

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FLORENCE COUNTY

Howard P. King, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RODERICK JEROME SELLERS,

APPELLANT

APPELLATE CASE NO. 2013-002020

RECORD ON APPEAL

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
TESTIMONY	
TROOPER R.E. DENHAM	37
OPENING STATEMENT BY MR. TUCKER.....	64
OPENING STATEMENT BY MR. GROVE	69
TESTIMONY	
JOHNNY WILLIAMS.....	74
TROOPER R.E. DENHAM	93
THERESA SELLERS, R.N.....	122
SERGEANT J.A. SEGARS.....	128
TROOPER J.D. BELL.....	133
DR. JAMES BRENNAN.....	148
TROOPER TONY DEWITT.....	157
LANCE CORPORAL LEE ANNA DONKLE.....	175
FIRST SERGEANT M.C. RIVERS.....	179
CARMEN TUCKER	184
CLOSING ARGUMENT BY MR. TUCKER	206
CLOSING ARGUMENT BY MR. GROVE.....	216
VERDICT	242
INDICTMENT	254

SENTENCING	256
STATE'S EXHIBITS #1-4 (CAD Diagrams)	257
STATE'S EXHIBIT #5 (SLED Urine/ Blood Collection Report)	261
STATE'S EXHIBIT #6 (Implied Consent Form)	262
STATE'S EXHIBIT #7 (SCDPS Chain of Custody Form)	263
STATE'S EXHIBIT #8 (SCDPS Chain of Custody Supplemental Form)	264
STATE'S EXHIBIT #9 (SLED Blood Analysis Report)	265
CERTIFICATE OF COUNSEL	266

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) COURT OF GENERAL SESSIONS
) TWELFTH JUDICIAL CIRCUIT
) CASE NO. 2012-GS-21-354

STATE OF SOUTH CAROLINA,)
)
) Plaintiff,)
)

-vs-

TRANSCRIPT OF RECORD

RODERICK JEROME SELLERS,)
)
) Defendant.)
)

September 16-17, 2013
Florence, South Carolina

B E F O R E:

THE HONORABLE HOWARD KING, Judge; and a jury

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

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KRYSTAL J. SMITH
Court Reporter

	<u>I N D E X</u>	
	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
1		
2		
3	Jury Voir Dire.....	8
4	Jury Seated.....	22
5	Jackson v. Denno Hearing.....	33
6	Trooper R.E. Denham	
7	Direct Examination by Mr. Tucker.....	37
8	Cross Examination by Mr. Grove.....	43
9	Jury Sworn.....	58
10	Opening Statements	
11	Mr. Tucker.....	64
12	Mr. Grove.....	69
13	Johnny Williams	
14	Direct Examination by Mr. Tucker.....	74
15	Cross Examination by Mr. Grove.....	88
16	Trooper R.E. Denham	
17	Direct Examination by Mr. Tucker.....	93
18	Cross Examination by Mr. Grove.....	111
19	Redirect Examination by Mr. Tucker.....	120
20	Theresa Sellers, R.N.	
21	Direct Examination by Mr. Tucker.....	122
22	Cross Examination by Mr. Grove.....	126
23		
24		
25	(INDEX CONTINUED ON NEXT PAGE)	

1	WITNESS/DESCRIPTION	PAGE NUMBER
2	Sergeant J.A. Segars	
3	Direct Examination by Mr. Tucker.....	128
4	Cross Examination by Mr. Grove.....	131
5	Trooper J.D. Bell	
6	Direct Examination by Mr. Tucker.....	133
7	Cross Examination by Mr. Grove.....	137
8	Questioning of Defendant Regarding Testifying.....	140
9	Dr. James Brennan	
10	Direct Examination by Mr. Tucker.....	148
11	Cross Examination by Mr. Grove.....	153
12	Trooper Tony W. Dewitt	
13	Direct Examination by Mr. Tucker.....	157
14	Cross Examination by Mr. Grove.....	167
15	Redirect Examination by Mr. Tucker.....	172
16	Lance Corporal Lee Anna Donkle	
17	Direct Examination by Mr. Tucker.....	175
18	Cross Examination by Mr. Grove.....	178
19	First Sergeant M.C. Rivers	
20	Direct Examination by Mr. Tucker.....	179
21	Cross Examination by Mr. Grove.....	182
22	Carmen Tucker	
23	Direct Examination by Mr. Tucker.....	184
24	Cross Examination by Mr. Grove.....	190
25	(INDEX CONTINUED ON NEXT PAGE)	

1	WITNESS/DESCRIPTION	PAGE NUMBER
2	State Rests.....	193
3	Motion for Directed Verdict.....	194
4	Questioning of the Defendant Regarding Testifying.....	198
5	Charge Conference.....	202
6	Defense Rests.....	205
7	Motions Renewed.....	205
8	Closing Arguments	
9	Mr. Tucker.....	206
10	Mr. Grove.....	216
11	Charge on the Law by the Court.....	224
12	Verdict of the Jury.....	242
13	Motion for a New Trial.....	245
14	Sentencing Hearing.....	245
15	Sentence of the Court.....	252
16	Court Reporter Certification.....	253
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-1	CAD Diagram		162
4	S-2	CAD Diagram		162
5	S-3	CAD Diagram		162
6	S-4	CAD Diagram		162
7	S-5	SLED Urine/Blood Collection Report		126
8	S-6	Implied Consent Form		104
9	S-7	Chain of Custody	135	
10	S-8	Chain of Custody		
11		(pre-marked but not mentioned)		
12	S-9	SLED Blood Analysis Report	187	
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 SEPTEMBER 16, 2013

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 hearing began at 11:59 a.m.)

5 THE COURT: All right. Good morning, ladies and
6 gentlemen of the jury. As I'm sure Judge Brown has told you,
7 my name is Howard King and I am from Sumter. I was formerly
8 one of the resident judges of the Third Judicial Circuit. I'm
9 sure he has also told you that there are sixteen judicial
10 circuits in the state. The Third Circuit is my home circuit
11 and is composed of Sumter, Lee, Clarendon, and Williamsburg
12 counties. Florence and Marion counties are the Twelfth
13 Judicial Circuit.

14 I was a resident judge of the Third Circuit until six
15 years ago when I gave up my residency, but I continue to serve
16 at the request of the Supreme Court in a retired capacity and
17 I have been assigned to this term of General Sessions court
18 for Florence County along with Judge Brown. He, of course,
19 has already qualified you and already drawn one jury.

20 Mr. Solicitor, I've been handed an indictment. I guess
21 the next matter is the matter of the State versus Roderick
22 Jerome Sellers. Is that correct?

23 MR. TUCKER: That is correct, Your Honor.

24 THE COURT: All right. All right. Ladies and gentlemen
25 of the jury, what I'm going to tell you is not evidence in

1 this case. It is simply the allegations of the indictment and
2 that is the document by which the case is brought to trial,
3 but this indictment is not evidence. The evidence will be the
4 testimony that is introduced in this case along with any
5 exhibits that may be introduced, but I tell you this so you
6 can determine if you know anything about the case or anything
7 that would prevent you from serving as a juror in this matter.

8 By the bill of indictment in this case, the State charges
9 that Mr. Roderick Jerome Sellers did in Florence County on or
10 about September the 27th of 2011, drive a motor vehicle while
11 under the influence of alcohol, drugs, or a combination of
12 both and did an act forbidden by law and/or neglected a duty
13 imposed by law in the driving of the vehicle, which act or
14 neglect proximately caused great bodily injury to a passenger
15 in the vehicle driven by Roderick Jerome Sellers, and the
16 charge is one of felony driving under the influence with great
17 bodily injury.

18 The defendant in this case is represented by Mr. Will
19 Grove. Mr. Grove, would you stand, introduce yourself to the
20 jury, and have your client stand and face the jury, please?

21 (Whereupon, the defendant and counsel comply.)

22 MR. GROVE: Thank you, Your Honor. My name is Will
23 Grove. I'm an assistant public defender here in Florence
24 County. I also work as an assistant public defender in Marion
25 County. My client is Roderick Sellers. The other members of

1 my office are: our circuit defender, Scott Floyd; our chief
2 public defender, Michael Bell; Vic Meetze; Karen Parrott; Jay
3 Jordan; Daniel Jordan; and Scott Suggs are also assistant
4 public defenders in one capacity or another.

5 THE COURT: Thank you, sir. All right. The State of
6 South Carolina is represented by the Thirteenth -- I mean by
7 the Twelfth Circuit Solicitor's Office. Mr. Ed Clements is
8 the -- the Solicitor for the Twelfth Circuit, but, of course,
9 he has a number of assistants who help him in the prosecution
10 of cases. Mr. Solicitor, would you call -- would you stand
11 and introduce yourself to the jury and give the names of any
12 lawyers with whom you will be working.

13 MR. TUCKER: Yes, Your Honor. My name is Todd Tucker.
14 I'm an assistant solicitor here in the Twelfth Circuit.
15 Working with me are Matt Ozment, John Jepertinger, Pat Parr,
16 Bob Wells, Emily Craven, and Catherine Wyse and, of course,
17 you've heard we work for the Twelfth Circuit Solicitor, Ed
18 Clements.

19 THE COURT: Thank you, sir. All right. Before we select
20 the jury, I need to ask you a number of questions to determine
21 your qualifications to serve on this jury. I would ask that
22 you give your name to these -- I mean give your attention to
23 these questions and if any of them apply to you, then respond
24 accordingly.

25 Is any member of the jury panel related by blood or

1 connected by marriage to the defendant, Roderick Jerome
2 Sellers? If so, please stand.

3 (Whereupon, no one stands.)

4 THE COURT: All right. Counsel have a witness list? I
5 have the State's witness list here. Is there one -- any
6 witness list from ---

7 MR. GROVE: Yes, Your Honor.

8 THE COURT: All right.

9 MR. GROVE: If I may approach, I also have a supplemental
10 voir dire I've already given to the State.

11 THE COURT: All right. Hand them up, please.

12 MR. TUCKER: And, Your Honor, and if I could approach
13 also?

14 (Whereupon, a bench conference is held in the presence of
15 the jury panel but out of the hearing of the jury panel
16 as follows.)

17 MR. TUCKER: Your Honor, with regards to the supplemental
18 voir dire ---

19 THE COURT: I can't hear you.

20 MR. TUCKER: I'm sorry. With regards to the supplemental
21 voir dire questions that Mr. Grove just handed you, the State
22 would object to questions one, two and three, just based on
23 the fact that that would encompass almost everybody in the
24 panel with regards to an automobile accident. Certainly, the
25 fact that they were involved in an accident I don't think has

1 anything to do with a DUI case even though this does involve
2 great bodily injury that came as a result of an accident, but
3 we would just object to those and to those on the record.

4 THE COURT: All right. I may or may not ask those. I
5 understand your position.

6 MR. TUCKER: Yes, sir. Thank you.

7 (Whereupon, the bench conference ends.)

8 THE COURT: The following individuals may appear as
9 witnesses in this case. I would ask that if any of the
10 witnesses are present that they stand when their name is
11 called, please.

12 Trooper R.E. Denham, of the South Carolina Highway
13 Patrol; Trooper T. Dewitt of the South Carolina Highway
14 Patrol; Sergeant J.A. Segars of the South Carolina Highway
15 Patrol; Trooper J.D. Bell of the South Carolina Highway
16 Patrol; Lance Corporal Lee Ann Donkle D-O-N-K-L-E, of the
17 South Carolina Highway Patrol; First Sergeant M.C. Rivers of
18 the South Carolina Highway Patrol; Theresa Sellers, Registered
19 Nurse, from Florence; Carmen Tucker of the State Law
20 Enforcement Division; Johnathan Williams from Effingham; Dr.
21 James Brennan from Florence; Johnathan Anton Williams -- I've
22 already given you that name; Corley Kennedy; and Keeta Pigatt.

23 Is any member of the jury panel related by blood or
24 connected by marriage to any of the proposed witnesses? If
25 so, please stand.

1 (Whereupon, no one stands.)

2 THE COURT: Is any member of the jury panel close
3 personal friends of any of the parties, the lawyers, or any of
4 the witnesses whom I have read off to you? If so, please
5 stand.

6 (Whereupon, one person stands.)

7 THE COURT: All right. Yes, sir. You -- are you on the
8 jury panel?

9 THE POTENTIAL JUROR: I am.

10 THE COURT: We got some of the jury on both sides?

11 THE CLERK: Yes, sir.

12 THE COURT: Oh, okay. All right. Give me a list of the
13 jurors, please.

14 (Whereupon, the clerk complies.)

15 THE COURT: All right. Give me your name and number?

16 THE POTENTIAL JUROR: Juror Number 147.

17 THE COURT: All right, sir. Mr. Wilson?

18 THE POTENTIAL JUROR: Yes, sir.

19 THE COURT: All right. Tell me, Mr. Wilson, what's the
20 relationship?

21 THE POTENTIAL JUROR: There isn't a relationship, but I
22 have worked with the ---

23 THE COURT: With the defendant?

24 THE POTENTIAL JUROR: With Mr. Sellers.

25 THE COURT: Mr. Sellers, the defendant? Okay.

1 THE POTENTIAL JUROR: And I know his family.

2 THE COURT: You know his family? All right. Are y'all
3 social friends or do you just know who they are?

4 THE POTENTIAL JUROR: Myself and him and -- and his
5 family would be social friends.

6 THE COURT: Okay. All right. Thank you, sir.

7 THE COURT: Is any member of the jury panel ---

8 MR. TUCKER: You've got one standing right there.

9 THE COURT: Yes, ma'am, I'm sorry. Your name and number?

10 THE POTENTIAL JUROR: 142, Bonnie Wilkes.

11 THE COURT: 142. All right. Ms. Wilkes, what's your
12 situation?

13 THE POTENTIAL JUROR: Scott Suggs was my attorney for
14 adoption of my little boy.

15 THE COURT: All right. Mr. Suggs is not involved in this
16 case; is he?

17 WILL GROVE: No, Your Honor. He's a juvenile public
18 defender in our office.

19 THE COURT: Right. Okay. He's just a public defender.
20 Thank you, ma'am.

21 Is any member of the jury panel represented now or been
22 represented in the last ten years by any member of the Twelfth
23 Circuit Solicitor's Office? If so, please stand?

24 (Whereupon, no one stands.)

25 THE COURT: Is any member of the jury panel represented

1 now or been represented in the last ten years by any member of
2 the Twelfth Circuit Public Defender's Office? Any of the
3 public defenders? If so, please stand.

4 (Whereupon, no one stands.)

5 THE COURT: Does any member of the jury panel know
6 anything about the facts of this case as I have briefly
7 recited them to you? If so, please stand.

8 (Whereupon, one person stands.)

9 THE COURT: Is any member of the jury -- whoop, yes, sir?

10 THE POTENTIAL JUROR: I heard about the case while I was
11 working there at the post office.

12 THE COURT: All right. Thank you, Mr. Wilson. That's
13 Juror Number 147, Mr. Wilson. Thank you, sir.

14 Is any member of the jury panel or member of your
15 immediate family -- and I describe immediate family as
16 parents, spouse, brother, sister, or child -- been employed --
17 now employed or been employed in the last ten years by the
18 South Carolina Department of Public Safety? If so, please
19 stand.

20 (Whereupon, no one stands.)

21 THE COURT: Is any member of the jury panel or a member
22 of your immediate family as I have described that term ever
23 been employed by the South Carolina Highway Patrol
24 Multidisciplinary Accident Investigation Team, sometimes
25 referred to as the MAIT Team? If so, please stand.

1 (Whereupon, no one stands.)

2 THE COURT: All right. Ladies and gentlemen, as you have
3 deduced from the allegations of the indictment and also from
4 the questions that I would have asked, I'm going to ask
5 another question and ask that you listen to this carefully.

6 Has any member of the jury panel or member of your
7 immediate family been involved in an automobile accident in
8 which involved personal injury requiring medical attention or
9 was found to be an at-fault driver in an automobile accident
10 or has been involved in a civil lawsuit regarding a motor
11 vehicle accident and would not be able to put those facts
12 aside and decide this case based on the evidence that you hear
13 in this courtroom? In other words, if they -- any kind of
14 experience with an accident that would prevent you from
15 putting that aside and giving both sides a fair and impartial
16 trial? If so, please stand.

17 (Whereupon, one person stands.)

18 THE COURT: All right. Come up, please, ma'am.

19 (Whereupon, a bench conference is held with the potential
20 juror and counsel in the presence of the jury panel but
21 out of the hearing of the jury panel as follows.)

22 THE COURT: Your name and number?

23 THE POTENTIAL JUROR: It's Erica Joyner, Number 68.

24 THE COURT: All right. I haven't got any Ms. Jointer,
25 did you say ---

1 THE POTENTIAL JUROR: Joyner, yes, sir. I'm sorry.

2 THE COURT: Okay. What's your situation, Ms. Joyner?

3 THE POTENTIAL JUROR: My father was killed by a hit and
4 run driver.

5 THE COURT: Okay.

6 THE POTENTIAL JUROR: And they never found out who did it
7 and I would like to think I would be impartial, but I don't
8 think I could.

9 THE COURT: Okay. That's the kind of information we
10 want.

11 THE POTENTIAL JUROR: Okay.

12 THE COURT: Thank you very much. Counsel, stay up here.

13 (Whereupon, the potential juror leaves the bench
14 conference.)

15 MR. TUCKER: Yes, sir.

16 THE COURT: That was -- I kind of reworded those first
17 three questions that you had ---

18 MR. GROVE: Yes, sir.

19 THE COURT: --- to get the impartiality part and that's
20 what we wanted so that's what we got.

21 MR. TUCKER: Yes, sir.

22 MR. GROVE: Yes, sir.

23 THE COURT: So, that's all I'm going to do with those
24 first three.

25 MR. TUCKER: Suits me, Your Honor.

1 THE COURT: Okay.

2 MR. GROVE: Judge, are you going to excuse her from
3 service?

4 THE COURT: Huh?

5 MR. GROVE: Are you going to excuse her from service?

6 THE COURT: Oh, yeah.

7 MR. TUCKER: And I believe there was one more who stood,
8 Your Honor.

9 THE CLERK: You have one more.

10 THE COURT: Yes ma'am, come on up, please. Your name and
11 number, please, ma'am?

12 THE POTENTIAL JUROR: Amber Scott, 120.

13 THE COURT: I'm sorry. The number again?

14 THE POTENTIAL JUROR: I believe it's 120.

15 THE CLERK: 120.

16 THE COURT: 120. Okay. All right. Ms. Scott, what's
17 your situation?

18 THE POTENTIAL JUROR: We just buried my best friend
19 yesterday.

20 THE COURT: What?

21 THE POTENTIAL JUROR: We just buried my best friend
22 yesterday. She was drinking and driving and it was her fault.

23 THE COURT: All right. Would that fact interfere with
24 your ability to -- could you put that aside and decide this
25 case based on the facts or would that interfere with your

1. decision?

2 THE POTENTIAL JUROR: I don't think so.

3 THE COURT: You don't think you could put it aside?

4 THE POTENTIAL JUROR: No.

5 THE COURT: Okay. All right. Thank you, ma'am.

6 THE POTENTIAL JUROR: You're welcome.

7 THE COURT: All right, I'm going to cancel -- she said
8 she couldn't put it aside. I'm also going to excuse Wilson,
9 too, by the way, 147.

10 MR. TUCKER: Yes, sir.

11 THE COURT: Okay. I've got a few more.

12 THE CLERK: Judge, you going to keep 142?

13 THE COURT: I'm going to keep 142, yeah.

14 (Whereupon, the bench conference ends.)

15 THE COURT: Okay. All right. Step back.

16 MR. TUCKER: Yes, sir.

17 MR. GROVE: Yes, Judge.

18 THE COURT: Other than what has been disclosed to me, has
19 any member of the jury panel formed or expressed an opinion as
20 to the guilt or innocence of the defendant, Roderick Jerome
21 Sellers? If so, please stand.

22 (Whereupon, no one stands.)

23 THE COURT: Other than what has been disclosed to me, is
24 there any member of the jury panel aware of any interest, any
25 bias, or any prejudice for or against the defendant, Roderick

1 Jerome Sellers? If so, please stand.

2 (Whereupon, no one stands.)

3 THE COURT: Other than what has been disclosed to me, can
4 each member of the jury panel give to the State and the
5 defendant, Roderick Jerome Sellers, a fair and impartial
6 trial? If not, please stand.

7 (Whereupon, no one stands.)

8 THE COURT: Other than what has been disclosed to me,
9 does any member of the jury panel know of any reason
10 whatsoever why he or she should not serve as a juror in this
11 case? If so, please stand.

12 (Whereupon, one person stands.)

13 THE COURT: All right. Come up, please, ma'am.

14 (Whereupon, a bench conference is held with the potential
15 juror and counsel in the presence of the jury panel but
16 out of the hearing of the jury panel as follows.)

17 THE COURT: Your name and number?

18 THE POTENTIAL JUROR: Stephanie Galloway, Number 39.

19 THE COURT: 39?

20 THE POTENTIAL JUROR: 39. Yes, sir.

21 THE COURT: Okay. Yes, ma'am, Ms. Galloway.

22 THE POTENTIAL JUROR: My husband and I own In and Out
23 Bail Bonds and I believe he has been a client at our office.

24 THE COURT: I'm sorry. Your husband and you what?

25 THE POTENTIAL JUROR: And myself, we own In and Out Bail

1 Bonds and I believe he is a client at our office.

2 THE COURT: Oh, I see. The defendant is a client you
3 think in your office?

4 THE POTENTIAL JUROR: Mm-hmm. I am not a hundred percent
5 sure because we've got so many, but I know -- I'm pretty sure.

6 THE COURT: All right. Okay.

7 THE CLERK: Judge, In and Out, I think that's ---

8 THE POTENTIAL JUROR: That's it, that's me.

9 THE COURT: Okay. All right. Okay. Thank you.

10 THE POTENTIAL JUROR: All right. Thank you.

11 THE COURT: Yes, sir. Come on up. How many have we got
12 all together left over after Judge Brown?

13 THE CLERK: Forty-four, but you've ---

14 THE COURT: Okay. Good enough. I just wanted to know.

15 THE CLERK: We got plenty.

16 THE POTENTIAL JUROR: Hey, Judge.

17 THE COURT: Yes, sir. Your name and number?

18 THE POTENTIAL JUROR: Wayne Powell and I done forgot my
19 number. It's 102. I got COPD and I can't hardly breathe and
20 I have to breathe in one of them machines every two hours.

21 THE COURT: Mm-hmm.

22 THE POTENTIAL JUROR: And I just don't think I'm going to
23 be able to stand it in here.

24 THE COURT: Okay. All right. Did you tell Judge Brown
25 that when you were qualified?

1 THE POTENTIAL JUROR: No, I forgot to. I didn't. He had
2 turned one fellow down for back so I didn't know whether to
3 stand up or not.

4 THE COURT: All right. What I'm going to do is I'm going
5 to take you out of this panel, but I'm not going to excuse him
6 from the week and what you need to do is get a certificate
7 from your doctor that you are unable to serve and bring it to
8 this lady tomorrow morning.

9 THE POTENTIAL JUROR: Okay. Bring it to her? Okay.
10 Thank you, sir.

11 THE COURT: All right, counsel. Here is what I'm going
12 to do. I'm going to let Wilson go, that's the guy that knows
13 the defendant. Joyner, Scott, Galloway's the bonding lady,
14 she needs to be excused as well, and then, of course, Mr.
15 Powell. I'm going to make him get a doctor's excuse. So
16 that's one, two, three, four, five. We'll take those five out
17 and I'm going to keep Wilkes, number 142.

18 MR. GROVE: That's 147.

19 THE COURT: 147 ---

20 MR. GROVE: 68 and 120 ---

21 THE COURT: 68, 120 ---

22 MR. GROVE: 39 and 109.

23 THE COURT: 39 and 109. Any problems?

24 MR. TUCKER: No, sir.

25 MR. GROVE: No objection.

1 (Whereupon, the bench conference ends.)

2 THE COURT: Okay. All right. Are there additional
3 questions on behalf of the State, Mr. Solicitor?

4 MR. TUCKER: None from the State, Your Honor.

5 THE COURT: On behalf of the defense?

6 MR. GROVE: None, Your Honor. Thank you.

7 THE COURT: All right. You get that?

8 THE CLERK: Give me just a second.

9 (Whereupon, the Court and the Clerk confer off the
10 record.)

11 THE COURT: Counsel, we'll -- we'll draw one alternate
12 with one strike and two for the defense. All right.

13 MR. TUCKER: Yes, Your Honor.

14 MR. GROVE: That will be fine, sir.

15 THE COURT: All right. Madame Clerk, if you'll us the
16 jury. Ladies and gentlemen of the jury, you've been through
17 this process with Judge Brown so you know the procedure. What
18 will happen is that the clerk will call your name and number,
19 if you would come up here to this right about this microphone
20 or this podium and turn around and face your back -- put your
21 back to me and face the back of the courtroom. If you are
22 acceptable to the State, the State will indicate present the
23 juror. If you are acceptable to the defense, the defense will
24 indicate swear the juror and you would have a seat in the jury
25 box to my right. If either side excuses you, you would have a

1 seat back out with the remainder of the jury panel. All
2 right, Madame Clerk.

3 (Whereupon, there is a pause in the proceedings as the
4 jury list is produced.)

5 THE COURT: Thank you.

6 THE CLERK: When you do strikes, you do five and five?

7 THE COURT: Five and five, and then two and one on the --
8 or one and two on the alternate.

9 THE CLERK: 136, Phillip Ward.

10 (Whereupon, a white male comes forward.)

11 THE CLERK: What say the State?

12 MR. TUCKER: Please present Dr. Ward.

13 THE CLERK: What say the defendant?

14 MR. GROVE: Please excuse Dr. Ward from the trial of this
15 case.

16 THE CLERK: You've been excused for this trial only. 32,
17 Kay Felker.

18 (Whereupon, a white female comes forward.)

19 THE CLERK: What say the State?

20 MR. TUCKER: Please present Ms. Felker.

21 THE CLERK: What say the defendant?

22 MR. GROVE: Please excuse Ms. Felker from the trial of
23 this case.

24 THE CLERK: You've been excused for this trial only.
25 150, Howard Worrell.

1 (Whereupon, a white male comes forward.)

2 THE CLERK: What say the State?

3 MR. TUCKER: Please present Mr. Worrell.

4 THE CLERK: What say the defendant?

5 MR. GROVE: Please swear Mr. Worrell.

6 THE CLERK: Please have a seat in the jury box. 74,
7 Howard Leary.

8 (Whereupon, a white male comes forward.)

9 THE CLERK: What say the State?

10 MR. TUCKER: Please present Mr. Leary.

11 THE CLERK: What say the defendant?

12 MR. GROVE: Please swear Mr. Leary.

13 THE CLERK: Please have a seat in the jury box. 75, Ann
14 Lewis.

15 (Whereupon, a white female comes forward.)

16 THE CLERK: What say the State?

17 MR. TUCKER: Please present Ms. Lewis.

18 THE CLERK: What say the defendant?

19 MR. GROVE: I beg the Court's indulgence. Please swear
20 Ms. Lewis.

21 THE CLERK: Please have a seat in the jury box. 108,
22 Deborah Poston.

23 (Whereupon, a white female comes forward.)

24 THE CLERK: What say the State?

25 MR. TUCKER: Please present Ms. Poston.

1 THE CLERK: What say the defendant?
2 MR. GROVE: I beg the Court's indulgence. Please swear
3 Ms. Poston.
4 THE CLERK: Please have a seat in the jury box. 91, Mary
5 McMillan.
6 (Whereupon, a white female comes forward.)
7 THE CLERK: What say the State?
8 MR. TUCKER: Please present Ms. McMillan.
9 THE CLERK: What say the defendant?
10 MR. GROVE: Please excuse Ms. McMillan.
11 THE CLERK: You've been excused from this trial only.
12 41, Johnny Gaskins.
13 (Whereupon, a white male comes forward.)
14 THE CLERK: What say the State?
15 MR. TUCKER: Please present Mr. Gaskins.
16 THE CLERK: What say the defendant?
17 MR. GROVE: I beg the Court's indulgence. Please swear
18 Mr. Gaskins.
19 THE CLERK: Please have a seat in the jury box. 7, Joseph
20 Balotti.
21 (Whereupon, a white male comes forward.)
22 THE CLERK: What say the State?
23 MR. TUCKER: Please present Mr. Balotti.
24 THE CLERK: What say the defendant?
25 MR. GROVE: Please swear Mr. Balotti.

1) THE CLERK: Please have a seat in the jury box. 10, Joy
2 Boone.

3 (Whereupon, a white female comes forward.)

4 THE CLERK: What say the State?

5 MR. TUCKER: Please present Ms. Boone.

6 THE CLERK: What say the defendant?

7 MR. GROVE: Please excuse Ms. Boone from the trial of
8 this case.

9 THE CLERK: You've been excused for this trial only.
10 121, Marilyn Scurry.

11 (Whereupon, a white female comes forward.)

12 THE CLERK: What say the State?

13 MR. TUCKER: Please present Ms. Scurry.

14 THE CLERK: What say the defendant?

15 MR. GROVE: Please excuse Ms. Scurry from the trial of
16 this case.

17 THE CLERK: You've been excused for this trial only. 77,
18 Tauseef Malik.

19 (Whereupon, a Middle Eastern male comes forward.)

20 THE CLERK: What say the State?

21 MR. TUCKER: Please excuse Mr. Malik from the trial of
22 this particular case.

23 THE CLERK: You've been excused from this trial only.
24 126, Julie Sims.

25 (Whereupon, a white female comes forward.)

1 THE CLERK: What say the State?

2 MR. TUCKER: Please present Ms. Sims.

3 THE CLERK: Does the defendant wish to challenge this
4 juror for cause?

5 MR. GROVE: No. Thank you, Madame Clerk.

6 THE CLERK: Please have a seat in the jury box. 5, Ward
7 Anderson.

8 (Whereupon, a white male comes forward.)

9 THE CLERK: What say the State?

10 MR. TUCKER: Please excuse Mr. Anderson from the trial of
11 this particular case.

12 THE CLERK: You've been excused from this trial only,
13 sir. 62, Christie Hyman.

14 (Whereupon, a black female comes forward.)

15 THE CLERK: What say the State?

16 MR. TUCKER: Please excuse Ms. Hyman from the trial of
17 this particular case.

18 THE CLERK: You've been excused from this trial only.
19 13, Rickisha Brown.

20 (Whereupon, a black female comes forward.)

21 THE CLERK: What say the State?

22 MR. TUCKER: Please excuse Ms. Brown from the trial of
23 this case.

24 THE CLERK: You've been excused for this trial only. 33,
25 Marjorie Fitzwater.

1 (Whereupon, a white female comes forward.)

2 THE CLERK: What say the State?

3 MR. TUCKER: Please present Ms. Fitzwater.

4 THE CLERK: Does the defendant wish to challenge this
5 juror for cause?

6 MR. GROVE: No. Thank you, Madame Clerk.

7 THE CLERK: Please have a seat in the jury box. 107,
8 William Phillips.

9 (Whereupon, a white male comes forward.)

10 THE CLERK: What say the State?

11 MR. TUCKER: Please present Mr. Phillips.

12 THE CLERK: Does the defendant wish to challenge this
13 juror for cause?

14 MR. GROVE: No. Thank you, Madame Clerk.

15 THE CLERK: Please have a seat in the jury box. 35,
16 Terri Floyd.

17 (Whereupon, a white female comes forward.)

18 THE CLERK: What say the State?

19 MR. TUCKER: Please present Ms. Floyd.

20 THE CLERK: Does the defendant wish to challenge this
21 juror for cause?

22 MR. GROVE: No. Thank you, Madame Clerk.

23 THE CLERK: Please have a seat in the jury box. 114,
24 Lory Rawlinson.

25 (Whereupon, a white male comes forward.)

1 THE CLERK: What say the State?

2 MR. TUCKER: Please excuse Mr. Rawlinson for the trial of
3 this case.

4 THE CLERK: You've been excused for this trial only.
5 142, Bonnie Wilkes.

6 (Whereupon, a white female comes forward.)

7 THE CLERK: Does the State wish to challenge this juror
8 for cause?

9 MR. TUCKER: No.

10 THE CLERK: Does the defendant wish to challenge this
11 juror for cause?

12 MR. GROVE: No. Thank you, Madam Clerk.

13 THE CLERK: Please have a seat in the jury box. 28,
14 Jason Doughty.

15 (Whereupon, a white male comes forward.)

16 THE CLERK: Does the State wish to challenge this juror
17 for cause?

18 MR. TUCKER: No, Madame Clerk.

19 THE CLERK: Does the defendant wish to challenge this
20 juror for cause?

21 MR. GROVE: No. Thank you, Madame Clerk.

22 THE CLERK: Please have a seat in the jury box.

23 THE COURT: Alternate, please. Counsel, one and two.

24 THE CLERK: 84, Jessica D. McDaniel.

25 (Whereupon, a white female comes forward.)

1 THE CLERK: What say the State?

2 MR. TUCKER: Please excuse this juror from the trial of
3 this case.

4 THE CLERK: You've been excused for this trial only.
5 117, Kimberly Roberts.

6 (Whereupon, a white female comes forward.)

7 THE CLERK: What say the State?

8 MR. TUCKER: Please present the juror.

9 THE CLERK: What say the defendant?

10 MR. GROVE: I beg the Court's indulgence.

11 THE COURT: Mm-hmm.

12 MR. GROVE: Please swear Ms. Roberts.

13 THE CLERK: Please have a seat in the jury box.

14 THE COURT: Anything with regard to the striking of the
15 jury on behalf of the State, Mr. Solicitor?

16 MR. TUCKER: No, Your Honor.

17 THE COURT: On behalf of the defense, Mr. Grove?

18 MR. GROVE: I beg the Court's indulgence. No. Thank
19 you, Judge.

20 THE COURT: All right. All right. Thank you very much.
21 All right. Counsel, come up just a minute and let's talk
22 about the schedule.

23 MR. TUCKER: Yes, Your Honor.

24 (Whereupon, a bench conference is held in the presence of
25 the jury but out of the hearing of the jury as follows.)

1 THE COURT: I want to go ahead and send them to lunch and
2 bring them back to start first thing after lunch. Is there
3 any reason that doesn't suit you?

4 MR. TUCKER: Not at all.

5 MR. GROVE: Suits me just fine as well. We may -- I
6 believe that there is a statement from my client that at some
7 point we may need to have a Jackson v. Denno hearing before
8 the trial begins. So you may want to give them a more
9 extended lunch to give us time.

10 THE COURT: All right. That's what I was going to see.
11 If you got a Jackson v. Denno, we can do it right now.

12 MR. GROVE: Okay.

13 THE COURT: Send the jury and bring them back.

14 MR. GROVE: That's fine by me.

15 THE COURT: Okay. Well, I'll bring them back at 2:00 and
16 we'll do whatever motions we've got. Okay.

17 (Whereupon, the bench conference ends.)

18 THE COURT: All right. Ladies and gentlemen of the jury
19 selected in the trial of this case, I've been advised by
20 counsel that there are some pre-trial matters that we need to
21 take up and we're going to do that between now and the time
22 for us to break for lunch and then be ready to start after
23 lunch. So I'm going to excuse you now and allow you to go
24 about your business for the next hour and twenty-five minutes
25 and ask you to be back in the jury room, not in the courtroom,

1 but in the jury room, at two o'clock. By then we should have
2 all the pre-trial matters out of the way and should have been
3 able to get all the court personnel to lunch and back, and
4 we'll be ready to start the trial of this case at two o'clock.

5 There are several things I want to tell you before you
6 leave. First of all, later on in this trial I will allow you
7 to select from the twelve members of the principal jury a
8 person to be the foreperson of that jury -- of this jury.
9 When I do, the foreperson should always sit in the first seat
10 here on the front row. The alternate should always sit in the
11 first seat on the second row where she is seated now. The
12 rest of the seats in the jury box are not reserved and it does
13 not matter what order you come and go from the courtroom. I
14 would simply ask that you go all the way down so it wouldn't
15 be a situation of crawling over one another, leaving the first
16 seat on the second row for the alternate and the first seat on
17 the front row for the foreperson when I -- when that
18 foreperson is selected.

19 I would also tell you that I know that you do know
20 anything about this case. You have not heard any of the
21 evidence, but you know basically what it is about, but it
22 would improper for you to discuss this case among yourselves
23 when you are reassembling in the jury room or at any time
24 throughout the trial of this case until I tell you it is
25 appropriate for you to begin your discussions. It would also

1 be wrong and inappropriate for you to discuss the case with
2 anyone outside of the courtroom. So when you see your family
3 or your friends during this recess or any other recess, do not
4 talk with them about the case. The reason for that is pretty
5 apparent. You've got to decide this case based upon what you
6 hear in this courtroom and not on the basis of what anyone
7 else might say.

8 And do not allow anyone to talk to you about the case.
9 If anyone should approach you and try to talk with you about
10 the case, get their name or their description, report it to me
11 or the bailiff, and I will deal with them. So for the next
12 hour and twenty-five minutes or so, if you would, I'm going to
13 excuse you now, allow you to go about your business, get your
14 lunch and ask you to be back in the jury room, which is right
15 back here behind the bailiff, if you will come through the
16 courtroom and they will let you in to the jury room at two
17 o'clock. But come on back and be ready to go at two o'clock.
18 Thank you. You are excused now. It's about twenty-five
19 minutes to one, twenty minutes to one.

20 THE BAILIFF: Just follow me please.

21 (Whereupon, the jury exits the courtroom at 12:39 p.m.)

22 (Whereupon, the Court and the Clerk confer off the
23 record.)

24 THE COURT: Ladies and gentlemen not selected in the
25 trial of this case, I'm going to excuse you for the rest of

1 the day. It's often very difficult for us to estimate exactly
2 how long a trial is going to take and it may be that this case
3 and Judge Brown's case will run into tomorrow and we may not
4 need you tomorrow, but I don't have any way of knowing that at
5 this time, so I'm going to excuse you for the rest of the day
6 and ask that you call that number that you have after six
7 o'clock tonight, anytime six o'clock on. That's an answering
8 machine very much like the one that you've got at home and
9 there will be am message on their after six tonight and you
10 can call anytime all night long, but there will be a message
11 on there about your reporting instructions for tomorrow.

12 So if you don't have that number, be sure and get it from
13 the bailiff before you leave. But it is an answering machine
14 and call that number after six tonight, anytime all night
15 long, and we'll have your reporting instructions for tomorrow.
16 With that, you are free to go for the rest of the day. Thank
17 you very much and maybe I'll see you tomorrow.

18 (Whereupon, the jury panel exits the courtroom at 12:40
19 p.m.)

20 THE COURT: Counsel, come up just a minute.

21 (Whereupon, a bench conference is held off the record.)

22 THE COURT: All right. The jury seems to have cleared
23 the room. Are there pre-trial motions? Any pre-trial matters
24 on behalf of the State, Mr. Solicitor?

25 MR. TUCKER: Your Honor, the only one that we have

1 possibly is a Jackson v. Denno hearing. Let me just explain a
2 little bit about the State's position with regards to it.

3 There was an in-car camera running at the time that
4 Trooper Denham arrived on the scene. Essentially, due to the
5 nature and the extent of the injuries to both the driver, Mr.
6 Sellers, and the passenger, Johnny Williams, they were taken
7 away pretty quickly so there wasn't a whole lot captured.
8 There is just a whole lot of noise and a whole lot of buzz.

9 To be quite honest with you, the State had not intended
10 to put it up so there would be no incriminating statements
11 that we would -- or any statements for that matter. In fact,
12 we don't plan to put the DVD up at all. There is a MAIT
13 video, but that's after the fact and, of course, the only
14 reason we're putting that up is to show the jury the scene and
15 things of that nature.

16 The only thing that comes close to a statement, Your
17 Honor, in talking to Trooper Denham is when he's asking Mr.
18 Sellers at the hospital who was driving the vehicle. Mr.
19 Sellers didn't deny that he was driving. Of course, the State
20 is aware that that's kind of fraught with some possible issues
21 there with regards to, you know, his right against self-
22 incrimination and things of that nature.

