

ORIGINAL
VOLUME I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED
SEP 18 2013
SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

STEVEN KRANENDONK,

APPELLANT

APPELLATE CASE NO. 2012-210207

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED March 5, 6, 7, 2012.....	1
PRE-TRIAL MOTIONS	10
TESTIMONY	
KEVIN ROOSEN (IN - CAMERA)	
Direct Examination by MR. POTTS.....	14
Cross Examination by MR. HARVEY	24
Redirect Examination by MR. POTTS	28
RHETT BICKLEY (IN - CAMERA)	
Direct Examination by MR. POTTS.....	28
Cross Examination by MR. HARVEY	38
Redirect Examination by MR. POTTS	51
Recross Examination by MR. HARVEY	52
MOTION TO SUPPRESS THE BAC TEST	57
TESTIMONY	
RHETT BICKLEY	
Examination by THE COURT.....	91
COURTS RULING ON MOTION TO SUPPRESS THE BAC TEST.....	100
OPENING STATEMENTS BY MS. SAMPSON	108
OPENING STATEMENTS BY MR. HARVEY	117
TESTIMONY	
GLENN DAVIS	
Direct Examination by MS. SAMPSON	133
Cross Examination by MR. HARVEY	149
Redirect Examination by MR. SAMPSON	161
Recross Examination by MR. HARVEY	162
KENNETH SIMMONS	
Direct Examination by MR. POTTS.....	162

Cross Examination by MR. HARVEY	169
KEITH CORLEY	
Direct Examination by MS. SAMPSON	170
Cross Examination by MR. HARVEY	182
Redirect Examination by MR. SAMPSON	184
JENNA BRELAND	
Direct Examination by MS. SAMPSON	186
Cross Examination by MR. HARVEY	207
Redirect Examination by MR. SAMPSON	217
Recross Examination by MR. HARVEY	220
ERIC HARRISON HAIR	
Direct Examination by MS. SAMPSON	222
Cross Examination by MR. HARVEY	242
Redirect Examination by MR. SAMPSON	265
Recross Examination by MR. HARVEY	268
ROBERT CHRISTOFOLI	
Direct Examination by MR. POTTS	270
Cross Examination by MR. HARVEY	286
Redirect Examination by MR. POTTS	301
Recross Examination by MR. HARVEY	304
COLT LAX	
Direct Examination by MR. POTTS	308
Cross Examination by MR. HARVEY	336
Redirect Examination by MR. POTTS	353
KEVIN ROOSEN	
Direct Examination by MR. POTTS	356
Cross Examination by MR. HARVEY	371
Redirect Examination by MR. POTTS	386
Recross Examination by MR. HARVEY	389
KERI THREATT	
Direct Examination by MR. MATTHEWS	396
Cross Examination by MR. HARVEY	399
RHETT BICKLEY	
Direct Examination by MR. POTTS	404
Cross Examination by MR. HARVEY	430
Redirect Examination by MR. POTTS	443
Recross Examination by MR. HARVEY	446
ROBIN CAMLIN	
Direct Examination by MS. SAMPSON	448
Cross Examination by MR. HARVEY	471

Redirect Examination by MR. SAMPSON	489
Recross Examination by MR. HARVEY	520
TRIAL TRANSCRIPT DATED March 8, 9, 2012	541
TESTIMONY	
TIM GRAMBOW	
Direct Examination by MR. POTTS	545
Cross Examination by MR. HARVEY	554
RAY LEWIS	
Direct Examination by MR. POTTS	555
Cross Examination by MR. HARVEY	609
Redirect Examination by MR. POTTS	632
Recross Examination by MR. HARVEY	637
MOTION FOR A DIRECTED VERDICT	644
COURTS RULING FOR A DIRECTED VERDICT	648
TESTIMONY	
JEFFREY LEE HARRELL	
Direct Examination by MS. HARVEY	649
Cross Examination by MR. SAMPSON	661
VERDICT	667
JURY POLLING	667
POST TRIAL MOTIONS	671
SENTENCE OF THE COURT	673
INDICTMENT SHEETS	675
DEFENDANT'S EXHIBIT # 2 (DIAGRAM)	679
STATE'S EXHIBIT # 54 (LAW ENFORCEMENT STATEMENT)	680
CERTIFICATE OF COUNSEL	683

****DEFENDANT'S EXHIBIT #1, (PHOTOGRAPH), IS BEING
TRANSPORTED TO THE COURT OF APPEALS. ****

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2011-GS-40-05469
	)	2011-GS-40-05472
	)	
THE STATE,	)	
	)	
	)	PARTIAL
vs.	)	TRANSCRIPT OF RECORD
	)	
STEVEN KRANENDONK,	)	
	)	
DEFENDANT,	)	

March 5 - 7, 2012
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE; and a jury.

APPEARANCES:

APRIL SAMPSON, ASSISTANT SOLICITOR
FOSTER MATTHEWS, ASSISTANT SOLICITOR
CARTER POTTS, ASSISTANT SOLICITOR
Attorneys for the State

JONATHAN HARVEY, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S
INDEX OF WITNESSES:

KEVIN ROOSEN

Direct By Mr. Potts	24
Cross By Mr. Harvey	34
Redirect By Mr. Potts	38

RHETT BICKLEY

Direct By Mr. Potts	38
Cross By Mr. Harvey	48
Redirect By Mr. Potts	61
Recross By Mr. Harvey	62

BRENT BACCENE

Direct By Mr. Matthews	172
Cross By Mr. Harvey	175

GLENN DAVIS

Direct By Ms. Sampson	218
Cross By Mr. Harvey	234
Redirect By Ms. Sampson	246
Recross By Mr. Harvey	246

KENNETH SIMMONS

Direct By Mr. Potts	247
Cross By Mr. Harvey	254

KEITH CORELY

Direct By Ms. Sampson	255
Cross By Mr. Harvey	267

Redirect By Ms. Sampson 268

BRENT BACCENE

Direct By Mr. Matthews 270

Cross By Mr. Harvey 279

Redirect By Mr. Matthews 281

JENNA BRELAND

Direct By Ms. Sampson 282

Cross By Mr. Harvey 302

Redirect By Ms. Sampson 313

Recross By Mr. Harvey 316

ERIC HARRISON HAIR

Direct By Ms. Sampson 318

Cross By Mr. Harvey 338

Redirect By Ms. Sampson 361

Recross By Mr. Harvey 364

FRANK BRADSHAW

Direct By Mr. Matthews 366

Cross By Mr. Harvey 371

CLAY NICHOLS

Direct By Ms. Sampson 373

JOSHUA WALSH

Direct By Mr. Potts 387

Cross By Mr. Harvey 398

ROBERT CHRISTOFOLI

Direct By Mr. Potts 403

Cross By Mr. Harvey 418

Redirect By Mr. Potts 434

Recross By Mr. Harvey 436

COLT LAX

Direct By Mr. Potts 441

Cross By Mr. Harvey 469

Redirect By Mr. Potts 486

DEANNE CORLEY

Direct By Mr. Matthews 489

Cross By Mr. Harvey 491

KEVIN ROOSEN

Direct By Mr. Potts 494

Cross By Mr. Harvey 508

Redirect By Mr. Potts 524

Recross By Mr. Harvey 526

KERI THREATT

Direct By Mr. Matthews 534

Cross By Mr. Harvey 537

RHETT BICKLEY

Direct By Mr. Potts 541

Cross By Mr. Harvey 568

Redirect By Mr. Potts 580

Recross By Mr. Harvey 583

BENJAMIN THOMAS

Direct By Ms. Sampson 585

Cross By Mr. Harvey 597

Redirect By Ms. Sampson 599

ROBIN CAMLIN

Direct By Ms. Sampson 600

Cross By Mr. Harvey 623

Redirect By Ms. Sampson 641

Recross By Mr. Harvey 672

> > > < < <

Pretrial Charge 184

Opening Statement by Ms. Sampson 193

Opening Statement by Mr. Harvey 202

CERTIFICATE OF REPORTER 693

STATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Bottle of vodka	174	276
2	photograph	180	277
3	photograph	180	277
4	photograph	180	277
5	photograph	180	277
6	Photograph	180	
7	Photograph	180	
8	Photograph	180	
9	Photograph	180	
10	Photograph	180	

11	Photograph	180	
12	Photograph	180	507
13	Photograph	180	507
14	Photograph	180	507
15	Photograph	180	507
16	Photograph	180	507
17	Photograph	180	507
18	photograph	180	507
19	Photograph	180	507
20	photograph	180	507
21	photograph	180	507
22	photograph	180	507
23	photograph	180	507
24	photograph	180	507
25	photograph	180	
26	photograph	180	
27	Photograph	180	
28	photograph	180	
29	photograph	180	
30	Photograph	180	
31	photograph	180	
32	photograph	180	233
33	photograph	180	397
34	photograph	180	397
35	photograph	180	397

36	photograph	180	397
37	photograph	180	397
38	photograph	180	397
39	photograph	180	397
40	photograph	180	397
41	photograph	180	397
42	Photograph	180	397
43	photograph	180	397
44	exhibit	180	
45	exhibit	180	
46	exhibit	180	
47	exhibit	180	
48	exhibit	180	
49	exhibit	180	
50	stipulated document	381	
51	stipulated document	381	
52	report	519	561
53	Report	519	561
54	exhibit	552	562
55	waiver of rights	552	
56	aerial diagram	581	581
57	diagram	612	

DEFENDANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	photograph	242	243
2	diagram	520	
3	Diagram	520	

COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	voir dire	67	
2	paper	691	

1 THE COURT: Call your case.

2 MR. POTTS: State vs. Steven Kranendonk,
3 2011-GS-40-5472 and 5469, two counts of reckless homicide
4 on a boat.

5 THE COURT: And it's my understanding there are five
6 indictments in this case. The State is not going forward
7 on the other three; is that correct?

8 MR. POTTS: We're going forward at this time on the
9 two counts of reckless homicide by boat.

10 THE COURT: Is that correct, counsel?

11 MR. HARVEY: It is correct, Your Honor.

12 THE COURT: So what are the cases you're not going
13 forward on?

14 MR. POTTS: Your Honor, we're not going forward at
15 this time on one count of felony BUI, boating under the
16 influence.

17 THE COURT: Not going forward?

18 MR. POTTS: Yes, and one count of boating under the
19 influence, great bodily injury.

20 THE COURT: Two counts of the death and great bodily
21 injury?

22 MR. POTTS: Yes, Your Honor.

23 THE COURT: Not going forward on any of those charges
24 at this time?

25 MR. POTTS: At this time, correct, Your Honor.

1 THE COURT: Is that correct, Mr. Harvey?

2 MR. HARVEY: It is, Your Honor.

3 THE COURT: All right. Now, anything of a pretrial
4 nature that needs to be addressed by the court?

5 MR. HARVEY: There is, Your Honor. May I address the
6 court?

7 THE COURT: Yes, sir, Mr. Harvey.

8 MR. HARVEY: Your Honor, if I may, the motions that
9 remain before the court, if I may refer to page four of
10 the pretrial brief which has them listed in the motion.

11 THE COURT: I have them.

12 MR. HARVEY: Your Honor, the motions that we have
13 before the court are motions to suppress blood alcohol
14 test results, motion in limine --

15 THE COURT: Hold on.

16 MR. HARVEY: To --

17 THE COURT: We're not going forward on --

18 MR. HARVEY: Your Honor --

19 THE COURT: Boating under the influence.

20 MR. HARVEY: Your Honor, the State has advised me
21 that it wishes to use that evidence in its case in chief
22 as evidence of recklessness.

23 THE COURT: Is that correct?

24 MR. POTTS: That's correct, Your Honor.

25 THE COURT: All right. Mr. Harvey, I didn't mean to

1 interrupt you.

2 MR. HARVEY: If I may, Your Honor, another motion, we
3 have a motion in limine to exclude the evidence of bottles
4 of alcoholic beverages. Motion in limine --

5 THE COURT: Hold on.

6 MR. HARVEY: That would be --

7 THE COURT: Number 19.

8 MR. HARVEY: Number 19, Your Honor, yes.

9 THE COURT: All right. Going forward on -- you want
10 to go forward on that motion?

11 MR. HARVEY: Yes, Your Honor.

12 THE COURT: All right.

13 MR. HARVEY: A motion in limine to prohibit the use
14 of the term victim during jury selection.

15 THE COURT: Number 20?

16 MR. HARVEY: Yes, Your Honor; number 21, we have
17 reached an agreement with respect to part of that and --
18 if I may, Your Honor, part of the motion to exclude
19 photographs is also related to a motion to exclude
20 late-disclosed evidence and memorandum.

21 There were some photographs that were disclosed on
22 2/27/2005 and --

23 THE COURT: 2000?

24 MR. HARVEY: Excuse me, 2/27/2012. I was thinking
25 March 5th. I was thinking the third day, third month,

1 It's not DNA evidence. It's other trace evidence.

2 THE COURT: Okay.

3 MR. POTTS: Excuse the confusion.

4 THE COURT: Okay.

5 MR. POTTS: At this point, it still stands.

6 THE COURT: They'll be sequestered.

7 MR. HARVEY: Your Honor, I'm sorry. Could you repeat
8 the question? I apologize.

9 THE COURT: I asked him -- I -- I thought he said
10 DNA. He says now it's not DNA. It's trace evidence, and
11 he wants that officer to be able to stay in the courtroom.
12 Just for convenience sake, I said their office is right
13 behind that door, and I don't see any need for them to be
14 in here.

15 MR. HARVEY: I concur, Your Honor.

16 THE COURT: Thank you.

17 All right. Does that resolve the sequestration
18 issue?

19 MR. HARVEY: It does, Your Honor.

20 THE COURT: All right. Mr. Potts?

21 MR. POTTS: I guess next, Your Honor, it would
22 probably be best to address the motion to suppress the
23 blood alcohol test.

24 THE COURT: Do you want to go forward on that one?

25 MR. POTTS: I think so, Your Honor.

1 THE COURT: All right.

2 MR. POTTS: Sir?

3 THE COURT: Call your first witness.

4 MR. POTTS: The State calls Sergeant Roosen.

5 KEVIN ROOSEN, after being duly sworn,
6 testified as follows:

7 THE CLERK: Have a seat in the witness box. State
8 your full name for the record, please.

9 THE WITNESS: My name is Kevin J. Roosen.

10 DIRECT EXAMINATION:

11 BY MR. POTTS:

12 Q Sergeant Roosen, where are you currently employed?

13 A South Carolina Department of Natural Resources.

14 Q And what is your role there?

15 A I'm a conservation officer.

16 Q Did you respond the night of May 1st, 2010 at the
17 boating scene in question in this case?

18 A Yes, I did.

19 Q And what was -- at that night, did you have an
20 opportunity to interact with the defendant?

21 A Yes, I did.

22 Q All right. And what was the purpose of that
23 interaction?

24 A Well, basically just to see what exactly what had
25 happened.

1 Q Did he tell you he was the operator of the vessel?

2 A Yes, he did.

3 Q The one that was at the marina?

4 THE COURT: Let's get a little more...

5 BY MR. POTTS:

6 Q When was this?

7 A It was May 1st, 2010.

8 Q About what time of day?

9 A I received the first call from our radio dispatcher
10 about 10:30 p.m.

11 Q Okay. When did you respond?

12 A Shortly thereafter.

13 THE COURT: Where?

14 BY MR. POTTS:

15 Q Where did you respond to?

16 A I went -- originally, I went to

17 . Upon arriving there, I was instructed by
18 Officer Ken Simmons, who was on that scene, to go to Lake
19 Murray Marina to try to find the boat that had been
20 involved in the hit and run.

21 Q And what was at that first scene?

22 A The -- some of the victims of the boating incident
23 and the vessel.

24 Q Okay. But Simmons directed you to the marina?

25 A Lake Murray Marina, yes, sir.

1 Q Okay. And while you were at the marina, what did you
2 do there? What was your role there?

3 A To find the boat that had been involved in the hit
4 and run, which I did.

5 Q Okay. And what vessel was that, do you recall?

6 A It was the center console that had been operated by
7 Mr. Kranendonk.

8 Q And he told you he was the driver?

9 A Yes.

10 Q What did he tell you about the hit and run?

11 A Well, he basically told me that they were underway
12 approximately 30 to 35 miles an hour running about 4,000
13 RPMs.

14 He could see another vessel ahead of him and to the
15 right, and he maintained his course in speed. Shortly
16 thereafter, he said that he had ran into something.

17 Q Okay. Now, upon hearing this, what did you decide to
18 do?

19 A Well, basically determine who were all the passengers
20 on the vessel, who was driving the vessel. I checked all
21 of the safety equipment that he was required to have.

22 Q Did you look for alcohol?

23 A Yes, I did.

24 Q Did you find any?

25 A No, I did not.

1 Q Okay. What did you find when you were searching for
2 alcohol?

3 A Well, he had a cooler onboard, and in that cooler, I
4 found some lemon flavor Propel bottled water.

5 THE COURT: Say it slow. I'm trying to write it
6 down.

7 THE WITNESS: Sir?

8 THE COURT: I'm trying to write it down.

9 THE WITNESS: Okay.

10 THE COURT: Say it again.

11 THE WITNESS: In the cooler on the vessel I found
12 some lemon flavor Propel bottled water, and I think he had
13 some soft drinks also.

14 BY MR. POTTS:

15 Q Okay. Now, was there anything else you were told to
16 do with the defendant?

17 A Yes. I was instructed to perform a field sobriety
18 test.

19 Q And why was that?

20 A Sir?

21 Q Why was that?

22 A Just to determine if he was under the influence.

23 Q Do you have the original on this?

24 A Yes, sir.

25 Q Now, I'm going to show you something. What is this?

1 A It's just a standard form that we use for the field
2 sobriety test.

3 Q Is this the -- do you recognize this one in
4 particular?

5 A Yes, I do.

6 Q What is this one in particular?

7 A That was the one that I used in reference to
8 Mr. Kranendonk.

9 Q Okay. Let me show you this one. Is that a true and
10 accurate copy of the one you have in your hands?

11 A Yes, sir.

12 Q Do you mind switching with me so I have the original
13 one?

14 A Okay.

15 MR. HARVEY: Your Honor, Mr. Potts has shown me a
16 document. That part of the document I've seen before.
17 The rest of the document I haven't seen before. I believe
18 it's the officer's notes on which he based the report.

19 MR. POTTS: Correct.

20 MR. HARVEY: So I've got the full report. I've never
21 seen the notes which underlie the report. Again, I would
22 ask -- I will object to the notes to the report coming
23 into evidence.

24 THE COURT: He hadn't offered them.

25 MR. POTTS: I'm offering them.

1 MR. HARVEY: I thought he was about to offer them.
2 That's why he was showing them. Again, maybe I jumped the
3 gun, as is often the case but I apologize, Your Honor.

4 THE COURT: Well...

5 MR. POTTS: I show you --

6 THE COURT: The Court is not going to let it in any
7 way, let alone the notes. He can refresh his memory.

8 BY MR. POTTS:

9 Q So what field sobriety test did you offer the
10 defendant?

11 A Well, it's just a standard form that we follow. It
12 has several different performance tests.

13 Q What time? About what time did you offer these tests
14 to him?

15 A About two -- or 12:15 a.m.

16 Q And that would be the next morning?

17 A On the 2nd, yes, sir.

18 Q Okay. Just go about, tell me how you offered these
19 tests to say him on this particular day?

20 A Well, I basically just went down the line. There's a
21 couple of pretest questions that you ask, and then there's
22 four or five, six tests that you asked him to perform.
23 One is the alphabet test. That's simply reciting the
24 alphabet from A to Z.

25 Q How did he do on that test?

1 A Completely satisfactory.

2 Q Okay. And what -- did you offer any other tests?

3 A Yes, I did. I did the backwards count test which is
4 counting from 25 to one.

5 Q And how did you do on that test?

6 A I completed it satisfactorily.

7 Q All right. Any other tests?

8 A The finger count tests. I've got checked completed
9 satisfactorily.

10 Q Palm pat?

11 A Palm pat completed satisfactorily.

12 THE COURT: What was the last one?

13 THE WITNESS: Sir?

14 THE COURT: What was the last one?

15 THE WITNESS: The palm pat.

16 THE COURT: The palm pat.

17 THE WITNESS: P-A-L-M, P-A-T, yes, sir.

18 BY MR. POTTS:

19 Q How do you do that test?

20 A Simply, you hold one hand up above the other, and you
21 just tell them to count out loud coming down. Come up,
22 turn your hand over; two, you speed up as you keep doing
23 the test until the officer tells you to stop.

24 Q All right. Did you do any other tests?

25 THE COURT: How did he do on the palm pat?

1 THE WITNESS: He completed that one satisfactorily.

2 THE COURT: Any other tests?

3 THE WITNESS: He did the finger to nose test.

4 Basically, I based him -- asked them to tilt their head
5 back slightly, close their eyes. You tell them left,
6 right, whatever.

7 On this, I've got a note that he put his right hand
8 halfway to his nose, then corrected himself with his --
9 with the correct hand that I had asked him to use.

10 THE COURT: So did he pass that test?

11 THE WITNESS: I've got checked completely
12 satisfactory, Your Honor.

13 THE COURT: Okay. Thank you.

14 BY MR. POTTS:

15 Q Did he mess up at all on that test?

16 A On that one, he did.

17 Q How did he do that?

18 A Well, I was counting out left or right hand, and I
19 counted -- I told him to use his left hand. He got his
20 right hand halfway up, then realized his mistake and then
21 corrected himself with his left hand.

22 Q And that he was still satisfactory here?

23 A Yes.

24 Q Did you do the horizontal gaze nystagmus?

25 A Yes, I did.

1 Q Okay. Did you do the walk and turn?

2 A No, I didn't. The last one I did was the --

3 THE COURT: Slow down. How did he do on the
4 horizontal gaze nystagmus?

5 BY MR. POTTS:

6 Q How about the nystagmus?

7 A There's not really a box to check for completed
8 satisfactorily, so I'm saying that he did it; that it was
9 -- that he passed.

10 Q Do you remember that particular, or are you just
11 guessing?

12 A I do not remember in particularly doing the
13 horizontal gaze nystagmus. I have checked on the box
14 vertical nystagmus, yes or no. I have got "no" checked.

15 Q So you have checked verbal nystagmus?

16 A Right.

17 Q So you do a vertical nystagmus?

18 A Right.

19 Q But there's nowhere to write HGN?

20 A No, sir.

21 Q Okay. But you do not recall in particular doing the
22 horizontal gaze nystagmus test?

23 A No, I do not.

24 Q Okay. Did you do the walk and turn?

25 A No, I did not.

1 Q Did you do the one-leg stand?

2 A No, I did not.

3 Q Is there anything in particular about the walk and
4 turn, one-leg stand and HGN?

5 A (There was no response).

6 Q Do you guys use them often in DNR?

7 A What's that?

8 Q Do you use them -- in your experience as a DNR
9 officer, do you use them all?

10 A Not the walk and turn or the one-legged stand simply
11 because usually when we're performing these tests, we're
12 on a vessel.

13 Q Okay. But those are the three standardized field
14 sobriety tests --

15 A Right.

16 Q -- done by most DUIs, right?

17 A Right.

18 Q But you didn't do them because you don't normally do
19 them --

20 A Correct.

21 Q -- because you're not normally on boats?

22 A Correct.

23 Q Okay. Now, have how long have you been a DNR officer
24 offering field sobriety tests?

25 A Probably ten years.

1 Q Okay. Do you recall in that time how many you've
2 done?

3 A I would -- I would guess maybe four or five per
4 summer, so that would be 40 to 50 throughout the 10-year
5 career.

6 Q So when you finished giving him these field sobriety
7 tests, did you place him under arrest for BUI?

8 A No, I did not.

9 Q And that was because of his -- how he had done on
10 those tests, correct?

11 A Correct.

12 MR. POTTS: Okay. Thank you. No further questions.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION:

15 BY MR. HARVEY:

16 Q Thank you. Officer Roosen, you had an opportunity to
17 refresh your memory based upon a report that you wrote
18 prior; is that right?

19 A Yes, sir.

20 Q And tell the Court anywhere in your report that you
21 authored concerning the events of May 1st or May 2nd, 2010
22 at the Lake Murray Marina where you indicated in your
23 report any contemporaneous observations of your impairment
24 on Mr. Kranendonk?

25 A I didn't.

1 Q All right. Now, you'll agree with me in your report
2 you actually noted that you didn't initiate the field
3 sobriety testing. You were requested by another officer
4 to do that, correct?

5 A That's correct. It was -- he is over the boating
6 program.

7 Q All right. And you'll agree with me, then, when
8 Mr. Potts asked you about the walk and turn test and the
9 one-legged turn, the document that you filled out called
10 the Field Sobriety Test Performance Report had a section
11 for walk and turn, correct?

12 A Correct.

13 Q Had a section for one-legged stand, correct?

14 A Correct.

15 Q And it carries -- it has the instructions on how to
16 ask the subject to perform the test, correct?

17 A Correct.

18 Q And it also has a section for noting clues, correct?

19 A Yes.

20 Q Now, you'll agree with me that in the pretest
21 questions, you had no difficulty in Mr. Kranendonk's
22 responses. You asked him a question. He responded,
23 correct?

24 A Yes, sir.

25 Q You'll agree with me you checked that alphabet test

1 completely satisfactorily, correct?

2 A Yes.

3 Q Backwards count satisfactory, finger count
4 satisfactorily, palm pat completed satisfactorily and
5 finger nose completed satisfactorily?

6 A Correct.

7 Q You'll agree with me that when you observed him, even
8 though you gave him an instruction to use the left hand,
9 he started with the right, and he self-corrected using the
10 appropriate finger, correct?

11 A That's correct.

12 Q Now, after you completed the administration of these
13 tests, you then released him, correct?

14 A Yes.

15 Q He wasn't charged with any boating offense, was he?

16 A Not at that time.

17 Q Correct. He wasn't under arrest, correct?

18 A Right.

19 Q He wasn't given the DNR equivalent of a uniform
20 traffic ticket. He wasn't given a summons, let's say for
21 boating under the influence, to appear in Magistrate's
22 Court, was he?

23 A No.

24 Q All right. And you also had an opportunity to -- and
25 in your report -- now, you've been an officer for ten

1 years, correct?

2 A Yes.

3 Q And you've received extensive training in the battery
4 afloat?

5 A Some.

6 Q And you testified you've encountered people at least
7 45 times in administering tests, correct?

8 A Yes.

9 Q And some of those administrations of tests have
10 resulted in citations for boating under the influence,
11 correct?

12 A Yes.

13 Q You'll agree with me as a result of the test
14 administered by Mr. Kranendonk on May 2nd, 2012, he was
15 not issued any type of citation, correct?

16 A Not by myself.

17 Q Not by you. Okay. And had you thought there were
18 signs of impairment, you would have taken different
19 action, correct?

20 A I would have consulted the lieutenant.

21 Q But you didn't consult the lieutenant, did you?

22 A No, I did not.

23 Q So you will agree with me that you didn't see or
24 detect any evidence that would lead you to consult with
25 the lieutenant, correct?

1 A Correct.

2 Q Beg the Court's indulgence one moment.

3 (Pause.)

4 That's all I have, Your Honor.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION:

7 BY MR. POTTS:

8 Q Of those 45, how many were DUI arrests, off the top
9 of your head?

10 A I would say between half a dozen to a dozen.

11 MR. POTTS: Thank you. No further questions.

12 THE COURT: Anything further?

13 MR. HARVEY: No, Your Honor.

14 THE COURT: All right. You may come down. Thank you
15 very much.

16 Next witness.

17 MR. POTTS: State calls Rhett Bickley.

18 RHETT BICKLEY, after being duly sworn,
19 testified as follows:

20 THE CLERK: Have a seat in the witness box. State
21 your name for the record, please.

22 THE WITNESS: My name is Rhett Seese Bickley, Jr.

23 DIRECT EXAMINATION:

24 BY MR. POTTS:

25 Q Sergeant Bickley, where are you employed?

1 A South Carolina Department of Natural Resource in
2 their law enforcement division.

3 Q Were you employed there back on May 1st, 2010?

4 A Yes, I was.

5 Q Were you on duty that day?

6 A Yes, I was.

7 Q Okay. Did you have a chance to respond to -- I guess
8 were you called out that night?

9 A Yes, I was.

10 Q About what time was that?

11 A It was approximately 10:30 at night that I received a
12 call.

13 Q What were you doing at the time?

14 A At that time, I was on a date. Well, finished a
15 date, was headed home.

16 Q And they called you to come to work?

17 A Yes.

18 Q Where did you go?

19 A Went home, put on my uniform, responded down to
20 Palmetto Richland.

21 Q And why did you go there?

22 A That's where first sergeant Dudley Brett (phonetic),
23 my supervisor, said they had people out at the lake, but I
24 was the closest individual to respond to the hospital.

25 Q And you were responding to this location, correct?

1 A I responded to a boating accident at the lake that
2 was a developing.

3 Q And how was it developing?

4 A Just trying to figure out who -- what all had
5 happened because of the two incidents that happened that
6 night.

7 Q Okay. Now, when you got to the hospital, walk me
8 through what happened when you got to the hospital that
9 evening.

10 A When I first arrived at the hospital, I checked in to
11 Pod 5, one of the trauma centers. There were multiple
12 people being brought in, some by ambulance. Some were
13 walking injured, some were dead.

14 People were being treated for various forms of
15 injury, just trying to figure out who -- who related in
16 what way to the boating accident.

17 Q So that was your job was to investigate at the
18 hospital?

19 A Yes, to try to figure out who coming in had been
20 involved in what way and get any statements or evidence
21 that might be secured at the hospital.

22 Q Okay. Who all did you interact with that evening?

23 A Mr. Christofoli, which was determined to be the
24 operator of one of the vessels; Mr. Kranendonk, which was
25 determined to be the operator one of the vessels.

1 Mr. Hair.

2 THE COURT: Wait a minute, slow down.

3 THE WITNESS: Sir?

4 THE COURT: What was the first name?

5 THE WITNESS: Mr. Christofoli.

6 THE COURT: Christofoli?

7 THE WITNESS: Yes, sir, Your Honor.

8 THE COURT: Go ahead. What did you say?

9 THE WITNESS: Mr. Kranendonk.

10 THE COURT: All right.

11 THE WITNESS: Those two were determined to be
12 operators of the vessels, then Mr. Hair, which was a
13 passenger in a vessel; Mr. Lax.

14 THE COURT: How do you spell that?

15 THE WITNESS: L-A-X.

16 THE COURT: L-A-X?

17 THE WITNESS: Yes, sir. I believe that was -- give
18 me just a second. I'll check real quick, but I'm pretty
19 sure that was -- yes, sir, L-A-X.

20 THE COURT: What was he?

21 THE WITNESS: He was a passenger in one of the
22 vessels, Your Honor.

23 THE COURT: Okay.

24 THE WITNESS: And then there was also Mr. Miller,
25 which was determined later was involved in the other

1 accident that had gone on and --

2 THE COURT: There were two accidents?

3 THE WITNESS: Yes, sir. There were two boating
4 accidents that evening.

5 THE COURT: Miller is not involved in this one?

6 THE WITNESS: He was not involved in this situation,
7 no, sir.

8 THE COURT: All right. Thank you.

9 BY MR. POTTS:

10 Q How many DNR officers were involved at the hospital
11 that evening?

12 A Me.

13 Q Just you?

14 A One.

15 Q Just you. And your goal at that point was to
16 investigate, get statements and investigate what you could
17 at the hospital, correct?

18 A Just to determine what all that happened and secure
19 evidence I could.

20 Q How much communication did you have with the officers
21 who was at the marina?

22 A Sporadic. You don't get really good cell reception
23 inside of the hospital down inside of the bottom like that
24 with all the walls and other equipment going on. We come
25 out, check in every so often; you know, see what else may

1 be going and what other information I could get.

2 Q Okay. Did you -- basically, tell me how did you go
3 about gathering evidence that evening? I mean, I know you
4 talked to him, but who did you talk to and when?

5 A Who did I talk to? Well, the first person I talked
6 to was Mr. Christofoli. He was on an examination table.
7 He had injuries to his arm, had a team working on him, but
8 I was able to get to one side and at least get some
9 information in between as they were working.

10 Once I got information from him that told me that he
11 was an operator, because he was not going to be able to
12 leave for any kind of Data Master or anything and because
13 he said in his statement he was -- that he had been
14 drinking that evening, I had the nurse to secure a blood
15 sample from him.

16 Q Okay.

17 A I went out, different people -- it was person to
18 person as we were working with it, but from
19 Mr. Christofoli, I ended up going next -- Mr. Hair was who
20 I spoke with next. I wanted to make sure I had the right
21 term and order.

22 THE COURT: Hair?

23 THE WITNESS: Hair, yes, sir.

24 Mr. Hair was the second individual that I spoke to
25 that night. He identified himself as a passenger in

1 Mr. Kranendonk's boat but that he had only been a
2 passenger, not an operator as far as the boat was
3 concerned.

4 Q How do you go about identifying who you talked to?

5 A Just people who were coming into that pod pretty much
6 that night was dedicated to the boating accident.

7 So if they were inside of the pod or later on, as I
8 dealt with people who were in the pod, went out in the
9 waiting room to check to see if anybody else -- because
10 some people were in the pod that would be released if they
11 didn't need immediate treatment or if their treatment --
12 you know, their injuries weren't bad enough to need
13 treatment.

14 Q Now, before you talked to Mr. Kranendonk, how many
15 individuals did you talk to?

16 A I believe three.

17 Q Can you describe to me briefly how you got in touch
18 with Mr. Kranendonk that evening?

19 A As I was coming in and out of the pod, Mr. Kranendonk
20 was in the waiting area. I had observed him, didn't
21 realize because there were other injuries, other people
22 from just run of the mill evening events on an evening in
23 Columbia, there were other people in the waiting rooms.

24 It was not a dedicated waiting room. It's your --
25 for anybody that comes in for anything, and at some point

1 during the evening, I ended up coming out and asking, you
2 know, are you involved in the boating accident. He
3 identified that he was, and I asked him to come back to
4 talk to me.

5 Q Had you been looking for the other operator before
6 that?

7 A Had I been looking for another operator?

8 Q Yeah.

9 A I was trying to figure out who the other operator
10 was, yes. I didn't know if he had come -- had been
11 transported. I didn't know what his degree of injuries
12 were. I didn't know if the other operator was somebody
13 who was on one of the tables or in this case. He had been
14 -- he had not been transported by EMS. He had come to the
15 hospital on his own.

16 Q Okay. Now, when you talked to Mr. Kranendonk, about
17 what time was that, do you think?

18 A It was after midnight. It was solidly after
19 midnight.

20 Q Would it be around 3:30?

21 A That's when we conducted our interview process, so it
22 would have been shortly before that that I figured out who
23 he was.

24 Q Now, tell me your impressions of when you first
25 interviewed with Mr. Kranendonk, what did you know?

1 A Basically, I had been out a couple of times to ask
2 who was who. There were some girls who had identified
3 that they had been involved in the incident who had also
4 been identified through Mr. Hair.

5 Mr. Kranendonk was sitting in the corner. It
6 basically took a direct question to identify that he was
7 part of the boating accident and the operator for the
8 boat.

9 Q So he was not -- he did not volunteer himself to be
10 the other operator?

11 MR. HARVEY: Your Honor.

12 THE COURT: Don't lead the witness.

13 MR. POTTS: Sorry.

14 THE WITNESS: No, sir. He did not volunteer himself
15 to be.

16 BY MR. POTTS:

17 Q Okay. Now, what, if anything, did you observe about
18 him when you started talking to him?

19 A Just once we got -- once I asked him to come back to
20 the room, he tired a long day on the water, you know,
21 bloodshot eyes. You could smell alcoholic beverage.

22 He said from his discussion that he had been drinking
23 that date after a period of self-imposed nondrinking that
24 he had started, you know, back drinking when -- on the
25 water.

1 Based on the fact that he had identified himself as
2 the operator of the boat and the fact that he identified
3 that he had been drinking during the day and the fact that
4 I was the only officer who did not have the ability to get
5 him out of there to a Data Master establishment, I asked
6 that I be given a blood sample based on the inability to
7 get him to the standard Data Master procedure.

8 Q Now -- okay. Did you know at that time that there
9 had been a fatality in this collision?

10 A Yes. One of the first things that I had to do before
11 I dealt with Mr. Kranendonk was one of the doctors asked
12 me to sit in with him in notification of one set of
13 parents about their daughter's fatality.

14 Q Now, did you ask the defendant to give blood in this
15 case?

16 A Did I ask the defendant to give blood?

17 Q Yes. Did you give him a choice?

18 A I explained to him that because of the fatality
19 involved that it was a requirement by law.

20 Q Beg the Court's indulgence one second.

21 (Pause.)

22 At that time, were you aware of any field sobriety
23 test?

24 A No.

25 Q Okay. Had he done a statement by that point?

1 A At this point when we were first talking, it was late
2 in the evening, and I knew that as far as blood draw and
3 body burning alcohol, I went for the blood draw before we
4 did the statement.

5 At that point in time in my initial just basic
6 interview, because I didn't know what his position was, I
7 didn't know if he was a victim or, you know, the suspect
8 of it -- I just knew he was involved in the accident as an
9 operator -- I gave him both his Miranda rights and his
10 victim statement rights because I wanted him to understand
11 both sides, both sides of the situation.

12 At no point in this discussion or in the initial
13 portions of the conversation did he identify that he had
14 previously had any form of field sobriety testing done.

15 MR. POTTS: Thank you. No further questions.

16 THE COURT: All right. Mr. Harvey?

17 MR. HARVEY: May it please the Court.

18 CROSS-EXAMINATION:

19 BY MR. HARVEY:

20 Q Officer Bickley, you are an author of a DNR report
21 concerning your conduct at Richland Memorial Hospital on
22 the morning of May 2nd, 2010?

23 A Yes, sir, I am.

24 Q Correct, and as you stated in response to the
25 solicitor's questions, you were directed to Palmetto

1 Richland Hospital; is that correct?

2 A Yes, I was.

3 Q You were informed that the injured parties from the
4 boating accidents, there were two accidents were being
5 transported to Palmetto Richland, correct?

6 A At that the point in time, I did not know there were
7 two accidents. I just knew there had been a significant
8 boating accident on the lake.

9 Q Now once you arrived at Palmetto Richland, you began
10 a series of interviews, correct?

11 A Yes, sir.

12 Q As part of your interview duties, you make sure that
13 the information provided by the interviewee is provided
14 voluntarily, correct?

15 A Yes, sir.

16 Q Now, your department has a document called Waiver
17 forms, correct?

18 A Waiver of Rights, yes, sir.

19 Q Now, the Waiver form is a document that documents
20 when you went through a protocol to make sure that the
21 statement you obtained from a party is knowingly and
22 voluntarily submitted, right?

23 A Yes, sir.

24 Q Now, your agency calls its form a Law Enforcement
25 Waiver of Rights, correct?

1 A Yes, sir.

2 Q That form has a listing for the case number, the
3 county, and the subject's name, correct?

4 A Yes, sir.

5 Q Now, the date and time that an interview starts is on
6 the waiver form, correct?

7 A Yes, sir.

8 Q Now, you'll agree with me that you had Mr. Robert
9 Christofoli execute a Waiver form --

10 A Yes, sir.

11 Q -- or you went through a protocol of a Waiver form
12 with him, correct?

13 A Yes, sir.

14 Q Have you reviewed the Waiver form that you gave Mr.
15 Christofoli?

16 A I have not looked at one today; no, sir.

17 Q Have you looked at it before?

18 A Not in the last week; no, sir.

19 Q Beg the Court's indulgence one moment.

20 (Pause.)

21 Do you have your report in front of you?

22 A I've got my report, yes, sir, just the report
23 portion.

24 Q You'll agree with me that the first person you
25 interviewed at Richland Memorial Hospital was Robert

1 Arthur Christofoli, correct.

2 A Yes, sir.

3 MR. HARVEY: All right. May I approach the witness,
4 Your Honor?

5 THE COURT: Sure.

6 BY MR. HARVEY:

7 Q Do you -- I'm going to hand you a document. Tell me
8 if you recognize that document.

9 A This is a document for Waiver of rights for
10 Mr. Christofoli.

11 Q All right. And is the time indicated when you went
12 through the protocol with Mr. Christofoli?

13 A 5/2/10 00:28 a.m.

14 Q What is zero -- what time does that translate to?

15 A Military time. That's 12:28, after midnight.

16 Q And you don't disagree with me that the first person
17 you talked to at Richland Memorial Hospital was
18 Mr. Christofoli, correct?

19 A Yes, sir.

20 Q Now, you'll agree with me that according -- have you
21 had an opportunity to review the blood draw document of
22 Mr. Christofoli?

23 A No, sir. I've mainly concentrated on my report.

24 Q All right. Well, in your report, does your report
25 indicate the time on the blood draw on Mr. Christofoli?

1 A No, sir, it does not.

2 Q Would the -- do you have -- would you disagree with
3 me that the time that the blood draw on Mr. Christofoli
4 was several hours after you first interviewed him?

5 A I do not believe it was, but then time is somewhat
6 compressed when you're in such an incident, so I don't
7 recall exactly at what point in time he got his blood
8 drawn. I thought it was to my remembrance, it is within
9 -- within a short period of time after the initial
10 discussion.

11 Q Okay. Now, the second person you interviewed was
12 Harrison Hair, correct?

13 A Yes, sir.

14 Q Now, Harrison -- as a result of your interview with
15 Harrison Hair, you were able to determine that
16 Mr. Kranendonk was the operator of the other boat involved
17 in the accident, correct?

18 A Yes, sir.

19 Q Now, in addition to the Law Enforcement Waiver form,
20 depending upon the type of case, you may generate other
21 forms or documents, correct?

22 A Yes, sir.

23 Q And you would generate what you did in this case, a
24 supplemental report, correct?

25 A Yes, sir.

1 Q You testified in response to the solicitor's
2 questions that you would generate a SLED IS -- ICS 015
3 form, advisement of implied consent rights, correct?

4 A Yes, sir.

5 Q You authorized a supplemental report in this case,
6 right?

7 A Yes, sir.

8 Q You also assisted in the execution of three law
9 enforcement waivers -- actually, four, including Mr. Lax,
10 at Palmetto Richland Memorial --

11 A Yes, sir.

12 Q -- correct? Now, those waivers were for Robert
13 Christofoli, Harrison Hair, Steven Kranendonk, and
14 Mr. Colt Lax, correct?

15 A Yes, sir.

16 Q Now, at the time that's noted by the right section is
17 the time the interview process began, correct?

18 A It's the time that I read the Miranda rights and they
19 signed them.

20 Q That that's the time the interview process begins?

21 A Yes, sir.

22 Q Okay. And now, have you had an opportunity to review
23 the Waiver of Rights form on the interview of Mr. Colt
24 Lax?

25 A No, sir, I did not.

1 Q All right. Were you -- and you were aware you were
2 going to testify today about your conduct?

3 A Yes, sir.

4 Q Okay.

5 A I didn't know we were getting into specific points of
6 time on documents.

7 Q Let's talk about Mr. Eric Harrison Hair. You
8 interviewed him next.

9 May I approach the witness, Your Honor?

10 THE COURT: Yes, sir.

11 BY MR. HARVEY:

12 Q Tell me if you recognize this document.

13 A Waiver of Rights form that I read for Mr. Hair. He
14 had an arm injury and couldn't sign it.

15 Q What time was that?

16 A According to this Waiver of Rights form, it was at
17 01:25 a.m., which is 1:25 in the morning standard time.

18 Q And this document would indicate the time, the
19 approximate time of your interview of Mr. Harrison Hair?

20 A Yes, sir, it would.

21 Q Now, the report that you wrote, that report would
22 contain all of the salient information from your
23 interviews, correct?

24 A Yes, sir.

25 Q You're an experienced officer. How many years do you

1 have, sir?

2 A I have 15 years in law enforcement, approximately.

3 Q Fifteen years in law enforcement, and you're well
4 aware of the importance of a report.

5 A Yes, sir.

6 Q You're well aware of the importance of the report
7 being accurate.

8 A Yes, sir.

9 Q You're well aware of the importance of the document
10 containing information that's relevant to your interviews,
11 correct?

12 A Yes, sir.

13 Q Now, do you have your report up there with you?

14 A Right here, yes, sir.

15 Q All right. Now, you'll agree with me your report --
16 we go from the Waiver of Rights forms that you interviewed
17 Mr. Christofoli about 12:25 a.m., and you had an oral
18 interview, correct?

19 A Yes, sir.

20 Q We know that on your statement on page one of four
21 concerning your interview with Mr. Christofoli, you used
22 the actual language. You got very few details about the
23 accident from Mr. Christofoli; is that correct?

24 A Yes, sir.

25 Q Now, you'll agree with me on page two of four of your

1 report, you summarize your interview of Mr. Harrison Hair.
2 which occurred, we know from the Law Enforcement Waiver of
3 Rights form about 1:20 a.m.; isn't that correct?

4 A Yes, sir.

5 Q And it's fair to say based upon your review of this
6 case file and what you know about the case, Harrison
7 Hair's written statement was given three days after the
8 interview, your interview, correct?

9 A I did not get a written statement from Mr. Hair.

10 Q Precisely. And it was -- in your notation about what
11 you knew when you talked to Harrison Hair, you didn't put
12 anything in your report that you're aware of any details
13 of the accident other than the occurrence of the accident
14 in your report, what's written in your report; isn't that
15 correct?

16 A Yes, sir.

17 Q All right. Now, the third person -- and you'll agree
18 with me by the time you interviewed Steven Kranendonk, you
19 hadn't gotten any information from Robert Christofoli
20 about the consumption of alcohol by Steven Kranendonk,
21 correct?

22 A No, I had not.

23 Q You hadn't gotten any information about the
24 consumption of alcohol by Harrison Hair, correct?

25 A Other than they had been partying that day.

1 Q Is that in your report?

2 A No, sir, it is not.

3 Q All right. So the information that most accurately
4 reflects your recollection in the report doesn't mention
5 that, does it?

6 A No, it does not.

7 Q All right. Now, we get to your interview with
8 Mr. Christofoli -- I apologize, with Mr. Kranendonk. You
9 have interviewed Mr. Christofoli. You interviewed
10 Harrison Hair. The third person you talked to in relation
11 to this case is Steven Kranendonk, correct?

12 A Yes, sir.

13 Q You see Steven. Your notes indicate that you asked
14 him a question, and he identified himself as the operator
15 of the boat, right?

16 A Yes, sir.

17 Q So when the solicitor asked you a question about did
18 he volunteer to identify himself as operator of the boat,
19 he was cooperative with you when you asked him a question.
20 He answered it, correct?

21 A According to the statement of the report, yes, sir.

22 Q All right. And his answer was consistent with what
23 Mr. Harrison Hair told you, correct?

24 A Yes, sir.

25 Q Now, it's uncontroverted in your report, and you even

1 testified with the solicitor, at the time you interviewed
2 him, you were uncertain of his status in the case. So
3 you'll agree with me your report says you read him his
4 victim's rights, correct?

5 A Yes, sir, I did.

6 Q You'll agree with me that you read him his Miranda
7 rights, correct?

8 A Yes, sir, I did.

9 Q And you'll agree with me -- or you may agree with me,
10 but I guess I've got to show you the document first.

11 May I approach the witness, Your Honor?

12 THE COURT: Certainly.

13 (Pause.)

14 BY MR. HARVEY:

15 Q Please identify this document.

16 A Waiver of Rights from my interview with
17 Mr. Kranendonk.

18 Q And what time is that?

19 A 03:30 a.m.

20 Q And you'll agree with me in your report when you
21 document the chronology of events of that evening, your
22 report notes that you began your interview with
23 Mr. Kranendonk.

24 During the initial phase of your interview, you asked
25 Mr. Kranendonk some questions, and Mr. Kranendonk

1 disclosed the fact to you that he had consumed alcohol,
2 correct?

3 A Yes, sir.

4 Q Read for me in your report anywhere where you mention
5 you detected the odor of alcohol on his breath or read in
6 your report anywhere where you wrote you saw bloodshot
7 eyes.

8 A It's not there, sir.

9 Q And read in your report -- you wrote in your report
10 because it was three a.m., it was now after three a.m.,
11 that's why you asked for blood, correct?

12 A That's why I asked for blood at the time, yes, sir.

13 Q Now, he wasn't under for felony BUI, correct?

14 A Correct.

15 Q Other than the occurrence of an accident, okay --

16 A Yes, sir.

17 Q -- and other than his admission that he had consumed
18 alcohol, at the time you asked for blood under the felony
19 BUI statute, you didn't know what had happened, correct?

20 A Correct.

21 Q And you'll agree with me that you told the solicitor
22 at the time you asked for blood, quote, "You did not know
23 his position in the accident", correct?

24 A I did not know if he was at fault or not, correct.

25 Q All right. So you had no reason -- you didn't have

1 any probable cause, did you? You didn't know what
2 happened, correct?

3 A Correct, sir.

4 THE COURT: That was two questions.

5 BY MR. HARVEY:

6 Q The answer is correct to both questions?

7 A Well, just state them both as separate questions, and
8 I'll answer each one.

9 Q Fair enough. When you responded to the solicitor's
10 question about why you sought blood, you answered you
11 didn't know his position in the accident, correct?

12 A Correct.

13 Q At the time you asked for blood --

14 A The probable cause question, correct.

15 Q You didn't have any probable cause, did you?

16 A Based on that statement, correct, sir.

17 (Pause).

18 THE COURT: Based on what? Based on what?

19 THE WITNESS: Sir?

20 THE COURT: What did you say? Based on --

21 THE WITNESS: Based on -- based on not knowing who
22 was at fault in the accident, based on -- based on the
23 fact that you have an accident with two operators not
24 knowing specifically that one was at fault or one was not
25 at fault or both were contributing parties.

Bickley - cross (Harvey) in camera

61

1 I could not specifically say that Mr. Kranendonk was
2 the offending party.

3 THE COURT: I understand. The question is whether --
4 well, go ahead. I'm not going to interfere. Are you
5 finished?

6 MR. HARVEY: Yes.

7 THE COURT: Mr. Potts?

8 REDIRECT EXAMINATION:

9 BY MR. POTTS:

10 Q So the time you asked him for blood, what made you
11 think he might be a party to a felony BUI?

12 A Because two boats had collided causing two deaths.
13 Each boat can contribute to the -- or each operator in
14 each vessel can be a contributing party to it, and it was
15 to my best knowledge that I was securing evidence in
16 regard to that believing that one or both were.

17 Q Did you think he might have been under the influence
18 at the time of alcohol?

19 A Yes, sir.

20 THE COURT: What was the question?

21 MR. HARVEY: Your Honor, unresponsive --

22 THE COURT: I asked him what the question was.
23 Excuse me, Mr. Harvey.

24 MR. HARVEY: I apologize.

25 MR. POTTS: I asked him if he believed the defendant

1 might have been under the influence of alcohol at the
2 time, yes. That's why he asked him to draw blood.

3 THE COURT: He's already answered that but go ahead.

4 THE WITNESS: Yes, sir.

5 MR. POTTS: Thank you. No further questions.

6 THE COURT: Any redirect [sic]?

7 RECROSS-EXAMINATION:

8 BY MR. HARVEY:

9 Q He wasn't under arrest for felony BUI, correct?

10 A No, sir.

11 Q He wasn't under arrest, and you didn't arrest him for
12 BUI after -- let me ask you this: It's true after you
13 began -- you see, your interview was actually two parts,
14 correct?

15 A Yes, sir.

16 Q And you began a short interview which you terminated
17 after that brief bit of information that you obtained from
18 Mr. Kranendonk acknowledging that he was the operator --

19 A Yes, sir.

20 Q -- and acknowledging he had consumed alcoholic
21 beverages during the proceeding day, correct?

22 A Yes, sir.

23 Q Your report does not delineate with any specificity
24 the time or any --

25 MR. POTTS: Your Honor, I object. This goes way

1 beyond the scope of my redirect.

2 THE COURT: Well, I want to get to the bottom of this
3 issue. I'm going to allow it.

4 MR. POTTS: Thank you, Your Honor.

5 BY MR. HARVEY:

6 Q Your report doesn't contain with any specificity the
7 time that Mr. Kranendonk told you he consumed alcoholic
8 beverages, correct?

9 A I don't believe so, sir.

10 Q All right. And you'll agree with me that a lot of
11 information that you were able to glean about the accident
12 from Mr. Kranendonk occurred subsequent to the blood draw,
13 correct?

14 A Yes, sir.

15 Q So your interview was really -- had several parts:
16 Reading the Waiver form, talking with him, determining in
17 your report that based upon Mr. Kranendonk's admission to
18 you that he consumed alcoholic beverages and because you
19 said it was after three a.m. in your report, that's why
20 you asked for blood.

21 A Yes, sir.

22 Q Now, you'll agree with me -- and you had mentioned
23 that you were one of the investigators in the case,
24 correct?

25 A I'm one of the support officers, yes, sir.

1 Q And all the officers met with Mr. Lewis the following
2 morning, correct?

3 A The next morning, yes, sir.

4 Q And when you met with Mr. Lewis, you were aware that
5 he passed Mr. Roosen -- as a result of your meeting with
6 Mr. Lewis --

7 A As a result of the meeting, yes, sir.

8 Q And you were aware before you took the blood to SLED
9 that he had passed a field sobriety test at the incident
10 location?

11 A Yes, sir, I was.

12 Q All right. So all you were aware of was the
13 occurrence of an accident, correct?

14 A Correct.

15 Q Him telling you that he had consumed some alcoholic
16 beverages that -- sometime the same day as the occurrence
17 of the accident. You were aware that he passed a field
18 sobriety test, and you were aware of the occurrence of the
19 accident, correct?

20 A Correct.

21 Q And when you took the blood to SLED the next day on
22 the 3rd, you didn't have any more particularized
23 information about the accident, did you?

24 A No, sir, I did not.

25 Q So you testified to the sum total of your knowledge

1 that was known to you when you got the blood and when you
2 took the blood to SLED, correct?

3 A Yes, sir.

4 MR. HARVEY: Thank you.

5 THE COURT: Anything further?

6 MR. POTTS: Nothing further, Your Honor.

7 THE COURT: All right. You may come down, sir.

8 Thank you very much.

9 MR. POTTS: No further witnesses from the State, Your
10 Honor.

11 THE COURT: From the defense?

12 MR. HARVEY: No, Your Honor.

13 THE COURT: No witnesses?

14 MR. HARVEY: No, Your Honor.

15 THE COURT: All right. Approach the bench, counsel.

16 (There was no response).

17 Approach the bench, please.

18 (Whereupon, there was a bench conference.)

19 THE COURT: All right. Counsel, I'm going to suspend
20 the review of the defendant's motion in limine. I'm going
21 to go ahead and draw this jury, and that's going to take
22 some time.

23 So we'll continue with the motions following the
24 selection of the jury. Any objection to that procedure
25 from the State?

1 MR. POTTS: No, Your Honor.

2 THE COURT: From the defense?

3 MR. HARVEY: No, Your Honor.

4 THE COURT: All right.

5 All right. As far as the requested voir dire, any
6 requested voir dire from the State?

7 MS. SAMPSON: Your Honor, just on the ones that you
8 would normally use, and because of the publicity with
9 this, we know there's going to have a special question on
10 that particular issue.

11 I would suggest that we do just that issue maybe as
12 an individual voir dire versus asking the panel if they
13 heard of anything they may blurt out.

14 THE COURT: That's my plan.

15 And Mr. Harvey, I have your voir dire.

16 MR. HARVEY: Thank you, Your Honor.

17 THE COURT: All right. Madam clerk, give us a
18 jury -- I mean, bring the jury.

19 Mr. Addison?

20 THE BAILIFF: Yes, sir.

21 MR. POTTS: Your Honor, can I excuse Sergeant Roosen
22 and Bickley.

23 THE COURT: If you're finished.

24 (WHEREUPON, Court's Exhibit No. 1 was marked for
25 identification only.)

1 both of you at the bench when he came up saying he had
2 read the article. He indicated in both of your presence
3 that he could be fair and impartial even though he worked
4 in the Department of Natural Resources, and he indicated
5 he had no contact with any of the officers who were
6 involved in the case that he was aware of.

7 At that time, there was no motion to excuse him for
8 cause. Only later when he stood in response to some
9 question, I don't recall which one, did he say he supplied
10 one of the officers with some information. I assume that
11 would be tell them what the weather was like on a
12 particular day. He maintained that he still could be fair
13 and impartial.

14 I respectfully overrule your motion.

15 MR. HARVEY: Thank you, Your Honor. Your Honor, if I
16 may address the Court.

17 THE COURT: Absolutely.

18 MR. HARVEY: Your Honor, with respect to my client's
19 motion concerning the blood alcohol test, Your Honor has
20 heard from Officer Roosen who testified that he was
21 instructed by another officer to administer the field
22 sobriety test that he did not initiate a field sobriety
23 test on his own volition, but based upon reasons he
24 observed at the scene that he thought --

25 THE COURT: This is Roosen?

1 MR. HARVEY: Yes, sir, the first witness, Roosen.

2 It's clear from Mr. Roosen's testimony that all of
3 the tests that were administered by Mr. Roosen, the
4 defendant passed satisfactorily.

5 He even indicated, I believe, in one of the tests
6 that the defendant started with the wrong hand and
7 self-corrected to the correct hand.

8 Each one of those tests he passed satisfactorily. He
9 is released. He is not given a citation for boating under
10 the influence.

11 He is not given a citation for any boating violation
12 whatsoever. At that time, the knowledge of the DNR is he
13 was the operator of a vessel involved in a collision with
14 another vessel, and at some time undetermined between the
15 time he left the scene and when Officer Bickley interacted
16 with Mr. Kranendonk at Palmetto Richland hospital, even
17 though it's not in Officer Bickley's notes, Officer
18 Bickley has a vague recollection of gaining some knowledge
19 of the occurrence of the accident and the occurrence of
20 the fatality.

21 Your Honor, it's clear under the felony BUI blood
22 sample statute, you either have to be under arrest for
23 felony BUI, or the arresting officer has to have probable
24 cause that the subject committed felony BUI.

25 The officer's testimony was from the stand on direct

1 examination and then on cross-examination, he did not have
2 probable cause. He did not know about the factual
3 occurrence of the accident other than he talked to
4 Mr. Christofoli, and he saw injuries, but he didn't know
5 if those were severe injuries or the legislature in the
6 statute didn't say, "Law enforcement, you can get a blood
7 sample on the occurrence of the fatality."

8 The legislature particularly stated you have to have
9 a probable cause standard. I think what the officer
10 articulated at best today was mere suspicion. He wasn't
11 sure.

12 He thought he could be involved, or he could be a
13 victim. So he could not articulate the probable cause
14 standard that the legislature specifically articulated in
15 getting a blood draw.

16 If the legislature had said, "Anytime there is a
17 fatality in a boating accident, a boater is required to
18 give a sample," the legislature could have said that, but
19 what the legislature particularly stated was the probable
20 cause standard.

21 He talked to Mr. Christofoli, didn't get details of
22 the accident. He said in his report on page one, or I
23 believe page two of the report, his report said very few
24 details about the accident.

25 He talked to Mr. Harrison Hair. Mr. Harrison Hair

1 informed him that Mr. Kranendonk was the operator, who
2 Mr. Harrison Hair did not provide any information to that
3 officer at that time about consumption of alcohol or
4 details about the accident.

5 He talks with Mr. Kranendonk. He talks to
6 Mr. Kranendonk, and by his testimony, he says, "I
7 identified Mr. Kranendonk as the operator of the vehicle."

8 The reason why I asked the questions about the law
9 enforcement waivers is I wanted the Court to be able to
10 hear from the witness what knowledge that officer had at
11 the time he talked to Mr. Kranendonk.

12 So the substance of his knowledge at the time he
13 talked to Mr. Kranendonk is he talked to Mr. Hair. He was
14 able to know he was an operator.

15 He talked to Mr. Christofoli, scant details, if any,
16 about the accident, talks with Mr. Christofoli -- excuse
17 me, talks with Mr. Kranendonk. Mr. Kranendonk says, "Yes,
18 I consumed some alcohol."

19 The officer testifies, "Well, I'm stopping the
20 interview, and I'm going to request a blood draw based on
21 that." That isn't probable cause. That's a mere
22 suspicion.

23 He didn't have any probable cause in his report. He
24 says he didn't mention anything about bloodshot eyes. You
25 heard Deputy Roosen who testified he didn't mention

1 anything about an odor of alcohol.

2 You have at three o'clock in the morning, five hours
3 after the incident, you have an alleged recollection of
4 the odor of alcohol, but the odor of alcohol in admitting,
5 "I operated the boat" isn't probable cause that he it
6 committed the crime.

7 The crime is they have to show he is an operator of
8 the boat. They have to show that he's under the
9 influence, and they have to show his operation of the boat
10 caused the injuries or death.

11 The fact that an accident occurs in and of itself
12 isn't probable cause. Had he thought he was intoxicated,
13 he could have arrested him at that time.

14 He didn't even have probable cause to give him a BUI
15 ticket. The officers at the scene didn't have probable
16 cause to detain him.

17 Then we have the issue after they've drawn the blood,
18 he meets with -- he said that he was aware of the fact the
19 next morning, or the morning preceding the blood draw,
20 that he had passed a field sobriety test.

21 I had argued in the memoranda a lot of the cases with
22 respect to imputed knowledge. Oftentimes in search
23 warrant cases, probable cause is based upon imputed
24 knowledge of one officer to the other.

25 It seems to me at the time he submitted, or he was

1 asked to request to submit to the blood test, the imputed
2 knowledge is he passed the field sobriety test. He was
3 released from the scene.

4 It's -- you know, the sincerity of the effort of the
5 officers I don't think is the issue. I do not doubt their
6 sincerity. I do not doubt their earnestness, but in this
7 particular instance, we have got a statute that has got
8 specific requirements.

9 I cited the line of authority with respect to
10 probable cause, and it couldn't have been corroborated any
11 more than what Your Honor heard from the witness stand.

12 I respectfully submit that what's different in this
13 case compared to the typical probable cause case is that
14 was -- that the defendant had consumed alcohol at a time
15 unknown and unrelated to the incident.

16 We mentioned about the imputed knowledge and Your
17 Honor had cited the line of cases about the collective and
18 imputed knowledge.

19 The gist of the circumstance is he passed the field
20 sobriety test. The officer interviewed three other
21 witnesses. Excuse me, two other witnesses.

