We have a motion for dismissal based on
18 the delay and age of the case. We have a motion for
19 dismissal based on Rule 3.06 and 3.8 pretrial
20 publicity.

21 We have motions for suppressions of items taken
22 by a search warrant. It may be a moot point, but we
23 were provided in discovery some, what I would
24 classify, as potentially Lyle evidence. We have a
25 motion to exclude that. Obviously, the Jackson v.

1 Denno issue. Also, there was a motion in reference
2 to some personnel records from Detective Gilliam, a
3 motion for sequestration.

4 And then, Judge, ultimately when we received
5 the witness list today, there is a name on there,
6 David Jackson, who I believe is Megan Jackson's
7 father. I've been provided extensive discovery, but
8 nowhere in that discovery has his name ever popped
9 up. And so I'm kind of at a loss because my
10 understanding is he was estranged from his daughter
11 and hadn't seen her for approximately three years
12 prior to her death. And I don't believe he had ever
13 spoken with my client prior to that, so...

14 **THE COURT:** What was the one between the
15 personnel records and the issue with Mr. Jackson?

16 **MR. MADSEN:** There was a motion for
17 sequestration. Also, we had made a request for some
18 personnel records from Detective Gilliam. I believe
19 that the Solicitor had those, may be even -- or had
20 those and may have been sealed.

21 **THE COURT:** So how long is it going to take to
22 do the pretrial matters?

23 **MR. WEDEKIND:** I would imagine the remainder of
24 the day, sir.

25 **THE COURT:** Do you agree with that, Mr. Madsen?

1 **MR. MADSEN:** I mean, it's a possibility it
2 might move quicker than that, but it's -- I would
3 think at least a couple of hours. The Jackson v.
4 Denno, I think, last time was probably 30 to 40
5 minutes in and of itself.

6 **MR. WEDEKIND:** Yes, sir.

7 **THE COURT:** Okay. Bring the jury in.

8 (The jury returns to the courtroom.)

9 **THE COURT:** All right. Ladies and gentlemen,
10 as I instructed you before, there usually are
11 pretrial issues in every case that have to be
12 addressed by the judge. One of my pet peeves is I
13 don't like to have the jury sitting around waiting
14 on us when we're out here working. So I try to get
15 an estimation from them.

16 And while it appears that we may get through
17 this late this afternoon, I don't want you to sit
18 around and wait that long or have to come back
19 today. So in a little bit, I'm going to let you go
20 for the remainder of the day.

21 I do not have a clear approximation yet as to
22 the length of the trial, but, hopefully, I'll get
23 that and can tell you in the morning the expected
24 length of the trial.

25 I have to give you some instructions before I

1 let you go. One is repetitive of what I told you
2 before you went back in the jury room. When you are
3 placed under oath when you come back, your oath is
4 going to be one in which you're going to promise us
5 that you're going to decide this case based on the
6 evidence and the law. And those things are going to
7 come to you in this courtroom.

8 Now, I'm going to ask you to use your common
9 sense. I want you to bring your common sense with
10 you and use it, but you'll be deciding the case
11 based on the evidence and the law. So it's really
12 important that you not discuss this case with anyone
13 else until this week is over and you've been
14 discharged from any case you may be called upon to
15 try. So don't discuss this case with anybody else.
16 Don't discuss it with family members or friends or
17 anybody at all.

18 Now, you may tell a spouse or a friend that
19 you're on a jury, I understand you have to do that
20 to make arrangements in your personal life, but you
21 cannot tell them what this case is about or who's in
22 it or anything like that.

23 If anybody should attempt to contact you and
24 discuss the case with you, please report that to me
25 so that I can deal with it. I don't expect that to

1 happen. I've been a judge almost 20 years, it's
2 never happened before, but I've had to say it in
3 every single case. If anybody tries to contact you
4 and discuss the case with you, report it to me so I
5 can deal with it.

6 Now, I never know what trials the media decides
7 to pick up on. Usually, the only way I know is if
8 they ask to set up television cameras or something.
9 I don't know of any media coverage expected for this
10 trial, but if there is any, get away from it.

11 Report to me what you may have seen, heard or read
12 through the media at the first opportunity you have
13 to report that to me, but if you are exposed to any
14 media coverage, just get away from it and do your
15 best not to let yourself be exposed to it again. If
16 I find out that there is a media outlet that's
17 covering the trial, then I'll give you instructions
18 specifically related to that trial.

19 Don't discuss this case among yourselves until
20 I tell you to, once again that'll be at the very end
21 of the trial and you'll have no doubt about when
22 that is.

23 Now, folks, I'm also supposed to tell you that
24 you are not to do independent investigation of the
25 case. As I've explained to you, the evidence is

1 going to come to you here in this courtroom. And
2 there are procedures in place and guidelines and
3 safeguards and things that are in place to deal with
4 the presentation of evidence to make sure that the
5 trial is fair.

6 It is really important that we don't have a
7 juror or some jurors who take it upon themselves to
8 do such things as research law, that's why they put
9 me here. It's my job at the end of the case to tell
10 you the law. And we have had situations where a
11 juror would decide to go on the Internet and start
12 looking up the law, please don't do that. I'll tell
13 you the law.

14 First of all, there's that old adage about a
15 little knowledge being a dangerous thing. You may
16 read some principle of law that's completely
17 accurate, but you don't know the context of it and
18 that's why they make us go to law school all those
19 years and then have to go through all the things we
20 have to go through to get licensed. So don't look
21 up law.

22 We've had jurors who, as part of independent --
23 what we call independent investigation, once they
24 find out where something is alleged to have
25 occurred, they go out and look around, don't do

1 that. Again, there are procedures in place to let
2 you do those sorts of things if the attorneys feel
3 it necessary, but don't do those kind of things.
4 Don't do any independent investigation of the
5 trial -- of the case.

6 Now, this has gotten to be such a big issue
7 nationwide that the Chief Justice has given us
8 specific things that we're supposed to read to you.
9 So my explanation to you is probably a little more
10 common because I'm a common kind of guy, but I'm
11 going to read to you what the Chief told me to tell
12 you in just a moment.

13 It's all common sense. It really all boils
14 down to common sense, but to give you an example, I
15 mean, out in California and some of those states
16 where they have those lengthy trials and that last
17 for months and things like that, they've had some
18 serious issues. They've had issues with jurors who
19 decide they want to write a book about the trial
20 they're on so they start sending notes and tweets
21 and all sorts of things. So some of these may sound
22 a little silly to you. I'm going to read them to
23 you now.

24 All right. You are not to discuss this case
25 with others, including other jurors, except as

1 authorized by the Court. You're not to read or
2 listen to any news reports about the case. You're
3 not to use a computer, a cell phone or any
4 electronic device with communication capabilities
5 while attending the trial or during deliberations.
6 Those devices may be used during lunch breaks and
7 extended breaks, but they cannot be used to obtain
8 or disclose information that's prohibited.

9 You're not to use a computer, a cell phone or
10 other electronic device with any communication
11 capabilities or any other method to obtain or
12 disclose information about the case when you're not
13 in court. And information about the case includes
14 such things, but is not limited to, information
15 about a party, a witness, an attorney or a court
16 officer, news accounts of the case, information
17 collected through juror research on any topics
18 raised or testimony offered by any witness, or
19 information collected through juror research on any
20 other topic that the juror might think would be
21 helpful in deciding the case. So don't do
22 independent investigation.

23 All right. Now, if everything goes according
24 to plan, I will bring you back in tomorrow at 9 :30
25 or 10:00. And the way you're going to know when to

1 come in, whether it's 9:30, 10:00 or some other
2 time, is to call that number that you were given
3 upstairs. Everybody have that telephone number?

4 You listen for the instructions for the case of
5 State versus Humphrey, that's the case you're on.
6 Don't get confused by others because I don't know
7 what Judge McMahon may have on there or what they
8 may have for the balance of the panel. Your
9 instructions are for State versus Humphrey. It may
10 tell you to come in at a specific time. It may tell
11 you to call back later. Just please follow those
12 instructions.

13 All of that's done for your convenience because
14 when I was practicing law, they just brought the
15 juries in and they sat. So I know it's
16 inconvenient, I know you may have questions. And
17 when the week's over, I'll be happy to take the robe
18 off and you can fire away at me any questions,
19 comments, criticisms or complaints you may have, but
20 call that number tonight and follow the instructions
21 that are on there.

22 I hope you have a very pleasant evening. The
23 last thing that I can think of that I need to tell
24 you is this: If you have some true emergency that
25 arises that prevents you from being here at the

1 designated time, please call the clerk's office and
2 have them -- and tell them what's going on because I
3 can't do anything until all of you are here. And if
4 you're not here, I send people to try to find you.
5 So please let us know or have somebody let us know
6 if you have some true emergency.

7 If you get a stomach virus, we don't want it,
8 okay. We'll be reasonable with you. Hopefully,
9 nothing will happen, everything will be fine and we
10 won't have any problems, but please let us know and
11 please try to be on time, okay.

12 All right. When you come back, don't come into
13 the courtroom, come directly to the jury room. When
14 you all leave, the bailiff's going to show you what
15 door to come to and they'll be there to meet you and
16 bring you back here into this jury room.

17 Thanks so much, folks. I'll look to see you
18 some time tomorrow. Thank you.

19 (The jury was excused for the day.)

20 **THE COURT:** All right. Folks, let me just give
21 this instruction. I try to give it in every case.
22 And I've got mostly law enforcement professionals in
23 here so you already know this, but please be really
24 careful as you leave here that you don't have any
25 conversations that might be overheard by a juror or

1 have any contact with a juror. You're going to be
2 using the same common areas, you're going to be
3 using the same elevators most likely, you're going
4 to be using the same parking lots, so just be really
5 careful that you're not saying anything that relates
6 to the case that might be overheard by a juror.

7 The safest thing to do is just to let them
8 clear out because, as most of you know, you think
9 jurors are gone and left, but they don't necessarily
10 do that. Some of them have to wait on rides, some
11 of them just kind of walk around. So be real
12 careful that you don't have any contact with a
13 juror. If you go to a local restaurant to eat,
14 check around, make sure there's no juror sitting
15 close to you that's within earshot.

16 Mr. Humphrey, you're out on bond?

17 **DEFENDANT:** Yes, Your Honor.

18 **THE COURT:** I'm going to let you stay out, but
19 make sure -- I have to say this to everybody. You
20 understand the jury's been drawn. You understand
21 the case is going to go forward whether you're here
22 or not.

23 **DEFENDANT:** Yes, Your Honor.

24 **THE COURT:** So make absolutely certain that
25 you're here when you're supposed to be. If you're

1 not here, I'll issue a bench warrant and have you
2 picked up. But if you do have some emergency that
3 arises, if you'll call Mr. Madsen's office or get in
4 touch with whoever you can get in touch with, get
5 word to us, I'll try to accommodate you, but I can't
6 promise you. So just make sure you're back here, I
7 want everybody back at two o'clock, okay.

8 All right. We're in recess for lunch until
9 2:00 p.m.

10 (Whereupon, there was a luncheon recess.)

11 **THE COURT:** All right. I assume, unless you
12 all have problems with the witnesses, that the most
13 logical way to address this is to deal with the
14 motion to quash and the motions for dismissal first.

15 **MR. MADSEN:** I would agree, Your Honor.

16 **MR. WEDEKIND:** Yes, sir.

17 **MR. MADSEN:** Unless -- I mean, if they want to
18 do Jackson v. Denno, because they've got officers
19 that have something, we could certainly take that
20 out of order, but if not --

21 **MR. WEDEKIND:** No problem, sir, that seems
22 logical to the State.

23 **THE COURT:** Go ahead, Mr. Madsen.

24 **MR. MADSEN:** Judge, we would move to quash the
25 indictment under Rule 3 of the Rules of Criminal

1 Procedure. Subsection (c) says that within 90 days
2 after receipt of an arrest warrant from the Clerk of
3 Court, the Solicitor shall take action on the
4 warrant, subsection (1), preparing an indictment for
5 presentment to the grand jury.

6 Subsection (d) then goes on to say that
7 extensions of time, that the Solicitor may petition
8 the circuit court -- or, excuse me, may petition and
9 if the circuit court finds probable -- or, excuse
10 me, good cause, they might extend that.

11 Judge, this is -- the allegations in this are
12 for an incident that occurred on October 17th of
13 2004. Mr. Humphrey was arrested on October 22nd of
14 2004. There was an initial indictment that was done
15 by the Solicitor on November 14th of 2005, so almost
16 one year past the arrest date or a little bit over
17 one year past the arrest date. I am not aware, and
18 maybe the Solicitor can pipe in on this, but that is
19 certainly not within 90 days.

20 Additionally, I am not aware that the Solicitor
21 has petitioned the circuit court nor had the circuit
22 court found good cause for that original indictment.

23 Additionally, Judge, the indictment that we're
24 actually proceeding on here today was true billed by
25 the grand jury on April 11th of 2011. So we're

1 dealing with almost, I guess, six and a half years
2 later, well beyond that 90 days set by Rule 3.
3 Therefore, Judge, we would move to quash the
4 indictment on a violation of Rule 3.

5 **THE COURT:** What's the State's position?

6 **MR. WEDEKIND:** Your Honor, under State v.
7 Culbreath that held that a 90-day requirement for
8 this rule is not jurisdictional, failure to act on a
9 warrant within 90 days of the receipt of the warrant
10 as required by the rule does not invalidate the
11 warrant.

12 The case was timely presented. It was indicted
13 originally. There were some questions in the first
14 trial. This is a -- the first trial ended in a
15 mistrial. Subsequent to that, we amended it.
16 Really what the indictment that's before the Court
17 is an amended indictment. The substance and the
18 nature of the charges have not changed. There's
19 been no deviation to the elements required that the
20 State has always put forth and presented. There has
21 been no prejudice to the defendant from that.

22 Furthermore -- well, as far as, I guess, the
23 indictment, I'll just leave that. As far as the
24 timeliness of the trial, we'll take it up, I think,
25 at the next motion.

1 **THE COURT:** Mr. Madsen, do you have anything
2 else on this?

3 **MR. MADSEN:** No, Your Honor.

4 **THE COURT:** Under the State versus Edwards, a
5 2007 case from the Court of Appeals, the court has
6 determined that the 90-day requirement is an
7 administrative requirement and not a jurisdictional
8 requirement. And the failure of a prosecutor to
9 seek a warrant within 90 days or to seek a
10 continuation is not sufficient within itself to
11 invalidate the warrant or prevent prosecution. The
12 motion's denied.

13 What's your next motion?

14 **MR. MADSEN:** Judge, we have a motion for a
15 dismissal based on the delay under various different
16 reasons, obviously a violation of Mr. Humphrey's
17 speedy trial, a violation obviously then also for
18 due process and confrontation and right to present a
19 defense.

20 Ultimately, the purpose, Your Honor, of a
21 speedy trial that is guaranteed under United States
22 Constitution amendment -- the Sixth Amendment and
23 the South Carolina Constitution Article 1 Section 14
24 is that, I believe, it's -- basically, the purpose
25 is fourfold: to prevent prejudice to the defendant

1 because of the time delay; additionally, the right
2 is designed to minimize the possibility of lengthy
3 incarceration prior to trial; the third purpose is
4 to reduce the lesser but nonetheless a substantial
5 impairment of liberty imposed on an accused while
6 released for bail; and, fourth, to shorten the
7 disruption of life caused by an arrest.

8 The court has basically said that there are --
9 although there's no hard or fast rules, they have
10 generally kind of looked at four different factors:
11 one, the length of the delay; second, the reason for
12 the delay; third, the defendant's assertion of
13 that right; and, four, the prejudice to the
14 defendant.

15 As I understand correctly, Judge, ultimately I
16 think the Court needs to take up that fourth element
17 and make a decision on that and then kind of jump
18 back and decide if the Court even needs to take a
19 look at one, two or three. Generally, though, it
20 looks to be, Judge, that the Court has held once you
21 get to a certain point in time, that that fourth
22 element, prejudice to the defendant, is presumptive.

23 There have been a multitude of cases that
24 listed that some of those finding that the
25 presumptive prejudice was out there after a couple

1 of years and so we do believe that this is
2 presumptively prejudiced and, therefore, the first
3 three factors, the length of the delay, the reason
4 for the delay and the assertion -- or the
5 assertion of that right should be gone into by the
6 State.

7 Doggett versus United States was a Supreme
8 Court case that apparently suggested in dicta that a
9 delay of more than a year is presumptively
10 prejudicial. Also, for the South Carolina court,
11 State versus Pittman also indicated that a delay may
12 be lengthy as to require a finding of presumptive
13 prejudice and that that may trigger an analysis of
14 the other factors.

15 As I have previously stated, Judge, we have a
16 situation here where we are about six and a half
17 years from the alleged incident date. We do believe
18 that that is presumptively prejudicial. And we
19 believe that that has violated not only the U.S.
20 Constitution, but also Mr. Humphrey's state
21 constitutional rights of a speedy trial, due process
22 and then obviously a -- the Sixth Amendment right to
23 confrontation or the ability -- or the right to
24 present a defense.

25 Just to let Your Honor know as far as the

1 record, there were numerous witnesses who have
2 either testified in the past or I have spoken with
3 that given the nature of the delay, have either no
4 memory or their memory is not nearly as clear as it
5 used to be. One of those was one of the EMS
6 workers, John Daily. Mr. William Maye, I believe he
7 testified to last time that obviously given the
8 timeframe, his memory is not as clear as it once
9 was.

10 The SLED agent who was involved in this case,
11 Michael Squire, it is my understanding from the
12 Solicitor that no one knows where he is at this
13 point in time. Additionally, there was a SLED agent
14 involved, Kimberly Hahn, I believe the Solicitor's
15 office was able to track her to Texas at this point
16 in time. There were photographs taken by SLED that
17 no one can find or document.

18 Apparently, sergeant -- or, excuse me,
19 Lieutenant Day of the MAIT team had gone out and
20 done some review of the car back in October of 2004.
21 He doesn't have any notes or reports or,
22 realistically, an independent recollection of what
23 he did then.

24 Additionally, a coroner, Wanda McNair, is now
25 deceased and there's no way to obviously question

1 her about some information that she was provided at
2 that point in time.

3 We have spoken with Ms. Jackson, she had some
4 medical providers around that time, a doctor who's
5 now in North Carolina, a couple of different nurses
6 that actually have no recollection of her or the
7 event surrounding that time. So we would move for a
8 dismissal based on that.

9 **THE COURT:** What about the nurse now?

10 **MR. MADSEN:** There was a couple of nurses that
11 provided care prior to this incident for Ms.
12 Jackson. They have no recollection of her or what
13 they had done at this point in time given the fact
14 that it's six and a half years later.

15 **THE COURT:** All right. After Mr. Daily, the
16 EMS worker, who did you say before the SLED agent,
17 but after Mr. Daily?

18 **MR. MADSEN:** There was another SLED agent,
19 Kimberly Hahn.

20 **THE COURT:** No. This was before you talked
21 about the SLED agent. Wait a second, I can look
22 back.

23 Who is William Maye?

24 **MR. MADSEN:** He was a witness at the last
25 trial. And I believe testimony came out through him

1 and I had conversations prior to that that he
2 certainly does not remember everything.

3 **THE COURT:** What's your contention that the
4 State is maintaining happened here, Mr. Madsen?

5 **MR. MADSEN:** In --

6 **THE COURT:** In the -- that caused the death, to
7 bring about her coming out of the car or vehicle.

8 **MR. MADSEN:** At this point in time, I'm
9 assuming they think that my client engaged in some
10 type of physical altercation with her leading to her
11 falling from a moving vehicle. That's a little bit
12 different than the wording at the last trial.

13 **THE COURT:** What did they say last time?

14 **MR. MADSEN:** Beg the Court's indulgence. Let
15 me see if I can find --

16 (Pause.)

17 **MR. MADSEN:** The last time, they indicated that
18 while the truck, operated by the victim, was moving
19 down a road, the defendant broke out the rear window
20 of the truck, climbed into the cab and fought with
21 the driver to the point she was compelled to jump
22 out of the vehicle resulting in her death.

23 And then the new indictment was what Mr.
24 Humphrey was served with today, but they had gotten
25 it and provided a copy -- it was true billed, I

1 guess, on 4/11 and I think I had gotten it prior to
2 it being true billed or at least a copy of what they
3 anticipated.

4 **MR. WEDEKIND:** Yes, sir.

5 **THE COURT:** So up until this week, the State
6 was claiming that the defendant was in the back of
7 a -- or in the bed of a pick-up truck or some sort
8 of truck.

9 **MR. MADSEN:** Yes, sir.

10 **THE COURT:** Broke out the back window or went
11 through one of those windows that opens and was
12 tussling with the driver of the truck.

13 **MR. MADSEN:** That's my understanding.

14 **THE COURT:** And that the -- that Ms. Jackson
15 then jumped or fell off the vehicle?

16 **MR. MADSEN:** They indicate that she was
17 compelled to jump out of the vehicle resulting in
18 her death.

19 **THE COURT:** But was there ever an assertion
20 before this that Mr. Humphrey was engaged in some
21 sort of physical altercation with Ms. Jackson in
22 your discovery or anything else?

23 **MR. MADSEN:** Judge, in my conversations with
24 the Solicitor, I believe that that was his
25 contention.

1 Ultimately, we had a previous trial to this. I
2 had moved to either quash that indictment or for
3 them to amend the "to wit" with some sort of
4 specificity. That is ultimately what they came up
5 with.

6 The reason that I did that was to find out
7 obviously exactly what their contention was. And
8 the judge -- or Judge McMahon granted that and that
9 was what the Solicitor had, at that point in time,
10 was what I had read out. And I can certainly
11 welcome to pass that up to Your Honor.

12 **MR. WEDEKIND:** No objection from the State.

13 **MR. MADSEN:** If Your Honor would like to see
14 that.

15 **THE COURT:** Okay.

16 **MR. MADSEN:** I'm going to hand you up the
17 original indictment and then what I moved --

18 **THE COURT:** Where is the warrant?

19 **MR. MADSEN:** We can get a copy of those.

20 Here is a copy of the original warrant.

21 **THE COURT:** The warrant charged that on October
22 17, 2004, the defendant, Michael A. Humphrey, did
23 with criminal negligence and with reckless disregard
24 to the safety of others, caused a wreck which led to
25 the death of Megan D. Jackson on 21, October, 2004.

1 This occurred in the town of Batesburg-Leesville,
2 Lexington County, South Carolina.

3 The indictment that was true billed -- did you
4 mean to hand me the new indictment or the old
5 indictment?

6 MR. MADSEN: Well, I gave you the old one
7 because that goes along with --

8 THE COURT: I don't see the old one.

9 MR. MADSEN: I'm sorry, Judge.

10 I'm sorry. I did hand you -- I handed you the
11 new one instead of the old one. I'm sorry. They
12 both -- it's kind of confusing because they both
13 have the same --

14 THE COURT: What is this?

15 MR. MADSEN: That is the amendment to the old
16 indictment. It's a little bit confusing because
17 both of them have the same docket number, the old
18 and the new one.

19 MR. WEDEKIND: And if I may, sir, I think --
20 the reason why we have the new indictment was Judge
21 McMahon, at the previous trial, came up with the
22 idea of doing this amendment as an attachment at the
23 behest of Mr. Madsen's motion. So that was typed up
24 and stapled to the original indictment for
25 presentation to the jury. And rather than be

1 awkward with that again, we decided to clean up the
2 process and just have one indictment that reflected
3 what was intended by Mr. Madsen's motion.

4 Originally, we wanted to grant that -- or not
5 grant it, but we wanted to go along with that and
6 just clarify things so there would be less
7 confusion. Apparently, it has now become a point of
8 confusion, but we were attempting to make it so we
9 wouldn't be here scratching our heads as to why.
10 This new indictment is to clarify what Mr. Madsen's
11 motions were made for in the previous trial.

12 **THE COURT:** Well, hold on a second. Was Megan
13 Jackson driving the vehicle?

14 **MR. WEDEKIND:** Ms. Jackson was driving the
15 vehicle.

16 **THE COURT:** Okay. I didn't understand. I
17 thought they were -- okay.

18 **MR. WEDEKIND:** And that's been the contention
19 all along, sir.

20 **THE COURT:** I wasn't sure that Megan Jackson
21 was operating the vehicle. I thought she was in the
22 back of the vehicle with Mr. Humphrey.

23 **MR. WEDEKIND:** The facts asserted by the State
24 are that she was driving the vehicle to go to work.
25 Mr. Humphrey jumped in the back, smashed out the

1 back window in an attempt to gain control of the
2 vehicle and her. And she either -- during the
3 struggle for the control of the vehicle, she lost
4 that physical fight and she decided that either she
5 had to get out of that vehicle because of what was
6 going on in the cab or what was about to go on, but
7 she deemed it safer or less pleasant to hit the road
8 than it was to stay in the car with Mr. Humphrey.
9 And that's the State's contention in this case.

10 **THE COURT:** So what did Mr. Daily offer?

11 **MR. MADSEN:** Mr. Daily was one of the EMS
12 workers who --

13 **THE COURT:** What did he offer, though? I mean,
14 what was he able to say?

15 **MR. MADSEN:** Just a second, Judge.

16 (Pause.)

17 **MR. MADSEN:** He indicated that he was an EMS
18 driver, that he got there, that ultimately he began
19 to work on Ms. Jackson who had a skull fracture,
20 that while he was preparing her for transport, a wad
21 of cash fell out of one of her pockets, he handed it
22 to a bystander, asked him to give that to the
23 Batesburg-Leesville officers, that one of the
24 bystanders helped to secure the officers, that he
25 saw two uniformed officers talking to an

1 African-American male who made the statement to the
2 police officers that I was not driving the car.

3 He told the officers that she had a skull
4 fracture, that they were transporting her to a
5 landing zone for a helicopter. Additionally says
6 that the African-American male in quote said, Oh,
7 Lord, is she going to be okay?

8 Additionally, there was an EMS run sheet that
9 indicated, I believe, that indicated that Ms.
10 Jackson was combative.

11 **THE COURT:** The EMS run sheet said that she was
12 combative?

13 **MR. MADSEN:** Combative.

14 **THE COURT:** And when you got to trial, what did
15 he remember?

16 **MR. MADSEN:** He was not called as a witness. I
17 spoke with him on the phone and he basically told me
18 that he had no independent recollection of the case
19 whatsoever. The only thing that he could go by was
20 what he had written down at that point in time, but
21 that he had no independent recollection whatsoever.

22 **THE COURT:** What about Mr. Maye? What did Mr.
23 Maye know originally?

24 **MR. MADSEN:** Mr. Maye was the neighbor across
25 the street who I believe was the first individual

1 out there. He was able to testify at trial as to
2 going out there, he's a former EMS worker himself,
3 was able to testify as to what he saw out there,
4 what he found out there, but he just indicated that
5 his memory was not nearly as good at that point in
6 time about six years later than it was back a time
7 closer.

8 **THE COURT:** Did he give a written statement on
9 or about the time of the incident?

10 **MR. MADSEN:** He did, Judge. It was extremely
11 limited. It says, When I arrived on the scene of
12 the accident, the victim was in and out of
13 consciousness. I was able to get a name of Megan
14 from her. The other person on the scene, whose name
15 I did not get, was a black male. The black male was
16 hysterical saying, Help me, help her, quite loudly.
17 His only statement to me was -- to how he arrived on
18 scene was that he had been dropped off by someone.
19 And that was his only statement to law enforcement
20 that I'm aware of.

21 **THE COURT:** Did he identify Mr. Humphrey as
22 being that person?

23 **MR. MADSEN:** He did in the court.

24 **THE COURT:** Did he testify that Mr. Humphrey
25 said that he had been dropped off there by someone?

1 **MR. MADSEN:** I believe he did.

2 **MR. WEDEKIND:** My recollection, he had a pretty
3 good recollection of it from the trial a couple
4 months ago, sir.

5 **THE COURT:** What did SLED do?

6 **MR. MADSEN:** SLED was the actual crime scene,
7 that was my understanding, is Michael Squire was the
8 crime scene -- I believe he took photographs, but I
9 don't believe -- or SLED doesn't have any copies of
10 those, Batesburg-Leesville Police Department does
11 not have any copies of those. There were notes from
12 him, but my understanding is no one; at this point
13 in time, knows where he is. I believe he might have
14 also, at some point in time, either collected or
15 been in the chain of custody of some potential
16 evidence.

17 **MR. WEDEKIND:** And, Your Honor, my
18 understanding was he did not process the vehicle
19 until it was removed from the crime scene a day or
20 two later when it was at the Batesburg impound
21 garage. He then took some photographs that were
22 replicated by the Batesburg-Leesville Police
23 Department and also by the defense and the State,
24 went to the same impound garage, it was a little
25 dustier, but I don't think the vehicle had been in a

1 disturbed condition.

2 There was also some blood swabs taken from the
3 interior of the compartment. I had requested, and
4 this goes to Ms. Hahn's involvement in the case from
5 SLED too, those swabs were turned over to Ms. Hahn.
6 Initially, my hope was that that would show some
7 mutual blood from Mr. Humphrey because I know he had
8 flown through the back window and into the steering
9 column and was injured on his shoulder, which we'll
10 have photographs showing injuries to his shoulder
11 blade. So we knew we'd find his blood in the
12 vehicle, but we were also looking to see if we could
13 find any blood from the victim.

14 However, she didn't really start to bleed until
15 she made contact with the road surface from exiting
16 the vehicle. We just didn't know the extent of the
17 combat that had taken place in the vehicle and if it
18 was some fisticuffs with her being a result of her
19 shedding blood in the vehicle.

20 Unfortunately, for the State, we never found
21 any of that. There was nothing to indicate that.
22 The only blood that was analyzed and had a result
23 from DNA for Ms. Hahn showed a male chromosome
24 present. So, obviously, it would not have been any
25 blood that was taken from Ms. Jackson in the

1 vehicle.

2 THE COURT: What was in the crime -- what was
3 in the chain of custody that --

4 MR. WEDEKIND: The blood sample, sir.

5 MR. MADSEN: The blood sample. I believe he
6 also maybe, at some point in time, ended up taking
7 some clothing.

8 MR. WEDEKIND: The clothing's in the custody of
9 the Batesburg-Leesville Police Department and that
10 was all gathered by Batesburg. I don't think there
11 was ever -- there might have been some check for
12 cuttings from it, but, again, there was nothing from
13 Ms., you know, it's Ms. Megan Jackson's clothing, so
14 obviously her DNA was going to be present on it.
15 There was no blood of Mr. Humphrey on that clothing.

16 And we -- as I said, there was nothing really
17 that would have been presentable by the State. It
18 was her vehicle, so we knew we'd find her DNA and
19 fingerprints present in the vehicle. It was also
20 Mr. -- Mr. Humphrey had ridden in that vehicle, so
21 there would have been his fingerprints and DNA
22 material inside the vehicle as well.

23 MR. MADSEN: The SLED evidence reports, Judge,
24 indicate that Michael Squire had come into contact
25 or apparently had taken, by a SLED laboratory

1 evidence inventory, different swabs; two rolls of
2 color film; fibers collected from a driver's door;
3 fibers collected from a sliding window; a bungee
4 strap; tan pants and a red shirt that they have
5 listed as, Subject, assorted clothing removed from
6 victim; white shoes removed from passenger side of
7 the truck.

8 **THE COURT:** And what about Kimberly Hahn? What
9 was her involvement?

10 **MR. MADSEN:** My understanding is she was the
11 DNA analyst or the blood analyst.

12 **THE COURT:** I realize we have a Denno issue
13 hanging out there, but what was the essence of Mr.
14 Humphrey's statement?

15 **MR. WEDEKIND:** At first, Your Honor, he said he
16 was not involved, that he had been dropped off by
17 the -- I think he gave two or three different
18 accounts how he got there, but his initial story to
19 law enforcement was he wasn't in the vehicle and he
20 had gotten informed about this and he was dropped
21 off by friends.

22 Then it was he said he was in the back of the
23 vehicle and she was attempting to exit the vehicle.
24 So in an effort to save her life, he felt compelled
25 to smash out the back window with his fist and then

1 jump through the front window to attempt to grab her
2 in the cab to prevent her from exiting the vehicle.

3 I think Officer Gilliam then said something to
4 the effect of, Well, Bo, why didn't you just grab
5 the door from the back instead of going the long way
6 about it? And he said, Oh, it didn't occur to me.
7 Then later on he was making statements that he was
8 sorry, he was sorry. And he had been in the back of
9 the vehicle and he didn't, you know, I'm sorry,
10 baby, and that kind of stuff.

11 Also, I think there was some talk about an
12 argument beforehand when he had gone out drinking
13 till about five o'clock in the morning. He returned
14 to her and the children at 5:30. She was getting --
15 arisen and getting dressed to go to work. He said
16 he was too drunk to watch the kids, that she was
17 going to have to call in sick or come late to work.
18 She said she'd just got this job, she was the sole
19 bread winner at that time and she needed to maintain
20 the income. He said, No, you're going to have to
21 stay. Then he went to sleep on the bed.

22 She then crept out of the house, got in the
23 vehicle. He heard the engine start up or the
24 vehicle drive by, ran out of the house, left the
25 kids behind, jumped in the back of the bed. And

1 they went down the street, made a turn from Granite
2 onto Highway 1 and that's when he felt that he
3 needed to gain control of the situation, bust out
4 the window and take the vehicle. And his account
5 was to save her from jumping out of the vehicle.

6 **THE COURT:** What time did this happen?

7 **MR. WEDEKIND:** Around 6:00 to 6:30 in the
8 morning, sir.

9 **THE COURT:** Did they take blood samples for a
10 alcohol analysis?

11 **MR. WEDEKIND:** Everyone said they smelled
12 alcohol on his presence. He admitted to drinking
13 and he showed an I.D. card from Club Revolutions.

14 **MR. MADSEN:** And, Judge, I just -- I think some
15 of the facts as the Solicitor gave were not
16 necessarily statements that Mr. Humphrey had given
17 to law enforcement as far as the scope of the
18 argument or anything. I think it was just very
19 cursory. I think some of that is things that the
20 Solicitor thinks happened, but I don't think Mr.
21 Humphrey specifically --

22 **MR. WEDEKIND:** No, sir. Those are from
23 statements he gave to law enforcement and to Ms.
24 Jackson's mother who memorialized that in a
25 statement to the police.

1 **THE COURT:** So what photographs does the
2 Batesburg-Leesville Police Department have?

3 **MR. MADSEN:** They went afterwards and took
4 photographs -- I don't remember -- it was quite a
5 period of time, probably four to five years later,
6 they might have taken some after talking with the
7 Solicitor's office, but my understanding is none
8 from that night, none from SLED or the ones that
9 SLED had taken, I believe, a day later. I can't
10 necessarily answer when they took their photographs
11 that they had.

12 **MR. WEDEKIND:** The SLED agent didn't come till
13 the next day when it was at the impound shop. He
14 took some photographs that were overlapping with
15 some that Batesburg-Leesville took.

16 **THE COURT:** How do you know that?

17 **MR. WEDEKIND:** Because I've talked with the
18 chief who said that he didn't --

19 **THE COURT:** You didn't talk to the SLED agent.
20 How do you know they overlap?

21 **MR. WEDEKIND:** Well, I'm trying to explain,
22 sir.

23 **THE COURT:** Go ahead.

24 **MR. WEDEKIND:** They initially thought it was a
25 car wreck, that there was not a crime involved, so

1 they never preserved the crime scene photos. And
2 SLED was not called, the MAIT team was not called to
3 the scene.

4 It was only -- that happened on a Sunday
5 morning, in the wee hours of Sunday morning. Chief
6 Oswald said that after he started hearing reports
7 back from his officers, he discerned that this was
8 something more than just a collision into a tree and
9 he called, at that point, for SLED's assistance and
10 the MAIT team.

11 Once the MAIT team arrived, they said, Well,
12 you've got SLED here. This is a criminal thing. We
13 only do traffic accidents. And they backed off.

14 There are photographs of the vehicle on the
15 back of the tow truck at the impound lot. And
16 according to Chief Oswald, that's -- shortly
17 thereafter is when the SLED agent first arrived
18 there to take photographs.

19 But we have photographs that have been given in
20 discovery to Mr. Madsen showing the truck the day
21 after the wreck. It's the same timeframe that
22 Batesburg-Leesville Police Department said that they
23 first called in to SLED to notify them of their need
24 for assistance.

25 **THE COURT:** Who took them?

1 **MR. WEDEKIND:** Lieutenant Clair of the
2 Batesburg-Leesville Police Department took the
3 Batesburg photographs that we turned over in
4 discovery, don't know how many or what photographs
5 were taken by the SLED agent." He is no longer
6 employed by SLED and we were not able to locate him.

7 **THE COURT:** So was it four years later or was
8 it right then?

9 **MR. WEDEKIND:** There have been a series of
10 photographs. We took -- Mr. Humphrey's first
11 attorney, Mr. Lourie, came out there. He wanted to
12 look at the truck. So we took additional
13 photographs there. Then Mr. Madsen wanted to look
14 at it himself, so we took him out there. We took
15 some additional photographs of that one.

16 So I think we have a series of four actually.
17 There's Batesburg-Leesville's photos initially.
18 There's a series taken with Mr. Lourie. There's a
19 series taken with Mr. Madsen. And then Lieutenant
20 Day from the Highway Patrol went back and he took
21 some additional photographs actually at the request
22 of Mr. Madsen because he said he would use those
23 photographs to do an estimate of speed at the time
24 of collision with the tree that was hit that flung
25 Mr. Humphrey into the steering column.

1 **THE COURT:** Is that right or wrong, Mr. Madsen,
2 about the timing of the taking of the photographs?

3 **MR. MADSEN:** I can't speak as to when they went
4 and got them with Mr. Lourie. I went out -- at my
5 request, they did allow me to --

6 **THE COURT:** No. I want to go back -- when I
7 originally asked the question, you said that the
8 photographs -- that this SLED agent had taken two
9 rolls of color photographs according to a report you
10 have.

11 **MR. MADSEN:** Yes, Your Honor.

12 **THE COURT:** But nobody knows where they are.

13 **MR. MADSEN:** No, sir.

14 **THE COURT:** The State is saying those took
15 place not at the scene, but at another area when
16 SLED was processing the vehicle.

17 **MR. MADSEN:** That is my understanding.

18 **THE COURT:** I asked about the
19 Batesburg-Leesville Police Department photographs
20 and I understood you to say that they were taken
21 like four years or so afterwards.

22 **MR. MADSEN:** Well, I think they've had a -- I
23 think they've taken multiple sets of photographs
24 afterwards. I believe they took some with
25 Mr. Lourie that was --

1 **THE COURT:** No. Go back. Y'all -- I want to
2 know about the delay. I want to know about what
3 happened that night and close thereto that we can't
4 restructure or reconfigure.

5 **MR. MADSEN:** My understanding is the first
6 pictures that were taken were from SLED, which I
7 believe was the day after. As far as when Batesburg
8 first took their photographs, I can't tell Your
9 Honor that because I don't believe that -- I have
10 copies of the photographs, but I don't believe that
11 there is a report indicating when that was as
12 compared to when the SLED was and if --

13 **THE COURT:** How far did the trial go before?

14 **MR. MADSEN:** It was a hung jury.

15 **THE COURT:** So you've been through an entire
16 trial?

17 **MR. MADSEN:** Yes, sir.

18 **THE COURT:** Did they introduce photographs?

19 **MR. MADSEN:** Some they did, Your Honor.

20 **THE COURT:** Were they photographs that they --
21 they didn't say when they took them?

22 **MR. MADSEN:** I don't recall which ones. I know
23 there were some from Sergeant Day that had
24 introduced some photographs. And there were some --
25 some that were introduced, I believe, by Officer

1 VanPut or Officer Thomas, but I don't recall.

2 Obviously, I did -- I think I had some
3 objections to those, but obviously, as Your Honor
4 knows, we start, at this point in time, anew.

5 **THE COURT:** Yeah, I realize that. I'm just
6 trying to figure out the timing of the evidence that
7 was calculated.

8 All right. Now, what -- if y'all have anything
9 else, I'll listen to you.

10 **MR. WEDEKIND:** Sir, we have the photographs
11 that were taken by -- the day after.

12 **THE COURT:** I just need to know when they were
13 taken. Y'all show me photographs, you might as well
14 be showing me photographs of the Eiffel Tower. I
15 don't know what you're talking about.

16 **MR. WEDEKIND:** The 18th, sir, the day after by
17 the Batesburg-Leesville Police Department.

18 **MR. MADSEN:** Lieutenant Clair did not testify
19 last time.

20 **MR. WEDEKIND:** No, sir, but he took those
21 photographs.

22 **THE COURT:** Well, how do I know that?

23 **MR. WEDEKIND:** Well, we can present it, sir.

24 **THE COURT:** Y'all are going to have to give me
25 five minutes. I'm sorry. And when I come back, I

1 want to know timing, all right?

2 MR. WEDEKIND: Yes, sir.

3 THE COURT: Timing. Thank you.

4 (Brief Recess.)

5 THE COURT: Back to the photos, explain to me
6 what the photos -- what photos were taken that you
7 have that were at or near the time of the incident.

8 MR. WEDEKIND: Yes, sir. And for clarity sake,
9 I think Mr. Madsen was present when we had a
10 coordination meeting last December before the trial
11 in January before Judge McMahon of this case.

12 What occurred chronologically was the 17th is a
13 Sunday, in the early morning hours, there's this
14 truck hitting a tree. The initial responding
15 officer, Mr. -- Officer Thomas, thinks that it's an
16 accident. Later on, when all of the reports start
17 coming into Chief Oswald, he determines that, no,
18 this was not a collision with a tree, this was a
19 crime. So he then calls for assistance.

20 The next morning he calls in the MAIT team from
21 the Highway Patrol. He calls in SLED. They both
22 arrive. The MAIT says, This is a criminal
23 jurisdiction. We have nothing to do with it. They
24 walk away. They don't take any further action.

25 THE COURT: I don't understand that.

1 **MR. WEDEKIND:** That's their procedure at the
2 time. That's what Chief Oswald has reported to me
3 and to Mr. Madsen at that coordination meeting in
4 December.

5 **THE COURT:** So why does MAIT testify in all of
6 these cases I do if they don't have anything to do
7 with criminal prosecution?

8 **MR. WEDEKIND:** Because they came back at the
9 behest of Mr. Madsen and myself to see if they could
10 look at the indentation of the vehicle, which has
11 been preserved in that shed --

12 **THE COURT:** Who did?

13 **MR. WEDEKIND:** Lieutenant Day of the Highway
14 Patrol MAIT Team today. He was the officer that
15 showed up with the MAIT team originally, but he said
16 he waived off because, at that time, that was their
17 administrative proceeding, that if it was criminal,
18 they only handled civil car accidents and
19 reconstructions.

20 But he said he would still be able to -- when
21 we were there with Mr. Madsen, he said, I can tell
22 you, I can take measurements right now and I can
23 take some photographs and I can come back and give
24 you an estimate of the speed that this vehicle was
25 traveling when it hit that tree. So we had him do

1 that and he has given an oral report to myself and
2 to Mr. Madsen. We provided him his phone number.
3 And he testified in the last trial to that effect.
4 I think it was a speed of 28 to 32 or something like
5 -- 25 to 28, I'm sorry. So that's how that
6 happened.

7 Now, back to the photographs, sir. On the 18th
8 when the SLED agent showed up, contemporaneous with
9 Chief Oswald and Lieutenant Clair, who was their
10 crime scene investigator, they got a search warrant
11 to take photographs and to obtain items from the
12 pick-up truck that was in their impound garage.

13 On the 18th, these series of photographs that
14 I'm showing Mr. Madsen, and he has been provided
15 them in discovery, I don't think there's any
16 objection to them, these were taken on the 18th of
17 October, 2004, by the Batesburg-Leesville Police
18 Department. They have been provided in discovery to
19 Mr. Lourie, the original attorney. They were also
20 provided to Mr. Madsen. They have not changed.
21 They have been there since the day after the
22 offense.

23 We have no idea what happened to those two
24 rolls of film that SLED Agent Squires took. We have
25 no idea of those. We've never seen them, but they

1 were -- I'm told by Chief Oswald the only time that
2 he was granted access to take those photographs was
3 the day of the 18th when the search warrant was
4 executed. It was also when the blood swabs were
5 taken from the interior of the cab of the vehicle,
6 and I believe that was it.

7 Then there was a second timeframe when
8 Mr. Lourie, who was the first attorney that Mr.
9 Humphrey had, he said he wanted to look at the
10 vehicle himself --

11 **THE COURT:** I don't want to talk about that
12 yet.

13 **MR. WEDEKIND:** Okay, sir.

14 **THE COURT:** I want to know what -- they
15 swabbed, you said, from the interior of the vehicle.

16 **MR. WEDEKIND:** Yes, sir.

17 **THE COURT:** And the allegation is that this man
18 broke glass.

19 **MR. WEDEKIND:** Yes, sir.

20 **THE COURT:** Did they swab the glass?

21 **MR. WEDEKIND:** There was the back -- there's
22 photographs of the back window broken in. There's
23 an indentation to the frame of it. He, by his own
24 oral statement, said, I busted out the window with
25 my fist and I climbed through.

1 His shoulder has abrasions on it and it looks
2 as if when the car hit the tree, that he hit -- they
3 swabbed a door and a dashboard, I believe, and
4 that's where they took some blood samples from the
5 interior of the car, the door handle, I think it
6 was, the interior of the cab.

7 **MR. MADSEN:** Driver's door and passenger door,
8 steering wheel.

9 **MR. WEDEKIND:** There were three samples.

10 **THE COURT:** What was the timing of the three
11 statements? When did he give the last
12 statement when he said he -- I'm sorry -- the second
13 statement, I guess, when he said he punched through
14 the window?

15 **MR. WEDEKIND:** That was done on the 17th and on
16 the 18 -- they're both on the 17th at -- I'm sorry
17 -- the 17th and there was one given to -- that was
18 to Officer Gilliam and then there's a second one
19 given to Officer Clair on the 19th, October 19th and
20 October 17th.

21 **THE COURT:** On the one on the 17th, did he say
22 anything about punching through the glass?

23 **MR. WEDEKIND:** Yes, sir. I'll pass up a copy
24 to you.

25 **THE COURT:** I don't want to read it.

1 MR. WEDEKIND: Okay, sir. He said on then --

2 THE COURT: I mean, I will, but...

3 MR. MADSEN: I don't have an objection to you
4 reading it, Judge.

5 THE COURT: Well, y'all have two big notebooks
6 full of stuff. If I've got to sit up here and read
7 all this stuff and you can't answer my questions,
8 I've got a serious question about why in the heck
9 we're trying the case.

10 MR. WEDEKIND: Okay, sir. He said -- yes, sir,
11 on that date to Officer Gilliam on the 17th, he
12 said, Megan was trying to fall out, so I punched out
13 the back window and grabbed Megan by the back of her
14 pants.

15 THE COURT: The 17th?

16 MR. WEDEKIND: On the 17th, yes, sir.

17 THE COURT: They didn't swab the glass?

18 MR. WEDEKIND: They did not swab the glass, no,
19 sir.

20 THE COURT: And you know that how?

21 MR. WEDEKIND: There was no sample taken from
22 the DNA survey -- evidence that was turned into --
23 Squires took that, turned it into the DNA lab,
24 Kimberly Hahn, the DNA analyst, took those
25 submissions to her and published her report based on

1 it and that it was human blood, but it was male.
2 blood not female blood.

3 We never got a DNA standard, I think, of Mr.
4 Humphrey because I didn't think -- I thought it was
5 superfluous. It was his truck. It was obviously
6 his blood because he was cut. You can see it in the
7 photographs on his shoulder that he was cut. A
8 couple days later you can see the scabs healing up
9 on his shoulders and on his knuckles from where the
10 window was broken out.

11 Again, it was just redundant that the glass is
12 obviously -- he said he broke it out. You can see
13 the cuts on his knuckles. You can see the cuts on
14 his shoulder and then we found male blood in the
15 interior of the cab. I didn't think we'd have to
16 bring a Texas witness all the way back to dust off
17 to tell us what any person with common sense would
18 know.

19 **THE COURT:** Was there an autopsy?

20 **MR. WEDEKIND:** There was an autopsy performed
21 by Dr. Armstrong. Dr. Armstrong is ready to testify
22 and has his records and they have been provided to
23 the defense.

24 **THE COURT:** Did they find the defendant's blood
25 on the victim?

1 **MR. WEDEKIND:** No, sir. There were scratch
2 marks made by a human being, but there was no
3 preserved evidence taken from Mr. Humphrey to show
4 that -- underneath his fingernails or any cuttings
5 like that.

6 **MR. MADSEN:** I take issue with the -- the
7 pathologist testified that she had what's called
8 linear delicate scratches. He said that they could
9 have been made by fingernails, but he clearly says
10 in testifying that he can't say -- they're delicate
11 scratches. And he can't say when they happened or,
12 you know, what they came from except for the fact
13 that they are delicate scratches. So he can't
14 conclusively say that they came from a person. Is
15 it a possibility? Sure, but they were just linear
16 delicate scratches.

17 **MR. WEDEKIND:** Yes, sir. That's just for a
18 question of fact for the jury.

19 **THE COURT:** All right. Now, Mr. Madsen, you
20 said that the MAIT team had done an investigation,
21 but that no one had any notes or nobody could
22 remember anything, if I recall correctly, is that --

23 **MR. MADSEN:** My understanding is Lieutenant Day
24 came out on the 18th along with SLED at that same
25 point in time, but he didn't generate any type of

1 report. He didn't take any notes at that point in
2 time.

3 **THE COURT:** And they say he just backed out of
4 the investigation.

5 **MR. MADSEN:** Correct.

6 **THE COURT:** But he got involved in it later
7 after there was a question about assisting with the
8 speed of the vehicle.

9 **MR. MADSEN:** From a request from the Solicitor,
10 that might have been Mr. Lourie that dealt with him,
11 but I was not involved. I've talked with Lieutenant
12 Day.

13 **MR. WEDEKIND:** And he'll tell you, he said,
14 Yeah, I was called out there, but at our -- our
15 behest at that time was not to get involved in crime
16 scenes, so we backed off and didn't do anything.
17 Once he saw SLED there, he just turned around and
18 left and he'll testify to that, sir.

19 **MR. MADSEN:** But I don't think he has an
20 independent recollection of what he did on the 18th
21 of 2004.

22 **THE COURT:** But he remembers that, that he
23 backed out because SLED was there?

24 **MR. MADSEN:** Judge, it was something that I
25 asked him --

1 **THE COURT:** Hold on a second. I mean, you all
2 are telling me that their practice was that they
3 didn't do that. I've tried reckless homicide cases
4 where MAIT has come in and testified. And I'm
5 struggling to understand how it is that they say, on
6 the one hand, they don't get involved in criminal
7 investigation.

8 **MR. HUBBARD:** Your Honor, I'll jump in. It
9 kind of took me aback, too. He said back then their
10 policy was -- they did wrecks all the time. In
11 fact, they were generally the first ones called out
12 there, but he said most of your wrecks are, you
13 know, you have a big accident out on I-26 or I-20,
14 they go out there, they do the speed, try to show
15 causation, all the things that ultimately, on the
16 criminal side, we want.

17 He said back then if it was a criminal matter,
18 they'd call SLED in and their crime scene people and
19 they would back off. Kind of surprised me, too. He
20 said they've long since abandoned that policy, but
21 way back when, he said that's what was in effect.

22 So he said Chief Oswald had called us out
23 there. He had called SLED out there. And when they
24 started talking that this might be a criminal
25 matter, that it wasn't just a wreck or an accident,

1 he said we deferred to SLED, so we didn't even do a
2 report. We decided right then and there SLED will
3 handle this.

4 And it just so happened that the SLED agent
5 that was handling this is the one that was fired or
6 no longer with SLED and the photos went with him.
7 Thankfully, Batesburg-Leesville took photos that
8 same day that SLED was out there.

9 This same officer, Judge, Lieutenant Day, will
10 testify, and he can testify as to what their policy
11 was and what it is now and why he did what he did,
12 but he said, thankfully, what I can do, since this
13 evidence was preserved after all this time, I can
14 look at the old photos and compare it to the truck
15 and see that it's preserved. I can do a crush
16 analysis based on my training and give you a general
17 speed estimate. And I think both sides were in
18 concurrence with him doing that.

19 So he did it, didn't do a written report, which
20 was fine. I think everybody just wanted to know how
21 fast was this vehicle going and that's basically
22 what he testified to. And he looked at a chart that
23 was drawn contemporaneously with this wreck and said
24 that comports with what I'm seeing.

25 **THE COURT:** Who drew the chart?

1 **MR. HUBBARD:** The chart was actually done by
2 Batesburg-Leesville. When they initially thought it
3 was an accident, one of their officers drew up a
4 chart showing where the body -- where parts of the
5 clothing were or shoe, a watch and then where the
6 truck hit the tree. It looked like it had bounced
7 back about 15 feet.

8 So he looked at all that and says, Look, I can
9 even look at that and tell you approximately where
10 the body first hit the road. And I can look and
11 tell you based on how far that -- the front end of
12 that truck was crushed in and where the truck was
13 found, I can give you a speed of that truck. He
14 said, All of that's based on my training even after
15 the fact.

16 **THE COURT:** What did Wanda McNair do? She was
17 the coroner or deputy coroner.

18 **MR. MADSEN:** Beg the Court's indulgence.

19 (Pause.)

20 **MR. MADSEN:** Ultimately, Judge, they have a
21 certificate of death indicating that the cause of
22 death was pending. However, there was also a
23 coroner's report done at the same time indicating
24 from deputy -- or this is a statement from Deputy
25 Coroner Wanda McNair:

1 According to the statements that were taken by
2 Batesburg-Leesville Police Department, victim and
3 her boyfriend, Michael Humphries [sic], had been
4 arguing due to the boyfriend staying out all night
5 and coming home drunk. The victim had to go to work
6 on the morning of the accident, but the boyfriend
7 had told her that he couldn't keep the kids. Victim
8 became upset, went outside, got in the truck and as
9 she was leaving, the boyfriend jumped in the back of
10 the truck. While traveling down the road, the
11 boyfriend broke the back glass and grabbed the
12 victim and the steering wheel causing the vehicle to
13 veer off the road and strike a tree.

14 Judge, there are no witnesses to -- or nothing
15 I've been provided in discovery where anyone
16 witnesses or was there a admission by Mr. Humphries
17 saying that he grabbed the victim and the steering
18 wheel causing the vehicle to veer off the road and
19 strike a tree.

20 Additionally, it says, When emergency personnel
21 arrived, the victim was lying supine on the ground
22 close to the vehicle with her boyfriend on top of
23 her yelling at her.

24 In speaking with all of the witnesses, majority
25 of them law enforcement out there, said that he was

1 hysterical trying to comfort her. Certainly, I
2 would be curious as to where she got that
3 information because it does not seem -- I mean,
4 that's not in discovery anywhere else. And it
5 doesn't seem to be accurate from anything else that
6 we have seen.

7 **MR. WEDEKIND:** And it would also be rank
8 hearsay. I don't think it would be any way, shape
9 or form admissible.

10 **THE COURT:** The question may or may not involve
11 the statement itself's admissibility. It may
12 involve, from my evaluation, the source of the
13 information. For example, and I'm not saying this
14 is true, she may claim that one of these officers
15 who said something different to someone else said
16 that to her.