23 So that -- that would be the extent of what the State
24 would offer. We wouldn't be putting up the DVD and certainly,
25 you know, we would tread cautiously with regards to Trooper

1 Denham's testimony and reference ---

2 THE COURT: It's not what he -- he didn't say anything
3 one way or the other?

4 MR. TUCKER: He didn't say anything one way or the other.
5 He just didn't deny that he was driving, Your Honor.

6 THE COURT: All right. All right. Mr. Grove, I'll be
7 glad to hear from you.

8 MR. GROVE: Your Honor, my issue would be if that is
9 evidence that the State's going to put up, then that ---

10 THE COURT: You ---

11 MR. GROVE: That would require some sort of a hearing
12 whether or not he was advised that he had the right to remain
13 silent when he certainly has the absolute right to remain
14 silent when questioned and that shouldn't be used against him.
15 If that is evidence that they intend to introduce, I would
16 like the proffer some testimony regarding it.

17 THE COURT: Well, do you -- do you want to use that
18 statement or that lack of a statement as probative of whether
19 he was or was not driving?

20 MR. TUCKER: Well, yes, Your Honor. Obviously, at that
21 point ---

22 THE COURT: If you're going to argue it as being if he
23 didn't deny it like you kind of said to me, then I think that
24 -- that he needs a -- sometimes what is not said speaks louder
25 than what is said ---

1 MR. TUCKER: Yes, sir.

2 THE COURT: --- and that's -- if that's the case, then he
3 would be entitled to Miranda warnings. Was he given Miranda
4 warnings?

5 MR. TUCKER: At this point, Your Honor, I would ask
6 Trooper Denham that. There was some -- he was at scene
7 briefly and then he was taken to the hospital.

8 THE COURT: Well, let's -- let's ---

9 MR. TUCKER: And we could certainly ---

10 THE COURT: All right. Let's treat it then. Let's see
11 where we are. Let's treat it as Jackson v. Denno at this
12 point right now. The defense has made a motion under Jackson
13 v. Denno to suppress any statements or any responses positive
14 or negative to interrogation and, that being the case, then
15 the burden shifts back to the State to show that it was
16 voluntary.

17 MR. TUCKER: Yes, sir.

18 THE COURT: Okay. And we'll go forward. All right.

19 MR. TUCKER: At this time, Your Honor, we would call
20 Trooper Denham to the stand.

21 THE COURT: All right. Trooper Denham, come around,
22 please.

23 THE CLERK: If you will, sir, place your left hand on the
24 Bible and raise your right hand. Do you swear to tell the
25 truth, the whole truth, and nothing but the truth, so help you

TROOPER R.E. DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 God?

2 TROOPER DENHAM: I do.

3 THE CLERK: Please be seated and state your full name for
4 the record.

5 TROOPER DENHAM: Trooper Richard Eric Denham.

6 THE COURT: Go ahead, sir.

7 MR. TUCKER: May it please the Court, Your Honor.

8 TROOPER R.E DENHAM, being first duly
9 sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. TUCKER:

12 Q: Trooper Denham, where are you employed?

13 A: I am employed in Florence County.

14 Q: Okay. Do you work with the Highway Patrol?

15 A: Yes, sir.

16 Q: How ---

17 A: Under the Department of Public Safety with the Highway
18 Patrol in Troop 5.

19 Q: And how long have you been with that particular agency?

20 A: Almost six years.

21 Q: Now, were you working with the Highway Patrol Department
22 of Public Safety on or about September the 22nd, 2011?

23 A: Yes, I was.

24 Q: Do you recall working an accident in which a car had
25 flipped over and there were two casualties or two injuries

TROOPER R.E. DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 with regard to the wreck?

2 A: Yes, I do.

3 Q: Do you recall what you did when you first arrived?

4 A: I did what we normally do. I assessed the scene, tried
5 to keep the collision site from getting any worse, and
6 assessed what we needed as far as EMS and fire and got them en
7 route and tried to make a determination as to whether the
8 subjects that were present were alive or conscious or not
9 conscious, and tried to make my best determination as to who
10 was the driver and who was the passenger.

11 Q: Were you able to do that based on what you saw there at
12 the scene?

13 A: I feel like I was.

14 Q: Okay. Could you explain to the Court a little bit about
15 what went into that?

16 A: Based on my training and experience, when a car is in the
17 predicament or the position that this was on this particular
18 night, where the subjects who were ejected or partially
19 ejected were laying, one astute person could make a
20 determination as to who was the driver and who was not, and I
21 did at that time.

22 Q: Where you able to identify the driver in this case?

23 A: I feel like I was.

24 Q: Who did you identify as the driver?

25 A: The subject present.

TROOPER R.E. DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Okay.

2 A: Mr. Sellers.

3 Q: All right. Now, were you able to make any sort of
4 contact with Mr. Sellers there at the wreck scene itself?

5 A: Yes, sir, I was.

6 Q: Did you notice anything unusual about his person?

7 A: A very, very strong smell of alcohol, and based on my
8 training and experience, maybe just -- just based on my
9 opinion and training and experience, maybe something beyond
10 alcohol. I cannot say exactly what it was.

11 Q: Now, did you make a determination then as to whether or
12 not to continue your inquiry there or were the injuries to
13 both subjects ---

14 A: Based on my -- based on my memory and recollection, the
15 subject was in a lot of pain and unable to give any kind of
16 clear, audible facts about this case. I made a determination
17 and a decision in my own mind not to do any kind of
18 Mirandizement or questioning until he got to wherever he was
19 going to be transported to.

20 Q: I understand. Now, subsequently when he was transported
21 to a hospital, did you make contact with him there?

22 A: Yes, sir, I did.

23 Q: Do you know how long -- how much time elapsed from that
24 -- when you made that initial contact and when you talked to
25 him at the hospital?

TROOPER R.E. DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 A: I cannot say for sure. I would say between thirty
2 minutes to forty-five minutes.

3 Q: Okay. Now, what, if anything, did you do when you first
4 encountered him at the hospital?

5 A: I do as I always do when I feel like it is a DUI case,
6 especially a felony DUI case in which the passenger or rider
7 is -- has sustained great bodily injury. I Mirandized him. I
8 read his implied consent rights to him.

9 Q: That was my next question. Now, when you said you
10 Mirandized him, did you recite those from memory or did you
11 read it from a form?

12 A: We are required to read it from a form.

13 Q: And did you have that form with you?

14 A: Yes, sir, I did.

15 Q: Did you read exactly as it was written on that form?

16 A: Yes, sir, I did.

17 Q: Okay. And what, if anything, in response to -- after
18 being advised of his rights pursuant to policy and pursuant to
19 law did Mr. Sellers do?

20 A: I asked some general questions about what took place. He
21 began -- and again he was in some pain so it was not what I
22 would like as far as clarity goes, but I deduced that based on
23 his account that he was driving. When I asked him after the
24 fact was he, in fact, driving, in my best estimation and in my
25 opinion, I felt like he decided that he would not answer any

TROOPER R.E. DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 more questions. When I asked him about whether he was driving
2 or not, he elected not to answer.

3 Q: So he didn't say no, I wasn't driving or no, it was the
4 other guy, he just didn't say anything?

5 A: That is correct.

6 Q: Okay. Now, you mentioned that he -- in your opinion, you
7 smelled a strong odor of alcohol and he was in some pain. Was
8 there anything about his demeanor or his -- the way he
9 answered questions that gave you pause as to whether or not he
10 understood his Miranda warnings or those warnings that you
11 gave him from that form?

12 A: No, sir, he did not. I had no reason to believe he did
13 not understand.

14 Q: Okay. Did he seem to follow all your other directions
15 and questions?

16 A: He seemed to. Yes, sir, he did.

17 Q: Okay. I mean anything that gave you pause as far as
18 whether he suffered injuries that would otherwise affect his
19 ability to understand what was going on?

20 A: No, sir.

21 Q: Now, at any point was he -- did you place him in
22 handcuffs or anything of that nature?

23 A: No, sir, I did not.

24 Q: Okay. But you did advise him of his Miranda rights from
25 the form before asking him any questions?

TROOPER R.E. DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 A: I Mirandized -- the Miranda rights are separate from the
2 implied consent rights that we read so it's actually two
3 recitations what we have to give them.

4 Q: Okay. And those were from two separate forms?

5 A: That is correct.

6 Q: And you had those forms with you?

7 A: That is correct.

8 Q: Now is there a place where you sign and date those forms?

9 A: Yes, there is on the implied consent only.

10 Q: Okay. Now, was Mr. Sellers able to sign that form?

11 A: No, sir, he was not.

12 Q: Okay. Do you recall why he was not able to sign it?

13 A: Due to the extent of his injuries.

14 Q: What -- did he have IV's in his hands or something of
15 that nature?

16 A: To my best recollection, he did. He was receiving all
17 the treatment that someone in his state would and it's just
18 not practical to try to engage in that kind of activity and
19 make the situation worse.

20 Q: Now, at any point did he ask for an attorney?

21 A: No, sir, he did not.

22 Q: At any point did he ask for any sort of assistance from
23 you before answering any of the questions or in this case in
24 not answering of the questions as it may be.

25 A: No, sir, he did not.

TROOPER R.E. DENHAM - CROSS EXAMINATION BY MR. GROVE

1 MR. TUCKER: Okay. I believe that's all the questions I
2 have, Your Honor.

3 THE COURT: Cross examination, Mr. Grove?

4 MR. GROVE: Thank you, Judge.

5 CROSS EXAMINATION

6 BY MR. GROVE:

7 Q: Trooper Denham, Mr. Sellers was receiving all the -- all
8 the medical attention that you would expect from somebody that
9 had just been in an accident?

10 A: Yes, sir, he was.

11 Q: Like morphine?

12 A: I cannot say for sure.

13 Q: But he is in extreme pain?

14 A: He seemed to be in some pain.

15 Q: And -- and he was at the hospital?

16 A: Yes, sir, he was.

17 Q: And did you learn after this accident as to the extent of
18 his injuries?

19 A: I did -- I did to some degree I did.

20 Q: Broken bones?

21 A: I do not remember about broken bones.

22 Q: So you say you don't remember what his injuries were?

23 A: I know they were incapacitating and I cannot speak to any
24 specifics.

25 Q: But you didn't ask him any questions at the scene?

TROOPER R.E. DENHAM - CROSS EXAMINATION BY MR. GROVE

1 A: No, sir, I did not.

2 Q: And you didn't Mirandize him at the scene?

3 A: No, sir. I'm not required to do that.

4 Q: Would it surprise you that your report indicates that you
5 Mirandized him at the scene and placed him under arrest there?

6 A: I do not remember that. I do not remember doing that.

7 Q: If I showed you a copy of your report, would that help
8 you?

9 A: If you'd like to do that.

10 MR. GROVE: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 Q: In the body of that incident report during your
13 narrative, fifth line down starting from the left.

14 A: Yes, sir, I see that.

15 Q: And does it then go on to say that later they were
16 transported to the hospital?

17 A: Yes, sir, it does. That's what I stated.

18 Q: Does it at any point later indicate that you Mirandized
19 him at the hospital and took a statement from him then?

20 A: No, sir. Typically, I would not -- I would not list that
21 on a report like this.

22 Q: You wouldn't include that you took a statement from the
23 defendant in your report?

24 A: Yes, sir, I would. I would not necessarily -- I would
25 not necessarily write it again that I Mirandized him again

TROOPER R.E. DENHAM - CROSS EXAMINATION BY MR. GROVE

1 after if that's what the case was. Typically, I just do it
2 one time.

3 Q: But earlier your testimony was the state that my client
4 was at the time at the scene, giving him Miranda at that point
5 was useless because he was in such extreme pain that he
6 wouldn't have appreciated what you were saying; right? That
7 was your testimony a minute ago?

8 A: Sir, you'll have to say that again. I'm not -- I'm not
9 following what you're saying.

10 Q: Earlier you said you did not Mirandize my client at the
11 scene.

12 A: I said I did not remember Mirandizing the subject at the
13 scene.

14 Q: And I believe your testimony was when you got to the
15 scene he was in such extreme pain given the nature of his
16 injuries that giving him Miranda at that point would have been
17 useless. He wasn't able to really communicate with you; is
18 that correct?

19 A: Sir, it's been -- it's been a while. I'm answering these
20 questions to the best of my ability. There is no intent to
21 mislead. What I saw at the scene was a person who was hurt
22 and trying to communicate with him it was -- as far as getting
23 any answers from any questions that was pointless. I may have
24 -- you know if I -- if I wrote this in the narrative, this --
25 this is true. I do not remember doing that at the scene.

TROOPER R.E. DENHAM - CROSS EXAMINATION BY MR. GROVE

1 This has been a long time ago.

2 Q: That's all I'm asking. Did he fill out a form waiving
3 his Miranda rights at the hospital?

4 A: No, sir. I do not remember him signing any -- any form.

5 Q: Or you filling out a form for him?

6 A: The only thing that I typically do when somebody is not
7 in a position to sign the implied consent is I write unable to
8 sign.

9 Q: Okay. And you said earlier when you were at the hospital
10 after he's been Mirandized, that you deduced from his account
11 that he was driving. Specifically, what is it that he said
12 that you were able to deduce that he was driving?

13 A: I did not deduce anything based on that primarily. What
14 I deduced is that based on where he was lying on the ground
15 relative to the vehicle's position, any person who has my
16 experience in accident reconstruction would deduce that he was
17 the driver.

18 Q: What comments made by Mr. Sellers contributed to that
19 investigation?

20 A: Based on my training and experience, when he is
21 describing where they were coming from, the specifics I do not
22 remember, where they were going to, the excessive speed of the
23 vehicle, things of that nature, it was given in the context of
24 he being the driver and not the other person.

25 Q: In what way?

TROOPER R.E. DENHAM - CROSS EXAMINATION BY MR. GROVE

1 A: Sir, I just -- you know, I'm doing the very best I can to
2 recount what happened. I can't get into things that I'm not
3 -- I cannot -- they're not fresh in my mind. All I can say is
4 that he said they were leaving from one particular place going
5 to another place and he -- he made a comment about driving too
6 fast and I remember asking him was he the driver and I did not
7 get an answer one way or the other. He did not confirm or
8 deny.

9 Q: Did you make any notes about your conversation with him?

10 A: No, sir, I did not.

11 Q: Okay. And you said that he wasn't able to sign the
12 implied consent. That's not an uncommon thing given an
13 injury; right?

14 A: No, sir. It's actually very common.

15 Q: And you said it might have been because he had IV's in --
16 in his hands?

17 A: Yes, sir.

18 Q: Or his -- or in his elbow?

19 A: Yes, sir.

20 Q: Or both?

21 A: We also -- I might add we also cannot interfere with a
22 medical staff working on any particular person. So sometimes
23 we -- out of respect for them that also factors in that.

24 Q: Certainly.

25 MR. GROVE: I beg the Court's indulgence.

TROOPER R.E. DENHAM - CROSS EXAMINATION BY MR. GROVE

1 Q: Thirty or forty-five minutes -- and I'm not going to hold
2 you to a figure by the way.

3 A: Yes, sir.

4 Q: But thirty or forty-five minutes between arriving at the
5 scene and arriving at the hospital?

6 A: That's my best recollection, sir. I cannot speak to the
7 exact time.

8 Q: Sure and I don't -- I don't expect you to check your
9 watch every thirty seconds to see what time it is.

10 A: Yes, sir.

11 Q: And again, I'm just asking for a ballpark here. Arriving
12 at the hospital and speaking with my client, how much time
13 were we talking about there?

14 A: I cannot say for sure. The only thing that I can say is
15 that in the situation like this, we are under a timeframe in
16 which blood or urine has to be taken and that was the only
17 thing that I was thinking about at the time.

18 Q: Sure. When had you decided based on your training and
19 expertise that Roderick Sellers was the driver of that
20 vehicle?

21 A: When I -- when I was walking around surveying the damage
22 and I walked around to where he was laying and I knelt down
23 beside him. First, I wanted to make sure that he was -- he
24 was still conscious and alive and at that time, based on my
25 training and experience, I made a reasonable determination

TROOPER R.E. DENHAM - CROSS EXAMINATION BY MR. GROVE

1 that he was the driver and he was under the influence.

2 Q: Did he make any comments to you that you can remember at
3 the scene?

4 A: No, sir. I cannot remember.

5 Q: Okay. And you can't remember specifically any comments
6 that he made to you at the hospital? Just -- just the one
7 comment he did not make to you?

8 A: That is correct, sir.

9 Q: Was he generally responsive with you?

10 A: Generally, he was.

11 Q: Despite the injuries and despite any medication that he
12 may have been taking and despite nurses and doctors coming and
13 going?

14 A: Yes, sir.

15 Q: No Miranda form filled out?

16 A: We don't have a Miranda form.

17 Q: You didn't have him sign anything acknowledging that he
18 was waiving his right?

19 A: The only thing that he can sign if he so chooses is the
20 implied consent. Miranda is just giving audible -- audible
21 warnings.

22 Q: And being at the hospital, none of this is on video?

23 A: That is correct, sir.

24 Q: At what point -- and I'm not going to hold you to a
25 specific minute in time. At what point did you inform

TROOPER R.E. DENHAM - CROSS EXAMINATION BY MR. GROVE

1 Roderick that he was either under arrest or he would be under
2 arrest upon leaving the hospital?

3 A: Before I -- before I asked any questions as I normally
4 do, I told the subject you are under arrest. The Miranda
5 rights follow and then the implied consent rights, if the
6 situation -- if the person is conscious, we do our best to do
7 the implied consent rights.

8 MR. GROVE: Thank you. I don't think that I have
9 anything further, Judge.

10 THE COURT: Redirect?

11 MR. TUCKER: No, Your Honor.

12 THE COURT: All right. Thank you, sir. You may step
13 down. Anything else on this issue on behalf of the State, Mr.
14 Solicitor?

15 (Whereupon, the witness leaves the stand at 1:02 p.m.)

16 MR. TUCKER: No, Your Honor.

17 THE COURT: All right. Mr. Grove, I'll be glad to hear
18 from you. It's your motion.

19 Mr. GROVE: Thank you, Your Honor. Obviously, the
20 purpose of a Jackson v. Denno hearing is to determine whether
21 an individual knowingly and intelligently waived their right
22 and gave -- gave a voluntary statement. First of all, it
23 doesn't appear from the proffered testimony that there's any
24 statement that can actually be produced and it's generic terms
25 and conjecture at this point. There -- there aren't any

1 quotes. It's -- it is just suggestions of something along the
2 lines of X, Y or Z. I'd also put to Your Honor that being in
3 the hospital, being certainly told that you're under arrest,
4 having traumatic injuries that may have included up to two
5 broken collar bones, a broken neck and a broken leg and ---

6 THE COURT: Well, that's not in evidence, but go ahead.

7 MR. TUCKER: And the possibility of being under whatever
8 medication you might suspect after having a traumatic car
9 injury, that I'm not sure that Mr. Sellers could have
10 knowingly and intelligently made a voluntary statement. I
11 don't think that the State has met their burden in that regard
12 and furthermore, I don't think that the State has put up any
13 evidence of an actual statement that would be presented. At
14 this point, as I said, it's all conjecture of supposed
15 suggestions of a statement.

16 I'd also argue that, Your Honor, that my client's got a
17 right to remain silent and that remaining silent should not be
18 used against him. If he doesn't take the stand in this case,
19 Your Honor will instruct the jury that him not saying
20 something and choosing to remain silent cannot be held against
21 him and shouldn't be considered. No more so should it be
22 considered by the State putting up evidence that he chose to
23 remain silent when he was confronted with questions at the
24 hospital immediately following this accident.

25 THE COURT: All right. Let me hear from the State?

1 MR. TUCKER: Your Honor, I think from Trooper Denham's
2 testimony there was nothing that he saw or heard or otherwise
3 became aware of that would indicate that Mr. Sellers was
4 incapable of understanding his Miranda warnings and his
5 implied consent warnings that he wrote -- read to him off of
6 the form. With regards to -- he answered some questions as
7 Trooper Denham testified to. When he asked where he was
8 coming, he said he was able to give him some answers, but then
9 in the face of who was driving, he didn't say it wasn't me, it
10 was somebody else. So ---

11 THE COURT: So is it your position and I think that it is
12 your position that if he -- if he had said I was driving that
13 that's admissible?

14 MR. TUCKER: I would under these circumstances, Your
15 Honor. After he'd been properly Mirandized and given his
16 advisement of rights based on the form that certainly that
17 would be a declaration against penal interest and certainly
18 one that we would want to use against him.

19 THE COURT: But his failure to make a statement is also
20 -- how is that a declaration against penal interest?

21 MR. TUCKER: Well, I certainly think that in face of a --
22 of a direct question of who was driving the vehicle when he
23 says nothing, obviously, as Your Honor alluded to ---

24 THE COURT: But doesn't he have a right to say nothing?

25 MR. TUCKER: He does. He has a right to invoke his right

1 of silence by -- you know, by saying I don't want to answer
2 any questions.

3 THE COURT: He doesn't even have to do that; does he? He
4 just doesn't have to say anything.

5 MR. TUCKER: That is correct, Your Honor. The State
6 would so ---

7 THE COURT: He doesn't have to say I'm -- I'm relying on
8 my Miranda rights, I ain't going to say anything, I'm not
9 going to answer that question. He doesn't need to say
10 anything.

11 MR. TUCKER: I understand, Your Honor.

12 THE COURT: And I -- it -- I have a problem with --
13 several problems with this. First of all is that he has the
14 absolute right to remain silent and he doesn't have to say
15 that he's -- he's not going to say -- make any statement and
16 what you trying to do is to infer that he was driving by his
17 failure to answer the question or you're trying to infer that
18 -- that his answer would have been I was driving.

19 And the other thing is that when you've got somebody that
20 is obviously hurt as he testified to and is obviously in pain
21 as he testified to and -- and I think he can testify to his
22 fact that he was under the influence or that he smelled
23 alcohol and all. All of those factors to me make it pretty
24 clear that -- that this individual was not in a situation to
25 waive his rights one -- or to waive or understand his rights

1 either way.

2 And so in my view the inferences the State wishes to
3 impose by his failure to answer the question of was I driving
4 or was he driving is not proper, and so I would say that this
5 officer can testify as to what he deducted from out there on
6 the road from the location of the victims on the scene and
7 based upon his experience as a highway patrolman what he
8 concluded in his opinion who was driving, but I don't think
9 that he can ask the question -- be asked the question did you
10 ask him if he was driving and he said nothing. I'm going to
11 sustain the objection to that and suppress that.

12 MR. TUCKER: Yes, Your Honor.

13 THE COURT: All right.

14 MR. GROVE: Your Honor, if I may for clarity of the
15 record's sake, Trooper Denham also testified to general
16 comments. He couldn't provide any quotes, but he did
17 reference the conversation between him and Mr. Sellers ---

18 THE COURT: Anything that he said in the hospital after
19 the Miranda warnings is inadmissible.

20 MR. GROVE: Thank you, Judge.

21 THE COURT: Now, he can tell what he deducted from what
22 his observations out there on the road were ---

23 MR. TUCKER: Yes, sir.

24 THE COURT: --- as to who was driving.

25 MR. TUCKER: I understand, Your Honor.

1 THE COURT: Okay. All right. Okay. Let's -- let's
2 recess for lunch and be ready to start back at two o'clock,
3 please. Thank you.

4 MR. GROVE: Oh.

5 THE COURT: Yes, sir.

6 MR. GROVE: We don't need to address it now. The jury
7 hasn't been sworn, but ---

8 THE COURT: What is his status?

9 MR. TUCKER: Judge, he was arrested September of last --
10 of 2011. Based on a member of the jury panel, we know that In
11 and Out Bail Bonding was -- was the bonding company that
12 posted his bond. If you'll give me a moment, I can tell you
13 exactly how much it was.

14 MR. TUCKER: It was like a \$10,000 surety bond, Your
15 Honor.

16 Mr. GROVE: He -- he had a bench warrant one time that
17 was lifted when he readily appeared. He missed one day of
18 court and came the next. I called him ---

19 THE COURT: All right. Here's what I'm going to do. At
20 least for the lunch recess, he'll stay out on bond at this
21 time with the understanding, Mr. Sellers, that this matter is
22 going forward this afternoon whether you are here or not. So
23 if you don't show back up, the case is going forward. Do you
24 understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And if the jury were to find you guilty, you
2 would be sentenced in your absence, a bench warrant would be
3 issued, you'd be brought before the Court, and the bench
4 warrant would be published, which means that you would
5 probably be arrested and incarcerated if you -- on the bench
6 warrant if you don't show up. So you can't cause a mistrial
7 by not showing up after lunch. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. With that understanding then I'll
10 allow him to stay out on bond. What I want you to do though,
11 Mr. Grove, before the evening recess is to contact the bail
12 bond company and to make sure they are not taking the position
13 that they are released on the bond by his appearance if this
14 case goes overnight and it probably will. If they are willing
15 to stay on the bond overnight, then I'll allow him to stay out
16 on bond under the same conditions, but I want the bond --
17 bonding company to notify the clerk that -- that bond is still
18 in effect.

19 MR. GROVE: That will be fine, Judge.

20 THE COURT: All right.

21 Mr. TUCKER: Thank you, Your Honor.

22 THE COURT: Thank you. We'll be in recess until two
23 o'clock.

24 (Whereupon, there is a break in the proceedings from 1:08
25 p.m. until 2:03 p.m.)

1 THE COURT: All right. We're back on the record with
2 regards to the matter of the State versus Roderick Jerome
3 Sellers. Mr. Sellers is present in court with his attorney,
4 Mr. Grove. The State is present and represented by the
5 Thirteenth Circuit Solicitor -- the Twelfth Circuit
6 Solicitor's Office. Anything before we bring the jury in and
7 have the jury sworn on behalf of the State?

8 MR. TUCKER: No, Your Honor.

9 THE COURT: On behalf of the defense?

10 MR. GROVE: No, Your Honor. Thank you.

11 THE COURT: Okay. Bring the jury in, please.

12 THE BAILIFF: Yes, sir.

13 (Whereupon, the jury enters the courtroom at 2:05 p.m.)

14 THE BAILIFF: That's the foreperson, Judge.

15 THE COURT: Okay. All right. Thank you, ladies and
16 gentlemen, and thank you for your promptness in being back
17 here and we are now ready to proceed. Mr. Doughty, I
18 understand the members of the jury have selected you as their
19 foreperson. Is that correct?

20 THE FOREPERSON: Yes, Your Honor.

21 THE COURT: Okay. You will sit there throughout the
22 trial of this case and, of course, the alternate will sit
23 where she is seated. All right, Madame Clerk, you may swear
24 the jury.

25 THE CLERK: If you will, stand and raise your right hand

1 to be sworn.

2 (Whereupon, all jurors comply.)

3 THE CLERK: You shall well and truly try and a true
4 deliverance make between the State of South Carolina and the
5 defendant at the bar whom you shall have in your charge and a
6 true verdict render according to the law and evidence, so help
7 you God. You may be seated.

8 THE COURT: All right. Ladies and gentlemen, before we
9 begin the actual trial of this case, I thought it might be
10 helpful if I explain to you basically how a trial proceeds. I
11 know all of you have seen trials on television, but I think
12 you will find it is a great deal different in real life.

13 First of all, the State will make an opening statement.
14 An opening statement is not evidence. It is simply an outline
15 to help you understand what the State expects the evidence
16 will show. The defendant may, if he wishes to, present an
17 opening statement, but he doesn't have to for reasons that I
18 will explain later.

19 Following the opening statement, you will hear the
20 testimony and evidence in this case. This will consist of
21 testimony from the State's witnesses, as well as any physical
22 exhibits that may be introduced into evidence. Following the
23 completion of the testimony, the attorneys will again have an
24 opportunity to make what is called a closing statement or
25 summation to you. This is an opportunity for the attorneys to

1 summarize the case from their respective points of view.

2 Again, these arguments are not evidence.

3 Following the closing statements by the attorneys, I will
4 instruct you on the law of South Carolina as it pertains to
5 the issues that have arisen in this case. And when I have
6 completed my instructions to you, you will be permitted to
7 begin your deliberations in order to reach a verdict.

8 Now, ladies and gentlemen, you are now the jury in this
9 case and I want to take a few minutes to tell you something
10 about your duty as jurors and give you some preliminary
11 instructions. At the end of this trial, I will give you more
12 detailed instructions and those instructions will -- will
13 control your deliberations.

14 It will be your duty to decide from the evidence what the
15 facts are. You and you alone are the judges of the facts.
16 You're going to hear the evidence, decide what the facts are,
17 and then apply those facts to the law which -- which I will
18 give to you. That is how you reach a verdict. In doing so,
19 you must follow that -- follow the law whether you agree with
20 it or not. That is the law that I give to you. The evidence
21 will consist of the testimony of witnesses, documents and
22 other things received into evidence as exhibits, and any facts
23 on which the lawyers agree or which I may instruct you to
24 accept.

25 Now, you should not take anything that I may say or do

1 during this trial as indicating what I think of the evidence
2 or what your verdict should be. The same law that makes you
3 the judge of the facts makes me the judge of the law. You
4 must take the law as I give it to you, regardless of what you
5 think the law is or what the law ought to be. If I'm wrong on
6 the law, there's another time and place for that error to be
7 corrected, but for this case, you must accept the law as I
8 give it to you.

9 Now, this is a criminal case brought by the State of
10 South Carolina. The State charges the defendant, Roderick
11 Jerome Sellers, with the offense known in the law as felony
12 driving under the influence. The charge against the defendant
13 is contained in this indictment. The indictment is not
14 evidence of anything. It is simply the description of the
15 charge made by the State against the defendant.

16 The defendant has pled not guilty to the charge and is
17 presumed innocent unless and until proven guilty beyond a
18 reasonable doubt. A reasonable doubt is the kind of doubt
19 that would cause a reasonable person to hesitate to act. A
20 defendant has a right not to testify and never has to prove
21 innocence or present any evidence. The burden of proof is
22 always on the State of South Carolina.

23 Now, there are certain things that are not evidence and
24 you must not consider them as evidence in deciding the facts
25 of this case. Statements and arguments of the attorneys are

1 not evidence. Questions and objections of the attorneys are
2 not evidence. And Testimony that I instruct you to disregard
3 is not evidence.

4 Evidence may be direct or circumstantial. Direct
5 evidence is testimony by a witness about what that witness
6 personally saw or heard or did. Circumstantial evidence is
7 indirect evidence. The law permits you to give equal weight
8 to both, but it is for you decide how much weight to give to
9 any of the evidence.

10 There are rules of evidence which control what can be
11 received into court. When a lawyer asks a question or offers
12 an exhibit into evidence and a lawyer on the other side thinks
13 that it's not permitted by the rules, that lawyer may object.
14 If I overrule the objection, the question may be answered or
15 the exhibit may be received. If I sustain the objection, the
16 question cannot be answered or the exhibit cannot be received.
17 Whenever I sustain an objection to a question or deny a motion
18 to admit an exhibit into evidence, you must ignore the
19 question or the existence of the exhibit and you must not --
20 must not guess what the answer would have been or what the
21 exhibit would have shown.

22 Sometimes it may be necessary for me to request that you
23 leave the courtroom while I discuss with the attorneys legal
24 questions that come up during the trial. If this occurs, you
25 should not speculate about our discussions or the reasons that

1 you were asked to leave the room. This is simply a procedure
2 that the law requires when certain legal issues arise.

3 There also may be occasions when I ask the attorneys to
4 approach the bench so that I can discuss a legal issue with
5 them in private. I will do this as often as possible so that
6 you will not be required to leave the room more than is
7 absolutely necessary. Again, if I ask the attorneys to step
8 up to the bench or I ask you to leave the courtroom, please
9 don't think that anybody is trying to hide anything from you
10 or keep any evidence from you. This is simply a procedure
11 used by all lawyers and by all Courts to determine and decide
12 legal questions.

13 Now, in deciding the facts of this case, you may have to
14 decide which witnesses to believe and which witnesses not to
15 believe. That is called credibility. You may believe
16 everything a witness says or only part of it or none of it.
17 In deciding what to believe, you may consider a number of
18 factors including: the witness's ability to see or hear or
19 know the things the witness testified to; the quality of the
20 witness's memory; the witness's manner or demeanor while
21 testifying; whether the witness has an interest in the outcome
22 of the case or any motive, bias or prejudice; whether the
23 witness was contradicted by anything the witness said or wrote
24 before the trial; or by any other evidence in the record. And
25 finally, how reasonable was the witness's testimony when

1 considered in the light of other evidence which you do
2 believe.

3 Now, just a few words to you about your conduct as
4 jurors, some of which I have already mentioned, but they're
5 important enough that they bear repeating. Do not talk to
6 each other about this case until the end of the case when you
7 go to the jury room to deliberate your verdict. Do not talk
8 with anyone else about the case until the trial has ended
9 following your verdict and you have been discharged as jurors.

10 This means do not discuss the case with members of your
11 family or your friends or with anyone else. You may tell them
12 that you are a juror, but don't tell anything about the case
13 until you have been discharged by me. Do not let anyone talk
14 to you about the case. If anyone should try to talk with you,
15 get their name or their description and report it to the
16 bailiffs or the security personnel. They will let me know and
17 I will deal with them.

18 Do not read any news stories or articles or listen to any
19 radio or television reports about the case. You are not to
20 consider as evidence anything that you may see or hear when
21 court is not in session. Do not do any research such as
22 consulting dictionaries or other reference materials or the
23 internet. And do not do -- make any investigation into the
24 case on your own.

25 And finally, do not make up your mind about what your

1 verdict should be until you have heard all of the evidence in
2 this case and the arguments and the lawyers and the
3 instructions on the law by the Court. You will be instructed
4 when to begin your deliberations by either me or the bailiff.
5 Any objection to my initial remarks on behalf of the State,
6 Mr. Solicitor?

7 MR. TUCKER: No, Your Honor.

8 THE COURT: On behalf of the defense, Mr. Grove?

9 MR. GROVE: No. Thank you, Your Honor.

10 THE COURT: All right. All right. Ladies and gentlemen,
11 the first order of business will be the matter of opening
12 statements and for that purpose the Court will recognize the
13 assistant solicitor. Yes, sir.

14 OPENING STATEMENT BY THE PLAINTIFF

15 MR. TUCKER: Choices. We all make them every day. Some
16 are big; some are small. Some choices are good; some choices
17 are bad. And folks, some choices will flat change your life
18 forever. This is a case about choices and on September the
19 27th, 2011, the defendant, Roderick Sellers, made a series of
20 choices that went from bad to worse. He chose to drink, he
21 chose to drive, and he drove his automobile after drinking in
22 such a way that it caused not only injuries to him but to his
23 passenger.

24 To understand how September 27th, 2011, occurred and what
25 brings us here today, we have to go back just a little bit.

1 September the 26th, 2011, that we're talking about, late in the
2 evening, kind of bleeding over until the morning of September
3 the 27th. But on that date and time, Johnny Williams, just
4 like many other people do in my neighborhood and his, he
5 decides to walk up the street in the Savannah Grove area to a
6 friend of his. He walks up there and as friends will
7 sometimes do, there is a little beer being drank, there's a
8 little bit of a party going on.

9 Now, what happens as the evidence will show is that
10 Johnny Williams sees an individual later identified as
11 Roderick Sellers. Now, Mr. Williams and Mr. Sellers aren't
12 particularly friends, but it is a party after all, be it an
13 impromptu one. And as impromptu parties will sometimes do,
14 they kind of die out and sometimes it's just because the
15 person whose house it is will run you out. But at any rate,
16 that party began to fizzle a little bit.

17 Now, by this time as the evidence will show, Mr. Williams
18 and Mr. Sellers had become somewhat of acquaintances. Now, a
19 decision is made, and again we're talking about choices as I
20 mentioned, and this is one of those situations where it was a
21 bad choice that got worse because they made a choice to take
22 the party somewhere else. Now, Mr. Williams will tell you
23 when he gets on the stand he made a bad decision by getting in
24 the car with a fellow he knew had been drinking. He has to
25 live with that choice pretty near for the rest of his life as

1 he will tell you. He's facing responsibility for his choices
2 on a daily basis. We ask you now after hearing all the
3 evidence to make Mr. Sellers face responsibility for his.

4 What happened when they got in the vehicle -- this was a
5 vehicle that was owned by Mr. Sellers, that was operated by
6 Mr. Sellers, and it was being driving Mr. Sellers. As the
7 evidence will show, in the Savannah Grove area and they go
8 down Alligator Road, Mr. Sellers started driving in such an
9 erratic fashion that Mr. Williams, as he will testify, he
10 started telling him stop, stop, stop, let me out. Mr. Sellers
11 didn't hear it or, if he did, he didn't pay it any attention,
12 but he drove that car after drinking in such a way that it
13 actually flipped over and it threw out Mr. Williams and it
14 almost threw out partially Mr. Sellers.

15 Now, both of them sustained serious injuries and you will
16 hear testimony from Mr. Williams's doctor -- you will hear
17 from him, but you will also hear from his doctor and he'll
18 tell you the extent of the injuries suffered by Mr. Williams.
19 Rehab, surgeries, and still walking with a cane, and we're
20 talking, you know, a couple of years after the fact and the
21 effect that it had on him. The choices, they have
22 consequences.

23 Now, you will hear from Trooper Denham. He was the first
24 Trooper on the scene. He is the investigating, he is the
25 responding, he is the arresting officer in this case as you

1 will hear. Now, when Trooper Denham gets on the scene, there
2 are a lot of things that a highway patrolman has to do. He
3 has to, number one, make sure that the people who are injured
4 aren't killed or that they're getting proper medical
5 treatment, that the first responders are looking after them.
6 He'll tell you how he did that in this case.

7 He also has a responsibility to try to figure out what
8 happened and he will tell you what he did to ascertain that,
9 but almost from the get go, he thought something was a little
10 odd based on the weather conditions and based on how this
11 vehicle was wrecked in such a way and where it was wrecked.
12 His suspicions got a little bit more heightened when he got
13 close to Mr. Sellers and he smelled what he will describe to
14 you was a strong odor of alcohol.

15 At this point, the injuries are so severe, Trooper Denham
16 doesn't want to interfere with what the EMS workers are trying
17 to do and both Mr. Williams and Mr. Sellers are loaded up and
18 they're taken to local hospitals. Mr. Sellers goes to
19 Carolinas Hospital. This is where you'll hear from Teresa
20 Sellers, who was an RN working in the emergency room that
21 night. She'll tell you how when she got -- was at work,
22 Trooper Denham came to her after conducting his investigation,
23 after forming probable cause that Mr. Sellers was not only
24 operating the vehicle, but he was also operating it while he
25 was -- the fact that he was operating a motor vehicle while

1 materially and appreciably impaired.

2 At that point, pursuant to law, Trooper Denham asked
3 Nurse Sellers to draw blood for testing for blood alcohol
4 content. She'll tell you how she drew the blood and how she
5 gave it to Trooper Denham, and Trooper Denham again will tell
6 you what he did with the blood in terms in laying a chain of
7 custody so that you folks will know that there was no way that
8 blood could have been tampered with from the time it came out
9 of Mr. Sellers's arm.

10 You will hear from two other troopers who will tell you
11 that once the blood was signed in to the South Carolina Troop
12 5 headquarters here, it was logged in, accounted for, secured,
13 and it was then taken to Columbia. You will hear from the
14 trooper who took it to Columbia. You will hear from the two
15 troopers who received it in Columbia, logged it in, and then
16 you will hear from, later on tomorrow, a forensic toxicologist
17 who will tell you the blood got to her and what she did with
18 it and what she tested the blood for. She'll also tell you
19 what the results of that was. The blood alcohol content was
20 almost twice what we refer to as the legal limit, a .15 and
21 higher.

22 Choices. His choices. He chose to drink, he chose to
23 drive, he chose to operate his vehicle in such a fashion.
24 Now, once you hear from her, you'll hear from Trooper Dewitt,
25 who is on the -- what we refer to as the Multidisciplinary

1 Accident Investigation Team or MAIT as it's referred to.
2 These guys, it's their training, it's their purpose in life to
3 respond to an accident scene, and based on from what they have
4 put together, to tell you how it happened, why it happened,
5 and more than likely the root causes of what went on. You'll
6 hear from Trooper Dewitt and he will tell you based on the
7 evidence, based on his scientific approach to ascertaining
8 what went on, what the inescapable conclusion of the Highway
9 Patrol was.