22 He interviewed Mr. Kranendonk after the blood draw,
23 and what was known to him at the time he requested the
24 blood was not enough information to get beyond a mere
25 suspicion.

1 It didn't rise to the level of probable cause that
2 the statute had required. Thank you, Your Honor.

3 THE COURT: State's position?

4 MS. SAMPSON: Your Honor, the State disagrees in
5 almost every respect with Mr. Harvey in this case and
6 believes should let the blood in.

7 First and foremost, Your Honor, the biggest thing, I
8 think, Mr. Harvey fails to apprehend is that the felony
9 BUI statute is substantially different than the felony DUI
10 statute.

11 To commit the offense of felony BUI, you have to be
12 the operator of a boat under the influence of alcohol and
13 causing death. There's nothing about being at fault.
14 There is nothing about being the person who -- there is
15 nothing about what -- the events that occurred that caused
16 it. Oh, you have to cause it.

17 So as a felony DUI, you have to violate a portion of
18 the law. There has to be some sort of fault on your part,
19 some sort of bad behavior that gives rise to the
20 collision, and felony BUI, there is not.

21 So the fact that the officer at the hospital did not
22 know all the facts surrounding the incident does not
23 negate any probable cause. The fact that he knows there
24 has been a collision and there has been at least one death
25 that is not the operator --

1 THE COURT: Could he say there had -- he knows there
2 has been a death?

3 MR. POTTS: Yes, Your Honor.

4 He testified that one of the first things he did when
5 he got there was go in front of the doctors and talk to
6 the Bullard family to let them know that their daughter
7 had died. That's the first --

8 THE COURT: That's Brett Bickley?

9 MR. POTTS: So he did, indeed, know that there had
10 been a death. This is not like felony DUI where you have
11 to be in apprehension of more facts than that.

12 Secondly, Your Honor, this ties into the whole
13 victim's rights aspect Mr. Harvey touches on. In fact,
14 had Mr. Christofoli been under the influence of alcohol,
15 as well, he could have been charged with felony BUI, as
16 well. That's a key misapprehension on Mr. Harvey's part.

17 That's why he read -- they can both be defendants and
18 victims in the same case. That's the way the felony BUI
19 statute is written.

20 Now, is that a great way to prosecute a case? I'm
21 not going to say it is, but I will say that that does not
22 rule out one thing or the other.

23 Secondly, Your Honor, Mr. Harvey is incorrect when he
24 talks about how the arresting officer must direct that the
25 blood be taken. It's any officer.

1 Section 50-21-116 states, "Notwithstanding any other
2 provision of law, a person must submit to either one or a
3 combination of chemical tests of his breath or urine for
4 the purpose of determining the presence of alcohol, drugs
5 or a combination of alcohol or drugs.

6 If there is probable cause to believe that the
7 personal violated or is under arrest for a violation of
8 section 50-21-113, and that would be the felony BUI
9 statute here.

10 Your Honor, I think the fact that the defendant had
11 bloodshot eyes, smelled of alcohol and confirmed to the
12 officer that he had been drinking that day combined with
13 the fact that he -- the fact that Mr. Hair and he both
14 admitted he was the driver of one of the boats in the
15 collision and the fact that there had been a death does,
16 indeed, give rise to probable cause for felony boating
17 under the influence.

18 Your Honor, probable cause gives rise to the eyes of
19 each individual officer. Not every officer has to see
20 probable cause the same way, but Your Honor, just for
21 comparison's sake, voluntary BUI. I'm sorry.

22 May I approach?

23 THE COURT: Sure.

24 MR. POTTS: Your Honor, that first case I handed up
25 to you is the Lap case (phonetic). Mr. Harvey cites it in

1 his -- in his brief.

2 In that case, Your Honor, in you look at the facts,
3 it's really about the probable cause, whether it be --
4 there is probable cause to do an administrative hearing.

5 "Upon arriving at the scene, the officer -- this is
6 on page two. The officer observed Lap sitting in her
7 vehicle. Officer Simmons questioned Lap, admitted she had
8 struck two vehicles. Having detected a strong odor of
9 alcohol coming from Lap, officers asked Lap to perform a
10 field sobriety test."

11 There were no field sobriety tests in this case. He
12 then at that point arrested Lap for DUI, and Your Honor,
13 that case is very similar to here because what we have,
14 like when Officer Bickley at the scene, he had a person
15 who admitted to driving with the two vehicles involved in
16 the collision, seemed to be under the influence of the
17 alcohol and then finally death.

18 If there had been a field sobriety test, I think it's
19 easy to see that he clearly would have probable cause.

20 Announcing probable cause, Your Honor, page three,
21 "In asserting the presence of probable cause, all the
22 evidence within the arrest's officer's knowledge may be
23 considered, including observing the response and the
24 information received," and it's the information at the
25 officer's disposal.

1 At this time, Your Honor, Rhett Bickley did not have
2 that, any other knowledge at his disposal than what he's
3 found at the hospital scene.

4 THE COURT: Well, what about the fact that the
5 officer at the marina obviously didn't think there was
6 sufficient probable cause? How do you develop --

7 MR. POTTS: Your Honor.

8 THE COURT: I mean, what -- what changed between the
9 dock and the hospital to create probable cause?

10 MR. POTTS: Oh. What changed, Your Honor, is the way
11 the officer who saw and interpreted the facts. I think
12 it's every officer's facts, the way they interpret what
13 they see is different.

14 If every officer had to agree that there's probable
15 cause at every stage of the proceedings, Your Honor, we'd
16 never get anyone arrested.

17 We can't ask every single officer who sees a set of
18 the fact to agree.

19 THE COURT: We can't have all new people.

20 MR. POTTS: I agree with you there, Your Honor, but
21 at the same time, that --

22 THE COURT: Can you have -- can you have three
23 officers that say there is no probable cause and one say
24 there is?

25 MR. HARVEY: I think you could, Your Honor, yes. I

1 think that that officer is then going to make an arrest at
2 that point. I think he's okay once he has probable cause.

3 In this case, I think it's clear that we did have
4 probable cause in the hospital. If you -- everything he
5 knew created probable cause, but he -- Your Honor, there's
6 also -- I wanted to point out here --

7 THE COURT: Probable cause for what?

8 MR. POTTS: For felony BUI.

9 THE COURT: Well, that's two issues.

10 MR. POTTS: Yes, Your Honor.

11 THE COURT: Felony probable cause is a crime that has
12 been committed and probable cause to take blood. I think
13 Mr. Harvey is distinguishing between the two.

14 MR. POTTS: Your Honor, I think that the probable
15 cause is one in the same. If there is probable cause to
16 believe a crime has been committed, then it's the same
17 probable cause to get you to draw blood.

18 I don't think one -- I don't think one is any higher
19 than the other. I think it's the same level of probable
20 cause required for both.

21 THE COURT: Well, wait a minute. Let's assume the
22 officer knew the crime has been committed, a crime,
23 believed a crime had been committed but had no reason to
24 suspect this defendant of being under the influence.

25 MR. POTTS: Yes, Your Honor.

1 THE COURT: Certainly, he could still be responsible
2 for the accident, and I think that's the distinction
3 Mr. Harvey is making; that there is -- based on the
4 officer's testimony, he didn't have probable cause to draw
5 the blood.

6 MR. POTTS: Your Honor, I --

7 THE COURT: May not have had probable cause to even
8 arrest -- well, obviously -- he didn't make an arrest that
9 evening either, did he?

10 MR. POTTS: No, Your Honor, didn't have to.

11 THE COURT: I understand. You don't have to but you
12 didn't.

13 MR. POTTS: No. He did not, Your Honor. I think he
14 wanted to see how the blood draw came out first before he
15 made an arrest, but I think that he clearly had probable
16 cause to believe felony BUI had been committed. That's
17 the probable cause he acted upon.

18 I think that his testimony supports that. I think
19 it's clear that's what happened, but even if Your Honor
20 starts imputing knowledge of other things that are way
21 outside his control and outside his purview, I think there
22 is --

23 THE COURT: Well, I'm not worried about imputing.
24 He -- he knew -- he had certain information he believed;
25 that he knew there was an accident.

1 He knew -- as you say, he knew there was a death. He
2 knew this -- somebody was driving the vessel, and he --
3 the defendant admitted he was driving the vessel. Is
4 that -- with that alone, did he have probable cause to
5 draw the blood?

6 MR. POTTS: Your Honor, that would be the smell of
7 alcohol and the admission of drinking. Yes, I think he
8 does, Your Honor.

9 THE COURT: Okay.

10 MR. POTTS: I think his testimony is that Mr. Hair
11 stated to him that he had been partying all day. For him,
12 I think that's more than probable cause.

13 THE COURT: Well, I don't know if I heard that.

14 MR. POTTS: Your Honor, I believe I heard when he
15 said that, Your Honor.

16 THE COURT: He had been partying all day?

17 MR. POTTS: I believe he said Mr. Hair said that,
18 yes.

19 THE COURT: Oh, Mr. Hair said that.

20 MR. POTTS: Yes, Your Honor. Not the defendant.

21 THE COURT: Okay.

22 MR. POTTS: I believe Mr. Bickley testified Mr. Hair
23 said they had been partying all day.

24 THE COURT: They didn't --

25 MR. POTTS: If you didn't hear it, Your Honor, don't

1 rely on my ears so --

2 THE COURT: No. I'm just trying to -- like Sergeant
3 Friday, I'm just trying to get the facts.

4 Hair was in the boat with the defendant?

5 MR. POTTS: That's correct, Your Honor.

6 THE COURT: And you heard the witness said Hair said,
7 "We had been partying all day".

8 MR. POTTS: Yes, Your Honor.

9 THE COURT: So he knew that before he drew the blood.

10 MR. POTTS: Yes Your Honor. I believe even more so
11 than that, Your Honor, he had the smell of alcohol.

12 THE COURT: I know that.

13 MR. POTTS: The defense admits to drinking and the
14 bloodshot eyes and so forth.

15 THE COURT: Well, even if that was a convenient
16 memory, the fact that he's -- that Mr. Hair said,
17 according to you, that we'd been partying all day --

18 I'm going to give you a chance.

19 (Pause).

20 -- certainly raised in the officer's mind a
21 reasonable suspicion was -- rises to probable cause or not
22 that he needed to investigate further. Do you free with
23 that?

24 MR. POTTS: I free, Your Honor.

25 THE COURT: Then if you take the statement by the

1 defendant plus his observations of bloodshot eyes and the
2 smell of alcohol, this then rises to probable cause.

3 MR. POTTS: I think it certainly does.

4 THE COURT: Let me hear from Mr. Harvey.

5 MR. HARVEY: Your Honor, I don't recall -- I'll let
6 Your Honor be the judge about what was said about
7 Mr. Hair's testimony.

8 THE COURT: Mr. Hair has not testified.

9 MR. HARVEY: The alleged hearsay. The result of the
10 investigation of Mr. Hair is -- I'm examining this
11 report --

12 THE COURT: You have got something I don't have.

13 MR. HARVEY: Well, I believe it's attached to the
14 memorandum.

15 THE COURT: All right.

16 MR. HARVEY: Page two of the report attached to the
17 memorandum, and I don't see any recollection that was
18 reported that Mr. Hair told the officer he was partying
19 all day.

20 With respect to the officer's report, details of
21 chronology of the information that was known to the
22 officer at the time he interviewed Mr. Kranendonk.

23 What was known to the officer was that
24 Mr. Christofoli was the operator of a boat involved in a
25 collision.

1 Mr. Hair was a passenger in a boat operated by
2 Mr. Kranendonk passenger that was operate by the
3 collision. He talks with Mr. Kranendonk.

4 Mr. Kranendonk acknowledges he was the operator of a
5 boat. He acknowledges that some time, an unidentified
6 time, he doesn't say what time in proximity to the
7 accident, but he had consumed some alcohol.

8 The officer in his report in his testimony said, "I
9 stopped the interview. I wanted a blood draw, but I
10 wasn't sure. I wasn't sure what his role was. He could
11 be on both sides." That's what the officer said.

12 I asked the officer, "Did you have probable cause to
13 believe at the time you got the blood Mr. Kranendonk had
14 admitted the crime of felony BUI?"

15 The legislature did make a distinction, and the
16 distinction is -- it's -- I believe the statute says the
17 officer requesting the blood must have -- either he's
18 under arrest or the officer requesting the blood has
19 probable cause that he committed the offense.

20 What's interesting in the line of cases that I cited,
21 all of the officers had objective information about the
22 occurrence.

23 What you've got is you've got an officer who doesn't
24 record his recollection of bloodshot eyes and a high odor
25 of alcohol. You hear an officer who saw him at the scene

1 did extensive field sobriety tests, including a horizontal
2 gaze nystagmus where he has to be in proximity to the
3 defendant. Yet, there's no contemporaneous observation of
4 impairment. There's no --

5 THE COURT: It's in the nighttime, too.

6 MR. HARVEY: Your Honor, that's correct, but they
7 also --

8 THE COURT: I don't see how they do a nystagmus test
9 in the dark but...

10 MR. HARVEY: They do. He have also had to be in
11 close proximity to him, no mention of odor of alcohol. I
12 would respectfully submit the probable cause to get the
13 blood is distinct. They have to have probable cause that
14 he committed the offense of felony BUI rather than a mere
15 suspicion.

16 THE COURT: Okay.

17 MR. HARVEY: Thank you, Your Honor.

18 THE COURT: Thank you. I'll -- I'm going to read
19 your memorandum, read the case law, and I'll let you know
20 in the morning.

21 How about your motion -- your other motions in limine
22 to exclude evidence concerning bottles of alcoholic
23 beverages. What is that?

24 MR. HARVEY: If I may, Your Honor, there is a witness
25 named Brent Baccene. I believe I'm pronouncing the name

1 correctly. He was the witness that the young lady who
2 stood up in the purple outfit and said she was his college
3 apartment neighbor.

4 Mr. Baccene sent an e-mail to law enforcement and
5 also provided law enforcement with a -- I believe a vodka
6 bottle that was photographed. There's some evidence that
7 after Mr. Kranendonk's vessel returned to the Lake Murray
8 marina, at some point in time, the vodka bottles -- vodka
9 bottles were removed from the vessel. I always -- Your
10 Honor --

11 THE COURT: Your Honor, by whom?

12 MR. HARVEY: Well, this is -- Your Honor, what --
13 what Mr. Baccene is going to allege is that
14 Mr. Christofoli -- excuse me, Mr. Kranendonk personally
15 removed a bottle or asked that the bottle be removed.

16 If that evidence is -- comes in, I believe that the
17 jury will draw an inference of guilt based upon the
18 removal of bottles, and that's conduct that has no
19 relevance to the charge of reckless homicide by operation
20 of a boat. That's certainly -- and I believe that
21 evidence is of no probative value.

22 THE COURT: So you -- it's 403.

23 MR. HARVEY: Yeah.

24 THE COURT: All right. What's the State's position?

25 MR. SAMPSON: Your Honor, the State's position would

1 be that the first thing that the -- that DNR or any of the
2 other investigators looked for when they got to the scene
3 and did the inventory of the boat, looking at the boat was
4 alcohol. So that was important to them to look for it.

5 Secondly, Your Honor, we would bring in the witness
6 to actually state what he saw, and clearly, we're not --
7 that is going to be hearsay coming from one of the
8 officers.

9 We would be putting him on the stand as a witness to
10 state what he saw, but the fact that the defendant -- if
11 his testimony is going to be the defendant is asking
12 people to remove bottles from the boat, we feel it's very
13 probative to --

14 THE COURT: Why don't we just proffer that evidence,
15 let you proffer it.

16 MR. SAMPSON: With the -- you want us to do it prior
17 to him testifying or in the morning?

18 THE COURT: Yeah. Well, I don't care when he does
19 it.

20 MR. SAMPSON: I'm just trying to figure out when to
21 bring him here. That's all I'm trying to figure out.

22 THE COURT: Any objection?

23 MR. HARVEY: No, Your Honor.

24 THE COURT: Let's see what he has to say.

25 MR. SAMPSON: Can we do it prior to openings? I just

1 need to --

2 THE COURT: Have him here at nine o'clock.

3 MR. SAMPSON: If we can have him here, just so we
4 know what we can and cannot say in opening. I don't mean
5 to open some door.

6 THE COURT: That's fine. Let Mr. Harvey
7 cross-examine him. Obviously, I don't know what he's
8 going to say. It's hard to make a decision when you don't
9 know what somebody is going to say.

10 MR. SAMPSON: That's fine, Your Honor.

11 THE COURT: All right. We'll proffer that in the
12 morning.

13 Victim?

14 MR. HARVEY: Yes, Your Honor. Your Honor, I have
15 submitted a memorandum with respect to prohibit the use of
16 the term "victim" during jury selection, following the
17 jury charges.

18 THE COURT: I didn't use it -- I'm not sure I used it
19 in jury selection.

20 MR. HARVEY: That's fine, Your Honor, but just during
21 the trial and in jury charges, Your Honor, I've articulate
22 my argument, basically one section by use of the term
23 victim violates the presumption of innocence, allows at
24 trial the references to the parties as victims, allows for
25 the interjection of a personal belief that the defendant

1 is guilty.

2 Again, Your Honor, I would respectfully submit the
3 term be used by the court in jury charges makes
4 conclusions of facts invading the province of the jury.

5 Your Honor, I cited state and federal constitutional
6 provisions, as well as general case law with respect to
7 fair trial comments on facts, the division of the roles
8 between the jury and the court.

9 Your Honor candidly asked me about a case
10 specifically on point. I cannot tell Your Honor that I
11 cited a case specifically on point with -- with respect to
12 the relief that I asked, but I would just stand on the
13 argument presented in the memorandum and believe it
14 certainly articulates a persuasive constitutional fair
15 trial argument on behalf of my client.

16 THE COURT: All right. What's the State's position
17 in?

18 MR. POTTS: Your Honor, the State believes the victim
19 is defined both in the constitution of South Carolina and
20 in the Victim Rights Act, as a personal opinion.

21 Anyway, just with regard to the term "victim" in this
22 case, we believe that the word "victim" is
23 constitutionally defined. It should be used here without
24 exception. The same way we use defendant and State,
25 Judge. It's just a term that our courts have given.

1 MR. HARVEY: Your Honor, the only brief retort I
2 would have with that is I believe the State constitution
3 defines victim but does not give a substantive right to
4 the State to be able to use that term.

5 It certainly provides certain privileges for victims,
6 and I just believe repetitive use of the term victim in
7 this manner --

8 THE COURT: Well, I will tell you, I'm not -- I don't
9 believe my normal -- my regular jury charges use the word
10 'victim.'

11 Now, having said that, I don't believe I can stop the
12 State from saying anything you want to that is not
13 objectionable in describing -- you know, if you can call
14 somebody a liar to the jury, I don't think there's any
15 reason why you can't use the word "victim".

16 MR. HARVEY: Well, Your Honor, I'm appreciative of
17 the Court's observation that I filed --

18 THE COURT: I understand your position.

19 MR. HARVEY: I don't want to belittle the point. I
20 just want to protect my client's position.

21 THE COURT: I understand.

22 MR. HARVEY: Thank you.

23 THE COURT: Respectfully, I deny your motion with
24 regard to the use of the word "victim". Now, I'm not even
25 sure I'd use the word victim.

1 I'd probably more likely use some other term, the
2 deceased or some other term in my communication with the
3 jury, but I don't think I can stop the State from using
4 what you consider an objectionable term.

5 MR. HARVEY: Yes, sir.

6 THE COURT: Photographs?

7 I think we have done the sequestration and the --
8 other than the photographs, what else is the
9 late-disclosed evidence?

10 MR. HARVEY: Well, Your Honor, I was -- we were
11 provided information in the coroner's report, photographs
12 and I was also provided medical records of my client, but
13 I understand that's not going to be an issue in the case.

14 MR. POTTS: I don't plan on introducing any medical
15 records.

16 MR. HARVEY: Your Honor --

17 MR. POTTS: Also the CD of the 9-1-1 call.

18 MR. HARVEY: -- there was a CD of a 9-1-1 call that
19 was disclosed late. Your Honor, our position is with
20 respect to 9-1-1 calls, I was given the transcript and the
21 printout of the 9-1-1 calls.

22 The 9-1-1 calls, they -- I -- first of all, I don't
23 think they should be able to use it -- in my general
24 position with respect to late-disclosed evidence is the
25 case was scheduled by the State. Discovery motions had

1 been outstanding for a year, year-and-a-half.

2 We've actually enjoyed a good dialogue, and again, I
3 don't doubt the efforts of Mr. Potts and not attributing
4 any ill motive on his part but when a case of this
5 magnitude that's scheduled, and we had issues -- and I
6 think the cases that I cited, and I believe it was Clark
7 v. Cantrell about proponents giving opposing parties a
8 reasonable opportunity to look at evidence and discern
9 evidence, I believe the appropriate remedy is not to allow
10 the use of the 9-1-1 tapes.

11 There is other means that they can accomplish that
12 evidence. I'm not objecting to -- and I don't think I can
13 object to a witness saying I did call 9-1-1 at this time
14 or I called 9-1-1. I am objecting to the late disclosure
15 of it.

16 I think if the Court has the authority to control
17 discovery and under Rule 5, a sanction is not to allow
18 them to use that evidence.

19 Also, Your Honor, just while we're talking about the
20 9-1-1 tape, to me there's a 403 issue in that naturally
21 it's a 9-1-1 tape. The caller is very animated. It's
22 very dramatic.

23 That evidence can -- and those facts can be
24 presented without the use of the actual 9-1-1 recording.
25 So I have a late discovery -- a late discovery issue, and

1 on the issue of judicial economy, I'll also address a 403
2 type issue.

3 THE COURT: What's the State's position on the 9-1-1
4 calls?

5 MR. POTTS: Your Honor, the position on the 9-1-1
6 calls, same as the coroner's file, Your Honor, basically,
7 I will prepare for trial, meet every witness --

8 THE COURT: Let's --

9 MR. POTTS: It was disclosed --

10 THE COURT: -- not worry about the late disclosure
11 for the moment. Why do you need 9-1-1 tape? Why do you
12 need the 9-1-1 tapes?

13 MR. POTTS: Your Honor, I think it was the best
14 evidence of what he was current that evening, the best
15 evidence to show the party's state of mind, to show what
16 happened. It's a -- you know, a --

17 THE COURT: Do you have people that made the 9-1-1
18 tape?

19 MR. POTTS: Yes, Your Honor.

20 THE COURT: I mean, not made the tapes but made the
21 calls?

22 MR. POTTS: Most of them, Your Honor.

23 THE COURT: When were they disclosed?

24 MR. POTTS: They were disclosed, I believe, Tuesday
25 of last week, Your Honor.

1 THE COURT: I don't know.

2 MR. HARVEY: That would be the 28th of February, Your
3 Honor.

4 THE COURT: Is that right?

5 MR. POTTS: Yes, sir.

6 THE COURT: February 28th was last Tuesday.

7 MR. POTTS: Yes, Your Honor. I met with Investigator
8 Lewis on Monday. He told me he had the tapes, so I turned
9 them over Tuesday morning.

10 THE COURT: Well, has this evidence been disclosed in
11 another fashion in terms of --

12 MS. SAMPSON: Your Honor, most of them were available
13 on the State website. I tried to get them myself through
14 respective 9-1-1, but by the time I got the case file,
15 Your Honor, it had been more than three months.

16 MR. POTTS: They had already been disposed of by the
17 Richland and Lexington 9-1-1s. I did not know that
18 investigator Lewis had it until we met at the time and
19 decided to go to trial.

20 THE COURT: Well, I might --

21 MR. POTTS: The fact 9-1-1 was called, Your Honor, is
22 in all the reports, and even that 9-1-1 was called. In
23 fact, most of the calls were on The State's website at
24 some point, Your Honor.

25 THE COURT: What state website?

1 MS. SAMPSON: The newspaper website, Your Honor.

2 THE COURT: Oh, The State newspaper website.

3 MR. POTTS: Yes, Your Honor.

4 THE COURT: Why were they in the material you
5 disclosed in your Rule 5, and as a result of your Rule 5
6 request?

7 MR. POTTS: I'm sorry, Your Honor?

8 THE COURT: Was the existence of 9-1-1 calls or 9-1-1
9 tapes disclosed in your responses --

10 MR. POTTS: Yes, Your Honor.

11 THE COURT: -- responses to your Rule 5 request?

12 MR. POTTS: Yes, Your Honor. Mr. Harvey was made
13 aware of that. We had the -- gave him the Open Incident
14 reports from the 9-1-1 calls, Your Honor.

15 THE COURT: Gave him what?

16 MR. POTTS: The Open Incident report, basically
17 9-1-1's reports on the fact they received the call, the
18 information in the call were given to him upon his Rule 5
19 request, Your Honor. By that time, I did not actually
20 have the reports.

21 THE COURT: You just didn't have the physical tape?

22 MR. POTTS: Right, Your Honor.

23 THE COURT: Or CD.

24 MR. POTTS: Yes, Your Honor.

25 THE COURT: Do you agree with that?

1 MR. HARVEY: Yes, Your Honor. I believe it's a
2 different proposition the week before trial to disclose
3 tapes. I think --

4 THE COURT: The question in my mind, are you
5 surprised as a result of --

6 MR. HARVEY: I --

7 THE COURT: B, are you prejudiced in the sense of --
8 undue prejudice if you knew about them before the tape
9 came to you?

10 MR. HARVEY: I was aware there was a transcript. I'm
11 not --

12 THE COURT: What did the transcript say?

13 MR. HARVEY: The transcript is a running transcript
14 of who made the call and outlines, but it's different
15 than, I believe, the prejudice to my client.

16 THE COURT: You mean somebody screaming or crying on
17 the tape?

18 MR. HARVEY: Yes.

19 THE COURT: Oh, okay.

20 MR. HARVEY: And --

21 THE COURT: I think you can anticipate that that's
22 what all 9-1-1 calls do.

23 MR. HARVEY: Your Honor, but there is a prejudice to
24 my client when I meet with him to review the evidence and
25 he gets his counsel. We rely on the evidence that's been

1 given to us, and again, I believe the appropriate remedy
2 for the 9-1-1 tapes --

3 THE COURT: I understand. You understand that
4 everything is prejudicial --

5 MR. HARVEY: I do, Your Honor.

6 THE COURT: -- in criminal cases, whether it's
7 prejudice to one side or the other.

8 MR. HARVEY: Your Honor, I --

9 THE COURT: And I've got to discern whether the
10 probative value for 403 purposes outweighs the prejudicial
11 value to the State, to your client, and if you've had the
12 transcript of the tapes --

13 MR. HARVEY: Well.

14 THE COURT: -- and you.

15 MR. HARVEY: I'm listening, Your Honor.

16 THE COURT: If you've had the transcripts for the
17 tape, I don't see where the actual introduction of the
18 tapes prejudices you anymore.

19 MR. HARVEY: Let me --

20 THE COURT: I don't want to -- go ahead and put it on
21 the record, but I'm going to deny your motion, okay. You
22 want to make a record, go ahead.

23 MR. HARVEY: Yes, Your Honor. Yes, sir.

24 (Pause).

25 May it please the Court. Your Honor, the information

1 I have is -- and I misspoke when I characterized it. They
2 are not real-time transcripts as what would be prepared by
3 a court reporter. They are documents which are a summary
4 of the information that's placed into a 9-1-1 detailed
5 report of a 9-1-1 agency.

6 THE COURT: A log.

7 MR. HARVEY: Correct. That's different than a
8 transcript which would reflect the content of the
9 communication.

10 THE COURT: Well, if there's anything different once
11 you listen to the tape, which I assume you have, from what
12 you have previously been notified about, I might consider
13 reconsidering it, but based on what I know at this point
14 in time, I respectfully deny your motion.

15 MR. HARVEY: Thank you, Your Honor.

16 THE COURT: Now, the only remaining issue as I see
17 it, are these photographs, and I'd like to take that up at
18 nine o'clock in the morning.

19 MR. HARVEY: Your Honor, I think we've resolved the
20 photograph issue with respect to photographs of the
21 deceased, am I correct, Mr. Potts?

22 MR. POTTS: Yes, Your Honor.

23 MR. HARVEY: And there is.

24 MR. POTTS: Of the incident case. State v. Collins
25 resolved that pretty clearly for us.

1 MR. HARVEY: Your Honor, so we have resolved that
2 aspect of the case. Maybe Mr. Potts and I can resolve --
3 that was the main gist of the photograph motion, Your
4 Honor.

5 The ancillary part of the paragraph motion is I was
6 given new photographs of the boat and incidental location
7 as part of the overall factual basis for the case last
8 Monday or Tuesday. I can't remember which day.

9 The State has other photographs that they have timely
10 disclosed to me that I have told Mr. Potts I don't have an
11 objection to -- I don't have an objection.

12 I don't have an objection to them being used. I
13 assume it meets the 403 test, but my objection is to any
14 of this new stuff that's being provided to me late, I --
15 again, Your Honor, these are --

16 THE COURT: I thought you told me you just resolved
17 it.

18 MR. HARVEY: No. They're photographs of the boat
19 that I was given of a vessel involved in the accident late
20 and photographs of the decedent. So part of the
21 photograph -- one of the remaining issues with respect to
22 the photographs that I was given is the late disclosure of
23 those photographs.

24 THE COURT: All right. I see. We'll take it up in
25 the morning.

1 MR. HARVEY: Thank you, Your Honor.

2 THE COURT: Let me have a -- be prepared to -- let's
3 identify what you're talking about.

4 MR. POTTS: Yes, Your Honor.

5 THE COURT: So the court -- so the record will be
6 clear what photographs you're talking about.

7 MR. HARVEY: Thank you, Your Honor.

8 THE COURT: All right. Stand at ease until
9 nine o'clock in the morning.

10 MR. POTTS: Thank you, Your Honor.

11 (Whereupon, There was an overnight recess).

12 THE COURT: Yes, sir.

13 MR. HARVEY: Your Honor, may I address the Court?

14 THE COURT: Yes, sir.

15 MR. HARVEY: Your Honor, with respect to issue we
16 left, Your Honor, and concerning -- there was an issue I
17 had raised about late disclosure of a photograph.

18 THE COURT: Yes, sir.

19 MR. HARVEY: I've had an opportunity to discuss that
20 issue with my client. I've had the opportunity to show my
21 client some of the photographs.

22 THE COURT: Yes.

23 MR. HARVEY: We're not going to move forward in that
24 aspect of the motion before the Court. We have reached --
25 there's one less matter that will be before the Court this

1 morning.

2 Your Honor, I have -- Mr. Potts and I have identified
3 the photographs with specificity, so we won't need to go
4 forward with that motion concerning photographs of the
5 boat that were turned over on 2/27 or 2/28.

6 THE COURT: Okay.

7 MR. HARVEY: Thank you, Your Honor.

8 THE COURT: Now, let me just -- is it my
9 understanding, then, that the State plans to introduce
10 these photographs, and that there's no objection?

11 MR. HARVEY: Well, there's no objection based upon.

12 THE COURT: Late disclosure.

13 MR. HARVEY: Late, late disclosure, correct, Your
14 Honor.

15 THE COURT: Will there be other objections?

16 MR. HARVEY: To these photographs, frankly, Your
17 Honor, it depends on how many other photographs they
18 intend to introduce, and there may be a potential
19 cumulative value -- question.

20 THE COURT: Well, I understand.

21 MR. HARVEY: But to the --

22 THE COURT: I just wonder if we can mark them and --

23 MR. HARVEY: Yes, Your Honor. That's something I can
24 talk with the solicitor during a break in the trial, but
25 with respect to a motion that was pending yesterday --

1 THE COURT: All right.

2 MR. HARVEY: I wanted to make sure we -- perhaps you
3 can preface it -- the motion regarding late disclosure of
4 a series of boat photographs that accompany the -- that
5 accompany the coroner's file, there is no objection based
6 on late disclosure.

7 THE COURT: All right. Thank you.

8 MR. HARVEY: Thank you, Your Honor.

9 THE COURT: Let's move on to the suppression motion.
10 At this time, I would like to recall Officer Bickley.
11 Officer Bickley, you're still under oath. Do you
12 understand?

13 THE WITNESS: Yes, sir.

14 THE COURT: Do you have your report with you?

15 THE WITNESS: Yes, I do, Your Honor.

16 THE COURT: All right. I've had the opportunity to
17 review your report over the evening, and, of course, I
18 heard the testimony yesterday but...

19 I just want to ask you just a very few questions. As
20 I understand it, you went to the emergency room at
21 Palmetto Richland. Can you tell me what the scene was
22 like, in other words? I guess that's -- I guess that's my
23 question in terms of your investigation.

24 THE WITNESS: In terms of my investigation? When I
25 initially went to it, I simply had heard I had a boating

1 accident.

2 When I showed up at the scene of Palmetto Richland, I
3 go inside. Ms. Bullard is there, who they transported
4 thinking they might could save her, and they weren't able
5 to.

6 THE COURT: Did you know that?

7 THE WITNESS: Yes, sir. I actually walked in the
8 room where she was after -- after they pronounced -- I
9 mistakenly went into the wrong room.

10 It was going from person to person, because at that
11 point in time, you had Mr. Christofoli who was in there
12 right then bleeding and being worked on. You had other
13 people who were being brought in on the gurney, so I was
14 going person to person.

15 There was some back and forth involved in it as far
16 as trying to figure out who was who and what was what.
17 Because to add further confusion to it, usually when you
18 have a boating accident, you can say, "Were you in the
19 white boat? Were you in the green boat? Were you in the
20 fiberglass boat? Were you in the aluminum boat?"

21 In this case, both boating accidents were big white
22 fiberglass boats and both other boats were smaller
23 aluminum boats.

24 Basically, just -- I'm dealing with, you know, going
25 from person to person and trying to identify who they were

1 and what place they had it.

2 Does that answer your question, Your Honor?

3 THE COURT: And as far as this accident, it's my
4 understanding you first interviewed Mr. Christofoli.

5 THE WITNESS: Christofoli, yes, sir.

6 THE COURT: What did you determine in terms of your
7 investigation he had been doing that day?

8 THE WITNESS: He told me he had been out to dinner
9 with friends and that he had consumed alcohol.

10 THE COURT: All right.

11 THE WITNESS: The standard answer on almost anybody
12 when you ask them if you have beers is a couple. He then
13 clarified that he had, you know, a number of drinks, a
14 specific number, but being able to smell it on him, not
15 being able to know had he drank any more after that.

16 Yesterday we got into a discussion on probable cause,
17 and my understanding was that I was being asked about
18 probable cause for me being the charging officer for
19 boating under the influence.

20 I did not have probable cause in regards to charging,
21 but my understanding of the law was that I had the
22 probable cause knowing that he had been an operator in a
23 boat, knowing that he had been consuming alcohol, and
24 knowing that I had a fatality to request the blood draw.

25 THE COURT: Did you have the Data Master available at

1 that time?

2 THE WITNESS: No, sir; no, sir. Not at the hospital,
3 and he was under specific care at that time on the table
4 being worked on with injuries.

5 THE COURT: So your -- what was your alternative?

6 THE WITNESS: I asked to draw blood.

7 THE COURT: You felt you had probable cause to do so?

8 THE WITNESS: Yes, sir, based on the law as far as
9 him being involved in the accident where a fatality had
10 occurred.

11 THE COURT: All right. Then you moved on to
12 Mr. Hair.

13 THE WITNESS: Yes, sir.

14 THE COURT: And did you follow the same procedure
15 with Mr. Hair?

16 THE WITNESS: Yes, sir, as far as the conversation
17 went in the interview. However, the -- from the
18 beginning, you know, he allowed that he was not an
19 operator of the vessel and that the individual later
20 determined to be Mr. Kranendonk was.

21 THE COURT: And did you make any effort to identify
22 whether he had consumed alcohol?

23 THE WITNESS: From general discussion of what their
24 daily events had been, yes, sir, I understand it's not
25 included in the report.

1 I'm more used to the report being a reminder of
2 incidents rather than exactly a specific detailed event,
3 but he did tell me they had been out partying on the lake.

4 THE COURT: But you chose not to draw blood from him?

5 THE WITNESS: Yes, sir, because he identified himself
6 as not being an operator, and from the general
7 conversations as the evening went on with other people, it
8 pointed also to Mr. Kranendonk being the other operator,
9 like I did not draw blood from Mr. Lax when I interviewed
10 him.

11 THE COURT: All right. Stay with my series of
12 events.

13 THE WITNESS: Yes, sir.

14 THE COURT: Now, you say in your report around this
15 time, Mr. Miller --

16 THE WITNESS: Operator in another boat from the other
17 accident, Your Honor.

18 THE COURT: Okay. That's the other accident.

19 THE WITNESS: Yes, sir; yes, sir.

20 THE COURT: But you drew blood from him.

21 THE WITNESS: I drew blood from Mr. Miller because he
22 was identified as an operator, and there were fatalities
23 in his accident, as well.

24 THE COURT: All right. Then we get to
25 Mr. Kranendonk, and go through the same procedure you did

1 with Mr. Christofoli in terms of interviewing him --

2 THE WITNESS: Yes, sir.

3 THE COURT: -- and what you learned and what you did.

4 THE WITNESS: Yes, sir.

5 THE COURT: I'm just looking at your report.

6 THE WITNESS: Yes, sir.

7 THE COURT: What did you --

8 THE WITNESS: I started to interview him. Once I
9 determined that he was an operator, we paused in the
10 interview because it had already been a good bit of time,
11 and I know that blood evidence is fleeting. I asked to
12 secure the blood evidence and then continue with the
13 interview.

14 THE COURT: What was your basis for asking to secure
15 the blood evidence?

16 THE WITNESS: In this regard again, I'm the only
17 officer in the hospital. I don't have alternate
18 resources. There is not a Data Master there.

19 THE COURT: Well, look at your report on page two of
20 four. I was reading the last paragraph.

21 THE WITNESS: What's -- I mean, what I'm trying to
22 understand, Your Honor, he told me he had been drinking.

23 THE COURT: What?

24 THE WITNESS: Excuse me?

25 THE COURT: What?

1 THE WITNESS: He told me that he had been drinking
2 alcohol that day.

3 THE COURT: Well, you are much more specific in this
4 report..

5 THE WITNESS: Vodka lemon Propel, yes, sir, Your
6 Honor.

7 THE COURT: What is lemon Propel?

8 THE WITNESS: It's an energy drink. He it's the --
9 Sergeant Roosen mentioned that when he found the thing, he
10 found the drink. That was what he named in the
11 discussion.

12 THE COURT: How much did he tell you he had to drink?

13 THE WITNESS: He told me approximately three that
14 day. He said at least three was his quote. I have got an
15 additional statement.

16 I only have my portion of the report right here. I
17 can get from the file that Sergeant Lewis has his specific
18 statement if you'd like me to read it, as well, Your
19 Honor.

20 THE COURT: Whose statement?

21 THE WITNESS: Mr. Kranendonk's that he gave at that
22 point in time.

23 THE COURT: Did he give that statement at that point
24 in time or after the blood draw?

25 THE WITNESS: He wrote the statement after the blood

1 draw.

2 THE COURT: What I'm concerned about is the reason
3 you drew blood from Mr. Kranendonk on that day, on that --
4 at that time.

5 THE WITNESS: My understanding -- again, my
6 understanding of the law, he had told me he had been
7 drinking.

8 I had a fatality involved in a boating accident. I
9 did not have another officer or another way to get him to
10 a Data Master at that time, and I made a judgment call.

11 THE COURT: What was that call?

12 THE WITNESS: To ask for blood --

13 THE COURT: Just for the record, what was that?

14 THE WITNESS: To ask for a blood draw to be able to
15 secure evidence for BAC.

16 THE COURT: And what was his response?

17 THE WITNESS: He told me I could have it, but I will
18 state to the fact that it was not -- I cannot tell you
19 that it was a voluntary specific.

20 You know, I explained the law to him as far as my
21 understanding of it, that because he had been involved in
22 a fatal boating accident, because alcohol was involved,
23 that he was required to give a blood sample.

24 THE COURT: Did you feel you had probable cause to do
25 that?

1 THE WITNESS: Yes, sir, from my understanding of the
2 law, he did not have to be under arrest. I simply had to
3 understand that he was involved in it.

4 THE COURT: And when was he arrested?

5 THE WITNESS: When was he arrested? I do not know,
6 Your Honor. I was not involved in the arrest process or
7 the warrant process.

8 THE COURT: Was it that night?

9 THE WITNESS: No, sir.

10 THE COURT: But he was free to go?

11 THE WITNESS: Yes, sir.

12 THE COURT: One other thing, your advisement of
13 implied consent rights.

14 THE WITNESS: Yes, sir.

15 THE COURT: Did you go over that with him?

16 THE WITNESS: Yes, sir, I did. I read it to him
17 specifically, and I have the signed document from him, as
18 well, in Sergeant Lewis' copy of the report. He has got
19 all of the originals.

20 THE COURT: All right. That's all I have.

21 Just either State or Mr. Harvey.

22 MR. HARVEY: Yeah. Do you want to...

23 MR. POTTS: Nothing from the State, Your Honor.

24 THE COURT: All right.

25 MR. HARVEY: The implied consent right form that you

1 read to Mr. Kranendonk is a special felony BUI implied
2 consent form, correct?

3 THE WITNESS: Yes, sir.

4 MR. HARVEY: Mr. Kranendonk during your conversation
5 initially informed you he wanted to refuse the test,
6 correct?

7 THE WITNESS: But even if he said that he wanted to
8 refuse it, by my understanding of the law, he doesn't have
9 a right to refuse it.

10 THE COURT: Right. So you told him he couldn't
11 refuse it, correct?

12 THE WITNESS: I told him he was required to give it
13 by law. I do not recall them asking to refuse it.

14 MR. HARVEY: All right. And when you talked to
15 Mr. -- beg the Court's indulgence one moment.

16 That's all I have.

17 THE COURT: Thank you very much.

18 THE WITNESS: All right.

19 THE COURT: Mr. Bickley, you may come down. Thank
20 you.

21 All right. Based on the -- this officer's testimony
22 and my review of the law and the statutes that apply to
23 the boating under the influence statute, I find that the
24 officer did, indeed, have probable cause to draw the blood
25 at the scene.

1 I find that there was -- that considering the
2 totality of the circumstances, an officer brought into an
3 emergency room where he was made aware that there's been a
4 fatality or there were people that he finds to be involved
5 in the accident in various stages of treatment.

6 In his effort to make a sufficient or an adequate
7 investigation as to the identification of the drivers, the
8 operators of the vehicles, the vessels. I think I have to
9 take into consideration the totality of the circumstances.

10 He identified two operators of -- three, for that
11 matter, but only two involved in this case, both of which
12 admitted to him they had been drinking.

13 Mr. Kranendonk admitted he had been drinking more
14 than Mr. Chris Piney -- Christofoli, I'm sorry. I feel --
15 I think it was reasonable under the circumstances and --
16 for him to believe that he needed to draw blood for him to
17 comply with the statute.

18 I think he met the terms of the statute in that he
19 felt there was probable belief -- probable cause to
20 believe that the person violated the statute 50-21-13---
21 113. Therefore, I will, at this point, rule that the
22 officer had probable cause to draw the blood.

23 Now, Mr. Harvey, I'm -- you raise an additional
24 point. That is that the officer did not have probable
25 cause to send the sample to the State Law Enforcement

1 Division, and you used the accumulated knowledge of the --
2 of law enforcement as a basis for your position.

3 Would you -- would you just clarify that for me,
4 because I don't see the difference? I don't see the
5 difference --

6 MR. HARVEY: Well, Your Honor --

7 THE COURT: -- in sending it to SLED. If he had
8 probable cause to draw it, why didn't he have probable
9 cause to send it to the State Law Enforcement Division for
10 testing?

11 MR. HARVEY: There is a distinction there. Your
12 Honor reviewed the report. The officer noted with
13 specificity that he had not been advised that
14 Mr. Kranendonk had successfully passed a field sobriety
15 test at Lake Murray Marina.

16 The difference is if Your Honor looks at the totality
17 of circumstances earlier on, based upon the limited
18 knowledge that the officer has, its terms has expired when
19 the officer knows that he successfully passed the field
20 sobriety test.

21 He has knowledge at that time. I believe that's
22 additional knowledge or different additional information
23 that goes to his probable cause determination.

24 He's got the blood, but it still hadn't been sent to
25 SLED. He's got additional knowledge that he had -- that

1 he had when he got the blood at the hospital. What's
2 different is it's unequivocal. He knew he had passed a
3 field sobriety test.

4 When you look at -- his testimony was, in essence, we
5 take a prophylactic measure. Anytime there's a fatality,
6 we ask for blood.

7 The statute doesn't say that. The statute says if
8 there is probable cause that the individual from whom
9 they're requesting blood committed the offense of felony
10 BUI, so you have this additional information that's known
11 to the officer before it gets to SLED that the totality of
12 the circumstances are earlier on, hours before he was
13 interviewed by law enforcement, subjected to field
14 sobriety tests and then released. I believe that's an
15 additional ground or additional information that reduces
16 his body of knowledge from probable cause to suspicion.

17 He's got additional information. When you weigh the
18 totality of circumstances, if you look at the body of
19 knowledge that he had when he drew the blood, subsequent
20 to the actual taking of blood before it's submitted, he is
21 aware of more circumstances that mitigate or don't rise to
22 the level of probable cause.

23 If the Court will indulge me one moment.

24 (Pause.)

25 Again, Your Honor, I would reiterate that if the

1 Court finds that Officer Bickley had probable cause when
2 he required the submission for a blood sample, which
3 obviously we're disputing the existence of probable cause
4 was mitigated from information later learned concerning
5 the defendant having passed a field sobriety test. At
6 that point, he didn't have probable cause to submit his
7 blood.

8 We just -- he's got -- I guess for purposes of
9 characterization, the first phase of the blood draw and
10 the second phase of the blood draw.

11 In that second phase, they unequivocally had
12 knowledge, I contend, that the authority cited in the
13 memorandum that he passed the field sobriety test and that
14 then mitigates or increases the information, increases the
15 probable cause.

16 Thank you, Your Honor.

17 THE COURT: What's the State's position?

18 MR. POTTS: Your Honor, we believe that Mr. Harvey is
19 artificially splitting the blood draw in two separate
20 phases. Really, Your Honor, the blood draw is one
21 happenstance that occurred that night at the hospital.

22 This occurred the next morning at the -- what we
23 believe he's talking about, Your Honor, the blood draw
24 occurred, and then that's the ending analysis.

25 I think the -- I think as far as policy goes, that

1 public policy word, law enforcement can require evidence
2 and certainly can't throw away that evidence if and when
3 those matters change.

4 Mr. Harvey -- there is no announcement in
5 Mr. Harvey's world where -- you can't just keep that blood
6 in the fridge indefinitely in case you ever regain
7 probable cause. Once you have made that blood draw, Your
8 Honor, that clock is ticking.

9 I think it's unfair to saddle law enforcement with
10 the responsibility of keeping evidence because of this
11 artificial time gap that Mr. Harvey talks about. I don't
12 think he lost probable cause because of the blood draw if
13 the blood draw already occurred, then that stops when the
14 blood draw happens. I just think it's an arbitrary
15 abstract that Mr. Harvey is trying to use, and it doesn't
16 work.

17 THE COURT: Do you think his argument is that the
18 field sobriety test trumped the blood draw?

19 MR. POTTS: I don't think they do, Your Honor.

20 THE COURT: Do you think that's his position that
21 they have or should have more than one way than the
22 officer's finding of probable cause when he drew the
23 blood.

24 MR. POTTS: Your Honor, I believe -- we believe it
25 should have more weight. We talked to the officers. It's

1 our experience they'll tell you people do differently on
2 field sobriety for different reasons.

3 If you want testimony, I think, Your Honor, we can
4 also provide it, but some people do really well on field
5 sobriety tests. Some people do really poorly. You know,
6 that's part of the analysis that goes into it.

7 If -- you know, certainly, you're not -- they are
8 important. I'm not going to say that. I don't think
9 that --

10 THE COURT: Well, they are a threshold --

11 MR. POTTS: There's probable cause. They can't get
12 behind that.

13 THE COURT: Aren't they a threshold determination?

14 MR. POTTS: If -- yes. I think there probably is,
15 Your Honor. I think it's something to take into
16 consideration, Your Honor.

17 I think at that -- I think in this point, clearly,
18 there's probable cause to have a blood draw. I think
19 that's where the analysis stops.

20 THE COURT: All right.

21 MR. HARVEY: Your Honor, again, I believe there is a
22 distinction. Blood was drawn prior to the blood being
23 presented to SLED to be used as evidence.

24 It's clear that the knowledge known to the State, the
25 knowledge known to the officer contained -- there was an

1 exhibit in my memorandum that cited all along the
2 investigative report, which is an inventory of the
3 totality of the knowledge known to the State at that time.

4 We would respectfully submit the totality of the
5 knowledge before that evidence -- the legislature said you
6 can get the blood. The legislature in that statute says
7 there has to be probable cause, and the legislature wanted
8 to make sure that a citizen in the position of
9 Mr. Kranendonk before the State utilized this evidence and
10 utilized this evidence in this particularized circumstance
11 that there was probable cause.

12 I think when you look at the statute, the
13 legislature -- if they're drawing blood, part of that, the
14 next phase is the testing of the blood.

15 Well, we've got an evidentiary continuum here, and I
16 believe after -- after the blood was drawn and before it
17 was submitted to SLED looking at that evidentiary
18 continuum, there was not probable cause.

19 Thank you, Your Honor.

20 THE COURT: All right. Well, I understand your
21 argument, Mr. Harvey. I can't agree with it. I think the
22 test results are admissible evidence and I so rule.

23 All right. Anything else of a pretrial nature?

24 (There was no response).

25 From the State?

1 undivided attention to the attorneys and the parties in
2 this case. We'll now begin with the opening statements.

3 Solicitor.

4 OPENING STATEMENT:

5 MS. SAMPSON: Thank you, Your Honor. May it please
6 the Court.

7 Choices and consequences. For every choice you make,
8 there are consequences. This case is about the choices
9 made by Steven Kranendonk and how his choices had a
10 devastating consequence on May 1st, 2010.

11 You're going to hear in the following days about a
12 boat wreck that happened on Lake Murray on May 1st. On
13 that day, it started out like any other sunny day in
14 Columbia.

15 You're going to hear about two groups of friends.
16 The first group is made up of a gentleman, a gentleman
17 named Rob Christofoli and his girlfriend, Amber Golden.
18 They were out with their friends, who are Chris -- I'm
19 sorry, Colt Lax and his girlfriend, Kelli Bullard.

20 All four of them decided to go to O'Charley's. They
21 ate and you'll hear that Rob had two beers. At that time,
22 they then decided, "It's a good day. It's still nice.
23 Let's go out on the lake."

24 At that point, Rob quit drinking. They decide to get
25 in the boat, get on the lake and have a good night, and

1 that's what they proceed to do.

2 In the second group is Steven Kranendonk and his
3 friend Eric Hair, also known as Harrison. They decided
4 that they, too, were going to go on the lake.

5 They joined with friends Mallory and Jenna Breland
6 who they had just met the night before. They meet in the
7 Publix parking lot in Harbison and they decide to go out
8 on the lake.

9 Before they get out on the lake, they make sure to
10 stop, buy a bottle of vodka, load up their coolers with
11 beer and lemon Propel water because you have to have
12 something to mix with the vodka and get on the lake.

13 They proceed to be on the lake all day, as lots of
14 people do, have some fun, and when it gets dark, they
15 proceed to the marina.

16 This, ladies and gentlemen, is when the two stories
17 collide, literally, with devastating consequences. Now,
18 you're going to hear about some boats.

19 Now, in one boat, which is called a Sylvan aluminum
20 boat you have -- and what the circles are, passengers and
21 the square is driver, okay. Rob is driving the boat; Colt
22 sitting in the back; Amber sitting here, and Kelli sitting
23 here.

24 They decided to go to the marina and meet some
25 friends at the low -- at the landing dock. Now, they're

1 driving, proceeding, as they're supposed to be.

2 The other boat, which is called a Key West boat, it's
3 23 feet; it's a big boat. You have three passengers and
4 one driver. The driver in this case is Steve Kranendonk.
5 His passenger up front is Eric or Harrison. Next to Steve
6 is Jenna and next to Eric is Mallory.

7 Now, I don't know a whole lot about boats. I'm from
8 Tennessee. I like the land. I like to feel what's under
9 my feet, so I don't get on boats.

10 My husband tried to take me on his fishing boat, and
11 he has only succeeded one time. I tried to jump off, so I
12 had to learn a whole lot about boats in order to do this
13 case. What you're going to learn is that unlike cars,
14 boats have to have red and green lights so that you know
15 who has the right of way.

16 There's no stop signs. There's no red lights.
17 There's no yellow medians. There's none of the stuff that
18 we typically have when we drive, so boaters have to have
19 -- take courses in order to learn all of this so they will
20 know who has the right of way.

21 It's not as simple as when you get in a car. Boats
22 also have to have a light on the back, a white light that
23 you can see so that you know there's a boat.

24 If you see the red light, just like when you see a
25 red light when you're driving your car, you are stopped;

1 let that boat proceed because that boat has the right of
2 way.

3 You're going to learn some other terms like portside
4 and different sides. They don't use right and left, and
5 I'm not so good at that either. So I can't remember those
6 terms, but over the next few days, we're going to teach
7 you those terms so that you have the right language to
8 understand what happened and to understand why it's Steven
9 Kranendonk's fault that we are all here today.

10 Steven Kranendonk decided to ignore the rules of
11 boating, whether it's because his blood alcohol level was
12 at a .11, whether it's because he was drinking on the
13 boat, whether because it's just that he was not paying
14 attention. He saw that red light and disregarded it.

15 Instead of pulling the throttle down to slow the boat
16 down or stop it like we would put our foot on the brake or
17 take your foot off the gas of the car, he does nothing.

18 He sees the boat and keeps on going. He keeps on
19 going until his 23-foot boat slams, and I say slam because
20 that is exactly what it did, into the bodies of Amber and
21 Kelli killing them, injuring their friends, folding the
22 boat so much that when their friend Keith Corley happens
23 to drive up and see it, it's sinking.

24 Luckily for us, Keith is able to tow the boat to
25 shore, and now the stories go apart again. Because what

1 do these friends do? They try to save each other.

2 Colt and Rob do their best to try to save their
3 girlfriends. They give them mouth to mouth, but it's to
4 no avail. One of the girls is pronounced dead on the
5 scene. There is absolutely nothing they can do. The
6 other one arrives at the hospital and 20 minutes later is
7 pronounced dead. There is absolutely nothing that they
8 can do.

9 They to their best to help, but they can't. They
10 tell everyone, "We were hit by a boat. It drove off. We
11 don't know what happened. We just know we were hit."

12 What does Kranendonk do? Does he call 9-1-1 to say,
13 "Oh, there is this other boat. Go help them"? No. They
14 call 9-1-1, but what you're going to hear is their stories
15 start to change immediately.

16 Initially they say, "Oh, a boat hit us in the front."
17 Then they say, "Oh no, no, no. A boat hit us on the
18 side." Then he says, "I don't even know if we hit a boat.
19 I just know that we hit something and all of us go flying
20 out of the boat."

21 You're going to learn that Steve, Jenna, and Mallory
22 fall out of the boat when the collision occurs. Eric is
23 able to stay on the boat, and when he sees that his
24 friends are outside of the boat in the water, he turns
25 around and goes to get them.

1 Now, let me explain something to you really quick:
2 There's a reason why both of them think there is a hit and
3 run. Unlike a car -- we've all seen car wrecks. If
4 you're driving on 26, you see them every day.

5 Cars stop when they collide. They don't have a
6 choice: Gravity, force, whatever. They collide and they
7 stop. Boats don't. When boats collide, unless you
8 throttle down, they're going to keep going.

9 That's exactly what happened, both boats keep going.
10 The throttles -- because everybody is knocked either out
11 of the boat or unconscious.

12 Nobody knows to throttle down, so the boats keep
13 going, all right. They know they've been hit by a boat
14 because what do they do? When Steven Kranendonk gets on
15 the landing, is he yelling for help? Is he trying to get
16 help for the girls that he had to drag back in the back
17 who had to be helped back into the boat? No.

18 What is he concerned with? Getting the liquor
19 bottles off the boat, getting the beer off the boat.
20 You're going to hear that from a bystander who came to
21 help, but instead of being able to get help, he is
22 watching them unloaded liquor bottles.

23 He takes one because he knows something is wrong. He
24 knows it's just not right to be taking alcohol off a boat
25 when people were just hurt. You'll see that liquor

1 bottle.

2 You'll see there's only about a fourth of the liquor
3 left in the bottle. They tried to hide evidence, and
4 that, ladies and gentlemen, is showing that they were
5 reckless and they knew it. They changed their story over
6 and over again showing that they're reckless and they know
7 it.

8 When DNR arrives, they give them different stories.
9 They can't seem to say what happened. They go to the
10 hospital and ask them what happened. They're getting
11 different stories. It's never consistent because it's
12 never the truth.

13 The story they try to stick to is that this tiny --
14 and I shouldn't say tiny because it has four people on
15 it -- the small Sylvan boat ran into the front of their
16 boat, but you're going to see the pictures. It's just not
17 possible. It's just not possible.

18 Now, I'm sure Mr. Harvey is going to get up here and
19 say this was an accident, a tragic accident; that his
20 client didn't mean to hurt anybody, didn't mean to kill
21 anybody, and he wasn't reckless. It just was an accident.

22 That simply isn't the case. Is this tragic? Yes.
23 It's tragic that the families have to sit here and listen
24 to how their daughters died.

25 It is tragic that they are not going to be able to

1 see them go on, graduate from college and do all of the
2 things we hope to see our children do. That's what's
3 tragic.

4 And it's tragic that all of this could have been
5 avoided if Steven Kranendonk had of made better choices,
6 if he hadn't been drinking. If he hadn't have ignored the
7 rules. If he had just slowed down his boat when he saw
8 that red light instead of ploying into Amber and Kelli.
9 That's why we're here today.

10 At the end of this case, my co-counsel is going to
11 come and ask you to make a verdict. Judge Cooper is going
12 to educate you all on the law. I'm just going to give you
13 a few details because as jurors, you're not given
14 instructions on how to be a juror, right?

15 Most of us are professionals. We're told how to do
16 our jobs. You're we're given rules. You aren't. You're
17 going to hear a bunch of lawyers talk. You're going to
18 hear a bunch of witnesses talk, and then we're going to
19 ask you to make a decision.

20 I'm going to give you a couple of rules. I'm going
21 to ask you to listen closely. I want you to look at all
22 of the evidence. Don't ignore it. Don't follow along
23 with this, "Let's just call it an accident. He didn't
24 mean to," because the first thing you're going to learn is
25 we don't have to prove he meant to kill anybody.

1 I'm sure that everyone in this room, including
2 Mr. Kranendonk, wishes they could go back to May 1st and
3 change the results. I have no doubt about that, but we
4 can't. So you have to look at what happened, and when you
5 look at what happened, he is responsible, whether he meant
6 to do it or not.

7 The only thing we have to prove beyond a reasonable
8 doubt is that he recklessly drove that boat and that he
9 recklessly caused the deaths of Amber and Kelli; not that
10 he did it on purpose, not that he plowed into them
11 intending to kill them, but that he recklessly drove the
12 boat. That is all we have to show you.

13 I do not think that there's going to be a question
14 about the deaths. So yes, we have to prove that they died
15 on the -- as a result of the boat. That's not really a
16 question.

17 The only thing you're going to hear us arguing about
18 is whether it's his fault or not. At the end of this
19 case, we're going to ask you to come to a verdict, a
20 verdict, as we say, that speaks the truth, a verdict that
21 holds Steven Kranendonk responsible for the choices and
22 the consequences of his actions.

23 The only verdict that will give this court and this
24 county justice, a verdict of guilty of two counts of
25 reckless homicide for the deaths of Amber and Kelli.

1 Thank you.

2 THE COURT: Mr. Harvey.

3 OPENING STATEMENT:

4 MR. HARVEY: May it please the Court.

5 THE COURT: Yes, sir.

6 MR. HARVEY: Good morning, ladies and gentlemen.

7 JUROR: Good morning.

8 MR. HARVEY: Good morning. My name is Jonathan
9 Harvey. You figured that out. I'm a lawyer from
10 Columbia, and I represent the young man seated at the
11 defense table, Steven Kranendonk.

12 As a lawyer, I have prepared an opening statement. I
13 had it organized, and I was going to follow a format, but
14 yet, I heard His Honor address the jury, and I heard
15 Ms. Sampson address the jury.

16 One thing you're not going to find is lawyers and
17 judges and lawyers agreeing about things, but I wanted to
18 let you know, I agree with what His Honor told you. When
19 His Honor told you this case is a search for the truth.

20 I agree with what His Honor told you that the
21 yardstick to measure the burden of proof, the
22 responsibility of proving this case is beyond a reasonable
23 doubt.

24 I agree with His Honor, and I'm going to talk more
25 about that bedrock principle that he told you, the

1 presumption of innocence.

2 His Honor called it a substantial right, and it is a
3 substantial right, and I agree with my colleague from the
4 solicitor's office. We don't agree about much, but I
5 agree with her.

6 She told you he didn't mean to do it. She told you
7 he didn't mean to do it. She told you this case is about
8 whether or not he was reckless, and I'm glad the
9 solicitor's office cleared up that point because from the
10 very outset of the case, the State has told you he didn't
11 mean to do it.

12 So I thank you for that. Now, while Ms. Sampson and
13 I might not agree on many things in relation to this case,
14 I'm sure she'll agree with me that as she did tell you,
15 all concerned people, whether they're a prosecutor or a
16 defense lawyer recognizes this case emanates from a tragic
17 accident.

18 The enormity of the tragedy for Kelli's family, the
19 enormity of the tragedy for Amber's family, is almost
20 beyond comprehension. There is no question this incident
21 has impacted all affected by it.

22 It's impact radiated out to affect each participant.
23 It's radiated out to affect their family, their friends
24 and not to acknowledge that this accident has taken
25 something from everyone, not to acknowledge that this

1 accident has made everyone less whole. It's just not
2 right.

3 There is no one in this courtroom -- there is no one
4 in this courtroom who doesn't have great sorrow or lament
5 over the events of May 1, 2010.

6 The recognition of the tragedy and the grief it
7 invokes, it still -- and the grief it invokes to this day
8 is a different proposition than what lies before you in
9 your duty as a juror.

10 Recognition of the emotions that permeate this case
11 is a different proposition than what must be determined by
12 this trial.