17 And what's the doctor in North Carolina?

18 **MR. MADSEN:** Judge, the doctor and both of the
19 nurses -- Ms. Jackson had had a baby, I believe, in
20 July of 2004. She ultimately after that sought --
21 basically ended up being diagnosed as postpartum
22 depression and was given some medicine for that.
23 I've talked with both of the nurses who say that
24 they have no independent recollection of that. And
25 the doctor, from where I can track him, is now in

1 North Carolina.

2 And as Your Honor had heard, Mr. Humphries told
3 law enforcement that she had opened the door, that
4 he had busted out the back window in an attempt to
5 grab her to stop her from going out the door.

6 **THE COURT:** Do you know where the medical
7 records are?

8 **MR. MADSEN:** I have copies of those medical
9 records and I've provided those to the Solicitor.

10 **THE COURT:** Do you know what medication she was
11 taking?

12 **MR. MADSEN:** I believe Leprozone (ph) and
13 Xanax. Although I haven't been able to find them in
14 the medical records, but that's what my client tells
15 me.

16 (Pause.)

17 **MR. MADSEN:** It was Xanax and letrozole, .5
18 milligrams of number 30 Xanax and -- actually, it
19 might be Lexapro. It's hard to read the writing
20 from a doctor believe it or not, 10 milligrams for
21 three months.

22 **THE COURT:** Did they find drugs in her system?

23 **MR. MADSEN:** I believe that they did, Judge,
24 but they appeared to me to be items that were
25 consistent with therapeutic levels. She was in the

1 hospital for a period of time before she died.

2 They did do a toxicology on her in conjunction
3 with the autopsy and they did not find, from what I
4 recall, either of those two things. But there were
5 some things such as opiate based products, but I
6 believe that those were dealing with treatment from
7 the hospital.

8 (Pause.)

9 **THE COURT:** All right. How many speedy trial
10 motions have been filed in this case?

11 **MR. MADSEN:** Judge, there were no speedy trial
12 motions filed.

13 **THE COURT:** When you all came up in front of
14 me, what was that about? Was that bond?

15 **MR. WEDEKIND:** It was attorney representation.
16 He had fired Mr. Lourie. Then there was some issue
17 about income that he was making that it was
18 sufficient for him to retain an attorney.

19 **MR. MADSEN:** I had moved to be relieved based
20 on income.

21 (Pause.)

22 **THE COURT:** Okay. Let's go back to Mr. Maye.
23 The State is telling me that Mr. Maye was very
24 detailed in his previous testimony. And the defense
25 is saying that he could not recall many events

1 independently, but then I think, I don't know which
2 one of you told me, he did an in-court
3 identification of Mr. Humphrey as the person who was
4 out there talking to the police that night.

5 What is it you were trying to ask Mr. Maye that
6 you were unable to ask him because of the delay or
7 unable to get an answer, more appropriately because
8 of the delay?

9 **MR. MADSEN:** Judge, I don't think that there
10 was anything specific. He just indicated that given
11 the fact, in my conversation prior to him, that it
12 had been six and a half years and so his memory is
13 not nearly as clear on some of the smaller things as
14 they are on kind of the larger or main things, but
15 there wasn't anything specific that I can recall off
16 the top of my head that I had asked him.

17 **THE COURT:** Did he hear all of this from a
18 distance or was he ever actually close to Mr.
19 Humphrey?

20 **MR. MADSEN:** He was in his home, which was
21 across the street from the accident scene. His
22 testimony was is that he heard a -- kind of a loud
23 crash. And I think he said he got up and looked out
24 some windows, didn't see anything, went back down,
25 never really fell asleep, but a period of time

1 later, heard someone yelling.

2 Also, he had initially thought the crash might
3 be someone hitting a trash truck and said, when he's
4 lying there, he remembers it's Sunday, the trash
5 trucks aren't going to be out, hears an individual
6 hollering, ends up going outside, coming out and
7 finding Ms. Jackson and Mr. Humphries.

8 **THE COURT:** So he was close to Mr. Humphrey?

9 **MR. WEDEKIND:** He even related some details of
10 what he said to his wife when he first was awakened.
11 I mean, his memory, I thought, was kind of
12 astonishing and clear.

13 **THE COURT:** What about alcohol? Did he smell
14 alcohol on Mr. Humphrey?

15 **MR. MADSEN:** I don't recall him testifying to
16 that.

17 **THE COURT:** Did he testify about how he acted
18 other than being hysterical?

19 **MR. MADSEN:** Besides saying he was hysterical,
20 saying help me, help her. I don't recall if he said
21 anything about alcohol.

22 Besides, he said that Mr. Humphrey was
23 basically trying to help her, but I don't know if
24 the alcohol question was asked, to be honest.

25 **THE COURT:** Well, he wasn't arrested by the

1 officers that night, was he?

2 MR. MADSEN: He was not. He was not arrested
3 until the 22nd.

4 THE COURT: But the statement was he'd been out
5 all night drinking?

6 MR. MADSEN: Yes, sir, that he had gone to a
7 Club Revolutions in Columbia and had been dropped
8 off back at the house by his cousin.

9 THE COURT: Okay. So why has it taken six
10 years to bring this case to trial?

11 MR. WEDEKIND: Sir, when we first started with
12 Mr. Lourie, it was always kind of an intimation that
13 we were going to work this out with a plea. A
14 couple years had passed -- usually, as you know, it
15 doesn't really come to fruition until we get it --
16 most cases up for trial until they're about two and
17 a half to three years in age anyway. So we started
18 realizing that this was not going to plea out,
19 started to prepare for a trial.

20 Then once we got to the point, after two or
21 three trial notices and requests for continuances,
22 right on the eve of my deployment to Afghanistan, I
23 think a month or two before that knowing I was going
24 in August, I was trying to get it done in that early
25 months of the summer, Mr. Lourie was dismissed by

1 Mr. Humphrey as his attorney. He then needed to get
2 new counsel. There became a whole series of issues
3 about needing to find additional time to get new
4 counsel.

5 My orders came up. Mr. Stumbo inherited the
6 case from me. I think there were some attempts to
7 make a plea, that eventually fell through. Then I
8 returned from the deployment and immediately, in
9 April of last year, started working to get
10 Mr. Humphrey brought in who did not have legal
11 counsel at that time.

12 I think we took him in front of Judge Newman
13 and warned him about the dangers of
14 self-representation. I served him with a trial
15 notice, advised -- he was admonished to get some
16 kind of legal representation. He said he didn't
17 want to be indigent. He wanted to hire his own
18 attorney, in fact, hired a private investigator.

19 Then we brought him in front of Judge Russo who
20 then said, You're not getting -- you haven't come up
21 with a retained attorney, I'm appointing the public
22 defender's office. Mr. Madsen then looked at the
23 income and I think -- I don't know if he was present
24 or informed about it, but then he made a motion to
25 be relieved saying, I shouldn't be on the case. I

1 think that went before Your Honor. You said, Mr.
2 Madsen, you're going to continue to represent him.

3 Then in December, we went forward with the
4 preparations for the trial this year -- or December
5 of last year. We had the meetings. We got
6 everything together and we called the case. I think
7 it was the first calendar case of this year before
8 Judge McMahon. The evidence was presented. We went
9 forward. And the jury hung, I think, it was eight
10 to four.

11 And we are here -- we've tried on several
12 occasions to get the case to trial, but there's
13 always been something that Judge McMahon heard as a
14 higher priority case that was older -- or not
15 necessarily older, but one that he had previously
16 ordered to be trial by date certain, I think there
17 was at least two of those cases we had with date
18 certainties and that kept pushing us back. And then I
19 was -- and he has declined to hear the rehearing of
20 the trial, so we had to wait for a window of
21 opportunity.

22 And then the last court term, I was off again
23 for two weeks of AT orders and now I'm back. So
24 this is the first opportunity to get it before Your
25 Honor or any other judge other than Judge McMahon

1 here in Lexington County and when I'm present. And
2 here we are today, sir.

3 **THE COURT:** Mr. Madsen.

4 **MR. MADSEN:** Judge, the documentation that I
5 see from the file indicates that Mr. Lourie moved to
6 be relieved on November 17th of 2009, so
7 approximately -- a little bit over, I guess, five
8 years after the incident date. That was granted on
9 November 25th of 2009.

10 **THE COURT:** How old were the children?

11 **MR. WEDEKIND:** Three months and I think two --
12 18 months or two years.

13 **MR. MADSEN:** Two months and three years old.

14 **THE COURT:** Anybody else at the house?

15 **MR. MADSEN:** Well, her mother lived there, but
16 not that night. Her mother worked nights at a
17 business in Aiken, Shaw Industries, and she worked
18 nights.

19 **THE COURT:** So the only people that could have
20 heard this alleged argument about keeping the
21 children and all that would have been the two small
22 children and Mr. Humphrey and the purported victim?

23 **MR. MADSEN:** Ms. Jackson. And obviously it is
24 a residential area. They canvassed the
25 neighborhood, but found nothing from any of the

1 neighbors from that night or early morning hours.

2 THE COURT: How far was the wreck from the
3 house?

4 MR. WEDEKIND: Three-tenths of a mile.

5 MR. MADSEN: Eight-tenths of a mile at the
6 most. It was definitely under a mile.

7 THE COURT: What kind of truck was it?

8 MR. MADSEN: Ford Ranger.

9 MR. WEDEKIND: With an extended cab, sir.

10 MR. MADSEN: Yes, sir.

11 MR. WEDEKIND: The only other attribution we
12 would have that comes from his statements to Ms.
13 Jackson later on and also to Detective Gill -- or
14 Officer Gilliam, when he made his written statements
15 saying that they had had the argument in the
16 household before the truck incident.

17 THE COURT: And how long did he stay in jail?

18 MR. MADSEN: Three days, Judge.

19 MR. WEDEKIND: Looks like he bonded out on the
20 24th.

21 THE COURT: All right. So the dismissal was on
22 the grounds of delay and you mentioned pretrial
23 publicity.

24 MR. MADSEN: Yes, sir. Judge, I have a
25 separate one based on pretrial publicity. There was

1 a -- coming through this election season, as we've
2 already heard, the Attorney General is the State's
3 chief prosecutor. The Attorney General's Office put
4 out a press release on October 3rd of 2005, so about
5 a year afterwards, indicating in there, it's titled,
6 Silent witness ceremony honored 2004 victims of
7 fatal domestic violence.

8 There's an indication in there from Lexington
9 County and it indicates: Megan Jackson, 18 years
10 old. Ms. Jackson was attacked as she attempted to
11 drive away from her boyfriend on October 17th, 2004.
12 Her boyfriend, Michael Humphries, jumped into the
13 back of the pick-up truck Ms. Jackson was driving,
14 broke the rear glass window and grabbed her and the
15 steering wheel. This caused the truck to veer off
16 the road and strike a tree.

17 When emergency medical personnel arrived, they
18 found Mr. Humphrey yelling at the unconscious body
19 of Ms. Jackson. She died four days later while
20 being treated for head injuries. The trial is
21 pending. She is survived by her two young children.

22 That was then picked up by the State Newspaper
23 on October 4th of 2005 that basically parrots the
24 press release.

25 We believe that that violates a couple of

1 different things, Judge. That violates Rule 3.6,
2 pretrial publicity, of the Rules of Ethics that
3 indicates a lawyer should not make an extrajudicial
4 statement that they know or reasonably should know
5 will be disseminated by means of public
6 communication and will have a substantial likelihood
7 of materially prejudicing an adjudicated proceeding.

8 The comments under that rule indicate that
9 criminal matters are more likely than not to have
10 prejudice if they talk about expected testimony,
11 opinion of guilt or innocence and do not indicate
12 that this is a statement of mere accusation.

13 Additionally, comment (6) indicates that
14 criminal trials are most sensitive to extrajudicial
15 statements.

16 As I said, the AG is the chief prosecutor for
17 the State. Additionally, if you look under Rule
18 3.8, there are special duties of a prosecutor.
19 Under 3.8(f), Refrain from extrajudicial comments
20 having substantial likelihood of heightening public
21 condemnation of the accused and exercise reasonable
22 care to prevent law enforcement from doing the same.
23 Comment (5) indicates, To put out a statement where
24 there is no legitimate law enforcement purpose.

25 We would request that both of these be marked

1 as court's exhibits, Your Honor. And we would move
2 for a dismissal based on that.

3 **THE COURT:** Yes, sir. Mark --

4 **MR. WEDEKIND:** And no objection, Your Honor. I
5 think this came up in the last trial. It's the same
6 stuff. We have no objection.

7 (Court's Exhibit Numbers 1 and 2 were marked
8 for identification purposes.)

9 **MR. MADSEN:** And, Judge, further -- well, I'll
10 let Your Honor read it first.

11 (Pause.)

12 **THE COURT:** Okay. Mr. Madsen, what else did
13 you have on this?

14 **MR. MADSEN:** Judge, I just wanted to point out
15 that obviously is something from the Attorney
16 General's Office not from the Lexington Solicitor's
17 Office, but he is the chief prosecutor.

18 Additionally, Judge, that gets back to
19 obviously comments that we had talked about in
20 reference to Wanda McNair that go even above and
21 beyond what they say within their indictments and
22 can't be attributed to anyone. But we do believe
23 that those have run afoul of the rules and that a
24 dismissal is warranted based on a flagrant violation
25 of those rules.

1 **THE COURT:** All right. Solicitor.

2 **MR. WEDEKIND:** Your Honor, we made the inquiry
3 of the jury if they've heard anything about this.
4 There's been no prejudice to be demonstrated against
5 Mr. Humphrey. The jurors said they have no
6 knowledge from any publicity or outside sources
7 about this case, that's why they were qualified.

8 In addition, I think the last time that this
9 was brought up before Judge McMahon, he did say that
10 there was, in fact, some wrongdoing on the part of
11 the Attorney General and such actions, that he was
12 going to take that matter into hand. And I would
13 suggest the same, if it's a matter, that it would be
14 addressed with the Attorney General's Office, but it
15 doesn't have anything to do with the prosecution of
16 this case.

17 **THE COURT:** Anything else, Mr. Madsen?

18 **MR. MADSEN:** No, Your Honor.

19 **THE COURT:** All right. This motion is denied.
20 The other one I've still got under advisement.

21 The suppression issue, is that something we
22 need to take up before the Denno hearing?

23 **MR. MADSEN:** Not necessarily. We can take it
24 up afterwards. I think the last time we were able
25 to address it, that they indicated that they weren't

1 going to introduce any evidence that was received by
2 way of a search warrant. I don't know if they have
3 the --

4 **MR. WEDEKIND:** Your Honor, there would be a
5 slight change to it. There is one item that we
6 would seek to introduce that was taken from the
7 vehicle, not on the day the search warrant was
8 executed, but it was taken from there and some
9 photographs were taken of it. It was just an
10 identity card of the victim, Ms. Megan Jackson.

11 That would be the only issue that, I think,
12 anything was taken from there other than the
13 photographs of the vehicle that were taken of the
14 exterior and interior all from the outside in plain
15 view and this hand -- or this identification badge,
16 which was also in plain view, but that was
17 collected. That would be the only tangible object
18 that we would seek to, other than the photographs,
19 to seek to introduce.

20 **THE COURT:** So is there anything for me to rule
21 on or not?

22 **MR. MADSEN:** Well, I would think the identity
23 badge, but there might be other issues involved with
24 that even if Your Honor felt. So if Your Honor
25 wanted to do the Jackson v. Denno, then obviously we

EMMITT B. GILLIAM (IN CAMERA) - DIRECT BY MR. WEDEKIND

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1 can jump back to that issue.

2 MR. WEDEKIND: We're not going to introduce the
3 DNA, sir, no fingerprints, again no other objects
4 other than photographs of the vehicle.

5 THE COURT: All right. Let's go to the Denno
6 hearing then.

7 MR. WEDEKIND: The State would call officer
8 Emmitt Gilliam.

9 MR. MADSEN: Judge, I would ask that the other
10 officers be subject to sequestration during Denno
11 hearings if they have taken statements.

12 THE COURT: Who is that?

13 MR. MADSEN: That would be Lieutenant Clair
14 Officer VanPut and Officer Thomas.

15 THE COURT: Would you gentlemen step outside,
16 please?

17 EMMITT B. GILLIAM,

18 having been duly sworn, testified as follows:

19 THE CLERK: Please be seated, state your full
20 name.

21 THE WITNESS: Emmitt B. Gilliam.

22 DIRECT EXAMINATION

23 BY MR. WEDEKIND:

24 Q Officer Gilliam, who are you current currently
25 employed by?

1 A Columbia City Police Department.

2 Q Who were you employed by back in November --
3 way back in 2004?

4 A Batesburg-Leesville Police Department.

5 Q October as well, right?

6 A That's correct.

7 MR. WEDEKIND: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 MR. WEDEKIND: Your Honor, I'm going to present
10 Officer Gilliam a copy of what's labeled an
11 interview and his investigative report.

12 BY MR. WEDEKIND:

13 Q Officer Gilliam, would you turn to what's
14 labeled at the top as an interview sheet? Do you
15 have that document?

16 A Yes.

17 Q And on paragraph one, it's enumerated right
18 below there, it says, Traffic Accident. Who put
19 that information on that upper portion of the form?

20 A I did.

21 Q Okay. And it lists an individual's name. It
22 says, I certify the above items one through eight
23 were read to, whose name is listed there?

24 A Michael A. Humphrey.

25 Q Okay. And what's the date that it says it was

1 talked about?

2 **A** October the -- correction, 17th of October,
3 2004.

4 **Q** Okay. And is it signed -- there's a name of
5 Michael A. Humphrey. And below that, there's a name
6 below there as interviewing officer. Who is that?

7 **A** It's myself, Emmitt Gilliam.

8 **Q** And then there's a signature, it says, Person
9 Interviewed. Whose signature is affixed there after
10 the X?

11 **A** Michael Humphrey.

12 **Q** And who placed that signature there?

13 **A** Michael Humphrey himself.

14 **Q** Okay. Now, going back to items two, three,
15 four, five, six, seven and eight, what are those,
16 sir?

17 **A** That's an actual breakdown of your Miranda
18 rights. And each individual question I asked him, I
19 look at him and he'll say yes or no.

20 **Q** Okay. So you went through each advisements of
21 two, three, four, five, six, seven and eight with
22 Mr. Humphrey?

23 **A** That's correct.

24 **Q** And after each one of those enumerated lines,
25 it has a check block, yes, no. Who affixed those

- 1 checks in the yes portions?
- 2 A I did.
- 3 Q And what does that indicate?
- 4 A That he understand what I was reading to him.
- 5 Q So you not only read it to him, but you asked
- 6 him each and every line individually whether or not
- 7 he understood what you had just read to him?
- 8 A That's correct.
- 9 Q And he nodded to you that he understood?
- 10 A Yes.
- 11 Q Did you have any difficulty communicating with
- 12 Mr. Humphrey at that point?
- 13 A No.
- 14 Q Did he speak English to you?
- 15 A Yes.
- 16 Q Okay. You spoke it back to him?
- 17 A That's correct.
- 18 Q There was no need for an interpreter?
- 19 A No.
- 20 Q Did he appear to be incognizant of what you
- 21 were saying, incoherent? Did you have difficulty
- 22 understanding him?
- 23 A No.
- 24 Q Was he slurring his speech to such an extent
- 25 that you weren't able to understand him?

1 A No.

2 Q And it says what time was this administered to
3 him?

4 A It says 21 -- correction, I'm sorry. I'm
5 jumping ahead of myself. I'm sorry. 2115, which is
6 9:00 p.m.

7 Q Okay. And the date, immediately preceding
8 that, was October what?

9 A 17th.

10 Q So in laymen's term, 9:15 in the evening?

11 A That's correct.

12 Q And this incident had occurred before with the
13 vehicle that led to his going to the hospital, you
14 going to the hospital and Ms. Jackson being kept in
15 the hospital, all that occurred roughly what time?

16 A If I'm correct, around 6:00 something in the
17 morning.

18 Q So that same morning. This is several hours
19 later, and you concluded the interview at what time?

20 A Ten o'clock p.m.

21 Q Okay. So several hours had passed. Did you
22 know he had been drinking earlier in the day?

23 A No.

24 Q Did he appear to you to be under the influence
25 of alcohol when you were speaking with him?

1 A No.

2 Q And did he ask for any kind of break or time
3 out when you were talking with him?

4 A No.

5 Q Was he handcuffed or locked and confined at any
6 time when you took this statement?

7 A No.

8 Q And --

9 MR. WEDEKIND: Beg the Court's indulgence.

10 THE COURT: Yes.

11 (Pause.)

12 BY MR. WEDEKIND:

13 Q And would you go through items two through
14 eight just as you spoke them out to Mr. Humphrey,
15 please?

16 A Yes. Question number two, You have the right
17 to remain silent. You do not have to make any
18 statements. You do not have to answer any
19 questions. Do you understand this?

20 Q And after that, you checked what?

21 A Yes.

22 Q And that signified what?

23 A Yes, he understand what -- waived his right and
24 that he's got a right to remain silent.

25 Q Item three.

1 A Anything you say can and will be against you in
2 a court of law. Do you understand this?

3 Q Again, there's a check mark. It was checked
4 what?

5 A Yes.

6 Q Indicating?

7 A Yes, he understand that anything he say can be
8 used against him.

9 Q Okay. And item four.

10 A You have a right to talk to a lawyer for advice
11 before we ask you any question or to have him with
12 you during any questioning, if you wish so. Do you
13 understand this?

14 Q And, again, checked what?

15 A Yes.

16 Q Indicating?

17 A That he understand that he can have a lawyer
18 anytime.

19 Q Item five, please.

20 A If you want a lawyer, but can't afford to hire
21 one, one appointed to you by the court. Do you
22 understand this?

23 Q Again checked what?

24 A Yes.

25 Q Indicating?

1 A That he understand if he need a lawyer, that
2 the court will hire one.

3 Q Item six, please.

4 A If you decide to answer question -- excuse me
5 -- if you decide to answer question without a lawyer
6 present, you still have the right to stop at any
7 time. Do you understand this?

8 Q And what's checked?

9 A He checked yes.

10 Q And that indicated?

11 A That he understand he could stop answering
12 questions at any time.

13 Q And item number seven.

14 A Knowing these rights, are you willing to make a
15 statement or answer any questions without a lawyer
16 present.

17 Q Indicating -- block checked what?

18 A Yes.

19 Q Indicating?

20 A That he know his rights.

21 Q And number eight, please.

22 A Have any threats or promise of any kind made to
23 you to do so -- excuse me -- Have any threats of any
24 kind been made to you that you would give a
25 statement? And he checked no.

1 Q Very good. And that indicated what?

2 A That nobody threatened him or forced him to
3 write a statement.

4 Q And he signed that after you went over each of
5 those rights with him?

6 A That's correct.

7 Q And this was taken actually -- where did you
8 take this statement from him?

9 A Batesburg-Leesville Police Department.

10 Q Initially though you had met with him earlier
11 than the time you took this statement. Tell the
12 Judge what the circumstances of that were.

13 A I was called to go to the hospital in reference
14 to this case here. When I got to the hospital, I
15 did meet Mr. Humphrey, the victim's mother and I
16 advised -- I asked him -- I advised him that I
17 needed to talk to him at the station about this
18 case.

19 Q And did you put him in handcuffs and drag him
20 to the police station?

21 A No.

22 Q So you merely asked him to come down and he
23 came of his own volition?

24 A That's correct.

25 Q What happened when he arrived there?

1 A When he arrived, I explained what was going on.
2 His mother asked do he need to talk to us because he
3 was on medication or something. And I asked Mr.
4 Humphrey, We don't have to talk to you right now, we
5 can talk to you another time. And he said, no, he
6 wanted to go on and get it -- go on and go through
7 with this.

8 Q At that time, do you notice any kind of
9 differentiation or inability for him to understand
10 what you were saying and doing?

11 A No.

12 Q Did you have difficulty communicating with him?

13 A No.

14 Q He said he wanted to talk with you and he
15 agreed to talk with you alone?

16 A That's correct.

17 Q And then you went into what location?

18 A We went to the squad room side. I think that's
19 the right thing, the squad room.

20 Q And did he ask for any breaks or did he ask for
21 any kind of other -- any material that he wanted to
22 have done at the time?

23 A The only thing he requested for me to do, to
24 write a statement for him at the time.

25 Q Why was that?

1 **A** Because his arm was swore.

2 **Q** And did you notice any injuries to his arm?

3 **A** I did. I know he had something on his shoulder
4 and he said it was a little swore.

5 **Q** Okay. So let's go down to the bottom of that
6 page. And it's a two-page document; is that
7 correct?

8 **A** That's correct.

9 **Q** Would you read out the portion that's written
10 -- and you say you put all the pen and ink on the
11 page yourself?

12 **A** Yes.

13 **Q** And it says, Statement. Would you read what
14 comes after statement?

15 **A** Statement of Michael A. Humphrey written by
16 Detective Emmitt Gilliam for Michael Humphrey at his
17 request.

18 **Q** Continue.

19 **A** I went to Club Revolution in Columbia, then to
20 IHOP. I didn't get back to Batesburg until --
21 actually between 5:30 and 5:45 a.m. this morning. I
22 got home and Megan was getting ready for work. I
23 was -- and I told her that I couldn't watch after
24 the kids because I was drunk. Then Megan called her
25 job and told them that she will not be able to come

1 in. Then I went and got in the bed.

2 Before I got in the bed, we argued a little.

3 Then Megan walked out the door, crunked [sic] up the
4 truck and I walked out the door -- excuse me -- out
5 the house to the driver's side of the vehicle and I
6 told Megan to stop and then Megan put the truck in
7 reverse and started backing out the yard. I jumped
8 into the back of the truck as soon as she put the
9 truck in reverse. Megan put the truck in drive and
10 I was -- I was on -- excuse me -- I was knocked on
11 the back -- I was knocking on the back window
12 telling Megan to stop.

13 Megan was speeding up the road -- and I put in
14 parentheses [REDACTED] -- and slowed down and
15 turned onto East Columbia -- and I put in
16 parentheses U.S. 1 -- without stopping at the stop
17 sign. Megan was driving towards Batesburg and Megan
18 was speeding.

19 I was knocking on the window and I was telling
20 her to stop because the kids was at the house by
21 themselves. Megan was trying to and I jumped out --
22 I guess my mistake there and I scratched through it
23 for him and he put fall out -- so I punched the back
24 window and grabbed Megan by the back of her pants so
25 Megan wouldn't fall out. And before I knew it --

1 knew anything else, we hit a light pole. Then Megan
2 stumbled out of the truck to the passenger side and
3 fell down. Then I ran over and start screaming and
4 crying.

5 I don't remember anything else, but telling the
6 police to get in contact with someone like my father
7 to make sure my kids are okay. End of statement.

8 **Q** And that's followed by a question and answer
9 series of questions one, two, three and four. Would
10 you read those as well?

11 **A** Yes. Why did you get on the back of the truck
12 if you know your kids was in the house? Answer was,
13 I didn't think she would leave. I was thinking she
14 would stop.

15 Number two, If you saw Megan trying to fall out
16 of the vehicle, why didn't you push the driver door
17 closed? I wasn't thinking about that. I did the
18 first thing I thought about.

19 Then I asked him, Was you and Megan arguing
20 before this incident? We had a brief -- and few
21 words in parentheses -- then I went to bed.

22 Did you try to scare her into pulling over or
23 going back to the house? No.

24 **Q** Then it says what?

25 **A** End of interview.

1 Q Okay. And then there's signifying an open area
2 with an X across it. What does that --

3 A That basically -- add nothing or take nothing
4 from this statement.

5 Q At the bottom there's a signature of a witness.
6 Whose signature is that?

7 A That's mine, Emmitt Gilliam.

8 Q And then the other side of the same portion of
9 the page, it says, Signature of person giving the
10 statement. Whose signature is that?

11 A That's Michael Humphrey.

12 Q And who actually touched pen to paper to put
13 that signature?

14 A Michael Humphrey.

15 Q Is that the same person that did it on the
16 front page?

17 A That's correct.

18 Q And that said that it concluded at what time?

19 A Ten o'clock p.m.

20 Q On what date?

21 A 17th.

22 Q And, again, did you make any threats or
23 coercion to get that statement from Mr. Humphrey?

24 A No.

25 Q Did he request any kind of break or

1 opportunity?

2 A No.

3 Q And he is the one who asked you to put the
4 statement on the paper with your own hand?

5 A Yes.

6 Q Did you give him the opportunity to make any
7 additions, deletions or corrections to it?

8 A Yes. Before we even signed, I made sure I read
9 it back to him and whatever he said was wrong, then
10 I initialled -- scratched through and put my
11 initials above it.

12 Q Once you said there was no deletions or
13 additions, you -- in fact, there are some deletions
14 on there with initials. Did you brief those with
15 him?

16 A Yes.

17 Q Okay. And then you initialled them when you
18 lined them out?

19 A That's correct.

20 Q And then once he said that there was nothing to
21 add, you put the X on it?

22 A That's it.

23 Q And did he, at any time, make a representation
24 to you that he did not wish to go further and he
25 wanted to stop and cease the interview and get a

1 lawyer?

2 A No.

3 MR. WEDEKIND: Thank you. Please answer any
4 questions that the defense may have.

5 THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MR. MADSEN:

8 Q So were you requested to interview Mike?

9 A Did I request --

10 Q Did someone request for you to interview Mike?
11 Did anyone tell you to --

12 A Yes. He said that we needed to talk to him,
13 yes, yes.

14 Q Who said that?

15 A I'm not exactly sure. I don't know was it the
16 chief or was it -- Chief Oswald or, at that time,
17 Sergeant Clare, which is Lieutenant Clare, one of
18 the two.

19 Q So you don't recall who ended up asking you to
20 do that?

21 A Not off the top of my head, no.

22 Q And then do you call Mike and say, hey, I want
23 to talk with you?

24 A No. I seen him at the hospital when I was
25 picking up the clothes for the -- meeting the

1 victim's mom at the hospital.

2 Q So you go to Richland Memorial Hospital, which
3 is where Ms. Jackson was?

4 A That's correct.

5 Q And when you go to the hospital, Mike's there
6 along with Ms. Jackson's mother?

7 A That's correct.

8 Q And that's where you see him?

9 A Yes.

10 Q What time was it that you got to the hospital?

11 A I'm not sure. It was probably around -- I
12 mean, I really couldn't tell you, but it was in the
13 evening time I know that much.

14 Q But you don't remember the specific time?

15 A No, not off the top of my head.

16 Q And, ultimately, then, you see Mike there and
17 say, hey, I'd like to talk with you, right?

18 A Yes.

19 Q And do you then set up a time with him to come
20 to Batesburg or --

21 A No. Actually, I was going back to drop off
22 stuff I had. And when I got there, a few minutes
23 later, he come walking in.

24 Q And who was with him?

25 A His mother.

1 Q And, ultimately, they're there because you
2 said, hey, I want to interview you?

3 A Yeah. I told him I needed to talk to him about
4 it, yes.

5 Q And you took him back, did you say, to a squad
6 room?

7 A Squad room, when you walk into the -- not in
8 the booking room.

9 Q And his mother told you before y'all went back
10 there that, Hey, he's on medication, I'd like to go
11 back there also, right?

12 A Yes.

13 Q And you told him, We can do this at some other
14 point in time, we don't have to do it now?

15 A That's correct.

16 Q And he said, No, I'll go ahead and talk with
17 you?

18 A Uh-huh.

19 Q And then you told his mother that she couldn't
20 come back?

21 A Right.

22 Q Why is that?

23 A Because he's over age 18. He made his own --
24 it's not like we were promising him that he had to
25 do it right then. I told him myself he can come

1 back another time. We just need to get this done,
2 though, sooner or later.

3 Q Well, what would be the problem with someone
4 else witnessing his statement?

5 A There's no problem, but I feel much comfortable
6 talking to the individual himself. A lot of times
7 the individual will tell you things or say what they
8 want to say instead of having a third party in there
9 intervening.

10 Q And did you record the statement that you took
11 from him?

12 A Just on interview sheet.

13 Q Not an audio recording?

14 A No, sir.

15 Q No video type of recording?

16 A No, sir.

17 Q And, ultimately, you told her that she couldn't
18 be back there at the same time, correct?

19 A That's correct.

20 Q And during the time that he was back there with
21 you, he cooperated, didn't he?

22 A Yes.

23 Q You ended up letting him leave that day?

24 A That's correct.

25 Q Didn't place him under arrest?

1 A No, sir.

2 Q Answered all the questions that you had?

3 A Yes.

4 Q This was, I guess, started at 9:15 p.m. and
5 ended about 10:00 p.m.?

6 A That's correct.

7 Q And that was going to be on the same day of the
8 accident, which I guess was around 6:00 a.m. that
9 morning?

10 A That's correct.

11 Q And were you aware of how long he was at the
12 hospital with Megan?

13 A No.

14 Q And you knew that at some point in time after
15 the accident, he had been taken to the hospital
16 himself, correct?

17 A Yeah. Once I got the call to go to the
18 hospital, yes, I think I knew that he was there.

19 Q But what I'm saying is you knew he got medical
20 attention separate from her at a different hospital?

21 A During that timeframe when he went, no, I
22 didn't know then, no.

23 Q Had you learned that since then?

24 A I learned that when I got to the hospital that
25 he was there, too.

1 Q And when you talked to him that day, did y'all
2 not discuss that he had had some medical treatment
3 that same day?

4 A He told -- I really can't answer that. I
5 really don't know I discussed that far with him.

6 Q You don't remember whether or not you discussed
7 that with him?

8 A Not at the hospital.

9 Q And then as far as when you were talking about,
10 did you say something about some injuries you
11 noticed on him?

12 A Yes, when we got back to the -- he came to the
13 police department, he did have his shoulder --
14 something on his arm.

15 Q Do you recall what that was?

16 A I'm not sure. It might have been a wrap or
17 either -- it was in a sling or something, I'm not
18 exactly sure.

19 Q Okay. You don't remember what it was in or --
20 do you recall seeing any cuts or scraps or scratches
21 on him at all?

22 A At that time, I wasn't looking. I was trying
23 to get the initial interview in.

24 Q Did you take any photographs of him then?

25 A No, sir, because I was still -- it was in the

1 investigating mode.

2 MR. MADSEN: That's all the questions I have.

3 THE COURT: Redirect.

4 MR. WEDEKIND: Nothing further, sir.

5 THE COURT: Thank you, sir. You may step down.

6 Call your next witness.

7 MR. WEDEKIND: State would call Lieutenant

8 Clare.

9 STEVEN E. CLARE,

10 having been duly sworn, testified as follows:

11 THE CLERK: Please be seated, state your full
12 name.

13 THE WITNESS: Steven E. Clare, C-l-a-r-e.

14 DIRECT EXAMINATION

15 BY MR. WEDEKIND:

16 Q Lieutenant Clare, who are you employed by?

17 A Batesburg-Leesville Police Department.

18 Q Were you employed by Batesburg-Leesville back
19 in October of 2004?

20 A Yes.

21 Q You were a sergeant then at the time, correct?

22 A I don't remember if I was a sergeant or a
23 corporal.

24 Q But you weren't always a lieutenant?

25 A Right.

1 Q And do you recall taking a meeting -- or having
2 a meeting and taking a statement from Mr. Michael
3 Humphrey?

4 A Yes.

5 Q And is that the person seated over there that
6 you took the statement from?

7 A Yes.

8 Q And let me show you a copy of what's marked as
9 interview sheet.

10 MR. WEDEKIND: Your Honor, if I may, I'm going
11 to take the previous one that we talked about, I
12 neglected to have it marked for identification.

13 Could we have this marked for identification as
14 State's I.D. Number 1, please?

15 (State's Exhibit Number 1, 10/17/04
16 interview sheet, marked for identification
17 purposes).

18 MR. WEDEKIND: And that would be the one signed
19 by Officer Gilliam.

20 Q And then I'm referring to the two-page document
21 also captioned, Interview Sheet, at the top. Do you
22 have a copy of that?

23 A Yes, I do.

24 Q Is that the original?

25 A No.

1 Q Where is the original? Is it in your files?

2 A There was some discrepancy of whether I got it
3 from the court, the last case, because I don't
4 remember receiving it.

5 Q Okay. I think the -- that one was never
6 introduced into evidence in the first trial?

7 A That's right, it wasn't.

8 Q Would it be in your file?

9 A It would be in the case file, yes, sir.

10 Q Is that here in the courtroom?

11 A The chief had it.

12 Q Let me pass this up and see if you...

13 A (Witness reviewing documents.)

14 Q That's okay, Lieutenant Clare.

15 MR. WEDEKIND: If we could have this marked as
16 -- interview sheet as State's I.D. Number 2, please.

17 (State's Exhibit Number 2, 10/19/04
18 interview sheet, marked for identification
19 purposes.)

20 Q Let me show you what's marked as I.D. State's
21 Number 2. Do you recognize that document?

22 A Yes, I do.

23 Q How many pages does it consist of?

24 A It consists of two pages.

25 Q Okay. And at the top, it says, Traffic

1 Accident; is that correct?

2 A That is correct.

3 Q And who put that information on the page?

4 A I did.

5 Q Okay. And then down below that, there's a
6 paragraph two -- or item two, three, four, five,
7 six, seven and eight. What do those indicate?

8 A Those are the Miranda rights.

9 Q And at the end of each statement, there's a yes
10 and no block. And at the beginning, preceding each
11 one of those numerals, there are a series of
12 alphabetical scratches on that paper. Who put those
13 there?

14 A Mr. Humphrey.

15 Q And what do the initials symbolize?

16 A His initials that he understands that right.

17 Q And does it say M.A.H.?

18 A I just have H on mine. It was cut off.

19 Q Okay. And then would you read item two through
20 eight, please?

21 A You have the right to remain silent. You do
22 not have to make any statement. You do not have to
23 answer any question. Do you understand this? And
24 then yes is marked, is checked.

25 Number three: Anything you do say can and will

1 be used against you in court. Do you understand
2 this? And then yes is also marked.

3 Number four: You have the right to talk to a
4 lawyer for advice before we ask you any questions
5 and to have him with you during questioning if you
6 wish. Do you understand this? And yes is marked.

7 If you want a lawyer -- number five, If you
8 want a lawyer but cannot afford to hire one, one
9 will be appointed for you by the court. Do you
10 understand this? And yes is marked.

11 Number six: If you decide to answer questions
12 now without a lawyer present, you will still have
13 the right to stop answering at any time. Do you
14 understand? And yes is marked.

15 Number seven: Knowing these rights, are you
16 willing to make a statement or answer questions
17 without a lawyer being present? Yes is marked.

18 And number eight: Have any threats or promises
19 of any kind been made to you so that you will give
20 us a statement? And no is marked.

21 Q Okay. And when you marked the yes and noes,
22 what did that symbolize?

23 A That's his response.

24 Q After you read each one of these items to him?

25 A Yes.

STEVEN E. CLARE (IN CAMERA) - DIRECT BY MR. WEDEKIND

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1 Q And before the numerals with the initials was
2 that signifying what?

3 A That Mr. Humphrey understood that right.

4 Q And who actually touched the pen to paper to
5 make those initials before each item?

6 A Mr. Humphrey.

7 Q And then it's signed and dated what date?

8 A The 19th day of October, 2004.

9 Q And does your name say interviewing officer
10 right below it?

11 A Yes.

12 Q Who signed that?

13 A I did.

14 Q Okay. And then it says, Person Interviewed, to
15 the right of that. Who signed that area?

16 A Mr. Humphrey.

17 Q And then it states some personal information
18 about a Michael A. Humphrey, address, phone number,
19 date of birth and the time that the interview began.
20 What time and date did the interview begin on?

21 A The interview began on October 19th, 2004, at
22 11:11 in the morning.

23 Q And where did it take place?

24 A It took place at the Batesburg-Leesville Police
25 Department.

1 Q And what time did this interview, according to
2 your notes, conclude?

3 A The interview ended October 19th, 2004, at
4 12:11.

5 Q So it was a duration of how long?

6 A One hour.

7 Q And now it has a series of writings written
8 below the blank area and the lines where it says,
9 Statement. What do those signify?

10 A Those are questions that I asked Mr. Humphrey.

11 Q And then the A symbolizes what right below each
12 question?

13 A The A symbolizes Mr. Humphrey's answer.

14 Q And who actually touched pen to paper to put
15 the question and answer format there?

16 A I did.

17 Q And would you read for the Court all the
18 questions and answers in the series as they appear
19 on the paper?

20 A Question: Where were you when you were
21 knocking on the back of the window of the truck?

22 Answer: I was right behind the middle glass of
23 the rear window.

24 The next question: Which window did you punch
25 out?

1 Answer: The middle window, the one I was
2 knocking on.

3 The next question, there's a misspelling that I
4 crossed out and I had my initials above it: Which
5 hand did you grab Megan with?

6 Answer: My left hand.

7 The next question: Where did you grab Megan?

8 Answer: By the back of the -- by the back
9 pants. They were nursing scrubs.

10 Next question: Do you know why Megan was
11 trying to get out of the truck?

12 Answer: No, same thing I'm wondering.

13 The next question: When did you let go of
14 Megan's pants?

15 Answer: I don't know. I blacked out when we
16 hit the tree. I thought it was a light pole. They
17 said it was a tree.

18 The next question: Did you see Megan stumble
19 out of the truck to the passenger side?

20 Answer: No. I assumed that's what she did
21 because there was no one around when I got to her.

22 Next question: How fast do you think you were
23 going before you hit the tree?

24 Answer: 40 or 45.

25 Next question: Where were you after the truck

1 hit the tree?

2 Answer: I don't remember. All I remember was
3 getting to her -- Megan in parentheses -- crying and
4 screaming and I blacked out after that.

5 Next question: Was Megan trying to get away
6 from you in the truck?

7 Answer: For what? Why would she be trying to
8 getting from me? No.

9 Q Okay. And at the bottom of the page two as
10 it's signed by a witness, whose signature is that?

11 A That's my signature.

12 Q And then right after that, Signature of person
13 giving statement, whose signature is that?

14 A That's Mr. Humphrey.

15 Q Did you communicate this stuff and let Mr.
16 Humphrey see these questions and answers that you
17 wrote on the page?

18 A Yes.

19 Q Did you offer him the opportunity to add or
20 delete or make any changes if he wished to before he
21 signed the statement?

22 A Yes.

23 Q And did he, in fact, sign the statement after
24 you gave him that opportunity?

25 A He did.

1 Q Not before? He didn't sign a blank check, did
2 he?

3 A No.

4 Q Now, what were the circumstances of how Mr.
5 Humphrey came to be with you at that time when you
6 took this statement? Was he under arrest?

7 A No, he wasn't.

8 Q How did he get before you on the 19th?

9 A I don't remember how he came up.

10 Q He just appeared. You didn't call him?

11 A I don't think I did. He came up to the police
12 department. And, normally, when we talk with
13 somebody about an incident, we talk with them a few
14 times.

15 Q So he, of his own volition, walked in and
16 presented himself to you?

17 A Yes.

18 Q And then you took this statement?

19 A Yes.

20 Q You advised him of all his rights as you talked
21 about, item two through eight, correct?

22 A Yes.

23 Q And he said he understood them?

24 A Yes.

25 Q Did you have any difficulty understanding him?

1 A No, I didn't.

2 Q Did he speak clearly and plainly to you?

3 A Yes.

4 Q Did he respond to a logical way when you would
5 ask him questions?

6 A Yes.

7 Q So no difficulty communicating with Mr.
8 Humphrey?

9 A No.

10 Q Did he appear to be under the influence of any
11 alcohol, drugs or any kind of medication?

12 A No, he didn't.

13 Q And was there anyone else present with him?
14 Was he alone?

15 A In the booking room, yes.

16 Q And once you started this interview, did he ask
17 to take any breaks?

18 A I don't believe so.

19 Q If he had, would you have offered him that
20 opportunity?

21 A Yes.

22 Q After the conclusion of your interview, did you
23 place him under arrest at that time?

24 A No.

25 Q And was he detained or threatened in any way to

1 make these statements?

2 A No.

3 Q Any time during the process of you advising him
4 of his rights, making the statement, did he, at any
5 time, ask for a break and ask for representation of
6 a lawyer?

7 A No.

8 MR. WEDEKIND: Thank you. Please answer any
9 questions that Mr. Madsen has.

10 THE COURT: Cross.

11 CROSS-EXAMINATION

12 BY MR. MADSEN:

13 Q So, Lieutenant Clare, is your testimony that he
14 just kind of showed up at the Batesburg-Leesville
15 Police Department? Are you sure that maybe you
16 didn't call his mama and ask him to come up there?

17 A I don't believe I did, no, sir.

18 Q You think maybe someone else did?

19 A I don't know if they did or not.

20 Q Okay. You don't remember whether or not he
21 just showed up or whether it was basically set up
22 for you to interview him as compared to, say, the
23 chief, Detective Gilliam or anyone else, correct?

24 A That's correct.

25 Q And then, I guess, ultimately your interview

1 with him took about an hour exactly?

2 A Yes, sir.

3 Q And it didn't take an hour for you to put pen
4 to paper, did it? Did y'all have some discussions
5 before?

6 A We might have, yes, sir.

7 Q Okay. During and then maybe even after?

8 A I don't remember after.

9 Q Do you recall you and he having a conversation
10 about, you know, with the interviews -- because he
11 wasn't charged at this point in time?

12 A That's correct.

13 Q Having a conversation about, you know, any
14 discrepancies that there are and you telling him
15 that the only discrepancy was that Megan wasn't in
16 the car when it hit a tree. Do you remember having
17 a conversation with him about that?

18 A No, I don't.

19 Q And so after he ended up giving this statement,
20 you didn't place him under arrest at that point in
21 time, did you?

22 A No, sir.

23 Q You allowed him to leave?

24 A Yes, sir.

25 Q You indicated on the interview sheet, I guess,

1 at the top that this was a traffic accident?

2 A Yes, sir, that's how it was initially listed.

3 Q And, at this point in time, we're not real sure
4 where the original is?

5 A No, sir.

6 Q Of the statement?

7 A No, sir.

8 MR. MADSEN: That's all the questions I have,
9 Judge.

10 THE COURT: Redirect.

11 MR. WEDEKIND: Court's indulgence for a moment,
12 sir.

13 (Pause.)

14 MR. WEDEKIND: Your Honor, if I may approach.
15 This is a better copy of what we had that we just
16 marked for I.D. for 2. Could I substitute this? It
17 doesn't have the initial portion cut off on the side
18 of the margin. I've shown it to Mr. Madsen. He
19 doesn't have any objection.

20 THE COURT: Sure.

21 MR. WEDEKIND: No further questions.

22 THE COURT: Thank you, sir. You can step down.
23 Any other witnesses on Denno?

24 MR. WEDEKIND: Yes, sir, very briefly. We have
25 two more witnesses. Mr. Thomas.

1 CHARLES EDWARD THOMAS,
2 having been duly sworn, testified as follows:

3 THE CLERK: Please be seated, state your full
4 name.

5 THE WITNESS: Charles Edward Thomas.

6 DIRECT EXAMINATION

7 BY MR. WEDEKIND:

8 Q Mr. Thomas, who were you employed by back in
9 October 17th of 2004?

10 A Batesburg-Leesville Police Department.

11 Q And had you just come on with the police
12 department at that time?

13 A Yes, sir.

14 Q And were you dispatched to any kind of call
15 regarding the early hours of the 17th of October,
16 2004?

17 A Yes, sir, a traffic accident, what we thought
18 was a traffic accident early that morning.

19 Q And what happened -- were you the first officer
20 to respond?

21 A Yes, sir.

22 Q And tell the Court what you saw when you
23 arrived at the scene.

24 A I arrived on scene. There was a dark in color
25 -- it was kind of at dawn. It was a dark in color

1 Ranger, Ford Ranger. And it was a white female laid
2 next to the vehicle and it was a black male on top
3 of her straddling her.

4 Q I want to show you a statement. Is this -- I'm
5 going to show what's marked -- or it's not marked.
6 It's marked at the top as statement. Do you
7 recognize that document?

8 A Yes, I do.

9 Q And would you read it over just to refresh your
10 memory, please?

11 A Out loud?

12 Q No, you can just read it.

13 A (Witness complies.)

14 Q Now, you saw this before the last trial,
15 correct?

16 A Yes, sir.

17 Q And after you said you arrived, it was in the
18 what hours of the day?

19 A It was in the early morning.

20 Q And what was the light conditions at the time?

21 A It was, like, in between the sun coming up and
22 it being dark.

23 Q Okay. And you said you saw a pick-up truck,
24 you saw a black male and a white female laying on
25 the ground?

1 A Yes.

2 Q And what, if anything, did the -- did you hear
3 anyone say?

4 A When I approached, I didn't know what exactly
5 was going on. And I got close to them and I heard
6 the black male on top of her saying, I'm sorry,
7 baby. I'm sorry, baby. Wake up. I'm sorry.

8 Q And was there any other individual present at
9 the time?

10 A Yes. It was a neighbor, a white male, a
11 neighbor.

12 Q Okay. So there were actually three people
13 there, the woman on the ground, the black male
14 standing over her or straddling her you said?

15 A Yes, sir.

16 Q He's screaming, I'm sorry. And the white male
17 was doing what?

18 A He was standing around at first. He was asking
19 if there was anything he could do. We tried to pull
20 Mr. Humphries [sic] off of the lady. He was kind of
21 hysterical, I don't know if he was trying to help
22 her or what, trying to pull her [sic] off of her.
23 And then we just decided to back off until we could
24 get some more backup there.

25 Q Did you notice anything distinctive about the

1 black male that you saw present that morning?

2 A Once we finally got him to calm down, he was
3 really hysterical, like, for a long period of time
4 until I got some background -- I mean, backup there.
5 He smelled like alcohol and that's about it.

6 Q Do you see him present in the courtroom?

7 A Yes, I do.

8 Q Would you point him out?

9 A Mr. Humphrey's sitting at the defendant's table
10 (indicating).

11 MR. WEDEKIND: And, Your Honor, if I could ask
12 the Court to reflect that he did identify Mr.
13 Humphrey.

14 THE COURT: So noted.

15 BY MR. WEDEKIND:

16 Q Is that the same person that you're talking
17 about?

18 A Yes, sir.

19 Q Okay. And did he make any further statements
20 to you about where he had been earlier in the
21 evening?

22 A Yes. I was trying to find out more about what
23 was going on and he said that he doesn't know. He
24 had came from the club with his cousin that lived on
25 -- I can't remember the road, if I can see it.

1 Q Sure.

2 A Pond Branch. And he went to Club Revolutions.
3 And he also went in his pocket and produced a party
4 ticket, like a ticket or a ticket stub or something
5 like that.

6 Q And then did he make any further comments about
7 his relationship with the woman you saw laying on
8 the ground? And let me ask you to refresh your
9 memory again.

10 A Oh. He said that when he -- when she came
11 home -- when he came home from the club, it was like
12 one continuous statement from him telling me where
13 he came from, that when he came home from the club,
14 that she blew up on him.

15 Q And did you arrive at the scene thinking it was
16 a vehicular accident?

17 A I did, sir.

18 Q Did you arrest anybody at that time?

19 A No, sir.

20 Q Did you place anybody in handcuffs at that
21 time?

22 A No, sir.

23 Q Did you make any threats to arrest anybody?

24 A No, sir.

25 Q Did you, in fact, even approach Mr. Humphrey

1 and demand information from him?

2 A No, sir.

3 Q Okay. What was your -- how would you
4 characterize what he was saying to you or saying at
5 that time? Was it directed to you or just --

6 A It was directed to her.

7 Q Okay. And once you did approach and you sat
8 down, were you in uniform at the time?

9 A Yes, sir.

10 MR. WEDEKIND: Please answer any questions that
11 Mr. Madsen may have for you.

12 THE COURT: Cross.

13 CROSS-EXAMINATION

14 BY MR. MADSEN:

15 Q Officer Thomas, the Solicitor handed you a
16 statement that you read before you testified. Is
17 that because you don't really remember what happened
18 six and a half years ago and needed to look over
19 that?

20 A It was six and a half years ago. And I
21 remember it, the scene -- I can remember the picture
22 in my head, but remembering the incident and
23 remembering the way you worded something six years
24 ago is totally different.

25 Q As far as specifics or that, it's foggy because

1 it's over six years ago, correct?

2 **A** The statement is.

3 **Q** Okay. And you wrote a statement back then and
4 you indicated that when he had come -- came in, that
5 she, and you put in quotes, Blew up, end quotes, on
6 him, correct?

7 **A** Yes, sir.

8 **Q** And he had indicated that, I guess, that he had
9 been to a club with some cousins and even gave you a
10 -- or showed you a membership card or something to
11 that effect, correct?

12 **A** Yes, sir.

13 **Q** And when you got out there, do you recall
14 saying that, I guess, he was straddling her, saying,
15 wake up, baby? Do you remember that?

16 **A** I'm sorry, baby -- he was calling her baby --
17 I'm sorry. I remember that part because that's what
18 -- when I first got -- I kind of questioned what was
19 going on.

20 **Q** Do you remember him crying?

21 **A** Yes.

22 **Q** Him being hysterical?

23 **A** Yes, sir.

24 **Q** He asked you for help?

25 **A** Yes. He was yelling to everybody to get some

1 help, me and this person on the side, the other
2 witness.

3 Q Asking you to get an ambulance there?

4 A Yes, sir.

5 Q And he was, I guess, real panicked?

6 A Yes.

7 Q And so when you were there and he's over top,
8 he's trying to help her. He's not assaulting her or
9 hitting her or anything like that. His statements
10 are, Get help, get an ambulance. He's crying, he's
11 hysterical, correct?

12 A At that time, we didn't -- we really were
13 trying to get him off of her, me and Mr. -- I'm not
14 familiar with his name right now, but he was really
15 so hysterical that we didn't want to rattle the
16 victim anymore or upset him anymore, so we backed
17 off until I got backup there that, you know, I was a
18 new officer at the time, and that's how I remember
19 it.

20 Q And, at some point in time, you actually, I
21 guess, had to restrain Ms. Jackson; is that correct?

22 A I believe when the ambulance got there, they
23 just needed somebody holding her down. She was kind
24 of kicking her legs a little bit because she was in
25 so much pain and they asked for another a hand.

1 Q And you helped out?

2 A Yes, sir.

3 MR. MADSEN: That's all the questions I have.

4 THE COURT: Redirect.

5 MR. WEDEKIND: Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. WEDEKIND:

8 Q Officer Thomas, when she was being restrained,
9 was she, as you would expect, a normal person
10 behaving or someone who had been severely injured?

11 A Somebody severely injured. Like, she was just
12 -- it wasn't like -- they were just trying to strap
13 her legs down on the gurney. It was like she
14 couldn't keep her legs still.

15 Q Was she out of it or in it?

16 A I really couldn't tell, like, you know, she was
17 just moving.

18 Q Okay. And did he -- let me show you what's
19 marked as a report here to refresh your memory. Did
20 he make any statement to you while you were present
21 about how he had arrived at the scene? Did he tell
22 you who was in the truck at the time or did he tell
23 you how he got there?

24 A Oh, he said that he had been dropped off and
25 that's part of how he was explaining how he came

1 from the club, how did he end up on the scene,
2 because that's what I wanted to know, because, at
3 first, I didn't know whether or not he had been in
4 the vehicle or not and I just began asking questions
5 to him once he calmed down.