10 His car, his drinking, his driving is what led to this.
11 Folks, this is a case about choices. We make them every day.
12 Some big, some small, some good, some bad, and some as I said
13 will flat change your life forever and that's what happened to
14 Johnny Williams. His life got changed forever. He lives with
15 the responses of -- or the responsibilities for those -- for
16 those consequences of his actions every day.

17 After you hear all the evidence, we're going to be asking
18 you to return a verdict of guilty of felony DUI with great
19 bodily injury. And finally, make Mr. Sellers take
20 responsibility for what he did by way of choices that night.

21 THE COURT: Mr. Grove, does the defendant care to make an
22 opening statement?

23 MR. GROVE: Yes. Thank you, Judge.

24 THE COURT: You may.

25 OPENING STATEMENT BY THE DEFENDANT

1 MR. GROVE: When I was four years old, I lived in Tabor
2 City, North Carolina, and I went to preschool at First Baptist
3 Church in Tabor City. And I got in trouble one day because my
4 best friend, Jessie Coleman, cut his finger with a knife. It
5 was a brand new pocket knife and I don't know how familiar
6 y'all are with pocket knives, but when they are new, the
7 blades are a little bit tighter than they are as they -- as
8 they age and for a little four-year-old who probably shouldn't
9 be playing with a pocket knife alone, Jessie was trying to
10 open up the blade and his thumb slipped over the return just
11 -- just a little bit and when it came out of his hand, it
12 jumped right back in and just barely nicked the end of his
13 finger. Of course, Jessie was crying and Ms. Stevens, our
14 teacher, came over to ask what was going on and Jessie said
15 well, William brought this pocket knife and I got cut when I
16 was playing with it.

17 So Ms. Stevens calls my mama, Beth, and she says, Beth, I
18 need you to come up to the church. We need to have a sit-down
19 talk with William about how he's not old enough to have a
20 pocket knife of his own yet and that's something that little
21 boys need to do with their dad's until they are old enough to
22 have their own knife. She said if you will, call Mike, my
23 dad, and have him come and meet us there as soon as he can.

24 So mama calls dad at work and he's on the phone so she
25 leaves a message with Marietta, and Marietta takes down

1 shorthand of the message and goes and drops it off at my dad's
2 desk. He's on the phone and looks at the note and says, Bill,
3 I got to call you back and hangs up the phone and runs out of
4 the office with his keys, jumps in his car and flies down the
5 road to the First Baptist Church because the note said, Mike,
6 Beth called. William took a knife to school and cut a child.

7 So in his head he is picturing this bloody massacred
8 scene of me coming to school with a knife and -- and going
9 berserk when in reality what had happened was Jessie had taken
10 the knife to school and didn't want to get in trouble for it.
11 So he said that I had brought it and, you know, the injury
12 wasn't nearly as bad as it sounded.

13 I'm not suggesting the Mr. Williams's injuries aren't as
14 bad as they sound; I'm sure that they are. What I am
15 suggesting is that you, ladies and gentlemen, wait and listen
16 until you've heard all the evidence because when Dad got to
17 the First Presbyterian Church, he realized that the story he
18 had in his head turned out to be vastly different than the
19 story that was in reality. He didn't rush to judgment, he
20 didn't jump to conclusions or he did, but he shouldn't have.
21 Because if he had waited, he would have realized that there
22 was a whole lot more there than what he first thought there
23 might be.

24 That's what I am hopeful that you, ladies and gentlemen,
25 will do. Wait. That's all I'm asking. You're going to hear

1 plenty of testimony. You're going to hear a lot of it from
2 right here. Every bit of the testimony in this case will come
3 right there from the witness stand. Some of it might be good,
4 some of it might be bad, some of it might only take a few
5 minutes, some of it might take hours.

6 Some of it might be exciting and some of it might be
7 boring, but every last word of it is important. The first
8 one, the last one and every word in between, so pay attention.
9 Don't make your mind up now. Don't make your mind up tonight.
10 Don't make your mind up in the morning. Make your mind up
11 when you've heard every last word.

12 The prosecutor has gone over some of the elements of this
13 crime with you and he's told you what they are. The driving
14 under of the influence to the extent that it appreciably
15 impairs your ability to operate a motor vehicle. Someone
16 received injuries and that your intoxication was the cause of
17 the accident. Those are what are called the elements. You
18 have to meet each and every last one of those before you can
19 be found guilty.

20 And whether it's not intoxicated, it's not a motor
21 vehicle, I'm not the one driving, the accident wasn't caused
22 because of my intoxication, or that the injuries weren't
23 caused because of the accident, if any of those aren't met,
24 the case hasn't been satisfied. So think about all of them.
25 Think about every last word that comes from over there.

1 Also, think about what you don't hear. What I think
2 you're going to hear is that this investigation was over as
3 soon as it started. As soon as they walked up there, we know
4 what happened, and then all of the evidence will come to
5 surround the idea that they've created in their heads as to
6 what went down, as opposed to gathering all of the evidence
7 and investigating all of it and then deciding what happened.
8 Maybe after you've heard the evidence, it will sound like they
9 decided what happened and then they found the evidence that
10 would go around it.

11 I'll leave that up to you guys. All I'm asking is pay
12 attention. Listen carefully for what you do hear, for what
13 you don't hear, for what does satisfy the elements and for
14 what doesn't. And at the end of this trial, I'm confident
15 that you will not be confident that all of the elements have
16 been satisfied and you'll return a verdict of not guilty.
17 Thank you.

18 THE COURT: All right, sir, you may call your first
19 witness.

20 MR. TUCKER: Thank you, Your Honor. May it please the
21 Court. At this time, we call to the stand Johnny Williams.

22 THE COURT: All right. Mr. Williams.

23 THE CLERK: If you would, place your left hand on the
24 Bible and raise your right hand, please.

25 THE WITNESS: Yes, ma'am.

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

1 THE CLERK: Do you swear the testimony you give in this
2 case will be the truth, the whole truth, and nothing but the
3 truth, so help you God?
4 THE WITNESS: Yes, ma'am.
5 THE CLERK: Be seated and state your name for the record.
6 THE WITNESS: Johnathan Williams.
7 MR. TUCKER: May it please the Court, Your Honor.
8 JOHNNY WILLIAMS, being first
9 duly sworn, testifies as follows:
10 DIRECT EXAMINATION
11 BY Mr. TUCKER:
12 Q: Mr. Williams, how old are you?
13 A: Twenty-nine.
14 Q: Are you a life-long resident of Florence County?
15 A: Yes, sir.
16 Q: Where do you presently live?
17 A: Savannah Grove Road.
18 Q: Can you speak up just a little bit?
19 A: Savannah Grove.
20 Q: Where did you go to high school?
21 A: West Florence High.
22 Q: Did you play sports or anything like that there?
23 A: Yes, sir.
24 Q: What kind of sports did you play?
25 A: Football, basketball, baseball.

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

- 1 Q: Any good at them?
- 2 A: Yes, sir.
- 3 Q: How many kids do you have?
- 4 A: One.
- 5 Q: Do they stay with you?
- 6 A: Well, I have a baby momma. She comes on the weekends and
- 7 she get her on the weekdays.
- 8 Q: What kind of work do you do presently?
- 9 A: I can't work.
- 10 Q: Are you permanently disabled?
- 11 A: Yes, sir.
- 12 Q: I want to ask you some questions about September the 22nd
- 13 -- or 26th rather, 2011. Do you recall where you were and what
- 14 you were doing?
- 15 A: Yes, sir.
- 16 Q: Tell -- specifically I want to direct your attention to
- 17 that evening. Do you recall what you were doing if anything?
- 18 A: Yes, sir.
- 19 Q: I need you to speak up ---
- 20 A: Yes, sir.
- 21 Q: --- just a little bit for me ---
- 22 A: Yes, sir.
- 23 Q: --- Mr. Williams.
- 24 A: Yes, sir.
- 25 Q: Just like you're yelling at me almost.

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

1 A: Yes, sir.

2 Q: What were you doing?

3 A: Well, September 26th I walked down ---

4 THE COURT: Wait just a minute. Pull that microphone up
5 to you a little bit closer.

6 THE WITNESS: I'm sorry.

7 A: I walked down from my mom's house and I went down there
8 to Latrice Gee's house where everybody be at or whatever.

9 Q: All right. You said you walked from your mother's house.
10 Where is that actually?

11 A: That's on Savannah Grove Road which is Latrice's house is
12 on Savannah Grove Road also.

13 Q: How far is that in distance?

14 A: Probably like a mile.

15 Q: Now, you walked over to Mr. Gee's house is that right?

16 A: Yes, sir. Latrice.

17 Q: Do you recall what time of the evening this was?

18 A: Could have been six -- seven.

19 Q: We're talking in the evening?

20 A: Yes, sir. Afternoon.

21 Q: When you got there, what, if anything, did you do?

22 A: We had some drinks. Had a -- then smoked some bud and
23 all.

24 Q: Well, when you say you had some drinks, now be specific.
25 You're talking alcohol?

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

1 A: Yes, sir.

2 Q: Was it beer?

3 A: Liquor and beer.

4 Q: All right. And you mentioned you smoked some buds. What
5 are you referring to there?

6 A: Cannabis.

7 Q: All right. Now, at some point during the evening did you
8 make contact or see an individual that you later -- or you
9 knew to be Roderick Sellers?

10 A: Yes, sir.

11 Q: How well do you know or did you know Mr. Sellers on that
12 date?

13 A: Well, I know Mr. Sellers. We've known each other for a
14 long -- pretty long time.

15 Q: Now, would you consider yourself to be great friends at
16 that point?

17 A: Yes, sir, at that point. Yes, sir.

18 Q: Okay. Now, did you have any sort of conversations with
19 Mr. Sellers that evening?

20 A: We was talking about going to the club and stuff like
21 that and that's when we got in the car and went to the club.

22 Q: Okay ---

23 A: Well, we went to -- we ain't never made it to the club.

24 Q: Let's back up just a little bit. Now, when you say
25 Roderick Sellers, do you see Roderick Sellers sitting in the

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

- 1 courtroom today?
- 2 A: Yes, sir.
- 3 Q: Could you point him out for the Court, please?
- 4 (Whereupon, the witness points to the defendant)
- 5 Q: Okay. Is that the individual sitting next to Mr. Grove
- 6 at the defense table?
- 7 A: Yes, sir.
- 8 Q: Now, you mentioned that you were drinking and that you
- 9 were smoking cannabis. Did you see Mr. Sellers drinking and
- 10 smoking as well?
- 11 A: Well, yes, sir.
- 12 Q: Okay.
- 13 A: They told us that in the hospital. It was in our system
- 14 when they did the blood work.
- 15 Q: But did you personally see Mr. Sellers drinking?
- 16 A: Yes, sir.
- 17 Q: What was he drinking?
- 18 A: Alcohol.
- 19 Q: Was he drinking the same things you were drinking?
- 20 A: Yes, sir.
- 21 Q: Beer?
- 22 A: Same thing.
- 23 Q: Liquor?
- 24 A: Yes, sir.
- 25 Q: Did you see him smoking cannabis?

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

1 A: Yes, sir. We smoked.

2 Q: All right. Now, you mentioned later on that y'all talked
3 about going to a club. Do you recall what time this
4 conversation took place?

5 A: I'd say about twelve -- twelve o'clock, that midnight.

6 Q: Okay. Now, were y'all still at Mr. Gee's at this point?

7 A: Yes, sir.

8 Q: All right. Now, you mentioned you had walked over. So
9 you hadn't driven at this point?

10 A: No, sir.

11 Q: All right. Whose idea was it to drive to a club?

12 A: Roderick.

13 Q: All right. What, if anything, after you had that
14 conversation did y'all do?

15 A: Well, we went to -- well, we left Latrice Gee's house.
16 We got on Paul Jones and as we got on Paul Jones, we ran out
17 of gas and there was this girl that brung us a -- a tank of --
18 a tank of gas or whatever for us to make it to the store, the
19 Kangaroo. Because it was so late, that's the only store that
20 was open. It's on Irby Street. So we made it to the store
21 and got to the store and the guy's other friend that was also
22 in the car had to go back home or whatever. So instead of us
23 going straight from the club -- from the Kangaroo, we went to
24 -- they went back home and that's when I jumped -- I was in
25 the back seat. I jumped in the passenger seat and Roderick

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

1 jumped in the driver's seat and we left and went back to
2 Savannah Grove because we had to go them and as we was going
3 back ---
4 Q: All right. Let me stop you there. Now, when you left
5 Mr. Gee's house, there was someone else in the car with you
6 besides Mr. Sellers?
7 A: Yes, sir.
8 Q: All right. Who was that individual? Do you recall his
9 name?
10 A: Corey Kennedy and Trassa [phonetic] Gee.
11 Q: Okay. Now, where were they sitting?
12 A: Corey was in the front, I was in the back and Trassa was
13 in the back and Roderick was driving.
14 Q: Okay. Who was sitting in the back right behind Roderick?
15 A: I was.
16 Q: Okay. And again, this was Mr. Sellers driving the car?
17 A: Yes, sir.
18 Q: All right. Now, after you got gas and y'all went back
19 and you say that the other two individuals got out of the car?
20 A: Yes, sir.
21 Q: All right. And then you got into the front seat?
22 A: Yes, sir.
23 Q: All right. What happened then?
24 A: Well, we was going back to meet them to pick them back up
25 and go back uptown and stuff to the club, which is called Easy

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

1 Street. And as we was going back, we was on Paul Jones and
2 was -- we was, you know, going fast or whatever and ---

3 Q: Let me ask you this, you said the car was going fast?

4 A: Yes, sir.

5 Q: Did this alarm you in any way?

6 A: Yes, sir. I actually told him we can do thirty-five
7 miles per hour, man. We -- it don't matter what we -- how
8 fast we go. We still going to get to the same place.

9 Q: Okay. After you made this statement, did anything happen
10 after that?

11 A: No, sir.

12 Q: Okay. Now, you mentioned you were on John Paul Jones
13 Road?

14 A: Yes, sir.

15 Q: Did anything happen as you were traveling down that road?

16 A: We was going pretty fast and then we got on -- after we
17 got -- after Paul Jones, we got on Savannah Grove and, you
18 know, how Savannah Grove have them curves and we went round
19 the first curve and we di -- he was all right, but when we
20 went around the other curve, which is where I stay at, that's
21 where we flipped.

22 Q: Okay. Now, I want to be clear. At this point, there was
23 you in the car?

24 A: Yes, sir.

25 Q: And Roderick Sellers was in the car at this point?

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

1 A: Yes, sir, at this point.

2 Q: And he was the one driving?

3 A: Yes, sir.

4 Q: All right.

5 A: We was supposed to meet up with our friends, but we never
6 did.

7 Q: Okay. Now, you mentioned that as you were approaching
8 that road something happened. What?

9 A: We flipped.

10 Q: Okay. Do you recall what happened in terms of did it
11 veer to the left or the right or can you recall at all?

12 A: To the left.

13 Q: Now, do you recall being ejected from the vehicle?

14 A: No, sir. I didn't know I was ejected.

15 Q: Okay.

16 A: Not at the time.

17 Q: Were you wearing your seatbelt when you left to go to the
18 club?

19 A: No, sir.

20 Q: Do you recall if Mr. Sellers was wearing his seatbelt or
21 not?

22 A: No, sir. They told us we weren't wearing our seat belts.
23 They said we weren't wearing our seatbelts.

24 Q: Well, listen. I don't want to ask about what they told
25 you at the hospital.

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

1 A: Okay.

2 Q: Let's just talk about what you observed. Okay?

3 A: Yes, sir.

4 Q: All right. Now, once you were ejected from the vehicle,
5 what's the next thing that you remember?

6 A: Well, I think I blanked out or whatever and as I woke
7 back up and I realized, I looked up and I looked at the car
8 and I was like, man, we flipped. And then when I laid back
9 down, I thought about it and I was like, well, let me see if
10 something wrong with me and when I got up, that's when I knew
11 my leg was broke. And I thought, aw man, my leg broke. So I
12 laid back down and this guy came outside that was in his yard
13 and he was like what's going on? I was like, man, just call
14 the police, call the ambulance, call somebody, man. I need
15 some help. And that's when they did.

16 Q: All right. So immediately you knew your leg was broken?

17 A: Yes, sir. And my femur broke and I didn't know my back
18 was broke.

19 Q: Okay. Do you recall -- and I know this must have been a
20 traumatic incident for you, but how far from the vehicle you'd
21 been thrown at this point? Were you able to find -- see?

22 A: I was pretty far.

23 Q: Okay. More than ten feet?

24 A: Yeah. I could say that.

25 Q: Okay. Now, you mentioned that this individual in whose

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

1 yard y'all ultimately wound up, you indicated that you asked
2 him to call the police and the ambulance?

3 A: Yes, sir.

4 Q: Did they arrive ultimately?

5 A: Yes, sir.

6 Q: Okay. What happened then? Do you recall?

7 A: Well, I don't recall riding to the hospital, but I recall
8 the last time I remember which is listening to the sirens and
9 hoping -- you know.

10 Q: Now, you were transported to a local hospital?

11 A: Yes, sir.

12 Q: Do you recall which one?

13 A: Carolina.

14 Q: Okay. Now, at the hospital did you have to undergo any
15 sort of surgery or anything like that?

16 A: Yes, sir. I had surgery on my femur and I had surgery on
17 my spine.

18 Q: So you had surgery on your femur and your spine?

19 A: Yes, sir.

20 Q: Which leg actually had the surgery with regards to the
21 femur?

22 A: My left.

23 Q: All right. Now, how long were you in the hospital? Do
24 you recall?

25 A: I want to say a month and some change.

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

1 Q: So you were as a -- you were in-patient in a hospital for
2 about a month?

3 A: Yes, sir.

4 Q: Now, when you were released, did you -- were you released
5 to the care of a physician for any sort of follow-up
6 treatment?

7 A: Yes, sir. I had therapy. I -- I had to learn to walk
8 all over again.

9 Q: Okay. Do you have -- did you -- you've had some sort of
10 physical rehabilitation afterwards?

11 A: Yes, sir.

12 Q: All right. Do you recall how long you had to undergo
13 that?

14 A: I did it about for four or five months. It couldn't --
15 he wouldn't take me too long because I didn't have the money
16 to pay him. So he did what he could.

17 Q: Do you recall being seen and treated by a Dr. Brennan?

18 A: Yes, sir. That's my back doctor.

19 Q: Okay. Now, ultimately, how long were you under his care
20 before he released you or discharged you?

21 A: It was in April.

22 Q: Okay. So this happened in September?

23 A: April -- April the 12th. I'd say April 2012.

24 Q: Okay. Did you have to have any follow-up surgeries after
25 you were discharged initially?

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

- 1 A: No, sir.
- 2 Q: Okay. Just the rehab?
- 3 A: Yes, sir.
- 4 Q: Were you able to work at all during this period of time?
- 5 A: No, sir.
- 6 Q: Were you able to walk unassisted during this period of
- 7 time?
- 8 A: No, sir.
- 9 Q: After the rehab, what sort of collateral consequences
- 10 have you had to suffer? I noticed when you walked to the
- 11 stand, you walked with the benefit of a cane?
- 12 A: Yes, sir.
- 13 Q: Are you able to walk without that cane?
- 14 A: Yes, sir. At times. Yes, sir.
- 15 Q: Okay. So you have to use it sometimes?
- 16 A: Yes, sir.
- 17 Q: Now, the use of the cane, is that directly related to the
- 18 surgery and the rehab following the wreck?
- 19 A: Yes, sir.
- 20 Q: Now, with regards to after you were discharged from
- 21 medical treatment, have you been able to work since then?
- 22 A: No, sir.
- 23 Q: So if this happened in September 27, 2011, have you been
- 24 able to work at all?
- 25 A: September? Say what now? Can you repeat the question?

JOHNNY WILLIAMS - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Since this happened, have you been able to work at all
2 period?

3 A: No, sir.

4 Q: All right. And again, you said that you're applying for
5 disability or you're already getting that?

6 A: Yes, sir. I've applied for it.

7 Q: Let me ask you this. With regards to you mentioned that
8 you played football, are you able to do anything physical like
9 that again?

10 A: Oh, no, sir.

11 Q: With regards to your child, are you able to interact with
12 your child the way that you want to?

13 MR. GROVE: Objection, Your Honor, relevance.

14 A: No.

15 THE COURT: Yes, sir. This is -- I'm going to sustain.
16 I think we -- I know what you're trying to establish, but I
17 believe you've established it. I think we're getting just a
18 little irrelevant. This is a -- let me -- a current
19 situation.

20 MR. TUCKER: Yes, sir. I'll move on.

21 Q: Mr. Williams, do you have a criminal record of any kind?

22 A: No, sir.

23 Q: Do you have a valid driver's license?

24 A: No, sir.

25 Q: Let me ask you again just so I'm sure. Who was driving

JOHNNY WILLIAMS - CROSS EXAMINATION BY MR. GROVE

1 that vehicle September 27th, 2011?

2 A: Roderick.

3 MR. TUCKER: Thank you. I believe that's all the
4 questions I have, Your Honor.

5 THE COURT: Cross examination, Mr. Grove?

6 MR. GROVE: Thank you, Judge.

7 CROSS EXAMINATION

8 BY MR. GROVE:

9 Q: Mr. Williams, you live on Savannah Grove Road?

10 A: Yes, sir.

11 Q: And this accident occurred on Savannah Grove Road?

12 A: Yes, sir.

13 Q: How far away from your house did this accident occur?

14 A: I want to say thirty -- thirty to forty yards.

15 Q: Thirty to forty yards from your house?

16 A: Yes, sir.

17 Q: So right there?

18 A: Yes, sir.

19 Q: And you walked to Latrice's house?

20 A: Yes, sir.

21 Q: For the Monday night football game; right?

22 A: Uh, no. It wasn't a Monday night football game. There
23 wasn't a Monday night football game at Latrice's house.

24 Q: Hanging out on a Monday night?

25 A: Yeah, just hanging out.

JOHNNY WILLIAMS - CROSS EXAMINATION BY MR. GROVE

- 1 Q: Okay. How far is Latrice's house from yours?
- 2 A: Like I said, like a mile.
- 3 Q: You walked a mile to Latrice's house?
- 4 A: Yes, sir.
- 5 Q: Now, you said that you got in the car with Roderick and
- 6 y'all ran out of gas?
- 7 A: Yes, sir.
- 8 Q: And then somebody brought you gas?
- 9 A: One of his female friends.
- 10 Q: And then y'all kept going?
- 11 A: Yes, sir. We went to the Kangaroo to put some more gas
- 12 in it.
- 13 Q: If you were going to leave Latrice's house and go to the
- 14 Kangaroo, would you go towards your house or away from your
- 15 house?
- 16 A: We went towards my house.
- 17 Q: So you didn't even make it a mile?
- 18 A: Say what now?
- 19 Q: You ran out of gas?
- 20 A: Yeah.
- 21 Q: So you didn't -- you didn't have a mile's worth of gas in
- 22 the car?
- 23 A: I don't know how much gas we had in the car.
- 24 Q: Well, you -- you got in the car and you ran out of gas
- 25 before you got to your house.

JOHNNY WILLIAMS - CROSS EXAMINATION BY MR. GROVE

- 1 A: Yeah, I understand that, but I still don't know how much gas
2 we had in the car. It's not my vehicle.
- 3 Q: Did you run out of gas?
- 4 A: Yes. We ran out of gas.
- 5 Q: Between Latrice's house and your own house?
- 6 A: No. We did not run out of gas between Latrice's house
7 and my mom's house. We ran out of gas on Paul Jones -- John
8 Paul Jones.
- 9 Q: How far away did you run out of gas from your house?
10 Miles away?
- 11 A: Yeah, miles away.
- 12 Q: Okay. And then you were going to Easy Street?
- 13 A: After -- we were going to Easy Street, but the friends --
14 the two friends got out because they had to go back to the
15 house and we were going back to meet up with them and that's --
16 that's where we made it. We never made it to Easy Street.
- 17 Q: And Easy Street's right over here; right?
- 18 A: Yeah. Yes, sir.
- 19 Q: I mean within two or three blocks of the courthouse?
- 20 A: Yes, sir.
- 21 Q: Okay. And you say you saw Roderick drinking that night?
- 22 A: Yes, sir. We both been drinking.
- 23 Q: And you say you saw Roderick smoking weed that night?
- 24 A: We both smoked.
- 25 Q: I'm not going to hold you to a specific amount of time.

JOHNNY WILLIAMS - CROSS EXAMINATION BY MR. GROVE

1 I'm not going to expect you to be able to say it was six
2 minutes, but at some point you said Corey Kennedy was in the
3 car?

4 A: Yes, sir.

5 Q: And then he got out?

6 A: Yes, sir.

7 Q: How much longer after that before the accident?

8 A: I'd say after we was leaving the Kangaroo and going back
9 to Savannah Grove ---

10 Q: Mm-hmm.

11 A: --- we was going on Paul Jones. We got back on Paul
12 Jones going back to Savannah Grove and then we got on Savannah
13 Grove. I'd say like -- I want to say ten minutes.. Fifteen
14 minutes at the most.

15 Q: And do I understand correctly that a fair amount of what
16 you remember has been told to you because you don't really
17 have a -- a recollection of the moment that the accident
18 happened; is that right?

19 A: That's true.

20 Q: Okay. I mean which is certainly consistent with having
21 been in the hospital for a while; right?

22 A: Yes, sir.

23 Q: Were you unconscious for any extended period of time? Do
24 you know?

25 A: Yeah. I had blanked. I know I was out. I didn't know

JOHNNY WILLIAMS - CROSS EXAMINATION BY MR. GROVE

1 -- you know, I seen -- when I seen -- when we flipped, I seen
2 the lights going in the dirt and I don't remember me getting
3 ejected out the car, but I know when I got up -- I guess I
4 woked up and I looked up and I seen the car was on its head
5 now. I was like, man, we flipped and that was when I was like
6 let me see if something wrong. And I went to get up and my
7 femur -- well, my femur -- I ain't looked at my femur until I
8 got the hospital and the doctor told me my femur was broke,
9 but I knew my leg was broke because I couldn't walk on it.

10 Q: Would you say you were drunk that night?

11 A: Yeah. I was high.

12 Q: And it was just you and Roderick in the car?

13 A: At the time, yeah, that we got in the accident.

14 Q: Whose yard did you end up in?

15 A: It was this -- I want to -- it was this yellow house that
16 is on Savannah Grove Road.

17 Q: But it's ---

18 A: I don't know the people.

19 Q: But you live -- you don't know them necessarily, but you
20 know where their house is?

21 A: Yes, sir.

22 Q: And it's not far from yours?

23 A: No, sir.

24 MR. GROVE: No further questions.

25 THE COURT: Redirect?

26

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 MR. TUCKER: No, Your Honor.

2 THE COURT: All right. Thank you. You may step down.

3 All right. You may call your next witness.

4 (Whereupon, the witness leaves the stand at 2:46 p.m.)

5 MR. TUCKER: Your Honor, the State would call Trooper
6 R.E. Denham to the stand.

7 THE COURT: All right. Trooper Denham.

8 THE CLERK: If you would, place your left hand on the
9 Bible and raise your right hand to be sworn. Do you swear the
10 testimony you give in this case will be the truth, the whole
11 truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Be seated and state your name for the record.

14 THE WITNESS: Trooper R.E. Denham.

15 MR. TUCKER: Thank you, Your Honor. May it please the
16 Court.

17 THE COURT: Yes, sir.

18 Trooper R.E. Denham, being first duly
19 sworn, testifies as follows:

20 DIRECT EXAMINATION

21 BY MR. TUCKER:

22 Q: Trooper Denham, although it's probably painfully obvious
23 to everybody who sees your uniform, but would you tell the
24 court where you work?

25 A: I work for the South Carolina Highway Patrol assigned to

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 Troop 5 Post B, which is Florence, Dillon and Marion.

2 Q: Okay. Let's begin with the obvious question first. How
3 long have you been a trooper?

4 A: Almost six years.

5 Q: Did you have any prior law enforcement experience prior
6 to joining the patrol?

7 A: No, sir, I did not.

8 Q: Did you hold any other kind of jobs that are relevant to
9 being a patrolman prior to joining the patrol?

10 A: No, sir, I did not.

11 Q: Now, when you say you joined the patrol and you've been
12 with them about six years ago, do you have to attend any sort
13 of special training to become a highway patrolman?

14 A: Yes, sir, we do.

15 Q: Would you please tell me a little bit about that?

16 A: We -- we first start out with -- it's a paramilitary
17 organization. We have about twenty-one weeks of basic
18 training in which one phase of that is -- is concentrated on
19 basic accident reconstruction, and then we have a much more
20 follow-up throughout the remainder of your career.
21 Specifically, we have to go back for two weeks of advanced
22 accident reconstruction in Columbia at our training Facility
23 there and then there are additional training opportunities if
24 you -- if you are so inclined to -- to be a part of.

25 Q: Okay. Now, you mentioned those particular training

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 opportunities. Did you, in fact, attend those and
2 successfully complete them?

3 A: Yes, sir, I did.

4 Q: With regards to your present duties, what are some of the
5 things that a highway patrolman does on a regular basis?

6 A: We're primarily concentrated on the efforts of reducing
7 fatalities on the streets of South Carolina, primarily in
8 Florence County which I'm assigned to, and basic law
9 enforcement of traffic laws that govern our state.

10 Q: Okay. Now, you mentioned that you had specialized
11 training with regards to accident reconstruction. Have you
12 also had any training with regards to driving under the
13 influence detection?

14 A: Yes, sir, I have.

15 Q: Could you tell the folks of the jury a little bit about
16 that, please?

17 A: In addition to what we receive at the basic school, I've
18 attended more than one advanced DUI class that is provided to
19 us through -- through the Highway Patrol.

20 Q: Okay. Now, with regards to working in Troop 5, were you
21 working in Troop 5 and on duty the early morning hours of
22 September the 27th, 2011?

23 A: Yes, sir, I was.

24 Q: Specifically, do you recall being dispatched to what came
25 out as an accident call on Savannah Grove Road?

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 A: Yes, sir, I was.

2 Q: Do you recall when you responded what you saw first?

3 A: When I saw -- just speaking in layman's terms, it was
4 quite a mess to be honest. I saw an overturned vehicle well
5 off the roadway that was obviously traveling at a high rate of
6 speed and I saw two persons that were laying in close
7 proximity to the -- to the vehicle in question, as well as a
8 lot of debris. We already had bystanders already gathered at
9 the scene and shortly thereafter you begin to see EMS and fire
10 and -- and a couple of my co-workers were there as well.

11 Q: Now, with regards to where this happened, you mentioned
12 it was Savannah Grove Road; is that correct?

13 A: That's correct.

14 Q: Is that in Florence County?

15 A: Yes, sir, it is.

16 Q: Okay. Now, when you got there, what you just mentioned
17 you had several of your co-workers show up. What was the
18 first thing that you recall doing when you pulled up and got
19 out of your vehicle?

20 A: Our first priority is to make sure that the collision
21 scene doesn't get any worse and then we have to begin as best
22 we can assessing what we have as far as injury. Most of the
23 time we -- fire and EMS, because a lot of the calls primarily
24 go through 911, they're en route before we are so oftentimes
25 they will get there before us, but -- so we will see a lot of

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 people -- first responders moving to take -- to take action to
2 help the people that are hurt primarily.

3 Q: Now, was that taking place when you arrived on this
4 particular incident?

5 A: Yes, sir. I don't remember the exact sequence, but we --
6 we arrived basically at the same time.

7 Q: Okay.

8 A: Give or take five or ten minutes.

9 Q: Now, you recall getting out and what was the first -- you
10 mentioned that one of the primary things you do is to try and
11 make sure the accident scene doesn't get worse?

12 A: Yes, sir.

13 Q: After that, what do you do?

14 A: Begin to assess whether any laws have been broken,
15 primarily in this case whether one or more people involved --
16 depending on how many vehicles are involved, whether they were
17 potentially or possibly under the influence of drugs or
18 alcohol or any other substance that might create impairment.

19 Q: Let me ask you this. With regards to where this accident
20 occurred, is that a straight stretch of highway, curvy road,
21 or do you recall?

22 A: It's -- it's curvy in a lot of places.

23 Q: Do you recall what the speed limit is through there?

24 A: I'd have to look at my notes. There are some portions --
25 it is primarily a forty-five mile an hour zone throughout the

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 -- there may be a thirty-five at one point, but most of the
2 time it's forty-five.

3 Q: Do you recall if it was raining or if there was any fog
4 present during the time of this accident?

5 A: No, sir. It was a beautiful night.

6 Q: And you said beautiful. I would assume you mean clear
7 by that; is that correct?

8 A: That is correct.

9 Q: Okay. Now, you mentioned that you got out and started
10 processing the scene. Do you recall the first time that you
11 had an opportunity to see where the occupants of the vehicle
12 were?

13 A: Yes, sir. The -- the gentlemen who just testified was a
14 little bit farther away. We can provide the jurors with a
15 diagram. He was a little bit farther away, but the -- Mr.
16 Sellers ---

17 Q: Let me ask you this. I didn't mean to interrupt you, but
18 does that in and of itself suggest anything to you based on
19 your training and experience?

20 A: It can. It can.

21 Q: What is one of the things it can suggest to you?

22 A: It can suggest that because Mr. Sellers was lying in a
23 particular place in very close proximity to the driver's door
24 relative to the car, it can suggest one being the driver and
25 one possibly not being the driver.

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Now, based on your assessment of what you saw with this
2 particular incident, where you able based on that alone to
3 ascertain who was driving the vehicle?

4 A: I believe in good faith I could make a good estimation
5 that Mr. Sellers was the driver.

6 Q: Okay. Now, once you made that determination, did you
7 approach Mr. Sellers?

8 A: I did. I was trying to ascertain what his condition
9 might be because I have to pass along the person's condition
10 to my immediate supervisor.

11 Q: Now, was he on the ground at this point or was EMS
12 already working on him?

13 A: He was on the ground.

14 Q: Did you notice anything unusual or suspicious about Mr.
15 Sellers when you approached and got close to him?

16 A: Yes, sir. I could -- the odor of alcohol was unusually
17 high and I had -- based on my experience and training, I felt
18 like there probably was some marijuana involved and maybe some
19 other substances, but I knew that the alcohol was the main
20 cause.

21 Q: Now, let me ask you this. With regards to a single car
22 accident, where it happened and the weather conditions, did
23 that in and of itself suggest anything to you?

24 A: It can. Based on my training and experience, especially
25 with the advanced DUI, there are certain indicators and red

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 flags as you might want to refer to them and we had -- I had
2 in this case a couple and I basically began my investigation
3 based on those indicators.

4 Q: Now, you mentioned there were some red flags present.
5 What were those specifically?

6 A: The high rate of speed in which the vehicle was
7 traveling, which was a little bit unusual. We -- the
8 condition based on the -- the ejections or partial ejections
9 of the -- of the persons involved. And as I stated before,
10 the -- what I was, -- what I was smelling from Mr. Sellers
11 about his person and the fact that I felt like he -- there was
12 a strong possibility that he was under the influence.

13 Q: Did you make any determinations or any attempts to
14 ascertain who the registered owner of the vehicle involved in
15 the accident belonged to?

16 A: Yes, sir. One of the things that we have to do as well
17 as being a first responder and seeing that the people involved
18 in the collision get the treatment they need, we also have to
19 begin to -- we have to begin to investigate the collision
20 beyond any impairment that we see and one of the things that
21 we do is we have to get the information as far as the vehicle
22 being registered with DMV so we can place that or put that on
23 the wreck report itself.

24 Q: Okay. Did you do that in this case?

25 A: Yes, sir, I did.

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

- 1 Q: Do you recall off-hand who the vehicle was registered to?
- 2 A: I believe it was registered to Mr. Sellers.
- 3 Q: Okay. Now, you were able to ascertain that through DMV?
- 4 A: Yes, sir, I was.
- 5 Q: Okay. Now, once you made that determination with all the
- 6 other red flags that you had present, what, if anything, did
- 7 you do next?
- 8 A: Because we -- because troopers are under a frame of time
- 9 in which we have to -- if we're going to pursue this from a
- 10 driving under the influence angle, we have to have bodily
- 11 fluids drawn from the time of arrest. We have to have that
- 12 completed within a certain amount of time. So as --
- 13 associates with the Highway Patrol are assisting me and
- 14 they're taking -- jobs are being allocated to one person or
- 15 another. It frees me to go with EMS or shortly thereafter to
- 16 a hospital so I can get those bodily fluids and so that is
- 17 what I did.
- 18 Q: Okay. Now, once the folks were transported -- Mr.
- 19 Sellers and Williams were transported to a local hospital, did
- 20 you follow up and make contact with Mr. Sellers there at
- 21 Carolinas Hospital?
- 22 A: Yes, sir, I did.
- 23 Q: What, if anything, did -- in terms of what you asked
- 24 personnel there to do?
- 25 A: I arrived -- as best I could tell, I arrived shortly

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 thereafter after he arrived and my goal is to find out the
2 extent of his injuries and make a determination as to whether
3 I'm going to pursue this from a DUI or felony DUI case. At
4 that point, there are things that I'm obligated to do as far
5 as getting my -- for lack of a better term, my kit together
6 that I have to provide the hospital so they can draw the blood
7 in this case.

8 I have to have the person -- if they're going to be
9 placed under arrest, if I know that's the case, then I have to
10 let them know that they are under arrest. I have to read them
11 their Miranda rights and then I have to -- if they wish to
12 give the blood or urine or in this case it was blood, I have
13 to read them the implied consent form provided to us by SLED,
14 which I did.

15 Q: Okay. So I'm clear and we don't any stone unturned, you
16 had made a decision at this point that probable cause existed
17 to arrest Mr. Sellers?

18 A: Yes, sir. I felt that it did.

19 Q: Could you tell the ladies and gentlemen of the jury
20 specifically what factors led you to determine that probable
21 cause existed?

22 A: As I stated before, the -- there were -- there were no
23 apparent extenuating circumstances that led me to believe that
24 there were any mechanical problems with the vehicle. There
25 were no other vehicles involved that may have run this vehicle

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 off the road. Nothing existed beyond me witnessing this
2 scene, surveying the damage, the extent of the damage, and
3 factoring in the severe nature of the injuries and then making
4 a determination that there was a strong possibility that the
5 driver -- I felt was the driver -- was under the influence.

6 Q: Okay. Did the fact that he smelled of alcohol, did that
7 play any sort -- any part in your probable cause
8 determination?

9 A: Yes, sir, it did.

10 Q: Now, once you were at the hospital, you mentioned that
11 you made contact with the nurse who was working on Mr.
12 Sellers?

13 A: Yes, sir.

14 Q: Do you see that nurse in here?

15 A: Yes, sir, I do. I've dealt with her many times.

16 Q: Okay. And you also mentioned that you read and advised
17 him of complied consent rights to Mr. Sellers; is that
18 correct?

19 A: That is correct.

20 Q: Okay.

21 MR. TUCKER: And, Your Honor, if I may approach?

22 THE COURT: Yes, sir.

23 Q: Trooper Denham, I'm handing you what has been marked as
24 State's Exhibit 6 and I would ask if you recognize that?

25 A: Yes, sir, I do.

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 Q: How do you recognize that?

2 A: I recognize my handwriting and the date and time that
3 would coincide with the collision.

4 Q: Would you please publish to the ladies and gentlemen of
5 the jury the date and time that's affixed at the bottom of
6 that document?

7 THE COURT: It's been offered in evidence?

8 MR. TUCKER: Not yet, Your Honor. I'm getting there.

9 THE COURT: Oh, okay.

10 A: Yes, sir. To the right of my signature, which I have to
11 sign and endorse the form, is 9/27 of 2011 and the time is
12 0500, which is five a.m.

13 Q: Okay. Is that your signature at the bottom of that?

14 A: Yes, sir, it is.

15 Q: Okay.

16 MR. TUCKER: Your Honor, at this time we would move
17 State's Exhibit 6 into evidence.

18 THE COURT: Any objection?

19 MR. GROVE: No, Judge. Thank you.

20 THE COURT: All right. Admitted into evidence as State's
21 Number 6 without objection.

22 MR. TUCKER: Okay.

23 Q: Trooper Denham, you mentioned that you made contact with
24 a nurse.. What, if anything, did you direct the nurse to do
25 pursuant to your investigation?