13 I want to make sure that -- from the outset that it's
14 clear that I recognize you may have genuine heart-felt
15 sympathy. I recognize that, but by your oath as jurors
16 and by what His Honor instructed you, you cannot let your
17 emotions be your guide. Your role as jurors can't be
18 dictated by emotion.

19 As I'm sure His Honor will instruct you, your job as
20 jurors is to decide from the evidence whether the State
21 has proven its case.

22 I had mentioned I represent Steven. Please take a
23 good look at Steven. Take a good look at Steven. That's
24 what an innocent man looks like, because His Honor told
25 you there is only one presumption in this case.

1 What did His Honor tell you from the start? He is
2 presumed innocent. Take a look at Steven because as His
3 Honor has told you in his remarks to you this morning and
4 I will mention later, Steven, like all who enter this
5 courtroom and all who sit at that table, are presumed
6 innocent.

7 There is only one constant, and the prosecutor had
8 mentioned gravity in her remarks. Remember, she talked
9 about roads and gravity.

10 Well, we know gravity is a constant. Every moment
11 we're on earth gravity is pulling them. There is another
12 constant that's in this courtroom. There is another
13 constant that's pulling on my client throughout this
14 trial.

15 Do you know what that constant is? The same thing
16 she mentioned, just like gravity. It's the presumption of
17 innocence.

18 What did His Honor tell you? What did His Honor
19 instruct you when he told you how important this
20 proceeding is? He mentioned the presumption of innocence.

21 As I address you all, I would like to be very brief,
22 and I hope I can be brief, but this case is too important
23 for my client. I feel as though he deserves my best
24 effort.

25 Initially, let me say like my colleges from the

1 solicitor's office, I appreciate your service. I doubt
2 when you received your notice, your summons from the Clerk
3 of Court about jury duty you were overjoyed.

4 It's not as if life isn't tough enough. I doubt all
5 of you feel as though, "I don't have enough to do at work.
6 I don't have enough to do at home, and what I really want
7 to do is take time off from work, take time off from what
8 I have going on at home and come to 1701 Main Street and
9 be at the courthouse.

10 "What I really want to do is be placed on a jury
11 panel, and then I want to be picked for jury duty," and
12 not only were you picked for jury duty, but you were
13 picked for this particular jury and having to be faced
14 with making difficult decisions.

15 I recognize you didn't volunteer to be here. You
16 know there are many people at each counsel table who would
17 rather not have the occasion to be here. You know Steven
18 doesn't want to be here. We find ourselves together right
19 now through a confluence of events. Those events have
20 brought us together.

21 We are parties that find ourselves together for the
22 duration of this trial. A colloquial or informal way to
23 describe our forced relationship, sometimes you've heard
24 the expression a shotgun marriage. We have people who are
25 forced to be together, but like all relationships, we're

1 going to put our best efforts forward.

2 You may wonder how are our efforts going make the
3 trial proceed as it should? We're going to make the trial
4 go forward. We're going to make the trial go forward
5 because each of us has a role to play.

6 You may remember His Honor told you about the role of
7 the court. His Honor told you about the role of the jury,
8 to finds the facts, and the role of the lawyers is to
9 represent their party.

10 His Honor, he runs the court. You jurors, you look
11 at, you listen to the witnesses. You look at, you listen
12 to other evidence and you decide the facts. You decide
13 what happened.

14 I didn't want to interrupt my colleague when she was
15 making her argument to you, but remember what His Honor
16 said, you've got to decide the facts not based upon what
17 she said, but what comes from this witness stand. That's
18 only her argument. That's only her presentation. You
19 have to decide what the evidence really shows you. It's
20 called an opening argument.

21 Why do we have jurors if what someone says is so?
22 That's only an opening argument. You decide what
23 happened. You decide what to believe and who to believe.
24 You decide how much of a witness's testimony, if any, do
25 you want to believe.

1 Like I said, the lawyer's job is to represent their
2 clients. Your role is to decide what happened, and you
3 start your role, you start your job, by following your
4 oath, your oath you took as jurors.

5 Now, I mentioned about you -- that you didn't
6 volunteer to be on jury duty. Your role isn't to let your
7 displeasure at being selected for jury duty cause you to
8 prejudge this case.

9 You've been selected. Your service makes a
10 difference, and because your service is important, I
11 implore you, I urge you, and because this trial is so
12 important for my client, Steven, I'm even going to ask you
13 again that for the time that we're together you cast aside
14 your feelings about being on jury duty and you devote your
15 best efforts to being a fair and impartial juror.

16 I'm confident each of you is up to this task. I'm
17 confident each of you acknowledge that this trial is
18 important for Steven. I'm confident that each of you now
19 know how important your role is in this trial.

20 Your role is not to let passion, not to let
21 prejudice, not to let frustration about the serious issue
22 of crime make you not abide by your sworn duty. I don't
23 think there is a disagreement in this courtroom. There is
24 no disagreement that the charges before you represent
25 serious allegations.

1 I want to make it clear, I do not think so little of
2 the time that you've been asked to sacrifice. I do not
3 think so little of your duty that I would ask you to
4 condone criminal activity. I would not and will not
5 demean your presence by such a request.

6 I do recognize that for you jurors, this case is
7 going to be a test. What will be tested? I think what's
8 going to be tested in this case is your courage.

9 Why is this case a test of your courage? Because at
10 the conclusion of the trial, what you may want to do is
11 not what you've sworn to do, because what you must do is
12 remain true to your oath, because what you must do is not
13 always what you want to do, because you do not like what
14 you've heard, because you do not like what you've seen,
15 and because you do not like being informed about a tragic
16 accident does not mean that the State of South Carolina
17 has met its burden of proof.

18 The State has made specific allegations. It is
19 alleged that Steven engaged in particularized reckless
20 conduct. It's alleged that Steven did or did not do
21 particular things.

22 The State in this case must prove its allegation.
23 Can the State prove its allegation? Can the State of
24 South Carolina prove beyond a reasonable doubt that on
25 May 1, 2010, Steven's operation of his boat, his reckless

1 operation of his boat, was the cause of the death of Kelli
2 and Amber?

3 Can the State prove beyond a reasonable doubt after
4 you listen to all of the evidence that Steven operated his
5 boat for the reckless disregard for the safety of others,
6 and what I mean by that is I want you to pay close
7 attention to this witness stand because I submit as this
8 case unfolds and how the case unfolds, it's going to be a
9 little bit different than that image the prosecutor tried
10 to project in her comments.

11 You listen to how the case unfolds and you listen to
12 what happened, and you make a decision on this evidence,
13 and you're going to have to decide whether Steven's
14 conduct was reckless and did he operate the boat with the
15 reckless disregard for the safety of others.

16 I anticipate -- and you heard from the State. It's
17 going to present evidence concerning the accident and its
18 aftermath. I anticipate the State will present evidence
19 about what it contends occurred.

20 The mere fact that the State presents evidence, as
21 I'm sure His Honor will instruct you, does not mean that
22 the State has proved its case, or as lawyers say, met its
23 burden of proof or His Honor has instructed you met the
24 yardstick.

25 The burden of proof, the burden of proof: What does

1 it mean and why is it important? The burden of proof
2 means the State of South Carolina must prove this case.

3 The burden of proof in every criminal case is beyond
4 a reasonable doubt, and it's your job. It's your
5 important job, the job in which you make a difference, is
6 to decide if at the end of the case the State has
7 convinced you all as jurors beyond a reasonable doubt.
8 Has it convinced you beyond a reasonable doubt of the
9 crime for which Steven is charged.

10 Now, what does Steven Kranendonk have to prove? I
11 just looked at my watch and timed what Steven Kranendonk
12 has to prove. As His Honor told you, Steven Kranendonk or
13 any defendant in the State of South Carolina in the United
14 States of America has nothing to prove. That's why it
15 took no time for me to time it.

16 As I keep saying, the State of South Carolina has the
17 burden of proof. Why do I keep mentioning that? Because
18 as I said when I first met you, Steven under our system of
19 justice is presumed innocent.

20 Now, another way to look at the presumption of
21 innocence and the burden of proof is this way: Steven
22 comes into court shrouded, wrapped in a robe. He is
23 wrapped in a cloak of innocence. It's wrapped around
24 him. Think of the flags in the courtroom, the flag of the
25 United States of America, the flag of the State of South

1 Carolina.

2 Look at those flags and envision them wrapped around
3 Steven like a cloak of innocence.. He stays wrapped in
4 those flags throughout this trial.

5 Just like gravity is constant, he stays wrapped in
6 those flags and the presumption of innocence throughout
7 this trial, and he remains fully cloaked in his innocence.
8 He remains presumed innocent until the State can remove
9 those cloaks of innocence by its evidence.

10 Under our system of justice, it's the same for every
11 accused. It doesn't matter who you are. If I'm on trial
12 or any of you are on trial, no matter who you are, no
13 matter what your address is, no matter where you work, no
14 matter whether you live in a penthouse, whether you work
15 in the executive suite or you come in after hours and you
16 clean up that executive suite, every person who sits at
17 the table where Steven Kranendonk sits is presumed
18 innocent, and he's protect by that cloak of innocence I
19 just mentioned.

20 Now, what do I mean by beyond a reasonable doubt?
21 If, at the end of the case, after you weigh all the
22 evidence and you feel, "Well, I think so," or you think
23 maybe the State has proven its case, that's not beyond a
24 reasonable doubt.

25 If there is a fact that the State has not proven, if

1 there is a reason that would cause you to hesitate to act,
2 if there is from the State's evidence a reason that does
3 not leave you firmly convinced of Steven's guilt, then you
4 haven't been convinced beyond a reasonable doubt.

5 Now, I need to tell you, I've told you what your job
6 is. I've told you how important your service is. Now I
7 need to tell you where the reasons to doubt Steven's guilt
8 are going to come from.

9 The reason to doubt Steven's guilt aren't going to
10 come from Jonathan Harvey, his lawyer. They aren't going
11 to come from Ms. Sampson or Mr. Potts, the prosecutors,
12 nor are they going to come from His Honor.

13 The one place that's the reason to doubt Steven's
14 guilt, the one place and one place only is right here on
15 this witness stand, right here. The reasons to doubt
16 Steven's guilt are going to come from right here. It's
17 going to come from the witnesses you meet and hear from.

18 Well, what are you going to hear? What are you going
19 to see? You're going to meet and hear from witness who
20 are truly sincere. You're going to meet and hear from
21 witnesses who have differing recollections about the
22 salient event in question, and the salient event in
23 question is the accident.

24 You will have an opportunity to hear and observe what
25 was recalled about May 1 and part of May 2, 2010. You're

1 going to learn about what was seen and more importantly,
2 you will have an opportunity to learn about the
3 circumstances surrounding the witness's observations
4 related to the case.

5 You're going to meet and hear from officials from the
6 South Carolina Department of Natural Resources. You're
7 going to meet and hear from personnel from other law
8 enforcement agencies, the Lexington County Sheriff's
9 Department. You will meet and hear from personnel from
10 the South Carolina Law Enforcement Division.

11 Now, South Carolina Law Enforcement Division is known
12 by the acronym SLED. The Department of Natural Resources
13 is known by the acronym SC DNR. You might look at me and
14 say, "Well, Mr. Harvey, what's an acronym?"

15 An acronym is a word made up of the first initials of
16 multiple words. Well known examples are RADAR and SONAR.
17 For people my age, there is an acronym from a famous TV
18 program, MASH.

19 MASH stood for Mobile Army Surgical Hospital, MASH.
20 An acronym is very important in this case. That acronym
21 is did, D-I-D. Did. That acronym comes from the words
22 Doubt In the Details. That acronym is present in this
23 case.

24 The doubt is going to arise when you learn about the
25 who, when, where and what in this case. There are doubts

1 in the details in the State's case.

2 You will come across those details, and I will speak
3 to you more about the doubts in the State's case when I
4 make a closing argument. I'm confident you'll be able to
5 assess the State's case and the details in question.

6 Why am I confident you're going to be able to
7 recognize the doubts in the details? Because each of you
8 as jurors possesses two important tools that are going to
9 enable you to recognize the data. What are these tools?
10 Common sense and the knowledge and wisdom you get from
11 life's experiences.

12 Let's talk about common sense. All because we're in
13 a courtroom, all because His Honor is presiding over the
14 court and all because the lawyers are arguing does not
15 mean that common sense is not a value and does not mean
16 that common sense will play a role in this case. It is
17 here with you.

18 Use common sense to temper the testimony of the
19 State's witnesses. Use common sense to objectively
20 analyze the occurrence of the accident.

21 Now, I talked about knowledge and wisdom from
22 experience. Let's talk about why experience is so
23 important. Life teaches us many lessons. We all learn
24 from experience.

25 As you -- all of you as jurors, you bring in the

1 cumulative wisdom of your life's experiences. You bring
2 in your cumulative wisdom into the jury panel.

3 Experience is so important. Think about getting a
4 job. Think about getting a job. Why is it on a job
5 application? Why is there always a section about prior
6 jobs or experience? Because employers value the knowledge
7 that comes with experience.

8 It's been said many times, and I don't want to sound
9 trite, but I will say an expression that I think best
10 expresses what I just mentioned: Experience is the best
11 teacher. There are no dropouts from experience.

12 King Solomon said it this way, "The light that comes
13 from wisdom never goes out." Now, I urge you to use these
14 tools to evaluate the reliability of the evidence that's
15 presented to you.

16 I urge you to evaluate the evidence with these tools,
17 your common sense and the knowledge you've got from life's
18 experiences because by using these tools, you will see
19 that what the State alleged and what the State will show
20 you will leave you at the end of the case not -- with
21 reasons not to be firmly convinced of Steven's guilt.

22 Now, I'm a former assistant solicitor here in
23 Richland County. I worked in the solicitor's office. I
24 argued a case, many cases, I hate to tell you how many
25 decades ago in this very courtroom.

1 I was an assistant Attorney General under Attorney
2 General Travis Medlock. As a former prosecutor, I know
3 how important this case is to the State of South Carolina,
4 but by the same token, I know for my client, it's
5 important that you keep an open and fair mind until all of
6 the evidence has been heard.

7 After having the opportunity to learn about you
8 during the jury selection process and after watching you,
9 I want to thank you for my attention to what I thought I'm
10 sure you perceive is long-winded remarks, but I want to
11 thank you for your attention during my remarks.

12 Because after watching you pay attention to my
13 remarks, after learning about you in the jury selection
14 process, I'm confident that your diligence will make sure
15 that justice is served. But on behalf of my client, I'm
16 thanking you in advance for your service.

17 As you perform your task as jurors, I urge you to
18 keep in mind a passage from proverbs, a passage from
19 proverbs that seems to capture the essence of what I do
20 for my client in this case and what you've sworn to do.
21 Its message provides all of you with insight into this
22 process.

23 Talking about Proverbs chapter 18, versus 17, "He who
24 states his case first seems right until the other comes
25 and questions it." Let me repeat it. "He who states his

1 case seems right until the other comes and questions him."

2 It's my duty for Steven to question. It's your duty
3 to your oath to question, as well, and make sure you have
4 been convinced beyond a reasonable doubt. As you sit
5 through the trial, please keep this passage from Proverbs
6 in mind.

7 On behalf of my client, Steven, I want to thank you
8 again for your service, for your attention to my remarks
9 and for your future diligence. Thank you.

10 THE COURT: All right. Solicitor, call your first
11 witness.

12 MS. SAMPSON: Thank you, Your Honor. May it please
13 the Court. The State calls Deputy Glenn Davis.

14 GLENN DAVIS, after being duly sworn,
15 testified as follows:

16 THE CLERK: Please have a seat. State your full name
17 for the record.

18 DIRECT EXAMINATION:

19 BY MS. SAMPSON:

20 Q Good morning.

21 A Good morning.

22 Q Could you please state your full name for the record?

23 A Yes, William Glenn Davis.

24 Q And let's just get this straight, you actually are an
25 officer with Lexington County.

1 A That's correct.

2 Q But this incident occurred in Richland County.

3 A Yes, it did.

4 Q Okay. How long have you been an officer in Lexington
5 County?

6 A A little over eight years.

7 Q And were you an officer Before then?

8 A Yes, I was.

9 Q Where at?

10 A The Department of Natural Resources, as a Wildlife
11 Conservation Officer for 17 years.

12 Q So altogether, you have 25 years in law enforcement?

13 A No. I worked -- actually, at jobs before that. I've
14 already retired and come back, 30 years.

15 Q Okay. So all together, how long have you been with
16 law enforcement?

17 A Twenty-eight years commissioned law enforcement
18 officer.

19 Q And you've been -- had training?

20 A Yes, I have.

21 Q When you first become an officer, you have a six-week
22 training course, I believe.

23 A I think it was nine weeks at the academy, and then
24 when I went to work for the Department of Natural
25 Resources, we had about eight weeks of training, the

1 different disciplines.

2 Q And do you continue to have training ongoing?

3 A Oh, yeah, yeah. Throughout my whole career, still
4 do.

5 Q And what is your position now?

6 A I'm a Marine Patrol Officer.

7 Q And what do you do as Marine Patrol Officer?

8 A I patrol Lake Murray just checking for boating
9 violations, and our main job being deputy sheriffs is
10 looking out for the public, for criminal offenses, other
11 criminal offenses that might occur, domestics and people
12 stealing stuff.

13 Q And was that your same job duties back in May
14 of 2010?

15 A Yes, it was.

16 Q Okay. So I'm going to ask you about how did you
17 become involved in this case?

18 A I was actually patrolling. We work 12-hour shifts,
19 and the evening, the night of the accident, I was
20 patrolling Lake Murray, and I was near Bomb Island, which
21 is in the middle of the lake, just doing a routine patrol.

22 Q And when you say routine patrol, are you in your car?
23 Are you on a boat?

24 A No. I'm in a sheriff's department patrol boat.

25 Q Okay. So you drove around along the middle or the

1 coast or...

2 A Go all over, all over the lake.

3 Q And you were doing that on that night?

4 A Yes, I was.

5 Q And did you receive a call?

6 A Yes, I did.

7 Q What type of call did you receive?

8 A I received a call from dispatch that there had been a
9 boating accident on the Richland County side of the lake,
10 and actually, we do have agreements between the sheriffs
11 to where we can go into the other counties.

12 So I immediately responded. En route, they weren't
13 sure exactly where the boat was. I called the Department
14 of Natural Resources dispatcher, and they said the people
15 involved in the accident were at Lake Murray Marina.

16 Q Okay. And I just want to go back to something you
17 said.

18 A Okay.

19 Q You all have an agreement with Richland County that
20 you can work both sides, if necessary?

21 A In all four counties we have kind of a jurisdiction
22 agreement. We can go in and assist them, and they can
23 come assist us, yes.

24 Q So your job that day was to assist Richland County?

25 A Yes, yes.

1 Q And when you got to -- you went to Lake Murray
2 Marina, I think is what you said.

3 A Yes, I did.

4 Q What did you see when you got there?

5 A When I arrived there, there were a lot of people on
6 the dock, and I noticed that Mr. Kranendonk's boat was
7 tied up to the dock. There were people, I guess, that had
8 come out from the bar area or restaurant area who were
9 trying to assist them.

10 Q When you -- I don't mean to stop you --

11 A Okay.

12 Q -- for a second. You said you saw his boat.

13 A Yes.

14 Q I'm going to talk about a boat for a little bit.

15 A Yes.

16 Q Did you see any damage to his boat?

17 A Well, my job there at first was to check on the
18 victims, try to get them assistance. I made sure an
19 ambulance was on the way, and that -- that was my first
20 thing was trying to take care of them and trying to get
21 information because it was relayed to me over the radio
22 that there had been a hit and run accident.

23 So I was trying to get information about the other
24 boat. All four people in the boat, of course, were very
25 upset or traumatized and --

1 Q Let me ask you about that. Were you able to get
2 information about the other boat from any of the
3 individuals?

4 A Very little, very little.

5 Q When you say very little, any at all?

6 A Yeah. I think one of the passengers, Mr. Hair, I
7 talked to him and Mr. Kranendonk and tried to get some
8 information from the girls and -- and just didn't get a
9 whole lot out.

10 Q Were they able to tell you even the size or the color
11 or anything about the boat?

12 A No, no. Just that this -- I think Mr. Kranendonk and
13 Mr. Hair said they saw some lights and --

14 Q Were they able to tell you what color of lights they
15 saw?

16 A Mr. Hair, which is documented in my statement, said
17 he saw a green and a white light.

18 Q And what did that mean to you?

19 A Well, that contradicts what --

20 MR. HARVEY: Objection.

21 THE COURT: What's the objection?

22 MR. HARVEY: The question is what does it mean, not
23 contradicting.

24 THE WITNESS: Okay.

25 MR. HARVEY: His answer isn't responsive to the

1 question.

2 THE COURT: I sustain that.

3 Rephrase your question.

4 MS. SAMPSON: You stated --

5 THE COURT: Re-ask it. Re-ask it.

6 BY MS. SAMPSON:

7 Q You stated you saw a green -- he said he told he saw
8 a green and white light. What does that mean to you?

9 MR. HARVEY: That --

10 THE COURT: Go ahead.

11 THE WITNESS: In the rules of navigation, that would
12 mean that the boat, the victim's boat, would have been
13 coming from their left.

14 BY MS. SAMPSON:

15 Q And what significance did that have to you in this
16 case?

17 A Later on when I saw the victim's boat, the damage was
18 on their left side, which meant they were coming from
19 the --

20 MR. HARVEY: Objection, Your Honor.

21 THE WITNESS: -- Mr. Kranendonk --

22 MR. HARVEY: All he can say is what he observed. He
23 doesn't know the occurrence of the accident.

24 THE COURT: He said he observed the second boat, and
25 his opinion is based on his observation of the second

1 boat.

2 Overruled.

3 BY MS. SAMPSON:

4 Q Go. Continue.

5 A Okay. The damage to the other boat was on the port
6 or left side, which Mr. Kranendonk's boat -- they would
7 have been coming from -- it's hard to show you without
8 drawing it but coming from this direction. They would
9 have hit --

10 MR. HARVEY: Your Honor, again --

11 THE WITNESS: -- on the portside of the boat.

12 THE COURT: Overruled.

13 MS. SAMPSON: I'm going to -- may I approach, Your
14 Honor?

15 THE COURT: Go ahead.

16 MS. SAMPSON: May I approach the witness, Your Honor?

17 THE COURT: Sure.

18 BY MS. SAMPSON:

19 Q I'm going to -- I know you weren't in here earlier
20 Mr. -- I'm sorry, Officer Davis.

21 A Right.

22 Q Let's assume this right here is the boat that you're
23 talking about --

24 A Right.

25 Q -- the victims --

1 A Right.

2 MR. HARVEY: Your Honor, I would ask -- that was an
3 exhibit that was used in the opening statement.

4 THE COURT: Why don't you let her finish the
5 question?

6 MR. HARVEY: Well, she is using that exhibit as the
7 basis for her question.

8 THE COURT: Well, do you want her to draw it again?

9 MR. HARVEY: Your Honor, that may have --

10 MS. SAMPSON: I can -- I can lay some foundation,
11 Your Honor, to make it easier.

12 THE COURT: Go ahead.

13 BY MS. SAMPSON:

14 Q Would this -- will the drawing fairly and accurately
15 -- will the drawing help you depict what you're discussing
16 with us right now?

17 A Yes.

18 Q Would it be fair to say that this would be an
19 approximation of the victim's boat?

20 A Yes, it would.

21 Q And would this be an approximation of the defendant's
22 boat?

23 A Yes, it would.

24 Q Okay. And in talking about this as an approximation,
25 where was the damage to the victim's boat? You can stand

1 up and show us.

2 A Okay. It would have been right here.

3 Q And why is that significant to you?

4 A Because that shows that the boat was coming from
5 their right; that this boat had the right of way in the
6 rules of navigation, and this boat was the give-away boat.
7 They should have given way to that boat.

8 Q Thank you. You can sit down. What does give-away
9 boat mean?

10 A The give-away boat means you have to basically yield
11 or stop to the other boat. If you see the red navigation
12 light, that's basically like a stop light. That's what it
13 means. If you see the light, you yield to that boat. You
14 let them go by, and then you go around them.

15 Q And you were able to speak to all the occupants of
16 Mr. Kranendonk's boat at that time?

17 A Yes but...

18 Q And who were those occupants, do you remember?

19 A I'm sorry?

20 Q Who were the occupants of the boat?

21 A Okay. It was Mr. Kranendonk, a Mallory Collins,
22 Jenna Breland, and Eric Hair.

23 Q And were you able to determine who was driving the
24 boat at that time?

25 A Yes, Mr. Kranendonk.

1 Q And did you observe any injuries to Mr. Kranendonk?

2 A From what I recall, what's documented in the report,
3 he had a cut to his head, and I believe due to glass being
4 down in the bottom of his boat, he had some cuts to his
5 feet so...

6 Q Now, you spoke -- I'm going to jump a little bit.
7 You spoke about glass being in the boat. Did you make any
8 observations about that glass?

9 A Yeah. In my experience, the other boat had to be a
10 walk through windshield type boats. It has like the two
11 windshields, because that uses -- like it's a safety type
12 glass that when it breaks, it shatters like a car window
13 in little pieces.

14 The boat, Mr. Kranendonk's boat, was the center
15 console. It had like a plexiglass type windshield that
16 didn't have any damage. There was no other glass. The
17 glass had to come from that boat.

18 Q So that's what you based on your experience, you
19 believed the glass in the bottom came from the other boat?

20 A Dual -- yeah. Dual windshield, walk-through type
21 boat. That's basically all the information I had.

22 Q So after speaking with them and making your
23 observations, what did you do?

24 A Again, an ambulance hadn't showed up. I think
25 Mr. Kranendonk had a towel to his head, and I got the

1 information. I think the most information I got was from
2 Mr. Hair.

3 I asked him -- everybody else was pretty upset. He
4 told me that they were driving in the boat. They saw the
5 green light and the white light. They had some kind of
6 impact.

7 He came around and the boat was moving. He was on
8 the floor of the boat, and he got the boat stopped.
9 Nobody else was in the boat with him. He started looking
10 and found the other three occupants of the boat, picked
11 them up, and they went into the Lake Murray Marina, and
12 that he had had a pretty good injury to one of his arms.
13 I don't remember which.

14 Q Now, at some point you leave them there and go
15 somewhere else.

16 A Yes. It had been a good little while, and no EMS had
17 shown up. I called my dispatch and tried to figure out
18 why an ambulance hadn't gotten there and never did get a
19 good answer.

20 Even at one point I asked them, "Can y'all send an
21 ambulance from Lexington County to come into Richland
22 County?" The EMS supervisor said, "No. We can't do
23 that."

24 I believe the DNR officer arrived a short time later,
25 and one of the sergeants with DNR who wasn't on that scene

1 called me and said, "We have another accident. I need
2 your help back out here on the water."

3 About the same time, a fire department first
4 responder showed up, which is basically a fireman who is
5 trained in first aid. I think I got him in the boat with
6 me, and we went out. Actually, it was still a second
7 accident.

8 Q And I just want to -- there were two separate
9 accidents that night, correct?

10 A Two separate accidents almost in the same place.

11 Q And so when you're talking about this second
12 accident, you are not talking about anybody involved in
13 this accident?

14 A No, no.

15 Q So you went with that one for a little bit?

16 A Yes, I did.

17 Q And then did you return to be dealing with people
18 involved in this accident?

19 A Yes, I did. In fact, I went to the second scene,
20 which I had found out toward the end there was just two
21 different radio systems, two different agencies.

22 You know, there were two different scenes. That part
23 with me wasn't connected for a little while. I just knew
24 I had some people who were injured and an ambulance hadn't
25 shown up, but when I left the second boating accident,

1 then I went back to where this boat had come in.

2 Q And when you say this boat, you mean the boat with --

3 A The victim's boat.

4 Q The victim's boat, okay.

5 A And it had come in to an address, 142 Creekwood
6 Drive, and I went there and tried to assist at that scene.

7 Q And were you -- what did you do when you got there?

8 A Basically, I think one of the victims had been
9 transported, and one was still there. I just talked to --

10 Q Was one victim deceased at that time?

11 A Yes, yes.

12 Q Did you know which one?

13 A I did not at that time, no.

14 Q So what did you do when you were there?

15 A I contacted the DNR guys and got with them and, of
16 course, everybody was still dealing with two horrific
17 scenes.

18 I assisted them, was standing by with the victim's
19 boat just trying to help with that and to see what we
20 needed to do, what the next step was once all the victims
21 were transported.

22 Q Did you take any statements that night?

23 A No.

24 Q Did you speak to the homeowner at all?

25 A Yes, I did; yes, I did.

1 Q And --

2 A I take that back. I may have started -- I may have
3 gotten him to write a statement.

4 Q And that would be Francis Burris?

5 A Yes, I did.

6 Q You did speak with him?

7 A Yes, I did.

8 Q And were you able to get a statement from him?

9 A Yes.

10 Q Okay. Did you collect any items on the scene?

11 A I did.

12 Q What were those?

13 A The boat -- well, let me say the victim's boat was,
14 of course, full of water and all. There were some beer
15 cans.

16 Q I want to stop you for a second.

17 A Yeah.

18 Q You said it was full of water. Can you describe the
19 condition of the boat?

20 A Yes. The victim's boat was an aluminum boat, even
21 though I think it was about 21 feet. It was basically --
22 if you can imagine a soda can being bent in the middle.
23 It was bent in the middle where the impact had occurred
24 and full of water.

25 Of course, all boats now to meet Coast Guard

1 standards have flotation in them so they never -- boats
2 never sink anymore, but it was full of water, as much as
3 the boat could hold.

4 So all the -- whatever was in the boat was kind of
5 floating out and gas was coming out of the boat and stuff.

6 Q And I'm going to show you what's being marked as
7 State's Exhibit No. 32 and ask you do you recognize it.

8 A Yes, I do.

9 Q And what is that?

10 A That is the victim's boat.

11 Q And does that accurately and fairly depict the boat
12 as you saw it on that night May 1st?

13 A Yes, it does.

14 MS. SAMPSON: At this time, Your Honor, the State
15 would ask to move State's Exhibit 32 into evidence.

16 THE COURT: Any objection?

17 MR. HARVEY: No, Your Honor.

18 (WHEREUPON, State's Exhibit No. 32 was admitted into
19 evidence.)

20 BY MS. SAMPSON:

21 Q So this is the way the boat looked when you arrived
22 on the scene?

23 A Yes, it was.

24 Q So -- and that's what you're talking about when it
25 was bent?

1 A Yes.

2 MS. SAMPSON: No further questions, Your Honor.

3 Please answer any questions Mr. Harvey has for you.

4 THE WITNESS: With you.

5 THE COURT: Cross-examination?

6 MR. HARVEY: May it please the Court.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION:

9 BY MR. HARVEY:

10 Q Hello, Deputy Davis.

11 A Hello, how are you?

12 Q Good. Good to see you.

13 Now, you're a lake deputy, correct?

14 A That is correct.

15 Q And before that, you were a road deputy?

16 A Yes, I was and a detective.

17 Q And I -- you've got how many years law enforcement
18 experience?

19 A It's 28 years certified law enforcement officer.

20 Q All right. And you prepared a report, correct?

21 A Yes, I did.

22 Q Do you have that report in front of you?

23 A Yes, I do.

24 Q Is that Lexington County Sheriff's Investigative
25 report?

1 A Yes, it is.

2 Q 10039840?

3 A It is, uh-huh.

4 Q Two pages?

5 A Yes.

6 Q And you're the author of that report?

7 A I am.

8 Q And that report, I guess, was finalized on May 5th,
9 2010?

10 A That's correct.

11 Q All right. And you really occupied or had about
12 every position there is to have in law enforcement,
13 deputy, investigator. You've done it all, correct?

14 A I have with most of my career being with the
15 Department of Natural Resources as a conservation officer.

16 Q All right. But as a result of your experience and
17 training, you know it was crucial to have important
18 details in a report, correct?

19 A Yes.

20 Q All right. And one of the reasons it's important to
21 have details in the report is your agency from whomever
22 you're working for at the time relies on the information
23 in the report, correct?

24 A That's correct.

25 Q Your supervisor's rely on the information in the

1 report; is that correct?

2 A Correct.

3 Q And prosecuting officers often rely on reports to
4 make decisions about cases, correct?

5 A That's correct.

6 Q Now, you saw Steven -- in your report, you denote the
7 time as 22:17 that you were dispatched, correct?

8 A That's correct. That tells us the time that dispatch
9 center gave to me.

10 Q Well, is that the time the dispatch center was
11 contacted or is that the time the dispatch center
12 contacted you?

13 A That's -- when I called them to ask for times of the
14 incident, the time they call me, that's the time they gave
15 me.

16 Q So really, as a result of your investigative efforts,
17 the dispatch received a call about 22:17, correct?

18 A I'm assuming that's what that time was. That's the
19 time I was trying to get out of there.

20 Q Okay. Now, may I approach the witness, Your Honor?

21 THE COURT: Certainly.

22 BY MR. HARVEY:

23 Q I show you Lexington County Sheriff's Office
24 investigative report for case 10039840. Do you recognize
25 that?

1 A Yes; yes, sir.

2 Q And like I asked you a moment ago, the date is
3 5/5/2010; is that correct?

4 A That's correct.

5 Q Now, and you're the author of this report, correct?

6 A Correct.

7 Q Now, before the report was finalized, you read it and
8 made all the necessary corrections, correct? In other
9 words --

10 A Yes.

11 Q -- you read the report, looked at it and said, "This
12 is what I mean to say"?

13 A Yes; yes, sir.

14 Q Okay. Now, during the time you've been in law
15 enforcement, you've had an occasion to observe individuals
16 under the influence of alcohol.

17 A Yes, I have.

18 Q You've had the occasion to observe how many
19 individuals, do you think, like that?

20 A Through the years I've made several boating under the
21 influence cases, I don't know how many. I don't have that
22 number right now.

23 Q Now, you'll agree with me -- take a moment and review
24 your statement.

25 A Uh-huh.

1 Q Now, you wrote your statement after you had the
2 opportunity to interview Steven on 5/1/2010, correct?

3 A Correct, yeah, yeah.

4 Q All right. And your statement doesn't have any
5 recorded observations about Steven's condition, does it?

6 A No, sir.

7 Q All right. And you're an officer with 28 years'
8 experience, correct?

9 A Correct.

10 Q And based upon your experience, if you had noted
11 something out of the ordinary about any subject's
12 condition, standard protocol is denoted, correct?

13 A It's -- as the investigating officer, which I wasn't
14 that night. I was the on-the-scene officer.

15 Q As an on-the-scene officer, you made sure your report
16 contained all important details, correct?

17 A Yes.

18 Q And you'll agree with me, your report doesn't contain
19 any with reference to Steven's condition concerning the
20 consumption of alcohol, does it?

21 A No.

22 Q Okay. And you'll agree with me that based upon that
23 same training and experience about wanting to make sure
24 important details are in the case, your report
25 specifically states that both Mr. Hair and Mr. Kranendonk

1 said they saw green lights, correct?

2 A That's correct.

3 Q Now, one thing, you were able to determine the point
4 of impact, correct?

5 A Yes, it was very obvious --

6 Q Right.

7 A -- on the boat.

8 Q But other than the point of impact, you don't have
9 any knowledge to tell this jury what transpired prior to
10 impact, do you, other than the impact?

11 A Other than impact and -- I guess the training I
12 received in accident reconstruction is with -- employed
13 with Department of Natural Resources, I know that the
14 contact boat was moving at a pretty good speed.

15 Q Okay.

16 A That's obvious, too.

17 Q Okay. All right.

18 A With the damage that was done.

19 Q All right. And based upon your training and
20 experience, you looked at the Sylvan boat yourself, right?

21 A Yes, I did.

22 Q You identified it in a picture. That Sylvan is a
23 light aluminum fishing boat, right?

24 A Yes.

25 Q And it's a proper boat to be on the waterways.

1 A Yes. It's a well-made boat.

2 Q Okay. And the boat that Mr. Kranendonk was the
3 operator of, it was -- it was a well-made boat, as well,
4 right?

5 A Yes, sir, a fiberglass boat.

6 Q Okay. And you have two boats of different
7 construction and different makes, correct?

8 A Correct.

9 Q Okay. An aluminum boat is a -- is as sturdy or heavy
10 as the fiberglass boat, correct?

11 A It's not as sturdy, and when you get to the size that
12 this one was, about 21 feet, they're certainly much
13 thicker than what you'd call a small 14-foot Jon boat.

14 Q Where is the exhibit?

15 A The picture?

16 MS. SAMPSON: The jurors have it.

17 BY MR. HARVEY:

18 Q You can't see it in the picture, but I'm pointing --
19 this is -- the front of the boat is the bow, correct?

20 A That's correct.

21 Q The back of the boat is the stern?

22 A That's correct.

23 Q Correct?

24 A Uh-huh.

25 Q The left side is the portside?

- 1 A Correct.
- 2 Q The right side is the starboard side, correct?
- 3 A That's right.
- 4 Q This boat would have navigational lights on top of
- 5 the bow, correct?
- 6 A That's correct.
- 7 Q And if the navigational lights were operative at
- 8 one -- the starboard is green, correct?
- 9 A That's correct.
- 10 Q And the portside is -- is red, correct?
- 11 A (Nods in the affirmative.)
- 12 Q I have in my hand a photograph and this photograph.
- 13 MS. SAMPSON: Your Honor --
- 14 THE COURT: Yes.
- 15 MS. SAMPSON: -- before he publishes it...
- 16 THE COURT: Before you publish it, see if he can
- 17 identify it.
- 18 BY MR. HARVEY:
- 19 Q Do you recognize what's in this photograph?
- 20 A It's a shot -- it looks like the Richland County side
- 21 of Lake Murray near Susie Ebert Island.
- 22 Q Is this a reasonable and accurate depiction of that
- 23 portion of the lake?
- 24 A Yes, it is.
- 25 Q Is this a reasonable and accurate depiction of that

1 portion of the lake as it looked on May 1, 2010 except for
2 it's daytime?

3 A Yes, sir.

4 Q All right. You'll agree with me 22:17 hours is --

5 MS. SAMPSON: Your Honor, if he's going to put it
6 into evidence, he needs to do so.

7 THE COURT: Are you going to offer it?

8 MR. HARVEY: I'm going to have it marked as a -- for
9 identification at this time, Your Honor.

10 THE COURT: Go ahead, mark it.

11 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
12 identification only.)

13 THE COURT: Is there any objection to the
14 introduction?

15 MS. SAMPSON: Your Honor, I would just object to use
16 it -- either he needs to say it's demonstrative purposes
17 or introduce it into evidence. I don't care which one.
18 We just need to make that clear.

19 THE COURT: Is there any objection if he offers it in
20 evidence?

21 MS. SAMPSON: No.

22 THE COURT: Offer it in evidence. Move on.

23 MR. HARVEY: Please mark this as a Defendant's
24 Exhibit's 1.

25

1 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
2 into evidence.)

3 THE COURT: If you wish to do so.

4 MR. HARVEY: I mean, I'm -- thank you, Your Honor.

5 May the witness stand next to me, Your Honor?

6 THE COURT: Absolutely. If you'll exchange positions
7 with him so the court reporter can hear what he has to
8 say.

9 BY MR. HARVEY:

10 Q I'm going to use a finger as a pointer, and I'm
11 pointing to this structure in the photograph. What is
12 that structure?

13 A That's Lake Murray Marina.

14 Q And what is this structure?

15 A That's Light House Marina.

16 Q What is this land mass here?

17 A That is Susie Ebert Island.

18 Q And what is this land mass here?

19 A Coast Guard Island.

20 Q Okay. And you operated your vessel to Lake Murray
21 Marina?

22 A Yes, I did.

23 Q And did you travel -- was your route of travel as it
24 would be depicted on this photograph moving from -- on the
25 photograph, it would be left to right, or did you come

1 from a different direction?

2 A I came from the center of the lake out here, so I
3 pretty much came in a straight line into Lake Murray
4 Marina.

5 Q All right. Well, let me ask you this: Since you
6 testified in response to the solicitor's questions that
7 you're a lake deputy, lakes are a little bit different
8 than roadways, correct, in that roadways have speed
9 limits, correct?

10 A Correct.

11 Q Lakes have no wake zones, correct?

12 A Correct.

13 Q And what is the part of the lake that doesn't have
14 the speed restriction called?

15 A It's the --

16 Q Unrestricted open water?

17 A Open water.

18 Q And once you leave a no wake zone, is that open
19 water?

20 A Yes, it is.

21 Q Would you agree that this area of the lake, at least
22 if we could draw a line from this point to this point
23 would be on this side of that would be open water?

24 A Oh yes.

25 Q And when you're in the open water, there's no like

1 drawing an analogy to a highway, there is no speed limit,
2 correct?

3 A There is no speed limit.

4 Q Okay. I mean, and you'll agree with me that every
5 operator, of course, has a duty to operate their boat
6 safely, correct?

7 A Correct, follow the rules of the road.

8 Q Follow the rules of the road and maintain a safe
9 lookout, correct?

10 A Correct.

11 Q Okay. Thank you. Please sit down.

12 Now, you'll agree with me that the events of May 1,
13 2010 were fresher in your mind on May 5th, 2010 when you
14 wrote the report than today, correct?

15 A Yes, they were.

16 Q Okay. And you'll agree with me that in your report,
17 you noted all the salient details of your interaction with
18 Steven and Harrison, correct?

19 A Correct.

20 Q And you'll agree with me in your report it contains
21 no contemporaneous observation about Steven and the
22 consumption of alcohol, correct?

23 A It didn't.

24 MR. HARVEY: Thank you, Your Honor. That's all I
25 have.

1 THE COURT: Redirect?

2 MS. SAMPSON: Briefly, Your Honor.

3 REDIRECT EXAMINATION:

4 BY MS. SAMPSON:

5 Q Officer Davis, your job that day was what?

6 A Try to get aid to the victims.

7 Q Was your job there to determine with whether
8 Mr. Kranendonk had been drinking or not?

9 A No. My Department -- by state law, the Department of
10 Natural Resources is tasked with investigating the boating
11 accident, and we're just there to assist.

12 Q To just assist?

13 A Just assist.

14 Q In your report, it contains the details of what you
15 did?

16 A Yes, it does.

17 Q It doesn't contain the details about what the other
18 officers did?

19 A No, it does not.

20 Q And so you would have no idea what the other officers
21 observed about Mr. Kranendonk?

22 A That's correct.

23 MS. SAMPSON: No further questions, Your Honor.

24 THE COURT: Any recross?

25 RE CROSS-EXAMINATION:

1 BY MR. HARVEY:

2 Q Your report contains the -- your report reflects your
3 observations and interactions with Steven and Harrison,
4 correct?

5 A That's correct.

6 Q And your report entertains your observations and
7 interactions with Steven and Harrison after you have been
8 informed there was a boating accident, correct?

9 A Yes, it --

10 MR. HARVEY: Thank you.

11 THE COURT: All right, sir. You may come down. May
12 this witness be excused?

13 (There was no response.)

14 Without objection.

15 Next witness.

16 MR. POTTS: The State calls Sergeant Simmons.

17 Your Honor...

18 THE COURT: He's excused.

19 KENNETH SIMMONS, after being duly
20 sworn, testified as follows:

21 THE CLERK: Thank you. You may have a seat in the
22 witness stand.

23 DIRECT EXAMINATION:

24 BY MR. POTTS:

25 Q State your full name, please.

1 A Sergeant Kenneth Simmons.

2 Q Good morning Sergeant Simmons. I've got four
3 minutes, so I can say that. Where are you currently
4 employed?

5 A With DNR, South Carolina DNR.

6 Q And DNR is?

7 A The Department of Natural Resources.

8 Q How long have you been there?

9 A I'm going on my 19th year, about 18-and-a-half.

10 Q So what's your rank?

11 A First sergeant over --

12 Q What's that?

13 A First line supervisor over Lexington and Saluda
14 counties.

15 Q Now, were you on duty back on May 1st, 2010?

16 A I was.

17 Q That evening were you called out to anything
18 interesting in particular?

19 A I was.

20 Q Explain that to the jury, please.

21 A On May 1st, 2010, I had already -- I lived on the
22 lake. I had already gotten home and been at home probably
23 less than half an hour when I received a call at about 20
24 minutes after ten that evening from another officer who
25 had heard about a boating accident involving a possible

1 hit and run on Lake Murray somewhere near, possibly near
2 Dockside up in the Richland County area.

3 Q Now, Dockside does that have another name?

4 A That's one of the restaurants. Dockside is at Lake
5 Murray Marina or it used to be. It's no longer there.

6 Q All right. Continue. Sorry.

7 A That's all right. At that time, I quickly got
8 dressed, ran outside, jumped in the boat. I live back in
9 Bear Creek, so it's going to take me a little while to get
10 there.

11 I got to where Wessinger Island is, for anyone who is
12 familiar with the lake. Right along in there is pretty
13 much a common traffic area for people going to the
14 marinas, to the restaurants, back towards the other end of
15 the lake, Saluda, Newberry, but it's common travel area.

16 They always run that side of the lake, so I started
17 stopping boats looking for any type of damage on the boat
18 since it was a possible hit and run.

19 I might have stopped one or two boats when I called
20 Deputy Glenn Davis with Lexington County Marine Patrol to
21 find out what was going on, the status of the thing with
22 the whole situation.

23 Q What did he tell you?

24 A He told me that --

25 MR. HARVEY: I'm going to object to what he said.

1 THE COURT: Sustain the objection.

2 MR. POTTS: Your Honor, it's not for the truth. He's
3 explaining it.

4 BY MR. POTTS:

5 Q I guess after you talked to Deputy Davis, what did
6 you then proceed to do?

7 A I talked to Deputy Davis. He advised me that he had
8 a center console boat, the one that I think they called
9 originally. He made the call in, I think that's what he
10 said.

11 He had it under tow and all of its occupants and that
12 he believed the other boat was at a -- up in a -- say
13 washed up but ran aground up in the yard at Crestview
14 Drive, I think. He said -- anyway, if I leave where I was
15 at Wessinger traveling up towards the Richland area,
16 getting around Susie Ebert, he said I would see lights
17 from the ambulance.

18 Q Is that what you did?

19 A Sure enough, yeah. If I could see the lights, so I
20 went straight to that house.

21 Q Okay. What did you find there?

22 A When I got there, I tied my boat up to the -- to the
23 dock that was there, walked up. As I walked up, I saw --
24 I think I ran -- might have met a fireman or a paramedic,
25 and I just said, "What's the status here?"

1 They said, "One female has already been taken away
2 with no signs of life." Another female visually watched
3 her. She was on the gurney. They were taking her up to
4 an ambulance, and there was an EMT literally straddling
5 the gurney giving her chest compressions giving her CPR.
6 Two males were laying on the grass next to the aluminum
7 boat that was kind of washed up there.

8 Q Okay. Now, I'm going to show you what's been marked
9 as State's Exhibit No. 32. That's the aluminum boat
10 you're talking about?

11 A That's it.

12 Q Okay. So what was your role at that point?

13 A Well, at that point, I went down and I talked -- I
14 don't remember which one of the two males that were laying
15 there on the grass. I wanted to confirm that there were
16 only four people in that boat because I knew --

17 Q Why is that?

18 A To make sure we didn't have any missing people.
19 Someone else thrown out, someone else floating on the
20 water or whatever. I knew Deputy Davis had already told
21 me he had all the occupants to that one boat that he was
22 towing back to Dockside.

23 Q That would be the other boat?

24 A Correct, the center console. He said he confirmed he
25 had everybody. So I went and talked to one of the two

1 males laying there. I asked him how many were on the
2 boat. He told me four.

3 So seeing one female. The paramedic told me the
4 other female had been taken away. I seen the two, I knew
5 I had everybody. So I kind of stepped away, called my
6 dispatch, told them to notify my captain and lieutenant of
7 the situation of what was going on and to get the on-call
8 boating accident investigator en route since we did have a
9 fatality involved.

10 Q Okay. After you called in to let everyone know what
11 you found at the scene, what did you do at that point?
12 Did you do anything else?

13 A Two other DNR officers had approached, and they asked
14 me what to do. I asked them if they could meet Officer
15 Davis at Dockside to assist with the people in that boat,
16 whatever needed to be done with them.

17 If he would take care of that scene, I would take
18 care of this scene. And we knew we had an investigator en
19 route, and pretty much, it was under control at that
20 point.

21 Q Did anything else happen to make it not under control
22 anymore?

23 A Yeah about --

24 MR. HARVEY: Objection.

25 THE WITNESS: -- not even --

1 THE COURT: Hold on. Hold on a minute.

2 MR. HARVEY: The form of the question.

3 THE COURT: Restate your question.

4 BY MR. POTTS:

5 Q My question was did anything else happen to not make
6 it under control?

7 THE COURT: Not what?

8 MR. POTTS: Not under control anymore, out of
9 control.

10 THE COURT: I sustain the objection.

11 BY MR. POTTS:

12 Q What else happened that evening?

13 A After I made those phone calls, a phone call to my
14 dispatch, talked to the other two deputies, another boat
15 pulled up, and it had a male and female in it.

16 They were yelling and screaming about another boat
17 accident where people were hurt. I asked them where, and
18 they pointed to some lights --

19 MR. HARVEY: Objection, Your Honor. That's not
20 relevant to this case.

21 THE COURT: It may not be, but he answered the
22 question.

23 BY MR. POTTS:

24 Q Did you go at that point in response?

25 A Yes. I left the scene at that house, jumped in my

1 boat and left and took care of another one.

2 Q Did you have anything else --

3 A No.

4 Q -- to do with this incident that night?

5 A No, sir.

6 MR. POTTS: Thank you. No further questions.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION:

9 BY MR. HARVEY:

10 Q You described your efforts basically as observational
11 and helping manage the scene, correct?

12 A Yes, sir.

13 Q Okay. And as far as this jury, you can't tell them
14 anything firsthand that you observed on the lake in
15 relation to this case, can you?

16 A No, I cannot.

17 MR. HARVEY: Thank you.

18 THE COURT: Anything further?

19 MR. POTTS: No, Your Honor.

20 THE COURT: All right. You may come down, sir.

21 THE WITNESS: Thank you, sir.

22 THE COURT: May this witness be excused?

23 (There was no response).

24 Without objection.

25 MR. POTTS: No objection from the State, Your Honor.

1 THE COURT: You're free to go. Thank you very much.
2 Next witness.

3 MS. SAMPSON: Yes, sir, Your Honor. The State would
4 call Keith Corley.

5 KEITH CORLEY, after being duly sworn,
6 testified as follows:

7 THE CLERK: Thank you. You may have a seat in the
8 witness stand.

9 DIRECT EXAMINATION:

10 BY MS. SAMPSON:

11 Q Would you spell your last name for the record?

12 A C-O-R-L-E-Y.

13 Q And how old are you, Mr. Corley?

14 A I'm 29.

15 Q And do you work?

16 A Yes, ma'am.

17 Q Where do you work?

18 A I work at the South Carolina Department of Mental
19 Health.

20 Q Okay. And how long have you lived -- do you live in
21 Columbia?

22 A I live in Lexington.

23 Q In Lexington. How long have you lived there?

24 A All my life.

25 Q And I'm going to ask you to speak up a little bit.

1 You're kind of soft spoken.

2 A Yes, ma'am.

3 Q And are you friends with Robert Christofoli?

4 A Yes, ma'am.

5 Q And what about Colt Lax?

6 A Yes, ma'am.

7 Q How do you know them?

8 A We've been friends for probably the last five, ten

9 years.

10 Q Okay. And back in May of 2010, on May 1st, what were

11 you doing?

12 A I'd been on the lake.

13 Q You were what?

14 A I was on the lake.

15 Q Okay. What were you doing?

16 A Riding around, having fun, had a few drinks.

17 Q And at some point you speak with who, Robert or Colt?

18 A I believe I talked to Colt that night.

19 Q And what were y'all going to do?

20 A He was going to meet us at the marina where we were

21 going to have some drinks and hang out for a little while.

22 Q Which marina, do you remember?

23 A Lake Murray Marina. I don't remember the name of it

24 to be honest with you, the one to the right.

25 Q And you all were -- you were going to meet them

1 there?

2 A Yes, ma'am.

3 Q Were you going to drive there or drive your boat?

4 A We were on a boat.

5 Q And what --

6 A We were going by water.

7 Q What type of boat do you have or were you in, I
8 guess?

9 A We were in a 23-foot center console.

10 Q And were you driving that boat?

11 A Yes, ma'am.

12 Q Who else was with you?

13 A A friend of mine was with me, Michael Shoeman, and I
14 went and picked up Joshua Walsh after we talked with them.

15 Q Okay. Do you remember what time this was?

16 A Before dark. I honestly don't know the exact time.

17 Q Okay. And after you picked up Josh, what did you do?

18 A We picked up Josh. We headed back across the lake.

19 Like I said, we were going to meet them at the marina.

20 They were still at a restaurant eating. I talked to them.

21 So we had a little time to waste, so we were just kind of

22 easing around wasting some time.

23 Q Okay. And when you say wasting time, were you just
24 driving around on Lake Murray?

25 A Just going slow, yes, ma'am, just driving.

1 Q Okay. All right. What happened when you finally
2 decided to head toward Dockside?

3 A When I came into the cove, we were just -- there's a
4 no wake zone there, so we were slowing down for the no
5 wake zone. I looked over. About 300 yards away from me,
6 I could see a boat. Something about the navigation lights
7 didn't look right to us.

8 Q What do you mean by that?

9 A One of them was -- I could tell by the light that it
10 was leaning over. It wasn't leaning the way the boat
11 would have been leaning. I could tell it wasn't in the
12 right position.

13 Q Okay. And I don't know that much about boats. I've
14 learned. A navigation light is what?

15 A There's two lights on the front of the boat, and
16 there's one light on the back of the boat that tells you
17 which way the boat is facing and which direction it's
18 going.

19 Q And the navigation light you're talking about that
20 was leaning, which light was that?

21 A The rear light.

22 Q And is that the white light or that --

23 A Yes, ma'am, the white light.

24 Q And on the front, you would have red and green
25 lights?

1 A Yes, ma'am.

2 Q All right. So you saw that the white light was
3 leaning?

4 A Yes, ma'am.

5 Q So what did you do?

6 A I told my friends that I thought something was wrong
7 with the boat, and they said, you know, "There ain't
8 nothing wrong with that boat. You're just seeing thing."

9 I said, "No. I'm pretty sure something's wrong with
10 that both." Both of them said, "You know, turn around.
11 We'll go see what it is," really being nosey more than
12 anything. So we turned --

13 Q Let me stop you. At that time, did you know that it
14 was your friends in that boat?

15 A No, ma'am. I had no idea.

16 Q Okay. So you go back to the -- you turn, you have to
17 turn around?

18 A Yes, ma'am. I turned the boat around, went back out,
19 and we got within I'd say 50 feet of the boat, and I could
20 see that the boat had been hit.

21 It was right -- it was a little after dark at that
22 point. So we couldn't see how bad it was from that
23 distance, but I could tell the boat was hit.

24 I couldn't see anybody in the boat, so we went real
25 slow, you know, trying to make sure there wasn't anybody

1 in the water. We couldn't tell what -- you know, didn't
2 know the situation at all when we pulled up on it so...

3 Q Was the boat moving?

4 A No, ma'am. It was sitting still.

5 Q So then what did you do?

6 A We pulled up beside the boat. When we pulled up
7 beside the boat, Colt stood up and said, "We need help."
8 At that point, he didn't realize it was us, and we didn't
9 realize it was him until --

10 Q Could you tell who it was?

11 A When he stood up, I realized who it was. He was
12 covered head to toe with blood. I realized who it was.
13 We asked him if anybody was in the water. I don't -- I
14 don't think he knew at that point.

15 Q Was he -- how was he acting at that time?

16 A Dazed. He didn't know -- I don't think he knew what
17 was going on. He was just kind of coming to at the time.
18 He didn't know. He didn't know whether to tell us people
19 were in the water or everybody was okay. You know, he was
20 kind of coming to and figuring out what was going on
21 himself.

22 Q So what did you do?

23 A We pulled up beside the boat. The whole side of the
24 boat was folded in, so we couldn't do anything but hold on
25 to the side of it. There was nothing to tie to.

1 Q So you were approaching on the side of the boat that
2 was damaged?

3 A Yes, ma'am.

4 Q Okay.

5 A The portside of it, yes, ma'am.

6 We pulled -- one of -- Michael got in their boat to
7 try to help figure out who was hurt and what was going on.
8 Josh held the boat that was beside us. Their boat was
9 beside us. He held their boat, and I was staying driving
10 the boat trying to get to shore.

11 Q How did he hold the boat?

12 A Literally with both hands on the side of my boat. He
13 was holding on to the side because there was nothing there
14 to tie to.

15 Q And with him holding on and Michael in the boat, the
16 other boat, correct?

17 A Yes, ma'am.

18 Q Y'all drove it? You drove your boat?

19 A Yes, ma'am. I drove my boat and towed the boat
20 beside me to shore.

21 Q And what did you do once you got to shore?

22 A We -- I jumped off the boat, ran to the house to get
23 an address. I was on the phone with 9-1-1. From the time
24 we grabbed onto their boat, I had dialed 9-1-1. I was on
25 the phone with 9-1-1 all the way to shore.

1 Q When did you call 9-1-1?

2 A As soon as we pulled up and saw those people were
3 hurt.

4 Q And you talked to the 9-1-1 operator?

5 A Yes, ma'am.

6 Q And earlier today when you came in, did you listen to
7 that 9-1-1 call?

8 A Yes, ma'am.

9 MR. HARVEY: Your Honor, he is here to testify about
10 the substance of his call. This is cumulative, and under
11 the applicable Rules of Evidence, I'd object to its --
12 he's here to testify.

13 THE COURT: I understand, sustained.

14 BY MS. SAMPSON:

15 Q Do you remember what you told the 9-1-1 operator?

16 A Yes, ma'am.

17 Q What did you tell her?

18 A I told her that we had come up on a boat in the
19 middle of the lake that had been hit and that we needed
20 help.

21 Q Were you upset?

22 A We needed -- ma'am?

23 Q I'm sorry. Were you upset?

24 A Very.

25 Q Were you yelling?

1 A At times.

2 Q So you tell them that you needed help, and I believe
3 you said you went to the address to -- you went to the
4 house to determine the address?

5 A Yes, ma'am.

6 Q Why did you do that?

7 A The 9-1-1 operator told me that the best chance we
8 had to help them would be to get to land and get an
9 address for an ambulance to come to. They couldn't send
10 an ambulance to the middle of the lake.

11 Q So when you're talking to the 9-1-1 operator, she
12 tells you -- was it a he or a she?

13 A It was she, a female.

14 Q Female? And what did she tell you?

15 A She told me that I needed to get the people to shore
16 to get them help. There was no ambulance that could come
17 to the middle of the lake.

18 Q And is that why y'all were towing it the way you
19 were?

20 A Yes, ma'am.

21 Q So you did that based on the instructions of the
22 9-1-1 operator?

23 A We had already started towing the boat before she had
24 instructed me, but yes, ma'am, per her directions.

25 Q So you get on the shore, and what do you do?

1 A I ran to the house, beat on the door to try to get
2 somebody to come out there to give me an address. There
3 was no mailbox. There was no way for me to know the
4 address. I knew where I was by water, but I didn't know
5 how to tell anybody to get there by land. So I had to
6 find that address.

7 Q Did someone come to tell you that?

8 A Yes, ma'am.

9 Q And what did they tell you? Do you remember the
10 address?

11 A The person that came out of the house was already on
12 the phone with 9-1-1. I caused quite a scene.

13 Q You caused quite a scene. What do you mean?

14 A I believe he called 9-1-1 because of me more than the
15 incident. I don't think he knew the -- what was going on.
16 He just somebody was beating on the door trying to get in.

17 Q Were you yelling and screaming?

18 A Yes, ma'am.

19 Q And so after -- was he able to give you the address?

20 A He had already gave 9-1-1 the address. At that
21 point, I got off the phone with the operator.

22 Q And what did you do then?

23 A I helped get the ladies out of the boat.

24 Q And did you know the two women?

25 A Yes, ma'am.

1 Q What were their names? Do you remember? Was it
2 Amber and Kelli?

3 A I'm sorry. Kelli and Amber, yes, ma'am.

4 Q Okay. And how did you know the women?

5 A I had known Kelli for years, and I knew Amber through
6 Rob.

7 Q And just before the -- you're a little nervous today?

8 A Yes, ma'am.

9 Q Have you ever done this before?

10 A No, ma'am.

11 Q All right. So you've known -- I want to make sure I
12 got it right. You've known Kelli for years, and you had
13 just met Amber.

14 A Yes, ma'am.

15 Q Okay. So you stopped -- did you help get them out of
16 the boat?

17 A Yes, ma'am.

18 Q How did you do that?

19 A Well, they had them -- they had Amber out of the boat
20 by the time I got off the phone. When I got back to the
21 water's edge, Colt was standing there with Kelli. His arm
22 was hurt, broken. I don't know what was wrong with it,
23 but he couldn't pick her up, put her on the shore. So I
24 jumped in the water to help him get her on the shore.

25 I don't know for a fact, no, ma'am, but it didn't

1 look like it.

2 Q Okay. What about Kelli?

3 A Neither one of them were breathing.

4 Q Okay. So what did you all do?

5 A Colt started doing CPR on Kelli, and Michael, the
6 other guy that was in my boat, started doing CPR on Amber.

7 Q And did they do that -- when did they stop doing
8 that?

9 A They didn't stop that until the paramedics got there.
10 When the paramedics got there and took over, Colt just
11 fell over. I mean, he was hurting so bad he couldn't
12 stand up straight. I mean, literally fell on the ground.

13 Q And did you talk to the police when they got there?

14 A No, ma'am.

15 Q Did you ever give a written statement to police
16 officers?

17 A Yes, ma'am.

18 Q When did you do that? Do you remember?

19 A I want to say the following day, but it may have been
20 a couple months of that.

21 MS. SAMPSON: Beg the Court's indulgence.

22 (Pause.)

23 BY MS. SAMPSON:

24 Q Did you notice anything odd about Colt's shoulder
25 when he was doing CPR?

1 A Yes, ma'am.

2 Q What did you notice?

3 A His shoulder was clicking. Every time he did a
4 compression, I could hear his shoulder making a clicking
5 noise every time he did it.