6 Q So, initially, when you first got there, he
7 told you that he wasn't in the back of the truck and
8 there was no mention of punching the window?

9 A No, no mention of punching the window when I
10 first got there.

11 Q Just that somebody dropped him off?

12 A Somebody dropped him off.

13 MR. WEDEKIND: Okay. Thank you. No further
14 questions.

15 THE COURT: Recross.

16 MR. MADSEN: That's all the questions.

17 THE COURT: Thank you, sir. You can step down.
18 Call your next witness.

19 MR. WEDEKIND: The State would call Corporal
20 VanPut.

21 NICOLAS VANPUT,
22 having been duly sworn, testified as follows:

23 THE CLERK: Please be seated, state your full
24 name.

25 THE WITNESS: My name is Nicolas VanPut,

1 Supervisor and Corporal for the Town of Johnston.

2 DIRECT EXAMINATION

3 BY MR. WEDEKIND:

4 Q And, Corporal VanPut, that's who you're
5 currently employed with, correct?

6 A Yes, sir. I was employed with
7 Batesburg-Leesville back in 2007, from 2000 to 2007,
8 seven years.

9 Q Okay. And do you remember working a case on
10 October 17th, 2004, involving a collision --

11 A Yes, sir.

12 Q -- what you thought was an accident?

13 A Yes, sir.

14 Q Okay. Who was with you working the scene?

15 A At the time, it was Officer Shuler and Officer
16 Thomas.

17 Q And what time did this occur on the 17th?

18 A It was right at shift change about six o'clock
19 in the morning on the 17th.

20 Q Do you recall who the initial responding
21 officer was?

22 A I believe it was Shuler, that was the first one
23 there.

24 Q All right. And do you recall anything about
25 arriving at the scene?

1 **A** I arrived in my, at that time, unit 20. I
2 parked my unit behind the vehicle that was -- that
3 hit the tree, which was a pick-up truck, Ranger
4 type, I believe it was green in color, South
5 Carolina tag.

6 **Q** And did you have any interface with any of the
7 individuals who were at the scene?

8 **A** What do you mean?

9 **Q** Did you speak with anybody other than the other
10 officers at the scene?

11 **A** At the time of the incident, the only person
12 that was there that I do remember was Officer Shuler
13 and the defendant, Mr. Humphrey.

14 **Q** Do you see Mr. Humphrey present in the
15 courtroom?

16 **A** Yes. He's a black male wearing a nice suit,
17 watch, tie.

18 **Q** Did you direct any questions to him or just
19 overhear any statements he made?

20 **A** I just observed.

21 **Q** And what did you observe? Did you hear him
22 make any statements?

23 **A** I observed him holding a white female that
24 appeared to be in, I believe, like, scrubs, like,
25 medical outfit.

1 Q Right.

2 A I believe she had, like, one -- like, a Croc
3 shoe type on her foot. And he was very hysterical
4 and upset. He was, in a way, comforting her and
5 that was on the right passenger side of the truck.

6 Q And did you hear him express anything about the
7 children?

8 A Later.

9 Q What about anything that had happened -- did
10 you notice anything about his appearance at the
11 time?

12 A I believe he was wearing a red in color
13 possible fleece shirt. I can't remember exactly,
14 but it was a light color, maybe a tan pair of pants.
15 I don't believe he was wearing any shoes at the
16 time.

17 During the time when I was observing him being
18 upset, taking care of the victim, he did make a
19 comment about -- I'm just paraphrasing -- that he
20 had two children left alone in the home.

21 Q And as a result of that, did you take any
22 action leaving the scene? What did you do?

23 A I left the scene. And I don't exactly remember
24 who was with me at the time, but I do know I went to
25 the home. The house was unlocked. It was

1 unsecured. I entered the house. And there were two
2 children in one bedroom, it's been a long time ago,
3 both sleeping. One was an infant. One was, I'd
4 say, a few years old.

5 Q Did you hear any statements from Mr. Humphrey
6 about his presence at the time the vehicle collided
7 with the tree? Did he say he was there or not
8 there; do you recall?

9 A He said he didn't drive the vehicle, that the
10 victim was the one who drove the vehicle. Then he
11 said he was waiting for some people, some friends of
12 his, and that's all I can recall.

13 Q Now, did you place him under arrest?

14 A Not at that time.

15 Q Was he under the shackles or any kind of
16 detention?

17 A No, sir, no restraints were placed on him
18 because at the time we thought we had an accident
19 and we were working it as an accident.

20 Q Did you hear -- overhear any comments from Mr.
21 Humphrey about being in an argument with Ms.
22 Jackson, the woman that was laying on the ground
23 earlier?

24 A At the time, no, sir.

25 Q Did he say anything subsequent that you heard

1 about -- that you heard him say?

2 A Not that I recall.

3 MR. WEDEKIND: Thank you. Please answer any
4 questions that Mr. Madsen has.

5 THE COURT: Cross.

6 MR. MADSEN: No questions, Your Honor..

7 THE COURT: Thank you, sir. You may step down.
8 Any other witnesses for the State?

9 MR. WEDEKIND: No, sir.

10 THE COURT: Any witnesses for the defense?

11 MR. MADSEN: No, Your Honor.

12 THE COURT: All right. We'll take a short
13 recess and then we'll continue. Thank you.

14 (Brief Recess.)

15 THE COURT: Okay. Mr. Madsen, let's take
16 these, if you don't mind, one at a time. If you
17 would prefer to do them differently, that's fine.

18 MR. MADSEN: Judge, I can sum up both of them
19 with one argument.

20 THE COURT: I've got four, don't I?

21 MR. MADSEN: Well, just the two written ones.

22 THE COURT: Okay. Go ahead.

23 MR. MADSEN: Judge, my only objection to those
24 would be that they are not original copies. I have
25 seen the original copies. They were introduced last

1 time. And I realize under Rule 1003, that the Court
2 might allow those based on that, but I do have an
3 objection based on that. Other than that, I would
4 leave it to the Court's discretion on whether those
5 are introduced or not.

6 **THE COURT:** All right. Well, the objection
7 based on the documents themselves not being the
8 originals is overruled, denied. They have --
9 there's no evidence before the Court that would
10 cause the Court to think they're not authentic
11 copies, unaltered copies.

12 With regard to the statement which is given to
13 Lieutenant Clare, October the 19th, 2004, at 12:11
14 p.m., I think that is, this statement was taken at
15 the police station. The defendant was not under
16 arrest. He was not in custody. Actually, according
17 to my review of the evidence, he came in for an
18 interview. But if it is considered to be the
19 substantial equivalent of incustodial interrogation,
20 and I don't really find it to even be that because
21 there's no indication that the defendant was not
22 required -- I'm sorry -- there's no indication that
23 the defendant was required to stay, that he was
24 under any kind of detention or the substantial
25 equivalent of it.

1 But since it took place in a police station and
2 was the product of questioning, even if it were
3 determined to be incustodial questioning or the
4 functional equivalent, I find that the State has
5 established by the requisite degree of proof that
6 the defendant was properly advised of his rights
7 under the Fifth and Sixth Amendments to the United
8 States Constitution and under the authority of
9 Miranda versus Arizona and its precedence.

10 Specifically, he was advised that he was -- he
11 had the right to remain silent; if he made a
12 statement, it could be used against him and would be
13 used against him in court; that he had the right to
14 have an attorney with him at all times during
15 questioning; if he could not afford an attorney, the
16 Court would appoint one for him; that he had the
17 right to stop answering questions at any time; that
18 he understood that he did not have to answer any
19 questions.

20 And the Court finds that he made a free and
21 knowing and voluntary waiver of his right to counsel
22 and his right to silence and elected to answer the
23 questions. He was not under any threats or promises
24 or improper inducements of any kind, any reward or
25 hope of reward. He was not suffering from any

1 disability that would affect his thinking. He was
2 not intoxicated or suffering from any mental disease
3 or defect and no threats of any kind were made
4 towards him. So I find that statement to be a free
5 and voluntary expression of the defendant and it is
6 admissible assuming that a sufficient foundation is
7 established before the jury.

8 With regard to the written statement given to
9 Mr. Gilliam on October the 17th, 2004, at 10:00
10 p.m., the Court likewise finds that the defendant
11 was not in custody. The statement was taken at the
12 police department. He was not confined. He was
13 being interviewed. He was not under arrest.

14 It does not appear to be an incustodial
15 interrogation or the functional equivalent of it,
16 but even if it were considered to be such, the Court
17 finds that the State has established by the
18 requisite degree of proof that the statement was
19 obtained after properly given Miranda warnings and
20 after the defendant was properly advised of his
21 rights and that it was not the product of any sort
22 of promise, threat, not the product of any improper
23 inducement or reward or hope of reward.

24 The defendant understood all of his rights
25 related to counsel, all the essential rights under

1 Miranda and his right to remain silent. He
2 understood the statement could be used against him.
3 And the statement was given by him at a time --
4 there's no indication that he was suffering from any
5 sort of mental defect or level of intoxication or
6 impairment that would have affected his ability to
7 think clearly and make rational choices and given an
8 accurate statement.

9 The Court finds that this statement will be
10 admissible if a proper foundation is asserted.
11 That's State's Exhibit Number 1 for identification
12 purposes. So 1 and 2 for I.D. will be admitted.

13 Now, with regard to Corporal VanPut, he
14 testified last.

15 **MR. WEDEKIND:** Yes, sir.

16 **THE COURT:** Do you have any motions related to
17 him?

18 **MR. MADSEN:** No, sir.

19 **THE COURT:** I really thought most of what he
20 said was more helpful to you than not, but if you
21 had any such motion -- there's no indication that
22 anything was done in response to police questioning
23 and he certainly was not in custody.

24 Now, with regard to Charles Edward Thomas, do
25 you have motions related to it?

1 **MR. MADSEN:** Judge, I would move that that
2 statement be excluded. Officer Thomas testified
3 that not only did he smell alcohol, but that Mike
4 was crying, was hysterical.

5 Additionally, I was troubled by the fact that
6 he doesn't have an independent recollection of that
7 -- of those statements, as the Solicitor ended up
8 starting with having him read to himself a statement
9 that he has done. I think that that --

10 **THE COURT:** Who is he?

11 **MR. MADSEN:** Officer Thomas. He gave Officer
12 Thomas his statement, that was the first thing that
13 the Solicitor did was to have him read that. I
14 asked him about having an independent recollection
15 of those statements and I don't believe he does.

16 I think that to allow him to be questioned that
17 way would deny Mr. Humphrey due process under the
18 Fifth Amendment and the Fourteenth Amendment, also
19 under South Carolina Article 1 Section 14 and 9 and
20 also deny him the right of confrontation under the
21 Sixth Amendment and, additionally, South Carolina
22 Article 1 Section 14, which is our State
23 Constitution's.

24 He just, given the fact that it's six and a
25 half years ago, doesn't have an independent

1 recollection of those statements.

2 **THE COURT:** All right. What's the State's
3 position?

4 **MR. WEDEKIND:** It's the embodiment of a refresh
5 memory, Your Honor. He has independent
6 recollection. He, without any kind of a prompting
7 or anything, he told us what he was doing. He'd
8 just started with the Batesburg Police Department.
9 He was the initial officer that got out there. He
10 remembered Mr. Maye. He remembered Mr. Humphrey.
11 He was able to identify Mr. Humphrey by sight, the
12 commentary of Mr. Humphrey being hysterical.

13 He -- I mean, that's exactly what we record
14 these statements for is to refresh people's memories
15 when they look at it. As soon as he looked at it,
16 you saw that spark of recognition. He goes, Oh,
17 yeah, I remember this, this and this. And it was
18 falling back into place. That's what we do when we
19 watch -- or look at old pictures, that's what we do
20 when we look at recorded statements and diaries and
21 journals, it refreshes our memory and it sparks a
22 human, whatever process takes place in the brain to
23 withdraw memories forward.

24 It almost allows people -- in my case, when I
25 look at things, I can visualize events that occurred

1 just by reading some kind of statement, everything
2 comes back, intimate details, you know, minute
3 details become more focused and everything just
4 comes flooding back in a memory. And I think that's
5 exactly the case that we've seen here with Officer
6 Thomas. He had a spark of recognition upon looking
7 at his statement and everything came back into
8 clarity.

9 **THE COURT:** I mean, I don't have eyes on the
10 side of my head, so I can't say I saw what you saw,
11 but I didn't interpret it that way at all. It
12 sounded to me like he was reading from his
13 statement.

14 **MR. WEDEKIND:** That would certainly be
15 something he's subject to be cross-examined by, do
16 you really remember this or do you not, but it's a
17 question of fact for the jury to be presented
18 whether or not he remembers it or being prompted for
19 it. But I think the statements that he recorded and
20 if he's able to say he remembers them on
21 cross-examination or not, that's up there, but I
22 think the statement should be admissible.

23 There was nothing coercive. There was no
24 detention. He was just recording the statements
25 that were contemporaneous with that event as it

1 occurred and wrote those notes down, just what we
2 would want an officer to do.

3 **THE COURT:** I'm not faulting the officer. I'm
4 just saying -- what troubled me is I believe he said
5 that at some point, and I could be confusing the
6 witnesses, I believe he said, at some point, that he
7 was questioning the witness, questioning the
8 defendant. He said he was trying to find out what
9 was going on. And, you know, I know that that is
10 allowed. The problem I have is the specificity is
11 not there.

12 And, again, I'm not faulting anybody for not
13 being able to remember something six and a half,
14 seven years ago. I'm sure he remembers vividly
15 certain aspects of it. I would think if one came
16 upon this scene, the fact that he came upon the
17 scene and that Mr. Humphrey was hysterical, all of
18 that is -- that's not really a statement, that's --
19 what I'm looking for are the statements.

20 **MR. WEDEKIND:** Well, he did say, the first
21 thing that jumped out without any kind of reading of
22 his notes, he said he saw Mr. Humphrey straddling
23 his body saying --

24 **THE COURT:** I thought you handed him the notes
25 before he even started talking. You handed him a

1 piece of paper and said, I want you to read this,
2 and then you started asking him questions and that's
3 bothersome.

4 MR. WEDEKIND: Okay, sir. I thought I showed
5 it to him and then I stepped away. And then I gave
6 it to him when he started having difficulty, but the
7 first thing he said --

8 THE COURT: Well, that's worse.

9 MR. WEDEKIND: Well, the first thing he said
10 was he saw her [sic] straddling the body and then he
11 said, I'm sorry, baby, I'm sorry, baby. Then, at
12 that point, I think I gave him the things because I
13 started asking him questions about - as I recall, he
14 didn't mention Mr. Maye. He said he saw a white
15 female and a black male straddling her body.

16 And then I noted he -- and I wanted to lead
17 into the question about Mr. Maye being present
18 because Mr. Maye heard the wreck from his bedroom
19 and got out of bed and was actually the first person
20 other than the victim and Mr. Humphrey. And he had
21 mentioned that so that's why I tried to prompt his
22 memory with Mr. Maye's presence. At that point, I
23 said, go read it, and from there we went forward.

24 But as far as this statement of him saying, I'm
25 sorry, baby, I'm sorry, baby, I don't think he had

1 read the statement at that point.

2 And they are his notes that he's refreshing his
3 memory from, that's the whole purpose --

4 **THE COURT:** You're saying he refreshed his
5 memory.

6 **MR. WEDEKIND:** Yes, sir.

7 **THE COURT:** When did he say they refreshed his
8 memory?

9 **MR. WEDEKIND:** We didn't say that. I mean, I
10 just gave him, I said, Look over your statement, and
11 he did. And then I asked him further amplifying
12 questions from it.

13 Your Honor, I thought I was relying on Rule
14 612, Writing used to refresh memory when a witness
15 is on the stand.

16 **THE COURT:** If the witness says that, I agree
17 with you. You're saying it.

18 **MR. WEDEKIND:** To what he said, I got you.

19 **THE COURT:** To what who said?

20 **MR. WEDEKIND:** To what he -- his notes is what
21 he took to refresh his memory of what Mr. Humphrey
22 said to him.

23 **THE COURT:** Mr. Wedekind, if I'm missing
24 something, I apologize to you profusely. The way
25 I've always dealt with writing to refresh memory is

1 to first establish that somebody can't remember it.
2 Then you ask them if they took notes
3 contemporaneously with it, would that assist them.

4 You don't walk up to the witness, hand him
5 these notes and say read this and then start asking
6 him a bunch of questions.

7 Let me see what exactly took place.

8 (Pause.)

9 **THE COURT:** You're the one telling me his
10 memory needed to be refreshed not him.

11 **MR. WEDEKIND:** I got you, sir.

12 **THE COURT:** What you did, according to the
13 rough notes, is you walked up to him and said, I'm
14 handing you a document to refresh your memory.

15 **MR. WEDEKIND:** Okay, sir.

16 **THE COURT:** Let's see what he actually said,
17 though. That's more to the point.

18 Okay. The part about trying to find out what
19 was going on, he had come from a club with his
20 cousin on Pond Branch Road. He went in his pocket
21 to produce a ticket from the club.

22 The ruling of the Court is that the statements
23 that are attributed to Mr. Humphrey about she blew
24 up on him and the statements about where he had
25 been, those are not admissible. There's no way for

1 me to review the context in which they were elicited
2 or his condition at the time.

3 I mean, it may well be that he was perfectly
4 fine. I just -- on this record that I have in front
5 of me, I've got a problem because the State's got to
6 make a preliminary showing. And the man had just
7 been, according to the State's version, in a car
8 wreck where a tree had been hit and he had been
9 drinking. And the officer testified that he was
10 keeping -- the defendant smelled of alcohol. And
11 the officer testified that he was asking questions,
12 he was trying to figure out what was going on. And
13 I can't evaluate the context of the questions or
14 exactly what he asked. And, again, I'm not faulting
15 anybody for not being able to remember that far
16 back.

17 These -- now, the fact of what he observed,
18 that's a different matter altogether. What he saw
19 and what he can recall is a different matter.

20 **MR. WEDEKIND:** Just for clarity, sir. So he
21 can say that he presented him a membership card from
22 Club Revolutions, but he can't go into saying, I
23 went to Club Revolutions with my friends, nor can he
24 say she blew up on him. And I only wanted those to
25 corroborate what Mr. Humphrey had put in his written

1 statement to Officer Gilliam as corroboration, that
2 can still come in.

3 **THE COURT:** What I'm excluding right now are
4 statements.

5 **MR. WEDEKIND:** All right, sir. But the fact
6 that he said, I went to Club Revolutions and then
7 showed me the I.D. card, he can say he showed me --

8 **THE COURT:** No, he can't say what he said. He
9 can say what he observed. He can say if he -- just
10 like he said he handed him his driver's license, he
11 can say that he handed him a card, if he recalls it.

12 **MR. WEDEKIND:** Yes, sir.

13 **THE COURT:** Those are all the statements,
14 right?

15 **MR. WEDEKIND:** Yes, sir.

16 **THE COURT:** So what else do we have left?

17 **MR. MADSEN:** Judge, one thing, based on your
18 ruling, I think one of the things that they were
19 going to potentially elicit from Mr. Maye was saying
20 that Mr. Humphries had been dropped off, which given
21 the Court's rationale from that, I think, would fall
22 under the same thing as far as the right after a car
23 accident --

24 **THE COURT:** I'd have to hear from Mr. Maye.

25 **MR. MADSEN:** And I just wanted to bring that

1 up. Obviously, he's not here, but I know Your Honor
2 doesn't want to stop and start and obviously we want
3 to start moving through, but I wanted to bring that
4 up.

5 Judge, it's my --

6 **THE COURT:** Hold on, let me just -- before we
7 jump too far ahead. Mr. Maye may be in a completely
8 different circumstance. His recollection may be
9 different. He is not a law enforcement officer. So
10 whenever you all get around to that, if you've got
11 something you need me to take up in camera, then
12 just let me know and I'll send the jury out if we're
13 still going.

14 **MR. WEDEKIND:** First thing in the morning we'll
15 do that. I excluded Mr. Maye because I figured he
16 was a lay witness and not subject to interrogation
17 and coercion because he was just --

18 **THE COURT:** Well, what I just ruled on really
19 was not exactly a Denno ruling, but -- all right.
20 So what other issues do we have, Mr. Madsen?

21 **MR. MADSEN:** Judge, there was a motion to
22 exclude any prior bad act evidence or Lyle evidence.
23 I don't think that they plan on doing that.

24 **MR. WEDEKIND:** There was an incident reported
25 of her screaming in the middle of the night for

1 assistance and the police called. We won't bring
2 that up. There was allegations that she went to a
3 friend talking about being beaten by Mr. Humphrey
4 and she was never going back to him. We won't bring
5 any of that up. There's going to be nothing -- that
6 we're just going to focus on the events of October
7 17th, sir.

8 **THE COURT:** Okay. And suppression of a search
9 warrant.

10 **MR. MADSEN:** My understanding, Judge, is the
11 only thing that they anticipate trying to bring out
12 is an I.D. card of Ms. Jackson. I would object
13 under 401, 402, 403.

14 Additionally, Judge, I think it's very similar
15 to State versus Livingston, which is 327 S.C. 17. I
16 don't think it would be admissible. I think they
17 have the I.D. card now, which I believe I was with
18 the Solicitor when he actually retrieved that out of
19 the truck some five, six years later.

20 **MR. WEDEKIND:** It's depicted on the floorboard
21 in the photographs that were initially taken the day
22 after by Lieutenant Clare. And all we did was have,
23 I think, Chief Oswald or Lieutenant Clare pick it up
24 from the floorboard where it had been laying for
25 five or six years. So it had been undisturbed in

1 the garage and we just had them pick it up, put it
2 into evidence.

3 MR. MADSEN: And not only would I --

4 THE COURT: What does it go towards?

5 MR. WEDEKIND: Just showing that there was a
6 struggle, that she would have normally been wearing
7 that on her attire as any person wears an I.D. badge
8 and that during the ensuing struggle in the cab of
9 the vehicle, it was ripped off of her clothing and
10 thrown on the floor. It's a question -- she was
11 going to work as she [sic] said she was in the
12 statements given by Mr. Gilliam -- I mean, Mr.
13 Humphrey and elicited by Officer Gilliam, but that
14 would have been what somebody's doing and was part
15 of a struggle of --

16 THE COURT: I keep my I.D. badge on the top of
17 my console. If I hit a telephone pole or a tree,
18 you're telling me that indicates a struggle?

19 MR. WEDEKIND: If she was wearing it on her
20 clothing, yes, sir.

21 THE COURT: How do I know that?

22 MR. WEDEKIND: It's a question of fact for the
23 jury.

24 THE COURT: No, you can't leave them to
25 speculate. If you've got some witness who said she

1 always did that when she left the house.

2 MR. WEDEKIND: Yes, sir, that's what we're
3 attempting to get through some other witnesses that
4 that was her normal practice was to wear that on her
5 clothing before reporting to work and then the fact
6 that it was laying -- and Mr. Madsen's bringing up
7 the question it was a suicide and her taking drugs
8 that would have led to her depression. This, I
9 think, goes to the fact that she was -- why would
10 she dress up with her badge and go to work if she
11 was out on a suicide mission.

12 THE COURT: You say you've got a 403 exception?

13 MR. MADSEN: Judge, I don't see the relevance
14 in it. Additionally, not only would we move to
15 exclude the badge, but also the photographs of the
16 badge. I think one's just as bad as the other one.
17 As I said, I think it's very similar to State versus
18 Livingston where they attempted in that case to
19 introduce a photo of a victim through, I guess, some
20 testimony of a husband.

21 THE COURT: All right. Well, this is an in
22 camera ruling and it may change. You all know the
23 case. I don't know the case, so my impression may
24 change as the case goes along, but right now if all
25 you've got is that there was an I.D. badge on the

1 floor of a vehicle, I don't see how that's relevant
2 in this scenario, which is his 401 objection.
3 You're extrapolating things from that about it being
4 ripped from her clothing. Unless you got some
5 foundation to establish that, I don't know how that
6 comes in.

7 It certainly seems that it would -- I don't
8 know of any reason why you would introduce a
9 photograph of the lady under Rule 403. I mean, I
10 can see it coming in if there was some question
11 about who was operating the vehicle or things of
12 that nature, but it's like I said, I usually leave
13 my I.D. badge in my vehicle. If it's in my vehicle
14 when I hit something, it's going to probably fly
15 around, that doesn't mean I was in a struggle with
16 anybody.

17 The suicide thing, I don't see how it makes
18 anything more or less likely. If she was dressed
19 and going to work and then she got into something
20 that caused her to feel like she was going to end
21 her life, to be honest with you, this is the first
22 I've heard of this, I don't think she would stop and
23 change her clothes.

24 Right now, again, I may change my mind later
25 after I hear the evidence, but right now I say it's

1 excluded.

2 MR. WEDEKIND: This photograph, sir, of the
3 condition of the cab or just the badge itself?

4 THE COURT: I haven't seen the photograph.

5 MR. MADSEN: I would move to exclude obviously
6 any photographs of the badge. If the badge is out,
7 I would...

8 MR. WEDEKIND: That's the one that we
9 introduced previously that he's objecting to now,
10 but it just shows the I.D. badge. And it was taken
11 contemporaneous with the day after.

12 THE COURT: You're going to have to mark this
13 if I'm going to rule.

14 (State's Exhibit Number 3, photograph,
15 marked for identification purposes.)

16 THE COURT: I don't see a problem with State's
17 3 for I.D. I'll let you put your objection on the
18 record. Do you need anything else on the record?

19 MR. MADSEN: No, sir. I just renew it just
20 based on the I.D. itself, but obviously that's just
21 in limine.

22 THE COURT: All right. So what are these
23 personal records of --

24 MR. MADSEN: Judge, it's my understanding that
25 Detective Gilliam was let go from Batesburg Police

1 Department. I think the Solicitor has those records
2 that have been sealed, but I haven't seen him
3 obviously.

4 MR. WEDEKIND: We can get them. Again, I
5 think, Judge, initially, the first time we called
6 this case at the beginning of the year, we were
7 going to call it in front of Your Honor --

8 THE COURT: I thought I had already ruled on
9 this.

10 MR. WEDEKIND: And to that end, I gave you a
11 sealed envelope of that and I thought you examined
12 it, said there was nothing untoward in there. And
13 then the case actually got called in front of Judge
14 McMahon and I think we gave it to him. And I don't
15 know where those records are. We can probably get
16 them replicated by Chief Oswald if you need to
17 examine them again.

18 THE COURT: No. I remember, in generalities,
19 giving to -- these are records of Batesburg Police?

20 MR. WEDEKIND: Yes, sir.

21 THE COURT: Chief, can you access those
22 overnight.

23 CHIEF OSWALD: Yes, sir, I can find them again,
24 but, I mean, it would be the same thing, yes, sir.

25 THE COURT: I know it's the same thing, but

1 they say they don't know where they are.

2 **CHIEF OSWALD:** Yes, Your Honor, I'll try to
3 find them. They'll be in dead storage. I'll find
4 them again, yes, sir.

5 **THE COURT:** I'm sorry to put you to the extra
6 work.

7 **CHIEF OSWALD:** No problem, sir.

8 **THE COURT:** Give those to Mr. Madsen tomorrow
9 morning.

10 **CHIEF OSWALD:** Yes, sir.

11 **THE COURT:** Sequestration, is there any
12 objection to that?

13 **MR. WEDEKIND:** No, sir.

14 **CHIEF OSWALD:** Give them to you or --

15 **THE COURT:** No. I've already seen them and
16 ruled on them, so give them to Mr. Madsen. They
17 need to be maintained so that they're only used in
18 the confines of this --

19 **MR. MADSEN:** Judge, I don't know if there's
20 anything relevant in them or not.

21 **THE COURT:** Well, I'll let you make that call.
22 I didn't see anything in there that was particularly
23 one way or the other. But, in any event, at the end
24 of the trial, they need to be sealed back up and
25 we'll leave them as part of the record for any

1 Well, I have looked at these cases and the
2 rules that I'm aware of that would go to this issue.
3 And I will say, like they said in one of these
4 cases, the delay is troubling. But as far as -- the
5 length of the delay until the first trial, I think,
6 is really the most relevant point, but even to this
7 trial, it is a long time to try -- to wait to try a
8 case. It's -- one of the cases that was cited was a
9 12-year delay.

10 The reason for the delay -- I think these
11 things have to be evaluated sort of, I think one of
12 the cases referred to it as they have to be
13 evaluated together even though there's that mention
14 of the fourth prong of prejudice being something
15 that can be presumed.

16 But when you look at the length of the delay, I
17 think you obviously have to look at the reason for
18 the delay. And it seems to the Court that the bulk
19 of the delay has been occasioned by the fact that
20 we've had attorneys involved in the cases who had
21 been working on them maybe with expectations that
22 the case would not go to trial. There were --
23 mentioned some about requests for continuances.

24 The prosecutor that was handling the case
25 primarily was deployed overseas. There was a brief

1 part of the delay that would have been occasioned by
2 the fact that it just happened that the court
3 schedule had it during a two week window in which he
4 was having to report for duty. At a different time,
5 they assigned the case apparently to Mr. Stumbo
6 within the office after Mr. Wedekind was put on
7 notice about having to go to Afghanistan.

8 There was this issue about the attorneys
9 getting appointed, that three different judges dealt
10 with that and -- Judge Newman, Judge Russo and I
11 were dealing with different issues, but they all
12 seemed to be legitimate issues. And part of that
13 was attributed to the fact that Mr. Humphrey was
14 changing lawyers and then part of it was attributed
15 to the fact of, quite frankly, a very realistic
16 issue and very strong issue about whether Mr.
17 Humphrey was entitled to appointed counsel.

18 I think I leaned very strongly in favor of
19 making sure that he had competent counsel assisting
20 him because it appeared to be something that he
21 really needed and he was -- he was working and he
22 has a good job, but it seemed to me that he still
23 qualified for the public defender.

24 The assertion of the right, there's been no
25 motions for a speedy trial. The prejudice to the

1 defendant is the main prong that I think the Court
2 looks at, that's why I asked all of those questions
3 about what Day would have said, what Maye said and
4 what the SLED agents would have provided, the MAIT
5 team issue, the coroner being deceased and these
6 issues about the doctor and the nurses.

7 At this point, there just has not been a
8 sufficient demonstration in the Court's view that
9 there was a failure to record what was being
10 investigated early on. And it seems to me that
11 either this evidence is not going to be able to be
12 offered against the defendant or that it's stuff
13 that benefits him or that it doesn't really
14 prejudice him substantially.

15 Mr. Maye is still around. I have not heard
16 from him personally. There were photos that were
17 represented to me that were taken by the
18 Batesburg-Leesville Police Department at or near the
19 time of the incident.

20 This issue about the MAIT team I think is a
21 surprise to a lot of people in the courtroom because
22 -- Mr. Hubbard referred to this being an old
23 practice. Well, I'm an old judge and the MAIT team
24 didn't even exist for a large part of my tenure as a
25 judge, so I don't know when they changed their

1 practice.

2 I assume what they're saying is if they go out
3 there and they start investigating and SLED doesn't
4 show up or the FBI, then they keep on, but if SLED
5 or the FBI or somebody like that shows up, then they
6 back off and let them do it. Thankfully, they've
7 changed that practice because they're supposed to
8 have some degree of expertise that one would not
9 think that SLED would have in the field of accident
10 reconstruction of motor vehicles.

11 But in any event, I haven't had any
12 demonstration or any evidence that, from what has
13 been produced, the defense could not have had its
14 own investigation done to determine speed or there's
15 any real dispute about speed if one was in fact done
16 and it's just not being mentioned because of a lack
17 of the State's position being more harmful to the
18 defendant.

19 I don't know that that sentence came out right,
20 but, basically, what I'm saying is what's before me
21 does not indicate the defense has been deprived of
22 the opportunity to have a meaningful investigation
23 of the critical issues.

24 The coroner, all that stuff the coroner is
25 saying, now I don't know how that's coming in. The

1 issue that's precisely before me about where she got
2 that from is quite frankly the most troubling aspect
3 of this whole thing because I'm left to speculate as
4 to where she got that from. And this apparently was
5 circulated because it looks like the Attorney
6 General pulls his press release largely from what
7 the coroner's report was saying. Remarkably, the
8 State Newspaper seems to have complied with the
9 rules of professional conduct, but that's a
10 different issue for a different day. But in any
11 event, I don't find that to be a sufficient ground
12 to dismiss the charges.

13 The information about the medications and what
14 medications the purported victim may have been
15 taking at the time and her suffering from postpartum
16 depression and all of those sorts of things, there's
17 been no showing to me that the State -- I mean,
18 excuse me, the defense is unable to produce evidence
19 related to it or that that, in fact, was not
20 something that could have been obtained from medical
21 records or things that could be admissible through
22 some other source.

23 There was reference that the doctor is in North
24 Carolina. There's been no indication exactly what
25 steps have been taken to try to secure his or her

1 presence. And the nurses have no recollection of
2 what was done. I really don't know that they had
3 much of a recollection before.

4 Lexapro is a pretty standard -- I hear that
5 drug mentioned a great deal as far as being
6 diagnosed and Xanax is one that you hear even more
7 about. Xanax is, in the context that I normally
8 hear it, and I don't pretend to be a pharmacist or a
9 doctor or have any medical expertise, but Xanax
10 generally is a drug to calm people down and relax
11 them. It's only when it's -- I know it gives a
12 euphoric effect according to the people in drug
13 court who are in the treatment side, but the main
14 areas of abuse on Xanax come from mixing it with
15 alcohol that I hear about.

16 So I wish we had some information about what
17 was in her system when she was admitted to the
18 hospital. I don't know that they had any reason to
19 do toxicology. I don't know what blood they took,
20 but obviously once she was put in the hospital, I'm
21 sure they started giving her pain killers and things
22 to relax her like Valium and try to keep her out of
23 shock.

24 So I feel, at this point, that I'm compelled to
25 deny the motion related to the delay, the motion to

1 quash and the motion to dismiss. The reasons for
2 the delay seem to be acceptable. They don't seem to
3 be the product of any type of -- certainly no
4 intentional misconduct. It was related, as I said
5 earlier, primarily to the different involvement of
6 the attorneys.

7 And I don't know that I've covered this
8 prejudice to the defendant issue as sufficiently as
9 I would like to, but by the same token, I also
10 realize that I've said a lot of words. The critical
11 aspects related to this matter and being able to
12 defend the charge against it seem to be sufficiently
13 present that the Court feels it must deny the
14 motion.

15 I've already ruled on the pretrial publicity,
16 haven't I?

17 **MR. WEDEKIND:** Yes, sir.

18 **THE COURT:** I told the jury 11:00, which I was
19 -- do y'all have any other motions?

20 **MR. WEDEKIND:** No, sir.

21 **MR. MADSEN:** No, sir.

22 **THE COURT:** Do we need to get Mr. Maye in here
23 before --

24 **MR. WEDEKIND:** We can do that first thing in
25 the morning, sir. He's going to be here in the

1 morning at 9:00.

2 **THE COURT:** Are you all going to make him
3 available to Mr. Madsen or is that going to be an
4 issue?

5 **MR. WEDEKIND:** We already have.

6 **MR. MADSEN:** I've spoken with him.

7 **THE COURT:** Why don't y'all meet me at 10:00
8 and then if there are any issues we need to address,
9 we can put him on the stand and I can hear from him,
10 all right.

11 **MR. WEDEKIND:** Yes, sir.

12 **THE COURT:** Okay. Mr. Humphrey, remember all
13 of those admonitions now about staying out
14 overnight, make sure you're here at 10:00 or --
15 well, your lawyer might want you here sooner, so be
16 here whenever Mr. Madsen tells you to be here, no
17 later than 10:00. If you have some emergency, make
18 sure you let us know.

19 And I hope everybody has a pleasant evening.
20 I'll look to see y'all in the morning at 10:00 a.m.

21 (The proceedings were concluded for April
22 25, 2011.)

23 (The following proceedings were held on
24 April 26, 2011.)

25 (State's Exhibit Numbers 4 through 13,

1 photographs, marked for identification purposes.)

2 **THE COURT:** State ready for the jury?

3 **MR. WEDEKIND:** Yes, sir.

4 **THE COURT:** Defense ready for the jury?

5 **MR. MADSEN:** Yes, Your Honor.

6 **THE COURT:** Bring the jury in, please.

7 (The jury enters the courtroom at 11:00
8 a.m.)

9 **THE COURT:** Ladies and gentlemen, the first
10 order of business is that I have to have you placed
11 under the oath of a trial jury. I need you to stand
12 and raise your right hand. The clerk will
13 administer that oath.

14 (The jury was duly sworn by the Clerk of
15 Court at 11:02 a.m.)

16 **THE COURT:** All right. Ladies and gentlemen,
17 before we start into the trial, I'm going to give
18 you an explanation of how we generally operate court
19 as far as the jury is concerned so that you'll have
20 some basic information about how to plan your day.
21 Then I'm going to explain to you how the case will
22 begin procedurally. I won't go through the whole
23 thing, but I'll tell you how we'll get started. And
24 then I'm going to give you some instructions you
25 have to follow throughout the trial.

1 Normally, I would bring you in at 9:30 or 10:00
2 in the morning and normally we go until about one
3 o'clock and break for lunch. Generally, you're on
4 your own for lunch. And we typically give the jury
5 an hour to an hour and a half for lunch, so we
6 usually start back between 2:00, 2:30. And we
7 usually break for the day with the jury around 5:00
8 to 5:30.

9 Now, sometimes we have to vary that schedule
10 depending upon where we are in the case and whether
11 the witness has travel problems and things like
12 that. And once we give the case to the jury to
13 decide, we normally wait on the jury to decide it.
14 But you know as much as I know now about how your
15 day is likely to go as far as time.

16 The way the case will begin is that I will
17 first recognize the attorneys to make their opening
18 statements to you. In the opening statements, the
19 attorneys are not permitted to engage in what we
20 call argument. An opening statement is an
21 introduction, an outline, an overview, but it cannot
22 extend into argument. Once the opening statements
23 are finished, then I will call upon the Solicitor to
24 present his case.

25 The State brought this charge against Mr.

1 Humphrey and the State has the entire burden of
2 proof. The State has to prove every essential
3 element of the offense charged beyond a reasonable
4 doubt. Mr. Humphrey is presumed to be innocent. So
5 I will recognize the Solicitor to present evidence
6 in an attempt to meet that burden.

7 When the State has finished presenting its case
8 in chief, the Solicitor will inform me that the
9 State rests. At that point, whether you've been in
10 the courtroom just a few minutes or whether you've
11 been in here a good while, we have to stop. I have
12 to send you out of the courtroom, then I have to
13 discuss legal issues with the attorneys. When you
14 come back in after that point, I'll tell you where
15 we go from there, but, procedurally, that's how
16 we're going to get started.

17 Now, it's really important that you understand
18 some things. First, that oath that you just took
19 was one in which you've promised us that you're
20 going to decide this case based on the evidence and
21 the law. So you need to know where those things
22 come from:

23 As I mentioned to you yesterday, the law comes
24 from me. It's my job to decide what law applies to
25 the case and to tell it to you at the end of the

1 trial.

2 The evidence comes from the sworn testimony of
3 witnesses. Evidence can also come in the form of
4 exhibits. Now, an exhibit can be anything tangible
5 that's marked in the record. It can be a
6 photograph, a map, a chart, anything tangible.

7 If something is an exhibit, you will have it
8 with you in the jury room when you decide the case.
9 And the reason I'm telling you that is because it's
10 not unusual for an attorney to have something like a
11 small photograph and to show it to you from a
12 distance or hand something into the jury box and ask
13 you to circulate it around so that you're trying to
14 look at the thing that they want you to look at at
15 the same time that you're trying to pay attention to
16 what's going on from the witness stand. So just
17 realize that all of the exhibits are with you in the
18 jury room when you decide the case.

19 What the lawyers say is not evidence. I want
20 to you to pay attention to the attorneys because
21 they facilitate the introduction of the evidence,
22 but what comes out of their mouths is not evidence.
23 The evidence comes from the witnesses and the
24 exhibits.

25 Now, there is one exception to that rule about

1 what the lawyers saying not being evidence and if we
2 come upon it, I'll tell you about it; otherwise, I
3 won't burden you with it.

4 Now, it's also really important that you
5 understand that there are two judges in this
6 courtroom. I'm the judge of the law. I've already
7 told you that I have to tell you the law at the end
8 of the case. It's also my job to preside over the
9 trial, maintain order and rule on legal issues as
10 they arise.

11 You're the other judge. You're the only judge
12 of the facts. And it's important that you
13 understand that only you get to decide such things
14 as whether evidence is believable or not. And only
15 you get to decide what weight, if any, to put on
16 evidence. That's entirely your prerogative and I'm
17 not going to invade your province.

18 Now, to explain to you in -- take a few extra
19 minutes and explain to you how our roles differ,
20 none of us know going into a trial whether there's
21 going to be one objection or a 101 objections. We
22 have no way of knowing. These attorneys have taken
23 an oath, just like you and I have taken an oath, and
24 they have an obligation, if they feel that the other
25 side is trying to put something before the jury

1 that's not proper for the jury to consider, doesn't
2 fit within the rules, then they have an obligation
3 to stand up, raise an objection and ask me to rule
4 on it. And many times when that happens, I will
5 send you out of the courtroom.

6 The reason I send you out of the courtroom, the
7 primary reason, is because I can handle the matter
8 quicker and we can get you back in here and keep
9 moving. Don't worry about what we're doing out
10 here, don't think anybody's trying to hide anything
11 from you, just let me do my job. Don't worry about
12 my job, I'll do the best I can to do it.

13 When you come back in, I will advise you or if
14 I rule without sending you out, I'll say whether I
15 overrule the objection, which means that I do let it
16 come before you for you to consider, or whether I
17 sustain the objection. If I sustain it, then I
18 agree that it's not proper for the jury to consider
19 and you put that out of your mind.

20 But to explain to you, to focus in now on our
21 different roles, when I'm making those decisions, it
22 will never cross my mind to think is that thing
23 believable or not because that's not my job. It
24 won't cross my mind to consider whether there should
25 be any weight assigned to that particular piece of

1 evidence that's trying to be introduced because it's
2 not my job.

3 My job is to look with tunnel vision and see
4 does that thing fit within the rules for the jury to
5 consider. And if I think that it does, I let it
6 come before you and then you decide whether it's
7 believable or not and you decide what weight, if
8 any, it should have. So you understand that we have
9 differing roles and you're the only judges of the
10 facts.

11 Now, while you've promised us that you're going
12 to decide the case based on the evidence and the law
13 and you must do that, as I mentioned to you
14 yesterday, I'm not telling you to leave your common
15 sense at home. We want you to use your common
16 sense. We want you to use your sense of logic,
17 reason and your good judgment.

18 It just makes good common sense that you keep
19 an open mind about this case and you don't make up
20 your mind until you've heard all of the evidence and
21 you know what the law is that applies to the case.
22 So there's a rule that we insist upon that you
23 follow, and it's difficult to follow and I've
24 already mentioned it, but I have to repeat this one
25 again, and that is you are not to discuss this case

1 in any way among yourselves until I tell you to.

2 And you'll have no doubt about when that is.

3 Now, folks, that's hard to follow because you
4 14 people may feel you have little in common except
5 you all live in Lexington County and you all got
6 picked on this case, so the logical thing you're
7 going to want to talk about, if I send you out of
8 the courtroom, is what you just saw in the courtroom
9 or what you just heard in the courtroom and that's
10 just human nature. That's something, though, that
11 you have to resist the temptation to do and wait
12 until I tell you you can begin your deliberation and
13 then you can talk about it as much as you like and
14 we wait on you then. So, please, do not discuss the
15 case in any way among yourselves until I tell you
16 to.

17 Don't discuss it with anyone else. If anybody
18 attempts to contact you and discuss the case with
19 you, report it to me so that I can deal with it. So
20 don't talk to anybody else about this case in any
21 way until the case is completely over and you've
22 been discharged from this jury.

23 I remind you if there's any media coverage, get
24 away from it and report to me at the first
25 opportunity what you may have been exposed to

1 through the media.

2 Also, I'm not going to read that long -- well,
3 it's relatively short, but I'm not going to read to
4 you the explanation about independent investigation.
5 I've already explained that to you. Don't do any
6 independent investigation.

7 Now, the last thing I'm going to say before I
8 turn it over to the attorneys is thank you. I don't
9 have much of a personality and what little
10 personality I do have I have decided a long time ago
11 that it just seems to diminish it when I sit here
12 and repeatedly thank a jury for their service. You
13 all have other things to do and other places to be
14 and I know that. I promise you that I'll never
15 forget that.

16 I appreciate very much the fact that you're
17 here. It's very easy to find yourself in a dispute
18 like these folks are in. If you're ever in one of
19 these disputes, you'll be very grateful that 14
20 people like you came away from everything else they
21 had to do in their lives so that we can resolve our
22 disputes in a civil fashion and move on. So I thank
23 you.

24 The only promise I can make to you is this: If
25 you're waiting on us, we're working. We are never

1 going to be sitting out here goofing around, telling
2 jokes and drinking coffee while you're back there
3 waiting on us. If you're waiting, we're working. I
4 can't promise you there won't be hurry up and wait,
5 but I can promise you there will be work when the
6 wait is going on, all right.

7 So to honor my commitment to you, I'm going to
8 be quiet now. And I'm going to recognize the
9 Solicitor and the defense counsel for their opening
10 statements and I invite your close attention.

11 All right. Solicitor.

12 **MR. WEDEKIND:** Thank you, Your Honor.

13 OPENING STATEMENT

14 **MR. WEDEKIND:** It's all about Mike. Let me say
15 that again. This case is all about Mike. And by
16 that, I mean the defendant, Michael Humphrey.

17 I want you to watch all of the witnesses in
18 this case, take it in because it's very important.
19 This is a criminal matter. It's all about Mike,
20 Mike's desire to control the victim in this matter,
21 Megan Jackson. It's Mike's desire to get what he
22 wants because he's at heart a self-centered person.
23 It's always Mike first, last and always. And, in
24 this case, Megan Jackson paid the price for him to
25 get what he wanted on the night of October 17th --

1 or the early morning hours of October 17th, 2004.

2 And that brings us to the facts in this case, ladies
3 and gentlemen.

4 You're going to hear from several witnesses.
5 And each witness I want you to sit there and watch
6 them, watch them like a hawk, listen to everything
7 that they say and remember it's all about Mike.
8 Mike's desire, everything Mike does is for Mike
9 first and last.

10 You're going to hear from -- the first witness
11 is going to be a gentleman by the name of Mr. Maye
12 who lived across the street where this collision
13 occurred and where the ultimate injuries were
14 inflicted upon Ms. Megan Jackson. Mr. Maye, you're
15 going to hear, was asleep in his bed with his wife
16 and he heard a clunking noise. He got out of the
17 bed, didn't see anything, started to go back and
18 then his wife said he [sic] heard somebody calling
19 for help.

20 He did what any person would do, he went
21 outside and investigated. And sure enough he saw a
22 vehicle smashed up that apparently had hit a tree
23 and was sitting on Highway 1 right in front of his
24 home in Batesburg-Leesville here in Lexington
25 County. He then told his wife, There's been a

1 wreck, call 9-1-1.

2 And then you're going to hear from the second
3 witness in the case a young officer, Charles Thomas,
4 of the Batesburg-Leesville Police Department. He
5 was a rookie cop. He'd just started working there
6 and you're going to hear from his testimony.

7 But, again, it's all about Mike. Process what
8 you hear about the things that Michael was saying
9 and you're going to hear how Michael would say one
10 thing and then another. Remember it's all about
11 Mike.

12 The next witness you're going to hear from is
13 another officer that showed up, Officer VanPut. And
14 he heard the radio call, hey, this is -- there is a
15 wreck here, I need some kind of assistance, because
16 he was a new young officer, Officer Thomas, so a
17 more senior officer showed up. And you're going to
18 hear from his observations of what he saw, what he
19 heard, what he did. Again, it's all about Mike.

20 The next witnesses you're going to hear from
21 will be the doctor in the matter who had to
22 ultimately do the examination of what caused the
23 death of Megan Jackson because this is an
24 involuntary manslaughter case.

25 You're also going to hear from Chief Oswald.

1 You're going to hear from Lieutenant Clare. They
2 came out later on, started gathering the evidence,
3 preserving it, making photographs, taking exhibits
4 so that we will have something to present to you in
5 there..

6 You're also going to hear from an Officer
7 Emmitt Gilliam. Emmitt Gilliam met, along with
8 Lieutenant Clare at a later time, the defendant.
9 Mike came in, gave a statement to them. You're
10 going to hear about that. And, again, it's all
11 about Mike because he was giving that statement,
12 shading the facts to suit him to do what was best
13 for Mike, try and minimize any damage to him because
14 it's always Mike first, last and always.

15 Ladies and gentlemen, that's pretty much what
16 you're going to hear. You're also going to hear a
17 little bit from Lieutenant Day who's going to talk
18 about the speed that the vehicle hit the tree and
19 maybe talk about some of the angles of the
20 photographs and the functionality of the automobile,
21 but that's about it.

22 It's going to be a brief case. It's not going
23 to take a whole lot of time this week. It's not
24 going to be, as the Judge said, some California case
25 that you're going to be here for months and months

1 on, but pay attention. And when you do, just
2 process it, always Mike, always Mike's desire for
3 control, Mike's desire to get what he wanted and
4 ultimately Ms. Jackson had to pay that price. Thank
5 you for your attention.

6 **THE COURT:** Thank you.

7 Mr. Madsen, you're recognized for your opening
8 statement.

9 **MR. MADSEN:** May it please the Court.
10 Solicitor.

11 This case is over six and a half years old.
12 This incident date happened on October 17th of 2004.
13 This was a tragic, tragic accident. Nothing more,
14 nothing less than a tragic, tragic accident where a
15 lady lost her life. A tragic, tragic accident that
16 occurred over six and a half years ago.

17 Now, as the Judge has kind of told you, your
18 job is to decide the facts as they come from the
19 witness stand and you need to listen to those facts.
20 And there's going to be a lot of things that we
21 disagree about what you hear, but in the end, Mike
22 Humphries is charged with involuntary manslaughter
23 from that incident back on October 17th of 2004.
24 And the State alleges that he got -- or that he
25 engaged in a physical altercation with the victim,

1 Megan Jackson, leading to her falling from a moving
2 vehicle resulting in injuries that caused her death.

3 All we ask is that you hold them to their
4 burden of proof. That's all anyone can ask, hold
5 them to their burden of proof. As the Judge will
6 tell you, everyone is innocent until proven guilty
7 and that's not just any kind of, you know,
8 arbitrary, theoretical, ivory tower kind of legal
9 principal, it's very important.

10 See, the State has the entire burden of proof
11 in this case and that proof is beyond a reasonable
12 doubt. There is no higher burden of proof in the
13 law than beyond a reasonable doubt.

14 Some of you might have been on a civil case
15 where the burden of proof is a preponderance of the
16 evidence. This is the highest burden of proof that
17 is in the American judicial system. And all we ask
18 is that you listen to the evidence and hold them to
19 that burden of proof.

20 Mike doesn't have to prove his innocence. And
21 there's some good reasons for that. I mean, if you
22 just kind of think about it, someone says, oh, I saw
23 Rob Madsen at the movies on Saturday, I'm home alone
24 by myself, the wife and kids are gone somewhere, how
25 do I prove that I didn't do something? I can't

1 prove that I don't have a movie ticket. He doesn't
2 have to prove anything. The entire burden of proof
3 is on the State.

4 And you know what you're going to hear? You're
5 going to hear a lot of speculation, surmise,
6 conjecture and that's going to be their entire case.
7 Their entire case is going to be based on
8 speculation, surmise and conjecture.

9 And listen to what they say up on the stand,
10 but also, at the same time, we ask you just kind of
11 think about some of the things that they don't say,
12 that they don't do. Ask yourself, when this
13 happened on the 17th, where are the pictures from
14 that day? Where are the photographs? Where are the
15 measurements from that day? Where is the accident
16 reconstructionist that comes out that day? Where is
17 the Highway Patrol on that day? You're not going to
18 hear any of that because they weren't there and they
19 weren't called out that day.

20 So it's important to listen to what they have,
21 but also be thinking about what don't they have
22 because they have the burden of proof. Where is the
23 physical evidence from that day? Where are the
24 eyewitnesses? You're going to have none of that.
25 Speculation, surmise and conjecture.

1 You are going to hear about how Mike cooperated
2 with law enforcement, how that every time they asked
3 him to come in or to talk with him, he did it, how
4 he came in on October 17th and spoke with
5 Investigator Gilliam, how they wanted him back in on
6 the 19th and he came in and spoke with Lieutenant
7 Clare.

8 You're going to hear that when they tell him
9 they have an arrest warrant for him on October 22nd
10 of 2004, over six and a half years ago, he shows up
11 and he's there. Let's them photograph him. He
12 cooperated every single time that
13 Batesburg-Leesville needed or wanted him there.

14 As I said in the beginning, this is just a
15 tragic, tragic accident, nothing more, nothing less.
16 And once you hear the evidence that the State has,
17 and more importantly the lack of evidence that the
18 State has, I think the law would dictate that you
19 find Mike not guilty. Thank you.

20 **THE COURT:** Thank you, Mr. Madsen.

21 Call your first witness, Solicitor.

22 **MR. WEDEKIND:** Yes, sir. The State would call
23 Mr. William Maye.

24 ****

25 ****

1 WILLIAM MAYE,
2 having been duly sworn, testified as follows:

3 THE CLERK: If you'll have a seat over here.
4 State your name and spell your last, please, for the
5 record.

6 THE WITNESS: My name is William Maye, M-a-y-e.
7 I'm a lab technician, dental laboratory technician.
8 I run a dental laboratory in Saluda, South Carolina.

9 DIRECT EXAMINATION

10 BY MR. WEDEKIND:

11 Q No need to ask you to speak up. I think you've
12 got that down, Mr. Maye. Now, tell the jury, if you
13 would, where you resided back in October of 2004?

14 A In October of 2004, I lived on Highway Number 1
15 at the corner of Bedenbaugh Street and Highway 1.

16 Q And what town and county is that close to?

17 A That's in Batesburg-Leesville in Lexington
18 County.

19 Q And I want to ask you a couple questions about
20 some photographs here, but you said you were
21 residing -- where do you reside right now?

22 A Right now I live on [REDACTED] just
23 outside of Leesville.

24 Q Let me show you what's marked for
25 identification as State's I.D. Number 4. Do you

1 recognize that, sir?

2 **A** Yes, sir. This is aerial photo of
3 Batesburg-Leesville. Church Street...

4 **THE COURT:** You have to speak up.

5 **THE WITNESS:** I'm sorry. I was just saying I
6 have a problem reading these aerial photos sometime.
7 There's Bedenbaugh. My home was right here
8 (indicating).

9 BY MR. WEDEKIND:

10 **Q** Okay. So that is a picture of
11 Batesburg-Leesville. Is this how it appeared in
12 2004 to your recollection?

13 **A** To the best of my recollection, yes, sir.

14 **Q** And let me show you what's marked for
15 identification as State's I.D. Number 5. What is
16 that, sir?

17 **A** This is a blown up view of the same area. This
18 would be my home here (indicating). This was a
19 tennis court that belonged to my neighbor. This is
20 Highway 1. This was Bedenbaugh Street running here.

21 **Q** And let me show you what's marked for
22 identification as State's I.D. Number 6. Do you
23 recognize that?