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 A: Well, we always -- in order to get the best results as
2 far as cooperation, we understand that they have a job to do.
3 They might have a workload that's very high. They may have
4 something that is going on that might take precedent. So what
5 I do is I let her know and she in this case would know that my
6 presence alone would signal to her that I needed to get the
7 evidence through bodily fluids from Mr. Sellers. I asked her
8 if she would assist me in this way. She is very accommodating
9 and she said she would and -- and that began the process of me
10 supplying her with the kit that's provided to the Highway
11 Patrol by SLED and I give that to her and she begins the
12 process.

13 Q: Okay. Now, when you say she begins the process and
14 she'll testify here shortly so if you leave out anything don't
15 worry about it, but with regards to what she did do you recall
16 specifically what her primary function was in these
17 proceedings?

18 A: Yes, sir. In a very efficient manner, I provided her
19 with a SLED kit and there are two vials that have to be filled
20 to a reasonable level and that's what she did. All of this is
21 done under not my supervision but my -- my witnessing the
22 event. And it is immediately placed with secured evidence
23 tape over the vials and then the paperwork begins and I fill
24 out the SLED form that is provided to me as best I can and
25 then in two separate places she will sign and date the fact

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 that she was the nurse that drew the blood.

2 Q: Okay.

3 MR. TUCKER: May I approach, Your Honor?

4 THE COURT: Yes, sir.

5 Q: Trooper Denham, I'm handing you what has been marked as
6 State's Exhibit 5 and I would ask if you recognize it?

7 A: Yes, sir, I do.

8 Q: What is it exactly?

9 A: It is the -- we call it SLED, but it's the South Carolina
10 Law Enforcement Division. It's the urine, forward slash,
11 blood collection report provided to us.

12 Q: Okay. And you mentioned this document was -- there was a
13 place for the nurse to sign, but you also sign that as well?

14 A: That is correct.

15 Q: Now, were you in the room when the blood was drawn?

16 A: Yes, sir.

17 Q: Okay. Did you ever leave the room at any time while the
18 blood was being drawn?

19 A: No, sir, I did not.

20 Q: Now, you pointed to her. Do you know this nurse's name
21 that is sitting courtroom, Teresa Sellers?

22 A: I do.

23 Q: Okay. And she was the one who drew the blood?

24 A: Yes, sir.

25 Q: Now, when she drew the blood, what, if anything, did she

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 do with it at this point?

2 A: Once she -- she usually does -- she'll do one vial at a
3 time and at least ideally she will and she will put the cap
4 back on. I already have the tape that -- that will secure
5 that from an evidence standpoint. I will immediately apply
6 that to the -- to the vial. She will have the other one
7 filled to a reasonable level and do the same thing with that.

8 Q: Okay. And that's what happened here?

9 A: Yes, sir, it was.

10 Q: Now, are the tubes marked in any particular way?

11 A: No, sir. The only marking that is on them is what I put
12 on them.

13 Q: Okay. And once you got that blood from the nurse or the
14 vials rather, did you put any sort of markings on them?

15 A: Yes, sir, I did.

16 Q: Okay. What sort of markings did you put on there?

17 A: They are -- they are -- just to -- just to make it
18 simple, they are strips of paper that basically the same
19 information that is on this form is put on the forms that
20 we'll put on the vials. When that is filled out and the ink
21 is dry so there is no smearing, I will take adhesive tape off
22 the back and if you can just visualize the vial has my finger,
23 I'll start here and I'll go over the top and come down on the
24 other side and seal it up so if the seal were ever broken, it
25 would be abundantly obvious to anybody that -- that it had

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 been tampered with.

2 Q: Okay. So when you got the blood, it stayed in your
3 custody?

4 A: Yes, sir, it did.

5 Q: And we're getting ahead, but just for purposes of
6 clarity, what did you ultimately do with the blood that was
7 drawn from Mr. Sellers?

8 A: Being the felony DUI case that I knew it was going to be,
9 I immediately took it from the hospital straight to Troop 5
10 headquarters where I have to enter all the information into
11 the computer, print out the forms that I need that will go
12 with the forms that I already have, and then I will put it in
13 an evidence fridge that we have there that will keep it until
14 we can -- it will keep it in a deliverable state until --
15 until somebody can take it to Columbia, which is typically in
16 the next few hours.

17 Q: Okay. Now, with this particular -- I mean this is a
18 secure area I assume?

19 A: Absolutely.

20 Q: Now, going back to the hospital. Subsequently, did you
21 have any contact with the victim or the passenger in this
22 case, Mr. Johnny Williams?

23 A: Yes, sir, I did.

24 Q: Did he indicate to you who was driving the vehicle?

25 A: Yes, sir, he did.

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Who did he indicate was driving the vehicle?

2 A: Mr. Sellers.

3 Q: Okay. I want to ask you one further thing. With regards
4 to your investigation, did you subsequently reduce your
5 investigation down to any sort of accident report?

6 A: Yes, sir. In this case, what I do is a preliminary
7 collision investigation, knowing that it will be turned over
8 to our collision experts at Highway Patrol and then we will
9 sit down -- when they are done with their part of the
10 investigation, we'll sit down and finalize the report.

11 Q: Okay.

12 MR. TUCKER: And, Your Honor, at this time it's not been
13 marked as State's Exhibit 10, but I'd ask that it be marked as
14 such at this time.

15 MR. GROVE: If Mr. Tucker intends to introduce that into
16 evidence, that would be my question.

17 MR. TUCKER: I do.

18 MR. GROVE: I'd have an objection to that at the
19 appropriate time.

20 THE COURT: All right. Come up, please.

21 (Whereupon, a bench conference is held in the presence of
22 the jury but out of the hearing of the jury as follows.)

23 MR. GROVE: Your Honor, I wasn't aware that an accident
24 -- an officer's report like an incident report could be
25 entered into evidence.

TROOPER R.E DENHAM - DIRECT EXAMINATION BY MR. TUCKER

1 THE COURT: Well, it's specifically not allowed under
2 803, paragraph 8. Accident reports required under South
3 Carolina Code are not admissible as evidence of negligence and
4 due care in an accident with damages. What ---

5 MR. TUCKER: And we're simply offering it to -- he made
6 the -- the call to DMV and even though he's testified to it,
7 we would want the jury to be able to look at it with regards
8 to the DMV material as to who the registered owner of the
9 vehicle was.

10 MR. GROVE: I think its probative value would certainly
11 not be -- will be outweighed by all the prejudice that it
12 would create if the jury could use that to make a
13 determination.

14 THE COURT: Even though it involves the exceptions to the
15 hearsay? What's your objection?

16 MR. GROVE: My objection is that an incident report can't
17 be entered into evidence and that's what he's -- the
18 prosecutor trying to do.

19 MR. TUCKER: And it's not really an incident report per
20 se; it's an accident report, Your Honor. And again, we're
21 simply offering it to determine that ---

22 THE COURT: What's the difference in the way you're
23 offering it?

24 MR. TUCKER: Well, we're offering it to show that Trooper
25 Denham did, in fact, notify DMV and DMV did verify the owner

TROOPER R.E. DENHAM - CROSS EXAMINATION BY MR. GROVE

1 of the vehicle. Of course, that's a big part of the State's
2 case.

3 THE COURT: Well, I'll let him use it to refresh his
4 memory with and he can testify to that, but I don't think the
5 document itself is admissible.

6 MR. GROVE: He's already done that.

7 THE COURT: Yeah. He can certainly testify as to its
8 content.

9 MR. GROVE: I've got no -- I've got no ---

10 THE COURT: Based upon the issue with that. Okay.

11 MR. TUCKER: Okay.

12 THE COURT: But the document itself is not admissible.

13 (Whereupon, the bench conference ends.)

14 Q: Trooper Denham, I just have final question with regards
15 to are you confident that the driver of the vehicle in
16 question was Roderick Sellers?

17 A: Yes, sir, I am.

18 MR. TUCKER: Thank you. I don't believe I have any
19 additional questions, Your Honor.

20 THE COURT: All right. Mr. Grove?

21 MR. GROVE: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. GROVE:

24 Q: Afternoon, Trooper. How are you?

25 A: I'm doing well. How are you, sir?

TROOPER R.E DENHAM - CROSS EXAMINATION BY MR. GROVE

- 1 Q: I'm hanging in there. You testified a few moments ago
2 that there were several troopers at the scene; is that
3 correct?
- 4 A: Yes, sir, it is.
- 5 Q: And that there were several first responders, be they EMS
6 or fire department or otherwise at the scene; correct?
- 7 A: Yes, sir.
- 8 Q: And there may very well have been other law enforcement
9 outside of the Highway Patrol there; is that correct?
- 10 A: I don't remember, but it's possible.
- 11 Q: It wouldn't be unusual?
- 12 A: No, sir, it would not.
- 13 Q: And I guess based on the location of this accident being
14 outside of the city limits, if it had been, it would have been
15 someone from the Sheriff's Department?
- 16 A: That is correct.
- 17 Q: I'm not going to hold you to a specific number, but can
18 you ballpark for me how many troopers you think were on the
19 scene?
- 20 A: About three or four, best I remember.
- 21 Q: And you -- but you were the first one there?
- 22 A: I don't know that I was the first one there, but it was
23 in my zone so to speak so I would have been responsible for
24 it.
- 25 Q: Sorry. I guess that was my point. You're the

TROOPER R.E DENHAM - CROSS EXAMINATION BY MR. GROVE

1 investigating trooper?

2 A: That is correct. Yes, sir.

3 Q: On this case, everyone else was supplementing your
4 efforts?

5 A: Yes, sir. That's correct.

6 Q: And, in fact, you did at one point say that because you
7 had to leave and go to the hospital to further the
8 investigation that you had allocated other duties to the
9 troopers that remained on the scene?

10 A: My supervisor would have allocated it.

11 Q: What -- what sort of duties are you talking about?

12 A: In this case because we were not sure that one or both of
13 the persons would have survived, we are responsible to what we
14 call paint the scene. We have fluorescent orange paint that
15 we have to put in particular places that would signify to the
16 people who would come behind us where the final resting place
17 of the vehicle is, where the -- where the driver and passenger
18 came to rest, what they might have -- what the vehicle might
19 have struck before coming to final rest, and things of that
20 nature.

21 Q: Because I guess they're not going to leave all that stuff
22 as is forever?

23 A: That is correct. Yes, sir.

24 Q: Okay. They're going to tow that car. They're going to
25 pick up that debris.

TROOPER R.E DENHAM - CROSS EXAMINATION BY MR. GROVE

1 A: That's correct.

2 Q: Just more or less a way of preserving the information as
3 you remember it?

4 A: That is correct. Yes, sir.

5 Q: What about taking pictures? Why wouldn't you just do
6 that?

7 A: Well, we have to have a redundancy and so we'll have
8 another person allocated to take the pictures and they have to
9 take a minimum of 100 photographs in an ideal situation. We
10 also have people who are monitoring traffic. If there is any
11 obstruction to the roadway, they have to make sure that the
12 road is either shut down or the traffic is able to get by in
13 one or both of the open lanes, depending on how wide the
14 roadway is. We also have to have somebody supervising the --
15 the damage as far as the property damage to this -- this
16 vehicle obviously came to rest in someone's yard. We have to
17 make sure that nobody was hurt with them and we also have to
18 make sure that wreckers are on the way to get the vehicles
19 that have been in the collision, and so on and so forth.

20 Q: You brought up a very good point. This vehicle came to
21 rest in someone's yard?

22 A: Yes, sir.

23 Q: And I know it was three o'clock in the morning, but there
24 were people standing out there?

25 A: Yes, sir, there were.

TROOPER R.E DENHAM - CROSS EXAMINATION BY MR. GROVE

1 Q: I'm sure this made one heck of a racket?

2 A: Yes, sir. They were actually sitting on their little
3 front porch stoop, so to speak.

4 Q: You speak with any of them?

5 A: I did at some point. I don't remember exactly when it
6 was, but I did speak to them.

7 Q: Did you memorialize their statements in any way?

8 A: No, sir, I didn't. It was of no evidentiary value so I
9 did not put it on the report. There were no eyewitnesses.

10 Q: You testified earlier you went to -- obviously, you went
11 to some sort of a school or an academy when you became a
12 trooper; right?

13 A: Yes, sir.

14 Q: And I think you said it was -- was it twenty weeks or
15 twenty-one weeks?

16 A: Yes, sir.

17 Q: Which is getting close to six months at that point;
18 right?

19 A: Yes, sir.

20 Q: And at the academy they teach you all sorts of things?

21 A: Yes, sir.

22 Q: They teach you how to operate a vehicle?

23 A: Yes, sir.

24 Q: How to probably do pit maneuvers and all that sort of
25 stuff?

TROOPER R.E DENHAM - CROSS EXAMINATION BY MR. GROVE

1 A: Things like that, yes, sir.

2 Q: How to handle a weapon?

3 A: Yes, sir.

4 Q: How to take a weapon apart?

5 A: Yes, sir.

6 Q: How to control a suspect?

7 A: Yes, sir.

8 Q: How to defend yourself?

9 A: Yes, sir.

10 Q: How to make a report?

11 A: Yes, sir.

12 Q: How to talk to witnesses?

13 A: Yes, sir.

14 Q: How to memorialize your conversations with witnesses so

15 that you can use them later on, whether or not you think they

16 might be helpful at the time?

17 A: I'm not sure about that. I'm not sure what you're

18 talking about. I'm not sure what you mean by memorialize.

19 Q: Write them down. To record them.

20 A: If ---

21 Q: Make notes that I spoke with such and such a person.

22 Their name is so and so. Their address is such and such.

23 A: The best report is a clean report in my estimation and

24 things that will not contribute to any resolution as far as

25 the findings that are reported are not listed on the report,

TROOPER R.E DENHAM - CROSS EXAMINATION BY MR. GROVE

1 at least not mine.

2 Q: And how can you decide at three o'clock in the morning in
3 the middle of the night when you haven't gotten -- completed
4 your investigation as to what is or is not going to be
5 important later on?

6 A: Well, I only -- I only -- I mean I'm basing that on the
7 fact that when I spoke to them, their -- it was clear to me
8 that nobody saw anything. The only thing that they were
9 seeing was what we were seeing and that was what was taking
10 place in the aftermath.

11 Q: Okay. You said that Mr. Sellers smelled of alcohol and
12 possibly marijuana and he may have been under the influence of
13 other things. You weren't sure?

14 A: That is correct.

15 Q: But you were sure that he smelled of alcohol?

16 A: Yes, sir, I was.

17 Q: And that he probably smelled of weed?

18 A: Yes, sir. That was very apparent, too.

19 Q: What about -- what about Mr. Williams?

20 A: He was obviously under the influence of alcohol and I
21 believe that I did detect marijuana. I can't say for sure
22 about the marijuana part.

23 Q: Did you do a blood test on him?

24 A: No, sir. He was not -- he would not apply.

25 Q: Why not?

TROOPER R.E DENHAM - CROSS EXAMINATION BY MR. GROVE

1 A: He was -- it was apparent to me, based on my experience,
2 that he was not the driver. I did not make this decision
3 alone. We -- we make it as a team and I felt that -- very
4 strongly that Mr. Sellers was the driver so he was the person
5 that I pursued.

6 Q: But you -- essentially you decided within three hours of
7 the accident that Mr. Williams wasn't the driver?

8 A: Actually, I decided a lot quicker than that.

9 Q: So when you got on the scene?

10 A: It was not an instantaneous thing. It was -- the one
11 thing that we have to do is -- for lack of a better term, is
12 put it in a lower gear. Not in a lackadaisical manner, but a
13 very calm manner, look at what we have, assess it with the
14 help of my supervisor and any other person who has the same
15 level of experience. We will discuss it based on what we see,
16 not what we think or what we hope or what we think might could
17 have happened, not any hypothetical, but what we see. We make
18 our determination at that point.

19 Q: But what if you're wrong?

20 A: I'm -- I'm not a perfect person, but I do the best I can.

21 Q: So you're allowing room for error?

22 A: I'm not a perfect person, but I do the best I can.

23 Q: So you're allowing room for error?

24 A: I'm -- I'm not always right, but I like to think I do a
25 good job.

TROOPER R.E DENHAM - CROSS EXAMINATION BY MR. GROVE

1 Q: And I don't dispute that one bit.

2 A: Yes, sir.

3 Q: But if your initial inclination is wrong, you don't have
4 anything to support a case against Mr. Williams; do you?

5 A: No, sir, I do not.

6 Q: Earlier, you testified that EMS and the fire department
7 and you and maybe another officer, all of y'all essentially
8 got there around the same time?

9 A: Generally about the same time. Yes, sir.

10 Q: Was EMS or the fire department attending to either Mr.
11 Sellers or Mr. Williams when you arrived?

12 A: To the best of knowledge, generally about the same time
13 they were attending to both at the same time.

14 Q: Sorry. My question is were they already attending to
15 them when you got there or ---

16 A: No, sir. It seems like it was -- it was a couple of
17 minutes after, give or take. I'm not -- I cannot put a minute
18 time on it for you, but ---

19 Q: Sure.

20 A: Pretty quickly to say -- say the least.

21 MR. GROVE: I don't think that I have any further
22 questions at this time. Thank you, Trooper.

23 THE WITNESS: Thank you.

24 THE COURT: Redirect?

25 MR. TUCKER: Just one question.

TROOPER R.E DENHAM - REDIRECT EXAMINATION BY MR. TUCKER

REDIRECT EXAMINATION

2 BY MR. TUCKER:

3 Q: Trooper Denham, have you ever met any perfect police
4 officers?

5 A: No, sir, I haven't.

6 MR. TUCKER: Thank you. That's all I have.

7 THE COURT: Anything further, Mr. Grove?

8 MR. GROVE: No, Judge.

9 THE COURT: All right. Thank you. You may step down.

10 THE WITNESS: Thank you.

11 (Whereupon, the witness leaves the stand at 3:18 p.m.)

12 THE COURT: All right. Leave the exhibits with the --
13 yeah. Ladies and gentlemen, you've been in the courtroom now
14 for about an hour and fifteen -- almost an hour and twenty
15 minutes and I think it's appropriate that we take our
16 afternoon recess at this time. So we're going to take about a
17 fifteen minute recess.

18 Please go to the jury room and just relax. Do not
19 discuss the case among yourselves. It's still premature for
20 you to begin any discussion about this case among yourselves.
21 But just take a little recess and we'll be ready to start back
22 about three thirty. Thank you. You may go with the bailiff.

23 (Whereupon, the jury exits the courtroom at 3:18 p.m.)

24 THE COURT: All right. Counsel, we'll be in recess
25 until about three thirty.

1 MR. TUCKER: Thank you, Your Honor.

2 (Whereupon, there is a break in the proceedings from 3:19
3 p.m. until 3:35 p.m.)

4 THE COURT: Thank you. Please be seated. All right.
5 We're back on the record with regard to the matter of the
6 State versus Sellers. Mr. Sellers is present with his
7 counsel. The State is present and represented by the Twelfth
8 Circuit Solicitor's Office. Anything before we bring the jury
9 back in?

10 MR. TUCKER: Your Honor, just briefly. I have spoken to
11 Mr. Grove with regards to scheduling. There are three more
12 witnesses the State would put up: the registered nurse,
13 Theresa Sellers, and two chain witnesses with the Highway
14 Patrol. We have -- Dr. James Brennan is on there. He has
15 surgery this afternoon and couldn't be here until in the
16 morning and the others are coming from Columbia with the
17 exception of Trooper Dewitt.

18 THE COURT: Okay.

19 MR. TUCKER: But ---

20 THE COURT: That will be fine. We'll do well to get
21 through the ones we got.

22 MR. TUCKER: Yes, sir.

23 THE COURT: Okay. All right. Anything, Mr. Grove,
24 before we bring the jury in?

25 MR. GROVE: Not at this time, Your Honor.

THERESA SELLERS - DIRECT EXAMINATION BY MR. TUCKER

1 THE COURT: All right. Bring the jury in, please.

2 THE BAILIFF: Yes, sir.

3 (Whereupon, the jury enters the courtroom at 3:36 p.m.)

4 THE COURT: All right. Thank you, ladies and gentlemen,
5 and we are now ready to proceed. The State was presenting
6 their case and they will have the right to continue to present
7 evidence to you in -- in this regard. Yes, sir.

8 MR. TUCKER: At this time, Your Honor, we would call
9 Theresa Sellers to the stand.

10 THE COURT: All right. Ms. Sellers, come around, please.

11 THE CLERK: If you would, place your left hand on the
12 Bible and raise your right hand. Do you swear the testimony
13 you give in this case will be the truth, the whole truth, and
14 nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Be seated and state your name for the record.

17 THE WITNESS: Theresa Sellers, registered nurse.

18 THE COURT: Yes, ma'am.

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

21 THERESA SELLERS, being first
22 duly sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. TUCKER:

25 Q: Ms. Sellers, where do you work as a nurse?

THERESA SELLERS - DIRECT EXAMINATION BY MR. TUCKER

1 A: Carolinas Hospital System in the Emergency Department.

2 Q: And I'm not asking for a curriculum vitae, but if you
3 could just tell us what some of the duties and training you
4 had as a nurse?

5 A: I've been a nurse for fifteen years and prior to that I
6 was a paramedic for ten years. So I've been in the medical
7 field for twenty-five years.

8 Q: I understand. Now, with regards to where you were, were
9 you working at Carolinas Hospital on the early morning hours
10 of September the 27th, 2011?

11 A: Yes, sir.

12 Q: Do you recall where you were specifically when you had to
13 deal with an individual that was identified as Roderick
14 Sellers?

15 A: Yes, sir.

16 Q: Can you recall what you did upon your first encounter
17 with him or how that happened?

18 A: We were notified that the patient was coming in and he
19 was in pretty serious condition. We prepared the trauma bays
20 as we normally do per procedure and escorted him into -- I
21 believe he was in Trauma One.

22 Q: Now, at some point, did you touch base or did you have
23 any sort of contact with Trooper Denham?

24 A: I did.

25 Q: After you had that contact, did he direct you to do

THERESA SELLERS - DIRECT EXAMINATION BY MR. TUCKER

1 anything?

2 A: Yes, sir.

3 Q: Do you recall what that was?

4 A: He asked me to obtain a blood sample.

5 Q: Okay. Now, when he says blood sample, did he mean from

6 Mr. Sellers?

7 A: Yes.

8 Q: With regard to how you go about drawing a blood sample,

9 how does that normally occur?

10 A: They provide us with a kit from the State I'm guessing.

11 It's got two vials in it with a needle and a bag container.

12 And you use betadine to swab the skin and collect the two

13 vials simultaneously.

14 Q: Now you mentioned you use betadine and not rubbing

15 alcohol?

16 A: Right.

17 Q: Right?

18 A: Yes, sir.

19 Q: Now, do you recall whether or not you were able to

20 withdraw two vials of blood from Mr. Sellers?

21 A: I was.

22 Q: Was Trooper Denham in the room with you when this

23 occurred?

24 A: Yes, sir.

25 Q: When you obtained those vials of blood, what, if

THERESA SELLERS - DIRECT EXAMINATION BY MR. TUCKER

1 anything, did you with them?

2 A: I handed them to Trooper Denham and he placed a tape from
3 one side of the vial to the other sealing the vials and put
4 them back in the box and sealed the box.

5 Q: Did you make any sort of notations on any sort of little
6 strips that were affixed to the vials?

7 A: Yes, sir.

8 Q: What was the purpose of that?

9 A: To identify that I had drawn the blood.

10 Q: Now, did you have to fill out any additional paperwork
11 once the blood was collected?

12 A: Yes, sir.

13 Q: Do you recall what kind of paperwork that was?

14 A: It was my signature stating that I had obtained the blood
15 from the patient.

16 MR. TUCKER: Your Honor, if I may approach?

17 THE COURT: Yes, sir.

18 Q: Ms. Sellers, I'd like -- what's already been marked as
19 State's Exhibit 5, I'll ask you first if you recognize it?

20 A: Yes, sir.

21 Q: How do you recognize it?

22 A: My signature.

23 Q: Okay. Is that the document that you referred to when you
24 said you signed some paperwork with regards to once you
25 collected the blood?

THERESA SELLERS - DIRECT EXAMINATION BY MR. TUCKER

1 A: Yes, sir.

2 Q: Now, once you signed that document, did you give that
3 back to Trooper Denham?

4 A: I did.

5 MR. TUCKER: As this point, Your Honor, we would ask that
6 that SLED blood collection form be moved into evidence.

7 THE COURT: All right. I was thinking we -- all right.
8 I don't have it as marked. Any objection, Mr. Grove?

9 MR. GROVE: No, Your Honor. Thank you.

10 THE COURT: All right. State's Number 5 admitted into
11 evidence without objection.

12 Q: And Nurse Sellers, I appreciate if I've asked you the
13 same question twice, but did that blood ever leave your sight?

14 A: No, sir.

15 Q: Did it ever leave Trooper Denham's sight while y'all were
16 in the room together?

17 A: No, sir.

18 Q: Okay. And again, you gave that to him once you collected
19 it?

20 A: Yes, sir.

21 MR. TUCKER: Thank you. I believe that's all that
22 questions I have, Your Honor.

23 THE COURT: Cross examination, Mr. Grove?

24 MR. GROVE: Thank you, Your Honor.

25 CROSS EXAMINATION

THERESA SELLERS - CROSS EXAMINATION BY MR. GROVE

1 BY MR. GROVE:

2 Q: Ms. Sellers, is it safe to say you have zero information
3 regarding an accident that occurred on Savannah Grove Road on
4 September 27th? First-hand information?

5 A: In reference to the accident itself?

6 Q: Yes, ma'am.

7 A: No. I don't.

8 Q: You don't anything about it?

9 A: Nope.

10 Q: You took blood from who they said take blood from?

11 A: Yes, sir.

12 Q: Did you take blood from Mr. Williams?

13 A: No, sir.

14 Q: He's the gentlemen sitting over there with the cane.

15 A: No, sir.

16 Q: Did you treat him for any of his injuries?

17 A: I don't recall him.

18 Q: Would it surprise you one way or the other if you did or
19 did not treat him I mean.

20 A: Of course, it would because he wasn't there.

21 Q: Okay. You signed some paperwork and you drew some of Mr.
22 Sellers' blood?

23 A: Yes, sir.

24 MR. GROVE: No further questions.

25 THE COURT: Redirect?

26

SERGEANT J.A. SEGARS - DIRECT EXAMINATION BY MR. TUCKER

1 MR. TUCKER: No, Your Honor, and we would ask that Ms.
2 Sellers be released from her subpoena.

3 THE COURT: Any objection to the witness being excused?

4 MR. GROVE: None, Your Honor. Thank you.

5 THE COURT: All right. Thank you. You are excused and
6 thank you for coming.

7 THE WITNESS: Thank you.

8 (Whereupon, the witness leaves the stand at 3:42 p.m.)

9 The Court: All right. You may call your next witness.

10 MR. TUCKER: Thank you, Your Honor. At this time, we
11 call Sergeant -- Trooper Dewitt to the stand.

12 THE COURT: All right. Trooper Dewitt.

13 MR. TUCKER: I'm sorry. Segars. You guys start looking
14 alike.

15 THE CLERK: If you would, place your left hand on the
16 Bible and raise your right hand. Do you swear the testimony
17 you give in this case will be the truth, the whole truth, and
18 nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Be seated and state your name for the record.

21 THE WITNESS: James Segars.

22 TROOPER J.A. SEGARS, being first
23 duly sworn, testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. TUCKER:

SERGEANT J.A. SEGARS - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Sergeant Segars, where are you presently employed?

2 A: With the South Carolina Highway Patrol here in Florence,
3 Troop 5, Post B, which consists of Florence, Dillon and
4 Marion.

5 Q: How long have you been employed with the Highway Patrol?

6 A: Nineteen years.

7 Q: Now, is it safe to say you've had various duties and
8 assignments within the patrol within those nineteen years?

9 A: Yes, sir.

10 Q: Now, with regards to your present assignment and
11 responsibilities, what do you primarily do these days for
12 Troop 5?

13 A: As -- as -- as being a sergeant, one of my primary duties
14 is the evidence custodian, which I log in all the evidence
15 that comes into the post.

16 Q: Now, were you working in that capacity on or about
17 September the 27th, 2011?

18 A: Yes, sir.

19 Q: And I understand that there are a lot of pieces of
20 evidence that come in on a daily basis and on a regular basis,
21 but do you recall handling any blood from Trooper Denham with
22 regards to a felony DUI that he was working?

23 A: Yes, sir.

24 Q: Do you recall what -- when he brought it to you what the
25 procedure would have been and what you did in this case?

SERGEANT J.A. SEGARS - DIRECT EXAMINATION BY MR. TUCKER

1 A: The procedure would have been he placed it in the
2 refrigerator, which he did, and at some point in time, we
3 retrieve it out the refrigerator and log it in to the system,
4 our police central system.

5 Q: Okay. Now, with regards to the refrigerator, is the
6 refrigerator secure itself and is it, in fact, in a secure
7 area?

8 A: Yes, sir, it is.

9 Q: Now, what's the purpose of having it in a secure
10 Facility?

11 A: So you won't have every -- limited people going in and
12 out of it, making contact with evidence.

13 Q: Now, with regards to the evidence area out at Troop 5
14 headquarters, how many people have access to that particular
15 area?

16 A: It would be myself and the First Sergeant, Bobby Castle.

17 Q: Now, with regards to the blood once it goes into the
18 refrigerator, is there anything else -- nobody's keeping
19 lunches or juice boxes or anything like that in there; are
20 they?

21 A: No, sir.

22 Q: Okay. Now, with regards to this particular item, what
23 happens once it is logged into Troop 5 and particularly in
24 this case?

25 A: Once it's logged in and at some point in time we would

SERGEANT J.A. SEGARS - DIRECT EXAMINATION BY MR. TUCKER

1 have it transported to Central Evidence, which is located in
2 Columbia.

3 Q: Okay. Now with regards to someone transporting it, did
4 you transport the blood in this particular case?

5 A: No, sir.

6 Q: Do you recall who did?

7 A: Yes, sir. It was Trooper Bell.

8 Q: Now, with regards to all the pieces of evidence that come
9 in to Troop 5, how do you make sure that they don't get mixed
10 up with evidence say from another case?

11 A: One of things we have to do or one of the things I have
12 to do when logging it in, I have to put labels on it so it
13 won't get mixed up with any other evidence.

14 Q: Okay. And that was done in this case?

15 A: Yes, sir.

16 Q: Did you have any sort of involvement with the actual
17 investigation of this particular case aside from handling the
18 evidence?

19 A: No, sir.

20 MR. TUCKER: I don't believe I have any additional
21 questions, Your Honor.

22 THE COURT: Mr. Grove?

23 MR. GROVE: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. GROVE:

SERGEANT J.A. SEGARS - CROSS EXAMINATION BY MR. GROVE

1 Q: Sergeant, I'll be relatively brief. You were not on call
2 that evening, September 27th, 2011?

3 A: I'm always on call, sir.

4 Q: But you didn't respond to the scene?

5 A: No, sir.

6 Q: That was my point, sorry. So you didn't participate in
7 the investigation itself?

8 A: No, sir.

9 Q: You didn't take any pictures?

10 A: No, sir.

11 Q: You didn't take any statements?

12 A: No, sir.

13 Q: You didn't do any investigation?

14 A: No, sir.

15 Q: You couriered the blood from one location to another?

16 A: Right

17 MR. GROVE: Nothing further.

18 A: Well, I didn't actually take it, but I had someone. One
19 of the troopers took it to Columbia.

20 Q: I apologize, but you -- you picked it up? You had your
21 hands on it at some point?

22 A: Right.

23 Q: Then you took it from one place to another place?

24 A: That's correct.

25 Q: That's your involvement with this case?

SERGEANT J.A. SEGARS - CROSS EXAMINATION BY MR. GROVE

1 A: Yes, sir.

2 MR. GROVE: Nothing further.

3 THE COURT: Anything further of this witness?

4 MR. TUCKER: No, Your Honor, and likewise -- and we would
5 ask that Sergeant Segars be released from his subpoena as
6 well.

7 THE COURT: Any objection?

8 MR. GROVE: No, Your Honor.

9 THE COURT: All right. You are excused. Thank you for
10 coming.

11 (Whereupon, the witness leaves the stand at 3:45 p.m.)

12 MR. TUCKER: Your Honor, at this time we -- the State
13 would call Trooper J.D. Bell to the stand.

14 THE CLERK: If you will, sir, place your left hand on the
15 Bible and raise your right hand. Do you swear to tell the
16 truth, the whole truth, and nothing but the truth, so help you
17 God?

18 THE WITNESS: I do.

19 THE CLERK: Please be seated and state your full name for
20 the record.

21 THE WITNESS: Joseph Bell.

22 TROOPER J.D. BELL, being first
23 duly sworn, testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. TUCKER:

TROOPER J.D. BELL - DIRECT EXAMINATION BY MR. TUCKER

1 Q: And, Trooper Bell, at the risk of asking the obvious,
2 where are you presently employed?

3 A: The South Carolina Highway Patrol.

4 Q: What are your present duties?

5 A: I'm a road trooper. I investigate collisions.

6 Q: Now, if you heard Trooper Denham testify twenty-one weeks
7 of training, did you have to undergo all of that as well?

8 A: Yes, sir.

9 Q: Now, where particularly are you assigned within the
10 Highway Patrol?

11 A: Troop 5, Post B, which is Florence, Dillon and Marion.

12 Q: Now, part of your duties aside from being a regular road
13 trooper -- and I hate to say regular because I don't think
14 there is anything regular about what you guys do, but aside
15 from being a road trooper, do you occasionally have to take
16 evidence to Columbia?

17 A: Yes, sir.

18 Q: Were you employed with Highway Patrol and Troop 5 on or
19 about September the 27th, 2011?

20 A: Yes, sir.

21 Q: Do you recall at some point I think being asked to take
22 some blood in reference to a felony DUI with great bodily
23 injury to Columbia?

24 A: Yes, sir.

25 Q: Okay.

TROOPER J.D. BELL - DIRECT EXAMINATION BY MR. TUCKER

1 MR. TUCKER: And, Your Honor, if I could approach the
2 witness?

3 THE COURT: Yes, sir.

4 Q: Trooper Bell, I'm showing you what's been marked as
5 State's Exhibit 7 and without asking you to identify what it
6 is, do you recognize it?

7 A: Yes, sir.

8 Q: What is it?

9 A: It's the -- our chain of custody.

10 Q: Okay. Now, is that something that you guys fill out when
11 you handle evidence?

12 A: Yes.

13 Q: What's the purpose?

14 A: It's to keep the chain of custody so you know who --
15 who's had it so you'll know it hadn't been tampered with --
16 evidence hadn't been tampered with.

17 Q: Okay. Now, does your name appear on that chain of
18 custody form?

19 A: Yes.

20 Q: Okay. Does it indicate when you would have taken the
21 blood to Columbia?

22 A: Yes.

23 Q: What date is reflected there?

24 A: September the 30th.

25 Q: Now, with regards to how the blood is transferred into

TROOPER J.D. BELL - DIRECT EXAMINATION BY MR. TUCKER

1 your custody, how does that normally occur?

2 A: The sergeant, after he does everything he has to do with
3 the evidence, he then -- I then sign for it on -- sign a chain
4 of custody form and I transport it to Columbia.

5 Q: Okay. Now, when you say you transported it to Columbia,
6 where exactly did you take it?

7 A: To the Central Evidence Facility.

8 Q: Could you explain what that is exactly?

9 A: That's the -- that's our Facility where all evidence or
10 blood or any other evidence is taken by the -- from DPS.

11 Q: Okay. I want to make sure I understand. You don't take
12 it straight to SLED, you take it to Central Evidence ---

13 A: No. We take it to Central Evidence Facility.

14 Q: And that is part of the Department of Public Safety?

15 A: Yes.

16 Q: Do you recall when you picked up this particular item
17 from Sergeant Segars, did it appear to be tampered with in any
18 way?

19 A: No, sir.

20 Q: Did it appear to be intact?

21 A: Yes.

22 Q: Now, and your sole participation in this particular case
23 was taking the blood from Sergeant Segars here in Florence to
24 the Central Evidence Facility in Columbia?

25 A: Yes.

TROOPER J.D. BELL - CROSS EXAMINATION BY MR. GROVE

1 MR. TUCKER: I believe that's all the questions I have,
2 Your Honor.

3 THE COURT: Mr. Grove?

4 CROSS EXAMINATION

5 BY MR. GROVE:

6 Q: Again, I'll be brief. Trooper, you're testifying that
7 you picked something up and you took it somewhere else?

8 A: Yes, sir.

9 Q: You don't have any information to offer regarding the
10 facts of this case?

11 A: No, sir.

12 Q: You didn't -- you weren't on call that night to the
13 extent that you got called to the scene?

14 A: No, sir.

15 Q: You didn't take any pictures?

16 A: No, sir.

17 Q: You didn't take any statements?

18 A: No, sir.

19 Q: Didn't talk to any witnesses?

20 A: No, sir.

21 Q: Didn't reconstruct any accident?

22 A: No, sir.

23 MR. GROVE: Thank you.

24 THE COURT: Anything further?

25 MR. TUCKER: No redirect, Your Honor.

26

1 THE COURT: All right. You may step down. Thank you.
2 Do you want to have the witness excused?

3 (Whereupon, the witness leaves the stand at 3:51 p.m.)

4 MR. TUCKER: I do, Your Honor.

5 THE COURT: Any objection?

6 MR. GROVE: No.

7 THE COURT: All right. The witness is excused. Thank
8 you for coming.

9 MR. TUCKER: And, Your Honor, we have reached that point
10 in the proceedings where ---

11 THE COURT: Okay. All right. Ladies and gentlemen, the
12 State has advised me that they have not yet rested their case.
13 They have some more witnesses to call, but from a logistical
14 standpoint they cannot have the witnesses here this afternoon.
15 So we are going to adjourn for the afternoon and start back
16 tomorrow morning at nine thirty.

17 Over the evening recess, do not discuss the case among
18 yourselves. Do not allow anyone to discuss the case with you.
19 And just relax and forget about this case over the evening
20 recess and report back to your jury room tomorrow morning at
21 nine thirty and we'll be ready to start back at that time.
22 With that then, I am going to excuse you now and allow you to
23 go about your business and ask you to be back in the jury room
24 tomorrow morning at nine thirty. I'll see you at that time.
25 Thank you. Have a pleasant evening.

1 THE BAILIFF: Folks, just follow me, please.

2 (Whereupon, the jury exits the courtroom at 3:52 p.m.)

3 THE COURT: Everybody else except for the law
4 enforcement, not many spectators here with everybody, but
5 let's stay in place until the jury is allowed to get on the
6 elevator and get out of the building. And while they are
7 doing that, let's take care of some administrative matters.
8 Mr. Grove, I believe you told me that you had spoken with the
9 bondsman and the bondsman had no problem with the defendant --
10 no problem with the -- remaining on the defendant's bond
11 during the pendency of this case?

12 MR. GROVE: That's correct, Your Honor. Per your
13 instructions, I spoke with In and Out Bonding right before we
14 reconvened. It must have been five minutes to two; it may
15 have been two on the nose. He -- I reminded him as to Mr.
16 Sellers and his bond and the age of the bond and the fact that
17 we were in trial. He said he had no problem remaining on his
18 bond for the duration of the trial. I indicated that the
19 trial would -- maybe would take until Wednesday, but very
20 likely would be over tomorrow.

21 THE COURT: Okay. All right. Mr. Sellers, let me ask
22 you to stand. I'm going to remind you again. Now, your
23 bondsman is still on the bond, but I am going to still tell
24 you that I will allow you to remain out on bond while this
25 trial is going on with the clear understanding that the matter

1 is going forward whether you are here or not and that you
2 cannot create a mistrial by not showing up.

3 If you are not here tomorrow, the State will present
4 their -- finish presenting their evidence. Your lawyer will
5 have the right to participate on your behalf, but if the jury
6 were to find you guilty, I would impose sentence and that
7 sentence would be sealed and a bench warrant would be issued
8 and you would be picked up and brought before the Court. Do
9 you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. With that understanding, then I
12 will allow you to remain out on bond. Now, in that same
13 connection, I'm not going to require that you give me an
14 answer on this right now, but in order to save time tomorrow,
15 I want to go ahead and put on the record your Fifth Amendment
16 rights and I want to talk with you about those for just a few
17 minutes.