6 Q Okay. But he continued to do it anyway?

7 A Yes, ma'am.

8 MS. SAMPSON: No further questions, Your Honor.

9 THE COURT: Cross-examination?

10 CROSS-EXAMINATION:

11 BY MR. HARVEY:

12 Q Thank you, Mr. Corley.

13 Mr. Corley, I have in my hand a photograph. This
14 photograph is a section of Lake Murray. Do you recognize
15 this section of Lake Murray?

16 A Yes, sir.

17 Q Do you recognize -- may I stand next to the witness,
18 Your Honor?

19 THE COURT: Absolutely.

20 BY MR. HARVEY:

21 Q Please stand up, and we'll switch spots. Face the
22 jury. What is this body of water?

23 A That's not water.

24 Q Excuse me, what is this point of land?

25 A That's Susie Ebert island.

1 Q And what is that?

2 A That's Coast Guard Island.

3 Q Which marina is it?

4 A I don't know.

5 Q There are two marinas. One is Lake Murray and one is
6 Lighthouse.

7 A That is Lake Murray. That's Lighthouse (indicating).

8 Q All right. And you had been out on the lake that
9 day, right?

10 A Yes, sir.

11 Q And you said you were having fun. You had something
12 to drink, right?

13 A Yes, sir.

14 Q And you were going to meet your friends at Lake
15 Murray marina?

16 A Yes, sir.

17 Q And y'all were going to have some drinks there?

18 A Yes, sir.

19 MR. HARVEY: Okay. Well, thank you very much.
20 Please sit down. Thank you very much for being here..
21 That's all the questions I have, Your Honor.

22 THE COURT: Any redirect?

23 MS. SAMPSON: Just briefly, Your Honor.

24

25

1 BY MS. SAMPSON:

2 Q When you were on the boat, as Mr. Harvey just showed
3 you, were all of your lights on?

4 A Yes, ma'am.

5 MS. SAMPSON: No further questions.

6 THE COURT: Mr. Harvey, anything further?

7 MR. HARVEY: Nothing further, Your Honor.

8 THE COURT: All right, sir. You may come down.

9 Thank you very much.

10 May this witness be excused?

11 (There was no response).

12 Without objection.

13 You're free to go, sir. Thank you very much.

14 MS. SAMPSON: May we approach, Your Honor?

15 THE COURT: Yes, ma'am.

16 (Whereupon, there was a bench conference.)

17 THE COURT: All right. Ladies and gentlemen, the
18 next witness is on his way. Let's take about a ten-minute
19 break, just go to your jury room for a few minutes.

20 Relax. We'll call you when we're ready.

21 I'm going to remind you every time you get up, don't
22 discuss the case among yourselves while you're in the jury
23 room. Just relax for a few minutes, and we'll reconvene
24 in about ten minutes. Thank you very much.

25

1 (WHEREUPON, the jury left open court at approximately
2 12:20 p.m.)

3 THE COURT: Counsel, one other.

4 (Whereupon, there was a bench conference.)

5 THE COURT: The State ready for the jury?

6 MS. SAMPSON: Yes, Your Honor.

7 THE COURT: Defense ready for the jury?

8 (There was no response.)

9 Is the defense ready for the jury?

10 MR. HARVEY: Yes, Your Honor.

11 THE COURT: Bring the jury, please.

12 (WHEREUPON, the jury came into open court at
13 approximately 12:40 p.m.)

14 THE BAILIFF: The jury is seated.

15 THE COURT: Thank you very much.

16 All right. Solicitor, call your next witness.

17 MR. MATTHEWS: The State calls Brent Baccene.

18 BRENT BACCENE, after being duly sworn,
19 testified as follows:

20 THE CLERK: Thank you. Have a seat in the witness
21 stand.

22 DIRECT EXAMINATION:

23 BY MR. MATTHEWS:

24 Q Where are you currently employed, Mr. Baccene?

25 A I own my own company in Irmo.

1 THE COURT: Anything further of this witness?

2 MR. HARVEY: None, Your Honor.

3 THE COURT: All right. You may come down, sir. May
4 this witness be excused?

5 (There was no response).

6 Without objection, you're free to go, thank you.

7 Thank you very much.

8 Next witness.

9 (There was no response).

10 Next?

11 MS. SAMPSON: May it please the Court, Your Honor.

12 The state calls Jenna Breland.

13 JENNA BRELAND, after being duly sworn,
14 testified as follows:

15 THE CLERK: Thank you. You may have a seat in the
16 witness stand.

17 DIRECT EXAMINATION:

18 BY MS. SAMPSON:

19 Q Good afternoon. Could you please spell your last
20 name for the record?

21 A Breland, B-R-E-L-A-N-D.

22 Q And Ms. Breland, how old are you?

23 A I am 26.

24 Q And are you working?

25 A Yes, ma'am.

- 1 Q Where do you work?
- 2 A I work at Tapio School of Gymnastics. It's a small
3 business down in Mt. Pleasant, South Carolina.
- 4 Q And are you from this area?
- 5 A No, ma'am. I'm from Mt. Pleasant.
- 6 Q When did you move to Columbia?
- 7 A In 2003 when I went to USC for college.
- 8 Q So you've lived here since 2003?
- 9 A I don't live here now, anymore.
- 10 Q When did you move back to Mt. pleasant?
- 11 A In 2010.
- 12 Q So in May of 2010, were you living in Mt. Pleasant or
13 in Columbia?
- 14 A I was -- the first part I was living here, and I
15 moved at the end of May back to Mt. Pleasant.
- 16 Q So on May 1st, you were living there?
- 17 A Yes, ma'am.
- 18 Q Okay. I'm going to take you back to -- actually to
19 the day before, April 30th.
- 20 A Uh-huh.
- 21 Q What did you do that night?
- 22 A I just went out with some friends, I believe.
- 23 Q And did you meet anyone that night?
- 24 A No one new.
- 25 Q No one new. Who did you hang out with then?

1 A Some of my friends I did before and then Stephen and
2 Harrison and Jeff.

3 Q And when you say, is that the defendant, Steven
4 Kranendonk?

5 A Yes, ma'am.

6 Q Okay. And when you say Harrison, is that Eric Hair?

7 A Yes, ma'am.

8 Q You all call him Harrison?

9 A Yes, ma'am.

10 Q How do you know him?

11 A We met him through a mutual friend named Jeff.

12 Q Okay. So the next day -- did you make plans that
13 night to meet?

14 A No, ma'am. We -- it was kind of a spur of the moment
15 on May 1st.

16 Q Okay. So on May 1st, what happened?

17 A We got up and we were going to hang out with Jeff,
18 and he decided -- he said that we all would go on the
19 boat. We said sure because we've never been before. He
20 made plans with Steven and Harrison to go out on the boat,
21 and we met up with them.

22 Q And when you say we met up, was Jeff with you all?

23 A Jeff was -- we were hanging out with Jeff, and we
24 went to Rush's on Harbison for lunch. Then he went back
25 to his house to get ready to go to the -- on the boat, and

1 he -- then we met with Harrison and Steven when we were --
2 before we got in -- we were meeting at his house so we
3 could all ride together.

4 Q When you say meeting at his house, whose house?

5 A Steven's house.

6 Q Okay. So you all -- where did you all first meet
7 with Steven?

8 A On Harbison.

9 Q Do you remember where?

10 A I think it was in a parking lot. I'm not sure which
11 parking lot.

12 Q And did you all go in one car?

13 A Not into -- we drove separate cars until we got to
14 Steven's house.

15 Q Okay. Did you make any stops along the way?

16 A We -- on the way -- we stayed in the car, but Steven
17 had went to Total Wine and Harrison went to go get a bow
18 tie from a tuxedo shop right near there.

19 Q So you stopped at Total Wine. Did they go in and you
20 stayed outside?

21 A Yeah. Me and Mallory who I was with, we stayed in
22 the car and Steven went one place and Harrison went the
23 other.

24 Q All right. So then you went to Steven's house?

25 A Uh-huh.

1 Q And what did you all do there?

2 A We got in the -- I put a bathing suit on and a sun
3 dress, and then he just loaded up the car and we went.

4 Q Do you remember what time this was?

5 A I'm not -- probably around three. It was in the
6 afternoon, two or three.

7 Q And where did you all go from Steven's house?

8 A To -- it was where his boat was parked at Pine
9 Island.

10 Q Okay. And was -- did you all have anything with you?

11 A I had my bag with towels in it, and he -- Steven had
12 just like food and drinks and all.

13 Q Did you have any liquor?

14 A Yes, there was liquor.

15 Q What did you have?

16 A When he went to Total Wine, it was I think vodka and
17 make a bourbon or something.

18 Q Okay. What color was that liquor?

19 A Brown.

20 Q And you took that on the boat with you?

21 A Yes, ma'am.

22 Q Did you take any beer?

23 A No, ma'am.

24 Q Was there beer on the boat, do you remember?

25 A When we left the Rusty Anchor, we brought our beer

1 back from there.

2 Q So you got beer at the Rusty Anchor?

3 A Yes. We got one or two.

4 Q I think I'm speeding ahead.

5 THE COURT: Could she just pull that microphone up
6 just a little built.

7 MS. SAMPSON: The judge has to --

8 THE COURT: You can pull your seat up if that helps.

9 BY MS. SAMPSON:

10 Q So from Pine Island, is that where the boat was?

11 A Yes, ma'am.

12 Q And from Pine Island, what happens from Pine Island?

13 A We just loaded the boat and left the boat and went
14 to -- we rode around for a little bit and went to --

15 Q When you say rode around, were you riding in a boat
16 or in a car?

17 A In a boat, okay.

18 Q Okay.

19 A And went to -- we met some people he knew and kind of
20 anchored by their boat.

21 Q Okay. So you go somewhere, and I know you are not --
22 are you familiar with Lake Murray at all?

23 A No.

24 Q Okay. So you go somewhere --

25 A Uh-huh.

1 Q -- and meet some other people.

2 A Uh-huh.

3 Q I need you to say yes or no.

4 A Yes, ma'am, I'm sorry.

5 Q That's all right. And do you know how long you all

6 stayed with those other people?

7 MR. HARVEY: I object to the form of the question,

8 Your Honor. It's a leading question.

9 MS. SAMPSON: I can --

10 THE COURT: Overruled.

11 MR. HARVEY: -- change the question, Your Honor.

12 THE COURT: Overruled, go ahead.

13 MS. SAMPSON: Do you know how long you stayed with

14 the other people?

15 A Maybe an hour or two. Not -- it wasn't too long, but

16 it was, I believe, an hour or so.

17 Q Okay. And then what did you all do?

18 A Then we were riding around and then he decided he

19 wanted to go to -- I don't know the name of the marina.

20 Q He who?

21 A Steven, I'm sorry.

22 Q That's okay. And who all is in the boat?

23 A Me, Mallory, Steven, and Harrison.

24 Q And who is driving?

25 A Steven.

- 1 Q Did he drive the whole time?
- 2 A Yes, ma'am.
- 3 Q Okay.
- 4 A Except after Harrison left.
- 5 Q Okay. But up until the incident, he was driving?
- 6 A Uh-huh.
- 7 Q Okay. And when you were with the other people, were
- 8 you drinking?
- 9 A I had one drink, yes.
- 10 Q What about Steven?
- 11 A Yes.
- 12 Q He was?
- 13 A Yes.
- 14 Q Do you know how many?
- 15 A No, ma'am.
- 16 Q Okay. Was it -- can you --
- 17 A I would say one or two.
- 18 Q Okay. And then you left those people and went where?
- 19 A After we -- I don't know the name of the marina, but
- 20 it was where like the Rusty Anchor, and there was another
- 21 like bar-type area.
- 22 Q So you went to the Rusty Anchor first?
- 23 A We went to the Rusty -- it was like the bar place.
- 24 Q That's fine.
- 25 A Okay.

- 1 Q You went to a bar.
- 2 A Yes, ma'am.
- 3 Q Okay. And did you all get out of the boat?
- 4 A Yes, ma'am.
- 5 Q And what did you do at the bar?
- 6 A I had a beer, maybe two beers, and we're just hanging
7 out. By that time, Jeff came and met us there.
- 8 Q And what about Steven, do you remember if he was
9 drinking?
- 10 A I believe so.
- 11 Q Do you know what he was drinking?
- 12 A No, ma'am.
- 13 Q Okay. But to the best of your recollection, he was
14 drinking something?
- 15 A Uh-huh.
- 16 Q Okay. And how long did you all stay at the bar?
- 17 A I'm not positive, probably -- maybe a couple of
18 hours.
- 19 Q And how was Steven acting at the bar?
- 20 A He wasn't -- he knew a bunch of people, so he was
21 walking around talking to people. But he -- just normal.
- 22 Q Was he happy, sad?
- 23 A He was happy.
- 24 Q Would you say y'all were partying?
- 25 A No, ma'am. It was very relaxed.

1 Q Okay, relaxed.

2 A Uh-huh.

3 Q Okay. So you stayed at the bar. Did you say how
4 long you stayed at the bar, I'm sorry?

5 A I think maybe an hour or two. I don't think it
6 was --

7 Q Was it dark yet?

8 A Yes, ma'am, or it was getting dark.

9 Q So what did you all do at that time?

10 A After we decided to leave, we went into the boat and
11 we -- I kind of hung out in the boat a little bit and
12 finished our beer.

13 Q So let me stop you there. Who was drinking on the
14 boat at that time?

15 A I believe -- I think everybody. I'm not sure,
16 though.

17 Q Okay. And you all -- I believe that earlier you all
18 at that time put beer onto the boat.

19 A Yes.

20 Q Do you remember what kind?

21 A Maybe a Miller Light, a Miller Light is. I think
22 Miller Light or Bud Light.

23 MS. SAMPSON: That's fine.

24 THE COURT: I can't hear what she is saying.

25 MS. SAMPSON: I'm sorry. You're going to have to

1 speak up.

2 THE COURT: She talks kind of fast.

3 THE WITNESS: Sorry. It was either a Miller Light or
4 a Bud Light.

5 BY MS. SAMPSON:

6 Q And that's what you all took onto the boat with you?

7 A Yeah. It was just like one can.

8 Q Each?

9 A I know me and Mallory did. I don't know about
10 Harrison or Steven.

11 Q Okay. So you all get on the boat, and then what do
12 you do?

13 A We just listen -- there's music playing, and we were
14 hanging out for a little bit before we decide to leave.

15 Q Okay. Do you know how long?

16 A No, ma'am.

17 Q Okay. At some point, you leave?

18 A Uh-huh.

19 Q What do you all do when you leave?

20 A We were just getting out at the marina. We were
21 leaving it, waited -- we were going slow for a little
22 while. Then we decided to speed it up to get back.

23 Q And do you remember when you speeded up? Were you in
24 the open waters or the no wake zone? Do you remember?

25 A It was in the open waters.

1 MR. HARVEY: Your Honor, object to the form of the
2 question. This is very important.

3 THE COURT: Rephrase your question.

4 BY MS. SAMPSON:

5 Q Were you in the open waters or the no wake zone when
6 you sped up?

7 A It was in the open waters.

8 Q Okay. And then where did you do?

9 A We were heading back to Pine Island to dock his boat.

10 Q Okay. And did you make it there?

11 A No, ma'am.

12 Q What happened before you got to Pine Island?

13 A The accident occurred.

14 Q And I want you to kind of walk me through what you
15 remember.

16 A I remember once we sped up and....

17 (Crying).

18 Once we sped...

19 Q It's okay. Take your time.

20 A Once we sped up and...

21 (Crying).

22 Q I'm sorry. I know this is hard. You're going to
23 have to speak up.

24 A I know, I know. I'm sorry. Let me -- because at
25 first, I was sitting in the front of the boat, and then

1 before --

2 Q Well, let's talk about that for a little bit. You
3 were sitting in the front. Who were you sitting next to?

4 A I was on the left side, and Mallory and Harrison were
5 kind of in the middle part like right where the center
6 console was.

7 Q Okay.

8 A And like --

9 Q Were you sitting right beside each other?

10 A I was sitting right here.

11 Q And who was driving?

12 A Steven.

13 Q Okay.

14 A And then like I went back and sat by him.

15 Q I'm sorry. I didn't understand what you said.

16 A And then I went back and sat by him.

17 Q You went and sat beside Steven.

18 A Steven, yes, ma'am. And then when we were going kind
19 of fast, we saw the boat coming and...

20 Q Which side of you was the boat on?

21 A It was on my right side.

22 Q It was on your right side. Could you see any lights?

23 A Yes, ma'am. I did see lights.

24 Q What kind of lights did you see?

25 A It was the red and green, like he said.

1 Q Did you see both or one or do you remember?

2 A I don't remember.

3 Q Okay. Did you see any other lights?

4 A No, ma'am.

5 Q Okay. So then what happened.

6 A Then I just -- the next thing I knew, we -- because
7 I -- as we were driving, Steven was kind of honking the
8 horn, and he may have been flashing lights just to see if
9 like he got out of the way or anything.

10 Q Did he say anything?

11 A I believe Harrison told us or told -- leaned --
12 turned around and told Steven about the -- and I kind of
13 saw it, and then he said I saw it and then kind of -- and
14 he was honking the horn and everything.

15 Q So you -- I just want to make sure I'm understanding.
16 Harrison said he --

17 MR. HARVEY: Object to what Harrison said, Your
18 Honor.

19 MS. SAMPSON: She has already --

20 THE COURT: She has testified. Overruled. Go ahead.

21 BY MS. SAMPSON:

22 Q Harrison said he saw the boat.

23 A I believe.

24 Q He told this to Steven?

25 A That's what I remember.

1 Q That's what you remember. Did you -- how far away
2 was the boat when you first saw it?

3 A I'm not positive. In my testimony, it says 34 yards
4 because the DNR people made me look out a window when we
5 were -- when we were at a place on James Island, and they
6 said, "About how far?" They went and measured it.

7 Q Okay. So they had you --

8 A Look out a window and see a distance.

9 Q And they measured it and told you how far the
10 distance.

11 A Yes.

12 Q But to the best of your recollection --

13 A I don't know if that's right or not.

14 Q And that's fine but you are able to see the boat.

15 A Yes, I did.

16 Q Did you say anything to Steven?

17 A I said -- I said, "There's a boat over there."

18 Q "There's a boat over there"?

19 A Uh-huh.

20 Q Okay. Did -- and then what happened?

21 A And then it -- we hit the boat, and the next thing I
22 know, I was in the water.

23 Q Could you tell what part of the boat you hit?

24 A No, ma'am.

25 Q And I believe you said you fell out?

1 A Uh-huh.

2 Q What happened after you fell out?

3 A We were in the water, and I was kind of near Steven
4 in the water. Then I called out for Mallory to see where
5 she was. We got with her in the water, and then Harrison
6 was still in the boat. He had a big light shining and
7 came and got us, picked us up.

8 Q Now, before -- you just said he had the big light
9 shining.

10 A Uh-huh.

11 Q Was that light on before the wreck, or did he turn it
12 on after?

13 A I am not positive.

14 Q Okay. Who -- how did you get in the boat?

15 A When Harrison came and got us, the back ladder came
16 down. We climbed in.

17 Q And was Harrison -- what was Harrison doing at that
18 time?

19 A He was on the phone, I believe with 9-1-1, and he
20 was -- he kind of had the light on and driving over.

21 Q I'm sorry. What did you just say?

22 A He had the -- I think he had the light on and just
23 came and got us.

24 Q Okay. What did you do once you got back on the boat?

25 A I got on the phone and was calling friends or

1 something to come help us.

2 Q Did you have -- were you using the same phone as
3 Harrison, or did you have a different one?

4 A I had a different one. It was Mallory's phone.

5 Q Okay. So you used Mallory's phone?

6 A Yes, ma'am.

7 Q And who did you call?

8 A A friend to -- to come get us.

9 Q Did you -- where did you tell them to go?

10 A I -- well, I told them that we had gotten in a boat
11 wreck, and Steven was on the radio talking to somebody and
12 Harrison had called 9-1-1. Then we -- I stayed on the
13 phone until we got to the other place.

14 Q Did you know where you were?

15 A No, ma'am.

16 Q So when you're talking to your friend, could you tell
17 them where to go?

18 A No.

19 Q And you said Steven was on the radio. Do you
20 remember what he was telling them?

21 A He said, "Mayday, Mayday. There has been a boat
22 wreck," and I don't know what after that.

23 Q Okay. Who drove to the marina?

24 A Steven.

25 Q Steven. So when did -- when was -- when did Harrison

1 drive boat?

2 A To come get us out of the water.

3 Q Was he driving when the wreck occurred?

4 A No, ma'am.

5 Q And did he drive after you all got back in the boat?

6 A No, ma'am.

7 Q Okay. And what did you do when you got onto the
8 marina?

9 A We went there, and there were some people out there
10 that were helping us. Mallory had a gash on her face, so
11 we were looking at that. Me and Mallory and this other
12 lady that was helping her, we went into, I guess it was a
13 bar and something and got towels and water.

14 Q So did you stay by the boat?

15 A We did for a little while, and then we went in and
16 came back up on the boat.

17 Q Okay. And were you hurt at all?

18 A I had -- my shoulder was hurt, and then I had just a
19 bruise on my arm.

20 Q But no cuts or anything?

21 A No, ma'am.

22 Q Did you go to the hospital, though?

23 A Yes, ma'am.

24 Q The were you taken by ambulance, or did you just
25 drive?

1 A Our friends came and picked us up, and they drove us
2 to the hospital.

3 Q Beg the Court's indulgence.

4 (Pause.)

5 I want to ask what, if anything, happened in relation
6 to music?

7 A When we were at the -- when we finished at the bar
8 and we were getting ready -- before we were leaving and
9 hanging out in the boat with the music, I knew someone
10 that was sitting up in the bar area came down and asked to
11 turn the music down because it was loud.

12 Q Did that in any way bother anybody?

13 A I didn't feel very comfortable with it, because at
14 first, I think -- I believe Steven was saying that he
15 didn't have to, really and I don't know. I just -- I
16 don't like to be in situations like that.

17 Q Did it feel confrontational?

18 A Just when I -- an authority figure...

19 MR. HARVEY: Your Honor, I don't think -- she
20 can't --

21 MS. SAMPSON: I can rephrase.

22 MR. HARVEY: She can't give the nature of -- she was
23 asked something about confrontational. That means she
24 would have to be able to give an opinion about how the two
25 parties viewed the conversation. I object to that

1 question being asked.

2 THE COURT: I sustain the objection. Rephrase your
3 question.

4 BY MS. SAMPSON:

5 Q That's fine.

6 A Just when an older figure, an older person, comes and
7 tells you to do something, you do it.

8 Q And based on what you just said, was the other person
9 older?

10 A I believe they were older.

11 Q Okay.

12 A I can't say for sure.

13 Q Okay. Before the impact, did you feel the boat slow
14 down at all?

15 A I can't -- I don't recall it.

16 Q You don't recall?

17 A No, ma'am.

18 Q When Steven saw the boat, what did he do?

19 MR. HARVEY: Your Honor, that calls for her to be
20 able to give an opinion as to when Steven saw the boat and
21 then what Steven did. She can't testify when Steven saw
22 the boat. She can testify when she saw the boat and what
23 she observed.

24 THE COURT: Overruled.

25 MR. HARVEY: Thank you, Your Honor.

1 BY MS. SAMPSON:

2 Q What did Steven do when he saw the boat?

3 A I know he honked the horn and I'm not...

4 Q Okay. Do you remember how far from the land you
5 were, or can you tell us how far you were from the land
6 when you got -- fell in the water?

7 A It was pretty far, I thought.

8 Q I'm sorry?

9 A It was pretty far from what I thought because Mallory
10 had said something about swimming, and I was like, "No.
11 We're not going to swim."

12 Q Do you feel like you could swim to the shore?

13 A If I had to, I could have.

14 Q Okay. How was the -- how was Steven reacting while
15 he was in the water?

16 A It was like a calm panic, I guess, because he like --
17 it was kind of like he couldn't believe what happened, but
18 it was like he was keeping things under control.

19 Q Okay. Do you know if the defendant was drinking at
20 the time of the accident?

21 A I'm not sure.

22 Q You're not sure. All right.

23 No further questions, Your Honor.

24 THE COURT: Cross-examination?

25 CROSS-EXAMINATION:

1 BY MR. HARVEY:

2 Q Good afternoon, Jenna.

3 A Good afternoon.

4 Q Jenna, you had testified about the events of May 1st
5 and you and Mallory actually had made plans to eat lunch
6 with your friend Jeff, right?

7 A Yes, sir.

8 Q Jeff Harrell?

9 A Yes, sir.

10 Q And you all went to lunch at Rush's, right?

11 A Yes, sir.

12 Q After you and Jeff and Mallory went to lunch at
13 Rush's, Jeff -- it's your understanding Jeff then went
14 home to get his bathing suit to meet you guys at the lake,
15 right?

16 A Yes, sir.

17 Q And it's your understanding from talking with Jeff,
18 he fell asleep, and he met you guys later on that evening,
19 not when you went to Pine Island --

20 A Yes.

21 Q -- with Harrison, Mallory and Steven, correct?

22 A Yes, sir.

23 Q And when you guys left Pine Island, did y'all go to
24 Beech Island or a beach?

25 A Yeah. It was somewhere it had an area, and you

1 anchored by other boats.

2 Q And you knew there was some -- you were introduced to
3 some of Steven's friends?

4 A Yes, sir.

5 Q And do you recall if people shared the alcohol --

6 A Yes.

7 Q -- at the beach?

8 A Yes, sir. They did.

9 Q So it's fair to say that you -- when I say share
10 alcohol, people who consumed the vodka, it wasn't Steven
11 who exclusively consumed the vodka, correct?

12 A That's right.

13 Q So in this exhibit, this volume of vodka from here to
14 here can't be attributed solely to Steven's consumption,
15 can it?

16 A Correct.

17 MS. SAMPSON: Objection, Your Honor, argumentative.

18 THE COURT: Overruled.

19 BY MR. HARVEY:

20 Q Now, y'all spent about an hour with Steven and his
21 friends at -- we'll call it the first place, okay.

22 A Okay.

23 Q And after you all -- I'm going to use the word hung
24 out because that's what young people say they do. After
25 you hung out -- some say they chill out, right?

1 A Uh-huh.

2 Q So y'all hung out and chilled out, and then you
3 decided to go somewhere else. Everyone in the boat went
4 from Beech Island to a marina, correct?

5 A Yes, sir.

6 Q And when you were at the marina, you consumed a beer,
7 right?

8 A Yes, sir. It may have been two.

9 Q Right. That's what people do when they go to the
10 lake, right?

11 A Uh-huh.

12 Q Okay. And that's what they do when they go to a
13 marina that has a bar, right?

14 A Yes, sir.

15 Q They consume beer, okay. So we're at the lake. When
16 I say "we", Jenna, Mallory, Harrison, and Steve were at
17 the marina.

18 A Uh-huh.

19 Q Y'all were there for a while, correct?

20 A Correct.

21 Q Now, somebody else joined you, didn't they?

22 A Yes, sir.

23 Q That would be Jeff, wouldn't it?

24 A Yes, sir.

25 Q And Jeff joined y'all at the marina, and he was there

1 with you guys for a considerable period of time, correct?

2 A Uh-huh.

3 Q And, actually, in response to the solicitor's
4 question, you had said that Mallory, Jenna, Harrison and
5 Steve left the marina, correct?

6 A Yes, sir.

7 Q And when the boat left the marina, was Jeff on the
8 dock?

9 A I'm not sure. I know -- I don't now if he left by
10 then or not.

11 Q You don't remember if Jeff helped push the boat off?

12 A I'm not -- no, sir.

13 Q Okay. Now, did you, Mallory and Jeff have plans to
14 meet later on that evening?

15 A No, sir. We were going to meet with some of my other
16 friends.

17 Q All right. And you had plans to ride with Steven to
18 your automobile, correct?

19 A Yes, sir.

20 Q When I say ride on the boat to where your automobile
21 is --

22 A Before I asked Jeff to see if he would take us to
23 Steven's house to get his car, and Jeff said he didn't
24 know where Steven lived.

25 Q Okay. Now, and your plans were you were going to --

1 once you arrived at Pine Island, were you going to have to
2 get a ride from Steven back to your vehicle?

3 A Yes, sir.

4 Q So Jeff was aware, wasn't he, that you were going to
5 have to take a ride in the lake in the boat, and he was
6 aware of your plans that you were then going to go from a
7 boat to a car and ride in a car --

8 MS. SAMPSON: Objection, Your Honor.

9 BY MR. HARVEY:

10 Q -- operated by Steven, correct?

11 A Yes.

12 MS. SAMPSON: He is asking her if she is aware of
13 what someone else knew.

14 THE COURT: Overruled. It's fair cross-examination.

15 BY MR. HARVEY:

16 Q Correct?

17 A Yes, sir.

18 Q Okay. Now, when the boat left Lighthouse marina --

19 A Uh-huh.

20 Q -- you told the prosecutor where you were first
21 sitting. Where was that?

22 A On the front left-hand side.

23 Q And you were next to Mallory?

24 A I wasn't like directly sitting by her but yes, close
25 to it.

1 Q You were close to her?

2 A Yes.

3 Q And when the boat left the marina, you had described
4 in your response to the prosecutor's questions that you
5 had enough time to sit next to your friend and walk in the
6 boat and sit in a seat next to Steven, correct?

7 A Yes, sir.

8 Q So you weren't having a hard time maintaining your
9 balance when you got up in a moving boat --

10 A Uh-huh.

11 Q -- walked back and sat down without incident,
12 correct? It wasn't difficult?

13 A No, sir.

14 Q All right. Now, you'll agree with me that the boat
15 changed speeds once it had traveled a certain distance,
16 correct?

17 A Yes, sir.

18 Q Now, when you were sitting -- when you were in the
19 boat as you left Lighthouse Marina, what, if anything, did
20 you observe that you observed that gave you any indication
21 Steven was distracted? You didn't observe anything, did
22 you?

23 A No, sir.

24 Q What, if anything, gave you an indication that Steven
25 wasn't operating the boat in a normal manner? You didn't

1 observe anything, did you?

2 A No, sir.

3 Q What, if anything, did Steven tell you about the
4 equipment not working when you left? He didn't tell you
5 anything, did he?

6 A No, sir.

7 Q When you were sitting next to Steven, he didn't
8 appear distracted to you, did he?

9 A No, sir.

10 Q And when you had mentioned in response to the
11 prosecutor's questions about being interviewed by DNR, you
12 told DNR, didn't you, that you didn't think Steven was
13 operating the boat out of the ordinary, did you?

14 A No, sir.

15 Q Okay. So you thought he was operating the boat
16 normally?

17 A Yes, sir.

18 Q Okay. Now, Steven wasn't on his cell phone when he
19 was driving the boat, was he?

20 A No, sir.

21 Q You answered the prosecutor's questions that when he
22 was operating the boat prior to the accident, you weren't
23 sure if he was drinking or not, correct?

24 A Correct.

25 Q So you can't say, "Oh, Steven was looking at a drink

1 or he was on the cell phone when he was operating the
2 boat," can you?

3 A No, sir.

4 Q Now, this is at night, right?

5 A Yes, sir.

6 Q It's at -- on Lake Murray, and you're from Mt.
7 Pleasant, so you said you weren't too familiar with Lake
8 Murray, right?

9 A Correct.

10 Q Okay. And now, Mt. Pleasant is on the coast, right?

11 A Yes, sir.

12 Q You had been on boats before May 1st, 2010.

13 A Yes, sir.

14 Q And when you were on that boat as an experienced boat
15 rider, you just testified you didn't think Steven was
16 doing anything out of the ordinary, right?

17 A No, sir, he wasn't.

18 Q Now, when, if ever, did you observe Steven not facing
19 forward before you first saw the other boat? You never
20 did, did you?

21 A No, sir.

22 Q He was facing forward. Now, you called the front of
23 the boat the bow, right?

24 A Uh-huh.

25 Q You call the back -- what's the back of the boat

1 called? That's the stern, isn't it?

2 A Yes, sir.

3 Q Now, from where you were sitting, you could look out
4 over the bow, right?

5 A Yes, sir.

6 Q When you looked out over the bow, you had a field of
7 vision what was in front of you, didn't you?

8 A Yes, sir.

9 Q Now, when you were on the boat after it left
10 Lighthouse Marina prior to the collision, what if
11 anything, was there on the boat that impeded your field of
12 vision? There wasn't anything, was there?

13 A No, sir.

14 Q What, if anything, did you hear Steven say that
15 indicated to you he wasn't paying proper attention or he
16 didn't have a field of vision? It was nothing?

17 A No, sir.

18 Q Right. Is there -- there is nothing that happened
19 that night that would lead you to believe Steven wasn't
20 paying attention, correct?

21 A Correct.

22 Q There's nothing you observed concerning Steven's
23 operation of the boat that led you to believe that he was
24 proceeding in a manner that disregarded the safety of
25 anybody, was there?

1 A No.

2 Q Now --

3 MS. SAMPSON: Objection, Your Honor. That question
4 is --

5 THE COURT: Overruled.

6 BY MR. HARVEY:

7 Q Now, growing up in Mt. Pleasant, you testified you've
8 been on boats before, right?

9 A Yes, sir.

10 Q And boats, when boats approach each other, each boat
11 is moving at a speed, right?

12 A Yes, sir.

13 Q And so when a boat -- if I'm a boat over here and I'm
14 moving at a speed, and you're a boat coming towards me, as
15 we both move towards each other -- will you please stand
16 up? Please unhook the --

17 A This?

18 Q Please. Please walk down. Let's walk towards each
19 other.

20 A Straight in?

21 Q No, walk towards me.

22 A Okay.

23 Q As we're both moving, we're closing the distance at a
24 speed, correct?

25 A Yes, sir.

1 Q And the distance that we close between you and I is
2 the speed of both of us.

3 MS. SAMPSON: Is there a question, Your Honor? I
4 don't understand the point of all of this.

5 THE COURT: Ask the question.

6 BY MR. HARVEY:

7 Q When boats approach each other at night and they're
8 moving at a speed, each boat closes towards the other boat
9 based on their rate of speed, correct?

10 A Yes, sir.

11 Q And you know that from being on boats way before May
12 1st, 2010, right?

13 A Yes.

14 Q Thank you. Please sit down.

15 Now -- I have nothing further, Your Honor.

16 THE COURT: Redirect?

17 MS. SAMPSON: Yes, Your Honor.

18 REDIRECT EXAMINATION:

19 BY MS. SAMPSON:

20 Q Ms. Breland, Mr. Harvey asked you when you were at
21 the bar area --

22 A Uh-huh.

23 Q -- and you were making plans. You all spoke -- you
24 and Mallory spoke with Jeff about leaving?

25 A Yes, sir -- or yes, ma'am, I'm sorry.

- 1 Q I'm sorry?
- 2 A I said yes, ma'am, I'm sorry.
- 3 Q Okay. And were -- did you want to leave at that
- 4 time?
- 5 A Yes, ma'am.
- 6 Q Why did you want to leave?
- 7 A I just wanted to get back because it was getting
- 8 dark, and I had never been in a boat at night.
- 9 Q You've never been in a boat at night?
- 10 A No.
- 11 Q So did you know the rules with boating having to do
- 12 with the red and the green lights?
- 13 A I knew somewhat about them because when I was in high
- 14 school, I took a boating course but I'm not positive about
- 15 them.
- 16 Q You're not positive about them?
- 17 A No, ma'am.
- 18 Q So -- and you testified, I believe, that you don't
- 19 know which -- if both lights were on, the red and the
- 20 green, or just one?
- 21 A Correct.
- 22 Q Okay. And when you were leaving the bar, you didn't
- 23 want to be there anymore?
- 24 A No. I was ready to go.
- 25 Q You were ready to go, but instead, you got in the

1 boat with Steven?

2 A Yes, ma'am.

3 Q Didn't you want Jeff to take you home?

4 MR. HARVEY: Your Honor, object to the form of the
5 question and relevance.

6 THE COURT: Relevance. I'll sustain it.

7 BY MS. SAMPSON:

8 Q Who did you want to go home with --

9 MR. HARVEY: Relevance, Your Honor.

10 Q -- at that time?

11 THE COURT: Sustained.

12 BY MS. SAMPSON:

13 Q Why did you not want to be with Steven anymore?

14 MR. HARVEY: Objection, Your Honor.

15 THE COURT: I will overrule that one.

16 MR. HARVEY: Your Honor, that wasn't...

17 I -- you've ruled, Your Honor.

18 BY MS. SAMPSON:

19 Q Why did you not want to be with Steven anymore?

20 A He was -- I don't think he was quite ready to go and
21 I was.

22 Q Okay. Mr. Harvey did a demonstration with you two
23 walking towards each other. If two -- he just had you
24 walking towards each other, you would have hit in the
25 front in that demonstration, correct?

1 A Yes.

2 Q You all hit the side of the other boat, correct?

3 A I believe so, yes.

4 MS. SAMPSON: No further questions, Your Honor?

5 THE COURT: Anything further of this witness?

6 RE CROSS-EXAMINATION:

7 BY MR. HARVEY:

8 Q Your answer to the prosecutor's question about how
9 the boats collided with, I believe, someone, correct?

10 A Correct.

11 Q So there's some uncertainty, correct?

12 A Yes, sir. I'm not sure how he hit.

13 Q You're not sure how he hit. Thank you.

14 THE COURT: All right. Thank you very much,

15 Ms. Breland. You're free to go.

16 Any objection to dismissing this witness?

17 MR. POTTS: None from the State, Your Honor.

18 THE COURT: Without objection.

19 All right. Ladies and gentlemen of the jury, we're
20 going to take a lunch break at this time. Be back in the
21 jury room at 2:30. That's about an hour for you to get
22 some lunch.

23 I'm going to continue with the trial at that time.

24 I'm moving pretty quickly, as you can tell because I want
25 to make sure we get all the witnesses in front of you this

1 week.

2 Again, don't discuss -- I'm going to ask you not to
3 discuss the case among yourselves when you return to the
4 jury room or with anyone else over the lunch hour.

5 You can leave your pads either in your chairs if you
6 prefer to do that, or you can leave them in the jury room,
7 whichever one you prefer. Have a pleasant lunch. We'll
8 see you at 2:30.

9 (WHEREUPON, the jury left open court at approximately
10 1:32 p.m.)

11 We'll stand at ease until 2:30.

12 (WHEREUPON, a lunch break was taken.)

13 THE COURT: State ready to proceed?

14 MS. SAMPSON: Yes, Your Honor.

15 THE COURT: Defense ready to proceed?

16 MR. HARVEY: Yes, sir.

17 THE COURT: Bring the jury, please.

18 (WHEREUPON, the jury came into open court at
19 approximately 2:35 p.m.)

20 THE BAILIFF: The jury is seated, Your Honor.

21 THE COURT: Thank you very much. All right.

22 Solicitor, call your next witness.

23 MS. SAMPSON: Thank you, Your Honor. May it please
24 the Court. The State calls Eric Harrison Hair.

25 THE BAILIFF: Place your left hand on the bible.

1 ERIC HARRISON HAIR, after being duly
2 sworn, testified as follows:

3 THE CLERK: Please have a seat there, sir. State
4 your full name for the record and please spell your last.

5 THE WITNESS: Eric Harrison Hair, H-A-I-R.

6 DIRECT EXAMINATION:

7 BY MS. SAMPSON:

8 Q Good afternoon, Mr. Hair. How old are you?

9 A Twenty-seven.

10 Q And do you work?

11 A I do.

12 Q Where do you work?

13 A Brace and Boot.

14 Q Brace and Boot. How long have you been there?

15 A I've been there for almost a year.

16 Q And are you from this area?

17 A I am.

18 Q Where?

19 A Irmo.

20 Q Irmo?

21 A White Rock, actually.

22 Q White Rock?

23 A Yes; yes, ma'am.

24 Q I just didn't know if I heard you. I'm sorry. And
25 do you know Steve Kranendonk?

1 A Yes, ma'am.

2 Q How do you know him?

3 A We went to school together, high school.

4 Q High school so you've known him for how long?

5 A About 10 years now or so.

6 Q Would you would you characterize your relationship
7 with Steven?

8 A We're friends.

9 Q Good friends, not good friends?

10 A No. We're good friends.

11 Q About how often do you see him?

12 A About every other week or so.

13 Q And is that how your relationship has always been?

14 A Yes, ma'am.

15 Q Okay. I want to talk to you a little bit about
16 May 2010 why we're here. What were you doing on May 1st?

17 I'm sorry. I'm going to take you back to April 30th.

18 What were you doing April 30th?

19 A April 30th?

20 Q Yes, the day before the accident.

21 A At what time?

22 Q Did you -- were you in the boat with Mr. Kranendonk
23 all day?

24 A No, I was not.

25 Q What were you doing that night?

- 1 A That night we went down to Five Points at a bar
2 called Chubbies.
- 3 Q Who did you go with?
- 4 A I was down there. I met up with my buddy, Jeff.
- 5 Q And what's Jeff's last name?
- 6 A Heller.
- 7 Q Heller, okay.
- 8 A And later on, Steve showed up.
- 9 Q And you called him Steve?
- 10 A That's correct.
- 11 Q Okay. Where did you all go after that? You said you
12 met at Chubbies? Did you to anywhere after that? Did you
13 stay --
- 14 A No. We stayed at Chubbies.
- 15 Q And did you -- were any females there with you all?
- 16 A Yes, but I don't remember exactly who. I could take
17 a guess as to who was there, but I don't know for sure.
- 18 Q Was Mallory or Jenna there with you?
- 19 A I'm not sure.
- 20 Q Not sure, okay. That's fine. How long did y'all
21 stay out that night, do you remember?
- 22 A Until about -- until about closing, until about two.
- 23 Q Okay. And so what did you do the next day?
- 24 A Woke up, called Steve, you know. Usually we -- you
25 know, weekends, we said, "Hey, what do you think about

1 going out on the boat?"

2 Q Do you remember what time you got up?

3 A I want to say it was around noon.

4 Q Around noon. Did you -- do you remember what time
5 you talked to Steve?

6 A No, I do not.

7 Q Okay. But you called him?

8 A I did.

9 Q And what did you all talk about?

10 A I talked about going out on the boat later that
11 afternoon.

12 Q Was this -- did you go out? How often did you go out
13 on the boat with him?

14 A About every other time we went out on the boat.
15 Every other -- like --

16 Q When you say every other time, do you have a boat
17 or --

18 A No. I mean, he would go out. A lot of times he
19 would call me. Sometimes I would go, sometimes I
20 wouldn't.

21 Q Okay. Did you go every week, every month, do you
22 know?

23 A A couple times a month.

24 Q Okay. Was it normal or out of the ordinary for you
25 all to go out on the boat?

- 1 A Normal.
- 2 Q So you all talk on the phone and decide to go out on
3 the boat?
- 4 A Correct.
- 5 Q So what did you do after that?
- 6 A Had some food.
- 7 Q Did you go with Steve to get the food or were you by
8 yourself?
- 9 A I believe I was by myself.
- 10 Q And what time did you meet up with Steve?
- 11 A I guess about around two, three o'clock.
- 12 Q Was it just you and Steve or was anybody else there?
- 13 A I met up with Steve first.
- 14 Q Okay.
- 15 A And then --
- 16 Q And then what did you do?
- 17 A And then later we met up with Mallory and John.
- 18 Q Okay. And how long have you known those two?
- 19 A Now, going on for about three-and-a-half. I'd say
20 three-and-a-half years.
- 21 Q So back then, you would have known them maybe a year,
22 two years?
- 23 A That's correct.
- 24 Q So you all decided to go -- were they going with you
25 all or what was going on?

1 A Yes; yes, ma'am.

2 Q Okay. So what did y'all do? Where did you meet them
3 at, do you remember?

4 A It was a grocery store. Which one, I'm not sure.

5 Q Okay. Was it in Columbia, Harbison, Irmo? Do you
6 remember?

7 A Irmo.

8 Q And where did y'all go after that?

9 A After that, I don't remember.

10 Q Did you make any stops? Do you remember?

11 A I think we went to Total Wine, I believe.

12 Q Okay. Who went into Total Wine?

13 A I don't remember.

14 Q You don't remember. Do you remember what was
15 purchased?

16 A No, ma'am.

17 Q Do you remember giving a statement to law
18 enforcement?

19 A I did.

20 Q Would seeing that statement help refresh your memory
21 as to what you told them?

22 A Sure. I can give it a shot.

23 MS. SAMPSON: May I approach the witness, Your Honor?

24 THE COURT: Yes, ma'am.

25

1 BY MS. SAMPSON:

2 Q I'm going to hand you this and ask you if you
3 recognize it.

4 A I do.

5 Q And what is that?

6 A It's the statement that I took. Actually, it's my
7 mother's handwriting because my arm was -- I wasn't able
8 to write at the time.

9 Q Correct. Okay. And so she wrote it?

10 A Correct.

11 Q Did you tell her what to write?

12 A I wrote -- I talked and she wrote.

13 Q Okay. And I'm going to point you to the middle of
14 the page. Do you see anywhere in there where you talk
15 about going to Total Wine?

16 A I do.

17 Q And what did you tell them at that time?

18 A "I met Steve and Mallory at the Publix grocery store.
19 Then we went to Total Wine and then back to Steven's
20 house."

21 Q Okay. So you did go?

22 A Yes, ma'am.

23 Q All right. But right now you don't remember what you
24 purchased at Total Wine?

25 A No, ma'am.

1 Q Okay. Do you remember purchasing anything?

2 MR. HARVEY: Your Honor, he -- object to the
3 question. It's been asked and answered.

4 THE COURT: Overruled.

5 BY MS. SAMPSON:

6 Q Do you remember if you purchased anything?

7 A I know something was purchased, but I don't know
8 exactly what it was.

9 Q Okay. So you go to Steven's house, or did you go to
10 Steve's house?

11 A Correct.

12 Q What did you all do when you got to his house?

13 A Loaded it up on the truck.

14 Q What did you put on the truck?

15 A I would assume -- usually, my food, my water, phone,
16 life jackets, usually whatever I'm taking out on the boat.

17 Q Did you all take any liquor on the boat that day?

18 A I can't remember.

19 Q You can't remember. Okay. Did you take any beer?

20 A I know I had some beers out there, but I can't
21 remember if I brought them or if I acquired them when we
22 were at Sandy Beach.

23 Q Okay. So let's -- so you go to Steve's boat. Where
24 is his boat at?

25 A I don't remember where it was that day. At one

1 point, it was parked at a -- Pine Island.

2 Q Okay.

3 A At one point, it was parked there. Sometimes it's at
4 his house. I don't remember where it was that day.

5 Q Okay. But it -- did you get on the lake at some
6 point?

7 A Correct.

8 Q Okay. And who all goes in the boat at that time?

9 A Steve, me, Mallory and John.

10 Q And who is driving?

11 A Steve.

12 Q Okay. And where do you all go at that point?

13 A Sandy Beach.

14 Q And do you stay at the beach?

15 A We docked up with other boats. We just hang out,
16 listen to music.

17 Q How long do you think you all were there?

18 A A couple hours, maybe two at the most, maybe three,
19 possibly.

20 Q Was anybody else there?

21 A Until it got dark.

22 Q I'm sorry?

23 A Until it got about dark.

24 Q Until it got about dark?

25 A That's usually when we leave Sandy Beach.

1 Q Okay. While you were at Sandy Beach, was anybody
2 else there with you all?

3 A With us?

4 Q Yes.

5 A No.

6 Q Were you all interacting with anybody else?

7 A Oh yes. There were a whole bunch of other boats out
8 there.

9 Q Did you know those people?

10 A Some of them I did. Some of them I met that day.

11 Q And were you all drinking?

12 A Yes, ma'am.

13 Q What were you drinking?

14 A I was drinking beer.

15 Q What about Steve? Did you see him drinking?

16 A I believe he had a drink. I didn't know exactly what
17 it was.

18 Q Okay. And were you all drinking from stuff you
19 brought or what other people had brought?

20 A Like I said, I know I had beer, but I can't --
21 sometimes I get it from, you know, other boats. I can't
22 -- I probably brought it, but I can't say for sure.

23 Q Okay. And what about Steven? Was he drinking with
24 other people or do you know?

25 A I'm not sure.

1 Q Okay. So around dark you said you got back in the
2 boat to leave Sandy Beach?

3 A Yes, ma'am.

4 Q Where did you all go after that?

5 A Johnson's Marina, the one on Johnson's Marina Road.
6 I think it's like Quarter Deck, I believe.

7 Q Okay. Did you get off the boat there?

8 A Yes, ma'am.

9 Q And what did you all do there?

10 A We went up and met up with Jeff and our friend, Ivy,
11 works at the bar up there.

12 Q Was that -- was the plan to meet Jeff there?

13 A No. He lived on Johnson Marina Road. We just --
14 when we showed up there, I called him to said, "Hey, we're
15 right around the corner from your house."

16 Q And then she came over?

17 A Correct.

18 Q So you all were hanging out. I think you said
19 something about Ivy. Who is Ivy?

20 A Ivy is a friend from high school. She is a bar
21 tender up there at the Quarter Deck.

22 Q She was working that night?

23 A Correct.

24 Q While at Quarter Deck, did you drink there?

25 A I believe I had a little bit on the boat. I think I

1 got beer.

2 Q Okay. And I just want to make sure because maybe I'm
3 not understanding because I don't know. Quarter Deck you
4 can park your boat and dock there?

5 A Correct.

6 Q And you can get off?

7 A You can get off, walk up and then walk back.

8 Q Okay. All right. So is this similar to a parking
9 lot where you park your car? You park your boat, though?

10 A Similar.

11 Q Okay. I'm just trying to get the picture in my head.

12 A All right.

13 Q Let me ask you this: How far away do you have to
14 walk from the boat to the bar?

15 A I'd say the dock is about -- from about here to the
16 back door and double that from the end of the deck to the
17 bar.

18 Q Okay. All right. So would it be fair to say it's
19 within walking distance you can walk back and forth fairly
20 easily?

21 A Yes, ma'am.

22 Q All right. So you're -- I don't want to -- you were
23 drinking. You just can't -- do you remember whether you
24 got it from the bar or from your boat?

25 A I got it from the bar, I'm pretty sure.

1 Q Okay.

2 A Like I said, I'm not quite exactly sure, but I would
3 assume.

4 Q Did you see Steven drinking?

5 A Yes, ma'am.

6 Q What, if anything, did you see him drink?

7 A It was in a cup, so -- and it had a straw. That's
8 all I can for sure tell you.

9 Q Okay. And how was he acting at that time?

10 A Normal, fine.

11 Q Okay. Were you all playing music at that time in the
12 boat?

13 A In the boat? There was a live band, so I don't think
14 we were playing music on the boat, but if the band was
15 over, then we probably would have turned the music on.

16 Q Okay. Do you remember doing that or --

17 A No. No, ma'am.

18 Q Okay. So what you can remember is your normal
19 pattern, but you can't remember what you did that night?

20 A Correct.

21 Q Okay. How long were you at Rusty Anchor or Quarter
22 Deck?

23 A Maybe an hour.

24 Q And was it dark?

25 A It was.

1 Q Okay. Why did you leave?

2 A Because we were planning on going out and getting
3 some food.

4 Q So the time -- from the time you went to the beach to
5 the time you went to Quarter Deck, had y'all eaten a meal?

6 A We ate before we got onto the boat.

7 Q Okay. So what time did you get on the boat?

8 A I would assume -- I think around four or five
9 o'clock.

10 Q And you had lunch before you met with everybody?

11 A Correct.

12 Q And that was the last meal you had?

13 A Yes, ma'am.

14 Q Okay. And from then -- so when your leaving Quarter
15 Deck, you're going to get dinner?

16 A Correct.

17 Q Okay. What happened when you left Quarter Deck?

18 A We were trolling through the no wake zone a little
19 bit fast, the no wake zone. We throttled up.

20 About the time we planed out, we were coming up
21 toward the point. I saw the other boat. By the time I
22 saw it, I felt the boat slow down. I knew we were going
23 to impact.

24 Q Let me stop you there. How did you know you were
25 going to impact?

1 A Because the boat was close enough that there was no
2 way to avoid it.

3 Q Okay. Continue.

4 A Upon impact, I was slammed into the edge of the boat
5 with my shoulder. Mallory flew over my head. When I
6 stood back up, I turned around. There was nobody on the
7 boat.

8 Q Now, I want to ask you from -- you -- where were you
9 standing on your boat or sitting on your boat?

10 A I was sitting in the front.

11 Q Okay.

12 A The front right.

13 Q And from which direction did the boat come? I know
14 you used port, but was it to your right or to your left?

15 A From facing this way, it came from there.

16 Q Okay. So it came from your right?

17 A Yes, ma'am.

18 Q Okay. And what happened after the girl -- you said
19 you saw Mallory fall into the water?

20 A Correct. She went over my head.

21 Q Did she --

22 A She was sitting to the left of me.

23 Q Okay. Did you see anybody else fall in the water?

24 A No, ma'am.

25 Q Did you -- what, if anything, did you feel about the

1 speed of the boat at that time?

2 A We were slowing down, and then when we hit, it sped
3 up.

4 Q Okay. So what did you do after the hit?

5 A I turned around to tell Steve to -- you know, to stop
6 the boat when I realized I was the only one left.

7 Q Okay.

8 A So I got up, brought the boat up to neutral, picked
9 the phone, called 9-1-1. When I called 9-1-1, it -- I put
10 them on hold and yelled for my friends.

11 Q Okay. I'm going to stop you for a second.

12 A Okay.

13 Q What did you tell 9-1-1?

14 A I said, "We've been hit by another boat. My friends
15 are in the water." Then I -- that's when I called for
16 them.

17 Q Did 9-1-1 tell you to do anything?

18 A Not that I can remember. All I know is that I picked
19 up the phone, called 9-1-1, and then as soon as they
20 picked up, I told them what was going on. I put the phone
21 down and yelled for my friends.

22 Q Did you tell 9-1-1 where you were?

23 A I told them we were on Lake Murray.

24 Q Did you know exactly where on Lake Murray you were to
25 tell them?

1 A I did.

2 Q So where did you tell them you were?

3 A I don't remember exactly what I said to 9-1-1. I was
4 more worried about my friends in the water.

5 Q All right. Did you tell them you had friends in the
6 water?

7 A I did.

8 Q So then you put the phone down?

9 A Yes, ma'am.

10 Q Before you put the phone down, did 9-1-1 respond?

11 A I talked to 9-1-1.

12 Q And so then you put the phone down and what happened?

13 A And I yelled for my friends. Steven responded.
14 That's when I navigated the boat towards their voice.

15 Q Okay. And then what did you do?

16 A I got up. I pulled them onto the boat, and once I
17 pulled them onto the boat, I realized I was hurt.

18 Q So what did you do then?

19 A I handed the phone to Steve and just crouched down on
20 the boat and assessed my wounds.

21 Q Okay. And who drove the boat at that time?

22 A Steve.

23 Q So then what happened?

24 A Then he called out on the radio that we had been
25 hit -- or I don't know exactly what his words were, but he

1 called out on the radio "emergency". And then he looked
2 around, didn't see anybody, and we didn't know how -- I
3 mean, there was blood all over the boat from my feet --

4 Q Uh-huh.

5 A -- so Steve just -- after not seeing anybody, turned
6 and drove toward the shore.

7 Q Now, you said you stopped to look for people or...

8 A We were looking around the boat, didn't see any other
9 boats or any other lights or anything.

10 Q Okay. And I want to talk to you -- you just talked
11 about seeing lights. Did you see lights on the other boat
12 before it hit?

13 A Yes, ma'am.

14 Q What lights did you see?

15 A I saw a green light right before impact.

16 Q Okay. Now, after you start -- while people are back
17 in the boat and Steve is driving, where do you go?

18 A Lake Murray Marina.

19 Q And what happened when you get marina?

20 A As soon as we pulled up, some onlooker people on the
21 dock helped us off the boat. One lady got me a chair, a
22 Tylenol and some towels for my feet.

23 Q Did you make any phone calls?

24 A I called my mother, and I called my friend Jeff since
25 he had -- he was right around the corner.

1 Q And do you remember what you told your mother or
2 Jeff?

3 A I told Jeff that we'd been in an accident; he needed
4 to come. And I told my mom that we had been in a hit and
5 run and that I was pretty sure my arm was broke.

6 Q Okay. Did Jeff come to the marina?

7 A He did.

8 Q What about your mother?

9 A She did not. She stayed in touch with Jeff the
10 entire time to figure out what was going on, if she needed
11 to come or not.

12 Q All right. And what were Jenna and Mallory doing
13 during this?

14 A They were sitting on the dock, and they were making
15 phone calls.

16 Q What about Steven?

17 A Steven, he called his mom. He had a wrap on his head
18 from -- from where he was bleeding, and he waited on his
19 mom to come out.

20 Q Did he mom come to the dock?

21 A Yes, ma'am.

22 Q Did his father or just his mother?

23 A I know his mom did for sure. I don't think his
24 father. I'm not sure.

25 Q Do you --

- 1 A I know his mom did.
- 2 Q Did -- did she get there before or after the police
3 got there?
- 4 A Before. There was -- the ambulance took -- I think
5 the ambulance took a while to get there.
- 6 Q And she got there?
- 7 A Before the ambulance.
- 8 Q Do you remember there being -- I'm going to show you
9 what's marked as State's Exhibit No. 1. Do you remember
10 this being on the boat?
- 11 A No, ma'am.
- 12 Q You don't remember this at all?
- 13 A No, ma'am.
- 14 Q And do you remember talking to Investigator Lewis?
- 15 A Yes, ma'am.
- 16 Q Do you remember when you talked to him?
- 17 A I don't -- somebody talked to me in the hospital. I
18 can't recognize his face from that time. I know some --
19 an officer talked to me in the hospital, and then another
20 officer also talked to me when I came out to the DNR
21 office.
- 22 Q Okay. And when you did your written statement, do
23 you remember if Investigator Lewis was there when you did
24 that with your mother?
- 25 A I remember there was a female police officer or DNR

1 officer from Charleston.

2 Q You don't remember her name, though?

3 A No, ma'am.

4 Q Okay. Do you remember telling Investigator Lewis
5 about seeing a white light on the other boat?

6 A No, ma'am.

7 Q You don't remember telling him that it looked like
8 they were coming right off the point, the other boat?

9 A I do remember that.

10 Q Okay. Beg the Court's indulgence.

11 (Pause.)

12 I'm going to ask you one more thing -- or a couple
13 more things about what you remember. Do you remember
14 talking to Investigator Lewis and telling him that you all
15 drank Propel water and vodka?

16 A No, I do not.

17 MS. SAMPSON: No further questions, Your Honor.

18 THE COURT: Cross-examination?

19 CROSS-EXAMINATION:

20 BY MR. HARVEY:

21 Q Good afternoon, Mr. Hair.

22 A Good afternoon.

23 Q Now, in response to the prosecutor's questions, you
24 indicated that you and Steven had made plans to be
25 together on May 1st; that's the date of the accident,

1 right?

2 A Yes, sir.

3 Q Okay. And y'all had talked to each other, and you
4 had made arrangements to be with Jenna and Mallory,
5 correct?

6 A Correct.

7 Q And part of those plans also included another friend
8 Jeff, correct?

9 A Correct.

10 Q Now, Jeff -- you met with Mallory and Jenna -- it
11 would have been the midafternoon, late afternoon, correct?

12 A Yes, sir.

13 Q Now, and you guys -- when I say "you guys", I mean,
14 Mallory, Jenna, Harrison and Steven went in Steven's car
15 to Pine Island?

16 A It...

17 Q If you can, just the best you remember.

18 A I don't -- I know we went to the boat. I don't
19 remember how we got to it.

20 Q Okay. Fair enough. Once you got in, you testified
21 in response to the prosecutor's question, you loaded your
22 stuff on to the boat, right?

23 A Yes, sir.

24 Q You loaded life preservers?

25 A Yes, sir.

1 Q You loaded some food?

2 A That's correct.

3 Q You loaded some alcoholic beverages, right?

4 A Correct.

5 Q I mean, you're going out on the lake. People drink
6 on the lake, correct?

7 A Yes, sir.

8 Q It's no secret that people consume alcohol on the
9 lake, is it?

10 A No, sir.

11 Q Okay. And you don't deny y'all were going out on the
12 lake for a social occasion, and you were going to consume
13 some alcohol, do you?

14 A No, sir.

15 Q You don't deny that?

16 A No, sir.

17 Q Okay. So you put in the boat at Pine Island. Now,
18 as a matter of fact, you have family that lives on the
19 lake, right?

20 A Correct.

21 Q You grew up on the lake.

22 A Yes, sir.

23 Q You're very -- you've been on boats ever since you've
24 been a young guy, right?

25 A Before I can remember.

1 Q Before you can remember, okay. And you know where
2 Beach Island is, correct?

3 A Yes, sir.

4 Q And you went to Beach Island?

5 A Sandy Beach.

6 Q Sandy Beach, I stand corrected. You went to Sandy
7 Beach, and when people go to Sandy Beech, do they tie up
8 boats and socialize?

9 A The first way that people get there, park on the
10 beach; the rest of the times, they anchor out and tie to
11 other boats.

12 Q And it's like a boat party.

13 A Yes, sir.

14 Q A floating party, right?

15 A Yes, sir.

16 Q I mean, it's -- and people drink beer?

17 A Correct.

18 Q Listen to music?

19 A Yes, sir.

20 Q And you meet all sorts of people. Guys go there,
21 maybe, to meet girls and vice versa, right?

22 A Yes, sir.

23 Q All right. That's what people do when you go to the
24 lake. It's social, right?

25 A Yes, sir.

1 Q So you guys went to the lake. You went to -- y'all
2 were there, and at some point in time, did you see Steven
3 talking to people he knew at -- where all the boats were
4 tied up?

5 A Yes, sir.

6 Q Did you know some of the same people?

7 A Some of them.

8 Q Was it William? Did you see a William there?

9 A I don't -- he may go by a different name.

10 Q Okay. But you saw friends. Is it uncommon for
11 people to share a beer and alcohol when they're all tied
12 up having a floating party?

13 A That's normal.

14 Q Okay. That's normal. Okay. So you felt as though
15 when you're at the first location everything was normal,
16 right?