24 **A** Yeah. This is Shealy Reality. This is Highway
25 1 and my home would be out of the picture just below

1 here.

2 Q And what are depicted in front of that --
3 what's that building right there?

4 A This is Shealy Reality. This is Highway 1.
5 This area has been developed since then. This is a
6 little drive-through, pecan trees along the front.
7 When the accident occurred, it hit this tree right
8 here.

9 Q Is that how it appeared in 2004 when you
10 witnessed this?

11 A Yes.

12 Q And is that also the case for State's I.D.
13 Number 4 and 5, as well as 6?

14 A Yes.

15 MR. WEDEKIND: Your Honor, at this time, the
16 State would move into evidence State's I.D. Number
17 4, 5 and 6.

18 THE COURT: Show the photos to counsel.

19 MR. MADSEN: Can I see them?

20 (Pause.)

21 MR. MADSEN: No objection, Your Honor.

22 THE COURT: Mark those in evidence, please,
23 Madame Court Reporter.

24 (State's Exhibit Numbers 4 through 6,
25 photographs, admitted into evidence.)

1 **MR. WEDEKIND:** Your Honor, if I may, I'd like
2 to publish these to the jury.

3 **THE COURT:** Yes, sir, you may.

4 **MR. WEDEKIND:** Thank you, Your Honor. Beg the
5 Court's indulgence for a moment.

6 (Pause.)

7 BY MR. WEDEKIND:

8 **Q** Mr. Maye, you can see this photograph, can't
9 you? This is State's Number 4 that I'm talking
10 about.

11 **A** Yes, sir.

12 **Q** And can you tell me what -- I'll point to it
13 with my finger here. This right here, that area
14 right there, what does that depict?

15 **A** That's the intersection of Highway Number 1,
16 Bedenbaugh Street.

17 **Q** And is this -- what road is this?

18 **A** That would be Highway Number 1.

19 **Q** And what is this right here?

20 **A** That would be Bedenbaugh Street.

21 **Q** Okay. And what is this?

22 **A** That would be the home I lived in at that time.

23 **Q** And that is what?

24 **A** That would be Shealy Reality.

25 **Q** Okay. And can you tell what street this is up

1 here?

2 A I believe that would be [REDACTED]

3 Q Okay. And State's Number 5, what is that right

4 there, sir?

5 A That was Shealy Reality.

6 Q And, again, what is this road?

7 A That is Highway Number 1.

8 Q Okay. And what is this road?

9 A That is Bedenbaugh Street.

10 Q And what is this object here?

11 A That was my home at that time.

12 Q And what are these objects right in front of

13 the Shealy Reality?

14 A Pecan trees, I believe, as far as the type of

15 tree.

16 Q And State's Number 6, what is that, sir?

17 A Again, that's Shealy Reality, Highway 1.

18 Q That's what?

19 A Highway Number 1, Columbia Avenue.

20 Q Same intersection?

21 A Yeah, Bedenbaugh, uh-huh.

22 Q And your house would be here?

23 A That's correct.

24 Q And what county is that in, sir?

25 A Lexington County.

1 Q Okay. Now, where exactly when you said --
2 well, let's go to the morning of October 17th, 2004.
3 Tell the jury, if you would, exactly what occurred
4 that morning.

5 A I believe that was a Sunday morning. Nancy and
6 I -- my wife and I were in bed asleep and I was
7 awakened by a loud sound. I got up and I walked
8 around the back of the house, which is where our
9 bedroom was, looked out a couple of windows, didn't
10 see anything and I went, crawled back in the bed.
11 And a few minutes later, my wife says, I hear
12 somebody hollering for help. And so I sat up again.
13 I said, Yeah, you do.

14 So I got up, walked to the front of the house
15 and looked out and there was a car that was sitting
16 in the road and the horn was going off. I told my
17 wife, I said, Looks like there's been a wreck. I
18 said, Give a call to 9-1-1, I'm going to go out and
19 see what I can do.

20 Q Okay. So you were sound asleep. What were the
21 lighting conditions at the time?

22 A It was dark, pitch black.

23 Q And you said you heard a disturbance that woke
24 you up from your slumber?

25 A Uh-huh.

1 Q And you said you didn't see anything, and what
2 else happened?

3 A Well, like I say, I walked around the house and
4 I heard a loud sound. I just assumed, I said, well,
5 it was a, you know, trash truck, something, I didn't
6 know. And I went back to bed and I laid there for a
7 minute, said, well, it's Sunday. And then my wife
8 said she heard somebody hollering for help.

9 Q So you said you saw a wreck, you walked out.
10 Where exactly was this wreck and what did you see
11 when you came out?

12 A The wreck was right there in front of my house
13 on the highway, between my house and Shealy Reality.
14 There was a pick-up truck sitting in the road.
15 There was a black male out and he was hollering,
16 Help me, help her.

17 And I'm going -- came on over to the truck and
18 on the other side of the truck from my home, there
19 was a young lady laying on the ground appeared to
20 have been injured from the wreck. I went over to
21 her. Like I said, he was distraught and she was
22 laying there and she had a head injury. I checked
23 her as best I could. I could see really no other
24 serious injuries at the time except the severe head
25 injury.

1 Q Now, you said you tried to help her. Did you
2 have any particular medical training in your
3 background?

4 A Yes, sir. It's been 30 years ago now, but I
5 was an EMT and a volunteer on the rescue squad in
6 North Carolina.

7 Q So you had a rough idea what needed to be done
8 and you attempted to do that?

9 A Yes, sir.

10 Q And did anyone else arrive on the scene while
11 you were trying to render what assistance you could?

12 A While I was trying to check with her, Officer
13 Thomas from the Batesburg Police Department came up.

14 Q And how would you describe Officer Thomas?

15 A Young black male.

16 Q And do you see the same individual that you
17 said you saw when you walked out and saw this wreck,
18 you said there was two individuals there, do you see
19 one of those persons here?

20 A Yes, sir, Mr. Humphrey there sitting at the
21 table.

22 Q Is that the same man that you saw?

23 A Yes, sir.

24 Q Did you hear him say anything while you were
25 walking up on the scene?

1 **A** The only things I got, you know, he was
2 hollering, Help me, help her. And I checked her. I
3 said, How did you get here? He says -- because he
4 didn't appear to be injured. He was just walking
5 around talking. He said, I was dropped off. And
6 I'm going, okay, whatever, and I went back to the
7 girl.

8 **Q** Do you remember how he was dressed at the time
9 when you saw him?

10 **A** Not really, no, sir. I don't think I paid any
11 attention to how he was dressed.

12 **Q** Do you remember how she was dressed, the lady
13 that you tried to help?

14 **A** No, sir, I don't.

15 **Q** Are you sure that the man that you pointed out
16 is the one you saw that morning?

17 **A** Yes, sir.

18 **Q** And you say it was what day of the week?

19 **A** It was Sunday morning.

20 **Q** Was there a lot of traffic going on at that
21 hour?

22 **A** No. There was nothing going on.

23 **Q** What were the lighting conditions?

24 **A** It was still dark. There was some light coming
25 from some street lamps, but that was it.

1 Q Did you make any -- well, can you describe the
2 vehicle that you saw that was wrecked on the road?

3 A Front end was caved in in the front.

4 Q Do you remember what type of vehicle it was?

5 A It was a pick-up truck, I think, green, if I'm
6 not mistaken.

7 Q Show you what's marked for identification as
8 State's Number 10. Does that appear to be the same
9 car that you saw?

10 A If not the same, it would be similar. Like I
11 say, it was just a green or dark colored pick-up.

12 Q Mr. Shealy, I'm going to give you a laser
13 pointer and ask you to pinpoint on this picture
14 exactly where you saw the truck and that individual.

15 A Like I said, the truck was sitting somewhere in
16 this area right there (indicating) in the road. I'm
17 sorry, it should have been in this area right here
18 (indicating).

19 Q And your home was where?

20 A It would be off this picture right in here
21 (indicating).

22 Q So when you came out, you saw the people
23 standing where, the male and the female?

24 A My front door, come out here and they were just
25 -- he was somewhere here. I didn't see her until I

1 got past the truck because she was on the opposite
2 side over here on the ground.

3 Q Okay.

4 MR. WEDEKIND: Thank you, sir. Would you
5 please answer any questions that Mr. Madsen may have
6 for you?

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. MADSEN:

10 Q How are you doing this morning, Mr. Maye?

11 A Doing well. Thank you.

12 Q Mr. Maye not Shealy, right?

13 A Yes.

14 Q The building was Shealy's Reality?

15 A That's correct.

16 Q You lived across the street. How long had you
17 lived there?

18 A I lived there for approximately 20 years.

19 Q And you heard something that kind of caused you
20 to get up, a big pow, kabam, something like that.
21 You get up, look out the back, don't see anything
22 and kind of lie down and think, oh, it must be just
23 a trash truck or something, correct?

24 A That would be correct.

25 Q Realize, once you're laying down there, it's

1 Sunday, there's no trash trucks going around at that
2 point in time, right?

3 A Yes.

4 Q Then your wife hears someone hollering, says
5 something to you and then you end up getting up and
6 going outside, correct?

7 A Get up, walked through the house and make a
8 little more thorough search than I did the first
9 time, yes, sir.

10 Q And, ultimately, you end up going outside,
11 correct?

12 A Yes, sir.

13 Q And you find Mike out there, Help me, help her,
14 correct?

15 A That would be correct.

16 Q And when you get out there, wasn't he
17 straddling or holding Megan?

18 A At one point, he was actually, and this was
19 after the policeman had arrived, he was sitting on
20 her, holding her down trying to get her to be still
21 or whatever. And I asked the officer, I said, If
22 you can, just take him away.

23 Like I said, the only injuries I could see were
24 the head injury, but you still worry about internal
25 injuries and the possibility -- I said, sitting on

1 her is not going to help. So I said, if he could
2 just take him away and let me work with her.

3 Q Right, because you had that previous --

4 A I did have previous training, yes, sir.

5 Q -- EMS experience. When you get out there,
6 he's hysterical, isn't he?

7 A Yes.

8 Q He's trying to gather people -- or trying to
9 basically call attention to get help?

10 A Yes.

11 Q And that's the yelling that apparently your
12 wife heard?

13 A That's correct.

14 Q Is he crying when you get out there?

15 A I don't know that he was crying, but he was
16 hollering and, you know, just very distraught, Help
17 me, help her. But I didn't notice any tears or --
18 it's not impossible, I just didn't see it.

19 Q And then, ultimately, when you see Ms. Jackson,
20 she's kind of in and out of consciousness, isn't
21 she?

22 A Yes.

23 Q And she is kind of struggling a little bit,
24 isn't she?

25 A She was rolling around some. I was trying to

1 get her to stay still and be still until I could
2 check and see how badly I thought she was injured.

3 Q And when he's there holding her, it's not like
4 he was trying to hurt her or anything like that?

5 A It did not appear that way to me, no.

6 Q You didn't hear or see anything prior to when
7 you heard the crash sound, did you?

8 A No.

9 MR. MADSEN: That's all of the questions I
10 have, Your Honor.

11 THE COURT: Thank you.

12 Redirect.

13 MR. WEDEKIND: No questions, sir.

14 THE COURT: Thank you, Mr. Maye. You may step
15 down.

16 Call your next witness, Solicitor.

17 MR. WEDEKIND: State calls Charles Thomas to
18 the stand.

19 THE COURT: Is he released?

20 MR. MADSEN: No objection.

21 MR. WEDEKIND: No objection, sir.

22 THE COURT: Mr. Maye, you're welcome to stay if
23 you like to stay. You're free to go if you wish to
24 go.

25 THE WITNESS: Thank you, sir.

1 CHARLES EDWARD THOMAS,
2 having been duly sworn, testified as follows:

3 THE CLERK: If you'll have a seat over here.
4 State your name, spell your last name for the
5 record.

6 THE WITNESS: Charles Edward Thomas. Thomas,
7 T-h-o-m-a-s.

8 DIRECT EXAMINATION

9 BY MR. WEDEKIND:

10 Q Mr. Thomas, tell the jury, if you would, who
11 you're employed by right now.

12 A Savannah River Site. I'm an inspector there.

13 Q And how long have you been working with
14 Savannah River Site?

15 A A month.

16 Q Okay. And before that, immediately before
17 working for Savannah River Site, where were you
18 working?

19 A I was an investigator at Wagner Police
20 Department in Aiken County.

21 Q And then back in 2004, particularly in October
22 2004, what were you doing for a job?

23 A I was a patrolman at Batesburg-Leesville Police
24 Department.

25 Q And was that your first job?

1 A Yes, sir.

2 Q So how long had you been working on the job as
3 a Batesburg-Leesville Police Officer in October,
4 particularly on the 17th of 2004?

5 A It was a couple of months.

6 Q So you were still relatively new to it?

7 A Yes, sir.

8 Q Okay. And where do you currently reside?

9 A Aiken, South Carolina.

10 Q And were you working a shift on the morning
11 hours of October 17th, 2004?

12 A Yes, sir.

13 Q Did you have an occasion to receive a dispatch
14 call?

15 A Yes, sir.

16 Q Tell the jury, if you would, what happened that
17 morning.

18 A It was around change of shift in the morning
19 and they -- we received a phone call, 9-1-1 call,
20 that there was an accident on Number 1 Highway in
21 the town of Batesburg-Leesville.

22 Q And what did you -- would you describe for them
23 what you saw when you first arrived on the scene,
24 you drove to it and respond to the call?

25 A Yes, sir. When I arrived on scene, there was a

1 -- first thing I saw was a white female laid on the
2 side of the road on her back. There was a black
3 male on top of her straddling her. It was another
4 witness that was standing around trying to assist in
5 any way that he could. And there was a black Ford
6 Ranger by the side of the road right next to the
7 victim or the lady that was in the car -- I mean,
8 that was out of the car.

9 Q Where was the car or the truck that you're
10 talking about, that black Ford Ranger, where was
11 that located?

12 A It was on the side of the road, half on, half
13 off of the roadway.

14 Q And when you say road, which road are we
15 talking about?

16 A Highway 1.

17 Q And was there an intersection nearby?

18 A Yes, sir. I believe it was Bedenbaugh and
19 Number 1.

20 Q And let me show you State's Number 6. What
21 does this depict, Officer?

22 A I believe that is the area where the accident
23 happened, the driveway.

24 Q I know it's kind of weak to see with the lights
25 up a bit. Let me show you it close up here and then

1 maybe we can reference it.

2 A Yes, sir. Bedenbaugh, that's Bedenbaugh,
3 Shealy Reality at the tree and where the car was
4 parked, where the car was resting.

5 Q Okay. Let me give you a laser pointer, just
6 press this button here.

7 A Okay.

8 Q All right. Would you show the jury Shealy
9 Reality?

10 A (Witness complies.)

11 Q And the -- Highway 1.

12 A (Witness complies.)

13 Q And you said there was an intersection with
14 Bedenbaugh?

15 A Yes, sir. That's Bedenbaugh to the left
16 (indicating).

17 Q And from there, you said you saw the pick-up
18 truck.. Where was that located?

19 A Yes, sir. I was coming -- I came from that
20 way, from Batesburg. The vehicle and the body were
21 about, approximately right there (indicating).

22 Q Okay. And what -- because you noticed, you
23 said there was a couple individuals there. Who were
24 they again?

25 A Mr. Humphrey and I believe the witness was Mr.

1 A Maye.

2 Q Now, you said -- what are those objects laying
3 in front of a house right there up on the side?

4 A That's a tree.

5 Q And there's a driveway right here. What is
6 this right there?

7 A That's another tree.

8 Q Okay. What is that?

9 A A tree.

10 Q Did you -- you said the truck was on Highway 1?

11 A Yes, sir.

12 Q What was the condition of the truck?

13 A The front end was bent in. The trunk -- I
14 mean, not trunk, the hood and the front fender were
15 bent in.

16 Q Okay.

17 **MR. WEDEKIND:** Your Honor, if I could ask the
18 officer to step down.

19 **THE COURT:** Sure. Just keep your voice up,
20 please.

21 (Witness leaves the witness stand.)

22 BY MR. WEDEKIND:

23 Q Officer Thomas, I'm going to ask you, if you
24 would, to just take this pen and draw out the
25 intersection of Highway 1 and Bedenbaugh?

1 **A** I think that's called Bedenbaugh also, that
2 road.

3 **Q** Okay. And show just a block of where Shealy
4 Reality is located.

5 **A** (Witness complies.)

6 **Q** Okay. Now, you said you saw the truck. Depict
7 how that was on Highway 1, where it was located.

8 **A** There was a driveway. I don't know what that
9 went to, I guess, probably a house there. It was a
10 tree.

11 **THE COURT:** He's standing between the jury and
12 the board.

13 **BY MR. WEDEKIND:**

14 **Q** Step a little bit to the side and step up as
15 you're drawing something.

16 **A** Okay. Well, that's a tree and the vehicle was
17 kind of like cornered like this (indicating). Part
18 of the truck was on the side of -- on the grass and
19 part was on the road.

20 **Q** Okay. And where -- did you notice anything in
21 the median of the street?

22 **A** Yes, sir. After we looked around and walked
23 the area --

24 **THE COURT:** Can y'all see what he's doing?

25 Y'all will either have to angle that board or

1 have him move.

2 BY MR. WEDEKIND:

3 Q You said you saw something in the median?

4 A Yes, sir. Probably about 30 to 40 feet that
5 way was a shoe. And we found, like, part of a watch
6 directly behind the vehicle.

7 Q Okay. And that was towards
8 Batesburg-Leesville?

9 A Yes, sir.

10 Q And which direction would be Saluda? If you
11 were trying to go through town to Highway 1 to get
12 to Saluda --

13 A I believe that would be going this way.

14 Q On Highway 1?

15 A On Highway 1? Because Saluda is the other way,
16 that way.

17 Q Okay. So Shealy's Barbecue in
18 Batesburg-Leesville is here?

19 A I'm sorry. It's been six years. Shealy's
20 Barbecue was that way. It was going to the left.

21 MR. WEDEKIND: All right. So, Your Honor, at
22 this time, we'd like to move this diagram into
23 evidence.

24 MR. MADSEN: No objection.

25 THE COURT: All right. Madame Court Reporter,

1 mark that in evidence, please.

2 (State's Exhibit Number 14, diagram, was
3 marked and admitted into evidence.)

4 BY R. WEDEKIND:

5 Q You can take your seat again. Thank you.

6 A (Witness resumes the witness stand.)

7 Q Now, when you came upon the scene, you said you
8 saw Mr. Humphrey; is that correct?

9 A Yes, sir.

10 Q Do you see him in the courtroom today?

11 A Yes, sir.

12 Q Would you describe him and point him out,
13 please?

14 A He's the tall gentleman right there in the
15 black suit at the defendant's table (indicating).

16 Q And when you came upon Mr. Humphrey, did he say
17 anything spontaneous to you?

18 A He was screaming -- while he was straddling
19 her, he was screaming, I'm sorry, baby. I'm sorry.
20 It's -- I'm sorry, baby. I'm sorry.

21 Q Okay. Words to that effect?

22 A Yes, sir.

23 Q And did he tell you how he got to that scene?

24 A Yes, sir.

25 Q What did he say?

1 **A** He said he was dropped off by his cousins.

2 **MR. MADSEN:** Your Honor, I have an objection
3 and a matter of law.

4 **THE COURT:** All right. Ladies and gentlemen, I
5 need to ask you to step in the jury room, please.
6 Don't discuss the case.

7 (The jury retires to the jury room.)

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

9 **MR. MADSEN:** Judge, you had made rulings
10 yesterday on statements. And my understanding from
11 the Court is you indicated that you found that it
12 was not admissible where Mr. Humphrey had been, not
13 admissible for him to indicate that she blew up on
14 him.

15 There was discussion between yourself and the
16 Solicitor as far as the introduction of the fact
17 that Officer Thomas received a ticket or a card or
18 something like that, but Your Honor ruled that those
19 statements clearly could not come in, that's what's
20 been elicited here. We would object to those and
21 move for a mistrial. I think that that certainly
22 runs afoul of the Court's order yesterday.

23 **MR. WEDEKIND:** Your Honor, all he said was he
24 was dropped off and --

25 **THE COURT:** He said he was dropped off by his

1 cousins.

2 **MR. WEDEKIND:** Yes, sir, and that's it. That's
3 what he said yesterday, that's what he said today.

4 I told him specifically not to mention that she
5 blew up. And I told him not to mention anything
6 about Club Revolutions unless it was the particular
7 act of getting a card handed from Mr. Humphrey
8 saying he was at Club Revolutions or he gave him a
9 card from Club Revolutions, but not to say he said
10 he was at Club Revolutions. But I'm not even going
11 to bring that up because that's going to come later.

12 **THE COURT:** Anything else?

13 **MR. MADSEN:** No, sir, Judge. I thought it was
14 just clear yesterday as to the parameters.

15 **THE COURT:** Yesterday in the in camera hearing,
16 my notes indicate that he had stated that the
17 defendant said that the defendant had come from a
18 club with his cousins, I wasn't sure, but I think
19 the cousins lived on Pond Branch Road, and then went
20 in his pocket and produced a ticket from the club.
21 I ruled that those statements were not admissible
22 nor were the statements about him getting home and
23 the victim blowing up on him.

24 In front of the jury, he said that he had been
25 dropped off by his cousins. The motion for a

1 mistrial is denied.

2 And the witness is instructed that you're not
3 to say anything else this man said. If you feel
4 like you have to say something that he said, you
5 turn to me and tell me that you need to address
6 something, all right?

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

8 **THE COURT:** Anything else?

9 **MR. MADSEN:** Judge, we would move for that to
10 be stricken from the record.

11 **THE COURT:** Do you want to be heard, Solicitor?

12 **MR. WEDEKIND:** Your Honor, again, we didn't
13 mention anything about Club Revolutions or that she
14 blew up on him. I think it's cumulative to the
15 facts that's -- and the first witness mentioned the
16 same thing. It just corroborates what exactly the
17 jury heard that he said in the presence of everyone.

18 **THE COURT:** Well, it is cumulative. And I
19 understand the corroboration. That really in my
20 view is the problem because the reason for my ruling
21 was I could not tell if these were in response to
22 questions by police or the setting in which they
23 were made. I'm having to sort of extrapolate
24 things.

25 Do you want a curative instruction to the jury

1 telling them to disregard that?

2 **MR. MADSEN:** Yes, sir.

3 **THE COURT:** Okay. Anything else?

4 **MR. WEDEKIND:** No, sir.

5 **THE COURT:** Okay. Bring the jury in, please.

6 (The jury returns to the courtroom.)

7 **THE COURT:** Ladies and gentlemen, before you
8 went out, there was a statement made by the witness
9 that Mr. Humphrey had indicated he was dropped off
10 by his cousins. I am instructing you that you must
11 completely disregard that alleged statement. You
12 have to put it out of your mind, do not consider it
13 in any way whatsoever against the defendant. It's
14 not admissible.

15 All right. You may continue, Solicitor.

16 **MR. WEDEKIND:** Your Honor, may we approach for
17 a moment?

18 **THE COURT:** Sure.

19 (Whereupon, a bench conference was held off
20 the record, in the presence of the jury, but out of
21 the hearing of the jury.)

22 BY MR. WEDEKIND:

23 **Q** Officer Thomas, when you came up there, do you
24 remember anything distinctive about your
25 observations and your senses as they pertain to Mr.

1 Humphrey?

2 **A** Yes, sir. When I tried to get a closer look at
3 her, because he was still on top of her, I smelled a
4 strong smell of alcohol on him and he was very, just
5 very irate and panicked.

6 **Q** Can you describe what kind of clothing he was
7 wearing?

8 **A** It was a red sweater. I don't remember him
9 having any shoes on and I don't recall the pants.

10 **Q** Now, you said you saw a vehicle. I'm going to
11 show you some photographs here. Let me show you
12 what's marked for identification as State's I.D.
13 Number 7, State's I.D. Number 10 and State's I.D.
14 Number 12.

15 **A** Yes, sir.

16 **Q** Do you recognize those three photographs, sir?

17 **A** Yes, sir. It's the vehicle that was on the
18 side of the road that day.

19 **Q** And that's the truck that we're talking about?

20 **A** Yes, sir.

21 **Q** Do those photos fairly and accurately depict
22 the condition of the vehicle, other than the
23 location, as you saw it the morning of October 17th,
24 2004?

25 **A** Yes, sir.

1 **Q** And that's the same Ford Ranger Pick-up Truck
2 that you saw?

3 **A** Yes, sir.

4 **MR. WEDEKIND:** Your Honor, at this time, the
5 State would move into evidence State's I.D. Number
6 7, State's I.D. Number 10 and State's Number 12.

7 **THE COURT:** Subject to previous objection?

8 **MR. MADSEN:** No objection.

9 **THE COURT:** Do you want to preserve the
10 previous objection?

11 **MR. MADSEN:** Yes, Your Honor.

12 **THE COURT:** Subject to previous objection, mark
13 those in evidence, please, ma'am.

14 (State's Exhibit Numbers 7, 10 and 12,
15 photographs, admitted into evidence.)

16 **MR. WEDEKIND:** Please answer any questions that
17 Mr. Madsen may have for you.

18 **THE COURT:** Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. MADSEN:

21 **Q** Do you recall exactly, Officer Thomas, what
22 time you were dispatched?

23 **A** No, sir, not offhand.

24 **Q** Actually, let me back up. You work now at SRS?

25 **A** Yes, sir.

1 Q What do you do out there?

2 A Safety inspector.

3 Q So not in the law enforcement capacity out
4 there --

5 A No, sir.

6 Q -- something different?

7 A Yes, sir.

8 Q And so were you coming on shift or getting off
9 of shift?

10 A I was coming onto shift.

11 Q And when you got dispatched out to this
12 accident, how long did it take you to get there?

13 A It was a straight drive across town, so a
14 couple of minutes.

15 Q Do you know where you were coming from?

16 A Yes, sir.

17 Q Where were you coming from?

18 A The Batesburg-Leesville Police Department.

19 Q And, ultimately, I guess, if this is -- my
20 understanding is that's Shealy Reality right there?

21 A Yes, sir.

22 Q And then that's Bedenbaugh?

23 A Yes, sir.

24 Q And so Batesburg Police Department would be
25 this way (indicating)?

- 1 A No, sir.
- 2 Q So it would be down this way?
- 3 A Yes, sir.
- 4 Q So Bedenbaugh's on the Leesville side of Shealy
5 Reality?
- 6 A Yes, sir, to my recollection.
- 7 Q Are you sure about that?
- 8 A It's been a while.
- 9 Q Six and a half years?
- 10 A No. It's been four years since I worked there.
- 11 Q Four years since you worked at Batesburg?
- 12 A That's a lot of...
- 13 Q Well, was there anyone else in your vehicle
14 with you when you got dispatched, any other law
15 enforcement officers?
- 16 A No, sir.
- 17 Q And when you arrived, were there any other law
18 enforcement officers there?
- 19 A No, sir.
- 20 Q And so when you arrived, you see a white male
21 and a black male?
- 22 A Yes, sir.
- 23 Q And the black male's Mike?
- 24 A Yes, sir.
- 25 Q And the white male ends up being Mr. Maye?

1 A Yes, sir.

2 Q And then you also see Ms. Jackson on the
3 ground, correct?

4 A Yes, sir.

5 Q And so while you're out there, does any other
6 law enforcement arrive?

7 A While I'm out there, yes, sir.

8 Q Okay. Who ends up arriving first while you're
9 out there?

10 A I believe it was Nicolas VanPut, I think.

11 Q Anyone else besides him?

12 A Yes, sir. It was change of shift, so it was
13 several officers around. I'm not -- I can't
14 remember exactly who all it was.

15 Q How about the chief, does he come out there?

16 A I have no -- I don't exactly remember. I know
17 later on that day, he did.

18 Q Okay. So he comes out there while you're still
19 on the scene?

20 A Not that I -- I know later on that day, we met
21 up there, but not -- I don't recall him being out
22 there.

23 Q Do you remember testifying in a previous
24 hearing when I asked you, How about the chief, did
25 he ever show up, and you said, I think so?

1 A Yeah. He showed up later on that afternoon
2 because it goes in a chain of command, you know,
3 corporal, sergeant.

4 Q How about Lieutenant Clare, was he out there?

5 A I remember him being out there some time that
6 day. He does show up some time that day.

7 Q How about any EMS, do they end up coming out
8 there?

9 A Yes, sir.

10 Q Was there one crew, two crews, multiple crews?

11 A I do not recall. I don't recall about how many
12 crews there were.

13 Q While you're out there, do you take any
14 photographs?

15 A Not me, sir.

16 Q Does -- do you see anyone take any photographs
17 while you're out there?

18 A I really don't recall. It was my first
19 accident scene I had been on and there was a lot
20 going through my -- first body on the side of the
21 road. It's one of those things that -- injury and
22 accident you see in your career and I don't
23 remember. There was a lot going on through my head.

24 Q Do you take any measurements when you're out
25 there?

1 A I wasn't trained in how to do that, so, no.

2 Q So the answer's, no, that you don't take any
3 measurements?

4 A No, sir.

5 Q Do you see anyone else take any measurements
6 while you're out there?

7 A No, sir, not that I recall.

8 Q How about diagrams? You did the diagram here
9 today. Do you do a diagram while your out there?

10 A Yes, sir.

11 Q That day you did one?

12 A It's a TR-310.

13 Q That's part of the traffic collision report,
14 correct?

15 A Yes, sir.

16 Q While you're out there, do you interview
17 anyone?

18 A Not interview, just once you get on the scene,
19 you ask the question to see who was involved in the
20 accident and just the normal questions.

21 Q But as far as any witnesses or that, you don't
22 interview anyone?

23 A As far as asking what happened to Mr. Maye and
24 Mr. Humphries [sic], no, sir.

25 Q How about while you're out there, does SLED end

1 up coming out there, South Carolina Law Enforcement
2 Division?

3 A I don't recall. I really don't. I don't think
4 so.

5 Q How about anything from Batesburg-Leesville
6 crime scene?

7 A I don't know. At that time when you're a
8 patrolman, you're low level, so you do the running
9 around. So I don't know what happened at
10 maintaining the scene. I just not -- it wasn't me
11 in my line of duties then.

12 Q Sure, but while you're out there, you know who
13 works the crime scene part of Batesburg-Leesville --

14 MR. WEDEKIND: Objection, Your Honor. It's
15 asked and answered. He's answered that he did not
16 have any recollection of those persons being there.

17 THE COURT: Overruled. He's on cross.

18 Go ahead.

19 BY MR. MADSEN:

20 Q You know who dealt with crime scenes within
21 your department even though you're new, correct?

22 A Yes, sir, but every -- I mean, a lot of people
23 -- different levels of crime scene were different
24 people's responsibilities.

25 Q How about Highway Patrol? While you're out

1 there on the 17th, do you ever see Highway Patrol
2 come out there?

3 A I do not recall, sir.

4 Q How about the MAIT team portion of the Highway
5 Patrol that does accident reconstruction, are they
6 out there on the 17th? Do you see them?

7 A I don't recall.

8 Q How about -- Batesburg-Leesville had a
9 detective or an investigator at that point in time,
10 I think, Detective Gilliam. Was he out there that
11 morning?

12 A He was around some time that morning. I don't
13 remember if he came to the scene, though.

14 Q And so when you get out there, you see Mike and
15 he's real panicked?

16 A Yes, sir.

17 Q He's on top straddling her?

18 A Yes, sir.

19 Q He's crying, asking for help?

20 A Talking to her, saying, I'm sorry, baby.
21 That's what I heard.

22 Q And that's all you heard?

23 A As far as I remember.

24 Q Do you remember testifying previously that
25 there was another white male walking around the

1 scene. It was a black male on top of her straddling
2 her, crying and asking us for help and talking to
3 her saying, wake up, baby, I'm sorry, baby. He
4 asked me for help, get some help here, get an
5 ambulance here?

6 A Can I see that?

7 Q Do you remember previously testifying to that?

8 A Okay. Yes.

9 Q Do you end up collecting any evidence while
10 you're out there?

11 A I found some evidence, but I didn't help
12 collect it.

13 Q And so at some point in time when EMS ends up
14 showing up, you kind of end up helping to restrain
15 Megan, don't you?

16 A Yes, briefly.

17 Q You describe her as kind of delirious?

18 A Yes, sir.

19 Q And you did, I guess, what you called a -- was
20 it a TR-310?

21 A Yeah. I was being trained on a TR-310.

22 Q That's basically your uniform or your regular
23 traffic collision report form, correct?

24 A Yes, sir.

25 Q And this is the one that you did?

1 A Yes, sir.

2 Q And in this, there's an area there where you
3 designate Ms. Jackson as the driver, correct?

4 A Yes, sir.

5 Q And you indicate under whether or not she
6 contributed to the collision, you have a yes circled
7 there, correct?

8 A Yes, sir.

9 Q While you're out there that early morning, you
10 never end up placing Mike under arrest, do you?

11 A No, sir.

12 Q You're a certified officer at the time?

13 A Yes.

14 Q You understand that in a CDV type of situation,
15 that a law does require you to make an arrest if you
16 see anything and, yet, you don't make an arrest
17 there, do you?

18 **THE WITNESS:** Your Honor?

19 **THE COURT:** Sir?

20 **THE WITNESS:** He told me on the scene, how do I
21 answer that?

22 **THE COURT:** Ladies and gentlemen, I need you to
23 step in the jury room. Don't discuss the case.

24 (The jury retires to the jury room.)

25 **THE COURT:** Do you need a break?

1 **DEFENDANT:** Yes.

2 **THE COURT:** We'll be in recess for about ten
3 minutes.

4 You can step down, but you can't discuss your
5 testimony with anybody.

6 **THE WITNESS:** Yes, sir.

7 (Brief Recess.)

8 **THE COURT:** What did you need to tell me, sir?

9 **THE WITNESS:** Yes, sir. When you're on a
10 traffic accident, the first thing you do is ask who
11 was in the car and he told me he wasn't there. So
12 how do I answer from then on?

13 **MR. MADSEN:** Judge, I can make it easy. I'll
14 just withdraw the question.

15 **MR. WEDEKIND:** Your Honor, I think the rule of
16 completeness, and the question was asked, he's
17 opened the door, I think he has to now answer it.

18 We stayed within the confines of the rule and
19 we accepted the Court's keeping it out, but -- or
20 telling him to disregard it, but now he's hit him
21 with the transcript. He's trying to make it look
22 like this officer -- he's been very earnest and
23 trying to be forthright and he's trying to make it
24 look like he's withholding facts. And Mr. Madsen is
25 trying to use your ruling as a club to imply that

1 this officer is being dishonest or withholding
2 information.

3 I think under the Rules of Evidence, under Rule
4 106, it's a rule of completeness. We get to put in
5 that transcript about what he said in its entirety,
6 Mr. Madsen just simply opened that door. And I
7 think we also get to ask him the question of did he
8 tell you where or how he got to that scene again.

9 Had Mr. Madsen just left it alone, it would
10 have been fine, but now he's trying to use it as a
11 club against this witness and that's not the case.
12 He's not trying to be deceptive, he's just being
13 restrictive.

14 **THE COURT:** Mr. Madsen, do you have anything
15 else?

16 **MR. MADSEN:** Judge, I think my last -- or I had
17 asked him if he placed him under arrest. And then
18 my last question dealt with situations of CDV, which
19 he didn't end up answering that question. I think
20 he turned to the Court and Your Honor sent the jury
21 out and I think Mr. Wedekind objected kind of all at
22 the same time. So I don't think that -- I think
23 Mr. Wedekind might be talking about something prior
24 to that. I don't think that that applies in and of
25 itself, but I'll withdraw that question on the CDV.

1 **THE COURT:** Anything else?

2 **MR. WEDEKIND:** No, sir.

3 **THE COURT:** I was concerned about an earlier
4 question about if anybody -- it was something
5 roughly equivalent to did anybody say anything out
6 there. I was concerned at that point that the door
7 was being opened. The question that was asked of
8 the witness was related to criminal domestic
9 violence and that line of questioning apparently is
10 being withdrawn.

11 As far as the completeness issue, I'd have to
12 see the context of the transcript, but I don't know
13 how I can determine that you go into all of those
14 other things that -- where he had come from and that
15 sort of thing.

16 **MR. WEDEKIND:** Your Honor, all we were seeking
17 is I was going to wait for the end of his
18 cross-examination and say -- suggest that -- ask for
19 this in camera hearing that he's opened that door
20 and I guess I'm making that motion now.

21 He's opened that door by saying what -- did he
22 make any statements, and then he's tying Officer
23 Thomas' hands. He lived within the bounds of what
24 the Court was saying. But Mr. Madsen asked that
25 question a couple of minutes before we got to the

1 immediate one. I was going to say he's opened the
2 door and I was going to get the Court's permission
3 to ask him that question. And he said -- and the
4 one was dropped off by his cousins.

5 **MR. MADSEN:** Judge, I think the context that
6 he's talking about is when I spoke -- or was talking
7 to Officer Thomas, he indicated when he got there,
8 which they drew out, that he was saying, I'm sorry,
9 baby, and that's it.

10 He had previously testified at the previous
11 trial additional things other than that in regards
12 to that and I think I am certainly allowed to
13 impeach him on a prior inconsistent statement, which
14 I followed the rules and showed him that. He
15 admitted the statement, so obviously it doesn't get
16 to be introduced, but he admitted to that prior
17 inconsistent statement within that limited area. I
18 certainly don't think that that opens up the door
19 for anything else.

20 **THE COURT:** Anything else?

21 **MR. WEDEKIND:** It's called the rule of
22 completeness because it's supposed to be complete
23 not some little sharp innuendo that's using the
24 Court's ruling against him. And, also, Mr. Madsen
25 asked him the question, he said, Did he say any

1 statements? And he hesitated and didn't answer it
2 directly, but I think Mr. Madsen opened the door
3 when he said, Did he make any statements?

4 And that's all we want is the, he said he was
5 dropped off by his cousins, just -- and it's
6 cumulative to what was already testified by Mr.
7 Maye. Now, it makes -- now, the situation makes it
8 look like the jury has to disregard what's validly
9 in from Mr. Maye and also what's in from Mr. Thomas
10 now.

11 **THE COURT:** I didn't rule that.

12 **MR. WEDEKIND:** Well, I think the implication is
13 there, Your Honor, that's why I was asking for the
14 curative instruction on top of the curative
15 instruction because you said, Disregard any comments
16 about -- it wasn't specific disregard Officer
17 Thomas' comments about being there, you just said,
18 Disregard any comments about arriving at the scene.
19 And I think that possibly might plant the seed in a
20 couple of jurors' heads that any comments that Mr.
21 Maye may have said also have to be disregarded.

22 **THE COURT:** Well, when you get to closing
23 argument, you can make sure they don't think that
24 way.

25 I didn't say that, I don't believe. I said,

1 This witness.

2 MR. WEDEKIND: Okay, sir.

3 THE COURT: I agree with you that I said they
4 had to disregard it. The reason you are in this box
5 is because during the in camera hearings before, he
6 couldn't say what happened.

7 MR. WEDEKIND: Yes, sir.

8 THE COURT: I got to play with the cards I'm
9 dealt just like you all do. If he could have come
10 up here and y'all tried this case a couple of years
11 after it happened and he had a more vivid memory of
12 it, we could go with it fine, but you wait six and a
13 half and seven years and try a case, this is what
14 happens. I'm sorry, that's where we are. I've got
15 to rule best I can and it's certainly not an ideal
16 situation.

17 I don't understand Rule 106 the same way. It's
18 a completeness issue, sure, but it doesn't mean that
19 you get to go into other areas that the Court has
20 ruled to be inadmissible.

21 The opening the door, I've already expressed to
22 you I had some concerns about one question that was
23 phrased that seemed to ask about other statements
24 that were made. And the question is whether I let
25 that open the door to let all these other things in.

1 And the fact that it bolsters and upholds what Mr.
2 Maye said is a big part of the problem as you're
3 sitting up here trying to be neutral and detached.
4 Now, if I were sitting in your seat, I'd be arguing
5 just like you're arguing.

6 **MR. WEDEKIND:** Yes, sir.

7 **THE COURT:** The ruling of the Court whether --
8 I just have to make a ruling and move on. The
9 ruling of the Court is the door's not been opened.
10 The question's been withdrawn and we'll go forward
11 from there.

12 Bring the jury in.

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right. Ladies and gentlemen,
15 the last question was withdrawn.

16 Do you have any other questions of the witness?

17 **MR. MADSEN:** Just a couple, Your Honor.

18 BY MR. MADSEN:

19 **Q** The shoe that you end up seeing in the road is
20 that the right or the left shoe?

21 **A** I don't recall. I just remember it being like
22 a Croc type -- white Croc.

23 **Q** Like one of those slip on, kind of slip off
24 type of shoes?

25 **A** Yes, sir.

1 Q And then Ms. Jackson is transported by EMS,
2 correct?

3 A Yes, sir.

4 Q And Mr. Humphries ends up being transported to
5 a different hospital, doesn't he?

6 A Yes.

7 MR. MADSEN: That's all the questions I have.

8 THE COURT: Redirect.

9 REDIRECT EXAMINATION

10 BY MR. WEDEKIND:

11 Q Officer Thomas, is there any doubt about what
12 you saw at around six o'clock in the morning on
13 October 17th?

14 A No, sir.

15 Q Is there any doubt that you saw Mr. Humphrey
16 there?

17 A No, sir.

18 Q Is there any doubt that you saw --

19 MR. MADSEN: Objection to leading, Judge.

20 THE COURT: Try not to lead, Mr. Wedekind.

21 BY MR. WEDEKIND:

22 Q Tell the jury who you saw at that scene.

23 A I was on Number 1 and Bedenbaugh, I saw Ms.
24 Jackson laying on top of the ground -- I mean, laid
25 on the ground on her back with Mr. Humphries on top

1 of her. It was a damaged vehicle next to them. And
2 that's what I saw. It was the first time I seen
3 anything like that. I was a brand new police
4 officer and it kind of sticks in your mind the
5 physical parts of it of an incident like that.

6 Q Did anyone smell like alcohol?

7 A Yes, sir.

8 Q Who was that?

9 A Mr. Humphries.

10 Q Were you the junior man there?

11 A The lowest man on the totem pole.

12 Q At that time, did you know anything much of on
13 who was SLED, who was Highway Patrol or did you just
14 know what?

15 A Uniforms, I didn't know exactly how it all fit
16 together. I was learning that, you know, brand new.

17 MR. WEDEKIND: Okay. Thank you. No further
18 questions.

19 THE COURT: Recross.

20 MR. MADSEN: Nothing, Your Honor.

21 THE COURT: Thank you, sir. You may step down.
22 Do you have a 15-minute witness?

23 MR. WEDEKIND: Maybe a little longer, sir.

24 THE COURT: Is this a good time to break for
25 lunch?

1 **MR. WEDEKIND:** Yes, sir. I think it will be a
2 good time for a break.

3 **THE COURT:** Does that suit y'all?

4 **MR. MADSEN:** Yes, sir.

5 **THE COURT:** Okay. Folks, we're coming up on a
6 lunch break, so we'll just go ahead and take that
7 now.

8 **MR. WEDEKIND:** Can he be released, sir?

9 **MR. MADSEN:** No objection.

10 **THE COURT:** Mr. Thomas, you're released from
11 your subpoena. If you want to leave, you're free to
12 leave. Thank you.

13 **MR. WEDEKIND:** Thank you, sir.

14 **THE COURT:** Let's just say be back at two
15 o'clock, all right. I need you back in the jury
16 room, please, at two o'clock. Remember all of those
17 admonitions. I hope you have a pleasant lunch.
18 Just follow the bailiff, please.

19 (The jury was excused for lunch.)

20 **THE COURT:** Where are the sequestered
21 witnesses? Are they sitting in the hall?

22 **OFFICER:** I'll bring them toward this way, sir.

23 **THE COURT:** If you wouldn't mind, just kind of
24 get them away from where the jury would be.

25 All right. Y'all be careful as you leave that

1 you don't have any contact with the jurors. And
2 it's best if you just wait a few minutes and let
3 them clear out. Two o'clock. Thank you.

4 (Whereupon, there was a luncheon recess.)

5 **THE COURT:** State ready?

6 **MR. WEDEKIND:** State's ready.

7 **THE COURT:** Defense?

8 **MR. MADSEN:** Yes, Your Honor.

9 (The jury returns to the courtroom.)

10 **THE COURT:** Call your next witness.

11 **MR. WEDEKIND:** State would call Corporal

12 Nicolas VanPut.

13 NICOLAS VANPUT,

14 having been duly sworn, testified as follows:

15 **THE CLERK:** If you'll have a seat here. State
16 your name, spelling your last, please, for the
17 record.

18 **THE WITNESS:** My name is Nicolas VanPut. Last
19 name VanPut is V-a-n-P-u-t.

20 DIRECT EXAMINATION

21 BY MR. WEDEKIND:

22 **Q** Corporal VanPut, would you please tell the jury
23 who you're currently employed by?

24 **A** I'll give you a little history of myself. I'm
25 51 years old, a family man. I've worked with West

1 Columbia DPS, was in the military four years active,
2 12 years inactive with the National Guard. I'm
3 currently employed with the Town of Johnston, County
4 of Edgefield, as a corporal supervisor. And at the
5 time of this incident, I was employed with the Town
6 of Batesburg-Leesville as a supervisor and a
7 corporal. And I was employed there for seven good
8 years.

9 Q Now, specifically, on October 17th of 2004, who
10 were you working for at that time?

11 A The town of Batesburg-Leesville.

12 Q And were you working a shift on that date at
13 about six o'clock in the morning?

14 A Yes, sir. The incident occurred right at shift
15 change and my shift was the shift that was coming
16 on.

17 Q And tell the jury what you observed and how you
18 got to be called to the scene on that day.

19 A About 6:00 in the morning on the 17th of
20 October, it was still dark. And like I said, it was
21 during shift change. We had received, I believe
22 through dispatch, there was an accident on U.S. 1
23 near Bedenbaugh. I responded to that call. The
24 officers that were working with me on duty was an
25 Officer Thomas and Officer Shuler. I was driving

1 unit 20. It was a white in color Impala.

2 By the time I arrived at the scene, I parked my
3 vehicle behind the, I believe, it was a Ranger,
4 green in color, pick-up truck that had collided with
5 a big tree. And the way it looked, when the truck
6 hit the tree, it bounced off the tree and rolled
7 back on the street.

8 At that time, I just observed what was going
9 on. I saw the defendant, who was a black male, and
10 he's dressed very nice, suit, red shirt and tie, he
11 was comforting a woman, a white female who was
12 dressed in, it appeared to be, some type of medical
13 outfit, scrubs. I think she was in a light colored
14 scrubs. I can't remember the pants exactly. She
15 had one Croc shoe on.

16 At that time, I did notice also there was a
17 watch and a shoe at a distance from the truck and --

18 Q What direction were those objects located?

19 A Both items were behind the truck. I'm going to
20 take a guess, about 30, 40 feet from the truck.

21 Q And where were they actually lying on the road
22 surface?

23 A Well, they were -- about in the median of the
24 road surface.

25 Q And let me interrupt one thing. You described

1 the defendant, Mr. Humphrey, and you talked about
2 his clothing. What was he wearing on the clothing
3 when you saw him on that day not today?

4 **A** The day in question he was wearing a red fleece
5 type, I believe, looked like a pajama shirt, tan in
6 color pants, could be jamas [sic], and no shoes.
7 When I saw him, he was upset, hysterical and he was
8 comforting the victim, Ms. Jackson, in his arms.

9 **Q** And did you take any action upon that scene or
10 did you leave and go somewhere else?

11 **A** At that time, it was brief. He had made
12 mention about -- he made comments that he was
13 waiting -- that some friends had dropped him off at
14 first.

15 **MR. MADSEN:** Judge, I've got a matter of law.

16 **THE COURT:** All right. Ladies and gentlemen,
17 please step in the jury room. Don't discuss the
18 case.

19 (The jury retires to the jury room.)

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

21 **MR. MADSEN:** Judge, I would object. We did a
22 Jackson v. Denno hearing yesterday. The corporal
23 was specifically asked about statements attributed
24 to my client. His only mention was the fact about
25 the children being at home and that was it. The

1 Solicitor asked him if there was anything else, he
2 said, no.

3 Ultimately, the Court ruled that those
4 statements could come in, in fact, I believe looking
5 down and asking if I had any objections to those
6 coming in. And I think the Court might have even
7 commented that those statements helped me.

8 Here is something that is entirely different
9 that has not come out through another officer. We
10 would object -- we had a full hearing on this
11 yesterday. We would object and move for a mistrial.

12 **THE COURT:** Well, I've got notes that he also
13 said that the victim was driving the vehicle -- the
14 defendant said that the victim was driving the
15 vehicle and the defendant said that he was waiting
16 for some friends of his. He was asked about an
17 argument and he said -- the witness said he did not
18 recall anything about an argument.

19 **MR. MADSEN:** I wasn't -- the context of the
20 witness. But he certainly didn't testify as to what
21 he testified here today on record.

22 **MR. WEDEKIND:** Your Honor, Mr. Madsen made no
23 objections to Mr. VanPut's testimony. If he wants
24 to cross him, I'm sure he's -- he's certainly
25 welcome to do that, but I don't think he said

1 anything that he was prohibited from saying. And,
2 you know, it is his memory, which we're not supposed
3 to go off his prior recorded statements. If
4 something just sprung into his head, it was a fair
5 question asked.

6 I was actually driving for the question about
7 the children and going to the home to check on the
8 children. I really didn't seek anything about what
9 Mr. Humphrey said.

10 **THE COURT:** Yes, sir. I can agree with some of
11 that. The purpose of the Denno hearing is to find
12 out what statements were made, whether they're
13 admissible or not. And if he gets on the stand in a
14 Denno hearing and says some things but doesn't say
15 them all, it defeats the purpose of a Denno hearing.

16 **MR. WEDEKIND:** But he wasn't under arrest and
17 there was no objection from Mr. Madsen about any
18 statements he made. There was no objections or
19 anything towards that effect. I don't think he's
20 limited to verbatim regurgitation of exactly what
21 came out in the Denno hearing.

22 And it's subject to cross-examination by
23 Mr. Madsen. If he has this miracle recollection, I
24 mean he can certainly address it. And it's really
25 going to come out from the defendant's own

1 statements in his written statement.

2 **THE COURT:** I know. I understand that and
3 that's why I'm a little frustrated that it keeps
4 coming -- jumping out of the bushes.

5 **MR. WEDEKIND:** And it's because it's there,
6 Judge. It's what happened. It was what he said.
7 And I understand that, we're trying to avoid it.
8 I'm equally frustrated. I'm trying to stay away
9 from it.

10 **THE COURT:** I understand. You're asking him
11 question -- you asked him where he worked and he
12 went off on a whole history of things. I mean, I --
13 I understand, but the purpose -- I'm being
14 repetitive. The purpose of the Denno hearing is to
15 find out what statements are attributed to the
16 defendant and then you don't get to -- it's not a
17 moving target.

18 **MR. WEDEKIND:** Yes, sir.

19 **THE COURT:** Go ahead, please, and tell us what
20 it is that you were going to say, if you recall,
21 Mr. VanPut.

22 **THE WITNESS:** Yes, sir. When the victim and
23 the subject were together on the passenger right
24 side near the curve in the roadway of, I believe,
25 it's U.S. 1, he was hysterical, upset. One of the

1 officers, according to my statement, I don't recall
2 which officer, but they were asking him who was
3 driving and the defendant said he was a rider and
4 the victim was the initial driver.

5 Also, he stated that, according to my
6 statement, said friends dropped him off then. Then
7 he said he was riding with her. At the same time,
8 he told me about his children being alone at home
9 and they resided at [REDACTED] Leesville,
10 South Carolina. And, at such time, when he told me
11 that, he told me that -- the defendant told me that
12 he had two children in the home by themselves.

13 And the first thing I did, for the safety of
14 the children, I went, and I don't recall who was
15 with me, but I know I was there and I went there.
16 The house was unsecured, meaning the front door was
17 unlocked. And when I walked in, I can't remember
18 exactly what room, but the two children were asleep
19 in the bedroom.

20 **THE COURT:** So a moment ago when the jury was
21 in here, you said, At first, he said that he -- at
22 first, he said that -- he made a comment that
23 friends had dropped him off.

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

25 **THE COURT:** But just now you said that he first

1 said he was a passenger in the vehicle.

2 **THE WITNESS:** I believe I did say that, but the
3 way I have it worded on my statement, I believe I
4 got it a little scrambled, sir.

5 **THE COURT:** And you said just now that that was
6 in response to somebody questioning him.

7 **THE WITNESS:** Yes, sir. And, again, I don't
8 remember exactly which officer, but the officers
9 that were on duty was Officer Shuler and Thomas at
10 the time. And when the defendant told me about the
11 children being alone, I departed the accident
12 scene --

13 **THE COURT:** That's fine. I understand and we
14 talked about that yesterday. The objection relates
15 to this comment that friends dropped him off.

16 **THE WITNESS:** Yes, sir.

17 **THE COURT:** Because I assume what the State's
18 going to get up and argue is that the defendant was
19 not telling the truth. He was giving different
20 versions of the story. And I think, as Mr. Wedekind
21 said, some of this is already contained in
22 statements that are coming in.

23 All right. Do you have anything further, Mr.
24 Madsen?

25 **MR. MADSEN:** Judge, I mean, like Your Honor

1 said, I just think that was the basis of the Denno.
2 I mean, obviously, it was six and a half years
3 later. I know Corporal VanPut has his notes up
4 there and I think he's referring to those, but
5 doesn't have an independent recollection and that's
6 probably what's causing some of the confusion, but I
7 don't think that it's appropriate.

8 I kind of thought that we had crossed that
9 bridge yesterday when we did a Denno hearing with
10 the Solicitor asking, you know, do you remember
11 anything else and testimony yesterday was no.

12 **THE COURT:** Well, like I said, he did say,
13 according to my notes, Corporal VanPut did say
14 yesterday, The defendant made a statement that the
15 victim -- he didn't use the word victim, I don't
16 think -- was driving the vehicle. And he --
17 Corporal VanPut said that the defendant said he was
18 waiting for some friends of his, which could have
19 meant to pick him up after the wreck. I mean,
20 that's -- saying that you're waiting for somebody --
21 and those are my notes. I don't know if they're
22 exactly what he said or not.

23 Does the State have anything else on this?

24 **MR. WEDEKIND:** No, sir.

25 **THE COURT:** All right. I'm going to rule that

1 the statement that was just made by the witness that
2 the defendant commented at first that friends had
3 dropped him off, that that's inadmissible. That's
4 the whole purpose of us going through a Denno
5 hearing. And he said -- the witness just said that
6 this was in response to some sort of questioning
7 that was ongoing, nobody has been able to provide me
8 with the circumstances related to the questioning.

9 I mean, I know you all are asserting he's not
10 in custody, but I mean I don't know how I can
11 determine, when we haven't even mentioned it,
12 whether his freedom of liberty had been deprived in
13 any significant way, which is another thing that
14 would trigger the Miranda warnings and those things.

15 So, again, I'm certainly not faulting
16 individuals here. We're all having to deal with
17 what we have to deal with. It's just I've got to
18 rule on what's put before me, so I intend to exclude
19 that.