18 You may, Mr. Sellers, be called as a witness to testify
19 on your own behalf. I know advise you that you the right to
20 invoke the protections given to you by the Fifth Amendment to
21 the Constitution of the United States and a similar
22 counterpart provision of the Constitution of the State of
23 South Carolina. The Fifth Amendment to the Constitution of
24 the United States provides in part that no person shall be
25 compelled in any criminal case to be a witness against

1 himself. This provision of constitutional law means that you
2 cannot be compelled or required to testify in this case. This
3 is a right and a privilege which the law extends to you. It
4 is a personal privilege and no one can waive this right except
5 you.

6 You have the right not to testify, but you also have the
7 right to testify. The Court will grant you the right to
8 consult with your lawyer before you make a decision. If you
9 elect not to testify, your failure to testify cannot be used
10 by the State as an inference of guilt and your failure to
11 testify cannot be considered by the jury in its deliberations
12 and I would so instruct the jury.

13 If you elect to testify and waive the privileges extended
14 to you by the Constitution of the United States and the State
15 of South Carolina, I advise you that you would then assume the
16 role of a witness in this case and you would waive or give up
17 your constitutional privilege against self-incrimination.
18 This means that if you voluntarily take the witness stand and
19 testify, that you will then subject yourself to the same rules
20 that govern other witnesses and you may be examined and cross
21 examined on any relevant issue in this case, and you may be
22 impeached to the same extent as any other witness, all of
23 which is subject to the rules of law and the rules of
24 evidence.

25 I further advise you that if you elect to take the

1 witness stand and testify, that this decision on your part
2 must be made freely, voluntarily, intelligently and with
3 knowledge of the protections given to you by the Constitution
4 and with knowledge of the -- of the consequences of your
5 election to testify.

6 Now, I'm not going to ask you to give me a decision as to
7 whether you do or do not wish to testify in this case. That
8 -- that question is premature at this time, but I am going to
9 ask you, do you understand what I have advised you about your
10 Fifth Amendment rights?

11 THE DEFENDANT: That means that I can testify or I don't
12 have to?

13 THE COURT: Exactly right. Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: And I'll give you -- of course, I'll give you
16 a chance to talk with your lawyer before we -- we get to that
17 point, but I just wanted to make sure you understand that you
18 don't have to testify, but you can if you want to. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. All right. Having advised him of
22 his Fifth Amendment rights, then we will take that matter up
23 at the appropriate time.

24 MR. GROVE: Your Honor, if I -- if I may, while we're on
25 the subject, if we could discuss any impeachable ---

1 THE COURT: Yeah. I always think that that does impact
2 upon the decision as to whether or not a defendant should
3 testify. What do you contend you have as impeachable offenses
4 under 609?

5 MR. TUCKER: Your Honor, let me look at the record. It
6 seems like there were a couple of things. A 2008 conviction
7 for what looks to be a drug offense and I think he's got some
8 driving infractions as well. And, Your Honor, just to give
9 the Court kind of an idea of what his record is like, it looks
10 like he had a breach of peace conviction on a magistrate level
11 offense in 2006.

12 THE COURT: All right. That would -- doesn't qualify.

13 MR. TUCKER: Also, there was a -- what looks to be a
14 strong armed robbery or actually it was an assault and battery
15 high and aggravated conviction in 2008. He received a
16 sentence of five years suspended to one year probation. Also,
17 in 2007 it looks like there was a drug offense. It's not
18 showing whether there was a conviction. It looks like the
19 ABHAN was the only -- there were two charges. It looks like
20 that was the only conviction.

21 THE COURT: All right. Looks like the -- so the only one
22 that you would contend that you can use as an impeachable
23 offense is the '07 ABHAN?

24 MR. TUCKER: Yes, Your Honor.

25 THE COURT: You disagree with that, Mr. Grove?

1 MR. GROVE: Only to the extent that I'm not sure what the
2 impeachable qualities of the assault and battery of a high and
3 aggravated nature conviction are. But -- but I agree that is
4 the only charge on his record that carries more than a year's
5 possible punishment and none of them indicate -- none of the
6 other convictions indicate any sort of misleading or false
7 statement or propensity for lying I guess.

8 THE COURT: Okay. Well, the -- the only thing that's
9 required under 609 is that for purposes of attacking the
10 credibility of a witness, that an accused has been convicted
11 of such a crime shall be admitted if the court determines that
12 the probative value of admitting this evidence outweighs the
13 prejudicial effect to the accused. And the only requirements,
14 of course, are that it be something for which it could be
15 within the ten year period and it's definitely within the ten
16 year period. So we'll address that matter when the times
17 comes for him to make his election. But you know what the --
18 what the contention is from the State's standpoint?

19 MR. GROVE: I do, Your Honor, but one -- very briefly,
20 one other thing. With the exception of to impeach for I guess
21 a misstatement of fact, he does have a driving record that
22 includes a couple of speeding tickets, but obviously ---

23 THE COURT: Same thing.

24 MR. GROVE: This would be none of that qualifies.

25 THE COURT: Right. That wouldn't qualify as well. Yeah.

1 So the only thing that the State contends that qualifies as an
2 impeachable offense is the '07 ABHAN. All right. Anything
3 else, Mr. Solicitor?

4 MR. TUCKER: Your Honor, there is one little collateral
5 matter with regards to the witness list for tomorrow. There
6 were two troopers who were scheduled to testify tomorrow
7 morning. One of whom -- and essentially they would be chain
8 witnesses and I think the first one -- there is a Corporal
9 Donkle, more or less she took the blood from Trooper Bell and
10 logged it in and her first sergeant took it to SLED. I'd ask
11 Mr. Grove if he would stipulate that we maintained the chain
12 at least all the way up to the first sergeant without having
13 to have the corporal come and testify who essentially just
14 logged it in.

15 MR. GROVE: And -- and he and I spoke about that about
16 thirty minutes ago, Judge. I don't have a problem with that.
17 It sounds as though she was stationary. I don't think that
18 she even took it anywhere. I think she was just the custodian
19 for a moment in time. I'm fine to stipulate to the chain
20 being satisfied as to Lieutenant Donkle.

21 THE COURT: Okay.

22 MR. GROVE: Or Lance Corporal Donkle.

23 THE COURT: All right. I take it there may be some other
24 chain issues or you want -- at least you want them proven
25 other than that?

1 MR. GROVE: That's correct, Judge. I don't anticipate
2 there being any chain issues, but that is what I'm stipulating
3 to that Lance Corporal Donkle's contribution to the chain I
4 will waive as satisfied.

5 THE COURT: Okay. All right. Fine. That's in the
6 record and that's taken care of. I would call both counsels'
7 attention to Rule 6(b) of the Rules of Criminal Procedure
8 which deal with the chain of custody and the certified or
9 sworn statement.

10 MR. TUCKER: Yes, sir.

11 THE COURT: Yeah. Okay. All right. What else, Mr.
12 Solicitor?

13 MR. TUCKER: I believe that's it, Your Honor, for us for
14 today at least.

15 THE COURT: All right. Mr. Grove, anything else?

16 MR. GROVE: Nothing at this time, Judge. Thank you.

17 THE COURT: All right. We'll be in recess then until
18 9:30 tomorrow morning. I'll see everybody then. Thank you.
19 Have a pleasant evening.

20 MR. GROVE: Thank you, Judge.

21 (Whereupon, there is a break in the proceedings from 4:00
22 p.m. until the next day at 9:33 a.m.)

23 THE COURT: Thank you. Please be seated. All right.
24 Madame Clerk, you want to give me the indictment, ma'am?
25 Thank you. All right. We are back on the record with regard

1 to the matter of the State versus Roderick Jerome Sellers,
2 Indictment number 2012-GS-21-354. Mr. Sellers is present in
3 court with his attorney. The State is present and represented
4 by the Twelfth Circuit Solicitor's Office. I've been advised
5 that all the jurors are here. Anything before we bring the
6 jury in on behalf of the State?

7 MR. TUCKER: No, Your Honor.

8 THE COURT: On behalf of the defense?

9 MR. GROVE: No. Thank you, Judge.

10 THE COURT: All right. Bring the jury in, please.

11 THE BAILIFF: Yes, sir.

12 (Whereupon, the jury enters the courtroom at 9:34 a.m.)

13 All right. All right. Good morning, everyone, and thank
14 you for your promptness in being back here this morning. I
15 need to ask you before we begin, if anyone has tried to talk
16 with you or approached you and talked with you about this case
17 in any manner whatsoever over the evening recess, I would need
18 to know about it now. Negative response and that's good.

19 Okay. Yesterday when we adjourned, the State was
20 presenting their case to you and they are still presenting
21 their case to you and so they will have the right to continue
22 presenting whatever evidence they wish to present. Yes, sir.

23 MR. TUCKER: Thank you, Your Honor. At this time, we
24 would call Dr. James Brennan to the stand.

25 THE COURT: All right. Come around, please.

DR. JAMES BRENNAN - DIRECT EXAMINATION BY MR. TUCKER

1 THE CLERK: Yes, sir. If you will, go to the witness
2 stand and stop right there and place your left hand on the
3 Bible and raise your right hand. Do you swear to tell the
4 truth, the whole truth, and nothing but the truth, so help you
5 God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated and state your full name for
8 the record.

9 THE WITNESS: Dr. James Joseph Brennan.

10 DR. JAMES BRENNAN, being first
11 duly sworn, testifies as follows:

12 DIRECT EXAMINATION

13 BY MR. TUCKER:

14 Q: Dr. Brennan, what is your occupation?

15 A: I'm a neurological surgeon.

16 Q: Now, are you licensed to practice in the State of South
17 Carolina?

18 A: Yes, I am.

19 Q: How long have you been licensed?

20 A: Thirteen years.

21 Q: To become a part of your profession, did you have to
22 undergo any special education?

23 A: Yes. I did medical school.

24 Q: Tell us about that?

25 A: Medical school for four years. I did a -- that was at

DR. JAMES BRENNAN - DIRECT EXAMINATION BY MR. TUCKER

1 Albany Medical College. One year general surgery internship
2 at the University of Oklahoma Health Sciences Center, followed
3 by a five year neurosurgical residency at the same
4 institution, and then a one year's spine fellowship at
5 Washington University, St. Louis.

6 Q: Now, do you have your own office now and your own
7 practice?

8 A: Yes. And I have three partners.

9 Q: Now, what is the nature of your practice? Is it
10 generalized or are you specialized in the field of
11 neurosurgery or neurology?

12 A: Specialized in neurosurgery. It's Florence Neurosurgery
13 and Spine is the name of the group.

14 Q: Have you ever had any articles published or anything like
15 that?

16 A: Yes. In my CV over the time of research, yeah.

17 Q: Have you ever been qualified as an expert in the field of
18 neurosurgery?

19 A: Yes.

20 Q: In a court of law?

21 A: Yes.

22 Q: Okay.

23 MR. TUCKER: Your Honor, at this time, we would ask that
24 Dr. Brennan be admitted as an expert in the field of
25 neurosurgery.

DR. JAMES BRENNAN - DIRECT EXAMINATION BY MR. TUCKER

1 THE COURT: Voir dire with regard to qualifications, Mr.
2 Grove?

3 MR. GROVE: No. Thank you, Your Honor.

4 THE COURT: All right. The Court will qualify Dr.
5 Brennan as an expert in the field of neurosurgery. Ladies and
6 gentlemen of the jury, let me tell you what that means.

7 Ordinarily, a witness who is not an expert, that
8 witness's testimony is limited to things that are within the
9 witness's perception, such as one of the five senses, and are
10 helpful to a clear understanding of the witness's testimony
11 and do not require special knowledge, skill, experience or
12 training. However, if scientific, technical or other
13 specialized knowledge will assist the trier of fact, and
14 that's you in this case, to understand the evidence or to
15 determine a fact in issue, a witness qualified as an expert by
16 knowledge, skill, training or experience may testify in the
17 form of an opinion. So basically, the difference between a
18 non-expert witness and an expert witness is that an expert
19 witness is allowed to give an opinion, and I have qualified
20 the Doctor as an expert in the field of neurological surgery.
21 All right.

22 MR. TUCKER: Thank you, Your Honor.

23 Q: Dr. Brennan, do you recall if your service and office
24 became involved in the medical follow-up of a patient, Johnny
25 Williams?

DR. JAMES BRENNAN - DIRECT EXAMINATION BY MR. TUCKER

1 A: Yes.

2 Q: This would have been around September the 27th, 2011?

3 A: Yes.

4 Q: Do you recall how you became involved and what the extent
5 of his injuries were?

6 A: He had presented to the emergency room after a motor
7 vehicle accident. He was actually initially seen by my
8 partner, Dr. Raga -- that's R-A-G-A -- and was noted to have a
9 spinal fracture. Dr. Raga requested my help and we took over
10 and we had to perform a surgery on him.

11 Q: Now, you said spinal fracture. Is that a pretty serious
12 injury?

13 A: Yes.

14 Q: What are some of the effects of the spinal injury?

15 A: Usually nerve -- neurologic injury or nerve injury.

16 Q: Could that somehow impair one's ability to walk or move
17 about?

18 A: Yes.

19 Q: Now, you mentioned a surgery with regards to the spinal
20 injury?

21 A: Yes.

22 Q: I'm assuming this may sound like a silly question, but he
23 was placed under anesthesia and all that?

24 A: Yes. General anesthesia and underwent the procedure that
25 day.

DR. JAMES BRENNAN - DIRECT EXAMINATION BY MR. TUCKER

1 Q: And after he had the surgery, what, if anything, did you
2 do or your office do?

3 A: Basically, we had him recover. He did develop a post-
4 operative wound infection about three weeks later and required
5 another surgery to clean out the wound. But we basically
6 beyond that treated him with bracing and rehabilitation and
7 physical therapy to try to help improve his neurologic status.

8 Q: Do you recall if he also was suffering from a broken leg?

9 A: He may have. I don't recall. I'd have to look at the
10 records.

11 Q: But primarily you and your office were involved with the
12 spinal injury?

13 A: Yes.

14 Q: Now, following the post-operative infection and then the
15 subsequent surgery for that, was he required to undergo any
16 sort of physical rehabilitation?

17 A: We -- we had recommended physical therapy. I can't
18 recall if he went to the rehabilitation hospital or was doing
19 physical therapy at home.

20 Q: What was -- in terms of his ability to -- to move about
21 at that point in his progress?

22 A: His movement was impaired. He had residual weakness in
23 his left leg and what we call hyperreflexia or increased
24 reflexes, which make it difficult to sense where you're
25 walking.

DR. JAMES BRENNAN - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Do you recall when the last time you saw him?

2 A: I believe my last visit was August 22nd, 2012.

3 Q: Had he improved at any point at that time?

4 A: He'd improved slightly, but he was still at the point I
5 didn't think he would be able to return to the employment that
6 he had. He was able to ambulate some and move around but he
7 had still obvious slight weakness and hyperreflexia.

8 Q: Based on your expert medical opinion, do you think he
9 will get to a point where he would be normal in terms of prior
10 to the accident what he was capable of doing?

11 A: No. I don't believe so.

12 Q: Would he be able to hold a full-time job that required
13 any sort of physical labor?

14 A: Not -- not with major physical demands, no.

15 Q: With regards to the surgeries and post-operative care,
16 did he have any scars or anything like that?

17 A: Well, he has the incision on his back from the surgery.

18 MR. TUCKER: I believe that's all the questions I have,
19 Your Honor.

20 THE COURT: All right. Cross examination, Mr. Grove?

21 MR. GROVE: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. GROVE:

24 Q: Doctor, do you remember how long Mr. Williams was in the
25 hospital?

DR. JAMES BRENNAN - CROSS EXAMINATION BY MR. GROVE

1 A: I'd have to check my records to see when his discharge
2 was.

3 Q: If you have them there, take a moment.

4 A: Let me take a look to see if I have it. Unfortunately, I
5 don't think I have his discharge summary so I don't know the
6 exact amount of days in the hospital.

7 Q: Okay. That's fine. But you did say that after -- after
8 a few weeks he developed an infection and had to come back for
9 another surgery?

10 A: Yeah. Post-operative wound infection.

11 Q: Okay. And that was related to his initial surgery, not
12 to the actual injury itself?

13 A: Well, probably the injury and the -- and the initial
14 surgery. You know, the injury caused the surgery. Sometimes,
15 you know -- I mean post-operative infections is an accepted
16 risk of a surgery.

17 Q: Sure. But there's not really any way to tell what caused
18 what at that point?

19 A: It's hard to say. I mean he had a ---

20 Q: Obviously, there was a motor vehicle accident which
21 caused the initial injury.

22 A: Which required ---

23 Q: What caused the infection later, who knows?

24 A: Right. Well, there was an accident which caused the
25 injury which required the surgery and as a complication of the

DR. JAMES BRENNAN - CROSS EXAMINATION BY MR. GROVE

1 surgery, he had a postoperative wound infection.

2 Q: There we go. And he was referred to physical therapy?

3 A: I believe so. He would have been undergoing it in the
4 hospital and, as I said, I don't have the privilege to his
5 discharge summary. We couldn't find it in the records we
6 printed.

7 Q: Certainly. And you said at one point you weren't sure if
8 the follow-up physical therapy would have been at the hospital
9 or if it would have been at home?

10 A: Or at home and I don't recall. I can't see that noted in
11 my records.

12 Q: Are you sure that he actually participated in any of
13 that?

14 A: I know he did in the hospital and I believe he was
15 attempting it when he was home, but I don't have actual
16 documentation of that.

17 Q: You said he wouldn't be able to return to a -- the work
18 he had. What was he doing before?

19 A: I believe it was some type of heavy labor work. I don't
20 recall the actual job.

21 Q: And this type of an injury would restrict jobs that had
22 physical demands?

23 A: Yes, because of the weakness in his leg.

24 Q: Certainly. Not necessarily anything else?

25 A: I mean if there was a lighter duty employment available,

DR. JAMES BRENNAN - CROSS EXAMINATION BY MR. GROVE

1 he could possibly do that.

2 Q: Sure. Your last visit with him was in August of last
3 year?

4 A: Yes.

5 Q: And that was not quite a year after the accident?

6 A: Yes.

7 Q: How long had it been before you had seen him at that
8 point? That was clearly a follow-up?

9 A: Yeah. I -- I had seen him. Usually we -- I had seen him
10 about a month or two after -- I have the actual follow-up
11 notes, but that was that was the last visit I had. Usually,
12 we follow to about a year out. If the x-rays appear stable
13 and the bone fusion that we performed is stable and the wound
14 is healed, we have them see us as needed.

15 Q: Certainly.

16 A: But I had seen him multiple times in-between that last
17 visit and the other surgeries.

18 MR. GROVE: Thank you. I don't have any further
19 questions, Your Honor.

20 THE COURT: Redirect?

21 MR. TUCKER: No redirect, Your Honor.

22 THE COURT: All right. Thank you, Doctor. You may step
23 down. Would you like to have the doctor excused?

24 MR. TUCKER: I would, Your Honor.

25 THE COURT: Any objection, Mr. Grove?

TROOPER TONY DEWITT - DIRECT EXAMINATION BY MR. TUCKER

1 MR. GROVE: No, Judge. Thank you.

2 THE COURT: All right. You are excused. Thank you for
3 coming.

4 THE WITNESS: Thank you.

5 (Whereupon, the witness leaves the stand at 9:45 a.m.)

6 THE COURT: All right. You may call your next witness.

7 MR. TUCKER: Your Honor, at this time the State would
8 call Trooper Tony Dewitt.

9 THE COURT: All right. Mr. Dewitt.

10 THE CLERK: Raise your right hand. Do you swear to tell
11 the truth, the whole truth, and nothing but the truth, so help
12 you God?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated and state your full name for
15 the record.

16 THE WITNESS: Tony Wayne Dewitt.

17 TROOPER TONY DEWITT, being first
18 duly sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. TUCKER:

21 Q: Trooper Dewitt, I notice by your uniform it looks as if
22 you are a highway patrolman, but I need to ask for the record.
23 Where do you presently work?

24 A: South Carolina Highway Patrol.

25 Q: How long have you worked for the patrol?

TROOPER TONY DEWITT - DIRECT EXAMINATION BY MR. TUCKER

- 1 A: Twenty-three years.
- 2 Q: Did you have any prior law enforcement experience prior
3 going to the patrol?
- 4 A: I did not.
- 5 Q: What sort of specialized training above and beyond the
6 basic class that you attended years ago have you had since you
7 been in the patrol?
- 8 A: Going on approximately -- almost -- getting ready to hit
9 a thousand hours in accident -- different fields of accident
10 investigation.
- 11 Q: Now, are you part of a specialized entity within the
12 Highway Patrol know as MAIT?
- 13 A: I am.
- 14 Q: Could you explain to the ladies and gentlemen of the jury
15 what MAIT is and what it stands for?
- 16 A: MAIT stands for Multidisciplinary Accident Investigation
17 Team. We basically -- we're a special unit of the Highway
18 Patrol. We go around the state investigating all the fatal --
19 mostly fatal investigations and all the -- all the collisions
20 that involve any kind of General Sessions court case.
- 21 Q: Now, you mentioned that you have about a thousand hours?
- 22 A: Yes, sir.
- 23 Q: Could you explain what that entails with regards to your
24 training?
- 25 A: It entails anything from basic traffic investigation,

TROOPER TONY DEWITT - DIRECT EXAMINATION BY MR. TUCKER

1 advanced traffic reconstruction, computer aided diagram,
2 motorcycle, ped, commercial vehicle, anything -- anything
3 relating to the field of accident reconstruction. I'm also
4 nationally accredited with -- with ACTAR, which is an
5 Accredited Commission for Traffic Accident Investigation.

6 I've been accredited with them going on seven years now.

7 Q: What sort of requirements did you have to obtain or
8 complete before you could become nationally accredited?

9 A: You had to -- certain amount of hours or certain types of
10 classes you had to complete before taking the test. To get
11 accredited, you have to take a -- it's an eight hour -- it's a
12 one day test that takes approximately eight hours to take the
13 test.

14 Q: With regards to your duties now, how many accidents would
15 you say you have investigated in the course of your career? I
16 know it's a lot, but if you could, ballpark it for me.

17 A: It's thousands.

18 Q: Have you ever been qualified as an expert in the field of
19 accident reconstruction?

20 A: I have.

21 MR. TUCKER: Your Honor, at this time, the State would
22 move that Corporal Dewitt be considered or qualified as an
23 expert in the field of accident reconstruction.

24 THE COURT: Voir dire with regard to qualifications, Mr.
25 Grove?

TROOPER TONY DEWITT - DIRECT EXAMINATION BY MR. TUCKER

1 MR. GROVE: No, Judge. Thank you.

2 THE COURT: All right. So you don't challenge the
3 proffer?

4 MR. GROVE: I do not.

5 THE COURT: All right. All right. The -- again, the
6 Court will qualify Trooper Dewitt as an expert in the field of
7 accident reconstruction. Ladies and gentlemen, again, you
8 will recall that I told you that the difference between a non-
9 expert witness and an expert witness is that an expert witness
10 is allowed to give an opinion, and I have qualified this
11 expert -- I mean this witness based on his experience,
12 training, and education as an expert in the field of accident
13 reconstruction. All right.

14 MR. TUCKER: Thank you, Your Honor.

15 Q: Corporal Dewitt, with regards to your present duties,
16 were you working with the MAIT Team on or about September the
17 27th?

18 A: I was.

19 Q: All right. Specifically, 2011?

20 A: I was.

21 Q: Did you recall or do you recall becoming involved in a
22 case involving an accident out off of Alligator Road?

23 A: I do.

24 Q: Do you recall how you were notified and what prompted
25 your involvement?

TROOPER TONY DEWITT - DIRECT EXAMINATION BY MR. TUCKER

1 A: I don't -- I don't recall the exact how we were notified
2 or who notified me, but normally when the Troop has a
3 collision they want help with with the MAIT team, the troop
4 lieutenant will call our lieutenant, who will pass it down the
5 chain to us to respond to the collision scene.

6 Q: Do you recall responding out to this particular incident
7 though?

8 A: I did not actually respond to this one.

9 Q: Okay. Subsequently, are there other people on the team
10 that work with you?

11 A: There is. There's actually nine people on the team here
12 in Florence.

13 Q: Now, are you a supervisor with or on that team?

14 A: I am.

15 Q: As part of your supervisory duties, would you review the
16 work or the reports prepared by your subordinates?

17 A: I would.

18 Q: Did you review a report that was prepared by your
19 subordinates in this case?

20 A: I did.

21 MR. TUCKER: Your Honor, if I may approach the witness?

22 (Whereupon, no verbal response.)

23 Q: Trooper Dewitt, I'm handing you four papers that are
24 marked State's Exhibit 1 through 4. Do you recognize those?

25 A: I do.

TROOPER TONY DEWITT - DIRECT EXAMINATION BY MR. TUCKER

1 Q: How do you recognize them?

2 A: They are the CAD drawings for this particular collision
3 prepared by one of my investigators.

4 MR. TUCKER: Your Honor, at this time, I would move that
5 State's 1 through 4 be admitted into evidence.

6 THE COURT: Any objection, Mr. Grove?

7 MR. GROVE: I beg the Court's indulgence. May I take a
8 look at them briefly?

9 THE COURT: Yes, sir.

10 MR. GROVE: No objection, Your Honor.

11 THE COURT: All right. Admitted into evidence as State's
12 Exhibits 1 through 4. One, two, three and four.

13 Q: Trooper Dewitt, after you reviewed the report prepared by
14 your subordinates, could you tell what happened with regards
15 to this accident?

16 A: Yes, sir.

17 Q: Could you relate based on your review more or less the
18 facts that give you ---

19 A: In looking at the -- in looking at all the evidence that
20 we had collected and the speed calculated by one of my
21 investigators, it appears that the vehicle was traveling north
22 on Savannah Grove Road. It for some reason crossed over the
23 center line and went off the left shoulder of the road, came
24 back on the road, over corrected. The vehicle started
25 rotating in a counter-clockwise rotation, went off the left

TROOPER TONY DEWITT - DIRECT EXAMINATION BY MR. TUCKER

1 side of the road again and overturned, ejecting both occupants
2 of the vehicle.

3 Q: Now, based on your review of the report, what would you
4 say were the contributing factors?

5 A: Speed.

6 Q: Do you recall what the speed limit is in that particular
7 area?

8 A: I do not at this time.

9 Q: Okay. But based on your review, you determined or your
10 opinion is that speed was a contributing factor?

11 A: Yes, sir.

12 MR. TUCKER: Your Honor, if I could, I'm going to have
13 Mr. Godbolt raise this screen and we've got those particular
14 four diagrams loaded in our computer.

15 THE COURT: All right. Yes, sir.

16 (Whereupon, there is a pause in the proceedings as the
17 screen is prepared.)

18 Q: Trooper Dewitt, I'm also ---

19 MR. TUCKER: If I can approach, Your Honor?

20 THE COURT: Yes, sir.

21 Q: Trooper Dewitt, I ask if you could recognize what I just
22 handed you?

23 A: This is a copy of our final report that we -- that we
24 prepared.

25 Q: Okay. And that's the report that you reviewed prior to

TROOPER TONY DEWITT - DIRECT EXAMINATION BY MR. TUCKER

1 your testimony?

2 A: It is.

3 Q: I'm going to ask if you could step down and we'll raise
4 these diagrams on the screen and just kind of explain what
5 we're looking at for the jury.

6 MR. GODBOLT: This is State's Exhibit 1.

7 Q: All right. And what we're looking at now is State's 1?

8 A: All right. That is a CAD drawing of the roadway as it
9 appears prior to the collision. That's just the roadway.
10 There's no evidence or nothing marked in that one.

11 Q: Now, with regards to the -- how it's presented on the
12 CAD, is that accurate in terms of the road being straight?

13 A: Yes, sir.

14 Q: All right.

15 MR. TUCKER: If we could see the next one? Okay.

16 A: This is the -- I'm sorry. This one is what we call -- we
17 layer these things when we do them. We layer it in four
18 different layers. We layer them roadway, impact, evidence of
19 final rest, and sequence of events. This one is the impact
20 layer. There is no evidence yet, but that shows the impact
21 where the vehicle first struck the -- the driveway culvert.

22 MR. TUCKER: Can we see the next one?

23 A: This is the evidence of final rest layer. You can see
24 the evidence. That's the tire marks of the vehicle. It went
25 off the side of the road the first time and came back on and

TROOPER TONY DEWITT - DIRECT EXAMINATION BY MR. TUCKER

1 that's the evidence where the vehicle started rotating in a
2 counter-clockwise rotation. The blue areas are what we call
3 gouge areas. These are areas where the vehicle hits the dirt,
4 pushes the dirt out the way, creates like a scarred area, and
5 these are just different areas where the vehicle was rolling
6 and flipping and hitting the ground.

7 Q: Were you able to determine how many times the vehicle
8 flipped?

9 A: I don't know. I did -- I do not know.

10 Q: All right.

11 MR. TUCKER: If we could see the next one?

12 MR. GODBOLT: This is Exhibit 4.

13 Q: And what are we looking at here?

14 A: That's the sequence of events. That's how the collision
15 occurred. The vehicle was traveling north on Savannah Grove
16 Road, went off the left shoulder of the road and came back on
17 and overcorrected, and you can see where the vehicle is
18 starting to rotate counter-clockwise here, hitting the culvert
19 and then it flips through here and comes to rest on its roof
20 right there in front of the house.

21 Mr. TUCKER: Okay. Now, if we could put that back.

22 Okay. Trooper, would you take the stand back, please.

23 Q: Trooper Dewitt, in your review of the MAIT report in your
24 capacity as a supervisor, did the report indicate that there
25 was any sort of mechanical failures present with the vehicle?

TROOPER TONY DEWITT - DIRECT EXAMINATION BY MR. TUCKER

1 A: No, it did not.

2 Q: Did the report indicate whether or not there were any
3 sort of weather conditions that played a factor in the
4 accident?

5 A: It did not.

6 Q: With regards to your review of the MAIT report, does it
7 indicate whether or not there was any sort of driver error
8 other than the speed?

9 A: No, it didn't.

10 Q: Could the impairment of a driver play a part in an
11 accident just as the one that was depicted in the CAD drawing?

12 A: It could.

13 Q: In your experience and in your opinion investigating
14 accidents in your capacity as a supervisor on the MAIT Team,
15 if a car flips over and the occupants are ejected, assuming
16 that were two, the one found closest to the vehicle, would
17 that indicate anything to you in terms of who was the driver
18 and who was the passenger?

19 A: Normally, the -- the subject that's closer to the vehicle
20 in my experience is going to be the driver.

21 Q: What do you base that conclusion on?

22 A: Basically, the driver's got more to come out the vehicle
23 through. He's got the steering wheel, brake pedals, gas
24 pedal, gear shifts, the stick. It's just you've got more --
25 it takes more for him to get out the car than a -- than a

TROOPER TONY DEWITT - CROSS EXAMINATION BY MR. GROVE

1 passenger.

2 MR. TUCKER: Your Honor, I believe that's all the
3 questions I have.

4 THE COURT: Cross examination, Mr. Grove?

5 MR. GROVE: Thank you, Judge.

6 CROSS EXAMINATION

7 BY MR. GROVE:

8 Q: Trooper, just a moment ago, Mr. Tucker asked you if the
9 MAIT report indicated any mechanical failure and it didn't is
10 what your testimony is?

11 A: Yes, sir.

12 Q: But it also -- it also doesn't include an investigation
13 as to the mechanics of the vehicle; does it?

14 A: No, it does not.

15 Q: There -- nothing about that is addressed?

16 A: No, there's not.

17 Q: Okay. So there very well could have been a mechanical
18 failure, but it wasn't investigated?

19 A: It wasn't investigated.

20 Q: He also asked you about ejections from the vehicle --
21 more than one individual being ejected from a vehicle and your
22 testimony is that normally the person closer to the vehicle
23 was behind the wheel?

24 A: Correct.

25 Q: Normally?

TROOPER TONY DEWITT - CROSS EXAMINATION BY MR. GROVE

1 A: Normally, yes.

2 Q: Not always?

3 A: Not always, but normally. It's been my experience that
4 the occupant closest to the vehicle was driving.

5 Q: Normally?

6 A: Normally, yes.

7 Q: But there is no real way to predict when that wouldn't be
8 the case?

9 A: No, there's no real way.

10 Q: With the car flipping over and over, people -- windows
11 getting busted out, people obviously being ejected from the
12 vehicle, there's a certain amount of chaos going on; right?

13 A: Yes.

14 Q: So no real way to accurately depict that this is exactly
15 what happened?

16 A: No, there's not.

17 Q: I want to direct your attention to what I believe --
18 actually you can-- you can look at any of them.

19 MR. GROVE: May I approach the witness, Your Honor?

20 THE COURT: Yes, sir.

21 Q: Any -- any of 1 through 4 that Mr. Tucker handed up to
22 you. I'm showing you 1. That appears to be the one with the
23 least amount of recreation on it.

24 A: Right.

25 Q: I'm going to point your attention to there's a notation

TROOPER TONY DEWITT - CROSS EXAMINATION BY MR. GROVE

1 that what you described as the driveway culvert. I guess

2 that's where the driveway meets the road?

3 A: Correct.

4 Q: And there's also two notations in the yard near where the
5 car eventually came to rest?

6 A: Correct.

7 Q: What are those?

8 A: Them are gouge marks from where the vehicle struck the
9 ground.

10 Q: How do you mean?

11 A: You talking about the blue areas?

12 Q: No, sir. I'm talking about -- it looks to be a black
13 area with a gold center?

14 A: Them are light poles.

15 Q: Light poles in the middle of the yard?

16 A: That's what -- I mean -- that's not -- I don't know what
17 they're doing there, but that's what they're -- that's what
18 that represents. They're light poles.

19 Q: Okay. So this -- this vehicle just went -- essentially
20 based on the last assessment, the vehicle went straight
21 through two light poles?

22 A: Correct.

23 Q: And it doesn't look as though there's a whole lot of room
24 for it to have gone one way or the other or it would have hit
25 a light pole?

TROOPER TONY DEWITT - CROSS EXAMINATION BY MR. GROVE

- 1 A: That's correct.
- 2 Q: Okay. How far away from the vehicle were Mr. Williams --
- 3 was Mr. Williams?
- 4 A: They were not -- the final rest positions were not marked
- 5 when we were out there.
- 6 Q: How ---
- 7 A: They were already gone when we got there.
- 8 Q: How far away from the vehicle was Mr. Sellers?
- 9 A: It was not marked either.
- 10 Q: So you don't know?
- 11 A: We don't know.
- 12 Q: Who actually developed this report?
- 13 A: Are you asking -- the final report?
- 14 Q: Yes, sir.
- 15 A: I can't remember if I wrote this report or Sergeant
- 16 Dangerfield at the time wrote the report -- the final report.
- 17 Q: If I directed you to page two of the MAIT report, would
- 18 that help refresh your memory?
- 19 A: Sergeant Mike Dangerfield. He was the team leader at the
- 20 time.
- 21 Q: So he gave the ---
- 22 A: He gave the final approval.
- 23 Q: Right. And he I guess works with you or for you?
- 24 A: He works -- well, he's actually my direct supervisor now.
- 25 Q: Okay. Who developed the initial report?

TROOPER TONY DEWITT - CROSS EXAMINATION BY MR. GROVE

1 A: I do not recall exactly who did it. I can't remember if
2 I did it or he did it. But he would -- he would -- I mean
3 whoever wrote it, he would be the -- he would give the final
4 approval to it.

5 Q: And who responded to the scene?

6 A: That would have been Lance Corporal Alban and Lance
7 Corporal Shull I believe.

8 Q: And they're listed on the front of the MAIT report there
9 as MAIT team members?

10 A: Yes, they are.

11 MR. GROVE: I beg the Court's indulgence.

12 Q: And you testified earlier you're not sure how many times
13 this car was supposed to have flipped or what exactly
14 happened?

15 A: I'm not sure how many times it flipped.

16 Q: It ended up upside down I believe?

17 A: It ended up upside down. Yes, sir.

18 Q: So we know if flipped at least once or half a time?

19 A: Correct.

20 Q: But how many times, four, five or six, that thing is
21 probably -- that's probably a difficult thing to assess?

22 A: I could probably figure it out, but I just -- like I say,
23 at the time I didn't. I don't know how many times it flipped.

24 Q: Sure. Thank you, Trooper.

25 THE COURT: Redirect, Mr. Tucker?

TROOPER TONY DEWITT - REDIRECT EXAMINATION BY MR. TUCKER

1 MR. TUCKER: Just briefly.

2 RE-DIRECT EXAMINATION

3 BY MR. TUCKER:

4 Q: Corporal Dewitt, you indicated that Lieutenant
5 Dangerfield is your immediate supervisor?

6 A: He is.

7 Q: And at this point, I think he's since been promoted since
8 this report was prepared?

9 A: He has.

10 Q: Okay. And he's -- does he work still in the District 5
11 or Troop 5?

12 A: He's actually statewide now. He's over the whole state.

13 MR. TUCKER: Thank you. That's all I have.

14 THE COURT: Anything further, Mr. Grove, from this
15 witness?

16 Mr. GROVE: No. Thank you, Your Honor.

17 THE COURT: All right. Thank you, sir. You may step
18 down.

19 (Whereupon, the witness leaves the stand at 10:03 a.m.)

20 MR. TUCKER: We would ask if Trooper Dewitt could be
21 excused as well, Your Honor.

22 THE COURT: Any objection?

23 MR. GROVE: No. Thank you.

24 THE COURT: All right. You are excused Mr. Dewitt.
25 Thank you for coming.

1 MR. TUCKER: Your Honor, if we could approach?

2 THE COURT: Yes.

3 (Whereupon, a bench conference is held in the presence of
4 the jury but out of the hearing of the jury as follows.)

5 MR. TUCKER: Your Honor, my next two witnesses are the
6 highway patrolmen from Columbia. They have not yet arrived.
7 I've got my secretary calling to see if they are very close
8 by. So if we could ask for a short recess?

9 THE COURT: Okay. Who is that?

10 MR. TUCKER: That's going to be Donkle and First Sergeant
11 Rivers.

12 THE COURT: Okay.

13 MR. TUCKER: And then Carmen Tucker will be the last
14 witness, but the first two are the chain witnesses.

15 THE COURT: Okay. All right. We'll take a recess. Let
16 me know where they stand.

17 MR. TUCKER: Yes, Your Honor.

18 (Whereupon, the bench conference ends.)

19 THE COURT: All right. Ladies and gentlemen, we need to
20 check on the status of a witness at this time. So I'm going
21 to ask that you go to your jury room. Please do not discuss
22 the case among yourselves. It is still premature. As soon as
23 we get this administrative matter straightened out, we'll send
24 for you and we'll be ready to go forward. Thank you. You may
25 go with the Bailiff.

1 (Whereupon, the jury exits the courtroom at 10:04 a.m.)

2 THE COURT: All right. Mr. Tucker, check on them and let
3 me know what the status is.

4 MR. TUCKER: Yes, sir.

5 THE COURT: Thank you.

6 (Whereupon, there is a break in the proceedings from
7 10:04 a.m. until 10:18 a.m.)

8 THE COURT:: We're back on the record with regards to
9 State versus Sellers. Mr. Sellers is present with his counsel
10 and the State is represented by the Twelfth Circuit
11 Solicitor's Office. Mr. Tucker, I understand that the
12 witnesses are here and you're ready to proceed?

13 MR. TUCKER: Yes, Your Honor.

14 THE COURT: All right. Bring the jury in, please.

15 THE BAILIFF: Yes, sir.

16 (Whereupon, the jury enters the courtroom at 10:19 a.m.)

17 THE COURT: All right. Thank you, ladies and gentlemen.
18 We are now ready to proceed. Mr. Tucker, you may call your
19 next witness.

20 MR. TUCKER: Thank you, Your Honor. May it please the
21 Court. At this time, the State calls Lance Corporal Lee Anna
22 Donkle to the stand.

23 THE COURT: All right. Come around, please.

24 THE CLERK: If you will, ma'am, come to the witness stand
25 and place your left hand on the Bible and raise your right

CORPORAL LEE ANNA DONKLE - DIRECT EXAMINATION BY MR. TUCKER

1 hand. Do you swear to tell the truth, the whole truth, and
2 nothing but the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Please be seated and state your full name for
5 the record.