17 A Yes, sir.

18 Q Now, you mentioned you guys leave that beach about
19 dark, right?

20 A Correct.

21 Q And where did y'all go next?

22 A Quarter Deck.

23 Q Quarter Deck. Now, the Quarter Deck is at what
24 marina?

25 A It's on Johnson Marina Road.

1 Q So --

2 A Some people call it Johnson Marina.

3 Q Okay. And at the Quarter Deck, who was with you?

4 Mallory was with you. Jenna was with you. Steven was
5 with you, right?

6 A Correct.

7 Q And at some point in time, Jeffery arrives, correct?

8 A Correct.

9 Q Okay. And at -- you guys stayed there for with a
10 period of time, correct?

11 A Yes, sir.

12 Q And you had testified that maybe you thought you had
13 a beer.

14 A Yes, sir.

15 Q Is that a beer that you may have purchased?

16 A Yes, sir.

17 Q All right. So you go to the bar and you buy a beer
18 and you consume it, right?

19 A Correct?

20 Q Okay. And at some point in time, you guys made plans
21 to leave, right?

22 A Yes, sir.

23 Q Now, when you guys made plans to leave, the people
24 who got on the boat are Mallory, Jenna, Harrison, and
25 Steven, correct?

1 A Yes, sir.

2 Q Jeffery remained on the dock, correct?

3 A Yes, sir.

4 Q Jeffery actually helped you guys shove off from the
5 dock, didn't he?

6 A Yes, sir.

7 Q Now, Jeffery had decided not to come with you guys
8 because he was tired, right?

9 A Correct.

10 Q Okay. Now, you guys were going to get in Steven's
11 boat and go back to Pine Island, correct?

12 A We were going to go get our vehicles.

13 Q Right. Now, I show you Defendant's Exhibit 1, and it
14 depicts a section of Lake Murray. Are you familiar with
15 this section of Lake Murray?

16 A Let me get my bearings. Yes, sir, I know the lake
17 very well.

18 Q Okay. Now, you know the lake very well. Who in your
19 family lives on the lake?

20 A My grandmother lived on the lake in Chapin for a
21 while, and my step grandparents live on the lake right
22 now.

23 Q And your step grandparents, do they live near Susie
24 Ebert Island?

25 A They're right there (indicating).

1 Q So you're very familiar with this part of the lake
2 because that's where your step grandparents live, correct?

3 A Yes, sir.

4 Q Now, you were on the boat as it left the marina,
5 correct?

6 A Yes, sir.

7 Q Now, on Defendant's Exhibit 1, the marina is here,
8 correct?

9 A Yes, sir.

10 Q Susie Ebert Island is here, correct?

11 A Yes, sir.

12 Q The Coast Guard station is here, correct?

13 A Yes, sir.

14 Q Lake Murray marina is here, correct?

15 A Correct.

16 Q Now, your route of travel would have been in this
17 channel, correct?

18 A Yes, sir.

19 Q And is this a wake zone?

20 A It is until right...

21 Q You use a pointer and point to the wake zone.

22 A The wake zone ends roughly right about there
23 (indicating).

24 Q Now, since you grew up on the lake and your step
25 grandparents live on the lake, and you testified you had

1 been with Steven many times on a boat in the lake, you
2 know about what the significance of a wake zone and no
3 wake is, don't you?

4 A Yes, sir.

5 Q And a no wake zone means it's not a restricted speed,
6 correct?

7 A Correct.

8 Q And once you passed a no wake zone, there's no
9 restriction on the speed, correct?

10 A Correct.

11 Q All right. Now, you had an occasion to talk to
12 several law enforcement officers on May 1st, 2010, didn't
13 you?

14 A Yes, sir.

15 Q The first law enforcement officer you talked to was
16 Officer Davis from the Lexington County Sheriff's
17 Department, correct? That's the first person you talked
18 to after the accident, correct?

19 A I don't know the names of people that I talked to.

20 Q All right. But you talked to a uniformed law
21 enforcement officer at the marina, correct?

22 A That's correct.

23 Q And you talked to -- and he asked you -- the first
24 person you talked to asked you about the wreck, correct?

25 A Yes, sir.

1 Q And you indicated to him that you saw green lights,
2 correct?

3 A Yes, sir.

4 Q Now, after you talked with that law enforcement
5 officer, you had an opportunity to talk to a DNR officer
6 at the scene, Officer Roosen. He wore a different uniform
7 than the first officer, correct?

8 A Correct.

9 Q So the first officer had a different uniform than the
10 second officer, and the second officer was a DNR officer
11 who wore a DNR uniform, correct?

12 A Yes, sir.

13 Q All right. And when you talked to that DNR officer,
14 you told them that you were an occupant.

15 A Correct.

16 Q You told him Steven was the driver?

17 A Yes, sir.

18 Q And you indicated to him that prior to the wreck, you
19 saw some green lights, correct?

20 A Correct.

21 Q All right. Now, at some point in time, you were
22 transported to Palmetto Richland Hospital, correct?

23 A Yes, sir.

24 Q And you talked to a third officer.

25 A Yes, sir.

1 Q And you advised -- and that -- you informed that
2 third officer that you were a passenger on the boat.

3 MS. SAMPSON: Objection, Your Honor. He's
4 bootstrapping. He keeps asking him the same question you
5 told me I couldn't earlier.

6 THE COURT: Overruled. Go ahead.

7 BY MR. HARVEY:

8 Q And the third officer, you informed that you were a
9 passenger on the boat and Steven was an occupant, correct?

10 A Correct.

11 Q And every time you met with law enforcement officers,
12 you wanted to make sure you could tell them important
13 details, correct?

14 A Yes, sir.

15 Q Now, you actually -- you suffered -- your arm, your
16 right arm got injured, right?

17 A Yes, sir.

18 Q All right. And you -- a couple of days -- you
19 actually talked to an officer at the hospital, right?

20 A Yes, sir.

21 Q And then several days later, you and your mom went to
22 a DNR office.

23 A That's correct.

24 Q And when you went to the DNR office several days
25 later, the events of May 1st were fresh in your mind,

1 correct?

2 A Yes, sir.

3 Q And you made that statement within several days of
4 the accident, correct?

5 A Correct.

6 Q And you talked to investigator Lewis; is that right,
7 or can you remember who you talked to?

8 A I remembered the female officer being there from
9 Charleston.

10 Q All right. And you were asked questions. You
11 provided the answer, and your mom wrote down the answers,
12 right?

13 A Yes, sir.

14 Q And at the end of the question-and-answer period, you
15 had an opportunity to review your statement to make sure
16 it was correct?

17 A Yes, sir.

18 Q Okay. And you wanted to be sure your statement was
19 accurate, didn't you?

20 A Yes, sir.

21 Q And after you reviewed the statement, you actually
22 asked your mom to sign her name for you, right?

23 A Correct.

24 Q And your mom's name is Idesa?

25 A Yes, sir.

1 Q And Idesa signed the statement, right?

2 A Yes, sir.

3 MR. HARVEY: May I approach the witness, Your Honor?

4 THE COURT: Certainly.

5 BY MR. HARVEY:

6 Q Harrison, take a moment to look at this statement and
7 tell me if you recognize it.

8 A I do. It's my mother's handwriting. It's what I
9 said at the DNR office.

10 MR. HARVEY: May I approach the witness, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. HARVEY:

13 Q Harrison, tell me if I'm reading correctly right here
14 on page two, "Hung out in the boat at the end of the dock
15 for 20 to 30 minutes"; is that correct?

16 A Yes, sir.

17 Q Now, I guess at some time, you guys left the dock
18 because your next statement is, "Throttled through the no
19 wake zone"?

20 A Trolled.

21 MS. SAMPSON: Your Honor, is there a question of the
22 witness?

23 MR. HARVEY: Tell me if I'm reading correctly.

24 THE COURT: Mr. -- you can't just read the statement.
25 You understand that?

1 MR. HARVEY: Yes.

2 THE COURT: All right. Ask him a question.

3 MR. HARVEY: Now --

4 THE COURT: Without publishing the statement.

5 BY MR. HARVEY:

6 Q Once you -- describe your route of travel through the
7 wake zone in the boat.

8 A We trolled through the no wake zone and then --

9 Q Okay. What does trolled mean? Describe what trolled
10 means?

11 A It's in a boat. You have got the throttle, which is
12 the gas. If you just click it forward past neutral, it
13 will go forward, kind of like if you're in your car and
14 you let off the gas. Some cars will roll forward. It's
15 slow.

16 Q All right. At some point in time when you got
17 through the no wake zone, did the speed of the boat
18 change?

19 A It did.

20 Q And how did it change?

21 A We throttled forward until the boat planed out.

22 Q Okay. What does planed out mean?

23 A When you throttle a boat, it picks up out of -- the
24 rear end goes in, and the front -- when it planes out, the
25 boat levels, and it's riding flat on the water.

1 Q Okay. And is planing out in unrestricted water,
2 extraordinary type of travel?

3 A No, sir.

4 Q Does almost every boat in unrestricted water travel a
5 plane?

6 A Yes, sir.

7 Q So when Steven's boat got to plane, did you think
8 that was anything out of the ordinary?

9 A No, sir.

10 Q That as someone who has been on the boat and grew up
11 at the lake, did you think that when Steven's boat reached
12 plane, it gave you any cause for concern that he wasn't
13 paying attention?

14 A No, sir.

15 Q Did it give you any cause for concern that he was
16 operating the boat with any disregard for the safety of
17 his passengers?

18 A No, sir.

19 Q Now, you know about boats and boats -- the front of
20 the boat is the bow; the back of the boat is the stern,
21 correct?

22 A Yes, sir..

23 Q And on a boat -- on the bow of a boat, on one side --
24 there are navigational lights, and there are boats -- some
25 boats have side-by-side navigational lights, correct?

1 A Yes, sir.

2 Q If you'll come stand in front of me with a pointer.

3 Stand right here.

4 (Complies).

5 Now, I want you to imagine that I'm on the bow of a
6 boat.

7 A Yes, sir.

8 Q And right here is the bow, and my two fists represent
9 a navigational light.

10 A All right.

11 Q The right side or the starboard side is what color?

12 A Red.

13 Q The right side or the starboard side is what color?

14 A Red.

15 Q Okay. Now, are you sure?

16 MS. SAMPSON: Objection, Your Honor.

17 MR. HARVEY: The right side --

18 THE WITNESS: Right is red.

19 BY MR. HARVEY:

20 Q Okay. Do you know what port means?

21 A Port is left.

22 Q And starboard means?

23 A Right.

24 Q Okay. Now -- all right. Now, please sit down.

25 (Complies).

1 Have you ever operated a boat at night?

2 A Yes, sir, I have.

3 Q When you operate your boat at night and you're
4 driving the boat and you're facing the water in front of
5 you --

6 A Yes, sir.

7 Q -- and there is a navigational light on and you're
8 driving, what color light is on the portside?

9 A I...

10 Q You don't know?

11 A Yes, sir.

12 Q Okay. Now, you'll agree with me that the starboard
13 side is the right side, correct?

14 A Yes, sir.

15 Q And you'll agree with me that the portside is the
16 left side?

17 A Yes, sir.

18 Q Now, you'll agree with me that you gave a statement
19 to the DNR that you said you saw a boat approaching. You
20 felt your boat slow down, correct?

21 A Yes, sir.

22 Q And the boat that you saw approaching, you saw the
23 starboard gunnel higher than the port gunnel; is that
24 correct?

25 A That's correct.

1 Q And that was a statement that you gave DNR that -- in
2 the presence of your mother, and you read that statement
3 to make sure that statement was correct.

4 A Yes, sir.

5 Q All right. Now, when you operate a boat -- and this
6 is the bow of a boat and when a boat turns from right to
7 left, the starboard side moves like this, doesn't it? The
8 starboard side is higher?

9 A Yes, sir.

10 Q Okay. And when a boat moves from left to right, it's
11 just the opposite, correct?

12 A Correct.

13 Q And whatever light is on the starboard side is going
14 to be the light that you see, correct?

15 A Correct.

16 Q Okay. Now, you were in the boat, and what was your
17 position in the boat when it left Lake Murray Marina?

18 A It was in the front right side.

19 Q Excuse me, not Lake Murray Marina but Light House
20 Marina.

21 A The front right side of the boat.

22 Q The front right side of the boat. Who was next to
23 you?

24 A Mallory.

25 Q And who was next to Mallory?

1 A Nobody.

2 Q Was Jenna next to Mallory at one time?

3 A When we first left, she was.

4 Q Okay. And then at some point in time, Jenna got up.
5 Did she sit next to Steve?

6 A Yes, sir.

7 Q Okay. Now, when you left the no wake zone, were you
8 talking to...

9 A Mallory.

10 Q Mallory? When you left the no wake zone, did you
11 hear Steve talking on his cell phone?

12 A No, sir.

13 Q Did you hear -- did -- was Steve trying to get your
14 attention?

15 A No, sir.

16 Q Did you hear Steve moving about or hear any noise
17 that indicated to you that Steve wasn't paying attention?

18 A No, sir.

19 Q Did you have any concern from the time you left the
20 no wake zone to the time of the impact of the accident
21 that Steven wasn't reasonably operating his boat?

22 A No, sir.

23 Q All right. Now, you talked to DNR after the
24 accident, and you told DNR that you saw a boat approaching
25 from right to left, correct?

1 A That's correct.

2 Q And you didn't put any distance in your statement
3 because it's hard to recall the exact distance, isn't it?

4 A Especially at night.

5 Q Especially at night, okay. And when two boats are
6 traveling, okay, and a boat -- if I'm pointing on the
7 pointer and a boat is going in this direction, okay --

8 A Yes, sir.

9 Q -- you're coming -- and you're on plane, that's
10 normal type of travel for this unrestricted water,
11 correct?

12 A Yes, sir.

13 Q Now, you've been on the lake a lot, and you've been
14 on this section of the lake, correct?

15 A Correct.

16 Q Have you been on this section of the lake in a boat?

17 A I have.

18 Q All right. And you'll agree with me that in order to
19 get to Lake Murray Marina, you have to travel through this
20 channel, correct?

21 A Yes, sir.

22 Q And you'll agree with me -- now, do you know the buoy
23 markers?

24 A Where they're at?

25 Q Right. Do you know the numbers of the buoy markers?

- 1 A I do not know the numbers.
- 2 Q Okay.
- 3 A I know where they're at, roughly.
- 4 Q Okay. Now, you'll agree with me that you saw another
5 boat. You had enough time to make a comment to Steven.
6 You felt the boat slowing down, correct?
- 7 A Correct.
- 8 Q And everything happened suddenly, correct?
- 9 A Yes, sir.
- 10 Q And you'll agree with me unequivocally -- you stated
11 to the prosecutor -- that after the accident, you -- and
12 you used the term collectively, "We looked around the lake
13 to see if there were other boats," correct?
- 14 A Yes, sir.
- 15 Q Because that's -- you wanted to make sure if there
16 was another boat, you could help them, right?
- 17 A Correct.
- 18 Q And once you couldn't see another boat, that's when
19 you guys went to lake Murray Marina, correct?
- 20 A Yes, sir.
- 21 Q Now, do you recall Steven having any difficulty
22 docking the boat at Lake Murray Marina?
- 23 A No, sir.
- 24 Q Do you -- do you recall Steven demonstrating good
25 control of the boat by driving very fast and then slowing

1 down to be able to dock at the marina?

2 A Yes, sir.

3 Q At any time when you were in the boat before or after
4 the accident when it was operated by Steven, did you have
5 any fear that he wasn't operating the boat unreasonably?

6 A No.

7 Q Okay. When, if ever, after you left the no wake zone
8 did you observe Steven engage in any type of conduct
9 before the collision that gave you concern about his
10 paying attention to what was going on? It didn't happen,
11 did it?

12 A No, sir.

13 Q What, if anything, was Steven doing before you saw
14 the boat that was out of the ordinary? Nothing, correct?

15 A Correct.

16 Q When, if ever, after you left the no wake zone did
17 you observe Steven engage in any type of conduct before
18 the collision that gave you concern about paying attention
19 to what was going on?

20 A None.

21 Q Now, as an experienced boater, you know that when
22 you're on a boat and the boat is moving at a certain
23 speed, if the boat goes faster, tell me what kind of
24 feeling you get as a passenger. How can you -- describe
25 the feeling when the boat goes faster.

1 A You feel under you moving slightly faster so the top
2 part of your body kind of leans back a little.

3 Q And if it's going slower, you can feel it, as well?

4 A It's the opposite. You kind of feel yourself pushing
5 forward a little.

6 Q And if someone throttles back, you can get that
7 feeling, right?

8 A Yes, sir.

9 Q And you described your feeling of the boat throttle
10 back to DNR, didn't you?

11 A Yes, sir.

12 Q Now, when you looked out over the bow, you had a
13 field of vision that was in front of you, correct?

14 A Yes, sir.

15 Q And when you were underway, you didn't have anything
16 to impede your field of vision, did you?

17 A No, sir.

18 Q And you don't know of anything that Steven had to
19 impede his field of vision, do you?

20 A No, sir.

21 Q And when you described seeing the boat to DNR, the
22 boat approached rather suddenly, didn't it?

23 A Yes, sir.

24 Q And there was some confusion about what happened
25 because it happened so quickly, correct?

1 A Yes, sir.

2 Q And when you talked to the DNR officers or when you
3 guys were interviewed immediately after the accident, you
4 were giving them your best impression of what you thought
5 happened, correct?

6 A Correct.

7 Q All right. And when you used the phrase "hit and
8 run", that was based upon an impression that you had that
9 happened, correct?

10 A Yes, sir.

11 Q Okay. And that impression was based upon your
12 observations, correct?

13 A Correct.

14 Q There's nothing you observed about Steven's operation
15 of the boat that led you to believe he was proceeding in a
16 manner that disregarded the safety of anyone after he saw
17 the other boat, is there? You had no information or no
18 impression that he was disregarding the safety of others
19 after he saw the other boat, did you?

20 A No, sir.

21 MR. HARVEY: That's all I have.

22 THE COURT: Redirect?

23 MS. SAMPSON: Yes, sir, Your Honor.

24 REDIRECT EXAMINATION:

25

1 BY MS. SAMPSON:

2 Q Okay. So you do remember talking to officers once
3 they got to the marina after the wreck?

4 A That's correct.

5 Q And there was -- about how long between the wreck and
6 the time you talked to the first officer, do you know?

7 A 9-1-1 or the actual officer on the shore?

8 Q Actual officer on the marina.

9 A I would assume 15, 20 at the most.

10 Q Okay. And do you remember at some point -- I think
11 you've gone over this. You talked to officers when your
12 mother wrote your statement?

13 A That's correct.

14 Q And at that time, do you remember telling them
15 that -- giving them a description of the boat that you all
16 hit?

17 A I don't understand the question.

18 Q Do you remember at that time when you were talking to
19 the officers when your mother was writing your statement,
20 do you remember telling them, giving them a description of
21 the boat that you all hit?

22 A I mean, I know that we hit another boat. I don't
23 understand what you're trying to ask.

24 Q Did you give the officers a description of the other
25 boat that you all collided with when you spoke to them

1 when your mother wrote your statement? Do you remember
2 that?

3 A I still don't understand what you're asking. You
4 said the same thing.

5 Q Do you remember telling them that the boat you hit
6 was a V hull?

7 A No. I do not remember if it was in my statement
8 directly afterwards, then. That was the most accurate
9 representation from my memory.

10 Q Okay. That's not my question. Do you remember
11 telling them that the boat that you all hit was a V hull?

12 MR. HARVEY: Your Honor, he's asked and answered the
13 question.

14 THE COURT: I'm going to allow it. Go ahead.

15 THE WITNESS: No. I don't remember making that
16 statement.

17 BY MS. SAMPSON:

18 Q Do you remember telling them that you'll thought it
19 was a ski boat?

20 A Again, I don't remember at that point.

21 Q Okay. Do you remember saying that you saw an outline
22 of the boat?

23 A That I do.

24 Q Okay. Do you remember saying you saw a white light
25 15 to 20 yards away?

1 A No.

2 Q Okay. And you talked about -- Mr. Harvey asked you
3 about being on the boat and on the lake and it being a
4 party boat together?

5 A Boats dock up together.

6 Q And that you're an experienced boater?

7 A That's correct.

8 Q Are you supposed to drink and get behind the wheel of
9 a boat?

10 A No.

11 MS. SAMPSON: No further questions, Your Honor.

12 THE COURT: Anything further of this witness?

13 MR. HARVEY: Beg the Court's indulgence one moment.

14 (Pause.)

15 RECROSS-EXAMINATION:

16 BY MR. HARVEY:

17 Q You were asked by the prosecutor about drinking and
18 operating a boat. Do you remember that question?

19 A Yes, sir.

20 Q At the time you left the marina before the accident,
21 did you have any reservation in your mind about Steven's
22 ability to operate the boat?

23 A No, sir.

24 MS. SAMPSON: Objection. It goes beyond the scope of
25 my redirect.

1 THE COURT: Overruled, go ahead.

2 BY MR. HARVEY:

3 Q Did you have any reservation about Steven?

4 A No, sir.

5 Q Okay. You had your cell phone with you?

6 A It was in the center console.

7 Q But you could have used it, right?

8 A Yes, sir.

9 MS. SAMPSON: Objection, Your Honor, again.

10 THE COURT: Overruled.

11 BY MR. HARVEY:

12 Q And your friend Jeff was there, correct?

13 A Yes, sir.

14 Q And he drove a car, correct?

15 A Correct.

16 Q You could have gotten a ride with Jeff if you needed
17 a ride, correct?

18 A Yes, sir.

19 THE COURT: All right, sir. You may come down.

20 Thank you very much.

21 May this witness be excused? Without objection?

22 MR. POTTS: Nothing from the State, Your Honor.

23 THE COURT: Next witness.

24 MR. MATTHEWS: The State calls Frank Bradshaw.

25 FRANK BRADSHAW, after being duly

1 I do need to know one thing. It's 4:30. Does any
2 member of the jury have any childcare issues that require
3 you to be somewhere to pick up a child at a certain time,
4 because I'm well aware of the fact that daycare centers
5 and other institutions like that have this little trick of
6 charging you by the minute or by the hour that you're
7 late.

8 I mean, if anybody has that kind of a problem, let me
9 know. Otherwise, I've told counsel that we'll stop at
10 5:30 for the day. If that is a problem for anybody,
11 please let me know.

12 (There was no response).

13 All right. Call your next witness.

14 MR. POTTS: The State calls Robert Christofoli.

15 ROBERT CHRISTOFOLI, after being duly
16 sworn, testified as follows:

17 THE CLERK: Please have a seat there, sir; speak into
18 the microphone; state your full name for the record.

19 THE WITNESS: What?

20 THE CLERK: State your name for the record.

21 THE WITNESS: Robert Arthur Christofoli, III.

22 DIRECT EXAMINATION:

23 BY MR. POTTS:

24 Q All right. Rob, would you mind just telling the
25 jury, tell them a little about yourself real quick.

1 A Uhm...

2 Q Where are you born? Where are you from?

3 A I'm from Lexington, South Carolina, born and raised,
4 moved to the lake when we were one. I grew up hunting and
5 fishing, just, you know, family oriented.

6 (Pause).

7 Q Take your time, Rob. It's all right. I know this is
8 tough for you.

9 (Pause).

10 Well, tell me about Colt Lax. How do you know Colt?

11 A Both our moms work together. We met when we were
12 probably four and just been, you know, two peas in a pod
13 ever since then just.

14 (Crying).

15 THE COURT: Take a deep breath. Give him a drink of
16 water.

17 THE WITNESS: Colt has been my right-hand man ever
18 since.

19 BY MR. POTTS:

20 Q Now, Robert, stay with me now. Tell me about Kelli.
21 How do you know Kelli?

22 A I've known Kelli since probably third or fourth
23 grade, probably earlier than that, ever since elementary
24 school.

25 We all, me, her and Colt, all went to the same

1 schools, you know, all the way until we graduated
2 together.

3 Colt and Kelli first dated. I think they were their
4 first boyfriend, girlfriend. You know, that was
5 elementary, middle school kind of thing, and then -- and
6 then she came back in Colt's life probably when we were
7 21, 20, somewhere in there.

8 Q Uh-huh.

9 A So, you know, we just started hanging out together,
10 but I've known her, you know, basically since elementary
11 school.

12 Q Now, Rob, I want you to tell me about Amber. How did
13 you meet Amber?

14 A We went on a cruise, me, Colt, Keith, and Josh were
15 with us and a couple other friends.

16 Q Keith is Keith Corley?

17 A Keith Corley and Josh Walsh, they were also with us
18 and a couple other friends. We all went on a cruise
19 together. I believe I was 21 --

20 Q Uh-huh.

21 A -- and we met on a cruise, and just -- you know -- I
22 knew she was from Alabama, but ever since then, it was
23 kind of -- I knew.

24 Q You guys hit it off. That's the easy part, Rob.

25 Now, I need you to tell me about the chain of events that

1 started on May 1st, 2010. Okay. Do you remember the
2 night before at all?

3 A Not really.

4 Q Okay. Let's just start with that -- this type of
5 day.

6 A Okay.

7 Q How did your day begin?

8 A Well, Amber came to see me that weekend. We got up.
9 The shell crackers are like a broom fish. They bed in
10 shallow water usually about that time of year. It was --
11 we decided to go fishing on the lake and see if we could
12 catch some.

13 And I met up with a friend of mine, Benji. He met us
14 out there. We were in a little Jon Boat, a little 14-foot
15 aluminum boat, just riding around through the bushes. You
16 can see them. They'll get in, you know, a foot of water,
17 and you can see them. We rode around all day pretty much
18 looking for them trying to catch fish. We did that most
19 of the day, probably I'd say about three or four o'clock.
20 We came back. I believe she took a nap.

21 Q And "she" being?

22 A Amber took a nap. We were deciding what we were
23 going to do that evening. So I called Colt, and we
24 decided to meet at O'Charley's that evening for dinner and
25 then go from there. Then the weekend before, me and Colt

1 went with a friend of ours, Barry, to Lighthouse, over
2 that side of the lake, you know, on the boat and had good
3 time.

4 So, you know, we couldn't find anything to do, so we
5 called up Keith Corley and Josh, and they said they were
6 going to go over there later that evening. So we figured
7 we'd go back to my parent's house and get my dad's boat
8 and ease over that way and, you know, spend the evening
9 over there.

10 Q And so whose boat did you get?

11 A I got my father's.

12 Q All right. Well, tell me a little bit about your
13 father's boat.

14 A It's an 18-foot aluminum boat. It's a very deep V.
15 It's mainly strictly used for striper fish. Striper is
16 kind of a deep water. You have to get out in open water.

17 So it was a big boat made for, you know, rougher
18 water, and it was just a wide open boat. It had two seats
19 in it, a driver's seat and passenger's seat with two
20 consoles in the front of it.

21 I mean, it was -- it was basically a fishing boat,
22 but it was a, you know, much bigger boat than my Jon Boat.
23 You know, we wanted to take something that would go across
24 the lake.

25 Q Okay. Now, before you got in the boat, is there

1 anything you checked to make sure about?

2 A Well, we checked, you know. I hooked it up, made
3 sure I had all the life jackets in it.

4 I had to get, I think, an extra chair because like I
5 said, it's only got two chairs, so I got two extra fold
6 out chairs, put it in the boat, checked the life jackets.

7 I believe I actually had to get -- I believe there
8 weren't but two life jackets on it. We had bag with like
9 six life jackets in it. I ended up grabbing that bag. We
10 got the boat in. The lights and everything worked, and I
11 believe before we left, I had went back to the shop.

12 My parents live right across the street from the
13 lake, so I put in right across the street from my
14 parents'. I went back to my dad's shop and got a Q-beam.
15 A Q-beam light is just a real bright light, you know, if I
16 need it.

17 Sometimes it gets dark. If you're not real sure
18 where you're at, just to check lands and islands and
19 stuff. I believe I ran back to the shop to get that
20 before we left.

21 Now, describe your dad's shop. What kind of shop
22 does he have?

23 A A 30 by 30 Hoover building. He actually has a boat
24 shop out of it. It's just him and I help him part-time,
25 just a little mechanic's shop, backyard kind of --

1 Q So you've spent a lot of time around boats?

2 A Yes.

3 Q Have you ever taken any boating courses?

4 A Yes. I took the boating course that the DNR gives in
5 8th grade.

6 Q Now, at that point, you guys load up the boat. You
7 have life jacket on. You were ready to go. Did you shove
8 off at that point?

9 A Yes, we left from there. Where my parents live is
10 about the center of the lake where -- if anybody is
11 familiar with the lake, it's Sandy Beach. It's about in
12 the middle of the lake on the Lexington side.

13 We left there and went down towards the dam to meet a
14 friend of mine, John, to see if he wanted to go with us.
15 It was probably I'd say two miles down the lake to his
16 house.

17 He couldn't go, so we left from there. When we left
18 from there, it was pretty much a straight shot across the
19 lake to go to Lighthouse Marina.

20 Q Okay. So what did you do while you were there?

21 A At John's house?

22 Q At John's house, yeah.

23 A We just talked to him, you know, asked him if he
24 wanted to go. His girlfriend had gone out that evening,
25 and she had come home about the same time. Then we showed

1 up, so he wasn't going to be able to go, just asked him,
2 you know, basically if he wanted to ride with us.

3 Q Now, in the boat, you said there were only two seats.

4 A Correct.

5 Q So where was everybody sitting?

6 A I was in the driver's seat. If you're sitting in the
7 boat, the steering wheel is opposite of a car, so you
8 know, in a car, you're sitting on the left side. I was
9 sitting by the right side behind the steering wheel. Then
10 Kelli was right beside me on the left side, and then Amber
11 was all the way in the back behind her. Then Colt was
12 behind me.

13 Q Okay.

14 A It's probably, you know, between -- from where I was
15 to the back is probably, you know, four or five feet
16 apart. I mean, it's a very open boat so...

17 Q Can you give me a better -- a little bit more
18 description of how your boat looked earlier that day?
19 I'll put it that way. I mean, we've heard about center
20 console boats. We've heard about deep V's. Explain to me
21 what your boat was actually like.

22 A It was a very high -- I'd say, you know, inside --
23 basically where you drove the boat at was more near the
24 front. So from where you drove the boat to the back of
25 the boat is very open where we can put fishing rods, a

1 bait tank, and it's got very deep sides.

2 If you're standing in the boat, inside the boat is
3 probably -- I'd say three-and-a-half to four feet. You
4 know, it's right there at your waist.

5 So I mean, it's a very deep boat. It's built for
6 rough water for handling three- to four-foot waves easy.

7 Q But it wasn't that rough that night.

8 A No, no.

9 Q All right. So you and Kelli were sitting on the
10 seats. What were Rob and Amber sitting on, not Rob.

11 A Colt.

12 Q Colt and Amber sitting on?

13 A They were sitting on like fold out chairs I had
14 picked up out of the shop.

15 Q Okay.

16 A Just regular old...

17 Q Did they shift a lot while you guys were driving or
18 just...

19 A No, no.

20 Q So describe to me how you start traveling once you
21 guys leave your friend's house?

22 A I mean, we basically leave there. I wouldn't say I
23 was wide open. The boat, I think, topped out with two
24 people in it about 55 miles an hour. I was probably not
25 quite wide open, so I'd say about 40 or so, you know, 45

1 and just heading straight across the lake and then
2 that's --

3 Q Did you see anything while you were traveling across
4 the marina? I guess describe the travel to your
5 destination point.

6 A Nothing. I remember it was just a clear night.
7 There really wasn't that many people out on the open water
8 part of the lake.

9 Q Uh-huh.

10 A But I remember it was clear. Nothing -- to me it was
11 nothing out of the ordinary.

12 Q Now, describe to me why -- when you got a little bit
13 closer to your destination.

14 A Well, when we got closer, there is -- there's a gap
15 that you go through. The gap is probably 2- or 300 yards
16 wide, and then when you go through this gap, it opens up a
17 lot bigger.

18 When we came through the gap, I had seen a pontoon
19 coming out of -- it looked like Rusty Anchor is where they
20 were coming there. We were heading straight. The Rusty
21 Anchor would have been off to our left. It looked like
22 they were coming out of there. It didn't look like they
23 were slowing down for me.

24 Q And then you were coming from -- who had the right of
25 way in that situation?

1 A I would have had the right of way. They would have
2 seen a red light on my boat, and if you see a red light,
3 you're supposed to give way. So and it --

4 Q How did you respond?

5 A What's that?

6 Q How did you respond to them?

7 A It didn't look like they were slowing down. So I
8 just went ahead and slowed down, let them come on by. We
9 were probably 2- 300 yards away from -- there is a no wake
10 zone. It's pretty much just idle going into the
11 Lighthouse.

12 We were about 2- or 300 yards away. There was no
13 point in, you know, getting back in the throttle, so I
14 just let it idle down at about -- we were probably running
15 20 to 25 miles an hour, and then that pontoon passed us.

16 Q Okay. Once that pontoon passed you, how fast were
17 you going?

18 A I'd say about 20, 25. You know, once I backed out of
19 it -- like I said, we were 2- or 300 yards away from the
20 no wake zone. So there wasn't no point in running wide
21 open just to slow back down.

22 Q All right. So you're traveling along, heading that
23 way going 20, 25. What's the next thing you know?

24 A I remember looking back into Rusty Anchor or back
25 over that way, and I did see some boats, you know, back in

1 there. There is also a no wake zone back in there, too.

2 From Rusty Anchor to the no wake zone is probably
3 150 yards. I do remember seeing boats back there, but I
4 never saw anybody else.

5 Q So there was no boat between the end of the no wake
6 zone and where you were?

7 A Not that I could see.

8 Q Not that you saw?

9 A Not that I saw.

10 Q Okay.

11 A And the only thing I remember is somebody said
12 something in the boat, and I remember looking.

13 Q Which way did you look?

14 A To my left.

15 Q So you look to your left. Were anything coming, you
16 would have had the right of way?

17 A Correct.

18 Q And that's where Kelli is, too.

19 A Correct.

20 Q She is on your left.

21 A Right.

22 Q So you look past Kelli, and what do you see?

23 A All I see is white, you know, like a boat, and then
24 that's all I saw. The next thing I remember is we're
25 getting to the shore.

- 1 Q Who is "we're getting to the shore"?
- 2 A Me, Colt, Amber, and Kelli.
- 3 Q So you see the white, and you don't recall anything
- 4 between then and being put ashore?
- 5 A No.
- 6 Q Okay. Describe -- I know it's tough, but I need
- 7 descriptive details. Start telling me about what you
- 8 remember from that part.
- 9 A I remember getting out of the boat. I don't know if
- 10 somebody was helping me, but I knew right away that my leg
- 11 was broke.
- 12 Q It's all right. Do you need a glass of water?
- 13 A (Pause).
- 14 All I remember is seeing Colt.
- 15 (Crying).
- 16 Q Take your time.
- 17 (Pause).
- 18 Take some deep breaths, Rob. Take some time.
- 19 (Pause).
- 20 A I remember hearing Colt.
- 21 Q What was Colt saying?
- 22 A Just not really yelling at Kelli but basically
- 23 saying, "Don't do this." You know, "Don't. Wake up."
- 24 Just -- I think he knew.
- 25 Q What else do you remember?

1 A I remember Amber laying there, and somebody was
2 giving her CPR. I tried to give her mouth to mouth.

3 (Crying).

4 Q What do you remember about that?

5 A I remember they were trying to give her CPR, and I
6 was giving her mouth to mouth. All I could remember is
7 that it tasted like she has thrown up, and then I just --
8 I was in so much pain with my leg. I just quit, and then
9 by the time the paramedics showed up...

10 Q After that, what do you remember?

11 A I remember the paramedics got there, and they put me
12 on a board. That was about most painful board I've ever
13 been on, and they put me in an ambulance.

14 All I remember is them -- kept saying that there was
15 another ambulance behind. They wouldn't tell me who was
16 on it, anything. Nobody would tell me who was in it, how
17 everybody was. I knew Colt was okay, because I could
18 remember hearing his voice, but the two girls, I had no
19 idea.

20 When I got to the hospital, they, you know, still
21 wouldn't tell me anything. Everything, some bits and
22 pieces, you know, I was -- the ambulance ride seemed like
23 it was, you know, a two-minute ride.

24 You know, I don't know exactly how long it took or
25 anything.

1 Q Do you recall speaking to law enforcement that
2 evening?

3 A I remember DNR came to -- when I was in the room. He
4 read me my rights, and basically the only reason I really
5 remember that is because I have a good friend that works
6 dispatch. I asked him if he knew, you know, my friend,
7 and that's about all I remember talking to DNR.

8 Q You don't remember anything else, any other parts of
9 the conversation?

10 A No.

11 Q Can you describe your injuries that you received to
12 the jury, please?

13 A I had a laceration to my knee. My leg was broke, my
14 lower leg. I had a laceration to my shoulder down into my
15 back right here, down in my shoulder. My shoulder wasn't
16 dislocated but it had been stretched where all the
17 ligaments had been stretched out.

18 I believe I had two fractured ribs. I'm not sure
19 exactly how many it was, but I know I had fractured ribs
20 and a concussion. I had about 28 staples and about
21 30-some stitches.

22 Q What did they do about your leg?

23 A They put a rod -- I have a rod from my knee to my
24 ankle with four screws holding it.

25 Q Now, Rob, earlier that evening, you guys went to

1 dinner, right?

2 A Yes.

3 Q Where did you go to dinner?

4 A We went to O'Charley's in Lexington.

5 Q While you were there, did you have anything to drink?

6 A Yes.

7 Q What did you have?

8 A I had two beers, draft beers, during my dinner.

9 Q Did you have anything else that entire day?

10 A No.

11 Q When you were fishing, did you have anything else to
12 drink?

13 A No.

14 Q After dinner, did you have anything else to drink
15 between then and the collision?

16 A No.

17 MR. POTTS: Beg the Court's indulgence one second.

18 (Pause.)

19 Thank you, Rob. No further questions. Please answer
20 any questions Mr. Harvey has for you.

21 THE COURT: Cross-examination?

22 MR. HARVEY: May it please the Court.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION:

25

1 BY MR. HARVEY:

2 Q Rob, do you want to get some water?

3 A I'm good right now.

4 Q You're good?

5 A Yes.

6 Q All right. Rob, I appreciate your being here. I
7 know it's a difficult -- difficult thing for you, okay.
8 Bear with me. I'm going to ask you some questions, all
9 right.

10 Now, you were the operator of the Sylvan boat that's
11 depicted in the photographs that the jury has, correct?

12 A Yes, sir.

13 Q Now, that boat was about 20 years old at the time of
14 the incident, right?

15 A (Nods in the affirmative.)

16 Q And you were interviewed by Mr. Lewis, the DNR
17 officer, on May 2nd, 2010, right?

18 A (Nods in the affirmative.)

19 Q The events of May 1st --

20 THE COURT: Just a minute. You have to answer
21 verbally.

22 THE WITNESS: Okay. Okay. Yes.

23 THE COURT: You have to answer. You can't just shake
24 your head. Thank you.

25

1 BY MR. HARVEY:

2 Q You have to answer because that nice young lady next
3 to you --

4 A Right.

5 Q -- she is a court reporter, and she has to take down
6 everything that's said.

7 A Right.

8 Q She is so tired of hearing my voice and taking it
9 down.

10 It's important to you. It's important to everybody
11 so thank you. Okay.

12 Now, you were interviewed by Mr. Lewis on May 2nd,
13 2010, right?

14 A Yes, sir.

15 Q The events of May 1, 2010 were fresh on May 2nd, 2010
16 in your mind, right?

17 A Yes, sir.

18 Q Now, may I approach the witness?

19 THE COURT: Yes.

20 BY MR. HARVEY:

21 Q Now, do you recognize that document? Take a moment
22 and look at it.

23 A Yes, sir. This is the statement that I gave.

24 Q All right. And keep looking at that document because
25 I'm going to ask you some questions. When you spoke to

1 Mr. Lewis, you realized it was important to make sure you
2 included important details, correct?

3 A Yes, sir.

4 Q Now, the statement that you and Colt -- in your
5 statement, you wrote that you, Colt, Amber, and Kelli went
6 to O'Charley's about eight p.m., right?

7 A Yes, sir.

8 Q And you wrote in your statement you had two beers,
9 right?

10 A Correct.

11 Q Now, after you left O'Charley's, you decided to put
12 your boat in the water, right, meaning the Sylvan.

13 A Right.

14 Q Okay. And you decided that you were going to go.
15 You put in the statement that you decided you guys were
16 going to go to Lighthouse, correct?

17 A Yes, sir.

18 Q And you just testified that you called your friend
19 Keith Corley to meet you over at the Lighthouse, correct?

20 A Yes.

21 Q Now, you went to visit a friend at Snelgrove named
22 John, right?

23 A Yes, sir.

24 Q Now, that -- and John did not get on the boat and
25 travel with you to Lighthouse Marina, correct?

1 A Yes, sir.

2 Q All right. Now, when you left John's house, you,
3 Amber and Colt were all on the boat, correct?

4 A Yes, sir.

5 Q Now, it's about a 20, 30-minute ride from John's
6 house to the Lighthouse, correct?

7 A I would say so.

8 Q All right. And then -- now, your boat, you stated
9 it's a fishing boat, and it's got deep gunnels, right?

10 A Yes, sir.

11 Q The side of the boat is called the gunnel.

12 A Correct.

13 Q Okay. And you had four passengers, right?

14 A Yes, sir.

15 Q And you actually had put folding chairs in the back
16 for two extra passengers.

17 A Yes.

18 Q So they were sitting in lounge chairs?

19 A Pretty much.

20 Q So they weren't sitting in a chair that was part of
21 the boat, right?

22 A Yes.

23 Q Okay. So -- and you decided -- even though your boat
24 didn't have the capacity, built-in capacity for four
25 people, you decided to go on the lake at night, travel 20

1 minutes with your passengers being in folding chairs,
2 right?

3 A Yes, but it was rated four to six people, I believe.

4 Q Okay. You believe. Now, after you left John's
5 house, you eventually traveled in a non-wake or
6 nonrestricted area of the lake, right?

7 A No, sir.

8 Q You were in the wake zone the entire time?

9 A Oh, yeah -- no. No. No. We -- yes, we were --

10 Q Let me ask the question.

11 A Okay. I might have got that --

12 Q No. I contributed to the confusion.

13 A Okay.

14 Q That happens a lot. You were at your friend John's
15 house.

16 A Correct.

17 Q "John, do you want to come with us?" John's answer
18 was no. You're in your boat, and you decided to travel 20
19 minutes on Lake Murray to Lighthouse Marina, correct?

20 A Correct.

21 Q At some time in your journey to Lighthouse Marina,
22 while you were operating a vessel, you were in
23 unrestricted water, correct?

24 A Correct.

25 Q And unrestricted means there's no speed limit,

1 correct?

2 A Correct, yes, sir.

3 Q When you were in a 20-year-old light aluminum fishing
4 boat, you testified to Mr. Potts that you were going about
5 40, 40 miles an hour, right?

6 A Yes, sir.

7 Q And you felt going at that speed in unrestricted
8 water was reasonable, right?

9 A Yes, sir.

10 Q You didn't feel that you were placing the occupants
11 in your boat in any danger, did you?

12 A No, sir.

13 Q Now, you're traveling towards Lake Murray -- excuse
14 me, towards Lighthouse Marina, right?

15 A Yes, sir.

16 Q And you testified that you grew up. You're a hunting
17 and fishing kind of guy?

18 A Yes.

19 Q And you're an experienced boat operator, right?

20 A Yes, sir.

21 Q Now, your engine and throttle were operating
22 correctly?

23 A Yes, sir.

24 Q Is it fair to say a throttle is like a gas pedal in a
25 car. It's what makes you -- it's what you used to send

1 more fuel or less fuel to the engine, right?

2 A Yes.

3 Q And when you sent more fuel or you throttle up, the
4 boat goes faster, right?

5 A Yes, sir.

6 Q And when you use less fuel or throttle back, the boat
7 goes slower, correct?

8 A (There was no response).

9 Q Now, once you were in unrestricted water, you were
10 operating in a boat -- what you believe to be a reasonable
11 speed, correct?

12 A Yes, sir.

13 Q Now, at some time before the accident, you
14 encountered a pontoon boat, correct?

15 A Yes, sir.

16 Q You state that you saw a pontoon boat between the
17 Coast Guard Auxiliary and Susie Ebert Island, correct?

18 A Yes, sir.

19 Q I'm going to put a photograph up here that's defense
20 Exhibit No. 1.

21 Your Honor, may I stand by the witness?

22 THE COURT: Yes, sir.

23 BY MR. HARVEY:

24 Q Thank you.

25 I'm going to use a pointer. Do you recognize this

1 island?

2 A That's Susie Ebert Island.

3 Q Do you recognize this?

4 A That's the Coast Guard auxiliary.

5 Q And in your statement, you said you saw the car --
6 you had entered the waterway between the Coast Guard
7 station and Susie Ebert Island, correct?

8 A Correct.

9 Q So if we would have drawn an imaginary line, you
10 would have had to cross the line. Do you ever watch pro
11 football?

12 I think it's Fox has -- they superimpose the first
13 down in the yard marker, so if we were to be Fox Sports
14 and superimpose a line on this photograph, you'll agree
15 with me in your statement you said you had passed the
16 Coast Guard station and Susie Ebert Island?

17 A Correct.

18 Q Okay. You wrote that you were traveling towards the
19 marina, right?

20 A Yes, sir.

21 Q Now, you wrote the pontoon boat was coming from Rusty
22 Anchor, right?

23 A Yes, sir.

24 Q All right. Now, you will agree with me you saw this
25 boat traveling in your direction, correct?

1 A Yes, sir.

2 Q Now, you will agree with me that you were concerned
3 enough about visibility at that time after you had crossed
4 that imaginary 10-yard line that you -- you stated you
5 slowed down, correct?

6 A I slowed down because I didn't think they saw me or
7 knew to give way to me.

8 Q Now, if they didn't --

9 A I could plainly see them.

10 Q All right. But you had a concern they could see you,
11 correct?

12 A That they could see me? I believed that they could
13 see me. I just didn't -- I didn't believe that they knew
14 the laws.

15 Q May I -- may I approach the witness, Your Honor?

16 Now, this is your statement, correct?

17 A Yes, sir.

18 Q And as a matter of fact, your mom helped you with
19 this statement, correct?

20 A Yes.

21 Q You were asked questions. You gave responses; your
22 mom wrote down your response, correct?

23 A (Nods in the affirmative.)

24 Q You reviewed the statement to make sure everything in
25 the statement was accurate and correct and then you --

1 your mom signed it for you.

2 Now, you had just answered about -- I asked you a
3 question about your concern about the other boat being
4 able to see you. Tell me if I am reading correctly: "I
5 guess they didn't see me." Is that what you wrote?

6 MR. POTTS: Objection, Your Honor.

7 MR. HARVEY: Did I read that correctly?

8 MR. POTTS: Read the statement.

9 THE COURT: Just ask him a question. Don't publish
10 the statement.

11 BY MR. HARVEY:

12 Q In your statement you wrote that you had difficulty
13 or you had some concern about them seeing you, didn't you?

14 A (Nods in the affirmative.)

15 Q Pardon me?

16 A Yes, sir.

17 Q All right.

18 A But I didn't have difficulty seeing.

19 Q Now, you -- after you saw -- after the boat cleared
20 the area, you will agree with me that you told DNR you
21 bucked up the throttle, correct?

22 A No.

23 Q Read -- will you please read that, read -- read those
24 lines. Read the three lines at the bottom of that
25 statement because that's your statement. Tell me what you

1 wrote.

2 A "I guess they didn't see me. I bumped the throttle
3 up a little after they were passed."

4 Q All right. And before that, tell me what you told
5 DNR you did when you saw the boat and you had a concern
6 about them seeing you. What did you write? What are the
7 words you used when you talked to DNR?

8 A I slowed down to let the pontoon by because I guess
9 they didn't see me.

10 Q And you will agree you slowed down and then you
11 throttled back up, correct? Those are your words, aren't
12 they?

13 A Yes.

14 Q And to an experienced boater, throttling back up
15 means you're going faster, correct?

16 A Yes.

17 Q And you'll agree with me -- you stated that you
18 slowed down. Once you passed this imaginary Fox Sports
19 line, correct, and after the pontoon had cleared the area,
20 you accelerated, correct?

21 A No.

22 Q And then you told DNR you accelerated to 25 miles an
23 hour; isn't that correct?

24 A Yes, sir.

25 Q All right. So you increased the speed of your boat

1 to 25 miles an hour, correct?

2 A That was about where I was.

3 Q That's what you told DNR, correct?

4 A Right, but I had slowed down to 20 to 25. Maybe not
5 quite, you know, maybe closer to 20.

6 Q I'm asking you, sir, in your statement did you not
7 tell -- I'm not -- did you not tell DNR you slowed down to
8 let the pontoon boat pass?

9 A Yes.

10 Q Did you not tell DNR in your own words "I throttled
11 up"?

12 A Yes.

13 Q Did you not tell DNR you were running 25 miles an
14 hour?

15 A Yes.

16 Q Okay. And you had throttled up somewhere in this
17 area, correct?

18 A It was a little further up.

19 Q A little further up. So you were -- your speed was
20 accelerating, correct? Because throttled up means you're
21 going faster.

22 A Yeah, but it wasn't wide open.

23 Q I didn't ask you, sir, if it was wide open. I simply
24 asked was your speed increasing. You told DNR that you
25 increased your speed to 25 miles an hour.

1 Now, during the entire episode with the pontoon boat,
2 you're still traveling towards the Lighthouse, correct?

3 A Yes.

4 Q So you never become stationary, correct?

5 A Correct.

6 Q Now, you wrote that you thought the pontoon boat did
7 not see you, right?

8 A Yes.

9 Q Now, you'll agree with me that bumping up the
10 throttle means you increased your speed, right?

11 A Yes.

12 Q Now, you're familiar with the lake, right?

13 A Yes, sir.

14 Q And you're traveling towards -- I don't know what
15 other area you could call it but a busy area. You've got
16 Lake Murray Marina over here, and you've got another
17 marina back here, correct?

18 A Correct.

19 Q And you'll agree with me that if you're in between
20 that -- this -- this peninsula obstructs the view of this
21 marina which is Lighthouse, correct, unless you're way
22 over here or way over here, correct?

23 A Correct.

24 Q So if you're in this part of the lake, you don't have
25 a clear shot to see lake -- this marina, do you?

1 A No.

2 Q Okay. Now, as you're moving -- by your own
3 statement, as you're traveling towards the area with two
4 marinas, by your own statement, you increased your speed
5 to 25 miles an hour, correct?

6 A Yes.

7 Q And you'll agree with me you were in unrestricted
8 water when the accident occurred, correct?

9 A Yes.

10 Q You know Lake Murray.

11 Now, if you're traveling in this direction, at some
12 time you're going to have to get in this channel, correct,
13 and when you travel to get in this channel, you're the
14 operator of the boat, you're going to have to maneuver
15 your boat for it to turn and move in that direction,
16 correct?

17 A Yes.

18 Q Okay. Now, your boat has multidirectional lights on
19 the bow, correct?

20 A Yes.

21 Q I'm going to try it this way. If the bow is -- my
22 two hands are the bulbs of a multidirectional boat --
23 excuse me, a multidirectional light on the bow of a boat.
24 Are you with me?

25 A Yes, sir.

- 1 Q We call the right side the starboard side, correct?
- 2 A Yes.
- 3 Q We call the left side the portside, correct?
- 4 A Yes, sir.
- 5 Q Your multidirectional light on your boat had a green
- 6 light on the starboard side, correct?
- 7 A Yes, sir.
- 8 Q You have a red light on the portside, correct?
- 9 A Yes, sir.
- 10 Q And at some point in time, you're going to have to
- 11 make turn to get into this channel, correct?
- 12 A Yes.
- 13 Q So as you turn -- and when you make a turn and you
- 14 make a turn in that direction, a green light is going to
- 15 be visible, correct?
- 16 A Yes.
- 17 Q All right. And -- and the -- those lights were
- 18 working on your boat?
- 19 A Yes.
- 20 Q Okay. You -- you made this statement to DNR one day
- 21 after the accident, correct?
- 22 A Yes, sir.
- 23 Q Now, when you met -- do you remember meeting with
- 24 Mr. Potts --
- 25 A Yes.

1 Q -- in preparation for this trial?

2 A Yes, yes.

3 Q Now, when you met with Mr. Potts, you told him you
4 had an unobstructed view of the marina, right?

5 A Yes, sir.

6 Q Which marina?

7 A Rusty Anchor.

8 Q The one back here?

9 A Yes, sir.

10 Q So by your testimony and your recollection, you would
11 have had a clear -- another line right here, correct? So
12 your testimony is that the accident didn't occur in this
13 water or this water, but at some point where you had
14 cleared -- or you could see beyond that point and that's
15 your recollection?

16 A Yes, sir.

17 MR. HARVEY: Thank you.

18 THE COURT: Just a minute.

19 MR. HARVEY: That's all I have, Your Honor.

20 Thank you, Your Honor.

21 THE COURT: All right.

22 REDIRECT EXAMINATION:

23 BY MR. POTTS:

24 Q Just briefly, first I was going to ask you, this
25 picture you see right here, is this picture to scale?

1 A No, sir.

2 Q Do you know anything about this picture?

3 A I mean, I know where it's at.

4 Q Right. Well, you know what it's supposed to depict,
5 but it's coming at an angle, isn't it?

6 A Right.

7 Q It's not straight down, top down, is it?

8 A Correct.

9 Q Now, your boat, you had two boating chairs and the
10 normal chairs, right?

11 A Yes, sir.

12 Q Who were sitting in the normal chairs, the chairs
13 that were built into the boat?

14 A Me and Kelli.

15 Q You and Kelli.

16 A Yes.

17 Q In fact, it was Kelli and Amber were sitting on the
18 left-hand side of the boat.

19 A Correct.

20 Q All right. And how many people did you say that boat
21 is rated for?

22 A I would say at least six.

23 Q So at least six?

24 A Yes. I'm not -- not certain on it, but it was
25 well -- it was well capable of holding it, you know, with

1 more than four people, actually.

2 Q Okay. Now, Mr. Harvey made a big deal about the
3 changing of speeds. Before you saw the pontoon, about how
4 fast do you think were you going?

5 A Thirty to 40 miles an hour.

6 Q And then you did what?

7 A I slowed down..

8 Q You increased your speed to what after the pontoon
9 had passed?

10 A Twenty-five, 20 to 25.

11 Q Okay. Is that day still fresh in your mind?

12 A For the most part, yes.

13 Q So it's not like in the past 18 months that you have
14 -- or almost 24 months now, you had completely forgotten
15 what happened that day, correct?

16 A Correct.

17 Q And before Mr. Kranendonk's boat hit you, you had an
18 unobstructed view of the marina?

19 A Yes, sir.

20 Q And his boat came from which direction?

21 A From the left.

22 MR. POTTS: Beg the Court's indulgence.

23 (Pause.)

24 Thank you.

25 RECROSS-EXAMINATION:

1 BY MR. HARVEY:

2 Q Rob, you were asked by the prosecutor about the speed
3 in which you operated your boat. You had testified
4 earlier -- you just had been asked a question a moment ago
5 by Mr. Potts.

6 Earlier you said you were operating your boat at 40
7 miles an hour in unrestricted water. Just then you
8 testified that you were operating your boat at about 30 to
9 35 miles an hour.

10 A I said 35 to 40.

11 Q Well, you will agree with me if someone is operating
12 in the range of 35 miles an hour in unrestricted water,
13 that in and of itself isn't an indication of recklessness,
14 is it?

15 A No.

16 MR. HARVEY: Thank you.

17 THE COURT: All right, sir. You may come down. May
18 this witness be excused?

19 MR. POTTS: No objection from the State, Your Honor.

20 THE COURT: Without objection.

21 THE BAILIFF: Watch your step.

22 THE COURT: All right. Ladies and gentlemen, that
23 will conclude the testimony for today. I'm going to ask
24 you to be back in the jury room tomorrow morning at 9:30,
25 at which time we will continue with the trial.

1 Again, let me remind you, and I caution about
2 discussing the case with anyone over the evening hours or
3 among yourselves when you return in the morning.

4 There probably is some press media going on as far as
5 this case. I'm going to ask you again not to read
6 anything about the case. Remember, it's only some
7 reporter's impression about what they saw. You've seen
8 it. You've heard it.

9 My hope is that you will not dwell on something like
10 that because you're the judges of the facts in this case,
11 not the press.

12 So with that caution, again and again I'll ask you
13 not to do any independent research about the case. You're
14 now dismissed for the evening. I hope you have a pleasant
15 evening.

16 I'll see you at 9:30 in the morning. We'll continue
17 with the trial.

18 Juror number -- is it 302? I got your note. I think
19 we're all right.

20 THE JUROR: Thank you.

21 THE COURT: All right. Thank you very much.

22 (WHEREUPON, the jury left open court at approximately
23 5:18 p.m.)

24 THE COURT: Just for the record, counsel, I got a
25 note. I just happened to leave it in my office from juror

1 302 wondering if she needed to make arrangements next week
2 for a substitute teacher because we were going to be here
3 next week.

4 I assured her that it was not my intention to be here
5 next week, but that I had no control over the lawyers.

6 See you've at 9:30.

7 MS. SAMPSON: Your Honor, before we leave --

8 THE COURT: Yes.

9 MS. SAMPSON: Before we break, I just need to put on
10 the record, in order for us to get our witnesses together,
11 I spoke with Mr. Harvey earlier today.

12 It's my understanding there is some evidence that's
13 going to come in in reference to the lights on the boats
14 and having been tested to see whether they were on or not.
15 Those lights were taken through the chain of custody as it
16 normally would go.

17 THE COURT: Did you have them tested or did the
18 defendants have them tested?

19 MS. SAMPSON: The State had them tested, Your Honor,
20 and it's my understanding that Mr. Harvey will stipulate
21 that we don't have to call the chain witnesses that just
22 moved an item from one place to the other. He has that
23 stipulation.

24 THE COURT: This is specifically with regard to the
25 lights on the boat?

1 MS. SAMPSON: Correct, only the lights that were
2 tested, not any other chain.

3 THE COURT: Is that correct?

4 MR. HARVEY: It is, Your Honor.

5 MS. SAMPSON: That was all. I just wanted to put
6 that on the record so -- I don't know how many I would
7 have to have ready.

8 THE COURT: And if there are other chains that need
9 or call for a stipulation, I would appreciate it if you
10 can work that out, too.

11 I'll be here at nine in the morning. If anything
12 else comes up, I'll be glad to meet with you at
13 nine o'clock. Otherwise, court is adjourned, at ease --
14 at rest -- adjourned until 9:30 in the morning.

15 (Whereupon, There was an overnight recess).

16 THE COURT: Is Ms. Sampson close?

17 MR. POTTS: She is making copies. She will be here.

18 THE COURT: Defense ready to proceed?

19 MR. HARVEY: Yes, Your Honor.

20 THE COURT: Bring the jury, please.

21 THE BAILIFF: Yes, sir.

22 (WHEREUPON, the jury came into open court at
23 approximately 9:39 a.m.)

24 THE COURT: Good. We're read to the continue with
25 the trial.

1 Solicitor, call your next witness, please.

2 MR. POTTS: The State calls Colt Lax.

3 COLT LAX, after being duly sworn,
4 testified as follows:

5 THE CLERK: Have a seat in the witness box. State
6 your full name for the record.

7 THE WITNESS: My name is Colt Lax.

8 THE CLERK: Spell your last name.

9 THE WITNESS: Lax, L-A-X.

10 THE COURT: Thank you.

11 DIRECT EXAMINATION:

12 BY MR. POTTS:

13 Q Good morning, colt. Just tell the jury a little bit
14 about yourself and your relationship with Robert
15 Christofoli, Amber Golden, and Kelli Bullard.

16 A Well, my name is Colt Lax. I'm a diesel technician.
17 I've known Rob since I was three, four years old. I've
18 just known him for a long time. Kelli was actually my
19 first girlfriend when I was in elementary school.

20 Amber -- we met Amber. We went on a cruise a few
21 years before the accident, and Rob met Amber. That's how
22 Rob got to know Amber.

23 The -- me and Kelli were -- I absolutely loved her.
24 The day of the accident, we were actually -- she had went
25 to a -- she had went to Las Vegas earlier that week and

1 got back.

2 She was at my house, really, every day for the last
3 six months or so, but I asked her -- we went out to go
4 eat. I asked her if she would like to make it official
5 and move in with me. That was scheduled for that Sunday.

6 Her and her mom were actually supposed to come over
7 Sunday morning to plant plants by -- around my house, and
8 me and Jerry were going to get her stuff in the apartment
9 she was at, get all the rest of her stuff and move in.
10 That next day, I was going to ask Jerry if I could marry
11 her.

12 Q All right. Now, I'm going to take you back to
13 May 1st, 2010. How did your day start?

14 A The day started fine. I was -- I was actually at my
15 parents' house, and I forgot what we were doing. Probably
16 we were working on something, and Kelli had called me.
17 Her sister was going to prom, and we were supposed to meet
18 on the lake.

19 It's -- some friends of her parents were on the lake,
20 and that's where they were going to take prom pictures. A
21 bunch of people were meeting before they went to prom.

22 We went there, and we had -- Kelli took some pictures
23 with Lainey and got done with the prom pictures, and
24 that's when we called Rob because I knew Amber was in
25 town.

1 Kelli really liked spending time with Amber, and I
2 wanted to meet up with them. So we went and had something
3 to eat. I met in Lexington, had something to eat.

4 Q Where did you go eat?

5 A O'Charley's. It's a place right there in Lexington,
6 went and ate at O'Charley's, sat back down. I mean,
7 everything was normal.

8 That's -- we got done eating, and we were looking for
9 something else to do. It was still early. I had called
10 around seeing maybe what the -- what was going on for the
11 evening as far as what everybody was doing.

12 I wanted to show Amber a good time because she
13 doesn't get in town very much. I just kind of wanted to
14 make sure she was -- she had fun.

15 So we decided to talk to Rob. The weekend before, we
16 had been to the marina. I went with some friends. That's
17 actually when Kelli was in Las Vegas. I had went the
18 weekend before.

19 We had went to Dockside and had a pretty decent time,
20 and I brought up about maybe going back to Dockside
21 because it was -- I mean, it was -- it was the right time.

22 So we got the boat. We went to Rob's parents' house
23 where the boat was at. It was his dad's fishing boat.

24 Q Why did you do to Rob's house?

25 A Rob's house is extremely close to the water as far as

1 where we were going to put in at. Where Rob and his
2 family live, you drive across the street and you can put
3 the boat into the water, but that's why we went to Rob's
4 parents' house, just to pick up the boat and put into the
5 water right there all together.

6 I had called Keith. We were on the way out. He was
7 actually seeing a girl at the time.

8 Q By Keith, who do you mean?

9 A Keith Corley. He was seeing a girl at the time that
10 worked at the Dockside restaurant, was a bartender. So I
11 talked to him before I left. I made a couple of other
12 phone calls.