20 Do you want me to -- I deny your motion for a
21 mistrial. I think it's mainly cumulative and I
22 don't really see where it rises to the level of
23 granting a mistrial. Do you want me to instruct the
24 jury to disregard this?

25 **MR. MADSEN:** Judge, I kind of think almost --

1 obviously, it's cumulative in a bad way to Mr.
2 Humphrey. So I think I'm required to request a
3 curative instruction and move to strike. And then I
4 think after Your Honor gives that, I just have to
5 renew my objection to perfect the record.

6 **THE COURT:** Okay. Anything else from the
7 State?

8 **MR. WEDEKIND:** No, sir.

9 **THE COURT:** All right. Bring the jury back in,
10 please.

11 (The jury returns to the courtroom.)

12 **THE COURT:** All right. Ladies and gentlemen of
13 the jury, the objection that was raised is
14 sustained. And I have to instruct you at this point
15 that the statement by this witness, which was
16 something to the effect that the defendant commented
17 that friends had dropped him off at first, is
18 inadmissible and you must disregard that alleged
19 statement by this defendant from this witness.

20 Now, I told you all that I'm like you, I
21 haven't heard the case. And my instructions when
22 I'm telling you to disregard a statement made by
23 this witness and when I told you to disregard a
24 statement made by the other witness, I'm referring
25 to this particular witness, all right. So you are

1 to disregard this witness' statement that he
2 indicated that the defendant said that friends had
3 dropped the defendant off at first. You have to put
4 that out of your mind.

5 Note your objection.

6 **MR. MADSEN:** Yes, Your Honor.

7 **THE COURT:** And note your motion and the
8 rulings are the same as announced in camera.

9 Okay. Solicitor, you may resume your
10 examination.

11 **MR. WEDEKIND:** Thank you, sir.

12 BY MR. WEDEKIND:

13 **Q** Okay. Corporal VanPut, as a result of you
14 coming onto the scene, at that time, you thought it
15 was an accident, correct?

16 **A** Correct.

17 **Q** Did later on you change your opinion about
18 learning of the circumstances of the case as you
19 gathered facts?

20 **A** Yes.

21 **Q** And after -- you were at the scene with what
22 parties? Who was there?

23 **A** Officer Thomas, Officer Shuler.

24 **Q** And who else?

25 **A** From my team, that was it.

1 Q Was the defendant there obviously?

2 A Yes, sir. I'm sorry.

3 Q And the victim?

4 A And the victim, Ms. Jackson.

5 Q Now, having -- without going to anything that
6 anybody said, okay, after having gone to that scene,
7 did you then leave and go somewhere in particular?

8 A I left the scene because the defendant told me
9 he had two children at his home and there was nobody
10 there at the house. And he told me that his
11 children were there by themselves and he wanted
12 somebody to check on them.

13 So I departed the accident scene and went to
14 the residence of [REDACTED] on the Leesville
15 side. I don't remember or recall if I had a partner
16 with me, but I do remember I was there. And when I
17 arrived, the front door was unlocked. When I
18 entered the house, there were two children sleeping
19 in a room. And I believe the house was a single
20 level house, and both of them were sleeping.

21 Q Corporal VanPut, can you -- I'm going to give
22 you this laser pointer. Can you make this out from
23 where you're sitting? Can you make that out?

24 A Not really.

25 MR. WEDEKIND: Your Honor, could he come down

1 off the stand, please?

2 **THE COURT:** Sure.

3 (Witness leaves the witness stand.)

4 BY MR. WEDEKIND:

5 **Q** Just take a look at that photograph, please, on
6 the top.

7 **A** (Inaudible.)

8 **THE COURT:** You have to speak up. She has to
9 take down what you say.

10 BY MR. WEDEKIND:

11 **Q** Tell the jury, you can point it out here or use
12 the laser pointer on the screen, what is this street
13 right here?

14 **A** That's U.S. 1.

15 **Q** Okay. And what is this street that intersects
16 with it right there?

17 **A** That's going to be north Bedenbaugh.

18 **Q** And is that what building?

19 **A** I believe that's going to be the Shealy Real
20 Estate building.

21 **Q** And where -- now, this is -- where is [REDACTED]
22 [REDACTED] on this map?

23 **A** Right there.

24 **Q** So that's [REDACTED]

25 **A** [REDACTED] right there.

1 Q And going back to Shealy's Real Estate is
2 where?

3 A I believe right there (indicating).

4 Q Okay. So you saw the wreck where?

5 A Shealy's is right there, the real estate
6 building. And then there's a dirt road right beside
7 it and right next to that dirt road was a big 'ol
8 tree.

9 Q Okay. So you left that area and went to
10 [REDACTED] you said?

11 A Yes, sir.

12 Q What route did you take?

13 A I took U.S. 1.

14 Q You might find it easier -- just go on the
15 street --

16 A Okay. Right there (indicating).

17 Q So you went back up in the other direction?

18 A Yeah, that's because that's -- I believe these
19 are [REDACTED]

20 Q And what direction is the Batesburg-Leesville
21 Police Department? If this is Shealy's, like you
22 just said, right, that real estate office, which
23 direction would you go to get to the police
24 department headquarters?

25 A The opposite, that would be the opposite

1 direction.

2 Q Okay. So you would go that way to get to
3 there. Would you also go that way to get to the
4 Saluda, the Town of Saluda and the county?

5 A You can.

6 Q And if you were going to Lexington, which
7 direction would you go?

8 A The opposite direction, this way (indicating).

9 Q Okay. And, let's see, so you went to that
10 house, you found the children there alone and you
11 secured the residence. What happened then?

12 A The defendant and I talked. He gave me a -- I
13 couldn't get a hold of the victim's mother because I
14 believe Ms. Jackson was -- she works in Aiken.

15 Q And one quick question, were you able to
16 determine anything about the victim's job. Did you
17 know what her employment was?

18 A I believe it was Saluda Nursing Home.

19 Q And you said she was wearing what type of
20 clothing?

21 A She was wearing scrubs.

22 Q And on this map here, point out the Shealy
23 Realtor building.

24 A I believe that's Shealy because there's the
25 dirt road and I think the tree was there.

1 Q Okay.

2 A And then when I came, the truck was -- it
3 rolled back right here and I positioned my car
4 somewhere here (indicating), the shoe and I believe
5 there's a watch.

6 Q Where were they located?

7 A Somewhere in the median here.

8 Q Okay. And what was the lighting conditions
9 when you came upon --

10 A Dark, it was dark. At the shift change, it was
11 pitch black.

12 Q Please return to your seat.

13 A (Witness resumes the witness stand.)

14 Q Now, did you have an occasion to -- after you
15 secured the children and made sure they were in good
16 custody, did you have an occasion to go to the
17 hospital?

18 A Yes.

19 Q Where did you go?

20 A Well, the first thing I'd like to add --

21 MR. MADSEN: Judge, I'm going to object.

22 THE COURT: You really need to just answer his
23 questions.

24 THE WITNESS: What was the question again, sir?

25 BY MR. WEDEKIND:

1 Q What hospital -- you said you went to a
2 hospital, which one did you go to?

3 A I believe it was Richland Memorial.

4 Q And what was your purpose in going there?

5 A To check on the victim.

6 Q And what did you find when you checked on the
7 victim?

8 A Well, Ms. Jackson, the mother, was there.

9 Q Don't go into any statements, okay, just what
10 you did and what you observed. You can't say what
11 other people told you, that's hearsay.

12 A Okay. When I arrived, Ms. Jackson's mother was
13 there. She gave me consent to go with her to see
14 her daughter. She was in a coma and she was in a
15 bed. She was sleeping at the time. I did see some
16 injuries on her body.

17 Q Please describe for the jury those injuries
18 that you noted.

19 A Both her left and right arms had injuries. It
20 appeared to be scratch marks, could be road rash.
21 The mother said --

22 MR. MADSEN: Judge, I'm going to object to
23 hearsay.

24 THE WITNESS: I'm sorry. That's what I saw at
25 the time.

1 BY MR. WEDEKIND:

2 Q Now, when you say road rash, what do you mean
3 by that? What type of abrasions did they look like?

4 A Like scrapes down her arms.

5 Q Okay. And describe for the jury, in your own
6 words -- you said scratches. Were they the same
7 type of scratches as the road rash or a little
8 different?

9 A Yes. Like she -- her body was rubbed against
10 something solid to cause that.

11 Q And where do you consider normally road rash to
12 come from?

13 A It's like riding on a bicycle and you fall off
14 your bike and you hit a hard turf and it'll leave
15 abrasions on your knees or arms.

16 Q Now, you worked other vehicle accidents and
17 vehicle crashes, correct?

18 A Yes.

19 Q Did you ever observe those type of road rash
20 injuries on persons that were contained inside a
21 vehicle or those who were outside a vehicle?

22 A Only outside a vehicle, but I have never seen
23 something like this before.

24 Q Now, did you look at the vehicle, the pick-up
25 truck that you said you saw?

1 **A** Yes.

2 **Q** Did you look at it closely?

3 **A** On the same day in question, myself and Officer
4 Shuler went back to the truck, it was impounded by
5 Brooks, after it was towed. We had better lighting
6 then.

7 **Q** As the sun came up?

8 **A** Yes.

9 **Q** Let me show you what's marked for
10 identification as State's I.D. Number 3, 8, 9, 11
11 and 13. Do you recognize those, sir?

12 **A** Yes.

13 **Q** And would you look at each one individually,
14 please?

15 **A** This is the inside of the Ford Ranger. I
16 believe it's a 1993 model.

17 **Q** And, for the record, would you describe State's
18 I.D. Number 3 is the one you're describing; is that
19 correct?

20 **A** Yes. It's got a bent steering wheel, a lot of
21 debris on the floorboard and there's an I.D. of --
22 the victim's I.D. which I believe it said Saluda
23 Nursing Home as an employee.

24 **Q** And does that appear in the same condition and
25 the way it appeared to you on the day of -- you said

1 you saw it in the daylight on the 17th?

2 **A** Yes.

3 **Q** Does that have any -- has that altered or
4 changed significantly from the way you saw it on
5 that day in question?

6 **A** I believe it -- it doesn't appear like
7 anything's changed, the same as I saw it years ago.

8 **Q** So that picture fairly and accurately depicts
9 the scene of the vehicle the way you saw it in that
10 same condition?

11 **A** Yes, sir.

12 **Q** On that day?

13 **A** On that day.

14 **Q** And regarding State's I.D. Number 8, what is
15 that picture?

16 **A** This is the driver's side with the door open,
17 again the steering wheel bent, again debris on the
18 driver's side, damage to the steering wheel column
19 and a lot of glass, that appears from the back
20 window.

21 **Q** Okay. What is the condition of the door in
22 that photograph?

23 **A** The door was operational.

24 **Q** And then in that photo, it's what, open or
25 closed?

1 A It's open.

2 Q Does that also appear to be the way it appeared
3 to you on the 17th and 18th of October 2004?

4 A Yes, sir.

5 Q State's I.D. Number 9, please describe that.

6 A This is the back portion of the pick-up truck.

7 Q Inside the cab or outside?

8 A Inside the cab. This little black object next
9 to, I believe this is some type of tool box, is the
10 latch or the lock to the sliding back door. And, of
11 course, there's glass and debris from the glass.

12 Q Does that also depict the condition of the
13 vehicle as you saw it on the 17th and 18th of
14 October of 2004?

15 A Yes, sir.

16 Q Any material changes to it since then?

17 A I don't believe so.

18 Q And State's I.D. Number 11, what does that
19 picture depict?

20 A This is the front dash with a broken windshield
21 and everything appears to be the same.

22 Q And State's I.D. Number 13, what is that a
23 picture of?

24 A This is the back of the pick-up truck sliding
25 back window. The frame to the back window is bowed

1 in. The left-side, driver's side back window has
2 been broken in because most of the glass was inside
3 the truck.

4 Q And did you notice anything, when you looked at
5 it on the scene when it was still by the tree on
6 Highway 1, did you notice anything about that window
7 in particular?

8 A Just being broke open and the frame being --

9 Q Did you see anything or collect anything or
10 direct anybody's attention to an object on the
11 frame?

12 A The object on the frame came later when myself
13 and Shuler looked at it in the daytime. As I said
14 before, this was during shift change and, you know,
15 light was -- it was pitch black. I believe during
16 that time, sun didn't rise until almost seven
17 o'clock until you really had a good view, if I do
18 recollect.

19 When we took pictures of the truck, it was in
20 the impound within the impound fenced area. We
21 found some red fleece material that matched or
22 appeared to match the same material that the
23 defendant was wearing on the day in question. We
24 found some material in the -- up here (indicating)
25 somewhere in the frame. Like I said, it's been a

1 long time ago, but we did find some pieces of red
2 fleece up here.

3 MR. WEDEKIND: And at this time, Your Honor,
4 the State would move into evidence State's I.D.
5 Numbers --

6 THE WITNESS: I have something else.

7 MR. WEDEKIND: State's I.D. Number 3, State's
8 I.D. Number 8, 9, 11 and 13, Your Honor.

9 THE COURT: Any objection?

10 MR. MADSEN: Judge, I would just object to a
11 foundational. I don't think he took these
12 photographs or was actually there when the
13 photographs were taken.

14 THE COURT: He doesn't have to be present when
15 they were taken.

16 On Exhibit Number 9, he was asked if that
17 depicted the condition of the vehicle as he saw it
18 on the day. The other two, I don't think he said
19 that. So 9 is in over objection and previous
20 objections.

21 Do you want to ask him some more questions?

22 MR. WEDEKIND: Yes, sir. You're saying 9 is
23 in?

24 THE COURT: You asked him on 9 if that depicted
25 the same condition as what he observed that day.

1 **MR. WEDEKIND:** Yes, sir. And I'll ask a few
2 more questions then, sir.

3 (State's Exhibit Number 9, photograph,
4 admitted into evidence.)

5 **BY MR. WEDEKIND:**

6 **Q** State's I.D. Number 3, does that show any
7 difference from the way you saw it on the 17th and
8 18th of October? Does that fairly and accurately
9 depict the way it looked on that day?

10 **A** Yes, sir.

11 **Q** State's I.D. Number 8, is there any material
12 alterations or difference from the way that that
13 photograph depicts the vehicle as you saw it in that
14 condition on the day of the 17th and 18th of October
15 2004?

16 **A** No different.

17 **Q** State's I.D. Number 11, does that fairly and
18 accurately depict the condition of the truck as you
19 saw it appearing on the date of October 17th and
20 18th of October 2004?

21 **A** No, sir.

22 **Q** Is there any material alterations or changes to
23 that?

24 **A** Not that I'm aware of.

25 **Q** State's I.D. Number 13, now this is in the

1 impound garage, correct?

2 **A** Yes.

3 **Q** But does that fairly and accurately depict the
4 condition of the vehicle as you saw it on the 17th
5 and 18th of October without any alterations or
6 changes to the condition of the vehicle?

7 **A** Yes, sir.

8 **MR. WEDEKIND:** Your Honor, at this time, the
9 State would move into evidence State's I.D. Number
10 3, State's I.D. Number 8, State's I.D. Number 11,
11 State's I.D. Number 13.

12 **THE COURT:** Same objections?

13 **MR. MADSEN:** Same objections.

14 **THE COURT:** Mark those in evidence over
15 objection.

16 You may have asked him previously,
17 Mr. Wedekind. The real time is skipping around on
18 me up here, but --

19 **MR. WEDEKIND:** Yes, sir. No harm in asking
20 twice, sir.

21 **THE COURT:** Mark those in evidence, Madame
22 Court Reporter.

23 (State's Exhibit Numbers 3, 8, 11 and 13,
24 photographs, admitted into evidence.)

25 **MR. WEDEKIND:** And, Your Honor, at this time,

1 I'd like to publish these to the jury and ask for
2 Officer VanPut to step down, please.

3 **THE COURT:** Certainly.

4 (Witness leaves the witness stand.)

5 BY MR. WEDEKIND:

6 **Q** Okay. Officer VanPut, this is State's I.D.
7 Number 3. Can you describe that for the jury?

8 **A** Here is the steering wheel that's been bent by
9 something -- this is the steering wheel that was
10 bent the day of the accident when I arrived when I
11 saw it, as is. This is the victim's I.D. card.

12 It's Saluda Nursing Home, same place where I saw it
13 the day of. All the glass, there's a lot of glass,
14 that was because of where it was shattered. A lot
15 of the glass from the truck was inside the truck.

16 **Q** Okay. And State's Number 8, what does that
17 depict?

18 **A** Another view of the steering wheel being bent,
19 dash being messed up. Once again, the glass from
20 this side (indicating), the driver's side sliding
21 glass was busted in. And like I said, all of the
22 glass was in the inside. The doors function. There
23 was nothing wrong with the door.

24 **Q** State's Number 11.

25 **A** The windshield evidently was broke during the

1 impact of the collision with the tree along with
2 some of the dash.

3 Q State's Number 9.

4 A Again, the glass from the back. This is the
5 back area of the truck. This is where the glass is
6 and that's right where the window is. This piece
7 here is the lock mechanism to the sliding back door
8 -- back glass.

9 Q And State's Number 13.

10 A This is where it shattered.. But like I said,
11 all the glass you see went inside and there was
12 hardly any of it on the inside, a lot of it came
13 inside. Something caused this to bend.

14 This was wide open and this is where -- I can't
15 remember exactly, but we did find some red material
16 that appeared to match the defendant's red fleece.

17 Q Please return to your seat.

18 A (Witness resumes the witness stand.)

19 Q I'm going to show you what's already in
20 evidence as State's Number 10. What is that a
21 picture of?

22 A Driver's side door.

23 Q Okay. And what is the -- what condition is
24 that door in right there?

25 A Operational.

1 Q Is it open or closed?

2 A It's closed now.

3 Q And is that the same door that you just saw
4 depicted earlier in State's Number, I think it was,
5 State's Number 8?

6 A Yes.

7 Q So even today the door opens and closes as
8 designed?

9 A Yes.

10 Q And when you arrived on the scene back on the
11 17th at around, you know, after you got dispatched
12 there, what condition was the door in when you
13 walked up to look at that truck? Do you recall if
14 it was opened or closed?

15 A I don't remember.

16 MR. WEDEKIND: Please answer any questions that
17 Mr. Madsen may have. Thank you.

18 THE COURT: Cross.

19 CROSS-EXAMINATION

20 BY MR. MADSEN:

21 Q Corporal VanPut, you were working at
22 Batesburg-Leesville back then, correct?

23 A Correct.

24 Q And you were, I guess, coming on shift?

25 A I sure was.

1 Q And do you remember the time that you got the
2 call?

3 A Somewhere after 6:00. We have shift change
4 about six o'clock.

5 Q And was anyone with you in your patrol car?

6 A Somebody with me inside?

7 Q Yes, sir. When you were going to the accident
8 scene?

9 A No, I was on my own.

10 Q And when you get there, I guess, did you say
11 Officer Shuler and Officer Thomas were there?

12 A Yes.

13 Q Were any EMS workers there at that point in
14 time?

15 A At the time, sir, I can't say because I had to
16 go back and check on the children.

17 Q Did you see any other bystanders there?

18 A I can't remember.

19 Q Do you remember Mr. Maye being there?

20 A I can't remember.

21 Q You remember Mike being there, correct?

22 A Yes, sir.

23 Q And, ultimately, after you get there, besides
24 Officer Shuler and Officer Thomas, while you're out
25 there, does any other law enforcement show up?

1 A The only ones I can remember is my team,
2 Officer Shuler and Officer Thomas. There was no
3 other supervisors or anybody else. Since I was the
4 acting supervisor, I was it.

5 Q How about while you're out there, does anyone
6 from SLED show up?

7 A Not at the time when I was there, sir.

8 Q How about the chief?

9 A Not at the time.

10 Q Lieutenant Clare?

11 A No.

12 Q Any type of crime scene that
13 Batesburg-Leesville Police Department has, did they
14 show up there?

15 A No.

16 Q How about the Highway Patrol or their MAIT
17 team?

18 A At the time when it happened when I was there,
19 no, just the two officers.

20 Q And MAIT team is a portion of the Highway
21 Patrol that deals with, I guess, accident
22 reconstruction, correct?

23 A Correct.

24 Q I think it stands for something like
25 Multidisciplinary Accident Investigation Team or

1 something close to that?

2 A You said it better than me.

3 Q And while you're out there that morning, do you
4 take any photographs of the scene?

5 A No.

6 Q Do you see any other officers from your
7 department or any officers at all take any
8 photographs while you're out there?

9 A Like I said, just those two officers, don't
10 remember. I don't believe they took pictures. They
11 were working it like they would work an accident
12 scene.

13 Q And did you take any measurements?

14 A I did not take any measurements.

15 Q Did you see any other officers take any
16 measurements while you're out there?

17 A Not at that time, no.

18 Q Did you do any type of diagram that day?

19 A No. Officer Shuler did later that day.

20 Q And, ultimately, when you get out there, you
21 see Mike comforting Ms. Jackson, correct?

22 A Yes, sir.

23 Q She's semiconscious?

24 A Yes, she was semiconscious. I heard her.

25 Q He's hysterical?

1 A Yes, sir.

2 Q But even in his hysteria, he was able to convey
3 information to you about, please check on the kids,
4 they're at home alone?

5 A Yes.

6 Q And you ended up doing that?

7 A That's correct.

8 Q And so you go there. And from where the
9 accident was to, I think, it was [REDACTED]
10 correct?

11 A Yes.

12 Q You're heading away, when you leave that
13 accident scene and go to [REDACTED] you're
14 actually heading away from Batesburg-Leesville
15 Police Department, correct?

16 A Correct.

17 Q And so if Shealy's Reality is here and
18 Bedenbaugh, -- is it road or street?

19 A Bedenbaugh. It's like here's Bedenbaugh and
20 here's East Columbia or U.S. 1, like, right there.

21 Q And so Bedenbaugh would have been on the police
22 station side --

23 A Yes.

24 Q And so when you end up heading down that way to
25 go to [REDACTED] you're less than a mile from the

1 accident scene to get to that residence, correct?

2 A Yeah, I would say. It's not really that far
3 from the accident scene.

4 Q And so it only takes you seconds to get there?

5 A Yes, sir.

6 Q And, ultimately, you end up, from some stuff
7 from Mike, end up getting a family member to stay
8 with the children?

9 A It was Mike's help, or the defendant's help,
10 that I got a number. Like I said, Ms. Jackson, her
11 mother, was in Aiken at the time of the accident, I
12 couldn't get a hold of her. So he helped me get a
13 hold of his stepmother.

14 Q And you had mentioned something about finding a
15 Croc or a shoe?

16 A Yes, Ms. Jackson's other shoe.

17 Q Was it a right or a left shoe?

18 A I can't remember.

19 Q Did you collect that shoe?

20 A I did not collect it.

21 Q Did you end up collecting any evidence?

22 A I don't believe so. And there was a -- also
23 there was a partial watch.

24 Q Did you end up collecting that?

25 A No.

1 Q And so do you then eventually leave [REDACTED]
2 [REDACTED] and come back to the accident scene?

3 A Eventually, yes. I don't know what the
4 timeframe was, but I know the sun was up by then.

5 Q And so when you get back there, had Ms. Jackson
6 been transported to, I think, Richland Memorial?

7 A Yes. She was sent by helicopter.

8 Q And when you get back, was Mike still out
9 there?

10 A I can't remember, but I do remember he was --
11 he had some injuries too.

12 Q He had some shoulder injuries, didn't he?

13 A Yes. He was sent to, I think, Lexington E.R.

14 Q He went by EMS to Lexington -- or Lexington
15 E.R., a different hospital, correct?

16 A I guess. But he did seek medical attention.

17 Q And then, ultimately, when you get back out
18 there, you never place Mike under arrest, do you?

19 A No, sir.

20 Q No one places Mike under arrest that day on the
21 17th, do they?

22 A Sir, we worked it as an accident. He was not
23 under arrest and he was not Mirandized.

24 MR. MADSEN: That's all the questions I have.

25 THE COURT: Redirect.

1 MR. WEDEKIND: Thank you, sir.

2 REDIRECT EXAMINATION

3 BY MR. WEDEKIND:

4 Q Officer VanPut.

5 A Yes, sir.

6 Q When you first arrived there, you were treating
7 this as an accident, correct?

8 A Absolutely.

9 Q Was it later that you determined and thought
10 that it was a crime?

11 A Yes.

12 Q And, at the time, state for the jury the
13 condition that Ms. Megan Jackson was in. Was it
14 just the scrapes and bruises or severe, and how
15 severe if it was?

16 A I'll try and put it best I can in words. When
17 I saw her being comforted by the defendant, she was
18 moaning. She was breathing. She was semi-talking.
19 I did not know how bad the condition was until I got
20 to the hospital.

21 Q You did say she had to be -- what type of - how
22 was she removed from the scene?

23 A She was air lifted.

24 Q So what -- do they call -- for every bump and
25 bruise case or fender bender, do they call an

1. ambulance or --

2. A No. The only time we use the heliport is in
3. something like a trauma case, somebody that's --
4. it's life and death.

5. Q So it's dark and it's six o'clock in the
6. morning on Sunday?

7. A Yes, sir.

8. Q You've got a helicopter coming in. Was your
9. emphasis on saving her life or taking measurements
10. on a car?

11. A You're looking at a judgment call. As a
12. supervisor, I have two children that nobody's taking
13. care of. At the same time, I have officers at an
14. accident scene trying to take care of two other
15. people that are injured.

16. Q If you'd seen a gun or you'd seen a liquor
17. bottle there, would you have changed the method that
18. you approached this as a vehicle accident?

19. A Possibly.

20. Q If you'd seen a knife or somebody actually
21. showing gunshot wounds or stabs, would you treat it
22. as a --

23. A As a crime scene? Possibly.

24. Q So your emphasis was not on taking snapshots
25. and photographs and measurements, it was on what?

1 **A** Saving lives and taking care of the children
2 and the driver and the passenger or the defendant
3 and the victim.

4 **Q** One final question: What was in the direction
5 of travel of the vehicle as it appeared on Highway
6 1? What direction did it appear to be heading
7 towards?

8 **A** Like you're going to the police department, the
9 opposite -- like you're going towards -- it was on
10 Number 1 after striking the tree, but it appeared to
11 be like it was going towards Batesburg side, which
12 is U.S. 1.

13 **Q** So it was away from the direction of [REDACTED]

14 [REDACTED]

15 **A** Yes.

16 **Q** And it was heading towards the
17 Batesburg-Leesville Police Department?

18 **A** At least in that direction, yes.

19 **Q** Okay. And it was also in the direction of what
20 county?

21 **A** It's in the county of Lexington, but going
22 towards Saluda.

23 **MR. WEDEKIND:** Thank you. No further
24 questions.

25 **THE COURT:** Recross.

1 RECROSS-EXAMINATION

2 BY MR. MADSEN:

3 Q Obviously, Corporal, at some point in time, Ms.
4 Jackson had a very serious injury obviously that
5 ended up causing her to die, that's correct?

6 A Sadly to say, yes.

7 Q And your emphasis obviously is going to be for
8 to try to help those people that are injured?

9 A Correct.

10 Q That's your initial thing?

11 A Their safety.

12 Q But, at some point in time, Mike and Ms.
13 Jackson end up getting removed by EMS, don't they?

14 A Yes.

15 Q And once --

16 A I don't believe I was present during that time.

17 Q But once that is done, nothing stops you from
18 taking photographs, documenting the scene, anything
19 like that?

20 A Say that again.

21 Q Nothing stops you -- after you take care of
22 priority one, which is taking care of Ms. Jackson
23 and Mike, nothing stops you from taking photographs,
24 measurements or diagramming after you take care of
25 that initial important thing, does it?

1 **A** Right. Everything else is done later.

2 **Q** But it wasn't done, was it?

3 **A** Not at that time.

4 **MR. MADSEN:** That's all the questions I have.

5 **THE COURT:** Anything further of this witness?

6 **MR. WEDEKIND:** No, sir.

7 **THE COURT:** Thank you, sir. You may step down.

8 Ladies and gentlemen, I understand you've been
9 out a couple of times, but we have not. So we need
10 to take a 15 minute break and I'll get you back in
11 here in about 15 minutes. Thank you. Don't discuss
12 the case.

13 (The jury retires to the jury room.)

14 **THE COURT:** How many more witnesses do you
15 have?

16 **MR. WEDEKIND:** We have four witnesses, sir.

17 **THE COURT:** And is one of them a doctor?

18 **MR. WEDEKIND:** Yes. I don't think the doctor
19 -- I told him to probably plan on coming first thing
20 in the morning, sir. He will be my last witness.

21 **THE COURT:** So the other three are who?

22 **MR. WEDEKIND:** We have Lieutenant Day from the
23 Highway Patrol. We have Chief Oswald and we have
24 Officer Gilliam about the statement.

25 **THE COURT:** Do you know what the chief is

1 called upstairs for?

2 **MR. WEDEKIND:** A Schmerber hearing. He'll be
3 done momentarily. I don't think it will be too
4 long. And I'll call Lieutenant Day next, then
5 Officer Gilliam. We can call them out of sequence.

6 And, sir, may Officer VanPut be dismissed?

7 **THE COURT:** Sure. Thanks very much.

8 (Brief recess.)

9 **THE COURT:** State ready?

10 **MR. WEDEKIND:** State's ready, sir.

11 **THE COURT:** Defense?

12 **MR. MADSEN:** Yes, Your Honor.

13 **THE COURT:** Ask them to bring them in, please.

14 (The jury returns to the courtroom.)

15 **THE COURT:** All right. Call your next witness.

16 **MR. WEDEKIND:** The State would call Lieutenant
17 Day.

18 JAMES DEWITT DAY,
19 having been duly sworn, testified as follows:

20 **THE CLERK:** If you'll have a seat and state
21 your name, please.

22 **THE WITNESS:** My name is James Dewitt Day.

23 DIRECT EXAMINATION

24 BY MR. WEDEKIND:

25 Q And, Lieutenant Day, tell the jury, please, who

1 you're employed by and in what capacity do you work
2 there.

3 **A** I am employed by the South Carolina Highway
4 Patrol. I am the executive officer for the MAIT
5 team, which is Multidisciplinary Accident
6 Investigation Team. We investigate all types of
7 fatal collisions, mainly that's our main function.
8 I've been employed with them or working in that unit
9 for almost 16 years now.

10 **Q** And were you actually working on the MAIT team
11 back in October 17th of 2004?

12 **A** Yes, sir. At that time, I was in the Midlands,
13 the Columbia area, this is called the Midlands area.
14 I was a sergeant working under Lieutenant Maffet
15 (ph). At that time, he was deployed and I was
16 running the unit.

17 **Q** And are your procedures today, the way you do
18 business, different than they were in 2004 or you
19 just remained the same since you were created?

20 **A** We started in 1995 going to school, actually
21 were doing investigations at that time. In '96, we
22 started our unit. And from that day to today, we've
23 changed so much. We've actually gone from 12 people
24 to 37 people on the unit. We're statewide. We have
25 six units instead of three. We're actually the

1 first agency to go paperless. Every bit of our
2 stuff is paperless now. We do audio interviews,
3 audio everything. So we've evolved and changed
4 quite a bit.

5 Q Just get better with time?

6 A You get better, you learn a lot of new things
7 and you try to improve your unit and that's what
8 we've done.

9 Q So were you initially called out by Chief
10 Oswald of the Batesburg-Leesville Police Department
11 to investigate anything pertaining to this case?

12 A We were asked by Chief Oswald to come look at a
13 particular vehicle, that occurred -- that was on the
14 18th of October.

15 Q So you weren't called out the actual day when
16 this happened, were you?

17 A No, sir, we were not.

18 Q And where did you actually go to assist him in
19 response to his request? Where did you go?

20 A I met him at a garage. I think it's called
21 Hallman's Garage. We met there to look at the
22 vehicle.

23 Q Was that what they used as the impound?

24 A No, sir, that was actually a tow service at the
25 time. And then, subsequently, they have moved it to

1 their facility is where the vehicle is at.

2 **Q** And did you have an occasion to go out, at the
3 request of myself and Mr. Madsen, to go out and take
4 any measurements and look at the Highway 1 scene and
5 the tree where this collision, where the vehicle
6 collided with the tree?

7 **A** Yes, sir.

8 **MR. MADSEN:** Judge, can we approach?

9 **THE COURT:** Sure.

10 (Whereupon, a bench conference was held off
11 the record, in the presence of the jury, but out of
12 the hearing of the jury.)

13 BY MR. WEDEKIND:

14 **Q** So, Lieutenant Day, did you go out ultimately
15 to the intersection of Highway 1 and Bedenbaugh?

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

17 **Q** In Batesburg-Leesville?

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

19 **Q** And when you went out there, did it appear
20 today as exactly as it did back in 2004?

21 **A** No, sir. There's been some changes made to
22 that. There's actually a driveway now that didn't
23 exist. There's some -- the -- there's some brick
24 siding -- I mean, excuse me, I'm trying to think of
25 what it's called. It's sort of like --

1 Q Retaining wall?

2 A A retaining wall, brick retaining wall for
3 shrubbery and all that.

4 Q I just had that done at my house. So, now,
5 there's been changes to the front of Shealy's Real
6 Estate, correct?

7 A That's correct.

8 Q But was that tree still there?

9 A The tree was still there, there's grass still
10 there and it's still a slope.

11 Q And the road has not moved its course. It's
12 still in the same location of where it was in 2004?

13 A That's correct, sir.

14 Q So the essential elements of the tree and the
15 road have not changed?

16 A That's correct, sir.

17 Q Now, did you have -- if I were to show you this
18 diagram here as State's 14 -- could you come down
19 from the stand please, sir?

20 THE WITNESS: Your Honor?

21 THE COURT: Yes, sir, just keep your voice up,
22 please.

23 (Witness leaves the witness stand.)

24 BY MR. WEDEKIND:

25 Q Now, would you point out Bedenbaugh and Highway

1 1 as a representation on here?

2 A Yes, sir. Bedenbaugh is shown to run north and
3 south. Highway 1 is running east and west.

4 Q Okay. And let's say Shealy's Real Estate would
5 be represented by what?

6 A By the S.R. and this little square, which is
7 beside Bedenbaugh and the tree itself.

8 Q Okay. And does this fairly and accurately
9 depict kind of the condition of where the truck was
10 in relationship to the tree as you came to
11 understand it?

12 A I can't remember if that's the -- as far as the
13 truck, but the -- it was in the general location of
14 the driveway.

15 Q Okay. And let me show you State's Number 6.
16 Show the jury Highway 1, if you would.

17 A This is Highway 1 right here.

18 Q And Bedenbaugh.

19 A (Indicating.)

20 Q And where is the tree that we're talking about?

21 A The tree is located north of the U.S. 1 right
22 beside the real estate office.

23 Q And the -- you said -- now, let's say if there
24 was -- the truck was located in this vicinity, did
25 you find -- and there was a shoe, let's say

1 hypothetically, the shoe was located here, what
2 would that indicate to you if the truck is forward
3 of the shoe?

4 **A** The first thing it would indicate to me that
5 I'm looking for is why is the shoe from the operator
6 that far away from the vehicle? My first thought
7 would be that somebody has come out of the vehicle
8 and the shoe came off the person.

9 **Q** And the physics of it with the shoe came off to
10 the back of the vehicle, what would that indicate?

11 **A** You mean --

12 **Q** It was located to the rear of the vehicle.

13 **A** That the person came out of the vehicle as it
14 was traveling down the roadway.

15 **Q** And the fact that the tree appeared to be hit
16 and the vehicle was back here, what would that
17 indicate?

18 **A** Well, as I went out that day and looked at it,
19 there is a slope of nine to ten degrees slope from
20 the tree down to the roadway. And what you have on
21 the impact is you have rebound, which is the vehicle
22 bouncing back, plus you have the slope of the ground
23 going back to the road. So the vehicle would hit,
24 rebound and then come back towards the roadway.

25 **Q** Okay. And does this appear to be how the scene

1 appeared to you in 2004?

2 A Yes, sir, it is.

3 Q Show you State's Number 8. Does that appear to
4 be the vehicle that you were asked to examine?

5 A Yes, sir. That's the interior with the door
6 open showing the steering wheel, a little bit of the
7 dash and the driver's seat area.

8 Q Okay. And what is the current condition of the
9 door; is it functional?

10 A Yes, sir. The door was functional when I
11 examined the vehicle. It would open and shut. The
12 left quarter panel was pushed back a little bit, so
13 when you open it, it does creak, but that's from the
14 quarter panel being pushed back into the door area.

15 Q And what would be -- and here's a picture of --
16 in State's Number 10. Is that the same car door?

17 A Yes, sir, that is the same vehicle and the same
18 truck door. As you can see where there's a little
19 bit of damage from the quarter panel coming back,
20 you see how close it is to the door.

21 Q And you have worked on the MAIT team. You have
22 gone to some specific training for accident
23 reconstruction?

24 A Yes, sir. I've been -- I am qualified as an
25 accident reconstructionist. I've been going since

1 1995, started my training. Since then, I have gone
2 through over 2,000 hours of reconstruction training.

3 Q And have you ever testified in courts of record
4 in South Carolina under oath as to incidents of
5 vehicle accident reconstruction?

6 A Yes, sir, I have.

7 Q Have you gone to specific schools to talk about
8 how vehicles would perform in collisions and how
9 metal objects would react to those collisions and
10 also learn how to estimate speed distances and crash
11 measurements?

12 A Yes, sir. I've gone through all the basic
13 courses in reconstructions. Other courses that
14 we've done is called crush. We've done occupant
15 kinematics, human factors, been involved in
16 biomechanics dealing with occupants within a
17 vehicle, which is the same as occupant kinematics.
18 We've looked at, like I said, other crush, which is
19 to be able to determine speed from the crush of a
20 vehicle's damaged areas, been through some advanced
21 courses, interview interrogation courses. There
22 again, like I stated earlier, I've been through over
23 2,000 hours of reconstruction courses in my 16
24 years.

25 MR. WEDEKIND: And, Your Honor, at this time,

1 we'd move to have Lieutenant Day be recognized as an
2 expert in vehicle and accident reconstruction.

3 **MR. MADSEN:** No objection.

4 **THE COURT:** He is so recognized. You may
5 continue.

6 BY MR. WEDEKIND:

7 **Q** Now, Lieutenant Day, in your opinion, if a
8 person was found outside the vehicle or had been
9 outside the vehicle, was this door open or closed at
10 the time of the collision with the tree?

11 **A** That door was closed.

12 **Q** You say the door was closed?

13 **A** Yes, sir.

14 **Q** How can you make that determination?

15 **A** The springs on the door were normal. The doors
16 open and close correctly. On the impact, if the
17 door is open, the door would go forward. The
18 momentum of the vehicle is going forward, everything
19 would be going forward. There again, the door would
20 slam to the front and would -- the springs and the
21 door itself would be strained.

22 **Q** So if this door had been open at the time it
23 hit a tree, what would have happened to that door?
24 What direction would it have gone?

25 **A** That door would have went to the left or

1 forward towards the tree.

2 Q And would have it have affected the
3 operability, in your opinion, of that door if it had
4 been going, say, in excess of 25 miles an hour and
5 hit a sudden object and came to an immediate stop?

6 A Yes, sir, it would have affected the door.

7 Q Let me show you State's Number 7. Is that the
8 front vehicle of the Ford Ranger Truck that you were
9 asked to investigate?

10 A Yes, sir, that is the front of the Ford Ranger.
11 And that is what we call the -- that shows the
12 impact of the tree itself.

13 Q And were you able to take measurements from the
14 hood of that vehicle?

15 A What we do is to determine the speed based on
16 crush is first you got to realize where the front
17 end would be, then you would take measurements into
18 the deep part. This area here (indicating) is where
19 you would take the measurement. And in doing so,
20 you are able to come up with a minimum speed based
21 on the crush of the front of the vehicle.

22 Q Based on those measurements and what you know
23 of this particular vehicle, were you able to come up
24 with a speed estimate at the time of collision that
25 caused -- inflicted that damage on the vehicle?

1 **A** Yes, sir.

2 **Q** And what was that speed that you were able to
3 determine?

4 **A** The minimum speed on the impact with the tree
5 was 25 to 28 miles an hour.

6 **Q** Twenty-five to 28?

7 **A** Yes, sir.

8 **Q** And if, at that speed, it had hit that tree,
9 this door would have done what if it had been open?

10 **A** The door would have slammed forward towards the
11 tree.

12 **Q** But, in your opinion, if it was closed, as it's
13 depicted there, what would have happened to that
14 door?

15 **A** The door was intact as it is, the front quarter
16 panel, as you can see, actually came backwards
17 towards the door.

18 **Q** So, in your expert opinion, when this car hit
19 the tree, this door, was it open or closed?

20 **A** It was closed.

21 **Q** Any doubt in your mind whatsoever?

22 **A** No, sir.

23 **Q** Is that to a scientific fact?

24 **A** That's based on the evidence that I have
25 examined and a scientific study showing where

1 vehicles, when doors are open, how they get sprung,
2 yes, sir.

3 Q And -- okay. That's fair enough. So that door
4 was closed when it hit the tree. Do you see any
5 significance to the damage to the steering wheel
6 right there, the steering column?

7 A Yes, sir. If there had been somebody driving
8 the vehicle at the time of the collision, they would
9 have had injuries from here, but also what I noticed
10 in this examination was the steering wheel was
11 pushed downward not forward, but down. Whatever was
12 pushing on it came from an upward area down to --
13 down to the steering wheel.

14 Q Is that consistent with the damage that you
15 would see from a person sitting behind the wheel?

16 A No, sir, that's not consistent with the damage
17 I would expect.

18 Q What about the presence of this broken glass
19 depicted here and the broken glass on the
20 windshield, does that indicate anything in
21 particular?

22 A This broken glass here comes from what we call
23 induced damage. When a vehicle makes contact with,
24 in this case, a tree, that contact with the tree is
25 called contact damage. What you have to induce

1 damage is what occurs around or outside that area.

2 So as the car or the vehicle is wrapping around
3 that tree, other parts of the vehicle are doing
4 things also. In this case, the roof line here
5 buckled and when it buckled along the windshield, it
6 cracked the windshield. So this is what we call
7 induced damage from the impact with the tree.

8 Q So that's not from a person flying from the
9 back going to the front, that's just damage from
10 hitting the tree?

11 A That's correct, sir.

12 Q Okay. Now, if a person were to be in the back
13 of this truck, as you see in State's Number 13, and
14 hypothetically they had punched this window out,
15 where would you expect to find the glass as a result
16 of punching it out from the back? If you were
17 standing in the bed of the truck, you punched out
18 the window, where would you expect the broken glass
19 to reside?

20 A In my examination, I found the glass to be
21 behind the seat and forward, there forward of the
22 passenger seat also.

23 Q And what you see in State's Number 9 is that
24 consistent with what you would expect to see from
25 somebody punching out the back window?

1 A Yes, sir, that would indicate that the back
2 window came inward and ended up behind the driver's
3 seat.

4 Q And what is that object right there?

5 A That is the clip to the center glass, that
6 sliding glass, that's the clip that holds it in
7 place.

8 Q Okay. And what are these gray little objects
9 laying all around the floor of the truck?

10 A All this is glass. This is tinted glass that
11 matches the other window in the back or it's got a
12 slight tint to it as you can see.

13 Q So when you said there was a little clasp on
14 the floor, would that have been to this section of
15 the window?

16 A The clasp goes to this window, that's correct.

17 Q Okay. And does it actually -- how many panels
18 make up that back window section?

19 A Three, two permanent and one slide part.

20 Q And, in your opinion, what is the significance
21 of this one frame right there that holds up that
22 middle section, divides the left section and the
23 middle section from each other?

24 A The object that pushed that in of the -- if
25 there was a person who pushed that in, would be from

1 the bed going forward into the truck.

2 Q So being bent forward that means it was -- an
3 object came from the rear going to the front?

4 A That's correct.

5 Q Is that also kind of what you see at a
6 different angle but the same photograph in State's
7 Number 12?

8 A Yes, sir. You can see the indentation right
9 here, which I'm aware of the other picture, but I
10 know it's right there.

11 Q Now, if the -- if a person was halfway in and
12 halfway out or just had their legs extending back
13 here and then hit a tree, what would you expect that
14 person's body to do?

15 A Anybody partially in this vehicle on impact is
16 going to go forward into the dash, into this area
17 next to the -- right at the driver.

18 Q And would it have had any reaction to a body
19 mass being flung from the rear to the front to that
20 section if it was intact? What would happen to the
21 glass if somebody was halfway in and halfway out?

22 A The glass would shatter on this end -- as the
23 person would go forward, it bent this which put
24 stress on this glass. It would break the glass.
25 And this would not stop nobody. At 28 miles an

1 hour, you're going to go forward. There's no
2 stopping that person.

3 Q And is there any significance to the fact that
4 there's glass in the cab, but not in the bed?

5 A The only significance means that it was broken
6 inward towards the cab of the truck.

7 Q And would the forward momentum of the vehicle
8 until the impact with the tree have had any effect
9 on the glass particles?

10 A The impact -- there again, the momentum,
11 everything is going forward towards the tree. So
12 the glass, the person, everything is going in that
13 direction.

14 Q Please take your seat.

15 A (Witness resumes the witness stand.)

16 Q Now, based upon the condition of the door and
17 the condition of the steering wheel, can you make a
18 determination if somebody was actually seated behind
19 the wheel at the time of the impact?

20 A There was nobody behind the driver's steering
21 wheel at the time of impact.

22 Q And you said that the door was closed and fully
23 operational, but it had to be in a closed position
24 at the time of collision; is that correct?

25 A Yes, sir.

1 **Q** Would you have found it feasible that a person
2 could have been seated in that seat at the time of
3 impact and ejected through the side window of that
4 car?

5 **A** No, sir. There again, we're talking momentum.
6 One thing you have to understand about momentum is
7 as a vehicle -- as you're traveling down the
8 roadway, you're going the same speed of your car.
9 If your car comes to a sudden stop, your body is
10 going at the same speed forward.

11 So in this impact, the impact was into the
12 tree. For anybody to be in that seat, they'd have
13 to go forward, they're not going sideways or
14 anywhere, they're going straight to the tree. And
15 they would have injuries to the face, to the chest,
16 possibly knee area. They would have those type
17 injuries.

18 **Q** And if a shoe and a watch were located behind
19 the truck in the median and the truck was here, what
20 would you attach the significance to that to be?

21 **A** As I did my investigation and looked at the
22 autopsy, the photos that I had, what it told me was
23 that the person who would have been driving the
24 vehicle was now no longer in the vehicle. They were
25 out on the roadway and prior to the vehicle running

1 off the roadway hitting the tree.

2 Q So did you have a chance -- you mentioned the
3 autopsy photos. Did you look at the autopsy photos
4 of Ms. Megan Jackson?

5 A Yes, I did.

6 Q Do you have -- were you able to come to a
7 determination in your expert opinion about whether
8 or not she was behind the wheel of that Ford Ranger
9 Pick-up Truck at the time of collision?

10 A Yes, sir, I did. And that's based on my
11 studies of occupant kinematics, human factors and
12 biomechanics. She had no chest injuries. She had
13 no leg injuries, no external arm injuries. She had
14 a cracked skull, which is consistent with hitting
15 the ground. She had road rash on her arms, hands
16 and head, which are consistent with being on the
17 pavement sliding, creating, what we call, road rash,
18 which is rubbing of the skin.

19 So all of her injuries were consistent of being
20 outside of the vehicle and in contact with the
21 roadway and not behind the steering wheel. So, in
22 my opinion, she was not in the vehicle at the time
23 of the collision. She was -- had came out of the
24 vehicle prior to the collision.

25 Q So she had to come out of that vehicle before

1 it hit the tree, the door had to close behind her
2 because it would have been damaged if it hit the
3 tree; is that correct?

4 **A** Yes, sir.

5 **Q** As to investigating this scene and making a
6 report, why didn't you do a written report in 2004?

7 **A** In 2004, like I said, the MAIT team was running
8 a lot different. We were probably doing maybe 50,
9 60 cases a year. And when an AC would ask for help,
10 we would go to them and help them.

11 In this particular case, when I met with Chief
12 Oswald, it turned into a criminal investigation as
13 opposed to a criminal collision because of the
14 circumstances surrounding the individuals involved,
15 the young lady and the defendant. At that time,
16 since it was a criminal investigation, SLED was
17 involved in processing the vehicle. We turned it
18 back over to them.

19 **Q** And the lead agency in this case was who?

20 **A** Batesburg-Leesville.

21 **Q** So who makes the call when it's their case?

22 **A** They do, sir.

23 **Q** So when they ask for help, you're happy to
24 offer it. If they tell you thanks but no thanks,
25 you do what?

1 A It's not no much as no thanks, but it was the
2 fact that it was -- it was not a collision
3 investigation per se, it was a criminal
4 investigation. And so since it's not -- it didn't
5 have anything to do with collision other than
6 determining who was drive -- was she behind the
7 steering wheel or not when the collision occurred,
8 we turned it back over to them.

9 Q Okay. So you were asked for a consult. You
10 made that consult and you left?

11 A That's correct.

12 Q Now, what's different today from 2004? Do you
13 have a different procedure in place now?

14 A Yes, sir. We actually have procedures now
15 regardless of whether we get called to a collision
16 scene, whether it be with the city agency or county
17 or whoever, even DNR, we do boat accidents too, we
18 have a protocol that says you will take photographs,
19 you will video, you will do interviews. We've got
20 about six different things that you will have to do.

21 Q No matter what?

22 A No matter what.

23 Q But that didn't exist in 2004?

24 A No, sir. I have a new captain, our old captain
25 who retired, our new guy came in and he wanted to

1 make certain parameters that were required on all
2 cases. So we have changed our parameters and we
3 mandate certain things be done.

4 **MR. WEDEKIND:** Thank you. Please answer any
5 questions Mr. Madsen has.

6 **THE COURT:** Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. MADSEN:

9 **Q** Lieutenant Day, so you weren't called on
10 October 17th of 2004, correct?

11 **A** I don't remember receiving any call. We did go
12 out and meet them the next day, on the 18th.

13 **Q** And as far as you know, no one from MAIT was
14 called on the 17th to go out?

15 **A** Not that I remember, no, sir.

16 **Q** And MAIT team is one of those specialized
17 things, you all are on duty 24/7. If there's a call
18 and you're asked to come, you have to go?

19 **A** That's not true. We have protocols. We have
20 criterias [sic] on call outs. If it's, what we
21 call, a cold case or a cold scene, if it's already
22 been worked and they have moved the vehicles and
23 moved the people, that's called a cold scene, we
24 don't go out that night. We would come in another
25 day and help them.

1 Q But if it was a hot scene, you could be called
2 at three o'clock in the morning, midnight, 6:00 a.m.
3 and go out if it's a hot scene?

4 A That's correct.

5 Q And when you get out there, one of the things
6 that you can do is to document a scene, correct?

7 A Yes, sir. We document our scenes by way of
8 forensic mapping. We mark the evidence and we do a
9 forensic mapping, which the best way to describe it
10 for y'all is it's like a total station or Sokkia
11 station, in other words, like the DOT uses to map
12 scenes or roadways, it's the same type of
13 instrument. We use it to map scenes.

14 Q You can do that, you can take photos.

15 A Absolutely.

16 Q I think you mentioned that you can take videos.

17 A Yes, sir.

18 Q You can look at skid marks or I think something
19 called yaw marks?

20 A All that, sir, yes, sir.

21 Q You can create, I guess, is the forensic
22 mapping that you talked about kind of a fancy word
23 for very specialized diagrams?

24 A Specialized CAD drawing and we're actually, at
25 this juncture now, we're doing actually 3D

1 animation. We're one of the only organization to do
2 3D animations.

3 Q But we don't have any of that from October 17th
4 of 2004, do we?

5 A No, sir. We were called in at a later time.
6 The scene had already been cleared because it is --
7 the collision occurred in the City of
8 Batesburg-Leesville, it is their collision.

9 Q Right. You would be an assisting agency?

10 A Only when they would call us and ask for
11 assistance we would come in, that's correct.

12 Q And so you don't have any -- and I think,
13 apparently, you ended up going out then on the 18th,
14 correct?

15 A Yes, sir.

16 Q And you don't have any notes of that, correct?

17 A No, sir.

18 Q No reports?

19 A The other officer who went with me, I discussed
20 it with him and we talked about it. Yeah, it's been
21 six years.

22 Q Six and a half, I think?

23 A Six and a half years, that's correct, sir.

24 Q And so, realistically, your independent
25 recollection of what happened on the 18th is not

1 real good with no notes, no reports, correct?

2 A I was not at the scene at the time of the
3 collision. Once we found out it was a criminal
4 investigation, we backed out of it and turned it
5 back over to Batesburg-Leesville to do their
6 criminal investigation.

7 Q And I would imagine in the last six and a half
8 years, you've probably worked hundreds, if not,
9 thousands of wrecks?

10 A Well, last year alone our unit worked 701
11 wrecks, that was last year. So we've been averaging
12 over 600 for the last couple of years.

13 Q And at some point in time later, the Solicitor
14 gets you back involved, correct?

15 A Yes, sir. On the 27th of October, they asked
16 for a meeting. We --

17 Q What year?

18 A Chief Oswald had been calling me, you know,
19 about this stuff. And, finally, we got together
20 last year.

21 Q Okay. So October 27th of 2010 --

22 A That's correct.

23 Q -- you become back involved?

24 A We had a meeting of all the -- all the parties
25 involved in the investigation.

1 Q So a little bit over five years later?

2 A Yes, sir.

3 Q Do you recall whether the Croc was the right or
4 the left shoe?

5 A No, sir, I don't.

6 Q And as far as you recall your review of Ms.
7 Jackson, no leg injuries?

8 A That's correct.

9 Q Road rash on her head?

10 A She had it on her arms, hands and head.

11 Q And then you talked about kind of doing that
12 crush analysis?

13 A Yes, sir.

14 Q Now, when you do that crush analysis, did you
15 use anything specific with that vehicle being the
16 Ford Ranger?

17 A I'm not sure I understand what you're asking.

18 Q Is the crush analysis the same for, say, a Ford
19 ranger in that condition as compared to, say, a
20 super-duty, you know, with a front bar on it --

21 A It's going to be different because the crush,
22 say, if you had a steel bar across the front, it's
23 not going to give as the same as a vehicle. That's
24 why, as you notice, I told them it was a range 25 to
25 28 miles an hour.

1 Q Would there be a difference if it's a Ford
2 Ranger as compared to a Geo Metro as far as the
3 crush?

4 A It could be, a little bit. It's a small --

5 Q Because the bumper could make a difference --

6 A The bumpers that you use, they have them for
7 medium-size vehicles, they have them for trucks,
8 they're set up for small vehicles, so you actually
9 use separate -- different type formulas for the type
10 of vehicle in which you are looking at.

11 Q And so when you go out some five years later,
12 that scene right there by Shealy Reality is
13 significantly different than October 17th of 2004,
14 correct?

15 A Yes, sir. Now it has a wide driveway in there
16 and --

17 Q Shealy's is still there, but what was a dirt
18 road is now, I guess, paved?

19 A Yes, sir, it's a paved road.

20 Q And businesses behind it?

21 A Yes, sir, that's correct.

22 Q That part right there, the tree is still there,
23 but I think that it's like a retaining wall or a
24 brick wall that's in front of it and there's a
25 sidewalk there now?