6 THE WITNESS: It is Lee Anna M. Donkle.

7 THE COURT: Yes, sir.

8 MR. TUCKER: May it please the Court.

9 LANCE CORPORAL LEE ANNA DONKLE,
10 being first duly sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. TUCKER:

13 Q: Lance Corporal Donkle, where are you presently employed?

14 A: With the Central Evidence in Columbia, South Carolina.

15 Q: Now, you are wearing a Highway Patrol uniform. How long
16 have you been employed with the Department of Public Safety?

17 A: I have been with them for a little over twenty-one years.

18 Q: I'm assuming that that's a pretty wide career in terms of
19 responsibility. Did you work as a road patrol ---

20 A: Yes, sir, I did.

21 Q: --- trooper at one point?

22 A: For over sixteen years on the road.

23 Q: Now, you mentioned that you now work at the Central
24 Evidence Facility in Columbia?

25 A: Yes, sir.

CORPORAL LEE ANNA DONKLE - DIRECT EXAMINATION BY MR. TUCKER

1 Q: Could you explain to us what that is?

2 A: All right. Central Evidence is where we store the
3 evidence that comes in from the Department of Public Safety.
4 We log it in when it comes in and store it. If it needs to be
5 taken to SLED, we take it to SLED.

6 Q: Now, you mentioned evidence. Would blood evidence be one
7 such item?

8 A: Yes, sir. Blood and urine, drugs.

9 Q: And essentially what y'all do, y'all don't analyze there
10 at the CEF, y'all hold on to it and send it to SLED; is that
11 correct?

12 A: That's correct, sir.

13 Q: Now, were you working at the CEF on or about the tail end
14 of September of 2011?

15 A: Yes, sir.

16 Q: Do you recall receiving a blood sample in reference to
17 this case, the defendant Roderick Jerome Sellers?

18 A: I do, sir.

19 Q: Do you recall what the items were exactly?

20 A: Referring to my -- the notes -- the chain of custody
21 here, it was a DUI kit that had the name of Roderick Jerome
22 Sellers on it. Officer Denham was the officer and it was
23 sealed in a DUI -- SLED DUI kit when it arrived at CEF.

24 Q: Okay. Did it appear to be intact? Did it appear that it
25 had been tampered with in any way?

CORPORAL LEE ANNA DONKLE - DIRECT EXAMINATION BY MR. TUCKER

1 A: No, sir.

2 Q: Do you recall if you -- if you would look back at your
3 chain of custody form there, was it Trooper Bell that dropped
4 that off?

5 A: Yes, sir.

6 Q: Now, essentially all you do is just kind of log it in at
7 that point; is that correct?

8 A: That's correct. We log it into ILAB which is connected
9 with SLED and we have to pre-log it before we take it over to
10 SLED.

11 Q: Okay. Now, in that pre-logging, I mean is this where you
12 put it? Is this a secure facility there at CEF?

13 A: It is, sir. It's stored in our refrigerator in the back.
14 We have the -- nobody has access to our portion of CEF except
15 for the people that have security clearance. We're the only
16 ones that are allowed to go back there.

17 Q: Okay. Now, did you repackage it in any way or do
18 anything with the particular SLED pack itself when it came in?

19 A: No, sir. I did not.

20 Q: You just kind of logged it and put it into the evidence?

21 A: Yes, sir.

22 Q: Of the refrigerator?

23 A: Yes, sir.

24 Q: Okay.

25 MR. TUCKER: I believe that's all the questions I have of

CORPORAL LEE ANNA DONKLE - CROSS EXAMINATION BY MR. GROVE

1 this witness, Your Honor.

2 THE COURT: Cross examination?

3 MR. GROVE: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. GROVE:

6 Q: Lance Corporal Donkle, you got any information as to an
7 accident where both Mr. Williams and Mr. Sellers were injured
8 back in September?

9 A: No, sir. The only thing that we get is the chain of
10 custody and it advises whether or not it was an accident-
11 related, which on this paperwork it does show that there was
12 an accident involved and the victim in -- in the case was a
13 Johnathan Anton Williams and that was -- that is listed on the
14 paperwork that we received at CEF also.

15 Q: Did you get any blood from Mr. Williams?

16 A: No, sir.

17 Q: Just blood from Mr. Sellers?

18 A: Yes, sir. That's the only thing that was in the -- as
19 far as my knowledge meant that was inside of the DUI kit.

20 Q: You logged it in and at some later time logged it out?

21 A: Correct.

22 Q: Thank you.

23 THE COURT: Anything further?

24 Mr. TUCKER: No, Your Honor. We would ask if Lance
25 Corporal Donkle could be released from her subpoena, Your

SERGEANT M.C. RIVERS - DIRECT EXAMINATION BY MR. TUCKER

1 Honor.

2 THE COURT: Any objections, Mr. Grove?

3 MR. GROVE: No, Your Honor. Thank you, Corporal.

4 THE COURT: All right. Thank you. You are excused.

5 Thank you for coming.

6 THE WITNESS: Thank you, sir.

7 (Whereupon, the witness leaves the stand at 10:24 a.m.)

8 THE COURT: All right. You may call your next witness.

9 MR. TUCKER: Your Honor, at this time, the State calls
10 First Sergeant M.C. Rivers to the stand.

11 THE CLERK: Do you swear to tell the truth, the whole
12 truth, and nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated and state your full name for
15 the record.

16 THE WITNESS: Mendell Christopher Rivers.

17 FIRST SERGEANT M.C. RIVERS,
18 being first duly sworn, testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. TUCKER:

21 Q: Okay. First Sergeant, let me ask you the same question I
22 just asked -- asked your colleague. You work with the Highway
23 Patrol?

24 A: Yes, sir.

25 Q: For how long?

SERGEANT M.C. RIVERS - DIRECT EXAMINATION BY MR. TUCKER

1 A: Twenty-two years.

2 Q: I'm assuming you had varying responsibilities at various
3 times within the patrol?

4 A: Many. Yes.

5 Q: Your current assignment, where is that exactly?

6 A: I'm the supervisor of the Central Evidence Facility.

7 Q: And you heard Lance Corporal testify as to what the
8 Central Evidence Facility is?

9 A: Yes.

10 Q: Anything that you could add to her testimony with regards
11 to what the Central Evidence Facility does and is?

12 A: In addition, I would just add that it's a facility that
13 is not known by many. It is known just by the officers and
14 employees of the Department of Public Safety. It is a well
15 secured facility.

16 Lance Corporal Donkle alluded to the fact that certain
17 people have the ability and security to be able to access
18 certain areas. I am the one who gives that permission and
19 it's only related to those who work in our office. We have a
20 team of five who work in our office and we have about six or
21 seven different layers of security. One would be by key, by
22 fence outside. There will be scan pads, as well as cages and
23 so forth in order to be able to access and get to our secure
24 area.

25 Q: Now, would one of your responsibilities be to transport

SERGEANT M.C. RIVERS - DIRECT EXAMINATION BY MR. TUCKER

1 evidence that's logged into the CEF over to the SLED lab there
2 in Columbia as well?

3 A: Yes, sir.

4 Q: With regards to that, do you recall transporting some
5 blood evidence related to this case, Roderick Jerome Sellers,
6 to SLED for analysis?

7 A: Yes.

8 Q: Do you recall on what date that occurred?

9 A: According to our chain of custody, that was October 4th of
10 2011.

11 Q: So essentially the blood was in your facility for four
12 days give or take?

13 A: Yes, sir.

14 Q: All right. And it was refrigerated while it was there?

15 A: Yes, sir.

16 Q: Now, in terms of when you signed it out, did the package
17 appear to be tampered with in any way or did you see anything
18 to cause you any sort of concern?

19 A: No indications of it being tampered or anything to create
20 any concern.

21 Q: Okay. And your sole responsibility or your sole
22 function in this case was to transport the blood over to the
23 SLED lab?

24 A: That's correct.

25 Q: And what happens when you arrive at SLED with evidence to

SERGEANT M.C. RIVERS - DIRECT EXAMINATION BY MR. TUCKER

1 be analyzed?

2 A: When I arrive at SLED for it to be analyzed, they have us
3 actually sign in. They have a secured facility as well. Once
4 we go back, then we encounter intake, employee and personnel
5 with SLED, and they simply will take possession of that
6 particular item or evidence that we are actually dropping off
7 and transferring to them. They will sign our chain of custody
8 to maintain our chain in the movement of the evidence and at
9 that stage we will sign a sealed package to where it is
10 actually being put into another evidence bag. It is heat
11 sealed at that point. We will initial as the sealing agency
12 or officer that states that we are the one who actually sealed
13 that prior to any additional movement. Beyond that, then the
14 intake personnel at SLED will go with their procedures at that
15 point.

16 Q: Okay. And that was done in this case, First Sergeant?

17 A: Yes.

18 Q: And you were the one who actually did that; correct?

19 A: Yes.

20 MR. TUCKER: I don't believe I have any additional
21 questions, Your Honor.

22 THE COURT: Cross examination?

23 MR. GROVE: Just briefly, Your Honor. Thank you.

24 CROSS EXAMINATION

25 BY MR. GROVE:

SERGEANT M.C. RIVERS - CROSS EXAMINATION BY MR. GROVE

1 Q: First Sergeant, do you have any independent information
2 to offer in regards to an accident from September of 2011?

3 A: No, sir.

4 Q: When you transported evidence in this case, did you
5 transport any evidence pertaining to blood or urine collected
6 from Johnathan Anton Williams?

7 A: Not that I'm aware.

8 Q: Would it surprise you to say no, not at all?

9 A: No. According to the paperwork that we have and the
10 chain of custody it states that the sample was from Roderick
11 Jerome Sellers.

12 Q: And no sample from Johnathan Williams?

13 A: That's correct.

14 Q: Thank you.

15 THE COURT: Redirect?

16 MR. TUCKER: No redirect, Your Honor.

17 THE COURT: All right. Thank you. You may step down.
18 Would you like to have the witness excused?

19 MR. TUCKER: I would, Your Honor.

20 THE COURT: Any objection?

21 MR. GROVE: No, Judge. Thank you, First Sergeant.

22 THE COURT: All right. The witness is excused. Thank
23 you for coming. All right. Mr. Tucker, you may call your
24 next witness.

25 (Whereupon, the witness leaves the stand at 10:29 a.m.)

CARMEN TUCKER - DIRECT EXAMINATION BY MR. TUCKER

1 MR. TUCKER: Your Honor, at this time, the State calls
2 Carmen Tucker to the stand.

3 THE COURT: All right. Come around, please, ma'am.

4 THE CLERK: Do you swear to tell the truth, the whole
5 truth, and nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated and state your full name for
8 the record.

9 THE WITNESS: Carmen Janeen Tucker.

10 CARMEN TUCKER, being first duly
11 sworn, testifies as follows:

12 DIRECT EXAMINATION

13 BY MR. TUCKER:

14 Q: And Ms. Tucker, let's deal with the obvious first. We're
15 not related; are we?

16 A: No, sir.

17 Q: What's your current occupation or profession?

18 A: I'm a forensic toxicologist with the South Carolina Law
19 Enforcement Division, which is commonly known as SLED.

20 Q: And how long have you been in that capacity there at
21 SLED?

22 A: I have been there over three years now in that
23 department.

24 Q: Did you have any prior experience before you moved into
25 that particular department within SLED?

CARMEN TUCKER - DIRECT EXAMINATION BY MR. TUCKER

1 A: I did. I did four years in the drug analysis department.

2 Q: Was that also at SLED?

3 A: That's at SLED also, yes. It's right across the hall.

4 Q: Okay. Did you have any other experience before joining

5 SLED seven years ago?

6 A: Before joining SLED, not with specifically with

7 toxicology. I basically did drug synthesis with a lab in

8 North Carolina and that would -- and before that grad school.

9 Q: Okay. Let's talk about -- you mentioned grad school.

10 Did you have to have any sort of special education to assume

11 the responsibilities of your current profession?

12 A: Yes. Basically I have a master's degree and a bachelor's

13 degree in chemistry, and then I have drug synthesis experience

14 and that got me into the drug lab. And then there they gave

15 me all the experience in training that I needed to do that

16 part of it and then when I transferred into the tox lab,

17 basically because I wanted to learn more, they've trained me

18 in everything I needed to know for the blood alcohol analysis

19 and interpretation.

20 Q: Okay. And you mentioned some of the training, without

21 going into everything, but you have had specialized training

22 with regards to the analysis of blood evidence?

23 A: Blood alcohol analysis? Actually, the analysis of

24 biological substances and non-biological substances.

25 Q: Do you hold any sort of special certifications in that

CARMEN TUCKER - DIRECT EXAMINATION BY MR. TUCKER

1 field to obtain or to maintain your current profession?

2 A: We actually are certified through SLED -- through our
3 department through SLED. We have to do proficiency tests
4 twice a year to keep our certification up and we have to pass
5 them.

6 Q: Have you ever been qualified as an expert in a court of
7 law in South Carolina?

8 A: For toxicology three times, drug analysis sixteen.

9 MR. TUCKER: Your Honor, at this time, I would offer Ms.
10 Tucker as an expert in the field of forensic toxicology.

11 MR. GROVE: No objection, Your Honor.

12 THE COURT: All right. She will be so qualified. Again,
13 ladies and gentlemen, a witness qualified as an expert is a
14 person who by experience, training, knowledge or otherwise can
15 assist the trier of fact in determining a fact in issue and is
16 entitled to give an opinion, and I have qualified this witness
17 as an expert in the field of toxicology and drug analysis.

18 MR. TUCKER: Thank you, Your Honor.

19 Q: Ms. Tucker, let's start with the basic stuff first and
20 again, bear in mind I'm just a simple old county boy so I
21 apologize if I have to ask some follow-up questions. Could
22 you explain what blood alcohol content means or in
23 relationship to what you do at SLED?

24 A: What we do is we take samples, whether it's blood, ocular
25 fluid, tissues, and we examine them and analyze them for the

CARMEN TUCKER - DIRECT EXAMINATION BY MR. TUCKER

1 presence of alcohol or other drugs, substances. In this
2 particular case, the sample was analyzed for alcohol or the
3 presence of non-volatile substance.

4 Q: Now, did you perform that particular analysis yourself?

5 A: I did not.

6 Q: Okay. Who did?

7 A: One of the girls that works in our department. She ran
8 the initial analysis and then what we do is we confirm that on
9 a different instrument and then we run another analysis and we
10 take the lesser of the two values to give benefit of the
11 doubt.

12 Q: Okay.

13 A: And then what I do is then I take the evidence and I
14 review all of the data and -- against the evidence and what I
15 have and then I issue the report.

16 Q: Okay. And that's what you did here?

17 A: That's what I did here.

18 Q: Okay. Let me show you ---

19 MR. TUCKER: Your Honor, if I may approach?

20 THE COURT: Yes.

21 Q: This has been marked as State's Exhibit 9. Do you
22 recognize it?

23 A: I do. This is the report that was issued for this case.

24 Q: Okay. Could you explain what's on the report?

25 A: At the top, it basically has the agency information and

CARMEN TUCKER - DIRECT EXAMINATION BY MR. TUCKER

1 then the lab information, case number, basically subject and
2 victim's names, and then down below would be our analysis and
3 it basically tells you that there is a blood -- there was
4 blood submitted. The type of analysis that was done was
5 headspace-gas chromatography and then that was confirmed by my
6 spectrometry. It tells you ethanol was found at a result of
7 .158 and then that would be a material -- materially and
8 appreciably impaired is what our judgment would be on that.

9 Q: Okay. Now the 1. -- .158, that's the blood alcohol
10 content with regards to this blood sample?

11 A: Correct.

12 Q: And that was the blood of Roderick Sellers?

13 A: That's correct.

14 Q: What sort of effects -- if a person were to have a .158
15 blood alcohol content, what sort of effect on their ability to
16 walk, talk?

17 A: Okay. Well, there is several effects seen with this type
18 of -- this level of blood alcohol. I jotted a few down.
19 Emotional instability, loss of critical judgment, decreased
20 sensory response, reduced visual acuity, peripheral vision
21 and glare recovery, like when you're driving, sensory motor
22 incoordination, impaired balance, and drowsiness. These are
23 some of the types of effects you would see with a blood
24 alcohol content of this level.

25 Q: Would their ability to operate a motor vehicle be

CARMEN TUCKER - DIRECT EXAMINATION BY MR. TUCKER

1 impaired?

2 A: Absolutely. We take for granted that all the different
3 things that go into that when we drive because we do it so
4 often, but if you think about all the things you're
5 multitasking when you're driving. Basically, what alcohol
6 does is it's a central nervous system depressant. It
7 depresses your brain's ability to send those signals. So
8 you're not responding as quickly to something, say a car
9 turning out in front of you, that type of thing.

10 Q: When I said impaired, I meant materially and appreciably
11 impaired as ---

12 A: Absolutely.

13 Q: I believe that's the jargon you used earlier; is that
14 correct?

15 A: That's correct.

16 Q: With regards to what is recognized as the state's limit,
17 is it .08 in the state of South Carolina?

18 A: The legal limit is .08.

19 Q: And so we are talking about .158. That's almost twice
20 what the legal limit is?

21 A: That's correct.

22 MR. TUCKER: Thank you, Your Honor. I believe that's all
23 the questions I have.

24 THE COURT: Cross examination, Mr. Grove?

25 MR. GROVE: Thank you, Your Honor.

CARMEN TUCKER - CROSS EXAMINATION BY MR. GROVE

CROSS EXAMINATION

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BY MR. GROVE:

Q: Good morning, Ms. Tucker.

A: Good morning.

Q: Sure y'all not related?

A: I'm positive.

Q: I'm just joking. I'm looking at what Mr. Tucker handed you. I believe it's marked State's 9. It's the toxicology report.

A: That's correct.

Q: It's what you've been talking about. What are other substances were tested for?

A: In this case because this is a felony DUI case and when it came in there were no indications of other drugs present, so it gets initially -- it gets the blood alcohol analysis and then that blood alcohol analysis tells us that it's at a .158. If it's a felony DUI and it's at -- if it's at a .15 or over, we're done. We don't go looking for anything else. This proves impairment. If it's under -- if it's not a felony DUI, if it's a regular DUI, then that -- that value would be a .08 that we would be looking at.

In this case, there was no need to go and do any further testing because that is what our criteria is set for. If it's already over a .15, there is no need to go and check for anything else. This is impairment here.

CARMEN TUCKER - CROSS EXAMINATION BY MR. GROVE

1 Q: Proves impairment on everybody no matter what?

2 A: Everybody will be affected at this level with the
3 symptoms that I was describing to you, yes. It's your central
4 nervous system. Every human being is going to be affected the
5 same.

6 Q: Every human being is going to be affected the same?

7 A: Every human being is going to have suppression of their
8 central nervous system with alcohol in their system.

9 Q: But certainly to varying levels?

10 A: Depending on the level that -- that you have in your
11 system. You have different effects at different levels.

12 Q: If you and I were at the same blood alcohol level, we
13 wouldn't necessary have the same effects to the same extent?

14 A: And if we are at a .158, we would both be impaired.

15 Q: But you can't really know that. What if I'm -- what if
16 I'm a drunk?

17 A: You know that.

18 Q: But you do -- you do recognize that every level affects
19 every other person differently?

20 A: It doesn't matter what the level is. If it's a .08 or
21 higher, it's going to affect your central nervous system and
22 you will be materially and appreciably impaired.

23 Q: That's not my question. Every blood alcohol level
24 affects every individual differently?

25 A: If you were at a different level than I, then yes, we

CARMEN TUCKER - CROSS EXAMINATION BY MR. GROVE

1 would both be experiencing different symptoms.

2 Q: Every blood alcohol level affects every individual
3 differently?

4 A: Okay. You're asking -- that's two questions. You're
5 saying every ---

6 Q: No, it's the same question.

7 A: If you and I were both at a .158, we're both going to be
8 impaired. If you were at say a .25 and I was at a .15, you're
9 going to be more so than I am.

10 Q: Okay. If you and I are at the same level, we can argue
11 round and round all day that we might both be impaired, but
12 we're not going to be impaired to the exact same extent?

13 A: You're going to be too impaired to drive the vehicle. To
14 -- to all the motor things that you have to do when you drive
15 a vehicle, you're going to be too impaired to do that.

16 Q: Maybe we can agree to disagree? That being said, you
17 tested the sample from Roderick Jerome Sellers; correct?

18 A: I did.

19 Q: For alcohol and alcohol only?

20 A: That's correct.

21 Q: Because there were no other signs of any other drugs or
22 substances present?

23 A: Correct.

24 Q: Or you weren't asked to test for anything other than
25 alcohol?

CARMEN TUCKER - CROSS EXAMINATION BY MR. GROVE

1 A: Right. There was no need to look for anything beyond
2 what we were initially asked to analyze for.

3 Q: And you didn't test anything for Johnathan Anton
4 Williams?

5 A: No, sir.

6 Q: You didn't receive any samples?

7 A: Not to my knowledge.

8 Q: It wasn't suggested that you test something for him?

9 A: No, sir.

10 Q: You just got the one sample from the one person and did
11 the one test?

12 A: Yes.

13 MR. GROVE: I don't think I have any further questions.
14 Thank you.

15 THE COURT: Redirect?

16 MR. TUCKER: No redirect, Your Honor.

17 THE COURT: All right. Thank you, Ms. Tucker. You may
18 step down.

19 (Whereupon, the witness leaves the stand at 10:40 a.m.)

20 MR. TUCKER: Your Honor, likewise, we would ask if Ms.
21 Tucker could be released from her subpoena.

22 THE COURT: Any objection?

23 MR. GROVE: No, Your Honor. Thank you, Ms. Tucker.

24 THE COURT: All right. Thank you. You are excused.

25 Thank you for coming. All right. Mr. Solicitor?

1 MR. TUCKER: Your Honor, at this time, the State rests.

2 THE COURT: All right. All right. Ladies and gentlemen
3 of the jury, you have heard the State announce that they have
4 rested their case. That means that you have heard all the
5 evidence that you will hear from the State at this time.

6 Now, there are certain matters of law which I now need to
7 take up with the attorneys that are involved in this case and
8 this will take us a few minutes. So I'm going to ask that you
9 go to your jury room. Please do not discuss the case among
10 yourselves. It is still premature for you to begin any
11 discussion of this case. But these are matters of law that I
12 have to take up with the attorneys outside of your presence
13 and on the record. So please go with the bailiff to your jury
14 room, but do not discuss the case among yourselves. Thank
15 you.

16 (Whereupon, the jury exits the courtroom at 10:41 a.m.)

17 THE COURT: All right. Mr. Grove, motions on behalf of
18 the defendant?

19 MR. GROVE: Thank you, Your Honor. At this time, the
20 defense would move for a directed verdict. The State is
21 required to meet the burden of proving all of the elements of
22 felony DUI great bodily injury, those being the operation of a
23 motor vehicle on the roads in South Carolina under the
24 influence of drugs or alcohol or a combination to the extent
25 that it materially and appreciably impairs one's ability to

1 operate that vehicle, that that impairment was the cause -- a
2 contributing cause of the accident, that an accident did
3 occur, and that great bodily injury resulted from that
4 accident. I'd present to you that the State has not met their
5 burden and ask that you grant a directed verdict.

6 THE COURT: Tell me exactly what you think they have not
7 proven. The impairment or the bodily injury or what part to
8 the elements have they not proven?

9 MR. GROVE: Your Honor, I would present to you they have
10 not satisfied their burden as to driving. They have not
11 satisfied their burden as to impairment itself. They also
12 have not satisfied their burden as to great bodily injury.

13 THE COURT: All right. Mr. Tucker?

14 MR. TUCKER: Certainly, Your Honor, the State would argue
15 that we certainly have met our burden in this matter.
16 Certainly, the testimony from Mr. Williams was that it was Mr.
17 Sellers who was driving the automobile. That was corroborated
18 by what Trooper Denham indicated when he arrived on the scene.
19 He indicated that Mr. Sellers was closest to the automobile.
20 Mr. Williams had been ejected further away and in his training
21 and experience, that indicated that the one closest to the
22 vehicle was the driver.

23 As far as the impairment, Trooper Denham testified that
24 Mr. Sellers smelled of alcohol and also of marijuana. The
25 blood was drawn pursuant to South Carolina law. As you just

1 heard the forensic toxicologist testify, the blood alcohol
2 content was .158. She testified that that would have
3 materially and appreciably impaired Mr. Sellers's faculties to
4 drive an automobile, and certainly the testimony was that this
5 occurred off of Savannah Grove Road which is in the County of
6 Florence which is in the State of South Carolina.

7 So certainly we would argue that we met each and every
8 element, particularly with regards to the great bodily injury,
9 Dr. Brennan and Mr. Williams testified that he suffers from
10 permanent disability as a direct result of this accident. He
11 had to have surgery on his spine and I believe Mr. Williams
12 testified he also had a broken leg. Dr. Brennan testified
13 obviously that he would still -- would be suffering from those
14 and more than likely will suffer from that for the rest of his
15 life, impairing him to the point where he could not do
16 physical labor, which is what he had been doing prior to the
17 accident. So we would submit that we certainly met our burden
18 in each and every element.

19 THE COURT: All right. Mr. Grove, you want to be heard
20 any further?

21 MR. GROVE: No, Judge. We'll stand on our motion.

22 THE COURT: Okay. All right. Rule 19 of the South
23 Carolina Rules of Criminal Procedure provides that on motion
24 of the defendant or its own motion, the Court shall direct a
25 verdict in the defendant's favor on any offense charged in the

1 indictment after the evidence on either side is closed if
2 there is a failure of competent evidence tending to prove the
3 charge in the indictment.

4 I have always thought that the use of the word competent
5 in that sentence is unfortunate because it implies a weighing
6 of the evidence or a determination as to the truthfulness of
7 the evidence. I headed a committee to revise the criminal
8 rules about five years ago and we addressed that and the
9 recommended rule that we sent to the Supreme Court changed
10 that and left out the word competent. The Supreme Court has
11 not acted on our recommended changes in the rules and they
12 have been sitting there for about the last five years.

13 But be that as it may, it's my view that the use of the
14 word competent in that context or the context of the rule
15 means evidence within the record and that's what we changed
16 the record to. It does not mean to weigh or determine the
17 truthfulness of the evidence. In fact, the rule goes on to
18 say in ruling on the motion the trial judge should consider
19 only the existence or non-existence of the evidence and not
20 its weight.

21 In this case, there is testimony of driving from the
22 victim in this case and at least circumstantial evidence, if
23 not more direct evidence, but at least circumstantial evidence
24 from the trooper regarding who was driving the vehicle. There
25 is evidence in the record of a .158 blood alcohol reading and

1 under our law that is evidence of impairment and, of course,
2 the witness testified as to impairment and I don't think there
3 can be any doubt that the victim in this case was seriously
4 injured. Testimony of himself as well as the medical
5 professionals in this case regarding his injuries would make
6 it a fact question for the jury to determine about the serious
7 bodily injury.

8 So I do think that all three of the elements necessary
9 for a charge of driving under the influence -- I mean of
10 felony DUI with great bodily injury are present and the Court
11 respectfully deny the motion.

12 MR. GROVE: Thank you, Your Honor.

13 THE COURT: All right. All right. Mr. Grove, is your
14 client prepared to address the issue of whether or not he will
15 testify in this matter? Have you discussed it with him?

16 MR. GROVE: Just one moment, Your Honor.

17 THE COURT: All right.

18 (Whereupon, there is a pause in the proceedings.)

19 MR. GROVE: He is, Your Honor.

20 THE COURT: All right. Yesterday, Mr. Sellers, I talked
21 with you about your Fifth Amendment constitutional right to
22 remain silent and that you could testify or not testify, but
23 it was up to you and I said I would give you an opportunity to
24 consult with your lawyer about this. Have you had a chance to
25 consult with him?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And have you discussed with him whether you
3 should or should not testify?

4 THE DEFENDANT: I should not.

5 THE COURT: But I mean have you discussed -- you've
6 discussed it with him?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. And do you -- have you understood your
9 discussions with him?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you understood what I told you about
12 your Fifth Amendment rights?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions that you want to
15 ask me or him about your constitutional right to remain
16 silent?

17 THE DEFENDANT: No, sir.

18 THE COURT: Have you made a decision as to whether you do
19 or do not wish to testify in this matter?

20 THE DEFENDANT: I do not.

21 THE COURT: You have made a decision and that decision is
22 that you do not wish to testify?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. And is this decision on your part made
25 freely and voluntarily?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. All right. The Court would find then
3 that the defendant has made a free, voluntary, intelligent and
4 knowing decision to exercise his Fifth Amendment right and
5 privilege against self-incrimination and the Court will
6 respect that decision. All right. Thank you.

7 MR. GROVE: Thank you, Your Honor.

8 THE COURT: All right. Now, Mr. Grove, would your --
9 does your client plan to put up any other testimony in
10 connection to this matter?

11 MR. GROVE: We do not, Your Honor. And I'm glad you
12 addressed that. I will be happy to renew my motion on the
13 record after we rest here in a moment. For scheduling
14 purposes, I'm happy to go straight into arguments and charges.

15 THE COURT: All right.

16 MR. GROVE: Or if you don't want the jury to sit there
17 for that long, we can extend their break a little bit.

18 THE COURT: All right. Okay. So the defendant not only
19 is not going to testify, but no further evidence is going --
20 no testimony or evidence will be presented by the defense. So
21 when we come back on the record, then basically the defense
22 would rest; is that correct, Mr. Grove?

23 MR. GROVE: That's correct, Your Honor.

24 THE COURT: And renew your motions just made under Rule
25 19?

1 MR. GROVE: That's correct.

2 THE COURT: And the Court's ruling under Rule 19 would be
3 the same. Okay. And we can go into arguments and charge and
4 since you have not presented any evidence, you will have the
5 right to argue last. Mr. Tucker, how much time are you going
6 to need by way of argument?

7 MR. TUCKER: Your Honor, twenty -- twenty-five minutes at
8 the very most.

9 THE COURT: All right. What about you, Mr. Grove?

10 MR. GROVE: I can't imagine I would take much longer than
11 that.

12 THE COURT: Okay. I know I don't ever -- I never liked
13 to argue against the clock when I was practicing law for
14 thirty years, but when I first got this job I made a mistake
15 and I was trying a little -- I was hearing a little ordinary
16 garden variety automobile wreck case that I thought the jury
17 arguments would take no more than fifteen minutes or twenty
18 minutes at the most, and fifty-five minutes later one of the
19 lawyers was still going strong. So I figured that I now do
20 get an idea from the lawyers how long it's going to take and
21 while I don't cut them off right at the time, if they get to
22 running too long after they've told me it's going to take
23 fifteen or twenty minutes, then I will stop them if they get
24 to going thirty or thirty-five minutes.

25 All right. Let's get your thoughts together and be

1 prepared to go into closing arguments. Any special -- any
2 request for charge. Let me ask you about that. Special
3 request for charge, counsel, on behalf of the State?

4 MR. TUCKER: None, Your Honor, other than what you would
5 normally charge.

6 THE COURT: Let me tell you what a normal charge would
7 be. General felony charge with the presumption of innocence,
8 burden of proof, reasonable doubt charge. Reasonable doubt
9 charge is the one that Judge Baxley uses if y'all are familiar
10 with Judge Baxley's charge.

11 I will charge the pertinent parts of Section 56-5-
12 2945(a)(1), which is the statute. I will charge the
13 circumstantial evidence under the Logan case which was decided
14 by the Supreme Court on August 14th, just about a month ago.
15 It changes the Grippon charge slightly on circumstantial
16 evidence, but I will use the Logan charge for circumstantial
17 evidence.

18 I will charge about expert witnesses and, of course, I
19 will charge the defendant -- the defendant not testifying, the
20 fact that nothing is to be presumed from the defendant not
21 testifying. Other than that, are there any requested special
22 charges?

23 MR. TUCKER: None from the State, Your Honor.

24 THE COURT: Mr. Grove?

25 MR. GROVE: I was thinking about it, Judge, and I don't

1 have necessarily any law to support it and it's quite
2 literally just come to mind, but a mere proximity charge might
3 be appropriate. Obviously, there's plenty of testimony that
4 Mr. Sellers was right there at the accident scene and that he
5 was injured and that he was involved in the accident, but that
6 in and of itself should not necessarily reflect any guilt on
7 him just being a part of the accident.

8 MR. TUCKER: And certainly ---

9 MR. GROVE: Whether or not that's appropriate, I'll
10 obviously leave to you and that is -- that's not something
11 I've researched. It's something that I literally just thought
12 of.

13 THE COURT: Mr. Tucker?

14 MR. TUCKER: Certainly, Your Honor, we would object to
15 the mere presence charge being included. Obviously, all the
16 evidence points to Mr. Sellers doing one thing, which is
17 driving the automobile. He was present because of the
18 accident, but we think that the evidence certainly does not or
19 suggests way beyond a mere presence type of charge to jury.

20 THE COURT: I'm going to deny the motion for mere
21 presence. I don't think it's appropriate, Mr. Grove.

22 MR. GROVE: Thank you, Judge.

23 THE COURT: All right. Let's take about ten or fifteen
24 minutes. Counsel, here's a verdict form if y'all would like
25 to look at it before we recess and see if you have any

1 suggestions with regard to that and I'll go get my charges
2 together.

3 (Whereupon, a bench conference is held off the record
4 regarding the verdict form.)

5 THE COURT: Thank you. We'll take a few minutes.

6 (Whereupon, there is a break in the proceedings from
7 10:54 a.m. until 11:10 a.m.)

8 THE COURT: Thank you. Please be seated. All right.
9 We're back on the record with regard to the matter of the
10 State versus Sellers, 2012-GS-21-354. Mr. Sellers is present
11 in court with his counsel, Mr. Grove. The State is present
12 and represented by the Twelfth Circuit Solicitor's Office.
13 Anything before we bring the jury in, Mr. Tucker?

14 MR. TUCKER: Nothing from the State, Your Honor.

15 THE COURT: From the defense?

16 MR. GROVE: No, Your Honor.

17 THE COURT: All right. Bring the jury in, please.

18 THE BAILIFF: Yes, sir.

19 MR. GROVE: May we approach, Your Honor?

20 THE COURT: Sure.

21 (Whereupon, a bench conference is held as the jury is
22 entering the courtroom out of the hearing of the jury as
23 follows.)

24 MR. GROVE: I presume this because this is certainly the
25 way I've done it before, but after I rest on the record, I

1 would just generically renew my motion on the record. We
2 don't have to send ---

3 THE COURT: Since you rested on the record, I won't send
4 them back out. I'll just say motions previously made are
5 protected on the record.

6 MR. GROVE: Okay.

7 (Whereupon, the bench conference ends.)

8 (Whereupon, the jury enters the courtroom at 11:10 a.m.)

9 THE COURT: All right. Ladies and gentlemen, thank you
10 for your patience and we are now ready to proceed. You have
11 heard all the evidence from the State's standpoint. Now, the
12 defense will have the right to present any evidence to you
13 that they wish to present. Mr. Grove?

14 MR. GROVE: Thank you, Your Honor. At this time, the
15 defense would rest.

16 THE COURT: All right. Ladies and gentlemen, you have
17 now heard that the defense has rested. That means that you
18 have heard all of the evidence that you will hear in
19 connection with this case. With the defense having rested,
20 Mr. Grove, and for the record, the Court would note that the
21 appropriate motions were made after the resting of the case by
22 the defense with the same ruling by the Court.

23 MR. GROVE: Thank you, Judge.

24 THE COURT: Okay. Now as I've said, you've heard all the
25 evidence in this case and there are only two things that

1 remain to be done. Those are the arguments of counsel and the
2 instructions on the law by the Court. I will tell you now as
3 I did at the first of this case that the arguments of the
4 lawyers or the arguments of counsel are not evidence in this
5 case. They are simply the lawyers' views of what they think
6 the evidence shows.

7 You will decide this case based upon the evidence that
8 you have heard from this witness stand and from any exhibits
9 that have been introduced into evidence, and incidentally I
10 will tell you now, I did not tell you at the beginning of
11 this, but you will be allowed to take any exhibits or any
12 exhibits that were introduced into evidence will go with you
13 to the jury room when you retire to reach your verdict so you
14 will have ample opportunity to look at those or study those
15 for as long as you would like.

16 After the lawyers have concluded their summations to you,
17 then I will instruct you on the law of South Carolina as it
18 applies to the facts in this case as you may find those facts
19 to be and then you will be allowed to go to your jury room to
20 reach a decision. You will hear first from Mr. Tucker on
21 behalf of the State and then from Mr. Grove on behalf of the
22 defendant. Mr. Tucker?

23 CLOSING ARGUMENTS

24 MR. TUCKER: Choices. Some big, some small, some good,
25 and some bad. And some of them are so bad that they might

1 have tragic consequences that can alter a life forever. I
2 told you that yesterday and hopefully by now we have proven
3 this very thing to you. This is a case about choices.

4 This is a case about the bad choices that went from bad
5 to worse made by Roderick Sellers in the early morning hours
6 of September the 27th, 2011. He chose to drink alcohol, a lot
7 of it as you heard from the forensic toxicologist. He chose
8 to get behind the wheel of a car registered to him. He chose
9 to operate that motor vehicle while his abilities to do so
10 were materially and appreciably impaired while he had a
11 passenger in there and he operated that motor vehicle in such
12 a reckless fashion -- well, you heard it. It flipped over; it
13 careened down Savannah Grove Road like a bowling ball in an
14 alley gutter-balling. It flipped; it threw out the passenger,
15 Johnny Williams, and also Mr. Sellers. Bad choices that went
16 from bad to worse.

17 Now, you heard a lot of testimony here, essentially ten
18 witnesses from the State. Now, I'll be brief not simply
19 because I think the case is unimportant, but I think you folks
20 are just as intelligent as anybody else and can certainly
21 grasp the evidence as anybody. Five really told you what you
22 needed to hear. Five more or less were here to make sure we
23 did everything we could do and did do to maintain a strict
24 chain of custody. But five witnesses are the ones that really
25 proved the case.

1 And let's start with the first one, the victim in this
2 case, Johnny Williams. Now, Mr. Williams got on the stand and
3 he didn't try to hide anything from you. He didn't try to
4 make himself out to be any sort of an angel. He told you that
5 he walked up to a friend's house, he drank beer, he smoked a
6 little weed, he met up with a friend of his, Roderick Sellers,
7 who was also drinking and smoking, and they made a bad choice.
8 The difference is the witness's choice cost him almost
9 everything. Mr. Seller's choice to drive after he'd been
10 drinking only cost him a car.

11 It's in that detail that I think that that tells us what
12 we need to know as much or as important as anything else that
13 you heard. Johnny Williams told you that he walked a mile
14 from his house to that of his friends. Mr. Sellers drove up.
15 Now, Mr. Sellers had been drinking. If he wasn't driving that
16 car, surely he would brought a designated driver with him.
17 Surely he would have called a cab. He could have done any
18 number of things, but he didn't.

19 Mr. Sellers walked up. Or Mr. Williams walked up. Mr.
20 Sellers drove up. Mr. Williams indicates the person who at
21 least states I'm going to be drinking, I'm not going to be
22 driving so I'm going to walk up and it's close enough where I
23 can find a way back. That's an important detail. It tells us
24 who was driving the vehicle or at least is evidence of it.

25 Now, Mr. Williams told you after they'd been drinking,

1 after they'd been smoking, they decided to go into town to go
2 to another night -- to go to a nightclub. A bad choice that
3 went from bad to worse. The difference is that Mr. Williams
4 made a bad decision in getting in the car. Mr. Sellers made a
5 worse decision by driving it. It's not against the law to be
6 drunk and ride as a passenger in a vehicle. It is against the
7 law to drive a vehicle after you're just hammered to the point
8 where you ultimately have a blood alcohol content of .158.
9 That's almost twice the legal limit here in South Carolina,
10 almost twice.

11 Now, Mr. Williams told you that as they get out on the
12 Savannah Grove Road, they had some gas problems. The car had
13 run out of gas. They got gas, but there were two people in
14 the car. Mr. Sellers was driving and Mr. Williams was riding
15 passenger. And he said that Mr. Sellers drove in such a way
16 -- well, you saw the diagram and you heard the testimony from
17 Corporal Dewitt with the MAIT Team. It bounced from one side
18 to the other. Driving and speeding as Trooper Denham told
19 you, and I'll get into his testimony in a little bit more
20 detail, but he told you that it was almost seventy-five to
21 seventy-eight miles an hour and it's a forty-five mile an hour
22 zone.