13 I talked to another one of our friends, John Gunter.
14 His fiancée at the time -- they're married now -- she was
15 out of town and called him to see if he wanted to do
16 anything with us.

17 So we put the water and was on the way to John's
18 house when I got the phone call from John saying he was
19 going -- Melinda was coming back in town, and he was just
20 going to stay around the house.

21 Q Now, let's talk a little about putting the boat in
22 the water.

23 A Okay.

24 Q Can you talk about the process you guys used for
25 getting the boat and putting it down in the lake?

1 A Across the street from Rob's parents' house is
2 somebody they've known forever. What we do is Rob
3 actually -- him and his father work on boats as a job.

4 They had took the boat from there, and we just really
5 went across the street. Rob was driving. He drove
6 until -- you've got to kind of back down a pretty long
7 ways before you actually get into the water.

8 Rob drove down there. Rob got in the boat, and the
9 two girls got in the boat, and I backed the boat into the
10 water. Whenever he launched and tied up to the dock to
11 wait on me, I pulled the truck forward and parked the
12 truck and trailer out of the way, and that's when we -- we
13 got on the boat.

14 Q Okay. Did you guys check to make sure it was safe at
15 the time?

16 A Right. We had -- we actually went before we have --
17 Rob's father had a four pack of life jackets. I wanted to
18 make sure we had the life jackets.

19 Before we do anything, it's flotation devices, life
20 jackets, make sure your lights are working, whistles, all
21 the stuff that you need on the water. We made sure we had
22 all of that, and then I walked down on the dock and got in
23 the boat.

24 Q All right. So you get the call from John, and you
25 decide to continue over at Dockside?

1 A Right. Well, the way -- if you come out of Rob's --
2 where we put the boat in at, John's by water, where we
3 were going to pick him up at, isn't very far. It's maybe
4 a two- or three-minute boat ride to where John's house is
5 at.

6 We were going to pick him up, and it's that way
7 anyway. You've got to go across the big water to get to
8 the topside of the lake.

9 Q And what time of day is this?

10 A This is night. We got done eating probably nine or
11 so. I want to say we was -- it was a quarter until ten,
12 ten o'clock, when we put the boat in, was heading across.

13 Q Can you describe to me what the lake is like at
14 night?

15 A The lake is -- the lake is 100 percent different than
16 what it is during the day. There is no -- there's no
17 lights. There's lights on the bank that line the bank.

18 You've got dock lights and point markers, things like
19 that, but on the lake, there's a bunch of -- even though
20 you think you're in deep water, there are points that come
21 up, shallow points, that you've got to know what you're --
22 navigate correctly to be able to get around the shallow
23 water markers.

24 You've got to pay a good bit more attention at night
25 to what you're doing than just going during the day.

1 Q Okay. Now, you guys continue over to Dockside.
2 Explain that trip to me.

3 A The trip was -- Rob was in the captain's chair. I
4 was behind him, directly behind him. Kelli was sitting
5 across from Rob at the front left side, and Amber was
6 sitting at the back left. She was directly across from
7 me.

8 We were heading across the lake. I actually told
9 Rob, I said, "Man, we need to" -- I said, "Do you have a
10 radio or anything" because it was real quiet. He had a --
11 one of the little boom boxes about that big around that he
12 put down, and we were just going across the water.

13 I was talking to Amber, actually telling her about
14 the stars. The -- it was -- it was clear. It was dark,
15 though. It was very, very dark, but it was a clear night.
16 I was actually talking to her about the stars and just
17 heehawing with her in the back.

18 Q Was there any other traffic that night?

19 A Not that -- it wasn't -- I wouldn't say there was a
20 lot of traffic. We probably saw maybe -- until we get to
21 the other side, we maybe saw two, three boats tops.
22 There's not a whole lot of activity on the lake at night.

23 Q Well, now, when you're driving, you're coming towards
24 -- closer to Dockside?

25 A Yes.

Lax - direct (Potts)

448

1 Q You guys are going at -- around how fast are you guys
2 going?

3 A I'd put us traveling -- we weren't at all full
4 throttle. We were running 30 to 35 miles an hour.

5 Q Did anything cause you to slow down?

6 A When we got -- when you come into the cove where
7 Dockside and Lighthouse Marina are at, there was a --
8 there was a pontoon boat that was coming out of Lighthouse
9 Marina going across the cove going to -- it looked like
10 they were going toward the dam side.

11 When we saw the boat, Rob slowed down to let the boat
12 pass. Then when the boat passed, we weren't -- we weren't
13 very far away from the no wake zone. There's a no wake
14 zone on both sides as you start getting closer to the
15 marina.

16 Q There's two marinas there.

17 A There were two marinas. The way we were coming, if
18 you -- to the left-hand side, it is Lighthouse Marina.
19 Attached to that is a restaurant, outdoor bar, called
20 Rusty Anchor. It's connected on Lighthouse Marina.

21 On the other side, the right-hand side would be
22 Dockside. Dockside is also a restaurant, and that's
23 where -- restaurant, bar, that's where we were heading.

24 Q Okay. Beg the Court's indulgence one second.

25 (Pause.)

1 I'm going to show you something. Can you tell me
2 what that is?

3 A This would be -- the bottom island down here is Susie
4 Ebert.

5 Q Well, just tell me in general what this is rather
6 than describing it?

7 A Oh, this would be an aerial view of the lake. It
8 looks like it's printed off from Google Maps.

9 Q Okay. Would this help you explain where everything
10 is?

11 A Okay.

12 Q Would it -- would it help you?

13 A Yes. Yes, sir.

14 Q Okay. Let me put this up here. That's good,
15 actually.

16 Thank you.

17 Your Honor, may the witness step down for a second?

18 THE COURT: Sure.

19 BY MR. POTTS:

20 Q I'm going to hand you a pushpin here.

21 A Okay.

22 Q Let me get this so you can step down.

23 A I'll watch this.

24 Q Let me do it. If anyone's going to get in trouble...

25 A Okay.

1 Q If you could stick this pushpin where Dockside is.

2 A Dockside would be here. That would be Dockside
3 restaurant. This is Rusty Anchor, Lighthouse Marina over
4 to the left-hand side.

5 Q All right. I'm sorry. Do you mind taking that
6 pushpin and putting it where the Lighthouse is,
7 Lighthouse?

8 A Lighthouse Marina, Rusty Anchor, is here (indicating).

9 Q Okay. Now, put a -- put a pushpin showing where
10 you're coming from.

11 A We would be coming from...

12 Q And you're -- do a couple for your path of travel,
13 where you guys are coming from.

14 A Okay. We are coming -- we're actually coming from
15 the DNR station, Spence's Point, that kind of area. You
16 kind of need a bigger picture to see where we were coming
17 from, but this is where the -- the water gets big.

18 As you can see right here, it's kind of narrowed
19 down. This is where you start getting into the coves, but
20 it's a big area of water here.

21 We have would have been coming from this direction.
22 We would have started off right down here, and we would
23 have been coming through this hole in between Susie Ebert
24 Island and here.

25 Q Can you show me approximately where you saw the

1 pontoon boat?

2 A The pontoon boat I remember was in -- either the
3 pontoon -- I want to say the pontoon was crossing from
4 here. This is where the dam would be, which is across
5 Number 6.

6 Q Uh-huh.

7 A The pontoon was coming this way, getting -- looked
8 like they were leaving this area and was going towards the
9 dam.

10 Q And that would be the Lighthouse area?

11 A This up here where they were coming from, you
12 would -- you would think --

13 MR. HARVEY: Your Honor.

14 THE COURT: Yes, sir.

15 MR. HARVEY: Your Honor, he certainly can -- I would
16 object to him -- he certainly can describe the route of
17 travel of the vehicle -- excuse me, of the boat.

18 I don't think he can testify from where the boat came
19 from. He can certainly testify to his observation but
20 that's --

21 THE COURT: I think that's what he's doing.

22 Overruled.

23 MR. HARVEY: Thank you.

24 BY MR. POTTS:

25 Q Continue what you're doing.

Lax - direct (Potts)

452

1 A Okay. When we came in between the two islands, this
2 is where Rob -- he -- like I said, we were running 30 to
3 35 miles an hour. He throttled back to allow the pontoon
4 to pass.

5 When the pontoon passed, we were coming towards Dock
6 house, so we would have had -- from over here, we would
7 have had a direct shot to Dockside here.

8 Q Okay. And the other boat was coming from the area
9 called Lighthouse.

10 A It was coming from this area crossing -- crossing
11 this direction -- going towards the Irmo side would be the
12 dam, that area.

13 Q And which side of the boat was that?

14 A We would have seen it coming -- that would have been
15 the starboard side.

16 Q Starboard side, the left side or...

17 A The starboard side is the right.

18 Q Okay.

19 A The portside is going to be left.

20 Q So you guys would have been on its right side?

21 A Correct.

22 Q Okay. So it would have been on your left side,
23 correct?

24 A The -- the boat was in front of us. We saw the
25 starboard side as it was coming across.

1 Q All right. Now -- you can sit back down.

2 A Okay.

3 Q Now, once the pontoon boat passed, what did Rob do?

4 A There's two different -- what you have -- what we did
5 is we got on plane. On plane is considered -- a
6 V-bottomed boat, as you're sitting in the water, is a
7 lower in the water.

8 As the boat accelerates, the boat -- you have less of
9 the hull in the water. You're actually on plane. On
10 plane is you get up on top of the water, and that's where
11 we were at.

12 That could -- it's not very -- it's not full throttle
13 by no means. It doesn't take very much to be on plane,
14 but the boat just you're actually using the boat to ride
15 the way it's supposed to.

16 Q Okay. And so that would be -- that would be faster
17 or slower than the speed you're traveling toward the
18 pontoon boat?

19 A It would be faster than the speed that -- like when
20 we -- when we slowed down for the pontoon boat, we slowed
21 down to where the boat was -- it was -- we weren't
22 completely stopped, but we had slowed down. The boat had
23 dropped into the water. To get back up on plane, we --

24 Q What was the speed before that, before you even
25 slowed down the pontoon boat?

Lax - direct (Potts)

454

1 A Thirty to 35 miles an hour.

2 Q And the speed you were going when you got on the
3 plane or boat, would that be slower or faster than the
4 speed you were at, 30 to 35 miles per hour?

5 A We were -- we were slower definitely. There wasn't a
6 very long run between where we were at and the no wake
7 zone. There was no -- there was no need to really speed
8 back up.

9 It was -- we had a short little run. Maybe 2--,
10 300 yards. It wasn't very far at all until we got to
11 where you needed to slow down anyway.

12 Q Okay. So you guys aren't going that fast?

13 A No, we didn't have anywhere to be.

14 Q So what are you doing after the pontoon boat passes?
15 Are you still describing -- you're talking about
16 describing stars. Is that still what you're doing?

17 A I am. The reason -- me and my -- me and my dad, we
18 spent a lot of time in Hilton Head. My uncle down
19 there -- he does not anymore, but he was a licensed
20 captain for an offshore fishing boat.

21 We spent a bunch of time in there. We spent a bunch
22 of time at dark shrimping. That's when you shrimp in the
23 evening, but that's what he would do.

24 We would describe the stars. He would tell me where
25 the Little Dipper was and the North Star. That's what I

1 was describing to Amber. We didn't really have anything
2 else to talk about. The radio wasn't very loud, so it was
3 still -- I was, you know, just talking to Amber in the
4 back.

5 Q Okay. What happened next?

6 A It wasn't very long after. I'd say within 30
7 seconds, 15 to 30 seconds. I was looking forward, and I
8 think -- I went to go talk to Amber again, and my -- when
9 I looked to the left, I could see white. It was the hull
10 of a boat.

11 Q It wasn't the lights? It was --

12 A It was so close to us, the only -- it was six to
13 10 feet away from us. When -- it was there.

14 Q And which side of the boat was that?

15 A I would have been seeing -- the keel is the front
16 part where the V comes down. I would have seen the keel
17 and the starboard side of the boat, the very front bow of
18 the boat. That's all -- that's all I could have seen.

19 Q So that would have been the right-hand side of that
20 boat.

21 A The front, the front right-hand side.

22 Q And that was -- you were looking over which shoulder?

23 A I would have been looking to my left looking off the
24 portside of our boat and that -- seeing the right-hand
25 side of their boat.

1 Q Was their boat slowing down?

2 A It did not appear so.

3 Q How could you tell?

4 A When the -- as I was describing before, V-bottom
5 boats when you become on plane, the bow of the boat rises
6 to where it will actually -- as the boat is in the water
7 idling doing nothing, the boat actually becomes about two
8 times as tall when it's on plane where the bow would be
9 up. That helps for -- if you're going through the water,
10 it helps the waves break over the -- over the front of the
11 boat. It's a smoother ride.

12 I couldn't see. You have the top of the boat, which
13 would be called the gunnel. The gunnel is the two sides
14 of the boat that connect the hull to the deck of the boat.
15 I couldn't see any of that. The only thing I could see
16 was the keel. It was -- I couldn't see the top of the
17 boat.

18 Q If the boat had been slowing down, would you have --
19 do you think you would have been able to see the top of
20 the boat?

21 A Yes. We were in a boat that was -- how we were
22 sitting in our boat, we were actually high up. Compared
23 to a V-bottom boat, say it sits two foot off the waters in
24 idle when it's neutral.

25 As the boat accelerates, the bow comes up. If it's

1 two feet, it becomes four feet. The bow rises a very
2 substantial bit, and I didn't -- that's all I could see
3 was the keel.

4 Q Okay. And just tell the jury a little about your
5 experience with boating and boats throughout your life.

6 A I've been on the water since I can remember. The --
7 me and Rob, we do any kind of fishing, really, from
8 fishing the ponds, which -- shrimp fishing, things like
9 that, to offshore fishing where we're going to catch
10 marlin, the big game fish offshore.

11 Like I said, my uncle was a licensed captain. In the
12 fall, we spent a good amount of time -- me and my father
13 spent a good amount of time at my uncle's house leaving
14 from there fishing in salt water in shore, actually owned
15 an offshore fishing boat. Rob works on boats.

16 I mean, the water is no stranger to us. It's
17 something that my parents and my uncle made sure I
18 learned. That was one of the things my uncle always told
19 me. He said, "Do you see that? That's the North Star."

20 He said, "If you know where the North Star is at,
21 you've got to head west. You'll get back to -- you'll get
22 back to land." I needed to head that way to get somewhere
23 back. Yeah. It's -- I've -- I've spent a very good
24 amount of time on the water.

25 Q How fast do you think that boat was going?

1 MR. HARVEY: Your Honor, he's -- he's answered the
2 question that he observed the boat from six to 10 feet in
3 a matter of seconds.

4 I don't think he can give, based upon the foundation
5 that's been laid, an answer to that question based upon
6 his observation.

7 THE COURT: I'll let you cross-examine him about it.
8 Overruled.

9 BY MR. POTTS:

10 Q How fast do you think that boat was going?

11 A A boat that size to be on plane would have to be
12 going more than 20, 20 miles an hour or so. That's a
13 pretty good amount of boat to get out of the water.

14 Q At least 20 to 25?

15 A At least. Like I couldn't -- I couldn't hear their
16 engine or see them coming from aways, but with the parts
17 that I saw, that amount of the -- that boat was on plane.
18 It was -- it was at least running that fast.

19 Q Okay. Now, describe to me after you saw the boat
20 what happened next.

21 A When I saw the boat, the boat would have been
22 coming -- Kelli was sitting to the front left of me. I
23 had enough time to yell out "boat", and I was coming -- I
24 was coming out of my chair to grab her to try to pull her
25 to the bottom of the boat. I had enough time from where I

1 saw the boat, I had enough time to say "boat" to the
2 impact.

3 I had just got out of my chair. There was no time.
4 It was -- it was fast. When the boat hit us, since I was
5 already up -- our portside of our boat, when he hit, the
6 boat actually rose on the left-hand side. He hit us -- he
7 hit us that fast to push our boat up on the side.

8 When he hit us, the boat picked up. I thought the
9 boat was going over. That's how inverted the boat was.
10 The next thing I remember, I was in -- I stood up and was
11 looking. I didn't see either of the girls. Rob was
12 turned around in his chair looking at me.

13 My first words out of my mouth were, "Rob, what
14 happened?"

15 He said -- he said, "Bo, I think we got hit."

16 I said -- the next things out of my mouth were -- I
17 said, "Where are the girls at?"

18 He said, "I don't know."

19 I said, "Are they in the boat? Are they in the
20 water?"

21 The way the side of the boat was made, we were in a
22 sheet metal boat that comes up on the sides. When he hit
23 us, it had collapsed, collapsed the left-hand side of the
24 boat.

25 I could tell whenever I stood up, the stern of the

1 boat was in the water. It was -- we were sinking. I knew
2 my feet were wet, and there was no lights.

3 The stern light, which would be your anchor light,
4 that's one of the lights that come on with your navigation
5 lights as you're moving through the water, that was the
6 only light source we had in the boat.

7 It was -- the whole left side of the boat was gone.
8 There was pieces of glass and mirrors and life jackets and
9 all kinds of stuff in the bottom of the boat. I started
10 throwing it out of the way.

11 While this is going on, Rob is saying, "Help," but
12 it's very soft. He is -- it's not a yell. It's -- it's
13 as he's talking to me. It was as if we were having a
14 conversation. It was, "Help. Help."

15 I'm throwing stuff out of the bottom of the boat, and
16 I found -- I found Amber first.

17 Q Describe Amber for me, please.

18 A Amber would be -- her head would be towards the stern
19 of the boat. She was -- over half her body was covered in
20 water.

21 I picked her up, and I knew -- I picked her up and
22 put her head towards the bow of the boat where she would
23 be out of the water. I'm trained in CPR and first aid
24 response. I listened to how she was breathing, and it was
25 very shallow. It was like she was gasping for air.

1 Whenever I had her to the -- to the bow of the boat,
2 I found Kelli next, and...

3 Q Take your time.

4 A I found Kelli. Both the girls were limp. There
5 was -- there was no signs of...

6 (Pause).

7 I found Kelli next, and did the same thing I did to
8 her, to Amber. I pulled her towards the front of the
9 boat.

10 One of the first things you learn in CPR -- I
11 practiced on dummies and stuff. I mean, I've never done
12 CPR in person, but the -- I knew you had to tilt the head
13 back so you'd open up the airway, and then the next thing
14 is to...

15 (Pause).

16 Q You can do it, Colt.

17 A The next thing is you need to make sure the -- the
18 mouth is clear of obstructions, make sure nothing is in
19 their mouth.

20 Q So what did you do?

21 A I took my finger and ran it through her mouth just to
22 see if anything was in her mouth, and I could tell,
23 then...

24 (Crying).

25 (Pause).

1 Her face was...

2 (Giving tissues to the witness).

3 I appreciate it.

4 (Pause).

5 Her face was broken up very badly. I was --
6 actually, when I ran my finger through her mouth, I was
7 pulling teeth out of her mouth.

8 (Crying).

9 Oh.

10 (Pause).

11 Oh.

12 (Pause).

13 It took the -- I knew then this was very bad. I was
14 trying to -- I was doing compressions on her chest, and
15 her chest was just hallow. There was no -- there was
16 nothing in her chest. It was like -- usually they tell
17 you to compress the rib cage one to two inches to try
18 to...

19 There was nothing. It was...

20 When I tried to put air in her mouth, you usually
21 hold the nose to hold the bottom of the jaw to be able to
22 put air in. When I tried to put air in her mouth, all the
23 bones were gone in her mouth. I had to hold her mouth
24 together so I could put air in it.

25 (Pause).

1 Q But you tried anyway?

2 A I was doing everything I could. I mean, my baby girl
3 is dying.

4 MR. HARVEY: Your Honor.

5 THE COURT: Yes, sir.

6 MR. HARVEY: We have stipulated -- he certainly can
7 testify about his observations and his conclusions. We
8 have reached a stipulation with respect to injuries that
9 were sustained by the occupants of the boat.

10 I'm very loathe to interrupt. I wanted some facts to
11 come out, but I believe based on our stipulation, this
12 would be cumulative evidence that's before the jury. I
13 would respectfully pose an objection based on that.

14 Thank you, Your Honor.

15 THE COURT: Overruled.

16 BY MR. POTTS:

17 Q Keith.

18 A I --

19 Q Sorry. Please -- Colt.

20 A No, that's fine.

21 (Pause).

22 I knew we needed help. I could tell there was
23 something, either my shoulder was broken, but every time I
24 was doing compressions on Kelli, I could feel my shoulder
25 move up and down. It was -- there was nothing holding it.

1 At that time, I heard -- I heard Rob say -- he was
2 still calling for help the whole time this was going on.
3 I hear Rob. He starts yelling, "Help. Help."

4 I got up out of the boat and looked towards our side,
5 and I saw a boat approaching us. They were slow enough.
6 They were -- they were idling in the water. I could tell
7 the cockpits lights were on.

8 Q When you say cockpit lights, what kind of lights were
9 those?

10 A Cockpit lights are -- in a center console boat, it
11 would be a, normally, a V-bottom boat that's got a center
12 structure on it. It's got the controls, the helm, which
13 would be the steering wheel.

14 It puts everything in the middle of the boat for the
15 operator to be able to see if he's got electronics as far
16 as radar or a depth sounder. It puts everything in the
17 middle of the boat. That's why it's called a center
18 console because the console would be in the center of the
19 boat.

20 The cockpit lights are lights that are in the bottom
21 portion of the center console, but it bounces light
22 against the gunnel, so actually, the inside of the boat is
23 lit up.

24 I could see those lights were on, and I could see
25 they were slow and coming towards us. I couldn't -- I

1 couldn't see who it was, but I could tell there was three
2 people on the boat.

3 The next thing I hear is one of them say, "Is that
4 Colt?"

5 That's when I -- I said -- I could tell who was on
6 the boat. I could tell Keith was driving. Josh was on
7 the boat and Michael Shoeman was on the boat.

8 As they got closer towards us, the thing that kept
9 coming out of my mouth was, I said, "We've got to go." I
10 said, "We need help." I said, "My baby is dying." I
11 said, "We've got to do something."

12 The whole time when I'm trying to do compressions on
13 Kelli in the boat, I think Michael Shoeman comes aboard
14 our boat and is trying to work on Amber as far as doing
15 compressions, doing the same thing I am.

16 While that's going on, we had a bow line. Keith was
17 operating the boat, and Josh was on the bow of our boat.
18 Josh was holding the line as Keith was driving trying to
19 get us towards land.

20 I know since our boat was so heavy because the boat
21 is sinking, they were having a -- they were having a hard
22 time holding the rope as it pulled all the way through the
23 water.

24 When we got close enough, I know the house that we
25 were at, I could hear -- I could hear Keith, him hitting

1 on doors, trying to wake somebody up and him saying, "We
2 need help. There's been an accident," him yelling, doing
3 whatever he could to try to get us some help.

4 I'm still on Kelli in the boat. The riprap covered
5 the house that we were at.

6 Q What's riprap?

7 A Riprap would be big granite stones that people line
8 to do erosions. You'll see them sometimes in ditches, but
9 it's to try to keep the land from washing away.

10 Q I'm going to show you State's Exhibit No. 33. Are
11 those the rocks you're talking about on the bottom
12 right-hand corner?

13 A That's -- that is the rocks.

14 Q Okay. So Colt, while Keith is knocking on all these
15 doors, what are you doing?

16 A I'm doing absolutely everything I can do to keep
17 Kelli alive, to try to look for any kind of signs of life,
18 anything.

19 (Crying.)

20 I never could get a heartbeat. I never could get
21 anything out of her. She wasn't attempting to breathe on
22 her own. There was nothing.

23 I could tell that the house that we stopped at where
24 the riprap was at, there was -- there was two people
25 outside. They were in pajamas, like robes.

1 They were outside, and I had -- I had Kelli in my
2 arms and was trying to off-load her off the front of the
3 boat to try to get to land.

4 I gave her to -- to somebody. It was one of the --
5 it was either Michael, Keith, or Josh. I was trying to go
6 across the bow trying to get to land, and I had to hand
7 Kelli off, and I got out of the boat.

8 The -- we went up on land. There was an older man
9 and an older woman in the yard, and they were on the
10 phone. They said what happened? What happened?

11 I said, "There's been an accident. We have got
12 people hurt. We need help."

13 Then Kelli -- laid Kelli down on the ground. Then it
14 would be Rob and then Amber as the line goes. I was
15 still -- when we got -- when we got on land, I was still
16 trying to look for anything I could out of Kelli. That
17 was the only thing I knew how to do.

18 Q Colt, that evening, what did you learn? How injured
19 were you?

20 THE COURT: I couldn't hear the question.

21 BY MR. POTTS:

22 Q I'm sorry. Colt, what were your injuries that
23 evening?

24 A I knew there was something wrong with my shoulder. I
25 knew that.

1 As far as -- I knew I didn't -- I was still coherent.
2 I could still think. I could still -- there was so much
3 going on, but I was still there. I was still very
4 functional.

5 I had broken all the ligaments in my shoulder. There
6 were no bones but the three big tendons that hold your arm
7 to your rib cage, all of those separated. I have a -- I
8 had a big cut to my head. I had some glass pushed in my
9 arms, both of my arms.

10 Q Where did the glass come from?

11 A The glass -- the boat that we were riding in had --
12 in front of the captain's seats had glass that come
13 through. You see them on ski boats. It's glass that
14 folds down that goes between the two consoles. All of
15 that was gone, and that's where the glass came from.

16 I was wearing sandals and something happened to my
17 sandals. I wasn't wearing them, but I was stepping on
18 broken glass in the bottom of the boat.

19 I -- where that impact of my hip hurt real bad, I had
20 some bruising around my hip, but as far as nothing --
21 there was no major damage. I had -- I mean, tendons
22 broken but as far as broken bones or -- I didn't have
23 anything close to what the girls had.

24 Q Now, Colt, I want you to go back to your mind again
25 back to the collision, okay. Before the collision, did

1 Rob deviate from his path in any manner or fashion?

2 A No. We were straight as an arrow. We were -- we
3 could -- we could see where we were going. No, at no time
4 was there turns or something like that. We were on a
5 course. We were headed to where we were supposed to be.

6 MR. POTTS: Thank you, Colt. No further questions.
7 Please answer any questions Mr. Harvey has for you.

8 THE COURT: Cross-examination?

9 MR. HARVEY: May I approach the witness?

10 THE COURT: Sure.

11 CROSS-EXAMINATION:

12 BY MR. HARVEY:

13 Q Would you like some water?

14 A I'd like some water, please.

15 (Complies.)

16 Thank you.

17 Q You're welcome.

18 You're a guy that's been on the water your whole life
19 basically?

20 A Yes, sir.

21 Q All right. And first of all, I recognize how
22 difficult this is for you, and I appreciate your being
23 here. I think everyone recognizes that.

24 Now, Lake Murray has got basically a couple different
25 types of areas in which boats operate. There is an area

1 called a wake zone.

2 When a boat is in the wake zone, you have to operate
3 at a lower speed, right, in the no wake zone?

4 A In the no wake zone there is -- you can -- you've got
5 to be at idle. You cannot create any kind of wake behind
6 the boat.

7 Q Okay.

8 A That's in a no wake zone.

9 Q All right. And then there are parts of the lake that
10 are unrestricted, correct? In other words, there is no
11 restriction on the speed, correct?

12 A Well, it's left to the driver's discretion.

13 Q Kind of like --

14 A I won't say unlimited.

15 Q Okay. Would it be like the autobahn in Germany?
16 They have a highway. There is no speed limit but every
17 operator operates their automobile at the speed they
18 operated at. Is that a good analogy? And if it's not,
19 tell me it's not.

20 A I wouldn't compare those two.

21 Q Okay. All right. Well, let me ask the question
22 another way.

23 A Okay.

24 Q Once you leave a no wake zone -- like the night in
25 question, you testified you went to visit a friend named

1 John.

2 A We didn't visit him. We were on the way to see him,
3 yes.

4 Q On the way to see him. Part of the plans were to see
5 if John wanted to go to Lake Murray Marina with you guys?

6 A Which marina are you referring to?

7 Q Well, you had -- you had testified Lake Murray
8 Marina.

9 A Dockside?

10 Q You had said Lake Murray Marina. Those were your
11 words, Lake Murray Marina. So I'm asking you -- your
12 words were Lake Murray Marina. You had planned to go to
13 Lake Murray Marina, right?

14 A As far as -- I'm not sure -- the two marinas are
15 known as Rusty Anchor or Dockside. As far as the Lake
16 Murray Marina, I'm not sure which one you're referring to.

17 Q I'm asking you, did you testify to -- all I'm asking
18 you -- let me ask the question another way.

19 A Right. Well, I'm just -- I just want to make sure
20 we're clear.

21 Q We're clear that you -- you, Rob, Amber, and Kelli
22 were in the boat.

23 A Yes.

24 Q You, Rob, Amber, and Kelli were going to visit a
25 friend named John and then meet other friends at an

1 establishment later on?

2 A Yes.

3 Q Okay. All right.

4 A Yes.

5 Q And your route of travel to go to the establishment
6 would have taken you through some no wake -- through zones
7 that were not no wake zones, correct?

8 A Correct.

9 Q Can we -- can we agree to call that open water?

10 A That would be considered open water.

11 Q Okay. If we agree to call it open water, when a boat
12 is traveling in open water, it travels at a rate of speed
13 greeter than in a no wake zone.

14 A Correct.

15 Q Okay. Now -- and oftentimes, when boats are not in
16 no wake zones in open water or unrestricted water --
17 that's a term I use.

18 A Okay.

19 Q And we'll agree to call it open water, okay.

20 A Okay.

21 Q When a boat is in open water, boats often travel on a
22 plane, correct?

23 A Correct.

24 Q And when a boat is on plane, that means it's
25 traveling in an efficient manner because you have less --

1 as you said, bow in the water, and if there's less bow in
2 the water, there is less resistance and the engine doesn't
3 have to work as hard, right?

4 A Correct.

5 Q Okay. And you testified, and you'll agree with me
6 that a boat on plane is not the same thing as a boat at
7 full throttle, correct?

8 A You can be on plane without being at full throttle,
9 yes.

10 Q Okay. Now -- and you were asked questions by the
11 prosecutor about the route of travel, and you know from
12 being with your uncle -- you testified he's a -- you've
13 been on water at night.

14 A Yes.

15 Q And in this photograph right here, trees are depicted
16 in this photograph, correct?

17 A Yes.

18 Q So at night when there are trees by the shoreline,
19 it's a little darker, correct? In other words, if there
20 are -- if trees tend to block anything that's illuminating
21 the area, correct?

22 A (There was no response).

23 Q In this picture, there are trees of lights coming
24 from a structure back here, and you're between the
25 structure and the trees, the trees can block the

1 illumination, correct?

2 A You can't see through wood, yes.

3 Q Okay. I agree with that, and you'll agree with me
4 this is Susie Ebert Island?

5 A Uh-huh.

6 Q You'll agree with me this is the Coast Guard station,
7 and does this pin depict the location of the pontoon boat?
8 Tell me what this pin depicts.

9 A I just ran out of pins. The pontoon would be
10 crossing the point that comes up and wraps around to go to
11 Rusty Anchor. It would have been traveling from that
12 point across to the dam side of the lake.

13 Q So you guys had not yet come across the point when
14 you saw the pontoon, correct?

15 A I'm not sure exactly -- the pontoon was crossing in
16 narrower water, so that was --

17 Q If you'd like to stand up --

18 A Oh yes.

19 Q Please feel free to stand up.

20 A The pontoon was crossing -- this water, you can't
21 really --

22 Q I'm sorry. I got it.

23 A You can't really see. The map doesn't really -- but
24 you've got points that come out from these. This is
25 actually a whole lot narrower than what it looks like

1 here.

2 There is a definite neck down here. The pontoon was
3 either -- these two points are about the same width. This
4 one might be a little bit further across but we were --
5 either the pontoon was crossing here or was coming across
6 this direction. I'm not sure if they were going straight
7 down, but they were going this direction.

8 Q Okay. And you'll agree with me that the pontoon was
9 beyond -- beyond the Coast Guard station?

10 A Yes.

11 Q And beyond where -- this channel or this straight
12 here?

13 A Yes.

14 Q And so you're saying the pontoon was beyond this
15 point on this map?

16 A Okay.

17 Q And on the other side of -- if we drew a line right
18 there.

19 A Okay.

20 Q Is that right?

21 A They were somewhere in this -- I can't tell you exact
22 GPS coordinates of where they were, but they were in this
23 area coming this way.

24 Q Okay.

25 A This area is not very big.

1 Q Okay. So it's not a very -- please have a seat.

2 And you'll agree with me you remember that Rob slowed
3 his boat down to allow the pontoon to pass, correct?

4 A Yes.

5 Q Or in the clear vicinity, and you'll agree with me
6 that Rob's boat accelerated after the pontoon passed?

7 A Minimally, yes. There was a change of speed.

8 Q There was a change of speed, correct. Okay. And you
9 were asked about different speeds by the prosecutor.
10 Remember those questions?

11 A Yes, sir.

12 Q And actually when -- and you had also mentioned the
13 area of the lake that you were traveling from. You said
14 you would need more pictures to show that.

15 A Well, the lake is a big area of water.

16 Q Right.

17 A This is a very collapsed version of what you could
18 see on the lake, but this is actually very -- that area is
19 actually very small.

20 Q Okay. And when you're traveling towards this area,
21 you testified you thought Rob may have been operating
22 somewhere in the neighborhood of 30 or 35?

23 A I believe around that area.

24 Q Sure. All right. And he's coming 30 to 35. You
25 testified you knew he had slowed down when the pontoon

1 had --

2 A Right.

3 Q And you testified you knew he had accelerated once
4 the pontoon passed.

5 A Right.

6 Q Okay. And you'll agree with me that Rob is a pretty
7 experienced boater.

8 A I would say that.

9 Q And if Rob was -- were asked questions and Rob gave
10 an opinion about how fast Rob thought he was going, you
11 wouldn't have much reason to doubt what Rob --

12 MR. POTTS: Objection, Your Honor.

13 THE COURT: Overruled.

14 BY MR. HARVEY:

15 Q You wouldn't have any reason to doubt how fast Rob
16 thought he was going, would you?

17 A I would -- I wasn't looking at the speedometer. The
18 only thing I could go by was how quick the wind was going
19 across me. I never did look at a speedometer to tell
20 exactly how fast we were going, but I would put it in that
21 range, yes.

22 Q Okay. Now -- and I know it's difficult because
23 Mr. Potts asked you some questions about some -- not only
24 are the circumstances in the accident and the aftermath
25 very difficult, but you also were hurt. Do you remember

1 being transported to the hospital that night?

2 A Yes, I do. I was the first one to leave the impact
3 site. Well, the place where we had the land, the house.

4 Q All right. And you were at the hospital, and
5 eventually you talked to a DNR officer at the hospital.

6 Do you remember that?

7 A It was a woman. I was -- at that point, I was still
8 in a neck brace. I couldn't -- I couldn't sit up and have
9 a conversation with the woman, but yes, there was a woman
10 there and another officer.

11 Q All right. And at some point later on, was it at the
12 hospital or maybe when you were at home, you were
13 interviewed by Mr. Lewis. Do you remember that? When you
14 made a written statement?

15 A The statement that I gave was at the hospital.

16 Q All right. May I approach the witness, Your Honor?

17 THE COURT: Certainly.

18 BY MR. HARVEY:

19 Q I'm going to hand you a statement.

20 A Okay.

21 Q Tell me if you recognize this document. Tell me what
22 it is.

23 A This document looks like it is written by my mother.

24 Q All right. And tell me what that document is.

25 A I would assume -- this says "Law Enforcement

1 Statement", so I would assume this would be a statement
2 written by my mother for me because I was incapable of
3 writing.

4 Q Okay. And you'll agree with me that the procedure
5 was you were asked questions, and there's a name on the
6 statement. Do you see a name of a DNR officer on the
7 statement?

8 A It is a signature. It says Ray P. Lewis, Ray P.
9 Lewis, and there is also Robin Camlin is below it as a
10 witness.

11 Q Okay. Now, you agree with me that you were
12 interviewed by DNR at the hospital?

13 A Yes, DNR.

14 Q All right. And you'll agree with me that you were
15 asked questions, and your mom wrote the answers for you?

16 A Right, because I was tied to a board.

17 Q Right.

18 A Right.

19 Q Okay. And you'll agree with me that on May 2nd --

20 A Okay.

21 Q -- the accident occurred on May 1st.

22 A Yes.

23 Q It occurred -- it was dark. It was in the nighttime,
24 and that sometime after midnight, you were at the
25 hospital. So that would make it May 2nd. Do you agree

1 with me the next day is May 2nd?

2 A Correct.

3 Q And you'll agree with me that when you were in the
4 hospital on May 2nd, you had testified earlier that even
5 though you were in pain, you were coherent. Do you
6 remember your response to Mr. Potts' question?

7 A At the time, I was in the boat. I thought I was
8 functioning fairly well.

9 Q Okay. And at the time your mom wrote that statement,
10 did you have an opportunity to review the statement before
11 it was finalized?

12 A As far as in the hospital?

13 Q Yes, sir.

14 A Or later?

15 Q Well, let's talk about this statement right here.

16 A Okay. If this is statement -- if this is the
17 statement that was taken on May 2nd, 2010 at the hospital,
18 I was -- I don't think I would have been given a chance
19 to -- I don't remember reviewing it or having the
20 opportunity to change anything, whatever you would do. I
21 wasn't -- I wasn't aware you could change statements.

22 Q So you don't know whether or not you told DNR that
23 you saw a white hull V-boat off port side probably
24 20 yards at nine o'clock?

25 A I remember something to that. As far as it being

1 20 yards, I don't remember. It -- I'm sorry but --

2 Q Would you take a moment and look at that document and
3 tell me yes or no, because that document contains a
4 statement that says 20 yards at nine o'clock.

5 MR. POTTS: Objection, Your Honor. It was that
6 document. He said he doesn't remember saying it. He gave
7 his answer already.

8 THE COURT: Overruled. Go ahead.

9 THE WITNESS: This says -- from what I can read here,
10 it says, "Saw white hull V-bottom boat off portside
11 probably 20 yards at nine o'clock."

12 BY MR. HARVEY:

13 Q Okay. And you'll agree with me today you said six to
14 10 feet, correct?

15 A It was very close, yes.

16 Q Okay. Now, you'll agree with me that -- well, I'm
17 going to show you what's been marked as Defense
18 Exhibit No. 1.

19 A Okay.

20 Q Please stand up.

21 A All right.

22 Q You'll agree with me that's Susie Ebert Island,
23 right?

24 A Yes.

25 Q You'll agree with me this is the Coast Guard?

1 A Yes.

2 Q And you'll agree with me this photograph isn't as
3 compressed as this.

4 A It's a little bit different angle but yes, it is.
5 You can actually see, compared to how big this water is,
6 how smalls these channels are, yes.

7 Q So -- so this gives a good view of --

8 A Right. I would say that would be a good view.

9 Q Okay. And this is Lake Murray Marina?

10 A Dockside?

11 Q Dockside at Lake Murray Marina.

12 A If Dockside is at Lake Murray Marina, yes, then.
13 Like I said, I'm not sure. I think on one of these it
14 might have said what the -- but its nomenclature is
15 Dockside Marina.

16 Q Okay. And you'll agree with me that if Rob said he
17 was going to Lighthouse, this would be Lighthouse?

18 A Yes, sir.

19 Q And in order to go to Lighthouse, you've got to go in
20 this channel, correct?

21 A Yes.

22 Q And that's a different way than you'd have to
23 navigate a boat to go to Lake Murray Marina, correct?

24 A Correct.

25 Q Now, the Sylvan -- the Sylvan, it's a fishing boat,

1 correct?

2 A You can do a bunch of things, but yes. This was used
3 for fishing.

4 Q I mean, it's a multipurpose boat.

5 A Correct.

6 Q Whose primary design is for fishing?

7 A Correct.

8 Q And it's not designed like other boats that have a
9 lot of passenger seats, correct?

10 A I would -- they had modified the boat as far as the
11 interior. They used the back of the boat to carry coolers
12 and things that you would carry to --

13 Q But passengers that night were sitting in folding
14 chairs.

15 A Right. I was actually sitting in a plastic lawn
16 chair.

17 Q In a plastic lawn chair, okay. And the girls were
18 both on the portside, right?

19 A Yes. Kelli was in a captain's chair which would be
20 the seat fastened to the floor.

21 Q Exactly.

22 A Right.

23 Q And Amber was in a folding chair.

24 A I'm not sure what Amber was on.

25 Q Well, there's not a built-in chair. If you were in a

1 folding chair --

2 A Uh-huh.

3 Q -- and you guys put some -- when you had asked
4 some -- excuse me, I apologize. I got ahead of myself.
5 Actually, I'm going to get some water before I ask you.

6 A Okay.

7 (Pause).

8 Q You had described the process of loading up Rob's
9 boat. Do you remember those questions?

10 A Yes.

11 Q In that process, you guys put some folding chairs on
12 the boat, correct?

13 A I'm not sure if the chairs were already on there or
14 we loaded them up before the boat was launched.

15 Q But you won't disagree with me that folding chairs
16 were on the boat, would you?

17 A Yes, folding chairs were on the boat, yes.

18 Q And you won't disagree with me that folding chairs
19 would be on the boat so all passengers could have
20 something to sit on, correct?

21 A I believe, yes. The question was a little bit
22 confusing, but yes.

23 Q Okay. Now, and you would describe that you and Rob
24 are experienced vessel operators, correct?

25 A We've both been trained, right.

1 Q Right.

2 A Both of us -- you're required to go through a boater
3 safety class.

4 Q And one of the things you did -- now, when you guys
5 put in after you had dinner at O'Charley's, it was dark,
6 correct?

7 A Yes.

8 Q And you had mentioned the protocol that you and Rob
9 went through just to make sure that you -- you described a
10 checklist that you --

11 A Right. There's just things that you want to make
12 sure are on the boat.

13 Q All right. And one of the things you made sure of
14 were that the lights were working, correct?

15 A Yes.

16 Q Right. And Rob's boat had a directional light on the
17 bow, correct?

18 A Uh-huh.

19 Q And the directional light on the bow -- Rob's
20 directional light is a side-by-side light. Remember you
21 were asked -- shown some pictures, and they depict Rob's
22 boat?

23 A Yes.

24 Q And the depiction in Rob's boat, the light on the
25 bow, the directional light, the starboard or right side is

1 green.

2 A Yes.

3 Q The port or left side is red, correct?

4 A That's correct.

5 Q Now, and you had mentioned in the prosecutor's
6 question seeing a boat passing on the starboard side,
7 correct?

8 A Right.

9 Q Okay.

10 A The -- it was traveling from our left to our
11 right-hand side.

12 Q So when a boat's starboard side faces you, you see
13 your green light?

14 A Yes.

15 MR. HARVEY: That's all I have, Your Honor.

16 THE COURT: Redirect?

17 MR. POTTS: Yes, Your Honor.

18 REDIRECT EXAMINATION:

19 BY MR. POTTS:

20 Q There were a couple of questions about full throttle
21 and on a plane.

22 A Okay.

23 Q Okay. When a boat is at full throttle, is it also on
24 plane?

25 A It has to be on plane to be a full throttle, yes.

1 It's -- uh-huh.

2 Q Okay. And just because it's on full plane doesn't
3 mean it's on full throttle, but if it's on full throttle,
4 it has to be on plane?

5 A Yes. It -- yes.

6 Q Okay. Now, Mr. Harvey had you read part of your
7 statement -- or he read part of your statement to you --
8 about something happening at nine o'clock. Is that clock
9 time nine o'clock or what does that mean?

10 A The -- from the way I read that, if it was
11 approaching or portside, that would have been
12 nine o'clock. As twelve o'clock would be directly in
13 front of us, nine o'clock would be portside would have
14 been dead nine o'clock to our portside.

15 Q Okay. So it would have been exactly to your left?

16 A It would have been exactly to our left at
17 nine o'clock, yes.

18 Q Okay. And if a boat was coming from your left --

19 A Uh-huh.

20 Q -- what color lights would they have seen on your
21 boat?

22 A They would have seen the red port bow light and the
23 white stern light that are -- you have to illuminate
24 those whenever you're in navigation.

25 Q Okay. So once again, you said nine o'clock. You

1 didn't mean the time.

2 A No. This was directly off our portside.

3 Q Okay. There's also some question about Lake Murray
4 Marina versus Lighthouse versus Dockside. How do you know
5 you were going to Dockside?

6 A We were -- when I had contacted Keith before we had
7 left, I was asking him where he was going. He was at the
8 time seeing a girl that was working at Dockside, and he
9 was going there, so that's where we were going to meet up.

10 We didn't know anybody else on the water. We knew
11 Keith would be out, though, so we were going to where he
12 was going.

13 Q Okay. Did you -- now, you pointed out on this little
14 map where Dockside and Lighthouse were, correct?

15 A Yes.

16 Q At the time of the collision, were you turning at all
17 towards Lighthouse?

18 A Absolutely not. There would be no need to turn
19 towards to go to Lighthouse. You would head directly
20 straight to go to Dockside.

21 Q Okay. And you were going directly straight, correct?

22 A Yes.

23 Q You did not turn, correct?

24 A No, sir.

25 MR. HARVEY: Objection to the form of the question.

1 THE COURT: May this witness be excused?

2 (There was no response.)

3 Without objection.

4 Next witness.

5 MR. POTTS: The State calls Sergeant Roosen.

6 MR. HARVEY: I'm sorry, who is this next witness?

7 THE COURT: Roosen.

8 MR. HARVEY: I'm sorry. I just didn't hear, Your
9 Honor.

10 KEVIN ROOSEN, after being duly sworn,
11 testified as follows:

12 THE CLERK: Have a seat in the witness box; spell
13 your last name.

14 THE WITNESS: Kevin Roosen, R-O-O-S-E-N.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION:

17 BY MR. POTTS:

18 Q Good morning, Sergeant Roosen.

19 A Good morning.

20 Q Can you briefly tell me about your -- where you work
21 and what your duties are.

22 A Well, I'm employed with the South Carolina Department
23 of Natural Resources as a law enforcement officer. I've
24 been there since -- in law enforcement since 2000.

25 Q Okay. Were you on duty back on May 1st, 2010?

1 A Yes, I was.

2 Q All right. Can you briefly describe what you were
3 doing that evening?

4 A Approximately 10:30 I was called from our DNR
5 dispatch in reference to a possible hit and run boating
6 accident on Lake Murray.

7 Q Did you respond to it?

8 A Yes, I did.

9 Q And what did you find when you responded?

10 A Well, I originally went to -- I was told to go to a
11 subdivision which was

12 Upon arriving there, I saw one some -- of the boats that
13 had been involved and some of the victims from that boat
14 at that location.

15 Q Did you do anything while you were there?

16 A I was there for maybe five minutes, and I was
17 instructed by Sergeant Ken Simmons who is also with DNR to
18 go to Lake Murray Marina to see if I could locate the
19 other vessel that was involved in this accident.

20 Q Okay. Was anyone else already there?

21 A At Lake Murray Marina?

22 Q Uh-huh.

23 A I believe Lexington County Deputy Glenn Davis was
24 there.

25 Q Okay. Now, what time of day was this?

1 A I received the call about 10:30 p.m., so I'm guessing
2 I got to Lake Murray Marina probably around 11:15, 11:30.

3 Q Okay. So you said Lake Murray Marina. Does it have
4 another name?

5 A I believe they also call it Lighthouse.

6 Q Okay. Do you think that was Lighthouse?

7 A There's two marinas down there, to be honest with
8 you. I kind of get confused with their names. I know the
9 one I went to is Lake Murray Marina.

10 Q Okay. There's a map to your right. Can you tell me
11 which two marinas you went to based on that? Would that
12 help you, or was that not much help?

13 A This is the one I went to.

14 Q Okay. So the one on the right?

15 A Right.

16 Q So when you got to that marina, whatever it's called,
17 what did you do?

18 A Well, I located the boat, the other boat that was
19 involved. There was quite a crowd down there around the
20 boat.

21 Q Quite a crowd of what sort of people?

22 A Patrons.

23 Q Boat?

24 A People that had been in the bar. There's a bar right
25 there at Lake Murray Marina. There's also a restaurant.

1 A lot of people had heard what had what happened and came
2 down to the dock where the boat was. I talked to some
3 people and separated the four individuals that were on the
4 vessel --

5 Q Uh-huh.

6 A -- got their information, their names, contact phone
7 numbers for them and also located the operator of that
8 vessel.

9 Q Who told you they were the operator of that vessel?

10 A Mr. Kranendonk told me he was the operator.

11 Q Is he here in the courtroom today?

12 A Yes, he is.

13 Q Point him out, please.

14 A He is standing up in the middle.

15 Q All right. So what did Mr. Kranendonk tell you about
16 the collision?

17 A Well, they basically said that they had gotten on the
18 water around 4:30 that day, and between five and six p.m.
19 that same day, he had consumed a total of three alcoholic
20 beverages which consisted of vodka and lemon flavored
21 Propel bottled water.

22 Q Uh-huh.

23 A I then asked Mr. Kranendonk, you know, just to tell
24 me what had happened. He said that he was operating his
25 vessel going probably 30 to 35 miles per hour.

1 Q Did he say how fast his engine was going?

2 A Sir?

3 Q Did he say how fast his engine was going?

4 A He said around 4,000 RPMs.

5 Q What does that mean to you?

6 A That's running about three-quarters throttle.

7 Q Continue on, please.

8 A He stated to me that he noticed while he was underway
9 another vessel ahead of him and to his right, and I asked
10 him, I said, "Well, what did you do?"

11 He said, "Well," he said, "I maintained my speed and
12 course of travel." He said, "A few seconds later," he
13 said, "I hit something."

14 I asked him, I said, "Well, you didn't think it might
15 have been another vessel that you had seen earlier?" He
16 said, "All I know is I hit something."

17 Q So he didn't know if he hit a boat or what he had
18 hit?

19 A He said he didn't know what he had hit.

20 Q Okay. But he had seen a boat ahead of him and to his
21 right?

22 A Exactly, and he said that everybody on his vessel was
23 thrown into the water after the crash except for Mr. Hair.
24 He said Mr. Hair was able to get control of the vessel and
25 pull the three occupants of the boat back into the boat,

1 and then they headed to Lake Murray Marina.

2 Q Now, what time of day did they say this collision
3 occurred?

4 A I don't know if they ever stated to specific time.
5 I'm guessing it would have been around ten o'clock, maybe
6 a little after, because I received the call at 10:30.

7 Q Okay. Can you describe to me what the lake is like
8 at night?

9 A Well, at night, of course, it's dark. It's a totally
10 different place as opposed to during daylight. You have
11 lights from houses shining on the water. You have -- a
12 lot of people have lights on the end of their docks
13 shining on the water. You have other boats with their
14 lights on. It's very easy to lose your bearings and to
15 navigate at night.

16 Q Now, did you search Mr. Kranendonk's boat?

17 A I searched it briefly. I checked all the safety
18 equipment that he was required to have, life jackets, fire
19 extinguisher, which he had everything that he was required
20 to have.

21 He also had a cooler on his boat, which I did look in
22 and search and found some soft drinks and some -- the
23 lemon Propel bottled water.

24 Q Did you find any alcohol whatsoever on his boat?

25 A On the boat, no.

1 Q Okay. What did you do next?

2 A Well, after -- I think at that time, I got
3 everybody's information, the other passengers on the
4 vessel. I also checked his navigation lights, his front
5 light and his rear light and noticed at that time the
6 front light was not operational.

7 Q So his front light was not operational?

8 A Right, at that time.

9 Q Okay.

10 A After that, I walked Mr. Kranendonk up to the parking
11 area, because like I say, there were a lot of people on
12 the dock. I just wanted to get him away from everybody
13 else.

14 I walked him up to the parking lot where we could
15 have some lights up there and perform field sobriety tests
16 on him.

17 Q Why did you perform field sobriety tests?

18 A I was instructed to do so by Lieutenant Gary
19 Sullivan, who was over the boating investigation with DNR.

20 Q So that wasn't your call. That was Sullivan's call?
21 He asked you to do it?

22 A Right.

23 Q All right. What field sobriety tests did you
24 administer to the defendant?

25 A We have a standardized field sobriety test form.

1 Q Uh-huh.

2 A It's got, you know, six or seven different tests that
3 you can administer.

4 Q Okay. Well, let's talk about the test you gave in
5 this particular case.

6 A Okay.

7 Q Okay. Do you have different types of tests for when
8 the boat is on the water and when you're ashore?

9 A Yes.

10 Q Okay. What's the difference in those two tests?

11 A Well, usually when you're on a boat, of course, I
12 mean, you're going to have a hard time keeping your
13 balance. I mean, the tests we give on the boat are tests
14 that -- basically, it's a finger-count test. It's a
15 hand-pat test. You recite the alphabet. You count from
16 25 back to one.

17 Q Okay. Any other tests on -- any other tests -- I'm
18 sorry. Scratch that.

19 When you were ashore, what kind of tests did you
20 give?

21 A Well, you can give the walk and turn and like a
22 one-legged stand.

23 Q Okay. Now, which tests -- describe to me what level
24 one -- the tests you gave him that evening and how he did.

25 A Well, the first test was the alphabet test where

1 you're basically -- you recite the alphabet from A to Z,
2 which I did.

3 Q Did you ask him to do it backwards?

4 A No.

5 Q Did you ask him to do certain letters?

6 A No, I did not. It's just -- it's just A to Z.

7 Q That's what your test is, right?

8 A Right.

9 Q Are there any tricks involved in this alphabet test?

10 A No.

11 Q And how did -- how did he do on saying his alphabet?

12 A I've got checked completed satisfactorily.

13 Q Okay. So he didn't miss any letters when he said his
14 alphabet?

15 A No, sir.

16 Q Okay. Did you do any other tests?

17 A I did a backwards count where you're told to count
18 from 25 back to one.

19 Q Okay. Are there any tricks on this test?

20 A No.

21 Q And how did he do on that test?

22 A I have checked completed satisfactorily.

23 Q Okay. Did you offer him any other tests?

24 A I did. The next test would have been the finger
25 count where you simply take your thumb and touch it to

1 your forefinger starting out counting out loud as one,
2 two, three, four; four, three, two, one. You usually do
3 three to four sets, and he completed that satisfactorily.

4 Q Any other tests?

5 A The palm pat where you take one hand and hold your
6 palm up. You hold your other hand above it, and you come
7 down palm to palm. You count one. You bring it back up.
8 You turn it over, two, and as you're doing this, you're
9 increasing your speed as one, two; one, two until you're
10 told to stop.

11 Q And how did he do on that test?

12 A Completed satisfactorily.

13 Q Any tricks on that test?

14 A No.

15 Q Just simple things you asked him to do?

16 A Right.

17 MR. HARVEY: Your Honor, I object to the questioning
18 asking about simple tricks as part of the question. He
19 needs to answer --

20 THE COURT: Overruled.

21 BY MR. POTTS:

22 Q Did you give him any other tests?

23 A Yes. Finger to nose test, which where you basically
24 stand up and you tilt your head back slightly with your
25 eyes closed and you hold your arms out. The officer will

1 say left, left, right, or whatever hand he wants you, you
2 know, to bring up.

3 I told Mr. Kranendonk at one time left, and he
4 brought his right hand about halfway up, realized his
5 mistake, and then put it back down and then corrected
6 himself.

7 Q That was completed satisfactorily to you?

8 A Yes.

9 Q Okay. Did you do any of the eye tests?

10 A The only one that I have reported was the vertical
11 nystagmus test.

12 Q What was that test for?

13 A Basically, it's checking for smooth tracking of your
14 eyes and that maximum deviation looking for a slight
15 bounce of the eye.

16 Q What would that tell you?

17 A That he had consumed alcohol.

18 Q The vertical gaze nystagmus test will tell you about
19 alcohol?

20 A Sir?

21 Q The vertical?

22 MR. HARVEY: Object, ask him to rephrase the
23 question. It's a leading question. He has to lay a
24 foundation for what the test...

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

1 about it.

2 MR. HARVEY: Thank you, Your Honor.

3 THE COURT: Overruled.

4 BY MR. POTTS:

5 Q So the vertical gaze nystagmus, that's checking for
6 alcohol?

7 A Yes.

8 Q Okay. Now, you guys didn't do any other eye tests?

9 A Not that I recall. I don't have anything marked on
10 this form to say that I did or didn't do it, to be honest
11 with you.

12 Q Okay. Did you him to do any balance tests?

13 A No.

14 Q Okay. You didn't ask him to stand on one leg or --

15 A No, sir.

16 Q -- walk in a straight line or anything like that?

17 A No, sir.

18 Q Okay. And based on the test you gave, what was your
19 conclusion?

20 A Based on just this one particular test, I didn't feel
21 like I had enough, you know, to charge him at that time.

22 Q And so you let him go?

23 A Right.

24 Q You let him go on with his father, right?

25 A I think his father was there, and he took him to the

1 hospital.

2 Q Later that evening, did you have another opportunity
3 to interact with the boat?

4 A Yes, yes.

5 Q Mr. Kranendonk's boat?

6 A Yes.

7 Q I'm going to show you some pictures here.

8 Beg the Court's indulgence one second.

9 (Pause.)

10 I'm sorry, Your Honor. Let me scramble them back up
11 to be sure I have them all.

12 (Pause).

13 I'm going to show you what has been marked State's
14 Exhibit 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and
15 24.

16 A Okay.

17 Q Look through them. Tell me what they are, please.

18 A Okay.

19 (Pause.)

20 These are photographs of Mr. Kranendonk's boat.

21 Q Do they fairly and accurately depict what you saw
22 that evening?

23 A Yes.

24 Q Okay. And I'm going to pull one particular
25 photograph out in particular, State's No. 23, what is

1 that?

2 A That's the cooler that was in Mr. Kranendonk's boat.

3 Q As you found it that evening?

4 A Yes.

5 Q Okay.

6 (Pause).

7 THE COURT: Are you going to offer those?

8 MR. POTTS: Sorry, Your Honor. I apologize. At this
9 time, I'd like to offer State's Exhibits 12 through 24
10 into evidence.

11 THE COURT: Any objection?

12 MR. HARVEY: No, Your Honor.

13 MR. POTTS: Thank you, Your Honor.

14 (WHEREUPON, State's Exhibits Nos. 12 - 24 were
15 admitted into evidence.)

16 MR. POTTS: Permission to publish to the jury?

17 THE COURT: Go ahead.

18 BY MR. POTTS:

19 Q Later that evening, did you have an opportunity to
20 interact with Mr. Kranendonk's vessel?

21 A Yes.

22 Q Can you tell me about what happened at that time?

23 A Well, after we put it on the trailer and got it up in
24 the parking area, we did a complete inventory of the
25 vessel.

1 Q Is there anything with the lights?

2 A Sir?

3 Q Anything with the lights?

4 A Well, I noted when we were putting the vessel on the
5 trailer, the front lights were working at that time.

6 Q But they were not working when you first approached
7 the vessel?

8 A No.

9 Q Had someone turned them on in between?

10 MR. HARVEY: Your Honor, if he -- I apologize. If he
11 can answer from his own knowledge, maybe he can answer the
12 question.

13 THE COURT: If you know.

14 BY MR. POTTS:

15 Q If you know if someone turned them on between?

16 A Between the time when I first saw the vessel?

17 Q Uh-huh.

18 A Yes.

19 MR. POTTS: Thank you. No further questions.

20 MR. HARVEY: Your Honor.

21 MR. POTTS: Please answer any questions.

22 MR. HARVEY: Your Honor -- okay. I'll have to
23 cross-examine him.

24 THE COURT: Go ahead.

25 CROSS-EXAMINATION:

1 BY MR. HARVEY:

2 Q Hello, Officer Roosen.

3 A How are you doing?

4 Q Would you like some water?

5 A I'm fine.

6 Q Okay. Officer Roosen, you're one of the several DNR
7 officers dispatched to the Lake Murray Marina on May 1st,
8 2010, correct?

9 A Yes, sir.

10 Q All right. In the late evening of May 1st, 2010 and
11 the early morning of May 2, 2010, that was quite an
12 eventful time, wasn't it?

13 A Yes, it was.

14 Q All right. And you were quite busy, right?

15 A Correct.

16 Q And you were contacted by dispatch about 10:30 on
17 May 1, right?

18 A Yes, sir.

19 Q And you met DNR Officer Rodney Barnes in Little
20 Mountain before -- on your way to Lake Murray, right?

21 A Right.

22 Q Now, you and Officer Barnes went to Lake Murray from
23 Little Mountain, right?

24 A Correct.

25 Q The first location you went to was the Creekwood

1 Drive area in Ballentine, correct?

2 A Yes, sir.

3 Q Creekwood Drive is the site where the Sylvan boat
4 that been operated by Mr. Christofoli was, I guess at the
5 shore, correct?

6 A Yes.

7 Q All right. When you arrived at Creekwood Drive,
8 Sergeant Simmons instructed you to go to Lake Murray
9 Marina, correct?

10 A Yes.

11 Q Now, you went to lake -- you went to Lake Murray
12 Marina. You were informed by Sergeant Simmons that the
13 other boat and occupants were located at the Lake Murray
14 Marina and they believed that -- let me rephrase the
15 question.

16 You were advised by Sergeant Simmons that a boat had
17 been involved in the collision with occupants and operator
18 were at Lake Murray Marina, correct?

19 A Yes.

20 Q At the time, you didn't know which -- whether it was
21 related to the Creekwood boat or not, did you?

22 A Not 100 percent, but when I received the call from
23 the dispatch, they said concerning a possible hit and run
24 boating accident near Lake Murray Marina so...

25 Q All right. And when you arrived at Lake Murray

1 Marina, you located a 23-foot center console Key West
2 boat, correct?

3 A Correct.

4 Q And that 23-foot center console Key West boat is
5 depicted in some of these photographs, correct?

6 A Yes.

7 Q It was tied up to the dock, correct?

8 A Yes.

9 Q And you were able to identify all the occupants of
10 the boat, correct?

11 A Yes.

12 Q And the occupants were Eric Hair, Mallory Collins,
13 Jenna Breland and Steven Kranendonk, correct?

14 A I believe that's correct.

15 Q All right. Now, you wrote a report, correct?

16 A Uh-huh.

17 Q And you're looking at that report on the witness
18 stand to refresh your memory, correct?

19 A Yes.

20 Q Okay. Now, and you were the author of that report.

21 A Correct.

22 Q And that report would contain your recorded
23 recollection of the events that transpired on May 2nd and
24 May 1st on the dock, correct?