1 **A** Yes, sir. There is a -- the sidewalk's there
2 and you've got the retaining wall, then you got
3 grass in between the tree, that's correct.

4 **Q** And so looking at it, where you see the tree
5 now is quite a bit different than 2004 because it's
6 behind that retaining wall and a sidewalk, correct?

7 **A** Yes, sir. I mean, the tree's in the same
8 place. It hadn't moved.

9 **Q** Right. No, the tree hasn't moved, but as far
10 as --

11 **A** And the roadway hadn't moved. It's just they
12 put the retaining wall and --

13 **Q** In between's kind of changed?

14 **A** That's correct.

15 **Q** And then ultimately if someone -- I'm going to
16 show you State's Exhibit 13. There is -- I know
17 that that's not called a pillar. What is that bowed
18 in area there; what is that called?

19 **A** It's just a frame. It's a frame of the center
20 glass of the back windshield.

21 **Q** So that frame right here, that indicates that
22 something in the bed of the truck ends up coming in
23 contact with that and pushing it forward?

24 **A** That's correct.

25 **Q** And there's, apparently, was glass right there

1 that's been all shattered inward?

2 **A** Yes, sir.

3 **Q** And, ultimately, if someone was to, say, have
4 cuts on their shoulder, that could indicate coming
5 from that glass, correct?

6 **A** Yes, sir. There's -- I reviewed the
7 photographs and there were cuts on the defendant's
8 shoulder. There were cuts on his fingers, his right
9 point finger, his third finger on the left hand were
10 cuts, there were abrasions on his forearm and that's
11 all I remember. I remember all of the abrasions.
12 There were cuts on him.

13 **Q** And, ultimately, to when you got involved five
14 years later, the door's still operational?

15 **A** Yes, sir, it is.

16 **Q** Which indicates to you that that door was shut
17 when that collision happened?

18 **A** Yes, sir.

19 **Q** And from the photographs, there was no one
20 behind the wheel when that door was shut, correct?

21 **A** No, sir, there was no driver.

22 **MR. MADSEN:** That's all the questions I have.

23 **THE COURT:** Redirect.

24 **MR. WEDEKIND:** Just a few questions, Your
25 Honor.

1 REDIRECT EXAMINATION

2 BY MR. WEDEKIND:

3 Q Are these -- you referenced some photographs of
4 the defendant, Mr. Humphrey. Are those the
5 photographs you were referring to?

6 A Yes, sir. Those are three of the photographs.

7 Q Where are the injuries to Mr. Humphrey's
8 shoulder that you were talking about, or what
9 shoulder are we talking about?

10 A The right shoulder. This is a front view, a
11 top view of the shoulder and then the, what would be
12 -- this would be the left hand of the third finger.

13 Q And can you make an opinion as to if someone
14 was in the bed of the truck going through the center
15 section and they're injured on their right shoulder,
16 what does that indicate to you?

17 A That they were inside the vehicle and they got
18 cut from the glass. As they went in, the glass was
19 cutting them.

20 Q And what would have been the side engaged
21 towards the vehicle to cause that injury? If the
22 right side was injured, what side would have hit the
23 vehicle?

24 A That would be the center glass is what would
25 cause that -- the glass from that center would cause

1 that.

2 **Q** And did you use these photographs in the
3 examination to formulate what you just testified to
4 in your report?

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

6 **MR. WEDEKIND:** Your Honor, at this time, the
7 State would seek to move into evidence -- let me
8 show them to Mr. Madsen first.

9 **MR. MADSEN:** I just have a foundational
10 objection.

11 **THE COURT:** You want to try to lay a
12 foundation, a different foundation?

13 **MR. WEDEKIND:** No, sir, I'll wait at a
14 different time.

15 **BY MR. WEDEKIND:**

16 **Q** These are the photographs you looked at to make
17 your determination as to what you just testified to?

18 **A** Yes, sir. Those are photographs that I
19 obtained from Batesburg-Leesville and the
20 Solicitor's office, along with other photographs
21 that I took to do my investigation.

22 **MR. WEDEKIND:** And, Your Honor, at this time,
23 the State would seek to move into evidence State's
24 -- well, I'll have to mark it.

25 (State's Exhibit Numbers 15 through 17,

1 photographs, marked for identification purposes.)

2 BY MR. WEDEKIND:

3 Q Please describe State's I.D. Number 16. Is
4 that the photograph that you used to examine for
5 your report?

6 A Yes, sir. That's a close-up of what would be
7 the third finger or the finger next to the little
8 finger of the left hand.

9 Q And State's I.D. Number 15, what does that
10 depict?

11 A The defendant sitting in a chair showing
12 injuries to his right shoulder.

13 Q And State's I.D. Number 17.

14 A A close-up of the cuts and injuries to his
15 shoulder.

16 Q And are those fairly and accurately depicting
17 the photographs that you relied upon to make your
18 determinations?

19 A Yes, sir, they are.

20 Q Have there been any changes or alterations or
21 addition or deletions to the photos?

22 A No, sir.

23 MR. WEDEKIND: Your Honor, at this time, the
24 State would move into evidence State's I.D. 15, 16
25 and 17.

1 **MR. MADSEN:** I just renew my objection.

2 **THE COURT:** I know an expert can testify about
3 matters that otherwise would be hearsay, but I don't
4 think that relieves the obligation to establish more
5 of a foundation than what we have here. The
6 objection's sustained.

7 **MR. WEDEKIND:** Yes, sir.

8 **THE COURT:** They may come in through another
9 witness.

10 BY MR. WEDEKIND:

11 **Q** A couple more questions for you, Lieutenant
12 Day. Now, knowing today you do differently than you
13 did in 2004, but just because of that, doesn't mean
14 all of the evidence that you had is lost, does it?

15 **A** No, sir, it doesn't. Batesburg-Leesville
16 investigated the incident and SLED, in assistance
17 with them, they were able to gather all the
18 information. In this case, there were no skids
19 marks, there were no yaw marks on the roadway. So
20 the only physical evidence on the roadway would have
21 been the shoe and the watch and just things that
22 they did collect.

23 **Q** And the scene of Shealy's and that tree have
24 not changed, have they?

25 **A** No, sir, they have not.

1 Q The position of that roadbed has not changed,
2 has it, since 2004?

3 A No, sir.

4 Q And this depicts the scene as it appeared in
5 2004, does it not?

6 A Yes, sir.

7 Q Today it's different with a retaining wall,
8 correct?

9 A Yes, sir. The retaining wall which runs beside
10 a walkway and also the driveway there is now a paved
11 section to go into the business area.

12 Q But the tree and the roadbed haven't moved,
13 have they?

14 A No, sir.

15 Q The laws of physics haven't changed since 2004,
16 have they?

17 A No, sir.

18 Q The law of metallurgy and the way metals react
19 to hitting hard objects, had that changed?

20 A No, sir.

21 Q So everything you were able to testify to this
22 Court would have not changed had you done it today
23 or if you had done it in 2004; is that correct?

24 A That's correct, sir. Everything I've testified
25 to would have been the same findings back then if I

1 had done all this same work.

2 Q And even with all the wonderful animation and
3 additional computer tools that you have today at
4 your disposal, you don't have a dash camera or an
5 inboard camera on every vehicle that --

6 MR. MADSEN: Objection to leading.

7 THE COURT: Don't lead.

8 BY MR. WEDEKIND:

9 Q Do you have access to the interior of every cab
10 and a view of it at the time of the collision in the
11 United States?

12 A No, sir.

13 Q So do you have any idea of what had happened in
14 the cab of that Ford Ranger Truck immediately before
15 it hit the ---

16 A The only thing I can tell you is that the young
17 lady was not behind the steering wheel. She was
18 outside the vehicle when the vehicle struck the
19 tree.

20 Q But you weren't in there at the time?

21 A That's correct, sir.

22 Q And even if you followed the procedures today,
23 you wouldn't be able to tell anybody what had
24 happened immediately before the impact, would you?

25 A No, sir, I could not.

1 **Q** Except that she was not in that truck?

2 **A** That's correct, sir.

3 **MR. WEDEKIND:** Thank you.

4 No further questions, Your Honor.

5 **THE COURT:** All right. Cross.

6 **MR. MADSEN:** No further.

7 **THE COURT:** Thank you, sir. You may step down.

8 **MR. MADSEN:** Judge, I don't have an objection,
9 if the Solicitor doesn't, to him being excused.

10 **MR. WEDEKIND:** No objections, Your Honor.

11 **THE COURT:** You're free to go. Thank you.

12 **THE WITNESS:** Thank you, sir. Appreciate it.

13 **THE COURT:** Call your next witness.

14 **MR. WEDEKIND:** Your Honor, the State would call
15 Officer Emmitt Gilliam.

16 EMMITT GILLIAM,

17 having been duly sworn, testified as follows:

18 **THE CLERK:** If you'll have a seat over here,
19 state your name and spelling your last, please, for
20 the record.

21 **THE WITNESS:** Officer Emmitt Gilliam, spelling
22 of my last name is G-i-l-l-i-a-m.

23 DIRECT EXAMINATION

24 BY MR. WEDEKIND:

25 **Q** Okay. Officer Gilliam, who are you currently

1 employed by?

2 A City of Columbia Police Department.

3 Q And before you were working with City of
4 Columbia, who were you employed by?

5 A Town of Batesburg-Leesville Police Department.

6 Q Were you working for Batesburg-Leesville Police
7 Department in October of 2004?

8 A Yes.

9 Q Particularly on the 17th of October 2004?

10 A That's correct.

11 Q Now, did you have an occasion to meet with the
12 defendant in this case, Mr. Michael Humphrey?

13 A Yes.

14 Q Do you see him present in the courtroom?

15 A Yes, sir.

16 Q Would you please identify him, describe him and
17 point him out?

18 A Black male sitting at the defendant's table
19 with a black suit on with a burgundy shirt and tie.

20 Q And you said you had an occasion to meet with
21 him. Tell the jury when you first came into contact
22 with him on October 17th.

23 A I first got contact with him at Richland
24 Memorial Hospital dealing with a traffic accident
25 that occurred in the Batesburg area that morning.

1 He was the person that also was in the vehicle or
2 around the vehicle with Ms. -- I can't pronounce her
3 name -- Megan Jackson.

4 Q So you wanted to meet with Megan Jackson, right
5 -- or you want to go observe Ms. Megan Jackson; is
6 that correct?

7 A Yes.

8 Q Did you go there with the intention of meeting
9 directly with Mr. Michael Humphrey?

10 A Not at the time, no.

11 Q And to your knowledge, had Mr. Humphrey been
12 evacuated for medical treatment himself?

13 A Not to my knowledge.

14 Q But you knew that you were supposed to see Ms.
15 Megan Jackson at the hospital. Which hospital was
16 that?

17 A It was Palmetto Richland Memorial Hospital.

18 Q So you went there and what happened when you
19 got to the hospital?

20 A When I got there, I talked to her mother. And
21 I saw Mr. Humphrey and I just advised him I needed
22 to talk to him about this traffic accident.

23 Q So you then bumped into Mr. Humphrey and you
24 told him you needed to speak with him. Did you make
25 a demand or give him a time and a set place?

1 A No. I just told him when he get a chance.

2 Q Okay. Tell them exactly what you said to him.

3 A I just basically told him that I needed to talk
4 to him in reference to this accident and that was
5 basically it.

6 Q And after you finished your business at the
7 hospital, where did you go?

8 A I went back to the Batesburg-Leesville Police
9 Department.

10 Q And while you were there at the
11 Batesburg-Leesville department -- roughly, what time
12 were you arriving back there?

13 A I think I arrived at around 8:30 or quarter to
14 9:00.

15 Q Is that in the evening?

16 A That's in the evening, I'm sorry.

17 Q So you got there, what happened after you got
18 at the office?

19 A Once I got there, Mr. Humphrey came in with his
20 family.

21 Q And by his family --

22 A His mother.

23 Q And what happened when you saw Mr. Humphrey
24 there; what happened?

25 A He came in and I told him I needed to talk

1 about this case.

2 Q So you didn't set the time, he just kind of
3 surprised you and showed up that quickly?

4 A That's correct.

5 Q And did you have an occasion to talk with him
6 right there or what did you do with him at that
7 point?

8 A At that time, I talked to him for a minute and
9 I remember his mom said he was under medication. I
10 said, well, he can come back at another time, we'll
11 talk later. And he agreed, said, no, he wanted to
12 go and get this out of the way now.

13 Q And did you notice that there was any
14 difficulty communicating with him?

15 A No.

16 Q If you spoke to him, did he give a rational
17 reply?

18 A Yes.

19 Q If he spoke to you, were you able to understand
20 him clearly?

21 A Yes.

22 Q Did he have any difficulty in doing what you
23 were asking him, difficulty walking?

24 A No. He just had a, I think, it's a wrap on his
25 left shoulder from the hospital.

1 Q So one of his shoulders was injured?

2 A I'm pretty much sure, yes.

3 Q Now, did you have an occasion to sit down and
4 conduct an interview with him?

5 A Yes, I did.

6 Q Was anyone else present?

7 A Just me and him.

8 Q Did you place him under arrest?

9 A No.

10 Q Did you place him in handcuffs?

11 A No.

12 Q Did you make any threats or offers to harm him
13 if he didn't give you a statement?

14 A None.

15 Q So where did you go to meet with him?

16 A We sat in the squad room in the police
17 department just to the left, not the booking room,
18 but the squad room where it's like an open bay area.

19 Q And it was just the two of you?

20 A Yes, sir.

21 Q Let me show you what's marked for
22 identification as State's I.D. Number 1. Do you
23 recognize that, sir?

24 A Yes, sir.

25 Q Okay. And at the top of it it's entitled,

1 Interview sheet; is that correct?

2 A That is correct.

3 Q And right below it, it says, Item one, you are
4 under arrest for or being interviewed in connection
5 with, it's circled -- which is circled?

6 A Being interviewed in connection with.

7 Q Okay. And it says what?

8 A Traffic accident.

9 Q Who filled that in?

10 A I did.

11 Q Okay. And then right after that, there's a
12 number two, three, four, five, six, seven and eight.
13 What are those?

14 A Those are his rights broken down.

15 Q And after the two, what is that first one?

16 A It says, You have a right to remain silent.
17 You do not have to make any statement. You do not
18 have to answer any question. Do you understand
19 this?

20 Q And then right after that, there's a block for
21 yes and a no, which is checked?

22 A Yes.

23 Q What did that indicate?

24 A That he understand -- he knows his right, he
25 don't have to talk to me at the time.

1 Q Did you read each and every one of these to Mr.
2 Humphrey?

3 A Yes, I did.

4 Q And did he acknowledge his understanding of
5 them?

6 A Yes.

7 Q And gave you an affirmative answer one way or
8 the other?

9 A Yes.

10 Q And who actually touched pen to paper on this?

11 A I did.

12 Q And then after the number two, there's number
13 three, what does that say?

14 A Anything you say can and will be used against
15 you in a court of law. Do you understand this?

16 Q And was that read to him?

17 A Yes.

18 Q Did he appear to understand that?

19 A Yes.

20 Q How did he indicate that to you?

21 A By checking -- I checked yes for him.

22 Q And item four, what is that?

23 A You have a right to talk to a lawyer before
24 advice -- before we ask you any questions and to
25 have him with you during any questioning if you wish

1 so. Do you understand this?

2 Q Okay. And what was checked after that, yes or

3 no?

4 A Yes.

5 Q Did he indicate he understood?

6 A Yes, he did.

7 Q Okay. Item number five.

8 A If you want a lawyer, but can't afford to hire

9 one, one appointed by the court. Do you understand

10 this?

11 Q And what's checked after that?

12 A Yes.

13 Q Did he understand that?

14 A Yes.

15 Q Item six.

16 A If you decide to answer questions without a

17 lawyer present, you still have the right to stop at

18 any time. Do you understand this?

19 Q What's checked?

20 A Yes.

21 Q Again, indicating what?

22 A That he understood that...

23 Q And item seven.

24 A Knowing these rights, are you willing to make a

25 statement or answer question without a lawyer

1 present.

2 Q What's checked after that?

3 A Yes.

4 Q And number eight.

5 A Have any threats or promise of any kind made to
6 you so that you would give us a statement.

7 Q What's checked?

8 A No.

9 Q Again, was that his answer?

10 A Yes.

11 Q Okay. If there was any difficulties or
12 hesitancy, would you have tried to clarify those
13 answers for him?

14 A Yes, I would.

15 Q But you didn't have that in this case, did you?

16 A No.

17 Q And then it says right after that, I certify
18 that the above items were read to me, there's a name
19 of what?

20 A Michael A. Humphrey.

21 Q Okay. And it's dated what?

22 A 17th of October 2004.

23 Q Okay. And it says that those answers recorded
24 above were given by?

25 A Michael A. Humphrey.

1 Q And an interviewing officer, there's a name
2 there, whose is that?

3 A Emmitt Gilliam, mine.

4 Q And then to the right of that, it says, Person
5 interviewed, after an X, who signed that?

6 A I'm sorry?

7 Q Who signed this area right there (indicating)?

8 A Okay. I'm sorry. Michael Humphrey.

9 Q And who actually used a pen to paper to sign
10 that?

11 A He did.

12 Q And did you make any special promises to him
13 while you were taking this statement?

14 A None.

15 Q Did you make any threats to him?

16 A No, sir.

17 Q And how long was the duration from the time you
18 started this interview to the time you finished it?

19 A Forty-five minutes.

20 Q Okay. And how do you know that?

21 A Because I marked the time beginning and the
22 time ending.

23 Q Okay. And what was the time that indicated it
24 started?

25 A 2115, which is 9:15 p.m.

1 Q On what date?

2 A The 17th of October 2004.

3 Q And you say it ended at the Batesburg-Leesville
4 Police Department when?

5 A At ten o'clock p.m.

6 Q So 45 minutes?

7 A Yes.

8 Q All right. And then after that, there's a
9 statement there. Who wrote pen to paper on that?

10 A I wrote the statement at the request of
11 Mr. Humphrey.

12 Q And why was that?

13 A Because his arm was sore.

14 Q And was he finding it easy to write or not?

15 A Well, he said he just feel like better for me
16 to write it for him.

17 Q So when you wrote those statements down, did
18 you give him an opportunity for him to change it,
19 add to it or take away from it?

20 A Yes.

21 Q Did you offer him the chance to make any
22 corrections to it?

23 A That's correct.

24 Q And on the first page, it's a two-page
25 document, is it not?

1 A That's correct.

2 Q Was there a signature at the bottom?

3 A Yes, it is.

4 Q Who signed it on the left as a witness?

5 A I did.

6 Q Okay. And who signed the signature of the

7 person giving the statement area?

8 A Michael Humphrey.

9 Q And then turn to page two. Is that a

10 continuation of the statement from page one?

11 A That's correct.

12 Q And then it goes down to where it says, End of

13 statement, after the verbiage, what did that

14 indicate?

15 A Actually I crossed out that, meaning end of the

16 interview.

17 Q Okay. So then -- but in the middle right above

18 that, it says -- kind of in the middle of the page,

19 what's it say?

20 A End of interview.

21 Q No. Right, in this section, right there

22 (indicating).

23 A Oh, End of statement. I'm sorry.

24 Q So then right after that, End of statement,

25 there's a series of ones with an A after it, a two

1 with an A after it, a three with an A after it, a
2 four with an A after it. What does that indicate?

3 A I'm questioning, asking him to clarify some
4 things in his statement that he stated to me.

5 Q So that's a question and answer format?

6 A That's correct.

7 Q Who formulated the questions?

8 A I did.

9 Q Who gave the answers?

10 A Mr. Humphrey.

11 Q Who recorded the question and answer portion of
12 it?

13 A I did.

14 Q Did you also give him the opportunity to make
15 any changes, additions or deletions?

16 A Yes, sir.

17 Q Did he indicate he wanted to do that?

18 A Yes, sir.

19 Q Was there a couple of line outs and initial
20 changes?

21 A There's quite a few of them, that's to make
22 sure that we were saying exactly what he was saying
23 -- we were writing exactly what he was saying.

24 Q And then after 4-A, there is a lined out area
25 and it says what?

- 1 **A** End of interview.
- 2 **Q** And then what comes immediately after that?
- 3 **A** I X'd it out so that we couldn't add nothing to
- 4 it other than what was above it.
- 5 **Q** And what was the purpose of that?
- 6 **A** So we couldn't add no other statements or
- 7 answer or questions or add anything to it so that --
- 8 so he didn't have no knowledge of.
- 9 **Q** And is page two separately signed by you?
- 10 **A** That's correct.
- 11 **Q** Is it also signed by Mr. Humphrey?
- 12 **A** Yes, it is.
- 13 **MR. WEDEKIND:** Your Honor, at this time, the
- 14 State would move into evidence State's I.D. Number
- 15 1.
- 16 **MR. MADSEN:** No objection.
- 17 **THE COURT:** Mark it in evidence, please.
- 18 (State's Exhibit Number 1, 10/17/04
- 19 statement, admitted into evidence.)
- 20 **MR. WEDEKIND:** And we'd seek to publish this,
- 21 Your Honor.
- 22 **THE COURT:** Sure.
- 23 **BY MR. WEDEKIND:**
- 24 **Q** Are you able to read that, Officer Gilliam?
- 25 **A** Yes, sir.

1 Q Would you please read that aloud for the jury?

2 A Statement by Michael A. Humphrey, written by
3 Detective Emmitt Gilliam for Michael Humphrey at his
4 request.

5 I went to Club Revolution in Columbia, then to
6 IHOP. I didn't get back to Batesburg between --
7 actually I put a line there because he said some --
8 between that stuff -- until 5:30, but I put between
9 5:30 a.m. and 5:45 this morning. I got home and
10 Megan was getting ready for work. I told her that I
11 couldn't watch after the kids because I was drunk.
12 Then Megan called her job and told them that she
13 will not be able to come in.

14 Then I went and got in the bed. And before I
15 got in the bed, we argued a little. Then Megan
16 walked out of the door and cranked up the truck. I
17 walked out the house to the driver's side of the
18 truck and I told Megan to stop. And then Megan put
19 the truck in reverse and started to back out of the
20 yard. I jumped in back of the truck and as soon as
21 she put the truck in reverse, Megan put the truck in
22 drive and I was knocking on the back glass -- back
23 window and told Megan to stop. And Megan was
24 speeding up the road -- I put parentheses, [REDACTED]
25 [REDACTED] -- slowed down and turned onto East Columbia

1 Avenue -- I put in parentheses U.S. 1, which is

2 Highway 1 -- without stopping at the stop sign.

3 Q And then changing to page two, are you able to
4 read that?

5 A Megan was driving towards Batesburg and Megan
6 was speeding. I was knocking on the back window and
7 I was telling her to stop because the kid -- I can't
8 read the last word.

9 Q Okay.

10 A I was telling her to stop because the kids was
11 at home by themselves. Megan was trying to fall
12 out -- fall out, so I punched the back window and
13 grabbed Megan by her back of her pants. Megan would
14 not -- Megan wouldn't fall -- okay, I'm sorry -- by
15 the back of her pants so that Megan wouldn't fall
16 out. And before I knew anything also -- before I
17 knew anything else, we hit a light pole, then Megan
18 stumbled out of the truck to the passenger side and
19 fell down. Then I ran over to her and started
20 screaming and crying.

21 I don't remember anything else after that, but
22 telling the police to get in contact with someone
23 like my father to make sure my kids was okay.

24 Q And then it says, End of statement, right
25 there. Is that what we talked about earlier?

1 A Yes.

2 Q Okay. And what is this portion right here with
3 the one and the A?

4 A It's a question and answer.

5 Q Would you read the first question that you
6 formulated? These are follow-up questions?

7 A Yes, sir.

8 Q Okay.

9 A So why did you get on the back of the truck if
10 you know your kids was in the house?

11 Q And the answer?

12 A I didn't think she would leave. I wasn't
13 thinking she will stop -- I was thinking she will
14 stop.

15 Q And then question two.

16 A If you saw Megan trying to fall out the
17 vehicle, why didn't you push the door closed -- the
18 driver's door closed?

19 Q And what was that in reference to?

20 A I wasn't -- that was the reason, because he
21 said that she was falling out and he was on the back
22 of the truck.

23 Q Okay. Question number three -- I'm sorry --
24 answer number two.

25 A I wasn't thinking about that. I did the first

1 thing I thought about.

2 Q And then question three.

3 A Was you and Megan arguing before this accident?

4 Q And the answer.

5 A We had a brief, a few words, then I went to
6 bed.

7 Q Question four.

8 A Did you try to scare her into pulling over or
9 to going back to the house?

10 Q And his answer.

11 A No.

12 Q And then you have what?

13 A End of interview.

14 Q And then it's -- is that the X and the
15 signatures that we talked about earlier?

16 A That's correct.

17 Q Thank you. You never were at the -- called out
18 to the actual scene at the time, were you?

19 A No.

20 Q You only became involved at the hospital and
21 doing the interview of Mr. Gilliam -- I mean, Mr.
22 Humphrey; is that correct?

23 A That's correct.

24 MR. WEDEKIND: Please answer any questions that
25 Mr. Madsen may have for you.

1 CROSS-EXAMINATION

2 BY MR. MADSEN:

3 Q Investigator -- or Officer Gilliam now I guess.
4 It was detective back then?

5 A Yes.

6 Q Officer Gilliam, you were the only detective or
7 investigator for Batesburg-Leesville Police
8 Department back in 2004, correct?

9 A That's correct.

10 Q And you were on-call if -- if you got a call,
11 you would come out to a hot scene if requested?

12 A That's correct.

13 Q You weren't called on the early morning hours
14 of the 17th, were you?

15 A No, sir.

16 Q And so you don't actually go out and do any
17 investigation on the scene?

18 A No, sir.

19 Q You don't do any diagrams?

20 A No, sir.

21 Q You don't photo anything out there?

22 A No, sir.

23 Q Besides Mr. Humphrey, you didn't interview any
24 other witnesses?

25 A No, sir.

1 Q And so, ultimately, you go to Palmetto Richland
2 Memorial to check on Ms. Jackson?

3 A That's correct.

4 Q And Mr. Humphrey's there at the hospital with
5 her?

6 A Yes.

7 Q And you know that he had gone to a different
8 hospital?

9 A Actually I don't remember he was going to a
10 hospital. I just got a little information that he
11 was involved in the accident, that's basically what
12 I know.

13 Q But you know that when he came and saw you
14 later that day, that he had had some kind of medical
15 treatment. You talked about a bandage or a sling?

16 A Yes, sir, something on his arm.

17 Q I think you said something about his mama
18 saying something about him being on medication?

19 A That's correct.

20 Q And ultimately, though, when you see him at
21 Palmetto Richland, you say, hey, I want to talk with
22 you about this, would you come by
23 Batesburg-Leesville Police Department?

24 A Yes, sir.

25 Q He's there that night?

1 A Yes, sir.

2 Q That same day?

3 A Uh-huh.

4 Q What was it, about 9:15 he shows up?

5 A Yes, we start the interview at 9:15.

6 Q Okay. Start the interview at 9:15. And he

7 ends up coming there with his mama, doesn't he?

8 A Yes.

9 Q And she asks to be a part of that interview,

10 does she not?

11 A She asked, yes.

12 Q And you told her, no, that she couldn't?

13 A I said, No, because he's 18. And he said, Ma,

14 I got this. I need to do this.

15 Q So, ultimately, though, you weren't going to

16 let her come back?

17 A No.

18 Q And at that point in time, you had talked with

19 some individuals prior to talking with Mike?

20 A I mean, other than there was an accident,

21 that's about it and that he was also involved in it.

22 Q And did you audio tape your interview with

23 Mike?

24 A No, sir.

25 Q Video?

- 1 **A** No, sir.
- 2 **Q** Could have done those if you wanted to?
- 3 **A** If I thought there was more to it, I probably
4 would at the time.
- 5 **Q** But, ultimately, he comes back and he can't
6 write, so you do a written statement for him,
7 correct?
- 8 **A** That's correct.
- 9 **Q** He cooperated with you?
- 10 **A** Yes, sir.
- 11 **Q** He didn't have to?
- 12 **A** Correct.
- 13 **Q** He could have requested a lawyer?
- 14 **A** Uh-huh.
- 15 **Q** He could have said, I don't want to talk with
16 you?
- 17 **A** Yes, sir.
- 18 **Q** He could have done it before he gave a
19 statement, correct?
- 20 **A** That's correct.
- 21 **Q** He could have done it in the middle?
- 22 **A** Yes, sir.
- 23 **Q** He could have done it at any point in time. He
24 could say, you know what, I'm done?
- 25 **A** Yes, sir.

1 Q He didn't do that, did he?

2 A No, sir.

3 Q He cooperated with you the entire time?

4 A Uh-huh.

5 Q And once you got done with that statement, some
6 of the things in there, you know from the rest of
7 the investigation that what he's telling you was
8 true, correct?

9 A From the statement he gave me?

10 Q Well, in other words -- let me rephrase that,
11 that's probably kind of confusing. You know that
12 Megan -- through the investigation, you know that
13 Megan had called off for her job at Saluda Nursing
14 Home?

15 A At that time, I didn't know. I just --

16 Q You found out later, though?

17 A Yes.

18 Q And he told you that she had done that in the
19 statement?

20 A Yes.

21 Q And you were able to verify that?

22 A I think Lieutenant Clare actually verified
23 that.

24 Q But you know that information now?

25 A Yes.

1 Q And no neighbors hear any kind of argument
2 around that [REDACTED] that day or that
3 early morning?

4 A Not to my knowledge.

5 Q And he tells you that she had a brief argument
6 with him?

7 A Yes.

8 Q She's mad?

9 A Yes, he says that.

10 Q Because he's gone out with his cousins, come
11 back in early in the morning?

12 A All I know is that they got into a little
13 argument. He didn't go into details why and that he
14 was drunk.

15 Q And couldn't keep the kids?

16 A Correct.

17 Q There's, from what you could see, no
18 photographs of the scene on the 17th in front of
19 Shealy's?

20 A Not to my knowledge at the time.

21 Q South Carolina MAIT Team could have been called
22 out, could they not?

23 A To my -- best of my knowledge, they reviewed it
24 as a traffic accident. They didn't know exactly
25 what they had at the time.

1 Q And through your investigation, did you look
2 into whether Ms. Jackson had had any depression
3 problems or had been prescribed any antidepressants?

4 MR. WEDEKIND: Objection, Your Honor.

5 THE COURT: Yes, sir.

6 MR. WEDEKIND: I don't see how he would have
7 any medical knowledge. He wasn't saying he's a
8 nurse in any way involved in medical treatment of
9 any patients.

10 MR. MADSEN: I'm just asking him as part of his
11 investigation.

12 THE COURT: If he doesn't know, he can say he
13 doesn't know. The objection's overruled.

14 THE WITNESS: I don't know.

15 BY MR. MADSEN:

16 Q That's nothing that you looked into?

17 A No, sir.

18 Q You could have arrested Mike right then and
19 there at the Batesburg-Leesville Police Department,
20 correct?

21 A Yes.

22 Q Nothing stops you from, if you think that
23 there's probable cause, to arrest him, put the
24 handcuffs on him and take him to jail?

25 A That's correct, but I want to further my

1 investigation before we get to that part.

2 Q And you didn't do that, though?

3 A I didn't, but Lieutenant Clare did. He did the
4 next interview with him.

5 Q Mike ended up coming back, I think, a couple of
6 days later on the 19th at your department's request,
7 right?

8 A Yes.

9 Q And then, ultimately, I guess y'all get an
10 arrest warrant for him on the 22nd and he ends up
11 coming back for that to let y'all serve the arrest
12 warrant on him?

13 A I think that's correct.

14 Q And during the entire time that you were
15 interviewing Mike, any questions that you had, he
16 answered them?

17 A Yes, he did.

18 Q He fully cooperated with you, didn't he?

19 A That's correct.

20 Q Didn't have to?

21 A Correct.

22 MR. MADSEN: That's all the questions I have.

23 THE COURT: Redirect.

24 MR. WEDEKIND: Very briefly.

25 REDIRECT EXAMINATION

1 BY MR. WEDEKIND:

2 Q Officer Gilliam, you weren't in any rush to
3 make any judgments immediately, were you?

4 A No, sir.

5 Q In fact, you didn't arrest him, as Mr. Madsen
6 said, on the spot, did you?

7 A No, sir, I sure didn't.

8 Q In fact, you gathered a little more evidence,
9 took a little more time?

10 A Yes.

11 Q Did you discuss the case and what you had done
12 with his interview with your superiors?

13 A Yes.

14 Q And then later on was the determination made
15 that you had enough to go forward?

16 A That's correct.

17 Q And then at what time did you make that
18 ultimate arrest?

19 A I think it was the 22nd. I'm not exactly sure
20 of the dates.

21 MR. WEDEKIND: Thank you. No further
22 questions.

23 THE COURT: Recross.

24 MR. MADSEN: No recross, Your Honor.

25 THE COURT: Thank you, sir. You may step down.

1 How long is your next witness?

2 **MR. WEDEKIND:** Your Honor, if we may approach
3 about that?

4 **MR. MADSEN:** Judge, I don't have -- Officer
5 Gilliam, I know he works with Columbia now, if he
6 wants to be excused, I don't have an objection.

7 **MR. WEDEKIND:** No objection from the State.

8 **THE COURT:** You're free to go. Thank you very
9 much.

10 (Whereupon, a bench conference was held off
11 the record, in the presence of the jury, but out of
12 the hearing of the jury.)

13 **THE COURT:** All right. Ladies and gentlemen,
14 I'm advised that this is the best stopping point for
15 the day. I'm advised that they expect you to get
16 the case tomorrow. So it should go to you some time
17 tomorrow. I don't know what time. We'll gauge that
18 better tomorrow.

19 And I need you here at 9:30 in the morning.
20 You don't have to call that number, just please be
21 here at 9:30 in the jury room. I hope you have a
22 pleasant evening. Remember all of those
23 admonitions. I look to see you at 9:30 in the
24 morning. Thank you.

25 (The jury was excused for the day.)

1 **THE COURT:** All right. Everybody be careful as
2 you leave that you don't have any contact with the
3 jurors. And I need everybody here at 9:30 in the
4 morning. Thank you.

5 (The proceedings were concluded for April
6 26, 2011.)

7 (The following proceedings were held on
8 April 26, 2011.)

9 **THE COURT:** State ready for the jury?

10 **MR. WEDEKIND:** Yes, sir.

11 **THE COURT:** Defense?

12 **MR. MADSEN:** Yes, Your Honor.

13 **THE COURT:** Bring the jury in, please.

14 (The jury enters the courtroom at 9:32 a.m.)

15 **THE COURT:** Call your next witness.

16 **MR. WEDEKIND:** Your Honor, the State would call
17 Chief Oswald.

18 WALLACE OSWALD,

19 having been duly sworn, testified as follows:

20 **THE CLERK:** If you'll have a seat, state your
21 name, spelling your last, please.

22 **THE WITNESS:** Wallace Oswald, O-s-w-a-l-d.

23 DIRECT EXAMINATION

24 BY MR. WEDEKIND:

25 Q And, Chief Oswald, tell the jury your current

1 job and how long you've been there.

2 **A** I'm chief of police, Batesburg-Leesville Police
3 Department. I've been a police officer for 35
4 years, been chief of police for 30 years.

5 **Q** Back on October 17th of 2004, were you indeed
6 the chief of police at Batesburg-Leesville at that
7 time?

8 **A** That's correct.

9 **Q** And did you have overall responsibility of the
10 investigation of the case involving the State versus
11 Michael Humphrey?

12 **A** That's correct.

13 **Q** And back in 2004, tell the jury your
14 involvement in this case.

15 **A** I've received -- it's normal -- of course,
16 we're a small department. It's normal, especially
17 on Sunday afternoon, Sunday evening, for myself to
18 call officers on duty to see what's been going on.
19 And I received a phone call from the supervisor on
20 duty that this accident had occurred.

21 **Q** You said the word accident, but did it later
22 evolve into something different?

23 **A** Well, the officer was using that term, what we
24 refer to as the uniforms, the initial officers that
25 went on the road, were referring it to me as an

1 accident, but as I began to ask questions about it,
2 just things did not add up to me, that there may be
3 more there than an accident.

4 Q So once you started talking to all the people
5 and put all the pieces together, you determined it
6 was what?

7 A Well, first, I called Officer Gilliam. He was
8 our investigator, our detective at the time. And I
9 asked him to go to the hospital. When he called me
10 back that he had -- about information he had
11 obtained at the hospital, that's when I became more
12 curious that refer -- changing this from maybe an
13 accident to something more, to an incident rather
14 than an accident.

15 Q And did you review all these statements and
16 information and put it all together?

17 A Yes, I did.

18 Q And, ultimately, was there a determination
19 about whether or not to arrest Mr. Humphrey?

20 A Yes, there was.

21 Q And who made that call?

22 A I did.

23 Q And did you consult with any other agencies or
24 ask for assistance from other agencies?

25 A Yes. On Monday morning, when I came in on

1 Monday morning, I immediately called Lieutenant Day,
2 which you've already heard from. I asked him to
3 come over. Then I called SLED and asked for someone
4 from their department to come over to help us with
5 the investigation.

6 Q And how big and well financed is the
7 Batesburg-Leesville Police Department?

8 A We have 20 officers and we're not very well
9 financed as most small departments.

10 Q And do you have your own independent crime lab?

11 A No, we do not.

12 Q Do you have teams that go out and document
13 things with video tapes and holographic
14 computer-generated animation?

15 A No, we do not.

16 Q Do you then call in sometimes and consult with
17 agencies like the MAIT team?

18 A Many times.

19 Q And sometimes SLED?

20 A That's correct.

21 Q Did you feel you needed a particular question
22 answered by Lieutenant Day?

23 A Yes. The main question that -- when Lieutenant
24 Day came over Monday, the main question I had for
25 him at that time was, was the victim in that truck

1 when it hit the tree? I wanted to know if she was
2 in the truck when the truck hit the tree.

3 Q And was he able to answer that question for
4 you?

5 A Yes. He answered most emphatically that she
6 was not.

7 MR. MADSEN: Judge, I'm going to object
8 hearsay.

9 THE WITNESS: Excuse me. I'm sorry.

10 BY MR. WEDEKIND:

11 Q Don't go into what he said. But he resolved
12 the issue for you; is that correct?

13 A Yes, he did.

14 Q Then what was the issue -- what was the
15 question you asked of him? I don't want to hear his
16 response, but what was the question you asked of
17 him?

18 A My question was, was she in the truck when it
19 hit the tree?

20 Q And that was resolved for you by his answer?

21 A Yes, it was.

22 Q Okay. Now, was there a SLED investigator who
23 came out at the time?

24 A Yes.

25 Q Did he do much for you on the case?

1 **A** He checked over the truck for us in the case,
2 yes, he did.

3 **Q** And did he take photographs?

4 **A** Yes, he did.

5 **Q** Did your people also take independent
6 photographs in addition to what he took?

7 **A** Yes, Lieutenant Clare did.

8 **Q** And then you've had those pictures and we've
9 introduced those in evidence today or yesterday?

10 **A** That's correct.

11 **Q** Now, was there other materials taken by SLED to
12 your knowledge?

13 **MR. MADSEN:** Judge, I'm going to object.

14 **THE COURT:** What's your objection?

15 **MR. MADSEN:** Judge, we had a pretrial ruling in
16 reference to evidence.

17 **THE COURT:** Ladies and gentlemen, I need to ask
18 you to step in the jury room. Don't discuss the
19 case

20 (The jury retires to the jury room.)

21 **THE COURT:** What was the question?

22 **MR. WEDEKIND:** The question was, did he -- did
23 the SLED agent gather any evidence from the vehicle?
24 I'm not seeking to introduce it. Mr. Madsen brought
25 up the issue that asked the questions what was not

1 gathered. I'm just going to address that -- from
2 him that there was blood samples taken, but we're
3 not going to introduce it and we're not going to go
4 into what the results were, just that he didn't find
5 it to be of any use.

6 **MR. MADSEN:** Judge, I think that, A, it hasn't
7 been introduced; B, there would certainly be a 403
8 issue in regards to that. They haven't introduced
9 any evidence. They said they weren't going to
10 introduce anything from a search warrant. We don't
11 believe that it would be appropriate based on the
12 pretrial motion and what they said.

13 And, additionally, that under 403, they're
14 going to want to talk about stuff that's not going
15 to come into court and so we don't think that it
16 would be relevant or, even if it was, that under
17 403, it would be more prejudicial than probative.

18 **MR. WEDEKIND:** We're not going to introduce
19 anything except the fact that nothing's being
20 introduced, that he didn't feel there was anything
21 of value that was looked at. And -- well, the
22 photos are lost, not the -- blood samples aren't
23 lost, but we're not going to introduce any DNA
24 evidence or make any further reference.

25 The only reason this issue is in play is

1 because Mr. Madsen put it in play in his opening
2 statement saying -- asked the questions of what
3 agents were not there. He's asked questions about
4 SLED agents being present, but nothing -- where are
5 they, those questions. He's leaving that hanging.
6 We're just going to plug that gap and say nothing of
7 value was discerned by him. We're not introducing
8 any such material.

9 **THE COURT:** Go ahead and ask him what it is you
10 want to ask him so I can understand where we are.

11 IN CAMERA EXAMINATION

12 BY MR. WEDEKIND:

13 **Q** Chief Oswald, was there a SLED agent present
14 that processed the scene?

15 **A** Yes, there was.

16 **Q** Did he gather materials?

17 **A** Yes, he did.

18 **Q** Did you feel there was any need for those
19 materials to be introduced in this case of what he
20 gathered?

21 **A** No.

22 **MR. WEDEKIND:** That would be it, sir -- oh,
23 hang on a second.

24 (Pause.)

25 **Q** In particular, were there photos taken by the

1 SLED agent that you know of?

2 A That's correct.

3 Q Have you ever seen those photographs?

4 A I have not.

5 Q Do you know where those photographs are
6 located?

7 A I do not know where they are.

8 Q Did you make an attempt to get them from SLED?

9 A Yes, we did.

10 Q And what was the result?

11 A We have not received anything.

12 Q And is the agent who processed the scene still
13 employed with SLED?

14 A I've been told that he is not.

15 Q And have you been able to locate him?

16 A I have no idea where he is.

17 Q In regards to blood samples, were they
18 gathered?

19 A Yes, he did.

20 Q Do you know where those are?

21 A I do not know where they are. They were taken
22 to SLED. I have not seen them since.

23 Q Did you find any significance about the blood
24 that was taken? Would it prove anything to you?

25 A No, sir.

1 Q What would it -- I mean, whose blood did you
2 expect you were going to see?

3 A Well, we were seeing, you know, if it was
4 defendant's blood or victim's blood.

5 Q And whose car was it?

6 A It was victim's car.

7 Q And had it been known to you that he was a
8 passenger in that vehicle in the past?

9 A Yes.

10 MR. WEDEKIND: Beg the Court's indulgence.

11 (Pause.)

12 Q And, basically, since you called SLED,
13 ultimately were they of any assistance to you in
14 this investigation?

15 A No.

16 MR. WEDEKIND: That's all we're trying to do,
17 Judge, is just establish that there was a SLED
18 agent. Mr. Madsen has brought this up with the
19 other two previous law enforcement witnesses. They
20 couldn't answer. They knew SLED had come out or had
21 been at the scene, but they couldn't answer what
22 they did or didn't do. Here's the man who knows
23 what they did or didn't do and felt that it was of
24 no use to his investigation so that's why it's not
25 being used.

1 And nothing's going to be introduced and
2 there's nothing to be hidden from the jury. It's
3 just laying the facts out for them instead of trying
4 to do things by innuendo and sound like there's
5 something out there that's not being used or hidden
6 from the jury. We're just saying there's nothing to
7 be used. We won't go into the results of anything.
8 There is nothing to really show.

9 **MR. MADSEN:** Judge, I think the whole line of
10 questioning is inappropriate.

11 **THE COURT:** I agree.

12 You're going to let one man decide everything
13 that comes in and everything that doesn't come in
14 and what's important and what's not important and
15 you can't cross-examine him. And if you put this
16 stuff in, it sounds to me like they ought to get a
17 spoliation charge because you took photographs, but
18 you can't produce them. So are they entitled to an
19 instruction to the jury that you can infer from that
20 that it's favorable to the defense?

21 **MR. WEDEKIND:** We've already told the jury that
22 the photographs were taken. And he's mentioned that
23 there were photographs taken. They're not there,
24 it's out, to the jury's knowledge.

25 **THE COURT:** That's what spoliation is.

1 **MR. WEDEKIND:** We can give them the charge. I
2 don't have any objection to that, but, I mean, the
3 info's out there. Mr. Madsen's already talked about
4 the absence of SLED putting anything in. All I'm
5 doing is just saying why. He's put the issue in
6 play with two other witnesses.

7 **THE COURT:** You want him to evaluate whether
8 the information was important and significant
9 without ever telling us what it is.

10 **MR. WEDEKIND:** I'll rephrase the question, just
11 focus it on the absence of the photos, which we know
12 that two rolls were taken, that was mentioned, and
13 just say we never saw them and we don't know where
14 they are and he's never had contact with that SLED
15 agent.

16 **MR. MADSEN:** And, Judge, I don't think I have a
17 problem if he asked him, SLED took photos, you don't
18 have the photos, you don't know where those photos
19 are. I'm going to ask that question because I think
20 that that goes to part of the investigation.

21 **THE COURT:** I agree with you, but what they're
22 doing is going beyond that and saying is any of that
23 other stuff relevant or important and he's saying
24 no. That's quite a leap.

25 **MR. WEDEKIND:** We won't do that. We'll just

1 ask him the direct question about the photos, have
2 you ever seen them, do you know where they are and
3 do you know where the SLED agent is, those three
4 things.

5 MR. MADSEN: I don't have a problem with that.

6 MR. WEDEKIND: Can we ask the question, Your
7 Honor, of whether or not SLED was any assistance to
8 you because of the photos and if he just says yes or
9 no?

10 MR. MADSEN: I don't think that that's
11 appropriate.

12 MR. WEDEKIND: Your Honor, we'll just ask the
13 question then -- we'll withdraw that. We'll just
14 ask the question of the photos, did you know they
15 were taken and did you ever see them and that's it.

16 THE COURT: Bring in the jury.

17 (The jury returns to the courtroom.)

18 THE COURT: Rephrase your question.

19 MR. WEDEKIND: Yes, sir.

20 BY MR. WEDEKIND:

21 Q Chief Oswald, did you request SLED to come out
22 and assist?

23 A Yes, I did.

24 Q Were there photographs taken?

25 A Yes, there were.

1 Q Have you ever seen those photographs?

2 A No, I have not.

3 Q Do you know the location of where those
4 photographs are?

5 A No, I do not.

6 Q Do you know where the SLED agent is that took
7 those --

8 A No, I do not.

9 Q Have you attempted to locate that SLED agent?

10 A Yes, those requests were made.

11 Q And what was the result?

12 A No results.

13 Q So you don't know where he is?

14 A No, I do not.

15 Q Now, let's talk about some photographs. Let me
16 show you what's marked for identification as State's
17 I.D. 15, 16 and 17. And the same day that the SLED
18 agent was there taking photographs were you also
19 having your people take photographs?

20 A Yes. Lieutenant Clare took pictures those days
21 also.

22 Q And some of those photographs are the ones that
23 we've introduced into evidence, correct?

24 A That's correct.

25 Q Now, going back to State's I.D. Number 15, 16

1 and 17, look those photographs over.

2 A (Witness complies.)

3 Q Do you recognize them?

4 A Yes. These are --

5 Q Wait, don't --

6 A Yes, I do recognize them.

7 Q Do they fairly and accurately --

8 MR. MADSEN: If he wants to introduce them, I
9 don't have an objection.

10 MR. WEDEKIND: And, at this time, Your Honor,
11 the State would introduce 15, 16 and 17 into
12 evidence.

13 THE COURT: Mark those in the record, please,
14 ma'am.

15 (State's Exhibit Numbers 15 through 17,
16 photographs, admitted into evidence.)

17 BY MR. WEDEKIND:

18 Q Now, I'm going to have you stay right there.

19 We're going to put these up on the projector here.

20 This is State's Number 15, Chief. Do you recognize
21 this photograph?

22 A Yes, I do.

23 Q What does that photograph depict?

24 A The defendant sitting in our police department.

25 Q And when were these taken?

1 A On the 22nd of October.

2 Q So several days after the incident that
3 occurred?

4 A A few days after, yes.

5 Q And it's difficult to see until you have the
6 photograph in hand, but what is indicated right
7 there?

8 A That's injuries to his right shoulder.

9 Q And State's Number 17, what does that depict?

10 A That's a closer picture of injuries to his
11 right shoulder.

12 Q Again of the defendant, Mr. Humphrey?

13 A Of the defendant, Mr. Humphrey, yes.

14 Q And Number 16, State's 16, what does that
15 indicate?

16 A Picture of his fingers, knuckles of his fingers
17 of Mr. Humphrey, the defendant.

18 Q And what is that right there?

19 A It's cuts.

20 Q And what is that right there?

21 A His fingernail.

22 Q So once you gathered all these photographs --
23 once you got all these photographs, looked at the
24 statements and the information from your officers,
25 you made the conclusion that what had occurred?

1 **A** That the victim's death was caused by Mr.
2 Humphrey and I signed a warrant for his arrest.

3 **Q** Now, have you ever worked any cases involving
4 suicides using vehicles, single vehicle accidents?

5 **A** We have worked cases where that has been
6 assumed, yes.

7 **Q** And did you feel there was any need -- or what
8 has your experience been about --

9 **MR. MADSEN:** Judge, I'm going to object to
10 speculation.

11 **THE COURT:** What has his experience been about?

12 **MR. WEDEKIND:** What --

13 **THE COURT:** The question was, what has his
14 experience been about?

15 **MR. WEDEKIND:** I'm going to lay the foundation
16 to that right now.

17 **MR. MADSEN:** I think that question was going to
18 go farther and that's what I object to.

19 **THE COURT:** I have to rule on what's asked, but
20 the question is not improper. Go ahead.

21 **BY MR. WEDEKIND:**

22 **Q** You've been a police officer for how long,
23 Chief?

24 **A** Thirty-five years as a police officer.

25 **Q** And have you had cause to investigate vehicle

1 accidents as part of being a police officer?

2 A Yes, I have.

3 Q And have you had a case to investigate single
4 vehicle -- motor vehicle accidents?

5 A Yes, I have.

6 Q What's significant about single motor vehicle
7 accidents?

8 A Sometimes you look at what caused a single
9 vehicle accident because, you know, there has --
10 there have been cases where you cannot find a reason
11 for a single vehicle accident, what made the person
12 leave the road, what made the person hit a tree that
13 was off the road or some large object that was off
14 the road. And you try to find out why this vehicle
15 did what it did or why this person, the single
16 person in a car, did what they did.

17 Q And, again, you -- when there's another car
18 hitting another car, that explains itself, correct?

19 A That's correct.

20 Q But what happens when it's a single vehicle
21 without a tire blown out or some intervening cause,
22 what could be the cause?

23 A That could be suicide by vehicle when a person
24 is trying to kill themselves and they accelerate to
25 a large -- high speed hitting a large object or a

1 fixed object, something that will do tremendous
2 damage at high speed to a vehicle.

3 Q And usually in those cases, what is the speed
4 that the vehicle is going at? Is it slow speed or
5 high speed?

6 A Very high speed, like I said, to do tremendous
7 damage to the vehicle and, of course, tremendous
8 damage to the occupant inside.

9 Q If you're going five miles an hour to kill
10 yourself and you hit a wall, what's going to happen?

11 A Not much.

12 Q If you go ten miles, what's going to happen?

13 A Not very much.

14 Q A little bit more than five, but --

15 A Yes.

16 Q -- not -- a little bit more. So the faster you
17 go, the damage is going to be greater; is that
18 correct?

19 A That's correct.

20 Q Have you ever come across, in your experience,
21 any low speed suicide attempts to hurt themselves,
22 people going at extremely slow speeds?

23 A Not in my experience, no, sir.

24 Q Okay. So based on your years of experience --
25 how many cases have you looked at of single motor

1 vehicle accidents over the years would you estimate? ...

2 **A** It has been quite a few, I would say, over the
3 years, yes.

4 **Q** A rough number?

5 **A** Maybe 50.

6 **Q** And gathering upon all that experience, looking
7 at all the ones you've seen, did you have any reason
8 to analyze this case as a particular case of slow
9 speed attempted suicide?

10 **A** Well, we look at every aspect of anything such
11 as this, but I did not see anything that led me to
12 believe that was the situation in this, no.

13 **MR. WEDEKIND:** Thank you. Please answer any
14 questions that Mr. Madsen may have.

15 **THE COURT:** Cross.

16 CROSS-EXAMINATION

17 BY MR. MADSEN:

18 **Q** Chief Oswald, you didn't go out then on the
19 morning of the 17th, did you?

20 **A** Not of the morning of, no, sir.

21 **Q** Did you go out the afternoon of the 17th?

22 **A** It was later that evening I did go out, yes,
23 sir.

24 **Q** You normally don't work Saturdays and Sundays,
25 correct?

1 A Unless I'm called out.

2 Q Unless you're called out, you're available.
3 You're the chief, you're the head honcho there,
4 aren't you?

5 A Yes, sir.

6 Q And when you first became involved or realized
7 about this, generally what happens is since you're
8 not working on Saturday or Sundays, you end up
9 calling late Sundays to kind of get a briefing,
10 don't you?

11 A That's correct.

12 Q And that's what you did in this case?

13 A That's correct.

14 Q Okay. And so when you testified earlier that
15 someone had called you, that's incorrect. You had
16 actually called in just to get your normal Sunday
17 afternoon, late Sunday briefing about what's
18 happened on the weekend, correct?

19 A Not always, sometimes officers call me.

20 Q Sure. But, in this case, you ended up calling
21 in just to get the briefing?

22 A I may have, someone may have called me. I
23 can't tell you exactly on that.

24 Q At a different hearing in the past, did you
25 testify that you actually had called in?

1 A I can't tell you if I did or not.

2 Q Take a look at line 25 down there that you
3 normally -- Don't normally work Saturdays and
4 Sundays unless something has gone on, so I called
5 for information about what had been going on. Like
6 I said, I was informed of this accident.

7 A Yes.

8 Q And then based on that, you ended up calling
9 Officer Gilliam?

10 A Yes.

11 Q You never collect any evidence yourself, do
12 you?

13 A No, I do not.

14 Q You never interview any witnesses yourself, do
15 you?

16 A I do sometimes.

17 Q But, in this case, you don't?

18 A In this one, I did not.

19 Q You don't take any photographs yourself?

20 A Most of the time I do not.

21 Q In this case, you don't take any photographs?

22 A I did not in this case.

23 Q In this case, you don't take any measurements?

24 A No, I did not.

25 Q And then there were SLED photographs taken, but

1 you don't have copies of those?

2 A No, I do not.

3 Q You don't know where those are at?

4 A No, I do not.

5 Q You don't even know where the SLED agent's at?

6 A No, I do not.

7 Q And the SLED agent that came out, he was a
8 crime scene processor, wasn't he?

9 A That's what he told me.

10 Q And they came out at your request?

11 A That's correct.

12 Q And, ultimately, MAIT ends up leaving on the
13 18th because he's going to be the one that helps you
14 with the crime scene?