23 There was only one way that thing could have gone.
24 Nobody could maintain a car when your .158, almost twice the
25 legal limit. And ultimately it happened. The car flipped

1 after crashing and it threw out Mr. Williams and it threw out
2 Mr. Sellers. That tells us what we need to know as well. As
3 Trooper Denham testified he gets on the scene, one of the
4 first things he does is he wants to make sure that traffic
5 situation doesn't go from bad to worse.

6 But he also tells us something that is very important.
7 He tells us that Mr. Williams is ejected further away from the
8 car than Mr. Sellers. To him and his expert opinion -- well,
9 not an expert opinion, but in his training and experience, he
10 told you that that means that the driver is the one closest to
11 the car. The driver has more to clear inside the vehicle once
12 the vehicle is bouncing around and flipping over. The driver
13 has to clear a steering wheel, turn signal, a gear column if
14 it's on the column and any host of things. The driver -- or
15 passenger rather has nothing over there but just a dash and a
16 door and generally is ejected out further away.

17 That was one of the tips that kind of got him thinking
18 this was the driver. The vehicle is registered to Roderick
19 Sellers, not Johnny Williams, Roderick Sellers. What does
20 that tell you? He was driving, not Mr. Williams. Again,
21 you're talking about guys who were out, you know, drinking a
22 little bit and in Mr. Sellers's case, a whole bunch. He's was
23 going to let someone else drive his car? They're going to a
24 club. It doesn't make sense.

25 But you also heard from Johnny Williams when he got on

1 the stand to testify that it was Roderick Sellers driving the
2 car, not him, Roderick Sellers. And Mr. Williams doesn't
3 have a single thing to gain by coming in here and lying. He
4 wasn't charged with any sort of a crime. This thing happened
5 two years ago. Now, he's reminded of it every day,
6 particularly when he's walking with that cane, when he can't
7 find a job in the field that he'd been working at. But he has
8 nothing to gain by coming in here and lying to you and telling
9 you Mr. Sellers was driving when he wasn't. Mr. Williams told
10 you right there unequivocally and under oath Roderick Sellers
11 was driving the car. His car, his drinking, his driving,
12 that's what brings us here today.

13 Trooper Denham when he testified, again, he told you when
14 he got out he sees that the driver is the one closest to the
15 vehicle. The vehicle belongs to the one closest to the
16 vehicle. It's common sense that it's Roderick Sellers once he
17 makes that identification. He also told you that he smelled
18 an odor of alcohol about the man's person such that once he
19 got him to the hospital, he directed Ms. Sellers to draw blood
20 from him. Now, we maintain a strict chain all the way through
21 until it got to the toxicologist so there would be no way that
22 that blood could have been tampered with. And what does the
23 blood tell us? Now, we'll get into that in a little bit, but
24 the blood tells us .158, almost twice the legal limit. Bad
25 choices from bad to worse.

1 Trooper Denham also tells you that he called the MAIT
2 Team or one of his supervisors indicated that the MAIT Team
3 would come out and investigate due to severity of the
4 injuries. And I want to touch on the injuries a little bit
5 while I'm on the subject. Mr. Williams told you he had a
6 broken leg; he had a spinal injury. And again, as Dr. Brennan
7 testified, he had to have surgery on the spinal column or on
8 his spine to relive pressure on his spine for his spinal
9 injury and he had to have a post-operative surgery because of
10 an infection. But again, in his opinion this man suffers from
11 permanent impairment, from permanent disability as a direct
12 result of this man's choices. And again, Mr. Williams does
13 have a little bit to answer for because he did get into the
14 car with him, but getting in as a passenger is not against the
15 law. And Mr. Williams is paying for it every day of his life
16 and it's time for Mr. Sellers to face up to his
17 responsibilities in this matter as well.

18 Another thing I find very curious and I'm sure you do as
19 well, when Dr. Brennan was talking about the injuries of Mr.
20 Williams, he didn't mention anything about any sort of
21 injuries to the chest, to the clavicle, to the collarbone or
22 anything of that nature. You would expect someone driving a
23 vehicle to have those kinds of injuries when they are bounced
24 against the steering wheel and tossed back and forth and
25 ultimately thrown out. He didn't have a single injury like

1 that. He had an injury to the spinal area and he had a broken
2 leg. That's bad enough, but again, those tell us something.
3 Those tell us something. Choices. Some good, some bad, and
4 some just flat horrible.

5 Now, once Ms. Sellers testified she sent the blood, we
6 heard from a couple of troopers who were more or less in the
7 chain of custody. They took the blood from one place to
8 another. Ultimately, we heard from Dr. Brennan. Dr. Brennan
9 told you again based on the injuries that he saw that Mr.
10 Williams would suffer from these effects for the rest of his
11 life and would suffer permanent disability.

12 You also heard from Trooper Dewitt. Now, Trooper Dewitt
13 works on the MAIT Team. His job is to try to figure out what
14 happens after this. Now, of course, we had Trooper Denham to
15 tell us what his thoughts and impressions were, but Trooper
16 Dewitt has special training and he has special experience with
17 regards to accident reconstruction. And what does he tell
18 you? It was clear out that night based on the report and
19 Trooper Denham's testimony also corroborated it. No rain, no
20 fog, nothing else that explains the wreck other than the
21 person was speeding and now we know .158. The person was
22 impaired.

23 His choices. I've often heard it said that a person
24 driving a car while they're impaired is almost like a loaded
25 gun. In my opinion, I think it's much worse. I don't think

1 it's a loaded gun at all; I think it's a guided missile. A
2 bullet doesn't speed up or slow down. It doesn't change
3 directions like a car does being operated by someone's whose
4 ability to operate that vehicle is materially and appreciably
5 impaired. A bullet doesn't weight four thousand pounds like a
6 car does. Bad choices that this man made effects his life,
7 but more importantly it effects Mr. Williams's situation.

8 Now, Trooper Dewitt also told you a couple of things
9 about -- he said in his opinion the person closest to the car,
10 based on his experience and he didn't try to fudge or he
11 didn't try to make himself out to be more than he was, he told
12 you he wasn't able to see the bodies or the people before they
13 were removed from the scene, but what he did tell you was that
14 in his experience, and it is very substantial, the person --
15 when you have two people ejected out of the vehicle, the
16 person closest to the vehicle usually is the driver. But we
17 don't have to rely on that alone, do we, because we got Mr.
18 Williams's testimony. Nothing to gain by coming in here and
19 lying to you. But we also have Trooper Denham to corroborate
20 that.

21 We also heard from Carmen Tucker. She is the forensic
22 toxicologist who performed the test on the blood. Most
23 damning, .158, and really all you have to determine is whether
24 this man was driving the vehicle. We submit to you that we've
25 proven that. In the State of South Carolina on a public road.

1 We certainly submit that we've done that. That his ability to
2 operate a motor vehicle appreciably and materially impaired,
3 and we certainly think that we demonstrated that as well. And
4 we also have to show that the reckless operation of the
5 vehicle was the proximate cause to the injury causing great
6 bodily harm -- or injury to Mr. Williams and we submit that
7 we've done that.

8 But Ms. Tucker tells you that, and Mr. Grove tried to
9 shake her up several times which regards to it, she tells you
10 that there is no way that a person who had a .158 would have
11 been able to operate a motor vehicle lawfully. That that
12 person would have been impaired to the point where slow motor
13 skills, the person would have been slurring their speech,
14 would have swerving, and I ask her specifically how about
15 their ability to operate a motor vehicle. She even said
16 materially and appreciably impaired.

17 So really it comes down to whether or not you believe Mr.
18 Sellers was driving because we can show that the blood that
19 came out of his arm establishes that he was impaired. We
20 submit that we've done that. Who do you believe? A man that
21 has nothing to gain by coming in here and lying, a trooper who
22 is experienced, a MAIT Team officer who's experienced. They
23 all told you the same thing. Mr. Sellers was the one who was
24 closest to the car. It was his car. And Mr. Williams told
25 you he was in the car with him while Mr. Sellers was driving.

1 We think we've met all our elements and gone above and
2 beyond, folks. Choices. Some big, some small, some good,
3 some bad, and some just flat will change a life forever.
4 Again, Mr. Williams made a bad choice by getting in the car
5 with Mr. Sellers that night. He will live with it the rest of
6 his life based on his injuries. He's faced his responsibility
7 and it's time for Mr. Sellers to face responsibility because
8 his bad choices that night only cost him a car. It's time to
9 hold him responsible and find him guilty of felony DUI with
10 great bodily injury.

11 THE COURT: Mr. Grove?

12 MR. GROVE: Thank you, Your Honor. Mr. Tucker and I
13 agree about a lot of things a lot of the time. He being an
14 assistant solicitor here and I being an assistant public
15 defender here, we work together every day. We go out to lunch
16 very often. What movies we like, what sports teams we like,
17 we agree on a lot of stuff.

18 I can tell you one thing we don't agree on, that Johnny
19 Williams doesn't have anything to gain by coming up here and
20 saying the Roderick Sellers was driving. We agree that two
21 people were in that car and we agree that whichever one of
22 them that was driving, by Johnny's own admission, was under
23 the influence. But if it's Johnny that's driving, he just
24 walked himself into a felony DUI with great bodily injury.

25 You heard Trooper Denham testify both of them were

1 ejected from the vehicle, both of them had severe injuries,
2 both of them were in pain that night, both of them went to the
3 hospital for their treatments, and only one of them can be
4 driving. But to say that Johnathan Anton Williams doesn't
5 have anything to gain by saying I wasn't the one driving is
6 foolish. He's got absolutely everything to gain. The only
7 thing he's got to gain is skirting responsibility.

8 Now, if you're back there in the jury room and you're
9 arguing as to whether or not .158 appreciably or materially
10 impairs your ability to operate a motor vehicle, you have
11 missed the point of this trial, ladies and gentlemen. If
12 you're back there arguing as to whether or not someone was
13 operating the motor vehicle on the public roadways in the
14 State of South Carolina, you have missed the point of this
15 trial. If you have -- if you're back there arguing as to
16 whether or not somebody received great bodily injury as a
17 result of an accident that occurred on September 27th of 2011,
18 you have missed the point of this trial.

19 The point is that the State has not proven to you that
20 one was driving and the other was not. I haven't heard one
21 bit of information as to how far one was from the car versus
22 the other. Flipped. Fifteen feet? Fifty feet? How far is
23 farther away and when does normally become beyond a reasonable
24 doubt? Normally, the one that's farther away from the vehicle
25 is the one that's driving. Normally, the one who is ejected

1 and results closer to the vehicle is the one that was driving
2 rather. Normally, the one that is farther away was the
3 passenger.

4 Normally, the judge would tell you, normally doesn't
5 count. Normally, you'll hear beyond a reasonable doubt. And
6 the judge will talk to you about reasonable doubt and he'll
7 say it doesn't mean beyond every doubt obviously and it
8 doesn't account for the possibility of aliens coming down and
9 something weird and unusual, but it's a reasonable doubt.
10 It's a doubt that you can assign a reason for. Exactly what
11 it sounds like.

12 And I'm telling you, ladies and gentlemen, a reasonable
13 doubt is -- well, normally, this is the way it goes. Well,
14 normally that's the way it happens. Well, how far was --
15 yeah, he was far away. Just take my word for it he was far
16 away. Well, how far? He was far. How can -- how can you not
17 have a reasonable doubt when you can't be sure how sure you
18 should be? If we're talking about a distance of a football
19 field that might make your proof. If we're talking about the
20 distance between from me to this trunk, how sure are you then?
21 You can't be sure, ladies and gentlemen. A vehicle's flipping
22 over and over again. Windows are busted out. Everybody
23 that's in the vehicle, both of them, ejected. How can you be
24 convinced as to what was happening in the chaos of that moment
25 based on the word of a person who had everything to gain by

1 saying it wasn't him? You can't be convinced.

2 You heard Mr. Williams talk earlier that they had another
3 gentlemen in the car earlier that evening and they dropped him
4 off at the Kangaroo. Thank God he wasn't in the vehicle or
5 obviously there -- I'm sure there would be more injuries
6 levied upon him. I would have loved for the State to put him
7 up. He was in the car, too. He doesn't stand anything to
8 gain. He wasn't in the vehicle when the accident occurred.
9 He can come up here and say it doesn't matter to me who was
10 driving, here's who was driving. I'm not in trouble one way
11 or the other regardless of what you guys decide. I'll tell
12 you who was driving. You didn't hear from him.

13 Trooper Denham was the lead investigator, but Trooper
14 Denham can't be in five places at once. He's got to respond
15 to the scene, then he's got to go to the hospital, then he's
16 got to follow up with his investigation. So obviously he
17 delegates some of his duties to other troopers. There are too
18 many things for one person to do. But he's the only trooper
19 that responded to the scene that you heard from. You heard
20 from what seemed like fifty of them, but all of them with the
21 exception of Trooper Denham either testified as to a report
22 that somebody else made and that they reviewed or to the fact
23 that they maintained the chain of custody and I'm not in a
24 position to dispute any of that stuff.

25 I don't -- I don't doubt that the chain of custody is

1 sound and that the blood that was tested came from Roderick
2 Sellers. If that's what you're arguing about there, you have
3 missed the point of the trial. The point of the trial is you
4 haven't heard everything so how can you be sure?

5 They had an opportunity to put up the other two or three
6 troopers that were there and I believe Trooper Denham said
7 that maybe a hundred pictures were taken. They had an
8 opportunity to show you that stuff. He said that somebody
9 would come by and paint on the ground where things were so
10 that they could reconstruct the accident scene later on. That
11 the car was here and there was a gouge mark here and there
12 were -- and there were skid marks here and one of them was
13 here, Roderick was here and Johnny was there. I would love to
14 see that. It would answer a lot of questions that I bet
15 you've got. Questions that haven't been answered. Questions
16 that should be creating a doubt.

17 Trooper Denham gets up here and says when I got to the
18 scene, it didn't take me long to decide who I thought was
19 driving, formulated my investigation with that in mind. But
20 what if you're wrong? Because when you say that normally it
21 happens this way, that means that sometimes it doesn't. So
22 what if sometimes is this time? What if this is the abnormal
23 way? You've painted yourself into a corner where there can
24 only be one answer. You're not allowing for a full
25 investigation.

1 You didn't pull Johnny Williams's blood. I would love to
2 know what that was because it sure would be relevant if he --
3 if he was driving. He was the passenger, it doesn't matter.
4 But you put all your eggs at the scene. Before your
5 investigation is over, all of your eggs are in the Roderick
6 Sellers basket. That's the horse you're betting on and you
7 took your mortgage payment and you put it all down on him and
8 I hope he wins because if he doesn't, we don't have a backup
9 plan.

10 You heard from everybody. Didn't -- didn't do any
11 investigation as to whether or not Johnathan Anton Williams
12 could have been the driver. Got my mind made up. Mr. Tucker
13 will tell you because the car was registered to my client that
14 that means my client was the only one who could have driven
15 it, which is again foolish to think that no one ever drives
16 another person's car.

17 I'm also curious as to why they were thirty or forty
18 yards away from Johnathan Williams's house. They had gone in
19 one direction and now they were going back by his house to go
20 to Easy Street is Johnathan's story or maybe Johnathan was
21 taking himself home. How about that? How about maybe
22 Roderick Sellers doesn't know where he lives. All right.
23 Well, go to your house and then I'll go. How about that?
24 Maybe that's what happened. I would love to be able to tell
25 you for sure one way or the other, but because we didn't hear

1 all the evidence, we can't be sure one way or the other.

2 This case is about choices. It's about the way the State
3 chose to conduct their investigation. It's about the way that
4 they were sure right away as to what happened. That they were
5 sure this is exactly what must have happened because normally
6 this is the way it goes.

7 There's an old man in a small town and once a year he
8 challenges anybody in town to a bet. He's got a big barn at
9 the back corner of his property and says I bet you I can go
10 over there and I can hit a bull's-eye from fifty yards and I
11 can nail it, and every year he wins until one year a little
12 kid in town decides he's going to figure out how this guy is
13 such a good shot. I mean he's not known for using a bow and
14 arrow except for the one time a year. So he sneaks into the
15 woods behind the barn and he watches the old man go around to
16 the side and he loads up an arrow and he pulls it back and he
17 lets it fly onto a wall that's covered with arrows that are
18 dead in the heart of a bull's-eye and the arrow hits a blank
19 spot on the wall and he picks up a paint can and he walks over
20 to the wall and he paints a bull's-eye around the arrow.

21 That's what the State's down here. They hit a blank spot
22 in the wall and they painted their bull's-eye around it so you
23 know I got one. I don't know that. I don't know that, ladies
24 and gentlemen, and neither do you. There are ways to prove to
25 you beyond a reasonable doubt what happened and that hasn't

1 been done. There are ways to convince you firmly of the
2 defendant's guilt and that hasn't been done.

3 The judge hinted at it at the beginning of the trial when
4 he gave you his opening instructions and he may very well hint
5 at it again and I'll tell you now in the event that he
6 doesn't, but if he gets something wrong during this trial,
7 there is a way to fix that. If I get something wrong during
8 this trial, there's a way to fix that. If Mr. Tucker gets
9 something wrong during this trial, there's a way to fix that.
10 If you, ladies and gentlemen, get something wrong in this
11 trial, there is no way to fix that. That's why the standard
12 is beyond a reasonable doubt because you have to be sure
13 because there's no coming back one way or the other.

14 There's no fixing. Oh, man, I wish they'd told us that.
15 I would have decided differently. I would have known for sure
16 if they'd told us. I didn't realize. They didn't put that
17 up. Without a remedy, you have to be absolutely confident.
18 And like I said before, I don't mean confident in the way you
19 know what you had for breakfast this morning confident, but I
20 mean beyond a reasonable doubt.

21 I mean that the State has left you firmly convinced
22 despite the fact that there is no testimony of how far Mr.
23 Williams was from the vehicle or how far Mr. Sellers was from
24 the vehicle. Despite the fact that you didn't hear from any
25 of the people that were standing outside of their houses that

1 night after this accident. Despite the fact that you didn't
2 hear from Corey Kennedy, who was in the car with them moments
3 before this accident occurred. Despite that fact that you
4 didn't hear from the girl who brought them gas when they ran
5 out of gas. Do you remember that? They ran out of gas on the
6 side of the road and a girl brought them gas so that they
7 could keep going over here to Easy Street according to Mr.
8 Williams and you didn't hear from her. She stands nothing to
9 gain. Corey Kennedy stands nothing to gain.

10 It's the State's burden, ladies and gentlemen, and they
11 must convince you beyond a reasonable doubt and I know that
12 they haven't. Each and every element and like I said, if
13 you're back there arguing about .158, you've missed the point.
14 If you're back there arguing about whether or not it's a motor
15 vehicle, you've missed the point. If you're back there
16 arguing about great bodily injury, you have missed the point.
17 The first element that must be met for this charge is driving,
18 operating a motor vehicle. That's the one they missed. Get
19 back there, look at it and see for yourselves and return a
20 verdict of not guilty for my client.

21 CHARGE ON THE LAW

22 THE COURT: All right. Now, Mr. Foreman and ladies and
23 gentlemen of the jury, if you would, give me your attention.
24 You have followed very patiently and listened very attentively
25 to the presentation of the evidence in this case and also to

1 the able arguments made by the solicitor, Mr. Tucker, on
2 behalf of the State and Mr. Grove on behalf of the defendant
3 and I thank you for that.

4 It now becomes the duty of the trial judge under the
5 Constitution of this state to charge and instruct you in the
6 law applicable to this case. And it is your duty as jurors to
7 accept and apply the law as the Court will now state it to
8 you. And as jurors it is your exclusive duty to decide all of
9 the issues of fact in this case, and for that purpose to
10 determine the effect, the value, the weight and the truth of
11 the evidence. Both the State and the defendant have a right
12 to expect that you will conscientiously consider and evaluate
13 the evidence and apply the law of the case thereto to the end
14 that both the State of South Carolina and the defendant will
15 receive and obtain a fair and impartial trial.

16 Now, when I use the word defendant, I refer, of course,
17 to Mr. Roderick Jerome Sellers. The State of South Carolina
18 by the bill of indictment in this case charges the defendant,
19 Mr. Sellers, with the indictment -- I mean with the offense
20 known in the law as felony driving under the influence with
21 great bodily injury.

22 The indictment reads in part that Mr. Roderick Jerome
23 Sellers did in Florence County on or about September the 27th
24 of 2011, drive a motor vehicle while under the influence of
25 alcohol, drugs, or a combination of both and did an act

1 forbidden by law and/or neglected a duty imposed by law in the
2 driving of the vehicle, which act or neglect proximately
3 caused great bodily injury to a passenger in the vehicle
4 driven by Roderick Jerome Sellers.

5 To this indictment and to this charge, the defendant has
6 entered a plea of not guilty. This plea of not guilty by the
7 defendant places the burden of proof on the State to prove by
8 evidence the guilt of the defendant beyond a reasonable doubt
9 before you, the jury, can find the defendant guilty.

10 The defendant, Mr. Sellers, is presumed in the law
11 innocent of the charge contained in the indictment. It is a
12 cardinal and fundamental rule of the law of evidence that a
13 defendant, irrespective of the enormity of the charge against
14 him, will always be presumed innocent of the crime for which
15 he is indicted unless and until the guilt of the defendant has
16 been proven by evidence which satisfies you, the jury, of his
17 guilt beyond a reasonable doubt.

18 The presumption of innocence is not a mere legal theory;
19 it is not just a legal phrase. The presumption of innocence
20 is a substantial right to which every accused is entitled.
21 Our Supreme Court has declared that the presumption of
22 innocence is like a robe of righteousness placed about the
23 shoulders of this defendant and it remains with him and
24 assigns to him that class, the innocent, until that
25 presumptive robe of righteousness has been stripped from his

1 person by evidence satisfying you, the jury, of his guilt
2 beyond a reasonable doubt.

3 The presumption of innocence accompanies the defendant
4 from the time of his arraignment and appearance in this court
5 and continues with the defendant after you retire to your jury
6 room to deliberate your verdict. The presumption of innocence
7 remains with the defendant and continues in existence to his
8 benefit until you, the jury, reach the conclusion that the
9 State has proven the guilt of the defendant beyond a
10 reasonable doubt.

11 The State is not required to prove the guilt of the
12 defendant beyond all doubt or beyond every doubt, but beyond a
13 reasonable doubt. What is a reasonable doubt? It is not an
14 imaginary or fanciful doubt or a weak doubt; it is a
15 substantial doubt. It is a doubt which the words imply. A
16 doubt for which you can give or assign a reason based on the
17 testimony and the evidence in the case.

18 A reasonable doubt is not any sort of a doubt. You and I
19 know from everyday life experiences that you may have a sort
20 of a doubt about any matter that arises, no matter how trivial
21 it may be or how serious it may be. A reasonable doubt is a
22 doubt which makes an honest, sincere, conscientious juror in
23 search of the truth hesitate to act. Proof beyond a
24 reasonable doubt is doubt which leaves you firmly convinced of
25 the defendant's guilt.

1 If you have a doubt for which you can give or assign a
2 reason as to the guilt of the defendant, then he is entitled
3 to a verdict of not guilty. Reasonable doubt may arise from
4 the evidence which is in the case or from the lack of evidence
5 in the case.

6 You, the jury, must make the determination of whether or
7 not reasonable doubt exists as to the guilt of the defendant.
8 The very fact, however, that the jury engages in a full and
9 free discussion on the issue of guilt or non-guilt in this
10 case, with the normal conversational ebb and flow does not
11 mean that or does not automatically mean that reasonable doubt
12 exists in this case or in any other case. I charge you that
13 the defendant is entitled to every reasonable doubt arising in
14 the whole case. If upon any issue of fact essential to
15 conviction and a verdict of guilty you have a reasonable doubt
16 as to how that issue should be resolved, it would be your duty
17 to resolve that issue in favor of the defendant.

18 A defendant, ladies and gentlemen, is not required to
19 prove his innocence, but the State is required by law to prove
20 every essential element of the offense charged against the
21 defendant by evidence which satisfies you, the jury, of the
22 guilt of the defendant beyond a reasonable doubt before you
23 can convict the defendant and find him guilty. If then upon
24 the whole case you have a reasonable doubt as to guilt or
25 innocence of the defendant, he is entitled to that reasonable

1 doubt and would be entitled to an acquittal and a verdict of
2 not guilty. But on the other hand if upon the whole case, you
3 find the State has proven by evidence which satisfies you, the
4 jury, of the guilt of the defendant beyond a reasonable doubt,
5 then in such circumstances it would equally be your duty to
6 convict the defendant and find him guilty.

7 Now, I instruct you that the indictment in this case
8 which I hold in my hand is not evidence of anything and cannot
9 be considered by you as evidence in the case. The indictment
10 is simply the formal written instrument which contains the
11 charge against the defendant and it serves as the formal
12 document by which this matter is brought to trial.

13 During the trial, each of us, you and I, have certain
14 duties to perform. As the trial judge, it is my
15 responsibility to preside over the trial of this case and I
16 also have the duty to rule upon or pass upon the admissibility
17 of evidence offered during the progress of this trial. You're
18 to consider only the competent evidence before you and you're
19 to disregard and disabuse from your mind any testimony ordered
20 stricken from the record of this case during the progress of
21 the trial, if there be any, and you are to consider only the
22 testimony which has been presented from the witness stand,
23 together with any exhibits admitted into the record of this
24 case and any stipulations of counsel made into the record, if
25 there be any.

1 I have the additional duty to charge you the applicable
2 law in this case. As the presiding judge, I am the sole judge
3 of the law in this case and it is your duty to accept and
4 apply the law as I now state it to you. If you have a
5 preconceived idea as to what the law is or what the law ought
6 to be in this case and it does not agree with what I tell you
7 the law is, you are obligated under your role to abandon this
8 preconception on your part because you are sworn to accept the
9 law precisely as I give it to you.

10 In every case tried in this court before a jury, the jury
11 becomes the sole and exclusive judge of the facts. You, the
12 jury, are the judge of the facts in this case. The Court is
13 the judge of the law in the case.

14 The Constitution of this state had declared that the
15 trial judge shall not intimate, state, comment upon or make
16 any statement to a trial jury about the facts in the case.
17 Since you are the sole judge of the facts, you are not to
18 infer from anything that I have said during the progress of
19 this trial in ruling upon the admissibility of evidence or
20 otherwise or anything that I say to you now during the course
21 of this charge to you that I have an opinion about the facts
22 of this case. I do not. The law does not permit me to have
23 an opinion about the facts of this case. This is a matter
24 solely for you, the jury, to determine.

25 As jurors then, it is your duty to determine as I have

1 stated the effect, the value, the weight, and the truth of the
2 evidence presented during the course of this trial.
3 Necessarily then, you must assess the credibility of the
4 witnesses who have testified in this case. Credibility is
5 simply a legalistic term which means believability. It
6 becomes your duty then to analyze and evaluate the evidence
7 and to determine that evidence which convinces you of its
8 truth.

9 I charge you that in determining the question of
10 credibility of or believability of the witnesses, you may
11 believe one witness as against several witnesses or several
12 witnesses as against one witness. You may believe a part of
13 the testimony of a witness and reject the remaining part of
14 the testimony of that same witness. You may believe the
15 testimony of a witness in its entirety or you may reject the
16 testimony of a witness in its entirety. You may consider
17 whether any witness has exhibited any interest, any bias or
18 any prejudice in the case and you may consider the demeanor of
19 a witness. That is the appearance of a witness from the
20 witness stand. And you may consider the opportunity for
21 knowledge concerning those things about which a witness
22 testified.

23 These considerations you do not exercise arbitrarily, but
24 if in your good judgment there is sound reason in the record
25 for so doing. Because your objective, ladies and gentlemen,

1 is to find the truth whether it comes from one or more
2 witnesses and in doing so and exercising your mental processes
3 and in determining what you consider to be true, the law
4 simply requires that you use your good common sense, your good
5 judgment, your sense of logic and reason, and your experiences
6 in life. You then apply these attributes of ability to the
7 evidence and determine what you consider to be the true --
8 consider to be the truthful evidence and to these truthful --
9 true state of facts as determined by you, the jury, you take
10 and apply the law as the Court now give it to you and arrive
11 at a verdict in this case.

12 Now, as I said, the defendant in this case is charged
13 with the offense of felony driving under the influence and I'm
14 going to define that for you and to give you the exact code
15 section in connection with that matter.

16 First of all, I would charge you that section 56-5-2930
17 of the Code of Laws of South Carolina says that it is unlawful
18 for a person to drive a motor vehicle within this state under
19 the influence of alcohol to the extent that the person's
20 faculties to drive a motor vehicle are materially and
21 appreciably impaired, under the influence of any drug or
22 combination of drug or substances which cause impairment to
23 the extent that the person's faculties to drive a motor
24 vehicle are materially or appreciably impaired, or under the
25 combined influence of alcohol and other drugs or substances

1 which cause impairment to the extent that the person's
2 faculties to drive a motor vehicle are materially or -- and
3 appreciably impaired.

4 Section 56-5-2945 of the Code of Laws provides -- section
5 A of that section, this is the section on felony driving under
6 the influence, and it provides that any person who, while
7 under the influence of alcohol, drugs, or a combination of
8 alcohol and drugs drives a motor vehicle and when driving a
9 motor vehicle does any act forbidden by laws or neglects any
10 duty imposed by law in the driving of the motor vehicle, which
11 act or negligence -- or neglect proximately causes great
12 bodily injury is guilty of the offense of driving under -- of
13 felony driving under the influence with great bodily injury.

14 As used in this section, great bodily injury means bodily
15 injury which creates a substantial risk of death or which
16 causes serious permanent disfigurement or protracted loss or
17 impairment of the function of any bodily member or organ.

18 Thus there are three elements of the offense. The first
19 element, of course, is driving, that the defendant was driving
20 the motor vehicle. The second element is that that individual
21 was under the influence of -- of drugs or alcohol, and the
22 third element is that great bodily injury was the result. The
23 State must prove beyond a reasonable -- beyond a reasonable
24 doubt all three of these elements.

25 Now, I would also charge you that under section 56-5-2950

1 of the Code of Laws of South Carolina, the law is that a
2 person who drives a motor vehicle in this State is considered
3 to have given consent to chemical tests of his breath, blood,
4 or urine for the purpose of determining the presence of
5 alcohol or drugs or the combination of alcohol and drugs if
6 arrested for an offense arising out of acts alleged to have
7 been committed while the person was driving a motor vehicle
8 while under the influence of alcohol or drugs or a combination
9 of alcohol and drugs.

10 That section goes on to say that in criminal prosecution
11 for violation of section 56-5-2945, which is the felony DUI
12 statute, the alcohol concentration at the time of the test is
13 shown by chemical analysis of the person's breath or other
14 bodily fluids gives rise to the following inferences: if the
15 alcohol concentration was at that time eight one-hundredths of
16 one percent or more, it may be inferred that the person was
17 under the influence of alcohol.

18 Now, ladies and gentlemen, there are generally two types
19 of evidence which are presented in a -- in a criminal -- in a
20 case, circumstantial evidence and direct evidence. Direct
21 evidence directly proves the existence of a fact and does not
22 require deduction. Circumstantial evidence is proof of a
23 chain of facts and circumstances indicating the existence of a
24 fact. Crimes may be proven by circumstantial evidence. The
25 law makes no distinction between the weight or value to be

1 given to either direct or circumstantial evidence.

2 However, to the extent that the State relies on
3 circumstantial evidence, all of the circumstances must be
4 consistent with each other and when taken together point
5 conclusively to the guilt of the accused beyond a reasonable
6 doubt. If these circumstances merely portray the defendant's
7 behavior as suspicious, the proof has failed. The State has
8 the burden of proving the defendant guilty beyond a reasonable
9 doubt. The burden rests with the State regardless of whether
10 the State relies on direct evidence, circumstantial evidence
11 or a combination of the two.

12 Now, there has been testimony in this case from expert
13 witnesses. Although lay witnesses are limited to testifying
14 about the facts within their knowledge and are not allowed to
15 give opinions, certain witnesses who by their training,
16 education or experience are considered experts in a particular
17 field may give their opinions in that field based on the facts
18 of the matter and their conclusions. These opinions
19 constitute evidence to be considered by you in connection with
20 all of the other testimony and evidence in this case.

21 You may consider the expert's opinion just as you do all
22 other evidence in this case and it is for you, the jury, to
23 give it such weight as you and your experience and discretion
24 may determine. You must weigh the evidence and accept or
25 reject it in the same manner that you treat all other evidence

1 in this case.

2 Now, ladies and gentlemen, I tell you now that the
3 defendant in this case has not testified. This is his
4 constitutional right. It is not a circumstance which you can
5 take into consideration or even allow to enter into your
6 discussions in the jury room.

7 Under the Constitution of South Carolina and the United
8 States Constitution, it is a defendant's constitutional right
9 not to testify. The burden of proof is upon the State to
10 establish -- to establish his guilt by competent evidence
11 beyond a reasonable doubt. The fact that the defendant did
12 not take the stand and testify in his own behalf does not
13 create any inference against him. You, the jury, must not
14 permit this fact to weigh in the slightest degree against the
15 defendant, nor should this fact enter into the discussions and
16 deliberations in the jury room in any manner whatsoever.

17 Now, ladies and gentlemen, I have about finished my
18 instructions to you, but I would tell you that it has often
19 been said that you are not partisans for the State of South
20 Carolina or for this defendant. You do not serve on the jury
21 to reward your friends or punish your enemies. Obviously,
22 such a perverted system of justice would be intolerable.

23 You have been selected by both the State and the
24 defendant as fair and impartial jurors. It is your duty then
25 by your joint deliberations to determine the truth in this

1 case, giving the defendant the benefit of every reasonable
2 doubt on each and every issue, and then to the facts which you
3 determine to be true you then take and apply the law which has
4 been given to you by this Court and thus arrive at a verdict
5 which does speak the truth. For the word verdict, ladies and
6 gentlemen, has a Latin derivative. It comes from the Latin
7 phrase veredicto, meaning to speak the truth and when you have
8 accomplished these responsibilities, you will have satisfied
9 your oath as jurors and you will have discharged your duty to
10 this Court.

11 Now, I want to instruct you on your forms of verdict in
12 this case. If the State has failed to prove the guilt of the
13 defendant beyond a reasonable doubt, your verdict will be two
14 words, not guilty. If the State has proven the guilt of the
15 defendant beyond a reasonable doubt, your verdict would be one
16 word, guilty.

17 The verdict that you render in this case must be the
18 verdict of each and every juror. It must be your unanimous
19 verdict. All twelve jurors must agree on the verdict which
20 you authorize the foreman to write.

21 Now, Mr. Foreman, I have prepared a form of verdict on
22 this sheet of paper and have written the words verdict form.
23 The sequence which I have put the possible verdicts on here
24 has absolutely no significance whatsoever. You should not
25 infer from the order in which I have put your possible

1 verdicts on this verdict form that I have any opinion as to
2 what your verdict should be. I do not. The law does not
3 allow me to have an opinion. That is a matter solely up to
4 you, but obviously when putting something down on paper I had
5 to put something first and something second.

6 But across the top up here we simply have the State of
7 South Carolina, Florence County, the formalities of the court
8 and the indictment number and the name of the State versus the
9 defendant and verdict. We, the jury, by unanimous agreement
10 find the defendant Roderick Jerome Sellers on the charge of
11 felony driving under the influence with great bodily injury
12 guilty or not guilty. You would select one of those either by
13 x or a check mark, sign your name and date it and notify us
14 and we would return you to the courtroom. And I would remind
15 you again that all twelve of you must agree on any verdict
16 which you authorize the foreman to write.

17 Now, I'm going to ask you to retire to your jury room and
18 I'm going to ask that you not begin your deliberation just
19 yet. The law does require that I take up certain matters of
20 law with the attorneys in this case. If it is not necessary
21 for me to bring you back into the courtroom for additional
22 instructions, the bailiff will bring you the verdict form. He
23 will also bring you the exhibits which have been introduced
24 into evidence and will instruct you to begin your
25 deliberations.

1 So with the exception of the alternate, and I'm going to
2 ask you to keep your seat, please, ma'am, the rest of you
3 retire to your jury room, but do not begin your deliberations
4 just yet. Thank you.

5 (Whereupon, the jury exits the courtroom at 12:05 p.m.)

6 THE COURT: Additions or exceptions on behalf of the
7 State, Mr. Tucker?

8 MR. TUCKER: None, Your Honor.

9 THE COURT: On behalf of the defense?

10 MR. GROVE: No, Your Honor. Thank you.

11 THE COURT: All right. All right. Mr. Bailiff, if you
12 will -- here's the verdict form and get the exhibits from the
13 court reporter and tell the jury to begin their deliberations
14 and to let us know when they have reached a verdict.

15 THE BAILIFF: Yes, sir. I'm going to get some paper,
16 Judge.

17 THE COURT: That would be fine.

18 (Whereupon, the evidence, which had been checked by
19 counsel during a previous break, is delivered to the jury
20 along with the verdict form and the deliberations begin at
21 12:06 p.m.)

22 THE COURT: Madame Alternate, the law does not allow me
23 to have but twelve jurors. The purpose of drawing an
24 alternate is in the event that somebody gets ill or is unable
25 to serve for one reason or another and so that we would not

1 have a mistrial, but when we get to this stage of the case,
2 the law will allow me to only have twelve jurors. So while
3 you've heard all the testimony in this case, you're not going
4 to participate in the decision. So I'm going to excuse you
5 now from any further service on this case.

6 I will tell you that once you've been excused, there is
7 nothing illegal about your talking with anybody about your
8 service on this case. There is nothing illegal about anybody
9 talking to you about your service on this case. It is a
10 practice of which I strongly discourage and I strongly
11 disapprove, but it is not illegal. But it is up to you. You
12 can talk with anybody or not talk with anybody and if somebody
13 wants to talk with you about the case and you don't want to
14 discuss it with them and they continue to harass or bother
15 you, you let the court personnel know and I will deal with
16 them.

17 I will ask that you not talk with anybody about the case
18 until this jury has returned a verdict and you won't know when
19 that is so I would ask that you not talk with anybody about
20 this matter until at least sometime this evening, but after
21 that then it would be your decision.

22 Your fellow jurors will be reporting back in the morning
23 at nine thirty in this courtroom. We'll be drawing another
24 jury and so you'll be excused for the rest of the afternoon,
25 but I'll ask that you be back here in the morning at nine

1 thirty. Thank you. You are free to go.

2 (Whereupon, the alternate juror is released at 12:08
3 p.m.)

4 THE COURT: All right. Counsel, we will be at ease until
5 we hear from the jury.

6 MR. GROVE: Thank you, Judge.

7 (Whereupon, there is a break in the proceedings from
8 12:08 p.m. until 12:27 p.m.)

9 THE COURT: Thank you. Please be seated. All right. We
10 are back on the record with regards to the matter of -- in
11 Indictment Number -- I've got to put my glasses on to be able
12 to read the indictment number -- 2012-GS-21-354, State versus
13 Sellers. Mr. Sellers is present in court with his counsel.
14 The State is represented by the Twelfth Circuit Solicitor's
15 Office. Counsel, I understand the jury has reached a verdict.
16 Anything before we bring the jury in, Mr. Tucker?

17 MR. TUCKER: No, Your Honor.

18 THE COURT: Mr. Grove?

19 MR. GROVE: No, Judge. Thank you.

20 THE COURT: All right. Bring the jury in, please.

21 THE BAILIFF: Yes, sir.

22 (Whereupon, the jury enters the courtroom at 12:28 p.m.)

23 THE COURT: All right. Ladies and gentlemen, Mr.
24 Foreman, I've been advised that you've reached a verdict. Is
25 that correct?

1 THE FOREPERSON: Yes, Your Honor.

2 THE COURT: Would you hand it up to the clerk, please?

3 (Whereupon, the Clerk delivers the verdict form to the
4 Court.)

5 THE COURT: All right. From the standpoint of form, the
6 verdict appears to be correct. Mr. Grove, would you and your
7 client stand, please.

8 (Whereupon, the defendant and counsel comply.)