25 A Correct.

1 Q And you were able to identify that Mr. Kranendonk was
2 the operator, right?

3 A Yes.

4 Q And you engaged Mr. Kranendonk in what you described
5 in your written report, you described in your written
6 report as a field interview to find out what happened,
7 correct?

8 A Yes.

9 Q Now, you prepared the written report I just asked you
10 about, didn't you?

11 A Yes.

12 Q And you've been in law enforcement since 2000?

13 A Correct.

14 Q And you've received training on how to prepare such
15 written reports, right?

16 A Yes.

17 Q And you were taught to prepare complete, accurate
18 reports, right?

19 A The best we can.

20 Q And you were taught, and you know through experience,
21 to include everything about the interview that you believe
22 was important, right?

23 A Yes.

24 Q That's because your agency, investigating officers
25 and sometimes prosecutors like the Solicitor's Office all

1 rely on that report to evaluate a case, right?

2 A Sure.

3 Q Now, one of the most important things is to write
4 down about what an interviewed subject says, right?

5 A Yes.

6 Q Another important thing is to write down your
7 observations about a person's appearance, right?

8 A Sure.

9 Q Well, don't you think it was important in this
10 instance that you had already left Creekwood Drive where
11 the Sylvan boat was. You were aware that this was, sadly
12 enough, a tragic accident. This was a very, very unusual
13 incident.

14 A Yes.

15 Q You were called out from home, right?

16 A Yes.

17 Q I mean, this wasn't an everyday occurrence, so you'll
18 agree with me it was important to write down your
19 observations in this very important case.

20 A Which I feel I did.

21 Q All right. You'll agree with me that your report
22 reflects your recollection, right?

23 A Yes.

24 Q You'll agree with me that Mr. Kranendonk was
25 cooperative, right?

1 A Yes.

2 Q During the interview process, you had a chance to ask
3 Steven a series of questions about the chronology of
4 events that preceded the accident, right?

5 A Yes.

6 Q Questions about the accident, right?

7 A Yes.

8 Q Questions about what happened after the accident,
9 right?

10 A Correct.

11 Q Now, you took the necessary steps when you
12 interviewed Steven to find out what time he first got on
13 the water, right?

14 A Yes, sir.

15 Q As a result of your interview, you were informed that
16 Steven and his friends got on the water about 4:30 p.m.,
17 right?

18 A Yes.

19 Q During your interview process, you were able to
20 determine at some time prior to the accident, Steven had
21 consumed some alcohol, correct?

22 A Yes.

23 Q As a matter of fact, Steven told you he had consumed
24 vodka and lemon Propel bottled water, right?

25 A Correct.

1 Q The prosecutor had asked you about State's Exhibit 22
2 or 23. It wasn't a photograph of a boat. It was a
3 photograph of a cooler that somebody took, right?

4 A Right.

5 Q And you say that that photograph reasonably and
6 accurately depicted what the contents of that cooler
7 looked like at the time it was photographed, correct?

8 A Correct.

9 Q It had lemon Propel water in there, didn't it?

10 A Yes, sir.

11 Q Okay. You asked Steven some questions about the
12 accident, correct?

13 A Yes, I did.

14 Q And you -- your words that you used, "I then asked
15 Mr. Kranendonk to tell me exactly what happened," correct?

16 A Yes.

17 Q Based upon your questioning of Steven, you were
18 informed that once his boat was underway, he noticed
19 another boat was ahead of him and to his right, correct?

20 A Correct.

21 Q Now, your notes say he held his course, correct?

22 A Yes.

23 Q Now, as a result of your questioning Steven, you were
24 informed that Steven's vessel held its course, right?

25 A That's what he told me.

1 Q As a result of your questioning Steven, you were
2 informed that his observation was -- in your report,
3 doesn't your report contain the language that the others
4 have?

5 MR. POTTS: Objection, Your Honor, just read from the
6 report.

7 THE COURT: Overruled. I'll allow it.

8 BY MR. HARVEY:

9 Q Your report contains the language that Steven's
10 observation was that the other vessel was veering towards
11 his vessel?

12 A That's correct.

13 Q And the terminology he used was veering, correct?

14 A Correct.

15 Q Now, as a result of your interview with Steven, you
16 were informed that after impact, Steven, Mallory, and
17 Jenna were ejected from the boat, correct?

18 A Yes.

19 Q During your questioning of Steven, you also
20 determined that the vessel operated by Steven had all of
21 the required safety equipment, correct?

22 A Correct.

23 Q You performed a visual inspection of the navigational
24 lights, correct?

25 A Yes.

1 Q Navigational lights must be used between sunset and
2 sunrise, right?

3 A Correct.

4 Q There are several types of required navigational
5 lights, right?

6 A Yes.

7 Q There are some that are called side lights or
8 combination lights, right?

9 A Correct.

10 Q They are red and green lights, correct?

11 A Correct.

12 Q They're known as side lights because they're visible
13 to another vessel approaching from the side or head on,
14 right?

15 A Yes.

16 Q A red light indicates a vessel's port or left side,
17 correct?

18 A Correct.

19 Q The green light means a vessel's starboard or right
20 side, correct?

21 A Yes.

22 Q Now, the stern light is located at the back of the
23 vessel, right?

24 A Yes.

25 Q The bow is the front. The stern is the back.

1 A Correct.

2 Q And a stern light is located at the back of the
3 vessel, and it's seen only from behind or nearly behind
4 the vessel, right?

5 A No. It's -- should be visible from all the way
6 around regardless of how you're looking at the boat.

7 Q Now, your report noted the stern light was operable,
8 right?

9 A Yes.

10 Q Now, you had interviewed Steven. You had determined
11 who the occupants were. You determined he was consumed
12 some alcohol because he never -- he was cooperative,
13 right?

14 A Yes, he was.

15 Q Now, Officer Roosen, after you finished that phase of
16 your duties, your lieutenant asked you to perform some
17 field sobriety tests, right?

18 A Correct.

19 Q And you walked Steven to a parking lot, correct?

20 A Yes.

21 Q Now, you submitted Steven to a series of exercises
22 known in law enforcement as the float test battery,
23 correct?

24 A Correct.

25 Q Now, these tests have been developed for use in the

1 detection of impairment or when you stop someone for
2 suspicion of operating a boat under the influence,
3 correct?

4 A Correct.

5 Q Now, these tests, excuse me, are an important tool to
6 aid you in making determinations about someone's
7 condition, correct?

8 A Yes.

9 Q It's a battery of six tests, correct?

10 A Yes.

11 Q And did you -- it's a multifaceted test to give you a
12 lot of information, correct?

13 A Correct.

14 Q And you filled out a report called a Field Sobriety
15 Test, Performance Report.

16 A Yes, I did.

17 Q Okay. And I want you to look at...

18 MR. POTTS: Are you trying to enter this?

19 (Pause).

20 Your Honor, may we approach?

21 THE COURT: (Nods in the affirmative.)

22 (Whereupon, there was a bench conference.)

23 (WHEREUPON, State's Exhibits Nos. 52, 53 were marked
24 for identification only.)

25

1 BY MR. HARVEY:

2 Q I hold two documents, one in my left hand, one in
3 my right hand. Do you recognize these documents?

4 A Yes, I do.

5 Q Are these documents just a larger size of the report
6 which you authored?

7 A Appear to be.

8 Q Okay. Take a moment and look at your report and take
9 a moment and look at these documents.

10 (Pause).

11 A I would say they are accurate.

12 Q I'd like this marked as -- for identification as a
13 State's Exhibit -- excuse me, as a Defense Exhibit.

14 (WHEREUPON, Defendant's Exhibits Nos. 2, 3 were
15 marked for identification only.)

16 BY MR. HARVEY:

17 Q The report that you authored, how long were you with
18 Steven?

19 A From beginning to end? I would say maybe an hour.

20 Q All right. And you had the opportunity to interview
21 Steven several times. I mean, it wasn't one continuous
22 one-hour interview. You thought he was --

23 A I talked with him briefly at the boat.

24 Q And you performed some other tests?

25 A Yeah. I did the equipment safety check at the boat

1 and then got everybody's information, and after that, we
2 walked up to the parking lot where I administered the
3 test.

4 Q All right. And so you talked to him at least one
5 time, and when you interviewed him, when you do an
6 interview, you don't get real close to somebody, but you
7 get close enough to have an interaction with him?

8 A Right.

9 Q Were you this far apart or were you closer when you
10 -- am I close enough?

11 A Well, I would say probably the closest I got to him
12 was the distance that you and I are standing right now.

13 Q Was that during the interview?

14 A That would have been during the field sobriety test.

15 Q Now, one of the tests that you administered was a
16 nystagmus test?

17 A Correct.

18 Q And the nystagmus test was designed, and it was a
19 vertical -- vertical means up and down, correct?

20 A Correct.

21 Q You get a pen and you move it vertically for a
22 required number of passes going up and down in front of a
23 subject, right?

24 A Right.

25 Q And while you're doing the vertical nystagmus test,

1 you're looking at the subject's eyes, correct?

2 A Yes.

3 Q All right. And you're looking for a nystagmus or a
4 wiggle, right?

5 A A bounce.

6 Q A bounce. Okay. And that bounce is one of many
7 clues that aid in the detection of whether someone has
8 consumed alcohol or if the nystagmus is excessive, it's a
9 clue in conclusion with other tests about impairment,
10 correct?

11 A Correct.

12 Q Now, I've got a copy of your report, and I'm looking
13 at a DNR supplemental report. It's case number
14 10-05-0038, okay.

15 A Yes, sir.

16 Q And -- may I approach the witness, Your Honor?

17 THE COURT: You may approach the witness.

18 BY MR. HARVEY:

19 Q I've got a report in my hand. I want to make sure we
20 have got the same report, okay.

21 A It appears to be.

22 Q All right. I want you -- I'm going to hand you my
23 copy. In your report, you didn't make any notation about
24 Steven having any difficulty being ambulatory from the
25 dock to the parking lot, did you?

1 A No, I did not.

2 Q All right. And you didn't make any notation in the
3 report with Steven having difficulty in comprehension --
4 comprehending your instructions, did you?

5 A No, I did not.

6 Q All right. And now, that -- as on over -- as a
7 ten-year veteran at that time and having had training in
8 administering these tests, those would be important
9 factors that you would note in your report, wouldn't they?

10 A Yes.

11 Q And you will agree with me in your report, one of the
12 tests that you administered -- I believe the test that's
13 on the bottom of the first page of the Field Sobriety Test
14 Report, what's that called?

15 A The last one I did was the finger to nose.

16 Q Finger to nose test, and you gave him some
17 instructions and you're supposed to do -- what hand do you
18 do the finger to nose test with?

19 A You use both.

20 Q But what did you instruct him?

21 A Left.

22 Q Your report actually reflects, "He started with the
23 right hand, but he had the presence of mind to
24 self-correct and use the correct hand in the middle of the
25 testing procedure," didn't he?

1 A Yes.

2 Q Okay. Now, let me go back to that nystagmus test and
3 I'm going to hand you -- may I approach the witness, Your
4 Honor?

5 THE COURT: Go ahead. It's cross-examination. I'll
6 allow it.

7 BY MR. HARVEY:

8 Q This is the DNR supplemental report. I want you to
9 take a moment. I'm giving you a red felt-tipped pen. I
10 want you to circle where in your report you wrote that you
11 noticed he had bloodshot eyes or an odor of alcohol about
12 his person.

13 A I didn't detect either one.

14 Q Tell me where -- so it's not in your report, is it?

15 A No. I never said he did.

16 MR. HARVEY: That's all I have.

17 Thank you, Your Honor.

18 THE COURT: Redirect?

19 MR. POTTS: Just briefly, Your Honor.

20 REDIRECT EXAMINATION:

21 BY MR. POTTS:

22 Q When you performed the field sobriety test on the
23 defendant, was he still wet from falling in the water?

24 A Was he still what?

25 Q Wet from falling in the water.

1 A I believe so.

2 Q Okay. And when you searched the boat and went in
3 that cooler, were you looking for alcohol?

4 A Yes.

5 Q But you didn't find any, did you?

6 A I did not find any.

7 MR. HARVEY: Your Honor, I would object. That's not
8 responsive to cross-examination.

9 THE COURT: Well, I'll allow it.

10 BY MR. POTTS:

11 Q Now, the defense briefly talked about the defendant's
12 driving that night in that area. How would you describe
13 that area in regard to traffic?

14 A Well, it's -- you know, on a Friday or Saturday
15 night, it would be very congested. You have two different
16 marinas in the back of those coves. They both have
17 restaurants. They both have bars.

18 You get a lot of traffic in and out of an area like
19 that. It's kind of -- it kind of necks down or
20 bottlenecks, so it's a lot of traffic coming in and out.

21 Q Is there anywhere that you're aware of that has more
22 traffic?

23 A Any areas?

24 Q On Lake Murray, yeah.

25 A I would say as far as the whole lake is concerned,

1 that would be the heaviest traffic on the lake.

2 Q Okay. Now, you've been in law enforcement for DNR
3 for how long?

4 A Since 2000.

5 Q Since 2000, so about 12 years.

6 A Twelve years.

7 Q How long have you been on the lake?

8 A All 12 years.

9 Q All 12 years. How many times would you give field
10 sobriety tests?

11 A I would just guess maybe five to six per summer, been
12 working, you know, 12 summers.

13 Q And how many of those turn into BUI arrests?

14 A I've probably written maybe eight to 12 BUIs.

15 Q Is your report from that night perfect in every way?

16 A Absolutely not.

17 Q In fact, what date is your report? What's the very
18 first date?

19 A Well, actually, the date is the 2nd, and what
20 happened -- I mean, this thing occurred pretty close to
21 midnight of the 1st. Part of my report took place on the
22 2nd, part of it took place, should have taken place on the
23 1st which I missed -- made a mistake on the original
24 report and wrote the 2nd.

25 Q Everyone's report is not perfect all the time.

1 A No.

2 MR. HARVEY: Object to the --

3 MR. POTTS: Thank you.

4 Mr. Harvey?

5 THE COURT: Last one. Redirect -- recross?

6 RECROSS-EXAMINATION:

7 BY MR. HARVEY:

8 Q When you were asked questions about the boat and the
9 conditions that night, you don't have any personal
10 knowledge of the conditions that existed on the lake at
11 the time of the collision, do you? You weren't on the
12 lake at that time, were you?

13 A At that time I wasn't on the lake --

14 Q All right. But --

15 A Once I was on Lake Murray Marina, I couldn't hear
16 other boats --

17 Q No, sir. My question to you --

18 MR. POTTS: Objection, Your Honor. Let him finish
19 answering the question.

20 THE COURT: Let him answer the question.

21 BY MR. HARVEY:

22 Q My question simply is you don't have any personal
23 knowledge of the conditions of the lake at the time of the
24 collision. That's all I asked.

25 A Shortly thereafter I do. I was -- I saw the boat

1 from two different locations. I could see other boats. I
2 could hear other boats out on the water. Once I got to
3 Lake Murray Marina, there was a large crowd in the bar and
4 restaurant area. There were other boats parked at the
5 dock.

6 Q Okay. Let me ask it to you this way: You were at
7 home, correct?

8 A Correct.

9 Q And about -- you were at home around ten o'clock,
10 right?

11 A Yes.

12 Q And you'll agree with me 22:00 in military time is
13 ten o'clock?

14 A Yes.

15 Q Okay. And you'll agree with me that the collision
16 occurred approximately at ten p.m. on May 1st, 2012. If
17 you're at home, you couldn't have any personal knowledge
18 of the conditions on the lake at the time of the accident.

19 A Well, I'm sure all those people didn't come out in --
20 all those people in one-half hour time period, all of the
21 sudden everyone is at the lake. I mean, common sense
22 would tell you that --

23 Q Okay. Well, you live in Newberry?

24 A Prosperity.

25 Q You live in Prosperity. When you're at home in

1 Prosperity and you're in your living room or wherever you
2 were --

3 MR. POTTS: I think we're getting to the point where
4 it's badgering.

5 THE COURT: I'll sustain it. You're in --

6 MR. POTTS: Thank you, Your Honor.

7 THE COURT: We went through this about an hour ago.

8 MR. HARVEY: We did, Your Honor.

9 THE COURT: Where he was when he got the call. It's
10 repetitive, and I sustain the objection.

11 MR. POTTS: Thank you, Your Honor.

12 BY MR. HARVEY:

13 Q Now, you authored a Field Sobriety Test Performance
14 Report, correct?

15 A I didn't hear the first part of the question.

16 Q You authored a Field --

17 A Yes, I did, yes.

18 Q And that document is a document that is ordinarily --
19 as a matter of fact, the prosecutor asked you how many
20 field sobriety tests you had done in the course of your
21 career, correct?

22 A Yes.

23 Q You said at least five or six a summer for
24 approximately ten years, right?

25 A Right.

1 Q Now, this Field Sobriety Test Report, is it a
2 document that's kept in the ordinary course of business?

3 A I keep one --

4 Q You keep one?

5 A Right.

6 Q And the document and the copy that you have and you
7 refreshed your memory from, did you repair [sic] it? Did
8 you prepare it?

9 A Yes, I did.

10 Q And are you familiar with its method of preparation?

11 A Yes.

12 Q And its method of preparation is standard, correct?

13 A Yes.

14 Q And you followed all the procedures with respect to
15 preparation of this document, did you not?

16 A Yes.

17 Q And the documents that I showed you have not been
18 the -- the larger documents that I've shown you have not
19 been altered in any fashion, have they?

20 A Not that I could tell.

21 Q Is it -- Your Honor, at this time, I would move to
22 introduce Defendant's Exhibit...

23 MR. POTTS: Your Honor, we object under 803(A).

24 THE COURT: Beg your pardon?

25 MR. POTTS: Your Honor, may we approach?

1 THE COURT: Ladies and gentlemen, let's take a
2 morning break at this time.

3 THE JUROR: Thank you.

4 THE COURT: It's about the last time I can say it's a
5 morning break because it's almost twelve o'clock. So take
6 a short break. Let me take this up with the attorneys.
7 We'll call you in just a few minutes. Just relax. Don't
8 discuss the case in the jury room.

9 (WHEREUPON, the jury left open court at approximately
10 11:49 a.m.)

11 THE COURT: All right. Yes, sir, what? What do
12 you --

13 MR. HARVEY: That he had objected.

14 THE COURT: Tell me what you're attempting to --

15 MR. HARVEY: I want to introduce this document into
16 evidence.

17 THE COURT: What's the objection?

18 MR. POTTS: Your Honor, I have two specific
19 objections. The first is under 803(A) public records and
20 reports. "Records, reports, statements or (inaudible) --
21 matters pursuant to -- (unintelligible).

22 THE COURT REPORTER: I'm sorry. You have to slow
23 down.

24 MR. POTTS: Sorry.

25 THE COURT: Start over.

1 MR. POTTS: 803(A), Your Honor. It's in the hearsay
2 exceptions, public records and reports, records, reports,
3 statements or data compilations in any form of public
4 officers or agencies setting forth, A, the activities of
5 the officer and agency or, B, matters observed pursuant to
6 duty imposed by law as to which matters there was a duty
7 to report -- I think this falls under -- excluding,
8 however, in criminal cases matters observed by police
9 officers and other law enforcement personnel.

10 So I think in that -- in that case, Your Honor, it's
11 pretty clear that this is not a hearsay exception because
12 he is a law enforcement personnel, and this would be in
13 his public record.

14 THE COURT: Mr. Harvey?

15 MR. HARVEY: Beg the Court's indulgence one moment.

16 MR. POTTS: Secondly, Your Honor, just under best
17 evidence, I think the best evidence would be this copy of
18 the report, that's for the record.

19 MR. HARVEY: I would respectfully submit that this
20 document is not -- I don't think it falls within the
21 investigative exception.

22 THE COURT: I think it does.

23 MR. HARVEY: Thank you, Your Honor.

24 THE COURT: Yes.

25 MR. POTTS: Thank you.

1 THE COURT: It's not admissible.

2 MR. HARVEY: Thank you.

3 THE COURT: All right. Let's -- the court reporter
4 needs a break.

5 Officer Roosen, are you okay?

6 THE WITNESS: Yeah, I'm fine.

7 THE COURT: You don't need a restroom break?

8 THE WITNESS: No, sir. I'm fine.

9 THE COURT: All right. If you'll just stay right
10 there.

11 THE WITNESS: Okay.

12 THE COURT: We'll take about a ten-minute break.
13 We'll stand at ease for ten minutes.

14 MR. POTTS: Thank you, Your Honor.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: They're through with you.

17 THE WITNESS: I'm done?

18 THE COURT: Yes.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Ready for the jury?

21 MR. POTTS: Do you want to dismiss him in front of
22 the jury?

23 THE COURT: I'll just tell them.

24 Ready for the jury?

25 MR. POTTS: Yes, Your Honor. I'm sorry.

1 THE COURT: Bring the jury.

2 THE BAILIFF: Yes, sir.

3 (WHEREUPON, the jury came into open court at
4 approximately 12:17 p.m.)

5 THE BAILIFF: Your Honor, the jury is present.

6 THE COURT: All right. Thank you very much.

7 Ladies and gentlemen, Officer Roosen's testimony is
8 complete.

9 Now we're going to move on to the next witness.

10 Solicitor, call your next witness.

11 MR. MATTHEWS: Your Honor, the State calls Kerry
12 Connor.

13 KERI THREATT, after being duly sworn,
14 testified as follows:

15 THE CLERK: Have a seat in the witness box. State
16 your full name for the record and spell it, please.

17 THE WITNESS: My name is Keri, K-E-R-I, Threatt,
18 T-H-R-E-A-T-T.

19 DIRECT EXAMINATION:

20 BY MR. MATTHEWS:

21 Q I apologize. I said Keri Connor.

22 A It is Connor Threatt.

23 Q Ms. Threatt, can you just tell the jury what you do
24 for a living?

25 A I'm a registered nurse for the State of South

1 Carolina.

2 Q And where do you currently work?

3 A At Carolina's Medical Center in Charlotte, North
4 Carolina.

5 Q You live in Charlotte now?

6 A Yes.

7 Q Where were you working on May 1st, May 2nd, 2010?

8 A Palmetto Health Richland.

9 Q Can you briefly tell me a little bit about your
10 education?

11 A I have a B.S. in psychology, and I have an
12 Associate's degree in nursing from Midlands Tech.

13 Q And you're a registered nurse?

14 A Yes.

15 Q And what sort of additional training have you had
16 besides just education?

17 A We have multiple on-the-job training and continuing
18 education courses we have to take during our employment.

19 Q And have you had specific education on drawing blood?

20 A That's part of our emergency room department
21 training.

22 Q And are you licensed?

23 A Yes.

24 Q As --

25 A As a registered nurse. My license number is 109766.

1 Q On the evening of May 1st, morning of May 2nd, 2010,
2 were you working at Palmetto Health Richland, you said?

3 A Yes.

4 Q Did you have a chance to take a blood draw from two
5 individuals, a Robert Christofoli and Steven Kranendonk?

6 A Yes.

7 Q Can you briefly describe the procedure you undertook
8 first with Mr. Kranendonk?

9 A Once the consent is obtained, a straight stick is
10 done to draw a fresh blood sample. It's placed in a tube
11 and sealed at bedside in front of the patient and an
12 officer with paraffin wax and given to the parties
13 respectively.

14 Q Do you know who authorized you to do the blood draw
15 here for these individuals?

16 A Officer Bickley with the Department of Natural
17 Resources.

18 Q And you performed the same procedure on both
19 individuals?

20 A That's correct.

21 Q I'm showing you what's been marked as State's
22 Exhibit 52 and 53. Do you recognize those things?

23 A Yes, I do.

24 Q And what are those?

25 A Those are the blood samples drawn that evening for

1 the two patients.

2 Q And when you drew the blood, you say you sealed the
3 container?

4 A We sealed it at bedside with paraffin wax.

5 Q And what did you do with the container after you
6 sealed it?

7 A I gave it directly to the officer, Bickley, and then
8 one to each patient.

9 Q Did Officer Bickley observe you undertake the blood
10 draw?

11 A Yes, he was at bedside.

12 Q Did you use a non-alcohol prep?

13 A Yes, sir, water was used only.

14 MR.. MATTHEWS: Beg the Court's indulgence one moment.

15 (Pause.)

16 Thank you. I have no further questions. Please
17 answer anything Mr. Harvey may have.

18 CROSS-EXAMINATION:

19 BY MR. HARVEY:

20 Q You work in Charlotte now?

21 A Yes, sir.

22 MR. HARVEY: Thank you for being here today. I have
23 no questions.

24 THE COURT: All right. Anything further?

25 MR. MATTHEWS: No, sir.

1 THE COURT: All right.

2 Ma'am, you may come down.

3 May this witness be excused?

4 MR. HARVEY: Without objection.

5 THE COURT: Without objection.

6 THE BAILIFF: Watch your step.

7 All right. Ladies and gentlemen of the jury, the
8 attorneys have advised me that in terms of trial
9 preparation, things are moving along as planned and maybe
10 a little bit ahead of plan, and they have advised me as
11 far as scheduling that if we have a little bit longer
12 lunch hour today than we did yesterday, they may be able
13 to work some things out so it will streamline the process
14 even further so we'll move through it more expeditiously.

15 So I think that probably is the most expeditious
16 thing to do is go ahead and give them -- I think it will
17 become apparent to you what I'm talking about when the
18 testimony resumes.

19 So I'm going to excuse you now until two o'clock.
20 That's about an hour-and-a-half for your lunch break, and
21 I'll ask you to be back in the jury room at two o'clock.

22 I think a little bit longer lunch hour -- although
23 we -- sometimes -- I told you in the beginning sometimes
24 it seems like we're moving slow but we're not really. So
25 that's based on my sort of observation in the way that the

1 trial is progressing.

2 So if you will, again, not discuss the case among
3 yourselves when you return to the jury room or with anyone
4 else over the lunch hour.

5 I didn't anticipate this a few minutes ago when I
6 gave you a break, so you get a double break. So I'll see
7 you at two o'clock. Thank you very much.

8 (WHEREUPON, the jury left open court at approximately
9 12:25 p.m.)

10 THE COURT: We'll stand at ease until two o'clock.
11 Thank you very much.

12 (WHEREUPON, a lunch break was taken.)

13 THE COURT: Counsel ready to proceed?

14 MR. POTTS: Your Honor, I think there's something we
15 need to put on the record, first.

16 THE COURT: Mr. Harvey?

17 MR. HARVEY: If I may, Your Honor, we anticipate that
18 the next witness for the State will provide testimony with
19 respect to the advisement of the implied consent rights.

20 The parties have agreed that if possible -- we have
21 agreed to redact language from the implied consent right.
22 If I may, Your Honor, the implied consent -- we don't have
23 a redacted copy, do we?

24 MR. MATTHEWS: Right here.

25 MR. POTTS: This is a copy for his benefit. I'm

1 going to have him read the rights, redacted wise and then
2 that much.

3 MR. HARVEY: Your Honor, we've reached a stipulation
4 that the advisement of implied consent --

5 MR. POTTS: My understanding is that you stipulated
6 that the tests performed pursuant to SLED procedures and I
7 guess advised of statutory rights.

8 MR. HARVEY: And that part of the stipulation is that
9 the first paragraph under the B in the implied consent
10 right will not be testified to or read or mentioned, and
11 the last two paragraphs in subsection D of the implied
12 consent right form will not be testified to or otherwise
13 mentioned. We've agreed that the procedure was done
14 correctly, and that's our stipulation.

15 MR. POTTS: You do not want to do the -- just for
16 clarification real quick, on the first part, subsection B,
17 do you not want the witness to testify that he had
18 probable cause, as well?

19 MR. HARVEY: Correct. That's been redacted.

20 MR. POTTS: Right. So you don't want him to testify
21 at all that he had probable cause, that's fine; that he
22 drew blood based on what he heard that evening? How do
23 you want it analyzed?

24 MR. HARVEY: Can we approach the bench?

25 (Whereupon, there was a bench conference.)

1 THE COURT: Ready for the jury?

2 MR. POTTS: The State is ready, Your Honor.

3 THE COURT: Defense ready?

4 MR. HARVEY: Yes, Your Honor.

5 THE COURT: Bring the jury, please.

6 (WHEREUPON, the jury came into open court at
7 approximately 2:10 p.m.)

8 MR. HARVEY: Your Honor, the jury is present.

9 THE COURT: All right. Thank you very much.

10 MR. POTTS: At this time the State calls --

11 THE COURT: Hold on.

12 MR. POTTS: I'm sorry.

13 THE COURT: Where is -- counsel, approach.

14 (There was a bench conference held within the
15 presence of the jury but out of the hearing of the
16 jury.)

17 MR. POTTS: The State calls Sergeant Rhett Bickley.

18 RHETT BICKLEY, after being duly sworn,
19 testified as follows:

20 THE CLERK: Have a seat in the witness box. State
21 your full name for the record, spell your last name.

22 THE WITNESS: My name is Rhett Sease Bickley, Jr.
23 The last, spelling of my name, is B-I-C-K-L-E-Y.

24 DIRECT EXAMINATION:

25

1 BY MR. POTTS:

2 Q Where are you employed?

3 A I'm currently employed with the South Carolina
4 Department of Natural Resources.

5 Q What is -- what is your job there?

6 A I'm a conservation officer. Basically, I'm a law
7 enforcement officer, hunting, fishing, boating laws in
8 this state.

9 Q Okay. Did you work back -- did you work at DNR back
10 on May 1st, 2010?

11 A Yes, I did.

12 Q What were you doing that day?

13 A May 1st, 2010 was the last day of turkey season,
14 South Carolina. I spent the last portion of that day
15 working turkey hunting around the county, and then that
16 evening once I had finished for the day, I went to dinner
17 with my missus -- or my missus to be, rather, went grocery
18 shopping.

19 While we were grocery shopping, we got called -- I
20 got a call from my sergeant that said that there had been
21 a boating accident, and if I was available, he needed me
22 to report for duty at the Palmetto Richland Memorial
23 Hospital.

24 Q About what time did the call come out?

25 A The call came in just after 10:30 p.m.

1 Q And so did you go straight from the grocery store to
2 the hospital or --

3 A No. I went home, changed into a uniform, got in my
4 work truck and then proceeded down to the hospital.

5 Q Okay. Now, I want you to describe to me what it was
6 like when you first -- or I guess what did you know when
7 you got to the hospital?

8 A All my sergeant was able to tell me, the initial call
9 and the short follow up going down to the -- to the
10 hospital. Was -- there had been a boating accident with
11 injuries, with severe injuries; that people were being
12 transported, and as our typical practice, we will have
13 people both on the scene, and somebody reports to the
14 hospital to handle what evidence or information could be
15 gotten there.

16 Around the time I got to the hospital or shortly
17 after I arrived was when I discovered that there was a
18 fatality to go with it.

19 Then when I walked into the actual ER -- I'm familiar
20 with ERs. I know they are pretty hectic, but it was a
21 pretty chaotic evening because there were so many people
22 coming in involved with what was later determined to not
23 only be one but two accidents with the people from both
24 accidents coming to the hospital.

25 Q Now, what was -- what was your role at the hospital?

1 Describe your role specifically.

2 A My specific portion of being at the hospital is to
3 speak to the people who are coming, determine what portion
4 or part they may have played in the events that occurred,
5 the witnesses, boat operators, passengers are just on
6 standby or something, and then to gather any information
7 or evidence that can be secured from them.

8 Q Did they tell you anything about the collisions
9 before you got in there?

10 A No.

11 Q Other than --

12 A All we knew is we had a boating accident with -- with
13 injuries.

14 Q Okay. Describe -- okay. So you go in the ER, and
15 then you described the scene as chaotic. Can you go into
16 a little more detail about what it was like and what you
17 saw?

18 A You have got multiple people in multiple rooms. In
19 one room is Mr. Christofoli, who is in a neck brace and
20 bleeding, being worked on by a crew.

21 There are people on gurneys in different portions of
22 the hallways, because like any operate -- or emergency
23 room. There is not always enough space for somebody.

24 It's just multiple people from the accident and
25 people working on them, people trying to work around each

1 other as you're trying to -- as you're trying to interact
2 with them.

3 Q Now, how many officers were at the hospital that
4 evening?

5 A Just me.

6 Q The whole evening?

7 A The entire evening. The rest of the officers were
8 required for the amount of scene work that was being done
9 on the lake.

10 Q How did you find out about the fatality?

11 A I was originally told about the fatality on the
12 phone. My first-hand knowledge of it was going into a
13 room that I believed to be a room where someone was being
14 worked on where Ms. Bullard was located. She was on the
15 table after -- after being pronounced dead.

16 Q Did a doctor approach you about any of that?

17 A The doctor asked me if I would help him with the
18 family to help them understand some of what occurred and
19 what would be taking place during the process by that.

20 Q Now, you describe lots of people in the emergency
21 room. Is it just people from these two collisions in the
22 emergency room or other people, as well?

23 A No. There were other people coming with standard
24 stuff that were already -- some were already in there when
25 people began filtering in from the accident, and of

1 course, in the waiting room, you've got the standard
2 people who are waiting to come into an emergency room.

3 Q How did you identify who you needed to speak to?

4 A Between asking the nurses who was coming in from what
5 and then also going into the waiting room and asking
6 people what part -- if they had knowledge of the accident
7 or if they were involved in it, could help me with the
8 information.

9 Q Now, the nurses or whoever -- who did you identify
10 first?

11 A Mr. Christofoli was the first individual that I
12 identified as part of the accident.

13 Q Describe how you found him.

14 A He was in one of the cubby-hole kind of rooms like
15 where you pull the screen across where you're being --
16 where you're being worked on in a neck brace with blood on
17 him, and they were -- they were working on him for -- just
18 to figure out what all was wrong with him, what all they
19 needed to do.

20 I conducted just a shortly brief interview to hear
21 from him first hand, you know, who he was and what
22 relation he played as far as driving the boat.

23 Q Now what did you find out was his role?

24 A Excuse me?

25 Q What did you find out was his role in the incident?

1 A He told me that he had been driving one of the boats
2 involved in the accident.

3 Q Did he give you any other pertinent information?

4 A Yes, he did. As far as me asking about his events of
5 the evening, he told me he had been out to dinner; that he
6 consumed two beers.

7 Two is a customary answer. When you ask somebody,
8 actually a couple is a customary answer. So I
9 specifically asked him, you know, two beers? He's like
10 yes, two beers at dinner that evening.

11 Q Did you -- were you able to smell any alcohol on him?

12 A Based on the fact I had to be close to him -- he's in
13 a neck brace -- the nurses are working on him. He's not
14 speaking very loud. I'm down in this kind of proximity to
15 him. You could lightly smell alcohol, an alcoholic
16 beverage.

17 Q Now, when you're talking to him, did you read him any
18 rights?

19 A I read him his Miranda rights and his -- excuse me.
20 At this point in time, I read him his Miranda rights and
21 his victim rights.

22 Q Why did you do that?

23 A Because I don't know which part of the accident he
24 plays in, whether he is -- an accident can have, you know,
25 two parts.

1 You can be the one who causes it. You can be the
2 victim in it, or you can both contribute to it. Not
3 knowing what portion he played, I wanted to make sure that
4 he understood both sides of it and read -- I carry a card
5 in my wallet which is right here, which has both the
6 Miranda rights and the victim's rights printed on it.

7 Q Now, did you have an opportunity to read him any
8 other rights?

9 A I did but that was not until later in the evening.

10 Q Okay. What happened next then?

11 A At that point in time -- at that point in time, the
12 nurses were working on him and directed me that I needed
13 to get out of their way. So I -- based on the short
14 portion of that interview, stepped back and proceeded to
15 try to find other people who had been involved in the
16 accident and get further information on it.

17 Q Now, how are you finding people?

18 A Again, just either going out to the waiting room and
19 asking, you know, were you a part of this or do you know
20 anything about it, or to the people who were on gurneys
21 who the nurses helped me to identify had come in from the
22 ambulances that were coming in from that scene.

23 Q Now, who did you speak to next?

24 A Mr. Hair was next on my list of people to talk to or
25 the next person that I saw.

1 Q How was your attention directed to him?

2 A Excuse me?

3 Q How was your attention directed to Mr. Hair?

4 A He was sitting on a gurney outside waiting to --

5 waiting to -- in kind of like the hallway area. He was

6 kind of the overflow, and they pointed out that he was one

7 of the people that had been brought in with an injured arm

8 but that he was part of the boating accident.

9 Q Now, without telling me anything Mr. Hair told you,
10 describe your interview with Mr. Hair and your
11 discussions.

12 A Without telling you -- I -- just basically, when I
13 went to Mr. Hair to talk to him to find out what had been
14 done that day in regards to his activities and to find out
15 what -- what boat he'd been on because, you know, as a
16 course of action, you're trying to find out which boat is
17 what.

18 So you're asking for any identifying factors. Were
19 you in an aluminum boat? Were you in a fiberglass boat?
20 Were you in a green boat, white boat, purple boat, pink
21 boat? You're trying to identify the most obvious thing
22 that would stand out to somebody.

23 Mr. Hair identified that -- that he had been a
24 passenger in a large white fiberglass boat that day. When
25 I asked him, you know, was he the passenger or the

1 operator.

2 He indicated again, addressed that he was a
3 passenger. When I asked who the driver was, he,
4 throughout the questioning, did not want to be forthcoming
5 with an answer. He would say --

6 MR. HARVEY: I'm going to object to -- that's a
7 conclusion that called for speculation on someone's
8 motivation or thought process.

9 MR. POTTS: Your Honor, it's his impression.

10 THE COURT: Overruled.

11 THE WITNESS: When I was asking him to identify who
12 the operator was, he said things to me like, "I don't know
13 his last name. It's too hard to say, but we were calling
14 him Kran, and then also we called him Steven that day."

15 Those were the specific ways that he identified the
16 operator, as Kran or as Steven. And he said his last name
17 was too difficult to pronounce. He said that they had
18 been out together on the lake that day partying.

19 BY MR. POTTS:

20 Q Now, did you read Mr. Hair his Miranda rights and his
21 victim rights?

22 A I read him his rights, as well, and also had him also
23 sign them, the waiver of rights form.

24 Q Now, who did you go speak to next?

25 A Next in line was when Mr. Miller came in from the

1 previous -- from the other boating accident. He does not
2 tie into the --

3 (Talking over each other.)

4 Q Keeping to --

5 A -- this accident -- the next person involved in this
6 accident was Mr. Kranendonk.

7 Q Now, describe how that interaction came to be.

8 A The way Mr. Kranendonk's interview came about, I had
9 been out multiple times. I'm going from -- the way the ER
10 is set up, if anybody has ever been to an ER or not, you
11 -- when you come and you get checked in, you have a
12 waiting area out front, and then there are actual sections
13 of the ER back in the back.

14 This was all -- my portion of the accident was taking
15 place in pod called Pod 5, but I would have to go from Pod
16 5 out to the front, back to Pod 5 just to see if anybody
17 was coming in after the fact, you know, that I could find
18 or locate afterwards.

19 At some point in time during the evening when I came
20 out, there was an individual sitting in the room, in the
21 waiting room.

22 When I would ask people if they were involved in the
23 accident or if they had any information to it, he never
24 volunteered that he was involved with it.

25 At some point in time later in the night beginning

1 after two o'clock in the morning when I specifically
2 looked at him and said, "Are you involved in this, or were
3 you part of it?" that was when he then did acknowledge
4 that he was involved in the accident; that he had been
5 operating one of the boats.

6 Q Now, before you talked to Mr. Kranendonk, had you had
7 an opportunity to go back to Mr. Christofoli?

8 A Yes. That was where the 2:30 portion came in of my
9 interview with Mr. Christofoli. During the portion of
10 going back and forth, like I say, where the nurses will
11 let me talk to him.

12 At that point in time, I read him what is called -- I
13 explained to him that he had been involved in a boating
14 accident, and that because this boating accident involved
15 a fatality, because there was alcohol involved, I was
16 going to read to him his implied consent rights.

17 Q Go ahead.

18 A Would you like me to read those as part of this?

19 Q Go ahead.

20 A Anyway, I read him his rights as far as that would go
21 in requiring that he would have to give me a blood sample
22 because of the accident. At which point in time, he
23 signed the paperwork, and I asked a nurse to draw blood.

24 Q I'm going to show you something.

25 (WHEREUPON, State's Exhibits Nos. 54, 55 were marked

1 for identification only.)

2 BY MR. POTTS:

3 Q I'm going to show you what has been marked as
4 State's Exhibit No. 52. Do you recognize that?

5 A This is the blood sample from Mr. Christofoli.

6 Q How can you tell?

7 A It was marked as such by the nurse when I witnessed
8 her pull it from his arm.

9 Q And that would be the nurse, Keri Connor?

10 A Yes, sir.

11 Q And what happened with that blood when she drew it?

12 A I secured it in a small bag for me right then. She
13 took the tube of blood. They labeled it, and then I
14 secured it and kept it with me for the duration of the
15 evening.

16 Then when I was able to, later in the evening,
17 secured it in a cooler with ice until I could get to it
18 SLED on Monday.

19 Q Okay. But between taking -- between the moment she
20 gave you that blood and the moment it went in the cooler,
21 it never left your sight, did it?

22 A No. It stayed in my hands.

23 Q And then from what he put in the cooler, did the
24 cooler leave your side?

25 A It stayed with me the entire weekend.

1 Q And you took that cooler to SLED?

2 A Yes.

3 Q And that same -- that bag you have there, what is
4 that?

5 A That's a SLED evidence bag that they put it in when
6 you take evidence to them and you mark it as such, and my
7 signature is across the front of it where I witnessed them
8 sealing it.

9 Q So you witnessed them seal it, and you signed the
10 bag?

11 A Yes.

12 Q Would you have signed it if they hadn't sealed it?

13 A No.

14 Q Just put it down for now.

15 Okay. So after you get the blood from
16 Mr. Christofoli, you then go talk to Mr. Kranendonk,
17 correct?

18 A Yes.

19 Q Okay. What do you advise Mr. Kranendonk at that
20 time?

21 MR. HARVEY: Your Honor, I just want to renew my
22 previous objection now to preserve it. Thank you, Your
23 Honor.

24 THE COURT: Well, over the defendant's objection.
25

1 BY MR. POTTS:

2 Q You discussed with Mr. -- what does he tell you?

3 A Excuse me, now?

4 Q What does Mr. Kranendonk tell you when you first
5 began to interview him?

6 A When I first started interviewing him, my standard
7 practice for conducting an interview is a short interview
8 just to get a feel for what's going, and then I'll have
9 them give me a full statement afterwards. I just want to
10 get over the initial portion of the interview.

11 Mr. Kranendonk was Mirandized and then given his
12 victim's rights and then informed me that he had been
13 drinking that day on the lake and had consumed at least
14 three vodka drinks.

15 Q Did he tell you he was the operator?

16 A He informed me that he was the operator of the boat,
17 yes.

18 Q Okay. And based on that, you decided to draw blood?

19 A Based on the incident; that there was an identified
20 operator of the boat, alcohol involved and a fatality
21 involved, I used that information to draw the blood.

22 Q Okay. Did you read him in particular rights in
23 regards to blood draw?

24 A I read what is called the implied -- advisement of
25 implied consent rights.

1 Q Would you please read that to the jury as you read it
2 to Mr. Kranendonk that day?

3 MR. HARVEY: Your Honor, just out of an abundance of
4 caution, there is -- I just want to renew my objection
5 with specificity to the probable cause without making a
6 statement. I just want to make sure I protect that
7 objection.

8 Thank you, Your Honor.

9 THE COURT: Yes.

10 THE WITNESS: Basically, you're giving your
11 advisement of implied consent. It has your name, driver's
12 license number, date of birth and state license.

13 It says, "You're involved in a BUI involving death,
14 bodily injury or property damage advisement." It asks
15 will it be reported, yes or no. Then it tells you if no,
16 start at Section B which says, "inform the subject of the
17 type of the samples requested, IE breath, blood, or
18 urine."

19 BY MR. POTTS:

20 Q What examples did you request in this case?

21 A I requested a blood sample.

22 Q Okay. Go on.

23 A And then you read the following advisement to the
24 subject: "You're under arrest for boating under the
25 influence where death, bodily injury, or property damage

1 has occurred, section 50-21-113, South Carolina Code of
2 Laws, 1976, as amended or a law enforcement officer as
3 probable cause to believe you violated this section.

4 "The officer has directed that samples of blood
5 breath or urine" -- or excuse me, "breath, blood or urine
6 to be taken for alcohol and/or drug testing. The samples
7 will be taken and tested according to section 50-21-114
8 and SLED procedures and pursuant to section 50-21-116.

9 "You must submit to either one or a combination of
10 chemical tests for the purpose of determining the presence
11 of alcohol or drugs or a combination of alcohol or drugs."

12 Q Did you give him a choice about whether he wanted his
13 blood?

14 A I -- no, sir. I told him he was required to give
15 blood.

16 Q But he complied with that once you told him.

17 A Yes, sir, voluntarily.

18 Q Okay. Can you read the jury the Miranda rights, the
19 victim rights, you also read to him that day?

20 A The Miranda rights are: "You have the right" --
21 excuse me, victim's rights. I'm sorry. I went to the
22 Miranda rights.

23 "You have the right to remain silent. Anything you
24 say can and will be used against you in a court of law.
25 You have the right to talk to an attorney and have him or

1 her with you during questioning.

2 "If you cannot afford an attorney, one will be
3 appointed to represent you before questioning, if you
4 wish. You can decide at any time to exercise these rights
5 and to not answer any questions or to make any statements.
6 Do you understand each of these rights that I've explained
7 to you, and then having these rights in mind, do you wish
8 to talk to me now?"

9 Victim's right on the backside of the card is: "You
10 have the right to be treated with fairness, respect and to
11 be protected from intimidation or harm throughout the
12 criminal and juvenile justice process.

13 "You have the right to be informed about victim's
14 rights, criminal proceedings, and if the accused is
15 arrested, released, or escapes. You have the right to be
16 heard at bond, bail, release, pleas, or sentencing. You
17 have the right to reasonable access to documents relating
18 to the crime.

19 "You have the right to be present at criminal
20 proceedings when the accused can be present and to confer
21 with the prosecution before the case is heard in court.
22 You have the right to restitution from adult or juvenile
23 offenders and violating these rights is punishable by
24 law."

25 Q Okay. I'm going to show you what's been marked as

1 State's Exhibit No. 55. Do you recognize that?

2 A This is law enforcement waive of rights we use in our
3 department to have him acknowledge in writing that they
4 are waiving their right to now speak me.

5 Q And did he do that?

6 A Yes, he did.

7 Q I want to show you what's been marked as State's
8 Exhibit No. 53. At that point, did you take a statement
9 from the defendant?

10 A Excuse me, sir?

11 Q At that point, did you take a statement from the
12 defendant?

13 A Yes, sir. At that point in time -- well, the
14 waiver -- the actual rights were read before I had any
15 discussion with him other than identifying who he was.

16 Q Okay.

17 A Did the short statement, then did the blood draw,
18 then did the written statement.

19 Q So that's the order?

20 (Pause).

21 I'm going to show you what's being marked as State's
22 Exhibit No. 53. Can you tell me what that is?

23 A This is the blood sample that was taken from
24 Mr. Kranendonk.

25 Q How do you know it was from Mr. Kranendonk?

1 A I watched it be drawn directly from his arm. The
2 tube would be labeled as such and secured it with me until
3 such time as I was able to get it to SLED.

4 Q What time was that blood drawn that evening?

5 A The blood draw that evening was approximately 3:30 by
6 memory, but I have the exact form if you'll give me just a
7 second.

8 Q Take your time.

9 (Pause).

10 A 03:25, according to his implied consent form.

11 Q Translate to me in a.m. and p.m. terms.

12 A Excuse me, 3:25 in the morning, 3:25 a.m.

13 Q Okay. And that blood stayed with you?

14 A Stayed with me the same as Mr. Christofoli's.

15 Q Went into the cooler?

16 A And secured with my person the entire time the
17 investigation was going on that evening, put on a cooler
18 with ice the next morning or later on in that morning and
19 stayed with me until SLED on Monday.

20 Q And you kept the cooler fresh and cool?

21 A Cooler kept ice -- throughly, well iced and stayed.
22 It stayed protected.

23 Q Now, explain to me that bag, the bag. You didn't put
24 it in that bag that night, did you?

25 A No, sir.

1 Q Where did that bag come from?

2 A SLED evidence bag. The day that you go to SLED with
3 your vials, you take them out of the cooler. You hand
4 them to them. They'll put them in the bag, seal them up
5 for their testing.

6 Q And you watched them seal them up?

7 A Yes, I did.

8 Q And how did you signify that you saw them seal it up?

9 A My signature is across the back.

10 Q At this time, Your Honor, the State would like to
11 introduce into evidence State's Exhibits No. 53 and 52.

12 THE COURT: Over the defense objection; is that
13 correct?

14 (Pause).

15 MR. HARVEY: No objection, Your Honor.

16 (WHEREUPON, State's Exhibits Nos. 52, 53 were
17 admitted into evidence.)

18 BY MR. POTTS:

19 Q So after you got the blood from Mr. Kranendonk, you
20 then got a statement, correct?

21 A Yes, sir. I took a written statement from
22 Mr. Kranendonk.

23 Q And describe the procedure for getting a written
24 statement. Who writes the statement?

25 A Mr. Kranendonk wrote the statement.

1 Q Okay. And then how much time did you give him to
2 write the statement?

3 A As long as is needed in this case. I don't remember
4 exactly how long he took but probably half an hour.

5 Q And did you interfere with him writing a statement in
6 any way?

7 A Excuse me, sir?

8 Q Did you interfere with him writing a statement in any
9 way?

10 A No, sir.

11 Q At any point while you were talking to him, did
12 Mr. Kranendonk ever ask you to stop or say he wanted to
13 talk to an attorney?

14 A No, sir.

15 Q Did he ever at any point tell you that he wasn't sure
16 he understood the Miranda rights?

17 A No, sir.

18 Q All right. I'm going to show you what's been marked
19 as State's Exhibit No. 54. Do you recognize that?

20 A That was a written statement that I received from
21 Mr. Kranendonk?

22 MR. POTTS: At this time, Your Honor, I'd like to
23 enter State's No. 54 into evidence.

24 THE COURT: Any objection?

25 MR. HARVEY: No, Your Honor.

1 (WHEREUPON, State's Exhibit No. 54 was admitted into
2 evidence.)

3 BY MR. POTTS:

4 Q Would you believe please read and publish that to the
5 jury, permission from the court?

6 A Read the statement?

7 Q Yes.

8 A Excuse me.

9 (Pause).

10 "I, Steven Kranendonk, make the following statement
11 freely and voluntarily to Sergeant Rhett Bickley, Jr. who
12 has identified themselves as an official with the South
13 Carolina Department of Natural Resources, Law Enforcement
14 Division.

15 "Boarded boat and left Pine Island around five
16 o'clock p.m., went to little Sandy Beach, backside of
17 Bundrick Island" --

18 THE COURT REPORTER: I'm sorry, you need to slow
19 down.

20 THE WITNESS: I'm sorry. I'm sorry.

21 All right. "Boarded boat, left Pine Island around
22 five p.m., went to Little Sandy Beach, backside of
23 Bundrick Island and wrapped it up with friends.

24 "I had three drinks while on the water while wrapped
25 it up. The weather was looking like it might rain, so we

1 went to the Lighthouse Marina to go the opposite way of
2 the storm. I was also told there was a live band playing,
3 so it sounded like a good idea.

4 "We hung out there for an hour or so and decided to
5 go home back to Pine Island. As we left the no wake zone,
6 I got the boat on plane and proceeded towards the
7 direction of Pine Island.

8 "As soon as we passed the point on the starboard
9 side, I noticed a boat coming in our direction. I saw
10 that they were heading in our direction, and I immediately
11 put the boat in neutral to slow down and give them right
12 of way.

13 "After I had come off plane and slowed down, they
14 proceeded to steer into us and then hitting our boat. I
15 was tossed into the water, along with the two girls
16 onboard. One guy remained on the boat but was injured.
17 As our boat went away, I swam down under the water and
18 pulled one of the girls back up to the surface.

19 "The other girl was already on the surface, and I
20 yelled for her to swim over to us. When we were grouped
21 together, I started yelling and waiving my hands in the
22 air to get the attention of the one guy still onboard.

23 "He drove the boat over to us, and we all got back
24 on. When we were back on the boat, he had already dialed
25 9-1-1 and handed me the phone to direct EMS where to go.

1 I never saw another boat or anyone in the water after we
2 hit.

3 After not being able to see anyone, we drove on plane
4 through the no wake zone, headed to Lake Murray Marina
5 because it was an emergency. EMS met us at the dock along
6 with DNR and Lexington deputy sheriff.

7 "From there, they bandaged my head and later gave me
8 a field sobriety test. After that, my father drove me to
9 the hospital where I am now giving this statement. In
10 addition, before we left the dock at Lighthouse Marina, I
11 checked the NAV lights, and they were in proper working
12 order. I also was using the Furuno Radar as a NAV tool on
13 the way home."

14 Then you have a line saying nothing follows it, and
15 he initialed it. We signed and dated it at the bottom.

16 Q After you took that statement from Mr. Kranendonk,
17 what else did you do?

18 A I read over his statement. At that time, pretty much
19 everything I had been able to do as far as the gathering
20 of evidence or information was done, and I proceeded to
21 carry the evidence that I had and go to Bundrick Island
22 for a meeting with the rest of the team and just to see if
23 I could assist with any further gathering of evidence.

24 Q That's with the blood in the cooler?

25 A Yes. We have ice machines at Bundrick Island, and

1 actually, the cooler would have come in when I went home,
2 but it went into a plastic carrying bag ice pack with the
3 cooler until I put ice in it until I could transfer the
4 ice and contents into a stable cooler at the house.

5 Q Okay. How familiar are you with Lake Murray?

6 A I'm very.

7 Q Is that because --

8 A I've been on Lake Murray since I was nine years old.

9 Q Can you describe to me the way the lake is different
10 at nighttime versus the daytime?

11 A The primary aspect of difference is visibility. In
12 the daytime on a clear day, you can see in excess of five
13 miles. You might even be able to see, six, eight, you
14 know, as far as a long way.

15 Once dark comes, you have two major changes: The
16 darkness brings about a lack of visibility, which is a
17 very key feature in it, and then you have the problem of
18 especially around the portions of the lake where it's
19 extremely built up, all the lights on the bank which can
20 impede your visibility or depth perception or night
21 vision.

22 Q Explain to me how the lights make it less easy to see
23 at night.

24 A While they light up somebody's yard, if you're coming
25 out of the lake -- if you're riding on the lake, if you're

1 in the middle of the lake, you've got blackness in front
2 of you, darkness.

3 Anybody is familiar with the fact that if you close
4 your eyes, you know, at night and open them, you can see a
5 little better than if you cut on the flashlight and then
6 cut the flashlight off. You lose night vision.

7 So dealing with night lights, you mess up your night
8 vision. It can also mess up your depth perception because
9 it's hard when you're looking in the reflection on the
10 water and the light switches out. It makes it more
11 difficult to be ability to determine distances and such as
12 that.

13 Q In general, based on your experience at the lakes,
14 where are the busiest parts of the lake?

15 A The busiest parts of the lake, around marinas and
16 boat landings. Marinas, boat landings, or if you've got
17 any sort of public area, sandy beach or something like
18 that, but those would be common areas, marinas, boat
19 landings and, you know, the restaurants and stuff.

20 Q What about where this incident occurred, what about
21 that area?

22 A You have one big cove that basically towards the back
23 of it is one marina and on an offshoot -- as you're coming
24 into the cove, at the back of it to the left is one
25 marina, and coming in from a smaller cove to your right is

1 a second bar and marina.

2 When I say marina backs up, restaurant, bar and
3 marina. So one, two, which is a restaurant bar and
4 marina, so all traffic coming in is like this, and all
5 traffic coming out comes into basically a choke point.

6 Q So is it a high-traffic area?

7 A Yes. It's a very high-traffic area throughout the
8 summer.

9 Q But that's continued on during the daytime and
10 nighttime?

11 A Both the day and night because they frequently have
12 entertainment in the evenings.

13 MR. POTTS: Okay. Beg the Court's indulgence one
14 second.

15 (Pause.)

16 No further questions. Please answer any questions
17 Mr. Harvey has for you.

18 THE COURT: Cross-examination?

19 MR. HARVEY: Yes, Your Honor. Beg the Court's
20 indulgence one moment.

21 (Pause.)

22 CROSS-EXAMINATION:

23 BY MR. HARVEY:

24 Q Good afternoon, Mr. Bickley.

25 A Good afternoon, Mr. Harvey.

1 Q Officer Bickley, you testified that when you were at
2 Palmetto Richland Hospital -- when you went to Palmetto
3 Richland Hospital, you had the opportunity to actually
4 interview many people. One of the individuals you
5 interviewed was Robert Christofoli, correct?

6 A Yes, sir.

7 Q Another interviewee was Mr. Harrison Hair, correct?

8 A Yes, sir.

9 Q And the third interviewee was -- in relation to this
10 case was Mr. Steven Kranendonk, Steven, right over there,
11 right?

12 A Yes, sir.

13 Q Then you had an opportunity a lit bit later that
14 evening to talk to Mr. Lax, as well?

15 A Yes, sir.

16 Q So Mr. Lax would have been the fourth person in
17 relation to this?

18 A Yes, sir.

19 Q It was quite a hectic evening because you had
20 mentioned there was an unrelated incident. You had talked
21 to people in relation to that, as well, correct?

22 A Yes, sir.

23 Q Okay. And you had testified that your mission -- you
24 were actually instructed by part of the DNR team that was
25 managing the situation to go to the hospital, correct?

- 1 A By my sergeant, my local supervisor, not a part of
2 the team that was managing.
- 3 Q Okay. Your sergeant.
- 4 A Yes, sir.
- 5 Q Someone in your chain of command --
- 6 A Yes, sir.
- 7 Q -- gave you an order to go to the hospital, right?
- 8 A Yes, sir.
- 9 Q And when you get an order in the chain of command,
10 you follow an order.
- 11 A Yes, sir.
- 12 Q All right. And you stated earlier that your mission
13 was to gather information, and if possible, gather
14 evidence, correct?
- 15 A Yes, sir.
- 16 Q Now, when you want to gather information or gather
17 evidence -- I'm sorry, but you've been in law enforcement
18 how many years?
- 19 A I celebrate my 15th anniversary next month.
- 20 Q Okay. So 15 years is a significant amount of time.
21 Will you agree with me?
- 22 A Yes, sir.
- 23 Q DNR officers receive a lot of training, right?
- 24 A Yes, sir.
- 25 Q And part of your training, you're trained how to

1 write reports, correct?

2 A Yes, we are.

3 Q And you're taught that the contents of the reports
4 are important.

5 A Yes, sir, the content is.

6 Q And one of -- part of the content of a report, it
7 would reflect your observations, correct?

8 A Yes, sir, it does.

9 Q And your report would contain observations that you
10 would think would be important for a 25-cent word that a
11 lawyer may use as salient or...

12 A It will but it will not contain every piece of
13 information coming in.

14 Q Not every piece of information, but it should, you'll
15 agree with me, contain the important information.

16 A Yes, sir.

17 Q I mean, you wouldn't leave important information out,
18 would you?

19 A A report is a key piece of information for me to be
20 able to draw on to help recall what occurred what night.

21 Q Okay. And are you -- do you have your report in
22 front of you?

23 A Yes, sir.

24 Q All right. And your report is a supplemental report.
25 It's a four-page report.

1 A Yes, sir, it is.

2 Q And the date of the report is 5/6/2010?

3 A Yes, sir.

4 Q And you're listed as a reporting officer?

5 A Yes, sir.

6 Q Now, on page one of four, it talks about where you
7 made notation that you received calls and you responded --
8 not some calls but received a call from Sergeant Britt,
9 and it details as a response to that call you went to
10 Palmetto Richland Hospital, correct?

11 A Yes, sir.

12 Q Page one, it details your interaction with
13 Mr. Christofoli, correct?

14 A Yes, sir.

15 Q All right. And page two starting at the second full
16 paragraph, it details your information and your
17 recollection about your interaction with a subject known
18 as Eric Harrison Hair, correct?

19 A Yes, sir.

20 Q And on the third full paragraph, the report that you
21 wrote on 5/6/2010 doesn't make any mention that -- of your
22 observation that you thought Mr. Harrison Hair was
23 recalcitrant or hesitant to give any information, does it?

24 A Specifically, no, sir.

25 Q All right. And you had now -- according to your

1 report, you're investigating a boating accident on Lake
2 Murray, correct?

3 A Yes, sir.

4 Q According to your report, you've talked to
5 Mr. Christofoli who you've identified as an operator of a
6 boat involved in an accident, correct?

7 A Yes, sir.

8 Q And now you've talked to Mr. Hair, and Mr. Hair has
9 identified someone -- he actually said his friend Kran,
10 right?

11 A Specifically, he said his name was too hard to
12 pronounce, but he called him Kran.

13 Q Kran, all right. And you were able to determine --
14 also, you're able to determine based on your report that
15 Mr. Kranendonk was the operator of a boat, correct?

16 A Yes, sir.

17 Q All right. So you're investigating an accident. You
18 testified earlier that you had learned that there was a
19 fatality, yet you're telling this jury, you thought the
20 fact that the occupant of Mr. Kranendonk's boat was
21 hesitant to give information about Mr. Kranendonk's
22 identity wasn't a significant fact to note in your report.
23 That's what you're telling us, because it's not in the
24 report, is it?

25 A The fact that I felt he was obnoxious, no, sir.

1 Q When you were answering the questions of the
2 prosecutor, you didn't use the word obnoxious. You said
3 that you thought he was hesitant to provide information to
4 you.

5 A Evasive.

6 Q Isn't that what you said, sir? Please answer the
7 question.

8 A Yes, sir.

9 Q Thank you.

10 All right. Now, you then had an opportunity to talk
11 with Steven, correct?

12 A Yes, sir, I did.

13 Q And when you talked with Steven -- Steven -- you read
14 some significant legal warnings to him. You read a
15 victim's warning, correct -- or victim's rights advice?