15 A Well, MAIT answered my question and then they
16 left, yes.

17 Q You find out that when Officer Gilliam went to
18 Palmetto Richland Hospital to check on Ms. Jackson,
19 that he came in contact with Mike, correct?

20 A That's correct.

21 Q And you know that then there was an interview
22 later that day?

23 A That's correct.

24 Q At Batesburg-Leesville?

25 A That's correct.

1 Q Where Mike apparently leaves there and comes
2 out to Batesburg-Leesville and is interviewed by
3 Officer Gilliam?

4 A That's correct.

5 Q And Officer Gilliam was a seasoned officer?

6 A That's correct.

7 Q He was your town's only investigator at that
8 point in time?

9 A That's correct.

10 Q Has gone through law enforcement academy?

11 A That's correct.

12 Q Certified officer?

13 A That's right.

14 Q Quite a bit of training?

15 A Yes, sir.

16 Q Training that included how to interview or
17 interrogate individuals?

18 A Yes, sir.

19 Q I think, at one point in time, he was a
20 narcotics officer for you?

21 A That's correct.

22 Q And, ultimately, he ended up conducting that
23 interview, didn't he?

24 A That's correct.

25 Q And that was on the day of the 17th?

- 1 A Yes, sir.
- 2 Q And he did not arrest Mike on that day, did he?
- 3 A That's correct.
- 4 Q If he felt it was necessary, he could have done
- 5 that, he has that power?
- 6 A Well, he would have talked to me.
- 7 Q But he has the arrest power himself?
- 8 A That's correct.
- 9 Q And then on the 19th, I believe Lieutenant
- 10 Clare ended up interviewing Mike, correct?
- 11 A That was on the 19th, yes.
- 12 Q And that was at Batesburg-Leesville Police
- 13 Department?
- 14 A That's correct.
- 15 Q Was that at your direction?
- 16 A Yes.
- 17 Q And Mike came in there voluntarily?
- 18 A Yes.
- 19 Q And Lieutenant Clare has been with your
- 20 department how long?
- 21 A Around 20 years now.
- 22 Q He's a certified officer?
- 23 A That's correct.
- 24 Q He's gone through the academy?
- 25 A That's correct.

1 Q He's been trained on investigations,
2 interrogations, things of that matter?

3 A That's correct.

4 Q Ultimately, Mike comes in, cooperates. And he
5 doesn't place Mike under arrest, does he?

6 A No, he does not.

7 Q You then ask Mike to come back in to
8 Batesburg-Leesville, I guess, on the 22nd?

9 A That's correct, the 22nd, yes.

10 Q And that's when y'all take those photographs, I
11 think, that the State just introduced?

12 A That's correct.

13 Q And you end up -- you have gotten an arrest
14 warrant and placed him under arrest at that point in
15 time?

16 A That's correct.

17 Q He comes in voluntarily?

18 A Yes.

19 Q Doesn't have to?

20 A Yes, that's correct.

21 Q Answered all the questions that y'all had for
22 him?

23 A That's correct.

24 Q Cooperated fully the entire time?

25 A Yes, sir.

1 Q At your direction, you had officers canvass the
2 area around [REDACTED] correct?

3 A That's correct..

4 Q And no one hears anything that early morning,
5 that night, no kind of disturbance or anything like
6 that, correct?

7 A I don't -- I don't think there were any
8 statements of anyone hearing anything not that I
9 remember.

10 MR. MADSEN: That's all the questions I have.

11 THE COURT: Redirect.

12 MR. WEDEKIND: Yes, sir.

13 REDIRECT EXAMINATION

14 BY MR. WEDEKIND:

15 Q Now, Chief Oswald, you didn't look at just one
16 piece of evidence and make the call to make an
17 arrest on Mr. Humphrey, did you?

18 A No, I did not. It was the case as a whole.

19 Q And you looked at all the officers who were on
20 the scene and they gave you a report?

21 A That's right. Everyone that made reports,
22 everyone that did anything, it was all put together,
23 yes.

24 Q And you talked with them?

25 A Yes.

1 Q Did you talk with Gilliam after he interviewed
2 Mr. Humphrey?

3 A That's correct.

4 Q Did you talk with Lieutenant Clare after he
5 interviewed Mr. Humphrey?

6 A That is correct.

7 Q Did you use all that information and look at
8 everything and put it together and make the call?

9 A Yes, sir.

10 Q When did you get word that Ms. Megan Jackson
11 had died?

12 A On the 21st.

13 Q And you didn't make the call at that point
14 until after she was dead, right?

15 A That's correct.

16 Q And when did you actually make the direction
17 that Mr. Humphrey should be charged and arrested?

18 A The 22nd.

19 Q So were you in any hot rush to make an arrest
20 and just line Mr. Humphrey up and take him to jail?

21 A No, sir. We wanted to complete the
22 investigation, also see what the status of the
23 victim was going to be.

24 Q And would it have affected, whether Ms. Jackson
25 had lived or died, the nature of the charge?

1 **A** Yes.

2 **MR. WEDEKIND:** No further questions, Your
3 Honor.

4 **THE COURT:** Recross.

5 **MR. MADSEN:** No, Your Honor.

6 **THE COURT:** Thank you, sir. You may step down.
7 Call your next witness.

8 **MR. WEDEKIND:** The State would call Dr.
9 Armstrong.

10 WILLIAM ARMSTRONG,
11 having been duly sworn, testified as follows:

12 **THE CLERK:** If you'll have a seat over here.
13 State your name and spell your last for the record,
14 please.

15 **THE WITNESS:** My name is William Armstrong.
16 I'm a pathologist. My last name is
17 A-r-m-s-t-r-o-n-g.

18 DIRECT EXAMINATION

19 BY MR. WEDEKIND:

20 **Q** And, Dr. Armstrong, would you please tell the
21 jury some of your training and qualifications to
22 perform the tasks that you do?

23 **A** Very briefly, for five years of undergraduate
24 schooling, four years of medical school, one year of
25 internship, four years of pathology residency.

1 **Q** So you are a licensed medical doctor in South
2 Carolina?

3 **A** I am.

4 **MR. MADSEN:** Judge, we would stipulate to his
5 qualifications as a forensic pathologist.

6 **THE COURT:** Do you want to go any further?

7 **MR. WEDEKIND:** Yes, sir, just a couple of
8 things.

9 **THE COURT:** Go ahead.

10 **MR. MADSEN:** But thank you, Mr. Madsen.

11 BY MR. WEDEKIND:

12 **Q** Dr. Armstrong, do you have a particular
13 specialty? You don't just do brain surgery or
14 anything of that nature, do you?

15 **A** There are several things that I do, which are,
16 I would say, I guess you would say, specialty. I'm
17 subspecialty board certified in -- well, I'm board
18 certified in pathology, that's anatomic and clinical
19 pathology. I'm also subspecialty boarded nationally
20 as a hematopathologist, so I do a lot of that. We
21 read out -- we interpret biopsy specimens that are
22 taken out, pap smears, and run the clinical labs.
23 And we perform -- our group performs the autopsies
24 for the Richland County -- sorry -- Lexington County
25 Coroner.

1 Q Well, have you made a particular study of human
2 anatomy?

3 A Yes.

4 Q And would you tell the jury exactly not only
5 what a pathologist does, but a particular forensic
6 pathologist can do?

7 A A forensic pathologist is a little bit
8 different than a regular pathologist or a general
9 pathologist. And I have been doing that in this
10 community for 33 years actually and, uh, performing
11 forensic autopsies.

12 The difference between a general pathologist
13 who does autopsies and a forensic pathologist who
14 does autopsies is that we are qualified to
15 incorporate other findings, such as investigative
16 reports, blood tests, toxicology tests, x-rays, in
17 addition to our usual finding of the manner of the
18 cause of death. In other words, we're able to
19 determine what's called manner of death.

20 Q So an autopsy is just an examination tool
21 that's done on a person who's deceased. You don't
22 do them on a live person, right?

23 A That's correct. We just determine the cause of
24 death like a heart attack or pneumonia. In forensic
25 pathology, the determination of manner of death is

1 -- an opinion is given in our reports as to what
2 really -- how did the person die, not of what
3 disease.

4 So there are basically a handful of -- there
5 are whole textbooks of causes of death, but there
6 are very few manners of death. And one is natural
7 causes, heart attack; another one is suicide,
8 self-inflicted cause of death; and homicide, which
9 is a death related to a second party or parties.

10 Q So another person causes the death of a person?

11 A Or is related to it.

12 Q And to that end expressing that opinion, have
13 you done that before in courts of record in South
14 Carolina?

15 A Yes.

16 Q Have you testified?

17 A Yes, I have.

18 Q And you've been called upon approximately how
19 many times to offer that opinion in courts of
20 record?

21 A Hundreds, I can't tell you exactly how many.

22 Q Now, you said that you are also qualified to
23 take outside information from law enforcement. Were
24 you called upon to do that in this case involving
25 the death of Ms. Megan Jackson?

1 **A** Well, I did do that, yes, and that included
2 outside info -- some outside information from
3 Palmetto Richland where she was hospitalized for a
4 few days before being pronounced dead there and also
5 from the investigating coroner's verbal description
6 and then also the Lexington County Police Department
7 had a brief summary of events.

8 **Q** Was that the Batesburg-Leesville Police
9 Department?

10 **A** Yes, it was. I'm sorry. Batesburg Police.

11 **Q** So you took all that information together. Did
12 you examine the photographs from the autopsy?

13 **A** Yes.

14 **MR. WEDEKIND:** Your Honor, at this time, we
15 would move to qualify Dr. Armstrong as an expert in
16 forensic pathology.

17 **THE COURT:** He's recognized as an expert in
18 that field without objection. You may continue.

19 **BY MR. WEDEKIND:**

20 **Q** Okay, Doctor. So you looked at -- did you look
21 at photographs of the autopsy? Was one performed --

22 **A** Well, we took them, yes.

23 **Q** I'm going to show you these, without showing
24 them to the jury, just to refresh your memory or
25 just to look over those photographs.

1 **A** These are the photographs.

2 **Q** Did you note any particular injuries to the
3 body of Ms. Megan Jackson as a result of your
4 examination?

5 **A** She had several injuries. The first injury --
6 the injury that occurred first in the accident and
7 which caused her death was a injury to the front and
8 top -- or top of the head which caused skull
9 fractures, extensive intracranial hemorrhage, brain
10 swelling, and also -- which then really caused brain
11 death.

12 **Q** So the cause of death was determined to be what
13 specific type and what particular cause?

14 **A** Well, it can be termed severe closed head
15 injury with skull fractures.

16 **Q** And did you make it a particular
17 classification?

18 **A** Pardon me?

19 **Q** Did you make a call -- the manner of death, did
20 you make a call as to that?

21 **A** Well, based on the somewhat limited information
22 I had since a second party was involved, I called it
23 a homicide.

24 **MR. WEDEKIND:** And beg the Court's indulgence
25 for a moment, Your Honor.

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

2 (Pause.)

3 **MR. WEDEKIND:** Your Honor, I'm going to ask the
4 doctor to step down and make some markings on a
5 diagram.

6 **THE COURT:** Just keep your voice up, please,
7 Doctor, try not to block the jury.

8 **MR. WEDEKIND:** Yes, sir.

9 (Witness leaves the witness stand.)

10 **BY MR. WEDEKIND:**

11 **Q** Okay, Doctor. Now, you did a head examination
12 on the deceased, Ms. Megan Jackson, correct?

13 **A** Yes. What that entails is, as far as the head
14 itself goes, is that the external surface of the
15 head is examined. We remove the skull cap from the
16 top, reflect the skin, remove the skull cap, inspect
17 the surface of the brain and then remove the brain
18 and actually examine that separately. That's
19 followed by taking small pieces of tissue and
20 looking at them under a microscope to confirm what
21 we saw.

22 What I saw on the external surface was that
23 slightly on the right side of the head just to the
24 right of the midline and into the hairline, there
25 was a contusion right here (indicating) and a

1 laceration which had been sutured at Richland. And
2 then there was a -- near that there was a small
3 sutured area here where they did a burr hole in an
4 attempt to relieving the intercranial pressure, so
5 that was not part of the original. And there were
6 bruise marks and an irregular tear in the scalp
7 about two -- almost two inches.

8 Emanating from this here after we looked inside
9 the scalp, reflected the skin, there was a lot of
10 soft tissue hemorrhage --

11 Q And when you said reflect, does that mean under
12 the skin? You went under the skin later?

13 A Yes, under the skin, there was a lot of soft
14 tissue hemorrhage there which you would expect from
15 a trauma just like a bad bruise. And from there,
16 from this spot, there emanated skull fractures,
17 which really were pretty extensive. You can't see
18 the origin from this left view, but they went also
19 down. And so they really went -- skull fractures
20 went completely down the scalp and really into the
21 base of the skull.

22 Q So it was almost a complete split of the top of
23 her skull?

24 A Yes, essentially.

25 Q What was the cause of that particular fracture?

1 A Well, this (indicating) blunt trauma to the
2 front of the scalp.

3 Q And then what result from the fracture occurred
4 to the brain underneath the skull?

5 A The fracture itself was not displaced. It did
6 not affect the brain, but it was really the
7 hemorrhage from the fracture that caused brain
8 swelling -- I mean, a compromise of the brain.

9 The brain is in a fixed cavity and so if you
10 add more fluid, the brain has less room and so that
11 compresses the brain and there -- in an injury like
12 this, there's a lot of rattling of the brain back
13 and forth and juggling back, so it's bumping against
14 the walls of the skull causing what we call
15 contusions, that's really a bruise of the brain.

16 And then examining her brain in my hands, the
17 brain was swollen and -- which we would expect,
18 which they knew already -- and soft, more soft in
19 some areas which means that part of it was starting
20 to die.

21 Q And in your expert medical opinion, was that
22 bruised brain and split skull consistent with what
23 kind of impact?

24 A Well, a blunt impact on a flat or semiflat
25 surface.

1 Q And then learning about the location of the
2 body and reading the reports, did you come to a
3 conclusion about what was the cause of that blunt
4 trauma to her head?

5 A It was most consistent with contact with a
6 concrete road.

7 Q A road surface?

8 A Or a road surface.

9 Q Okay. So did you notice anything else unusual
10 other than the head? Was that the cause of her
11 death?

12 A That is the cause of death.

13 Q Were there other injuries observed to her
14 person?

15 A Yes. There were other -- do you want me to sit
16 down?

17 Q No, no. Actually, Doctor, if you could step
18 forward over here, please. And using those
19 photographs as a reference, would you please use me
20 to demonstrate for the jury what you observed and --

21 A Well, there were other minor injuries which did
22 not really affect her health any. There were
23 scrapes and abrasions along the arms, upper arms,
24 and in the elbow area here (indicating), some
25 scrapes over the surface of the hand, both hands.

1 And there were some linear scratches along the left
2 shoulder, like that (indicating), and along the
3 right abdomen. And I do not know the origin of --

4 Q Was --

5 A Excuse me. There's nothing on the back side of
6 the patient, the victim. It all happened on the
7 head and the front.

8 Q And you said it was what -- what side were the
9 head injuries on?

10 A Right.

11 Q So over here?

12 A Yes.

13 Q And was there any particular difference between
14 the abrasions and the body? Have you heard the
15 expression road rash?

16 A Yes. That's a common term, lay term. We call
17 them abrasions, but if it occurs by scraping on the
18 road, it's called road rash.

19 Q And did you note abrasions on her body that
20 were consistent with road rash?

21 A Yes, I did.

22 Q Where were they located?

23 A Well, the ones I just described, on the arms
24 and...

25 Q And was there a second type that was consistent

1 with any type of other injuries?

2 A There were scratch marks as I demonstrated.

3 Q And they were located where?

4 A On the left arm and over the right abdomen.

5 Q Okay. Thank you. Please take your seat,

6 Doctor.

7 A (Witness resumes the witness stand.)

8 MR. WEDEKIND: And, Your Honor, at this time,
9 we request to have the diagram that the doctor
10 marked moved into evidence.

11 MR. MADSEN: No objection.

12 THE COURT: Mark that in evidence, please.

13 (State's Exhibit Number 18, diagram, marked
14 and admitted into evidence.)

15 BY MR. WEDEKIND:

16 Q Were you also called upon to look at
17 photographs of the vehicle that was involved in the
18 wreck?

19 A Not at the time.

20 Q But have you done so since then?

21 A It's been seven years ago, I can't remember
22 actually.

23 Q Let me show you State's Number 8, 9, 10 and 12.
24 If you would just briefly look at those, please.

25 A (Witness complies.)

1 Q Now, taking those photographs of that truck,
2 can you make a determination when looking at the
3 injuries of her body as to whether or not she was in
4 that truck when it collided or was she somewhere
5 else?

6 A She was outside the truck.

7 Q And how can you tell that?

8 A Well, the door was still shut, apparently.
9 The...

10 Q Would you have expected to see any other
11 injuries to her body if --

12 A I would have expected, though, to see a
13 seatbelt bruise.. There was none there.

14 Q What about the chest?

15 A The -- there were no chest imprints of the
16 steering wheel such that if she had been in the car
17 when it actually had the impact on the tree, she
18 would have gone forward and there would be a
19 circular or semicircular bruise marks over the chest
20 and I did not see that.

21 Q Would you --

22 A And there was no air bag --

23 Q And do you ever see road rash from the inside
24 of a cab of a vehicle?

25 A No.

1 Q And going back to those scratches, were they
2 consistent with what you would expect to find being
3 inflicted from a human being's hands to another?

4 A That is certainly one cause.

5 Q It was not inconsistent though?

6 A It's not inconsistent.

7 Q And were they along the lines, looking at those
8 photographs, what you would have thought could have
9 been done by a human hand?

10 A They were relatively even, long lines, long
11 scratch marks, relatively thin.

12 Q And those were not, in your opinion, caused by
13 contact with a road surface?

14 A I can't completely exclude that.

15 Q But consistent with human scratches?

16 A It is consistent with that.

17 Q Based on the totality of the circumstances,
18 Doctor, of your forensic examination, your autopsy,
19 looking at the records and the photographs, does
20 anything alter your conclusion about the nature and
21 the manner of her death?

22 A No.

23 Q And that was what?

24 A Homicide.

25 MR. WEDEKIND: Thank you. Please answer any

1 questions Mr. Madsen may have.

2 **THE COURT:** Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. MADSEN:

5 **Q** Dr. Armstrong, how are you doing this morning?

6 **A** Good. Thank you.

7 **Q** You did an autopsy back on October 21st of
8 2004, correct?

9 **A** That's correct.

10 **Q** Generated a report, I think, on the 31st of
11 2005, January 31st?

12 **A** Yes.

13 **Q** At the time, you had discussions with the
14 investigator at the time of autopsy, right?

15 **A** That's correct.

16 **Q** Received information from him?

17 **A** Yes.

18 **Q** I think you said something about a limited
19 investigative report that you reviewed?

20 **A** They submit -- yes. They submit an initial
21 report, which is what I read.

22 **Q** And if I understand from State's Exhibit Number
23 18, that ultimately, I guess, on this side, that is
24 consistent with her head hitting the road?

25 **A** Yes.

1 Q And as far as any other blunt injuries to her
2 face or head, there are none except for --

3 A That (indicating).

4 Q -- that injury. And then I guess there's
5 something right there which you call a burr hole,
6 which is -- my understanding is the doctors that
7 were treating her would have drilled into the skull
8 to release pressure?

9 A That's correct.

10 Q So that's something that was done
11 therapeutically to try to help her?

12 A Yes.

13 Q And then you also say that there are areas on
14 her body of road rash?

15 A That's correct.

16 Q Ultimately, when someone ends up hitting
17 pavement, they're going to -- their skin's going to
18 catch and it's potentially going to roll, but it's
19 going to decelerate and it's going to cause scrapes?

20 A Yes.

21 Q Not unsimilar to if you're riding a bicycle on
22 the pavement and fall off and skin your knee?

23 A That's correct.

24 Q And then I think you -- on her left arm, there
25 are some thin, linear or delicate scratches?

1 A Yes.

2 Q And you can't exclude that that potentially
3 comes from the roadway?

4 A I can't. I cannot.

5 Q You can't sit here and tell the jury that that
6 happened at the exact same time that she received --
7 when her head hit the pavement, can you?

8 A That's correct I cannot.

9 Q You can't say that those don't happen earlier
10 in the day?

11 A That's correct.

12 Q You can't say that those don't happen after the
13 accident, can you?

14 A No.

15 Q You can't say that those don't happen, if she
16 is on the ground at the scene struggling and people
17 are trying to hold her down or restrain her, you
18 can't say that those don't come from that?

19 A That's correct.

20 Q And, ultimately, they're just superficial
21 scratches?

22 A That's correct.

23 Q She also, I believe, had a bruise on her inner
24 right knee, correct?

25 A Yes.

1 Q About three inches and irregular?

2 A Yes.

3 Q What's irregular mean? Does that just mean a
4 weird shape?

5 A Yes, rough edges or -- it's not a round, smooth
6 edge.

7 Q And it was kind of blueish, greenish?

8 A I have to look at my photographs to remember
9 the color exactly.

10 Q Okay. But it was discolored somewhat?

11 A I'd have to review those photographs.

12 Q And then as far as -- beside the impact point
13 on her head, she doesn't have any other kind of
14 injuries, no road rash or anything like that on her
15 head or her face?

16 A That's correct.

17 Q And I'm pointing over here. I guess, it was
18 this side. And when you take a look at her body,
19 you review the entire external body, correct?

20 A That's correct.

21 Q And you don't find any slap marks or bruising
22 associated with that on her?

23 A Pardon me? Would you say that again?

24 Q You don't find anything consistent with any
25 other type of blunt force trauma except for where

1 she's hitting the road anywhere on her body?

2 A Well, the bruise on the knee, for example, I
3 don't know when that occurred.

4 Q Sure.

5 A The impact on the head was the first injury.

6 Q You don't see any -- no hand prints, no slap
7 marks, nothing like that?

8 A I did not.

9 Q No knuckle prints or anything like that?

10 A I did not.

11 MR. MADSEN: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 (Pause.)

14 BY MR. MADSEN:

15 Q No injuries to her back?

16 A I saw none.

17 Q And no injuries to her face?

18 A There may have been a small minute lesion there
19 or two, but nothing of real significance.

20 MR. MADSEN: That's all the questions I have.

21 THE COURT: Redirect.

22 MR. WEDEKIND: Very briefly.

23 REDIRECT EXAMINATION

24 BY MR. WEDEKIND:

25 Q Doctor, you said a moment ago that you could

1 make the call that the head was the first injury; is
2 that correct?

3 **A** That's correct.

4 **Q** Could you go through that description of how
5 you can make that call if the head was the first
6 contact?

7 **MR. MADSEN:** I would make an objection. I
8 don't think that this is redirect.

9 **MR. WEDEKIND:** Your Honor, he brought it out on
10 cross and asked that question.

11 **THE COURT:** Bear with me a second.

12 (Pause.)

13 **THE COURT:** Overruled. You may continue.

14 **BY MR. WEDEKIND:**

15 **Q** You said you can tell that the head was the
16 first contact. How do you go about that conclusion?

17 **A** It was the most severe injury.

18 **Q** And was it consistent with the first contact
19 being with the road?

20 **A** That's my interpretation is that it was the
21 first contact with the road.

22 **Q** So the right side of the head. And can you
23 tell anything about the position of the body when it
24 hit the road?

25 **A** Well, the victim was, you know, hit the road

1 with her head down at the --

2 Q Can you make a call as to front or back first
3 because of the injuries?

4 A No.

5 Q Can you tell -- because of the upper torso
6 having the most abrasions, would that be of any
7 significance to you?

8 A Other than that they were probably the second
9 -- that was probably the second area which hit the
10 road.

11 Q So head and arms would have been the sequence?

12 A Yeah.

13 Q And regarding those scratches that Mr. Madsen
14 was asking about, the linear thin ones, you can't
15 tell if they were made prior to the road contact or
16 you can't tell if they were made after. You just
17 know that they're scratch marks; is that correct?

18 A That's correct.

19 Q And that's because you weren't in the car prior
20 to her exiting?

21 A That's correct.

22 MR. WEDEKIND: Thank you. No further
23 questions.

24 MR. MADSEN: No further questions.

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

1 down.

2 MR. MADSEN: If he wants to be excused, we
3 don't have any objection.

4 MR. WEDEKIND: No objections from the State,
5 sir.

6 THE COURT: You're free to go, Doctor. Thank
7 you.

8 Any further witnesses for the State?

9 MR. WEDEKIND: At this point, the State would
10 rest, Your Honor.

11 THE COURT: All right. Ladies and gentlemen,
12 at the beginning of the trial, I told you that when
13 we reached the stage where the State rests, I have
14 to discuss legal issues with the attorneys, so
15 that's where we are. This typically takes about 20
16 minutes. If it's going to be substantially longer
17 than that, I'll send word to you, but I should be
18 able to get you back in here in about 15, 20
19 minutes. Don't discuss the case. Thank you.

20 (The jury retires to the jury room.)

21 THE COURT: Motions.

22 MR. MADSEN: Judge, we would move for a
23 directed verdict. I know in most cases those are
24 just kind of a formality quite honestly to preserve
25 any potential errors or appeals, but in this case,

1 Judge, in the light most favorable to the State, we
2 believe that they have failed to bring sufficient
3 evidence to submit this case to jury.

4 Specifically, Judge, given the lack of direct
5 evidence, we believe that their case is largely
6 circumstantial and we believe that the evidence
7 submitted to the jury -- submitted does not rise to
8 the level of substantial circumstantial evidence
9 sufficient to submit this case.

10 Judge, we have no eyewitness evidence here. We
11 have testimony from officers and Mr. Maye that my
12 client was comforting her, asking for help. He
13 gives a statement to law enforcement that does not
14 admit guilt. There's a lack of on-scene
15 investigation. Ultimately, MAIT testifies, but I
16 think one of the things that they said is, that was
17 very important and I wrote down, says does not know
18 what happened in the cab.

19 We just heard from the pathologist who
20 testified that there are no wounds to indicate any
21 type of physical struggle. The only thing that I
22 think that the State could even potentially argue
23 were the small, linear, superficial scratches that,
24 according to the doctor, could or could not have
25 been called -- or caused by hands, could or could

1 not have been caused earlier in the day, afterwards,
2 potentially could have been caused by the roadway
3 according to his testimony.

4 Ultimately, we have an indictment that alleges
5 that the defendant did with criminal negligence and
6 with reckless disregard for the safety of the
7 victim, engage in a physical altercation with the
8 victim, Megan Jackson, leading to her falling from a
9 moving vehicle resulting in injuries that caused her
10 death.

11 Judge, the second part of that is there was
12 testimony that the door was operational, that the
13 door was shut. There is no evidence whatsoever of
14 her falling out of a vehicle. I would think that if
15 there's any evidence, it's the opposite that the
16 door was opened and shut. We know from the MAIT
17 officer that no one was behind the wheel at that
18 point in time.

19 Obviously, Judge, evidence must constitute
20 proof positive of facts and circumstances which
21 reasonably tend to prove guilt. Here, Judge, we
22 believe that the State's evidence only raises a mere
23 suspicion of guilt.

24 I would also point to the Court, and I
25 apologize, there was a new case that came down,

1 State versus Bostick, that dealt with a directed
2 verdict. It came -- it was filed on April 11th of
3 2011. The judge was Judge Steven John. The county
4 was Jasper County. And the opinion number was
5 26961. I wasn't able to find an actual cite at this
6 point in time since it came through the advanced
7 sheets, Judge. So based on that, we would move for
8 a directed verdict in this case.

9 Additionally, Judge, we would renew all of our
10 motions for -- in reference to the pretrial motions
11 including delay, the mistrial during the trial, but
12 we would move for a directed verdict.

13 And, Judge, the one last thing, and I think
14 this kind of came out from the Court beforehand, but
15 a lot of the questions the Court were asking is well
16 who tells me that, who says this, who says that, and
17 that was never done in this case. They certainly
18 could have called a witness that said Ms. Jackson
19 didn't have any scratches on her arm earlier in that
20 day and they didn't do that. There's just a total
21 lack of evidence here.

22 (Pause.)

23 **THE COURT:** All right. What's the State's
24 position?

25 **MR. WEDEKIND:** Your Honor, taken in the light

1 most favorable to the State, there's sufficient
2 evidence to take it to the jury. The doctor first
3 made the call that it was a homicide. Chief Oswald
4 said -- he ruled out the possibility that, in his
5 experience, it was not a suicide. The vehicle door
6 is in fully functioning condition.

7 The defendant gave conflicting statements to
8 Mr. Maye, which is before the jury, as to he was
9 sorry. Sorry for what? He stated at first that he
10 wasn't in the vehicle at all. Then he gave a later
11 conflicting statement where he said, Yeah, she was
12 in the car with me. We hit a light pole and then
13 she staggered out of the passenger side. Not the
14 driver's side, and that just didn't jive with the
15 evidence.

16 Then once he started realizing, oh, they got
17 the fibers from the door frame -- or from the window
18 frame, he comes up with the story and says, yeah, I
19 busted out the window.

20 Quite simply, had he not jumped in the back of
21 that car and acted in a reckless fashion towards
22 her, she would have driven safely to work and
23 returned and probably still be alive today.

24 He goes and busts out the window because she's
25 not complying with his directive. As he said, I

1 kept telling her to stop and go back. She didn't
2 obey me. And then he bust -- when she didn't comply
3 with that, he busted out the window.

4 We have sufficient evidence of a struggle.
5 There's no video tape to show it, but he says he was
6 in there to try and save her from bailing out of a
7 vehicle at a slow rate of speed. Officer Gilliam
8 even recognized the absurdity of that statement and
9 says, Bo, why didn't you just grab the door and keep
10 it shut instead of going the long way about it,
11 busting out -- this inordinately, difficult way of
12 doing it, busting out the window, crawling through
13 the window, squirming your way forward to grab ahold
14 of her?

15 I think there's sufficient evidence to go
16 present to the jury because of the scratch marks,
17 which are consistent with a struggle.

18 In addition, there is the I.D. badge that she
19 said she was going to work. He says -- or he said
20 she was going to work, that's why he was trying to
21 stop her. It's consistent with that I.D. badge
22 being on her uniform that she was -- everyone said
23 she was wearing her hospital scrubs, shows evidence
24 of the fact that it's laying on the floor being torn
25 off in the struggle. The scratch mark's consistent

1 with human fingers.

2 In addition, there's a photograph of his hands
3 and -- which he's sitting there and his individual
4 fingernail showing very long fingernails which would
5 be capable of inflicting scratch marks on a person
6 in a struggle.

7 Also, there's little likelihood that somebody
8 would have jumped out of a slow moving vehicle in an
9 attempt to kill themselves or injure themselves.
10 More likely she had a perfectly functioning vehicle
11 and he busted out the window, that alone led to the
12 struggle for control of the vehicle which she
13 ultimately lost because he's a much bigger,
14 physically, a man. And she realized that she was in
15 trouble when she -- the alternative to stay in there
16 and getting beat or jumping out of the car, she
17 certainly didn't realize that she was going to be
18 killed as a result of it, but she thought she could
19 jump out of the vehicle at that slow rate of speed.

20 I would suggest and will argue to the jury that
21 it was because he was still trying to hang on to her
22 that her head -- the lower portion of her body that
23 he was able to grasp ahold of delayed her in the cab
24 of that vehicle and as a result of him holding onto
25 her legs and knee was the fact that the head was the

1 first thing that came into contact with the road.
2 He certainly meant to kill -- or beat her.

3 He didn't mean to kill her and that's why it's
4 an involuntary manslaughter charge and not
5 manslaughter or murder. He didn't think with great
6 planning that this was going to happen. She just
7 didn't bend to his will. He jumped like a mad man
8 and recklessly endangered both his life and her life
9 by getting in the back of the vehicle. And we think
10 that there's sufficient cause to take this case to
11 the jury.

12 **THE COURT:** Mr. Madsen.

13 **MR. MADSEN:** Judge, just a lot of what he said
14 such as with the I.D. badge, and I think Your Honor
15 pointed that out in pretrial rulings, there's no one
16 that testified that that wasn't sitting somewhere,
17 you know, putting it on the wheel well on the top or
18 something like that. The MAIT testified it all goes
19 forward.

20 It's just -- there's just not substantial
21 circumstantial evidence here that a jury should
22 consider this. He's just -- he's taking liberties,
23 but there's just no evidence sufficient for this to
24 survive the directed verdict stage.

25 **THE COURT:** What was the evidence about the

1 steering wheel being bent in Exhibit 5 and Exhibit
2 8?

3 MR. WEDEKIND: It was consistent with Mr.
4 Humphrey's body being thrown forward with the
5 momentum of deceleration of the tree and him hitting
6 it. I think Lieutenant Day specifically said that
7 she was out of the vehicle at the time and it was
8 consistent with him hitting the steering column and
9 bending the top of it as he was flying forward when
10 the vehicle came to a decelerated stop.

11 He specifically said that he did not come in
12 contact with the roof of the vehicle, that that
13 fracture to the glass was done from transmission of
14 the vibrations through the car and compressing the
15 glass, but he said that it was consistent with Mr.
16 Humphrey, who we know had the fibers, and from his
17 own admissions, he had bust out the window and was
18 climbing through.

19 Also, the frame in the back window was bent
20 showing that he was probably thrown forward through
21 that hole into the cab of the vehicle with the
22 remainder of his body. In fact, it probably was the
23 thing that saved his life himself was hitting that
24 steering column to break his fall.

25 And one final thing, sir, also the injuries on

1 his shoulder are consistent with getting slammed
2 into the dash board going through that frame.

3 **THE COURT:** But his head's not injured.

4 **MR. WEDEKIND:** It's because his shoulder -- he
5 was grabbing her, wham, what's the first thing
6 that's going to hit that dash board, his right
7 shoulder. It's the light most favorable to the
8 State on that, sir.

9 So I submit that's why they tracked off the
10 road into the tree because they were struggling for
11 control. She jumps out. The vehicle starts
12 tracking off to the right. He's not controlling the
13 steering wheel. He's certainly halfway in and
14 halfway out, he can't touch the brake pads or the
15 gas pedal, but the car's continuing to move because
16 nobody can step on the brake. She's out. He's
17 leaning in the car. The first impact with that
18 vehicle or with -- with the car is his shoulder and
19 that's why the injuries are only to the right side
20 of his body because he's in like this (indicating)
21 leaning across and probably looking back at her and
22 the car tracks off to the right, hits the tree.

23 **THE COURT:** We'll be at ease for a few minutes.

24 (Brief recess.)

25 **THE COURT:** All right. I've read the Bostick

1 case. It's opinion number 26961. It was filed
2 April 11th, 2011. It recites other cases in it.

3 I've had several of my cases reversed as well
4 for submitting them to the jury when the appellate
5 court ultimately determined that there was not
6 sufficient circumstantial evidence to submit the
7 cases to the jury. So I'm familiar with the general
8 principle. Sometimes in the application of them, it
9 gets rather difficult because each case has to be
10 evaluated on a case by case basis.

11 Now, involuntary manslaughter is a crime. It
12 is a crime where someone dies and there was no
13 intention to kill that person. It can arise
14 basically in one of two ways: It can arise where
15 the accused is engaged in a lawful act, but is
16 acting in reckless disregard for the safety of
17 others or it can arise where the accused is engaged
18 in an unlawful act not naturally tending to result
19 in death or serious bodily injury, but that the
20 engaging in the unlawful act does result in the
21 death of another person.

22 The indictment charges Mr. Humphrey with
23 engaging in a physical altercation. It alleges that
24 he acted with criminal negligence and with reckless
25 disregard for the safety of Ms. Jackson by engaging

1 in a physical altercation with her leading to her
2 falling from a moving vehicle resulting in injuries
3 that caused her death.

4 Now, what I'm saying now is just thinking out
5 loud because I honestly don't know exactly how I'm
6 going to rule on this.

7 The evidence cannot be such that the jury just
8 has to speculate. Circumstantial evidence is more
9 than speculation. When they came down with that new
10 definition -- well, it's new to me probably not new
11 to you younger people -- but when they came down
12 with the newer definition that we're supposed to
13 charge juries on circumstantial evidence, the Chief
14 Justice wrote a dissent and I think she still feels
15 pretty strongly that we should have just stayed with
16 the older language, but the circumstances have to
17 point to each other conclusively to the guilt of the
18 accused.

19 Now, this -- again, that language has been
20 abandoned, but in the case that they reversed me on
21 most recently, they put it in the footnote because
22 the Chief wrote the opinion. And I think if the
23 court were to be reconstructed sufficiently, it may
24 change -- the law may change again.

25 The only evidence I see that can fall within

1 the category that he was engaged in a lawful act
2 would be if he were attempting to rescue Ms.
3 Jackson. If he were attempting to rescue Ms.
4 Jackson, then he's not responsible under any theory
5 that I know about for acting in the smartest, the
6 most calculated way.

7 If he should have reached over and grabbed the
8 door in the fraction of the second that he might
9 have to make that determination and instead he
10 punches through the window and tries to reach in and
11 grab her that way, that's just not a crime. The
12 State really is not charging him with that. The
13 State is charging that he was engaging in a physical
14 altercation with her.

15 And what was cited to me was that the
16 pathologist has the opinion this is a homicide.
17 It's not a suicide. See, I don't know that we
18 really have to get into this concept of suicide, but
19 the pathologist has the opinion that it's a
20 homicide.

21 There were conflicting statements that were
22 given about whether he was in the vehicle or not in
23 the vehicle. He being Mr. Humphrey. There's
24 alleged to be conflicting statements about whether
25 the victim, Ms. Jackson, staggered out of the

1 vehicle on the driver's side after the light --
2 after what he thought was a light pole was hit.

3 There's evidence about busting out the window.
4 And then there's these things about why not just do
5 this or why not just do that. Well, the why not do
6 this or do that, that's really not an evaluation I'm
7 supposed to get into in my view.

8 He said that the scratch marks are consistent
9 with a struggle. The photographs that are in
10 evidence do show that Mr. Humphrey had long
11 fingernails.

12 Part of the reason that the pathologist gave
13 for, I think, for his opinion that her head hit
14 first and that there was something going on in the
15 vehicle was from the statement that he was trying to
16 grab her. He also said that there is nothing on her
17 back. The back side of her body had no scratches,
18 no bruises, no nothing. He's coming at her from the
19 back. If he grabbed her pants, there's no evidence
20 that her pants were torn. There's no evidence that
21 those long fingernails scratched the lower part of
22 her back.

23 This argument about the I.D., I mean, y'all can
24 argue whatever you want to to the jury from the
25 evidence, but I've already told you my opinion about

1 that. If you had some evidence that there was torn
2 clothing in the clasp of the I.D. or that the top
3 part of the scrub was torn or something of that
4 nature, then maybe you could extrapolate that the
5 fact that the I.D. is on the floor of the truck
6 means something. To me, it's absolutely
7 meaningless. It is a purely speculative call. None
8 of us know how that I.D. got on that floor.

9 If I don't leave my I.D. in my vehicle, I tend
10 to forget it. If I tend to forget it, then I get
11 halfway to work and I don't have it and then I have
12 a problem. She may have been the same way. I don't
13 know if she had an I.D. on when she walked out the
14 door of her house. So I leave mine in my car.

15 I don't know what I might ultimately have to do
16 with this case, but at this stage having to view all
17 the evidence in the light most favorable to the
18 State, I think I am required to deny the directed
19 verdict motion as it relates to engaging in an
20 unlawful act not naturally tending to result in
21 death or serious bodily injury that does in fact
22 result in the death of another person.

23 As for any theory of responsibility for
24 involuntary manslaughter arising from a lawful act,
25 there's no evidence to support that from which a

1 jury could convict. If he was acting lawfully, then
2 punching out the window to try to rescue her is not
3 criminal recklessness.

4 MR. HUBBARD: Judge, I've -- I have to admit
5 that I'm -- my analysis is probably not nearly as in
6 depth as yours, so obviously -- but I would like to
7 offer this thought, and obviously you've probably
8 thought 20 yards ahead, but as far as the lawful act
9 not being present, that there's no evidence that he
10 was doing a lawful act in a reckless manner, my
11 thought is this:

12 Getting in the back of the truck, that's not
13 unlawful. Banging on the window is not unlawful.
14 But, Judge, if you take his words that he's trying
15 to save this woman, I would suggest to Your Honor
16 that he chose a reckless manner in which to do that.

17 If she's trying to get away from him, she's not
18 necessarily trying to bail out of that truck, you
19 have to believe his words, but busting out the glass
20 of a window of a moving vehicle even if she's just
21 driving down the road, that is reckless conduct.
22 What driver would not be disturbed, distraught and
23 distracted.

24 THE COURT: It's unlawful conduct though.

25 MR. HUBBARD: The minute he breaks the glass

1 out, but, Judge, I guess that's where -- my question
2 is if he -- and the reason why I bring it up is
3 because Your Honor says, by his own words, if he's
4 trying to save her, then that's not unlawful. So I
5 guess the question, and it would be a jury question,
6 is believability. Did he choose a reasonable method
7 to try to save her?

8 And if that was the most reasonable method to
9 try to save her, although it may appear reckless, if
10 that's what he had to do to save her, that's not
11 unlawful, but I would argue that is reckless
12 behavior so it is unlawful. So I guess the
13 question --

14 **THE COURT:** Well, if you're arguing it's
15 unlawful, then we're not disagreeing. What I'm
16 saying is he either engaged in one of three --
17 there's evidence that he engaged in one of three
18 unlawful activities, malicious injury to personal
19 property, assault, or assault and battery.

20 **MR. HUBBARD:** Right. Okay. I see what Your
21 Honor is saying.

22 **THE COURT:** If he's engaged in an unlawful
23 activity not naturally tending to result in the
24 death of another person and death results, I'm
25 saying you've got enough to go forward at this

1 point, but just jumping in the back of a pick-up
2 truck and acting a fool is not sufficient grounds
3 for somebody to bail out of a moving vehicle.

4 **MR. HUBBARD:** I'm with you, Judge. I
5 apologize. The only reason why I stood up to
6 address it is, and I probably misheard, I thought at
7 one point, and I probably misheard, that you had
8 said that if he's trying to save her, that's not
9 unlawful. So I probably jumped --

10 **THE COURT:** I did. If the only explanation for
11 the breaking of the window is that it was a lawful
12 act, in other words, that he was trying to rescue
13 someone, the fact that he broke the window would be
14 a lawful act.

15 **MR. HUBBARD:** Okay. Judge --

16 **THE COURT:** It would be like breaking a window
17 to go in a burning house. It's not malicious injury
18 to real property if you're breaking a window to try
19 to save somebody from burning to death.

20 **MR. WEDEKIND:** I understand what you're saying,
21 sir. There's two prongs to the involuntary
22 manslaughter, the lawful act and an unlawful act.
23 And you're saying if he did try to rescue her from a
24 suicide attempt, that's a lawful act and it's not
25 involuntary manslaughter. So we're really looking

1 at the unlawful act.

2 **THE COURT:** Now, they can argue that.

3 **MR. WEDEKIND:** Yes, sir. I think he'd want
4 that charge certainly.

5 **MR. HUBBARD:** I apologize. I was just kind of
6 confused and I'm sorry. You clarified it, Judge.
7 I'm sorry. I was the one that was confused,
8 apparently Larry wasn't, but I'm fine. I understand
9 now.

10 **THE COURT:** Well, it's a very unusual
11 situation. It's still very difficult. And I'm not
12 -- again, I'm not saying what the ultimate outcome
13 of my rulings will be.

14 I do have a concern, though, because I really
15 have not anticipated this and I've been working on
16 the charge and I've got like 18 to 20 pages already
17 typed out, but I'm probably going to have to go back
18 and rework it and you all are talking about trying
19 another case with Judge McMahon.

20 **MR. WEDEKIND:** Actually, sir, Judge McMahon
21 contacted Ms. Powell and said that he had a meeting
22 in Columbia this afternoon. So we won't have a jury
23 until tomorrow morning. So we have all day now.

24 **THE COURT:** Okay. Mr. Madsen, I have to talk
25 to your client about his right to testify.

1 Mr. Humphrey, I have to go over something with
2 everybody when they're on trial whether they're on
3 trial for some minor offense or some major offense
4 and I need your responses to be under oath.

5 MICHAEL AVERY HUMPHREY,
6 having been duly sworn, testified as follows:

7 **THE COURT:** Mr. Humphrey, we've reached the
8 stage of the trial where the State has rested.
9 They've presented their case in chief. And it's now
10 time, if you wish, to have your side offer evidence
11 for the jury to consider. You understand where we
12 are in the trial?

13 **DEFENDANT:** Yes, Your Honor.

14 **THE COURT:** Okay. Now, you're not under any
15 obligation to present any evidence, but you may if
16 you wish. You may call other people to testify for
17 you. You may testify yourself if you like. You
18 understand?

19 **DEFENDANT:** Yes, Your Honor.

20 **THE COURT:** Regardless of whether you call
21 other people to testify or whether no one testifies
22 on your behalf, you need to understand that you have
23 no obligation to present any case. Nobody can make
24 you testify. You are presumed to be innocent. And
25 if you choose not to testify, I'm going to tell that

1 jury that they cannot hold your silence against you
2 in any way at all. You know that?

3 **DEFENDANT:** Yes, Your Honor.

4 **THE COURT:** If you choose to testify, then
5 obviously you'll be subject to cross-examination.
6 Do you understand that?

7 **DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** Y'all haven't put in any exhibits,
9 have you?

10 **MR. MADSEN:** (Mr. Madsen shook head.)

11 **THE COURT:** If neither you nor anyone on your
12 behalf puts in any evidence, your lawyer gets to
13 make the last argument to the jury, otherwise the
14 State gets to go last. Do you understand that?

15 **DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** Now, this decision about whether
17 you testify it's your decision to make. It's yours
18 alone. As you know very well, you're the person on
19 trial here and it's your call. So I expect that you
20 might confer with your attorney, with family
21 members, with friends, anyone whose opinion you
22 value on important decisions, but, ultimately, this
23 decision as to whether you testify or not it's your
24 decision to make and yours alone. You understand?

25 **DEFENDANT:** Yes, Your Honor.

1 **THE COURT:** Does he have a prior criminal
2 record?

3 **MR. WEDEKIND:** No, sir, nothing that would come
4 in.

5 **THE COURT:** Now, Mr. Humphrey, I'm going to ask
6 you some questions and I have no reason to suspect
7 there's anything that's a problem, but I ask them of
8 everyone. Today are you under the influence of any
9 type of substance or suffer from any mental or
10 physical condition that's adversely affecting your
11 thinking?

12 **DEFENDANT:** No, Your Honor.

13 **THE COURT:** So you're clearheaded, you know
14 what you're doing?

15 **DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** Now, what I'm going to do, Mr.
17 Humphrey, is I'm going to make a finding at this
18 point that whatever decision you've made about
19 whether you testify or not, it's your decision and
20 it's yours alone; that you understand you have a
21 right to testify; you have a right not to testify;
22 you understand that if you choose not to testify,
23 I'm going to tell that jury they cannot hold your
24 silence against you in any way at all; you
25 understand that this decision is your decision to

1 make and yours alone and that you've made it freely,
2 knowingly and voluntarily and intelligently.

3 So whatever decision you've made, you can
4 change your mind. You can change your mind until
5 such time as either the trial has ended or -- by
6 that, I mean the testimony is over -- or you
7 actually come up to take the witness stand if you
8 are thinking that you may testify and then later
9 decide not to.

10 Do you need some time to talk to your client,
11 Mr. Madsen?

12 **MR. MADSEN:** No, Your Honor.

13 **THE COURT:** Do you all intend to offer any
14 evidence?

15 **MR. MADSEN:** No, Your Honor.

16 **THE COURT:** Do you want to talk to your
17 attorney, Mr. Humphrey? I'll be happy to take a
18 break and let y'all talk if you want to. He's
19 telling me you do not want to testify.

20 **DEFENDANT:** With the strategy or as was stated
21 in a previous hearing, I just ask to be protected on
22 the record that I did not agree with the strategy.

23 As far as my attorney, I mean, I think he's
24 done a great job as far as representing me as far as
25 on the State's end of presenting evidence or whatnot

1 and cross-examination or whatnot, but he's not
2 prepared to present a case. He's not prepared to
3 call witnesses in my defense or anything. So I
4 would ask respectfully to be protected on the record
5 that I never agreed with that from the first hearing
6 until this date.

7 **THE COURT:** Do you want to testify?

8 **DEFENDANT:** I'm not in the position without
9 having all the elements that would need to be to
10 corroborate what I've told them from the beginning.
11 I would need an entire defense to corroborate the
12 elements of what I've said because just my word
13 alone obviously is not enough because I wouldn't be
14 standing here right now. So I would need others to
15 corroborate that story and he's not prepared to
16 offer that to anyone today. He wasn't the last time
17 and I disagreed, that's why I say I would
18 respectfully ask to be protected on the record that
19 I didn't agree with him.

20 **THE COURT:** Who is it you want to offer?

21 **DEFENDANT:** Well, I mean, any expert witness
22 that could actually attest to the nature of the
23 illness that the victim actually was suffering from
24 because I dealt with that months prior. Today I've
25 had time since to go back and actually research and

1 I beat myself up everyday about the decisions that I
2 made then based off of what I know now when it comes
3 down to that. Someone that could actually testify
4 as to a person's mental capacity after having gone
5 through an accident.

6 Whereas, in the statements that I gave that
7 they're conflicting with and where the question was
8 originally raised was from the statements that I
9 gave at the scene of the accident, that was the
10 confliction.

11 In all this time, no one's actually told what
12 the other side of the story was. It's just that
13 they don't believe what I said. So someone that can
14 actually support what I'm saying as to the reasons
15 why these things were the way that they were is what
16 should be here and should have been prepared for
17 ahead of time that wasn't.

18 **THE COURT:** You wanted him to get expert
19 witnesses?

20 **DEFENDANT:** I asked for it all even the doctor
21 that treated her, which he was able to tell you
22 where the doctor's at, but never actually sought out
23 the doctor.

24 **THE COURT:** So if I'm understanding you
25 correctly, under the scenario that you are faced

1 with, you're choosing not to testify?

2 **DEFENDANT:** Yes, Your Honor.

3 **THE COURT:** Okay. Thank you, sir.

4 Do you all have any requests to charge?

5 **MR. MADSEN:** Without seeing Your Honor's
6 requests, these might be contained in Your Honor's.

7 (Pause.)

8 **THE COURT:** Does the State have any other
9 requests to charge?

10 **MR. HUBBARD:** Judge, I have not drawn one up,
11 but I was going to ask, do you have a contributory
12 negligence is not a defense charge to reckless
13 conduct? I've got four cases here and I can easily
14 fashion one up, but I did not know if Your Honor had
15 one. I've got the case cites, four of them, I was
16 kind of reluctant to go ahead and pin one down
17 because Your Honor can do it in so many different
18 ways. It can be simple or it can be a little bit
19 more involved.

20 I've got three reckless homicide cases and one
21 involuntary manslaughter case. By my research,
22 they're all still good law. And I can cite them for
23 you and pass them up, Your Honor, or I can just draw
24 one up for you if Your Honor does not have one.

25 **THE COURT:** I don't know that I have one. I

1 anything to me that I overlooked or omitted, have
2 them state their positions to me on the law. And
3 I'm going to ask you to be back here at two o'clock.

4 Now, I know that's an extended lunch break for
5 you, but what I'll do is stay here and work on the
6 charge and have the lawyers meet me back here.
7 We'll do what I told you and then hopefully I'll be
8 ready at two o'clock to bring you out. You'll hear
9 the closing arguments and then I'll tell you the
10 law. So you should get the case, my guess would be,
11 some time around 3:30 or something, all right. I
12 hope you have a pleasant lunch. Don't discuss the
13 case.

14 (The jury was excused for lunch.)

15 **THE COURT:** All right. Court's in recess until
16 1:30. Y'all be careful as you leave because the
17 jury's going to be coming out.

18 (Whereupon, there was a luncheon recess.)

19 **MR. MADSEN:** Judge, just one thing, I know you
20 denied the directed verdict motion. I don't recall
21 if you ruled on the other ones that I had renewed
22 from the pretrial and the trial. I was just worried
23 about that over lunch.

24 **THE COURT:** Well, I'm going to consider all the
25 motions that were made at the close of the State's

1 case to be renewed, including those you just
2 mentioned, and respectfully deny them.

3 Is the State ready?

4 **MR. WEDEKIND:** The State's ready, sir.

5 **THE COURT:** Defense?

6 **MR. MADSEN:** Yes, Your Honor.

7 **THE COURT:** Bring the jury in, please.

8 (The jury returns to the courtroom.)

9 **THE COURT:** All right. Ladies and gentlemen,
10 there are two stages that remain in this trial, the
11 closing arguments and the charge.

12 At the outset of the trial when I was
13 explaining to you about the opening statements and I
14 said that the attorneys could not engage in argument
15 at that stage, well, we have now reached the stage
16 where the attorneys are permitted to engage in what
17 we call argument. So the attorneys are permitted to
18 use the art of advocacy to attempt to get you to see
19 things as they would like you to see them on behalf
20 of their respective positions. That does not change
21 the burden of proof. The burden of proof remains
22 with the State throughout the trial.

23 Now, the way this will work is the State will
24 go first and then the defense will go last. I
25 always take a break between the time when the

1 attorneys talk to you and when I talk to you.
2 Sometimes I take a break between the two arguments,
3 it just sort of depends on how long they talk. So
4 we'll play it by ear and go from there. It's going
5 to take me 34 minutes to explain the law to you, so
6 I'll try to take breaks as needed, but I always take
7 a break between when they finish and when I start.

8 I invite your close attention.

9 Mr. Wedekind, are you going to make the closing
10 argument?

11 MR. WEDEKIND: Yes, sir. Thank you, Your
12 Honor.

13 THE COURT: You're recognized.

14 MR. WEDEKIND: Thank you, sir.

15 CLOSING ARGUMENT

16 MR. WEDEKIND: Well, ladies and gentlemen, as
17 the Judge said, this wasn't a California trial. It
18 didn't take months, just a matter of days. But if
19 you remember just back when we talked the other day,
20 I said this is a case it's all about Mike. And I
21 wanted you to think about that when you heard from
22 each and every witness that was on this stand and
23 testified before you in the courtroom. Well, let's
24 go back over some of the facts because I didn't want
25 to give you the story to begin with, I wanted you to

1 hear it, but think about that, think about it's all
2 about Mike.

3 Now, the first witness you heard from was Mr.
4 Maye. Mr. Maye has no dog in this fight. He's not
5 a law enforcement officer. He just heard a car
6 wreck, what he thought was a wreck, occur in front
7 of his home, heard the crunch, jumped out of bed,
8 didn't see anything because it was so dark.

9 It's October, six o'clock in the morning. We
10 all use our common sense as given by God. We know
11 there's lighting conditions that exist at that time
12 of the year.

13 Got up, heard somebody -- his wife actually
14 drew his attention to it, said, I hear somebody
15 calling for help, and that person turned out to be
16 Michael Humphrey. And he wanted help, help for
17 himself and I'm sure he was sincerely asking for
18 help for Ms. Megan Jackson because he knew what he
19 had done and he was trying to get her help. He
20 didn't mean to do it, that's why we're not here for
21 a murder case, we're here for involuntary
22 manslaughter.