9 THE COURT: Madame Clerk, you may publish the verdict.

10 VERDICT OF THE JURY

11 THE CLERK: The State of South Carolina versus Roderick
12 Jerome Sellers, Indictment 2012-GS-21-354. We, the jury, by
13 unanimous agreement find the defendant Roderick Jerome Sellers
14 on the charge of felony driving under the influence with great
15 bodily injury guilty. Signed foreman, Jason Doughty, dated
16 September the 17th, 2013, Florence, South Carolina. Members of
17 the jury, if this is your verdict, please raise your right
18 hand.

19 (Whereupon, all jurors comply.)

20 THE CLERK: That is everyone, Judge.

21 THE COURT: Thank you. You may be seated. Anything
22 further before the jury is discharged, Mr. Grove?

23 MR. GROVE: No, Judge. Thank you.

24 THE COURT: All right. All right. Ladies and gentlemen
25 of the jury, this will conclude your services in connection

1 with this matter and I'm going to excuse you from any further
2 service in this case. I will tell you that in my view the
3 jury's role in the fact-finding process is so important that
4 the trial judge should not comment on the verdict of the jury
5 even after a jury reaches a verdict and I make it a practice
6 and a policy never to comment on the verdict of a jury. I
7 will tell you that there was evidence in the record by which
8 you could have reached the decision that you did.

9 I'm going to excuse you from any further service in this
10 case and I will tell you that once you have been excused there
11 is nothing illegal about your talking with anybody about your
12 service. There is nothing illegal about anybody talking to
13 you about your service. It is a practice of which I strongly
14 discourage and I strongly disapprove, but it is not illegal.
15 Anyone can talk with you about your service on this case, but
16 if you don't want to talk about it, and it's up to you as to
17 whether you wish to discuss it with anybody and anybody
18 approaches you and you don't want to talk about it and they
19 continue to harass and bother you, you let the court personnel
20 know and we will deal with them. But I will tell you that it
21 is your decision and it is up to you as to whether you want to
22 discuss or do not want to discuss it after you have been
23 discharged.

24 I will also tell you there is one other phase that we
25 have to go into now and that is the sentencing phase of this

1 case and we are going to go into that right now. If you would
2 like to stay for the sentencing phase, you certainly may; you
3 do not have to. If you would like to stay when I discharge
4 you in a few minutes, if you will, go out this door and come
5 back around and have a seat at the back of the courtroom for
6 the sentencing phase and while we go through that I will then
7 allow you to be excused and leave the courthouse before anyone
8 else is excused, but you can leave now or you can stay for the
9 sentencing phase. Just go out and go around and come back in
10 and have a seat at the back of the courtroom if you would like
11 to.

12 With that then I'm going to -- the other thing is this is
13 going to be -- we are not going to need the jurors for the
14 rest of the afternoon and I'm going to ask that you be here in
15 the courtroom tomorrow morning at nine thirty along with your
16 fellow jurors as we will be drawing another jury in another
17 case tomorrow morning at nine thirty. So I'll excuse you at
18 this time for the rest of the day and ask you please to be
19 back in the courtroom tomorrow morning at nine thirty and I'll
20 see you at that time. Thank you. Have a pleasant afternoon.

21 (Whereupon, the jury exits the courtroom at 12:32 p.m.

22 Several members of the jury re-enter the back of the
23 courtroom.)

24 THE COURT: All right.

25 MR. TUCKER: If I can have a couple minutes, I'm going to

1 run get a sentencing sheet. I just ---

2 THE COURT: Yeah. Let me get -- let me get a couple of
3 things on the record. Mr. Grove, motions on behalf of the
4 defendant?

5 MR. GROVE: Yes, Judge. At this time, I would make a
6 motion for a new trial presenting to you that the jury's
7 verdict was against the weight of the evidence.

8 THE COURT: All right. I would respectfully deny that
9 motion. I think there was evidence in the record by which the
10 jury could have reached the decision that they did and they
11 resolved the fact questions adverse to your witness and I
12 think that that was the jury's prerogative so I would
13 respectfully deny the motion.

14 All right. If you'll get a sentencing sheet for me, Mr.
15 Tucker, then we'll be ready to go forward.

16 MR. TUCKER: Yes, sir. I'll be right back with that
17 form.

18 (Whereupon, there is a pause in the proceedings.)

19 MR. TUCKER: Judge, if I may approach?

20 THE COURT: All right. Mr. Tucker, anything on behalf of
21 the State? Come on around, Mr. Grove and Mr. Sellers.
22 Anything on behalf of the State? You've already indicated
23 that -- and I don't recall -- tell me what his prior record
24 was? I think there was a ---

25 MR. TUCKER: Your Honor, he had a 2007 conviction for

1 assault and battery of a high and aggravated nature. Looks
2 like he got a sentence of five years suspended to I believe a
3 couple years' probation. He does have a couple of driving
4 infractions, I think speeding, and I believe there was one
5 other, but that was the bulk of his criminal record.

6 Your Honor, the victim, Mr. Williams, had gone down. He
7 was supposed to come back up. I know that he would tell you
8 that certainly this thing has had an effect on him with
9 regards to what he can and can't do. Specifically, he
10 indicated that, you know, he loved to play football and he was
11 very active and now he can't and the thing that grieved him
12 the most was the fact that, you know, he can't pick his little
13 girl up the way he used to and he can't work and earn a living
14 like he used to. So I'm sure he would want me to convey that
15 to the Court before deciding on what sentence to give.

16 THE COURT: All right. What's your understanding of the
17 relationship between these -- these two individuals prior to
18 this matter? Were they friends or was this just kind of a
19 casual get-together that night?

20 MR. TUCKER: I think they were friends, Your Honor, but
21 not on a regular basis. I think they more or less just
22 crossed paths that night, but they knew each other and had
23 been friends.

24 THE COURT: Okay. All right. All right. Mr. Grove?

25 MR. GROVE: Thank you, Your Honor. May it please the

1 Court. And -- and Roderick and I were discussing this that he
2 is certainly acquainted with Mr. Williams. I don't think they
3 were close friends, but they knew of each other and certainly
4 knew each through mutual friends.

5 Roderick will turn thirty this month. He's got a three-
6 year-old daughter. He's working for Parrott Construction
7 doing welding and construction for them. He's been a lifelong
8 resident of Florence County as far as I know, Your Honor.

9 He also -- he also suffered tremendous injuries from this
10 accident. He broke a leg. I believe he fractured a vertebrae
11 in his neck and other fairly serious injuries certainly that
12 would -- fortunately, he's been able to go back to work, but
13 he did not come out of this unscathed by any stretch.

14 I've advised him and I will advise him again not to --
15 not to comment on the case itself. He may like to address
16 Your Honor at the appropriate time. It's certainly
17 unfortunate that we are here at this point, Your Honor, but I
18 do hope that you will keep in mind his lack of a -- a
19 substantial criminal record. He was convicted of assault and
20 battery of a high and aggravated nature back in 2007 or 2008
21 when that was a common law misdemeanor charge. He did a
22 year's worth of probation for it. And he was ---

23 THE COURT: Did he -- did he successfully complete the
24 probation?

25 MR. GROVE: That's my understanding, Your Honor.

1 THE COURT: Okay.

2 MR. GROVE: I don't show anything on his record and I
3 believe from my conversations with him, he successfully
4 completed it, and I don't show anything on his record that
5 would indicate otherwise.

6 THE COURT: Okay.

7 MR. GROVE: This was obviously two years ago later this
8 month. There hasn't been any trouble since and there wasn't
9 much trouble beforehand. Speaking candidly, Your Honor, he's
10 got family members here in the courtroom. I think that they
11 were unaware of the status of his case up until earlier this
12 week. He and I have been back and forth with his case for
13 quite a while now, and I'm not sure exactly what that means.
14 Maybe it's a lack of appreciation of the severity of the
15 circumstances or a hope that it would resolve itself and
16 obviously that didn't occur.

17 But I know that this comes as a shock to his family. I
18 do think that this -- that this is out of character for him
19 and his lack of criminal record would -- would certainly
20 support that. Your Honor, this charge carries a minimum of
21 thirty days and a maximum of fifteen years, and Roderick and I
22 have been back and forth about the consequences of going
23 forward with a trial and the likelihood of that including some
24 amount of prison time if he were convicted and that is
25 something he knows that he is facing.

1 We're hoping for as much leniency and mercy as Your Honor
2 can show given his particular circumstances and his lack of a
3 prior record and the family that's dependent on him. Aside
4 from that, Your Honor, we'd just ask for your consideration.

5 THE COURT: All right. Thank you, sir. All right. Mr.
6 Sellers, is there anything you'd like to tell me and again as
7 your lawyer has said, I will not hold it against you if you
8 don't want to comment on anything about the facts of the case
9 because of the situation on appeal or possible appeal on this
10 matter, but if there is anything that you would like to tell
11 me, I'll be glad to hear from you.

12 MR. GROVE: Hang on just one second, Judge.

13 THE COURT: Okay.

14 (Whereupon, defendant and his counsel confer.)

15 MR. GROVE: And again, he doesn't have anything to
16 comment at this time, Your Honor, and that's largely based on
17 my advice.

18 THE COURT: I understand that. Yeah. And that will not
19 be held against him. Mr. Tucker, I see Mr. Williams did come
20 in the courtroom and -- and let me address him for just a
21 minute. Mr. Williams is the victim in this case. You have
22 the right to be kept advised of everything that's going on.
23 You have the right to be present whenever there is anything in
24 court and you also have the right to address the Court. So if
25 there is anything you would like to tell me, I'll be glad to

1 hear from you.

2 MR. WILLIAMS: No, sir.

3 THE COURT: Okay. All right. Thank you, sir. Anything
4 further, Mr. Grove?

5 MR. GROVE: No, Judge. Thank you.

6 THE COURT: Mr. Tucker?

7 MR. TUCKER: No, Your Honor.

8 THE COURT: Did he serve any time in jail, Mr. Grove?

9 MR. TUCKER: Judge, it looks like about eight days, if my
10 math is correct.

11 THE COURT: Okay.

12 (Whereupon, there is a pause in the proceedings.)

13 THE COURT: All right. Mr. Sellers, as your lawyer has
14 mentioned, this offense carries -- carries up to fifteen years
15 in prison with a minimum of thirty days. You're very lucky in
16 a way that the victim in this case was not killed in this
17 accident because if it would have been felony DUI with a death
18 involved, it would have been a minimum of one year and a
19 maximum of twenty-five years in prison. Fortunately, that did
20 not happen, but you do have the seriousness of great bodily
21 harm involved.

22 Over seventeen years ago when I got this job, I was told
23 that the hardest thing that we would have to do would be
24 criminal sentencing and it is the most difficult thing that we
25 do. We judges don't have any crystal ball. All we can do is

1 make a decision based on the evidence before us and our
2 experience. Sometimes the sentence does not satisfy everyone.
3 Most times it doesn't satisfy everyone, sometimes it doesn't
4 satisfy anyone, but we make a decision based upon the facts as
5 we see them here.

6 The things that I see that you have going in your favor
7 are the lack of a substantial criminal record, having been
8 involved in one matter back a number of years ago that did not
9 involve driving and were able to complete a probationary
10 sentence on that, and some driving offenses. Those are the
11 things -- and you have family support. Those are the things
12 that you have going for you.

13 The things that you have that I think are -- mitigate
14 against you in this case are that there was speed involved,
15 that you had been out drinking and you shouldn't have been
16 driving. There was speed involved and as well as having
17 almost twice the legal limit of alcohol in your system, and
18 should certainly have known better than to have been driving a
19 car on that day.

20 Another thing though, of course, is that Mr. -- the
21 victim in this case was also not without fault in that he was
22 also drinking, but got in the car and got in the car with you.
23 All of those matters I've taken into effect. I'm not going to
24 give you anything like the maximum sentence, but I do think
25 prison time is appropriate.

SENTENCE OF THE COURT

The sentence of the Court is the defendant is committed to the State Department of Corrections for a determinate term of four years, giving him credit for whatever time that he has served. I'm not going to make it -- suspend any part of it and put him on probation. Just get this straight time done and get out and get your life straightened out and maybe this will send a message out not to drive and drink.

MR. GROVE: Thank you, Your Honor.

MR. TUCKER: Thank you, Your Honor.

THE COURT: All right. Before anyone else is excused, the jurors may leave and no one else is to leave until they are on the elevator and out of the building. Thank you. How about notify me when those jurors are on the elevator.

THE CLERK: Yes, sir.

(Whereupon, there is a pause in the proceedings.)

THE COURT: Jurors clear?

UNKNOWN VOICE: Yes, sir. They are on the elevator.

THE COURT: Okay. All right, I've been advised the jurors are clear and are on the elevator and out of the building. We are in recess until nine thirty tomorrow morning. Thank you.

(Whereupon, the proceedings end at 12:50 p.m.)

--- END REQUESTED TRANSCRIPT ---

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 General Sessions for Florence County, South Carolina, on the
12 16th and 17th days of September, 2013.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15

16

Krystal J. Smith

17

Court Reporter

18

19 Florence, South Carolina

20 January 6, 2014

21

22

23

24

STATE OF SOUTH CAROLINA V. RODERICK JEROME SELLERS

25

CASE NUMBER 2012-GS-21-354

WITNESSES

R A Denham

S C Highway Patrol

Todd Tucker

ARREST WARRANT NUMBER

M268215

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-21-00354

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH

TERM

2012

THE STATE

vs.

RODERICK JEROME SELLERS

Indictment for

**FELONY DRIVING UNDER THE INFLUENCE
WITH GREAT BODILY INJURY**

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
March 1, 2012

2012 MAR -1 AM 11:43
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

FELONY DRIVING UNDER THE INFLUENCE WITH
GREAT BODILY INJURY

At a Court of General Sessions, convened on MARCH 1, 2012 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- FELONY DRIVING UNDER THE INFLUENCE - GREAT BODILY INJURY

That RODERICK JEROME SELLERS did in Florence County, on or about September 27, 2011, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused great bodily injury to the passenger of the vehicle driven by RODERICK JEROME SELLERS, in violation of Section 56-05-2945(A)(1), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Florence

VS.

Roderick Jerome Sellers

AKA:

Race: B Sex: M Age: 29

DOB: SS#: 5

Address:

City, State, Zip: Effingham, SC 29541

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: DUI / Felony driving under the influence, great bodily injury results

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-21-00354

A/W#: M268215

Date of Offense: 9/27/2011

S.C. Code § : 56-05-2945(A)(1)

CDR Code #: 0406

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Tucker, Todd 13401 Wier 77931
Tucker, Todd SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 4 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

~~Months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of~~
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 100.00

§ 56-5-2995 (DUI Assessment) \$12 \$ 12.00

§ 56-1-286 (DUI Breath Test) \$25 \$ 25.00

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$

TOTAL \$ 292.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

PTUP

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel
§ 47.12 requires \$500 be paid to Clerk
during probation.

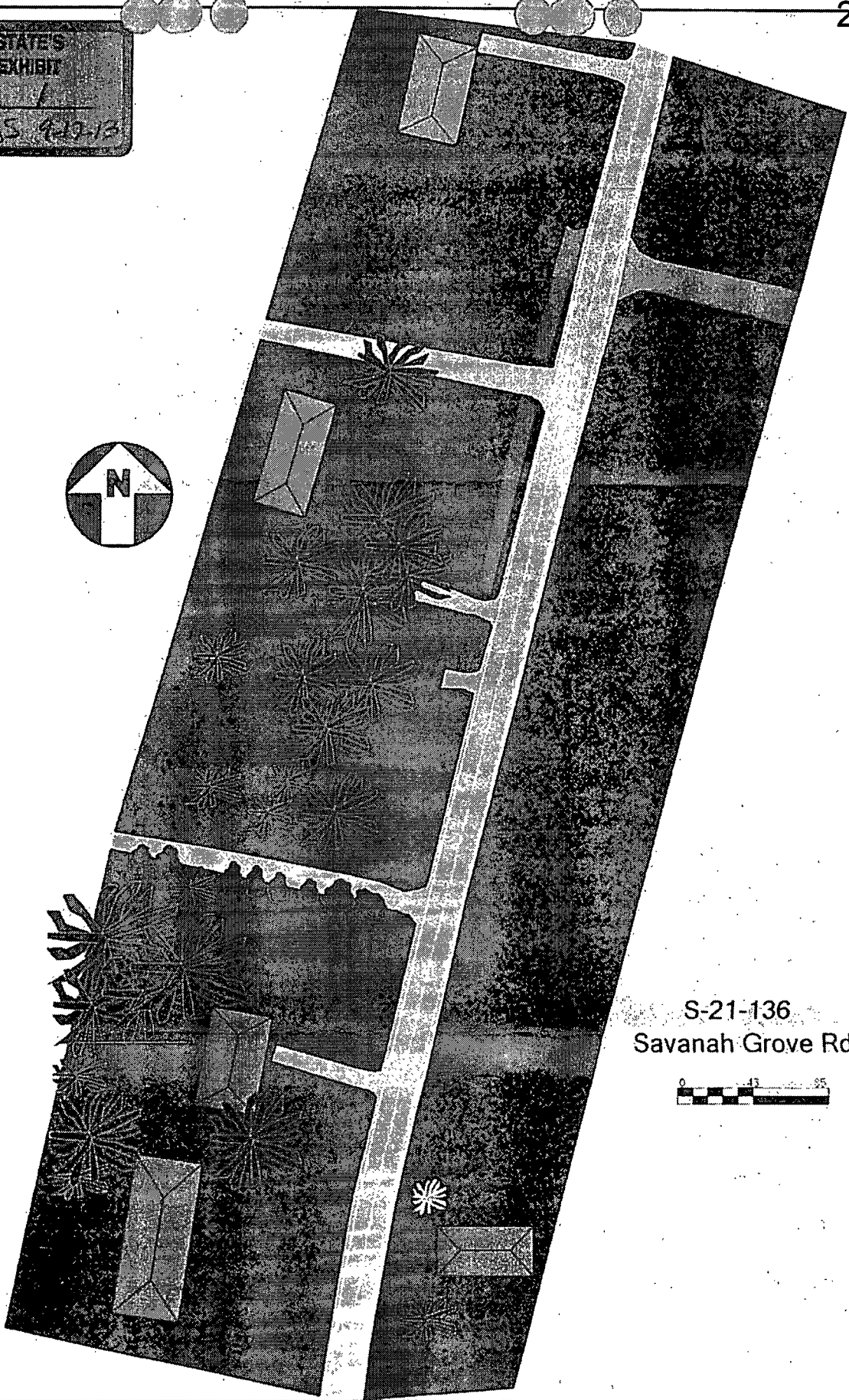
Presiding Judge

Judge Code: 2107

Sentence Date: Sept 17, 2012

CERTIFIED TRUE COPY
CLERK OF COURT & P.G.S.
FLORENCE COUNTY, S.C.

STATE'S
EXHIBIT
1
WS 9-22-13



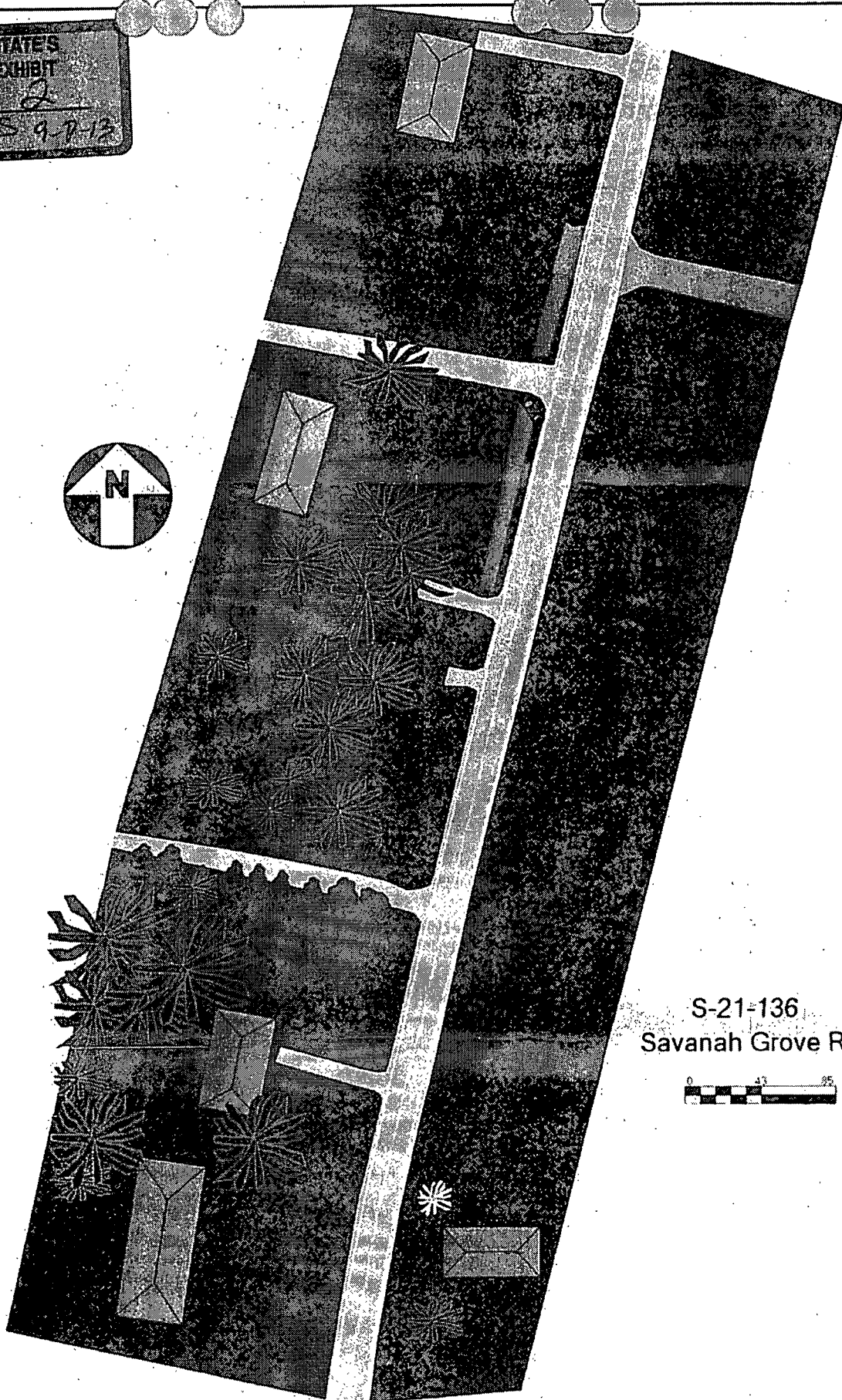
S-21-136
Savanah Grove Rd



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
PEE DEE
DATE DRAWN: 9/28/2011

ROADWAY

TROOP 5/ FLORENCE
OCCURRED ON: 9/27/2011
DG-159-11



S-21-136
Savanah Grove Rd

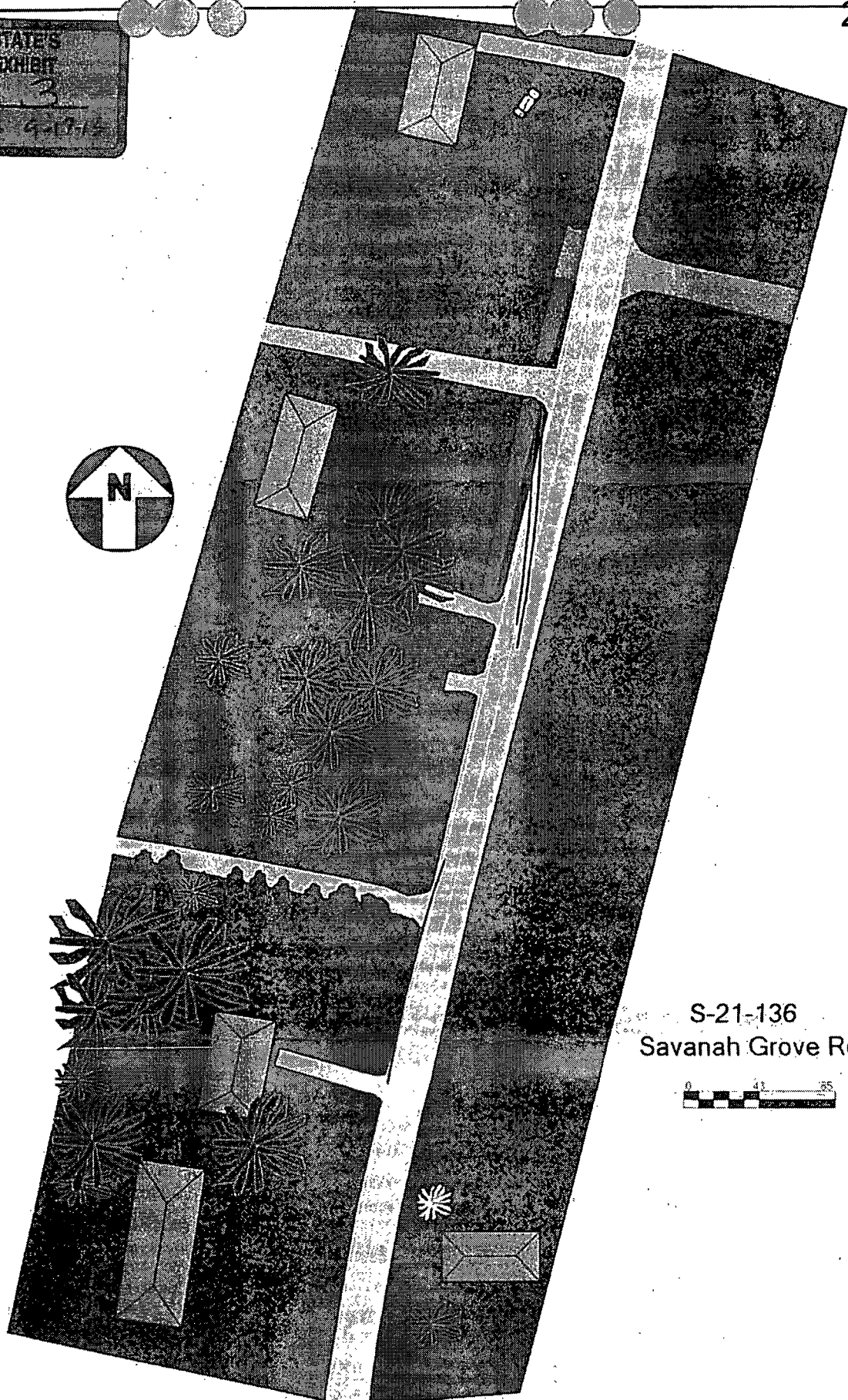


SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
PEE DEE
DATE DRAWN: 9/28/2011

IMPACT

TROOP 5/ FLORENCE
OCCURRED ON: 9/27/2011
DG-159-11

STATE'S
EXHIBIT
3
KIS 9-13-11



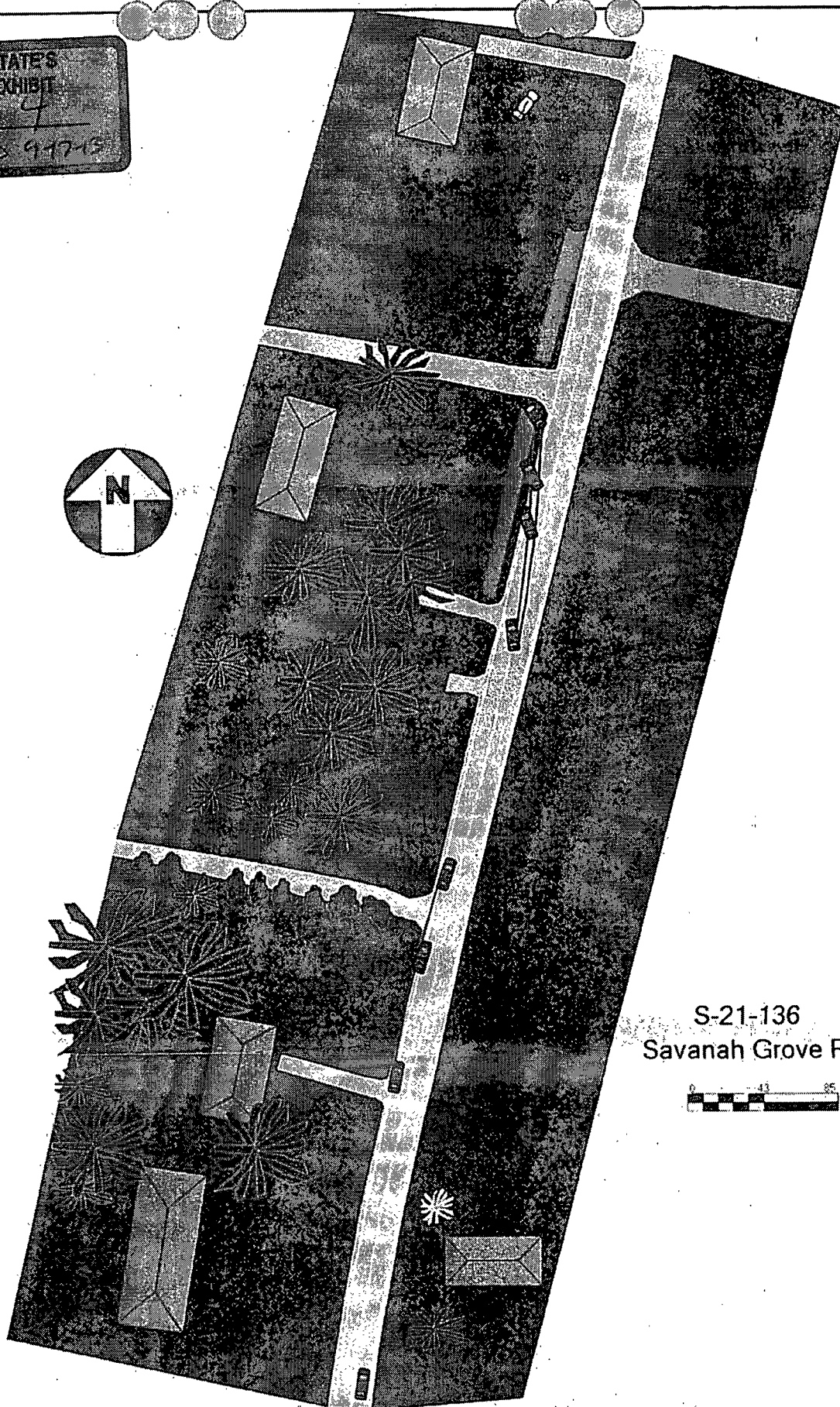
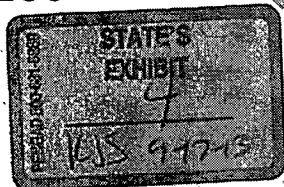
S-21-136
Savanah Grove Rd



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
PEE DEE
DATE DRAWN: 9/28/2011

EVIDENCE AND FINAL REST

TROOP 5/ FLORENCE
OCCURRED ON: 9/27/2011
OG-159-11



S-21-136
Savanah Grove Rd



SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM
PEE DEE
DATE DRAWN: 9/28/2011

SEQUENCE OF EVENTS

TROOP 5/ FLORENCE
OCCURRED ON: 9/27/2011
DG-159-11

SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

261

Subject: SELLERS RODERICK JEROME FLORENCE
 Last Name First Name Middle Name County of Arrest
 Subject's Address: [REDACTED] EFFINGHAM, SC 29541
 Driver's License Number: [REDACTED] State: SC DOB: 1/19/81 Sex: M Race: B
 Arresting Officer: R.E. DENHAM Agency: SCDP
 Arresting Officer's Address: 3415 E. PALMETTO ST. FLORENCE, SC 29506
 Date of Arrest: 9/21/11 Time of Arrest: 0430 AM/PM Traffic Ticket Number: _____
 Date of Test: 9/21/11 Time of Test: 0515 AM/PM Location of Collection: CAROLINA'S E.R. - FLO

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

- ☒ Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415, or is in violation of Section 56-5-2945, 50-21-113 or 56-1-286 of the 1976 South Carolina Code of Laws as amended.
- ☒ Subject has been advised in writing of his/her Implied Consent Rights.

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

- ☐ Subject had a DataMaster reading of less than 0.08%, and a urine sample is requested. DataMaster reading: _____ (optional)
- ☐ Subject is unconscious or otherwise incapable of refusal and is considered informed, therefore, a blood sample is requested.
- ☐ A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.
- ☒ Subject is under arrest for, or in violation of, Section 56-5-2945 or 50-21-113, and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.
- ☐ A blood sample is requested by the subject for his/her own independent test.

Name and Title of Licensed Medical Personnel: TERI SELLERS RN

(Please Print)

Signature of Licensed Medical Personnel: Teri Sellers RN

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

- ☒ Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
- ☐ A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name of Licensed or Trained Collector: TERI SELLERS, RN

(Please Print)

Signature of Licensed or Trained Collector: Teri Sellers, RN

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

- ☒ Sample collection was under my direct supervision.
- ☒ Sample container is properly labeled with the subject's name and time of collection.
- ☒ Sample is properly sealed and ready for transport.

Signature of Officer: [Signature]

Date: 9/27/2011

SUBJECT IS
I, UNABLE TO SIGN
 (Subject's Signature)

received a copy of this report on

Date

White Copy: Arresting Officer

Canary Copy: Hospital

Pink Copy: Subject

Goldenrod Copy: SLED

ADVISEMENT OF IMPLIED CONSENT RIGHTS

RODERICK JEROME SELLERS

Subject's Name (Print)

Date of Birth

Driver's License Number

State Licensed



DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be video recorded? If answer is Yes, start here → - Inform subject of video recording.
If answer is No, start here → - Inform subject of type samples requested (i.e. breath, blood, urine).
- (B) Provide subject with a written copy of the following advisement and read the advisement to the subject:
- You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws, 1976, as amended.
 - The arresting officer has directed that samples be taken for alcohol and/or drug testing.
 - The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
 - You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least six (6) months and your refusal may be used against you in court.
 - If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
 - If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month.
 - You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
 - You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
 - If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
(D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)

ADVERTENCIA POR MANEJAR BAJOS LOS EFECTOS DE ALCOHOL O DROGAS (DUI)

- (A) ¿Se grabará en video el análisis? Si la respuesta es Si, empieza aquí → - Informe al sujeto que va a ser grabado en video.
Si la respuesta es No, empieza aquí → - Informe al sujeto de lo que se requiere (ejemplo: soplar, sangre, urina.)
- (B) De al sujeto una copia escrita de la siguiente advertencia y lea la advertencia al sujeto:
- Usted queda detenido por Manejar Bajo los Efectos de Alcohol o Drogas (DUI), Sección 56-5-2930, del Código de Leyes de Carolina del Sur de 1976, según su enmienda.
 - El agente que efectuó la detención dispuso que se sacaran muestras de alcohol y/o drogas para ser analizadas.
 - Se obtendrán y se analizarán las muestras según la Sección 56-5-2950 y las normas de SLED.
 - Usted no está obligado a hacerse los análisis ni a sacarse las muestras, pero si se niega a someterse a estos análisis, se le tendrá que suspender o negar el derecho de manejar en Carolina del Sur por lo menos durante seis (6) meses y el hecho de que usted se niega, podrá usarse en su contra en un tribunal.
 - Si usted se somete a los análisis o se saca las muestras y tiene una concentración de alcohol de ocho centésimos del uno por ciento (0.08%) o más, entonces se lo podría acusar de Manejar con una Concentración Ilegal de Alcohol (DUAC), según la Sección 56-5-2933.
 - Si usted tiene una concentración de alcohol de quince centésimos del uno por ciento (0.15%) o más, se le deberá suspender el derecho de manejar en Carolina del Sur por lo menos durante un (1) mes.
 - Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice sus propios análisis adicionales, los cuales usted mismo tiene que pagar y en ese caso, el agente debe brindarle ayuda si usted lo solicita.
 - Usted tiene el derecho de solicitar una audiencia administrativa dentro de los treinta (30) días de la fecha en que se emitió la notificación de la suspensión.
 - Si usted no solicita una audiencia administrativa o si se le confirma la suspensión en la audiencia administrativa, usted tiene que matricularse en un Programa de Medidas Contra el Abuso del Consumo del Alcohol y las Drogas.

Si aplica, efectúe los siguientes procedimientos:

- (C) Inspeccione la boca del sujeto y quite material extraño de la boca. (Ignora si se niega el sujeto.)
(D) Anade datos biográficos en el DataMaster DMT. (Esto es requerido para todos los exámenes aunque se niege el sujeto.)
(E) Observe al sujeto un mínimo de (20) minutos antes de obtener un ejemplar de su respiro. (Ignora si se niega.)

SUBJECT UNABLE
TO SIGN.Subject's Signature
Firma del Sujeto (Recibió una copia)Officer's Signature
Firma del Agentedate/time
fecha/hora9/21/11
0500

Felony - GBI

South Carolina Department of Public Safety Chain Of Custody & Evidence Destruction

Case # 11-21-HP5-0218

Evidence Type Blood vials Date Impounded

☒ Highway Patrol ☐ Transport Police ☐ Bureau of Protective Service ☐ Other

Status Check One Only
☐ General Session Evidence ☒ Magistrate Evidence ☐ Found ☐ Recovered ☐ Safe Keeping ☐ Other

I hereby acknowledge that the listed items represent monies/ property taken from my possession and that I have received a copy of this report. Signature

Court Date: 11/8/2011 Summons /Warrant Number: Pending

Officer: R.E. Denham Date of Incident: 9/27/2011 Time of Incident: 0315

Subject / Violator's Name: Roderick Jerome Sellers Phone Number : ()

Violator's Address: Effingham, SC 29541 License Number (Tag /State) GY2363 SC

Item #	Quantity	Description (Include make, Model and serial Numbers if applicable)	Field weight	NCIC	
				Yes	No
1	2	Blood vials			

DISPOSITION OF ITEM (S) ABOVE: (The item(s) above have been received in substantially the same condition as when seized.)

From	To	Location	Reason for Movement	Date
R.E. Denham	Evidence fridge	Florence Patrol Office	LOG IN	9/27/2011
RKH1610101	JA SEBANS	"	"	9-27-2011
JA SEBANS	RKH1610101	"	"	9-27-2011
RKH1610101	JA SEBANS	"	TK/EF	9-28-2011
JA SEBANS	JD Bell	"	TK/EF	9-28-2011
JD Bell	L.M. Donkle	CEF	LOG-IN	9-30-11
L.M. Donkle	SAFE	CEF	Temp. Storage	9-30-11

We have further inspected such conveyance as to condition and contents, including glove compartment, trunk, or any other applicable storage areas and do certify that all contents and condition of such conveyance, except contraband items, if any have been satisfactorily accounted for to me/us with this conveyance, or that such items have been disposed of in accordance with my/our instructions, except: (If no exceptions, have recipient write "None" in ink, in his/her handwriting)

It is my/our full understanding that this is a Public Safety because such police agency admission that its seizure was unlawful. from:

Signature (Individual Receiving Property)

Signature (Individual Returning Property)

Witness:

Case # 11-21-HP5-0218

SCDPS EVIDENCE

Item #1

Record #DENHAM

Name: SELLERS, RODERICK, J.



to me/us by the South Carolina Department of Public Safety and that its return is in no degree an implication or inference as to its contents

Disposition of the above cases was disposed of in General Sessions/ Magistrate's court on:

DESTRUCTION OF EVIDENCE

This is to certify that I, _____ destroyed / relinquished the above described evidence on _____
 (Person destroying/relinquish evidence) (Date)

at _____

(Where destroyed)

(Witness)

Person destroying evidence

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Trp. Eric Denham
S.C. Highway Patrol Troop #5
3415 East Palmetto Street
Florence, SC 29506

TOXICOLOGY DEPARTMENT
November 01, 2011
SLED No: L11-11294
Your Case No: 1121HP50218
Incident Date: 09/27/2011

[S] Roderick Jerome Sellers
[V] Johnatha Anton Williams

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE

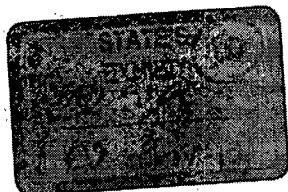
Item: 1 **Sample Type: Blood (Toxicology) - labeled "Roderick Jerome Sellers"**

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.158	% w/v	0.01

C. J. Tucker

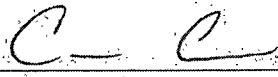
Carmen J. Tucker
Forensic Scientist



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 11, 2014.



Carmen V. Ganjehsani
Appellate Defender

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

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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July 11, 2014



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