16 A Yes, sir.

17 Q And you also read him what we all know from TV and
18 the movies a version of the Miranda warnings, correct?

19 A Yes, sir.

20 Q Now, as a 15-year veteran, someone who has got
21 extensive law enforcement experience, you know that one of
22 the important things about giving a warning and someone
23 saying "I understand" and having that process have some
24 validity is you've got to feel as though the person you're
25 giving that warning to understands it, right?

1 A Yes, sir, I do.

2 Q And you have got to feel that it was knowing and
3 voluntary, right?

4 A Yes, sir, I do.

5 Q And your report doesn't have any indication that you
6 had any reservation that Mr. Kranendonk didn't comprehend
7 the warning, does it?

8 A I had no indication, no, sir.

9 Q All right. Because that would have been some
10 critical information or something, evidence that you would
11 have wanted to put in your report, right?

12 A There is a waiver of rights that he has signed where
13 he also read his rights.

14 Q All right. So you'll agree with me you saw him read
15 it, correct? You just testified --

16 A I read it. I read it to him off the card. Then I
17 provided a sheet that we went over again that he and I
18 both signed documenting when he was Mirandized.

19 Q And you'll agree with me, your conclusion was, he
20 understood?

21 A Yes, sir.

22 Q Okay. Now, he then gave you a statement, correct?

23 A Yes.

24 Q And it's been identified.

25 A Actually, the first portion of what he did then was a

1 brief oral discussion.

2 Q All right. Well, actually, there was a brief oral
3 discussion. Then you went and got the blood that you had
4 identified.

5 A Yes, sir.

6 Q And then afterwards, he came back and y'all then
7 entered into the second phase of your interaction --

8 A Yes, sir.

9 Q -- which was when you asked him to provide a written
10 statement, correct?

11 A Yes, sir.

12 Q Now, in the written statement, you'll agree with me
13 as you published it, he stated he left the no wake zone,
14 correct?

15 A Yes, sir.

16 Q He stated -- after he said after he left the no wake
17 zone, he got on plane, correct?

18 A Yes, sir.

19 Q You will agree with me that when a boat gets on
20 plane, means that a boat -- when a boat gets on plane,
21 it's operating at a speed which makes it more efficient.
22 That means on plane, the top of the front of the boat is
23 the bow. Underneath the bow is the keel?

24 A Yes, sir.

25 Q And when a boat is on plane, the part -- part of the

- 1 keel is out of the water, correct?
- 2 A Yes, sir.
- 3 Q And now, a throttle in a boat is kind of like a gas
- 4 petal in a car?
- 5 A Yes, sir, it is.
- 6 Q And in order to be on plane, you don't have to be at
- 7 full throttle, do you?
- 8 A Depends on the boat.
- 9 Q Okay.
- 10 A I have no experience with this boat.
- 11 Q All right.
- 12 A Some boats will not hit plane at full throttle. Some
- 13 boats will hit plane at a much lower rate of speed.
- 14 Q Now, Steven also said in his statement, did he not,
- 15 that you published to the jury, "As soon as I passed a
- 16 point on the starboard side, I noticed a boat coming in
- 17 our direction, correct?
- 18 A Said that in his statement.
- 19 Q Now, I show you what's been marked as Defense
- 20 Exhibit No. 1. This is Lake Murray Marina?
- 21 A That's also called Dockside.
- 22 Q Is it also called Lake Murray Marina?
- 23 A Yes, it is.
- 24 Q Okay. All right. This is Lighthouse Marina?
- 25 A Yes, it is.

1 Q Also called the Quarter Deck?

2 A Quarter Deck, Rusty Anchor, yes.

3 Q Okay. If you're traveling from this marina
4 towards -- we'll just call it -- well, you would agree
5 this is big water or open space?

6 A Big water, open water, yes, sir.

7 Q Open water. If you're traveling from Lighthouse
8 Marina towards big water and you're traveling in this
9 direction, this point would be on your starboard side,
10 correct?

11 A Correct.

12 Q So you'll agree with me if someone has passed a point
13 on the starboard side, they're moving in this direction,
14 correct?

15 A Correct.

16 Q And this is open water, correct?

17 A It is open water on your picture, but these are
18 informational points that I wouldn't be able to identify
19 in a hospital room that morning.

20 Q I'm not asking you what you identified in the
21 hospital room.

22 A Okay. Yes, sir. If you're passing a point on your
23 starboard side, that would be where you would be passing.

24 Q Okay. And Steven said he had passed this point on
25 the starboard side.

1 A Okay.

2 Q And steven said he noticed a boat coming in his
3 direction, correct?

4 A Correct.

5 Q Now -- and you'll agree with me that Steven had been
6 involved in an accident about ten p.m. on May 1.

7 A Approximately, yes, sir.

8 Q You'll agree with me that you've come to learn that
9 he went to Lake Murray Marina shortly thereafter, correct?

10 A Yes, sir.

11 Q You will come -- you will agree with me that you've
12 come to learn that he remained at Lake Murray Marina until
13 after Mr. Roosen administered a field sobriety test and
14 allowed him to leave the scene.

15 A Correct.

16 Q And you'll come to agree with me that Mr. Kranendonk
17 went -- Steven went from Lake Murray Marina to the
18 hospital, correct?

19 A That is my understanding, correct.

20 Q All right. And you'll agree with me that once you
21 identified yourself as a DNR officer and asked him to
22 participate in an interview with you, he was compliant.

23 A Correct, yes, sir, he was.

24 Q All right. He was compliant with respect to blood?

25 A Yes, sir.

1 Q He was compliant with respect to the statement?

2 A Yes, sir, he was.

3 Q And did you have any doubt about Steven's earnestness
4 when he was giving you the statement?

5 A No, sir, I did not.

6 Q You asked him -- all right. And he had just been in
7 an accident, and you'll agree with me that you talked to
8 Steven -- it wasn't right away but within a short period
9 of time after an accident at night, right?

10 A Yes, sir.

11 Q On the lake, and you had described the lake as being
12 a different place at night, right?

13 A Yes, sir, it is.

14 Q Okay. And you'll agree with me that you don't doubt
15 the sincerities of Steven's recollection.

16 A No, sir, I do not.

17 Q Okay. And Steven told you --

18 A Actually, with response to the question you just
19 asked, I -- you -- repeat your last question for me for a
20 minute.

21 Q I had asked you, you didn't have any doubt about the
22 sincerity of Steven's response, and you answered you
23 thought he --

24 A I thought that he --

25 Q -- was sincere?

1 A I thought that he gave a statement to the best of his
2 ability at that time, yes.

3 MR. HARVEY: Okay. I don't have any further
4 questions.

5 I want to put this back, if I may.

6 THE COURT: Any redirect?

7 MR. POTTS: Just briefly, Your Honor.

8 REDIRECT EXAMINATION:

9 BY MR. POTTS:

10 Q You testified earlier you work in Richland County,
11 right?

12 A Yes, I do.

13 Q In Richland County.

14 (WHEREUPON, State's Exhibit No. 56 was marked for
15 identification only.)

16 BY MR. POTTS:

17 Q I'm going to show you this. Just tell me what it is
18 real quick.

19 A That is an aerial view taken from above of the same
20 general area that is the defense picture, which I would
21 say is a photographic representation of it.

22 Q Who made this representation?

23 A The Department did. It's just an aerial photograph
24 that we superimposed.

25 MR. POTTS: Okay. I'd like to offer State's Exhibit

1 No. 56.

2 THE COURT: Any objection?

3 MR. HARVEY: No, Your Honor.

4 THE COURT: Without objection.

5 (WHEREUPON, State's Exhibit No. 56 was admitted into
6 evidence.)

7 BY MR. POTTS:

8 Q And this whole area right here, this is in Richland
9 County, correct?

10 A Yes, it is.

11 Q Okay. Now, Mr. Harvey talked a lot about him talking
12 with his client, Mr. Kranendonk. When you were talking to
13 him, what about him did -- did you notice anything in
14 particular about him?

15 A Yeah. He --

16 MR. HARVEY: Your, I'm going to object to this. I
17 don't believe that's responsive. I asked about the
18 substantive.

19 THE COURT: Overruled, overruled.

20 MR. POTTS: Thank you, Your Honor.

21 THE WITNESS: It's been a long day for him at the
22 point that I contacted him. He had a bandage on his head,
23 bloodshot eyes, and at that point in time had the -- you
24 could smell alcohol or an alcoholic beverage about him.

25 One of the things you learn working on the lake

1 dealing with people who are out in the sun, when you
2 consume alcohol, it tends to not only be something you can
3 smell on your breath, but it's something that typically
4 spilled on or about -- around you. You'll smell it as
5 you're sweating off for the day.

6 Q Okay.

7 A Once you get into a closed room, it would be more
8 pronounced. It is more pronounced. It was more
9 pronounced.

10 Q By the time you talked with him, you had already
11 withdrawn Mr. Christofoli's blood, correct?

12 A Yes.

13 Q Okay. What time was that exactly?

14 A Mr. Christofoli's blood?

15 Q Yeah.

16 A Around 2:30. I can pull his advisement if you like.

17 Q If you could, just real quick.

18 MR. HARVEY: Your Honor, I didn't ask any questions
19 about the other subjects.

20 MR. POTTS: This is the last question, Your Honor.
21 I'll sit down.

22 THE COURT: All right. Go ahead.

23 THE WITNESS: For Mr. Christofoli, 2:32.

24 MR. POTTS: Thank you.

25 MR. HARVEY: Your Honor.

1 THE COURT: Approach the bench, please.

2 (Whereupon, there was a bench conference in the
3 presence of the jury but out of the hearing of the
4 jury.)

5 RECROSS-EXAMINATION:

6 BY MR. HARVEY:

7 Q Mr. Bickley, over the course of your investigation,
8 you have come to learn that Mr. Kranendonk was ejected
9 from his vessel, correct?

10 A Yes, I did.

11 Q He was in the water at Lake Murray for at least
12 several minutes?

13 A A few minutes, yes, sir.

14 Q A few minutes. So he would have been submerged in
15 water at Lake Murray, correct?

16 A Yes, sir.

17 Q And you've come to learn that when he was -- you've
18 come to learn from your participation in the investigation
19 that when Mr. Hair turned over the control of his vessel,
20 Mr. Kranendonk then went to Lake Murray Marina, correct?

21 A Yes, sir.

22 Q And you had testified earlier about people spilling
23 alcohol on subjects?

24 A Just in a given day, it will typically happen.

25 Q It will typically happen. So your testimony is you

1 smelled this alcohol because you believed that after -- as
2 you --

3 A As one aspect, not as the sole aspect.

4 Q But your testimony is you felt as though there was an
5 odor of alcohol emanating from the person of
6 Mr. Kranendonk, correct?

7 A That's one aspect, yes, sir.

8 Q All right. Your testimony is one aspect of the
9 emanation of the odor of alcohol was from
10 Mr. Christofoli's person -- excuse me, I apologize,
11 Mr. Kranendonk's person. I misspoke. Mr. Kranendonk,
12 correct?

13 A Correct.

14 THE COURT: All right, sir. You may come down.
15 Thank you very much.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: May this witness be excused?

18 MR. POTTS: No objection.

19 THE COURT: No objection. Thank you.

20 Next witness.

21 MS. SAMPSON: State calls Officer Thomas.

22 BENJAMIN THOMAS, after being duly
23 sworn, testified as follows:

24 THE CLERK: State your name.

25 THE WITNESS: Benjamin Franklin Thomas.

1 our seal is in the middle of it.

2 Q And can you see those on this map?

3 A (There was no response).

4 Q I don't believe you can but...

5 A No, ma'am.

6 Q Okay. But you would know you're in a no wake zone,
7 right?

8 A Yes, ma'am. You would know it very well, because if
9 you were staying on a plane speed, you would be the only
10 vessel in that area on plane running the vessel with what
11 they call white water coming from behind.

12 MS. SAMPSON: Okay. All right. No further
13 questions.

14 THE COURT: All right, sir. You may come down.
15 Thank you very much.

16 THE WITNESS: Thank you.

17 THE COURT: You're free to go, without objection.

18 THE BAILIFF: Watch your two steps.

19 THE COURT: Next witness.

20 MS. SAMPSON: The State calls Robin Camlin.

21 THE COURT: Who did you call?

22 MS. SAMPSON: Robin Camlin. He went to get her.

23 ROBIN CAMLIN, after being duly sworn,
24 testified as follows:

25

1 THE WITNESS: My name is Sergeant Robin Camlin with
2 the last name spelling C-A-M-L-I-N.

3 DIRECT EXAMINATION:

4 BY MS. SAMPSON:

5 Q And it's Sergeant Camlin, correct?

6 A Yes.

7 Q How long have you been with the Department of Natural
8 Resources?

9 A Twenty-two years.

10 Q Were you in law enforcement before then?

11 A No.

12 Q So your whole time has been with Natural Resources?

13 A Yes.

14 Q And how did you rise through the ranks?

15 A I began as a field officer and did several years as a
16 field officer. I worked in boater education and hunter
17 education with DNR, and then I became an investigator.

18 Q How long have you been an investigator?

19 A Approximately five years.

20 Q And I believe you said you worked with -- teaching?

21 A I do teach, yes.

22 Q Were you ever an instructor?

23 A Yes.

24 Q What do you instruct on?

25 A I instruct on boat operation for basic officers that

1 come in. I instruct on boating under the influence, even
2 hunter education.

3 Q Okay. I want to talk to you a little bit about boats
4 in general.

5 A Okay.

6 Q How is a boat the same as a car?

7 A Well, the boat is the same because it typically has a
8 motor on it. It has a steering mechanism, whether it's a
9 steering wheel or a tiller handle, and a car, of course,
10 has the steering wheel also.

11 Q How is it different?

12 A Well, it's different because the boat doesn't have
13 any brakes. It doesn't have any blinkers.

14 Q So how do you stop a boat?

15 A Well, you stop a boat using the throttle and ample
16 time.

17 Q How long does it normally take to stop a boat?

18 A It depends on the speed.

19 Q And are you familiar with the Lake Murray area, or do
20 you work in a different region?

21 A I work in different region. I'm just somewhat
22 familiar with it because I'm on the boating saturation
23 team.

24 Q Okay. And I know that you did not do this in this
25 particular case, but I think you just said you do

1 instructions on BUI?

2 A Uh-huh.

3 Q And I assume -- not assume. Have you ever given a
4 Breathalyzer or blood alcohol test to anyone?

5 A I have given the Breathalyzer. We call it the Data
6 Master.

7 Q How many times?

8 MR. HARVEY: Your Honor. I fail to see the relevance
9 in this case with the Data Master issue.

10 THE COURT: I don't know.

11 MS. SAMPSON: Your Honor, I'm just trying to lay a
12 foundation of how familiar she is with this type of
13 evidence. I just asked her a question. I wouldn't think
14 Mr. Harvey would have a problem with that.

15 MR. HARVEY: Your Honor, as my client's advocate, I
16 just want to make sure that they have a list that's
17 relevant to where we are, and that's it, Your Honor.

18 THE COURT: Well, I understand. She is laying the
19 foundation for something and I don't know what. Maybe you
20 do, but at this point, I'm not going to -- I overrule your
21 objection.

22 BY MS. SAMPSON:

23 Q You've given Breathalyzer tests.

24 A Yes.

25 Q How many, do you know?

1 A I don't know. I don't know.

2 Q More than 10?

3 A A few.

4 Q Okay.

5 A A few.

6 Q And have you seen any -- have you ever made any
7 arrests for boating under the influence?

8 A Yes.

9 Q When you make those arrests, does the person always
10 appear to be drunk?

11 MR. HARVEY: Your Honor.

12 THE WITNESS: No.

13 THE COURT: Sustained.

14 MS. SAMPSON: I'll move on.

15 BY MS. SAMPSON:

16 Q In this particular case, how did you become involved?

17 A I am an investigator, of course, and I was contacted
18 by an incident page on May 1st.

19 Q What's an incident page?

20 A An incident page is a statewide page that goes out to
21 investigators and administrative-level individuals that
22 inform us that there has been an incident.

23 Q Okay. And you received that page?

24 A I received the incident page about a double fatality
25 on Lake Murray. I wasn't on call at the time, but we

1 always keep in touch with the investigators that are
2 investigating.

3 Q So is it unusual for you to have your pager or
4 receive pagers when you are not on call?

5 A Yes.

6 Q Okay. So this was an out of the ordinary occurrence,
7 that would be fair to say?

8 A Well, it wasn't out of the ordinary that I received
9 it because any time there is a boating incident, the
10 investigators do receive pages.

11 Q Okay.

12 A But our assignments, depending upon the incident,
13 where it occurs.

14 Q So what did you do based on -- what happened after
15 you got the page?

16 A Well, after the page, I received a call from my
17 lieutenant at the time -- he is now the captain -- that
18 asked me to go to Lake Murray to assist in the double
19 fatality.

20 Q And how long did it take you to get there, do you
21 remember?

22 A I got there pretty quick.

23 Q Okay. And what did you see when you got there?

24 A When I got there, I arrived with another investigator
25 shortly thereafter.

1 Q You can say who it is.

2 A Okay, ray Lewis. We arrived almost together, which
3 in itself --

4 Q But you -- I'm sorry to interrupt, but were you all
5 in the same car?

6 A No. No, I was coming from my home.

7 Q Okay.

8 A Lieutenant Sullivan was there, and the -- one of the
9 first responding local officers was there.

10 Q And when you say there, where did you go?

11 A I went to Lake Murray Marina.

12 Q Okay. And when you arrived at Lake Murray Marina,
13 what did you see?

14 A I saw that there were individuals that were talking,
15 my lieutenant, Kevin Roosen, the officer that was one of
16 the first officers on the scene, and also saw a boat down
17 at the dock.

18 Q Okay. So what did you do once you arrived?

19 A Once I arrived, I spoke with Lieutenant Sullivan to
20 see if he gathered any information that I could use to
21 assist in the investigation, and I was assigned to do the
22 boat inventory on a Key West boat assisted by Officer
23 Kevin Roosen.

24 Q And who assigned you to do that?

25 A Lieutenant Southerland.

1 Q And that he is the person that would normally do
2 that?

3 A Yeah. Well, he is my -- he is my supervisor.

4 Q So he assigned you to go inventory the boat?

5 A Inventory the boat.

6 Q And did you do so?

7 A I did.

8 Q Okay. And what did you find?

9 A Well, we inventoried for everything that was on the
10 boat. I actually made a list of everything that was found
11 on the boat. We looked for safety equipment to make sure
12 that this individual that was operating the boat did abide
13 by the safety regulations.

14 Q And you got -- did you find the proper safety
15 equipment?

16 A Yes.

17 Q Okay. Go ahead.

18 A Okay. We check all of the storage areas for types of
19 contraband, anything that -- we can make sure that if we
20 see the boat, that we can account for everything that was
21 on it so that when it is returned to the owner, that they
22 get all of their items.

23 Q What would be contraband?

24 A Alcohol, drugs, just illegal items.

25 Q Would alcohol -- is alcohol important or have any

1 significance if you find it?

2 A Yes, it does.

3 Q What?

4 A Well, alcohol helps to develop our probable cause.

5 Q And in this case, did you find any alcohol?

6 A Not in this case I did not find any on the boat.

7 Q Based on that, what did you do?

8 A Based on that, I did the complete inventory, and then
9 I reported to Bundrick Island where I stood by to assist
10 when the Sylvan boat that was operated by Mr. Christofoli
11 returned.

12 Q And you stayed there until the boat got there? I
13 want to make sure I heard you right.

14 A Yes. When I completed my inventory, I was asked to
15 report to Bundrick Island, which I did. The Sylvan boat
16 that was operated by Mr. Christofoli was actually brought
17 to Bundrick Island on a barge.

18 Q And what did you do once you got there where the boat
19 was?

20 A Once I got there and the boat was there, we
21 inventoried that boat and we photographed it.

22 Q And State's Exhibit 33 -- they're all jumbled up so
23 kind of give me one second -- 33 and 32, did you take
24 these or were these taken by somebody else?

25 A These photographs were taken by somebody else.

1 Q Okay. The ones that you took are -- were when the
2 boat was already docked?

3 A Yes, on its trailer at Bundrick Island.

4 Q And I just wanted to make sure. When you
5 photographed it, did it look any different than these
6 photographs?

7 A Other than the fact that it was dark in these
8 photographs, the boat seems to appear the same as when I
9 photographed it.

10 Q When you photographed it, was it light outside? Had
11 it gotten light?

12 A Yes.

13 Q Okay. So after taking the photographs, what was your
14 next step?

15 A Well, we did inventory the boat, and then I also
16 photographed the Key West boat.

17 Q And did you find any -- when you inventoried the
18 boat, did you -- what did you find in the Sylvan boat?

19 A In the Sylvan boat, there were several items in the
20 Sylvan boat, safety equipment, shoes, a wallet. I
21 actually inventory, and I have the list and I -- you may
22 have it, but I have the list.

23 Q That's fine. Did you find any contraband?

24 A I found an empty Miller Lite can, and I believe, if I
25 recall, a full Miller Lite can.

1 Q And so what was your next step?

2 A The next step was making a plan for interviewing and
3 receiving statements for those involved.

4 Q Okay. And what goes into doing that?

5 A Well, you want to find out what happened as early as
6 possible.

7 Q Why is that?

8 A Some -- well, because it's fresh in the minds of
9 those that it happened to, and you can get some very
10 valuable information at that time before the individual
11 really gets to sit down and hash through it and figure it
12 out and then retell it.

13 Q Okay. And is that -- which is better, the retelling
14 or the first telling, in your mind?

15 A Well, the first telling.

16 Q Okay. And so what did you do at that point?

17 A Well, Ray Lewis and myself planned to do the
18 interviews. We began at the Richland County Memorial
19 Hospital.

20 Q And who was the first person you interviewed?

21 A We interviewed Mr. Rob Christofoli.

22 Q And were you able to get a statement from him at that
23 time?

24 A Yes. And if I recall, I think his mother wrote the
25 statement, but he did dictate it to her.

1 Q Okay. And you watched all of that?

2 A Yes.

3 Q Okay. And who was the next person you interviewed?

4 Oh one moment, beg the Court's indulgence.

5 (Pause.)

6 Okay. And what was the first person you interviewed?

7 A Mr. Colt Lax.

8 Q You did?

9 A Yeah.

10 Q You interviewed him at the hospital, as well?

11 A I'm sorry, ma'am. I didn't hear you.

12 Q I said you interviewed him at the hospital, as well?

13 A Yes, we did. Yes, we did.

14 Q And was he able to give you a statement?

15 A Yes, but as I recall, I do believe a family member
16 wrote the statement also.

17 Q Beg the Court's indulgence.

18 (Pause.)

19 And who was the next person you interviewed?

20 A The next person would have been Mr. Steven
21 Kranendonk.

22 Q And when you did his interview, who -- who was asking
23 him questions?

24 A Well, Ray Lewis was the primary investigator. I was
25 doing just bullet points that we may want to go back to.

1 Anything that we needed them to expound on, give some more
2 in-depth explanation.

3 Q Okay. And was he able to give you a statement?

4 A Yes.

5 Q And what, if anything, else did he do besides give
6 you a statement?

7 A Drew a diagram.

8 (WHEREUPON, State's Exhibit No. 57 was marked for
9 identification only.)

10 BY MS. SAMPSON:

11 Q I'm going to ask if you recognize it.

12 A I do.

13 Q And what is that?

14 A This is a diagram that was drawn by Mr. Steven
15 Kranendonk at the request of Investigator Lewis and
16 myself.

17 Q And is -- is that the original copy?

18 A Yes.

19 Q And is that what you saw him write himself?

20 A Yes.

21 Q Does it fairly and accurately depict what he drew
22 that day?

23 A Yes.

24 MS. SAMPSON: At this time, Your Honor, we'd ask that
25 State's Exhibit No. 57 and introduced into evidence.

1 THE COURT: Any objection?

2 MR. HARVEY: No objection.

3 THE COURT: Without objection.

4 BY MS. SAMPSON:

5 Q Thank you, Your Honor.

6 I'm going to stand here.

7 How does he explain what direction they were coming
8 in?

9 A Well, he just explained that they were coming from
10 Lighthouse Marina. Some people refer to it as the Rusty
11 Anchor also, but he was coming from that direction and
12 heading back home.

13 Q I wasn't sure. When you say heading -- he starts at
14 the -- where does he start at?

15 A He starts he leaving the Lighthouse or Rusty Anchor,
16 and he begins in the no wake zone.

17 Q So would that be fair to say on this picture it's on
18 the bottom, and he goes to --

19 A Correct.

20 Q -- using north, south, east and west on here?

21 A Correct.

22 Q So he starts south on this picture south and goes
23 which way?

24 A Goes south to north.

25 Q Or he's heading north?

1 A Yes.

2 Q Okay. Starts at the bottom of the page --

3 A Yes.

4 Q -- and goes towards the top.

5 A Yes.

6 Q Okay. Sorry about that. I'm not so good with
7 directions.

8 All right. And where does he show the other boat
9 coming from?

10 A He shows the other boat coming from his right between
11 Susie Ebert Island and the Coast Guard station.

12 Q Okay. And he actually -- does he draw those islands
13 and that kind of information on there?

14 A Yes, he does; yes, he does.

15 MS. SAMPSON: May I publish it to the jury, Your
16 Honor?

17 THE COURT: Yes, ma'am.

18 MS. SAMPSON: Thank you.

19 BY MS. SAMPSON:

20 Q So after you talked with Mr. Kranendonk, what did you
21 do?

22 A After we spoke with Mr. Kranendonk, we traveled to
23 the address of two of the passengers on Mr. Kranendonk's
24 boat.

25 Q Okay. And were you able to be speak to those women?

1 A Yes.

2 Q And did they provide statements to you all at that
3 time?

4 A Yes, they did.

5 Q And who was the next person you all interviewed?

6 A The next person was Mr. Corley. I believe that I
7 have written it as William Corley. That may be his middle
8 name or first name but....

9 Q Did he give you a written statement at that time?

10 A Now, when you say "me", I --

11 Q Or both of you.

12 A Yes.

13 Q Okay. He was able to tell you all what happened?

14 A Yes.

15 Q Okay. And what did you do? Was that -- did you do
16 anything else that day?

17 A That day, I believe that we just gathered together
18 and went back to Bundrick Island to talk about the
19 incident.

20 Q Okay. Did you ever -- what, if any, information did
21 you receive about alcohol having been on Mr. Kranendonk's
22 boat?

23 A Well, on several of the statements --

24 MR. HARVEY: Your Honor, I'm going to -- and I

25 apologize to the Court. I thought she was about to refer

1 to a statement by someone else.

2 BY MS. SAMPSON:

3 Q You can answer the question.

4 A The statement that we took stated that alcohol was
5 purchased by Mr. Steven Kranendonk earlier in the day and
6 that alcohol was consumed by Steven Kranendonk throughout
7 the day, and I was contacted later by Ray Lewis.

8 He had received information about the removal of
9 alcohol from the boat when they came to Lake Murray
10 Marina.

11 Q Okay. And Mr. Lewis provided you that information?

12 A Yes.

13 Q Were you there when they recovered the bottle from
14 the witness?

15 A No.

16 Q And did you receive any information -- or what, if
17 any, information did you receive about the downloading of
18 the GPS? Were you involved in that at all?

19 A I actually contacted Lowrance to see if we could get
20 that information from the machine, and I got step-by-step
21 instructions on how to do that from Mr. Craig Campbell,
22 and I relayed those to Investigator Ben Thomas. Ben
23 Thomas carried out retrieving the information.

24 Q That was not part of -- or was that part of your
25 duties?

1 A No.

2 Q Were you involved at all in checking whether the
3 lights worked on the vessels?

4 A I was there when we did check the operation of it.

5 Q And were they working?

6 A Yes.

7 Q Did Mr. -- did Investigator Lewis relay to you any
8 information about whether they were able to get the
9 tracking of the boat off of the Lowrance?

10 A Investigator Lewis told me that --

11 MR. HARVEY: Objection to whatever Investigator Lewis
12 says, Your Honor.

13 THE COURT: Sustained.

14 BY MS. SAMPSON:

15 Q Based on your conversations with Mr. Lewis, were you
16 able to get the tracking information off of the Lowrance?

17 A Yes.

18 Q Beg the Court's indulgence.

19 (Pause).

20 All right. I'm going to ask you a little bit --
21 we've heard this about Bundrick Island. Where is Bundrick
22 Island?

23 A Again, I'm not really familiar with the lake. The
24 Department of Natural Resources uses Bundrick Island to
25 put their boats in, and there are some other -- another

1 law enforcement agency that also uses it as a satellite
2 office.

3 Q Is that why the boats were taken to Bundrick Island?

4 A Yes.

5 Q Was that out of ordinary to do?

6 A No.

7 Q Okay. And I want to talk to you a little bit
8 about -- we talked about some boat terminology earlier.
9 When you boat planes out, can you tell how fast it's
10 going?

11 A Not -- just in and of itself as to planing out, but a
12 boat to have less drag on the water or resistance to the
13 water actually wants to plane out to get where they're
14 going quicker and also to throw less of a wake if they're
15 operating around docks.

16 Q And why do you want to throw less of a wake?

17 A Because it disturbs other boats, damages property,
18 and could be dangerous to someone else.

19 Q And as part of your training and teaching, you teach
20 about the rules and regulations of boating safety?

21 A I do.

22 Q What does it mean if you see a red light?

23 A If you see a red light, it means you're either going
24 to stop or you're going to alter your sense of action at
25 the time.

1 Q You do one of those two things?

2 A You do one of those two things.

3 Q If you do neither of those two things, would that be
4 proper?

5 A That would be proper. That would be against the
6 navigation rules.

7 Q Okay. And if you see another boat in your path, what
8 should you -- what is the best course to do?

9 A Well, if you see the boat in your path and if you're
10 going back to the lights, the rules of the road tell you
11 if you see a red light or a red and white light, that
12 tells you that a boat is approaching from your right.

13 Any boat that approaches from your right is a boat
14 that should maintain their course of speed. You are the
15 boat that will either slow down, come all the way off the
16 throttle or actually alter your course to avoid a
17 collision.

18 Q If a boat is approaching from the right, would you
19 ever see its green light?

20 A No.

21 Q All right. And I'm sorry about going back and forth.
22 You've seen Mr. Kranendonk.

23 A Uh-huh.

24 Q Do you remember talking to him about what had
25 happened?

1 A Mr. Kranendonk actually told us that he observed the
2 boat at about -- approximately 100 yards from him.

3 Q 100 yards?

4 A Yes, and he also saw it on his radar because the
5 radar is operational.

6 Q Let's get to that. I'm sorry, I almost skipped that.
7 This boat had a radar?

8 A Yes.

9 Q Do all boats have radars?

10 A No.

11 Q But this one had it?

12 A Yes, it did.

13 Q What does the radar do?

14 A Well, the radar can be used as one of the tools of
15 navigation in that the way it observes the area for you,
16 it can indicate the land masses, where other boats are in
17 relation to you.

18 It does -- it's a gadget. It does a lot of things
19 and many things even higher tech than I can explain to
20 you, but it has some navigation rings, range rings that
21 you can actually manipulate.

22 MR. HARVEY: Your Honor, she just stated she couldn't
23 plain the other functions. I object to further testimony
24 explaining functions.

25 THE COURT: Well, I think she's -- I think she is

1 talking within the range of common knowledge. That is
2 fairly straightforward. I'm going to allow it.

3 BY MS. SAMPSON:

4 Q Continue. You're talking about the range circles.

5 A The range circles, and you can set your range circles
6 to different distances. And knowing that when you set it
7 to a certain distance that anything that falls within that
8 range circle will help you determine in how close, how far
9 they are from you. So you -- it will enable you to make
10 correct decisions to avoid collisions.

11 Q So it's navigational tool?

12 A It is.

13 Q And you said Mr. Kranendonk told you he saw the boat
14 on his radar?

15 A Yes.

16 Q Did he -- and he saw it how far away?

17 A He said that his radar was out to a quarter of a
18 mile, but he saw it in his guesstimate, as far as his eye
19 shot, within 100 yards.

20 Q And he saw it on his radar?

21 A Correct.

22 Q And what else did he tell you? I'm sorry I stopped
23 you.

24 A It's okay. He told me that -- he started out at the
25 beginning by saying he saw red and green lights, and then

1 as he spoke to me, it went from red and green to red.

2 Q Okay.

3 A And then, as he spoke to me again, it went back to
4 red and green.

5 Q Did you clarify what he meant, or did you just let
6 him speak?

7 A I let him speak, and I actually asked him,
8 "Mr. Kranendonk, if you see a red, a red and white light,
9 what do you do?"

10 Q And what was his response?

11 A He couldn't tell me. He locked up.

12 Q All right. What else did he tell you?

13 A He pretty much stated where everyone was in the boat.
14 He stated that the boat was coming from his right, and I
15 tried to stay consistent with everyone in actually using
16 the face of a clock as an example of the position of the
17 boats when they actually were able to see them.

18 Mr. Kranendonk said that the boat that was
19 approaching him was at about the two, 2:30 position.

20 Q Okay. So on a clock, two to 2:30?

21 A Yeah, two to 2:30.

22 Q Did he give you any information as to whether he had
23 taken any boater education classes?

24 A Yes.

25 Q What did he tell you?

1 A He told us that he had taken boater education at the
2 age of 14 and 15, and he took it at Crooked Creek.

3 Q Did he give you any indication as to how fast he
4 thought he was going?

5 A He said he was going about 35 miles an hour when he
6 saw the boat.

7 MS. SAMPSON: Okay. No further questions. Please
8 answer anything Mr. Harvey has.

9 CROSS-EXAMINATION:

10 BY MR. HARVEY:

11 Q Ms. Camlin, may I call you Robin?

12 A Yes, sir.

13 Q Okay, Robin. You and Mr. Lewis went to
14 Mr. Kranendonk's home in the early afternoon of May 2nd,
15 correct?

16 A Yes, sir.

17 Q You went to his residence. Actually, you sought the
18 assistance of his mother because he was sleeping, and
19 y'all had to wake him up, right?

20 A Yes.

21 Q All right. So the Kranendonk family, throughout your
22 interaction with him, they were cooperative, correct?

23 A My only interaction was seeing Kevin Kranendonk at
24 his home and assisting Ray Lewis.

25 Q All right. Well, his family provided assistance so

1 you could talk to Steven, correct?

2 A Yes.

3 Q Okay. Would you -- I'm not trying to be
4 argumentative. You'll agree with me --

5 A I was --

6 (Talking over each other.)

7 Q You'll agree with me that's being cooperative,
8 wouldn't you?

9 A Yes.

10 Q Okay. I mean, you guys announced yourself as law
11 enforcement. You were investigating an accident. You
12 couldn't get in touch with Steven, so you got in touch
13 with his mom.

14 In essence, his mom said, "Let me help you. I'll
15 call him", right?

16 A Well, he actually spoke with Ray Lewis. I never
17 spoke with his mother. I never requested anything of his
18 family.

19 Q Okay. Now, you're at Steven's residence the
20 following day, correct?

21 A Yes.

22 Q It's -- Steven had been interviewed earlier that same
23 morning. This is May 2nd?

24 A Okay.

25 Q Well, you're the interviewer, and you're testifying

1 from your recollection of the events. Do you know what
2 day you interviewed him?

3 A Yes, but I did not interview him that morning.

4 Q Do you know the day that you sat in and listened on
5 the interview with Mr. Lewis?

6 A Yes, it was the 7th.

7 Q Okay. You'll agree with me that you were there with
8 Mr. Lewis on the 2nd --

9 A Yes.

10 Q -- correct? And you'll agree with me that that
11 occurred about 1:10 in the afternoon?

12 A Yes.

13 Q And you'll agree with me that over the course of your
14 investigation, you have come to learn that Mr. Kranendonk
15 was interrogated at the hospital sometime between three
16 and four a.m., correct, the same day?

17 A I was not aware that he was interrogated at the
18 hospital.

19 Q Okay. He was questioned in the interview by
20 Mr. Bickley, correct?

21 A I believe he received a statement from
22 Mr. Kranendonk.

23 Q But you'll agree with me that Mr. Bickley asked
24 Mr. Kranendonk some questions, and Mr. Kranendonk gave
25 answers to the questions?

1 A Yes.

2 Q Okay. And that's what happened at his home later on,
3 his residence. Mr. Lewis asked him a question, and
4 Mr. Kranendonk gave some answers, correct?

5 A Yes.

6 Q And while you were there, you made sure you testified
7 in response to the prosecutor's question that you made
8 some notes because you testified from your notes about
9 some of the answers you gave, correct?

10 A Well, I can remember some of the answers today, yes.

11 Q But didn't you also make a memo to the file?

12 A Yes, I did.

13 Q Did you review the memo to the file before you came
14 to court today?

15 A Yes.

16 Q Do you have the memo to the file with you today?

17 A I believe I do.

18 Q And did you -- did you refresh your memory before you
19 testified from reviewing your memo?

20 A Yes.

21 Q Okay. Now, in response to the prosecutor's question,
22 you stated that Mr. Kranendonk told you he was going 35
23 miles an hour, correct?

24 A Yes.

25 Q Okay. And I'm having a little operator difficulty.

1 (Pause).

2 All right. So Mr. Kranendonk tells you his vessel,
3 he believes, is traveling somewhere at the speed of 35
4 miles per hour, correct?

5 A Yes.

6 Q Now, and did you come to learn from the statement
7 that were obtained from Mr. Christofoli that
8 Mr. Christofoli said his boat was going about 25 miles an
9 hour?

10 A Yes.

11 Q All right. So you'll agree with me that you have the
12 knowledge that both boats involved in this incident were
13 traveling at speeds that the operator determined, based on
14 your recollection, to be Mr. Kranendonk's at 35 and
15 Mr. Christofoli said 25, correct?

16 A Yes, as I can remember it.

17 Q Now -- all right. Now, miles per hour is determined
18 by -- the computation is what? We know -- now, we know
19 when we look at a running track, four laps around is a
20 mile, right?

21 A Yes.

22 Q There are 440 yards in a lap. I used to run track.
23 I ran the 880. That's two laps, okay, and if you take
24 440 yards times four laps, that's 1,760 yards, you agree
25 with me?

1 A I haven't done the calculations. You obviously did.

2 Q And you'll agree with me that there are 5,280 feet in
3 a mile?

4 A Yes.

5 Q Okay. And when you go 60 miles an hour, you go a
6 mile a minute, right?

7 A Yes.

8 Q Now, and 60 miles an hour is 88 feet per second,
9 right?

10 A Okay, if you've done that calculation. I haven't.

11 Q Now, 30 miles an hour is 44 feet a second, right?

12 A Okay, if you've done the calculation.

13 Q And 35 miles an hour would be 51.33 feet a second,
14 and 25 miles an hour is 36.67 feet per second, right?

15 A If you've done the calculation.

16 Q All right. And you had -- somewhere the solicitor
17 had given you a document. I believe it may have been
18 published to the jury where Mr. Kranendonk drew a diagram.
19 It's not to scale, correct?

20 A Correct.

21 Q All right. And Mr. Kranendonk says he's going 35
22 miles per hour, right?

23 A He did.

24 Q Mr. Christofoli says he's going 25 miles per hour,
25 right?

1 A He did.

2 Q All right. And you'll agree with me when
3 Mr. Kranendonk says -- and you used the word, I believe,
4 "eye shot" to describe the distance. Was that your
5 phrase?

6 A Well, to see it, that he saw it with his eyes.

7 Q All right. Now, Mr. Kranendonk, according to your
8 recollection, he's going 51.33 feet a second, you'll agree
9 with me?

10 A If you've done the calculation.

11 Q Okay. I have done the calculation.

12 A Okay. I haven't.

13 Q And 25 miles an hour is 36.67 feet per second, and
14 100 yards equals 300 feet. You will agree with me on
15 that?

16 A It was --

17 Q From goal line to goal line is 300 feet.

18 A Okay.

19 Q Okay. Now, when Mr. Kranendonk says he sees that
20 boat, he's moving, according to your statement or your
21 recollection of the statement, 51.33 feet per second
22 towards the object he sees, correct, if he's going 35
23 miles an hour?

24 MS. SAMPSON: Your Honor, at this time, I'm going to
25 have to object. At this point, he is asking her to adopt

1 what he informed her the calculations are. She already
2 said she doesn't know what the calculations are.

3 THE COURT: Sustained.

4 BY MR. HARVEY:

5 Q You testified that Mr. Kranendonk told you he was
6 going 35 miles per hour.

7 A I reported what he told me.

8 Q And your recorded recollection that you testified to
9 in response to the prosecutor's question is his boat was
10 going 35 miles per hour?

11 A Yes.

12 Q And Mr. Christofoli -- you've come to learn that
13 Mr. Christofoli's boat -- boat is moving at 25 miles per
14 hour, correct?

15 A That's what he told me.

16 Q That's what he told you. And you also testified
17 earlier that you like to obtain statements early on,
18 because that's when people's recollection is freshest,
19 correct?

20 A Yes.

21 Q And you had mentioned -- or you'll agree with me that
22 in the discharge of the duties of DNR in investigating
23 this accident, they got statements from the occupants of
24 the Christofoli boat?

25 A Yes.

1 Q Meaning Mr. Lax and Mr. Christofoli?

2 A Yes.

3 Q The occupants of what we'll call the Kranendonk boat:
4 Steven, Harrison, Jeff, and Mallory, correct?

5 A Yes.

6 Q All right. And those statements were taken within
7 the timeframe that you just -- you like to get stuff when
8 they're freshest, right?

9 A Mr. Harrison's statement was taken at a later time by
10 us.

11 Q Okay. But the girl's statement was taken in --
12 within your fresh timeframe.

13 A As fresh as we could get there. It was the next day.

14 Q Okay. Now, you'll agree with me that these boats --
15 when boats are on the water and they're traveling -- and
16 boats are traveling so many feet per second, actually, the
17 closing speed of each boat -- as the closing speed of how
18 they get close together isn't the speed of one boat, but
19 it's the speed of each boat.

20 As this boat moves in a direction and this boat moves
21 in a direction, they close the distances by their combined
22 speed, correct?

23 A Yes.

24 Q Okay. So when one boat is going 35 miles an hour and
25 one boat is going 25 miles an hour, it doesn't take a very

1 long period of time to close a distance of 300 feet, does
2 it?

3 A I don't know that time.

4 Q You don't know that time, but you don't know from
5 your own experience operating a boat on a lake that if
6 you're operating a boat, let's say in open water and
7 operating a boat at the speed that Mr. Christofoli
8 testified that he was operating his boat at 25 miles an
9 hour, his boat is covering distance at a lot of feet per
10 second. You don't want to agree with me that it was
11 36.67 feet per second?

12 A I'm not going to agree or disagree --

13 Q Okay.

14 A -- because I have not done the calculation.

15 Q Okay. All right. Well, you'll agree with me that
16 based upon Mr. Kranendonk's statement which you observed,
17 and the information you were able to gather in the
18 interview, you've got two boats that are traveling on the
19 lake.

20 At some point in time, the boats cover the distance
21 between them, and at some point in time a collision
22 occurs. You'll agree with me?

23 A Yes.

24 Q Okay. You just won't agree with me on how many feet
25 per second these boats are covering?

1 A Correct.

2 Q Okay. But you'll agree with me they were covering
3 multiple, multi feet per second. You just won't agree
4 with the precise number?

5 A They're covering the water --

6 Q Okay.

7 A -- for a period of time.

8 Q And you'll agree with me that when he talked -- on
9 that Saturday afternoon, he was compliant with your
10 request to interview him?

11 A Yes.

12 Q You asked him to draw a picture?

13 A Yes.

14 Q And he gave you what you believe to be his best
15 efforts in drawing a picture?

16 A He gave us a picture.

17 Q All right.

18 A And I was there when he did it.

19 Q Okay. And in your bullet point --

20 A Uh-huh.

21 Q -- you didn't make any notation about any difficulty
22 in interacting with Steven and asking Steven to provide
23 the drawing, did you?

24 A No, I didn't.

25 Q Okay. And you were asked some questions about lights

1 and operating the boats at night. Do you remember those
2 questions?

3 A Yes.

4 Q Now, actually, we've got nighttime navigational
5 procedures, correct?

6 A Yes.

7 Q There's daytime and nighttime, correct?

8 A Yes.

9 Q Supposed to have lights on between sunset and
10 sunrise, right?

11 A Yes.

12 Q All operators are to be -- all operators are to be on
13 the lookout for lights of other vessels when operating a
14 boat at night.

15 A Yes.

16 Q All operators. So you have two boats, two operators.
17 The operator of each boat under the rules of the water are
18 to be on the lookout for the lights of other vessels?

19 A Yes.

20 Q Now, we've got -- at nighttime, we call it lights,
21 side lights, and it can be a red and green light, and
22 there's a combination light, correct?

23 A They can be in combination or separated from the
24 front or bow of the boat.

25 Q Okay. And you'll agree with me the red light is on

1 the portside?

2 A Yes.

3 Q The green light is on the starboard side?

4 A Yes.

5 Q Okay. And the stern end -- and there's a stern light
6 which is in the back.

7 A Yes.

8 Q And that's a white light, correct?

9 A Yes. A stern light illuminates to the back.

10 Q Now, if an operator approaches a boat and sees only a
11 white light at night --

12 A Uh-huh.

13 Q -- the boat with the white light is the stand on
14 vessel, correct?

15 A Correct.

16 Q And you go around port or starboard side?

17 A Well, I do want to correct you on that. That is only
18 one of the times when you see a white light that goes to a
19 stand-on vessel.

20 The boat that is seeing that white light is what is
21 referred to as give-way vessel, which is a vessel that has
22 to alter their course, slow down, or take all the way off
23 to avoid a collision.

24 Q All right.

25 A The stand-on boat is actually the boat that maintains

1 their course and speed.

2 Q All right. Let me ask you another way: Listen to
3 the question, please, and respond to the question. If
4 you'd like to explain it, I want you to explain it, but
5 please respond to the question.

6 An operator approaches a boat and sees only a white
7 light. So far so good?

8 A So far so good.

9 Q The boat would -- in this instance, the boat with the
10 white light is the stand-on vessel.

11 A Yes.

12 Q And the boat that -- and the other boat is the
13 give-way vessel, correct?

14 A Yes.

15 Q Okay. Now, if an operator is approaching a vessel
16 and sees a green and white light --

17 A Uh-huh.

18 Q -- that operator is the stand-on vessel, correct?

19 A When they see the green and white light, they should
20 interpret that as they maintain their course and speed,
21 but they have to be responsible because another boat does
22 not know the rules to navigation.

23 They are to come all the way off or alter their
24 course to avoid a collision.

25 Q All right. So you'll agree with me -- again, let me

1 ask you this: The operator approaches the vessel and sees
2 a green and white light. That operator is operating the
3 stand-on vessel. However, that operator must remain
4 alert, and the other boat is the give-way vessel just like
5 you describe.

6 A Yes.

7 Q And --

8 A When you interpret the green and white, you are the
9 stand-on boat. The operator interprets the red or red and
10 white, they have to give way.

11 Q And you'll agree with me, no matter which boat you're
12 operating, every boat operator has that responsibility
13 always to remain alert, just like you testified to and do
14 whatever you can to remain alert and avoid any type of
15 encounter with another boat, right?

16 A You have to abide by the navigation rules --

17 Q All boats have that.

18 A -- when you make your decisions, yes.

19 Q So when you have a collision -- and let me just move
20 on.

21 Now, if the operator sees red and white, they must
22 give way or slow down or turn to the right or pass behind.
23 Red and white, that operator must give way or slow down,
24 correct?

25 A Yes.

1 Q Now, Mr. Kranendonk told you that he saw red and
2 white lights and green and red lights, correct?

3 A He began by saying he saw red and green lights, then
4 mostly red and then back to red and green.

5 Q All right. And when something happens fairly quickly
6 like closing the distance of 100 yards with two boats
7 moving at a fair rate of speed, things happen quickly,
8 correct?

9 A Things happen quickly in a shorter distance and
10 distances that are longer.

11 Q And Mr. Kranendonk was trying to give you his best
12 recollection of an incident that happened in a fairly
13 short amount of time?

14 A He told me when what he experienced.

15 Q Right. And there is no doubt in your recollection
16 that he told you he saw green lights, and there is no
17 doubt in your recollection he also told you he saw red
18 lights, correct?

19 A He said he saw red and green, which makes a
20 difference in a number of ways. Then when he sees red,
21 mostly red, it makes a difference, and then when he sees
22 red and green again, it makes a difference because all of
23 the lights have arcs of visibility.

24 There are certain positions that boats are to each
25 other that you're going to be able to see that certain

1 color of light.

2 Q Okay. And in order to see green light, a green light
3 is on the starboard side, correct?

4 A Correct.

5 Q So if a boat is operating, and the starboard side
6 becomes more visible to you, you're going to see the green
7 light, correct?

8 A Yes.

9 Q And if the green light is more visible to you, like
10 you said, you see the starboard side. If the port light
11 is more visible to you, you see the red light.

12 A Yes.

13 Q Okay. Now -- you were asked questions about safety
14 equipment. Did you remember those questions?

15 A Yes.

16 Q You were asked questions about contraband. Is there
17 an open container law for beer on the lake?

18 A No.

19 Q All right. So you'll agree with me that beer is not
20 contraband?

21 A No.

22 Q Okay. Is there -- is alcohol contraband, meaning
23 whiskey?

24 A It's not contraband.

25 Q All right. So it's not like -- you'll agree with me

1 marijuana is contraband?

2 A Yes.

3 Q Marijuana is illegal?

4 A Right.

5 Q Okay. That's contraband. So when you were answering
6 the prosecutor's questions about contraband, alcohol might
7 be of some evidentiary value --

8 A Yes.

9 Q -- to you, but it doesn't enjoy the status of
10 contraband like marijuana or methamphetamine or cocaine,
11 does it?

12 A Correct.

13 Q Thank you for being patient with me. I know it's
14 long for both of us. I just beg your indulgence for a
15 moment.

16 A Okay.

17 (Pause).

18 MR. HARVEY: Beg the court's indulgence one moment,
19 Your Honor.

20 (Pause.)

21 That's all I have, Your Honor.

22 THE COURT: All right. Approach the bench.

23 (Whereupon, there was a bench conference.)

24 THE COURT: All right. Ladies and gentlemen, let's
25 take a short afternoon break. I'll ask you to go to the

1 jury room. Just relax a few minutes. Don't discuss the
2 case among yourselves while you're in the jury room.
3 We'll recall you in a few minutes. Just relax a few
4 minutes.

5 (WHEREUPON, the jury left open court at approximately
6 4:28 p.m.)

7 THE COURT: Bring the jury, please.

8 (WHEREUPON, the jury came into open court at
9 approximately 4:43 a.m.)

10 THE BAILIFF: Your Honor, the jury is present.

11 THE COURT: Thank you very much.

12 Ms. Sampson, you may continue.

13 MS. SAMPSON: Thank you, Your Honor.

14 REDIRECT EXAMINATION:

15 BY MS. SAMPSON:

16 Q Hi, Investigator Camlin. Mr. Harvey asked you some
17 questions, and I just want to cover some things. In
18 talking about the lights, did Mr. Kranendonk -- when did
19 he ever tell you he only saw a white light?

20 A I don't recall when he ever told me that.

21 Q Did he ever tell you that he only saw a green light?

22 A No.

23 Q Okay. And if he had only seen a green light, based
24 on your experience, would he have been able to cause this
25 kind of damage on this side of the boat?

1 MR. HARVEY: Objection to the question. I ask her to
2 withdraw it. That's not -- object to the question.

3 THE COURT: Well, I frankly diverted my attention for
4 a minute. What was the question?

5 MS. SAMPSON: The question was if he had only seen a
6 green light, would he be able to cause damage to this boat
7 on this side of the boat?

8 THE COURT: I think that calls for speculation. I
9 sustain the objection.

10 BY MS. SAMPSON:

11 Q Which side of the boat is hit on State's Exhibit 32?

12 A The left side.

13 Q And which side of the boat was facing
14 Mr. Kranendonk's boat?

15 A The left side.

16 MR. HARVEY: Your Honor, I object. She can't answer
17 that question.

18 THE COURT: I agree, sustained.

19 MS. SAMPSON: Where is it hit?

20 MR. HARVEY: That's been asked and answered, Your
21 Honor. This is --

22 THE COURT: Overruled.

23 MR. HARVEY: Thank you.

24 THE WITNESS: He said right in the middle of the left
25 side.

1 BY MS. SAMPSON:

2 Q And on State's Exhibit No. 13, where is the damage to
3 Mr. Kranendonk's boat?

4 A The bow.

5 Q Which is?

6 A On the front.

7 Q And which light is on the left side of the boat, the
8 right -- the red one or the green one?

9 A The red is on the left side of the boat.

10 Q Now, he talked about a stand-on boat and a give-way
11 boat. The stand-on boat is which one in these two boats?

12 A The stand-on boat would --

13 MR. HARVEY: Your Honor, that calls for speculation
14 on her part.

15 THE COURT: I agree. She wasn't there. She can't
16 recreate the accident.

17 BY MS. SAMPSON:

18 Q Based on Mr. Kranendonk telling you he saw a red
19 light, which boat would be --

20 MR. HARVEY: Your Honor, that --

21 MS. SAMPSON: -- the stand-on boat?

22 MR. HARVEY: Objection. The question, Mr. Kranendonk
23 said he saw a green --

24 THE COURT: I understand that.

25 MR. HARVEY: A green and red light.

1 THE COURT: All right. I sustain the objection to
2 this entire line of questioning. She is not in a position
3 to recreate the accident. She can say what she saw. She
4 can say what he did but asking her opinion about how the
5 accident happened is outside the rules.

6 BY MS. SAMPSON:

7 Q Yes, sir.

8 Investigator Camlin, did Steve Kranendonk tell you he
9 saw a red light?

10 A Yes.

11 Q What are you supposed to do when you see a red light?

12 A Alter your course, stop or reduce your speed.

13 Q And if you are the boat that sees the red light,
14 which boat are you, the stand on or the give way?

15 A I am the give-way boat if I see the red light. It
16 means I have to alter my course, slow down or take all the
17 way off to avoid a collision.

18 Q And did Mr. Kranendonk -- what, if anything, did he
19 tell you about altering his course when he saw the red
20 light?

21 A Mr. Kranendonk actually stated that his boat -- when
22 he saw the red light?

23 Q Yes.

24 A That he did not know what to do.

25 Q Okay. And Mr. Harvey asked you about both operators

1 having to remain alert.

2 A Yes.

3 Q What, if anything, did Mr. Kranendonk do to show you
4 he did not remain alert?

5 A Well, there were a number of things as far as
6 violating the navigation rules.

7 Q Why don't you tell us what he did.

8 A Well, he didn't show that he was responsible as an
9 operator. He didn't take due regard to --

10 MR. HARVEY: Your Honor, that's speculation based
11 upon a question. She has answered the question he saw red
12 and green lights.

13 He gave a chronology of what he observed. They've
14 now isolated and taken out the totality of his responses
15 based on a hypothetical that's not in evidence. I object
16 to the question.

17 MS. SAMPSON: Your Honor, I asked her what did he
18 tell her that shows him did not remain alert. I'm talking
19 about his whole conversation. I didn't ask just for
20 specifics.

21 THE COURT: She can say what he said. She just can't
22 interpret it in terms of fault for this accident.

23 MS. SAMPSON: I'm not asking her for fault. I asked
24 her --

25 THE COURT: Well, it sounded like it.

1 BY MS. SAMPSON:

2 Q I can state my question again.

3 What, if anything, did Mr. Kranendonk tell you that
4 shows that he did not remain alert?

5 A (There was no response).

6 THE COURT: That's the same, the same question. She
7 can say what he said.

8 MS. SAMPSON: May I approach the witness, Your Honor?

9 THE COURT: Yes.

10 BY MS. SAMPSON:

11 Q I want you to look at this and see if you recognize
12 what this is.

13 A This is a Law Enforcement Waiver of Rights.

14 Q And what is --

15 MR. HARVEY: Your Honor, I've been shown this
16 document. It is -- it is a statement obtained by another
17 officer at another time. It has not been introduced into
18 evidence.

19 MS. SAMPSON: I'm not introducing it as evidence.

20 MR. HARVEY: Tried to -- this officer didn't take the
21 statement which is recorded and made by my client. There
22 was testimony by the officer who took the statement as to
23 the gist of the statement.

24 THE COURT: Well, who -- who are you talking about?

25 MR. HARVEY: Officer Bickley -- they have just handed

1 this officer a written statement taken by -- produced by
2 Mr. Kranendonk, an officer --

3 MS. SAMPSON: Your Honor, if he prefers, I'll
4 introduce what has already been introduced into evidence.
5 It's State's Exhibit No. 55 and 54.

6 BY MS. SAMPSON:

7 Q Now, if you'll take a moment, could you please read
8 to yourself State's Exhibits 54?

9 A (Complies.)

10 Q Now, are there deferences between that written
11 statement and what he told you when you spoke with him the
12 next day?

13 A Yes.

14 Q Were -- is there anything in that written statement
15 about the radar?

16 A Yes.

17 Q And what did he tell you about the radar?

18 A He told me about the radar; that he saw the boat on
19 the radar, and the radar range was out to a quarter of a
20 mile, and he saw the boat as he left the --

21 Q And what did he tell you he did in response to seeing
22 that boat on the radar?

23 A Well, there -- he -- there was a point that he
24 flashed lights and blue horns.

25 Q Was that -- and when did he tell you that happened?

1 A When the space was closing between them within just a
2 short distance.

3 Q Is that what regulations say to do?

4 A No.

5 Q What do regulations say to do?

6 A They tell him based on what he has interpreted in the
7 lights to --

8 MR. HARVEY: Your Honor, again, she is trying to
9 interject knowledge into what he is supposed to do and
10 about the operation of his boat. That, again, is outside
11 the purview of her expertise.

12 THE COURT: Approach the bench.

13 (Whereupon, there was a bench conference.)

14 THE COURT: All right. Ladies and gentlemen, let me
15 try to hash this out with the attorneys. Just go to the
16 jury room for a few minutes. It won't take long. We
17 won't have time for a soft drink..

18 (WHEREUPON, the jury left open court at approximately
19 4:57 p.m.)

20 THE COURT: Ms. Sampson.

21 MS. SAMPSON: Thank you, Your Honor. I want to go
22 over your credentials right now.

23 THE COURT: For what purpose?

24 MS. SAMPSON: In order to qualify her as an expert in
25 boat regulations.

1 THE COURT: For what purpose?

2 MS. SAMPSON: In order to ask her questions about
3 what regulations for violated or could have been violated
4 since there seems to be some question as to what the
5 regulations are and aren't and what was done and wasn't
6 done by both the victim and the defendant.

7 THE COURT: All right.

8 MR. HARVEY: Your Honor, she has testified at length
9 about red lights, a green light, the scenarios that have
10 been presented in evidence based upon Mr. Kranendonk --
11 the information he provided.

12 She has been asked those questions. She has answered
13 those questions. She has, prior to this time, given her
14 opinion about what's proper and improper. This is
15 cumulative.

16 I don't think it helps the jury to determine what's
17 at issue. This additional testimony by Investigator
18 Camlin won't aid the trier of facts.

19 She has already testified into what the navigational
20 rules are. She has given an opinion of what
21 Mr. Kranendonk did incorrectly based upon the
22 information --

23 THE COURT: I think I sustained those objections.

24 MS. SAMPSON: That is correct, Your Honor.

25 THE COURT: I don't believe I allowed her to testify

1 about operating a boat.

2 MR. HARVEY: You're operating a boat, and you see a
3 red light, what are you supposed to do? That's the
4 regulation. That's what she wants her to testify to, to
5 be an expert in boating regulations, what she has already
6 testified to.

7 THE COURT: Didn't you ask her a similar question?

8 MS. SAMPSON: Yes.

9 MR. HARVEY: I asked her about the rules of
10 navigation. She answered. She answered the same
11 questions that the prosecutor asked her about the rules of
12 navigation.

13 THE COURT: All right. Well, you -- will you admit
14 to her qualification?

15 MR. HARVEY: Even if she is qualified, Your Honor, I
16 believe the substance of this testimony is cumulative and
17 won't aid the trier of fact. It is -- I forget the Rule
18 of Evidence.

19 THE COURT: 403.

20 MR. HARVEY: It is also part of 403 about cumulative.
21 I have listened to Your Honor, and I understand that in a
22 trial like this, from my perspective, I can articulate
23 that anything is prejudicial, but I'm focusing on the
24 other elements of 403 because there's ample testimony
25 that's been provided to the jury to aid in its

1 determination of what this witness says an operator is
2 supposed to do based upon the information applicable to
3 Mr. Kranendonk's case.

4 THE COURT: I think you asked her your questions in
5 the abstract about the regulations. You did not -- you
6 didn't particularize them, these two vessels, only in the
7 sense that you talked about the speeds.

8 MR. HARVEY: Correct.

9 THE COURT: Correct?

10 MR. HARVEY: And I believe, Your Honor, I talked
11 about the navigational rules, and I went through a series
12 of questions with lights, operator seeing different types
13 of lights.

14 THE COURT: I understand.

15 MR. HARVEY: And what the general rules are. What
16 the State wants to do now is --

17 THE COURT: Is to draw an opinion from those facts,
18 correct?

19 MR. HARVEY: But I didn't introduce the specific
20 facts of Mr. Kranendonk because she couldn't say she knew
21 how fast the boats were going.

22 MS. SAMPSON: Actually, she told him because he asked
23 her how fast they told her he was going, and before --
24 while I wanted to establish, Your Honor, that he not only
25 asked her about operational rules and navigational rules,

1 he then began to ask her about who was supposed to give
2 the right of way and got into some specifics about the
3 rules.

4 Part of what we have to show is reckless. That's
5 part of the reckless disregard would be disregarding the
6 boater safety rules that he's been taught or doesn't know.
7 I don't know which one it is at this point.

8 Furthermore, Your Honor, it would add the jury in
9 that most of the jurors, as far as we know, don't operate
10 a boat. It's not like a car that we all operate and
11 therefore have an understanding of what the rules and
12 regulations are and how you would violate them would go to
13 show if he was reckless or not.

14 I tried to keep it specific to this wreck so she
15 would not be giving just generalized opinions, but every
16 time I did, he objected.

17 THE COURT: Do you wish to -- that she be qualified?
18 I'm going to allow her to testify, given the burden on the
19 State.

20 MR. HARVEY: What I would like to do is -- if the
21 State is going to qualify her, I would like to be able
22 to -- without stipulating it, impose a contemporaneous
23 objection on the grounds that I'm articulating here. I
24 just want to make sure they are preserved before we move
25 forward.