23 And what does that involuntary manslaughter
24 mean? He committed an act. In this case, the State
25 would submit it was an act of busting out that

1 window that's reckless, who's driving a car that
2 doesn't have somebody screaming at them from the
3 back of the bed of the truck saying, stop the car,
4 stop the car, go back, I want you to go back,
5 because it's all about Mike, what Mike wanted that
6 night.

7 You heard from Officer Gillespie's [sic]
8 statement that he took a couple days later -- or
9 actually, I'm sorry, that night from Michael
10 Humphrey that he'd been out drinking to the wee
11 hours of the morning in Columbia and comes back in,
12 drags himself in, because why? It's all about Mike.
13 He leaves his girlfriend at home to tend to the two
14 children, a little two-year-old and a
15 three-month-old. Why? Again, because it's all
16 about Mike having fun, leaving her with the job of
17 taking care of the kids.

18 She has to get up and go to her job that
19 morning at the Saluda Nursing Home, but he says to
20 her by his own admission, I'm just too drunk, you're
21 going to have to call in sick. She's going to lose
22 her job. She says, I got to get to work. I'm
23 earning the bread, got to get to work. But, no,
24 it's all about Mike because he says, call in sick, I
25 don't care. I can't watch the kids. You're going

1 to have to call in sick.

2 She waits for him to go to sleep. Once
3 everything's quiet, thinks it's safe that he's
4 probably passed out drunk, she gets in the car
5 starts to drive away. He hears that engine, goes,
6 huh-huh, it's all about Mike. He runs outside in
7 his pajamas, jumps in the truck bed, Stop the car.
8 She doesn't stop. She doesn't obey his direction.
9 He's losing control. And what is it? It's all
10 about Mike, you better stop because I'm telling you
11 to.

12 She keeps going. She takes a turn off [REDACTED]
13 [REDACTED] right here, onto Highway 1, takes a left,
14 starts going in the direction of the Saluda Nursing
15 Home because that's where she works. There's her
16 I.D. badge right there. She's wearing hospital
17 scrubs just like a nurse would going to the Saluda
18 Nursing Home. But hold on, she's got a mad man in
19 the back pounding on the window, stop the car, stop
20 the car.

21 And I don't know if Mr. Madsen is going to
22 bring anything up about she was bent on suicide or
23 she was depressed, but ask yourself this question,
24 if she was out to kill herself, is somebody going to
25 do a low speed jump from a car in order to hurt

1 themselves or are they going to go full throttle,
2 hit the gas, run into any one of 20 or 30 trees that
3 you can see from the route to where the accident
4 occurred where the tree was collided with?

5 She could have hit the building. She could
6 have hit other cars. She could have hit the light
7 post. She could have hit the telephone pole. She
8 could have hit any other trees. If she really
9 wanted to be flamboyant, she could have taken out
10 Mr. B's gas station and hit the gas pumps if that's
11 what she wanted to do.

12 And you heard from the experience of Chief
13 Oswald, Single car accidents, sometimes there are
14 people committing suicide. They drive off a bridge.
15 They hit it at full throttle into some object. They
16 intentionally take themselves out. They don't slow
17 down to a low speed and then just jump out head
18 first. It just doesn't fit. That's why he ruled it
19 out as not being a suicide.

20 But let's go back to Mr. Maye. What does he
21 hear when he first gets there? He says he walks up
22 on the scene and he hears Michael Humphrey. He
23 pointed him out. Michael's over her body saying,
24 I'm so sorry, baby, I'm so sorry.

25 What's he sorry about? Because immediately

1 thereafter he tells Mr. Maye when he comes up and
2 goes, What happened here, were you in the car, was
3 this a wreck, and he goes, No, I was dropped off
4 here by some friends. Why is he doing that? Ask
5 yourself, use that common sense. Because it's all
6 about Mike. He's already thinking, oh, I got to
7 come up with a story. I've got to protect myself.
8 It's all about Mike. Some friends dropped me off.
9 Then you hear from Officer Thomas comes up.
10 Now, Mr. Maye can say this stuff because he's not a
11 police officer. He's not subject to Miranda. He's
12 not a police officer. He doesn't have to give
13 advisement when he asks somebody a question. He can
14 ask a question because he doesn't have the power of
15 arrest. He doesn't have the power to coerce
16 somebody and that's why our constitution protects
17 people from making statements to law enforcement
18 without advisement of rights.

19 And you heard those rights given as they were
20 by Officer Gilliam even before -- even though he
21 wasn't under arrest, Officer Gilliam wanted to
22 protect those rights and give it to him in advance
23 and tell him that what he said would be written down
24 and could be used against him in just such a
25 circumstance as we are here today.

1 But then Officer Thomas notes the position of
2 some shoes in the road. There's a shoe. The car,
3 the photographs you'll have, the truck has obviously
4 hit a tree. He's of the opinion it's an accident
5 because he's a rookie cop and who wouldn't think
6 that when you first see this scene that's what it
7 is, but there's a severely injured woman there. So
8 they go into life saving mode. They're not into
9 we've got a crime scene here because there's no gun,
10 there's nothing obviously pointing to a crime having
11 been committed. It looks, to all appearances at
12 that point, as just a terrible tragic accident.

13 Then you get Officer VanPut there and they all
14 see the treatment going on with this young lady
15 trying to do what they can for her. She's going to
16 get the life chopper come in and evacuate her.

17 Mr. Humphrey is also observed to be injured.
18 She and he are both on the passenger side of the
19 vehicle, remember that. When they take and put him
20 on an ambulance, they take him to one hospital.
21 They take her to a trauma center at Palmetto
22 Richland. After he's treated for his superficial
23 wounds on his arm, his right arm and his shoulder,
24 and I invite you to look at those fingernails that
25 you'll have this in evidence, and there's the wounds

1 on his shoulder on that right side, but he goes back
2 and he sees the officer at the hospital, Officer
3 Gilliam, who's sent out by the chief.

4 The chief by this time is there at work and he
5 starts hearing all these reports coming in. And
6 through his experience of having the 35 years on the
7 job that he had, he's saying this isn't adding up to
8 an accident, something's not right here, this might
9 be something different. So he goes, I need the
10 advice of SLED. I need the advice of the Highway
11 Patrol MAIT Team.

12 So he calls in Lieutenant Day to answer one
13 particular question. And the question he wanted
14 answered was not the distances, it wasn't the track,
15 it's pretty obvious, we know the car hit the tree,
16 but he wanted to know these injuries and the road
17 rash don't add up to somebody being in a car at the
18 time of the collision, which is what everybody was
19 hearing and that was their -- that was their
20 discernment that she must obviously -- the two of
21 them were in the truck.

22 Meantime Mike's given a statement because he --
23 he meets with Officer Gilliam. Gilliam says, I'd
24 like to talk to you about this some time. So they
25 set up -- he said come in, I'm not demanding that

1 you come, but he comes in of his own volition and he
2 gives another statement to Officer Gilliam, gives
3 him all the advisement of his rights.

4 In the meantime, they've collected fibers from
5 the back window frame that match up with the
6 clothing that they observed him, the pajamas,
7 without any shoes. They see the back window's
8 broken in, that's not adding up with what you
9 usually see with that car wreck. She doesn't have
10 those chest injuries from hitting that steering
11 wheel. She's got road rash, yet the door's closed
12 and fully functional. So how does she get ejected
13 from the vehicle if it jived up? Well, it doesn't.

14 But Mike doesn't know all that they know. He
15 just senses, I told them one thing and that's not
16 going to add up, I've got to say something
17 different. So he goes in with Gilliam -- and if I
18 could beg the Court's indulgence.

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

20 (Pause.)

21 **MR. WEDEKIND:** He gives a statement after the
22 full and conscious advisement of rights, every
23 warning that's required by the law Officer Gilliam
24 gave him, he fully complied with and he still said,
25 I want to tell my story. You'll be able to read

1 this.

2 But he talks about he got in drunk 5:30 in the
3 morning. She was going to work. He told her no,
4 everything that we've heard about their conversation
5 together. And he says Megan got in the car and he
6 jumped in the back and was telling her to come back.
7 But, again, he didn't stay and do the right thing
8 and stay with the kids. He was hell bent on getting
9 in the back of that car and making her turn around
10 and come back.

11 Ladies and gentlemen, if he'd done the sensible
12 thing and the calm thing, the thing that any, I
13 would submit, any one of you would do, he'd stay and
14 watch the kids and he'd hatch it out with her when
15 she got back. And it's so simple, if he hadn't
16 jumped in the back of that car, pounded on the
17 window, she would have gone straight to work, put in
18 her shift and returned home, she'd be alive. We'd
19 be here doing something different and Mr. Humphrey
20 wouldn't be sitting in this courtroom if he just
21 hadn't taken that step to jump in the truck and then
22 the additional action of pounding out the window.
23 Reckless disregard for the safety of others.

24 And I submit to you, busting out the window,
25 the back window of a truck while you're driving down

1 the road, somebody else is at the wheel is pretty
2 reckless. It's got to be a startling experience to
3 see the back window explode, glass come cascading
4 through the interior of the vehicle while you're
5 driving.

6 But I'd submit it went farther than that,
7 ladies and gentlemen. There was probably a struggle
8 for control of the vehicle. But Mike wasn't going
9 to reveal all that just in this statement. So he
10 says he told her to stop. I was knocking on the
11 back window telling Megan to stop. Megan was
12 speeding up the road, [REDACTED] slowed down
13 and turned onto East Columbia without stopping.
14 Because he's got to make her look bad, she missed
15 the stop sign at six o'clock in the morning on
16 Sunday.

17 Megan was driving towards Batesburg and Megan
18 was speeding. I was knocking on the window and I
19 was telling her to stop because the kids was at the
20 house by themselves. Again, it's all about Mike. I
21 got to be comfortable. I got to sleep it off. I'm
22 not watching the kids.

23 The kids was at the house. Megan was trying to
24 fall out so I punched out the back window and
25 grabbed Megan by the back of her pants.

1 Well, ladies and gentlemen, there's probably a
2 little grain of truth mixed in with the cover story
3 because that's really the best way to tell a lie is
4 to get a little bit of the truth and then shade it
5 your way because it's all about Mike.

6 But you're going to hear, or you see here,
7 Megan wouldn't fall -- so I punched the window out,
8 grabbed her pants so Megan wouldn't fall out. And
9 before I knew anything, we hit a light pole, then
10 Megan stumbled out of the back to the passenger --
11 of the passenger side and fell down. I ran to her
12 and started screaming and crying and I don't
13 remember anything else.

14 Use your common sense. What did you hear from
15 the stand? Lieutenant Day said, in his expert
16 opinion, there's no way, no how that she was in the
17 car when it hit that tree because she would have
18 bruises and chest injuries and the steering column
19 would not have been bent in this fashion.

20 This door was fully functional and still is to
21 this day. As you see in this picture, it opens and
22 it closes. And he said that that door had to open,
23 she had to get out and then it closed behind her
24 before this collision occurred. There's no question
25 about that because if she'd been in the car, there'd

1 be all kind -- and the doctor said it too, there
2 would be all kinds of different injuries if she'd
3 been, as Michael said, in the car at the time when
4 it hit the tree.

5 Because why? It's all about Mike. He's still
6 in that, I've got to make them think it's an
7 accident, that she was suicidal and I'm trying to
8 save her.

9 Because isn't that what he's doing? It's all
10 about Mike at this point. I'm the hero. I wasn't
11 the one who caused the wreck. I'm the one in the
12 back pounding on the window to get her to come back
13 and take care of those kids. Then I see for some
14 crazy reason, oh, she's going suicidal, I've got to
15 save her. I've got to get to her to keep her from
16 jumping out of the car. Does that make sense?

17 Because Officer Gillespie even questioned on
18 the Q and A, Why didn't you just grab the side door?
19 Because if you're a big guy and a woman in the
20 front, you're here, stop the truck, stop the truck,
21 and you see her going out, am I going to do the hard
22 thing to punch out a window, climb through this
23 narrow spot, reach around and grab her to save her
24 or am I just going to reach around and hold the door
25 shut and say, whoa, whoa, don't do that? Doesn't

1 that make more sense?

2 But his explanation was, whoa, that wasn't
3 working, it's all about Mike, I've got to come up
4 with something else. I was stoned. I was blacked
5 out, but I reached for her pants and she slipped
6 away.

7 Well, think about that, ladies and gentlemen,
8 think about that. Or is it really he was so
9 frustrated that she was heading in the direction of
10 the police department on her way to work? I've got
11 to stop her before she gets to Batesburg-Leesville
12 because she drives right by that and now I've kind
13 of crossed the line and I'm in the back of the
14 truck, I've got to stop her before we get farther
15 down the road, bust that window out and there's a
16 struggle, a struggle for control of that vehicle.
17 And who's going to win that, her or him?

18 She probably resists a bit, but she gets
19 scratched on her arm because he's reaching around.
20 Now, there's injuries on her arm and on her abdomen
21 that are consistent, the doctor couldn't say to an
22 absolute certainty, and I'm not trying to put
23 anything over on you, but he said they're consistent
24 with what? Oh, scratches.

25 Who's got fingernails that are going to put

1 scratches? And where would those scratches appear
2 if you're in the seat of a car driving? They're
3 going to appear when you're trying to control her
4 by, Get off the wheel. You're reaching over and
5 you're grabbing that and you're holding her and
6 saying, give me the wheel, and scratching her on
7 that. They're not going to appear on her back
8 because she's got the back of the seat up against
9 her. It's all going to be on the front.

10 But she loses that battle because he's in the
11 truck cab now at this point and he wrestled for
12 control. And she knows this ain't going to be good,
13 he's now got me and he's mad. He's so mad, he's
14 punched out the window and done this crazy, reckless
15 thing, he's got control. She's probably trying to
16 get out of the car to get out away of the severe
17 attack that she knows, if it's not underway already,
18 it's certainly coming very shortly.

19 And what would make any one of us want to jump
20 out of a perfectly functioning, normal truck at six
21 o'clock in the morning? Nobody's going to do that.
22 If it's going to be a calm discussion, you're going
23 to hit the brakes, pull off to the side of the road
24 and talk it out.

25 Or she's losing the fight. She's kicking and

1 struggling. She's got her feet off the brakes, her
2 feet off the accelerator, because you heard again
3 from Lieutenant Day that it's a 25 to 28 mile an
4 hour collision, isn't that consistent with the car
5 drifting off the side of the road or is it
6 consistent with it's all about Mike's story, I'm
7 saving her life?

8 Or maybe it's more consistent with that she's
9 going out the door, he is struggling for control of
10 her still and that's what trips -- that's why her
11 legs are the last thing to leave the vehicle.
12 Instead of doing what she wanted when she was trying
13 to get away from that beating that was coming or had
14 already taken place, she gets hung up at the last
15 second and what's the first thing, instead of her
16 feet coming out on the street, it's her forehead.
17 The very first thing contacts that hard asphalt is
18 her head. She didn't want that. It wasn't suicide,
19 that's a fiction.

20 And you heard that from the doctor. The first
21 thing that came in contact was her head. Was it
22 just a tap or was it a scrape? No. No. It was
23 such violent force, it split her skull from ear to
24 ear, bruised her brain to the extent that it was
25 swelling. They had to relieve pressure, still left

1 her brain damaged to the point that there was no
2 coming back and she died.

3 Did he mean to do it? No. But that's why
4 we're here for involuntary manslaughter and not
5 murder or manslaughter of a voluntary nature.

6 Look at everything in these pictures, ladies
7 and gentlemen, and ask if it adds up. Does it match
8 up? Why would Michael have to tell all these
9 different variances, all these, like, little slight
10 changes? Because each time when he gets confronted
11 with a fact, oop, oh, yeah, well, it really wasn't
12 that way, it was this way. Oop, no, it wasn't that
13 way, let me add this, or I was mistaken about that.

14 If you tell the truth the way it happened, it
15 stays the same. The truth doesn't change. It's
16 only when people tell lies that you get different
17 versions told to one person because you can't keep
18 up with it. You can't -- we just can't keep all
19 those facts over and over again and replicate them,
20 especially when you've got police officers checking
21 up on them and saying, hmm, that doesn't quite fit,
22 what about this? Oh, oh, oh, it really happened
23 this way.

24 Now, you're going to hear from Mr. Madsen
25 questioning why SLED didn't have these pictures.

1 Well, does it really matter? We'd like to have
2 them. Nothing to hide, we're not trying to keep it
3 away from you. But they already took
4 contemporaneous photographs of the vehicle that you
5 have before you. There's nothing lost there.

6 The laws of physics haven't changed. We've got
7 pictures of what Shealy Reality and that tree looked
8 like and what its proximity was to the road. The
9 roadbed hasn't changed. They've added a retaining
10 wall, but nothing has changed to alter the speed
11 estimate. And there's no doubt that this truck hit
12 a tree. You can see pretty much the outline of the
13 tree trunk in the front of the car.

14 So, yes, they didn't -- we don't have the
15 photographs of SLED. SLED wasn't there. We don't
16 know where that agent is. We'd like to have them if
17 we had them, but we don't have them.

18 Then you're going to hear some question about,
19 well, why wasn't the MAIT team doing there, taking
20 measurements there? They thought it was an accident
21 because that's what they were hearing and everybody
22 was thinking it was an accident.

23 It wasn't until later on that the chief
24 determined it was a criminal nature because her road
25 rash was not adding up with what you would expect to

1 see from somebody who had been in the cab of the
2 vehicle at the time of the collision. It wasn't a
3 wreck. At that point, something was fishy.

4 But the one question he wanted answered that
5 day was answered by Lieutenant Day, and I'm not
6 trying to throw a pun there, but Day answered it on
7 that day. He said, I can tell you that that woman
8 was not in that car. And that's what he told you on
9 this witness stand. And how did he know that? The
10 same way as the doctor. You don't get road rash
11 from a collision into a tree. So we didn't really
12 lose anything by these officers not being there.
13 You've got everything.

14 And, ladies and gentlemen, use that common
15 sense. You, as jurors, all come together because
16 it's so simple. It's going to sound complex when
17 the Judge tells you about reasonable doubt. He's
18 going to tell you about unlawful conduct, criminal
19 intent, accident and those are all important. What
20 the Judge says, you listen to and you follow every
21 single instruction.

22 But what this case really comes down to is if
23 he had not jumped in the back of that truck, if he
24 had not smashed out that window, if he hadn't
25 sustained those injuries to his right arm, because

1 that's consistent with somebody climbing through
2 that window, and what's the first thing, if he's
3 reaching for her and he's coming in through the
4 window, struggling for the wheel and struggling for
5 her and then she goes out, the door closes and he's
6 tracking for the tree to the right, what's the first
7 part of his body that's going to come in contact
8 with that steering wheel and dash board? It's going
9 to be that right shoulder the one that took the hit.
10 That adds up.

11 But here we go back to simplicity. Don't get
12 distracted by all the red herrings. Mr. Madsen's
13 going to want to look at why the police weren't here
14 and ask you to think about that and ask these, hmm,
15 I wonder why questions.

16 This isn't CSI. They're not a big giant police
17 agency. This is the real world. This is what we
18 have in Lexington County with small agencies. I'm
19 sure they wish they had their own crime lab. I'm
20 sure in 2004, they wished they had that, but we all
21 know that money is tight. They do the best with
22 what they got.

23 Really, this comes down to not a complex
24 matter. If he just hadn't had Mike's way, it had to
25 be my way, she was faced with a dilemma as he busted

1 that window out, a reckless act, and climbed in. If
2 he had just let her go to work on her own, she'd
3 have gone, gone to work and come back, she'd be with
4 us today, but it had to be Mike's way. It had to be
5 his way on his terms.

6 He meant to beat her, didn't mean to kill her,
7 but that's what led her to face that dilemma, I
8 would rather face the road than stay in a cab with
9 Mike. That act of his, and solely that act of his,
10 was what made her make the choice to jump out.

11 She probably thought she would make it if her
12 feet hit first, but then at the last second, she was
13 tripped up by something. It could have been him,
14 could have been just a poor method by going out, but
15 why would she leave that perfectly functional
16 vehicle with a perfectly functional door unless
17 something drove her from it? What's going to drive
18 you from it? It's all about Mike, that's what this
19 case finally turns on.

20 It's so simple, ladies and gentlemen, if he
21 just hadn't gotten in there. If you can answer that
22 question, would she be alive today if he didn't get
23 in the back and punch out that window, you can
24 answer that question with, yeah, he's guilty, that's
25 all it takes, ladies and gentlemen, simple as that.

1 Thank you for your attention.

2 **THE COURT:** Thank you very much.

3 Ladies and gentlemen, we'll take a short recess
4 no longer than five minutes and I'll get you back in
5 here. Don't discuss the case.

6 (The jury retires to the jury room.)

7 **THE COURT:** We're at ease for five minutes.

8 (Brief Recess.)

9 **THE COURT:** Bring the jury in.

10 (The jury returns to the courtroom.)

11 **THE COURT:** All right. Mr. Madsen, you're
12 recognized for your closing argument.

13 **MR. MADSEN:** May it please the Court.
14 Solicitors.

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

16 **MR. MADSEN:** As I told you in the beginning,
17 this is a tragic, tragic accident, no ifs, ands or
18 buts about it. It is a tragic, tragic accident, but
19 nothing more, nothing less. On October 17th of
20 2004, over six and a half years ago, there was a
21 tragic, tragic accident.

22 Now, what I told you in the beginning is that
23 Mike is innocent until proven guilty. The Judge
24 will tell you that, the Solicitor's going to agree
25 that he is innocent until proven guilty, that the

1 State and solely the State has the burden of proof
2 beyond a reasonable doubt, that's something that the
3 Solicitor's going to agree with me on. The Judge is
4 going to give that to you in the law.

5 Have they met that burden of proof? Have they
6 met that burden of proof? Absolutely, positively
7 not. All you've heard is speculation, surmise and
8 conjecture.

9 I would submit to you, ladies and gentlemen,
10 that the best witness the State had the entire time
11 was the Solicitor, but remember what the Judge told
12 you in the beginning? What we as lawyers say is not
13 evidence. The evidence comes from the witness stand
14 and the exhibits. And with all due respect to the
15 Solicitor, I have no idea who Gillespie was. I
16 think he meant Gilliam. Speculation, surmise and
17 conjecture.

18 Now, the indictment is simply just a charging
19 document. It has no evidentiary value, that is how
20 we get into court. Says that Mike did with criminal
21 negligence and with reckless disregard for the
22 safety of the victim, engage in a physical
23 altercation with the victim, Megan D. Jackson,
24 leading to her falling from a moving vehicle
25 resulting in injuries that caused her death. That's

1 really got kind of two main components, doesn't it?
2 Physical altercation and falling from the truck.
3 Let's kind of break those down and take those
4 individually.

5 What evidence do they have of a physical
6 altercation? You heard from the pathologist that
7 there was trauma to her head from the road and that
8 there was road rash. No hand prints, no other blunt
9 force, no slap marks, no punch marks, nothing at all
10 to her back.

11 The Solicitor wants to talk about this epic
12 struggle, this fight with some small, linear,
13 delicate scratches to the left arm. Why didn't you
14 see a picture of that? Wouldn't you have wanted to
15 see a picture of that? What did the pathologist
16 tell you? Could have happened earlier, could have
17 happened afterwards, could have happened when she
18 was being held down, could have happened from the
19 road, he couldn't rule that out.

20 The left arm, not the right arm, not the back,
21 the left arm. That's it? That's evidence of this
22 epic struggle? That's proof beyond a reasonable
23 doubt? Or is that speculation, surmise and
24 conjecture?

25 The second portion of that indictment talks

1 about falling, that she fell out. I'm not the
2 brightest guy in the world, but I kind of scratch my
3 head. You got, according to them and according to
4 what you see, a door that works, a door that opens,
5 a door that shuts and, according to Lieutenant Day,
6 a door that was shut, but, yet, she falls out. Does
7 that make sense? Have they proven that beyond a
8 reasonable doubt or are you just going back to
9 speculation, surmise and conjecture?

10 MAIT tells you that no one's behind that wheel,
11 no one's behind that wheel. So how does the door
12 get shut?

13 We know, from what they tell you, that Mike's
14 got injuries to his right shoulder that are
15 consistent with glass cuts around that. So he's in
16 the back part of that truck in the bed. There's a
17 bowed in frame back there indicating that when it
18 hits, stuff goes forward and he's got injuries to
19 his shoulder.

20 You hear that when Mr. Maye gets out there, of
21 course he told you he used to be, I guess, 30 years
22 ago have some EMS training in that, and of course,
23 you know, like a lot of things that we end up doing,
24 you forget a lot of things, but you try to kind of
25 pull back and bring and so he's quite honestly kind

1 of in assessment mode at that point in time, gets a
2 little bit from Mike, but realistically what's his
3 concern going to be with that background? It's
4 going to be Ms. Jackson at that point in time.

5 The evidence that you've heard, and, you know,
6 the Solicitor made a big deal of this, and I
7 appreciate him trying to make arguments, but is it
8 just as consistent -- Mike stays out till 5:30, 5:45
9 in the morning and gets home, that's not right, but
10 that's not involuntary manslaughter, that's a
11 mistake. No one's going to dispute that, that that
12 was a mistake and she's mad at him, understandable,
13 understandable, but that's not involuntary
14 manslaughter.

15 He says, I can't take care of the kids. She's
16 got a job that she's supposed to go to. We know
17 that she's called off that job, through
18 Batesburg-Leesville's investigation, that she's
19 called off that job. Is she mad at him? I'm sure
20 she is. Is she mad at him enough for some reason,
21 does she decide when he's in the back of that truck,
22 that, you know what, I'm going to go out and I'm
23 going to let him deal with the tree and the truck by
24 himself when I'm not behind the wheel? Is that just
25 as likely from this evidence? It sure is, but

1 that's certainly not involuntary manslaughter.

2 Let's just leave him to deal with that tree.

3 You heard about what happened on October 17th
4 of 2004. You heard about the fact that officers end
5 up going out there, that there's no accident
6 reconstructionist, that there's no photos.

7 Understandably, when they get out there, the
8 health of the individuals has got to be paramount,
9 no dispute in that, but at some point in time, Mike
10 is taken to one hospital, Ms. Jackson's taken to
11 another hospital. And the idea is just, well, we
12 just kind of thought it was an accident at this
13 point in time, so we didn't take any photographs
14 after all that was taken. We didn't call the
15 Highway Patrol, MAIT, SLED. We didn't do any
16 measurements. We didn't do any diagrams. You get
17 this as a diagram (indicating). We didn't do any of
18 that because we just thought it was an accident.

19 No one calls the chief. And then when the
20 chief, who takes weekends off, he's earned it, he's
21 worked there for 35 years, when he calls in, he
22 makes decisions, never interviews a witness himself,
23 never takes a measurement, never does a photograph,
24 but he makes a decision instead of the people who
25 are out there and seeing that. And the lack of

1 investigation in and of itself is reasonable doubt
2 and I ask you to strongly consider that.

3 SLED, forensic crime scene, comes out. We
4 don't know where he's at. We don't know where any
5 of the photographs are. What were you given? In
6 this day and age, that SLED agent doesn't file taxes
7 somewhere, they can't find him and they can't bring
8 him in here? Does that make a lot of sense? Or
9 maybe he just doesn't help their case and they just
10 don't need him or want him.

11 You hear from MAIT, Lieutenant Day, who tells
12 you six and a half years ago, you know I don't
13 really remember, but five years later, the Solicitor
14 brings me back and, oh, I don't need all that stuff.
15 2004, apparently they didn't have cameras, video
16 tapes. No, we just went out there for, you know,
17 one question. Does that make a lot of sense?

18 You know, one of the interesting things and I
19 think I asked him --

20 **THE COURT:** Hold on a second.

21 Folks, you got to keep your eyes open. If I
22 see you shutting your eyes, I'm going to have to let
23 you take a little break.

24 I'm not going to say who I'm looking at, all
25 right. I know you're writing. It isn't you, okay.

1 Just keep your eyes open, all right.

2 Go ahead, Mr. Madsen.

3 **MR. MADSEN:** The thing about Lieutenant Day,
4 one of the things that he said, and I made sure to
5 follow up and ask him about it, is he talked about
6 road rash on Ms. Jackson's head. You heard from the
7 pathologist there was no road rash on her head.

8 Asked him about other injuries, no injuries to
9 her leg, her legs. The pathologist testifies about
10 a three inch bruise, I think, on the inside of, I
11 don't remember if it was the right or the left knee.
12 Y'all are 12 so you've got a lot better memory than
13 me, but a three inch bruise around her knee.

14 Doesn't know what goes on in the cab,
15 Mr. Wedekind does, but the expert doesn't, the
16 person who's up there testifying, the person who you
17 listen to and take the facts from tells you about
18 the glass and the shoulder and everything coming
19 forward.

20 You know, what do we hear out on the scene?
21 That Mike's hysterical, that Mike's distraught, that
22 Mike is asking for help, Help me, help her, get an
23 ambulance, how he's concerned for his children.
24 Tells Officer VanPut, hey, please go check on the
25 children, they're at home alone. Same thing in the

1 statement, you know, I'm telling her, stop, the kids
2 are back home.

3 You hear how Mike eventually is transported to
4 Lexington Medical Center, Ms. Jackson is taken by
5 helicopter to Palmetto Richland, how when the chief
6 asks Investigator Gilliam to head to Richland
7 Memorial, that when he gets there, by that time,
8 Mike has been released and gone to Richland Memorial
9 where she's at, how they ask him, Investigator
10 Gilliam asks him, hey, I need to speak with you, I
11 want to speak with you and how Mike ends up leaving
12 Palmetto Richland, boom, right to
13 Batesburg-Leesville, 9:15 at night, 9:15 at night
14 gets there.

15 The officer tells you he's still bandaged. His
16 mother mentioned something about him being under
17 medication from the treatment in that, officer won't
18 let her go back in there with him. Mike says, nope,
19 he's going to cooperate and that's all you heard
20 about is how he cooperated. He answered all their
21 questions. He was available whenever they needed
22 him. You heard about that on the 17th from
23 Investigator Gilliam.

24 **THE COURT:** Mr. Madsen.

25 Folks, go to the jury room, get something to

1 drink, get something cool, be back in five minutes.
2 Don't discuss the case. If you're taking notes, you
3 need to leave your notes in the courtroom. I'm
4 sorry.

5 (The jury retires to the jury room.)

6 **THE COURT:** The lady in the red in the front
7 row, she has not gone to sleep, but she is fighting
8 it. I don't really know why at all. Everybody else
9 is extremely attentive. I guess whatever -- like I
10 said, I've been watching her like a hawk and she
11 hasn't gone to sleep, she's just really fighting it.
12 I'll let you double back and cover whatever you
13 need to cover to get back on track, but I was either
14 going to have to stop and remove her or I was going
15 to have to do what I did. We're at ease for about
16 five minutes. Thank you.

17 (Brief Recess.)

18 **THE COURT:** All right. Are you ready, Mr.
19 Madsen?

20 **MR. MADSEN:** Judge, I would -- at this point in
21 time, I would just move for a mistrial. With all
22 due respect to the Court, and I understand what the
23 Court did and why you did it, but obviously from
24 when I'm giving a closing examination, it's just
25 tough, the stop and the start, to develop some

1 consistency. And then I'm kind of stuck between a
2 rock and a hard place that if I go back, am I kind
3 of rambling on, being repetitive in their mind or do
4 I just kind of go on and almost like I've started
5 anew and it's then kind of hodgepodge.

6 Obviously, there's no right or wrong answer,
7 but it ends up putting Mike's position and defense
8 in kind of a difficult situation. And like I said,
9 with all due respect, we would just move for a
10 mistrial.

11 **THE COURT:** Well, obviously my preference would
12 have been for that not to happen. But to be quite
13 honest with you, not that my opinion matters, I
14 thought your closing argument was outstanding. I
15 thought both closing arguments were extremely good,
16 hadn't heard all of yours yet, but all 13 other
17 jurors were pretty much riveted in on you. And I'm
18 very impressed by what I can judge by sight as to
19 how these jurors are approaching their jobs.

20 I mean, we've had fire alarms go off in the
21 middle of closing arguments, we've had power go out,
22 we've had all kinds of things happen and you just
23 have to deal with it.

24 My other option was to let her go to sleep and
25 then try to decide whether to replace her or not and

1 whether that would be distracting.

2 So it doesn't rise to the level of a mistrial
3 and I'm really not -- I mean, nobody really knows a
4 hundred percent, but I cannot imagine it affecting
5 those other 13 jurors by the way they're acting.
6 They are intensely focused on what you're saying.
7 So I will say in their presence that you can go back
8 and repeat yourself some if you need to to get back
9 to where you were.

10 I'll have to give that gentleman an instruction
11 about notes. He started taking them during Mr.
12 Madsen's closing about halfway through. Since
13 nobody's taken notes until that point, I haven't
14 given the instruction about notes.

15 All right. Would you tell them to bring them
16 back in?

17 The motion's denied.

18 (The jury returns to the courtroom.)

19 **THE COURT:** Folks, since I noticed someone
20 taking notes, I need to give you an additional
21 instruction. It's perfectly fine with me if you
22 take notes. I don't have any problem with it at
23 all. They do tell us that if jurors start taking
24 notes, we're supposed to have three rules:

25 One is that if you leave the jury room before

1 the deliberations start, you have to leave the notes
2 in the jury room. The second is that you may take
3 the notes back into the jury room when you
4 deliberate, but you cannot physically show your
5 notes to another juror. Now, obviously you may look
6 at them and then say whatever you like, but you
7 can't say, look, I've got it written down right
8 here, that sort of thing.

9 And the third thing is after the trial is over,
10 the notes have to be destroyed. So you have to give
11 them to the bailiff and we shred them or tear them
12 into little pieces. We do not read your notes. If
13 you have them on something that you need to keep, we
14 have to take a black magic marker and mark over it.
15 So with those three rules, you're welcome to take
16 notes if you like.

17 Mr. Madsen, you're perfectly welcome to sort of
18 re-track and go back a little bit if you need to set
19 the stage as to where you were. So if you need to
20 repeat something that you've already said, that's
21 fine with me. All right, you're recognized.

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

23 I'll try not to be repetitive, but let me
24 mention one thing before I kind of get back into it.
25 You'll have the statement, which is marked as

1 State's Exhibit Number 1, back in the jury room with
2 you to read. You know, one of the things that I
3 thought that was interesting in the Solicitor's
4 closing argument is it says, Out of the truck to the
5 passenger side and fell down. Well, we know she was
6 found on the passenger side.

7 I don't know why the Solicitor decides that
8 instead of to, of the passenger side, trying to say,
9 you know, trying to say, oh, hey, there's a change
10 of story by Mike, she got out of the passenger side.
11 That's not what the statement says. Y'all will have
12 that statement. Y'all can look at it with your own
13 eyes.

14 Jumping back in, as I said, on the side of the
15 road, we know that Mike's hysterical, distraught,
16 help her, get an ambulance. We know that Mike
17 cooperated, went and talked with Investigator
18 Gilliam that same day 9:15 at night. We know from
19 the testimony that they wanted him back up there on
20 the 19th, that he was interviewed by Lieutenant
21 Clare of the Batesburg-Leesville Police Department.
22 For some reason, you don't have that and you don't
23 want to hear that -- or they don't want you to hear
24 that. Could that maybe not help their case?

25 Is there the 17th, cooperates, didn't have to,

1 comes back the 19th cooperates fully, answers all
2 their questions, doesn't have to. Back up on the
3 22nd, doesn't have to, cooperates the entire time,
4 answers all their questions, is always available to
5 them. It's his right not to cooperate, he doesn't
6 do that, he's there.

7 As I told you in the beginning, it's the
8 State's burden of proof beyond a reasonable doubt.
9 Mike, as he sits there, is innocent until proven
10 guilty. Has the State met that burden of proof?
11 No, they haven't. They have failed miserably. All
12 you heard is speculation, surmise and conjecture.

13 The chief's been around a long time. His
14 pencil is the same as mine and yours. It has an
15 eraser on the back of it. We all make mistakes.
16 Speculation, surmise and conjecture, that's all this
17 case is.

18 As I told you, beyond a reasonable doubt is the
19 highest burden in the American judicial system. All
20 we ask is that you hold them to that burden. No one
21 who sits where Mike is can ask anymore or any less
22 than to hold them to their burden of proof. And
23 based on the lack of evidence that they have, based
24 on the speculation, based on the surmise, based on
25 the conjecture, we ask that you hold them to that

1 burden of proof and find him not guilty. Thank you.

2 **THE COURT:** Thank you, Mr. Madsen.

3 All right. Folks, like I told you, I always
4 take a break, but you hadn't been in here but just a
5 few minutes so I might just go ahead and start. Is
6 that okay with everybody?

7 CHARGE OF THE COURT

8 **THE COURT:** All right. Folks, this is going to
9 take, as I told you, 34 minutes. So I'm going to
10 explain some things to you and some ground rules as
11 I'll say and then we'll turn to the specific charge
12 raised here.

13 Members of the jury, all of the evidence has
14 been presented. You've heard the arguments of
15 counsel. It's now time for me to instruct you on
16 the law that applies to the case. Please continue
17 to pay close attention during the next stage.

18 First, you need to understand some basic ground
19 rules. You, the jury members, are the sole judges
20 of the facts. You decide all the issues of fact.
21 You alone determine the truth of the evidence, its
22 effect, its value and its weight. You alone judge
23 the credibility of witnesses, in other words,
24 whether or not a witness' testimony is believable.

25 Now, in that regard, you -- in evaluating the

1 (The Clerk hands the verdict to the Judge.)

2 **THE COURT:** Publish the verdict.

3 VERDICT OF THE JURY

4 **THE CLERK:** Indictment 2009-GS-32-982, the
5 State versus Michael Avery Humphrey. As to the
6 charge of involuntary manslaughter, we, the jury,
7 unanimously find the defendant guilty of voluntary
8 manslaughter -- involuntary manslaughter. It is so
9 signed.

10 Madame Forelady, ladies and gentlemen of the
11 jury, if this was your verdict, please indicate by
12 raising your right hands.

13 **THE COURT:** All 12 hands are raised.

14 Any matters to take up prior to the jury being
15 discharged, from the State?

16 **MR. WEDEKIND:** None from the State, sir.

17 **THE COURT:** From the defense?

18 **MR. MADSEN:** None from the defense.

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

20 Ladies and gentlemen, I greatly appreciate your
21 service. And I want to tell you that I have to
22 deliver a message to you and I'm begging you not to
23 be upset with the messenger. I did not make this
24 decision. I am told that you are to report at 9:45
25 in the morning on the fourth floor to possibly serve

1 as jurors in another case, be here at 9:45 upstairs
2 on the fourth floor. I wish I could tell you
3 differently. I didn't make that call. You're free
4 to go. Thank you.

5 (The jury was excused.)

6 **THE COURT:** Any motions?

7 **MR. MADSEN:** Yes, Your Honor, there's a few.
8 We would renew all the motions and the objections
9 that we made during the trial, including the
10 mistrial motions.

11 Additionally, we would ask the Court to act as
12 a 13th juror and enter a verdict of not guilty. We
13 do not believe that there was sufficient evidence
14 for a jury to find Mike guilty beyond a reasonable
15 doubt.

16 Finally, Judge, we would ask for a new trial at
17 this point in time. I know Your Honor went through
18 and obviously gave strong consideration to a
19 directed verdict motion that we had made. We would
20 just respectfully request that the Court reconsider
21 and grant a new trial.

22 **THE COURT:** All right. The motions are
23 respectfully denied.

24 Do you have a sentence sheet?

25 **MR. WEDEKIND:** Not yet, sir. I'm sorry. Can I

1 beg the Court's indulgence? I'll get one inside of
2 five minutes or less than that really.

3 **THE COURT:** Okay. All right. We're going to
4 be at ease. Mr. Humphrey, just stay in the
5 courtroom okay. Thank you.

6 (Brief Recess.)

7 **THE COURT:** Does the State have anything else
8 on sentencing?

9 **MR. WEDEKIND:** Your Honor, you saw the same
10 case we did see. We'll just leave it in your
11 discretion, sir. He has no record of any felonies
12 in his prior history.

13 **THE COURT:** What do you want to tell me, Mr.
14 Madsen?

15 **MR. MADSEN:** Judge, just to kind of give you
16 some background about Mike, he's 30 years of age,
17 graduated Batesburg-Leesville High School, actually
18 went to North Greenville College to play football
19 and while there was studying theology, ended up
20 coming out of there and going to Midland's Tech for
21 a couple of semesters and also spent some time in
22 seminary school. He's actually enrolled back at
23 Midland's Tech where he's slated to start online
24 classes and an actual on-campus class.

25 He's got three children, two daughters and a

1 son. He's married to a lady by the name of Sharon
2 who actually has five children of her own.

3 He's worked now at Dick Dyer Toyota for over
4 three years. He is the Internet sales and fleet
5 manager there. Prior to that, he worked for a
6 little over two and a half years at Honda as an
7 Internet manager.

8 Judge, you know, one of the things that I
9 wanted to mention to you is in talking with Mike,
10 and I talked frank with him about, you know, whether
11 he should testify or not and that the things that he
12 did that night as far as coming in late that I
13 didn't think the jury would like those. And he kind
14 of stopped me, and I still remember this, and said,
15 You know, I'm not going to tell you I was a good
16 boyfriend. He goes, I was a horrible boyfriend. He
17 said, You know, I made a lot of mistakes with that.
18 And I thought that that was very good insight.

19 This is obviously a tough case. A young lady
20 lost her life and, I mean, that's just sad.

21 He is a productive member of society. He -- no
22 record before, hasn't been in any trouble in the six
23 and a half years since. You know, a lot of people,
24 I hate to say this, but a lot of people I represent,
25 felony is just another mark on their record, not a

1 big deal. To you, to me, the Solicitor, it is a big
2 deal and Mike's the same way.

3 We would ask for leniency. We would ask for a
4 probationary sentence, Judge, given his lack of
5 record.

6 **MR. WEDEKIND:** And, Your Honor, one thing I did
7 neglect to mention was the victims in the matter,
8 the mother and the father of Ms. Megan Jackson, did
9 attend the trial the last time, which was a hung
10 jury. The mother, Ms. Jackson's mother, she felt
11 like she had been through enough of an emotional
12 ringer and she declined to come in and participate
13 in this trial. And her father, I think, was
14 frustrated too and he declined to be here today as
15 well.

16 **THE COURT:** Okay. Mr. Humphrey, do you want to
17 say anything?

18 **DEFENDANT:** I'll never forget that night. I'll
19 never forget everything that led up until that
20 night. I told the courts one time four years ago, I
21 lost my best friend that night. And I regret every
22 stupid decision that I've made that led up to this
23 day. I'm sorry.

24 **THE COURT:** All right. Mr. Humphrey, if you
25 wish to appeal from this proceeding, you need to

1 tell your attorney. He will file the notice. And
2 then there's an office in Columbia that would take
3 up your case and go from there. It has to be in
4 writing and it's a very short timeframe, so make
5 sure you tell Mr. Madsen to file your notice of
6 appeal if you've got any inkling that you want to
7 appeal this because -- you know, you can always drop
8 it if you decide later to drop it, but you need to
9 go ahead and file that if you have any idea that you
10 want to appeal it.

11 SENTENCE OF THE COURT

12 **THE COURT:** The sentence of the Court is that
13 you be committed to the South Carolina -- how long
14 were you in jail?

15 **DEFENDANT:** Three days.

16 **THE COURT:** Sentence of the Court is that you
17 be committed to the South Carolina Department of
18 Corrections for one year provided that upon the
19 service of three days time served plus costs and
20 assessments, the balance is suspended and you're
21 placed on probation for two years.

22 You're subject to the standard conditions of
23 probation. Restitution is deferred. You have to
24 pass random drug and alcohol screens. The law
25 requires you to provide a DNA sample. I don't have

1 any control over that. Your probation may end after
2 one year if you've paid all your money and you're in
3 full compliance.

4 Pay your court costs, they can give you the
5 exact amount, again I don't have any discretion on
6 that, it's set by statute, but pay your court costs
7 at a rate of at least \$50 a month beginning June the
8 1st, 2011. I think I said restitution is deferred.

9 You understand your sentence?

10 **DEFENDANT:** Yes, Your Honor, I think I do.

11 **MR. MADSEN:** I'll explain it.

12 **THE COURT:** Okay. Well, you've got a year
13 hanging over your head and you've got probation for
14 two years, but if you pay all your money and you
15 stay out of trouble and you do what they tell you,
16 your probation can end after a year.

17 Now, there's nobody here from probation now.

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** They'll be here in the morning at
20 ten o'clock. I need you to come up here tomorrow at
21 10:00 in this courtroom and they'll process your
22 paperwork then, okay.

23 **DEFENDANT:** I'll be here.

24 **THE COURT:** All right. Thank you, sir.

25 END OF PROCEEDINGS

WITNESSES

Batesburg Leesville Police Department

William Oswald

Law Enforcement Case #: 041173

LGW

04122011 ARREST WARRANT NUMBER

1021127

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 4/11/11

VERDICT

Guilty

Julia Dial
Foreperson of Petit Jury
Date: 4/27/11

DOCKET NO. 2009GS3200982

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2011

THE STATE

vs.

Michael Avery Humphrey

CDR #: 0218

Indictment for

INVOLUNTARY MANSLAUGHTER

§ 16-03-0060

DONALD V. MYERS, SOLICITOR

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR

INVOLUNTARY MANSLAUGHTER

§ 16-03-0060

At a Court of General Sessions, convened on APRIL 2011, the Grand Jurors of Lexington County present upon their oath:

That **Michael Avery Humphrey** did in Lexington County, South Carolina on or about October 17, 2004, with reckless disregard for the safety of others, unlawfully kill one Megan D. Jackson, to wit: the defendant did with criminal negligence and with reckless disregard for the safety of the victim engage in a physical altercation with the victim (Megan D. Jackson), leading to her falling from a moving vehicle resulting in injuries that caused her death and she died October 21, 2004 as a proximate result thereof. All in violation of § 16-03-0060 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Mr. Michael Avery Humphrey

AKA:

Race: Sex: M Age: 30

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#: SC01304299

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Manslaughter/Involun

in violation of § 16-03-0060 of the S.C. Code of Laws, bearing CDR Code # 0218

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Wedekind, Lawrence Gerard SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 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 3 1/2 days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 2

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 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
Proviso 47.9 (Public Def/Prob)	\$500 \$500
§ 14-1-212 (Law Enforce. Funding)	\$25 \$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
Proviso 90.5 (SCCA Surcharge)	\$5 \$5.00
3% to County (if paid in installments)	\$
TOTAL	\$

IN THE COURT OF GENERAL SESSIONS

485

INDICTMENT/CASE#: 2009GS3200982

A/W#: 1021127

Date of Offense: 10/23/2004

S.C. Code § 16-03-0060

CDR Code #: 0218

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 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 3 1/2 days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 2

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 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
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§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
Proviso 90.5 (SCCA Surcharge)	\$5 \$5.00
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. ☐ Prob Corp. C.C.P., A.S. & P.O.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: DNA; PROBATION MAY END APRIL 14, 2011

IF ALL MONEY PAID & DEF. IN FULL COMPLIANCE.
Pay COURT COSTS BEGINNING 6/1/11 @ \$20/mo.☒ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

William P. Clonky

2050

April 27, 2011

INTERVIEW SHEET

The following **MUST** be read **IN FULL** by the interviewing officer to the person interviewed, and the answers given by that person must be written down **EXACTLY**, regardless of what the answer may be.

1. "You are (Under arrest for) being interviewed in connection with"

Traffic Accident

2. "You have a right to remain silent. You do not have to make any statement. You do not have to answer any questions. Do you understand this?" ☒ Yes ☐ No

3. "Anything you do say can and will be used against you in Court. Do you understand this?" ☒ Yes ☐ No

4. "You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning if you wish. Do you understand this?" ☒ Yes ☐ No

5. "If you want a lawyer but cannot afford to hire one, one will be appointed for you by the Court. Do you understand this?" ☒ Yes ☐ No

6. "If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. Do you understand?" ☒ Yes ☐ No

7. "Knowing these rights, are you willing to make a statement or answer questions without a lawyer being present?" ☒ Yes ☐ No

8. "Have any threats or promises of any kind been made to you so that you will give us a statement?" ☐ Yes ☒ No

I certify that the above items 1 through 8 were read to

MICHAEL A. Humphrey

by me on the 17 day of OCT, 2004
and that the answers recorded above are those given

by Michael A. Humphrey
at that time.

Emmit Gilliam

INTERVIEWING OFFICER

I have read or have had read to me everything on this interview sheet and it is true and correct.

[Signature]
PERSON INTERVIEWED

OTHER PERSON(S) PRESENT

Name of person interviewed: MICHAEL A. Humphrey Date of Birth: 11-19-80 Sex: M Race: B

Home Address: 1106 Springhill Rd Gilbert SC 29054

Extent of education: 12th HIG Date and time interview began: 10-17-04 21:15

Place of interview: B.L.P.D Date and time interview ended: 10-17-04 10:00 PM

STATEMENT

STATEMENT OF MICHAEL A. Humphrey written by Det. Emmit Gilliam for MICHAEL A. Humphrey at his request.

I went to Club Revolution in Columbia, then I bar, I didn't get back to Batesburg until 5:30. Between 5:30 AM and 5:45 AM this morning, I got home and MEGAN was getting ready for work, and I told her that I couldn't watch after the kids because I was drunk. Then MEGAN call her job and told them, that she will not be able to come in. Then I went and got in the bed, before I got in bed we argue a little. Then MEGAN walked out the door, crunk up the truck, I walked out the house to the driver-side of the truck, and I told Megan to stop and then MEGAN put the truck in reverse and started backing out the yard. I jump in back of the truck as soon as she put the truck in reverse. MEGAN put the truck in driver Drive and I was knocking on the back window tell MEGAN to stop. MEGAN was speeding up the road (Grand) slow down and turn on EAST Columbia (US 1) with out stopping at the 57.

I sign page 1 of this statement to be true and correct and I have received copy(s) of 2 page(s) of my statement.

[Signature]

Witness

[Signature]

Signature of person giving statement

STATEMENT

Sign. MEGAN WAS Driving toward Batesburg and MEGAN WAS speeding I was Knocking on the window and I was telling her to stop, because The Kids was at the house by themselves. MEGAN was trying to ~~FALL~~ ^{EG} out so I punch the Back window and grab Megan by her ^{EG} the back of her pants. ~~When I grab the~~ ^{EG} so Megan wouldn't fall out and before I knew anything else we hit a light pole. Then MEGAN Stumble out the truck to the passenger side and fell down. Then I ran to her and started screaming & crying. And I don't remember anything else but telling the police to get in contact with someone like my father to make sure my Kids was okay.

End of STATEMENT

- ① why did you get on back of the truck if you Kids was in the house?
- ② I didn't think she would leave, I was thinking she will stop
- ③ If you saw MEGAN trying to fall out of the vehicle why didn't you push the Driver door close?
- ④ I ~~wasn't~~ ^{was} thinking About that, I did the first thing I thought about
- ⑤ WAS you and MEGAN Arguing Before Before this Accident?
- ⑥ we had a Brief (few word) then I went to bed.
- ⑦ Did you try to scare her into pulling over or going back home?
- ⑧ NO
- ⑨ ~~Out~~ End of Interview

I sign page 2 of this statement to be true and correct and I have received copy(s) of 2 page(s) of my statement.

St. Dili

Witness

10.17.04

Date

10:00pm

Time

MEG

Signature of person giving statement

10.17.04

Date

10:03pm

Time

INTERVIEW SHEET

The following **MUST** be read **IN FULL** by the interviewing officer to the person interviewed, and the answers given by that person must be written down **EXACTLY**, regardless of what the answer may be.

1. "You are (Under arrest for) (being interviewed in connection with)"

Traffic Accident

- MAH 2. "You have a right to remain silent. You do not have to make any statement. You do not have to answer any questions. Do you understand this?" ☒ Yes ☐ No
- MAH 3. "Anything you do say can and will be used against you in Court. Do you understand this?" ☒ Yes ☐ No
- MAH 4. "You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning. If you wish. Do you understand this?" ☒ Yes ☐ No
- MAH 5. "If you want a lawyer but cannot afford to hire one, one will be appointed for you by the Court. Do you understand this?" ☒ Yes ☐ No
- MAH 6. "If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. Do you understand?" ☒ Yes ☐ No
- MAH 7. "Knowing these rights, are you willing to make a statement or answer questions without a lawyer being present?" ☒ Yes ☐ No
- MAH 8. "Have any threats or promises of any kind been made to you so that you will give us a statement?" ☐ Yes ☒ No

I certify that the above items 1 through 8 were read to

Michael A Humphrey

by me on the 19 day of October, 2004

and that the answers recorded above are those given

by Michael A Humphrey

at that time.

[Signature]
INTERVIEWING OFFICER

I have read or have had read to me everything on this interview sheet and it is true and correct.

[Signature]
PERSON INTERVIEWED

OTHER PERSON(S) PRESENT

Name of person interviewed: Michael A Humphrey Date of Birth: 11-19-80 Sex: M Race: B

Home Address: 1106 Spring Hill Rd. Gilbert SC 29054 803-892-244

Extent of education: 12 Date and time interview began: 10-19-04 11:11

Place of interview: BLPD Date and time interview ended: 10-19-04 12:11

STATEMENT

Q Where were you when you were knocking on the back of the window of the truck?

A) I was right behind the middle glass of the rear window

Q Which window did you punch out?

A) The middle window, the one I was knocking on.

Q ~~Which~~ ^{See} Which hand did you grab Megan with?

A) my left hand

Q Where did you grab Megan?

A) by the back pants they were Nursing Scrubs

Q Do you know why Megan was trying to get out of the truck?

A) No same thing I'm wondering

Q When did you let go of Megan's pants?

A) I don't know I Blacked out when we hit

I sign page 1 of this statement to be true and correct and I have received copy(s) of 2 page(s) of my statement.

[Signature]
Witness

[Signature]
Signature of person giving statement

STATEMENT

the tree, I thought it was a light pole they said it was a tree.

Q) Did you see Megan stumble out of the truck to the passenger side?

A) no I assume thats what she did be cause there was no one around when I got to her.

Q) How fast do you think you were going before you hit the tree?

A) 40 or 45

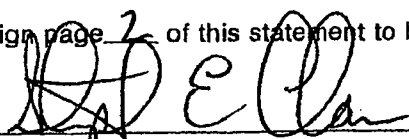
Q) Where were you after the truck hit the tree?

A) I don't remember All I remember was getting to her (Megan) crying and screaming and I blacked out after that.

Q) Was Megan trying to get away from you, in the truck?

A) for what why would she be trying to getting from me. NO

I sign page 2 of this statement to be true and correct and I have received copy(s) of 2 page(s) of my statement.



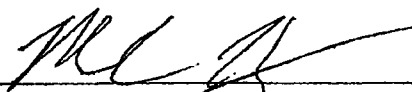
Witness

10-19-04

Date

1211

Time



Signature of person giving statement

19 Oct. 04

Date

12:11 P.M.

Time

490



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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 7th, 2013


Dayne C. Phillips
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL AVERY HUMPHREY,

APPELLANT

Appellate Case No. 2011-191566

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Mr. Michael Avery Humphrey at 100 Stanford Street, Columbia, SC 20203, this 7th day of January, 2013.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 7th day of January, 2013.

Marion Hight (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022

RECEIVED
JAN 07 2013
SC COURT OF APPEALS